

MANUEL V. FESTEJO, PETITIONER-APPELLEE, VS. JORGE BARRERAS, ANGEL TORRIJOS, PROVINCIAL BRANCH MANAGER, PVTA, ABRA, EDUARDO BANANAL, GENERAL MANAGER, PVTA, CUBA, QUEZON CITY, ROS...

G.R. No. L-25074. December 27, 1969

Ponente: BARREDO, J.

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BARREDO, J.:

Appeal from the decision dated September 11, 1964 of the Court of First Instance of Abra, in its Civil Case No. 382, denominated as a case of quo warranto and certiorari, "declaring (herein respondent-appellant) Jorge Barreras' appointment null and void and declaring (herein petitioner-appellee) Manuel V. Festejo the rightful holder and incum-bent of the position of Assistant Provincial Branch Manager of the PVTA (Philippine Virginia Tobacco Administration) in Abra and, as such, entitled to remain with all the corresponding emoluments, rights and privileges of that office until he resigns, is removed for cause, or the said position becomes vacant as provided by and in accordance with law."

The following facts are undisputed:

On March 13, 1961, petitioner, who is a member of the Philippine Bar and as such, a civil service eligible, was appointed Tobacco Inspector II of the PVTA with an annual salary of P3,108. Over a year thereafter, or on July 30, 1962, his salary was increased to P3,264 per annum. Subsequently, he was permanently appointed PVTA Legal Officer with an increased salary of P3,792 per annum effective January 1, 1963. On July 1, 1963, he was extended another appointment, this time as Assistant Provincial Branch Manager of the PVTA in Abra with an annual salary of P4,404. This appointment was approved by the Commissioner of Civil Service "under Sec. 24 (c) of Republic Act No. 2260."

Nearly five months after petitioner's such last appointment, the General Manager of the PVTA, respondent Eduardo Bananal informed the said petitioner, in a letter dated November 27, 1963, that his services as Assistant Provincial Branch Manager would be terminated at the close of office hours on December 31, 1963.

In the meanwhile, on December 16, 1963, respondent Barreras, also a member of the bar, was appointed to replace him. This appointment was confirmed by the PVTA Board of Directors under its Resolution No. 355, Series of 1963, and approved by the Commissioner of Civil Service also under section 24 (c) of R.A. 2260 on June 29, 1964, on which date petitioner was still holding office.

Since respondent Barreras assumed office by virtue of said appointment, on July 2, 1964, petitioner instituted a special civil action for quo warranto and certiorari with preliminary injunction in the lower court primarily questioning the legality thereof and seeking to enjoin him from further exercising the duties and functions of the office.

In an order dated July 25, 1964, the lower court denied petitioner's plea for a writ of preliminary injunction, but on

September 11, 1964, after conducting a hearing on the merits, it rendered the decision favorable to the petitioner which is now under review.

Respondents-appellants contend that said decision should be reversed because the lower court erred in holding that: (1) "there was no vacancy to which respondent-appellant Barreras could be appointed"; (2) "a non-eligible may not be replaced by another non-eligible"; and (3) "an appointee with provisional appointment cannot be replaced until after 30 days from receipt by the appointing officer of the certification of eligibles".

There is no need to pass on all these assigned errors separately. The pivotal issue involved in all of them is simple. May the services of an appointee to a position in the civil service who is a civil service eligible, although not for the said position, and who, therefore, is appointed under Section 24(c) of Republic Act 2260, the Civil Service Act of 1959, as a "provisional" employee, be terminated at the pleasure of the appointing authority and without his consent? This question is not new. In as many occasions as it has been raised before, this Court has invariably ruled that a "provisional appointment is good until re-placement by a civil service eligible and in no case beyond thirty (30) days from the date of receipt by the appointing officer of the certificate of eligibles."^[1] Accordingly, it is evident that the letter of November 27, 1963 sent by appellant Bananal to petitioner advising him that his services were being terminated as of December 31, 1963 is illegal and cannot have any effect.

There is no basis nor logic in appellants' contention that there is no difference between a temporary appointment under Section 24(d) of the Civil Service Act which reads thus:

"Temporary Appointment. - A person may receive a temporary appointment to a position needed only for a limited period not exceeding six months, provided that preference in filling such position be given to persons on appropriate eligible lists."

and a provisional appointment under Section 24(c) which says:

"Provisional Appointment. - A provisional appointment may be 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."

According to appellants, "while they may be different in the degree of permanence, in that temporary appointments are generally for and within specified periods of time, their nature as being subject to termination by the appointing power remains the same." Such contention is untenable.

Even from a cursory reading of these two provisions, one can readily see that each of them contemplates an entirely different situation from the other. Indeed, as pointed out by His Honor, the trial judge, it is contrary to the ordinary rules of legal hermeneutics to assume that the lawmakers intended these two separate provisions in a seemingly single enumeration of categories of appointments to have the same import or significance. Whereas a temporary appointment is designed to fill "a position needed only for a limited period not exceeding six months," a provisional appointment, on the other hand, is intended for the contingency that "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." In other words, the reason for extending a provisional appointment is not because there is an occasional work or job to be done which is expected to be finished in not more than six months but because the interest of the service requires that certain works be done or functions be performed by a regular employee, only that there is no one with appropriate eligibility, who can be appointed to do it, hence any other eligible may be appointed to perform such works or functions in the meanwhile that a suitable eligible does not qualify for the

position. This is clearly implied by the mandate of the provision that a provisional appointment may be extended only 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," meaning one who must anyway be a civil service eligible. On the other hand, again, in the case of a temporary appointment, all that the law enjoins is that "preference in filling such position be given to persons on appropriate eligible lists." And merely giving preference, of course, presupposes that even a non-eligible may be appointed. As a matter of fact, under this provision, even if the appointee has the required civil service eligibility, his appointment is still temporary, simply because such is the nature of the work to be done. The decisions^[2] cited by appellants are not in point. They all refer to temporary appointments as such. None of them involves a provisional appointment like the one herein in question.

