

CLARO MESIAS, PETITIONER AND APPELLANT, VS. HONORABLE CITY MAYOR DOMINADOR J. JOVER, CITY AUDITOR EDUARDO HIBIONADA, AND CITY TREASURER DAVID S. ROMEO, CITY OF ILOILO, RESPONDEN...

G.R. No. L-8543. November 22, 1955

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Claro Mesias is appealing from a decision of the Court of First Instance of Iloilo, dismissing his petition for a writ of mandamus (Case No. 3197) filed on August 10, 1954, against the City Mayor, the City Auditor, and the City Treasurer, all of the City of Iloilo. The facts of the case are clearly stated in the appealed decision which statement we quote below:

"On February 23, 1951, petitioner who was and had been a detective, Police Department, City of Iloilo, was advised by the then City Mayor of Iloilo, Rafael Jalandoni that 'your services are hereby terminated at the close of business today, February 23, 1951 for lack of trust and confidence in you on the part of this office.' Pursuant thereto, petitioner turned over to the property clerk of the Police Department all accountable property that had been issued to him. On February 24, 1951, he wrote a letter to the Commissioner of Civil Service informing the latter that he had been dismissed by Mayor Rafael Jalandoni and asked that he (the petitioner) be reinstated. Up to the present time, no action has been taken by the said Commissioner of Civil Service on the request of petitioner. On May 31, 1953 the now City Mayor of Iloilo Hon. Dominador J. Jover reinstated and appointed petitioner to the position of detective in the Police Department, City of Iloilo. On May 7, 1954, petitioner sent a communication to the Executive Secretary (Annex G), wherein petitioner 'respectfully appeals to the Honorable Executive Secretary with the expectation that the action of the then Mayor B. Jalandoni in this particular case be corrected in such a way as to have the time of his illegal dismissal paid up and to have the undersigned considered as never dismissed.' The Hon. Executive Secretary has however taken no action on the said communication. On June 17, 1954, petitioner forwarded a communication (Annex H) to the now City Mayor Dominador J. Jover, wherein he said, among other things:

'The undersigned respectfully appeals to the Honorable City Mayor Dominador J. Jover with the expectation that the action of then Mayor B. Jalandoni in this particular case be corrected in such a way as to have the time of his illegal dismissal paid up and to have undersigned considered as never dismissed. It is further prayed that the accrued vacation and sick leave pay to which he was entitled due to 21 years of efficient service be given to him. It is also implored that his 27 months and 5 days illegal separation from the service be corrected and that the City Auditor and the City Treasurer be ordered to pay the undersigned the corresponding salary and to entitle the undersigned to accrued vacation and sick leave pay.' The Mayor has not taken action on said communication up to the present time.

By this special civil action, petitioner seeks to compel the respondents to pay him of his salary from February 23, 1951 to May 31, 1953 as well as the money value of his accumulated vacation and sick leave."

To the facts above related we may add that after appellant's reinstatement or reappointment in the service on May

31, 1953, he rendered service up to December 7th of the same year when according to his own letter to the Executive Secretary, a copy of which is attached to his petition as Annex "G", he was forced to resign by Mayor Dominador J. Jover who reinstated or reappointed him, for lack of trust and confidence. It is also pertinent to state in addition that what prompted Mayor Jalandoni on February 23, 1951, to dismiss appellant was contained in his letter to him on the same date, namely:

"The reasons which compels me to take this drastic action against you are: in many cases you had been involved in cigarette smuggling in this City and you were always pointed out as the contact man in the cigarettes smuggling by the Chinese and lately, from the Iloilo Express on the midnight of February 16th, wherein the smuggled cigarettes were unloaded and which were consigned to a certain Chinese in this City."

The reasons given by the trial court in dismissing appellant's petition for mandamus are contained in a portion of its decision which we also reproduce below:

"After considering the arguments both written and oral of each of the parties, the Court has reached the conclusion that petitioner's action is not well-taken. It does not appear that he had taken the proper steps to contest or challenge the legality of his ouster, as ordered by the then Mayor Rafael Jalandoni, in a court of competent jurisdiction within one year from the date thereof. On the contrary, immediately thereafter, he turned over to the Property Clerk of the Police Department all accountable property that had been issued to him. Such being the case, it is presumed that he had acquiesced thereto. It is true that he wrote a letter to the Commissioner of Civil Service on February 24, 1951, and another to the Executive Secretary on June 17, 1954 but those officials were not the authority who had the final say as to whether or not petitioner's ouster was legal or illegal.

