

ANTOLIN GALENO, PETITIONER-APPELLANT, VS. REINERIO TICA O IN HIS CAPACITY AS MAYOR OF THE CITY OF ILOILO, RESPONDENT-APPELLEE.

G.R. No. L-22355. September 30, 1969

Ponente: ZALDIVAR, J.

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ZALDIVAR, J.:

Appeal from the decision of the Court of First Instance of Iloilo, Judge F. Imperial Reyes, presiding, in Civil Case No. 6215, dismissing the petition for mandamus, filed by petitioner-appellant Antolin Galeno against respondent-appellee Mayor Reinerio Ticao of the City of Iloilo, to compel the latter to prefer administrative charges before the City Board against a captain of detectives in the police force of the City.

The facts are undisputed. On October 16, 1962, petitioner Antolin Galeno sent a letter to the City Board of the City of Iloilo, complaining against Detective Captain Emeterio Verde, charging him with grave misconduct as a police officer in connection with an incident between them which occurred in the afternoon of October 8, 1962. The letter was not under oath, nor was it accompanied by any sworn statement. A copy of that letter was furnished respondent City Mayor. The City Board of Iloilo, by resolution, furnished a copy of the letter to respondent City Mayor "requesting appropriate action." On November 1, 1962, respondent City Mayor endorsed the letter to the Chief of Police of the City of Iloilo, with instructions that Captain Rafael D. Lavente, Chief of the Patrol Division and Legal Officer of the Police Department of the City conduct an investigation on the complaint contained in said letter. After conducting the corresponding investigation, Captain Rafael D. Lavente submitted, through the Chief of Police, to respondent Mayor a report, dated November 6, 1962, recommending dismissal of the complaint.

On November 27, 1962, petitioner wrote an amended letter-complaint, addressed to respondent Mayor, reiterating the same allegations contained in his letter to the City Board of October 16, 1962. This time petitioner's amended letter was under oath but, like his former letter-complaint, it was not accompanied by any sworn statement. On November 28, 1962 respondent Mayor answered petitioner, attaching therewith a copy of the report submitted by Captain Rafael D. Lavente.

On November 29, 1962, Attorney German Lopez, in behalf of the petitioner, wrote a letter to respondent Mayor questioning the propriety of respondent's action in endorsing petitioner's letter-complaint to the Legal Officer of the Iloilo City Police Department for investigation, instead of endorsing same to the City Board; and at the same time complaining that petitioner was not given a chance to be heard by Captain Lavente. Atty. Lopez requested respondent Mayor to prefer administrative charges against Detective Captain Emeterio Verde before the City Board, on the basis of petitioner's letter-complaint of October 16, 1962 and his sworn amended letter-complaint of November 27, 1962.

The record shows that on October 8, 1962, petitioner Antolin Galeno filed a complaint with the Office of the City Fiscal of Iloilo against Detective Captain Emeterio Verde for threats and slander in connection with the same

incident which was the basis of his complaint against the same police officer, as stated in his letter-complaint of October 16, 1962 to the City Board and of his amended letter-complaint of November 27, 1962 addressed to respondent City Mayor. It appears that after due investigation Assistant City Fiscal Vicente P. Gengos dismissed the complaint for insufficiency of evidence.

On December 10, 1962 respondent Mayor answered the letter of Atty. Lopez of November 29, 1962, stating "that no administrative case against any member of the Iloilo City Police Force can be filed without ascertaining the truth of the complaint, unless said member of the police force had been accused in court of any felony or violation of law." Respondent Mayor further stated, in bolstering his refusal to prefer charges against Detective Captain Verde, that he had been informed that Fiscal Vicente Gengos dismissed the criminal complaint against Captain Emeterio Verde after conducting a preliminary investigation, and added: "Under the present circumstances the undersigned cannot file said administrative case considering that the Office of the Chief of Police of the City of Iloilo had submitted an investigation report recommending dismissal of said charge."

In view of the refusal of respondent Mayor to fire the administrative charges, petitioner filed, on January 22, 1963, before the Court of First Instance of Iloilo a petition for mandamus, alleging refusal of respondent Mayor to perform a "ministerial duty" to prefer charges with the Municipal Board of Iloilo City against the said Detective Captain Emeterio Verde in spite of the demands made on him by the petitioner, to the damage and pre-judice of the latter. The petition prayed that respondent Mayor be ordered to prefer charges with, or endorse the sworn letter-complaint of November 27, 1962 of petitioner to, the City Board of Iloilo City for its appropriate action in accordance with law, to pay petitioner the sum of P3,000.00 for moral damages, P500.00 for attorney's fees and the costs of the suit.

