

ALFREDO A. AZUELO, PETITIONER AND APPELLEE, VS. RAMON ARNALDO, ET AL., RESPONDENTS AND APPELLANTS.*G.R. No. L-15144. May 26, 1960*

Ponente: BAUTISTA ANGELO, J.

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Alfredo A. Azuelo, who has no civil service eligibility, was appointed patrolman of the Municipality of Legaspi, Albay on July 1, 1954 with a salary of P840.00 per annum. He served as such patrolman until March 7, 1956, when he was suspended by Mayor Ramon Arnaldo in connection with certain administrative charges filed against him. On May 24, 1956, the mayor withdrew his charges but continued Azuelo's suspension pending final decision in the criminal case for infidelity in the custody of prisoners filed against him by the provincial fiscal on March 14, 1956.

On July 9, 1957, the mayor sent Azuelo a communication informing him that because of the pendency of the criminal charge against him, he was advising him that his temporary appointment as patrolman has not been renewed as of the date of his suspension. On July 18, 1957, Azuelo was acquitted in the criminal case, the court ordering the municipal authorities of Legaspi to reinstate him and to pay him his salary from the time of his suspension. In line with this decision, Azuelo sought from said authorities his reinstatement and the payment of his salary but to no avail. He elevated his case to the Office of the President, but without awaiting the action of said office, he filed a petition for mandamus against respondents seeking his reinstatement and the payment of his back salary.

On December 17, 1958, the court, after trial, rendered decision holding that Azuelo has been legitimately removed as patrolman and so the municipal mayor cannot be compelled to reinstate him. However, as he has been legally in the service from March 7, 1956 to July 9, 1957, he is entitled to the payment of his salary corresponding to that period amounting to P1,129.32, by reason of which it ordered respondents to pay him said amount. The court awarded Azuelo attorney's fees in the amount of P300.00. Hence the present appeal.

It appears that petitioner was not a civil service eligible and so was given a temporary appointment as patrolman on July 1, 1954 with a salary of P840 per annum. He served as such patrolman until March 7, 1956 when he was suspended by the municipal mayor in connection with certain administrative charges he filed against him. On May 24, 1956, the mayor withdrew the charges but continued his suspension in view of the case for infidelity in the custody of prisoners filed against him by the provincial fiscal on March 14, 1956. And on July 9, 1957, the mayor informed him that because of that criminal charge his temporary appointment as patrolman has not been renewed as of the date of his suspension.

Considering the above facts, the trial court made the following conclusion: "Inasmuch as the appointment of the petitioner on July 1, 1954 was temporary in character; considering that his appointment, pursuant to law, was subject to the pleasure of the Municipal Mayor of Legaspi, Albay; and taking into account that he was notified on July 9, 1957 of his removal on that date, the conclusion is irresistible to the effect that the petitioner ceased to be a

patrolman of Legaspi, Albay on July 9, 1957." Hence, the court concluded that he cannot be reinstated although he should be paid his salary corresponding to the period from March 7, 1956 to July 9, 1957 amounting to P1,129.32.

We agree to the foregoing finding it appearing that the appointment of petitioner is merely temporary and as such is terminable at the pleasure of the appointing power. In such case, there is no need even of any cause for such termination, although here the municipal mayor had enough cause which was the criminal charge for infidelity filed against him. It is true that petitioner was acquitted of the charge; nevertheless such acquittal is immaterial for even without it his employment could be terminated at a moment's notice.[1] Since petitioner was notified of the termination of his employment only on July 9, 1957, technically he is deemed to have ceased only from that date, and as such he is entitled to his salary corresponding to the period of his suspension. This is more so when he was acquitted with payment of his back salary.

It is contended that petitioner has no cause of action against respondents because he has not first exhausted all his administrative remedies to obtain redress before filing the present action of mandamus. This is untenable, for while as a rule administrative remedies must first be resorted to before court action may be taken, that rule only applies when there is an express legal provision requiring such administrative step as a condition precedent to taking action in court. Here there is none. Yet, petitioner elevated his case to the Office of the President but because of the apparent inaction of that office, he was constrained to take the present action. We find this action justified.

Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

Paras, C.J., Bengzon, Padilla, Labrador, Concepcion, Barrera, and Gutierrez David, JJ., concur.
Montemayor, J., took no part.

[1] Reyes vs. Donis, 103 Phil., 884; 56 Off. Gaz. (3) 509; Tolentino vs. Torres, 96 Phil., 522; 51 Off. Gaz., (2) 753; Brauda, et al. vs. Del Rosario, 103 Phil., 489; 54 Off. Gaz. (24) 6253.

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