

ENRIQUE V. MORALES, PETITIONER, VS. ABELARDO SUBIDO, AS COMMISSIONER OF CIVIL SERVICE, RESPONDENT.

G.R. No. L-29658. November 29, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

The question for resolution in this case is whether a person who has served as captain in the police department of a city for at least three years but does not possess a bachelor's degree, is qualified for appointment as chief of police. The question calls for an interpretation of the following provisions of section 10 of the Police Act of 1966 (Republic Act 4864):

"Minimum qualification for appointment as Chief of Police Agency. - No person may be appointed chief of a city police agency unless he holds a bachelor's degree from a recognized institution of learning and has served either in the Armed Forces of the Philippines or the National Bureau of Investigation, or has served as chief of police with exemplary record, or has served in the police department of any city with the rank of captain or its equivalent therein for at least three years; or any high school graduate who has served as officer in the Armed Forces for at least eight years with the rank of captain and/ or higher."

The petitioner Enrique V. Morales is the chief of the detective bureau of the Manila Police Department and holds the rank of lieutenant colonel. He began his career in 1934 as patrolman and gradually rose to his present position. Upon the resignation of Brig. Gen. Ricardo G. Papa on March 14, 1968, the petitioner was designated acting chief of police of Manila and, at the same time, given a provisional appointment to the same position by the mayor of Manila.

On September 24, 1968 the respondent Commissioner Civil Service Abelardo Subido approved the designation of the petitioner but rejected his appointment for "failure to meet the Minimum educational and civil service eligibility requirements for the said position." Instead, the respondent certified other persons as qualified for the post and called the attention of the mayor to section 4 of the Decentralization Act of 1967 which requires the filling of a vacancy within 30 days after its coming into existence. Earlier, on September 5, he announced in the metropolitan newspapers that the position of chief of police of Manila was vacant and listed the qualifications which applicants should possess.

The petitioner's reaction to the announcement was a demand that the respondent include him in a list of eligible and qualified applicants from which the mayor might appoint one as chief of police of the city. He contended that his service alone as captain for more than three years in the Manila Police Department qualified him for appointment. The demand was contained in a letter which he wrote to the respondent on October 8, 1968. The mayor endorsed the letter favorably, but the respondent refused to reconsider his stand. Hence this petition for mandamus to compel the respondent to include the petitioner in a list of "five next ranking eligible and qualified persons."

The petitioner's reading of section 10 of the Police Act of 1966 is, per his own phrasings as follows:

"NO PERSON may be appointed chief of a city police agency unless HE

"(1) holds a bachelor's degree from a recognized institution of learning AND has served in the Armed Forces of the Philippines OR the National Bureau of Investigation, OR

"(2) has served as chief of police with exemplary record, OR

"(3) has served in the police department of any city with the rank of captain or its equivalent therein for at least three years; OR

"(4) any high school graduate who has served as officer in the Armed Forces for at least eight years with the rank of captain and/ or higher."

As he has served successively as captain, major and lieutenant colonel in the MPD since 1954, the petitioner's insistence is that he falls under the third class of persons qualified for appointment as chief of a city police department.

In support of this proposition, he adverts to the policy of the Act "to place the local police service on a professional level,"[1] and contends that a bachelor's degree does not guarantee that one who possesses it will make a good policeman, but that, on the other hand, one who, like the petitioner, has risen from patrolman to lieutenant colonel "meets the test of professionalism."

Even if we concede the correctness of the petitioner's view, still we do not see how the requirement of a college degree as additional qualification can run counter to the avowed policy of the Act. On the contrary, we should think that the requirement of such additional qualification will best carry out that policy. The fallacy of petitioner's argument lies in its assumption that the choice is between one who has served long and loyally in a city police agency and another who, not having so served, has only a bachelor's degree. But that is not the issue in this case. The issue rather is whether, within the meaning and intent of the law, in addition to service qualification, one should have educational qualification as shown by the possession of a bachelor's degree.

