

CAPT. J. ANTONIO M. CARPIO, ET AL., PETITIONERS AND APPELLANTS, VS. HON. MACARIO FERALTA, JR., ET AL., RESPONDENTS AND APPELLEES.*G. R. No. L-20093. March 31, 1965*

Ponente: BAUTISTA ANGELO, J.

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On June 7, 1962, petitioners and other reserve officers similarly situated who were selected and retained in the active service by the Board of Officers created by the Chief of Staff under an order issued on May 30, 1961, by virtue of Republic Act No. 2334 filed a petition before the Court of First Instance of Rizal seeking to enjoin the Secretary of National Defense and the Chief of Staff from reverting them to inactive status on the ground that their order for them to do is illegal it being in violation of Section 3 of Republic Act No. 2334 under which they are exempt from reversion as provided for in Section 2 of the same law.

Upon the filing of the verified petition the court a quo on same date issued an order requiring respondents to file their answer within ten days from receipt thereof and, after approving a bond in the amount of P2,000.00, it ordered the maintenance of the status quo of petitioners and other reserve officers similarly situated pending decision on the merits, setting at the same time for hearing the petition for preliminary injunction as well as the supplemental motion for preliminary mandatory injunction filed by petitioners on June 30, 1962.

Trial on the merits having been held, during which both parties presented their evidence, the court a quo rendered its decision dismissing the petition and cancelling the preliminary injunction issued in the meantime. Petitioners interposed the present appeal.

Petitioners and other reserve officers similarly situated who filed the instant petition before the court a quo as a class suit were all in the active service of the Armed Forces of the Philippines with five or more years of military service prior to May 16, 1962. Pursuant to Section 3 of Republic Act No. 2334, the Chief of Staff created a Board of Officers under an order dated May 16, 1962 to select the reserve officers who shall be retained in the active service for a term of one year from June 19, 1962. Said Board was composed of Col. Rigoberto J. Atienza as chairman, and Col. Pedro J. Bartolome, Col. Santiago I. Concepcion, Col. Marcelo S. Castillo, Capt. Emilio B. Liwanag, and Lt. Col. Arturo delos Reyes, as members, with Lt. Col. Felipe E. Cantor as secretary. This Board, on the basis of certain detailed criteria purposely adopted as guide in the selection of the officers to be retained, together with other factors that were brought to its attention for consideration, decided to retain in the active service as proposed in the several reports it has submitted for the purpose about 1,400 reserve officers with 54 retirable among whom the petitioners were included. The officers selected for retention were notified of their selection. The Board did not make any revision of the list approved by it until its term expired on May 31, 1962.

However, on April 24, 1962, a warning order was issued by the Chief of Staff reverting into inactive status a group of reserve officers covered by Republic Act No. 2334 among whom were some of petitioners. On May 22, 1962, a warning order was again released alerting all reserve officers covered by the same Act, regardless of

whether they were or not recommended for retention, to be ready for reversion. This warning was followed by a flash radiogram bearing the same date. Another flash radiogram was later sent by the Chief of Staff containing a list of those reserve officers to be reverted on June 19, 1962.

Petitioners asked respondent Secretary of National Defense to modify his reversion orders by including therein a clause providing for the grant of their accumulated vacation and sick leaves with full payment, while petitioner Capt. J. Antonio M. Carpio sent a letter to respondent Secretary of National Defense asking for the nullification of the reversing orders on the ground that the same were contrary to law. The Secretary refused to entertain the request and told petitioner Carpio that he could take the case to court if he so desires. Wherefore, petitioners instituted the present petition on June 7, 1962 as already above adverted to.

Petitioners assign several errors which, stripped of non-essentials, may be boiled down to the following issue: What is the effect of the selection for retention in the active service made by the Board of Officers constituted pursuant to Republic Act No. 2334 and in accordance with the rules and regulations of the Armed Forces of the Philippines?

