

ANTONIO J. VILLEGAS, IN HIS CAPACITY AS MAYOR OF THE CITY OF MANILA, CAPTS. JAMES BARBERS, ANTONIO PARALEJAS AND FELICISIMO LAZARO, IN THEIR RESPECTIVE CAPACITY AS PRECINCT OR S...*G.R. No. L-26534. November 28, 1969*

Ponente: FERNANDO, J.

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The power of respondent Commissioner of Civil Service to direct the Mayor of the City of Manila, petitioner Antonio J. Villegas, to replace the other petitioners, James Barbers, Antonio Paralejas and Felicisimo Lazaro as station commanders of the three Manila police precincts, is challenged in this prohibition proceeding filed with the Manila Court of First Instance. There is no dispute that petitioner, as Mayor, by virtue of the statutory grant of authority of "immediate control over the executive functions of the different departments,"[1] could pick the police officials to be entrusted with such responsibility. The choice fell on the three other petitioners, then police captains. Respondent Commissioner would dispute their designation as such on the ground of lack for each of them of "an Inspector First Class (Police Detective Major)" eligibility. Petitioners prevailed, the lower court being unable to locate any legal provision to warrant such an exercise of power on the part of respondent Commissioner. The case is before us now on appeal. For reasons to be more explicitly and fully set forth, we affirm.

The petition for prohibition, with preliminary injunction being sought, was filed in the Court of First Instance of Manila on July 17, 1965. After the allegation as to parties, it was set forth therein that in an endorsement of June 30, 1965, respondent Commissioner directed that petitioners Barbers, Paralejas and Lazaro be replaced as station commanders of the three police precincts of Manila, as their continued employment as such was illegal, the eligibility required being that of an inspector first class, allegedly not possessed by them.[2] The petitioner Mayor replied on July 2, 1965, asserting that he felt obliged "to disregard said directive, it being in excess of the authority vested in [the Civil Service] Commission." As noted in such communication: "This Office is not aware of any provision of law requiring that Precinct or Station Commanders should be at least a Police or Detective Major or an Inspector First Class. Para-graph 4, Section 23 of Republic Act No. 2260, otherwise known as the Civil Service Act of 1959, which that Commission has invoked, contemplates positions in the competitive or classified service as provided for in an appropriation or budget measure to which an appointment, as the term appointment is used in Section 24 of the Civil Service Act of 1959, is required. Obviously, this provision of law can not cover mere designations or assignments to an area of command. Thus, Precinct or Station Commanders in the Manila Police Department are so designated for organizational purposes in order to delineate their specific area of command and effect greater efficiency in the administration of police affairs." [3]

Respondent Commissioner of Civil Service was however adamant, reiterating on July 9, 1965 his directive for the replacement of the other petitioners as station commanders.[4] Then came the allegation why in this particular case respondent Commissioner of Civil Service acted without or in excess of jurisdiction or, at the very least, with grave abuse of discretion. As pointed out in the petition, the assignment or detail in this case of the other

petitioners as precinct or station commanders did not constitute "appointment to positions in the competitive or classified service;" that such designation or detail was exclusively within the power and jurisdiction of petitioner Mayor under his specific power of direction, supervision and control vested in him by the Charter and in view of his responsibility as the chief executive of the City to maintain peace and order therein; that there is no law or civil service regulation which requires any specific civil service eligibility for a precinct or station commander and that on the assumption that respondent Commissioner could determine the appropriate eligibility, the examination for police inspectors invoked by him were suspended by order of the President of the Philippines of March 23, 1964 insofar as the City of Manila was concerned.[5] There were other allegations to show lack or excess of jurisdiction as well as grave abuse of discretion, but enough has been said to render clear why for petitioners the directive in question was beyond the power of respondent Commissioner to issue.

In the answer by respondent Commissioner filed on July 29, 1965, the facts as set forth were admitted, but there was an explicit denial of the grounds relied upon to show lack or excess of jurisdiction or his acting with grave abuse of discretion.[6] The stress in the affirmative and special defenses set forth was that the assignment of petitioners Barbers, Paralejas and Lazaro was not allowable under the Civil Service Act in view of the fact that there were as of that time eligibles to the position of inspector first class who could be so designated. Reliance was also had, as on the original directive of respondent Commissioner, of such designation of petitioners as not being "in conformity with the recommendation of the U. S. Agency for International Development to assign and shift [Manila Police Department] personnel to positions to which they have qualified in appropriate examinations." [7]

