

BAYANI SARMIENTO, DOMINGO BARTOLOME, CIRILO ABELA, FIDEL GUILALAS, JESUS DE LOS REYES, RODRIGO BAUTISTA, AND THE WIDOW AND CHILDREN OF THE DECEASED BENITO CABRERA, PETITIONERS, ...*G.R. No. L-38565. September 16, 1974*

Ponente: ESGUERRA, J.

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In this appeal by certiorari from a decision of the Court of Appeals in CA-G.R. No. 44302-R, March 6, 1974, entitled "Bayani Sarmiento et als. vs. Constantino Nolasco", the only principal issue raised is whether the appointments held by petitioners were "provisional" or "temporary" under the provisions of Sec. 24 (a) (b) (c) of Republic Act No. 2260.

Petitioners Bayani Sarmiento, Domingo Bartolome, Cirilo Abela, Fidel Guilalas, Jesus de los Reyes, Rodrigo Bautista and the deceased, Benito Cabrera, represented and substituted by his widow and children, were policemen of San Jose del Monte, Bulacan, by virtue of three successive appointments, the last being Quirico Villano. All of their appointments were expressly denominated "provisional" under Section 24 (c) of Republic Act 2260 as attested by the Commissioner of Civil Service, except Rodrigo Bautista who got his first appointment as patrolman on October 1, 1967, which appointment was also expressly denominated "provisional". On January 18, 1968, they were dismissed from their respective positions by the then newly elected Mayor, respondent Constantino Nolasco, the reason given for their dismissal being that they were only temporary or casual employees. Thereafter, respondent Mayor Nolasco appointed respondents Honorato Espanola, Mario S. Cruz, Nemesio Sanchez, Quirico Victorio and Antonio Miranda to the positions formerly held by petitioners on different dates between January 25 and March 1, 1968. Respondent Agustin Garcia was appointed sergeant of police, a position not held by any of the petitioners. At that time neither petitioners nor respondents-appointees were civil service eligibles and at the time of petitioners' dismissal on January 18, 1968, respondent Mayor Nolasco had not received a certification of eligibles from the Civil Service Commission for the position of policeman.

On January 29, 1968, the Police Commission, in response to petitioners' protest on their alleged illegal dismissal from office, sent a letter to the respondent Mayor Nolasco advising him to restrain his new appointees from discharging the duties of their positions and stating that non-eligibles appointed as provisional employees under Sec. 24(c) of the Civil Service Law of 1959, may be separated from the service "upon prior authority and certification of appropriate eligibles by the Civil Service Commission." Apparently the respondent Mayor did not heed the advice, so when petitioners again protested to the Police Commission, the latter on March 16, 1968, presumably sent a radio message to the P.C. Chief at Camp Crame, requesting him to instruct the P.C. provincial commander of Bulacan to disarm and disband the newly appointed members of the San Jose del Monte police department. Again, nothing happened. Hence the petition for quo warranto and mandamus was filed for the petitioners in the Court of First Instance of Bulacan (Civil Case No. 460-VI) on August 14, 1968.

Hon. Juan de Borja, as Court of First Instance Judge of Bulacan rendered a decision on May 14, 1969, in favor of petitioners, ordering respondent Mayor Constantino Nolasco to reinstate petitioners to their former positions under their last appointments; for respondent Mayor and respondent municipal treasurer of San Jose del Monte to pay petitioners their salaries from January 19, 1968; that respondents Marcelo Manuel, Honorato Espanola, Mario S. Cruz, Nemesio Sanchez, Quirico Victorio and Antonio Miranda are not entitled to the positions from which petitioners were removed; that the petition is dismissed as to Agustin Garcia who was holding a position not formerly occupied by any of the petitioners; that the municipal council and municipal mayor should make the necessary appropriations for the payment of petitioners' salaries starting from January 18, 1968, and as long as petitioners hold their positions; for respondents to pay petitioners the amount of P2,000.00 as attorney's fees, plus the costs.

From that decision of the Court of First Instance, the respondents elevated the case to the Court of Appeals. In a decision promulgated March 6, 1974, penned by Hon. Ricardo Puno and concurred in by Associate Justices Hermogenes Concepcion, Jr. and Andres Reyes of the Special Second Division, the appellate court reversed the decision of the lower court and dismissed the petition for quo warranto and mandamus. Hence this appeal by certiorari.

