

**ADRIANO B. VELASQUEZ, PETITIONER, VS. HONORABLE JOSE GIL,
AS COMMISSIONER OF CIVIL SERVICE, HONORABLE A. H. LACSON,
AS MAYOR, CITY OF MANILA, AND THE HONORABLE MUNICIPAL
BOARD, ...**

G.R. No. L-8860. June 28, 1956

Ponente: BENGZON, J.

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BENGZON, J.:

This is certiorari and mandamus filed against the Commissioner of Civil Service, and the Mayor and the Municipal Board of the City of Manila, to obtain a ruling that petitioner's reinstatement as police lieutenant of Manila is obligatory upon the respondent Mayor.

In 1941 Adriano B. Velasquez was a lieutenant of the Manila police when he was accused, and convicted together with policeman Federico Barba of the crime of extortion; he began serving his twenty-year sentence on August 18, 1944, but he was liberated by the guerrillas on February 13, 1945; he asked for reinstatement on March 3, 1945, but the Provost Marshall of the U. S. Army, then acting as Chief of Police denied his request; his subsequent requests for re-appointment were likewise refused; then on August 24, 1948. Federico Barba who had been accused and convicted like herein petitioner, re-entered the police force; this gave Velasquez some hopes, so in January 1954 he began mandamus proceedings to compel the Mayor to re-appoint him as police lieutenant, maintaining the theory that it was the latter's duty to reinstate him under Executive Order No. 223 dated September 25, 1939, which reads as follows:

"A person who has served six months or less in the Philippines Civil Service may be reinstated as a probationer within a period of one year following his separation from the service under the former appointment; * * * and a person who has served five years or more may be reinstated within ten years from the date of his separation from the service."

The Manila court of first instance, and this Court on appeal (G. R. No- L-7730, August 1954) found the mandamus petition to be without merit, not only because under the terms of said Order, reinstatement was discretionary, but also because the said Order did not apply to him; inasmuch as he had been separated from the service for cause: his twenty-year sentence.

A few months later, on December 7, 1954, Velasquez started this second attempt to return to duty; and obviously in an effort to evade the doctrine of res judicata "chose a different theory" and included, as new defendants the Commissioner of Civil Service and the Municipal Boards. However, as the Solicitor General and the City Fiscal suggest, a party may not renew a litigation by the expedient of simply joining new parties. And the controversy here is the same as in G. R- No. L-7730: does Velasquez have the right to go back to his job?

Our decision, in August said no: he had no right to compel reinstatement. It is alleged however that in this petition a new issue—not squarely debated in the former case—is presently raised: illegality of petitioner's separation from his position as police lieutenant. Even if the point had not been discussed then, still the principle of res judicata

applies, inasmuch as the point could and should have been asserted then and there. At that time petitioner claimed he should be taken back because he had a right to be reinstated. He could and should have added i because he had been illegally separated from the service.

The doctrine is, that a final judgment is conclusive not only as to every matter which was offered to sustain the petitioner's claim or demand, but also as to any other admissible matter which might have been offered for that purpose. *Pefialosa vs. Tuason*, 22 Phil., 303, 312; *Philippine National Bank vs. Barreto*, 52 Phil., 818, 824, (See *Moran Comments* under section 45 Rule 39.) The party is bound by the previous decision, even if his cause "had not been properly ventilated" by his former counsel who failed to see and develop a pertinent issue.

Of course, this is not an implied admission that if petitioner's cause were examined anew in the light of arguments advanced by his new counsel, he would have a chance. Yet it is not necessary to go over the same grounds, considering our views expressed thru Mr. Justice Labrador in a recent decision:

"If an employee is illegally dismissed, he may conform to such illegal dismissal or acquiesce therein, or by his inaction and by sleeping on his rights he may in law be considered as having abandoned the office to which he is entitled to be reinstated. These defenses are valid defenses to an action for reinstatement. * * *

We hold that in view of the policy of the State contained in the law fixing the period of one year within which actions for quo warranto may be justified, any person claiming right to a position in the civil service should also be required to file his petition for reinstatement within the period of one year, otherwise he is thereby considered as having abandoned his office." (*Unabia vs. City Mayor*, supra, p. 253)

According to appellant, he was removed by the then Acting Chief of Police on March 3, 1945; but he applied to the courts for reinstatement only in January 1954, after nine years. He waited too long.

The Manila court's order dismissing this second petition should therefore be affirmed, with costs.

Paras, C. J., Padilla, Reyes, A., Bautista Angelo, Reyes, J. B. L., and Endencia, JJ., concur.

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