

TOMAS M. PEREZ, PETITIONER-APPELLEE, VS. ABELARDO SUBIDO, IN HIS CAPACITY AS COMMISSIONER OF CIVIL SERVICE; MANUEL CUDIAMAT AND JOSE ERESTAIN, IN THEIR CAPACITIES AS CITY TREASU...

G.R. No. L-26791. June 22, 1968

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

In this appeal from a decision finding for the petitioner in a mandamus suit, the appellants pose the legal issue: Has the respondent Commissioner of Civil Service the power and authority to invalidate ex-parte the examination papers of petitioner, cancel his eligibility (as patrolman) derived therefrom, and eventually terminate his services as patrolman in the Manila Police Department? Our answer is: No.

In his application for the Patrolman Examinations held by the Civil Service Commission on 24 November 1962, the petitioner-appellee, Tomas M. Perez, answered "yes" to question No. 6, which reads as follows:

"6. Have you ever been accused of, indicted for or tried for the violation of any law, ordinance, or regulation, before any court, or have you ever been charged with or tried for any breach or infraction of military, naval, or constabulary discipline before any military, naval, or constabulary tribunal or other authority?"

Petitioner-appellee mentioned only two of the criminal cases of which he had been charged but failed to mention two other cases, namely, attempted corruption of a public official and gambling. These cases were dismissed before he took the examinations. He was thus cleared by the pertinent government offices and law-enforcing agencies. When he passed the examinations, a character investigation and a six-month training course at the Manila Police Academy, petitioner Perez was appointed by Mayor Antonio Villegas of Manila as a probational patrolman of the Manila Police Department on 27 May 1963, with a compensation of P2,400 per annum. The respondent-appellant Commissioner of Civil Service approved the appointment. On 1 January 1964, appellee was extended a permanent appointment with a salary adjusted to P2,940 per annum. This appointment and a subsequent promotion in salary to P3,300 per annum were also approved by the respondent Commissioner.

On 20 October 1965, however, the Commissioner of Civil Service addressed a letter to the City Mayor informing him of the invalidation of the examination papers of appellee because of his failure to state the two other criminal cases of which he had been charged in his application to take the examinations, the cancellation of his civil service eligibility and the termination of his employment as patrolman in the Manila Police Department. Perez requested a reconsideration but was denied. The City Mayor found no ground upon which to proceed against Perez and did not dismiss him but respondent Commissioner transmitted copies of his letter to the mayor to the City Treasurer and the City Auditor who, thereafter, refused to pay the salary of Perez.

On 12 April 1966, Tomas M. Perez filed a petition for mandamus with the Court of First Instance of Manila praying for the nullification of the order of the respondent Commissioner of Civil Service and to compel the other

respondents City Treasurer and City Auditor to authorize and pay the petitioner's salary.

After trial based on a stipulation of facts, the lower court granted the petition by declaring as null and void the Commissioner's order terminating the petitioner's employment and ordering the payment of his salary.

Respondent Commissioner appealed to this Court on the point of law stated at the beginning of this decision.

The situation of petitioner-appellee Tomas M. Perez is not unlike, and, even better than, the petitioner in the case of *Abaya vs. Villegas, et al.*, L-25641, 17 December 1966 (18 Sup. Ct. Rep. Anno. 1034). Speaking through Justice Conrado Sanchez, this Court stated in said case:

"Two acts adverse to petitioner were done: Appellant Commissioner's cancellation of his eligibility, and respondent Mayor's order of dismissal. Concededly, however, there was no investigation prior to the cancellation of petitioner's civil service eligibility and before he was eased out of the service. Consequently, petitioner was denied due process."

On the first adverse act, this Court said:

"We go to the controlling principle. Rule II, Article 4, of the Civil Service Rules, in its proviso, reads:

'That when an applicant for examination intentionally makes a false statement of any material fact in his application, or practices or attempts to practice any deception or fraud in connection with his examination, the Commissioner shall invalidate his examination and such offense shall be ground for his removal from the service.'

"The accent is on the word intentionally. The fact that petitioner made an answer which is at war with the truth does not connote the idea that it was intentionally made. Conceivably, situations may exist which could bring up that answer to the level of one given in good faith. Without evidence, we are loathe to tar and feather petitioner as a perjurer. Short of an inquiry which proves that the false answer was intentionally made, we cannot attribute thereto a meaning which would make a felon out of petitioner. It should then go without saying that the vitality of the constitutional principle of due process cannot be allowed to weaken by sanctioning cancellation of an employee's civil service eligibility and/or his dismissal from service - without hearing - upon a doubtful assumption that he has admitted his guilt for an offense against civil service rules. It is pertinent here to recall that good faith is always presumed. In the context just presented, we are constrained to state that petitioner received less than a fair treatment. Due process, in the end, merely is 'the embodiment of the sporting idea of fair play'."

And on the second adverse act, this Court said:

"1. The constitutionally protected security of tenure: '[N]o officer or employee in the civil service shall be removed or suspended except for cause as provided by law'.

"Section 32 of the Civil Service Law of 1959 echoes this precept with the provision that '[N]o officer or employee in the civil service shall be removed or suspended except for cause as provided by law and after due process.' Said Section 32 adds that the officer or employee complained of 'shall be entitled to a formal investigation if he so desires, in which case, he shall have the right to appear and defend himself at said investigation in person or by counsel, to confront and cross-examine the witnesses against him, and to have the attendance of witnesses and production of documents in his favor by compulsory process or subpoena or subpoena duces tecum.' A civil service employee should be heard before he is condemned. Jurisprudence has clung to this rule with such unrelentless grasp that by now it would appear trite to make citation thereof."

It is, therefore, plain that the Commissioner of Civil Service is without power or authority to cancel *ex parte* or without hearing the civil service eligibility of a patrolman nor to terminate his employment without a formal

investigation.[1]

For the foregoing reasons, the appealed decision is hereby affirmed. No costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] The Police Act of 1966 (RA No. 4864) prescribes a procedure for removal of peace officers.

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