

**SOLANO LAGANAPAN, PETITIONER, VS. MAYOR ELPIDIO ASEDILLO
MUNICIPALITY OF KALAYAAN, LAGUNA, AND EPIFANIO RAGOTERO,
RESPONDENTS.***G.R. No. L-28353. September 30, 1987*

Ponente: PADILLA, J.

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This is an appeal from the judgment*, dated 16 October 1967, of the Court of First Instance of Laguna in Civil Case no. SC-719, which ordered the respondents to reinstate the petitioner to his former position of chief of police of Kalayaan, Laguna, with back salaries from his dismissal up to his actual reinstatement.

The facts are not disputed. The petitioner Solano Laganapan was appointed chief of police of the municipality of Kalayaan, Laguna on 4 January 1960, with a compensation of P660.00 per annum, by the respondent Mayor Asedillo. On 1 July 1960, his salary was increased to P720.00 per annum, and he was extended an appointment which was approved as provisional under Sec. 24(c) of Republic Act no. 2260 by the Commissioner of Civil Service[1].

On 1 April 1962, the petitioner was given another increase in salary and a corresponding appointment was made which the Commissioner of Civil Service "approved under Sec. 24(c) of Republic Act no. 2260, to continue until replaced by an eligible but not beyond thirty (30) days from receipt of certification of eligibles by the Provincial Treasurer of Laguna"[2].

Then, on 1 July 1963, 1 July 1964, and 1 July 1965, he was again given salary increases, and new appointments were extended to him, which appointments were also approved under Section 24(c) of Republic Act no. 2260 by the Commissioner of Civil Service[3].

However, on 16 February 1967, the petitioner was summarily dismissed from his position by respondent Mayor Elpidio Asedillo, on the ground that his appointment was provisional and that he has no civil service eligibility. The petitioner was told to surrender his firearm and other office equipment to the Municipal Treasurer of Kalayaan, Laguna[4] who was also informed of petitioner's dismissal on the same day[5]. Respondent Epifanio Ragotero was appointed acting chief of police of Kalayaan, Laguna on the same day, in place of the petitioner[6].

Subsequently, or on 21 February 1967, the Municipal Council of Kalayaan, Laguna abolished the appropriation for the salary of the chief of police of Kalayaan, Laguna[7]. In view thereof, the petitioner complained to the Police Commission which advised him to file an injunction suit against Mayor Asedillo[8].

Hence, on 16 March 1967, the petitioner filed a petition for mandamus, quo warranto with preliminary mandatory injunction against respondents Mayor Elpidio Asedillo, the Municipality of Kalayaan, Laguna, and Epifanio Ragotero, before the Court of First Instance of Laguna, docketed therein as Civil Case no. SC-719, seeking his reinstatement to the position of chief of police of Kalayaan, Laguna, with back salaries and damages[9].

In answer, respondents Mayor Elpidio Asedillo and Epifanio Ragotero claimed that the appointment of the

petitioner, being merely temporary in character, and the petitioner having no civil service eligibility, his services could be terminated with or without cause, at the pleasure of the appointing power; and that the petitioner failed to exhaust all administrative remedies[10].

The respondent Municipality of Kalayaan, Laguna, for its part, alleged that the petitioner has no cause of action against it; and that, if the acts of the respondent mayor are patently irregular, the said mayor should be held solely liable therefor[11].

After due hearing, judgment was rendered, as follows:

"WHEREFORE, the Court hereby renders judgment -

- (a) Declaring the summary dismissal of the petitioner on February 16, 1967 illegal;
- (b) Ordering the respondent Mayor Elpidio Asedillo to forthwith recall his designation of respondent Epifanio Ragotero as Acting Chief of Police of Kalayaan;
- (c) Ordering the respondent Mayor Elpidio Asedillo and the respondent Municipality of Kalayaan to forthwith reinstate the petitioner to his former position of Chief of Police of Kalayaan, Laguna, restore the appropriation for his salary and pay him his back salaries from February 16, 1967, until reinstated; and
- (d) Ordering the respondent Mayor and respondent Municipality to give the petitioner a period of not less than thirty days from the date this decision becomes final within which to file his application for Civil Service eligibility under Sec. 9 of Republic Act. No. 4864.

