

ABELARDO SUBIDO, PETITIONER AND APPELLANT, VS. MARCELINO SARMIENTO, ANTONIO PARALEJAS, ARSENIO H. LACSON, AND TELESFORO TENORIO, RESPONDENTS AND APPELLEES.

G.R. No. L-14981. May 23, 1960

Ponente: BARRERA, J.

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BARRERA, J.:

From the decision of the Court of First Instance of Manila (in Civil Case No. 36134) dismissing his petition for mandamus with preliminary injunction against respondents Marcelino Sarmiento, as City Treasurer, Antonio Paralejas as Commanding Officer, Precinct 5, Manila Police Department; Arsenio H. Lacson, as City Mayor; and Telesforo Tenorio, as Chief of Police, all of the City of Manila, petitioner Abelardo Subido interposed this appeal.

The object of the petition was for the declaration as illegal under the provisions of Section 685 of the Revised Administrative Code, of the assignment of respondent Paralejas, a Detective Captain in the Manila Police Department allegedly belonging to the unclassified service of the City, to a position in the classified service; and the suspension of the payment of his salary as such, and his transfer to his old position in the detective bureau of the Police Department. The petition further prayed that respondent Lacson and Tenorio be ordered to refund, jointly and severally, the salaries paid to respondent Paralejas during his illegal assignment.

Both in their "Compliance" to the order to show cause why a preliminary writ of injunction should not be issued, as well as in their answer filed subsequently, respondents controverted petitioner's claims contending that Paralejas has civil service eligibilities as patrolman, police sergeant, and police lieutenant, that section 685 of the Revised Administrative Code does not apply in the present case, the legal provisions applicable being sections 34 and 37 of the Revised Charter of the City of Manila under which the questioned assignment of Paralejas was authorized; and finally, that petitioner as a mere taxpayer with only an inchoate right to retirement gratuity (his claim thereto being still pending in the Office of the President), is not the real party in interest.

The case was submitted for decision on a complete stipulation of facts, on the basis of which, the lower court rendered judgment upholding respondents' contention and thereby dismissing the petition, without costs. Hence, this appeal.

The only issue to be resolved in this case is whether or not the assignment of Detective Captain Antonio Paralejas to the position of Precinct Commander of the Manila Police Department is in accordance with law.

The argument against the legality of such assignment, as advanced by appellant, is premised on the allegation that the position of Detective Captain, which Paralejas previously occupied, belongs to the unclassified service, pursuant to Section 671-(j) of the Revised Administrative Code; and, as the position of Precinct Commander is classified, his (Paralejas') assignment to the latter post was effected in violation of Section 685 of the said code.[1]

The contention is erroneous because detectives in the City of Manila are not embraced in the unclassified service. Section 671- (j) of the Revised Administrative Code relied upon by appellant reads:

"Sec. 671. Persons embraced in unclassified service.—

* * * * *

(j) Secretaries of provincial boards, assistant provincial fiscals, provincial wardens, provincial sheriffs, deputy provincial sheriffs and secret agents" (Italics supplied.)

It must be observed that the above-quoted provision is an enumeration of provincial officials and employees. Under the well-accepted principle of ejusdem generis, the "secret agents" included therein refer to secret or confidential agents and employees appointed by provincial authorities. They do not, therefore, comprehend members of the Detective Bureau of the Manila Police Department who are appointed by and placed under the supervision and control of the City authorities pursuant to the provisions of Republic Act 409 (Revised Charter of the City of Manila). Additionally the term "secret agents" used in the cited provision does not include "detective", at least as these terms are intended in the Revised Administrative Code. Section 671 of this Code, before its amendment by Commonwealth Act No. 177 on November 13, 1936, in enumerating those persons embraced in the unclassified service specifically mentioned in paragraph (k) thereof, "Detectives, secret agents, sheriffs and deputy sheriffs." From this, it would appear clear that detectives are different and distinct from secret agents, as are sheriffs from deputy sheriffs and the two latter from the two former. Commonwealth Act 177 amended this paragraph by substituting therefor paragraph (j) which, as already stated, now refers to "secretaries of provincial boards, assistant provincial fiscals, provincial wardens, provincial sheriffs, deputy provincial sheriffs, and secret agents." As may be seen, detectives have been discarded from the enumeration and, therefore, eliminated from the unclassified service. The result is that detectives, after the amendment, became embraced in the classified service pursuant to Section 670 of the Revised Administrative Code which continued to provide, thus:

"Persons embraced in classified service.—Persons in the Philippine civil service pertains either to the classified or unclassified service. The classified service embraces all not expressly declared to be in the unclassified service." (Italics supplied).

