

MARCIAL COSTIN, ESTANISLAO LAJER, LIONEL KANEN AS CHIEF OF POLICE; FRANCISCO TISADO, OCTAVIO TRAYA AS MUNICIPAL MAYOR; DOMINGO IPONG AS MUNICIPAL TREASURER; AND THE MUNICIPAL CO...

G.R. No. L-32271. January 27, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

In this petition for review, the petitioners seek the annulment or reversal of the decision of the Court of First Instance of Leyte in Civil Case No. 3606, entitled Higinio Verra v. Marcial Costin, et al. In that case for a writ of quo warranto with mandamus, the respondent court declared Verra entitled to reinstatement with payment of salaries for the whole period from his illegal separation from the service to the date of his reinstatement.

Petitioner Estanislao Lajer was a member of the municipal police force of Abuyog, Leyte since January 1, 1949. He was extended a promotional appointment as sergeant of police on October 15, 1958. On November 25, 1959, the outgoing municipal mayor of Abuyog accorded Lajer another promotional appointment as chief of police. This last appointment was not attested and approved as required by law.

On January 14, 1960, the new municipal mayor dismissed Lajer and eight other members of the police department. On the same day, the municipal mayor extended to respondent Higinio Verra a permanent appointment as Chief of Police of Abuyog with a salary of P2,280.00 per annum. Verra immediately took over the position. His appointment was eventually approved as permanent under Section 24 (b) of Republic Act 2260 by the Commissioner of Civil Service.

On January 19, 1960, Lajer and the eight members of the police force filed an action for mandamus (Civil Case No. 2713) against the municipal mayor, municipal treasurer and the municipal council of Abuyog, contesting their separation from the service.

While this petition for mandamus was pending, there was again a change in the municipal administration of Abuyog, Leyte as a result of the 1963 local elections. The newly elected municipal mayor dismissed respondent Verra from office on January 16, 1964. Verra was replaced by Victoriano Silleza, officer-in-charge, on January 17, 1964 until October, 1964 when petitioner Marcial Costin was appointed chief of police.

On December 29, 1964, respondent Verra filed civil Case No. 3606 for quo warranto with mandamus against Marcial Costin, the municipal mayor, and the municipal treasurer, questioning the legality of his separation alleging that he could not be dismissed as chief of police because he was a civil service eligible and in possession of an appointment to the position of chief of police of Abuyog, Leyte duly attested "Permanent" by the Civil Service Commission.

On January 22, 1966, the mandamus suit (Civil Case No. 2713) filed by Lajer and his companions, which had been appealed was decided by the Court of Appeals (CA-G.R. No. 29313-R). The appellate court found that

Lajer, Tomines, and Jervoso "were illegally removed from office and are, therefore, entitled to reinstatement to their respective positions with payment of the salaries they failed to receive."

As a result of the appellate decision, petitioner (then mayor) Tisado reinstated Lajer as chief of police on April 1, 1966.

On July 24, 1966, respondent Verra amended his petition in Civil Case No. 3606, impleading Lajer as additional respondent therein.

On November 7, 1968, respondent Verra filed a second amended petition including as respondents the following: Octavio Traya, who succeeded Tisado as mayor; Lionel Kanen who succeeded Lajer as chief of police (Lajer retired from the service on February 1, 1968); Domingo Ipong who succeeded Cuyno (deceased) as municipal treasurer; and the Municipal Council of Abuyog, which appropriates funds for the office in question.

On December 2, 1969, respondent judge rendered his decision in Civil Case No. 3606, declaring that Verra is entitled to reinstatement with salary to be paid to him for the whole period of his illegal separation to the date of his reinstatement. The court also ordered the municipal mayor to reinstate Verra immediately and the municipal treasurer to pay his salary. This decision is now before us for review.

Hence, the present petition with the following assignments of errors:

"I. THAT THE HONORABLE COURT A QUO ERRED IN DECLARING THAT THE COURT OF APPEALS IN ITS DECISION ON CIVIL CASE C.A.G.R. NO. 29313-R (Civil Case No. 2713, CFI, LEYTE) ORDERED THE REINSTATEMENT OF PETITIONER ESTANISLAO LAHER TO THE POSITION OF SERGEANT OF POLICE OF ABUYOG, LEYTE AND NOT TO THE POSITION OF CHIEF OF POLICE;

"II. THAT THE HONORABLE COURT A QUO ERRED IN NOT DECLARING THAT THERE WAS NO VACANCY IN THE OFFICE OF CHIEF OF POLICE OF ABUYOG, LEYTE TO WHICH RESPONDENT HIGINO VERRA COULD HAVE BEEN VALIDLY AND EFFECTIVELY APPOINTED;

"III. THAT THE HONORABLE COURT A QUO ERRED IN HOLDING THAT THE ISSUE INVOLVED IN THIS CASE IS THE LEGALITY OF RESPONDENT HIGINO VERRA'S REMOVAL FROM THE SERVICE AS CHIEF OF POLICE AND NOT THE VALIDITY OF HIS APPOINTMENT THERETO;

"IV. THAT THE HONORABLE COURT A QUO ERRED IN HOLDING THAT THE SEPARATION OF RESPONDENT HIGINO VERRA FROM THE OFFICE OF THE CHIEF OF POLICE WAS ILLEGAL;

"V. THAT THE HONORABLE COURT A QUO ERRED IN HOLDING THAT RESPONDENT HIGINO VERRA, NOT BEING A PARTY IN CIVIL CASE NO. 2713 (CFI, LEYTE) FOR MANDAMUS, IS NOT BOUND ITS DECISION THEREON;

"VI. THAT, FINALLY, THE HONORABLE COURT A QUO ERRED IN ORDERING THE REINSTATEMENT OF OFT-MENTIONED HIGINO VERRA TO THE POSITION OF CHIEF OF POLICE."

