

VICENTE DICHOSO, PETITIONER AND APPELLANT, VS. LEANDRO VALDEPEÑAS, MAYOR APOLONIO P. REYES, AND VICENTE TAMAYAO, RESPONDENTS AND APPELLEES.*G.R. No. L-17448. August 31, 1962*

Ponente: BARRERA, J.

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Petitioner Vicente Dichoso filed with the Court of First Instance of Cagayan a petition, which was amended on February 18, 1960, for quo warranto with mandatory injunction and damages against respondents Leandro Valdepeñas, Apolonio Reyes (as municipal mayor of Tuguegarao, Cagayan), and Vicente Tamayao alleging, inter alia, that he is a civil service eligible and is the Chief of Police of Tuguegarao, having been appointed to said (position effective January 16, 1959, with a compensation of P1740 per annum; that on October 28, 1959, then Mayor Natividad of Tuguegarao extended to him a promotional appointment of permanent regular Chief of Police of Tuguegarao effective July 1, 1959, with a salary of P1,920 per annum, which appointment was duly attested by the Provincial Treasurer of Cagayan (as deputy of the Commissioner of Civil Service), as required by Section 20 of Republic Act No. 2260; that on January 10, 1960, while he was in the performance of his duties as Chief of Police, respondent Valdepeñas usurped and unlawfully assumed his position, and illegally exercised the functions thereof; that as a result of said usurpation, petitioner was deprived of his functions as Chief of Police; that respondent Valdepeñas acts of usurpation caused petitioner moral damages in the sum of P5,000.00 and to incur P1,000.00 as attorney's fees; that respondent Mayor Reyes, on January 7, 1960 appointed respondent Valdepeñas as Chief of Police, in violation of the provisions of Republic Act No. 2260; that upon the filing of the present petition respondent Valdepeñas resigned as Chief of Police and, thereafter, respondent Mayor Reyes appointed respondent Tamayao illegally to said position; that the municipal council of Tuguegarao refused to approve said appointments made by respondent Mayor Reyes; that respondent Tamayao is illegally exercising the functions of Chief of Police, to the prejudice of the people of Tuguegarao, and his acts amount to usurpation of petitioner's official functions as the lawful Chief of Police of Tuguegarao; and that the act of respondent Mayor Reyes in appointing respondent Tamayao caused petitioner to suffer moral damages in the sum of P5,000.00. Petitioner prayed that judgment be rendered declaring petitioner the lawful Chief of Police of Tuguegarao; declaring respondent Valdepeñas guilty of usurpation from January 6 to 31, 1960 and declaring the latter's acts during said period invalid; declaring the appointments of respondents Valdepeñas and Tamayao illegal; ordering the immediate ouster of respondent Tamayao as Chief of Police of Tuguegarao; ordering the payment of P5,000.00 damages by respondents Valdepeñas and Mayor Reyes and P5,000.00 damages by respondents Mayor Reyes' and Tamayao; ordering respondents jointly and severally to pay petitioner P1,000.00 as attorney's fees; and restraining respondent Mayor Reyes from making any further appointment to the position of Chief of Police pending decision of the petition.

To this petition, respondents filed an answer denying the illegal acts imputed to them and alleging, as special defenses, that petitioner is unfit to discharge police duties due to his previous convictions and mental illness; that

petitioner's appointment as Chief of Police terminated on December 31, 1959, in accordance with the attestation of the Commissioner of Civil Service; that petitioner's character and temperament do not permit him to hold the position of Chief of Police; that respondent Mayor Reyes has no confidence in petitioner; that respondent Valdepeñas is duly qualified to assume the duties of Chief of Police, being a major in the reserve force of the Armed Forces of the Philippines, and having previously served as provincial commander of Cotabato and Sorsogon; that respondent Tamayao is likewise duly qualified having twice passed the examinations for Chief of Police and Patrolman given by the Civil Service; and that respondent Tamayao is senior to petitioner in matters of appointment. Respondents prayed for the dismissal of the petition.

Issues having been joined, the case was tried and thereafter, the court on July 18, 1960, dismissed the petition and declared as legal the appointments of respondents Valdepeñas and Tamayao, in a decision which in part reads:

"The evidence on record shows that the petitioner was not at all removed from the government service, as can be seen from Exhibit I of the petitioner (Exhibit 5 of the respondents). Exhibit I clearly states that the petitioner's services as chief of police has already been terminated, and that he should assume his former duties as patrolman of the police department of Tuguegarao. In other words, the herein petitioner was only returned to his former position as patrolman, to which he is qualified. He cannot, therefore, claim that he was unlawfully removed from the government service.

