

ADRIANO FESTEJO, PLAINTIFF-APPELLANT VS. THE MUNICIPAL MAYOR OF NABUA, NICOMEDES PORNILLOS AND THE MUNICIPAL TREASURER OF NABUA, ALEJO RAMOS, DEFENDANTS-APPELLEES.*G.R. No. L-4983. December 22, 1954*

Ponente: REYES, J.B.L., J.

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This case came by direct appeal from a decision of First instance of Camarines Sur, rendered in its case No. 1711 whereby said. Court dismissed appellant's petition for a writ of mandamus to compel the Mayor of the Municipality of Nabua to reinstate appellant to the position of Chief of Police, and the Municipal Treasurer to pay him the corresponding salary.

It appears from the record that on April 1, 1950, Captain Ignacio Jelgado, P.C, Commanding Officer at Naga City, filed a sworn administrative complaint against Chief of Police Adriano Festejo, and police sergeant Regino Vernal, both of Nabua, Camarines Sur, charging them with "laxity and negligence in the custody of prisoners" for causing the escape of a detention prisoner. Acting on the charges, on April 21, 1950, the Mayor suspended the respondent Chief, and the Municipal Council passed Resolution No. 77, creating an "Integrity Board" composed of councilors Sergio Quiano, P. B. Velitario, and Juan Banal, to conduct the investigation. When the Board, with member Banal absent, called the case for hearing, counsel for respondent Festejo questioned the Board's jurisdiction, and upon being overruled, Festejo refused to submit to investigation. The Board then proceeded to hear the evidence of the complainant and on September 27, 1950, rendered its decision "finding the Chief of Boliee Pestejo guilty of the charge, and exonerating sergeant Sernal (Exh. 6). It does not appear that the Council as a whole acted on the case; but on October 9, 1950, the Mayor of Nabua, Nicomecles Pornillos, notified the Chief of Police that "confirming (conformably) to the decision of the Integrity Board", said respondent was completely separated from the service as Chief of Police (Exh. 7). This notice was received the next day. Counsel for Pestejo filed a "Notice of Appeal and Motion to declare void ab initio all proceedings had before the Integrity Board of Nabua, C. S." and sent it by registered mail to the Commissioner of Civil Service it was received by the latter on October 29, Copies were sent by ordinary mail to the Municipal Council of Nabua, through the Mayor, and to the District Auditor.

Subsequently, the suspended Chief resorted to higher executive authorities for reinstatement, but without result. In view thereof, he filed this case in the Court of First Instance of Camarlnes Sur, asking for a writ of mandamus against the Mayor and the Municipal Treasurer, and for damages.

The Court below denied the writ on the ground that the decision of the Integrity Board was not appealed in writing within 15 days from notice as required by Section 2 of Republic Act No. 557, governing suspensions or removals of municipal police and provincial guards. The Court held that under Sec. 8, Rule 27, of the Rules of Court, service of a notice of appeal sent by ordinary mail on October 21, 1950, was complete only 5 days thereafter, on October 26, which was more than 15 days after receipt of the notice of the administrative decision

(Exh. 7) on October 10, 1950.

The main issue posed by appellant Chief of Police is that the decision of the Integrity Board that heard his case was a complete nullity under sec. 1, of Rep. Act 557, that requires the investigation of municipal police to be conducted by the municipal council and not by a mere committee thereof; wherefore, there being no final decision of his case, he was entitled to be reinstated to his post after sixty days.

The contention is meritorious. While the previous legislation in the matter (sec. 2272 of the Administrative Code of 1917) authorized the investigation of municipal police members by either "the municipal council or a committee of three councilors, designated for said purpose by a majority of the council", the new law. Republic Act No. 557, sec. 1, expressly requires charges against a member

of the municipal police to be investigated by the municipal council in public hearing:

"SECTION 1. Members of the provincial guards, city police and municipal police shall not be removed and, except in cases of resignation, shall not be discharged except for misconduct or incompetency, dishonesty, disloyalty to the Philippine Government, serious irregularities in the performance of their duties, and violation of law or duty, and in such cases, charges shall be preferred by the provincial governor in matters: against any member of the provincial guards, the city mayor in cases against a member of the city: police, and the municipal mayor in cases involving' a member of the municipal police, and investigated by the provincial board, the city or municipal council, as the case may be, in public hearing, and the accused shall be given opportunity to make their defense. In every such case filed, a copy of the charges shall be furnished the accused by the said provincial governor, city mayor or municipal mayor personally or by registered mail, within five days from this date of the filing of the charges, and the investigating body shall try the case within ten days from the date the accused has been notified of the charge, unless the accused, for good reasons, shall be able for a longer period to prepare his defense. The trial of the case shall be finished within a reasonable time, and the investigating body shall decide the case within fifteen days from the time the case is submitted for decision."

Nowhere does the act authorize the council to delegate the investigation to a committee, and it is apparent that the change was designed to give the investigated officers protection against the possibility of having to face an investigation conducted by a committee composed of councilors hostile to the accused, and whose findings would necessarily influence the final decision of the council to be rendered upon their report.

Now, Republic Act No. 557, enacted on June 17, 1950, and effective upon its approval, was the law of the case when the petitioner-appellant Festejo was investigated by the so called "Integrity Board" created by the Municipal Council of Nabua; hence the said board could not lawfully conduct the investigation, over the objection of the respondent Chief of Police. Much less could said Integrity Board decide the case on its merits, without referring the matter to the council: for even under the previous legislation authorizing hearings before a committee of three councilors, it was prescribed that the committee "shall submit its report and findings to the council within ten days after the conclusion of the trial and the council shall decide the case within fifteen days from the receipt of the report." (Sec. 2272, Adm. Code).

The investigation and decision of appellant's case was illegal, under both Republic Act 7 and the preceding legislation. It follows that it was totally null and void; and there being no final decision, appellant Chief of Police was entitled to reinstatement sixty days after his suspension (Sec. 3, Rep. Act 557).

"SEC. 3. 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 decided 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."

The terms of the aforequoted section are peremptory; and compliance therewith Is clearly enforceable by mandamus.

The contention of appellees that the appellant Chief of Police should have first exhausted his administrative remedies has; no merit.

On the contrary, it does appear of record that the appellant petitioned the President of the1 Republic (Exh. B) and the then Secretary of the Interior (Exh. D) for his reinstatement all to no avail, because the Provincial Governor took no action on their instructions to have appellant reinstated.

The appellees contend, and It was so declared by the Court a quo, that; the appeal of Festejo to the Commissioner of Civil Service was filed out of time. This argument is not tenable, for the reason that the decision of the "Integrity Board" of Nabua was contrary to law and was void for want of power and authority of said Board to hear and decide the case. Thus, there was no decision from which to appeal. And jurisdiction being a pure question of law, the appellant Chief of Police had his way open to seek adequate remedy :in the Courts of Justice and not in the executive authorities.

The decision appealed from is reversed, and a writ of mandamus shall issue to reinstate appellant Adriano Pestejo as Chief of Police of Nabua. Without costs.

Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Reyes A., Bautista Angelo, Labrador, and Concepcion. concur.

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