

MAJOR VITALIANO B. VALDES, PETITIONER-APPELLANT, VS. HON. LUCIO G. GUTIERREZ, IN HIS OFFICIAL CAPACITY AS MAYOR OF THE MUNICIPALITY OF MALABON, RIZAL, AND THE MUNICIPAL COUNCIL ...

G.R. No. L-25819. May 22, 1968

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Direct appeal to this Supreme Court against a judgment of the Court of First Instance of Rizal (Quezon City branch) in its Civil Case No. Q-9502, dismissing the petition filed by appellant Valdes for a writ of mandamus to compel the Mayor and Council of the Municipality of Malabon, Rizal, to reinstate appellant as Chief of Police and to pay him back salaries during his period of suspension until reinstated.

The main facts are not controverted. Appellant Vitaliano B. Valdes was appointed by Mayor Gutierrez as Chief of Police of Malabon, Rizal, effective on March 12, 1962, with a compensation of P3,300.00 per annum. This appointment was attested as provisional by the Commissioner of Civil Service with the qualification "to continue until such time as the services of the person possessing appropriate eligibility and qualifications shall have been secured." [1] It is not disputed that the appointee was not a civil service eligible, though he is a World War veteran.

On June 13, 1962, appellee Mayor of Malabon suspended petitioner and three patrolmen because they were charged with murder in an information filed by the Provincial Fiscal in Criminal Case No. 11538 of the Court of First Instance of Rizal. [2]

Almost three months later, on September 10, 1962, the appellee Mayor appointed Pedro P. Cruz, Jr., as Chief of Police of Malabon "vice Vitaliano B. Valdes, a non-eligible, whose services were terminated." [3] While this appointment was also attested as provisional by the Civil Service Commissioner, Cruz was promoted in salary in July, 1964, and the Civil Service Commissioner transmitted his promotional appointment to the Rizal provincial treasurer with the statement that "the records show that Mr. Cruz qualified in the Chief of Police (Municipal Entrance) examination on November 23, 1963." [4]

On May 25, 1965, the appellant Valdes was acquitted of the charge of murder in the criminal case previously mentioned. [5] Thereafter, he demanded in writing that he be reinstated and paid his back salaries, invoking the provisions of section 4 of Republic Act 557. Both the Provincial Fiscal of Rizal and the Commissioner of Civil Service ruled against the reinstatement sought, for the reason that appellant's appointment being provisional, it is terminable at pleasure of the appointing power. [6]

It further appears that sometime later, the Commissioner of Civil Service cancelled the eligibility of Chief of Police Pedro P. Cruz, Jr., [7] but the latter obtained a writ of injunction from the Court of First Instance of Rizal (Caloocan City) against the implementation of the order cancelling the eligibility of Cruz. [8] There is no proof

that the injunction has been set aside.

On September 28, 1965, Valdes filed a petition in the Court a quo for a writ of mandamus to compel respondents, Municipal Mayor and Municipal Council of Malabon to reinstate him as Chief of Police and pay him back salaries during his suspension. The Provincial Fiscal, in representation of the respondents filed an answer, pleading that the appointment of Valdes was void because it was not approved by the municipal council as required by section 2259 of the Revised Administrative Code; that, at any rate, Valdes not being a civil service eligible, his appointment was only temporary and terminable at any time by the appointing power and that it was so terminated with the appointment of Chief of Police Pedro P. Cruz, Jr.; and that reinstatement of petitioner (now appellant herein) was not possible in view of the writ of injunction issued against the Civil Service Commissioner and the Mayor of Malabon.

Premises considered, the Court of First Instance of Rizal found that the petitioner had no valid cause of action, and dismissed the petition for mandamus. Whereupon, Valdes appealed to this Court.

We must agree with the Court below that mandamus does not lie. It is a rule well-entrenched in this jurisdiction that mandamus requires a showing of clear and certain right, and it never issues in doubtful cases.

"And where the legal rights of the petitioner, as in the case at bar, are not well defined, clear and certain, the petition for mandamus must be dismissed." (Aprueba et al. vs. Ganzon, L-20867, Sept. 3, 1966).[9]

In the present case, several factors militate against the re-instatement sought by appellant:

(1) His appointment as Chief of Police was made without the consent of the municipal council, as required by section 2259 of the Administrative Code; hence, it was not a valid appointment.