The foregoing assignments of errors may be narrowed down to the following issues:

- Whether or not the appointment of respondent Higinio Verra to the position of Chief of Police of Abuyog, Leyte, was valid and consequently his removal therefrom illegal.
- Whether the Court of Appeals in its decision in C.A.-G.R. No. 29313-R (Civil Case No. 2713-CFI, Leyte) ordered the reinstatement of petitioner Lajer to the position of Sergeant of Police or Chief of Police.
- Whether or not respondent Verra is bound by the decision of the lower court in Case No. 2713-CFI, Leyte, for mandamus, not being a party to it.

With respect to the first issue, the petitioners argue that the appointment issued in favor of respondent Verra as chief of police on January 14, 1960, was invalid and ineffective because the said position was not vacant from the time Lajer was illegally separated on January 14, 1960, up to the time he was actually reinstated. This is, according to the petitioners, premised on the fact that the Court of Appeals in deciding Civil Case No. 2713, CFI-Leyte, ordered Lajer's reinstatement which also legalized the dismissal of respondent Verra.

Respondent Verra, on the other hand, contends that the office in question was legally vacant when he was appointed thereto because Lajer's appointment was never attested as required by law or incomplete, and, therefore, never became effective. It is further contended that Lajer's appointment as chief of police was temporary in character and terminable at the pleasure of the appointing authority and when Lajer was separated from the office of chief of police, the position became legally and physically vacant. Verra also claims that since he is a civil service eligible and his appointment as chief of police was attested as permanent under Section 20 of Republic Act 2260 and served as such for four (4) years and two (2) days when he was dismissed without cause, his dismissal is illegal.

We find the petition meritorious.

When respondent Verra was appointed chief of police on January 14, 1960, Lajer had just been dismissed from office with several other members of the police force. The validity of Verra's appointment, therefore, hinges on the legality of Lajer's removal. It is elementary in the law of public officers that no person, no matter how qualified and eligible he is for a certain position may be appointed to an office which is not vacant. There can be no appointment to a non-vacant position. The incumbent must first be legally removed or his appointment validly terminated.

The lower court's error lies in its looking at the issues primarily from the viewpoint of Verra's removal, his qualifications and eligibility for the position, and whether or not his dismissal was valid. In the process, the lower court overlooked the fact that Verra could not have been permanently appointed to the contested position because no less than the Court of Appeals had declared that his predecessor, Estanislao Lajer was illegally terminated from office and must be reinstated to his former position.

Respondent Verra argues that Lajer's appointment as chief of police was temporary and terminable at the pleasure of the appointing power.

The private respondent is correct in asserting that when the promotional appointment of Lajer was made in 1959, it could not be considered final or complete. Under Section 2(a) of Rule VI, the Civil Service Rules implementing Section 16(g) of Republic Act 2260, an appointment extended by an officer duly empowered to make it is not final and complete until after the Commissioner of Civil Service has certified that such an appointment may be made. (*Gorospe v. Secretary of Public Works and Communications, et al.*, 105 Phil. 129)

It is likewise true that under Section 20 of Republic Act 2260 which, in part, provides:

"SEC. 20 Delegation in the Civil Service Commission and to the Agencies. . . . Appointments by . . . municipal mayors shall become effective upon issuance of such appointments and upon attestation by the provincial treasurer in the case of appointments made by the . . . municipal mayors All appointments made by the . . . municipal mayors . . . shall, after being attested to by the respective provincial treasurer . . . be forwarded within ten days to the Commissioner of Civil Service for review pursuant to Civil Service law and rules. If within one hundred eighty days after receipt of said appointments, the Commissioner of Civil Service shall not have made any correction or revision, then such appointments shall be deemed to have been properly made. . . ."

the attestation by the provincial treasurer of Leyte was necessary to make the appointment of petitioner Lajer

effective.[*] However, these requirements could not be complied with because Lajer, who had been appointed on November 25, 1959 was replaced on January 14, 1960 by the new mayor of the municipality who appointed Verra in his stead. As pointed out in *Dischoso v. Valdepenas* (5 SCRA 1069, 1075), the incoming mayor should have awaited the action of the provincial treasurer and later, the Commissioner of Civil Service, before appointing his own protege to a position with an incumbent occupying it. Respondent Verra cannot rely on the absence of an attestation from the provincial treasurer and a certification from the Civil Service Commissioner insofar as Lajer's appointment is concerned because by the fact of Verra's appointment, these requirements could no longer be fulfilled. Mayor Octavio Traya took the appointments away from the office of the Provincial Treasurer before they could be acted upon. The Commissioner could no longer act within 180 days.