Petitioners contend that the effect of such selection is to make their retention in the active service of reserve officers pursuant to Republic Act No. 2334 permanent, final, conclusive and unappealable such that the President of the Philippines, the Secretary of National Defense, or the Chief of Staff is prohibited from taking any hand, intervention, control and supervision over the selection that may be made by said Board pursuant to said Act and the rules and regulations of the Armed Forces of the Philippines. And to support this contention, petitioners cite paragraph 5(d) of the unnumbered Standing Operating Procedure of the Retention Board which states that the decision of the Board of Officers shall be final and unappealable. For ready reference, we are quoting hereunder the pertinent provisions of Republic Act No. 2334, of Circular No. 17 of the Chief of Staff dated November 23, 1959, and of the unnumbered Standing Operating Procedure already mentioned above:

"The provisions of section two of this Act shall not apply to reserve officers covered by the provisions of Republic Act Numbered Thirteen Hundred Eighty Two nor to those possessing technical qualifications, skills, and competence which are indispensable to the needs of the Armed Forces of the Philippines and for whom there are no satisfactory replacements from among reserve officers in the inactive status; Provided, that the selection of even officers shall be as determined by a Board of Officers to be appointed by the Chief of Staff." (Section 3, Republic Act No. 2334)

"4. SELECTION OF RESERVE OFFICERS TO BE RETAINED IN THE ACTIVE SERVICE:

"* * * * *

"b. The selection of officers to be retained shall be by individuals rather than by groups or category. In making each individual selection, the Board shall apply strictly the criteria prescribed in the law as follows:

(1) The officers concerned must have technical skills, qualifications, and competence which are indispensable to the needs of the AFP; and

(2) There is no satisfactory replacement for this officer, from among the inactive officers.

"c. The Board's selection of an officer for retention shall not be permanent. Such an officer shall be retained in the service only as long as the two conditions enumerated in par. (b) above, are satisfied in his particular case. Accordingly, the Board shall continuously reexamine the existing list of officers selected for retention with a view to up-dating this list to conform with changes in the critical officer needs of the AFP, the individual performance of the officers concerned, and the availability of inactive reserve officer replacements." (Paragraph 4, Circular No. 17, November 23, 1959)

"All decisions of the Board shall be arrived at by a majority vote of the appointed members of the Board. Any such decision once made, shall be final and unappealable." (Paragraph 5(d)i Unnumbered Standing Operating Procedure)

Petitioners contention is devoid of merit. Even if we carefully peruse Section 3 of Republic Act No. 2334 regarding the selection of reserve officers for retention in the active service we would find nothing therein from which we may imply that the selection of a reserve officer by the Retention Board created by the Chief of Staff is final, conclusive and binding on the President, the Secretary of National Defense, or the Chief of Staff, as may be seen from the following proviso: "Provided, that the selection of even officers shall be as determined by a Board of Officers to be appointed by the Chief of Staff." True, said proviso is but an exception to the general provision immediately preceding it to the effect that the selection shall not apply "to those possessing technical qualifications, skills, and competence which are indispensable to the needs of the Armed Forces of the Philippines and for whom there are no satisfactory replacements from among reserve officers in the inactive status," but it is precisely for this reason that the selection is to be made for not all possess the technical qualifications for whom no satisfactory replacement could be found. But the selection to be made is no more nor less than the result of a process of elimination to serve as guide for the corresponding superior officers to choose those who should be retained and those who should be returned to inactive status. In short, the selection is merely recommendatory and the same is not final nor conclusive upon the superior officers abovementioned. And this is so because, under Section 79 (c) of the Revised Administrative Code, a Department Head has direct control, direction and supervision over all officers under his jurisdiction and may, any provision of existing law to the contrary notwithstanding, repeal or modify the decision of the chief of said office when advisable in the public interest. And under Section 74 of the same Code, a Department Head is under the supervision and control of the President of the Philippines in matters of general policy one of which certainly is that which affects the organization of the Armed Forces of the Philippines. The contention, therefore, that the selection made by the Retention Board is final and unappealable simply because it is so stated in the unnumbered Standing Operating Procedure issued by the Chief of Staff is untenable for it cannot have the effect of overriding the superior authority that the law vests in the President of the Philippines, the Secretary of National Defense, and the Chief of Staff insofar as the retention of reserve officers of the armed forces is concerned.