Appellants also rely on the following indorsement of the Commissioner of Civil Service:

"Under the Civil Service Law and rules, temporary employees are those appointed pursuant to the provisions of Section 682 of the Revised Administrative Code, as amended, (now Section 24(c) of Republic Act No. 2260) or paragraph 3, Rule VI of the Civil Service Rules (now Section 24(d) of Republic Act No. 2260). Under the provisions of Rule VI, 'whenever the work to be done is, in the judgment of the Commissioner (of Civil Service), temporary in character, he may authorize temporary employment, giving preference to eligibles if available, which employment may continue until the completion of the work.' Emergency, seasonal, or casual employees in the classified service fall under this provision. A casual employee is therefore legally and actually a temporary employee because both may be separated from the service at any time with or without cause." (See 3rd Indorsement, Civil Service Commission, November 2, 1959). (Italics supplied)

Such reliance is unavailing. Much as We would want to accord the construction given by the Commissioner of Civil Service the consideration due it as coming from the executive office established by law to enforce the civil service system, We cannot avoid the conclusion that the foregoing view of the Commissioner is not in accordance with the spirit of Section 24 which precisely provides for different categories of appointments and expressly differentiates a provisional from a temporary one. True it is that the tenures created by both appointments are terminable by the appointing power, but it is clear that whereas that under a temporary appointment may be terminated at pleasure because the appointment does not involve any element of permanence, that pursuant to a provisional one is terminable only upon the certification of an appropriate eligible, since such appointment takes into account that the appointee should necessarily be an eligible who is supposed to have a permanent appointment and the nature of the work is such that only eligibles may perform the same. Moreover, it will be noted that the parity between the two mentioned appointments drawn in the above indorsement appears more as something that can be assumed rather than as a well studied conclusion, no reason at all being given why such parity is claimed to exist.

Nor can respondents call to their aid, the 2nd indorsement of the same Commissioner of July 18, 1962, cited in their brief, (pp. 7-8) and which reads as follows:

"Appointment proposed in a temporary or acting capacity and those approved by this office as provisional under Sec. 24(c) of R.A. 2260 or Sec. 682 of the Revised Administrative Code are temporary appointments. As enunciated by the Supreme Court in the case of Cuadra vs. Cordova, 54 O.G. 8063 and Mendez vs. Ganzon, 53 O.G. 4835, the essence of such appointment lie 'in /their/ temporary character and /their/ terminability by the appointing power. And one who bears such an appointment cannot complain if it is terminated at a moment's notice.' Likewise, appointments to positions which are confidential in nature 'are terminable at the will of the appointing officer, except where the law which creates such positions provides at the same time a fixed term of office for the incumbent thereof, in which case the incumbent may only be removed for cause as provided by law.' (CSC, 3rd Indorsement, March 8, 1960.)

"As to appointments proposed as permanent but approved by this Office in an Acting capacity, attention is invited to a 2nd Indorsement of this Office to the Director of Plant Industry dated April 3, 1962, in which it was stated that 'In the case of Mendez vs. Ganzon, 53 O.G. 4835, the Supreme Court, however, ruled that appointments in acting capacity are temporary in character and terminable at the pleasure of the appointing power so in the light of such opinion this Office has held that while certification of eligibles is not mandatory in such cases the appointing power nevertheless has discretion to replace such acting appointee with a more qualified candidate who meets all the requirements deemed necessary and proper by the appointing authority. However, since the appointment was not approved under the provisions of Section 24(b) of Republic Act 2260, it is not permanent and regular for purposes of compulsory insurance pursuant to Section 4(a) Commonwealth Act 186, as amended, without prejudice however to the continuation of any previous policy served under regular and permanent appointment."

The cases of Cuadra vs. Cordova, 103 Phil. 391 and Mendez vs. Ganzon, 101 Phil. 48, referred to by the Commissioner, like all the other cases cited by appellants involved appointments which are not provisional but temporary.

It is Our conclusion, therefore, that the termination of the services of appellee Festejo is illegal. Correspondingly, the appointment of appellant Barreras cannot stand.

WHEREFORE, the judgment of the lower court is hereby affirmed with costs against appellants.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Fernando, and Capistrano, JJ., concur.
Ruiz Castro and Teehankee, JJ., in the result.

[1] Section 13, Rule VI, Revised Rules of the Civil Service; Piñero vs. Hechanova, L-22562, Oct. 22, 1966; Ferrer vs. Hechanova, L-24418, Jan. 25, 1967, 19 SCRA 105; See also Ramos vs. Subido, G.R. No. L-26090, Sept. 6, 1967; 21 SCRA 44; Del Rosario vs. Subido, G.R. No. L-23934, July 25, 1968, 24 SCRA 117.

[2] Quitiquit vs. Villacorta, 107 Phil. 1060; Elegida vs. Gacutara, G.R. No. L-10588, Aug. 29, 1957 (unreported); Villanosa vs. Alera, G.R. No. L-10586, May 29, 1957 (unreported); Amora vs. Bibera, 99 Phil. 1; Erauda vs. Del Rosario, 103 Phil. 489; Hortillosa vs. Ganzon, 105 Phil. 105; Taboada vs. Municipality of Badian, G.R. No. L-14604, May 31, 1961.

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