The decision now on appeal, promulgated on July 14, 1966, noted that respondent Commissioner did not dispute the civil service eligibilities and training of petitioners Barbers, Paralejas and Lazaro. Reference was made to the opening paragraph of the petition wherein the following appeared: "Petitioner Capt. Barbers passed his First Grade Civil Service (supervisor) Promotional Examination taken on March 31, 1962 with a high mark of 80.1 per cent; he is also a law graduate (1964) and graduated as a full scholar; he completed the Basic Course for Patrolman at the MPD training school (1945), the Advanced Course (1946), the Detective Course (1946) as class topper with an average of 96.5 per cent and the Senior Police Refresher Course (1962) at the Philippine Army School Command, Ft. Bonifacio; and he also trained at the International Police Academy in Washington, D. C., the New York City Police Academy, the Pinkerton Detective Agency in New York, the Dade County Police Department in Miami, Florida, the U. S. Military Police School at Fort Gordon, Georgia, and the Michigan State University Communications Seminar. Petitioner Capt. Paralejas passed the civil service examination for police lieutenant in 1945 with a rating of 77.90 per cent; he is a commerce graduate (1939) 2nd year law, F.E.U.; he completed the supervisors 2nd In-Service Training in the City of Manila (medalist) and the Senior Police Refresher Course (1962) at the Philippine School Command, Ft. Bonifacio. Petitioner Capt. Lazaro passed the Criminal Investigation in Secret Service examination (pensionado) given by the Civil Service Commission in 1947, with an average of 83.62%; he completed the supervisors 2nd In-Service Training in the City of Manila and the Senior Police Refresher Course (1962) at the Philippine Army School Command, Ft. Bonifacio, graduating as third honor; first grade eligible under Rep. Act 1080, being a member of the Philippine Bar." [8]

The decision then noted that while respondent Commissioner had ruled "that the appropriate eligibility for the position of precinct commander is that of police inspector, first class (police major), no valid reason has been advanced to show that such eligibility is appropriate and that of police captain is not." [9] It was likewise made clear in the decision that there was no law prescribing that precinct commanders be police majors. Even on the assumption then that the "corrective measures" could be supplied by respondent Commissioner if "unsatisfactory situations are found" still the appropriate conclusion, according to the lower court, considering "the civil service eligibilities and training of petitioners-captains, the failure of respondent Commissioner to show unsatisfactory

situations in the assignment or designation of petitioners-captains as precinct commanders, and the reasons stated in the petition, [is that] respondent Commissioner has acted without or in excess of jurisdiction and with grave abuse of discretion in issuing and trying to enforce the directive in question." [10]

What cannot be denied, as stressed in such decision, is the absence of any law "which prescribes that precinct commanders be police majors," resulting necessarily in the directive of respondent Commissioner of Civil Service being declared null and void, the writ of prohibition thus being the appropriate remedy, with an injunction perpetually restraining him from the commission of the acts complained of.

The question, to repeat, is one of power. What is clear is that it is petitioner City Mayor that could so designate the other petitioners to assume the position of station commanders. That power is his, and his alone. He is not required by law to share it with respondent Commissioner, who must justify by the valid conferment of authority the action taken by him in requiring that the City Mayor replace the other petitioners. Power is not to be presumed, it must be shown. Respondent Commissioner failed to do so. It was not surprising therefore that the lower court ruled against him. As set forth at the outset, we sustain the lower court and affirm the judgment appealed from.

1. The power of petitioner City Mayor as to who could be designated as station commanders of the three Manila police precincts is conceded. No dispute as to his authority to do so exists. The Charter is clear. The narrow question, therefore, is whether such designation could be frustrated by the directive of the respondent Commissioner. For this official to be justified in interposing a negative, he must show that an applicable law authorizes him to do so.

It is well-settled that respondent Commissioner at the most may inquire only as to the eligibility of the person thus chosen to fill up a vacant position. If he were, then respondent Commissioner of Civil Service must so attest. That function being discharged, his participation ceases. So we have held in the lead-ing case of Villanueva v. Balallo, [11] the opinion being penned by the present Chief Justice. Thus: "When the appointee is qualified, as petitioner herein admittedly is, then the Commissioner of Civil Service has no choice but to attest to the appointment. It has been repeatedly held that an appointment becomes complete upon the performance of the last act required by law of the appointing power. The attestation required of the Commissioner of Civil Service is merely a check to assure compliance with the civil service laws."

In this particular case, the eligibility of the other petitioners as police captains is admitted. That was duly set forth in the decision now on appeal. More than that, their being exceptionally well-qualified, was likewise duly noted therein, a finding of fact binding on us as this appeal raises purely questions of law. The justification for the directive of respondent Commissioner is thus premised on his alleged power to insist on a specific eligibility for each of the other petitioners designated, that of "Inspector First Class (Police or Detective Major)."

