

PEDRO JIMENEA, PETITIONER-APPELLANT, VS. ROMEO G. GUANZON, IN HIS PERSONAL CAPACITY, AND AS MAYOR, CITY OF BACOLOD, ABELARDO SUBIDO, CIVIL SERVICE COMMISSIONER AND LUIS GADOR, R...

G.R. No. L-24795. January 29, 1968

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

On February 27, 1960, Pedro Jimenea took and passed the Civil Service Patrolman Examination held in Bacolod City with a rating of 72%.[1]

In the local elections held in Bacolod City on November 12, 1963, Teofisto Cordova, the then incumbent Mayor, lost to Romeo G. Guanzon for the office of Mayor.

On November 20, 1963, Jimenea was appointed Second Class Patrolman (vice Diogenes Cabiles who was recommended for confinement at the National Mental Hospital) in the Bacolod Police Department by then Mayor Cordova, upon the recommendation of Col. Javelosa, Chief of Police of Bacolod City, said appointment being characterized as "provisional".[2]

Jimenea took his oath of office and commenced serving as Second Class Patrolman on November 25, 1963.

On February 7, 1964, Mayor Guanzon brought an administrative case against Jimenea, under Rep. Act No. 557, for serious irregularity in the performance of his duties, docketed as Adm. Case No. 14 of the Office of the City Council, Bacolod City. Subsequently, however, Jimenea was acquitted of the charge.

Mayor Guanzon on May 13, 1964 wrote the Commissioner of Civil Service requesting for the disapproval and revocation of the appointment of Jimenea on the grounds that his appointment was not in conformity with the Commissioner's Memorandum Circular No. 35, Series of 1963,[3] being provisional in nature, and that there were many civil service eligibles whose ratings were much higher than that of the appointee.[4] On the same date, then Acting Commissioner of the Civil Service Abelardo Subido, in a communication denominated "First Indorsement" addressed to the City Treasurer and the Mayor of Bacolod City, approved as temporary the appointment of Jimenea for the period of actual service but not beyond the date of receipt of said communication.[5]

Pursuant to said indorsement of Commissioner Subido Mayor Guanzon on May 20, 1964 informed Jimenea by letter[6] that his services were to cease and terminate effective at the close of office hours of said date. Sometime later, Mayor Guanzon appointed Luis Gador, a civil service eligible in Jimenea's stead.

On July 15, 1964, Jimenea filed a petition for mandamus and prohibition with preliminary mandatory injunction, praying for an interlocutory order commanding Com-missioner Subido and Mayor Guanzon to restore him to his position as Patrolman, Second Class, of the Bacolod Police Department and enjoining Luis Gador from

continuing in holding on to his position as Second Class Patrolman thereof. On the same date the trial court issued an order for Subido, Guanzon and Gador to answer the petition within ten (10) days from receipt of said order.

Guanzon and Gador on July 29, 1964 filed a motion to dismiss the petition, and on July 31, 1964 Jimenea filed his opposition thereto. The motion having been denied Guanzon and Gador filed their answer on August 10, 1964.

On August 31, 1964, Commissioner Subido filed his answer with opposition to prayer for preliminary mandatory injunction.

The parties submitted a stipulation of facts on December 7, 1964,[7] and on the same date the lower court issued an order approving the same and requiring the parties to submit their respective memoranda within fifteen (15) days from date thereof.

After the submission of the parties' respective memoranda, the lower court on April 14, 1965 rendered a decision finding petitioner Jimenea without right to the remedy prayed for and ordering the dismissal of the petition.

Jimenea now appeals to Us raising the following issues:

- (1) Was the appointment extended to petitioner-appellant temporary or permanent?
- (2) Did said appointment confer upon petitioner-appellant a vested right to occupy in a permanent character the position to which he was appointed?

Both appellant and appellees admit that the appointment extended to the former was characterized as "provisional".[8] But it is the former's position that Mayor Cordova committed a mistake in making the designation and that he meant the same to be permanent, while it is the latter's stand that if indeed there was a mistake, the intent of the Mayor was to extend a temporary appointment.

Art. VI, Sec. 24(c) of Rep. Act 2260 (Civil Service Act of 1959) provides:

"(c) Provisional Appointment. - A provisional appointment may be issued upon the 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 filling thereof is necessary in the interest of the service and there is no appropriate register of eligibles at the appointment." (Underscoring supplied)

A perusal of the abovequoted provision will show that a provisional appointment may be issued to a person who has not qualified in an appropriate examination when the following requisites concur: (a) a 'vacancy occurs and the filling thereof is necessary in the interest of the service; and (b) there is no appropriate register of eligibles at the time of appointment. There is therefore merit in appellant's allegation that a mistake was indeed committed in the designation of his appointment because these two requisites do not concur in appellant's case. Being a civil service eligible, he has qualified in an appropriate examination.

This being so, what then was the intention of Mayor Cordova - to extend a permanent appointment or a temporary one? This calls for examination of the circumstances under which the appointment was issued in order to find an index into what he meant by the word "provisional". For, quoting Justice Holmes in *Lamar v. United States*,[9] "a word is not a crystal, transparent and unchanging, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used."

Petitioner-appellant was appointed by then Mayor Teofisto Cordova on November 20, 1963, just a week or so after the elections wherein he lost to the incumbent Mayor herein respondent Guanzon. Mayor Cordova knew that incoming Mayor Guanzon should be given the privilege of filling up vacant positions in the police department.

