

**LEVY D. MACASIANO, PETITIONER, VS. EPI REY PANGRAMUYEN,
MARIO R. GOMEZ, EDUARDO S. DE GUZMAN, MELCHOR DE LA CRUZ,
AND BARBA MARAYAG, RESPONDENTS.**

G.R. No. L-35078. October 23, 1973

Ponente: FERNANDO, J.

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FERNANDO, J.:

The decisive question in this certiorari and quo warranto proceeding, one impressed with novelty as well as significance, is whether respondent Commissioner of Civil Service is at liberty to disregard a finding made by the Police Commission that the principal respondent, Mario R. Gomez, lacked the statutory qualification of military service for the position of a chief of police under the Police Act of 1966.[1] Respondent Commissioner did not feel bound to honor such a determination, perhaps influenced by the assertion of respondent Gomez that his completion of a basic reserve officer training course in college was the equivalent thereof. As a result, respondent Eduardo S. de Guzman,[2] the Mayor of Cavite City, was emboldened to terminate the services of petitioner Levy Macasiano, who was duly appointed to that position and whose right to such office was recognized by the Police Commission. The answer we give to the basic issue posed is that both as a matter of principle and on policy considerations, the autonomy the law confers on such police agency is not to be taken lightly but must be accorded respect. Such an approach is all the more compelling in this suit as legal support is wanting for the interpretation of respondent Gomez as to his having undergone the military service imposed by law. We rule for petitioner.

Now as to the relevant facts, which are not open to dispute. It was shown in the petition that on November 10, 1971, former City Mayor Fidel D. Dones appointed respondent Mario R. Gomez as Chief of Police of Cavite City.[3] Thereafter, on January 14, 1972, the then City Mayor, the late Manuel Rojas, considered the services of respondent Mario R. Gomez as such Chief of Police terminated, a step attributed primarily to his failure to meet the minimum qualification for such office under Section 10 of the Police Act of 1966, lacking as he did the military service requirement; in his place was appointed petitioner Levy D. Macasiano on the very same day. Petitioner immediately took his oath of office.[4] Then came, on January 25, 1972, an indorsement from the Police Commission to respondent Commissioner of the Civil Service, wherein its Chairman, General Crispino M. de Castro, noted that notwithstanding respondent Gomez' failure to meet the minimum statutory qualifications for the position of Chief of Police of a city police agency in view of his lack of military or police service qualification according to Section 10 of the Police Act, his appointment as Chief of Police was inadvertently attested by the Civil Service Commission as temporary from November 16, 1971 to December 22, 1971 and as permanent effective December 23, 1971. There was in addition this categorical statement from such Chairman de Castro: "In the light of the premises evidently pointing to the disqualification of Mr. Mario R. Gomez, it is believed that a re-examination of the action of that Commission on his (Mr. Gomez's) appointment is in order." [5] Afterwards, on March 10, 1972, Chairman de Castro requested that the appointment of petitioner Levy D. Macasiano as Chief of Police of Cavite City be attested by respondent Commissioner of Civil Service.[6] There was, in addition, a

reiteration by him of the earlier request for a re-examination of the action of the Civil Service Commission on the appointment of respondent Gomez and for its immediate resolution.[7] The above notwithstanding, on April 7, 1972, respondent Commissioner of Civil Service recommended the payment to respondent Gomez of his salary as Chief of Police of Cavite City.[8] Lastly, on April 21, 1972, an urgent motion for reconsideration was filed by petitioner addressed to respondent Commissioner of Civil Service, but to no avail.[9]

That ought not to have been the case. Respondent Commissioner of Civil Service, instead of turning a deaf ear, should have reconsidered. For unless the determination of the Police Commission was contrary to law, he should have been guided accordingly. Respondent Commissioner was, however, adamant. Resort to this Tribunal by certiorari thus became unavoidable. A review of the action taken by respondent Commissioner leads to the conclusion, as noted at the outset, that it was devoid of support in law. The petition must be granted.

