

PEDRO TOLENTINO, ET AL., PETITIONERS, VS. RAMON TORRES, IN HIS CAPACITY AS ACTING GOVERNOR OF NEGROS OCCIDENTAL, RESPONDENT.

G.R. No. L-6787. January 31, 1955

Ponente: BENGZON, J.

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BENGZON, J.:

The respondent is the incumbent Provincial Governor of Negros Occidental, substituting the former governor Ramon Torres, who in June 1953 sent to each of herein thirty petitioners, the members of the Provincial guard, letters of the following tenor:

"You are hereby notified that your services as Private, Provincial Guard in the Provincial Government of Negros Occidental is no longer needed effective at the close of office hours today."

The petitioners allege that the removal was made by respondent Torres without authority of law, because under Republic Act No. 557 the authority to remove members of the provincial guards belonged to the provincial board, to be exercised only after preferment of charges, notice and hearing to afford the person concerned full opportunity to make his defense. They further aver that their removal was motivated by political considerations, they being under suspension of being partisan of the opposing faction in the locality. They ask that after due hearing the respondent be commanded to reinstate them and to pay moral and exemplary damages.

In his answer the respondent denied political motivation saying the true causes for removal were:

- Petitioners' lack of civil service eligibility excepting petitioner Jose Real;
- The temporary nature of their appointment;
- The expiration of the terms of office of the herein petitioners (except Jose Real) in September 30, 1952;
- Petitioners were unruly, abusive, and undisciplined.

Respondent further explained that Jose Real failed to meet the condition of his appointment: satisfactory report of physical fitness from the Government Insurance System.

Replying to the answer, petitioners assert that the reasons advanced by respondent were a mere afterthought by which he attempted to justify the "political purge" perpetuated by him.

Attached to the record are appointments of petitioners. All of them are expressly called "temporary". Excepting five, all expressly stipulate that the appointment shall not extend beyond September 30, 1952. These, therefore, expired on such date. For this Court to grant their petition would be tantamount to requiring respondent to extend to each of them another appointment, which we cannot do, having no power to control the respondent's discretion in the selection of personnel.

The appointments of Mario Pirano, Reynaldo Valencia, Pedro Barcillo and Jovito Bacalangco were temporary

too, but fixed no definite date of expiration. They simply were effective "until replaced by an eligible." However they were expressly made subject to section 682 of the Administrative Code which reads as follows:

"Sec. 682. Temporary and emergency employees,—Temporary appointments without examination and certification by the Commissioner of Civil Service or his local representative shall not be made to a competitive position in any case, except when the public interests so require, and then only upon the prior authorization of the Commissioner of Civil Service; and any temporary appointment so authorized shall continue only for such period not exceeding three months as may be necessary to make appointment through certification of eligibles, and in no case shall extend beyond thirty days from receipt by the chief of the bureau or officc of the Commis- sioner's certification of eligibles; * * *

Therefore the legal validity of their temporary appointments expired after three months, earlier than their so-called removal in June 1953.

As to Jose Real, his appointment was, by the Civil Service "Authorized as temporary pending report from the Government Service Insurance System as to the appointee's physical and medical examination." There is no question that up to the "removal" no such report has been made, because petitioner Jose Real failed to submit to a physical and medical examination. And yet it must be clear that hid appointment was approved subject to his passing such physical examination, within a reasonable time, of course. As he has not passed it, we cannot see our way clear to require his reinstatement, he having failed to meet a condition attached to his appointment.

On this point we have not overlooked petitioner's argument that such examination could not have been a condition sine qua non of his appointment, it being only for the insurance benefits, because he could not have qualified as patrolman civil service eligible if he had not been found to be physically fit. However, we have noticed that he took such examination in 1948 and this appointment was made in 1952. The condition of his health may have deteriorated after the passage of four years; and for a guard, health is most essential.

From the foregoing we must conclude that the case for petitioners is not one wherein respondent excluded¹ them from the use or enjoyment of an office to which they were entitled at the time of their petition. (Section 3, Rule 67.) Hence, their request for the writ of mandamus must be denied, with costs. So ordered.

Paras, C. J., Pablo, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador and Reyes J.B.L., JJ., concur.

Writ denied.

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