

**DEOGRACIAS A. REGIS, JR., PETITIONER, VS. SERGIO OSMEÑA, JR.,
VICENTE PACIFICO, CITY OF CEBU, CITY COUNCIL OF CEBU, CITY
TREASURER AND CITY AUDITOR, RESPONDENTS.**

G.R. No. L-26785. May 23, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is an appeal from the Decision[1] of the Court of First Instance of Cebu dated 28 December 1965 in Civil Case No. R-8778, dismissing the petition for Mandamus filed on 9 March 1965 by petitioner to compel respondents to reinstate him to his former position as driver, Motorized Section of the Cebu City Police Department (CPD), with back salaries from the date of his ouster until reinstatement, and to pay him moral and exemplary damages and attorney's fees.[2]

The material operative facts in this case, as admitted by the parties in the stipulation of facts they submitted in the court below and as established by the other evidence introduced by them pursuant to the reservations they made in the stipulation of facts are as follows:

I. Per stipulation of facts:[3]

"1. On January 8, 1958, petitioner was appointed by then Cebu City Mayor, Ramon Duterte, as 'driver, Motorized Division' of the Cebu Police Department, with a yearly compensation of P1,440.00, as shown by a true copy of his appointment hereto attached and marked Annex "A";

2. On January 8, 1960, petitioner was issued another appointment as 'driver' of the Cebu Police Department, at an increased yearly compensation at P1,560.00, a true copy of which is hereto attached and marked Annex "A-1";

3. On December 21, 1961, petitioner was issued another appointment by then Cebu City Mayor Carlos J. Cuizon as 'Driver, Civilian Employee' of the Cebu Police Department at the increased yearly compensation of P1,920.00 a true copy of which is hereto attached and marked as Annex "A-2";

4. On November 7, 1963, petitioner was extended an appointment as, 'driver (Radio Patrol) Civilian Employee' of the Cebu Police Department at the increased yearly compensation of P2,040.00, true copy of which is marked as Annex "A-3";

5. On April 14, 1964, petitioner was removed from his position in the Cebu Police Department without prior investigation or hearing, the termination having been made in a letter of dismissal quoted as follows:

'REPUBLIC OF THE PHILIPPINES
CITY OF CEBU
Office of the Mayor

April 14, 1964

Mr. Deogracias A. Regis, Jr.

Driver, Cebu Police Department
Cebu City

Sir:

There being no more need for your service as Driver in the Cebu Police Department, your provisional appointment thereto is hereby terminated effective April 16, 1964. Please turn over any government property that may have been issued to you to the proper property custodian and have yourself cleared of any accountability during the period of your service.

Respectfully,

By order of the Mayor:

(SGD.) Vicente V. Pacifico
Secretary to the Mayor'

6. Petitioner is a civil service eligible, having passed the patrolman and/or detective (qualified) civil service examination on July 20, 1963 with a rating of 75.85% as shown in the attached copy of 'Report of Ratings' marked Annex "B";
7. Petitioner is a fourth year student in the College of Liberal Arts in the University of the Visayas as shown by the attached certification marked Annex "C";
8. The position of the petitioner, after his removal, was filled up by the respondent City Mayor with the appointment of Eduardo Gabiana, a non-civil service eligible as shown in his appointment hereto attached and marked Annex "D";
9. On August 20, 1964, after his removal, the petitioner addressed similarly worded letters to the President of the Philippines and the Civil Service Commissioner, hereto attached as Annexes "E" and "E-1", protesting and appealing his unlawful removal and demanding his reinstatement. Under date of September 4, 1964, the Executive Secretary to the President indorsed the above-mentioned letter to the Commissioner of Civil Service, as shown in the first indorsement hereto attached as Annex "E-2". Since the filing of the instant action, the petitioner has not been afforded the relief of reinstatement by either the Office of the President of the Philippines or by the Civil Service Commissioner.

Parties, however, will submit evidence to establish facts not herein stipulated.

Cebu City, August 20, 1965.