On a perusal of the decision of the appellate court, it is immediately discernable that its reversal of the decision of the court a quo was principally predicated on its stand that the appointments extended to the petitioners were not "provisional" under Sec 24(c) of Republic Act 2260, but rather "temporary", reasoning out that the proper construction/interpretation of Sec. 24(c) of Republic Act 2260, as allegedly made by this Court in *Ramos vs. Romualdez*, G.R. No. L-27946, April 30, 1970; 32 SCRA 590, is that a "provisional" appointment refers to an appointee with a civil service eligibility but other than the appropriate one for the position to which he was appointed. That this obiter dictum appearing in the case of *Ramos* was never meant to change the meaning of "provisional" appointment as expressly stated in Sec. 24 (c) of Republic Act 2260 and as construed by Us in the cases of *Ferrer et als. vs. Hechanova*, G.R. No. L-24418, January 25, 1967; *Pinero vs. Hechanova*, G.R. No. L-22562, October 22, 1966; *Lamata et al. vs. Hon. Vicente Cusi, Jr. et al.*, G.R. No. L--32619, October 31, 1972 and *Ramos vs. Subido*, G.R. No. L-26090, September 6, 1967, will hereinafter be elucidated upon.

The appellate court acting and relying on the obiter dictum in the case of *Ramos vs. Romualdez* and finding the petitioners admittedly without civil service eligibility at the time they were extended appointments, leaped to the conclusion that the appointments extended to petitioners were not "provisional" but "temporary" and that, therefore, they could be dismissed at the will of the appointing official. We cannot agree with the precipitate conclusion of the appellate court which could have easily realized, upon a cursory examination of the decision in the case of *Ramos vs. Romualdez*, that the issue of petitioners' reinstatement was not decided on the question of the nature of petitioners's appointment (whether permanent or provisional) but rather on the nature of the position he was holding (confidential and therefore at the pleasure of the appointing power).

The construction We have given, and We now still believe in, to Sec. 24 (c) of Republic Act No. 2260, before its amendment by Republic Act 6040 is that "provisional" appointment may be issued upon the prior authorization of the Commissioner of Civil Service to a person who has not qualified in an appropriate examination (no civil service eligibility) but who otherwise meets the requirements for appointment to a regular position in the competitive service, whenever a vacancy occurs and the filling thereof is necessary and there is no appropriate register of eligibles at the time of appointment. In this case, there is no question that petitioners were not civil service eligibles but they were extended provisional appointments as expressly attested by the Commissioner of Civil Service because they were fit to be policemen at the time of their appointments and there were no eligibles at the time when the filling of those positions was required by public service. They were extended "provisional"

appointments which should be considered valid until eligibles could replace them.

We cannot fully subscribe to the reasoning that petitioners being non-eligibles could not be extended "provisional" appointments under Sec 24(c) of Republic Act 2260, because precisely section 24(c) providing for "provisional" appointments as distinct from "temporary" appointments was designed to provide a remedy in those cases when the public service then required the filling of a classified position and at the moment no eligibles happened to be available. That Congress meant it that way could be clearly seen when under Sec. 18 of Republic Act 6040, amending Republic Act 2260, "provisional" appointees were converted automatically to "permanent" appointees under the provision of Section 24(b) of Republic Act 2260, as amended, subject to the provision of Section 16(h) of Republic Act 2260, as amended.

Following the appellate court's reasoning that petitioners could not have been extended "provisional" appointments since admittedly they were without civil service eligibility, then respondent Mayor Nolasco had no reason at all, except his mere whim or caprice, when he dismissed petitioners and started appointing the respondents to the vacated positions whom he fully knew to be also without any eligibility. Respondent Mayor Nolasco could not have acted to strictly enforce the requirements of the Civil Service Law by dismissing non-eligibles from the police force on the ground that they held only temporary appointments for being non-eligibles and replacing them also with non-eligibles.