After hearing, the trial court, on November 20, 1963, rendered a decision dismissing the petition. Hence, this appeal.

The question to be resolved in this case is: Under Section 1 of Republic Act 557, upon the mere filing by any person or entity with the city mayor of a complaint against a city police officer, is it the mandatory duty of the city mayor to prefer charges against the police officer with the city council?

We rule that it is not mandatory, and so mandamus will not lie to compel the city mayor to prefer the charges against a police officer with the city council. We fully concur with the view of the learned trial judge when he resolved this question, as follows:

"En apoyo de la solicitud, la representacion del solicitante sostiene que, des-pues de recibir las dos cartas del solici-tante (Exhs. A y C), el recurrido tenia el deber ministerial de formular cargos contra el secreta Emeterio Verde. La del recurrido sostiene lo contrario que el recurrido tiene discrecion de formular cargos o no, de-pendiendo de si hay pruebas o no para es-tablecer dichos cargos.

"Despues de estudiadas las pruebas en autos, el Juzgado encuentra que la preten-sion del solicitantees insostenible.

"Antes de la aprobacion de la Ley No. 557 de la Republica, el Art. 2272 delCodigo Administrativo Revisado, que habla de la presentacion de cargos contra un policia y de la investigacion de dichos cargos, dice lo siguiente;

"Section 2272. Members of the mu-nicipal police shall not be removed and, except in cases of resignation, shall not be discharged except for mis-conduct or incompetency, dishonesty, disloyalty to the Philippine govern-ment, serious irregularities in the performance of their duties, and vio-lation of law or duty and in such cases charges shall be preferred under oath by the mayor or by any other person and investigated by the municipal coun-cil, or a committee of three councilors, designated for said purpose by a majo-riety of the council, in public hearing and the

accused shall be given opportunity to make their defense." (Italics ours)

"El Art. 1 de la Ley No. 557 de la Republica, que ahora habla de la presentacion de cargos contra un policia y de su investigacion, reza como sigue:

"Members of the provincial guards, city police and municipal police shall not be removed and, except in cases of resignation, shall not be discharged, except for misconduct or incompetency, dishonesty, disloyalty to the Philippine government, serious irregularities in the performance of their duties, and violation of law or duty, and in such cases charges shall be preferred by the provincial governor in matters against any member of the provincial guards, the city mayor in cases against a member of the city police, and the municipal mayor in cases involving a member of the municipal police, and investigated by the provincial board, the city or municipal council, as the case may be, in public hearing, and the accused shall be given opportunity to make their defense. (italics ours)

"Mientras segun el Art. 2272 delCodigo Administrativo Revisado, cualquier ciudadano podia formular cargos contra un policia, esta facultad, conferida a un ciudadano cualquiera, fue omitida en la disposicion del Art. 1 de la Ley No. 557 de la Republica. Tal omission es significativa. Al omitir en la disposicion del Art. 1 de la Ley No. 557 de la Republica la facultad de un ciudadano cualquiera de formular cargos contra un policia, el Congreso, indudablemente, ha tratado de librar a un policia de la molestia de tener que afrontar cargos maliciosos, arbitrarios y sin meritos. Si esto es asi, no puede sostenerse con razon que el recurrido, a mera peticion de un ciudadano, esta obligado a formular cargos contra el secreta Emeterio Verde sin cerciorarse siquiera de si la peticion o queja es meritoria o no. Adem as, no puede concebirse que, al aprobar la Ley No. 557 de la Republica, el Congreso ha tratado de convertir a un Alcalde, sobretodo de un Alcalde de una Ciudad, como lo es el recurrido, como un mero instrumento de un ciudadano.

"Del lenguaje usado en la redaccion del Art. 1 de la Ley No. 557 de la Republica, no puede decirse que, previa peticion simple de un ciudadano cualquiera, un Alcalde tiene la obligaci6n ministerial de formular cargos contra un policia, a peticion de un ciudadano, sin cerciorar se siquiera de si dichos cargos son o no meritorios.

"Adem as, consultado sobre si el formular cargos contra un policia, a peticion de un ciudadano, es mandatorio o discrecional de parte de un Alcalde, la oficina del "Head, Local Governments and Civil Affairs Office, Office of the President, Malacañang, Manila", que tiene supervision por no decir control, de los gobiernos locales, en su endoso de fecha 26 de abril de 1963, dijo lo siguiente:

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As to whether a City Mayor should file with the Municipal Board a complaint against a member of the city police is for him to decide as he is vested exclusively by Republic Act No. 557 with such discretion.

