

**ALBERTO FERNANDEZ AND RICARDO DE GUZMAN, PETITIONERS  
AND APPELLEES, VS. PABLO CUNETA, IN HIS CAPACITY AS MAYOR,  
PASAY CITY, CEFERINO FUENTES, IN HIS CAPACITY AS TREASURER  
OF PAS...**

*G.R. No. L-14392. May 30, 1960*

Ponente: CONCEPCION, J.

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**CONCEPCION, J.:**

This is an appeal from a decision of the Court of First Instance of Rizal, Pasay City Branch, the dispositive part of which is as follows:

"In View of the Foregoing, the Court hereby renders judgment ordering respondent Mayor to reinstate petitioners to their positions as helpers in the Office of the Civil Defense and Disaster Organization of Pasay City and to pay petitioners' salaries accruing from February 3, 1956 until their actual reinstatement. All respondents are ordered to pay the costs."

Although respondents appealed from said decision to the Court of Appeals, the latter certified the case to us upon the ground that the findings of fact made by the lower court are not disputed in appellants' brief and that the issues therein raised are purely legal in nature.

It appears that on December 1, 1955, petitioners, Alberto Fernandez and Ricardo de Guzman, were appointed by the Acting Mayor of Pasay City, and assumed their duties, as "helpers" in the Office of the Civil Defense and Disaster Organization of said City. On or about February 1, 1956, they received the letter, Exhibit D, signed by Lorenzo S. Ramos, Secretary of the City Mayor, enclosing therewith copy of an opinion of a Special Attorney of Pasay City—to the effect that Ordinance No. 27, series of 1954, creating said positions of "helpers" under which petitioners were appointed, had never received the approval of the Secretary of Finance, which was necessary under the city charter (Republic Act No. 183, Section 16 [c]), that there were, therefore, no positions to which petitioners could be appointed on December 1, 1955, and that their appointments were, accordingly, null and void—and advising petitioners that said letter served "as notice of separation from the service." Inasmuch as petitioners questioned the authority of the writer of Exhibit D to oust them from office, the stand taken therein was reiterated in the communication Exhibit F, dated February 3, 1956—which was seemingly received by petitioners on February 9, 1956—signed by Mr. Ramos "By authority of the Mayor". Thereupon, petitioners instituted the present action for mandamus against the City Mayor, the City Treasurer and the City Auditor of Pasay City, with the prayer that:

"\* \* \* the petitioners be allowed to proceed with this suit as pauper litigants and that judgment be issued (1) ordering the reinstatement of the petitioners with backpay from the date of their illegal ouster on Feb. 3rd, 1956, until reinstatement, (2) ordering the payment of their salaries for actual services rendered by them from January 1, to Feb. 3rd, 1956, (3) ordering the respondent City Mayor to pay moral and exemplary damages to the petitioners in such amounts as this Honorable Court may decide, (4) in the interest of the public, by ordering the Pasay City Treasurer and the Pasay City Auditor to stop or refrain from authorizing the payment

of the salaries of the two new incumbents who replaced the petitioners, and (5) to grant such other relief as in this instance, is just and equitable in the premises."

In their amended answer, respondents alleged substantially, that the appointments of petitioners herein were null and void from the very beginning, for said respondents "were not aware of the fact that Resolution No. 27, series of 1954", under which the aforementioned appointments were extended, had ever been approved by the department head concerned, as required in the city charter, and that petitioners' appointments were subject to certain conditions which had not been complied with.

In due course, the Court of First Instance of Rizal, Pasay City Branch, rendered the aforementioned decision in favor of petitioners herein. Hence, this appeal by respondents, who maintain that:

"1. The Honorable trial court erred in not finding that the 'last-hour' appointment extended by Acting Mayor Jose Milan in favor of the petitioners-appellees were immoral if not illegal; and inimical to the modern concept of more autonomy in the administration of local government;

"2. That considering the peculiar circumstances of this case, the Honorable Court erred in holding that the 'probationary' appointment of the appellees were 'permanent';

"3. That arguendo that the appellees' appointments were probationary and became absolute and permanent only after the conditions set forth in their appointments were complied with, yet the Honorable trial court erred in not finding that, as for the date of the trial, the1 said appellees have not done anything to qualify themselves to the positions;

"4. That the Honorable Court erred in denying the petition for new trial filed by the respondent city mayor;

"5. That considering that the appointments of Jose Rodriguez and Cirilo Decena have been approved by both the Commissioner of Civil Service, and by the Office of the President, the trial court erred in not ruling that the appellees' remedy under the circumstances is not mandamus but 'quo warranto';

"6. That the court a quo erred in finding that the appellees had exhausted all plain, adequate and complete remedy in the ordinary course of law;

"7. That considering the facts and circumstances of this case, and again arguendo that the appellees' termination of service were illegal, yet the Honorable Court erred in holding the respondent city mayor liable for the back salaries of the appellees."

