

CIPRIANO AMORA, CONRADO MATONDO, APOLONIO SIGNAR, FLORENTINO LOVETE, LORETO CINCO, APOLINAR ROSAL AND FILOMENO TABLO, PETITIONERS AND APPELLEES, VS. FRANCO BIBERA, FRANCISCO TAV...

G.R. No. L-8873. May 02, 1956

Ponente: PADILLA, J.

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PADILLA, J.:

In this quo warranto case the petitioners, chief of police, sergeant of police and patrolmen of the police force in the Municipality of Bato, Province of Leyte, raise the question of the legality of their ouster from office and of the appointment of the respondents in their place and stead. They pray that they be reinstated to their respective positions and paid their back salaries from their removal from office to their reinstatement.

The parties agreed upon the following stipulation of facts:

COME NOW the parties in the above-entitled case duly assisted by their respective counsel and to this Honorable Court respectfully submit the following stipulation of facts agreed and admitted by said parties:

- That petitioners and respondents are residents of Bato, Leyte, of legal age and come within the jurisdiction of the Court;
- That petitioner Cipriano Amora was duly appointed chief of police of Bato, Leyte, promotional, effective August 1, 1951, as evidenced by his promotional appointment which is marked as Exhibit "A" and his oath of office dated August 1, 1951 marked Exhibit "A-1", and discharged his duties as such;
- That petitioner Cipriano Amora was a veteran of the last World War being a member of the Leyte Area Command under Col. Kangleon. He was inducted to the Philippine Army on September 3, 1941, fought in Bataari, joined the guerrilla organization of Col. Kangleon and was discharged from the Army on September 25, 1946, as per Exhibit "A-5"; his special order dated September 3, 1944, as Sgt. of Leyte Area Command is evidenced by Exhibit "A-4";
- That petitioner Conrado Matondo was appointed Sgt. of Police of Bato, Leyte, on August 1, 1951 as evidenced by his appointment/ Exhibit "B", and entered upon the performance of his duties on December 28, 1951 as evidenced by Exhibit "B-1";
- That petitioner Loreto Cinco was appointed as policeman of Bato, Leyte on September 1, 1946 as shown by his appointment, Exhibits "C", "C-2" and "C-3", and entered upon the performance of his duties as such on the same date as shown by his oath of office, Exhibit "C-1";
- That petitioner Loreto Cinco was a veteran of the last war as evidenced by his discharge papers, Exhibit "C-4";
- That petitioner Apolinar Kosal was a veteran of the last war being inducted to B Company, 41st Inf., FA, at

Tacloban, Leyte on February 25, 1946 as shown by his release papers, Exhibit "D-3";

- That petitioner Apolonio Signar was appointed municipal policeman of Bato, Leyte effective/November 1, 1951 as shown by Exhibit "E", and took office and began discharging his duties as such on the same date as evidenced by Exhibit "E-1";

- That petitioner Filomeno Tablo was a veteran of the last World War being a member of Company "A", 96th Inf., 92nd Div;; PA, Leyte Area Command, inducted to said organization on July 25, 1946, and discharged honorably from said organization on September 28, 1946 as shown by his discharge papers, Exhibit "F-3";

- That petitioner Florentino Lovete was. appointed municipal policeman of Bato, Leyte on October 1, 1949 and took office on October 1, 1949, and began discharging the duties of his office as such on the same date as shown by his oath of office, Exhibit "G"

This petitioner was given a promotional appointment effective January 1, 1951, as shown by his appointment, Exhibit "

- That since petitioners have been duly appointed, and assumed their respective offices, they did not resign nor were they removed for misconduct and incompetency to the Philippine Government; neither have they committed illegal acts in the performance of their duties nor have they violated any law, rules and regulations in the performance of their duties nor have they been investigated for cause stated and against the provisions of Republic Act No. 557, and have continued in the discharge of their duties from the time of their appointment until February 21, 1954 when the respondent Mayor Franco Bibera terminated their services as evidenced by a general order of termination dated February 20, 1954 which is marked as Exhibit "H";

- That on February 22, 1954, petitioner Cipriano Amora was ousted and relieved by respondent Francisco Tavera as Chief of Police of Bato, Leyte; that petitioner Conrado Matondo was ousted and relieved by respondent Melecio Aguilar as sergeant of the police force of Bato, Leyte, that petitioner Filomeno Tablo was ousted and relieved by respondent Florencio Aguilar as policeman of Bato, Leyte; that petitioner Apolinar Rosal was ousted and relieved by respondent Isabelo Remolador as policeman of Bato, Leyte; that petitioner Loreto Cinco was ousted and relieved by respondent Antonio Red as policeman of Bato, Leyte, and petitioner Apolonio Signar was ousted and relieved by respondent Sinforiano Serdan as policeman of Bato, Leyte;

