

**HIDPION P. DEL ROSARIO AND AMADO SAÑEZ,
PETITIONERS-APPELLANTS, VS. ABELARDO SUBIDO, MIGUEL
YUVIENCO, DOMINADOR CAMERINO AND JOSE MENDOZA,
RESPONDENTS-APPELLEES.**

G.R. No. L-23934. July 25, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Direct appeal, taken by petitioners, Hidpion P. del Rosario and Amado from a decision of the Court of First Instance of Cavite, dismissing their petition for certiorari, prohibition, and mandamus, to annul certain acts and orders of respondent, Dominador Camerino, as Municipal Mayor of Imus, Cavite, and to enjoin him and respondent, Abelardo Subido, as Acting Commissioner of Civil Service - hereinafter referred to as the Commissioner - from re-moving or separating said petitioners from their respective position as Chief of Police and Police Lieutenant, respectively, of Imus, as well as to compel respondents Miguel Yuvienco and Jose Mendoza, as Provincial Treasurer of Cavite and Municipal Treasurer of Imus - hereinafter referred to as Provincial Treasurer and Municipal Treasurer respectively, to pay the salaries of the aforementioned petitioners, and to recover attorney's fees and costs.

There is no dispute on the facts, the parties having stipulated thereon, in addition to submitting documentary evidence.

The record shows that on October 1, 1963, Dominador C. Ilano, as Mayor of Imus, Cavite, issued a "permanent" appointment in favor of petitioner Amado J. Sañez promoting him from "T? Sergeant to Police Lieutenant" of Imus, effective on the same date. "Attested pursuant to section 23 () [1] of Republic Act 2260", by the Provincial Treasurer, said appointment was forwarded to the Commissioner, who, however, returned it, without his approval, to the Provincial Treasurer, for lack of certain papers required therefor.

On October 31, 1963, Mayor Ilano extended, in favor of petitioner Hidpion P. del Rosario, a "permanent" appointment as Chief of Police of Imus, Cavite, effective on November 21, 1963. "Attested pursuant to section 24(b) of Republic Act No. 2260," by the Provincial Treasurer, it was subsequently "approved under section 24(c) of Republic Act No. 2260", by the Commissioner. Both Del Rosario and Sañez, who had merely the civil service eligibility for "patrol-man", assumed office on the dates of their respective appointments.

On January 9, 1964, Dominador Camerino, as new Mayor of Imus, notified Del Rosario, in writing, that his "services and provisional appointment as Chief of Police" were thereby "terminated", effective "at the close of office hours" of said date, upon the ground of "lack of appropriate civil service eligibility as Chief of Police", and "lack of confidence", at the same time "offering" him the position of "patrolman", for which he was eligible, with the warning that he would be deemed to have turned down the offer, unless he otherwise advised the writer before the close of office hours on January 10, 1964. Soon later, Del Rosario received a letter of Mayor Camerino, dated January 14, 1960, inviting attention to a first indorsement of the Commissioner, of January 13, 1960, stating

that Del Rosario's appointment as Chief of Police had been "approved under provisional status pursuant to section 24(c) of Republic Act 2260, his eligibility not being appropriate for the position involved"; that "the records x x x fail to show" that he had taken "the Chief of Police (Municipalities) examination"; and that "in view thereof, the termination" of his services "as Chief of Police is deemed in order." A similar notice of termination of services and offer of appointment as "patrolman" were served upon and made to Sañez, on January 14, 1964, except that the only ground stated for said termination of hi, "services and provisional appointment" was his "lack of appropriate civil service eligibility as Police Lieutenant", and that his deadline for acceptance of the offer was January 15, 1964.

Despite these notices, Del Rosario and Sañez refused to relinquish their respective positions as Chief of Police and Police Lieut-enant of Imus; but payment of their-salaries as such was withheld since January 7 and 16, 1964, respectively. Hence, on January 20, they commenced the present action, in the Court of First instance of Cavite, against the Commissioner, the Provincial Treasurer, Mayor Camerino, and the Municipal Treasurer. Upon the filing of a Pl, 00U bond, said court issued, on the same date, a writ of pre-liminary injunction restraining the Commissioner and Mayor Camerino "from enforcing their orders for the termination" of petitioners' services.

