

DOMINGO CUI, ET AL., PETITIONERS AND APPELLANTS, VS. LUCIO ORTIZ, ETC., RESPONDENTS AND APPELLANTS.

G.R. No. L-13753. April 29, 1960

Ponente: PARAS, C.J.

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PARAS, C.J.:

The present appeal originated from a petition for a writ of mandamus to compel respondent mayor to sign the payroll and approve the salaries accruing to petitioners, and to reinstate petitioners to their former positions.

Petitioners were civil service eligibles appointed by the then Mayor of Ronda, Cebu, Fortunato Villalon, on December 1 and 12, 1955, petitioner Maribao as Chief of Police, and petitioners Cui, Yusores and Beynosa as patrolmen of the said municipality. On January 16, 1956, the newly elected mayor, above respondent, served notice to petitioners advising them of the termination of their service. In that very month, respondent appointed a new Chief of Police and three new policemen to take the place of petitioners. He also sent a telegram to the President of the Philippines withdrawing the appointments of petitioners. Petitioners after said date of January 16, 1956, continued in the service by reporting to the PC detachment at Damangug, Cebu.

The trial court rendered judgment ordering the incumbent mayor, respondent, to approve the payment of petitioners' salaries from January 16, 1956 to July 18, 1956, but kept silent as to the reinstatement, which the court evidently did not deem proper.

Both petitioners and respondents appealed from the aforesaid decision, petitioners insisting in their reinstatement and accrued salaries until reinstatement; respondents assigning as error the payment of salaries from January 16 to July 18, 1956.

Section 14, Ex. Order No. 175 series of 1938 governs the appointments to the police force of the municipality. It says:

"14. Hereafter, appointments to and promotion in the municipal, city and provincial police service shall be made in accordance with Civil Service Rules and Regulations by the respective city or municipal mayor or governor, with the approval of the President of the Philippines pending" designation of the Department Head who is to exercise supervision over local police force, except in cases of Chief of Police of Chartered cities which is governed by special provisions of law. The selection of appointees shall be made whenever possible from the list of eligibles in the corresponding city or municipality, if there are any, and in the negative case, from the general list of eligibles in the province. Pending approval of the appointment by the President, the appointee may assume office and receive salary for services actually rendered until the appointment is finally acted upon."

Petitioners' appointments on December 1 and 12, 1955 by the then mayor of the municipality were legal and in order, the appointing power still in possession of his right to appoint. For such appointments to be complete, the approval of the President of the Philippines is required. The law provides that pending approval of said appointment by the President, the appointee may assume office and receive salary for services actually rendered.

Accordingly therefore, in that duration until the appointment is finally acted upon favorably or unfavorably, the appointees may be considered as "de facto" officers and entitled to salaries for services actually rendered.

Petitioners' appointments when respondent took office were not complete. Their recall and withdrawal having been based on lack of residence in the municipality concerned is proper. Respondent cannot be charged with discriminate removal of petitioners in view of their incomplete appointment to the office.

It is of record that the office of the President disapproved petitioner Maribao's appointment on July 18, 1956. It is in fact liberal construction for this Court (as for the lower court) to consider said date of July 18, 1956 as the final disapproval of appointments of the other petitioners.

Wherefore, the decision appealed from is hereby affirmed without costs,. So ordered.

Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera and Gutierrez David, JJ., concur.

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