- There is no question about the lack of qualification of respondent Gomez to the position of Chief of Police of Cavite City, and to petitioner being entitled thereto. So it is apparent from the official communications from such agency. The first indorsement coming from Chairman Crispino M. de Castro of the Police Commission dated January 25, 1972 and addressed to respondent Commissioner of Civil Service reads thus: "It appears from the within papers that on 10 November 1971, Mr. Mario R. Gomez, a lawyer, was appointed by then Mayor Fidel D. Dones as Chief of Police of Cavite City. From the Personal Data Sheet of Mr. Gomez, however, it may be gathered that although the latter is a Bachelor of Laws degree-holder, he has no military or police service qualification as prescribed under Section 10 of Republic Act 4864 otherwise known as Police Act of 1966. Notwithstanding the fact that Mr. Gomez does not meet the minimum statutory qualifications for appointment as Chief of Police of a city police agency, his appointment was, we surmise, inadvertently attested as temporary under 24(C) of RA 2260 as amended effective November 16, 1971 up to December 22, 1971 and attested as permanent under Section 24(b) of RA 2260 as amended, effective December 23, 1971, the date he was granted his eligibility under RA 1080. Subsequently, on 14 January 1972, the newly elected Mayor of Cavite City terminated the services of Mr. Gomez in view of his failure to meet the minimum qualifications under Section 10 of the Police Act and thereafter extended on 15 January 1972 a new appointment in favor of Mr. Levy D. Macasiano as Chief of Police of the locality. In the light of the premises evidently pointing to the disqualification of Mr. Mario R. Gomez, it is believed that a re-examination of the action of that Commission on his (Mr. Gomez's) appointment is in order." [10] It concluded with these words: "The favor of an early resolution of this case will ease up the tension now obtaining in Cavite City where two persons are acting as Chief of Police." [11] This was followed by another indorsement of the same official to respondent Commissioner of Civil Service dated March 10, 1972, on the question of the right of petitioner Levy D. Macasiano to the position of Chief of Police. Thus: "Respectfully forwarded to the Honorable Commissioner of Civil Service, Quezon City, requesting attestation of the enclosed proposed appointment of the following to position indicated opposite their name: City: Cavite City. [Proposed Appointee: Levy D. Macasiano. Designation: Chief of Police]." [12] What is more, two weeks later, on March 24, 1972, to be exact, there was again a reiteration by Chairman de Castro of the request for the reconsideration of the action taken by respondent Commissioner of Civil Service. He explained why: "The tense situation prevailing in Cavite City due to the assassination of Mayor Manuel Rojas and the conflicting claims of Atty. Mario R. Gomez and Mr. Levy D. Macasiano to the position of Chief of Police of Cavite City impels us to reiterate our request for a re-examination of the action of that Commission on Atty. Gomez's appointment and immediate resolution thereto." [13]

There is no question as to the controlling legal provision either. Section 10 of the Police Act of 1966 [14] sets forth the minimum qualification for appointment as Chief of Police in a city. Thus: "No person may be appointed chief of a city police agency unless he holds a bachelor's degree from a recognized institution of learning and has served either in the Armed Forces of the Philippines or the National Bureau of Investigation, or has served as chief of police with exemplary record, or has served in the police department of any city with the rank of captain or its equivalent therein for at least three years; or any high school graduate who has served as officer in the

armed forces for at least eight years with the rank of captain and/or higher." [15] Respondent Gomez, in his answer reiterating what was set forth in his comment, would try to make light of what is really an insuperable obstacle by the allegation that the statutory provision as to military service had been satisfied by his two-year enrollment in the reserve officers training corps presumably as a college student. He added: "In fact, by reason thereof, respondent Gomez was called to active service when the Pacific War broke out on December 8, 1941 and was quartered at the old Philippine Law School and Lacson College building at Real St., Intramuros, Manila, until his unit (ROTC, Lacson College) was disbanded upon orders on or about December 23, 1941 when Manila was declared an open city by the late Gen. Douglas MacArthur." [16] His being quartered fourteen days, counting from December 8, may be considered as coming under such category. The law, however, requires three years. It does follow, then, that his attempt to escape from its literal language is unsuccessful. What is more, the agency entrusted with the enforcement of the Police Act of 1966 is flatly opposed to such an interpretation, and categorically declared that he had failed "to meet the minimum qualifications under Section 10 * * *." [17] Such a contemporaneous construction is not to be ignored or disregarded. It carries great weight. On such a technical matter, it is well-nigh conclusive. So our decisions have invariably held from *In re Allen*, [18] promulgated in 1903. The later cases are quite impressive as to number. [19] While not exactly in point, an excerpt from the leading case of *Morales v. Subido*, [20] the opinion being penned by Justice Castro, is further indicative of the untenable stand of respondent Gomez as to the interpretation to be given to the statutory requirement of military service. Thus: "The trouble with such argument is that even if we were to concede its soundness, still we would be hard put reading it in the law because it is not there. The inclusion of desirable enlargements in the statute is addressed to the judgment of Congress and unless such enlargements are by it accepted courts are without power to make them. As Mr. Justice Frankfurter put the matter with lucidity: 'An omission at the time of enactment, whether careless or calculated, cannot be judicially supplied however much later wisdom may recommend the inclusion.'" [21]

