

ROSENDO MENESES AND MARIANO C. LITAO, PETITIONERS AND APPELLEES, VS. ARSENIO H. LACSON, AS MAYOR OF THE CITY OF MANILA, RESPONDENT AND APPELLANT.

G.R. No. L-7925. October 31, 1955

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

By a communication of respondent Arsenio H. Lacson, as Mayor of the City of Manila, reading:

"July 18, 1952

The Chief of Police
Manila

Sir:

Under and by virtue of the provisions of Executive Order No. 264 issued by the late President Manuel L. Quezon of the former Commonwealth of the Philippines, the following officers and members of the Detective Bureau, Manila Police Department, are hereby summarily dismissed from the service, effective upon their being notified hereof, to wit:

- Det. Lt. Rosendo Meneses
- Sgt. Mariano Litao
- Det. Cpl. Eduardo Advincula
- Det. Oscar Olegario
- Det. Jesus Duran
- Det. Jose C. Gonzales
- Det. Mariano B. Rodriguez
- Det. Alfredo Garcia
- Det. Domingo Gomez"

Very respectfully,

(Sgd.) Arsenio H. Lacson
Mayor, City of Manila

copy of which was furnished the herein petitioners-appellees, Rosendo Meneses and Mariano Litao, together with a memorandum of the Chief of Police of Manila, of the following tenor:

"July 19, 1952

Memorandum for
The Chief, DB

1. I am sending herewith a copy of the order from His Honor, the Mayor of Manila, dated July 18, 1952, dismissing from the service Det. Lt. Rosendo Meneses and eight others effective upon their being notified thereof.
2. You are hereby instructed to notify them immediately of their dismissal, requiring them to acknowledge receipt of the notice on the duplicate thereof, which shall henceforth be forwarded to the Police Headquarters for record purposes.
3. They will be required to turn in their service equipment and other government properties and to have them comply with the attached clearance forms, which shall also be forwarded to the Police Headquarters."

said petitioners-appellees were summarily dismissed from the service as detective lieutenant and sergeant, respectively, of the Manila Police Department. Hence, on July 26, 1952, said petitioners instituted the present action in the Court of First Instance of Manila for the purpose of securing a writ of mandamus directing the respondent Mayor of Manila to reinstate them in their aforementioned positions and to pay them their respective salaries, with damages and costs.

The case was submitted for decision upon a partial stipulation of facts and some testimonial and documentary evidence introduced by both parties. Pertinent parts of said stipulations are quoted hereunder:

"2. That the following is a correct statement of the service records of the petitioners in the Manila Police Department:

ROSENDO R. MENESES

Date

Nature of Appointment

Appointment

Salary per annum

Remarks

5 -1-47 Reinstatement Temp. Patrolman.....

P1.200.00

Pre-war

5-20-47 Promotion..... Detective

1,500.00

Member

7-1-47 Promotion..... Detective.....

1,560.00

11-1-47 Promotion..... Actg. Det. Cpl.....

1,560.00

7- 1-48 Promotion..... Det Sergeant

2,580.00

6-30-51 Promotion..... Actg. Det. Lt.

2,580.00

10-20-51 Promotion..... Det. Lieutenant.....

2,580.00

7-19-52 Dismissed

MARIANO C LITAO

4- 1-45 Reinstatement.... Detective

P720.00

Pre-war

7- 1-45 Promotion..... Detective.....

1,500.00

Member

7-30-45 Dismissed.....

10-16-45 Reinstatement.... Detective

1,500.00

11-16-45 Promotion..... Detective

1,620.00

8- 1-46 Promotion..... Actg. Det. Sgt.....

1,620.00

11-1-46 Promotion..... Det. Sergeant

1,620.00

1- 1-47 Promotion..... Det. Sergeant

2,400.00

6- 1-48 Demotion..... Police Sergeant.....

2,040.00

7- 1-48 Promotion..... Det. Sergeant

2,580.00

7-23-52 Dismissed.....

* * * * *

"5. That during the incumbency of the respondent Mayor of Manila, the petitioners were never charged before any official or official body for misconduct, incompetency, dishonesty, disloyalty to the Philippine Government, serious irregularities in the performance of their official duties or violations of law or any other illegal act, in connection with the discharge of their official duties as officers in the Manila Police Department, nor for any other ground, for the purpose of meting out to them disciplinary punishment, up to the time of their dismissal; nor have the petitioners been notified of any charge in writing and thereafter investigated, and given a chance to defend themselves, before any official or body for any of the acts hereinabove enumerated, or for any other act, for the purpose of visiting upon them disciplinary punishment."