Without pronouncement as to costs"[12].

From this judgment, the respondents appealed directly to this Court, claiming that the lower court erred: (1) in holding that petitioner need not exhaust administrative remedies before bringing the action for quo warranto and mandamus in court, as the action prescribes in one year and an administrative appeal does not interrupt the running of the period; (2) in holding that the summary dismissal of the petitioner-appellee was illegal; (3) in ordering the respondents-appellants Mayor and Municipality to give the petitioner a period of not less than thirty (30) days from the date the decision becomes final within which to file his application for civil service eligibility under Sec. 9 of Republic Act no. 4864; and (4) in not fixing and ordering the petitioner to pay the respondents reasonable expenses incurred by them by reason of the false allegations in the verified petition for mandamus and quo warranto.

The appellant Municipality of Kalayaan, Laguna additionally claims that the lower court erred in not holding respondent-appellant Mayor Elpidio Asedillo personally liable for his illegal act.

We have carefully examined the records of the case and find no cogent reason to disturb the findings of the trial court, which are supported by the evidence and law. Thus, the appellants contend that the appellee should have first exhausted all administrative remedies before he resorted to the courts. They suggested that the appellee should have appealed the order of dismissal to the Commissioner of Civil Service in view of the provisions of Sec. 16(i) and Sec. 16(j) of Republic Act no. 2260 which grant the Commissioner of Civil Service the final authority to pass upon the removal, separation and suspension of all permanent officers and employees in the competitive or classified service; and to hear and determine appeals instituted by any person believing himself to be aggrieved by an action or determination of any appointing authority contrary to the provisions of the Civil Service Law and rules.

While there are precedents which hold that before a litigant can bring a matter to court, it is necessary that he first exhaust all the remedies in the administrative branch of the government, the doctrine of exhaustion or

administrative remedies is not a hard and fast rule. It has been repeatedly held that the principle requiring previous exhaustion of administrative remedies is not applicable where the question in dispute is purely a legal one; where the controverted act is patently illegal or was performed without jurisdiction or in excess of jurisdiction; where the respondent is a department secretary, whose acts as an alter ego of the President, bear the implied or assumed approval of the latter; where there are circumstances indicating the urgency of judicial intervention; or where the respondent has acted in utter disregard of due process[13]. The rule does not also apply where insistence on its observance would result in nullification of the claim being asserted; and when the rule does not provide a plain, speedy and adequate remedy[14].

In the instant case, there is no doubt that, in terminating the services of the appellee, the appellant Mayor Elpidio Asedillo acted summarily without any semblance of compliance or even an attempt to comply with the elementary rules of due process. No charges were filed; nor was a hearing conducted in order to give the appellee an opportunity to defend himself, despite the provisions of Sec. 14 of Republic Act no. 4864, otherwise known as the Police Act of 1966, which took effect on 8 September 1966, that "Members of the local police agency shall not be suspended or removed except upon written complaint filed under oath with the Board of Investigators herein provided for misconduct or incompetence, dishonesty, disloyalty to the Government, serious irregularities in the performance of their duties, and violation of law". Following the rule, there was no need for exhaustion of administrative remedies before appellee could come to court for the protection of his rights.

Besides, it appears that the order was immediately executed and the appellee was immediately removed from office and replaced by the appellant Epifanio Ragotero on the same day, so that appeal to the Commissioner of Civil Service, even if available to the appellee, was not an adequate remedy in the ordinary course of law.

Furthermore, appeal to the Commissioner of Civil Service is not a pre-requisite to, nor a bar to the institution of quo warranto proceedings[15], so that, as pointed out by the trial court, to require the appellee to exhaust administrative remedies before bringing this action, could easily result in a grave injustice of barring him forever from bringing the matter to the courts of justice for judicial determination.