- That respondents have withheld and continue to withhold from. the petitioners their respective positions above-mentioned despite a demand by the latter for reinstatement; and petitioners have not been paid salaries from the time of termination of their services on February 21, 1954 until the present;

- That respondents have assumed office as members of the police force of Bato, Leyte, vice the petitioners and continued to hold said positions until the present time and having been paid their salaries from February 21, 1954 until the present;

- That in the termination order dated February 20, 1954 of respondent Mayor Franco. Bibera of Bato, Leyte terminated the appointments and services of petitioners effective February 21, 1954 on the ground that said services were already terminated by operation of law, and the termination order is marked as Exhibit "H" for the petitioners and Exhibit "1" for the respondents;

- That in a letter written and signed by all the petitioners to the respondent Mayor of Bato, Leyte, under date of February 22, 1954, said petitioners agreed to turn over the respective responsibilities as such police officers if no administrative decision will be received from the higher authorities within one month after date of said letter which is hereto attached and marked Exhibit

- That up to March 21, 1954, no administrative decision about the petitioners' appeal was received by or served upon the petitioners or respondents;
- That petitioners have rendered their respective services as members of the police force of Bato, Leyte up to February 21, 1954, as evidenced by the certification of the ex-chief of police, Cipriano Amora, which certification is hereto annexed and marked Exhibit "3";
- That respondent Francisco Tavora was duly appointed by respondent Franco Bibera, and took oath and assumed office on February 22, 1954 as Chief of Police of Bato, Leyte, vice Cipriano Amora, non-eligible, effective February 22, 1954 as shown by respondent Francisco Tavera's appointment—Exhibit "4", certification of the mayor as Exhibit "4-A", oath of office as Exhibit "4-B", and information sheet as Exhibit "4-C";
- That Francisco Tavera has a certificate from the Bureau of Civil Service dated January 17, 1952 showing that he passed patrolman's examination of the date therein stated, which certificate is marked as Exhibit "4-D". Previously said respondent was appointed as Sergeant of Police of Maasin, Leyte on September 7, 1945 as shown by Exhibit "4-E", and on October 28, 1948 he was appointed as Provincial Guard effective July 1, 1948 as shown by Exhibit "4-F";
- That the civil service eligibility of respondent Francisco Tavera has been passed upon, recognized and upheld by our Supreme Court in its decision of the case of Orais et al. vs. Ribo et al., G. R. No. L-4945, Official Gazette, Vol. 49, December, 1952, page 5386, et seq.;
- That respondent Melecio Aguilar was duly appointed, took oath and assumed office as policeman of Bato, Leyte, vice Conrado Matondo, non-eligible and non-veteran, effective February 22, 1954 as shown by his appointment which is marked as Exhibit "5", mayor's certification as Exhibit "5-A", oath of office as Exhibit "5-B", and information sheet as Exhibit "5-C". Said respondent is in possession of certificate from the Bureau of Civil Service evidencing that he passed (83.9%) the assessor's civil service examination, which document is marked as Exhibit "5-D";
- That respondent Florencio Aguilar was duly appointed as policeman of Bato, Leyte, took oath and assumed office, vice Filomeno Tablo, non-eligible, on February 22, 1954, as shown by his appointment which is hereby marked as Exhibit "6", mayor's certification as Exhibit "6-A", oath of office as Exhibit "6-B", and information sheet as Exhibit "6-C"; that said respondent was a soldier of the last World War as shown by his discharge papers marked Exhibit "6-D". He is in possession of a graduation certificate from the Army Engineers' School marked as Exhibit "6-E". This respondent is a high school graduate as evidenced by his high school diploma marked as Exhibit "6-F";
- That respondent Antonio Briones has been appointed, took oath and assumed office as member of the police force of Bato, Leyte, on February 22, 1954, vice Florencio Lovete, non-eligible and non-veteran, as evidenced by his appointment which is marked as Exhibit "7-B", and information sheet as Exhibit "7-C"; said respondent is in possession of discharge certificate dated April 20, 1949 which is marked as Exhibit "7-D", and acknowledgment of service marked as Exhibit "7-E";
- That respondent Isabelo Remolador has been duly appointed, took oath and assumed office as policeman of Bato, Leyte, vice Apolinar Rosal, non-eligible, on February 22, 1954 as shown by his appointment marked "Exhibit "8", mayor's certification marked as Exhibit "8-A", oath of office as Exhibit "8-B", and Information sheet, Exhibit "8-C";
- That respondent Antonio Red was duly appointed, took oath and assumed office as policeman of Bato, Leyte, vice Loreto Cinco, non-eligible, on February 22, 1954; as shown by his appointment marked Exhibit "9"; mayor's

certification, "9-A"; oath of office, "9-B"; and information sheet, "9-C". Said respondent is a veteran of the last World War as evidenced by Exhibit "9-D", which is his honorable discharge certificate;