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II. Per additional evidence formally adduced during the hearing:

"10. Petitioner received his civil service eligibility for patrolman-detective on 8 March 1964, a photostatic of which was filed, for record purposes, with the clerk in charge of the record section of the CPD on 12 March 1964 (Exhs. "F", "F-1"); his efficiency rating is 88%, the highest among the drivers of the CPD; he is the only civil service eligible among the drivers in the CPD; after his ouster, the City of Cebu created positions of drivers; and he attributed his ouster to politics, alleging that he was being suspected as a supporter of the faction of then Congressman Durano, the political rival of respondent Mayor Osmeña;[4] and

"11. The records of the Regional Office of the Civil Service Commission in Cebu City do not show that petitioner possesses any civil service eligibility at the time he was appointed as driver."[5]

This Court further observes that the actions of the Civil Service Commission on the appointments of petitioner admitted in the Stipulation of Facts and attached thereto as Annexes "A", "A-1", "A-2" and "A-3" were as follows:

1. Appointment dated 8 January 1958 - Noted as temporary pending receipt of the required medical certificate, subject to availability of funds and provided that there is no pending administrative or criminal case against appointee and that the separation of the former incumbent is in order;
2. Appointment dated 8 January 1960 - Approved under Section 24(c) of R. A. No. 2260 as an exception to Section 256 of the Revised Administrative Code, and subject to availability of funds;
3. Appointment dated 21 December 1961 - Approved under Section 24(c) of R. A. No. 2260, subject to availability of funds and as exceptional case under Sec. 256 of the Revised Administrative Code, provided there is no pending administrative or criminal case against the appointee and provided that his efficiency rating for the semester ending 6-30-61 is not below 85%; and
4. Appointment dated 7 November 1963 - Approved under Section 24(c) of R. A. No. 2260, subject to availability of funds and subject to Section 20 of R. A. No. 2260, provided there is no pending administrative or criminal case against the appointee.

The last three appointments were for salary adjustments.

In its Decision of 28 December 1965, the court below dismissed the petition on the ground that petitioner's questioned appointment was temporary in nature and, therefore, terminable at the pleasure of the appointing power. Expounding on this, it says:

.....

"As for the first issue the answer is that his status at the time of his ouster on April 16, 1964 was that of temporary driver of the CPD. His appointments on January 8, 1958, January 8, 1960, December 21, 1961 and on November 7, 1963 were all temporary in nature. It is true that on March 5, 1964 the Civil Service Commission certified to his having passed the patrolman/detective civil service examination with a rating of 75.85%, but said examination is not intended for or appropriate to, the position of driver; hence, it did not convert his temporary status of driver to a permanent one. (Sec. 8, Rule IV, Civil Service Rules.) Then again, the mere certification of the Civil Service Commission of his civil service eligibility for patrolman/detective did not amount to his appointment. The appointing power, the City Mayor, 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. The Civil Service Commission does not ensure any appointment; it only certifies an eligible to be possessed of the qualification, as required for a position classified under its rules. (*Jimenez vs. General Francisco, etc., et al.*, G. R. No. L-9699, Feb. 28, 1957; Vol. 53 O.G. Aug. 15, 1957, p. 4804.)

The appointment of the petitioner being temporary or provisional in nature, the duration of temporary appointment should not exceed six months. (Sec. 24, Rep. Act 2260.) After the expiration of said period, petitioner could have been removed at will by the appointing power; his continuance thereafter as a temporary employee was only an extension of grace. (*Jimenez vs. General Francisco, etc., et al.*, supra.)

Temporary appointment is similar to one made in an acting capacity, the essence of which lies in its temporary character and its terminability at pleasure by the appointing power. And one who bears such an appointment cannot complain if it is terminated at a moment's notice. (*Cuadra vs. Cordova*, G. R. No. L-11602, April 21, 1958; Vol. 54 O.G. Dec. 8, 1958, p. 8063.)[6]

Hence, this appeal.

In his Brief petitioner assigns only one error: The court a quo erred in dismissing his petition.[7]

In support thereof he argues that his removal on the ground that there was "no more need for your service" was not real and true but a mere pretext, for after his ouster one Eduardo Gabiana, a non-civil service eligible, was appointed to the vacated position and in the succeeding budget of the City of Cebu more positions of driver were created; at the time of his ouster he was already a civil service eligible, having passed the patrolman-detective (qualifying) civil service examination given in July of 1963, and respondents knew of this fact. Moreover, said removal was not for cause, and it was done without due process in violation of Section 32 of R. A. No. 2260 which provides that "no officer or employee in the civil service shall be removed or suspended except for cause provided by law and after due process".

