

ISIDRO M. JAVIER, PETITIONER-APPELLEE, VS. PURIFICACION C. REYES, RESPONDENT-APPELLANT.

G.R. No. L-39451. February 20, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

Before the Court is a certified case involving pure questions of law. The facts, as found by the trial court, are as follows:

xxx It is alleged that petitioner was the duly appointed Chief of Police of Malolos, Bulacan, on November 7, 1967 by the then Mayor Victorino B. Aldaba, which appointment was confirmed and approved by the Municipal Council of the said municipality on the same date as per Resolution No. 210, series of 1967; that the following day, petitioner took his oath of office and thereafter assumed and discharged the rights, prerogatives and duties of the office; that on January 3, 1968, pending approval and attestation of his appointment by the Civil Service Commission, respondent who had then assumed the office of Municipal Mayor, recalled petitioner's appointment from the Civil Service Commission in her letter of said date; that not satisfied with her letter of recall, respondent summarily, arbitrarily and illegally ousted and relieved petitioner as Chief of Police and at the same time, designated Police Lt. Romualdo F. Clemente, a non-eligible, as Officer-in-charge of the Police Department, in her memorandum dated January 12, 1968; that on February 2, 1968, pursuant to the letter of recall, the Civil Service Commission returned the appointment papers of petitioner without action, duly excepted to by the petitioner in his motion for reconsideration dated February 16, 1968; that on May 2, 1968, the Civil Service Commission attested and approved the appointment of petitioner as such Chief of Police, in its 3rd Indorsement, pertinent portion of which reads as follows:

In view of Resolution No. 185 adopted by the Municipal Council of Malolos, Bulacan, in its meeting of September 26, 1967, notifying this Office that the appointment of Mr. Bayani Bernardo as Chief of Police of Malolos has not been confirmed by said Council, and as the consent of the Municipal Council is a mandatory requirement under Section 1 of Rep. Act 1551, the said appointment is considered null and void. In view thereof, the attached appointment of Mr. Isidro M. Javier has been approved as permanent under section 24 (b) of R. A. 2260 x x x;

That in its letter to respondent dated July 9, 1968 wherein its ruling contained in the aforequoted 3rd Indorsement was reiterated, the Civil Service Commission directed respondent 'steps be taken immediately to install Mr. Javier as Chief of Police of that Municipality Malolos'; that notwithstanding the aforementioned ruling and directive, respondent neglected and refused to reinstate petitioner to the position of Chief of Police of Malolos which act is specifically enjoined upon her as Municipal Mayor and public officer, in Sec. 19, Article IV of Rep. Act 2260 otherwise known as the Civil Service Act of 1959; that as a result of respondent's refusal to perform the act enjoined upon her by law, petitioner was deprived of his salary since November 8, 1967 up to his ouster on January 13, 1968 and from then on up to the present; that as a further consequence of the inaction of respondent, petitioner suffered social humiliation and embarrassment, was exposed to public ridicule, causing him to mental anguish thereby sustaining moral damages in the amount of P5,000.00 and was forced to engage counsel to prosecute his rights for the sum of P1,000.00 attorney's fees.

Respondent denies the material allegations of the petition and as special and affirmative defenses alleges that one Bayani Bernardo was appointed Chief of Police of Malolos by the then Mayor Jovencio C. Caluag on September 4, 1967; that likewise, Isidro M. Javier, petitioner herein, was appointed Chief of Police of the same municipality on November 8, 1967 by the then Mayor Victorino B. Aldaba, both of which appointments were approved by the Civil Service Commission; that in justifying the approval of the appointment of Bayani Bernardo, despite lack of consent of the Municipal Council, the Civil Service Commission stated in its 7th Indorsement dated January 17, 1968, as follows:

x x x The non-retention of the phrase "With the consent of the Municipal Council" found in Section 1f of the Republic Act No. 1551 (effective June 16, 1966) which, insofar as pertinent, x x x only shows the clear intention of the lawmaking body to amend the provision first above quoted by the Police Act of 1966 which vest in the Mayor the sole authority to appoint members of the police force with exception of course, of cities whose charters may require the participation of the council in such matters. Furthermore, the Decentralization Act of 1967 (effective September 12, 1967) does not require the consent of Municipal Council on the appointment of policemen. x x x

