

PIO L. TOLENTINO, PETITIONER, VS. FRANCISCO DE JESUS, AQUILINO PASCUAL, AND HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-32797. March 27, 1974

Ponente: MAKASIAR, J.

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MAKASIAR, J.:

Petitioner Pio L. Tolentino seeks a reversal of the decision of the respondent Court of Appeals promulgated August 24, 1970. The respondent Court of Appeals summarized the evidence of petitioner and private respondents, thus:

"Petitioner's pertinent evidence: He began his service in the police force of Antipolo way back in 1934. On September 1, 1939, he was appointed sergeant of police (Exhibit F) and on March 30, 1958, as Chief of police (Exhibit G). The latter appointment was 'AUTHORIZED as temporary pending receipt of the required medical certificate up to June 1st, 1959, and APPROVED as permanent, subject to the usual physical and medical examination effective June 19, 1959' by the Commissioner of Civil Service. Petitioner was issued an insurance policy (Exhibit I) by the Government Service Insurance System on October 1, 1958. On April 18, 1960, he was extended another appointment with an increase in salary effective July 1, 1959 (Exhibit H-2). The civil service commission gave on November 23, 1963, an examination for municipal chief of police (qualifying). He took and passed the examination and his rating was released on January 31, 1964 (Exhibit E). In a fourth Indorsement (Exhibit D) by the Commissioner of Civil Service to respondent Mayor, dated April 13, 1964, which 'refers to the appointment of Mr. Pio L. Tolentino as chief of police of that municipality at P2,280.00 per annum effective July 1, 1959' and his dismissal from the service on January 22, 1964, the Commissioner stated among other things that 'considering Mr. Tolentino's passing the examination, his occupancy of the position before the release of the results of the examination, and his residence at Antipolo, Rizal, he is entitled to preference either for retention or appointment to the position involved.' The indorsement concluded that 'the dismissal order of that office should be recalled and Mr. Tolentino should be reinstated in the service. This office has approved the appointment of Mr. Tolentino under Section 24(c) of Republic Act 2260, in view of the pendency of the contempt case against him.' The advice to reinstate petitioner was not heeded by respondent Mayor who had appointed another member of the police force, one Jose S. Oliveros, to the position in question.

"Respondent Mayor presented the following evidence: (1) A second indorsement to him by the Commissioner of Civil Service (Exhibit 9), dated February 9, 1965, anent the claim of Jose Oliveros for the payment of his salaries for the period from January 23 to December 15, 1964 wherein the Commissioner, after reviewing the circumstances attendant to the dismissal of petitioner and the appointment of Oliveros, including the fourth indorsement dated April 13, 1964 (Exhibit D), stated: 'Under the circumstances and on the basis of a valid and subsisting appointment which has been approved by all authorities concerned, it would appear that Mr. Oliveros is entitled to salaries claimed for the period from January 23 to December 15, 1964, for services actually rendered. Moreover, it appears that the termination of Mr. Tolentino's services as chief of police on January 22, 1964, is legal, considering that his last appointment as such is temporary which is good only until another appointment is made to take its place.' (2) A letter of the Commissioner to petitioner dated February

28, 1966 (Exhibit 12) informing the latter that his 'examination papers in the chief of police examination, as well as (his) eligibility resulting therefrom' were cancelled, it appearing that he had failed to explain why his application for the examination should not be disapproved in view of his failure to mention in his answer to question No. 6 of the application a criminal case filed against him although it was dismissed, the same being called for by the question, and which, had it been stated could have been ground for his disqualification to take the examination pursuant to Section 17 of Executive Order 175 S. 1938. It is also claimed that Oliveros has already acquired chief of police eligibility under Section 9 of Republic Act No. 4864 and Memorandum Circular No. 1, S. 1967 of the Civil Service Commission (see p. 492, Expediente).

