

MAYOR EULOGIO E. BORRES, PETITIONER, VS. HON. MATEO CANONoy, PRE-SIDING JUDGE, COURT OF FIRST INSTANCE OF CEBU, BRANCH III, 14TH JUDICIAL DISTRICT, AND SILVERIO PARAGES, RESPOND...*G.R. No. L-31641. October 23, 1981*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/aced535d353d/>**DE CASTRO, J.:***

In 1968, herein petitioner Eulogio Borres was then the acting mayor of Cebu City, while private respondent Silverio Parages was a detective in the Cebu Police Department holding such position in a permanent capacity being a civil service eligible. He was assigned to the Homicide and General Investigation Section of the Investigation Branch of said department, particularly to the Missing Persons Section.

On November 14, 1968, acting on verbal complaints that respondent Parages had been molesting Chinese businessman in Cebu and the fact that his performance was not satisfactory, petitioner Borres issued a memorandum ordering the detail of respondent to his office.[1]

On November 21, 1968, after the said detail order was endorsed by the Chief of Police, Parages was served with a copy thereof, but he refused to receive it and to comply with said order. He informed petitioner that he was declining the detail because the order was illegal[2] and continued to report to his unit.[3]

On December 7, 1968, Parages filed a petition for prohibition and injunction in the court a quo against petitioner. The Court, however, did not issue the writ of preliminary injunction as prayed for, but preferred to hear the evidence before taking any action.[4]

Meanwhile, in view of respondent's refusal to comply with the detail order, petitioner charged him with insubordination and neglect of duty in the Police Commission through the City Board of Investigators. At the same time, he ordered the suspension of respondent.[5] Respondent thus amended his petition for prohibition and injunction, with the additional prayer that his suspension be declared illegal.

After trial on the merits, the trial court rendered its decision dated February 4, 1969 declaring the detail order of November 14, 1968 illegal and therefore null and void, for being contrary to Section 90 of Republic Act No. 3857, otherwise known as Revised Charter of the City of Cebu and to the constitutional protection of security of tenure. Consequently, it held the order of suspension dated December 16, 1968 likewise illegal, and ordered the immediate reinstatement of private respondent to the service and the payment of his back salaries.

In the order of March 3, 1969, the lower court denied petitioner's motion for reconsideration of the decision and granted the immediate execution of the judgment pending appeal upon filing by private respondent of a bond in the sum of P3,000.00.[6]

Hence, petitioner filed the present petition for review on certiorari, raising principally the issue of whether or not it is within the power of the Mayor to order the detail of private respondent under the Revised Charter of the City

of Cebu and the latter's suspension for refusing to comply with the order.

It is the contention of herein petitioner that although Section 90 of the Revised Charter of Cebu, which provides:

"Section 90. Power and Duties of the Chief of Police.- There shall be a Chief of Police with a salary of seven thousand eight hundred pesos per annum who shall have charge of the police department and everything pertaining thereto including the organization, administration, discipline, and disposition of, and the transfer of, members from and to the city police and detective bureau; x x x and shall promptly and faithfully execute all orders of the Mayor, including assignments and transfer of personnel.

is applicable, it should, however, be read in the light of Section 20 of the said law, which reads:

"Section 20. General Powers and Duties of the Mayor.- The Mayor shall have the following general powers and duties:

x x x x

"e. To see that executive officers and employees of the city are properly discharging their respective duties. The Mayor may, in the interest of the service, transfer officers and employees not appointed by the President of the Philippines from one section, division, service, or department to another section, division, service, or department without changing the compensation they receive."

Petitioner likewise cites Section 19 of the city. Charter which provides:

"Section 19. Nature of Officer; Qualification; Compensations.- The Mayor shall be the chief executive of the city and as such shall have immediate control over the executive functions of the different departments and agencies of the city, subject to the general supervision of the President as may be provided for by law x x x."

and Section 32 which enumerates the departments on which the mayor may exercise supervision and control and reads:

"Section 32. City Departments.- There shall be the following city departments over which the Mayor shall have direct supervision and control, any existing law to the contrary notwithstanding:

x x x x

"(6) Police Department

x x x x."

Private respondent, on the other hand, claims that pursuant to Administrative Order No. 42, Series of 1937, issued by the Civil Service Commission "whenever the Head of any Department or Dependency of the National Government deems it necessary to assign any employee outside of the Bureau or office where he is regularly employed, or to perform within the same Bureau or office a kind of work which is different from that for which the position he occupies has been provided, the said Department or Dependency shall issue an order stating the necessity for such special assignment and a copy of the order shall be furnished to the Budget Office, but no such special assignment shall be made for more than 30 days." He also claims that in addition to the foregoing requirement, Memorandum Circular Nos. 45 and 29 of the Civil Service Commission dated September 24, 1964 and July 29, 1965, respectively, require that all assignments and reassignments to positions of a grade or character not contemplated by the examination from the results of which appointment was made x x x should also be submitted to the Commission for prior approval.