"Furthermore, it does not appear that the petitioner has rendered the services for and during the period for which payment of salary is demanded. It cannot be considered that respondents have unlawfully neglected the performance of an act which the law specifically enjoins as a duty resulting from an office because petitioner had not presented to them the corresponding salary voucher duly accomplished in accordance with rules and regulations. Disbursements of public funds can only be made by means of vouchers duly accomplished."

After a careful study of the case we are inclined to agree with the trial court that by appellant's inaction and by his failure to resort to the courts for the protection of his rights, if any, he may now be regarded as having acquiesced in his separation from the service in February 1951. A citizen who feels himself aggrieved by any act whether performed by a private citizen or by a public officer should not sleep on his rights, at least not for too long a time, otherwise any redress to which he may have been entitled would be denied him because of his apparent loss of interest, or waiver, even acquiescence on his part.

In the case of *Nicholas vs. United States*, 66 L. Ed. 133, Nicholas, an Inspector of Customs in the Port of Baltimore, Maryland, and included in the classified civil service, was separated from the service in May, 1913, based on the report of a committee appointed by the Secretary of the Treasury as to his use of intoxicating liquors, and the unsatisfactory and perfunctory manner in which he performed his work. Contrary to a provision of a Federal Statute, he had no notice of any charges against him nor was he allowed a reasonable time to personally answer said charges; so that his dismissal may be regarded as rather summary and illegal. And yet because he filed his petition for reimbursement of salary more than three years after his dismissal the Court of Claims denied his petition. On appeal to the Federal Supreme Court, said Tribunal affirmed the appealed decision and held:

"A person illegally dismissed from office is not thereby exonerated from obligation to take steps for his own protection, and may not for an unreasonable length of time, acquiesce in the order of removal * * * and then sue to recover the salary attached to the position. In cases of unreasonable delay he may be held to have abandoned title to the office and any right to recover its emoluments. * * *"

That case involved a delay of a little over three years. In the case of *Norris vs. United States*, 66 L. Ed. 137, Norris, also an Inspector of Customs in the same City of Baltimore, was separated from the service without notice of any charges and without any hearing; but just because he filed his petition for reimbursement about eleven months after his dismissal, his claim was finally denied by the same Federal Supreme Court, citing the case of *Nicholas vs. U. S.*, *supra*.

Considering the circumstances surrounding petitioner's separation it must be borne in mind that the loss of confidence of Mayor Jalandoni in him which prompted his dismissal was his alleged involvement in cigarette smuggling in the City of Iloilo. It is fair to assume that the office of Mayor Jalandoni must have had some evidence against him, sufficient in the opinion of the Mayor to justify his dismissal. If appellant were convinced that he was innocent and that he had not done anything illegal or in dereliction of his duty as a member of the police force, he could and he should have demanded an investigation which, he did not. His inaction to force the issue, for over three years may be regarded as not only loss of interest or acquiescence in his dismissal but also that he was loathe or afraid to face an investigation. When he finally woke up and filed the petition for mandamus with the trial court, he did not ask for reinstatement and allege that he was innocent of all suspicion or charge of smuggling but merely asked for reimbursement of the pay or salary corresponding to the period from the date of his dismissal in February, 1951 up to his reinstatement in May 1953. Furthermore, he was asking for pay or salary for a period of more than two years during which he rendered no service and did not offer to render any service.

A belated attempt to avoid and annul a dismissal of a public officer, especially when done after several years would place the government in a very disadvantageous position indeed and would be greatly prejudicial to the public interest. By the time the motion is instituted the official who caused the dismissal may no longer be in office as was true in this case. Witnesses which the dismissing official had and counted upon to establish the dereliction of duty of the officer he dismissed, may already be dead or unavailable because their whereabouts are unknown, and the records and other evidence necessary to prove said dereliction of duty may already have been lost or destroyed. Then it would be an easy task for the official dismissed to then come forward, allege that his dismissal was unjustified and challenge the Government to prove that he was guilty of any dereliction of duty. That is why it is a fair and sound rule to require any party who believes himself aggrieved by any unjustified dismissal or separation from the government service to bring the corresponding action immediately, or at least, within a reasonable time. If he does not do so, then it may be inferred that he had abandoned any action to protect any supposed right violated, or had acquiesced in his separation from the service or that he was afraid or in no position to face an investigation immediately after his dismissal.

In view of the foregoing, and considering that appellant filed this petition for mandamus more than three years after his separation from the police department of Iloilo City, we hold and find that the appealed decision dismissing his petition for mandamus is well-founded. Said decision is hereby affirmed, with costs.

Paras, C. J., Bengzon, Padilla, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J. B. L., JJ., concur.

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