

JOSE GONZALES, ET AL., PETITIONERS AND APPELLEES, VS. BENIGNO ALDANA, ET AL., RESPONDENTS AND APPELLANTS.

G.R. No. L-14576. April 27, 1960

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

This is an appeal by respondents Benigno Aldana, Vitaliano Bernardino and Igmedio Parcon, in their capacities as Director of Public Schools, Assistant Director of Public Schools and City Superintendent of Schools, Iloilo City, from the decision of the Court of First Instance of Iloilo, presided by Judge Jose R. Querubin, dated November 8, 1957, "restraining respondents from dismissing the petitioners and replacing them with civil service eligibles until after the five temporary industrial arts teachers in the Division of Iloilo City Schools shall have been first dismissed and replaced by civil service eligibles." The appeal was first taken to the Court of Appeals, which after studying the case, certified the appeal to us on the ground that only questions of law were involved.

The facts of the case are not disputed. The narration of facts made by the appellants in their brief, accepted by the appellees and adopted by the Court of Appeals in its findings of fact, which we also adopt, is as follows:

"Petitioners are both civil service non-eligibles who were given temporary appointments sometime in 1952 as industrial arts teachers in the Division of City Schools of Iloilo. They were assigned to the La Paz Elementary School of Iloilo City (par. III, petition; par. 2, answer; par. X, stipulation; pp. 4, 10, t. s. n., Exh. A, p. 31; Exh. B, p. 32, Exh. C, p. 33, rec.).

"In the Division of City Schools of Iloilo City, there were five other temporary industrial arts and garden teachers (par. 2, stipulation, par. IX, par. 8, answer; Exh. A, p. 31, rec.; Exh. B, p. 32, rec.; Exh. C, p. 33, rec.). Of the seven, only petitioners are veterans of World War II, petitioner Adriano Alcazar having been honorably discharged from the United States Army on April 8, 1946 and petitioner Jose Gonzales on February 15, 1946 (par. 3, stipulation; Exh. D, p. 34, rec.; Exh. D-1, p. 35, rec.; Exh. E, p. 36, rec.; Exh. M, pp. 6, 9, 11, t. s. n.).

"On or about June 5, 1957, petitioners learned that there was a plan to remove them from their positions (p. 4, t.s.n.). So they went to see respondent Iginedio Parcon, City Superintendent of Schools to find out the reasons why they were being replaced, Respondent Parcon told them that there were civil service eligibles who were going to take their places (pp. 4, 20, t.s.n.). As suggested by respondent Parcon petitioners requested the Secretary of Education to retain them in a letter dated June 5, 1957 invoking the provisions of Republic Act No. 1363 giving preference to war veterans in appointments to government positions (Exh. H, p. 39, rec.; pp. 5, 10, t.s.n.). Instead of a reply from the Secretary of Education petitioners were informed on August 8, 1957 by respondent Vitaliano Bernardino, Assistant Director of Public Schools, that petitioners could be replaced by civil service eligibles who had experience in industrial arts teaching (Exh. 1, p. 40, rec.; p. 5, t.s.n.).

"Petitioners also wrote the Commissioner of Civil Service about their case. The Commissioner of Civil Service endorsed the matter to respondent Director of Public Schools for comment (Exh. J. p. 42, rec.; p. 6, t.s.n.).

"Respondent Parcon consulted respondent Director of Public Schools Benigno Aldana, on the case of petitioners on June 10, 1957 (p. 19, t.s.n., Exh. I, p. 53, rec.) The respondent Director sustained Parcon's theory

that petitioners could be validly replaced by civil service eligibles (p. 21, t.s.n.).

"In the objective ranking of the seven Industrial Arts and garden teachers as of June 5, 1957, approved by their principal, petitioners Jose Gonzales and Adriano Alcazar ranked sixth and seventh respectively, (par. 5, stipulation, Exh. G, also Exh. 16, p. 7; Exh. P, p. 40; Exh. Q, p. 40; Exh. 2, p. 54, rec.; Exh. S, p. 55, rec.; Exh. 4, p. 56, rec.; Exh. 5, p. 57, rec.; Exh. 6, p. 58, rec.; Exh. 7, p. 59, rec.; Exh. 8, p. 60, rec.; Exh. 9, p. 61, rec.; pp. 12, 15, 22, t.s.n.). The factors considered in the ranking were educational qualification, experience, service status or eligibility and efficiency (p. 12, t.s.n.). It was on the basis of their low ranking that petitioners were the ones picked by respondents to be replaced by civil service eligibles (p. 23, t.s.n.).

"Petitioners were formally notified on August 26, 1957, through the 5th indorsement of respondent Parcon dated August 23, 1957, of their replacement by Esteban Estuche and Rex de Leon, both civil service eligibles (par. 6, stipulation; par. VII, petition; par. 6, answer; Exhibit K, pp. 43-44. Exh. L, p. 45, rec.; Exh. K, p. 52, rec.; p. 3, t.s.n.).

