

DOMINGO SERMONIA, JESUS SEMPER, PASTOR SEMIC, ELIAS FAJAMOLIN, EULOGIO TOLENTINO, GIL SAPALARAN AND AMADO SANTIANES, PETITIONERS-APPELLEES, VS. JOSE T. SANTACERA, AMADO SIASAT, ...

G.R. No. L-28749. April 24, 1970

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Appeal, by respondents, from a decision of the Court of First Instance of Iloilo, the dispositive part of which reads:

"WHEREFORE, judgment is hereby rendered: (a) declaring petitioners entitled to their respective positions from which they were removed by respondent Mayor Jose T. Santacera, except Jesus Semper who is not entitled to the position with corresponding salaries from the date they were removed to the date of their reinstatement; (b) Ordering respondent Mayor Santacera to reimburse the municipality of San Joaquin, Iloilo for whatever amounts may be paid by it to petitioners pursuant to this decision; (c) Respondent Mayor is further ordered to pay petitioners attorney's fees in the sum of P500.00; and to pay the costs.

"Petitioners' claim for moral and exemplary damages, not having been substantiated by evidence, the same are hereby denied."

On the dates set forth after their respective names, petitioners herein, namely:

1. Elias Fajamolin
April 16, 1949
2. Pastor Semic.....
January 1, 1952
3. Domingo Sermonia.....
January 1, 1952
4. Gil Sapalaran.....
September 8, 1958
5. Jesus Semper.....
January 1, 1960
6. Eulogio Tolentino.....
January 1, 1960

7. Amado Santianes.....

February 8, 1960

were extended temporary appointments as members of the police force of San Joaquin, Province of Iloilo. In view of said appointments, which were duly attested to by the provincial treasurer of Iloilo and approved by the Commissioner of Civil Service, pursuant to Section 24(e) of Republic Act No. 2260, otherwise known as the Civil Service Act of 1959, petitioners qualified and assumed the duties of their aforementioned positions, as well as received the emoluments attached thereto, continuously, up to December 31, 1963, when the newly elected mayor of San Joaquin, respondent Jose T. Santacera, gave notice of the termination of their services. As replacements of herein petitioners in the police force of San Joaquin, Mayor Santacera, likewise, appointed the other respondents herein, name-ly, Amado Siasat, Graciano Sandig, Ireneo Salcedo, Quirico Chavez, Eusebio Selibio, Jesus Sardon, Antonio Saquilayan, Eduardo Baylon and Fermin Egalin, who, accordingly, assumed the positions formerly held by the petitioners. Upon denial by Santacera of their request for reinstatement and payment of their salaries, petitioners commenced, with the court of first instance of Iloilo, the present action for quo-warranto and mandamus with damages, upon the ground that, although not civil service eligibles, they are war veterans and, as such, entitled to preference over Santacera's aforementioned appointees, who are neither civil service eligibles nor war veterans. After appropriate proceedings, said court rendered the decision adverted to above. Hence, this appeal by the respondents, who maintain that the lower court has erred in holding that petitioners:

I. "x x x who are veterans but not civil service eligibles and who were temporarily appointed members of the police force of San Joaquin, Province of Iloilo cannot be replaced by persons who are not civil service eligibles; and

II. "x x x are entitled to receive Back salaries during the period of their separation from service.

It should be noted that Jesus Semper, one of the petitioners in the lower court, who was found not to be a war veteran and, hence, not entitled to reinstatement, is not involved in this appeal, he having failed to seek a review of the decision of said court.

As regards the other petitioners herein, who, admittedly, are war veterans, appellants maintain that Section 8 of Republic Act No. 65, as amended by Section 1 of Republic Act No. 154, reading:

"Sec. 8. For a period of three years from the time of the passage of this Act, the persons mentioned in sections one and two hereof shall, all other qualifications being equal:

"(1) Have preference in appointments and promotions in and to any Government office, agency, or instrumentality, or in and to any Government-owned or subsidized corporation, the provisions of law as to civil service eligibility notwithstanding: Provided, That in examinations where experience is an element of qualification the time spent in the military or naval service of the United States or of the Philippines shall be credited in a veteran's rating where his actual employment in a similar vocation to that for which he is examined was interrupted by such military or naval service."

does not justify the decision appealed from, inasmuch as: (a) petitioners were merely temporary employees; (b) the preference given to war veterans in said Section 8, as, amended, refers only to "appointments and promotions," not to the retention of the office they hold; and (c) said preference is good only "for a period of three (3) years from the time of the passage" of said Republic Act No. 154, on June 14, 1947, so that petitioners' separation from the service on December 31, 1963 is beyond the pale of said legislation.

It is true that "temporary" employees may be removed at any time, in the absence of a legal provision to the

contrary. Such pro-vision is found, however, in the above-quoted section 8, insofar as war veterans are concerned.[1]

Appellants' second argument was rejected by this Court in *Gonzalez vs. Aldana*,¹ from which we quote:

x x x the Act aforementioned speaks of pre-ference in general and x x x our impression is that the preference contemplated by the law is not only an appointment whereby a veteran is accepted in the service of the Government but also his enjoyment of the benefits, rights and emoluments accruing from said appointment. It would certainly be unjust as well as illogical if after appointing a non-veteran to a Government position today, he may be replaced and dismissed tomorrow, when there are non-veterans occupying other and similar positions who could and should be replaced first. x x x.

