

**JOSE CANTILLO, PETITIONER, VS. HON. ABUNDIO Z. ARRIETA,
PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF
BUKIDNON, BRANCH II, THE MUNICIPALITY OF MARAMAG,
PROVINCE OF BUKIDNON;...**

G.R. No. L-31444. November 13, 1974

Ponente: MAKALINTAL, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/533bc4e23ab4/>

MAKALINTAL, C.J.:

Appeal from the decision of the Court of First Instance of Bukidnon (Br. II) in its Civil Case No. 430 dismissing the petition for mandamus filed by herein petitioner-appellant Jose Cantillo to compel the Mayor and Council of the municipality of Maramag, Bukidnon, to pay him back salaries during the period of his suspension from the police force of said municipality.

The material facts are partially stipulated as follows:

“xxx xxx xxx

2. That on October 6, 1962, the petitioner was originally appointed Temporary Municipal Policeman of the municipality of Maramag, Bukidnon; that pursuant to said appointment petitioner took his oath of office as Temporary Municipal Policeman, and served as such, for the municipality of Maramag, Bukidnon;
3. That said appointment was attested to by the Provincial Treasurer of Bukidnon, and the Commissioner of Civil Service;
4. That on November 2, 1964, the petitioner was given another appointment as Municipal Policeman of the municipality of Maramag, Bukidnon, took his oath of office by virtue thereof, acted and qualified as such. The appointment of November 2, 1964 is 'Provisional' in nature; that said appointment of (November 2, 1964) was attested to as provisional by the Provincial Treasurer of Bukidnon, and the Commissioner of Civil Service;
5. That on January 20, 1967, petitioner was given another provisional appointment as Municipal Policeman of the municipality of Maramag, took his oath of office by virtue thereof, acted and qualified as such, the same to take effect on July 1, 1966. That provisional appointment was attested to by the Provincial Treasurer of Bukidnon, and the Commissioner of Civil Service;
6. That at the time of petitioner's original appointment of October 6, 1962, petitioner was 41 years of age, he having been born on October 19, 1920; that at the time of petitioner's appointment on October 6, 1962, he was and is still a second year high school;
7. That on October 16, 1967, petitioner was suspended from the service as such patrolman of the Police Force of Maramag, Bukidnon, because of the filing of a criminal case against him for Infidelity in the Custody of the Prisoner; that the petitioner was not arraigned in the above-entitled case;
8. That on November 26, 1968, the then Assistant Provincial Fiscal Arcadio D. Fabria moved for the provisional dismissal of the case against petitioner on the ground that the prosecution did not have sufficient

evidence to prove the guilt of the petitioner beyond reasonable doubt; that from the time of the dismissal up to now no more action has been taken against the petitioner;

9. That after the dismissal of the case against the petitioner he (petitioner) presented oral and written request for reinstatement to the service and also claimed for payment of his back salary corresponding to the time of his reinstatement and payment of his back salary turned down by respondent;

xxx xxx xxx”

On February 12, 1969 petitioner commenced the mandamus case below, demanding that respondent municipality be compelled to pay his back salaries during his period of suspension from October 16, 1967 to June 30, 1968,[1] basing his claim on section 4 of Republic Act No. 557,[2] which reads:

"SEC. 4. When a member of the provincial guards, city police or municipal police is accused in court of any felony or violation of law by the provincial fiscal or city fiscal, as the case may be, the provincial governor, the city mayor or the municipal mayor shall immediately suspend the accused from office pending the final decision of the case by the court and, in case of acquittal (the) the accused shall be entitled to payment of the entire salary he failed to receive during his suspension. (Italics supplied)

After appropriate proceedings the court a quo dismissed the petition on October 14, 1969. Hence this appeal.

The law in force when petitioner was extended his latest provisional appointment as municipal policeman on January 20, 1967 was Republic Act No. 4864, otherwise known as the Police Act of 1966.[3] Section 9 thereof enumerates the general qualifications for appointment to a local police agency, specifically requiring, inter alia, that the appointee be not less than twenty-three nor more than thirty-three years of age, and in the case of an appointment in a municipal police force, that the appointee must have at least completed high school. Considering that on October 6, 1962, when petitioner was first appointed as temporary municipal policeman, he was already 41 years old, he was at least 46, clearly 13 years over the maximum age qualification, when he was extended his latest provisional appointment as municipal policeman on January 20, 1967. His having studied only up to second year in high school, a couple of years short of minimum educational requirement for the position to which he had been appointed, merely accentuates further his lack of the qualifications required by law.

The infirmity of petitioner's appointment was not mere absence of civil service eligibility but of qualifications for the office. It affected therefore the very validity of such appointment, and precluded the reinstatement he claimed after he was suspended. During his tenure he was at best only a de facto officer and as such entitled to emoluments for actual services rendered. His provisional appointment did not render nugatory the requirements of Section 9 of the Police Act of 1966 so as to give color of validity to petitioner's occupancy of the position. Thus, while Section 11 of the same Act authorized provisional appointments of policemen where no civil service eligibles are available therefor, it expressly required that "in case of a patrolman-appointee, he shall possess at least the general qualifications provided for in Section nine of this Act" in order that he could be appointed provisionally. "(T)he tolerance, acquiescence or mistake of the proper officials, resulting in the non-observance of the pertinent rules on the matter, does not render the legal requirement (in this case the possession of the general qualifications for appointment to the local police agency), ineffective and unenforceable." [4]

In view of what has been stated above, We deem it unnecessary to resolve the issue of whether or not the provisional dismissal of the criminal case filed against petitioner amounted to acquittal within the meaning of Section 4 of Rep. Act No. 557, as reenacted in Section 16 of Rep. Act No. 4864, concerning the payment of the salary during the period of suspension.

The decision appealed from is affirmed. No pronouncement as to costs.

Castro, Makasiar, Esguerra, and Munoz Palma, JJ., concur.
Teehankee, J., took no part.

[1] It appears that petitioner's position in the police force of Maramag, Bukidnon had been abolished by the municipal council effective July 1, 1968. This accounts for petitioner's voluntary desistance in pursuing his original additional plea for reinstatement.

[2] Section 4 of Republic Act No. 557 was rephrased in the second paragraph of section 16 of Republic Act No. 4864, otherwise known as the Police Act of 1966, in this wise:

“xxx xxx xxx

When a member of the police force or agency is accused in court of any felony or violation of law by the city or municipal attorney or by the chief of the municipal police or the provincial or assistant provincial fiscal or city or assistant city fiscal, as the case may be, the city mayor or municipal mayor concerned, shall immediately suspend the accused from office pending the final decision of the court, and in case of acquittal, the accused shall be entitled to immediate reinstatement and the payment of the entire salary he failed to receive during his suspension; x x x”

[3] Republic Act No. 4864 took effect on September 8, 1966.

[4] Favis vs. Rupisan, et al., 17 SCRA 190, 196; see: Ibanez vs. Commission on Elections, 19 SCRA 1002.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.