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"Petitioner makes no pretense to any civil service eligibility except that of chief of police which he acquired by passing the examination given therefor on November 23, 1963. Although his first appointment on March 30, 1958 (Exhibit G) was approved as a permanent appointment, as he claims, still in legal contemplation he was not actually a permanent appointee under the Civil Service Law since a permanent appointment implies civil service eligibility (Ferrer, et. al. vs. Hechanova, et. al., L-24418, January 25, 1967, 19 SCRA 105). Let us take a closer look at petitioner's appointments. His first, Exhibit C, carried the notation 'AUTHORIZED as temporary *** up to June 18, 1959, and APPROVED as permanent *** effective June 19, 1959.' His second dated April 1, 1958 (Exhibit H) with an increase in salary effective July 1, 1958, was 'APPROVED subject to the usual physical and medical examination' by the Commissioner of Civil Service. His third dated April 18, 1960 (Exhibit H-2) with another increase in salary effective July 1, 1959, was merely attested by the provincial treasurer. In petitioner's Exhibit D, an indorsement of the Commissioner, dated April 13, 1964, involving petitioner's third appointment, it was therein stated that said appointment was approved under Section 24 (c) of Republic Act 2260 which refers to provisional appointments. And finally in another indorsement of the Commissioner dated February 9, 1965 (Exhibit 9), it was also stated that petitioner's last appointment was temporary. His acceptance of said appointment as temporary, the one subsisting when he was dismissed on January 22, 1964, removed him from the constitutional protection to security of tenure (Limchaypo vs. Court of Appeals, L--19528, December 29, 1964). Holding office under a temporary appointment, petitioner's employment can be terminated at will and without need to show that the termination is for cause (Taboada vs. Municipality of Badian, et. al., L-14604, May 31, 1961; Cunado, et. al. vs. Gamus, et. al., L-16782-83, May 30, 1963; Aguila vs. Castro, L-23778, December 24, 1965)."

It is patent from the foregoing recital that petitioner does not have any civil service eligibility except that of chief of police, the examination given therefor on November 23, 1963 which he passed according to the results released on January 31, 1964; that the respondent Mayor in his letter to petitioner dated January 22, 1964 stated that his appointment as chief of police was terminated effective immediately but not later than the close of office hours on January 22, 1964 "for lack of the requisite civil service eligibility" (Exhibit A); that petitioner's passing the police chief examination was known only on January 31, 1964, about nine days after his provisional appointment was terminated; that in an indorsement dated April 13, 1964, the Commissioner of Civil Service stated that petitioner, having passed the chief of police examination, "is entitled to preference either for retention or appointment ***, the dismissal order should be recalled and Mr. Tolentino should be reinstated ***, " approved the appointment of petitioner as chief of police effective July 1, 1959 "under Sec. 24(c) of Rep. Act 2260, in view of the pendency of the contempt case against him" (Exh. D or 8), which Section 24(c) refers to provisional appointments; that in another indorsement of the commissioner of civil service dated February 9, 1965, said commissioner stated "that the termination of Mr. Tolentino's services as chief of police on January 24, 1964 (should be January 22, 1964) is legal, considering that his last appointment as such is temporary which is good only until another appointment is made to take its place" (Exh. 9); that he accepted the said temporary appointment, which was the one subsisting when he was dismissed on January 22, 1964 by the respondent mayor; and that in a subsequent letter to petitioner dated February 28, 1966, the civil service commissioner cancelled the chief of police civil service eligibility of petitioner because petitioner failed to state in his application for chief of police examination dated October 28,

1963 that he was accused of prolonging the performance of duties and powers under Article 237 of the Revised Penal Code, in Crim. Case No. 11285 of the Court of First Instance of Rizal although the same was subsequently dismissed (Exhs. 11 & 12).

As correctly ruled by the Court of Appeals, acceptance of a temporary appointment divests the temporary appointee of the constitutional security of tenure against removal without cause even if he is a civil service eligible (*Mendiola, et al. vs. Tancinco, et. al.*, L-26950, July 13, 1973, 52 SCRA 66, 71; *Festejo vs. Barreras, et. al.*, L-25074, Dec. 27, 1969, 30 SCRA 873, 879; *Esquillo vs. Ovido*, L-30341, Aug. 22, 1969, 29 SCRA 30, 32; *Barangan vs. Hernando*, L-28652, Feb. 28, 1969, 27 SCRA 239; *Santos vs. Chico*, L-24155, Sept. 30, 1968, 23 SCRA 343, 346; *Jimenea vs. Ganzon*, Jan. 22, 1968, 22 SCRA 226, 229).

Because petitioner had no civil service eligibility until he passed the chief of police examination given on November 23, 1963, he could not be legally extended a permanent appointment to any position in the civil service prior to January 31, 1964 when the list of successful examinees was officially released. His having passed the said chief of police examination, did not ipso facto convert his temporary appointment into a permanent one (*Jimenez vs. Francisco, et. al.*, 100 Phil. 1025).

