

FRANCISCO RODRIGUEZ, JR., ANTONIO RIVERA, RODULFO LUMABAN, PERENADE ALEJADO, VICENTE SUMASTRE, GAUDIOSO BUNGALON, LEONARDO ALBA, ROGELIO CONDEZA, AND ABDON CAMOCAMO, PETITIONERS...*G.R. Nos. L-41381-82. January 30, 1976*

Ponente: MARTIN, J.

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This is a review on a question of law of the decision of the Court of First Instance of Misamis Oriental in Civil Case Nos. 72-M and 73-M entitled Francisco Rodriguez, Jr., et al. vs. Romulo Rodriguez, Jr., et al. and Benjamin Rivera, Jr., et al. vs. Romulo Rodriguez, Jr., et al., respectively, wherein petitioners in both cases were claiming for reinstatement to their old positions in the City Police Department and City Fire Department of Gingoog City and for collection of back salaries.

Petitioners-appellants in Civil Case No. 72-M were appointed policemen of Gingoog City on the dates opposite their respective names, to wit: Francisco Rodriguez, Jr. – February 6, 1964; Antonio Rivera – March 16, 1964; Rodulfo Lumaban, July 1, 1964; Perenade Alejado – January 25, 1965; Vicente Sumastre – January 26, 1965; Gaudioso Bungalón – July 1, 1965; Leonardo Alba – January 11, 1966; Rogelio Condeza – March 5, 1966 and Abdon Camocamo – February 7, 1966. The appointments of Francisco Rodriguez, Jr., Antonio Rivera, Rodulfo Lumaban, Vicente Sumastre, Rogelio Condeza and Abdon Camocamo were indicated as provisional and approved under Section 24 (c) of the Civil Service Act (Republic Act 2260); while those of Gaudioso Bungalón and Leonardo Alba as temporary although approved under Section 24 (c), supra, with the express condition that the same were to continue not beyond six (6) months. Gaudioso Bungalón and Leonardo Alba were later separated from the service pursuant to Memorandum No. 1 dated January 2, 1968 and the unnumbered Memorandum of the respondent Mayor, Romulo Rodriguez, Jr. and subsequently replaced by non-civil service eligibles.

On January 2, 1968, or two days after respondent Mayor assumed office as newly elected Mayor of Gingoog City, he issued Memorandum No. 1, terminating the services of all casual laborers and/or employees of the City paid out of city funds, effective January 1, 1968 and advising those whose appointments were temporary and who had not yet resigned after six months from the date they were appointed to tender their resignation. On the same day, the respondent Mayor issued another unnumbered Memorandum to the Chief of Police notifying the latter that in accordance with his Memorandum No. 1, the services of all policemen who were not certified to be civil service eligibles or shown to be so in the record were terminated unless directed by him to continue in office.

In the afternoon of January 2, 1968 petitioners-appellants in Case No. 72-M, namely, Francisco Rodriguez, Jr., Antonio Rivera, Rodulfo Lumaban, Perenade Alejado,[1] Vicente Sumastre, Gaudioso Bungalón, Abdon Camocamo, Leonardo Alba and Rogelio Condeza, received a memorandum from the Acting Chief of Police of Gingoog City advising them that their services in the City Police Department had been terminated effective on the

last working day of January 2, 1968 and directing them to turn over to the City Police Department all government issues made to them for and in connection with the performance of their duties as members of the Gingoog City Police Department. After receiving said memorandum, petitioners-appellants turned over their respective firearms to the Office of Chief of Police.

In Case No. 73-M, petitioners were appointed to the Gingoog City Fire Department on the dates appearing opposite their respective names, to wit: Benjamin Rivera – Fireman – January 6, 1964; Belarmino Gulle – Fireman – June 16, 1965; Demosthenes Olario – City Electrician – July 1, 1965; Vicente Rapog – Firetruck Driver – March 7, 1966; Cresencio Caiña – Fireman – October 1, 1966; Leonardo Abad – Fireman – April 1, 1967; Alejandro Sison – Fireman Driver – July 1, 1967. The appointments of Benjamin Rivera, Belarmino Gulle, Vicente Rapog and Cresencio Caiña were indicated as provisional and approved under Section 24(c) of Republic Act No. 2260, while that of petitioner-appellant Demosthenes Olario as temporary, with the express condition that the same shall continue not beyond six (6) months. The appointments of Leonardo Abad and Alejandro Sison were not attested by the City Treasurer nor approved by the Commissioner of Civil Service.

On January 2, 1968, petitioners Demosthenes Olario, Benjamin Rivera, Jr., Belarmino Gulle, Cresencio Caiña, Vicente Rapog, Alejandro Sison and Leonardo Abad received a notice of termination of their services from the Chief of the Gingoog City Fire Department effective January 2, 1968. Petitioner Candido Rivera received from respondent City Assessor Leopoldo Rubina a notice terminating his services as Deputy City Assessor effective the last working hour of January 2, 1968. However, two days later in an unnumbered Memorandum of respondent City Assessor dated January 4, 1968, he was recalled to duty. But then on January 8, 1968, the latter again issued another unnumbered Memorandum requiring Candido S. Rivera to tender his resignation as Deputy City Assessor.