In its first assignment of error, respondents maintain that the Acting Mayor of Pasay City had acted in bad faith in appointing petitioners herein, on December 1, 1955, the party then in power in said city having allegedly lost in the elections held shortly before said date. This is, however, irrelevant to the issue in the case at bar, which hinges on the legality of petitioners' appointments, not upon the intent of the officer who made the same. Respondents branded those appointments as null and void for alleged lack of the requisite departmental approval of the ordinance creating the positions held by petitioners. However, the lower court found that the Secretary of Finance had approved on October 11, 1955, not only said ordinance, but, also, the appropriation for said positions. Hence, respondents have given up the theory pursuant to which petitioners were originally separated from the service.

Respondents now allege, in their second assignment of error, that said appointments were probationary in nature; that instead of performing manual labor, as required in their appointments, petitioners engaged themselves in clerical jobs, falling within the classified service, in violation of the civil service rules and regulations and of one of the conditions under which said appointments were approved by the Office of the President; and that being on probation, petitioners may be removed upon notice in writing, without any hearing.

This pretense is absolutely devoid of merit. To begin with, the appointments in question (Exhibits A and B)

appear, on their face, to be permanent in nature. Secondly, under the Civil Service Act of 1959 (Republic Act No. 2260), appointments may be either permanent, provisional or temporary (section 24). "Probationary" appointments do not exist under said Act. Subdivision [6] of section 24 thereof, dealing with "permanent" appointments, provides, however:

"A permanent appointment shall be issued to a person who has met all the requirements- of the position to which he seeks appointment in accordance with the provisions of this Act and the rules and standards promulgated in pursuance thereto. All such persons must serve a probationary period of six months following their original appointment and shall undergo a thorough character investigation in order to acquire permanent civil service status. A probationer may be dropped from the service for unsatisfactory conduct or want of capacity any time before the expiration of the probationary period: Provided, That such action is appealable to the Commissioner of Civil Service under section sixteen, paragraph (j) of this Act."

Pursuant thereto, "permanent" appointees "must serve a probationary period of six months following their original appointments." Although on probation, such appointees may not be removed at pleasure. They may not be dropped from the service, except "for unsatisfactory conduct or want of capacity at any time before the expiration of the probationary period." In other words, one of these two (2) causes must exist for their valid dismissal, and when the law fixes the causes thereof, it is understood that the officer or employee concerned must be given an opportunity to contest its existence. In other words, there must be notice and hearing. And this right is bolstered up by the proviso in the above quoted provision granting the right to appeal to the Commissioner of Civil Service.

Thirdly, respondents cannot invoke Republic Act No. 2260 to justify the removal of petitioners herein, and to assign them a "probationary" status under said Act, the latter having been approved on June 18, 1959, or almost three (3) years and a half after said removal.

At any rate, petitioners' dismissal was predicated, not upon their probationary status, which is not a fact, but upon the theory that their appointments were void on account of the alleged inexistence of their positions, and it is now admitted that the same have been legally created. Hence, their removal from office, without cause and without previous notice and hearing, is patently contrary, not only to our civil service law, but, also to the Constitution.

The petitioners' qualifications for reinstatement are assailed in the third assignment of error, upon the ground of breach of two (2) conditions imposed by the Office of the President in approving their appointments, namely, that said appointments are "subject to the usual physical and medical examination" and that the "main duties" of the appointees "are those of manual labor". Respondents say that petitioners have not submitted themselves to said "physical and medical examination" and that they have engaged in clerical work, which is, also, a violation of section 685 of the Revised Administrative Code.