But there was an urgent need to fill the position left vacant by a policeman who had to be confined at the National Mental Hospital - there being an insufficient number of policemen in Bacolod City. Thus Mayor Cordova appointed appellant but he expressly stated that the nature of the appointment be "provisional", obviously to afford Mayor Guanzon a chance to retain the petitioner or replace him with another of his confidence. For indeed, by parity of reasoning with appellant's logic when he argues that "if the intention of the appointing power was to extend a temporary appointment to petitioner, it would have been stated so in the appointing papers at the time of his appointment", if the intention of Mayor Cordova was to extend a permanent appointment to petitioner, he would have so stated instead of characterizing appellant's appointment as "provisional".

Appellant's civil service eligibility and the permanent character of the position filled by him, will not and cannot transform his temporary appointment into a permanent one.

"Where the nature of the appointments extended to petitioners was merely temporary, the same can not acquire the character of permanence simply because the items occupied refer to permanent positions. What characterized an appointment is not the nature of the item filled but the nature of the appointment extended. If such were not the case, when there would never be temporary appointments for permanent positions. This is absurd."^[10]

Since his appointment is temporary, it did not confer upon appellant a vested right to occupy in a permanent character the position to which he was appointed. His civil service eligibility will avail him none. For a civil service eligible who accepts a position in a temporary capacity is not entitled to the protection accorded by Republic Act No. 557^[11] nor to the protection of security of tenure in office guaranteed by the Constitution.^[12] The undisturbed unanimity of the cases is that one who holds a temporary appointment has no fixed tenure of office; his employment can be terminated any time at the pleasure of the appointing power without need to show that it is for cause.^[13]

Assuming arguendo that petitioner's appointment was permanent, it had not yet become final and thus could not as yet vest in him any right to the protection extended by Rep. Act 557 to regular employees of the Civil Service. This is so because -

"All appointments made by the provincial governors, municipal mayors and city mayors shall, after being attested to by the respective provincial treasurer or city 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; x x x"^[14]

Thus, all appointments made by city mayors and attested to by city treasurers must still be submitted to the Civil Service Commissioner for review. Under the latter's power of review, he may correct or revise such appointments submitted to him within one hundred eighty days or six months. Within this period, an appointee cannot yet claim any vested right. The Commissioner, therefore, acted well within the scope of his powers and prerogatives when within the prescribed 180-day period he corrected the appointment made by Mayor Cordova from "provisional" to "temporary", to reflect its true nature as intended, and terminated appellant's appointment. And as explained above, since appellant's appointment was temporary, he was "not entitled to the protection afforded by Rep. Act 557 to members of the corps of provincial guards, city police and municipal police."^[15]

WHEREFORE, the decision appealed from is hereby affirmed, with costs against petitioner-appellant.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

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- [1] Annex "B", Petition, pp. 14-18, Record on Appeal.
- [2] Annex "A", Petition, pp. 12-14, Record on Appeal.
- [3] Annex "3" of respondent Subido's Answer, pp. 49-50, Record on Appeal.
- [4] Annex "2" of Commissioner's Answer, p. 48, Record on Appeal.
- [5] Annex "D", Petition, pp. 19-20, Record on Appeal.
- [6] Annex "E", Petition, pp. 20-21, Record on Appeal.
- [7] Pp. 50-55, Record on Appeal.
- [8] See Par. 1 of Stipulation of Facts, p. 51, Record on Appeal.
- [9] 240 U.S. 60, 65; 60 L. ed. 526, 528, 36 S. Ct. 255; underscoring supplied.
- [10] Villanosa, et al. v. Alera, et al., L-10586, May 29, 1960; and Elegida et al. v. Gacutara, et al., L-19588, Aug. 29, 1957; Quitiquit v. Villacorta, L-15048, Apr. 29, 1960.
- [11] Hortillosa v. Ganzon, L-11169, Jan. 30, 1959.
- [12] Taboada v. Municipality of Badian, et al., L-14604, May 31, 1961.
- [13] Hojilla v. Mariño, et al., L-20574, Feb. 26, 1965; Aguila v. Castro, et al., L-23778, Dec. 24, 1965; Serrano, et al. v. National Science Development Board, et al., L-19349, Mar. 31, 1964; Cuñado and Vallecera v. Gamus, et al., L-16782-83, May 30, 1963; Taboada v. Mun. of Badian, supra; Azuelo v. Arnaldo, et al., L-15144, May 26, 1960; Madrid v. Auditor General, et al., L-13523, May 31, 1960 (citing Mendez v. Ganzon, et al., L-10483, Apr. 12, 1957; University of the Philippines, et al. v. Court of Industrial Relations, et al., L-15416, Apr. 28, 1960; Agapuyan v. Ledesma, L-10535, Apr. 25, 1957); Quitiquit v. Villacorta, supra; Montero, et al. v. Castellanes, L-12694, June 30, 1960; Ferrer v. De Leon, L-15076, Aug. 29, 1960 (citing Austria v. Amante, 79 Phil. 780); Villanosa, et al. v. Alera, et al., supra; Elegida v. Gacutara, supra; Cuadra v. Cordova, etc., L-11602, Apr. 21, 1958, 54 O.G. 8063; Castro v. Solidum, L-7750, June 30, 1955.
- [14] Sec. 20, Rep. Act 2260; Sec. 8, Rep. Act 2264; see also Rule VI, Revised Civil Service Rules.
- [15] Hortillosa v. Ganzon, supra.

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