Believing their separation from the service was illegal, petitioners in both cases (Case No. 72-M and Case No. 73-M) filed in the Court of First Instance of Misamis Oriental, the present suit for reinstatement to their positions and for collection of salaries with damages.

A joint trial of the two cases was held, after which the lower court rendered judgment and dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered: (1) Dismissing the petition in Case No. 72-M. (2) Dismissing the petition of Demosthenes Olario and Candido S. Rivera in Case No. 73-M. Ordering the immediate reinstatement of petitioners Benjamin S. Rivera, Jr., Belarmino Guile, Vicente Rapog and Cresencio Caiña in Case No. 73-M, and condemning respondent Chief of the Fire Department Guillermo Ababon, in his personal capacity, to pay them their salaries from January 3, 1968 up to the time they are finally reinstated, at the following rate of compensation:

Benjamin S. Rivera, Jr P2,040.00 per annum

Belarmino Guile 2,040.00 per annum

Vicente Rapog 1,800.00 per annum

Cresencio Caiña 1,800.00 per annum

(4) There is no pronouncement as to costs."

In Civil Case No. 72-M petitioners-appellants complain that the lower court erred:

I

"IN NOT HOLDING AS WITHOUT BASIS THE TERMINATION OF THE PETITIONERS FROM THE SERVICE.

II

"IN HOLDING THAT THE PROVISIONAL APPOINTMENTS OF PETITIONERS ARE MERELY TEMPORARY APPOINTMENTS."

A close examination of the records reveals that the above-named petitioners-appellants in Civil Case No. 72-M have not qualified in an appropriate examination for the position of City policeman of Gingoog City. Legally, at the time they were appointed members of the City Police Force of Gingoog City, they did not possess any civil service eligibility for any position in the government. The lack of such civil service eligibility makes the appointments of petitioners-appellants in Case No. 72-M temporary[2] and without a definite term and are dependent entirely upon the pleasure of the appointing power.[3] They may be terminated any time without cause.[4] Although indicated as provisional and approved under Section 24(c)[5] of Republic Act 2260 the same do not acquire the character of provisional appointments because of such lack of appropriate civil service eligibility for the positions of city policemen. The Civil Service Commission cannot even legally approve their appointments as provisional which in reality are temporary as this act would constitute an unwarranted invasion of the discretion of the appointing power.[6] If the approval of the appointments of the six (6) petitioners-appellants as provisional under Section 24(c) of Republic Act 2260 did not make them so, the fact remains that their appointments were temporary which could be terminated without any need to show that the termination was for cause.[7] They can even be replaced by non-eligibles.[8] The situation of petitioners-appellants Gaudioso Bungalon and Leonardo Alba, whose appointments were designated as temporary[9] subject to the express condition that the same were to continue not beyond six (6) months could not have been better, for their appointments have ceased after the expiration of six (6) months from the date of their appointments. It was not even necessary for the respondent Mayor to terminate their services after said period.

Likewise, in Civil Case No. 73-M, petitioners-appellants Demosthenes Olario, Leonardo Abad and Alejandro Sison assail the decision of the lower court:

I

"IN HOLDING THAT THE APPOINTMENT OF PETITIONERS ARE TEMPORARY AND THEREFORE EXPIRED SIX MONTHS THEREAFTER.

II

"IN NOT HOLDING THAT RESPONDENT DEPARTMENT HEADS OF THE CITY GOVERNMENT OF GINGOOG HAVE NO POWER TO TERMINATE THE SERVICES OF THE APPEALING PETITIONERS."

On the other hand, respondent Guillermo Ababon blames the lower court:

I

"IN HOLDING THAT HE EXCEEDS HIS AUTHORITY IN DISMISSING PETITIONERS.

II

"IN HOLDING HIM PERSONALLY LIABLE FOR THE BACK SALARIES OF THE PETITIONERS."

An examination of the records shows that petitioners-appellants Benjamin Rivera, Jr., Belarmino Gulle, Vicente

Rapog and Crescencio Caiña did not possess any civil service eligibility, and inspite of this, they were extended provisional appointments. Like the petitioners-appellants in Civil Case No. 72-M, their appointments could only be considered temporary notwithstanding the fact that they were approved under Section 24(c) of Republic Act No. 2260. Being temporary, they cannot last longer than six (6) months (Section 24(d), supra) from the date they were appointed. By looking at the respective dates petitioners-appellants were appointed, there can be no dispute that the six-month period has long expired before, their services were terminated on January 2, 1968. The same can be said of the appointment of petitioner-appellant Demosthenes Olario which was also temporary. On the other hand, it is patently clear that the appointments of petitioners-appellants Leonardo Abad and Alejandro Sison which were not attested by the City Treasurer and approved by the Civil Service Commission were invalid and of no effect. An appointment made by an officer duly empowered to make it is not final or complete until after the Commissioner of Civil Service has certified that such appointment may be made, hence, without such certification, the same may be recalled or withdrawn.[10] In the decision of the lower court petitioners-appellants Benjamin Rivera, Jr., Belarmino Gulle, Vicente Rapog and Crescencio Caiña, whose original appointments were also temporary were ordered reinstated. This is clear error. As their appointments were temporary, the lower court should not have ordered their reinstatement after their temporary appointments have expired.

