

ERNESTO M. DE GUZMAN, PETITIONER, VS. HON. ABELARDO SUBIDO, AS CIVIL SERVICE COMMISSIONER, HON. NORBERTO AMORANTO, AS MAYOR OF QUEZON CITY, ET AL., RESPONDENTS.

G.R. No. L-31683. January 31, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

All persons appointed to positions covered by the civil service law are required by regulation to accomplish an information sheet on the prescribed form. The information sheet provides in summary outline the personal data, eligibilities, education, experiences, and other qualifications of the appointee. Included in the information sheet is a query on any criminal records of the applicant, which in later versions of the prescribed form asks if he has ever been arrested, indicted, or convicted of any crime or accused in any administrative proceeding.

The issue in this petition for review is whether or not a person otherwise qualified but who admits having violated a city ordinance on jaywalking and another ordinance requiring a cochero to occupy only the seat intended for a cochero in a calesa is disqualified for appointment to the Quezon City Police Force.

Petitioner Ernesto M. de Guzman was appointed patrolman in the Quezon City Police Department by Mayor Norberto S. Amoranto on August 16, 1965. He was a civil service eligible having taken and passed the civil service patrolman's examination given on November 24, 1962. He had also passed the usual character investigation conducted before appointment. As a newly appointed patrolman, the petitioner went through and successfully completed the police training course.

On March 21, 1966, the petitioner's appointment was forwarded to the Commissioner of Civil Service. On August 18, 1966, or a year after the appointment and with no action on the appointment papers being taken by the respondent commissioner, the respondents city treasurer and city auditor stopped the payment of the petitioner's salaries.

On May 12, 1967, the respondent commissioner returned the petitioner's appointment papers, without action thereon, to the respondent mayor on the ground that Mr. de Guzman was disqualified for appointment under Republic Act No. 4864, the Police Act of 1966, which provides:

"SEC. 9. General Qualifications of Appointment.— No person shall be appointed to a local police agency unless he possesses the following qualifications:

.....

"(5) He must have no criminal record.' (SEC. 9[5], Police Act of 1966)"

The above finding was based solely on the petitioner's own answer to question No. 15 in the information sheet:

"15. Have you been accused, indicted, or tried for the violation of any law, ordinance, or regulation, before any court or tribunal?"

The answer given by the petitioner was:

"Yes. Jaywalking – paid fine P5.50; Municipal O.d. (Mla.) Sect. 1187 (cochero) paid fine of P5.00."

On September 7, 1967, the petitioner filed a petition for certiorari and mandamus with preliminary mandatory injunction with the Court of First Instance of Rizal, Branch V at Quezon City.

On May 29, 1969, the lower court rendered a decision dismissing the petition. According to the court, the requirement of "no criminal record" means without any criminal record and makes no distinction whether an act violates a state law or only a municipal or city ordinance.

The issue posed in this petition is presented by Mr. de Guzman, thus:

"Whether or not violations and/or convictions of municipal ordinances, one, for 'Jaywalking' and the other, Manila Municipal Ordinance No. 1187, prohibiting the cochero from 'occupying any part of the vehicle except the seat reserved for him', constitute 'CRIMINAL RECORD' to disqualify the petitioner under the Police Act of 1966 (Rep. Act No. 4864) from appointment to the Quezon City Police Force."

We are constrained to grant the petition.

The former Civil Service Act, Republic Act No. 2260, as amended, stated in its Section 23 that opportunity for government employment shall be open to all qualified citizens and positive efforts shall be exerted to attract the best qualified to enter the service. The same policy is reiterated in the Civil Service Decree, Presidential Decree No. 807, at Section 19, which superseded Republic Act No. 2260.

The requirements for applicants to a policeman's position may be quite stringent but the basic policy of attracting the best qualified is not served by automatically excluding any person who in an absent minded mood or while hurrying to an urgent appointment may unwittingly have crossed a street or stepped down from the curb in violation of a jaywalking ordinance. The same thing is true of a person who may have worked his way through college as a cochero and, who, pitying his horse struggling up an incline or a bridge, leaves his seat to stand aft and forward to balance the calesa load or who, alone on his way home, sits in the seat intended for passengers only to be fined for violating an obscure municipal ordinance.