Lastly, in accordance with Section 37 of the Revised Charter of Manila, which in part reads:

"Sec. 37. Peace officers.—The Mayor, the chief and deputy chief of police, the chief of detectives, and all officers and members of the city police and detective force shall be peace officers. Such peace officers are authorized to serve and execute all processes of the municipal court and criminal process of all other courts to whomsoever directed, within the jurisdictional limits of the city or within the police limits as hereinbefore defined; within the same territory, to pursue and arrest, without warrant, any person found in suspicious places or under suspicious circumstances reasonably tending to show such person has committed or is about to commit, any crime or breach of peace; * * *." (Italics supplied.)

the detectives of the Manila Police Department are not mere secret agents assigned or detailed to specific detection and apprehension duties, but are actually peace officers dedicated to the maintenance of peace and order of the City. That detectives are actually members of the police force, and, consequently, are in the classified service, has already been recognized by this Court in a long line of decided cases.[2] It is for this reason that they may no longer be removed except for cause and in the manner prescribed by Republic Act 557.

It may be said in passing that Paralejas is admittedly a Civil Service eligible. He was appointed to and accepted a position to which he was qualified. We find nothing illegal in the appointment of an eligible to a classified position.

But there is another reason why appellant's cause must fail. As stated before, the instant appeal stems from an action for mandamus filed by appellant Abelardo Subido, in his capacity as citizen and taxpayer, to restrain the City Treasurer from paying the salary of Paralejas, as Precinct Commander, out of city funds; to declare his

appointment illegal, to compel, the City Mayor and the Chief of Police to refund the salaries received by Paralejas during the latter's alleged illegal incumbency; and to effect Paralejas return to the Detective Bureau.

It is a basic and fundamental rule of our procedural law that actions must be prosecuted for and against the real party in interest.[3] And to be considered a real party in interest, it must be shown that such party would be benefited or injured by the judgment, or that he is entitled to the avails of the suit.[4] In the case at bar, appellant does not pretend to have any right to the position occupied by Paralejas, nor is he claiming to be directly and particularly affected by the payment to said appellee of the salary corresponding to the position of precinct commander, because, although it was alleged in the petition that appellant was not yet paid his retirement gratuity,[5] there is no intimation that such non-payment was caused by the disputed appointment of Paralejas. On the contrary, appellant himself declared that the delay in the payment of his gratuity was brought about by political differences, of which, the payment of the salary of a precinct commander has, certainly, nothing to do. Similarly, there is no showing that the payment to Paralejas of his salary created and imposed an additional and unreasonable burden upon the taxpayers of the City of Manila. Even granting therefore, arguendo that Paralejas' appointment was made in violation of existing laws, appellant Abelardo Subido, as a taxpayer and private citizen, has no right to institute the instant proceedings. On this point, the following authorities are illuminating:

Where nothing had been done or is proposed to be done which will create any burden on the taxpayers of the community, the mere fact that the defendant municipal officials have done, or proposed to do, an unauthorized or illegal act confers on him (taxpayer) no right to maintain a proceeding (*Shoemaker vs. Des Moines*, 129 Iowa 244, 105 NW 520, 3 LRA /NS/ 382; *Mississippi Road Supply Co. vs. Hester*, 185 Miss. 839, 188 Sc. 281, 124 ALR 574.)

A taxpayer suing in his private capacity, has no standing to maintain a suit to enjoin a state officer from committing a breach of his public duty, without showing that he will suffer injury thereby differing in kind from that suffered by the public at large. (*Colorado Paving Co. v. Murphy* [CCA 8th] 78 F. 28, 37 WRA 630; *Baltimore vs. Employers Asso.* 162 Md 124, 159 A 267; 81 ALR 342.)

Public wrongs or neglect or breach of public duty cannot be redressed at a suit in the name of the individual or individuals whose interest in the right asserted does not differ from that of the public generally. * * *.

To entitle a private individual to invoke the judicial power to determine the validity of executive or legislative action, he must show that he has sustained or is in immediate danger of sustaining a direct injury as a result of that action, and it is not sufficient that he has merely a general interest common to all members of the public. (Ex. parte *Levitt*, 302 US 633, 82 L ed 493, 58 S Ct 1.)

Wherefore, finding no reversible error in the judgment of the court a quo, the same is hereby affirmed, with costs against the petitioner-appellant. So ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, and Gutierrez David, JJ., concur.
Reyes, J.B.L., J., on leave, took no part.

[1] "Sec 685. Limitation on employment of person in unclassified service.—A person appointed to a position in the unclassified service shall not be employed in any position in the classified service nor shall he be allowed to do clerical duties other than such as may pertain to the office to which he was appointed."

[2] *Olegario vs. Lacson*, 97 Phil., 75; *Uy vs. Rodriguez*, 95 Phil., 493; 50 Off. Gaz. [8] 3574; *Palamine vs. Zagado*, 94 Phil., 494; 50 Off. Gaz. [4] 1566; *Abella vs. Rodriguez*, 95 Phil., 289; 50 Off. Gaz. [7] 3039; *Mission vs. Del Rosario*, 94 Phil., 483; 50 Off. Gaz. [4] 1571; *Pineda vs. Velez*, L-8859, Oct. 31, 1956.

[3] Section 2, Rule 3 of the Rules of Court.

[4] *Salonga vs. Warner, Barnes and Co., Ltd.*, 88 Phil., 125.

[5] Appellant's claim for retirement gratuity is still pending in the Office of the President.

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