

EMILIO ESPIRITU, ET AL., PETITIONERS-APPELLANTS, VS. VALERIANO FUGOSO ET AL., RESPONDENTS-APPELLEES.

G.R. No. L-1768. October 20, 1948

Ponente: PERFECTO, J.

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PERFECTO, J.:

Appellants instituted this quo warranto proceedings to seek reinstatement in the positions of police officers they were occupying in the Manila Police Department at the time the Pacific War broke out.

At the time this case was decided in the lower court on September 30, 1947, with the exception of Bias Pineda and Wenceslao Ealdama, appellants had already been reinstated in the service and appointed to the respective offices they were occupying prior to the outbreak of the war. According to the lower court, Pineda and Ealdama were denied reinstatement for they had been removed from the service for cause.

This case was heard on January 10, 1948, on which date the city fiscal and assistant fiscals appearing for appellees filed a petition for the dismissal of the case upon the fact that all petitioners have been reinstated and are now occupying the respective positions they had at the outbreak of the war, including Bias Pineda and Wenceslao Ealdama, as certified in the accompanying sworn statement of Florencia Catindig, Major and administrative officer of the Manila Police Department, and supported by the joint affidavit of Pineda and Ealdama, where both asserted that they had been reinstated, except that their salaries have not been adjusted because of lack of appropriation and that, on account of the willingness of the administration to restore them to their previously held ranks, obstructed only by the absence of the corresponding appropriations, they are no longer interested in this quo warranto proceedings.

Appellants' lawyers filed on January 19, 1948, manifestation to the effect that, according to a letter they received from Ealdama, Pineda and Ealdama did not sign voluntarily their affidavit of January 10, 1948.

Undoubtedly, the letter of Ealdama alone cannot nullify the affidavit that he and Pineda have subscribed and sworn before a notary public on January 10, 1943. Ealdama's allegation that he signed the affidavit very reluctantly and that he did not sign it under oath cannot be taken seriously, not being supported by his oath nor corroborated by Pineda, his co-signer of the affidavit, aside from the consideration that a police officer, such as Ealdama, trained to face all kinds of dangers in the performance of his official duties, cannot be believed to have succumbed to an alleged fear of future consequences so as to sign an affidavit against his will.

Furthermore, appellants have not disputed appellee's allegation that Pineda and Ealdama have also been reinstated.

The reinstatement of all of the appellants has made this proceedings academic.

Appellants alleged that the lower court erred in not declaring unconstitutional Commonwealth Act No. 698.

The lower court, invoking the provision of Sec. 10 of Article VIII of the Constitution, expressed the opinion that

the Constitution has lodged the power to declare law unconstitutional exclusively upon the Supreme Court, and consequently, refrained from passing upon the constitutionality of Commonwealth Act No. 698. There is nothing in section 10 of Article VIII of the Constitution from which it can be concluded that the power to declare a law unconstitutional belongs exclusively to the Supreme Court. The section provides only for the procedure that the Supreme Court should follow when such a question is presented before it.

Appellants adduced strong arguments against the constitutionality of Commonwealth Act No. 698, but now the question has become moot, because of the enactment on June 15, 1948 of Republic Act No. 271, expressly repealing Commonwealth Act No. 698.

The case is dismissed without costs.

Ozaeta, Paras, Feria, Briones, and Montemayor, JJ., concur.

Moran, C. J., concurs in the result.

Pablo, M., conforme con la parte dispositiva.

Tuason, J.:

I concur in this decision except the statement that "appellants adduced strong arguments against the constitutionality of Commonwealth Act No. 698." Although this Act has been repealed it is inadvisable to express an opinion on its constitutionality as similar legislation might be enacted or contemplated.

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