

ANDRES DE LA CERNA, PETITIONER AND APPELLANT, VS. SERGIO OSMEÑA, JR., ET AL., RESPONDENTS AND APPELLEES.*G.R. No. L-12492. May 23, 1959*

Ponente: MONTEMAYOR, J.

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Petitioner Andres de la Cerna, a civil service eligible, was on July 1, 1946 appointed by the Mayor of the City of Cebu, as a detective in the city police department. For alleged "grave misconduct, serious irregularity in the performance of his duty, and violation; of law and duty," he was administratively charged before the Municipal Board of the City of Cebu in Case No. 22, entitled "Vicente S. del Rosario, as Mayor of Cebu, complainant vs. Andres de la Cerna, respondent", and was suspended on June 7, 1953. On August 7, 1953, after the expiration of the 60-day period from the date of his suspension, he wrote the City Mayor stating that pursuant to the provisions of Republic Act No. 557 he should be reinstated in the service. On October 10, 1953, he received a letter from the Acting Mayor of the City of Cebu, advising him that his position had been abolished in the 1953-1954 General Fund Budget for the City and that his services in the police department were being terminated upon his receipt thereof.

On May 5, 1956, de la Cerna commenced these proceedings by means of a petition for mandamus filed with the Court of First Instance of Cebu with a view to having said court compel the respondents in said petition, namely: the City Mayor, members of the municipal board, the city treasurer and the city auditor to reinstate him to his position in the city police force and to pay his salary in arrears from the expiration of the 60-day period from the date of his suspension. Respondents in said case answered the petition and later filed a motion to dismiss. Acting upon the motion, the trial court, citing our decision in the case of Severino Unabia vs. the City Mayor of Cebu, et al., 99 Phil., 258, dismissed the petition by order of September 11, 1956. A motion for reconsideration of the said order of dismissal was filed and the trial court by order of January 28, 1957, denied the motion. Both orders are now before us on appeal.

In his petition for mandamus, dated May 5, 1956, as well as in his amended petition, dated June 26, 1956, petitioner-appellant alleged that Administrative Case No. 22 of the municipal board of the City of Cebu was still pending investigation and awaiting judgment or decision. On the other hand, in their answer to his petition for mandamus, respondents therein equally alleged that in said Administrative Case No. 22, petitioner-appellant was found guilty of the charges and as a result the municipal board dismissed him from the service. For lack of evidence, we are unable to make a finding on this controverted point, not knowing which of the conflicting allegations should be accepted. However, it is a fact that appellant's position was duly abolished and that due to said abolitions, he was separated from the service on October 10, 1953, and as already stated, he filed this action for reinstatement and for the payment of back salaries, only on May 10, 1956, after a period of almost three years.

Following the doctrine laid down in the case of Unabia vs. City Mayor, supra, and other cases,[1] where we held that "any person claiming right to a position in the civil service should also be required to file his petition for reinstatement within the period of one year, otherwise he is thereby considered as having abandoned his office",

we find no error in the two appealed orders, and, consequently, hereby affirm the same. No costs.

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

[1] Mesias vs. Jover, et al., 97 Phil., 899; 51 Off. Gaz., (12) 6171; Asella, et al vs. Rodriguez, 102 Phil., 643; Eraudia, et al. vs. Pel Eosario, etc., et al. 103 Phil., 489; and Quingco, et al. vs. Rodriguez, et al., G. R. No. L-12144, September 17, 1958; Taborada vs. City of Cebu, et al., G. R. No. L-11574, October 31, 1958.

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