- That Sinforiano Serdan was duly appointed as policeman of Bato, Leyte, took oath and assumed office vice Apolonio Signar, non-eligible and non-veteran, as shown by his appointment which is marked Exhibit "10"; oath of office, Exhibit "10-B"; mayor's certification, Exhibit "10-A"; and information sheet, Exhibit "10-C". Sinforiano Serdan was a third year high school student as shown by Exhibit "10-D", which is a certification issued by the registrar of Bato Academy at Bato, Leyte;

- That none of the petitioners have taken and/or passed any civil service examination given by the Bureau of Civil Service, and their appointments were made according to section 682 of the Revised Administrative Code as per annotations in their respective appointments;

- That since the appointments of said respondents effective February 22, 1954, all respondents, except Franco Bibera who is a nominal party in this action, have regularly performed the duties, of their offices and have been receiving their respective salaries to the present;

- That the appointments of the respondents have been forwarded to the proper authorities. Letter of transmittal of said appointments signed by Mayor Franco Bibera dated February 22, 1954 is hereto attached and marked as Exhibit "11";

- That respondent Franco Bibera has not terminated the appointments and services of two previously appointed policemen of Bato, Leyte, namely, privates Eugenio Gerodias and Arcadio Gerodias, in view of their civil service eligibility;

- That petitioner Loreto Ginco filed an indefinite leave of absence since February 1, 1954 is shown by his approved Application for Indefinite Leave of Absence, Exhibit "12". This petitioner is presently receiving a monthly service-connected disability pension from the United States Veterans Administration;

- That petitioner Apolinar Rosal has secured a medical certificate claiming that he is physically weak as shown by Exhibit "13", a certificate dated September 10, 1953;

- That respondent Franco Bibera received a letter on February, 1954 from the Office of the President dated February 27, 1954, copy of which is marked as Exhibit "14" and attached hereto, requesting said mayor to explain why petitioners should not be reinstated. The answer of Mayor Bibera embodied in a first indorsement dated March 11, 1954, a copy of which is hereto attached and marked as Exhibit "15", was sent to the Office of the President;

- That a copy of the letter of the Executive Secretary, Office of the President, dated July 31, 1954, addressed to Rep. Domingo Veloso, upholding the legal action of respondent Franco Bibera, has been received by Mayor Bibera on August 6, 1954, from the Office of the President. Said letter and envelope are hereto attached and marked Exhibits "16" and "16-A", respectively.

- That the respondents and petitioners admit the authenticity and due execution of the foregoing exhibits, which are hereto attached and made integral part of this stipulation of facts, without necessarily admitting the conclusions therein contained, the latter being within the province of the Court to determine;

- That the parties reserve their rights to prove, submit and offer such additional evidence as each party may deem necessary in the settlement of this action not herein before stipulated, agreed and admitted;

- That the respective rights and claims of the respondents and petitioners are hereby submitted for determination and judgment of this Honorable Court, said parties reserving their intention to file or submit their respective

memoranda in support of their contentions within a period of fifteen (15) days from the time the case is rested;

- That the right to appeal to the proper higher judicial courts and the right to other remedies and processes in aid of appeal is not barred or in any other way prejudiced by the foregoing stipulations. Wherefore, the parties respectfully submit the foregoing agreed and admitted stipulation of facts to be made the basis for judgment of this Honorable Court in this action.

Baybay, Leyte.

October 27, 1954.

TEODULO C. TANDAYAG

for the petitioners

Ormoc City

JUAN Y. REYES

for the respondents

Tacloban City

OSCAR R. LEOPANDO

for the petitioners

Hilongos, Leyte

RAMON AM. TORRES

for the respondents

Baybay, Leyte

On 7 January 1955 the Court rendered judgment, the dispositive part of which was amended on 22 January 1955—

* * * in favor of the petitioners and against the respondents ordering Franco Bibera to reinstate the petitioners to their respective positions and ordering the respondents to vacate their places without pronouncement as to costs. The Court orders for the payment of the back salaries of the petitioners during the period of their illegal separation from the service on February 21, 1954 up to the period of their reinstatement.

The respondents have appealed.

