

ENRIQUE MORALES, ET AL., PETITIONERS AND APPELLEES, VS. THE CITY ENGINEER OF THE CITY OF CAVITE, RESPONDENT AND APPELLANT.

G.R. No. L-11665. December 29, 1960

Ponente: DIZON, J.

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DIZON, J.:

Enrique Morales, Prudencio de la Cruz, Agaton Mendoza and Hilarion Vicente, hereinafter referred to as appellees, were employees of the Office of the City Engineer, City of Cavite, their respective appointments as pump operators of the Cavite Waterworks System having been signed by the Under Secretary of Public Works and Communications (Exhibits E, 1, 1-1, L and P). On July 26, 1954, after serving in the aforesaid capacity for several years, they were summarily removed by the City Engineer and replaced with other appointees. Two days thereafter appellees lodged written protests with the Secretary of Public Works and Communications, and on December 29 of the same year they filed in the Court of First Instance of Cavite the present action for mandamus against the aforesaid City Engineer to compel him to reinstate them, with all the rights and privileges appertaining to their positions as of the date of their removal. On February 14, 1955, finding the protests to be well founded, and, in accordance with the recommendation of the Bureau of Civil Service, the Director of Public Works and Communications ordered the City Engineer to reinstate appellees. Upon receipt of said order on February 26, 1954, the City Engineer reinstated appellees and thereafter filed a motion to dismiss the present case upon the ground that the question raised therein had become moot. However, upon appellees' objection, the motion to dismiss was denied because, aside from their reinstatement, their petition for mandamus sought payment of their respective salaries during the period from July 26, 1954 until their reinstatement.

The record discloses that on April 29, 1955, with previous leave of Court, the City of Cavite through the City Fiscal, filed an answer in intervention.

The main defense interposed by the City Fiscal and the City of Cavite, hereinafter referred to as appellants, was that the Cavite Waterworks System is an independent business entity owned, financed and operated by the City of Cavite under a certificate of public convenience granted to "it by the Public Service Commission; that the appointments of appellees made by the Under Secretary of Public Works and Communications were, therefore, illegal because all the employees of the City of Cavite, including those of the Cavite Waterworks System, were to be appointed by the Mayor of said City in accordance with Art. IV, sec. 19, of Commonwealth Act No. 547, commonly known as the Charter of the City of Cavite; that because of the illegality of their appointments and because they were merely temporary employees, they could be removed without cause and they were not entitled to back salaries.

After trial upon the issue thus joined, the lower court rendered judgment as follows:

"The Court, considering all the facts of the case as proven in Court and supported by the evidence presented by the parties, hereby declares that the preponderance of evidence justifies the rendering of judgment in favor of

petitioners, as follows:

(1) The three petitioners, Enrique Morales, Prudencio de la Cruz and Hilarion Vicente are hereby declared employees with permanent status, duly appointed by the Honorable Secretary of Public Works as pump operators of the Waterworks System of the City of Cavite, with salaries at the rate of P130.00 a month each and their validity can not be questioned by the City Fiscal unless it is declared null and void by the Court in a separate action;

(2) That all the four petitioners were unduly separated from the service on July 26, 1954, although Enrique Morales, Prudencio de la Cruz and Hilarion Vicente have reported back to their jobs when they received advice of their reinstatement since February 26, 1955—but these three have not as yet been paid their salaries, not even for their services rendered since the latter date of February 26, 1955;

(3) It is hereby ordered the permanent reinstatement of Agaton Mendoza at any time upon his report to the Office of the City Engineer of Cavite;

(4) It is hereby ordered that the respective salaries of the four petitioners be paid to each one of them at the rate of P130.00 a month beginning from the date of their suspension on July 26, 1954, up to February 26, 1955;

(5) Petitioners Enrique Morales, Prudencio de la Cruz and Hilarion Vicente should be paid their respective salaries beginning from the date of their reinstatement on February 26, 1955 up to the present; and, in the case of Agaton Mendoza, he should be paid his salaries only upon his report back to his job and up to as long as he works as a permanent employee of the Cavite City Waterworks System, as pump operator;

(6) All the rights and privileges appertaining to the petitioners are hereby restored, especially their rights to vacation leave, accrued leave, to insurance benefits and to their retirement;

(7) All authorities concerned of the City of Cavite having intervention in the payment ordered in this Decision are hereby required to extend their respective accomplishments;

(8) The respondent should pay the costs of the proceedings.