Soon thereafter, or on January 24, 1964, the Civil Service Commission certified that "there are Chief of Police eligibles who are residents of Cavite available from the register established from the Chief of Police (Municipalities) examination held in Manila on November 23, 1963," Then, or on February 16, 1964, Mayor Came-rino extended a "permanent" appointment, in favor of one Artemio Candalla - a member of the police force of Manila, who had passed "the Chief of Police (Municipalities) entrance examination held on November 23, 1963, with a rating of 79.9" - as Chief of Police of Imus, "to take effect upon approval by the Commissioner of Civil Service."

After appropriate proceedings, the lower court rendered judgment holding that, being, at best "provisional" in nature, peti-tioners' appointments were subject to termination at any time and, consequently, dismissed the petition, with costs against the petitioners, as well as dissolved the writ of preliminary injunction issued on Jan-uary 20, 1964, and ordered the payment of petitioners' respective salaries, up to and including the date of notice of said decision. A motion for reconsideration thereof having been denied, petitioners appealed directly to the Supreme Court "on pure questions of law."

They now alleged that the lower court erred: 1) in not hold-ing that their appointments are permanent; 2) in holding that provisional appointees may, like temporary appointees, be summarily removed from office, even without cause; and 3) in "not ordering the payment of the salaries of petitioners-appellants."

It is true that Mayor Ilano had extended "permanent" appoint-ments to petitioners herein; that Del Rosario's appointment was at-tested, also, as permanent by the provincial treasurer; and that the latter, likewise, attested the appointment of Sañez, without specify-ing the nature of the attestation they; given - whether "permanent", "provisional", or "temporary". It is no less true, however, that, in this connection, the Provincial Treasurer had acted as "deputy" of the Commissioner of Civil Service, "for the purpose of attesting, in accordance with Civil Service Law and rules, appointments made by provincial governors and municipal mayors; " that, consequently, said appointments, as thus attested, which shall be "forwarded within ten days to the Commissioner of Civil Service, for review pursuant to Civil Service Law and rules, " are subject to "correction or re-vision, " by the Commissioner of Civil Service within "one hundred eighty days after receipt" thereof;1 that in the exercise of this au-thority, the Commissioner had corrected or revised the action of the provincial treasurer and attested Del Rosario's "permanent" appointment as a "provisional" one, for he had not qualified in an examination "appropriate" for Chiefs of Police, but otherwise met "the requirements for appointment to a regular position in the com-petitive service, " for he possessed the civil service eligibility for "patrolman"; and that the appointment

of Sañez was, not only not attested by the Commissioner, but returned, for non-compliance with certain requirements. It is, also worthy of notice that petitioners have not appealed from the action thus taken by the Commissioner,² so that the correctness thereof cannot now be assailed by them; that Del Rosario cannot deny the provisional nature of his appointment, which is in line with the letter and spirit of section 24(c) of Republic Act 22603;³ and that, for the same reason, Sañez cannot claim a better status than that of a provisional appointee.

It is argued that pursuant to section 2266 of the Revised Administrative Code,⁴ only one examination for admission to the police service shall be held and that Del Rosario's civil service eligibility as "patrolman" is, therefore, sufficient to qualify him for a permanent appointment as chief of police. Said provision does not prohibit, however, the holding of different examinations for different ranks in the police force. It merely requires that there be, at least, one qualifying examination for said force.

Moreover, the provisions of the Administrative Code concerning police forces, including said section 2266, should now be interpreted in harmony with, if not considered amended or repealed by the Civil Service Act of 1959,¹ the provisions of which "embrace all branches, subdivisions and instrumentalities of the Government",² including, accordingly, local governments. Said Act classifies officers and employees of the Government into three (3) categories, namely: 1) those "exempt" from the provisions of said Act; 2) those in the "competitive or classified service"; and 3) those in the "non-competitive or unclassified service".