The petitioner Cipriano Amora, chief of police of Bato, Leyte, a veteran but without civil service eligibility, was replaced by respondent Francisco Tavera who had passed the civil service examination for patrolman (Exhibit 4-D). Being a civil service eligible, respondent Tavera's appointment to replace a non-eligible temporarily occupying the position of chief of police is valid and legal. The fact that petitioner Amora is a veteran does not give him the status of a civil service eligible under Republic Act No. 65, as amended by Republic Act No. 154, and he may be removed upon certification of an eligible by the Commissioner of Civil Service.[1] Likewise the appointment of respondent Melecio Aguilar, who had passed the examination for special deputy assessor and hence a civil service eligible (Exhibit 5-D), to the position of sergeant of police in the place of petitioner Conrado Matondo, a non-eligible temporarily holding the position of sergeant of police, is legal and valid.

It is argued that in the case of respondents Tavera and Aguilar, their civil service eligibility already expired for their failure to obtain employment in the Government within one year after passing the civil service examination they had taken. This contention would have been sustained were it not for the fact that Republic Act No. 1079, approved on 15 June 1954, provides that "Civil Service eligibility shall be permanent and shall have no time limit;" and that "This Act shall be retroactive so as to include persons whose civil service eligibility had expired prior to its approval."

The fact that the respondents Tavera and Aguilar were appointed to positions other than to those for which they had qualified in the civil service does not militate against their appointment, for petitioners have pointed out no law that prohibits the appointment of one who had passed a civil service examination to a position other than that for which he had qualified, especially when the position to which he has been appointed does not call for special knowledge or skill.

The temporary appointment of respondent Sinfiorano Serdan and Antonio Briones, the latter a veteran, both without civil service eligibility, to the position of policeman, vice petitioners Apolonio Signar and Florentino Lovete, also without civil service eligibility, is legal and valid. Appointments made under section 682 of the Revised Administrative Code as amended by Commonwealth Acts Nos. 177 and 281 are temporary, when the public interests so require and only upon the prior authorization of the Commissioner of Civil Service, not to exceed thirty days from receipt by the chief of the bureau or office of the Commissioner's certification of an eligible. The temporary appointment of non-eligibles to replace non-eligibles whose terms have expired is not prohibited.[1] The latter cannot successfully invoke the provisions of Republic Act No. 657 as the Act guarantees the tenure of office of provincial guards and members of city and municipal police who are eligibles. Non-eligibles do not come under the protection of the Act.[2]

The replacement of the petitioners Loreto Cinco, Apolonio Rosal and Filomeno Tablo, all veterans but without civil service eligibility, by respondents Antonio Red, Isabelo Remolador and Florencio Aguilar, all without civil service eligibility, is illegal because the petitioners Cinco, Rosal and Tablo are veterans appointed within three years as provided for in Republic Act No. 65, as amended by Republic Act No. 154. Although not civil service eligibles they are entitled as veterans to protection in office pending receipt by the chief of the bureau or office of certification of, eligibles from the Commissioner of Civil Service.[3] And although the respondents Antonio Red and Florencio Aguilar are also veterans, they cannot be appointed to replace veterans who were appointed within the period of time as provided, for in Republic Act No. 60, as amended by Republic Act No. 154, and are entitled to protection in office. Moreover, the appointment of veterans Antonio Red and Florencio Aguilar on 22 February 1964 was made beyond or outside the period of time as provided for in said Act as amended.[4]

Accordingly, the appointment of respondents Francisco Tavera as chief of police, vice Cipriano Amora; Melecio Aguilar as sergeant of police, vice Conrado Matondo; and Sinfiorano Serdan and Antonio Briones as policemen, vice Apolonio Signar and Florentino Lovete, respectively, being legal and valid, the judgment appealed from insofar as it concerns them is reversed and set aside, and the petition as to them dismissed. The dismissal of the petitioners Loreto Cinco, Apolonio Rosal and Filomeno Tablo, all policemen, and the appointment of respondents Antonio Red, Isabelo Remolador and Florencio Aguilar in their place and stead being illegal, the judgment appealed from insofar as it concerns them is affirmed and the respondent Franco Bibera, Mayor of Bato, Leyte, ordered to reinstate the petitioners Cinco, Rosal and Tablo. The rest of the judgment as to those to be reinstated is affirmed. No costs shall be taxed.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

[1] *Orais vs. Ribo*, 49 Off. Gaz., 5386, 5393; *Inocente vs. Ribo*, 50 Off. Gaz., 4853.

[1] *Orais vs. Ribo*, supra; *Paña vs. Medina*, 50 Off. Gaz., 146; *Manigbas vs. De Guzman*, 94 Phil., 245. *Inocente vs. Ribo*, supra.

[2] *Orais vs. Ribo*, supra.

[3] Orais vs. Ribo, supra; Inocente vs. Ribo, supra.

[4] Inocente vs. Ribo, supra.

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