

ANTONIO J. VILLEGAS, IN HIS CAPACITY AS MAYOR OF THE CITY OF MANILA, GREGORIO A. EJERCITO, RIZAL DAGA, DIONISIO BARING, DIOSDADO ROQUE, ARTURO T. DE GUIA, AUGUSTO CASIBANG, JOSE...*G.R. No. L-29588. December 27, 1968*

Ponente: CAPISTRANO J.

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Manila Ordinance No. 6485, effective January 1, 1968, created the position of City Legal Officer and the positions of his staff, and appropriated the ne-cessary amount for their salaries. This Ordinance was passed pursuant to Section 19 of Republic Act No. 5185, otherwise known as the Decentralization Act of 1967, which authorizes a city to create said positions to enable the city to avail itself of "full time and trusted services." For this purpose, con-tinues the law, "the functions hitherto performed by the * * * city fiscals in serving as legal adviser and legal officer for civil cases of the * * * city shall be transferred to the * * * city legal officer * * *."

On January 23, 1968, Mayor Antonio J. Villegas ap-pointed Gregorio A. Ejercito as City Legal Officer effective January 1, 1968. On the same day Mayor Villegas designated Ejercito City Legal Officer "[i]n the interest of the public service and in order to enable the Office of the City Legal Officer, which was created effective January 1, 1968, to immediately start functioning." The Mayor also made appointments to the staff of the City Legal Officer, as follows:

NAME**ELIGIBILITY****POSITION****DATE OF APPOINTMENT****EFFECTIVITY OF APPOINTMENT**

Victor C. Gella

1966 Bar; Gen. Clerical

Legal Researcher

1-23-68

Upon approval

Francisco S. Alcantara

1968 Bar

Asst. Attorney

1-23-68

Upon approval

Julia J. Daquigan

Testimonial Bindery Helper

Bindery Helper

1-23-68

Jan. 1, 1968

Angel M. Lozari

Gen. Clerical

Clerk-Typist

1-23-68

Jan. 1, 1968

Francisco Castro

Testimonial

Utilityman

1-23-68

Jan. 1, 1968

Edelita F. Reyes

1966 Bar; Gen. Clerical

Legal Researcher

1-23-68

Jan. 1, 1968

Demetrio Mendoza

Gen. Clerical

Sr. Clerk

1-23-68

Jan. 1, 1968

Rebecca V. Casibang

Jr. Stenog.; Gen. Clerical

Sr. Clerk

1-23-68

Jan. 1, 1968

Rizal G. Daga

Bar; 1st Grade

Chief of Div. (Adm.)

1-23-68

Jan. 1, 1968

Augusto Casibang

Gen. Clerical

Adm. Asst.

1-23-68

Jan. 1, 1968

Rocio T. Lomuntad

1959 Bar

Legal Aide

1-24-68

Upon approval

Armando M. Pulgado

Bar

Legal Asst.

1-25-68

Upon approval

Dionisio P. Baring

1954 Bar

Sr. Atty.

1-30-68

Upon approval

Dominador T. Mendoza

Laborer-Helper

2-1- 68

Upon approval

Pedro J. Manalo

Laborer-Helper

2-1- 68

Upon approval

Alejo Boquiren, Jr.

1966 Bar

Legal Researcher

2-7- 68

Upon approval

Emilia B. Foz

Bindery Helper

2-8- 68

Upon approval

Ramon S. Solidum

Bar

Legal Asst.

2-12-68

Upon approval

Cipriano Cid, Jr.

Bar

Legal Researcher

2-12-68

Upon approval

Luvimindo E. Echon

Laborer-Messenger

2-15-68

Upon approval

Diosdado C. Roque

1960 Bar

Sr. Atty.

2-16-68

Upon approval

Jose V. Alcantara

1954 Bar

Asst. Atty.

