

EDUARDO DE LOS SANTOS, PETITIONER, VS. GIL R. MALLARE, LUIS P. TORRES, IN HIS CAPACITY AS CITY MAYOR, PANTALEON PIMENTEL, IN HIS CAPACITY AS CITY TREASURER, AND RAFAEL USON, IN ...*G.R. No. L-3881. August 31, 1950*

Ponente: TUASON, J.

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This is an original action of quo warranto questioning the legality of the appointment of respondent Gil R. Mallare to the office of city engineer for the City of Baguio which the petitioner occupied and claims to be still occupying. The real issue however is the legality of the petitioner's removal from the same office which would be the effect of Mallare's appointment if the same be allowed to stand. It is the petitioner's contention that under the Constitution he can not be removed against his will and without cause. The complaint against the other respondents has to do merely with their recognition of Mallare as the lawful holder of the disputed office and is entirely dependent upon the result of the basic action against the last-mentioned respondent (Mallare).

Stripped of details unessential to the solution of the case, the facts are that Eduardo de los Santos, the petitioner, was appointed City Engineer of Baguio on July 16, 1946, by the President, appointment which was confirmed by the Commission on Appointments on August 6, and on the 23rd of that month, he qualified for and began to exercise the duties and functions of the position. On June 1, 1950, Gil R. Mallare was extended an ad interim appointment by the President to the same position, after which, on June 3, the Undersecretary of the Department of Public Works and Communication directed Santos to report to the Bureau of Public Works for another assignment. Santos refused to vacate the office, and when the City Mayor and the other officials named as Mallare's co-defendants ignored him and paid Mallare the salary corresponding to the position, he commenced these proceedings.

The petitioner rests his case on Article XII of the Constitution, Section 4 of which reads: "No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law."

It is admitted in respondents' answer that the City Engineer of Baguio "belongs to the unclassified service." And this Court, in an exhaustive opinion by Mr. Justice Montemayor in the case of *Lacson vs. Romero*, 47 Off. Gaz., 1778, involving the office of provincial fiscal, ruled that officers or employees in the unclassified as well as those in the classified service are protected by the above-cited provision of the organic law. But there is this difference between the *Lacson* case and the case at bar: Section 2545 of the Revised Administrative Code, which falls under Chapter 61 entitled "City of Baguio," authorizes the Governor General (now the President) to remove at pleasure any of the officers enumerated therein, one of whom is the city engineer. The first question that presents itself is, 'is this provision still in force?

Section 2 of Article XVI of the Constitution declares that all laws of the Philippine Islands shall continue in force until the inauguration of the Commonwealth of the Philippines; thereafter, such laws shall remain operative,

unless inconsistent with this Constitution, until amended, altered, modified, or repealed by the Congress of the Philippines, * * *."

It seems plain beyond doubt that the provision of Section 2545 of the Revised Administrative Code, "he (Governor-General now President) may remove at pleasure any of the said appointive officers," is incompatible with the constitutional inhibition that "No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law." The two provisions are mutually repugnant and absolutely irreconcilable. One in express terms permits what the other in similar terms prohibits.

The Constitution leaves it to the Congress to provide for the cause of removal, and it is suggested that the President's pleasure is itself a cause. The phrase "for cause" in connection with removals of public officers has acquired a well-defined concept. "It means for reasons which the law and sound public policy recognized as sufficient warrant for removal, that is, legal cause', and not merely causes which the appointing power in the exercise of discretion ' may deem sufficient. It is implied that officers may not be removed at the mere will of those vested with the power of removal, or without any cause. Moreover, the cause must relate to and affect the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interests of the public." (43 Am. Jur. 47, 48.)

Reconsideration of the decision in *Lacson vs. Romero* as far as officers in the unclassified service are concerned is urged. It is contended that only officers and employees in the classified service should be brought within the purview of Article XII of the Constitution.

Section 1 of this Article ordains: "A Civil Service embracing all branches and subdivisions of the Government shall be provided by law. Appointments in the Civil Service, except as to those which are policy-determining, primarily confidential or highly technical in nature, shall be made only according to merit and fitness, to be determined as far as practicable by competitive examination." The first clause is a definition of the scope of Civil Service, the men and women which Section 4 protects. It seems obvious from that definition that the entire Civil Service is contemplated, except positions "which are policy-determining, primarily confidential or highly technical in nature." This theory is confirmed by the enactment of Commonwealth Act No. 177 on November 30, 1936, to implement Article XII of the Constitution. Commonwealth Act No. 177 explains Civil Service almost in the identical words of that Article of the organic law. As a contemporaneous construction, this Act affords an index to the meaning of Civil Service as conceived by the framers of the Constitution. "The principle of contemporaneous construction may be applied to the construction given by the legislature to the constitutional provisions dealing with legislative powers and procedure. Though not conclusive, such interpretation is generally conceded as being entitled to great weight." (U.S. vs. Sprague, 282 U.S. 716, 75 L. Ed. 640, 51 S. Ct. 220, 71 A.L.R. 1381; *Den ex dem. Murray vs. Hoboken Land & Improv. Co.* 18 How. [U.S.] 272, 15 L. ed. 372; *Clark vs. Boyce*, 20 Ariz. 544, 135 P., 136, citing R.C.L.; 11 Am. Jur. 699.) The principle of express mention and implied exclusion may be made use of also to drive home this point.