In the case of Ferrer, et al. vs. Hon. Rufino Hechanova, et al., G.R. No. L-24418, promulgated January 25, 1967, which was an appeal in a petition for mandamus dismissed by the Court of First Instance of Manila wherein the petitioners-appellants sought to compel respondents-appellees their reinstatement to office with payment of back salaries and attorney's fees, this Court ruled that the positions of petitioners Hernandez and Garcia could not be considered primarily confidential in nature and that, therefore, although both of them held the designation of "permanent appointees", they were in legal contemplation not permanent appointees within the meaning of the Civil Service Law, for a permanent appointment implies civil service eligibility; that the same thing was true with petitioner Fojas, because his second grade civil service eligibility was not appropriate for the position he occupied, so that he was likewise without civil service eligibility; that petitioner Ferrer held only a provisional appointment at the time he was dismissed and that a provisional appointment is good until replacement by a civil service eligible and in no case beyond thirty (30) days from the date of receipt by the appointing officer of the certificate of eligibles (Sec. 24(c), Republic Act 2260; Rule VI, Sec. 13 and 14 of the Revised Civil Service Rule; Piñero vs. Hechanova, G.R. No. L-22562, October 22, 1966); that petitioner Fojas, Hernandez and Garcia who were not possessed of civil service eligibility should be deemed provisional appointees in their respective positions, since it was not questioned that except for the requirement of civil service eligibility they otherwise met the requirements for appointment to said regular positions in the competitive service; and that, therefore, their stay in the positions they occupy shall continue up to their replacements by eligibles and in no case beyond 30 days from receipt by the appointing officer of the certificate of eligibles; and that since "loss of confidence" was not a valid ground for dismissal of the aforesaid provisional appointees occupying positions in the classified service, their reinstatements must be ordered with payment of back salaries.

Obviously, this Court ruled in the above manner with the primary objective in mind of placing the civil service above and beyond the nefarious effects of the "spoils system" in appointments to public office in order to insure the attainment of the ideal in public service.

Subsequently, Republic Act 6040, amending Republic Act 2260 (Civil Service Law of 1959) which took effect on August 4, 1969, abolished "provisional appointments" and recognized only "permanent" and "temporary" appointments. Republic Act 6040, aside from repealing portions of Republic Act 2260 and modifying some of its provisions, provided in Section 18 that:

"x x x: Provided, That all provisional appointments made or appointments approved by the Civil Service Commission under Section twenty-four (c) of Republic Act Numbered Two Thousand Two Hundred and Sixty prior to the approval of the Act shall automatically be permanent under the provisions of Section 24(b) thereof, as amended, by this Act, subject to the provision of Section 16(h) of said Act as herein amended." (Italics)

In the case of Eugenio R. Ramos vs. Hon. Eduardo Z. Romualdez, 32 SCRA 590, promulgated April 30, 1970 (after "provisional appointments" were abolished by the amendatory provision of Republic Act 6040), which was an appeal from a decision of the Court of First Instance of Manila, dismissing petitioner-appellant's suit for mandamus to compel respondent Hon. Secretary of Finance Eduardo Romualdez to reinstate appellant to his position as special investigator of the Bureau of Internal Revenue, this Court ruled that even if the confidential character of the position which appellant occupied be accepted, still he was not able to convince the Court of sufficient justification for reversing the lower court's decision, since the incumbent of a primarily confidential position holds the office at the pleasure of the appointing power, and that when such pleasure turns into displeasure, the incumbent is not removed or dismissed from office; his term merely "expired".

It is true that in the case of Ramos this Court included as "obiter dictum" the statement that:

"x x x as noted in the brief of respondent Romualdez, however, what the law considers a provisional appointment refers to an appointee with a civil service eligibility but other than the appropriate one for the position to which he was appointed. That was so declared in the aforesaid case of Ferrer vs. Hechanova."

We consider now as an exercise in futility to discuss the petitioners' allegation of inconsistency in the above-quoted portion of the Ramos case with the pronouncement of this Court in the Ferrer case as to the true nature of a "provisional" appointment since that kind of appointment was abolished by Republic Act 6040, since August 4, 1969. To do so would be of no moment nor significance to this case.

We consider as directly and squarely in point to the principal issue in this case, Our decision in Ruel P. Lamata et al. vs. Hon. Vicente Cusi, Jr., et al., G.R. No. L-32619, promulgated October 31, 1972. In that case We ruled that petitioners Ruel P. Lamata and Florencio de la Cerna who were extended "provisional" appointments as patrolmen of Davao City by the then Mayor Carmelo L. Porras, as approved by the Commissioner of Civil Service under Sec. 24(c) of Republic Act 2260, were not temporary officials who may be dismissed at any time but may remain in office up to not more than 30 days from receipt by the appointing official from the Commissioner of Civil Service of a certification of the availability of civil service eligibles, or up to the appointment of such civil service eligibles. Thus, We emphatically stated:

"We have repeatedly held that one holding a public office under a provisional appointment, he having the qualifications necessary for the position, although without the requisite civil service eligibility, is not a 'temporary' official who may be dismissed at any time x x x"

The cases of Pinero vs. Hechanova, G.R. No. L-22562, October 22, 1966; Ferrer vs. Hechanova, G.R. No. L-24418, January 25, 1967; and Ramos vs. Subido, G.R. No. L-26090, September 6, 1967, were again cited. In the Lamata case, the respondent Mayor Elias B. Lopez of Davao was held liable for the illegal dismissal of petitioners and ordered to indemnify both Lamata and De la Cerna in the amount of their salaries from June 1 to November 22, 1968, with legal interest from November 22, 1968.