It appears, however, that petitioners were not aware of the aforementioned conditions. Seemingly, when their appointments were returned to the office of the city mayor, after the approval thereof by the Office of the President, the change of local administration had already taken place, and the new administration gave petitioners no chance to comply with said conditions. As stated in the decision appealed from:

"The respondents further contend that, on the assumption that the Civil Defense Office was legally created by Ordinance No. 27, series of 1954, yet, the petitioners have not complied with the conditions in their appointments by submitting themselves to the usual physical and medical examination and they have not been performing duties which are not those of manual labor. The petitioners admit that they have not submitted themselves to the usual physical and medical examination required in their appointments to make the same permanent but they claim that they did not know of the conditions appearing in their appointments because the originals thereof have not been delivered to them by the Office of the Mayor despite their demand to do so. The evidence of the petitioners to the effect that their original appointments were never delivered to them have

not been denied by the respondents. The failure of the petitioners to comply with the conditions respecting their submission to the usual physical and medical examination is not therefore due to petitioners' fault but to the failure of the Office of the Mayor to deliver to them their appointments before they were separated from office on February 1, 1956."

With respect to the type of work to be undertaken by petitioners, the condition imposed by the President is that their main duties be manual. In other words, they were not prohibited from doing clerical work, provided that their principal function was manual. Moreover, said section 685 of the Revised Administrative Code provides:

"Limitation on employment of person in unclassified service.— A person appointed to a position in the unclassified service shall not be employed in any position in the classified service nor shall he be allowed to do clerical duties other than such as may pertain to the office to which he was appointed."

The prohibition therein contained is addressed to the appointing power or the superior officer, not to the subordinate employee who generally feels bound to do whatever work the former may assign to him, and who should not be punished, therefor, for his obedience. Again, said prohibition, does not extend to all clerical work, but is limited to "clerical duties other than such as may pertain to the office to which" the employee concerned "was appointed." There is nothing in the record before us, and it is not even claimed by respondents, that the clerical work allegedly done by petitioners is "other than such as may pertain" to their positions as helpers in the Office of the Civil Defense and Disaster Organization.

Under the fourth assignment of error, respondents allege that the lower court should be granted their motion for new trial based upon newly discovered evidence, consisting of the appointments of Jose Rodriguez and Cirilo Decena to the positions of petitioners herein, which were allegedly approved by the Commissioner of Civil Service. There is no merit in this pretense. Said appointments were allegedly extended by respondent city mayor on February 1, 1956, or over a year before the lower court rendered the decision appealed from, dated February 15, 1957. And being the officer who issued the appointments, respondent city mayor could not have been unaware thereof. Besides, said appointments were mentioned in paragraph 11 of the petition and admitted in paragraph 11 of respondents' amended answer. Obviously, they were not newly discovered evidence.

Respondents insist in their fifth assignment of error, that, in view of said appointments of Jose Rodriguez and Cirilo Decena, petitioners herein cannot maintain the present action for mandamus, but should file quo warranto proceedings against Rodriguez and Decena. In their aforementioned amended answer, respondents denied, however, that Rodriguez and Decena had replaced petitioners herein and alleged that the latter were appointed under Resolution 27, series of 1954, and that the appointments of Rodriguez and Decena had been extended under Ordinance No. 64, series of 1955. If this allegation were true, it would not be necessary to remove Rodriguez and Decena in order to reinstate petitioners herein. At any rate, in a unanimous opinion, penned by Mr. Justice Montemayor, this Court said in *Batungbakal vs. National Development Co. and Manuel Agregado* (93 Phil., 182; 49 Off. Gaz., 2290, 2299-2300):

"As for the contention that for the Auditor General to reinstate the plaintiff would be tantamount to compelling him to dismiss without cause the present incumbent who was appointed after plaintiff's dismissal, suffice it to say that in so doing, neither injustice nor violation of law would be committed. Inasmuch as Batungbakal was illegally suspended and dismissed, legally speaking, his position never became vacant, hence there was no vacancy to which the present incumbent could be permanently appointed. In other words, the present incumbent's occupancy of or tenure in said post is temporary and precarious and does not come within the contemplation of the constitutional prohibition. But, assuming for the moment that the incumbent's tenure were permanent and that said tenure fell under the protection of the Constitution, still, his being made to leave the post to give way to the plaintiff's superior right, may yet be considered as removal for cause, not unlike a case of quo warranto where a respondent incumbent is ousted by court order to give way to the successful party or

petitioner."