Petitioner further argues that his last appointment of 7 November 1963 was approved under Section 24(c) of R. A. No. 2260; therefore, it was a provisional and not a temporary appointment as erroneously classified by the court a quo. Republic Act No. 2260 makes a distinction between provisional and temporary appointments. The former is governed by Section 24(c) while the latter is covered by Section 24(d) thereof. According to him, his appointment was provisional because at the time it was extended he was not yet a civil service eligible. He was still awaiting for the results of the examination for patrolman-detective (qualifying) given by the Civil Service Commission in July of 1963; however, he received his report of rating on 8 March 1963 indicating that he passed it; consequently, instead of dismissing him, the City Mayor should have extended to him a permanent appointment inasmuch as he had already become a civil service eligible. In short, he claims that his patrolman-detective eligibility is appropriate to his position considering the nature of his office prior to his removal which authorized him to wear the uniform and badge of a regular member of the Cebu Police Department, carry an official firearm, wear an ID as a regular member of the city police, and to make arrests.

Finally, petitioner submits that as member of the Cebu City Police at the time of his removal, his separation from the service could only be done under R. A. No. 557 under which the City Mayor can only prefer charges but cannot remove.

Respondents filed their Brief after the expiration of the reglementary period. Upon motion of petitioner dated 29 March 1967[8] this Court ordered their brief stricken off the record.[9]

We agree with the petitioner that the trial court erred in holding that his appointment is temporary in nature. Obviously, the trial court failed to appreciate the clear distinction between a temporary appointment and a provisional appointment. It had either confused one for the other or considered one as synonymous with the other

as shown in the opening sentence of the first paragraph of the portions of the decision hereinbefore quoted wherein it categorized the appointment of petitioner as "temporary or provisional in nature".

As correctly stated by petitioner, provisional appointments are governed by paragraph (c) of Section 24 of R. A. No. 2260 while temporary appointments are covered by paragraph (d) of said Section. For convenience We quote both paragraphs:

.....

"(c) Provisional appointments. - A provisional appointment may be issued upon prior authorization of the Commissioner in accordance with the provisions of the 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 time of appointment."

"(d) Temporary appointment. - A person may receive a temporary appointment to a position needed only for a limited period not exceeding six months, provided that a preference in filling such position be given to persons on appropriate eligible lists."

In *Festejo vs. Barreras, et al.*, L-25074, 27 December 1969,[10] We made a distinction between a provisional appointment and temporary appointment thus:

.....

"There is no basis nor logic in appellants' contention that there is no difference between a temporary appointment under Section 24(d) of the Civil Service Act which reads thus:

'Temporary Appointment. - A person may receive a temporary appointment to a position needed only for a limited period not exceeding six months, provided that preference in filling such position be given to persons on appropriate eligible lists.'

and a provisional appointment under Section 24(c) which says:

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 time of appointment."

According to appellants, 'while they may be different in the degree of permanence, in that temporary appointments are generally for and within specified periods of time, their nature as being subject to termination by the appointing power remains the same.' Such contention is untenable.

Even from a cursory reading of these two provisions, one can readily see that each of them contemplates an entirely different situation from the other. Indeed, as pointed out by His Honor, the trial judge, it is contrary to the ordinary rules of legal hermeneutics to assume that the lawmakers intended these two separate provisions in a seemingly single enumeration of categories of appointments to have the same import or significance. Whereas a temporary appointment is designed to fill 'a position needed only for a limited period not exceeding six months,' a provisional appointment, on the other hand, is intended for the contingency that '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 time of appointment.' In other words, the reason for extending a provisional appointment is not because there is an occasional work or job to be done which is expected to be finished in not more than six months but because the

interest of the service requires that certain work be done or functions be performed by a regular employee, only that there is no one with appropriate eligibility, who can be appointed to do it, hence any other eligible may be appointed to perform such work or functions in the meanwhile that a suitable eligible does not qualify for the position. This is clearly implied by the mandate of the provision that a provisional appointment may be extended only 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,' meaning one who must anyway be a civil service eligible. On the other hand, again, in the case of a temporary appointment, all that the law enjoins is that 'preference in filling such position be given to persons on appropriate eligible lists.' And merely giving preference, of course, presupposes that even a non-eligible may be appointed. As a matter of fact, under this provision, even if the appointee has the required civil service eligibility, his appointment is still temporary, simply because such is the nature of the work to be done. The decisions cited by appellants are not in point. They all refer to temporary appointments as such. None of them involves a provisional appointment like the one herein in question."