We are led to the same conclusion by the existing provisions at the time of the adoption of the Constitution. Civil Service as embracing both classes of officers and employees possessed definite legal and statutory meaning when the Constitution was approved. Section 670 of the Revised Administrative Code already provided that "Persons in the Philippine civil service pertain either to the classified or unclassified service." and went on to say that "The classified service embraces all not expressly declared to be in the unclassified service." Then Section 671 described persons in the unclassified service as "officers, other than the provincial treasurers and assistant directors of bureaus or offices, appointed by the President of the Philippines, with the consent of the Commission on Appointments of the National Assembly, and all other officers of the government whose appointments are by law vested in the President of the Philippines alone."

The rules of construction inform us that the words used in the constitution are to be given the sense they have in common use. (*Okanogan Indians vs. United States*, 279, U.S. 665; 64 A.L.R. 1434; 73 Law ed. 894.) It has been said that we must look to the history of the times, examine the state of things existing when the Constitution was framed and adopted, (*Rhode Islands vs. Massachusetts*, 12 Pet. 657, 9 Law ed. 1233), and interprets it in the light of the law then in operation. (*Mattox vs. United States*, 156, U.S. 237, 39 Law ed. 409.)

Attention is drawn to supposed inconveniences of tying the hands of the appointing power in changing and shifting officers in the unclassified service. "If—it is argued—all important officers and employees of the government falling within the unclassified service as enumerated in Section 671 of the Revised Administrative Code as amended by Commonwealth Act No. 177, may not be removed by the President except for cause as provided by law, * * * the President would be seriously crippled in the discharge of the grave duty and responsibility laid upon him by the Constitution to take care that the laws be faithfully executed."

Questions of expediency are, of course, beyond the province of the courts to take into account in the interpretation of laws or the Constitution where the language is otherwise clear. But the argument is, we think, unsound even if, the case be approached from this angle. It contains its own refutation. The Constitution and the law implementing it afford adequate safeguards against such consequences as have been painted.

The argument proceeds, contrary to its context, on the assumption that removals of civil service officers and employees are absolutely prohibited, which is not the case. The Constitution authorizes removals and only requires that they be for cause. And the occasions for removal would be greatly diminished if the injunction of Section 1 of Article XII of the Constitution—that appointments in the civil service shall be made only according to merit and fitness, to be determined as far as practicable by competitive examination - would be adhered to meticulously in the first place.

By far greater mischiefs would be fomented by an unbridled authority to remove. Such license would thwart the very aims of the Constitution which are expounded by Dean Aruego, himself a member of the Constitution Convention, in the following remarks copied with approval in *Lacson vs. Romero*, supra:

"The adoption of the 'merit system' in government service has secured efficiency and social justice. It eliminates the political factor in the selection of civil employees which is the first essential to an efficient personnel system. It insures equality of opportunity to all deserving applicants desirous of a career in the public service. It advocates a new concept of the public office as a career open to all and not the exclusive patrimony of any party or faction to be doled out as a reward for party service."

"The 'merit system,' was adopted only after the nations of the world took cognizance of its merits. Political patronage in the government service was sanctioned in 1789 by the Constitutional right of president of the United States to act alone in the matter of removals. From the time of Andrew Jackson, the principle of the 'To the victor belongs the spoils' dominated the Federal Government. The system undermined moral values and destroyed administrative efficiency.

"Since the establishment of the American Regime in the Philippines we have enjoyed the benefits of the 'merit system.' The Schumann Commission advocated in its report that 'the greatest care should be taken in the selection of the officials for administration. They should be men of the highest character and fitness, and partisan politics should be entirely separated from the government.' The fifth act passed by the Philippine Commission created a Board of Civil Service. It instituted a system here that was far more radical and thorough than that in the United States. The Governor-General after William Taft adopted, the policy of appointing Filipinos in the government regardless of their party affiliation. As the result of these the personnel of the Civil Service had gradually come to be one of which the people of the United States could feel justly proud.

"Necessity for Constitutional provision.—The inclusion in the constitution of provisions regarding the 'merit system' is a necessity of modern times. As its establishment secures good government the citizens have a right to except its guarantee as a permanent institution."