Respondent Mayor Nolasco, who manifestly intended to apply the spoils system in the dismissal of petitioners without cause and the appointment of new municipal policemen of his liking upon his assumption of office, must be made to shoulder the burden and whatever injury he has inflicted upon the petitioners and he must also serve as an example to other officials of the same frame of mind who may be inclined to place the call of ulterior motive over and above that of duty done in good faith. It is noted that this Court in the case of Aguilar vs. Valencia, 40

SCRA 210, 212, ruled that under the Police Act of 1966 (Republic Act 4864), patrolmen could only be removed for cause; and even if their appointments were provisional in character, their services could only be terminated under the Civil Service Act (Republic Act 2260) upon receipt from the Civil Service Commission of a list of available eligibles. There is no place for the spoils system in the appointment of those who enforce the law for the maintenance of peace and order of the community. The method of appointment must insure the loyalty of appointees not to the appointing official but to the law itself and to the public service.

As to the side issues raised by petitioners, We hold that the widow and six children of petitioner Benito Cabrera who died on August 7, 1969, are entitled to receive the emoluments due to the deceased from January 18, 1968, when he was dismissed from his position to August 7, 1969, when he died; that respondent Municipal Mayor is personally responsible and liable for the payment of the salaries of the petitioners because he was the one responsible for their illegal dismissal from office as was held in the case of *Lamata vs. Cusi*, G.R. No. L-32619, October 31, 1972; and that the allegation of respondents to the effect that respondent Honorato Espanola subsequently became a civil service eligible, must be verified by the court a quo. All the other side issues not raised in the appellate and lower courts or otherwise considered unimportant to the disposition of this case, We deem it wise no longer necessary to discuss them.

Having disposed of as untenable the appellate court's ground in reversing the decision of the court a quo, and now definitely ruling that the petitioners held "provisional" and not "temporary" appointments and, therefore, they could not be dismissed at anytime but may remain in office up to not more than 30 days from receipt by the appointing official from the Commissioner of Civil Service of a certification of availability of eligibles or up to the appointment of such civil service eligibles, which was the law until Republic Act 6040 took effect on August 4, 1969, We, therefore, set aside the decision of the appellate court, and revive the lower court's decision with the following modifications:

1. Respondent Municipal Mayor Constantino Nolasco is ordered to reinstate petitioners Bayani Sarmiento, Domingo Bartolome, Cirilo Abela, Fidel Guilalas, Jesus de los Reyes, Rodrigo Bautista to their former positions as of January 18, 1968, except the petitioner formerly holding the position presently held by respondent Honorato Espanola, upon verification by the court a quo that respondent Espanola truly subsequently acquired civil service eligibility, and from what time he acquired the same;
2. That above-mentioned petitioners should be reinstated as permanent employees under the provision of Section 18 of Republic Act 6040 if they qualify as such; otherwise, they should be considered to have held office until August 4, 1969 (when Republic Act 6040 abolishing provisional appointments took effect); as to the petitioner formerly holding the position presently held by respondent Honorato Espanola, he shall be reinstated as a permanent employee subject to the conditions above set forth if the court a quo upon verification finds that respondent Espanola acquired his eligibility after August 4, 1969, when the provisional permanent if he is eligible, otherwise, said petitioner is considered to have held office only until August 4, 1969;
3. Petitioner Benito Cabrera (deceased) is considered to have held office from January 18, 1968, to August 7, 1969, when he died, and his widow and six children shall be paid the salaries he was entitled to;
4. Ordering respondent Municipal Mayor, Municipal Treasurer and the Municipal Council of San Jose del Monte to immediately take all the necessary steps and measures to implement this decision;
5. In the event that the pecuniary liability due to the petitioners cannot be met as ordered, the respondent Mayor shall personally be liable for all said obligations;
6. Petition for quo warranto and mandamus as against Agustin Garcia who was appointed to a position not

previously held by petitioners is dismissed; and

7. Ordering the respondents except Agustin Garcia to pay the petitioners the amount of Four Thousand Pesos as attorney's fees with double costs against respondents.

Makalintal, C.J., Castro, Teehankee, Makasiar, and Munoz Palma, JJ., concur.

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