- What imparts to this proceeding more than just ordinary significance is not the determination of whether one individual rather than another is the one who has rightly staked his claim to being the chief of police of a city. If it were so, its outcome affects only the two persons involved. Whoever prevails gets the position, and that is that. There is, however, much more to this suit. It calls for a determination of whether respondent Commissioner of Civil Service, even if acting from the best of motives, is to be allowed to interfere unduly with the operation of the Police Commission clearly acting within the ambit of its competence. There can be only one answer. If the hoped-for reforms intended to be brought about by the creation of such an agency are not to be frustrated, then certainly its autonomy is to be respected, its independence assured. It is certainly in a much better position than respondent Commissioner to know what is best for the service. After seven years of existence, it has acquired, at the very least, a minimum degree of expertise. By this time, the terms of the Police Act of 1966 are no longer likely to produce difficult, much less insoluble, problems. What is more, it is its responsibility to enforce and administer such act. The law, not to say common sense, dictates that it should have the commensurate authority. This Court, not once, but several times, had called a halt to the propensity of the Civil Service Commissioner to encroach on the prerogatives of city mayors with respect to police matters. [22] It can do no less with this well-intentioned but legally untenable actuation of such dignitary that would cut deeply into a sphere appropriately within the jurisdiction of the Police Commission. If it fails to do so, then there is the risk that the beneficent purposes of the Police Act of 1966 would not be achieved. That is not the way to construe a statute. [23] Thus, as earlier mentioned, it is not only the strict wording of the law, but also, and much more, the soundest policy considerations that preclude this Court from sustaining respondent Commissioner of Civil Service.

WHEREFORE, in accordance with the prayer of the petition, the second indorsement of respondent Commissioner of Civil Service in answer to a request for a ruling by respondent City Auditor of Cavite City upholding the appointment of respondent Mario R. Gomez to the position of Chief of Police is nullified and set

aside as being without support in law, thus upholding the right to such position of petitioner in accordance with the first indorsement of the Police Commission dated March 10, 1972 by its then Chairman Crispino M. de Castro. Respondent City Mayor Eduardo S. de Guzman of Cavite City, respondent City Treasurer Melchor de la Cruz and respondent City Auditor Barba Marayag are hereby ordered to comply with this decision. Without pronouncement as to costs.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Teehankee, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

[1] Republic Act No. 4864.

[2] The other respondents are Melchor de la Cruz and Barba Marayag, Treasurer and Auditor of Cavite City.

[3] Petition, par. 8.

[4] Ibid, pars. 9 and 10.

[5] Ibid, par. 12.

[6] Ibid, par. 13.

[7] Ibid, par. 14.

[8] Ibid, par. 15.

[9] Ibid, par. 16.

[10] Ibid, Annex E.

[11] Ibid, Annex E-1.

[12] Ibid, Annex F.

[13] Ibid, Annex G.

[14] Republic Act No. 4864.

[15] Ibid, Section 10.

[16] Answer, 7.

[17] Petition, Annex E.

[18] 2 Phil. 630.

[19] Cf. *Government v. Municipality of Binalonan*, 32 Phil. 634 (1915); *United States v. Estapia*, 37 Phil. 17 (1917); *Molina v. Rafferty*, 37 Phil. 545 (1918); *Molina v. Rafferty*, 38 Phil. 167 (1918); *Madrigal v. Rafferty*, 38 Phil. 414 (1918); *Phil. Sugar Centrals Agency v. Collector of Customs*, 51 Phil. 131 (1927); *Yra v. Abaño*, 52 Phil. 380 (1928); *Guanio v. Fernandez*, 55 Phil. 814 (1931); *People v. Hernandez*, 59 Phil. 272 (1933); *Ortua v. Singson Encarnacion*, 59 Phil. 440 (1934); *Regalado v. Yulo*, 61 Phil. 173 (1935); *Bengzon v. Secretary of Justice*, 62 Phil. 912 (1936); *Director of Lands v. Abaja*, 63 Phil. 559 (1936); *Everett v. Bautista*, 69 Phil. 137 (1939); *Krivenko v. Register of Deeds*, 79 Phil. 461 (1947); *Manantan v. Municipality of Luna*, 82 Phil. 844 (1949); *Tamayo v. Manila Hotel Co.*, 101 Phil. 810 (1957).

[20] L-29658, November 29, 1968, 26 SCRA 160.

[21] Ibid, 160.

[22] Cf. *Pineda v. Claudio*, L-29661, May 13, 1969, 28 SCRA 34; *Villegas v. Subido*, L-26534, November 28, 1969, 30 SCRA 498; *Villegas v. Subido*, L-31004, January 8, 1971, 37 SCRA 1.

[23] *Sarcos v. Castillo*, L-29755, January 31, 1969, 26 SCRA 853; *Automotive Parts and Equipment Co. v. Lingad*, L-26406, October 31, 1969, 30 SCRA 248.

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