

## CONSTANTE V. ALZATE, PETITIONER AND APPELLEE, VS. GENERAL HEADQUARTERS EFFICIENCY AND SEPARATION BOARD OF THE ARMED FORCES OF THE PHILIPPINES, RESPONDENT AND APPELLANT. D E C I ...

*G R. No. L-16572. February 27, 1965*

Ponente: REGALA, J.

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### REGALA, J.:

The General Headquarters Efficiency and Separation Board of the Armed Forces of the Philippines (GHESB-AFP, for short) appeals from the decision of the Court of First Instance of Quezon City declaring it without jurisdiction to conduct an investigation upon Constante V. Alzate, a major in the army.

On October 16, 1958, Constante V. Alzate filed with the lower court a petition for prohibition with preliminary injunction praying that the GHESB-AFP be prohibited from conducting an investigation upon him for the purpose of separating him from military service. The desired writ of preliminary injunction was granted the following day.

Responding to the petition, the GHESB-AFP filed a motion to dismiss on the grounds that: (1) the petition states no cause of action; (2) petitioner has not exhausted all administrative remedies before coming to court; and (3) the court has no jurisdiction over the subject matter of the suit. This motion, however, was denied upon opposition from the petitioner.

Answer was thus filed and upon the joining of the issues, the parties submitted to court the following stipulation of facts:

"1. That petitioner is a reserve officer in the Armed Forces of the Philippines with a rank of Major, and was still on active duty with at least ten (10) years of active accumulated commissioned service (Annex 'A') at the time of the approval of Republic Act No. 1382 on June 18, 1955 (Annex 'B') and consequently, covered by the provisions of said Act;

"2. That this Republic Act No. 1382 (Annex 'B') was House Bill No. 1817 of the Congress of the Philippines (Annex 'C' and 'C-1'), and that said Act was already interpreted by the Secretary of Justice in his Opinion No. 127 dated April 20, 1956 (Annex 'D') ;

"3. That petitioner has never been tried or convicted of any crime or offense by any court martial of the Armed Forces of the Philippines, and the respondent is not a court martial created under the military law but a mere administrative body organized by virtue of Executive Order No. 302 (Annex 'E') and Circular No. 7 (Annex 'F').

"4. That Executive Order No. 302 (Annex 'E'), issued by the President of the Philippines on May 5, 1958, and Circular No. 7 (Annex 'F') issued by the General Headquarters of the Armed Forces of the Philippines on August 29, 1958, empower and authorize the respondent to investigate cases properly referred to it involving both regular officers and reserve officers serving an extended tour of active duty for six months or more for the

purpose of determining their fitness and suitability to remain in the service, or to be removed, discharged and separated from active service, and the words 'six Months or more' include reserve officers covered by the provisions of Republic Act No. 1382;

"5. That on September 20, 1956, the respondent notified the petitioner to appear before it on' October 9, 1958 a 9:00 a.m. in the G-2 Conference Room GHQ, Camp Murphy, Quezon City (Annex 'G') which date was later transferred to October 23, 1958 at the same time and place, for the purpose of conducting an investigation of the alleged cases of estafa against said petitioner and of finding out the suitability of separating, removing or discharging him from active service or not, as directed by the Chief of Staff, and pursuant to the provisions of Circular No. 7, GHQ, AFP, dated August 29, 1958 (Annex 'F');

"6. That although the notice dated September 26, 1958 (Annex 'G') states that the subject matter of the hearing which was set October 9, 1958 was 'for the purpose of conducting an investigation on the alleged cases of Estafa against you', the specification of charges dated October 1, 1958 (Annex 'H') does not contain any case of estafa but alleged civil obligations against the petitioner. That a promissory note for the amount of P11,400.00 was allegedly issued by petitioner in favor of one Rustico Z. Zapata, but the alleged cases of estafa referred to in the notice (Annex 'G') have long been dismissed by the Court (Annexes 'I', 'I-1' and '1-2' and J);