In *Ata, et al. vs. Namocatcat, et al.*, L-39703, 30 October 1972,[11] We further elaborated on the distinction:

"... A provisional appointment is one which may be issued, upon the prior authorization of the Commissioner of Civil Service in accordance with the provisions of the Civil Service Law and the rules and standards promulgated thereunder, 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 time of appointment' (Sec. 24(c), *supra*). On the other hand, a temporary appointment given to a non-civil service eligible is without a definite tenure of office and is dependent upon the pleasure of the appointing power." (Citing *Cuadra vs. Cordova*, 103 Phil. 391; *Pinullar vs. President of the Senate*, 104 Phil. 131, 135).

As early as *Piñero, et al. vs. Hechanova, et al.*, L-22562, 22 October 1966,[12] We held:

"... Even in the case of those holding provisional or probationary appointments ... the invalidity thereof can not be declared unless it is first shown that there were appropriate eligibles at the time they were appointed"

In *Ferrer vs. Hechanova*, L-24418, 25 January 1967,[13] We held:

"x x x A provisional appointment is good only until replacement by a civil service eligible and in no case beyond thirty (30) days from the date of receipt by the appointing officer of the certificate of eligibility (Sec. 24(c), R. A. 2260; Rule VI, Secs. 13 and 14, Revised Civil Service Rules; *Piñero vs. Hechanova, supra*)."

In *Ramos vs. Subido*, L-26090, September 6, 1967,[14] We ruled:

"The position in question is under the classified service; Ramos accepted his latest appointment thereto, dated July 1, 1963, without having the requisite appropriate civil service eligibility for said position. Accordingly, his appointment can only be deemed provisional and good only until replacement by one holding such appropriate eligibility, in no case to extend more than thirty days from receipt of the appointing officer of the list of eligibles (*Ferrer vs. Hechanova*, L-24418, January 25, 1967)."

In *Aguilar vs. Hon. Augusto L. Valencia, et al.*, L-30396, 30 July 1971,[15] We affirmed the decision of the trial court holding that provisional appointments under Sec. 24(c) of R. A. No. 2260 can only be terminated thirty days after receipt by the appointing power of a list of eligibles from the Civil Service Commission.

In *Lamata, et al. vs. Cusi, et al.*, L-32619, 31 October 1972,[16] We reiterated our rulings in *Piñero vs. Hechanova*, *Ferrer vs. Hechanova*, and *Ramos vs. Subido*.

Accordingly, since there was no certificate of civil service eligibility received by respondent City Mayor, the

provisional appointment of petitioner remained valid and subsisting. Prior to such receipt petitioner may only be removed for cause as provided by law under Section 32 of R. A. No. 2260. That there was "no more need" for his service was not a valid and lawful cause and even if it were so, it could not be availed of in this case since, as admitted by the parties, immediately after the ouster a non-civil service eligible was appointed to replace petitioner and more driver positions were included in the succeeding budget of the City of Cebu. These facts negated the pretended basis for the dismissal. The real hidden cause was not that service of the nature and character rendered by petitioner was no longer needed, but that petitioner had become unacceptable to the appointing authority. Petitioner testified that his removal was politically motivated, he was suspected of supporting the faction of Mr. Durano, a political enemy of respondent City Mayor. We are not inclined to give full faith and credit to this testimony considering that this point was not even alleged in the petition.

We agree, however, with the court below that the patrolman-detective civil service eligibility of petitioner "is not intended for or appropriate to the position of driver; hence, it did not convert his temporary [should be, correctly, provisional] appointment of driver to a permanent one (Sec. 8, Rule IV, Civil Service Rules)."

Section 8, Rule IV of the Civil Service Rules provides:

.....

"Except as otherwise provided by law, eligibility in a certain examination shall serve as qualification for appointment only to the position or positions for which examination was held and no horizontal or vertical conversion of eligibility or examination rating shall be allowed."

.....

In *Police Commission vs. Lood, et al.*, L-34637, 24 February 1984,[17] We ruled:

"Under the civil service law then in force, the fact that private respondent subsequently became a civil service eligible did not ipso facto render permanent the nature of his temporary appointment as to make the question moot and academic."

