

**ZOILO C. PARAGAS, CHIEF OF POLICE OF DAGUPAN CITY,
PETITIONER AND APPELLANT, VS. HON. ESTANISLAO R. BERNAL,
ASSISTANT EXECUTIVE SECRETARY OF THE PRESIDENT OF THE
PHILIPPINES, HO...**

G.R. No. L-22044. May 19, 1966

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal taken by Zoilo C. Paragas, from a decision of the Court of First Instance of Pangasinan, dismissing his petition in this case and dissolving the writ of preliminary injunction issued therein.

On July 26, 1961, petitioner was designated by the then President Carlos P. Garcia as Acting Chief of Police of Dagupan City. Soon thereafter, or on September 6, 1961, petitioner took the corresponding oath of office and began to perform the duties attached thereto. Still later, or on November 6, 1961, he was appointed ad interim Chief of Police. This appointment was confirmed by the Commission on Appointments on May 3, 1962. However, on September 11 of the same year respondent Estanislao Bernal, as Assistant Executive Secretary of the President, acting "by authority" of the latter, directed petitioner by letter to desist from further performing the duties aforementioned, upon the ground that his designation as acting chief of police had ceased to be effective on May 17, 1962, when Congress adjourned its regular session that year, and that petitioner's ad interim appointment as Chief of Police was covered by Administrative Order No. 2 of President Macapagal, dated December 31, 1961 withdrawing, recalling and declaring without effect all ad interim appointments extended or released by former President Garcia after December 13, 1961. A copy of this letter having been furnished the mayor, the treasurer and the auditor of Dagupan City, these officers thereafter refused to recognize the petitioner as the Chief of Police of said City.

Thereupon, petitioner commenced, in the Court of First Instance of Pangasinan, the present action for prohibition and mandamus, with preliminary injunction, against said officers of Dagupan City and the Assistant Executive Secretary of the President to restrain them, pending the determination of this case, from enforcing the latter's aforementioned letter of September 11, 1962, and to compel said city officers to desist from further refusing to pay petitioner's salary as Chief of Police of Dagupan City, and, thereafter, to make the injunction permanent. After due hearing on the petition for a writ of preliminary injunction, the lower court issued said writ, upon the filing of a bond in the sum of P1,000.00. In due course, later, the lower court rendered the decision appealed from, dismissing the petition and dissolving the writ of preliminary injunction, with costs against petitioner. A reconsideration of this decision having been denied, petitioner interposed the present appeal.

Although sustaining the view that petitioner's appointment, on November 6, 1961, as ad interim chief of police of Dagupan City, had not been adversely affected by the aforementioned Executive Order No. 2 of December 31, 1961, and that the confirmation of said ad interim appointment by the Commission on Appointments on May 3, 1962, had the effect of making him a full pledge permanent Chief of Police of Dagupan City, the lower court

upheld the legality of the action taken by the President on September 11, 1962, directing petitioner to desist from further performing the duties of the chief of police, upon the ground that, pursuant to Section 19 of Republic Act No. 170, as amended,[1]the incumbent of said office "shall," among other officers of that City, "hold office at the pleasure of the President."

Appellant maintains, however, that this conclusion of the lower court is erroneous and that, instead, it should be held that said Section 19 of Republic Act No. 170, as amended, had been repealed by Section 5 of Republic Act No. 2251) and, also, by Republic Act No. 2260, otherwise known as the Civil Service Act of 1959.[2] In support of this view, appellant cites the case of *Libarnes vs. Executive Secretary*, L-21505 (October 25, 1963).

The rule laid down in the *Libarnes* case is, however, inapplicable to the one at bar. Said case involved Lucio C. Libarnes, the chief of police of Zamboanga City, whose services as such were terminated by the President pursuant to Section 34 of Commonwealth Act No. 39,[3] which explicitly authorizes the Executive to "remove at pleasure" the aforementioned city official, among others. This Court invalidated the action thus taken against Libarnes upon the ground that, insofar as it sanctioned the removal of said officer "at pleasure," said Section 34 of Commonwealth Act No. 39 is inconsistent with Section 5 of Republic Act No. 2259, which provides that all city officials now appointed by the President of the Philippines, other than those specifically named in said section, among which the chief of police was not included, "may not be removed from office except for cause."

In the case at bar there has been, however, no removal from office. Pursuant to the charter of Dagupan City, the chief of police thereof holds office at the pleasure of the President. Consequently, the term of office of the chief of police expires at any time that the President may so declare.[4] This is not removal, inasmuch as the latter entails the ouster of an incumbent before the expiration of his term.[5] In the present case, petitioner's term merely expired, upon receipt by him of the communication of respondent Assistant Executive Secretary of the President dated September 11, 1962.

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

Bengzon, C.J., Bautista Angelo, Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

Judgment affirmed.

[1] Sec. 19. Appointment and removal of officials and employees.— The President of the Philippines shall appoint, with the consent of the Commission on Appointments, the judge and auxiliary judge of the municipal court, the city treasurer, the city engineer, the city attorney, the chief of police, the chief of the fire department, and the other heads of such city departments as may be created. Except the Judge and the auxiliary judge of the municipal court, said officers shall hold office at the pleasure of the President.

[2] Section 32 of which provides that: "no officer or employee in the civil service shall be removed or suspended except for cause as provided by law and after due process * * *."

[3] Appointment and removal of officials and employees—Compensation.—The President shall appoint, with the consent of the Commission on Appointments of the National Assembly, the Judges of the Municipal Court, the city Treasurer, the city engineer, the city assessor, the city attorney, the chief of police and the other heads of the city departments as may be created from time to time and, he may remove at pleasure any of said appointive officials, except the Judges of the Municipal Court, who may be removed only according to law.

[4] *Alba vs. Alajar*, 100 Phil., 683; 53 Off. Gaz., 1452.

[5] Manalang vs. Quitariano, 94 Phil., 903; 50 Off. Gaz., 2515.

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