that the same Commission, however, in approving the appointment of the petitioner Isidro Javier, stated in its 3rd indorsement of May 2, 1968, as follows:

x x x In view of Resolution No. 185 adopted by the Municipal Council of Malolos, Bulacan, in its meeting of September 26, 1967 notifying this Office that the appointment of Mr. Bayani Bernardo Chief of Police of Malolos, Bulacan has not been confirmed by said Council as the consent of the Municipal Council is a mandatory requirement under Sec. 1 of Republic Act 1551, the said appointment is considered null and void. In view thereof, the attached appointment of Mr. Isidro M. Javier has been approved x x x.

that in view of the obvious conflict of both actions of the Civil Service Commission which virtually renders the two appointments apparently valid, respondent is placed in a set of circumstances wherein her action in favor of either of the appointees may render her personally liable for salaries and other damages in favor of the other.

Having been granted the right to intervene, Bayani Bernardo moved to dismiss the petition on the grounds that the cause of action of petitioner has already prescribed and/or is barred by the Statute of Limitations and that the present petition is not founded on a clear, complete, undisputed and indubitable legal right. However, having been filed out of time, the motion to dismiss was not resolved and intervenor was declared in default in the order of this Court dated September 26, 1969.

The following facts have been admitted by the parties: that petitioner Isidro M. Javier was appointed Chief of Police of Malolos, Bulacan on November 7, 1967 by the then Mayor Victorino B. Aldaba, and approved by the Civil Service Commission on May 2, 1968; that petitioner took his oath of office as such on November 8, 1967 and immediately assumed the position and discharged his duties until January 13, 1968 when he was separated from office by respondent Municipal Mayor Purificacion Reyes; that respondent recalled the said appointment of petitioner on January 3, 1968 pursuant to which said appointment was returned by the Civil Service Commission returning his appointment on the basis of which the said commission reconsidered the same and approved his appointment on May 2, 1968; that since May 2, 1968 to the present, respondent has not reinstated the petitioner notwithstanding a follow-up letter circular dated July 9, 1968 of the Commission of Civil Service, directing the immediate reinstatement of the petitioner; that one Bayani Bernardo was also appointed Chief of Police of Malolos, Bulacan on September 4, 1967, approved by the Commissioner of Civil Service on September 17, 1967; and that said appointment of Bayani Bernardo by the then Mayor Jovencio Caluag was not referred to the Police Commission for decision. (Pp. 164-168, Record)[1]

The legal questions involved are as follows:

(1) When an appointment to the position of municipal chief of police was made by a municipal mayor and said appointment was not approved by the municipal council and such lack of approval lasted for more than ninety (90) days from the issuance of the appointment, will sec. 8, of R.A. 4864, otherwise known as the Police act of 1966 apply?

(2) When two appointments to one and the same position were both approved by the Civil Service Commission on the basis of two legal provisions, which one will prevail over the other? (Pp. 1-2, Appellant's Brief)[2]

The Court finds that preeminently, the question is: Between the petitioner's appointment and that of Bayani Bernardo, which prevails?

It shall be recalled that the petitioner was appointed Chief of Police of Malolos, Bulacan, on November 7, 1967, by the then Mayor Victorino Aldaba and the following day, took his oath of office. He discharged the powers of the office until January 13, 1968 when the respondent, who meanwhile succeeded as local chief executive, and in apparent political maneuver, removed him in favor of Bayani Bernardo.

On the other hand, Bernardo never assumed office or took his oath. It cannot be said, then, that he had accepted his appointment. Such an appointment being ineffective, we hold that the petitioner's appointment prevails.