"SEC. 2259. Appointment of members of police force. - The chief of police and other members of the force shall be appointed by the mayor, with the consent of the municipal council. In case of disagreement between the mayor and the municipal council regarding the appointment of the chief of police, if such disagreement extends over more than three months after the submission of the nomination by the mayor, the provincial board shall take action and decide such disagreement, and its decision shall be final."

(2) Appellant's appointment as Police head, even if valid, was temporary: being a non-eligible, Valdes could not be permanently appointed to a position in the classified service. The appointing power, respondent Mayor, could validly terminate Valdes' appointment, and did so terminate it upon the appointment of Pedro P. Cruz, Jr., "vice Vitaliano B. Valdes, a non-eligible whose services were terminated." While appellant claims that he was not given termination notice, his bare assertion to that effect does not suffice to overcome the presumption of regularity and performance of what the law prescribes.

Nor can Valdes find refuge in the proviso attached to his appointment (Annex A, Petition) that the same was "to continue until such time as the services of a person possessing appropriate qualifications shall have been secured." Obviously, such proviso could not have been intended to apply to a case where the appointee is indicted for murder, and the issue of the case is not foreseeable. For the municipality could not, for reasons readily seen, retain a murder indictee as its Chief of Police; and upon the other hand, it could not leave the police force indefinitely without a chief. The appointment of a successor thus became imperative, urgent and justified under the circumstances. The foregoing considerations likewise rebut the preference allegedly possessed by appellant as World War veteran.

(3) As noted before, appellant's successor, Pedro P. Cruz, Jr., was certified by the Civil Service Commission as eligible for Chief of Police in July, 1964, and his appointment was thereby purged of defects nearly one year prior to appellant acquittal in the murder case. Hence, appellant could no longer seek re-instatement, since the position was validly held by another, who was a civil service eligible.

(4) While the Civil Service Commissioner attempted to cancel the eligibility of the incumbent Cruz, such action could not be implemented in view of the injunction issued by the Rizal (Caloocan) Court of First Instance. This injunction, in effect, blocked the reinstatement of Valdes, even granting that he was entitled thereto. There is no showing that the injunction has been lifted or dissolved.

(5) Appellant's contention that he was entitled to reinstatement and back salaries under section 4 of Republic Act No. 557 is unavailing, for it has been consistently ruled that Republic Act 557 can only be invoked by civil service eligibles (*Amora vs. Bibera* [1956] 99 Phil. 1, 10; *Cayabyab vs. Cayabyab* [1957] 101 Phil. 682, 683, and cases therein cited; *Quiatchon vs. Villanueva*, 101 Phil. 990, 995-996).

"The petitioner who is not a civil service eligible can not invoke the protection afforded by Republic Act No. 557, because it can only be invoked by civil service eligibles" (*Cayabyab vs. Cayabyab*, supra.). "The latter (non-eligibles) can not successfully invoke the provisions of Republic Act No. 557, 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". (*Amora et al. vs. Bibera et al.*, supra.)

Appellant invokes *People vs. Bautista*, 96 Phil. 43, wherein it was ruled that under section 4 of Republic Act No. 557, the acquittal of members of the municipal police charged with rape ipso facto entitles them to reinstatement and payment of their salary during suspension. In view of the rulings that Republic Act No. 557 can not be invoked by non-eligibles, and does not protect them, the *People vs. Bautista* doctrine must be interpreted as covering only members of police forces who are civil service eligibles. There is nothing in the decision itself that those ordered reinstated by it were non-eligibles.

IN VIEW OF THE FOREGOING, the decision appealed from is affirmed. Costs against appellant Valdes.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Angeles, JJ., concur.

[1] Exh. 9-A, Folder of Exhibits.

[2] Petition, Annex A.

[3] Exhibit 3.

[4] Exhibit 4.

[5] Petition, Annex D.

[6] Exhibits 1 and 2, Folder of Exhibits, pp. 43 and 47.

[7] Exhibit 5.

[8] Exhibit 7.

[9] Also *Hodges vs. Ganzon*, L-18086, Aug. 31, 1964; *Villamor et al. vs. Lacson*, L-15945, Nov. 28, 1964; *Alzate vs. Aldana*, L-18085, May 31, 1963.

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