

CELSO A. FERNANDEZ, PETITIONER AND APPELLANT, VS. CECILIO LEDESMA, ET AL., RESPONDENTS AND APPELLEES.

G.R. No. L-18878. March 30, 1963

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Celso A. Fernandez was appointed ad interim chief of police of Basilan City on January 7, 1954, took his oath of office on the same date, and his appointment was confirmed by the Commission on Appointments on April 21, 1954. On June 8, 1957, President Carlos P. Garcia, in an administrative order, suspended Fernandez for one month for having been found guilty of gross negligence, violation of law, and dereliction of duty.

Fernandez was later charged before the Court of First Instance of Basilan City with two offenses, one for disobedience of an order of his superior officer (Criminal Case No. 368) and another for oral defamation (Criminal Case No. 438); for which he was suspended from office by the then Executive Secretary Fortunato de Leon. He asked that his order of suspension be lifted but it was denied. After the prosecution had rested its case and without requiring the accused to submit his defense, ' the latter was acquitted in the two criminal cases above-mentioned. Nevertheless, Fernandez continued suspended even if no formal administrative charges were instituted against him, or any administrative investigation conducted of said charges.

On April 30, 1959, the then Executive Secretary Juan C. Pajo wrote Fernandez informing him that the President has terminated his services as chief of police of Basilan City and has designated Cecilio Ledesma in his place ' requesting him at the same time to turn over his office, to Ledesma; The nomination of Ledesma having been confirmed by the Commission on Appointments, he took his oath of office as new chief of police of Basilan City on May 26, 1959. Whereupon, Fernandez instituted an action for *quo warranto* with *mandamus* against Ledesma before the Court of First Instance of Basilan City seeking his reinstatement on the ground that his removal from office without cause as provided by law was in violation of our Constitution.

The court *a quo*, after hearing, dismissed the complaint holding "that the removal of petitioner from office by the President was made in accordance with Section 17 of Republic Act 288 known as the Charter of the City of Basilan, whereupon Fernandez appealed to this Court on purely questions of law.

The letter which was sent by Executive Secretary Juan C. Pajo to petitioner-appellant informing him of the termination of his employment reads as follows:

"Sir:

I wish to inform you that the President has terminated your services as Chief of Police of the City of Basilan and has designated Mr. Cecilio Ledesma in your stead. It will, therefore, be appreciated if you can turn over the said office to Mr. Ledesma -upon receipt hereof.

Very truly yours,

(Sgd.) JUAN C. PAJO

Executive ..Secretary"

It is clear that the President in the exercise of his discretion has put an end to the services of appellant as" chief of police of Basilan City on April 28, 1959, and this he did pursuant to the authority conferred upon him ' by Section 17 of Republic Act 288, known as the Charter of the City of Basilan, which reads as follows.

"SEC. 17.- Appointment and removal of officers and employees-Compensation. —The President shall appoint with the consent of. the Commission on "Appointments, the municipal, judge and-auxiliary municipal judge, the city engineer,,the city treasury-assessor,' the city attorney, the chief of police and the other chiefs of ' departments of.the city which' may fee created from.time to time and the President may remove at his discretion any of said appointive officers with the exception of the municipal judge, who may be removed only according to law." (Italics supplied)

As may be noted, under the aforesaid section,, the President is vested with the authority to appoint, with the consent of the Commission on Appointments, among-others, the chief of police, and in connection with such power the same section says "the President may . remove at his discretion any of said appointive officers with the exception of the municipal-judge, who may be, removed only according to law." Verily, the President interpreted said removal clause as meaning that he may terminate the services of any officer he may appoint under the chapter at his discretion or pleasure with the exception of the municipal judge who may be removed only according to law, and in the exercise of such power he terminated . the services of appellant as chief of police. The court; a quo sustained this stand justifying the action of the , President and this is now assigned by appellant as error.

We agree with the foregoing interpretation. When the law. says that the President may remove at his discretion any of the appointive officers of the city with the exception of the. municipal judge who may be removed only according to law, it is evident that the legislative intent is to make the continuance in office of any of said appointive officers dependent upon the pleasure of the President. If such were not the case, it would not have made a distinction in point of removal between appointive officers in general and the municipal judge. This distinction verily is predicated upon the fact that nowhere in Republic Act No. 288 is there any mention that the term of office of the chief of police, and for that matter of any appointive officer, with the exception of the municipal judge, should be for a fixed period. The fact that no term of office is fixed for that position is indicative of an intention to make it dependent upon the discretion or pleasure of the appointing power. And Congress is not wanting in power to do so for, as it was aptly said: "A public office is the right, authority and, duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating 'power, an individual is invested with some portion of the sovereign function of the government, to be exercised by him for the benefit of the public" (7 Mechem, Public Officers, Section' 1; See also 42 Am. Jur., 944-955; Italics supplied). And in *Alba vs. Alajar*, 100 Phil., 683; 53 Off. Gaz., No. 5, p. 1452, this Court also said: "Congress can legally and constitutionally make the tenure of certain officials dependent upon the pleasure of the President."

Appellant, however, does not agree with the foregoing view for he contends that the act of the President in appointing Cecilio Ledesma to the position of .chief of police of Basilan City in his place is tantamount to his removal without cause from office in violation of Section 4, Article XII, of our Constitution, invoking in support thereof pur ruling in the cases of *De los Santos vs. Mallare*, 87 Phil, 289; 48 Off. Gaz., 1791 and *Lacson vs. Roque*, 92 Phil., 456; 49 Off. Gaz., 93. But this contention cannot, be sustained considering that the position of the chief of police does not have a fixed term. As already said, it was made dependent upon the discretion or pleasure of the President, whereas the cases invoked by appellant relate to positions for which, the law fixes a definite, term of office.: What is in point here is- the case of *Alba vs. Alajar*, supra,' wherein this Court made the

following pronouncement:

" 'The pervading error of the respondents lies in the fact that they insist on the act of the President in designating petitioner Alba in the place of respondent Alajar as one of removal. The replacement of respondent Alajar is not removal, but an Expiration of his term, which is "one of the ordinary modes of terminating official relations. On this score, section 2545 of the Revised Administrative Code which was declared inoperative in the Santos vs. Mallare case, is different from section 8 of Republic Act No. 603. Section 2545 refers to removal at pleasure while section 8 of Republic Act No. 603 refers to holding office at the pleasure of the President.

" 'Clearly, what is involved here is not the question of removal, or whether legal cause should precede or not that removal. What is involved here is the creation of an office and the tenure of such office, which has been made expressly dependent upon the pleasure of the President.

" 'The cases relied upon by respondents are, therefore, in-opposite to the instant proceedings. For all of them relate to removal of officials in violation of laws which prescribe fixity of term.

" 'Even assuming for the moment that the act of replacing Alajar constitutes removal, the act itself is valid and lawful, for under section 8 of Republic Act No. 603, no fixity of tenure has been provided for, and the pleasure of the President has been exercised in accordance with the policy laid down by Congress therein.' "

Wherefore, the decision appealed from is affirmed, without costs.

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

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