

**EUGENIO O. S. AGUILAR, AS MUNICIPAL MAYOR OF CABUSAO,
CAMARINES SUR, PETITIONER, VS. HON. AUGUSTO L. VALENCIA, AS
JUDGE, CFI-CAM. SUR., JOAQUIN RAMOS, SATURNINO URCIA,
VALENTIN ...**

G.R. No. L-30396. July 30, 1971

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

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

Petitioner Aguilar, who is the Municipal Mayor of Cabusao, Province of Camarines Sur, resorts to this Court asking the review and revocation of the decision of the Court of First Instance of that Province, in its Civil Case No. L-331, restraining the enforcement of his memorandum dated 16 January 1968, terminating the service of certain policemen of the municipality, making permanent the writ of preliminary injunction previously issued, and sentencing petitioner to pay the costs, the latter contending that the decision is contrary to law.

Upon the face of the record, it appears incontestable that on 16 January 1968, petitioner Mayor issued the Memorandum, Exhibit "A", in the following terms:

"Office of the Mayor

MEMORANDUM -

TO :

Pat. Felix Discaya, Cabusao Police Department

Pat. Valentin S. Enciso, Cabusao Police Department

Pat. Jose Gonzales, Cabusao Police Department

Pat. Melecio Paglinawan, Cabusao Police Department

all of Cabusao, Camarines Sur.

This office noted that your appointments in your position as Policemen are provisional in status.

Provisional appointments as prescribed by Republic Act No. 4864, otherwise known as Police Act of 1966, in any municipal police agency must at least meet the minimum requirements. In this connection you either lack the age or educational requirements.

Now, therefore, upon proper consultation and advise from the Regional Director of Civil Service, your service shall be terminated and your position declared vacant effective this date.

Cabusao, Camarines Sur, 17 January 1968.

(SGD) ATTY. EUGENIO O.S. AGUILAR

Municipal Mayor "

The court a quo also found that, with the exception of Felix Discaya (who desisted from the case), the addressees Enciso, Gonzales and Paglinawan (private respondents herein) had been extended appointments provisional in character by petitioner's predecessor, Mayor Pedro S. Abendante, in 1967. Upon receipt of the above-quoted memorandum, the patrolmen affected, joined by others who expected to be similarly dealt with, petitioned the Court of First Instance for a writ of prohibition against the Mayor, and for a writ of preliminary injunction, which the court issued after partially hearing the case.

In his answer, the Mayor pleaded that patrolman Enciso "is not qualified for the position he is claiming"; and that the appointments of petitioners patrolmen Gonzales and Paglinawan were "invalid in view of gross misrepresentations in their respective Personal Data Sheets submitted with (sic) the Civil Service Commission" and that Paglinawan was "overaged"; and further counterclaimed for damages and attorneys' fees. In a stipulation submitted to the court, the Mayor disclaimed any intention to terminate the services of the other patrolmen who joined as petitioners "without prejudice, to the respondent taking any legal action as may be warranted by the facts".

After the case was heard and submitted for decision, the court below rendered judgment for petitioner patrolmen, in the sense heretofore noted, holding that under the Police Act of 1966 (Republic Act 4864), the 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.

We find no error, much less abuse of judicial discretion, in the decision complained of. The complaining patrolmen were provisional appointees, and under Section 24(c) of the Civil Service Law of 1959 (Republic Act No. 2260), which was the governing law, as well as Sections 13 and 14 of the Civil Service Rules, their provisional appointment could only be terminated thirty (30) days after a receipt by the appointing Mayor of a list of eligibles from the Civil Service Commission.[1] The memorandum (Exhibit "A") dismissing patrolmen Enciso, Gonzales and Paglinawan makes no mention of any such list having been received. The petitioner's memorandum of 17 January 1968 only mentions "lack of age or educational requirements". Even if these alleged defects were true, which is not shown, it is plain that under the law and the Constitution respondent patrolmen could not be dismissed without previous investigation and hearing. In the absence thereof, the patrolmen's right to due process would be violated by their ex parte separation from the public service. Section 32 of the Civil Service law expressly prescribes 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". (Emphasis supplied)

In his supplemental answer below, the petitioner claimed that the appointment of the replacements for the complaining patrolmen had been approved by the local representative of the Civil Service Commissioner (Record, page 140) on 30 April 1968. This defense is ineffective: first, because the approval of the replacement on 30 April 1968 could not validate a dismissal made three months earlier, in 17 January 1968; and secondly, because the naked approval of the replacement, without proof of the reasons therefor, can not suffice to evade the express provisions of the law. Furthermore, the validity of the action of the Civil Service Commissioner's representative (Regional Director) had been also judicially contested in Civil Case No. 347 of the court below, and there is no showing of the outcome of that case.

Finally, petitioner contends that the affected patrolmen should have first exhausted their administrative remedies, by appeal to the Civil Service Commissioner. But petitioner Mayor did not submit this point in the court below, where the issue raised was exclusively the violation of the respondents' constitutional and statutory rights. It is

now a well settled rule that previous exhaustion of administrative re-medies does not apply to a case where the issue is one purely of law.[2]

WHEREFORE, the appealed decision of the Court of First Instance of Camarines Sur is hereby affirmed. Costs against petitioner.

Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, and Makasiar, JJ., concur.

Concepcion, C.J., in the result.

Villamor, J., took no part.

Dizon, J., on official leave, did not take part.

[1] V. Ferrer v. Hechanova, L-24418, 25 January 1967; Ramos vs. Subido, L-26090, 6 September 1967.

[2] Begosa v. Chairman, Phil. Veterans Adm., L-25916, 30 April 1970; Escalante v. Subido, L-22013, 28 November 1969; Uy v. Palomar, L-23248, 28 February 1969; Brillantes v. Guevarra, L-22586, 27 February 1969.

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