In his brief, however, he can point to no express provision that would confer on him such a power. His failure is understandable because there is none. At the most, then, he would rely on a reading of the Civil Service Act from which, mistakenly to our mind, he would infer such authority. According to his brief: "Said authority to fix appropriate eligibilities being corollary to respondent's 'exclusive jurisdiction over the approval under the Civil Service Law and rules of all appointments including pro-motions to positions in the competitive service' and/or being an implied power, there is therefore no need for an express provision setting forth in black and white what eligibilities are appropriate for what positions." [12]

There is thus an admission from respondent Commissioner himself that his power is necessarily limited. He would however, construe such a restricted authority expansively. He would rely on an ambiguity. It would be a stultification of well-settled principles of public law if from the vagueness of a statute competence to act could

be predicated. If such a purpose were within the contemplation of Congress, an appropriate form of words could have been utilized. The absence of such language negates its existence.

Respondent Commissioner would seek support for such untenable view by asserting that under certain provisions of the Act,[13] he is empowered to issue rules and regulations as well as to promulgate standards, policies and guidelines. This is to rely on a frail reed. To do so is to offend against the primacy that should be accorded a statute as contrasted with decrees coming from the Executive Department, necessarily of lower category. What is worse, the rules in question are not issued by the President, but by one of his subordinates; their binding force then is not as great. Much less could they supersede applicable statutes, not only in what they command but also in what they omit. It does not admit of doubt that in the hierarchy of legal norms, such rules and standards definitely occupy an inferior status. If the statute is silent as to the existence of power, there the matter rests.

Only Congress can remedy the situation. It is not for respondent Commissioner to do so on the flimsy allegation that he possesses authority to promulgate rules and standards dealing specifically with the supervision, the preparation and rating of all civil service examinations,[14] the making of investigation and special reports upon all matters relating to the enforcement of the civil service law,[15] the authority to pass upon all removal, separation and suspension of permanent officers and employees in the competitive and classified service,[16] and the determination of appeals instituted by any person believing himself to be aggrieved -[17] a power which does not have the remotest connection with an exercise by petitioner City Mayor of a competence exclusively lodged in him to designate the other petitioners as precinct commanders.

This conclusion has reinforcement from authoritative pronouncements that of late have come from us. Thus, from a 1968 decision:[18] "It would seem fairly obvious then that the law does not impose a rigid or mechanistic formula on the appointing power, compliance with which is inexorable and a deviation therefrom fatal. Far from it. If there be adherence to the concept that public office is a public trust, as there ought to be, the criterion should be what public welfare demands, what satisfies public interest. For it is axiomatic that public needs could best be attended to by officials, about whose competency and ability there is no question. To that overmastering requirement, personal ambition must of necessity yield. Discretion if not plenary, at least sufficient, should thus be granted to those entrusted with the responsibility of administering the officers concerned, primarily the department heads. They are in the most favorable position to determine who can best fulfill the functions of the office thus vacated. Unless, therefore, the law speaks in the most mandatory and peremptory tone, considering all the circumstances, there should be, as there has been, full recognition of the wide scope of such discretionary authority. Happily, there is nothing in the Civil Service Act, which is fittingly concerned with protecting the rights of those in the career service, that, rightly construed, calls for a different conclusion. It is well worth repeating that the broad authority of a department head appears indisputable. Such is the policy of the law, a policy reflected with fidelity in the decisions of this Court."

Also, from *Pineda v. Claudio*,[19] decided even more recently, the opinion coming from Justice Castro: "For it is not enough that an aspirant is qualified and eligible or that he is next in rank or line for promotion, albeit by passive prescription. It is just as necessary, in order for public administration to be dynamic and responsive to the needs of the times, that the local executive be allowed the choice of men of his confidence, provided they are qualified and eligible, who in his best estimation are possessed of the requisite reputation, integrity, knowledge, ability, energy and judgment. After all, it is the local executive, more than anyone else, who is primarily responsible for efficient governmental administration in the locality and the effective maintenance of peace and order therein, and is directly answerable to the people who elected him. Nowhere is this more true than in the sensitive area of police administration."

While the two above cases are not squarely in point, still the principle therein announced as to the respect to be accorded to the exercise of the authority to appoint by the official entrusted by law to do so and the minimum interference allowed the Com-missioner of Civil Service under his power to inquire into the eligibility of the appointee lends further support to the conclusion arrived at. It would appear clear, therefore, that respondent Commissioner does not possess any statutory authority to inter-fere with the power of petitioner City Mayor to make the designation of the other petitioners.

2. Respondent Commissioner, in his answer to the petition assailing his directive, would lend plausibility to his claim that he was legally empowered to do so by this argument: "Further-more, said assignments are not in conformity with the recom-mendation of the U. S. Agency for International Development to assign and shift MPD personnel to positions to which they have qualified in appropriate examinations." [20] To state such a contention is to reject it. As a foundation for the challenged directive it is, to put it mildly, far from stable. As an asserted basis to justify what respondent did, it is far from persuasive. To put it bluntly, as a source of power, its value is nil. It would not be easy to imagine a plea more offensive to our sovereignty and derogatory to our dignity as an independent nation.

