

**ARSENIO N. SALCEDO, PETITIONER, VS. THE COURT OF APPEALS,
VENANCIO N. DIA, MAYOR OF CANDELARIA, QUEZON, OR WHOEVER
MAY BE ACTING IN THAT CAPACITY, THE MUNICIPAL TREASURER
OF CAN...**

G.R. No. L-40846. January 31, 1978

Ponente: GUERRERO, J.

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GUERRERO, J.:

This is a petition for review on certiorari of the resolution of the Court of Appeals[1] dated March 6, 1975 in CA-G.R. No. 50219-R entitled "Arsenio N. Salcedo, Petitioner-Appellee, versus Venancio N. Dia, Mayor of Candelaria, Quezon, et al., Respondents-Appellants" which set aside the judgment of the same Court promulgated April 25, 1974.

Petitioner Arsenio N. Salcedo was first appointed Chief of Police of Candelaria, Quezon, on July 12, 1955, and again reappointed to the same position on October 20, 1956. On May 11, 1957, his appointment was attested as permanent by the Commissioner of Civil Service.

Records show that petitioner then held a civil service eligibility, having passed the U.S. Civil Service Examination for Messenger and Skilled Laborers in 1928. Considering his eligibility appropriate to the position of Chief of Police, the Commissioner of Civil Service validated the same on February 27, 1957, and approved his appointment as temporary pending receipt of his medical certificate. Informed by the GSIS of the receipt of said medical certificate, the Commissioner attested the appointment of the petitioner as permanent. Since then petitioner discharged the functions of his office.

On July 10, 1960, an administrative complaint for misconduct and serious irregularities in the performance of his duties was filed against the petitioner. On the same day, he was suspended from office for ten days, extended to 60 days, then indefinitely, until on March 12, 1965, while his administrative case was pending, the respondent mayor terminated his services as Chief of Police.

The letter of termination stated that the petitioner was not a civil service eligible because the attestation of his appointment as permanent was erroneous and illegal, petitioner not possessing the appropriate eligibility for the position of Chief of Police.

Again on July 26, 1965 petitioner was ordered separated from the service by a resolution of the Municipal Council of Candelaria, Quezon, finding him guilty as charged.

Petitioner appealed to the Civil Service Commissioner but was found guilty of conduct unbecoming a police officer. He was ordered reinstated, and was imposed a fine of one month's pay, with a warning against similar offenses.

Respondent mayor moved to reconsider the decision alleging the inappropriate eligibility of petitioner but the

reconsideration was denied.

Petitioner made repeated requests for reinstatement but were refused by the respondent mayor. Petitioner wrote the Civil Service Commissioner to intervene and the latter, in a series of indorsements, ordered the respondent mayor to immediately reinstate the petitioner. Respondent mayor, nevertheless, ignored these indorsements, and coursed a request to the Office of the President that the issue of the termination of petitioner's services, on the ground of lack of the requisite eligibility, be squarely resolved by the latter office.

On January 10, 1967, petitioner then filed mandamus proceedings before the Court of First Instance of Quezon. The lower court found cause for mandamus to issue, and ordered the reinstatement of petitioner, with back wages.

Respondent mayor appealed the decision to the Court of Appeals. On the ground that the Civil Service Commissioner has the final authority to decide on the eligibility of the petitioner, the appellate court ordered the reinstatement of the petitioner, with back wages.

Respondent mayor moved to reconsider the decision of the Court of Appeals. Resolving said motion for reconsideration, the appellate court reversed its earlier decision, and applying Sec. 23 (par. 4) and Sec. 24 (par. c) of R.A. 2260 (Civil Service Act of 1959) declared petitioner's appointment as provisional, on the ground that petitioner's eligibility is not appropriate for the position of Chief of Police which has acquired a separate civil service eligibility requirement in the interim between May 11, 1957, the date of the validation of petitioner's appointment as permanent, and March 12, 1965, the date of his termination by the mayor. Petitioner was, thus, ordered terminated from service, but with back salaries from July 11, 1960 up to March 12, 1965 at P3,600.00 per annum.

Petitioner filed a motion for reconsideration but was denied. Hence, this petition.

The lone issue in this instant action is whether or not the respondent mayor can legally terminate petitioner's services notwithstanding the attestation of the latter's appointment as permanent by the Commissioner of Civil Service.

Taking the position that his appointment in 1955 and the attestation of the said appointment as permanent in 1957 were prior to the effectivity of R.A. 2260, petitioner contends that the appellate court erred in applying the provisions of R.A. 2260 requiring him, in effect, to take a separate civil service examination for Chief of Police.

We find his contention meritorious.

The old Civil Service Law [found in Chapter 27 of the Revised Administrative Code] should have been applied, for well-settled is the statutory rule that statutes have no retroactive effect unless otherwise provided therein. Thus, the saving clause of R.A. 2260, Sec. 47 provides: "That except as otherwise provided in this Act, rights or privileges vested or acquired under the provisions of the old Civil Service Law, rules and regulations prior to the effectivity of this Act shall remain in force and effect." R.A. 2260 took effect June 19, 1959. Records show that petitioner duly acquired and enjoyed a permanent appointment under the provisions of the old Civil Service Law.

