

NICASIO FAUNILLAN, PETITIONER AND APPELLEE, VS. VICENTE DEL ROSARIO, ET AL., RESPONDENTS AND APPELLANTS.

G.R. No. L-9447. August 23, 1956

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This is a petition for mandamus originally filed on June 20, 1953 by Nicasio Faunillan against Vicente del Rosario as the then mayor of Cebu City for reinstatement as detective of the Police Department of the city from which respondent allegedly dismissed him not pursuant to law, and for moral damages and costs. Respondent del Rosario was subsequently ousted from office by the former incumbent mayor Jose V. Rodriguez, by virtue of our decision in the case of Rodriguez vs. Del Rosario 49 Off. Gaz., 5427, wherein we declared the removal of Jose V. Rodriguez and the appointment of Vicente del Rosario as City Mayor of Cebu illegal. Upon his return to office, Mayor Rodriguez reinstated petitioner Faunillan to his former position, for which reason petitioner, with leave of court, amended his petition, impleading, together with the ousted Mayor Vicente del Rosario, City Mayor Jose V. Rodriguez, City Treasurer Felipe B. Pareja, and City Auditor Restituto Cantos, and praying that he be awarded, in addition to moral damages, costs, and attorneys fees, his back salaries from the time of his dismissal up to the date of his reinstatement.

After joinder of issues, the parties entered into the following stipulation of facts:

- That petitioner and respondents are all of legal age and residents of the City of Cebu; and that respondent Vicente del Rosario had been replaced by Jose V. Rodriguez, while respondent Martin Kintanar had been succeeded by Restituto Cantos as City Mayor and City Auditor, respectively, of the City of Cebu;
- That petitioner, for a period of more than four years, that is, from July 1, 1949 up to and including May 19, 1953, was a detective in the police department of the City of Cebu as evidenced by Exhibit "A", appointment signed by former City Mayor Miguel Raffinan, dated July 1, 1949;
- That on May 19, 1953, the service of petitioner Nicasio Faunillan as such detective was terminated by respondent Vicente del Rosario effective at the close of office hours of said date as evidenced by Exhibit "B", which is the notice of termination, dated May 19, 1953, signed by said former mayor; and that since then up to December 17, 1953, petitioner had not received his salary as such detective;
- That the herein petitioner had collected the full amount covering his terminal leave commutation;
- That on December 17, 1953, petitioner was re-appointed to the detective force of the police department of the

City of Cebu as detective and is still serving up to the present;

- That he has not been paid his salary corresponding to the period from May 20, 1953 to December 17, 1953;
- That after the dismissal of the herein petitioner, Florencio Quijano was appointed in his place and for sometime actually occupied the post;
- That the herein petitioner up to the time of his dismissal from the service had not yet qualified in a patrolman examination given by the Commissioner of Civil Service, but had passed the patrolman examination given on September 20, 1952 in the City of Cebu with a rating of 80 per cent, as per advice received sometime in January, 1954;
- That former City Mayor Vicente del Rosario was ousted by the Supreme Court in a decision rendered in the case *Rodriguez vs. DEL ROSARIO*, G. R. No. L-6715, 49 Off. Gaz. 5427, declaring the designation of respondent Vicente del Rosario as city mayor of Cebu illegal;
- That on February 26, 1954, the Supreme Court decided the case of *Mission, et al., vs. Del Rosario, et al.*, G. R. No. L-6754, involving the case of the forty-three detectives who were dismissed for lack of trust or confidence;
- That the respondents have no objection to the admission of Exhibit "A" and Exhibit "B";
- That both petitioner and respondents hereby agree to abandon all claims for moral, compensatory and exemplary damages, and for attorney's fees, it being understood that the claim for back salaries by the petitioner is excluded from the waiver." (Orig. Record pp. 29-31.)

The court below found petitioner's summary dismissal from service arbitrary and in violation of Republic Act No. 557, and ordered the City Treasurer of Cebu to pay petitioner's accrued salaries corresponding to the period from May 19, 1953, the date of his dismissal, to December 16, 1953, the date of his reinstatement. From the judgment, the respondent appealed to this court.

Following our decision in the case of *Mission, et al. vs. Del Rosario*, [1] 50 Off. Gaz., No. 4, 1571, involving other detectives of the police department of the City of Cebu also summarily dismissed by the then mayor Vicente del Rosario in 1953, and subsequent cases involving the same issue (*Olegario vs. Lacson*, 97 Phil., 75; *Quintos vs. Lacson*, [2] 51 Off. Gaz., No. 7, 3429; *Meneses vs. Lacson*, 97 Phil., 857; *Vy vs. Rodriguez*, 50 Off. Gaz., No. 8, 3574), to the effect that detectives belonging to the police force are members thereof and cannot be summarily dismissed from office without complying with the provisions of Republic Act No. 557, unless their appointments are temporary, we must agree with the court below that appellee Nicasio Faunillan's summary dismissal from service by former Vicente del Rosario was arbitrary and in violation of law.

But there is merit in appellants' contention that under section 5 of the Charter of the City of Cebu (Commonwealth Act No. 58, as amended), the City is exempt from liability for damages suffered by any person from the failure of any city official to comply with the law. Said section provides:

"Sec. 5. City not liable for damages.—The City shall not be liable or held for damages or injuries to persons or

property arising from the failure of the mayor, the municipal board, or any other city officer, to enforce the provisions of this charter, or any other law or ordinance, or from negligence of said mayor, municipal board, or other offices while enforcing or attempting to enforce said provisions."

As appellee's claim for back salaries during the period that he had stayed out of office constitutes compensatory or actual damages suffered by him because of his unlawful dismissal by former Cebu Mayor Vicente del Rosario the city can not, under the above liability-exempting provision of its charter, be held liable therefor. Appellee's remedy is to sue the guilty official in the latter's personal capacity.

Wherefore, with prejudice to appellee's right to file another action against respondent Vicente del Rosario in the latter's personal capacity, the judgment appealed from is reversed insofar as it orders the City Treasurer of Cebu to pay appellee's accrued salaries from May 19, 1953 to December 16, 1953. Without costs in this instance. So ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and Felix, JJ., concur.

[1]194 Phil., 483.

[2]197 Phil., 290.

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