The insuperable factor, however, which stands in the way of Verra's reinstatement with backwages for eighteen (18) years from 1964 to the present is the Court of Appeals decision in *Lajer, et al., v. Traya, et al.*, (CA-G.R. No. 29313-R, January 22, 1966). The Court of Appeals was presented squarely with the issue of whether or not Estanislao Lajer and seven other petitioners were illegally separated from the service by Mayor Octavio Traya. In a decision penned by Justice Salvador V. Esguerra, concurred in by Presiding Justice Conrado V. Sanchez and Justice Magno S. Gatmaitan, the First Division of the Court of Appeals ruled that Estanislao Lajer, Mariano Tomines, and Melecio Jervoso were illegally removed from office and must be reinstated.

Respondent Verra now contends that Lajer was ordered reinstated to the position of sergeant and not chief of police. Mr. Verra cannot read into a Court of Appeals decision something which is not there.

Mr. Lajer did not go to court to contest the position of police sergeant or to question his removal as police sergeant. He was never removed from a position as sergeant of police. Lajer filed a petition for mandamus to be reinstated as chief of police. The January 30, 1961 decision of Judge S. C. Moscoso of the Court of First Instance of Leyte discusses an appointment as chief of police. When the decision ordering Lajer's reinstatement was appealed to the Court of Appeals, the appellate court specifically described petitioner Lajer as chief of police and petitioner Mariano Tomines, as police sergeant. When Lajer and Tomines were ordered reinstated, it was to the said positions as chief of police and police sergeant respectively.

The argument of respondent Verra that Mayor Tirado should have refrained from reinstating Lajer as chief of police notwithstanding the decision of the Court of Appeals because he, Verra, had filed a case with the Court of First Instance contesting the same position betrays a lack of understanding of a final and executory decision of an Appellate tribunal. The decision of the Court of Appeals superseded any decision that the Court of First Instance or the Civil Service Commissioner could have rendered on the same issue and the same facts. It was precisely the termination of Lajer's promotional appointment as chief of police which the appellate court struck down. Since Lajer was not validly terminated from public office and, as a matter of fact, was ordered reinstated through a writ of mandamus, it follows that there was no vacancy in the office of chief of police on January 14, 1960 and there was no office to which Higinio Verra could have been appointed. The discussions in the decision of the respondent judge on whether or not Higinio Verra was validly removed from office are all beside the point. Never having been validly appointed, there was no office from which he was illegally dismissed. At most, he was a *de facto* officer during the years when Lajer was litigating his action for reinstatement in the court of first instance and in the court of appeals. And as earlier stated, the certification by the Commissioner of Civil Service that Mr. Verra possessed the qualifications and the eligibility, doubtful though the latter may be, for the position of chief of police could not have made the proceedings in court moot and academic much less rendered inutile the 1966 decision of the Court of Appeals granting the petition for a writ of mandamus in Lajer's favor.

Moreover, the equities of the case do not lean towards respondent Verra. Estanislao Lajer had been a member of the Abuyog police force since January 1, 1949. He had passed the patrolman's examination, was promoted to

corporal, later to sergeant, and finally to chief of police in his tenth year of service. On the other hand, Higinio Verra was a school teacher with apparently no police experience whatsoever when he was appointed chief of police on January 14, 1960. It is too late in the day now to debate the correctness of the Court of Appeals decision that non-attestation was not sufficient cause for outright removal. The decision has long been final and was implemented in 1966. There is similarly no point in resolving the issue as to who has better qualifications and more nearly appropriate eligibility for the position of chief of police — a police sergeant with ten years experience and patrolman's eligibility or a school teacher with a senior teacher's eligibility.

Verra asks if he should be bound by the decision of the Court of Appeals, not having been a party to the case. The issue before the Court of First Instance and the Court of Appeals was whether or not the Mayor, Municipal Council, Municipal Treasurer, and the Municipality of Abuyog, Leyte illegally terminated the chief of police, sergeant of police, and six other members of the police force from their respective offices and whether or not mandamus may issue to compel their reinstatement. Mandamus having issued, any person whether Mr. Higinio Verra or any other appointee to the contested position must give up the office in favor of the officer adjudged by the courts to be entitled to it.

WHEREFORE, the instant petition is hereby granted. The decision of the respondent court in Civil Case No. 3606 is reversed and set aside and the petition for quo warranto with mandamus filed in the court a quo is ordered dismissed.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Vasquez and Relova, JJ., concur.

[*] Republic Act 6040, in creating regional offices of the Civil Service Commission, removed the authority to attest or approve appointments vested upon provincial or city treasurers. Under Presidential Decree No. 807, Section 8 (h) "(a)n appointment shall take effect immediately upon issue by the appointing authority if the appointee assumes his duties immediately and shall remain effective until it is disapproved by the Commission . . ."

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