"7. That on October 8, 1958, the respondent made another specification of charges (Annex 'K'), eliminating therefrom the following: (a) complaint of Mrs. Mauro D. Velasco for an alleged land sold by the petitioner to her for the same was dropped by complainant, Mrs. Velasco (Annex 'L'), and (b) the alleged violation of 96th and 19th AW as indicated in D/F from G-1, addressed to TAG dated July 19, 1955, for the charge regarding the same had long been dismissed on August 1, 1956 as recommended by the Judge Advocate General Office (Annexes 'M', 'M-1' and 'M-2');

"8. That up to the present time, no action whatsoever has been filed in court with respect to the alleged civil obligations of the petitioner as mentioned in the specification dated October 8, 1956 (Annex 'K');

"9. That the respondent has not conducted the investigation mentioned in the notice of September 26, 1958 (Annex 'G') due to the preliminary injunction issued ex-parte by this Honorable Court against said respondent on October 17, 1958;

"10. That a Motion to Dismiss the petition in the instant case presented by the respondent on October 27, 1958 which re-enforced by a Supplemental Motion to Dismiss dated November 12, 1958, but after due hearing and submission of extensive memoranda by both parties, this Court denied the same in its order dated March 31, 1959;

"11. That the petitioner and respondent admit the authenticity" the following documents:

\* \* (Annexes 'A' to M-2)"

The case was submitted after each of the parties had filed memorandum in support of their respective positions.

On December 9, 1959, the lower court granted the petition that it enjoined the respondent from proceeding with the questioned investigation, holding that the latter has no authority to do so for the purpose of separating the petitioner from the service.

In this appeal, We are called upon to interpret section 1, Republic Act No. 1382, which took effect on June 18, 1955, to wit:

"Reserve officers with at least ten years of active accumulated commissioned service who are still on active duty at the time of the approval of this Act shall not be reverted into inactive status except for cause after proper court-martial proceedings or upon their own request. Provided, That for purposes of computing the length of service, six months or more of active service shall be considered one year."

The question is whether or not the prohibition contained in the abovequoted provision covers the investigation which was supposed to be conducted upon Alzate, the appellee.

Apparently, what Republic Act 1382 prohibits is the "reversion to inactive status" of the officer mentioned therein, except by virtue of a court martial. The law does not use the words "separate," "discharge," "remove" or "dismiss". Just whether or not "reversion to inactive status" embraces, or is synonymous with removal, separation or discharge is the crux of the problem.

This Court has already made a distinction between these terms in the case of Paz vs. Alcaraz, et al., 99 Phil., 130; 52 Off. Gaz., p. 3039, pertinent portion of the decision of which is quoted thus:

"\* \* appellant's reversion to inactive status in the reserve force is not, as he claims a dismissal from the service. Although he "had ceased to be in the active service of the Philippine Navy, appellant nevertheless remains an officer of the Army reserve force. Officers in the naval reserve may be transferred from active to inactive service as the army authorities may see fit (cf 6 C.J.S. 17, and citing Denby vs. Berry, 44 S.Ct. 74, 263 U.S. 29, 68 L. Ed. 148), and appellant can not rightly complain that he had been dismissed or discharged without due process because mere transfer from active to inactive service in the army is neither dismissal nor discharge."

Following the above distinction, the law in question would not prohibit the investigation in question which purpose would be to determine the suitability of petitioner to remain or be separated from the service by reason of certain charges against him.