2-19-68

Upon approval

Criselda C. Rempillo

Gen. Clerical

Clerk-Typist

2-22-68

Upon approval

Fely B. Esteban

1965 Bar

Legal Researcher

2-26-68

Upon approval

Nemesio M. Gatchalian

1966 Bar

Asst. Atty.

2-27-68

Upon approval

Teresita M. Belisario

Gen. Clerical

Clerk-Typist

2-28-68

Upon approval

Arturo T. de Guia

1950 Bar

Sr. Atty.

4- 2-68

Upon approval

Mercedes M. Feliciano

First Grade

Records & Docket Asst.

4- 6-68

Upon approval

The appointments were sent to the Civil Service Commission shortly after the respective dates of said appointments.

On March 13, 1968, Mayor Villegas sent Civil Service Commissioner Abelardo Subido a letter of justification of the appointment of Ejercito as City Legal Officer. The letter, in part, reads:

"Atty. Gregorio A. Ejercito has been the As-sistant Secretary for legal and Administrative Services up to his appointment as City Legal Officer of Manila on January 23, 1968. He has under his direct charge and supervision three (3) divi-sions, namely, the Legal Division, Administrative Division, and the Accounting & Property Division.

"The Legal Division under this organization set-up has been entrusted with the functions or duties, among others, of: (1) making researches on legal issues affecting the interests of the City; (2) processing contracts to be entered by the City; (3) drafting or preparing executive orders, proclamations, or proposed ordinances and resolutions for submission to the Municipal Board; (4) conducting formal administrative investigations against erring officials and em-ployees; (5) preparing decisions on said administrative cases for the consideration of the undersigned; and (6) otherwise, performing such other functions which only lawyers or members of the bar are qualified to perform.

"Indeed, there have been numerous cases which Atty. Gregorio A. Ejercito and his as-sistants had to handle in court especially those affecting the rights and interests of the City of Manila because as has happened not infre-quently, the City Fiscal of Manila (the then legal adviser and legal officer of the City) took positions or held views in said cases contrary or adverse to the position taken by the Office of the Mayor or the undersigned.

"There have also been many instances when Atty. Ejercito and his assistants represented the undersigned in court or in the fiscal's office in cases where the undersigned either sued or was sued in his official capacity as Mayor of Manila. In all of these cases where Atty. Ejercito appeared as counsel either of the City of Manila or of the undersigned in the latter's official capacity and upon my direction, no prior permission was secured from the Commission for him to appear as such counsel inasmuch as it was part of his duties to handle legal matters affecting the City or the Mayor of Manila, and to make court appearances when the circumstances warrant * *

*,

"Inasmuch as Atty. Ejercito has been rendering service in the Office of the Mayor for the last 22 years, performing legal and administrative work, I believe I am in a good position to assess his capabilities and qualifications for the position, as well as his dedication to the service. Indeed, in recognition of his outstanding

services to the City government in the legal and administrative fields, he was voted in the year 1961 by the City Hall Press Club as the "Most Outstanding Assistant Department Head" in the City government. Considering his long and varied experience in the service of the City government and his familiarity with its administrative practices, procedures and policies which will serve him in good stead in the new position, I sincerely believe that his proposed appointment is fully justified."

No action having been taken by the Civil Service Commissioner on the appointments despite the lapse of about 6 months, on July 29, 1968, Mayor Villegas sent Commissioner Subido a follow-up letter concluding:

"From the foregoing it may be seen that early action on the proposed appointments submitted to your office is urgently necessary to enable the City Legal Office to discharge its duties under the law with a full complement, particularly considering the volume of work which it has been attending to since its creation."

On September 20, 1968, Mayor Villegas sent the Commissioner another follow-up letter stating that the appointees who had been working since their appointments without having received their salaries were suffering privations, and that as more than 180 days had already elapsed since their appointments had been received by the Civil Service Commission said appointments should be deemed to have been properly made under Section 20 of Republic Act No. 2260, otherwise known as the Civil Service Act of 1959, and that said appointments should immediately be released.

