

SERGIO G. MARTINEZ, PETITIONER, VS. MUNICIPAL MAYOR OF LABASON, GENEROSO B. TOKONG AND ERIBERTO PAREJA AS MUNICIPAL TREASURER OF LABASON, RESPONDENTS.

G. R. No. L-11868. April 30, 1958

Ponente: BENGZON, J.

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BENGZON, J.:

Statement. On June 14, 1956, Mayor Generoso B. Tokong of Labason, Zamboanga del Norte, suspended Sergio G. Martinez from his office as Chief of Police of the Municipality for "negligence in the prosecution of offenses and malicious delay in the administration of justice."

Ninety days thereafter, on September 14, 1956, Martinez filed this mandamus proceeding in the court of first instance there to obtain reinstatement plus the payment of his corresponding salary.

The petition was opposed. The controversy was submitted for decision upon a stipulation of facts, in view of which the Hon. Wenceslao M. Ortega, Judge, denied the petition for two reasons:

(a) Reinstatement could not be ordered because the municipal council after investigation had decreed the petitioner's dismissal from the service, said council being furthermore no party to the proceeding; and (b) To question the validity of the council's actuations, petitioner's remedy was to appeal to the Commissioner of Civil Service, in which case the special civil action of mandamus became unavailable.

In due time petitioner took the matter directly to this Court.

"That petitioner was serving as Chief of Police of Labason, Zamboanga del Norte, since August 16, 1948, when he took his oath of office up to June 15, 1956, when he was temporarily suspended from the service until the final decision of the administrative case filed against him which in no case shall it exceed sixty (60) days;

That the period of sixty (60) days from June 15, 1956, had expired on August 13, 1956;

That petitioner had been suspended by reason of the administrative case filed against him before the Municipal Council of Labason and that, respondent Mayor Generoso Tokong refused to reinstate petitioner herein on the ground that the said Council found him guilty of the charges filed against him and ordered his dismissal from the service; * * *

That on July 2, 1956, Municipal Resolution No. 07 was passed, copy of which is attached to the petition and marked as Annex "H";

That on July 24, 1956, the Municipal Council of Labason resolved to reinvestigate the administrative case against the petitioner herein and passed Municipal Resolution No. 109; * * *

That on August 13, 1956, the Municipal Council of Labason proceeded to hear ex-parte the administrative case against petitioner herein after the latter had walked out when his motion for postponement was denied;

That the Municipal Council of Labason had rendered its decision in the administrative case against the

petitioner on August 13, 1956, and the petitioner had filed a notice of appeal from said decision with the Municipal Mayor of Labason on September 3, 1956, and which administrative case is now on appeal for the final resolution by the Commissioner of Civil Service." * * *

Issues. The arguments in the printed brief for the petitioner-appellant may be reduced to the following propositions :

(a)

Reinstatement of petitioner was mandatory after the sixty-day suspension, the delay not having been caused by his fault, negligence or petition;

(b)

It was unnecessary to include the municipal council as part respondent.

(c)

The suspension and removal rested on grounds not mentioned by the statute.

Discussion. I. The first proposition invokes sec. 3 of Republic Act No. 557 providing that:

"When charges are filed against a member of the provincial guards, city police or municipal police under this Act, the provincial governor, city mayor or municipal mayor, as the case may be, may suspend the accused, and said suspension to be not longer than sixty days. If during the period of sixty days, the case shall not have been derided finally, the accused, if he is suspended, shall ipso facto be reinstated in office without prejudice to the continuation of the case until its final decision unless the delay in the disposition of the case is due to the fault, negligence, or petition of the accused, in which case the period of the delay shall not be counted in computing the period of suspension herein provided,"

and emphasizes the portion above underlined.

It will be noticed however, that on the sixtieth day the council voted by resolution to remove the petitioner from his position. Such resolution would have decided the matter finally if petitioner has not filed a notice of appeal to the Commissioner of Civil Service. Therefore, his case was not finally disposed of because of his own voluntary act of appealing, which amounted to a petition for review. Such petition excused any delay in the definite disposition of the charges.

Indeed, it would be contrary to the spirit of mandamus proceedings to compel reinstatement of a suspended officer after the latter had been found guilty and dropped from the service by the competent official body. Such suspended official, it may be said, did not have a clear legal right (to return) enforceable by mandamus.[1] And the court's discretion should not be exercised in a way injurious to public interest;[2] nor should mandamus issue where it would not promote substantial justice.[3]

In this connection it appears that on October 27, 1957, before the submission of this appeal for adjudication, the Commissioner of Civil Service decided administratively the appeal of Sergio G. Martinez in the sense that "he is hereby considered resigned effective on the date of his suspension, without prejudice to reinstatement in the discretion of the appointing official."

II. In our view of the cause, the second proposition concerning the non-joinder of the municipal council, becomes immaterial.

III. In his third proposition appellant says his suspension (and dismissal) is not warranted, because the charges do not fall under any of the grounds mentioned by Republic Act No. 557 for administrative action against members of

the municipal police force. Such contention has no merit. The negligence and delay attributed to him surely constituted "misconduct or incompetency" or "violation of law or duty" within the meaning of sec. 1 of said Act.

Not for the courts, naturally, the revision of the evidence to determine whether the charges against him had been adequately substantiated. For the courts rather the legal question of authority and the observance of due process and procedural requirements. On both points our finding is for respondents. True, there was at first the error of some councilors signing the charges, and the Council's mistake of delegating the investigation to three members thereof;^[1] but both errors were seasonably corrected, the investigation was re-opened^[2] and conducted by the whole membership; and the Council's decree of removal issued within the sixty-day period prescribed by the statute.

By the way, the Civil Service Commission wherein any irregularities could have been properly and fully aired, approved the decree of separation upon a review of the record of the administrative inquiry.

Conclusion. Taking the matter as a whole, we think petitioner exhibited no clear legal right to reoccupy his post. His Honor did not err in declining to issue a mandatory writ. Judgment affirmed, with costs against appellant.

Paras, C. J., Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

[1] 55 Corpuz Juris Secundum, Mandamus, sec. 53.

[2] 55 Corpuz Juris Secundum p. 33.

[3] 35 American Jurisprudence p. 16.

[1] Festejo vs. Mayor, 96 Phil., 286; 51 Off. Gaz., 121.

[2] Resolution Nos. 109 and 115 of the Municipal Council.

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