The competitive or classified service is said to "include positions for appointment to which prior qualification in an appropriate examination is required."³ Under his authority, inter alia, "to enforce, execute, and carry out the constitutional and statutory provisions on the merit system", underlying the Civil Service Law; to "supervise the preparation and rating" and "control all civil service examinations in the Philippines", as well as, "with the approval of the President, to prescribe, amend and enforce suitable rules and regulations for carrying into effect the provisions" of said Act; and to exercise "exclusive jurisdiction over the approval under the Civil Service Law and rules of all appointments including promotions to positions in the competitive service,"⁴ the Commissioner has prescribed special examinations for chiefs of police of cities and municipalities, distinct from that prescribed for, patrolmen thereof or from that required for police lieutenants, and one who has passed the civil service examination for "patrolman" is not eligible for permanent appointment as "police lieutenant", much less for "chief of police", for, "x x x qualification in an appropriate examination shall be required for appointment to positions in the competitive or classified service in accordance with the civil service rules."¹

Hence, "x x x except as otherwise provided by law, eligibility in a certain examination shall serve as qualification for appointment only to the position or positions for which the examination was held and no horizontal or vertical conversion of the eligibility or examination rating shall be allowed x x x,"² and "x x x a permanent appointment shall be issued to a person who has met all the requirements of the position to which he seeks appointment in accordance with the provisions of this Act and the rules and standards promulgated in pursuance thereto x x x."³

In short, the "permanent" appointments, made by Mayor Ilano, of Del Rosario, as Chief of Police, and, of Sañez; as "Police Lieutenant", could not be attested to except, at best, as "provisional" appointments.

Petitioners insist that, unlike "temporary" appointees, "provisional" appointees may not be removed except for cause; but, it is not necessary for us to pass upon this question, inasmuch as "a provisional appointment shall, in no case extend beyond thirty (30) days from receipt by the appointing officer of the certification of eligibles,"⁴ and such certification not merely of the availability of eligibles for appointment as Chief of Police, in general, but, also, of eligibles residing in Cavite, in particular - was received by Mayor Camerino on June 24, 1964, thus confirming the first indorsement of the Civil Service Commission dated January 13, 1964, declaring that the

termination of Del Rosario's services as Chief of Police is "in order". In fact, it is not disputed that Artemio S. Candalla, whom Mayor Camerino appointed as Chief of Police, on February 16, 1964, had "qualified in the Chief of Police (Municipalities) entrance examination held on November 23, 1963 with a rating of 79.9%".

Thus, even if a provisional appointee were not removable except for cause, petitioner Del Rosario would not be entitled to the writ prayed for, because his right to hold office as chief of police expired on January 14, 1964, when he received the Commissioner's indorsement of January 13, 1964, or, at the latest, on February 24, 1964, the thirtieth day after receipt by Mayor Camerino of the above mentioned certification of availability of eligibles for appointment as Chief of Police.

As regards petitioner Sañez, his appointment as Police Lieutenant had not been even attested by the Commissioner, who returned it for non-compliance with applicable requirements. What is more, it is not claimed that such act of the Commissioner is contrary to law or that said requirements had been complied with. It is thus clear that Sañez has no cause of action against respondents herein.

Being a mere consequence of the first two (2) assignments of error, which have been disposed of, petitioners' third assignment of error needs no further discussion.

WHEREFORE, the decision appealed from is hereby affirmed, with costs against petitioners, Hidpion P. del Rosario and Amado Sañez.

IT IS SO ORDERED.

Reyes, JBL, Dizon, Makalintal, Zaldivar, Sanchez, Ruiz Castro, Angeles and Fernando, JJ., concur.

[1] The parenthesis was left blank.

1 Section 20, Republic Act 2260.

2 See Section 18(b), Republic Act 2260.

3 Reading: "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."

4 Which provides: "An examination for admission to the police service shall be held in each province during the month of January of every year; and it shall be the duty of each secretary, by authority of his board and at such time as it shall determine, to give public notice of the place, day, and hour therefor."

1 Republic Act 2260.

2 Section 3, Republic Act 2260.

3 Section 4, Republic Act 2260.

4 Section 16 (b), (c), (e) and (h).

1 Section 23, Republic Act 2260.

2 Section 8, Rule IV of the Civil Service Rules.

3 Section 24(b), Republic Act 2260.

4 Rule VI of the Civil Service Rules.

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