"Exhibits 1, 10-A, 11, 12, 12-A, and 12-B of the respondents corroborate the allegations of the respondent Mayor Reyes that the petitioner herein was only acting as Chief of Police in a temporary capacity, and that his services as such, terminated as of December 31, 1959. We quote herein pertinent portions of Exhibit 10-A:

'* * * Moreover, it appears from the appointee's information sheet that, for slight physical injuries, he was fined P5.00 without imprisonment. However, for services actually rendered, the said appointment may be authorized under Section 3 of Civil Service Rule VI, the last, up to June 18, 1959, and approved effective June 19, 1959 to continue but not beyond December 31, 1959.'

"The municipal mayor is the highest executive official in the municipality and, as such, he is empowered by law to appoint minor officials and employees. He has, therefore, the discretion to appoint men of his confidence to work with him.

"In this particular case, Mayor Reyes acted within his power and discretion when he appointed Major Leandro Valdepeñas. The appointment extended to Vicente Tamayao and, likewise, within the power and discretion of said respondent Mayor. As such mayor of Tuguegarao, he also has the power and discretion to return the herein petitioner Vicente Dichoso to his former position as patrolman. Officials having the power to appoint should be given wider latitude in selecting their subordinates, because the success of their administration depends partly, if not widely, upon the cooperation of their subordinates. Thus, it was held in the case of *Jimenez vs. Francisco, et.al.*, 100 Phil., 1025; 53 Off. Gaz. 4804 that:

'The power to appoint is in essence discretionary on the part of the proper authority. * * * The appointing power has the right of choice which he may exercise freely according to his judgment, deciding for himself who is best qualified for any competitive position in the Civil Service. Mere certification as a civil service eligible, does not amount to an appointment. The Civil Service Commissioner does not issue an appointment; it only certifies an eligible to be possessed of qualification; as required for a position classified under its rules.'

"IN VIEW OF ALL THE FOREGOING, the Court hereby pronounces judgment dismissing the petitioner's petition for quo warranto with mandatory injunction and damages against the herein respondents, and declaring as legal the appointments extended by the herein respondent Mayor in favor of Major Leandro Valdepeñas and Vicente Tamayao, without pronouncement as to costs.

"SO ORDERED."

From this decision, petitioner appealed directly to us.

The only issue for determination in this case is whether appellant's ouster from his position as Chief of Police of Tuguegarao was legal.

The records disclose that on October 28, 1959, then Mayor Natividad of Tuguegarao extended to appellant a promotional appointment (effective July 1, 1959), with a compensation of 11,920 per annum (Exh. B). Said appointment was duly attested by the Provincial Treasurer of Cagayan, as deputy of the Commissioner of Civil Service, pursuant to Section 20[1] of Republic Act No. 2260. The records also show that when said appointment was extended to him, appellant was a civil service eligible, having passed the Patrolman examination (with a general average of 77.78%), given by the Civil Service at Tuguegarao, on October 27, 1956, as shown by the Report of Ratings dated April 16, 1959 (Exh. A). Being a civil service eligible, appellant can not be ousted from his position of Chief of Police, except on the ground provided in Section 1[2] of Republic Act No. 557. (*Mission vs. Del Rosario*, 94 Phil., 483; 50 Off. Gaz. 1571; see also *Abella vs. Rodriguez*, 95 Phil., 289; *Uy vs. Rodriguez*, 95 Phil., 493; *Quintos vs. Lacson*, 97 Phil., 290; 51 Off. Gaz. 3429; and *Diaz vs. Amante*, 104 Phil., 968; 55 Off. Gaz. 8643) In the *Mission* case, we said:

"It appearing that petitioners, as detectives or members of the police force of Cebu City, were separated from the service not for any of the grounds enumerated in Republic Act No. 557, and without the benefit of investigation or trial therein prescribed, the conclusion is inescapable that their removal is illegal and of no valid effect."

Appellees argue that the attestation by the Provincial Treasurer of Cagayan of petitioner's appointment dated October 28, 1959 pursuant to Section 20 of Republic Act No. 2260 did not make his appointment permanent, as it was still subject to correction or revision by the Commissioner of Civil Service within 180 days from the latter's receipt thereof. But appellant's ouster took place on January 6, 1960 (Exh. I), or 2 months and 9 days only from his appointment on October 28, 1959, and there is no pretense that the Commissioner did revise or correct said appointment during such period. In fact, the 180-day period within which the Commissioner may revise or correct said appointment has not yet elapsed at the time of appellant's ouster. In fairness to appellant, appellee Mayor Reyes should have awaited the action of the Commissioner on said appointment, and only after its correction or revision should he have acted against appellant. Note that the law does not require the action of the Commissioner in order to make the appointment made by the municipal mayor effective. On the contrary the appointment is, according to the provision of Section 20, "effective upon issuance" thereof, and "upon attestation by the provincial treasurer," subject only to the resolutive condition by way of correction or revision thereof by the Commissioner within 180 days after the appointments' submission to him. And the records do not show any such correction or revision.