All governmental powers are lodged in officials of our government both national and local. An alien agency at the most may be permitted to serve in an advisory capacity. It can suggest, but it cannot command. Its wishes do not constitute law. Our officials, therefore, are not bound to obey. If it were otherwise, then a posture of subserviency and mendicancy would be sanctioned. That this Court cannot allow. [21]

3. In the answer of respondent Commissioner, there was an implication that his directive finds support in the consti-tutional provision on the Civil Service. More specifically, he did point to the requirement that appointments in the civil service "shall be made only according to merit and fitness, to be determined as far as practicable by competitive exami-nation." [22] Apparently, he had a change of mind subsequently as to such constitutional prop, for his brief was conspicuously silent in that respect. That sober second thought had much to recommend it. No such support is yielded by the above consti-tutional provision to his assertion of authority.

The Constitution on the civil service has only four brief sections, two of which, prohibiting partisan political activities and additional or double compensation, have clearly no relevance. [23] The fourth section guarantees security of tenure, again without any bearing on the present litigation. [24] It is only the first section then, referred to above, that may conceivably touch upon the issue involved, although in a rather remote way. For it is more the expression of an ideal than a source of authority. Note that in stressing merit and fitness, it recognized that it should "be determined as far as practicable by competitive examination."

There was no creation of a Civil Service Commission. No such official as a Civil Service Commissioner was provided for. Respondent's position is a statutory creation, the extent of his powers being thus limited and circumscribed. It would thus be futile on his part to trace the existence of an alleged authority to the Constitution.

As a matter of fact, if there are constitutional overtones to this litigation, petitioners, not the respondents, are the beneficiaries. As they did correctly point out, not even the President is vested with the power of control over local officials. He exercises only "general supervision * * * as may be provided by law, * * *." [25] Respondent Civil Service Commissioner cannot be deemed then to be possessed of a greater prerogative, being himself an official of a lower cate-gory in the executive branch. Moreover, what the Constitution enjoins on the President as well as all those entrusted with executive functions is to "take care that the laws be faithfully executed." [26] Certainly, it is a manifestation of less than fealty to such a duty if an executive official like respondent would enforce a statutory provision not as written but as ex-panded and enlarged by him through a process of strained construction.

4. One last word. Nothing is better settled in the law than that a public official exercises power not rights. The government itself is merely an agency through which the will of the state is expressed and enforced. Its officers therefore are likewise agents entrusted with the responsibility of discharging its functions. As such there is no presumption that they are empowered to act. There must be a delegation of such authority, either express or implied. In the absence of a valid grant, they are devoid of power. What they do suffers from a fatal infirmity. That principle cannot be sufficiently stressed. In the appropriate language of Chief Justice Hughes: "It must be conceded that departmental zeal may not be permitted to outrun the authority conferred by statute." [27] Neither the high dignity of the office nor the righteousness of the motive then is an acceptable substitute. Otherwise the rule of law becomes a myth. Such an eventuality, we must take all pains to avoid.

WHEREFORE, the decision of the Court of First Instance of July 14, 1966 is affirmed. Without pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, and Teehankee, JJ., concur.
Castro, J., in the result.
Barredo, J., no part.

[1] Sec. 9, Republic Act No. 409 (1949). Cf. Sec. 22 of the same Act.

[2] Petition, par. 3.

[3] Ibid, par. 4.

[4] Ibid, par. 5.

[5] Ibid, par. 6.

[6] Answer with Opposition, pars. 1-5.

[7] Ibid, Affirmative and Special Defenses.

[8] Petition, par. 1.

[9] Decision, pp. 7-8.

[10] Ibid, p. 8.

[11] 9 SCRA 407 (1963).

[12] Brief for Respondent-Appellant, p. 26.

[13] Section 16 (e), (c), (f), (i) and (j), Republic Act No. 2260.

[14] Section 16 (c).

[15] Ibid, (f).

[16] Ibid, (i).

[17] Ibid, (j).

[18] Reyes v. Abeleda, 22 SCRA 825.

[19] 28 SCRA 34 (1969).

[20] Answer, Affirmative and Special Defenses, p. 5. His brief as appellant discussed the matter further at p. 13.

[21] Cf. *Viloria v. Administrator of Veterans Affairs*, 101 Phil. 762 (1957).

[22] Art. XII, Sec. 1, Constitution.

[23] Art. XII, Secs. 2 and 3, Constitution.

[24] Art. XII, Sec. 4, Constitution.

[25] Art. VII, Sec. 10, par. 1, Constitution.

[26] *Ibid.*

[27] *United States v. Macintosh*, 283 US 605, 627 (1931).

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