

ALFREDO B. BARAÑGAN, PETITIONER-APPELLEE, VS. VICENTE HERNANDO, ET AL., RESPONDENTS-APPELLANTS.*G.R. No. L-28652. February 28, 1969*

Ponente: REYES, J. B. L., J.

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Appeal from a decision of the Court of First Instance of Ilocos Norte^[1] holding illegal the removal of appellee Alfredo Barañgan from the office of the chief of police of San Nicolas, Ilocos Norte, and ordering his reinstatement thereto with back salaries.

From a stipulation of facts submitted by the parties, the lower court culled the following material facts: On 17 July 1961, Barañgan was appointed acting chief of police of San Nicolas by the then incumbent Mayor, Dominador Madamba. On 1 July 1963, he was extended another appointment to the same position. Said appointment was approved by the Commissioner of Civil Service on 24 March 1965, subject to the condition that the same would not extend beyond thirty days from receipt of the confirmation in the office of the mayor.

On 30 April 1965, Barañgan's service was terminated by appellant new Mayor Vicente Hernando. Having passed the Civil Service Examination for Chiefs of Police on 20 December 1963, Barañgan invoked his civil service eli-gibility and refused to vacate his office. He also immediately appealed to the Commissioner of Civil Service.

Noting that Barañgan possessed the appropriate civil service eligibility, the Commissioner sent his first indorsement to Mayor Hernando on 12 May 1965 reapproving Barañgan's appointment "as provisional under Section 24 (c) of Republic Act 2260 effective 1 July 1963, to 22 November 1963 and permanent effective 23 November 1963 under Section 24 (b) of said law", and advising the latter's reinstatement in the service. Another indorsement was forwarded to the mayor on 20 April 1966 in response to Barañgan's request for implementation of the first one. In the meantime, or on 5 April 1966, the mayor appointed Gregorio Damo, one of the appellants, as chief of police.

On 12 May 1966, Barañgan importuned for a "definite and final ruling" from the Commissioner. The latter accordingly issued his sixth indorsement on 9 January 1967 holding that Barañgan was a permanent chief of police, who could be dismissed only in accordance with the provisions of Republic Act No. 557, and, therefore, could not be summarily discharged from service; and that Barañgan's position could not be considered vacant to which another person might be appointed inasmuch as his removal was unlawful.

Subsequently, Barañgan himself demanded from the mayor and the members of the municipal council of San Nicolas, the other appellants, his reinstatement pursuant to the Commissioner's sixth indorsement. Having been rebuffed, he went to court on special civil actions for quo warranto and mandamus.

On 22 November 1967, the lower court rendered judgment. Sustaining the Commissioner's alleged power to qualify the nature of appointments submitted to him for approval, said court held that with his reapproval of Barañgan's appoint-ment as provisional, and then as permanent, the same was no longer terminable at the pleasure

of the mayor, the appointing power; hence, Baraňgan's position was considered not vacated by his purportedly unwarranted ouster and, for lack of a vacant position to be filled up, Dames appointment thereto was deemed inexistent. The defense of prescription of action for quo warranto was brushed aside as already academic for the reason that the recourse sought by Baraňgan was also for mandamus and that he had allegedly established a cogent right to it. Re-instatement With back salaries was ordered, as previously intimated. From this decision, appeal was directly made to us.

The decision should be reversed, as prayed for by appellants. The rule herein applicable is well settled. In the recent case of Santos, et al. vs. Chico, et al.,^[2] we stated the same, as follows:

“ - - - - While the Civil Service Law (Re-public Act 2260) recognizes three classes of civil service appointments, permanent, provisional and temporary (section 24), each class with requisites of its own, the determination of the kind of appointment to be extended lies in the official vested by law with appointing power (the Municipal Mayor in case of local policemen) and not in the Commissioner of Civil Service. The statute could be scanned in vain for any authority on the part of the Commissioner to supersede the discretion of the appointing officer on the nature or class of the appointment to be extended. All that the Commissioner is empowered to do is to approve or reject the appointment, depending upon its compliance with statutory requirements, and to review, correct or revise those made by provincial, municipal or city executives (Republic Act 2260, section 20), in order to make them conform thereto.

" In the case before us, the act of the Civil Service Commissioner in approving as provisional the temporary appointment made by the Municipal Mayor constitutes an unwarranted invasion of the discretion of the appointing officer, and can not be operative. Otherwise, the Commissioner would be exercising himself the power of appointment that the law has lodged elsewhere; it would make him the arbiter of what kind of appointments should be extended in every case. Certainly, nothing in the Civil Service Law indicates a legislative intent to this effect.

"It follows that the appointment of petitioners must be regarded as temporary as originally extended, and should be deemed approved as such by the Civil Service. As a result, the petitioners enjoy no fixed or protected tenure, and the appellee-respondent, Mayor Chico, had the right to terminate their services at any time, this condition being inherent in the temporary character of their appointment. "

We are of the belief that Baraňgan's reappointment is temporary in character, the same kind of appointment originally extended to him by former Mayor Madamba. This inference logically follows from his evident failure to prove, by submitting his case for decision in the court a quo on the basis of an incomplete stipulation of facts, the decisive fact that his reappointment is otherwise. Other than his assertion, or rather vague intimation, in his brief of his reappointment in the provisional capacity, the record is bereft of any showing to this effect. On the contrary, the Civil Service Commissioner's approval, under date of 24 March 1965, of his second appointment by the former mayor, with the stipulation that it should not extend beyond 30 days, is proof that the appointment was temporary in character, for only then could that condition be validly attached. Such being the case, Baraňgan stands outside the protective mantle of a secured tenure and may be summarily removed at the pleasure of the appointing power. His civil service eligibility avails him nothing at all. As a temporary appointee, he is not entitled to the protection afforded by Re-public Act No. 557, nor to the protection of security of tenure in office guaranteed by the Constitution.^[3] Neither can he derive comfort from the act of the Commissioner of Civil Service reclassifying his second appointment as provisional, and then as permanent. This is an exercise in futility. It is, in fact, an illegal act which appellant Mayor Hernando may rightfully disregard (Santos vs. Chico, ante,) for, as already ruled, to allow the Civil Service Commissioner to qualify at his pleasure an appointment already made is to permit him to assume the appointing power, contrary to law. And shorn of any right to permanently occupy the position in question, Baraňgan may not compel said mayor to reinstate him thereto by

mandamus. Certainly, the same mayor may appoint another, as he has, in fact, appointed appellant Damo, in his place.

WHEREFORE, the decision appealed from is hereby reversed, and the Commissioner of Civil Service ordered to act on the appointment of appellant Damo. Costs against appellee.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

Sanchez, J., did not take part.

[1] Civil Case No. 4298.

[2] G. R. No. L-24155, 30 September 1968.

[3] Jimenea vs. Guanson, G. R. No. L-24795, 29 January 1968, and cases cited therein.

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