

CESAR GONZALES, PETITIONER AND APPELLANT, VS. JOSE V. RODRIGUEZ, ET AL., RESPONDENTS AND APPELLEES.*G.R. No. L-12976. March 24, 1961*

Ponente: DIZON, J.

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Appeal from the decision of the Court of First Instance of Cebu dismissing the petition for mandamus filed by appellant Cesar Gonzales against the Mayor, the Municipal Board, the Treasurer and the Auditor of Cebu City to compel them to reinstate him as patrolman.

There is no question that on September 30, 1950, appellant—a civil service eligible—was appointed, and since then had acted as patrolman of the City of Cebu with an annual compensation of P1,200.00. His appointment contained a note to the effect that it was authorized by the Deputy Commissioner of Civil Service as "temporary" pending report from the GSIS regarding his physical and mental examination. Said report, however, was never submitted to the corresponding authorities.

On October 16, 1953, appellant was notified by the then Acting Mayor of the City of Cebu, Vicente S. del Rosario, of the termination of his services as patrolman on the ground that his position had been abolished and was not included in the city budget. On May 19, 1955, that is, more than one year and seven months after his dismissal appellant submitted a written request to the mayor for his reinstatement. The same was denied. Thereafter appellant resorted to other administrative remedies to secure his reinstatement, and according to the stipulation of facts, on February 12, 1954 the City Board approved Resolution No. 129 recreating 92 abolished positions in the police force of the City of Cebu, which number was subsequently reduced to 70 by Resolution No. 285 of March 30 of the same year due to the nonavailability of sufficient funds. The parties further agreed that thereafter, the respondent Rodriguez, in his capacity as Acting City Mayor, promised to reinstate appellant but never actually did so. This notwithstanding, appellant filed the present action for mandamus only on September 12, 1955.

In *Severino Unabia vs. City Mayor of Cebu*, 99 Phil., 253; 53 Off. Gaz., 132, this Court held that for reasons of public policy, any person claiming right to a position in the civil service should file action for reinstatement within one year from his illegal removal from office, otherwise he is considered as having abandoned the same. In the present case, the petition for mandamus was filed only on September 12, 1955, that is, almost two years from October 16, 1953 when appellant was dismissed from the service, and more than one year and five months from the date of approval of Resolution No. 285 (March 30, 1954) recreating 70 of the abolished positions of uniformed men in the police department of the city. We are, therefore, of the opinion, and so hold, that the lower court did not err in dismissing the petition.

In view of what has been said heretofore, we deem it unnecessary to determine whether appellant's appointment as patrolman was merely temporary in view of the notation made thereon that it was subject to a report to be rendered by GSIS regarding his physical and mental examination. Without costs.

Bengzon, Acting C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, and Paredes, JJ., concur.

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