

ANTONIO UY, PETITIONER AND APPELLANT, VS. JOSE RODRIGUEZ, MAYOR OF THE CITY OF CEBU, RESPONDENT AND APPELLEE.*G.R. No. L-6772. July 30, 1954*

Ponente: LABRADOR, J.

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LABRADOR, J.:

This is an appeal from a judgment of the Court of First Instance of Cebu dismissing the petition for mandamus instituted in that court by Antonio Uy against Jose Rodriguez, mayor of the City of Cebu. Petitioner Antonio Uy was appointed deputy inspector of the detective force, police department, of the City of Cebu on July 1, 1946. On July 1, 1947, he was promoted to the position of senior detective inspector. He held this position from that date until September 5, 1952, when the respondent city mayor dispensed with his services on the ground that he can no longer repose his trust and confidence in him. Upon receiving this notice of dismissal, petitioner requested the mayor to reinstate him, but the latter refused to do so. Hence, this action of mandamus.

The court a quo held that the position held by the petitioner is primarily confidential and, therefore, Executive Order No. 264, series of 1940, of the President of the Philippines is applicable to the petitioner; that detectives in the City of Cebu pertain to the "detective service," which is distinct from the city police force and, therefore, the provisions of Republic Act No. 557, which require investigation prior to the dismissal of a member of the city police force are not applicable.

The question raised in this special civil action has already been decided squarely by us in the cases of Palomine, et al., vs. Zagado, et al., 94 Phil., 494; Mission, et al., vs. del Rosario, 94 Phil., 483; and Abella vs. Rodriguez, supra, 289. In said cases, we have held that a member of the detective force of Cebu City is a member of the police department of said city and may not be removed except in accordance with the provisions of Republic Act No. 557.

The statement submitted by the petitioner shows that he is not a civil service eligible, but neither does it appear from the record that his appointment as member of the detective force was temporary in character or for periods of three months merely, and that he had been reappointed every three months until his separation. These circumstances, in addition to the fact that he was promoted as senior detective inspector, show that his appointment is not in a temporary capacity. He may not, therefore, be dismissed or removed except in accordance with the provisions of existing law.

The judgment appealed from is hereby reversed and the respondent city mayor is ordered to reinstate the petitioner to his former position of senior detective inspector in the detective force of the City of Cebu, with right to arrears in salary from the time of his separation to the date of his reinstatement. Without costs.

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

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