Aside from the aforementioned administrative order and circulars, private respondent likewise cites Section 684 of the Revised Administrative Code which provides:

"No person appointed to a position in the classified service shall, without the approval of the Commission of Civil Service, be assigned to or employed in a position of a grade or character not contemplated by the examination from the result of which appointment was made, unless otherwise provided by law."

Private respondent also disputes the validity of his suspension, claiming that contrary to Section 16 of Republic Act No. 4864, he was suspended even before the filing of an administrative complaint against him. Section 16 provides:

"Section 16. Suspension of Members of the Police Force or Agency.- When an administrative charge is filed under oath against any member of the local police agency, the city mayor or municipal mayor, as the case may be, may suspend the respondent: Provided, That the charge involves disloyalty to the government, dishonesty, oppression, grave misconduct, serious irregularities, or serious neglect of duty, if there are strong reasons to believe that the respondent is probably guilty thereof which would warrant his suspension or removal from the service xxx."

He further contends that the suspension order is a premature conclusion considering that the detail order was then already subject of a judicial determination as to its validity.

Under the foregoing facts and the pertinent laws cited, the power of petitioner, as Mayor of Cebu City, to detail respondent cannot be denied. Such power to detail must necessarily be deemed included in his power of control and supervision over different departments, among which is the Police Department, as expressly so provided in Sections 19 and 32 of the Revised Charter of Cebu.

In the case of *Mondano vs. Silvosa* 97 Phil. 143, this Court had the occasion to define "supervision" and "control" thus:

"Supervision means overseeing of the power or authority of an officer to see that subordinate officers perform their duties; control on the other hand, means the power of an officer to alter, modify or nullify or set aside what subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter."

In *Rodriguez, et al. vs. Montinola, et al.*, 94 Phil. 964, 972, We had earlier said:

"To supervise is to oversee, to have oversight of, to superintend the execution of or the performance of a thing, or the movements or work of a person, to inspect with authority; to inspect and direct the work of others. It is to be noted that there are two senses in which the term "supervision" has been understood. In one it means superintending alone or the oversight of the performance of a thing without power to control or to direct. In the other, the inspection is coupled with the right to direct or even to annul. The decisions of courts in the United States distinguish between supervision exercised by an official of a department, and supervision for the purpose of preventing and punishing abuses, discrimination and so forth."

If by the grant of the power of control and supervision, the Mayor can nullify or set aside what a subordinate has done in the performance of his duties, it is evident that he can order the detail of private respondent to correct or prevent him from committing any abuse in the performance of his duties; otherwise, said Sections 19 and 32 of the city charter would just be stale and meaningless provisions.

The power to detail may also be gleaned from the fact that Section 20 of the same charter provides that the Mayor has the power to see to it that executive officers and employees are properly discharging their respective duties. It should be recalled that the Mayor issued the questioned detail order after he has received reports that Parages' efficiency is far from satisfactory and had been molesting Chinese businessmen. Hence, in this desire to gain information of actual facts and closely look at his activities, he ordered the detail of private respondent to his office. There is no effective way by which the Mayor can see to it that private respondent properly discharged his

duties.

Furthermore, the same Section 20 authorizes the Mayor, in the interest of the service, to transfer officers and employees from one section, division, service or department without changing the compensation. A transfer is a movement of personnel, more or less permanent in nature, while detail is merely temporary. In the former, the employee concerned loses position, while in the latter he does not.[7] It would be illogical to hold that a Mayor can transfer employees from one station to another--which action involves permanency and severance of official connection of the transferee with his former position, but cannot order the detail of the private respondent which is for a more or less brief period, and is therefore only temporary in character.

The power of the Mayor in the disposition and transfer of members of the Police Department is not by any means limited by the provision of Section 90 of the Revised Charter of the City of Cebu which refers expressly to the powers and duties of the Chief of Police of Cebu which are thereby enumerated. Among such duties is to execute promptly and faithfully all orders of the Mayor "including assignments and transfers of personnel." Section 90 of the said charter, therefore, far from supporting private respondent's claim of illegality of his detail order issued by the Mayor, expressly recognizes the latter's powers to make transfer of personnel in the police department, under the more general grant of power to him under Section 20 of the Charter of Cebu City which gives him very broad power to make transfer of officers and employees from one section, division, service or department to another section, division, service or department without changing the compensation they receive.