The petitioner invokes the last paragraph of section 9 of the Act which provides:

"Persons who at the time of the approval of this Act have rendered at least five years of satisfactory service in a provincial, city or municipal police agency although they have not qualified in an appropriate civil service examination are considered as civil service eligibles for the purpose of this Act."

In effect, he contends that if a person who has rendered at least five years of satisfactory service in a police agency is considered a civil service eligible, so must a person be considered qualified even though he does not possess a bachelor's degree.

The petitioner's argument is fallacious in two respects. First, it fails to distinguish between eligibility and qualification. For the statute may allow the compensation of service for a person's lack of eligibility but not necessarily for his lack of educational qualification. Second, section 9 governs the appointment of members of a police agency only. On the other hand, the appointment of chiefs of police is the precise gravamen of section 10, the last paragraph of which states:

"Where no civil service eligible is available, provisional appointment may be made in accordance with Civil Service Law and rules: Provided, that the appointee possesses the above educational qualification: Provided, further, That in no case shall such appointment extend beyond six months, except for a valid cause, and with the approval of the Civil Service Commission."

Thus, while the Act gives credit for service and allows it to compensate for the lack of civil service eligibility in the case of a member of a police agency, it gives no such credit for lack of civil service eligibility in the case of a

chief of police. On the contrary, by providing that a person, who is not a civil service eligible, may be provisionally appointed[2] chief of police "[p]rovided, [t]hat the appointee possesses the above educational qualification, " the Act makes it unequivocal that the possession of a college degree or a high school diploma (in addition to service) is an indispensable requisite.

It is next contended that to read section 10 as requiring a bachelor's degree, in addition to service either in the Armed Forces of the Philippines or in the National Bureau of Investigation or as chief of police with an exemplary record or as a captain in a city police department for at least three years, would be to create an "absurd situation" in which a person who has served for only one month in the AFP or the NBI is in law considered the equal of another who has been a chief of police or has been a captain in a city police agency for at least three years. From this it is concluded that "the only logical equivalence of these two groups (Chief of Police with exemplary record and Police Captain for at least 3 years in a City Police Agency) is the bachelor's de-gree."

Section 10, it must be admitted, does not specify in what capacity service in the AFP or in the NBI must have been rendered, but an admission of the existence of the ambiguity in the statute does not necessarily compel acquiescence in the conclusion that it is only in cases where the appointee's service has been in the AFP or in the NBI that he must be required to have a bachelor's degree. The logical implication of the petitioner's argument that a person who has served as captain in a city police department for at least three years need not have a bachelor's degree to qualify, is that such person need not even be a high school graduate. If such be the case would there still be need for a person to be at least a high school graduate provided he has had at least eight years of service as captain in the AFP?

The truth is that, except for the ambiguity referred to (the meaning of which is not in issue in this case), section 10 of the Act needs no interpretation because its meaning is clear. That the purpose is to require both educational and service qualifications of those seeking appointment as chief of police is evident from a reading of the original provision of House Bill 6951 and the successive revisions it underwent. Thus, section 12 of House Bill 6951 (now section 10 of the Police Act of 1966) read:

"Minimum Qualification for appointment as Chief of a Police Agency. - No chief of a police agency of a province or chartered city shall be appointed unless he is a member of the Philippine Bar, or a holder of a bachelor's degree in police administration holder of a bachelor's degree who served either in the Philippine Constabulary or the police department of any city from the rank of captain or inspector, second class, or its equivalent for at least three years shall be eligible for appointment to the position of chief of the police agency.

"No chief of a municipal police force shall be appointed unless he is a holder of a four-year college degree course or a holder of a Bachelor's degree in Police Administration or Criminology.

"Where no civil service eligible is available provisional appointment may be made in accordance with Civil Service Law and rules, provided the appointee possesses the above educational qualification but in no case shall such appointment exceed beyond six months."