Although this case refers to a temporary appointment, the rule laid down equally applies to a provisional appointment.

This matter, however, had been subsequently categorically resolved in favor of holders of provisional appointments by R. A. No. 6040, which took effect on 4 August 1969. Section 18 thereof provides:

". . . all provisional appointments made or appointments approved by the Civil Service Commission under Section 24(C) of Republic Act Numbered Two thousand two hundred sixty prior to the approval of this Act shall automatically be permanent under the provisions of Section twenty-four (b) thereof as amended by this Act, subject to the provisions of Section 16(h) of said Act as herein amended." (underscoring supplied for emphasis).

Pursuant thereto, petitioner's provisional appointment of 7 November 1963 automatically became permanent effective 4 August 1969.

We therefore rule that petitioner's dismissal was illegal and that he should be reinstated.

He should also be granted back salaries.

However, the award for back salaries should not be from the date of his dismissal until reinstatement. In similar cases, We limited the award for a period of five (5) years.[18]

In *Ginson vs. Municipality of Murcia, et al.*, We ruled:

"Considering however, the lapse of time spanning almost twenty years - since this controversy rose, and considering the probability that the petitioner might have, in the interim, acquired a new employment, we are constrained to grant her the payment of back salaries equivalent to five (5) years without deduction or qualification. (Citing *Laganapan vs. Asedillo*, supra).

We likewise order her reinstatement, subject to the condition that she has not obtained any other employment in Murcia municipal dentist or any position for which she is qualified by reason of civil service eligibility and subject to the requisites of age and physical fitness. . . ."

As to who of the respondents should pay the back salaries, We rule that only respondent City of Cebu should be liable therefor. Respondent City of Cebu did not oppose the dismissal of petitioner and the appointment in his stead of another whose salaries it thereafter paid. All respondents were represented by the Assistant City Fiscal of Cebu City and interposed the same defenses.[19] Moreover, after respondent Mayor Osmeña vacated his office his successor, Carlos J. Cuizon, without the objection on the part of the City of Cebu, filed a manifestation in the court below to the effect that he adopted the position of his predecessor, Mayor Osmeña, in respect to the course of action taken against petitioner.[20] In short, respondent City of Cebu confirmed or ratified the action of the Mayor.

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered REVERSING the Decision appealed from and ORDERING the respondent City of Cebu to (a) reinstate petitioner, subject to the condition that he has not obtained any other employment, to his position under his appointment of 7 November 1963, or to any position of equivalent rank, or for which he is qualified by reason of civil service eligibility and subject to the requisites of age and physical fitness, (b) pay petitioner back salaries, at the rate last received by him, for a period of five (5) years without qualification and deduction and with interest at the legal rate from the date of his illegal dismissal until the same shall have been fully paid, and (c) pay the costs.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[1] Per then Judge Mateo Canonoy; Original record, 93-101.

[2] Original record, 1-4.

[3] Original record, 33-35.

[4] TSN, December 28, 1965, pp. 15-22.

[5] TSN, December 28, 1965, pp. 46-47.

[6] Original record, 99-100.

[7] Brief for Appellant, p. 1; Rollo, 12.

[8] Rollo, 37.

[9] Resolution of 27 April 1967; Rollo, 45.

[10] 30 SCRA 873, 876-78.

[11] 47 SCRA 314, 319-20.

[12] 18 SCRA 417, 425.

[13] 19 SCRA 105.

[14] 21 SCRA 44.

[15] 40 SCRA 210.

[16] 47 SCRA 385.

[17] 127 SCRA 757, 764.

[18] Cristobal vs. Melchor, et al., L-43202, 29 July 1977, 78 SCRA 175, 187; Balquidra vs. CFI, et al., L-40490, 28 October 1977, 80 SCRA 123; Laganapan vs. Asedillo, et al., L-28353, 30 September 1987, 154 SCRA 377, 387; Ginson vs. Municipality of Murcia, et al., L-46585, 8 February 1988, 158 SCRA 1, 8; Antiporda vs. Ticao, et al., L-30796, 15 April 1988, 160 SCRA 40, 42; San Luis, et al., vs. Court of Appeals, et al., G. R. No. 80160, 26 June 1989, 174 SCRA 258, 273.

[19] Answer, pp. 16-20 of Original Record.

[20] Manifestation, p. 68, Original Record.

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