So Ordered."

Having appealed from the above decision, the City Engineer and the City of Cavite now claim that the trial court erred: in holding that appellees were permanent employees of the Cavite Waterworks System and that they were unduly separated from the service on July 26, 1954; in ordering their reinstatement as pump operators and the payment of their respective salaries at the rate of P130.00 monthly from July 26, 1954 to February 26, 1955, and in restoring to appellees all rights and privileges appertaining to their positions, including vacation leave, accrued leave, insurance benefits and retirement pay.

Appellants' claim that the Mayor of Cavite City was the one empowered to appoint the employees of the Cavite Waterworks System is based on the provisions of Art. IV, sec. 19, of Commonwealth Act No. 547, commonly known as the Charter of the City of Cavite, which provides that all other officers and employees of the City whose appointment is not otherwise provided for by law, shall be appointed by the Mayor, upon recommendation of the corresponding city department heads, in accordance with the Civil Service Law, and may be suspended or removed only in accordance with law. Paragraph (j), section 22, Article VI of the same Act, clearly provides, on the other hand, that the City Engineer of Cavite City shall have the care and custody of the public system of waterworks and sewerage, while Section 1 of Commonwealth Act No. 424, in relation to the personnel of the engineering departments of chartered cities, provides that—

"The assistant engineer, superintendents, and other employees as are from time to time provided for in appropriation ordinances of the City shall be appointed in accordance with existing laws governing the

appointment of civil engineers, assistant civil engineers and other personnel in the various engineering districts of the Bureau of Public Works in the provinces."

In connection with the legal provisions mentioned above, Section 79-D of the Revised Administrative Code, which governs the appointment of civil engineers, assistant civil engineers and other personnel in the various engineering districts under the Bureau of Public Works, provides the following:

"The Department Head, upon the recommendation of the Chief of the Bureau or Office concerned, shall appoint all subordinate officers and employees whose appointment is not expressly vested in the (Governor-General) President of the Philippines, and may remove or punish them except as specifically provided otherwise, in accordance with the Civil Service Law. Laborers receiving compensation at the rate of seven hundred and twenty pesos or less per annum and other employees receiving compensation at the rate of two hundred pesos or less per annum, shall be appointed and removed by the Chief of the Bureau or Office, subject only to the general control of the Department Head.

"The Department Head also may, from time to time in the interest of the service, change the distribution among the several Bureaus and Offices of his Department of the employee or subordinate authorized by law."

As already stated heretofore, appellees were appointed by the Under Secretary of Public Works and Communications. Morales' appointment was for Item No. 52 in the approved city plantilla of personnel of the Office of the City Engineer, Cavite City, De la Cruz' was for Item No. 48, Vicente's for Item No. 59 and Mendoza's for Item No. 61. Since their respective appointments several years prior to their removal they 'had rendered apparently satisfactory service, and had been paid with funds appropriated by the City of Cavite.

It would seem, therefore, that, according to law, the employees of the Cavite Waterworks System are to be appointed by the Department of Public Works and Communications; that the City of Cavite has fully acquiesced to this interpretation by recognizing appointments made by the Secretary of Public Works and Communications and paying the salaries due to the appointees; that even while the present action was pending, in view of the reinstatement of appellees pursuant to the orders of the Director of Public Works, the City of Cavite and the City Engineer had again acknowledged the right of the Secretary of Public Works and Communications to appoint the employees of the Cavite Waterworks System. The conclusion is, therefore, inescapable that the appellees were illegally removed from office on July 26, 1954 and that the order for their reinstatement issued by the Director of Public Works, in conformity with the favorable recommendation of the Bureau of Civil Service, was in accordance with law.

In view of all the foregoing, the appealed decision is hereby affirmed, with costs.

Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Gutierrez David, and Paredes, JJ., concur.

Judgment affirmed.

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