We also find no merit in the appellants' contention that, since the appointments extended to the appellee as chief of police of Kalayaan, Laguna were all provisional in nature, and not permanent, his services could be terminated with or without cause, at the pleasure of the appointing officer. While it may be true that the appellee was holding a provisional appointment at the time of his dismissal, he was not a temporary official who could be dismissed at any time. His provisional appointment could only be terminated thirty (30) days after receipt by the appointing officer of a list of eligibles from the Civil Service Commission[16]. Here, no such certification was received by Mayor Elpidio Asedillo thirty (30) days prior to his dismissal of the appellee.

The appellants have also assailed the trial court for ordering them to give the appellee a period of not less than thirty (30) days within which to file an application for civil service eligibility under Sec. 9 of Republic Act no. 4864, claiming that the appellee had not asked for such relief in his petition.

Whether or not such relief was asked for in the petition or included in the petitioner's general prayer "for such relief and remedies that may be just and equitable in the premises", as the appellee claims, is now of little importance, in view of our finding that the appellee's provisional appointment could only be terminated thirty (30) days after receipt by the appointing officer of a list of eligibles from the Civil Service Commission. With such a posture, the appellee had ample time to ask the Civil Service Commission for a certification of civil service eligibility under the law.

We, likewise, find no merit in the contention of the respondent Municipality of Kalayaan, Laguna that Mayor Elpidio Asedillo alone should be held liable for the back salaries of the petitioner, because the records show that

the action was instituted against Mayor Asedillo, not personally, but in his capacity as Municipal Mayor of Kalayaan, Laguna, and he appeared and defended the action in such capacity.

Furthermore, it is of record that, after the summary dismissal of the petitioner by respondent Mayor Asedillo on 16 February 1967, the Municipal Council of Kalayaan instead of opposing or at least protesting the petitioner's summary dismissal from his position, even abolished the appropriation for the salary of the Chief of Police of Kalayaan, Laguna. We consider this act of the Municipal Council of Kalayaan as an approval or confirmation of the act of respondent Mayor in summarily dismissing the petitioner, as to make said municipality equally liable, as held by the trial court, as respondent Mayor for the reinstatement of petitioner and for the payment of his back salaries.

A number of cases decided by the Court where the municipal mayor alone was held liable for back salaries of, or damages to dismissed municipal employees, to the exclusion of the municipality, are not applicable in this instance. In *Salcedo vs. Court of Appeals*[17], for instance, the municipal mayor was held liable for the back salaries of the Chief of Police he had dismissed, not only because the dismissal was arbitrary but also because the mayor refused to reinstate him in defiance of an order of the Commissioner of Civil Service to reinstate.

In *Nemenzo vs. Sabillano*[18], the municipal mayor was held personally liable for dismissing a police corporal who possessed the necessary civil service eligibility, the dismissal being done without justifiable cause and without any administrative investigation.

In *Rama vs. Court of Appeals*[19], the governor, vice-governor, members of the Sangguniang Panlalawigan, provincial auditor, provincial treasurer and provincial engineer were ordered to pay jointly and severally in their individual and personal capacity damages to some 200 employees of the province of Cebu who were eased out from their positions because of their party affiliations.

The trial court, therefore, did not commit error in finding that the summary dismissal of the petitioner was illegal and in ordering the respondent Mayor and respondent Municipality to reinstate him with back salaries from the time of his dismissal.

The appealed judgment, however, needs some modification in the light of supervening events. It would appear that the reinstatement of the petitioner-appellee to his former position of chief of police of Kalayaan, Laguna, as ordered in the appealed judgment, is no longer feasible and hence, it cannot be enforced, in view of the appointment of a permanent chief of police (now called Station Commander) in accordance with PD 482, issued on 13 June 1974, which provides for the integration of police and fire departments and jails in certain provinces, including the province of Laguna.