Petitioner took and passed the U.S. Civil Service Examination for Messenger and Skilled Laborers in 1928. He was first appointed to the disputed position in 1955. His appointment was later validated as permanent in 1957. Since then, he discharged the functions of the position without question from any quarters. It was only in 1965 that his right to the position was questioned in the letter terminating his services.

Under par. 3 of Executive Order No. 39, dated June 23, 1936, amplifying the provisions of Sec. 661, Chapter 27 of the Revised Administrative Code, the "Bureau of Civil Service, in addition to the power and authority vested in it under existing law, shall take exclusive charge of all formal administrative investigations against officers and

employees in the Civil Service, and the decisions and the recommendations of the Commissioner of Civil Service with respect to appointments, removal, separation, and other matters relating to the conduct, discipline, and efficiency of the employees in the Civil Service shall be final; Provided, that the decision of the said commissioner on administrative investigations against any officer or employee in the Civil Service may be appealed to the Civil Service Board of Appeals." (emphasis supplied). It is evident that pursuant to the provisions of the old law, the Commissioner of Civil Service had the final authority in the matter of petitioner's appointment.

It is conceded that even under the old Civil Service Law, "no person shall be appointed to or employed in any position in the classified service until he passes the examination provided therefore." [2] However, at the time of petitioner's appointment and its validation as permanent, there was no civil service examination required for appointments to the position of Chief of Police, as the stated examination was first given only on November 23, 1963, after the passage of the new Civil Service Law of 1959 which required the said examination. This fact was recognized by the appellate court when it stated in its questioned decision, "Thus, it is evident that in the interim between the validation of petitioner's appointment as permanent on May 11, 1957 and March 12, 1965, the date of the letter-notice terminating his services as Chief of Police, the position of Chief of Police had acquired a separate civil service eligibility requirement x x x." [3] Hence, it cannot be required of the petitioner to take and pass an examination given years after his appointment was validated as permanent by the Commissioner of Civil Service at a time when the disputed position had as yet no separate civil service eligibility requirement. We are in full accord with the Commissioner's finding that:

"When Mr. Salcedo passed the U.S. Civil Service examination in 1928 it must be remembered that the Philippines was still a U.S. colony and Federal examinations were then considered for positions in the Philippine civil service. The determination of whether a certain eligibility is appropriate for a position or not is within the exclusive prerogative of the Commissioner in the exercise of his broad powers. As the appointment was subsequently attested as permanent on May 11, 1957, it is to be presumed that the matter of his qualification was fully considered by this Office and that he had met all the requirements of the position to which he sought appointment in accordance with the provisions of this Act and the rules and standard promulgated in pursuance thereto. The issue now raised by herein Mayor as to the eligibility of Mr. Salcedo has therefore become moot and academic." [4]

Therefore, the attestation of petitioner's appointment as permanent was not illegal nor erroneous, and consequently, his services cannot be terminated on this ground. The claim of respondent mayor to the contrary is without factual or legal basis.

We note in the appealed decision of the Court of Appeals that the respondent mayor admitted "that the decision of the Commissioner of Civil Service in the administrative charges against the petitioner, dated December 1, 1965, is final and unappealable," and only contended that "the proceedings thereafter before the Commissioner of Civil Service and the Office of the President were limited to and directed at the independent issue that petitioner, for lack of the requisite civil service eligibility to the contested position of Chief of Police, was separated from the service as per letter of respondent Municipal Mayor dated March 12, 1965." [5] Yet the respondent mayor persistently ignored the order of reinstatement given by the Commissioner of Civil Service and thus defied the directive of a superior body with final authority on the matter which is respondent's duty to comply. For acting arbitrarily and without legal justification in terminating the services of petitioner and refusing to reinstate him as Chief of Police, the respondent mayor must be held personally liable for the back salaries of petitioner. [6]

One last point. Petitioner prays that should he not be reinstated for reason of his having reached the retirement age on February 17, 1971, he should be paid his back salaries from July 11, 1960, the date of his first suspension from

office. This is untenable. He was legally suspended; in fact, he was found guilty by the Commissioner of Civil Service. Thus, he is not entitled to back wages during the time of his suspension. His right to back wages commences only from the time he was ordered reinstated by the Commissioner of Civil Service on December 1, 1965.

WHEREFORE, judgment appealed from is reversed and another is entered ordering the respondent mayor to pay petitioner's back salaries, at the rate of P3,600.00 per annum, for 5 years from December 1, 1965, the date when the Commissioner of Civil Service ordered his reinstatement, without deductions whatsoever; and also to pay as and for attorney's fees in the amount of P1,000.00, and costs.

Petition granted.

SO ORDERED.

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

[1] Former Fifth Division: Martin, J., ponente; Gancayco, J. and Serrano, J., concurring.

[2] Sec. 672, Art. III, Chapter 27, Revised Administrative Code.

[3] Decision, CA-G.R. No. 50219-R, p. 9.

[4] Petitioner's brief (C.A.), p. 17.

[5] Decision, CA-G.R. No. 50219-R, p. 3.

[6] *Nemenzo v. Sabillano*, L-20977, Sept. 7, 1968, 28 SCRA 1.

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