

REMIGIO R. ESQUILLO, PETITIONER-APPELLANT, VS. HON. ABELARDO SUBIDO, AS COMMISSIONER OF CIVIL SERVICE, CARMELO C. NADERA, AS MUN. MAYOR, AND SANTIAGO PARREÑO, AS MUN. TREASURER,...

G.R. No. L-30341. August 22, 1969

Ponente: FERNANDO, J.

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FERNANDO, J.:

In this suit for mandamus, petitioner, now appellant, Remigio R. Esquillo would assert his right to the position of Chief of Police of Tayabas, Quezon Province, seeking rein-statement to such position, his removal therefrom being in his opinion contrary to the due process safeguard of the Consti-tution. Such reliance was in vain, the lower court, in a decision of January 10, 1967, dismissing his petition. He elevated the case to the Court of Appeals, raising purely questions of law for which reason the matter is now before us. On the facts as found in the lower court decision, which we are not free to disturb, we discern no error committed by the lower court. This appeal cannot prosper.

A brief statement of the case is set forth in the appealed decision. Thus: "In this petition for Mandamus filed by Remigio R. Esquillo on November 17, 1965 against the Honorable Abelardo Subido, Commissioner of Civil Service, Carmelo Nadera, Municipal Mayor of Tayabas, Quezon, and Santiago Parreño, Municipal Treasurer of Tayabas, Quezon, to compel the first two respondents to reinstate the petitioner to his former position as Chief of Police of said municipality, and to compel the respondent Municipal Treasurer to pay peti-tioner his salaries from October 15, 1964 up to the date of his reinstatement, the issue is, in effect the validity of petitioner's dismissal by respondent Mayor as Chief of Police on the mentioned date of October 15, 1964. The parties have submitted the case for judgment on the pleadings."[1]

The facts, according to such decision, follow: "On September 2, 1963, Epifanio J. V. Orias, then Municipal Mayor of Tayabas, appointed petitioner Chief of Police of said municipality. The Mayor intended the appointment to be permanent in nature. However, on that date, petitioner did not have civil service eligibility for the position of Chief of Police, for which reason, the Provincial Treasurer, as Deputy of the Commissioner of Civil Service, on October 1, 1963, approved the appointment as a provisional or temporary one under section 24(c) of Republic Act No. 2260. It is to be presumed that petitioner accepted the provisional character of his appointment."[2]

The decision, now on appeal, next took up the matter of removal of petitioner. Thus: "In the meantime, respondent Mayor was elected to his position in the 1963 elections. On March 30, 1964, the Municipal Council of Tayabas passed Resolution No. 161 which practically removed petitioner from his position as Chief of Police of the municipality. The reso-lution was not implemented by respondent Mayor until October 7, 1964 when he advised petitioner that his services were being terminated effective October 15, 1964. On December 23, 1964, the Commissioner of Civil Service certified that petitioner had successfully passed the examination for Chief of Police."[3]

Then came the conclusion arrived at by the lower court: "Upon the foregoing facts, the Court is of opinion that petitioner has no valid cause of action. It has already been ruled by the Supreme Court that when an appointment is temporary in nature, it can be terminated at the discretion of the appointing power." [4]

In this appeal by petitioner five errors were assigned, the last maintaining that reinstatement ought to have been ordered in view of the failure to observe the constitutional requirement of due process which was stressed repeatedly in the other alleged errors committed.

We repeat that the decision thus arrived at is immune from the attack to which it is now subjected. Only recently, in *Baraňgan v. Hernando*, [5] we sustained the holding earlier announced in *Santos v. Chico*. [6] Thus: "It follows that the appointment of petitioners must be regarded as temporary as originally extended, and should be deemed approved as such by the Civil Service. As a result, the petitioners enjoy no fixed or protected tenure, and the appellee-respondent, Mayor Chico, had the right to terminate their services at any time, this condition being inherent in the temporary character of their appointment." The applicability of this case is undeniable, the position being that of a Chief of Police appointed in an acting capacity which in legal contemplation cannot be distinguished from one provisional and temporary in character as that obtaining in the present petition.

It does not admit of doubt that whenever the due process guaranty is appropriately invoked to protect the security of tenure of appointments permanent in character, an affirmative response is called for from the judiciary. So it has been in the past. So it ought to be. It is equally clear, however, that where no such permanency can be attributed to an appointment as in this case, then whatever sympathy might exist for the plight of the official thus deprived of his office certainly cannot be substituted for the existence of a clear legal right without which a petition for mandamus cannot possibly hope to succeed.

WHEREFORE, the decision of January 10, 1967 is affirmed. Without costs.

Concepcion, C.J., Dizon, Makalintal, Sanchez, Castro, Capistrano, and Teehankee, JJ., concur.

Zaldivar and Barredo, JJ., did not take part.

Reyes, J.B.L., J., is on official leave.

[1] Decision of the lower court, Record on Appeal, p. 135.

[2] *Ibid*, p. 136.

[3] *Ibid*, pp. 136-137.

[4] *Ibid*, p. 137.

[5] G.R. No. L-28652, February 28, 1969.

[6] G.R. No. L-24155, September 30, 1968.

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