"Despite receipt of the said indorsement, petitioners refused to leave the service (par. VIII, petition; par. 7, answer; Exh. L, p. 45, rec.). (pp. 2-5, brief)."

The principal question to be decided is whether or not respondents may replace petitioners who are war veterans with civil service eligibilities, when at the time, there were nonveteran temporary appointees who could be replaced first.

Section 1 of Republic Act No. 1363 expresses the purpose of the Jaw giving preference to veterans. It reads:

"Section 1. The policy of the Government is to give preference, other considerations being approximately equal, to persons who are veterans under section four of this Act."

Section 5 of Republic Act No. 1363 provides that in order to enable a veteran to obtain preference, it must be shown that he has approximately the same qualifications as other applicants, and that it is not intended that a veteran shall have priority over civil service eligibles, unless he him self is of the same or higher civil service eligibility. Petitioners Gonzales and Alcazar are not civil service eligibles, but they claim that they had approximately the same qualifications as the other five non-veterans who are occupying similar positions. It is true that in the objective ranking of industrial arts teachers such as are the two petitioners and five other non-veterans occupying similar positions, Gonzales and Alcazar occupy the sixth and seventh positions, with ratings of 51.4 and 50.63, respectively, while those occupying the fourth and fifth have 51.44 and 51.172, respectively. As the trial court observed, "the difference in scoring between the petitioners and the next two temporary teachers in the order of ranking does not exceed one percent. Therefore, the petitioners have 'approximately the same qualifications' as the rest of the five temporary teachers." We agree with said observation of the lower court.

The next point for determination is the contention at the Solicitor General that Republic Act No. 1363 "refers only to cases where an appointment is yet to be made, but not to cases where the non-civil service eligible veteran is already occupying the position, but is to be replaced by a civil service eligible." In other words, the Government takes the position that in getting appointments to the positions occupied by petitioners, they could invoke the provisions of Republic Act No. 1363, for being veterans, but after the appointment, said law ceases to give them preference and protection.

We are unable to agree to the above proposition. Section 1 of the Act aforementioned speaks of preference in general and although the other sections, such as Sections 2 and 5, speak of appointments, our impression is that the preference contemplated by the law is not only an appointment whereby a veteran is accepted in the service of the Government but also his enjoyment of the benefits, rights and emoluments accruing from said appointment. It

would certainly be unjust as well as illogical if after appointing a non-veteran to a Government position today, he may be replaced and dismissed tomorrow, when there are non-veterans occupying other and similar positions who could and should be replaced first. In the present case, petitioners are veterans occupying similar positions with five other non-veterans. The seven of them are non-civil service eligibles. As already stated, the petitioners have approximately the same qualifications as the other five, at least the two next preceding them in the objective ranking. Consequently, the preference accorded to veterans is still applicable.

In support of his contention that the law giving preference, to veterans applies only to appointments but not to cases where the non-veteran is already occupying a position, the solicitor general cites interpretative order no. 130, issued on July 18, 1955, by the president, implementing the law, wherein section 8 thereof says, "the preference herein granted shall not apply to promotions and transfers nor shall it apply to positions which have been declared policy determining, primarily confidential or highly technical, pursuant to section 671 (1) of the administrative code." the interpretative order, in our opinion, rather strengthens our position for it manifestly contemplates a situation where a veteran is already appointed, and that the preference he enjoys and continues to enjoy as a veteran, does not extend to promotions and transfers, etc.

The positions occupied by the petitioners are neither policy determining, primarily confidential, nor highly technical. Furthermore, they are not asking for any promotion or transfer. All their wish and desire is that they be allowed to retain their positions and continue serving the Government. By interpreting the law in this manner, namely, giving preference to a veteran, not only in the appointment but also in keeping the position to which he is appointed, we would be following and implementing the intention of the Legislature. As the lower court, citing Section 1 of Republic Act No. 1363 rather vehemently observed:

"The aforequoted provisions of law should be given full force and effect. The intention of the framers of the law to reward those who have risked their lives and sacrificed much in order that we could be freed from Japanese domination should not be implemented with empty promises and hollow gestures. We should give what is due the veterans as contemplated by law. For that is the only way we could repay and show our gratitude to the heroes of the last world war."

We find it unnecessary to discuss the other point raised in the appeal, namely, that petitioners have not exhausted the administrative remedies provided by law. Suffice it to say that when petitioners wrote to the Commissioner of Civil Service and to the Secretary of Education, and they failed to obtain the relief sought, and instead the Director of Public Schools threatened to replace them, they had already given an opportunity to these high officials to act upon their petition for relief, which practically, in our opinion, is equivalent to an exhaustion of the administrative remedies provided by law.

In view of the foregoing, the appealed decision is hereby affirmed. No costs.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.

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