"Separation, suspension, demotions and Transfers.—The 'merit system' will be ineffective if no safeguards are placed around the separation and removal of public employees. The Committee's report requires that removals shall be made only 'causes and in the manner provided by law.' This means that there should be bona fide reasons and action may be taken only after the employee shall have been given a fair hearing. This affords to public employees reasonable security of tenure." (Maruego's Framing of the Constitution 886, 887, 890.)

As has been seen, three specified classes of positions—policy-determining, primarily confidential and highly technical—are excluded from the merit system and dismissal at pleasure of officers and employees appointed therein is allowed by the Constitution. These positions involve the highest degree of confidence, or are closely bound up with and dependent on other positions to which they are subordinate, or are temporary in nature. It may truly be said that the good of the service itself demands that appointments coming under this category be terminable at the will of the officer that makes them.

The office of city engineer is neither primarily confidential, policy-determining, nor highly technical.

Every appointment implies confidence, but much more than ordinary confidence is reposed in the occupant of a position that is primarily confidential. The latter phrase denotes not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which insures freedom of intercourse without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state. Nor is the position of city engineer policy-determining. A city engineer does not formulate a method of action for the government or any of its subdivisions. His job is to execute policy, not to make it. With specific reference to the City Engineer of Baguio, his powers and duties are carefully laid down for him by Section 2557 of the Revised Administrative Code and are essentially ministerial in character. Finally, the position of city engineer is technical but not highly so. A city engineer is not required nor is he supposed to possess a technical skill or training in the supreme or superior degree, which is the sense in which "highly technical" is, we believe, employed in the Constitution. There are hundreds of technical men in the classified civil service whose technical competence is not lower than that of a city engineer. As a matter of fact, the duties of a city engineer are eminently administrative in character and could very well be discharged by non-technical men possessing executive ability.

Section 10 of Article VIII of the Constitution requires that "All cases involving the constitutionality of a treaty or law shall be heard and decided by the Supreme Court in banc," and warns that "no treaty or law may be declared unconstitutional without the concurrence of two-thirds of all the members of the Court." The question arises as to whether this judgment operates as invalidation of Section 2545 of the Revised Administrative Code or a part of it so as to need at least eight votes to make it effective. The answer should be in the negative.

We are not declaring any part of Section 2545 of the Revised Administrative Code unconstitutional. What we declare is that the particular provision thereof which gave the Chief Executive power to remove officers at pleasure has been repealed by the Constitution and ceased to be operative from the time that instrument went into effect. Unconstitutionality, as we understand it, denotes life and vigor, and unconstitutional legislation presupposes posteriority in point of time to the Constitution. It is a statute that "attempts to validate and legalize a course of conduct the effect of which the Constitution specifically forbids." (State ex-rel. Mack vs. Guckenberger, 139 Ohio St. 273, 39 NE [2d] 340.) A law that has been repealed is as good as if it had never been enacted, and can not, in the nature of things, contravene or pretend to contravene constitutional inhibitions. So, unlike legislation that is passed in defiance of the Constitution, assertive and menacing, the questioned part of Section 2545 of the Revised Administrative Code does not need a positive declaration of nullity by the court to put it out

of the tray. To all intents and purposes, it is non-existent, outlawed and eliminated from the statute book by the Constitution itself by express mandate before the petitioner was appointed.

Incidentally, the last discussion answers and disposes of the proposition that in accepting appointment under Section 2545 of the Revised Administrative Code, the petitioner must be deemed to have accepted the conditions and limitations attached to the appointment. If the clause of Section 2545 which authorized the President to remove officers of the City of Baguio at pleasure had been abrogated when petitioner's appointment was issued, the appointee can not be presumed to have abided by this condition.

We therefore hold that the petitioner is entitled to remain in office as City Engineer of Baguio with all the emoluments, rights and privileges appurtenant thereto, until he resigns or is removed for cause, and that respondent Mallare's appointment is ineffective in so far as it may adversely affect those emoluments, rights and privileges. Without costs.

Moran, C.J., Ozaeta, Paras, Pablo, and Montemayor, JJ., concur.

BENGZON, J., concurring:

I concur in the result solely upon the ground that Section 2545 of the Baguio Charter (Administrative Code) empowering the President to remove the City Engineer at pleasure has been impliedly repealed by Section 22 of Commonwealth Act No. 177 which expressly provides for the first time (following the mandate of the Constitution) , that "no officer or employee in the civil service shall be removed or suspended except for cause as provided by law."

I must decline to go into the matter of alleged conflict with the Constitution, first, because plaintiff is precluded from raising that question (*Zanduetta vs. de la Costa*, 66 Phil., 615); second, because every law is presumed to be constitutional unless eight Justices of this Court are clearly of a contrary opinion,[1] and third, because that subject need not be inquired into, except when absolutely necessary for the disposition of the controversy .

REYES, J.:

I concur in this opinion of Mr. Justice Bengzon.

[1] Cf. *People vs. Vera*, 65 Phil., 56, 137.

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