On September 30, 1968, Commissioner Subido sent Mayor Villegas a letter returning the appointments without action, of all the appointees (except Ejercito) on the ground that Ejercito had no legal capacity to re-commend said appointments considering that his own appointment had not yet been approved. The letter also said that as the appointments had been sent direct to the Commissioner, Section 20 of Republic Act No. 2260 was not applicable and that "this Office is not limited by the law to a period of 180 days within which to act on appointments."

On October 1, 1968, Commissioner Subido disapproved the appointment of Ejercito in an indorsement which in part states:

"For appointment to the position of City Legal Officer, the following qualification standards must be met:

Education: Bachelor of Laws

Experience: Three years experience in general legal work and four years experience in trial work in the Court of First Instance and/or superior courts.

Eligibility: RA 1080 (BAR)

"Mr. Ejercito is presently holding the position of Assistant Secretary for Legal and Administrative Services. A certification of the duties of the said position as certified by that Office has been submitted to this Office. A perusal of Mr. Ejercito's information sheet and the statement of his duties would show that while he meets the education and civil service eligibility requirements, he does not meet the four years' experience in trial work in the CFI and/or superior courts. Suffice it to state that Sec. 23 enjoins that 'Employees shall be selected on the basis of their fitness to perform the duties and assume the responsibilities of the positions whether in the competitive or classified or in the non-competitive or unclassified service.'

"Premises considered, the appointment of Mr. Ejercito has been disapproved. * * *."

The first question presented before us is, whether Section 20 of Republic Act No. 2260 is applicable to the appointments of Ejercito and his staff which were submitted direct to the Commissioner of Civil Service. The answer is in the negative. The statute cited contemplates a situation where an appointment is attested by the city treasurer in his capacity as deputy of the Commissioner of Civil Service. Such attested appointment takes effect

immediately and the appointee is entitled to receive the salary of the position. Section 20 then provides that:

"All appointments made by * * * city mayors shall, after being attested to by the respective * * * city treasurer, be forwarded within ten days to the Commissioner of Civil Service for review pursuant to Civil Service law and rules. If, within one hundred eighty days after receipt of said appointments, the Commissioner of Civil Service shall not have made any correction or revision, then such appointments shall be deemed to have been properly made * * *."

This law, clearly, does not cover the appointments of Ejercito and his staff. The law cannot be applied to their appointments by analogy, because theirs is a different situation and there is no act therein analogous to the attestation mentioned in the law. It is true that in 1959 there was an arrangement made by City Treasurer Sarmiento and Mayor Lacson with Civil Service Commissioner del Rosario whereby appointments made by the City Mayor were to be sent directly to the Commissioner of Civil Service for practical reasons, among them the lack of personnel in the Office of the City Treasurer to process the appointments for purposes of attesting them and the proximity of the City Hall of Manila to the office of the Civil Service Commission. This arrangement however did not, and could not, mean that said appointments were to be considered as having been attested by the City Treasurer.

The second question for resolution is, whether the Commissioner of Civil Service has the power to impose for the office of City Legal Officer the qualification standard of "[t]hree years experience in general legal work and four years experience in trial work in the Court of First Instance and/or superior courts." The petitioners contend that it is only the law that may prescribe qualifications for an office and that the Civil Service Commissioner may not do so, since he has no legislative power. The Solicitor General, unable to point out the legal source of respondent Civil Service Commissioner's alleged power to prescribe the qualification standard abovementioned, argues that at any rate said qualification standard is reasonable. Section 23 of the Civil Service Act of 1959 which provides in part that "[e]mployees shall be selected on the basis of their fitness to perform the duties and assume the responsibilities of the positions whether in the competitive or classified or in the non-competitive or unclassified service," relied upon by respondent Civil Service Commissioner as the source of his alleged power, is not clear or definite on the point. However we find it unnecessary to rule on the question presented in view of our finding below that Ejercito has met said qualification standard.

