

**ANTONIO ALACAR, PETITIONER AND APPELLEE VS. THE CITY
MAYOR OF BAGUIO, ET AL., RESPONDENTS AND APPELLANTS.***G.R. No. L-10020. December 29, 1958*

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

Antonio Alacar was a member of the police force of Baguio City, but in view of a complaint for misconduct filed against him, he was suspended from office on July 26, 1955. After due investigation the City Council found him guilty as charged on August 31, 1955. Within the period prescribed by Republic Act 557, Alacar appealed to the Commissioner of Civil Service. Since the 60-day period provided for in said Act for his reinstatement expired on September 26, 1955, Alacar requested for his immediate reinstatement. He was reinstated but with the proviso that pending final termination of his appeal he shall not be paid his salary until he has clarified his right to it after the case. Subsequently, however, this order of reinstatement was revoked and he was considered dismissed from the service. Hence he initiated the present petition for mandamus in the Court of First Instance of Baguio City praying for his reinstatement with back pay until his administrative case shall have been finally terminated.

The trial court, after hearing, rendered decision granting the petition and ordering respondents to reinstate petitioner immediately paying him his salary from September 26, 1955, but the damages prayed for were not granted on the ground that respondents acted on the matter in good faith. Respondents interposed the present appeal.

The question to be determined is whether petitioner is entitled to reinstatement pending final determination of his administrative case which was taken by him on appeal to the Commissioner of Civil Service.

Section 3 of Republic Act No. 557 provides:

"Sec. 3. When charges are filed against a member of the provincial guards, city police or municipal police under this Act, the provincial governor, city mayor or municipal mayor, as the case may be, may suspend the accused, and said suspension to be not longer than sixty days. 'If during the period of sixty days, the case shall not have been decided finally, the accused, if he is suspended, shall ipso facto be reinstated in office without prejudice to the continuation of the case until its final decision, unless the delay in the disposition of the case is due to the fault, negligence, or petition of the accused, in which case the period of the delay shall not be counted in computing the period of suspension herein provided.'"

It would appear that if during the period of sixty days the case shall not have been decided finally, the accused, if he is suspended, shall ipso facto be reinstated in office without prejudice to the continuation of the case until its final decision. But it would also appear that, the reinstatement would follow "unless the delay in the disposition of the case is due to the fault, negligence, or petition of the accused, in which case the period of the delay shall not be counted in computing the period of suspension." The question that now arises is whether the appeal taken by petitioner to the Commissioner of Civil Service from the decision of the city council constitutes a delay which may prevent his reinstatement since the same is caused by his own voluntary act.

This question has already been resolved in the affirmative in the case of *Martinez vs. Municipal Mayor of Labason, et al.*, 103 Phil., 634, wherein this Court made the following pronouncement:

"It will be noticed however, that on the sixtieth day the council voted by resolution to remove the petitioner from his position. Such resolution would have decided the matter finally if petitioner had not filed a notice of appeal to the Commissioner of Civil Service. Therefore, his case was not finally disposed of because of his own voluntary act of appealing, which amounted to a petition for review. Such petition excused any delay in the definite disposition of the charges.

"Indeed, it would be contrary to the spirit of mandamus proceedings to compel reinstatement of a suspended officer after the latter had been found guilty and dropped from the service by the competent official body. Such suspended official, it may be said, did not have a clear legal right (to return) enforceable by mandamus. And the court's discretion should not be exercised in a way injurious to public interest; nor should mandamus issue where it would not promote substantial justice."

In this case, petitioner was suspended from office on July 26, 1955 and was found guilty by the city council, after due investigation, on August 31, 1955, or within the period of sixty days. The case therefore would have been finally decided had not petitioner appealed to the Commissioner of Civil Service. Hence his case was not finally decided because of his voluntary act and this constitutes a delay which prevents his reinstatement.

Wherefore, the decision appealed from is reversed, with costs against petitioner.

Paras, C. J., Bengzon, Padilla, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

CONCURRING AND DISSENTING

MONTEMAYOR, J., :

Section 3 of Republic Act No. 557 in express and clear terms provides that the suspension of any member of the provincial guards, city police and municipal police, facing charges, may not be longer than 60 days; that if during said period of 60 days the case has not been decided finally, the accused, if suspended shall ipso facto be reinstated in office, without prejudice to the continuation of the case until its final determination, unless the delay in the disposition of the case is due to the fault, negligence or petition of the accused, in which case the period of delay shall not be counted in computing the period of suspension. The majority opinion holds that the delay in the final disposition of the case should be laid at the door of the accused-petitioner. I disagree.

The delay is due to the appeal taken by him to the Commissioner of Civil Service, which appeal is clearly provided for and guaranteed in section 2 of the said Republic Act 557. It is a remedy available not only to the policeman suspended, but also to the provincial governor, city mayor or municipal mayor as the case may be who made the suspension. Surely, the delay due to the final determination of the case by the Commissioner of Civil Service cannot be imputed to the party availing himself of the remedy.

The clause being applied is clear and unmistakable— "unless the delay in the disposition of the case is due to the fault, negligence or petition of the accused." The appeal to the Commissioner of Civil Service, certainly, is neither a fault nor negligence of the petitioner herein. Neither did he petition for any suspension or postponement of the disposition of the case. All that he did was to avail himself and follow the remedy and procedure outlined by the law itself, that of appeal. May any party in any case, judicial or administrative, be penalized for taking an appeal? Decidedly not. On the contrary, bonafide appeals are encouraged so as to correct any errors that might have been committed, so that the party feeling himself or itself aggrieved may have the satisfaction of having exhausted all the remedies afforded by law.

The case might be different if the appeal is clearly frivolous, intended merely to delay the final determination of the case. However, the record does not show, neither does the majority opinion make any declaration or even a hint, that the appeal taken by the petitioner in this cast) was frivolous and done in bad faith.

Furthermore, such delay, as a consequence of the appeal cannot possibly be long, for the reason that the period within which to appeal under Section 2 of the said Republic Act 557 is fixed at 15 days, and the provincial governor, the city mayor or the municipal mayor, as the case may be, is required within 20 days from receipt of the appeal to forward the records of the case to the Commissioner of Civil Service; and the Commissioner is required to render decision therein within a reasonable time.

But in view of the result of the voting in this case, I would concur in the majority opinion with the understanding that should the Commissioner of Civil Service finally decide the case in favor of the petitioner, the latter should immediately be reinstated and that he be paid the salary corresponding to the whole period of suspension.

Judgment reversed.

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