

ELPIDIO LLARENA, PETITIONER AND APPELLANT, VS. HON. ARSENIO H. LACSON, IN HIS CAPACITY AS MAYOR OF THE CITY OF MANILA, RESPONDENT AND APPELLEE.

G.R. No. L-15696. May 30, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal to the Court of Appeals from a decision of the Court of First Instance of Manila, Hon. Bonifacio Ysip, presiding, dismissing a petition for certiorari and mandamus filed by Elpidio Llarena against the Mayor of Manila in Civil Case No. 33216. The Court of Appeals in a resolution promulgated on June 11, 1959 elevated the case to this Court for resolution of the questions of law involved.

The Court of First Instance of Manila makes the following findings of fact:

"The petitioner is employed as a carpenter in the Carpentry Shop of the Dep't. of Public Services of the City of Manila, duly appointed by the Mayor and has been rendering service from October, 1946 to September 21, 1956; that sometime on September 13, 1955, a piano under attachment in connection with a civil case before the war was found missing from the Quiricada bodega of the said Dep't. of Public Services and on October 9, 1955, the respondent, the City Mayor, ordered an investigation of the missing property, by a committee (Exh. A) composed of Jose M. Regala, as chairman, Gregorio Ejercito and Pedro C. de la Cruz, as members, and said committee, on April 3, 1956, filed its memorandum (Exh. B) to the City Mayor, and recommended that the herein petitioner, Elpidio Llarena, be fined in an amount equivalent to 15 days' pay and be warned that the repetition of the same and similar offenses will be dealt with more drastically. The City Mayor, in view of the findings of the investigating committee, rendered a decision dated September 11, 1956 (Exh. C), and on September 30, 1956, the Chief of the Division of Building and Transportation Service thru the Dep't. of Public Services, dismissed the herein petitioner from the service with prejudice to reinstatement (Exh. D). The questions to be determined in this case are (1) whether the City Mayor or any of his department chiefs has the power to dismiss from office an employee of the City of Manila; and (2) whether the facts of this case can be properly subject of a special remedy of certiorari with mandamus. With respect to the first question, according to the facts on record, the herein petitioner is not a presidential appointee nor a classified civil service employee. Undoubtedly, Sec. 22 of Republic Act 409 commonly known as the Revised Charter of the City of Manila empowers the City Mayor to suspend and remove all city officers or employees not appointed by the President, subject to appeal to the Sec. of Interior, whose decisions should be final. The herein petitioner, at the hearing of this case, expressly admitted that he did not appeal from the order of the City Mayor dismissing him to the Office of the President."

On appeal the questions raised are the propriety of the petition for certiorari and mandamus as a remedy and the validity of the dismissal of the petitioner-appellant.

Petitioner-appellant claims that the petition may still lie even if he did not first appeal his case to the Office of the President, because he was not aware of his right to appeal, he having completed only fourth grade in the primary school. This contention is without merit.

The rule in this jurisdiction is that when an administrative remedy is provided by law, relief must be sought by exhausting this remedy before the courts will act. Failure to exhaust this remedy is fatal.

"It does not appear from the stipulation of facts or from any other portion of the record that the petitioners-appellees and intervenor-appellant Cornelio Diores ever appealed from the orders of the city mayor removing them from their respective positions, as required in the above-quoted provision of law. In pursuance of the principle of exhaustion of administrative remedies consistently adhered to by this Court (*De la Paz vs. Alcaraz*, et al., 99 Phil., 130; 52 Off. Gaz. 3037; *Miguel, et al., vs. Reyes, et al.*, 93 Phil., 542; *Ang Tuan Kai & Co. vs. The Import Control Commission*, 91 Phil., 143; *Leonardo Montes vs. The Civil Service Board of Appeals*, et al., 101 Phil., 490), we are constrained to rule that the petition should be dismissed on this ground. Without costs." (*Cabanes, et al. vs. Rodriguez, et al.* G. R. No. L-9799, May 31, 1957.)

The fact that petitioner is only a fourth grader in the primary school does not excuse him from not knowing and availing of the administrative remedy. The trial court was, therefore, correct in dismissing the petition on the ground that petitioner did not exhaust all administrative remedies.

The second question is the validity of the dismissal. Petitioner claims the Mayor has abused his discretion in not following the recommendation of the Committee created by him. He also claims he was removed without cause. Both claims lack merit. The recommendation of the Committee is only advisory in nature. The Mayor may or may not adopt its recommendation; he may modify the same, or even create another committee to conduct another investigation. And he is given wide discretion under Republic Act No. 409 to impose administrative penalties. The fact that petitioner bought the piano from the sheriff knowing the latter had no authority to sell and that he helped remove the same from the bodega of the Government is, certainly, dishonesty, which under the following Civil Service Rule XIII, No. 6, is a sufficient cause for removal:

"6. * * * dishonesty * * * notoriously disgraceful or immoral conduct * * * may be considered reasons demanding proceedings to remove for cause * * *.

Wherefore, the decision appealed from should be, as it is hereby, affirmed.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Concepcion, Barrera, and Gutierrez David, JJ., concur.

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