The administrative order and circulars cited by private respondent are totally inapplicable to the case at bar. Administrative Order No. 42, Series 1937, refers to Head of any Department or Dependency of the National Government assigning any employee outside of the bureau or office, where he is regularly employed. Moreover, they are in the nature of general laws which cannot prevail over the charter of Cebu which is a special law granting the City Mayor exclusive power of control and supervision over city employees. Public service and the practical necessities of efficient and honest government demand immediate action from the Mayor. The stability and efficiency of the city government may be jeopardized if the Mayor has to secure prior approval of the Commissioner of Civil Service in order that he may validly detail and closely supervise an employee. As was aptly said in *Pineda vs. Claudio*, 28 SCRA 34, it is the local executive, more than anybody else, who is primarily responsible for efficient (and honest) governmental administration in the locality and the effective maintenance of peace and order therein, and is directly answerable to the people who elected him. Nowhere is this more true than in the sensitive area of police administration.

Similarly, the case of *Lejano vs. Garcia*, 109 Phil. 117, which held that an officer cannot be detailed or transferred even temporarily without his consent has no application in the instant case. In that case, the transfer of petitioner Lejano already amounted to removal, for as found by this Court, such transfer was not a mere temporary assignment but a veritable new appointment which he had declined, and that respondents had already appointed another to take Lejano's place.

Likewise not in point is the constitutional provision on security of tenure. A temporary detail is neither removal, suspension or transfer when made in the interest of public service[8] and absent a showing of manifest abuse of discretion or that the detail is due to some improper motive or purpose.[9] As found by the respondent court, the alleged bad faith of the petitioner in ordering the detail of respondent to his office is not clear and the doubt should be resolved in his favor. Be that as it may, it should also be stressed that the constitutional provision on removal or suspension except for cause as provided by law gives in to the fundamental postulate that a public office is a public trust.[10]

As regards the order of suspension dated December 16, 1968, We are also constrained to reject the contention of

private respondent that his suspension is invalid because it was made before the filing of the complaint. For while it is true that the complaint dated December 16, 1968 was forwarded by the Office of the Mayor and filed before the Police Commission only in the morning of December 17, 1968,[11] the said suspension order was expressly made to take effect only upon receipt of the same by petitioner.[12] It was not shown when petitioner received said order of suspension, but in all likelihood it must have been not before the filing of the complaint.

Neither does the filing of the petition for prohibition and injunction render the suspension order invalid. The mere filing of the petition did not, ipso facto, make the detail order illegal, nor did it authorize private respondent to ignore the said order, the implementation of which had not been restrained by the lower court. Noteworthy is the fact that the issuance of the detail order carries with it the presumption of regularity.[13]

The suspension order was predicated on his obstinate refusal to obey the detail, and although the charge involved was denominated by petitioner as neglect of duty it cannot be doubted that such refusal properly constitutes grave misconduct which is one of the grounds for suspending an officer under Section 16 of the Polcom Law.

WHEREFORE, the decision of the lower court dated February 4, 1969 is hereby set aside and another one is entered declaring legal and with full force and effect petitioner's questioned detail and suspension orders. Without cost.

SO ORDERED.

Teehankee, (Chairman), Fernandez, Guerrero, and Melencio-Herrera, JJ., concur.
Makasias, J., took no part.

* Mr. Justice de Castro was designated to sit with the First Division under Special Order No. 225.

[1] p. 61, Rollo.

[2] p. 64, Id.

[3] p. 2, Decision of the CFI of Cebu, Branch III, p. 70, Id.

[4] Ibid.

[5] pp. 67-68, Rollo.

[6] Order, pp. 80-81, Id.

[7] The present P.D. 807, otherwise known as the Civil Service Decree of the Philippines, defines "transfer" and "detail" as follows:

"(c) Transfer.- A transfer is a movement from one position to another which is of equivalent rank, level or salary without break in service involving the issuance of an appointment.

"It shall not be considered disciplinary when made in the interest of public service, in which case, the employee concerned shall be informed of the reasons therefore. If the employee believes that there is no justification for the transfer, he may appeal his case to the Commission.

"The transfer may be from one department or agency to another or from one organizational unit to another in the same department or agency: Provided, however, That any movement of the non-career service to the career service shall not be considered a transfer."

x x x

"(f) Detail.- A detail is the movement of an employee from one agency to another without the issuance of an appointment and shall be allowed only for a limited period in the case of employees occupying professional, technical and scientific positions."

[8] Cruz vs. Navarro, 66 SCRA 80.

[9] Trinidad, et al., vs. Lacson, 109 Phil. 95.

[10] G. R. No. L-30135, Sto. Domingo, et al. vs. Hon. de los Angeles, promulgated February 21, 1980, citing Orenca vs. Enrile, 55 SCRA 580.

[11] pp. 55 and 13, Record (Exhibits "9" and "13").

[12] p. 58, Id., (Exhibit "12").

[13] Section 5(m), Rule 131, Rules of Court; Quiem vs. Serina, L-22610, June 30, 1966, 17 SCRA 567; Phil. International Surety Co., Inc. vs. Court of Tax Appeals, L-22420, March 18, 1967, 19 SCRA 617; People vs. Pineda, L-26222, July 21, 1967, 20 SCRA 748; People vs. Cortez, L-23508, December 11, 1967, 21 SCRA 1228.

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