

**AHMED ALCAMEL ABELLA, PETITIONER AND APPELLANT, VS.
HONORABLE JOSE V. RODRIGUEZ, CITY MAYOR OF CEBU,
RESPONDENT AND APPELLEE.**

G.R. No. L-6867. June 29, 1954

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is original action of mandamus instituted by the petitioner, a former detective in the secret service force of the City of Cebu, to compel the respondent city mayor to reinstate him in his former position, from which position respondent dismissed him beginning November 1, 1952. The records disclose that the petitioner was appointed as detective in the secret service in the City of Cebu on October 1, 1947. From that time he served in the said service continuously up to October 31, 1952. On October 28, 1952, the respondent city mayor notified him of his separation from the service, effective at the end of business hours on October 31, 1952.

The reason given by respondent for petitioner's separation is as follows:

Inasmuch as you are occupying a position which is primarily confidential in nature and that the undersigned has lost his trust and confidence in you, please be advised that your services as Detective in the Police Department of this City, are hereby terminated effective at the close of business hours on October 31, 1952. (Exhibit I.) Petitioner protested his separation and demanded reinstatement but the respondent refused, so petitioner instituted the present action of mandamus.

The defenses presented by the respondent are that the petitioner is not a civil service eligible; that he was summarily dismissed for lack of confidence in pursuance of Executive Order No. 264, series of 1940, of the President of the Philippines; and that petitioner is not a member of the police force, he being a detective in the secret service thereof, without any civil service eligibility whatsoever and, thereof, he may not invoke in his favor the provisions of Republic Act No. 557.

The Court of First Instance of Cebu, after due trial, ruled that members of the detective force of Cebu City are not members of the police department thereof and, therefore, are not entitled to the previous investigation required of members of the city police force, a requisite to dismissal pursuant to Republic Act No. 557. In other words, it ruled that detectives hold positions which are primarily confidential and, therefore, are subject to separation from the service in accordance with Executive Order No. 264, series 1940. Against this decision the petitioner has prosecuted this appeal, contending that the trial court committed an error in its conclusion of law.

The decisive question in this action is whether members of the detective force of the City of Cebu may be considered as members of the police department of said city. This question has already been decided in the affirmative by us in the cases of *Mission, et al. vs. Del Rosario, et al.*, 50 Off. Gaz. (4) 1571; 94 Phil., 483 and *Palamine, et al., vs. Zagado, et al.*, 50 Off. Gaz. (4) 566; 94 Phil., 494. In these cases we held that "** * **", both policemen and detectives perform common functions and duties and both belong to the police department. In contemplation of law, therefore, both shall be considered as members of the police force of the City of Cebu."

As the petitioner is a member of the police department of the City of Cebu, he may be summarily dismissed; he may only be separated from the service in accordance with the provisions of Republic Act No. 557. The provisions of this Act not having been complied with, his dismissal or separation from the service must be considered illegal.

It is to be noted that the claim made in the answer of the respondent that the petitioner is a temporary employee and is not a civil service eligible was not insisted upon as a defense in the court a quo, nor relied upon in this Court as a ground for sustaining the judgment. There is, furthermore, no evidence to support this defense; on the other hand, the oath of office of the petitioner does not show that his appointment was merely in a temporary capacity.

The petition is, therefore, hereby granted and the respondent city mayor is hereby ordered to reinstate petitioner to his position as detective in the secret service of the police department of the City of Cebu, with salary during the period of his separation. Without costs.

Paras, C. J., Padilla, Montemayor, Reyes, Jugo, Bautista Angelo and Concepcion, JJ., concur.

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