

SAN MIGUEL BREWERY, RECURRENT, CONTRA LA CORTE DE RELACIONES INDUSTRIALES Y LA NATIONAL LABOR UNION, RECURRIDAS.

G.R. No. L-2203. May 23, 1949

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BRIONES, M.:

Se ha interpuesto el presente recurso de certiorari por la entidad recurrente San Miguel Brewery contra la Corte de Relaciones Industriales y la National Labor Union a fin de que revoquemos y dejemos sin efecto una orden dictada por la referida Corte en el Expediente No. 26-V (4), bajo la ponencia de su presidente interino, Hon. Jose Ma. Paredes, orden que despues se confirmo por el tribunal en pleno con una sola disidencia. Para dar una idea clara y acabada de los hechos que dieron lugar al litigio y de los puntos de derecho en controversia, estimamos conveniente y apropiado transcribir íntegramente a continuación la orden cuya revocación se pide, a saber:

["INCIDENTAL CASE NO. 26 V(4)]

"NATIONAL LABOR UNION, petitioner, vs. SAN MIGUEL BREWERY,
respondent.

"ORDER

"This is a motion presented by the attorneys for the union alleging that on September 23, 1946, the company dismissed one Urbano Umapas without the permission of this Court, for having testified in the main case No. 26-V and for having been one of the members of the petitioning" union, praying that the vice-president of the company, J. B. Preysler, be punished for contempt and the company ordered to readmit Umapas. The company answering, alleged that Umapas was not an employee or laborer of the company but a special policeman assigned to the San Miguel Brewery by the Provost Marshal's Office, MPC, and as such was under the control and supervision of said office; that on September 23, 1946, the respondent company was advised by Col. Alberto Ramos, Provost Marshal's Office, that the appointment of Umapas as special policeman of the company had been cancelled for which reason, on the same date, Umapas was advised by the company that inasmuch as his appointment as special police had been cancelled, he could not continue rendering service to the company.

"After his discharge from the Army, Umapas applied for the position of special policeman of the San Miguel Brewery (Exhibit A) and by the latter's request, he was screened by the Military Police Command. Having been found to be qualified, Colonel Dumlao notified the company to that effect (Exhibit B). On May 18, 1946, Umapas was hired and employed by the company as guard at a monthly salary of P180 and given a badge with the following inscriptions, 'San Miguel Brewery Guard No. 19' (Exhibit D). One month and three days afterwards, or on June 21, while he was already working as guard of the respondent company, Umapas was appointed as special agent of the Military Police Command (Exhibit C).

"On July 30, 1946, the Court issued an order in the main case entitled, National Labor Union vs. San Miguel Brewery, Case No. 26-V prohibiting the workers from declaring a strike and the respondent from suspending or dismissing any of its employees and laborers without any justifiable cause and without first securing

permission of the Court. On August 27, Umapas was presented as a witness by the National Labor Union in the main case and he testified there that although he was one of the employees of the company, he was not given the monthly sack of rice like the others. He testified in the present incident that he was an applicant for membership in the Chapter of the National Labor Union, the San Miguel Brewery Employees and Laborers Association, commonly known as 'Sambela.' On September 23, Umapas was dismissed from his employment in the San Miguel Brewery by J. E. Preysler, Vice-President of the company, without obtaining permission from this Court.

"The main question presented before this Court is whether Umapas was an employee of the respondent company and if so, whether his dismissal was for a just cause or on account of his union activities or affiliation.

"Dr. Adriano, assistant vice-president of the respondent company declared that he hired and employed Umapas as guard at a monthly salary of 1180. The appointment of Umapas as special agent was issued by the MPC but it was the respondent company who paid his salary as a special policeman. The main duty of the MPC was to screen the applicant and recommend him to the company. If the applicant was found fit and qualified, he was recommended to the company and once accepted he was appointed as special agent of the MPC. Colonel Dumlao declared that the MPC did not issue the appointment 'unless the appointee is employed by the San Miguel Brewery.' So that the appointment of special policeman by the MPC depended upon his appointment by the San Miguel Brewery. It cannot be denied, therefore, that from the time Umapas was hired by Dr. Adriano, there was created the relationship of employer and employee between the respondent company and the employee concerned. This is strengthened by the fact that Umapas was hired by the company on May 18, 1946, (page 80 of the record) and was appointed special agent of the MPC only on June 21, 1946 (Exhibit C). In the case of Bendix Products Corporation (volume two, p. 275, Labor Disputes and Collective Bargaining) the employer contended that its policemen were not employees within the meaning of the Act because they held commissions as special officers from the City of South Bend, Indiana. However, said the Board in holding against the contention, 'The policemen are hired by the company and are paid by it. There is no basis for finding that they are anything other than employees of the company.'