Furthermore, the civil service record of petitioner Meneses shows:

"Aug. 12/29 —

Detective

Police

P840.00

p.a.

perm.

Feb. 15/35 —

Detective

Police

823.20

p.a.

perm.

Jan. 1/36 —

Detective

Police

756.00

p.a.

perm.

Jan. 23/37 —

Detective

Police

789.60

p.a.

perm.

Dec. 1/37 —

Detective

Police

840.00

p.a.

perm.

Mar. 1/39 —

Detective

Police

900.00

p.a.

perm.

June 1/40 —

Resigned"

(Exh. B)

p.a.

perm.

Again, the last appointments extended to petitioners herein (Exhibits A and D) appear to be permanent in nature.

Upon the other hand, respondent mayor testified that Rosendo Meneses gambled beyond his means; that in the year 1950 or 1951, when he (respondent) was still a Congressman, he saw Meneses gambling heavily in the races; that Meneses was spending money beyond his means; that Mariano Litao sold a jeep officially assigned to him (Litao), and, as a consequence, an information for malversation of public property (Exhibit 1) was filed against him after his dismissal; that respondent received verbal reports from reliable people that Litao had committed extortions in the Chinatown; and that, in the course of the investigations conducted by respondent, he found out that it was very hard to prove the extortions made by Litao owing to the reluctance of the parties concerned to testify thereon.

In due course, the lower court rendered a decision, the dispositive part of which reads as follows:

"Wherefore, the petition for mandamus filed by Rosendo Meneses and Mariano C. Litao is hereby granted, and the respondent Mayor of the City of Manila is ordered to reinstate the petitioners in their respective positions as detective lieutenant at P3,120 per annum and detective sergeant at P2,580 per annum, respectively, in the Detective Bureau of the Manila Police Department, with right to receive their salaries from the respective dates of their dismissal.

Petitioners' claim for damages against the respondent in the amount of P23,000 is hereby denied.

No pronouncement is made as to costs."

In his appeal from this decision, respondent maintains that:

I

"The Trial Court erred in not holding that the position of detective is primarily confidential in nature as per Executive Order No. 264 of the President dated April 1, 1940, in relation to section 671(j) of the Revised Administrative Code.

II

"The Court a quo also erred in not sustaining that Republic Act No. 557 did not repeal impliedly Executive Order No. 264 and also said section 671 (j) of the Revised Administrative Code, and that neither does it constitute an exception to the provisions of section 682 of the Revised Administrative Code nor does it in any way, modify, amend, or repeal impliedly the same pro tanto.

III

"The Court a quo likewise erred in ruling that the appointment of the appellee Mariano Litao was governed by Commonwealth Act No. 698 which was unconstitutional and therefore null and void and no longer in force, even if legal and valid, as it was repealed by Republic Act No. 271 approved June 15, 1948, that provided expressly the revival of the laws applicable thereto before the enactment of said Commonwealth Act No. 698 such as section 2447 of the Revised Administrative Code until the enactment and approval of Republic Act No. 409 (sections 11[q] and 12) and Executive Order No. 264 in relation to section 671 (j) of the Revised Administrative Code, as amended.

IV

"The Trial Court finally erred in not finding that the appellees who are not civil service eligibles do not come under the provisions of Republic Act No. 557 (Orais, et al. vs. Ribo, et al. G. R. No. L-4945) in accordance with section 682 of the Revised Administrative Code, and because of the fact that the position of detectives is primarily confidential in nature which is the reason for not requiring appointees thereto to take and pass any civil service examination."

These were the same issues raised in the case of Oscar Olegario vs. Arsenio H. Lacson (G. R. No. L-7926), and decided therein, on May 21, 1955, in the following language.

"It is contended for the appellant Mayor that (1) the position of detective in the Manila Police Department is confidential in nature, having been so declared by Executive Order No. 264, Series of 1940, and that Republic Act 557 did not repeal or affect said Executive Order; and (2) that appellee Oscar Olegario not being a Civil Service eligible, his appointment, in 1947, should be viewed as merely temporary under section 682 of the Revised Administrative Code, and, therefore, he was subject to summary dismissal at the expiration of three months.

The first issue tendered by the appellant has been thoroughly considered and resolved in previous decisions of this Court. In *Mission vs. Del Rosario* (1954) (50 Off. Gaz., 1571), this Court held that Executive Order No. 264, Series of 1940, upon which appellant now relies, has been repealed by Republic Act 557, in so far as it may be in conflict with the latter, and that detectives or secret service agents may now be removed only as provided in said Act. This ruling was applied to similar offices in other localities (*Abella vs. Rodriguez*, 50 Off. Gaz., 3041; *Palamine vs. Zagado*, 50 Off. Gaz., 1566), and we see no reason for not upholding it with respect to detectives or secret service agents of the Manila Police Department.