In the Court's Resolution, dated 18 May 1987, the parties were required "to MOVE in the premises within ten (10) days from notice, considering the supervening events, including the change of administration that has transpired since the promulgation of the Freedom Constitution by virtue of Proclamation No. 3, dated 25 March 1986 as well as the ratification of the 1987 Constitution and pursuant to the provision of Section 18 of Rule 3, insofar as the public respondents are concerned (which requires the successor official to state whether or not he maintains the action and position taken by his predecessor in office)"[20]. Pursuant thereto, respondents-appellants filed a Motion to Dismiss[21] which states, among others, that -

"3. Upon the organization of Integrated National Police, respondent Epifanio Ragotero, who was designated Acting Chief of Police of Kalayaan, was replaced by a permanent Station Commander, Antonio de la Paz, who holds said position until now;

"4. That respondent Mayor Elpidio Asedillo has long been dead since April 26, 1978, but even before he died

he had been succeeded as Mayor of Kalayaan, Laguna, by Mayor Norma Macaraeg, then after his death by Mayor Gerardo Kabamalan, who was elected in 1980, and finally by OIC Turiano Montes, Jr., who was appointed on April 3, 1986 after the EDSA revolution;

"5. That petitioner-appellee Solano Laganapan himself was appointed as Municipal Secretary of the Sangguniang Bayan of Kalayaan, Laguna on April 7, 1986 after the EDSA revolution but his services were terminated on April 7, 1987, as he is not a civil service eligible[22]".

Such being the case, the petitioner-appellee is entitled only to back salaries which however, should be limited to a period of five (5) years[23].

In addition, respondent Mayor Asedillo who was sued in his official capacity as municipal mayor, having passed away, the liability to pay petitioner his back salaries must now devolve upon the respondent municipality alone.

WHEREFORE, with the modification that the petitioner-appellee is entitled only to the payment of five (5) years back salaries to be paid by respondent municipality, the judgment appealed from is hereby affirmed. Without pronouncement as to costs.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

* Rendered by Judge Arsenio Nanawa

[1] Original Records, p. 46

[2] Id., p. 48

[3] Id., pp. 49, 50, 51

[4] Id., p. 53

[5] Id., p. 54

[6] Id., p. 59

[7] Id., p. 57

[8] Id., p. 56

[9] Id., p. 1

[10] Id., p. 16

[11] Id., p. 35

[12] Id., p. 105

[13] *Mitra vs. Subido*, L-21691, Sept. 15, 1967, 21 SCRA 127 and other cases cited therein.

[14] *Cuevas vs. Pineda*, L-47617, Aug. 29, 1986, and other cases cited therein.

[15] *Galano vs. Roxas*, L-31241, Sept. 12, 1975, 67 SCRA 8

[16] *Ramos vs. Subido*, L-26090, Sept. 6, 1967, 21 SCRA 44; *Del Rosario vs. Subido*, L-23934, July 25, 1968, 24 SCRA 117; *Aguilar vs. Valencia*, L-30396, July 30, 1971, 40 SCRA 210; *Lamata vs. Cusi*, L-32619, Oct. 31,

1972, 47 SCRA 385; Sarmiento vs. Nolasco, L-38565, Sept. 16, 1974, 59 SCRA 173

[17] G.R. No. L-40846, Jan. 31, 1978, 81 SCRA 408

[18] G.R. No. L-20977, Sept. 7, 1968, 25 SCRA 1)

[19] G.R. No. L-44484, L-44842, L-44591, L-44894, March 16, 1987

[20] Rollo, p. 47

[21] Rollo, pp. 48-49

[22] Id., p. 48

[23] Samson vs. Court of Appeals, G.R. No. L-43182, November 25, 1986, 145 SCRA 654 limited back salaries for an illegally terminated civil service employee to three (3) years only but the cases of Balquidra vs. CFI of Capiz, Branch II, G.R. No. L-40490, October 28, 1977, 80 SCRA 123; Salcedo vs. Court of Appeals, G.R. No. L-40846, January 31, 1978; 81 SCRA 408; and Gementiza vs. Court of Appeals, G.R. No. L-41717-33, April 12, 1982, 113 SCRA 477 granted back salaries of five (5) years for illegally terminated civil service employees.

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