

CLAUDIO GABUTAS, PETITIONER AND APPELLANT, VS. GUIDO D. CASTELLANES, IN HIS CAPACITY AS MUNICIPAL MAYOR OF CALATRAVA, NEGROS OCCIDENTAL, RESPONDENT AND APPELLEE.

G.R. No. L-17323. June 23, 1965

Ponente: DIZON, J.

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DIZON, J.:

This is an appeal taken by Claudio Gabutas from the decision of the Court of First Instance of Negros Occidental in Civil Case No. 4893 dismissing his petition for reinstatement and recovery of back salaries filed against Guido D. Rellanes, in his capacity as Municipal Mayor of Calatrava, Negros Occidental.

It is not disputed that on May 2, 1951 appellant was extended a temporary appointment as member of the Municipal Police Force of Calatrava, Negros Occidental; that on May 10, 1955 he was suspended from the service as a result of the filing of criminal cases Nos. 4536 and 4537 against him in the Court of First Instance of said province; that on June 1, 1955, during the period of his suspension, he was given a promotional appointment at the rate of P780.00 per annum, with retroactive effect on July 1, 1954; that on September 12, 1957, while said criminal cases were still pending, appellee notified appellant of his separation from the service effective September 15, 1957; and that on the 27th of the same month, judgment was rendered in criminal cases Nos. 4536 and 4537 acquitting appellant. Thereafter, appellee having refused to reinstate him to his position as member of the Police Force of Calatrava, Negros Occidental, and to pay his back salary covering the period of his suspension from May 10, 1955 to September 15, 1957, appellant instituted the present action for Mandamus. After appellee had filed his answer disputing appellant's right to the relief prayed for in his petition, the court, on September 27, 1958, rendered the appealed judgment.

In this appeal appellant seeks nothing more than the recovery of his back salary covering the period from May 10, 1955, the date of his suspension, up to September 15, 1957, the date when he was separated from the service. He invokes in his favor the provisions of Section 4 of Republic Act No. 557 which read as follows:

Section 4. When a member of the provincial guards, city police or municipal police is accused in court of any felony or violation of law by the provincial fiscal or city fiscal as the case may be, the provincial governor, the city mayor or the municipal mayor shall immediately suspend the accused from office pending the final decision of the case by the court and, in case of the acquittal, the accused shall be entitled to payment of the entire salary he failed to receive during his suspension.

On the other hand, appellee denies appellant's right to the relief sought on the following grounds: firstly, that law relied upon does not apply to one who does not possess any civil service eligibility and whose appointment temporary in character; secondly, that appellant having abandoned his claim to reinstatement, he can not now demand payment of the salary corresponding to the period of his suspension because the right to it is merely incidental to his right to reinstatement, and lastly, that mandamus is not the proper remedy to enforce appellant's right to the payment of the salary corresponding to his period of suspension.

Section 4 of Republic Act No. 557, in providing for the suspension of a member of a city or municipal police force who is accused in court of any felony or any violation of law, and for his right to the payment of his entire salary during the period of his suspension, in case of acquittal, does not require, as a condition, that such member of the city or municipal police force should have civil service eligibility and should have been permanently appointed as such. We can not read into the law this condition that the law-maker did not deem wise to include therein, especially if it is for the purpose of denying a member of the city or municipal police force the right to receive back salary in case of acquittal.

On the other hand, it is true that appellant no longer seeks his reinstatement, but this is no justification in law to deny him payment of the entire salary he failed to receive during his suspension if the only condition imposed in that connection—his acquittal—has been fulfilled. In this case, appellant having been acquitted of the charges which had risen to his suspension, we are of the opinion that he is entitled to the payment of his entire salary corresponding to the period during which he was suspended. This period, however, must necessarily end on the date when he was separated from the service. His appointment being temporary, the same was terminable at the pleasure of the appointing authority and such termination naturally ends appellant's right to the emoluments appertaining to his office in the present case, appellant precisely seeks nothing more than the payment of his entire salary corresponding to the period from the date of his suspension to the date of his final separation from office.

Concerning the last point raised by appellee, namely, that the mandamus is not the proper remedy to enforce appellant's right to his back salaries, we have this to say. The legal provision mentioned heretofore provides that, in case of acquittal "the accused shall be entitled to payment of the entire salary he failed to receive during his suspension". We believe that, in the light of the facts of this case, this provision gives appellant a clear legal right demandable from the proper authorities who, in turn, have an imperative legal duty to respect the same. The present action was instituted against Guido D. Castellanes, not personally but in his capacity as municipal mayor of Calatrava, Negros Occidental, and he appeared and defended the action in such capacity. It is therefore clear that the real party in duty bound to pay the back salaries of appellant, namely the Municipality of Calatrava, had its full day in court and the decision rendered herein must be deemed binding upon it.

WHEREFORE, the decision appealed from is reversed and another is hereby rendered ordering the Municipality of Calatrava, Negros Occidental, to pay the entire salary of appellant from the date of his suspension, May 10, 1955, up to the date of his final separation from office, September 15, 1957, at the rate of P780.00 per annum. With costs.

Bengzon, C.J., Concepción, Reyes, J.B.L., Paredes, Regala, Malcalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

Judgment reversed.

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