With regard to the appellee's lack of civil service qualifications, it is to be remarked that such lack does not necessarily mean that his appointment was temporary in character, considering that when appellee was appointed, Executive Order No. 264 was as yet in force, and under its terms, positions of secret agent or detective were excepted from civil service requirements. The records of the case at bar, in fact, show that appellee Olegario's appointment was not temporary in character (Exhs. E to H).

We have held in *Uy vs. Rodriguez*, G. R. No. L-6772, July 30, 1954, that unless it is shown that a detective's appointment was temporary, he may not be dismissed except in accordance with Republic Act No. 557, and that ruling is decisive of this case.

'The question raised in this special civil action has already been decided squarely by Us in the cases of *Palamine, et al. vs. Zagado, et al.*, G. R. No. L-6901, promulgated March 15, 1954; *Mission, et al. vs. Del Rosario*, G. R. No. L-6754, promulgated February 26, 1954; and *Abella vs. Rodriguez*, G. R. No. L-6897, promulgated June 29, 1954. In said cases, We have held that a member of the detective force of Cebu City is a member of the police department of said city and may not be removed except in accordance with the provisions of Republic Act No. 557.'

'The statement submitted by the petitioner shows that he is not a civil service eligible, but neither does it appear from the record that his appointment as member of the detective force was temporary in character or for period of three months merely, and that he had been reappointed every three months until his separation. These circumstances in addition to the fact that he was promoted as senior detective inspector, show that his appointment is not in a temporary capacity. He may not, therefore, be dismissed or removed except in accordance with the provisions of existing law.'

The difference between the present case and those involved in *Orais vs. Ribo*, 49 Off. Gaz. (12) 5386; *Paña vs. Medina*, 50 Off. Gaz. (1) 46, and *Manigbas vs. De Guzman*, G. R. No. L-6137, invoked by appellant, lies in that the present appellee was not appointed under section 682 of the Administrative Code, but under the exceptional provisions of Executive Order No. 264, and Commonwealth Act No. 698, in force before Republic Act 557 was enacted. Hence, said section 682 is inapplicable to him. The repeal of Commonwealth Act 698 by Republic Act 271 after he was appointed, could not retroact to the prejudice of the appellee."

In fact, Olegario, the plaintiff in the case cited, is the same Detective Oscar Olegario, whose name is the fourth in the list of officers, including the petitioners herein—at the end of the letter of respondent mayor, quoted at the beginning of his decision who were dismissed from the Police Department of the City of Manila by virtue of said

communication. Hence, respondent herein, who was the afame respondent in the Olegario case, admits that the doctrine laid down in *Mission vs. Del Rosario*, supra, upon which the decision in the Olegario case was predicated, is decisive in the case at bar, for which reason said respondent urges a reconsideration of the view expressed in the *Mission* case. However, the reasons given in support of respondent's pretense were already considered in disposing of the Olegario case and we are far from satisfied that the present case should be decided differently. Indeed, the decision in the *Mission* case merely followed the pattern set in *Manuel vs. De la Fuente*[1] (48 Off. Gaz., 4829) and reiterated in *Palamine vs. Zagado*[2] (50 Off. Gaz., 1566), *Abella vs. Rodriguez*[3] (50 Off. Gaz., 3039) and *Uy vs. Rodriguez*[4] (50 Off. Gaz., 3574).

In fairness to respondent herein, it should be noted, however, that he acted as he did because of certain communications of the Commissioner of Civil Service, dated October 2, 1951 and May 2, 1952, expressing the opinion that detectives in the Manila Police Department hold primarily confidential positions from which they may be summarily dismissed, for lack of trust or confidence on the part of the appointing authority, and that said opinion was given, and the dismissal of petitioners herein took place, before the rendition of our decisions in the cases above referred to. Needless to say, these decisions must prevail over said opinion, regardless of its weight, from the administrative viewpoint, and of the good faith with which respondent herein had acted and of the commendable zeal which, obviously, animated him. At any rate, the reinstatement directed in the decision appealed from does not bar such appropriate administrative action as the behaviour of petitioners herein may warrant, upon compliance with the requirements of due process.

Wherefore, said decision is hereby affirmed, without special pronouncement as to costs. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, and Reyes, J. B. L., JJ., concur.

[1] 92 Phil., 302.

[2] 94 Phil., 494.

[3] 95 Phil., 289.

[4] 95 Phil., 493.

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