It was precisely because the bill was clearly understood as requiring both educational and service qualifications that the following exchanges of view were made on the floor of the House of Representatives:

"MR. VELOSO (F.). Section 12, Minimum Qualification for Appointment, of Chief of a Police Agency, provides that the chief of a police agency of a province or a chartered city should be at least a member of the Philippine Bar or a holder of a bachelor's degree in Police Administration; and the chief of police of a municipality should be at least a holder of a four years college degree or holder of a bachelor's degree in Police Administration or Criminology.

"At first blush, there is no reason why I should object to these minimum requirements; but I find such

requirements very rigid because it would not allow a man to rise from the ranks. Take a policeman who rose from the ranks. He became a corporal, a sergeant, a police lieutenant. Shouldn't he be allowed to go higher? If he merited it, he should also be appointed chief of police of a city or municipality.

"MR. AMANTE. During our committee discussions, I objected to this provision of the bill because it is a very high qualification. However, somebody insisted that in order to professionalize our police system and also to attain a high standard of police efficiency, we must have a chief of police who has a college degree. The point which the gentleman is now raising was brought up by one Member in the sense that a policeman who rose from the ranks through serious hard work, even after serving for fifteen or twenty years in the police force, cannot become chief of police for lack of a college degree.

"The gentleman's objection is a very good and reasonable one. I assure him if he bring up during the period of amendments, I will consider it.

"MR. VELOSO (F.). I am glad that the Committee will accept my amendment. My only regret, however, is that because I made a number of proposed amendments, I will not be ready to submit them immediately. We should just limit ourselves to the sponsorship this evening." [3]

Thus it appears that it was because of the educational requirement contained in the bill that objections were expressed, but while it was agreed to delete this requirement during the period of amendment, no motion was ever presented to effect the change. [4]

In the Senate, the Committee on Government Reorganization, to which House Bill 6951 was referred, reported a substitute measure. [5] It is to this substitute bill that section 10 of the Act owes its present form and substance. Parenthetically, the substitute measure gives light on the meaning of the ambiguous phrase "and who has served either in the Armed Forces of the Philippines or the National Bureau of Investigation." The provision of the substitute bill reads:

"No person may be appointed chief of a city police agency unless he holds a bachelor's degree and has served either in the Armed Forces of the Philippines or the National Bureau of Investigation or police department of any city and has held the rank of captain or its equivalent therein for at least three years or any high school graduate who has served the police department of a city for at least 8 years with the rank of captain and/ or higher."

Thus, service in the AFP or the NBI was intended to be in the capacity of captain for at least three years.

At the behest of Senator Francisco Rodrigo, the phrase "has served as officer in the Armed Forces" was inserted so as to make the provision read:

"No person may be appointed chief of a city police agency unless he holds a bachelor's degree and has served either in the Armed Forces of the Philippines or the National Bureau of Investigation or police department of any city and has held the rank of captain or its equivalent therein for at least three years or any high school graduate who has served the police department of a city or who has served as officer in the Armed Forces for at least 8 years with the rank of captain and/or higher." [6]

It is to be noted that the Rodrigo amendment was in the nature of an addition to the phrase, "who has served the police department of a city for at least 8 years with the rank of captain and/ or higher," under which the petitioner herein, who is at least a high school graduate (both parties agree that the petitioner finished the second year of the law course) could possibly qualify. However, somewhere in the legislative process the phrase was dropped and only the Rodrigo amendment was retained.

Because of the suggested possibility that the deletion was made by mistake, the writer of this opinion personally and painstakingly read and examined the enrolled bill in the possession of the legislative secretary of the Office of

the President,[7] and found that the text of section 10 of the Act is as set forth in the beginning of this opinion. The text of the Act bears on page 15 thereof the signatures of President of the Senate Arturo M. Tolentino and Speaker of the House of Representatives Cornelio T. Villareal, and on page 16 thereof those of Eliseo M. Tenza, Secretary of the Senate, and Inocencio E. Pareja, Secretary of the House of Representatives, and of President Ferdinand E. Marcos. Under the enrolled bill theory, announced in *Mabanag v. Lopez Vito*[8] this text of the Act must be deemed as importing absolute verity and as binding on the courts. As the Supreme Court of the United States said in *Marshall Field & Co. v. Clark*:[9]