"The positions occupied by the petitioners are neither policy determining, primarily confidential, nor highly technical. Furthermore, they are not ask-ing for any promotion or transfer. All their wish and desire is that they be allowed to retain their positions and continue serving the Government. By interpreting the law in this manner, namely, giving preference to a veteran, not only in the appointment but also in keeping the position to which he is appointed, we would be following and implementing the intention of the Legislature. As the lower court, x x x rather vehemently observed:

"The aforequoted provisions of law should be given full force and effect. The intention of the framers of the law to reward those who have risked their lives and sacrificed much in order that we could be freed from Japanese domination should not be implemented with empty promises and hollow gestures. We should give what is due the veterans as contemplated by law. For that is the only way we could repay and show our gratitude to the heroes of the last world war."

With respect to the expiration of the term fixed in Section 8 of Republic Act No. 65, as amended, it should be noted that, on June 18, 1955, Republic Act No. 1363 took effect. Sections 1, 2, 4 and 5 thereof provide:

"Sec. 1. The policy of the Government is to give preference, other considerations being approximately equal, to persons who are veterans under section four of this Act.

"Sec. 2. Accordingly, appointing officers shall give preference to veterans when extending appoint-ments to positions in the government, in semi-govern-ment corporations, and government-controlled corpor-ations. Appointing officers who knowingly violate the provisions of this Act shall be punished by a fine of one month's pay for the first violation, and dismissal from the service for the second violation.

"xxx xxx xxx.

"Sec. 4. The term 'veteran' as employed in this Act shall refer to: (1) veterans of the Philippine Revolution as certified to by the Board of Pensions for Revolutionary Veterans; (2) veterans of World War II as certified to by the Philippine Veterans Board; and (3) honorably discharged soldiers and officers of the Armed Forces of the Philippines who have served therein for at least five years.

"Sec. 5. In order to enable a veteran to obtain preference under the provisions of this Act, it must be shown that he has approximately the same qualifications as other applicants. It is not intended that a veteran shall have priority over civil service eligibles unless he himself is of the same or higher civil, service eligi-bility."

Herein petitioners Fajamolin, Semic and Sermonia were still in office when Republic Act No. 1363 was approved. Then, too, said Act was already in force when petitioners Sapalaran, Tolentino and Santianes were appointed policemen of San Joaquin. It is clear, therefore, that these six (6) petitioners are entitled to the benefits of Republic Act No.1363. Interpreting the same, we held in *Sison v. Pajo*:¹

"Section 1 of Republic Act No. 1363 enacted on June 18, 1955, provides for the preference to be given to veterans in the matter of appointment to positions in the government, as follows:

'Section 1. The policy of the Gov-ernment is to give preference, other considerations being approximately equal, to persons who are veterans under section four of this Act.'

Section 2 penalizes the violation of the provisions of the Act, while Section 4 defines the term 'veteran.' Section 5 provides that in order to enable a veteran to obtain preference, it must be shown that he has approximately the same qualifications as other ap-plicants, and further states that it is not intended that a veteran shall have priority over civil service eligibles, unless he himself is of the same or higher civil service eligibility.

"The replacement on June 29, 1957 of Bonifacio Lacanlale, a non-eligible but veteran, by Pablo Santos, Jr., likewise a veteran and non-eligible is unlawful (Orals, et al. vs. Ribo, et al., 40 O.G. 538693) because the former, although appointed in an acting capacity, was entitled, by reason of the pre-ference established by the law in force at the time of his appointment (Republic Act No. 65, as amended by Republic Act No. 154), to keep his position until the availability, of a civil service eligible was duly certified by the Commissioner of Civil Service. x x x.

"Neither can the eligibility acquired by Santos, Jr., nor his temporary reappointment approved on January 17, 1959 by the Executive Secretary and the Commissioner of Civil Service subject to the result of the present case cure the invalidity or illegality of Lacan-lale's removal or validate Santos' appointment in his stead. The former replacement by an eligible must be made by competent authority and only after the Commissioner of Civil Service has certified that there is such an eligible available. (Fernandez, et al. vs. Curata, et al., G. R. No. L-14392, May 30, 1960; Batungbakal vs. NDC and Manuel Agregado, 49 O.G. 2290, G. R. No. L-5127, May 27, 1953.)"¹

The doctrine laid down in the Sison case is controlling in the one at bar. Indeed, petitioners herein have a stronger case than the petitioner in the Sison case. The main respondent therein was a war veteran. Yet, not being civil service eligible his appointment, by Mayor Sison, in lieu of the incumbent veteran, was declared illegal. More significant still is the fact that, after said replacement of the incumbent veteran, who was a non-civil service eligible, by another veteran, likewise, devoid of civil service eligibility, the latter became a civil service eligible. Still, it was held that this subsequent fact did not "cure the invalidity or ille-gality" of the incumbent's removal or "validate" the appointment of his replacement, prior to the acquisition of the latter's eligibi-lity under the Civil Service Law.

Respondents invoke the cases of Orais v. Ribo¹ and Inocente v. Ribo,² in support of the theory that the preference of an incumbent non-eligible veteran over another person likewise devoid of civil service eligibility, is good only within the three year period prescribed in Republic Act No. 65, as amended. Said cases arose and were decided, however, prior to the enactment of Republic Act No. 1363. Hence, they are not applicable to the case at bar. At any rate, insofar as inconsistent with the subsequent ruling in Sison v. Pajo,³ the doctrine laid down in the Ribo cases and others based thereon must be deemed modified pro tanto.

WHEREFORE, the decision appealed from should be, as it is hereby affirmed, with costs against respondents-appellants.

IT IS SO ORDERED.

Reyes, Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, and Villamor, JJ., concur.
Barredo, J., took no part.

[1] Orais v. Ribo, 93 Phil. 985, 994-995; Inocente v. Ribo, 94 Phil. 652, 660-662.

1 107 Phil. 754, 757-759.

1 L-18443, May 31; 1965.

1 Underscoring supplied.

1 Supra.

2 Supra.

3 Supra.

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