Appellees capitalize on the action taken by the Commissioner of Civil Service on appellant's previous appointments as Desk Sergeant (effective Dec. 1, 1957), as Police Lieutenant (effective March 1, 1958), as Police Lieutenant (effective July 1, 1958), and as Chief of Police (effective Jan. 16, 1959). [See Exhs. F and 10], wherein the Commissioner authorized said appointments "under Section 3 of Civil Service Rule VI, the last, up to June 18, 1959, and approved effective June 19, 1959, to continue but not beyond December 31, 1959". But the appellees and the lower court overlooked the fact that at the time such appointments were made, appellant was not yet a civil service eligible and, for that reason, said appointments are deemed temporary in nature and terminable by action of the Commissioner of Civil Service by limiting the period of their effectivity subject to the requirements of the service. But appellant's last promotional appointment extended to him on October 28, 1959 (Exh. B), was made and attested on the strength of his eligibility certified by the Civil Service on April 16, 1959 (Exhs. A & B).

Appellant, therefore, became entitled to the protection of civil service law and rules, specifically, of Republic Act No. 557, which prohibits the removal or suspension of members of the municipal police force except for the grounds enumerated in Section 1 therein.

Appellees also contend that appellant's appointment of October 28, 1959 is not permanent in nature, but merely probationary under Section 24 (b) of Republic Act No. 2260[3] and, for that reason, he was subject to removal from his position of Chief of Police. But under said provision, a probationer may be dropped from the service only for "unsatisfactory conduct" or "want of capacity", and there is no showing that appellant was removed for said causes. On the contrary, it appears from appellee-mayor's own letter of January 6, 1960 (Exhs. 1 & 5) terminating appellant's services as "Acting" Chief of Police, that the mayor expressly recognized appellant's "efficient administration" of the police force during his incumbency.

Furthermore the appointment of respondent Tamayao was not approved by the Municipal Council as required in Section 1 of Republic Act No. 1531 (t.s.n. p. 27).

For all the foregoing, we hold that appellant's ouster as Chief of Police of Tuguegarao was illegal and unjustified and that the appointments extended by appellee Mayor Reyes to appellees Valdepeñas and Tamayao as Chief of Police, vice the appellant, are invalid.

"* * * * *

Wherefore, the decision appealed from is reversed and appellee Mayor Apolonio Reyes is ordered to immediately reinstate appellant to his former position of Chief of Police of Tuguegarao and to pay his back salaries from the date of his ouster until he is reinstated. Appellee Tamayao is also directed to immediately vacate the position of Chief of Police and to refrain from exercising the functions appurtenant thereto. Appellee Mayor Reyes is ordered to pay appellant, under the circumstances, attorney's fees in the sum of P1,000.00 and the costs. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon, Regala, and Makalintal, JJ., concur.

[1] "SEC. 20. Delegation in the Civil Service Commission and to the Agencies. * * * Appointments by * * * municipal mayors shall become effective upon issuance of such appointments and upon attestation by the provincial treasurer in the case of appointments made by * * * municipal mayors * * *. All appointments made by the * * * municipal mayors * * * shall, after being attested to by the respective provincial treasurer * * * be forwarded within ten days to the Commissioner of Civil Service for review pursuant to Civil Service law and rules. If within one hundred eighty days after receipt of said appointments, the Commissioner of Civil Service shall not have made any correction or revision, then such appointments shall be deemed to have been properly made. * * *."

[2] "SECTION 1. Members of the * * * 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, * * *."

[3] "SEC. 24. Personnel Actions and Employment Status. * * * (b) Permanent appointment.—A permanent appointment shall be issued to a person who has met all the requirements of the position to which he seeks appointment in accordance with the provisions of this Act and the rules and standards promulgated in pursuance thereto. All such persons must serve a probationary period of six months following their original appointment and shall undergo a thorough character investigation in order to acquire a permanent civil service status. A probationer may be dropped from the service for unsatisfactory conduct or want of capacity any time before the expiration of

the probationary period: Provided; That such action is appealable to the Commissioner of Civil Service under section sixteen, paragraph (j) of this Act."

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