"The signing by the Speaker of the House of Representatives, and, by the President of the Senate, in open session, of an enrolled bill, is an official attestation by the two houses of such bill as one that has passed Congress. It is a declaration by the two houses, through their presiding officers, to the President, that a bill, thus attested, has received in the form, the sanction of the legislative branch of the government, and that it is delivered to him in obedience to the constitutional requirement that all bills which pass Congress shall be presented to him. And when a bill, thus attested, receives his approval, its authentication as a bill that has passed Congress should be deemed complete and unimpeachable. As the President has no authority to approve a bill not passed by Congress, an enrolled Act in the custody of the Secretary of State, and having the official attestations of the Speaker of the House of Representatives, of the President of the Senate, and of the President of the United States, carries, on its face, a solemn assurance by the legislative and executive departments of the government, charged, respectively, with the duty of enacting and executing the laws, that it was passed by Congress. The respect due to coequal and independent departments requires the judicial department to act upon that assurance, and to accept, as having passed Congress, all bills authenticated in the manner stated; leaving the courts to determine, when the question properly arises, whether the Act, so authenticated, is in conformity with the Constitution." [10]

To proceed with the history of the statute, it appears that when the two chambers of the legislature met in conference committee, the phrase "has served as chief of police with exemplary record" was added, thereby accounting for its presence in section 10 of the Act.[11]

What, then, is the significance of this? It logically means that - except for that vagrant phrase "who has served the police department of a city for at least 8 years with the rank of captain and/or higher" - a high school graduate, no matter how long he has served in a city police department, is not qualified for appointment as chief of police.

Still it is insisted that "if a high school graduate who has served as captain in the Armed Forces of the Philippines for eight years irrespective of the branch of service where he served can be Chief of Police of Manila, why not one who holds an A.A. degree, completed two years in Law School, and served as Chief of the Detective Bureau for 14 years, holding the successive ranks of Captain, Major and Lt. Colonel? Not to mention the fact that he was awarded three Presidential Awards, and was given the Congressional Commendation - the highest award ever conferred in the history of the Manila Police Department."

The trouble with such argument is that even if we were to concede its soundness, still we would be hard put reading it in the law because it is not there. The inclusion of desirable enlargements in the statute is addressed to the judgment of Congress and unless such enlargements are by it accepted courts are without power to make them. As Mr. Justice Frankfurter put the matter with lucidity:

"An omission at the time of enactment, whether careless or calculated, cannot be judicially supplied however much later wisdom may recommend the inclusion.

"The vital difference between initiating policy, often involving a decided break with the past, and merely carrying out a formulated policy, indicates the relatively narrow limits within which choice is fairly open to courts and the extent to which interpreting law is inescapably making law." [12]

In conclusion, we hold that, under the present state of the law, the petitioner is neither qualified nor eligible for appointment as chief of police of the city of Manila. Consequently, the respondent has no corresponding legal duty - and therefore may not be compelled by mandamus - to certify the petitioner as qualified and eligible.

ACCORDINGLY, the petition for mandamus is denied. No pronouncements as to costs.

Concepcion, C.J., Reyes, Makalintal, Sanchez, Fernando, and Capistrano, JJ., concur.

Dizon, J., concurs in the result.

Zaldivar, J., did not take part.

[1] Sec. 2.

[2] Section 24(c) of the Civil Service Act of 1959 provides: "Provisional Appointment. - A provisional appointment may issued upon the prior authorization of the Commissioner in accordance with the provisions of this Act and the rules and standards promulgated in pursuance thereto to a person who has not qualified in an appropriate examination but who otherwise meets the requirements for appointment to a regular position in the competitive service, whenever a vacancy occurs and the filling thereof is necessary in the interest of the service and there is no appropriate register of eligibles at the time of appointment."

[3] 1 Cong. Rec. No. 64, 156-57 (1966) (emphasis added).