Petitioners-appellants Demosthenes Olario, Leonardo Abad and Alejandro Sison further assail the authority of the Chief of the Fire Department, Guillermo Ababon to terminate their services by issuing the letter of January 2, 1968. They contend that Memorandum No. 1 dated January 2, 1968 issued by the City Mayor required among others, the Department Heads and Chiefs of offices to advise those with temporary appointments to tender their resignation. Although, it has been stipulated that the dismissal of herein petitioners-appellants by the Chief of the Fire Department was in pursuance of Memorandum No. 1 dated January 2, 1968 issued by the City Mayor, actually it was the respondent City Mayor who effected their separation from the service by appointing on January 3, 1968 other persons in their stead. As a matter of fact, it was not even necessary for the Chief of the Fire Department to issue the letter dated January 2, 1968 terminating the services of petitioners-appellants in Case No. 73-M. In like manner, there was nothing illegal in the termination of the services of Candido Rivera in Civil Case No. 73-M, inasmuch as his appointment as Deputy City Assessor on September 20, 1965 was also temporary subject to the condition that it will not continue beyond six (6) months after the date of his appointment. When his services were terminated on January 2, 1968 his temporary appointment had long expired.

In view of the foregoing, judgment is hereby rendered:

1. Affirming the decision of the lower court in Case No. 72-M;
2. Affirming the decision of the lower court in Case No. 73-M insofar as it dismissed the petition against petitioners-appellants Candido Rivera, Demosthenes Olario, Leonardo Abad and Alejandro Sison; and
3. Reversing the decision of the lower court in Case No. 73-M insofar as it ordered the reinstatement of respondents-appellees Benjamin Rivera, Jr., Belarmino Gulle, Vicente Rapog and Crescencio Caiña and condemned respondent-appellant Guillermo Ababon for the payment of their back salaries.

Costs against petitioners-appellants in both Cases Nos. 72-M and 73-M. So ordered.

Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

Teehankee, J., (Chairman), concurs in the result.

[1] Perenade Alejado has withdrawn his appeal.

[2] Ramos vs. Romualdez, et al., 32 SCRA 590; citing Orais vs. Ribo, 93 Phil. 985; Peña vs. Medina, 94 Phil.

103; Manigras vs. De Guzman, 94 Phil. 245; Inocente vs. Ribo, 94 Phil. 562; Amora vs. Bibera, 99 Phil. 1; Cayabyab vs. Cayabyab, 101 Phil. 631; Quiatchon vs. Villanueva, 101 Phil. 989; UP vs. CIR, 107 Phil. 848; Montero vs. Castellanes, 108 Phil. 744; Taboada vs. Mun. of Badian, 2 SCRA 412; Flores vs. Cordova, 3 SCRA 105; Phil. Land-Air-Sea Labor Union vs. Court, 11 SCRA 723; Hojilia vs. Mariño, 13 SCRA 293.

[3] Ata vs. Namocatcat, 47 SCRA 314.

[4] Mendoza vs. Tancinco, 52 SCRA 66.

[5] (c) Provisional Appointment. - A provisional appointment may be issued upon prior authorization of the Commissioner in accordance with the provisions of this Act and the rules and standards promulgated in pursuance thereto to a person who has not qualified in an appropriate examination but who otherwise meets the requirements for appointment to a regular position in the competitive service, whenever a vacancy occurs and the filing thereof is necessary in the interest of the service and there is no appropriate register of eligibles at the time of appointment.

[6] Santos vs. Chico, 25 SCRA 312.

[7] UP vs. CIR, supra.; Montero vs. Castellanes, supra.; Quitiquit vs. Villacorta, 107 Phil. 1060; Taboada vs. Mun. of Badian, supra.; Villanosa vs. Alera, L-10586, citing Cuadra vs. Cordova, 103 Phil. 391; Reyes vs. Dones, 103 Phil. 884.

[8] Orais vs. Ribo, supra.; Sigue vs. Rabaya, L-11717, December 27, 1958; Montero vs. Castellanes, supra.

[9] "Section 24(d) of Republic Act No. 2260:

"Any person may receive a temporary appointment to a position needed only for a limited period not exceeding six months, provided that preference in filing such position be given to persons on appropriate eligible lists."

[10] Suarez vs. Commission on Elections, 20 SCRA 797.

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