The sixth assignment of error refers to the effect upon this case of petitioners' failure to exhaust administrative remedies, namely, appeal to the Commissioner of Civil Service, the Office of the President and the President himself. Considering, however, that petitioners' separation from the service was based upon the alleged illegality of their appointments and that petitioners were immediately removed from office, we believe that said appeal was not a plain, speedy and adequate remedy in the ordinary course of law. Furthermore, the rule laid down in *Mangubat vs. Osmeña, et al.*, G. R. No. L-12837 (April 30, 1959) is squarely in point. We held therein that:

"\* \* \* when, from the very beginning, the action of the City Mayor is patently illegal, arbitrary, and oppressive; when there has been no semblance of compliance, or even an attempt to comply with the pertinent laws; when, manifestly, the Mayor has acted without jurisdiction, or has exceeded his jurisdiction, or has committed a grave abuse of discretion, amounting to lack of jurisdiction; when his act is clearly and obviously devoid of any color of authority, as in the case at bar, the employee adversely affected may forthwith seek the protection of the judicial department. Thus, in *Mission vs. Del Rosario* (94 Phil., 483; 50 Off. Gaz., 1571); *Uy vs. Rodriguez* (95 Phil., 493; 50 Off. Gaz., 3574); and *Abella vs. Rodriguez* (95 Phil., 289; 50 Off. Gaz., 3039), we did not hesitate to order the reinstatement of detectives of the police force of Cebu, who were dismissed by the City Mayor under identical conditions as those obtaining in the case at bar. Though not involving members of said force, we also, deemed it proper to grant the review prayed for by the dismissed employees, notwithstanding their failure to appeal from the order of dismissal to the department head, in *Palamine vs. Zagado*, 94 Phil., 494; 50 Off. Gaz., (4) 1566, *Manuel vs. De la Fuente* (92 Phil., 302; 48 Off. Gaz., 4829), *F. Jose vs. Lacson*, L-10477 (May 17, 1957), *Festejo vs. Mun. Mayor of Nabua* (96 Phil., 286; 51 Off. Gaz., 121), *Covacha vs. Amante*, L-8358 (May 25, 1956), *Carmona vs. Amante*, (99 Phil., 716; 52 Off. Gaz., 5109), *Senarillos vs. Hermosissima*, (100 Phil., 501; 53 Off. Gaz. (4) 1043), and *Briones vs. Osmeña, Jr.*, (104 Phil., 588; 55 Off. Gaz., [11] 1920)."

It is lastly urged that respondent city mayor should not have been sentenced to pay back salaries of petitioners herein, he having been sued in his official capacity.

It should be noted, in this connection, that, although petitioners herein were removed from office upon the ground that the ordinance creating their respective positions had not become effective for alleged lack of the requisite departmental approval, respondent city mayor had really no knowledge whether said approval had been given or not, for, in respondents' amended answer, it is merely alleged that they were not "aware" of such approval, which turned out to have been, in fact, secured. Thus, the dismissal of petitioners was effected, not only illegally, but, also, with gross negligence on the part of respondent city mayor, if not utter disregard of their rights, practically amounting to malice and bad faith, thus bearing out, substantially, the allegation in the petition to the effect that he had acted with "abuse of authority and malice aforethought and with the end and in view of paving the way for his cohorts to get the positions" in question. Under similar conditions, we declared in *Diaz vs. Amante*, (104 Phil., 968; 55 Off. Gaz., (41) 8643) involving another city mayor sued in his official capacity:

"The lower court ordered respondent not only to reinstate petitioners but also to pay them their back salaries and moral and exemplary damages in the aggregate amount of P7,000.00. We agree with the trial court that respondent should be made to pay the back salaries of petitioners \* \* \*. We may also agree with the trial court in holding that respondent in separating the petitioners from the service acted with gross negligence, if not in bad faith, considering the events of contemporary history that had happened in his province and his official acts amounting to abuse of authority of which the trial court took judicial notice in its decision, but we believe that the sum of P5,000.00 it slapped upon respondent as moral damages is not justified, for the same is already included in, if not absorbed by, the back salaries he was ordered to pay to petitioners. And with regard to the sum of P2,000.00 which respondent was ordered to pay as exemplary damages, the same is somewhat excessive, considering that respondent acted in the belief that he had the requisite authority under Executive

Order No. 264 of the President which at that time has not yet been declared repealed by the Supreme Court. But these damages should be imposed if only to curtail the abuses that some public officials are prone to commit upon coming to power in utter disregard of the civil service rules which constitute the only safeguard of the tenure of office guaranteed by our Constitution. These damages should therefore be reduced to P1,000.00."

Thus, the lower court was even lenient in not sentencing respondent city mayor to pay moral or exemplary damages.

Wherefore, the decision appealed from is hereby affirmed, with costs against respondent city mayor. It is so ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Barrera, and Gutierrez David, JJ., concur. Reyes, J.B.L., and Endencia, JJ., took no part.

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