Another factor that may be considered on this matter in Section 22 (m) of Commonwealth Act No. 1 (National Defense Act) which empowers the President to "order reserve officers to active duty at any time and for any period" he may desire, which impliedly gives to the President discretion to determine the duration of the tour of duty of a reserve officer in our army and, incidentally, to order his reversion to inactive status. Section 3 of Republic Act No. 2334 has not repealed, either expressly or impliedly, this basic authority and discretion given to the President to revert reserve officers to inactive status at any time. The only effect of said Act 2334 is to remove the officers selected for retention from the operation of the mandatory reversion provided for in Section 2 by making compulsory reversion inapplicable to them.

In enacting Republic Act No. 2334 Congress did not intend to withdraw from the President his pre-existing authority to revert reserve officers to inactive status but merely to limit his power to retain reserve officers in the service longer than two years, and this legislative may be gleaned from the explanatory note to House Bill No. 1619, now Republic Act No. 2334, and the speech of Representative Cornelio Villareal during the deliberation said bill which we quote below:

"The attached bill seeks to provide the compulsory rotation reserve officers in the active service of the Armed Forces of Philippines in order to meet the training needs of the reserve Officer Corps.

"The Citizen Army' concept of the National Defense Act has always envisioned the calling of reserved officers

to extended tours of active duty primarily for the purpose of training. However, due principally to the exigencies of the peace and order campaign, no rotation program for reserve officers in the active service has been implemented since the liberation.

"This failure to enforce such a rotation program has seriously impaired the build-up of an effective officer corps. Records show that almost 85 per cent of the 15,000 reserve officers in the inactive status have never served in active duty for the past ten years. Under these circumstances the reserve officer corps cannot be expected to fulfill its vital national defense role of providing qualified officers for our reserve units in case of emergency. For it is obvious that to make these untrained officers lead men in combat would be disastrous, perhaps criminal." (Explanatory note to House Bill No. 1619, 4th Congress)

"* * * In this, Mr. Speaker, I have no choice but to speak for the young boys, 15,000 in number, the flower of the youth of our land. I explained when I stood here, and I would say it again, that there is no need for this bill. Why? Because under the concept of our National Defense Act, Commonwealth Act No. 1, the Secretary of National Defense, the Chief of Staff and the Staff of our Army have the duty to yank out those officers without legislative action, because it is already in that law, taking boys by means of rotation in order that the reserve officers force can be trained and be ready for action at any moment. Yes, Mr. Speaker, there is only need to drive the nail into the heads of the Secretary of National Defense, the Chief of Staff and the President of the Philippines that they must comply with Commonwealth Act No. 1. I am standing in favor of the bill, if only to drive the nail into the heads of the President of the Philippines, the Chief of Staff and the Secretary of National Defense, that they must comply with the provisions of Commonwealth Act No. 1." (Excerpt from Speech of Rep. Cornelio Villareal, Congressional Record, 4th Congress, 1st Regular Session, Vol. 1, series 58, p. 2018)

It is contended that the court *a quo* erred in not ordering respondents to allow petitioners and other reserve officers who were reverted to inactive status to avail themselves of their "enjoyed leave" of absence by making the date of effectivity of their reversion coincide with the end of their respective accumulated leave of absence and to pay them the full amount corresponding to the money value of 1ch "enjoyed leave" of absence pursuant to Section 28G of the Revised Administrative Code. But to answer this point, suffice it to state that the section thus invoked does not contain any provision entitling petitioners to the "enjoyed leave" of absence they now claim for such section merely refers to the total vacation and sick leaves that have been accumulated in their favor. To such accrued vacation and sick leaves they are entitled and they can collect the same any time.

The same thing may be said with regard to the gratuity which Republic Act No. 2334 gives to reserve officers upon their reversion to inactive status. Petitioners are also entitled to this gratuity in the light of Section 4 of said Act.

Wherefore, with the modification that petitioners are entitled to the payment of their accrued vacation and sick leaves as well as the gratuity allowed to them by law upon their reversion, which respondents are ordered to pay upon demand, the order appealed from is affirmed, without pronouncement as to costs.

Bengzon, C. J., Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regain, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

Order affirmed with modification.

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