[4] See 1 Cong. Rec. No. 65, 28-36 (1966).

[5] See Committee Report 667.

[6] Unpublished Journal of the Proceedings of August 25-26, 1966 of the Senate.

[7] Of three copies of an enrolled bill signed into law, one is kept in the Office of the President, a second one in the Senate and a third one in the House of Representatives. See Bernal, *The Legislative Process*, 27 Phil. L. J. 507, 533 (1952).

[8] 78 Phil. 1 (1947) (overruled on other points in *Gonzales v. Commission on Elections*, L-28196, Nov. 9, 1967).

[9] 143 U. S. 647 (1891).

[10] *Id.* at 672.

[11] 1 Cong. Rec. No. 7 (special session, Aug. 27, 1966) 45.

[12] Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527 534 (1947).

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CONCURRING IN THE RESULT

DIZON, J.:

As stated in the decision penned by Mr. Justice Fred Ruiz Castro, petitioner Enrique V. Morales began his career in the Manila Police Department in 1934 as patrolman and gradually rose to his present position - that of Chief of the Detective Bureau thereof - and holds the rank of Lieutenant-Colonel.

In my opinion, a man bearing such credentials can be reasonably expected to be a good Chief of the Manila Police Department. But the issue before us is not whether or not his training and experience justify that expectation, but whether or not, under and in accordance with the pertinent law, he is qualified for appointment to such office to the extent that he is entitled to the relief sought, namely, the issuance of a writ of mandamus compelling the respondent Commissioner of Civil Service to include him in a list of eligible and qualified applicants from which the mayor of the City of Manila might choose the appointee who will fill the vacant position of Chief of Police of the City of Manila.

Section 10 of Police Act of 1966 (Republic Act 4864) - which controls the issue before us, reads as follows:

"Minimum qualification for appointment as Chief of Police Agency. - No person may be appointed chief of a city police agency unless he holds a bachelor's degree from a recognized institution of learning and has served either in the Armed Forces, of the Philippines or the National Bureau of Investigation, or has served as chief of police with exemplary record, or has served in the police department of any city with the rank of captain or its equivalent therein for at least three years; or any high school graduate who has served as officer in the Armed Forces for at least eight years with the rank of captain and/or higher."

The above legal provision may be construed as providing for two different kinds of academic qualification, namely, (1) a bachelor's degree from a recognized institution of learning, and (2) a high school degree, each of which is coupled with separate and distinct service qualifications. Any one of the latter, joined with either of the aforesaid academic requirements, would qualify a person for appointment as Chief of a city police agency. In other words, an applicant who is a holder of a bachelor's degree from a recognized institution of learning and has served either in the Armed Forces of the Philippines or the National Bureau of Investigation would make the grade, in the same manner as would another applicant with a similar bachelor's degree who has served as chief of police with exemplary record, etc.

In the case of an applicant who is a mere high school graduate, the service qualification is not only different but is higher and more exacting - for obvious reasons.

Petitioner, however, would construe and read the law as follows:

"NO PERSON may be appointed chief of a city police agency unless HE

"(1) holds a bachelor's degree from a recognized institution of learning AND has served in the Armed Forces of the Philippines OR the National Bureau of Investigation, OR

"(2) has served as chief of police with exemplary record OR

"(3) has served in the police department of any city with the rank of captain or its equivalent therein for at least three years; OR

"(4) any high school graduate who has served as officer in the Armed Forces for at least eight years with the rank of captain and/or higher."

While, in my view, petitioner's interpretation is not unreasonable, it falls short of showing that it is the true and correct meaning and intent of the law aforesaid. This, in my opinion, must lead to, the conclusion that petitioner is not entitled to the issuance of a writ of mandamus for the purpose stated in his petition because to be entitled

thereto he must show that, in relation to the matter at issue, he has a clear enforceable right, on the one hand, and that the respondent has an imperative legal duty to perform, on the other. Because of this I am constrained to concur in the result.

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