"A juzgar por dicha opinion, el Alcalde tiene discretion de formular cargos o no contra un policia.

"De las pruebas en autos es aparente que el recurrido se nego a formular cargos contra el secreta Emeterio Verde porque el Capitan Rafael D. Lavente, recommendo el sobreseimiento de la queja del solicitante contenida en su primera carta (Exh. A) como resultado de su investigacion practicada (Exh. 6) y tambien porque la oficina del Fiscal de la Ciudad donde el solicitante habia acudido para que se incoaran causas criminales contra el secreta Emeterio Verde como resultado del mismo incidente de la tarde del 8 de Octubre de 1962, objeto de las dos cartas tantas veces mencionadas del solicitante (Exhs. A y C), tambien se nego a tomar accion, por faltar de pruebas, contra dicho secreta.

"Como ya se dijo arriba, despues de recibir las dos cartas del recurrido, una de fecha 28 de noviembre de 1962, dirigida al solicitante (Exh. 2), y otra de fecha 10 de diciembre de 1962, dirigida al abogado Sr. Lopez (G), en representaci6n del solicitante (Exh. 3), la presente solicitud de mandamus fue incoada sin que el solicitante haya acudido al "Head, Local Governments and Civil Affairs Office, Office of the President, Malacañang,

Manila", lo que decidi-damente demuestra que el solicitante no ha agotado los remedios administrativos antes de la incoacion de dicha solicitud.

"Si bien es verdad que en el parrafo de la solicitud se alega que el solici-tante "has no speedy, plain and adequate remedy in the ordinary course of law against the illegal act and neglect of duty on the part of the respondent except by a writ of mandamus", no es menos verdad que en nin-guna parte de dicha solicitud se ha alegado que el solicitante ha agotado los remedios administrativos antes de incoar la presen-te solicitud. No puede decirse, pugs, que el solicitante 'has no speedy, plain and adequate remedy in the ordinary course of law against the illegal act and neglect of duty on the part of the respondent except by a writ of mandamus' ".

We wish to state, however, that the procedure pro-vided for in Section 1 of Republic Act 557 is not fol-lowed any more, because Republic Act 557 has been re-pealed by Republic Act 4864 known as the Police Act of 1966, which was enacted on September 8, 1966. The new procedure in the matter of preferring charges against police officers and the conduct of the investigation of the charges are now provided in Sections 14 and 15 of said Police Act of 1966,as follows:

"SEC. 14. Removal and suspension of members of the Police Force or Agency. - Mem-bers of the local police agency shall not be suspended or removed except upon written complaint filed under oath with the Board of In-vestigators herein provided, for misconduct or incompetency, dishonesty, disloyalty to the Government, serious irregularities in the per-formance of their duties, and violation of law.

"SEC. 15. Board of Investigators. - In every local police agency there shall be a Board of Investigators. Charges against any member of the city and/or municipal police agency shall be investigated by a Board of Investigators of three members, composed of the city or municipal treasurer as chairman, a representative of the Provincial Commander, and a councilor, elected by a majority of the city or municipal council concerned, as mem-bers.

"Copy of the charges shall be furnished the respondent by the Chairman of the Board of Investigators within five days from the date of filing of said charges, and the res-pondent shall answer within five days from receipt thereof. The Board of Investigators shall conduct its investigation in public within five days from receipt of respondent's answer to the charges or from the expiration of respondent's period to answer, whichever is earlier and unless for good cause shown the investigation shall be finished within thirty days thereafter and the Board shall submit the records of the investigation, its find-ings and recommendations to the Police Commis-sion within thirty days after the termination of the investigation. The decision of the Police Commission shall be final from the time of receipt of the findings of the Board. Disciplinary jurisdiction of offenses involving suspension of not more than ten days of forfeit-ure of not more than fifteen days' pay is vested in the chief of the police agency con-cerned whose decision shall be final."

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We affirm the decision appealed from, but We dec-lare that the ruling embodied therein regarding the preferment of charges against a police officer may now be considered academic because of the repeal of Re-public Act 557 by Republic Act 4864 known as the Police Act of 1966. Costs against the petitioner-appellant.

IT IS SO ORDERED.

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

Reyes, JBL, J., on official leave.

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