Acceptance is indispensable to complete an appointment. The fact that Bernardo's appointment was confirmed by the Civil Service Commission does not complete it since confirmation or attestation by the Commission, although an essential part of the appointing process,[3] serves merely to assure the eligibility of the appointee.[4]

Furthermore, Bernardo never contested the petitioner's right to office. He did, of course, intervene in the mandamus suit, but it was a belated effort to assert his alleged rights. It is not indicative of an interested party. It was too little and too late.

Bernardo's argument that he had thought it "prudent"[5] to await a clarification on the double appointments comes as a lame excuse. He should have challenged the petitioner's subsequent appointment, rather than allow events to take their course. The Court believes that he is guilty of laches.

On the other hand, we cannot say the same thing as far as the petitioner is concerned. The records show that he was appointed on November 7, 1967, and the following day, November 8, 1967, he took his oath of office and discharged the duties appurtenant thereto until January 13, 1968, when the succeeding mayor, the herein respondent Purificacion Reyes, recalled his appointment and appointed another. Thereupon, the petitioner went to the Civil Service Commission to ask for reinstatement. Finally, he brought suit for mandamus. These acts amounted to acceptance and gave rise to a vested right to the office in his favor.[6]

This case should be distinguished from *Cristobal v. Melchor*,[7] where we held that a party is not precluded by laches from pursuing reinstatement (notwithstanding the lapse of the one-year period within which to sue on quo warranto.) In that case, we were impressed by the efforts of the dismissed employee to seek reinstatement upon assurances from his superiors that one would be forthcoming. Moreover, we said that *Ingles v. Mutuc*,[8] in which we ordered reinstatement, was the law of the case among the parties, although the dismissed employee was not a party thereto. In the case at bar, Bayani Bernardo never undertook steps that would have convinced us that he was interested in, or had accepted, the appointment. Let the Court say that it would have been differently minded had done so.[9]

Under the circumstances, there is no necessity in delving on the questions raised at the outset. Our findings herein render them moot and academic.

WHEREFORE, THE RESPONDENT Mayor, or her successor in office, as well as the respondent, the

Municipality of Malolos, Bulacan, are ORDERED to REINSTATE the petitioner to office as Chief of Police, Malolos, Bulacan, or its equivalent, or to any position equivalent in rank and pay, subject to the requirements of age and fitness, and to PAY him back salaries equivalent to five (5) years without qualification or deduction.

SO ORDERED.

Melencio-Herrera (Chairman), Paras, Padilla, and Regalado, JJ., concur.

[*] Per the Court's Resolution dated August 1, 1988, we impleaded the Municipality of Malolos, Bulacan, as a party-respondent. Per the same Resolution, we required the municipality to answer the petition within ten (10) days from notice, for which an extension of thirty (30) days from August 15, 1988 (the date of the Resolution was received) was sought and granted. In view however of the failure of the municipality to comply with the Resolution within the period requested and considering further the fact that the case has been pending since 1968, we resolve the case in the absence of the municipality's answer, the period within which to do so having, at any rate, expired. (See *Gementiza v. Court of Appeals*, G. R. No. 41717-33, April 12, 1987 in which we held that municipalities whether impleaded or not, are bound by decisions decreeing reinstatement; see also *Nunal v. Commission on Audit*, G. R. No. 78648, January 24, 1989).

[1] Rollo, 34-38.

[2] Id., 38-39.

[3] *Mitra v. Subido*, No. L-21691, September 15, 1967, 21 SCRA 127.

[4] *Villanueva v. Ballado*, No. L-17745, October 31, 1963, 9 SCRA 407.

[5] Brief for Respondent-Appellant, 8.

[6] *Mitra v. Subido*, supra.

[7] No. L-43203, July 29, 1977, 78 SCRA 175.

[8] No. L-20390, November 29, 1968, 26 SCRA 171.

[9] In *Lacson vs. Romero*, 84 Phil. 740 (1949) as well as *Santos vs. Mallare*, 87 Phil. 289 (1950), the Court decreed reinstatement following timely appeals by the dismissed employees. We held therein that the succeeding appointments issued, without the dismissed workers having voluntarily vacated their posts, amounted to their removal in violation of their secure tenure.

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