The petitioner cites decisions of American courts in support of his arguments:

"By weight of authority, the violation of a municipal ordinance, enacted by a city under legislative authority, as in the case of ordinances prohibiting and punishing gaming and the keeping of gaming houses, etc., is not a crime, in the proper sense of the term, for such ordinances are not public laws, and the punishment for their violation is imposed by the state.' (Withers v. State, 36 Ala. 252; City of Greely v. Hamman, 12 Cole. 94, 20 Pac. 1; Williams v. Augusta, 4 Ga. 509) as cited on p. 7, Francisco's Revised Penal Code, Book One, 3rd Edition."

.....

"The common-law definition of a 'crime' as given by Blackstone, is 'an act committed or omitted in violation of a public law,' . . . giving the accused the right to be heard in all 'criminal prosecutions' relates exclusively to prosecution for violation of public laws of the state, and a city ordinance is not a public law of the state, but a local law of the particular corporation, made for its internal practice and good government. (Castillo [should be Costelo] v. Feagin, 50 South 134, 135, 162 Ala. 191)"

There are other federal decisions which state that prosecutions to enforce penalties for violations of municipal ordinances are not criminal prosecutions and the offenses against these ordinances are not criminal cases. (City of Mobile v. McCown Oil Co., 148 So. 402, 405; City of Mankato v. Arnold, 30 N. W. 305, 306; Village of

Litchville v. Hanson, 124 N. W. 1119, 1120).

We do not go so far as to sustain the arguments that only violations of statutes enacted by the national legislature can give rise to "crimes" or "a criminal record" as these terms are used in our law on local governments or the law of public officers. However, we take cognizance of the distinction in the law of municipal corporations which distinguishes between acts not essentially criminal relating to municipal regulations for the promotion of peace, good order, health, safety, and comfort of residents and acts intrinsically punishable as public offenses. (See cases cited in Dillon, A Treatise On The Law of Municipal Corporations, Vol. II, 5th Edition, Sections 745, 746, and 749.) A penalty imposed for the breach of a municipal regulation is not necessarily an exercise of the sovereign authority, to define crimes and provide for their punishment, delegated to a local government. In many cases, the penalty is merely intended not to render the ordinance inoperative or useless.

The phrase "criminal record" governing qualifications for appointments could not have been intended by the legislature to automatically cover every violation of a municipal or city ordinance carrying a sanction of a nominal fine to enforce it. A violation of a municipal ordinance to qualify as a "crime" must involve at least a certain degree of evil doing, immoral conduct, corruption, malice, or want of principles reasonably related to the requirements of the public office.

Automatic and perpetual disqualification of a person who in one unguarded moment threw a cigarette butt on the street, spat in public, deposited house garbage in a market receptacle for garbage, exceeded the speed limit for vehicles, blew his car horn near a school or hospital, or, as in this case, jaywalked, and who has paid the fine imposed by ordinance as commensurate deterrence for the act, would be unreasonable, if not oppressive.

Respondent Subido should have gone deeper into the nature of the petitioner's acts instead of taking every "Yes" answer in Question 15 of the information sheet as an automatic disqualification. Under Rule VI of the Civil Service Rules and Regulations, the respondent commissioner had 180 days from receipt of the appointment papers to act on them. Inaction means the appointment is approved as properly made. The papers were returned more than a year by the commissioner after he received them. The appointment, not having any defect of record except the matter in issue in this case, must be deemed complete and properly made after the 180 days period. The termination of the petitioner's services was, therefore, an illegal and invalid removal. The petitioner should be reinstated, assuming he meets the physical and other requirements of the Integrated National Police under the new legislation and procedures governing police forces. In addition to being paid any salaries for services actually rendered but not paid, the petitioner, following the formula in cases of illegal dismissals is entitled to five years backpay (Cristobal v. Melchor, 78 SCRA 175, 187).

WHEREFORE, the decision of the court a quo is set aside. The Integrated National Police and the respondent officials are directed to reinstate the petitioner to the Quezon City Police Force provided he meets the age, physical, and other qualifications and eligibilities for patrolman under present legislation and rules. The city government of Quezon City and the incumbent Mayor, Treasurer, and Auditor of the city are ordered to pay the petitioner any unpaid salaries and allowances for services actually rendered and five years backpay from the date his services were actually terminated.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Vasquez and Relova, JJ., concur.

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