"It is evident, therefore, that Umapas was an employee of the company at the time of his dismissal on September 23. If he was not such an employee, there would have been no need of tagging him with badge No. 19 with the inscription 'San Miguel Brewery' intended only for employees of the said company.

"The allegation in the answer of the company that Umapas was not an employee thereof because he was under the direct supervision and control of the MPC Command, is not quite correct. The evidence shows that prior to his dismissal, the respondent company, through Mr. Olives, made the assignments to work in the Metropolitan Theater, at the Sargento Mariano Street in Pasay, at the United Dairies at Rotonda. This control is a prerogative of an employer over an employee.

"Was the dismissal of Umapas for a just cause or simply on account of his union activities or affiliations?

"Umapas was dismissed by the company because of the cancellation of his appointment as special agent for a violation of the instruction from the MPC to the effect, as reported by the company, that he was a member of a labor organization. (Exhibit E). This cancellation could not have materialized had it not been for the said report. The cancellation by the MPC of the appointment of special agent is not, however, of a great moment in the determination of the cause why Umapas was dismissed, because according to Lieutenant Villegas, notwithstanding the cancellation, if the company desired to continue with the service it could have done so, despite the fact that he was no longer a special agent but as special policeman or other status, for there had been & case where the MPC Command recommended the dismissal of an employee because of anomalies committed outside of the premises of the compound, but the company insisted in employing him. So that in the final analysis, it was the will of the company that was to be followed. Consequently, the report (Exhibit E) regarding the affiliation of Umapas to a union was merely a pretext on the part of the company to dismiss him.

"The Court searched in vain the records of what might have been the cause of the dismissal. There were no charges of neglect, or inefficiency or bad conduct or anomaly committed by Umapas. There is, however, the fact that he applied, for affiliation with the 'Sambela' which he wanted to cancel on October 10, 1946 (Exhibit H). This coupled with the fact that he testified in the main case wherein he supported the claim of the petitioner therein that he also was not given the monthly sack of rice like the others, justify the conclusion that Umapas was dismissed because of these acts which, in the opinion of this Court, do not constitute a just cause.

"Granting for the purposes of argument that Colonel Dumlao conditioned the appointment of Umapas upon his not joining any union, this Court believes that Colonel Dumlao did not have the authority to prohibit or deprive any individual from joining a union of his own choosing, for that would be a violation of the constitution and our labor laws. The office of Colonel Dumlao then was only acting as a screening agency of the respondent company. As a principal, the company may not prohibit Umapas from joining any labor union, neither does Colonel Dumlao's office as agent possess such right.

"The right of the employees or laborers to be continued in the service of a company or corporation is not of course without limitation. However, if the employees or laborers are dismissed because of their union affiliation or for other unjustifiable causes, this Court should surely extend to the aggrieved employee or laborer the remedy provided by law.

"The Court, therefore, finds the dismissal of Urbano Umapas unjustifiable and orders the company to reinstate him to his former position at the same rate of compensation from the time of his dismissal until the date of reinstatement, with all the benefits that he should have received therefor.

"Pursuant to the provisions of section 6 of Commonwealth Act No. 103, as amended, Attorney Guillermo S. Nieva of this Court is hereby delegated to take such action as may be warranted in the premises in connection with the charges for contempt."

En cuanto a la apreciación de los hechos, nuestra conclusión es que la Corte de Relaciones Industriales no ha cometido ningún abuso en el ejercicio de su discreción; por tanto, nos vamos a limitar a resolver las cuestiones de derecho que se plantean en autos.