The findings of facts of the respondent Court of Appeals are conclusive on the parties and on this Court (*Tamayo vs. Callejo*, L-25563, July 28, 1972, 46 SCRA 27; *Nery, et. al. vs. Lorenzo, et. al.*, L-23096 & L-23376, April 27, 1972, 44 SCRA 431; *Viacrucis vs. CA*, L-29831, March 29, 1972, 44 SCRA 176; *Dela Cruz, et. al. vs. CA*, L-24000, Nov. 29, 1971, 42 SCRA 68; *Naga Dev. Corp. vs. CA*, L--28175, Sept. 30, 1971, 41 SCRA 105, 115; *Lacson & Basilio vs. Pineda, et. al.*, L-28523, July 16, 1971, 40 SCRA 35; *Quinano, et. al. vs. CA, et. al.*, L-23024, May 31, 1971, 39 SCRA 227; *Reyes, et. al. vs. CA, et. al.*, L-28466, March 27, 1971, 38 SCRA 138, 142; *Gotamco Hermanas vs. Shotwell, et. al.*, L-22519, March 27, 1971, 38 SCRA 112-117; *Limjoco vs. CA*, L-20656, Feb. 27, 1971, 37 SCRA 663-669; *De Garcia, et. al. vs. CA*, L-20264, Jan. 30, 1971, 37 SCRA 130, 136-137; *Simeon vs. Pena*, L-29049, Dec. 29, 1970, 36 SCRA 611), unless (1) the conclusion is a finding grounded entirely on speculation, surmise and conjectures; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the Court of Appeals went beyond the issues of the case and its findings are contrary to the admission of both appellant and appellees [*Roque vs. Buan*, L-22459, Oct. 31, 1967, 21 SCRA 648]; (6) the findings of facts of the Court of Appeals are contrary to those of the trial court; (7) said findings of facts are conclusions without citation of specific evidence on which they are based; (8) the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents [*Garcia vs. CA*, L-26490, June 30, 1970, 33 SCRA 622]; and (9) when the finding of fact of the Court of Appeals is premised on the absence of evidence and is contradicted by evidence on record [*Salazar vs. Gutierrez*, L-21727, May 29, 1970, 33 SCRA 243].

Nowhere in his petition nor in his brief does petitioner dispute the express finding of the respondent Court of Appeals that the Commissioner of Civil Service in his indorsement dated February 9, 1965 stated that petitioner's last appointment was temporary, that petitioner accepted the same, and that such temporary appointment was the one subsisting at the time of his dismissal on January 22, 1964. Nor does petitioner negate the finding of fact of the respondent Court of Appeals that the letter of the Commissioner of Civil Service to petitioner dated February 28, 1966 (Exh. 12) informed the latter that "'his examination papers in the chief of police examination, as well as (his) eligibility resulting therefrom' were cancelled because he had failed to explain why his application for the examination should not be disapproved in view of his failure to mention in his answer to question No. 6 of the application about a criminal case filed against him although it was dismissed, the same being called for by the question, and which, had it been stated, could have been ground for his disqualification to take the examination pursuant to Sec. 17 of Executive Order No. 175 S 1938." His failure to give the required explanation affects his

moral integrity which disqualifies him from continuing in the position and constitutes unsatisfactory conduct to justify his being dropped from the service.

There is no showing that the petitioner secured a reconsideration of the 1966 cancellation of his civil service eligibility nor a reversal of the same by the Office of the President. Consequently, the cancellation stands and petitioner is devoid of any chief of police civil service eligibility to qualify him for appointment to and to entitle him to remain in the position of chief of police.

Furthermore, in an order dated May 27, 1960 of then Judge Cecilia Muñoz Palma of the Court of First Instance of Rizal in Civil Case No. 6125 entitled "Rev. Fr. Pedro A. Hilario, etc., plaintiff, vs. Municipality of Antipolo, defendant," petitioner Pio L. Tolentino was adjudged guilty of contempt for violation of the preliminary injunction issued in said case and sentenced to thirty (30) days imprisonment (Exh. 4-A), which conviction was affirmed on April 23, 1968 by the Court of Appeals in a decision penned by Mr. Justice Jesus Perez with the penalty modified to only a fine of P200.00 with subsidiary imprisonment in case of insolvency. (See *Maximo Gatlabayan, et. al. vs. People of the Philippines*, CA No. 10250-CR).

Such conviction hardly qualifies petitioner for the position of chief of police. Precisely, the Commissioner of Civil Service, in his indorsement dated April 31, 1964, approved his appointment as provisional merely because of the pendency then of the contempt case against him. The inevitable conclusion is that if he were then already convicted by final judgment, the Commissioner would have disapproved his appointment.

WHEREFORE, the petition is hereby dismissed and the appealed decision of the Court of Appeals dated August 24, 1970 is hereby affirmed, with costs against petitioner.

Makalintal, C.J., Ruiz Castro, Teehankee, and Esguerra, JJ., concur.
Muñoz Palma, J., took no part.

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