

BAYANI SARMIENTO, ET AL., PETITIONERS, VS. CONSTANTINO NOLASCO, ET AL., RESPONDENTS.

G.R. No. L-38565. November 15, 1974

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

Petitioners seek modification of a portion of the decision rendered in their favor on September 16, 1974, more specifically paragraph 2 of its dispositive portion which reads as follows:

"That above-mentioned petitioners should be reinstated as permanent employees under the provision of Section 18 of Republic Act 6040 if they qualify as such; otherwise, they should be considered to have held office until August 4, 1969 (when Republic Act 6040 abolishing provisional appointments took effect);x x x" (Italics portion is the clause sought to be modified)

The motion is based on the ground that while Republic Act 6040 abolished "provisional appointments" and retained "permanent appointments" and "temporary appointments", providing that only those provisional employees who qualify as permanent employees shall automatically be permanent, said act does not provide that those who do not qualify for automatic permanent appointment may not continue to hold office as "holdover employees" or as "temporary employees".

In other words, petitioners contend that Republic Act 6040 does not provide that all provisional employees (as provided for in R.A. 2260) who do not automatically qualify as permanent under Sec. 18 of Republic Act 6040, are automatically removed or separated from the service after August 4, 1969; and that such automatic removal of provisional appointees could not have been intended by said Act, for if such were the case it would have created a vacuum in the government service by the automatic cessation of the tenure of all provisional employees.

Petitioners anchor their arguments on the provision of Memorandum Circular No. 4, Series of 1971, dated May 28, 1971, of the Civil Service Commission, which is intended to set guidelines for the implementation of Section 18 of Republic Act 6040. This Circular was issued almost two years after its enactment. It was not, however, brought to our attention in the pleadings of any of the parties and our attention was called to it only in the petitioner's motion for reconsideration for modification of paragraph 2 of the dispositive portion of the decision.

We examined said circular and found it to be a delegation of authority to Heads of Departments and agencies of the national government to review provisional appointments pursuant to said Section 18 of Republic Act 6040 providing, among others, for automatic conversion of provisional appointments to permanent appointments if appointees are qualified so as to expedite action thereon.

Under said circular, if the appointment of the provisional appointee is disapproved in the process of review because the appointee is without any civil service eligibility and the position he is holding belongs to the competitive service, said disapproval shall take effect thirty days from receipt of notice of disapproval by the appointee, unless an appeal is taken or request for reconsideration is made as provided by law; that if the appeal is decided adversely or the request for reconsideration is denied, the disapproval shall take effect thirty days from

receipt by the appointee of the decision on the appeal or denial of the request for reconsideration; and that if the exigencies of the service so require and in the judgment of the appointing authority there is need to reappoint a non-eligible, such non-eligible may be proposed for temporary appointment subject to the condition that no eligible is actually and immediately available. This executive interpretation of Republic Act No. 6040 carries great weight and We hold that it lays down a sound rule on the matter.

We are fully convinced that the approval on August 4, 1969 of Republic Act 6040 abolishing provisional appointments did not effect the automatic separation from the service of all provisional appointees, since Section 18 of the same law provides for automatic conversion of provisional appointments into permanent appointments if the incumbents are qualified. That segment of the law presupposes the individual review of each provisional appointment to determine if it could be converted automatically into permanent appointment under Section 18 of R.A. 6040. That is the reason why Memorandum Circular No. 4, Series of 1971, of the Civil Service Commission was promulgated so to provide for a uniform and expeditious procedure in the review of all provisional appointments.

The petitioners are clearly entitled to hold over and continue in service after August 4, 1969 (effectivity of R.A. 6040) pending review and final action on their individual provisional appointments as provided for in the aforementioned Circular No. 4 of the Civil Service Commission. To deny them said right given by the law (R.A. 6040) would be to deny them the same and equal treatment accorded to other provisional appointees in the service. This in turn would certainly be a denial of their basic fundamental rights to due process of law and equal protection of the law. We are fully aware that if petitioners did not enjoy the advantage of the procedure granted by law for the review of their individual provisional appointments, it was not due to their fault but to the pendency of this case involving the status of their provisional appointments.

WHEREFORE, paragraph two of the dispositive portion of the decision in this case is hereby modified to read as follows:

"2. That above-mentioned petitioners should be reinstated as permanent employees under the provision of Section 18 of Republic Act 6040 if they qualify as such; otherwise, they should be considered to continue in office as holdover employees, from August 4, 1969 (when Republic Act 6040 abolishing provisional appointments took effect) until their respective provisional appointments have been reviewed and/or until their appointments are legally terminated or disapproved by competent government authority; as to the petitioner formerly holding the position presently held by respondent Honorato Espanola, he shall be reinstated as a permanent employee subject to the conditions above set forth if the court a quo upon verification finds that respondent Espanola acquired his eligibility after August 4, 1969, when the provisional appointment of this petitioner automatically became permanent if he is eligible, otherwise said petitioner as reinstated is considered to continue in office under the same condition as the other petitioners."

Castro, (Chairman), Teehankee, Makasiar, and Muñoz Palma, JJ., concur.

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