La recurrente alega y arguye que Urbano Umapas no era obrero o empleado de la compañía San Miguel Brewery sino un policía especial asignado a dicha compañía por la Provost Marshal's Office de la Military Police Command y que tal policía estaba bajo el control y supervisión de dicha oficina; que posteriormente la agenda de la San Miguel Brewery recibió una comunicación del Coronel Alberto Ramos, de la Provost Marshal's Office, en el sentido de que el nombramiento de dicho Umapas como policía especial había sido cancelado, por cuyo razón fue notificado inmediatamente por la compañía de que en vista de la cancelación de su nombramiento como policía especial, el mismo no podía seguir prestando servicio a la compañía. La recurrente, por tanto, sostiene que el paro o cesantía de Urbano Umapas se decreta mediante justa causa.

Según los autos, la Corte de Relaciones Industriales halló que el nombramiento de Urbano Umapas como guardia se había extendido independientemente de la acción de la Military Police Command designándole policía o agente especial; pero aun suponiendo cierto que el nombramiento de Umapas se hizo en virtud de la designación hecha por el Provost Marshal, esto no haría de Umapas un funcionario público en virtud de la doctrina sentada por nosotros recientemente en el asunto de "Manila Terminal Company, Inc., vs. La Corte de Relaciones Industriales y la Manila Terminal Relief & Mutual Aid Association", [2] R. G. No. L-1881. En dicho asunto hemos establecido que el nombramiento de policía especial hecho por el Alcalde de Manila no hacía del nombrado un funcionario de la ciudad de Manila, toda vez que los sueldos se sufragaban por la compañía y el policía servía exclusivamente a la misma. El caso presente es enteramente idéntico al citado—así que reiteramos aquí ahora la doctrina allí sentada. No hay cuestión sobre el hecho de que los sueldos de Umapas se pagaban por la San Miguel Brewery exclusivamente; tampoco hay controversia sobre el hecho de que Umapas estaba al servicio exclusivo de

la compania. Si la Military Police Command tuvo algo que ver con la designacion, ello fue solamente en virtud de un arreglo especial entre la compa  a y la Military Police Command para que esta estudiase y dictaminase sobre las cualificaciones del solicitante para el cargo.

En meritos de lo expuesto, se desestima y sobresee el re-curso interpuesto, con las costas a cargo de la recurrente. Asi se ordena.

Moran, Pres., Paras, Feria, Pablo, Perfecto, Bengzon, Montemayor, y Reyes, MM., estan conformes.

[2] 83 Phil., 554.

DISSENTING

TUASON, J.:

I dissent for the reasons stated in my dissenting opinion in Manila Terminal Company, Inc. vs. The Court of Industrial Relations,[3] et al., G. R. No. L-1881, which I here reproduce:

The sole question at issue in this case relates to the character of the position of special policemen; namely, whether it is a public office or private employment. It is conceded on both sides that public officers and employees are not embraced by Act No, 103.

As stated in State vs. Hawkins, 257 Pac., 411, 53 A.L.R., 583, to be a public office—

"(1) It must be created by law or by ordinance authorized by law; (2) it must possess some sovereign functions of government to be exercised for public interest; (3) the functions must be defined, expressly or impliedly, by law; (4) the functions must be exercised by an officer directly under the control of the law, not under that of a superior officer, unless they are functions conferred by the law upon inferior officers, who, by law, are under the control of a superior; (5) It must have some permanency or continuity, not temporary or occasional."

The respondents possess all these requisites. Like regular policemen, they were appointed by the Mayor of the City of Manila with the approval of the President; they were sworn in by the mayor, exercise police functions, bear arms, and have the power to make arrests; they are subject to all the laws and regulations of the Manila Police Department and are accountable to the mayor alone in the performance of their official duties; only the mayor can remove them.

