

RAFAEL MASCARIÑAS, ETC., PETITIONER AND APPELLANT, VS. CARMELO L. PORRAS, ETC., RESPONDENT AND APPELLEE.

G.R. No. L-17595. August 30, 1962

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On January 5, 1960, Rafael Mascariñas, Chief of Police of Davao City, received a copy of memorandum bearing the same date signed by City Mayor Carmelo L. Porras which, for ready reference, we quote hereunder:

"MEMORANDUM TO:
Patm. Angel Fuentecilla
Patm. 1st Class Domingo Larena
Patm. Flaviano Tinapay
Police Department
City of Davao

Effective immediately you are hereby detailed to the Illegal Fishing Unit of the Police Department. It is directed that you enforce to the limit the laws and ordinances on illegal fishing and to apprehend violators thereof. In the performance of your activities, you are entitled to the use of the outboard motor of the Police Department. It is also desired that periodic reports on the result of your activities be made to this Office.

(Sgd.) CARMELO L. PORRAS
Mayor, City of Davao"

In said memorandum the city mayor in effect ordered the detail of three members of the police force of the city to the Illegal Fishing Unit of the Police Department which was created to enforce the laws and ordinances on illegal fishing, requiring them at the same time to submit periodic reports to the Office of the City Mayor on the results of their activities.

Considering that the above-quoted memorandum infringed his power as Chief of Police of the City of Davao and that, if not checked on time, might ultimately jeopardize his immediate direct control over the organization, government, discipline and disposition of the police force of Davao City, Rafael Mascariñas, in his capacity as chief of police, filed before the Court of First Instance of Davao a petition for prohibition with preliminary injunction seeking to annul the aforesaid memorandum and to prohibit respondent city mayor from enforcing it as the same tends to strip him of his power over the affairs of the police department of the City of Davao.

The court a quo denied the prayer for a writ of preliminary injunction ex parte pending determination of the case, but required respondent to answer the petition within 10 days from receipt of the order.

Respondent, in his answer, justified the issuance of the disputed memorandum by intimating that it was issued in accordance with power of control and supervision given him by the Charter of the City of Davao in line with the ruling of the Supreme Court in the case of Porras vs. Avellana, 105 Phil., 1147. He also set up the defense that the aforesaid memorandum is but "the direct consequence of previous acts of petitioner which necessitated and

justified its issuance."

On January 28, 1960, petitioner filed a motion for a bill of particulars asking that respondent be required to specify the alleged "previous acts of petitioner which necessitated and justified" the issuance of the memorandum in question so that petitioner could prepare a responsive reply, but relying on the assurance made by respondent that would present evidence on the alleged previous acts when the case is tried on the merits, petitioner desisted from pressing his bill of particulars and instead filed a reply denying knowledge of the alleged previous acts above adverted to. But, as the record discloses, no trial on the merits was had, and instead the case was Submitted for judgment on the pleadings, the issue involved being one of law. And on July 6, 1960, the court a quo rendered decision denying the petition based on our ruling in the case of *Porras vs. Avellana*, supra. In effect, the court a quo held that the respondent mayor has the power, under the charter of the city, to do directly what he is empowered to do thru his chief of police. It upheld the validity of the memorandum issued by respondent.

Petitioner has appealed.

It should be recalled that respondent mayor issued the memorandum in dispute detailing three members of the police force of the City of Davao to the Illegal Fishing Unit of the Police Department in order that they may exert efforts to enforce the laws and ordinances on illegal, fishing within the city, and requiring them to Submit periodic reports to his office on the results of their activities. It should also be noted that the memorandum was addressed directly to the patrolmen concerned and only a copy there of was furnished the chief of police. This action was resented by the chief of police who considered it as an invasion of his power, control and supervision over the police and detective force of the City of Davao. He contends that if such action is tolerated and not checked on time respondent mayor might ultimately strip him of his power and control over his organization.

The question that now arises is: Can the issuance of the memorandum in question be justified as a valid exercise of the power of control and supervision that the Charter of the City of Davao grants to the city mayor?

The answer to this question requires an analysis of the pertinent provisions of the City Charter of Davao which, or purposes of our discussion, merely refer to Sections 9, 16 and 33 of Commonwealth Act No. 51, as amended. Said sections provide:

"SEC. 9. General powers and duties of the Mayor.—As chief executive of the city government, the Mayor shall have immediate control over the executive and administrative functions of the different department, subject to the supervision of the Secretary of the Interior, and shall be held accountable for the proper administration of all affairs of the city." (Italics supplied)

"SEC. 16. City departments—Municipal Court.—There shall be a department of engineering and public works headed by the city engineer; a law department headed by the city attorney; a finance department headed by the city treasurer; a police department headed by the chief of police; and a fire department headed by the chief of the fire department and such other departments as may from time to time be established by law or ordinance approved by the proper Head of Department. * * *"

SEC. 33. Powers and duties of heads of department.—Each of the department of the city government shall be in control of such department, under the supervision and control of the Mayor and shall possess such power as may be prescribed therein or by ordinance. * * * (Italics supplied)

Note that, under Section 9, the city mayor is given immediate control over the executive and administrative functions of the different departments, one of which being the police department headed by the chief of police (Section 16), Note also that, under Section 33, each head of the department is given control of his department, subject to "the supervision and control of the mayor." It, therefore, becomes important to define the extent and scope of the terms "supervision" and "control" employed in the charter under consideration.

In *Mondano vs. Silvosa* 97 Phil., 143; 51 Off. Gaz. 2884; we said that "In administrative law, supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them the former may take such action or step as prescribed by law to make them perform these duties. Control on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter." (Italics supplied)

It is clear that respondent mayor not only can exercise supervision over the chief of police who comes under him in connection with the performance of his official duties in order that they may be properly fulfilled, but also immediate control in the sense that he can alter, modify nullify, or set aside what the latter may have done to the extent of substituting his own judgment for that of his subordinate officer in connection with the activities of the latter's office. This power of supervision and control is so broad that it may justify interference with the functions of a subordinate officer when such is necessary in the interest of the service. Because of such control and supervision, it is evident that respondent was justified in issuing the memorandum in question it appearing that its purpose is to fill the positions in the Illegal Fishing Unit of the Police Department in order that the same may carry out its function of enforcing the laws and ordinances concerning illegal fishing within the jurisdiction of Davao City. The fact that the action taken by respondent mayor was direct is of no moment. It is enough that petitioner was notified of the action taken so that he may act accordingly.

The court a quo was justified in invoking our ruling in the case of *Porras vs. Avellana*, (supra), promulgated July 24, 1959, for the same concerns an interpretation of the extent and scope of the power of control vested in the mayor of Davao City by its charter. In that case we justified the action taken by the mayor in ordering the transfer of the finance and supply officer of the chief of police to the field in view of the power of supervision and control of the mayor under the city charter. The facts obtaining in both cases are parallel.

Wherefore, the decision appealed from is affirmed, with costs against petitioner.

Bengzon, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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