It is to be noted that under Article 117 of Commonwealth Act No. 408 (otherwise known as the Articles of War), the President may drop from the rolls any officer in the army, whether in the regular or reserve force, who has been absent from duty without leave or who has been absent in confinement in a prison or penitentiary for 3 months after final conviction by a court of competent jurisdiction. Likewise, under section 8 of Republic Act No. 340, the Chief Executive may also separate from the service, thru the recommendation of Classification or Efficiency Boards, any officer by reason of physical disability on the part of the latter. We note also that under Executive Order No. 302, series of 1958, officers of the army, by reason of their incompetence, inefficiency, etc. may also be administratively discharged or separated by the President upon the recommendation of Efficiency and Separation Boards. If the prohibition contained in Republic Act No. 1381 is to be construed as to include not only reversion to inactive status" but also separation, dismissal or discharge, then said Republic Act would render inapplicable to reserve officers those aforementioned laws and regulations that give the Chief Executive the power to discipline army officers by separation. Greater protection and security of tenure would, in effect, be given to those officers in the reserve force with more than 10 years of service than those in the regular force with equal or longer years of service.

A study of the explanatory note to House Bill No. 1817 of the Third Congress (which became Republic Act 1382) will show that while it was the benign purpose of the Legislature to reward deserving officers, the spirit of the law is never to place said officers in a higher category than regular officers. The explanatory note, as signed by Congressman Pajarillo who introduced the bill, reads:

"This bill seeks to reward hard earned, loyal efficient and faithful service, of reserve officers to the country in time of war and in time of peace, and to afford security to them after having rendered twelve years of service in the Armed Forces of the Philippines.

"We cannot now ignore our obligations to these officers who have spent the best years of their lives in the service of the Armed Forces of the Philippines. By the length of their service, they have acquired the necessary experience, discipline and loyalty to the organization and the government. If reserve officers who have rendered two or more years of service in the Army have been made regular officers by operation of law, after

serving in Korea for a period of from six to eight months, there is no justification why reserve officers who have undergone greater hardships in Bataan and in the other fronts during the last World War, and who, since that time have served the Army up to this date, should not be rewarded by affording them the opportunity to become regular members of the organization they have so faithfully served, or protecting them from the uncertainty of their continuance in the service.

"Civil Service employees who have rendered ten years service in the government are rewarded with automatic civil service eligibility. With more reason that these reserve officers who have served twelve years in the Army and whose efficiency, integrity and loyalty cannot be questioned, should in equal measure, be rewarded with automatic integration or security of tenure in their service. For the foregoing reasons, this bill deserves approval."

It is very clear from the above explanation that it was not the intention of the legislature to grant greater security of tenure to reserve officers mentioned in Republic Act 1382 than to those officers in the regular service. As a Matter of fact, the most that they wanted was to grant those officers automatic integration in the regular force, but even this proposal met with disapproval in the halls of Congress (See Vol. I, No. 72, Congressional Record, page 2779), so much so that the term "automatic integration" was removed from the original version of the bill.

Furthermore, court martial proceedings, which according to the petitioner-appellee, may be the only process to remove the officers mentioned in the law in question, is confined to such cases only falling under specific provisions of the Articles of War (Com. Act 408). It does not embrace those grounds of removal provided under section 8 of Republic Act 340, Article .117, Com. Act 408, and presidential orders or regulations (Ex. Order No. 302, s. 1958). Indeed, to sustain the view that reserve officers protected by Republic Act 1382 may only be removed thru court martial would limit the presidential power of removal to those causes specified in the Articles of War.

It will not be amiss to state here that although, in the stipulation of facts, mention is made of the dismissal of criminal charges of estafa against the petitioner-appellee, it is clear from the annexes that these charges were dismissed merely on the failure to establish his guilt beyond reasonable doubt. In one of the decisions, however, (Crim. Case 308, CFI, Batangas), the court has found the said petitioner-appellee to have really misrepresented himself, "evidence on this point being conclusive and unassailable." This indicates somehow a questionable character on the part of the petitioner.

Premises considered, the decision of the lower court enjoining the respondent-appellant herein from proceeding in its investigation of petitioner-appellee is hereby reversed. Without pronouncement as to costs.

Bengzon, C. J., Bautista Angelo, Reyes, J.B.L., Barrera, Makalintal, Bengzon, J.P, and Zaldivar, JJ., concur.

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