The only important differences between the respondent and the regular members of the police force are that they receive their salaries from the Manila Terminal Co. Inc. and their jurisdiction does not extend beyond the confines of that company's premises. But the source of compensation, or the absence of compensation for that matter, does not a whit add to or detract from the nature of the position. Compensation is not an ingredient of a public office. Compensation and its source have nothing to do with the status of public officers as such. (Mechem, The Law of Public Officers and Offices, p. 577.) The matter of compensation is irrelevant with reference to the holding of a public office or the office itself. (Brown vs. Russel, 166 Mass., 14; Cornejo vs. Gabriel, 41 Phil., 188.) In New York, C. & St. L. R. Co. vs. Fieback, 87 Ohio St., 254, 43 L. R. A., it was said: "A policeman who was appointed and commissioned by the governor in pursuance of authority given by statute, although his appointment was on the application of a railroad company and his salary was paid by such company, was a public officer, deriving his authority directly from the state 'Police officers continued the court, 'by whomever appointed or elected, are generally regarded as public or state officers, deriving their authority from the sovereignty, for the purpose of enforcing the observance of the law.' "

The practice of appointing law officers with their salaries paid by the persons or companies they serve is not uncommon in our Government. To mention only two known examples of this arrangement, we have the Manila Railroad special policemen and public service inspectors.

The scope of a peace officer's territorial jurisdiction is irrelevant to his status as a public officer. This is so because the government is interested in the maintenance of peace and order in all places no matter how limited in area, within its territorial demesne. Similarly, the fact that a policeman's duties are confined to the protection of private interests and property of a specific person or entity does not make him an employee of that person or entity. Thefts and robberies are public crimes, injurious to the public, and prosecuted in the name of the people. They are included among the most important crimes which policemen are appointed to suppress. A police officer is not divested of his official character merely because he is assigned to watch, to the exclusion of all his other official duties, over a particular person's life and property that are exposed to or threatened with destruction. This seems so self-evident and so elemental as to make its ex-position sound presumptuous and impertinent.

In *Monette vs. State*, 44 So., 989, the court, citing *Shelby as. Alcorn*, 72 Am. Dec, 169, held: "A public officer is one who has some duty to perform concerning the public; and he is not the less a public officer when his duty is confined to narrow limits, because it is the duty and the nature of the duty which makes him a public officer and not the extent of his authority." *Mechera*, in his well-known treatise, *The Law of Public Officers and Offices*, section 9, p. 7, expresses the same idea in identical terms.

The decision says that if special policemen were to be converted into public officers merely in virtue of their emergency appointments, who, after all are no more than laborers and employees, would be placed in a very disadvantageous position in comparison with other employees and laborers of the company, because, it is argued, while the latter could avail themselves of all their rights as laborers to make reasonable demands for improvements and may resort to strikes if necessary, the special policemen would be completely deprived of all these legitimate weapons and means to aid them as laborers.' This argument, if valid, might be advanced by the tens of thousands of other officers and employees of the Government. But the right to hold a public office is not a natural or constitutional right from which the right to strike may not be taken away. The decision completely ignores the fact that the respondents, like other public officers and employees, accepted their employment of their own free will fully aware of the restriction imposed upon their choice of means to better their lot. Their appointments were not in any way forced on them.

In its practical operation, the decision is fraught with serious consequences. The Manila Terminal Company Inc., whose only part in the employment of special policemen is to propose them and to pay their salaries, is made the respondent while the mayor, who has the exclusive power to suspend, remove or discipline them is beyond the reach of the Court of Industrial Relations. Could that court legally prohibit the mayor from suspending or dismissing special policemen during the settlement of the dispute? While laborers have the right to quit work during a strike unless forbidden to do so by the court, could special police-men, subject to police laws, rules and regulations, refuse to perform their sworn duties without incurring the penalty of the law for desertion or abandonment of their post? And if the court should heed the respondents' grievances and demands, would the court's decision prevent the mayor from "firing" them and thus bring to naught the Court's order? It is enough to ask these and many other questions to see the incongruities and anomalies to which this Court's ruling would lead. The situation stems from the failure to realize that the strike by the members of the respondent unions is not in its broad aspect a strike against the Manila Terminal Company, Inc., it is a strike that strikes to the very bones of official discipline and Government authority, subversive of peace and order which the strikers have taken the oath to preserve.

This is not a brief against the law or policy which prohibits Government officers and employees from staging

strikes. If this law or policy is wrong and unjust, a question which is not here or there, it is not for the courts to change it. Let the political departments make the reform and provide that the Government or the appointing officer should be made a party to the dispute.

Se sobresee el recurso.

[3] 83 Phil., 559.

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