The third question for decision is, whether Ejercito is qualified for the position of City Legal Officer. The Civil Service Commissioner's indorsement of October 1, 1968, says that he has met two of the three qualification standards therein set by the Commissioner; namely, education, Ejercito being a Bachelor of Laws (1946, U.P. College of Law), and civil service eligibility, Ejercito having passed the bar examinations (1946, with a rating of 86.9%). With respect to the third qualification standard set by the Commissioner, to wit: "[t]hree years experience in general legal work and four years experience in trial work in the Court of First Instance and/or superior courts," the indorsement impliedly concedes that Ejercito has met part thereof, namely, three years experience in general legal work, but denies that he has had "four years of trial work in the Court of First Instance and/or superior courts." Hence, the issue of Ejercito's qualification is narrowed down to whether he has had "four years experience in trial work in the Court of First Instance and/or superior court." In resolving this particular question, we have in view a certification from the office of the Clerk of Court of the Court of First Instance of Manila dated October 15, 1968, annexed to the Reply, giving the titles and numbers of 18 civil cases (1959-1967) in the Court of First Instance of Manila wherein Gregorio A. Ejercito is the counsel of record or one of the counsel of record for the City of Manila and/or Mayor and other officials of the City. We find said certification together with Mayor Villegas' letter of justification of Ejercito's appointment (supra, pp. 3 and 4) sufficient to show that Ejercito has had more than four years of trial practice in the Court of First Instance of Manila and that he has met the Commissioner's third standard qualification of four years of trial work in the Court

of First Instance. Moreover, the declared purpose of the law (Section 19, Republic Act No. 5185) in authorizing the creation of the position of City Legal Officer is to enable the city government to avail itself of the full time and trusted services of the City Legal Officer. This purpose is achieved by the appointment of Ejercito as City Legal Officer because he had rendered the City of Manila "full time and trusted legal services" for a period of more than twenty years under Mayors Lacson and Villegas.

The fourth question before us is, whether mandamus lies to compel respondent Civil Service Commissioner Su-bido forthwith to approve the appointment of Gregorio A. Ejercito as City Legal Officer of Manila and release the same. Respondent Commissioner contends that "this Office is not limited by the law to a period of 180 days within which to act on appointments." The contention is untenable. We find, and so hold, that there being no period fixed for the Civil Service Commissioner to act on appointments directly submitted to him, public policy and the public interest demand that he take action thereon within the reasonable time of 180 days from date of receipt of the appointments by the Civil Service Commission. Ejercito being qualified for the position of City Legal Officer to which he was appointed on January 23, 1968, and his appointment having been received by the Civil Service Commission on January 26 of the same year, it is clear to us that mandamus should now issue to compel respondent Civil Service Commissioner to forthwith approve said appointment and release the same. The indorsement of dis-approval of October 1, 1968, is declared of no value and without effect.

With respect to the appointments of the staff of the City Legal Officer, considering that the reason for their return, without action, no longer holds true, mandamus lies to compel the respondent Civil Service Commissioner to act thereon within 30 days from date of their re-submission to the Civil Service Commission. In this connection attention is called to the doctrine laid down in the case of Villanueva vs. Balallo, G.R. No. L-17745, October 31, 1963, as follows:

"When the appointee is qualified, as petitioner herein admittedly is, then the Commissioner of Civil Service has no choice but to attest to the appointment."

IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered: 1. commanding respondent Civil Service Commissioner forthwith to approve the appointment of Gregorio A. Ejercito as City Legal Officer of Manila and release the same; and 2. commanding respondent Civil Service Commissioner to act on the 28 appointments of the staff of the City Legal Officer, mentioned on page 2 of this decision, within 30 days from date of their re-submission to the Civil Service Commission. No special pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, and Teehankee, JJ., concur. Castro and Barredo, JJ., did not take part.

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