

GODOFREDO N. FAVIS, PETITIONER VS. NICOMEDES T. RUPISAN, ET AL., RESPONDENTS.

G.R. No. L-22823. May 19, 1966

Ponente: BARRERA, J.

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BARRERA, J.:

The facts of this case are not disputed:

On June 1, 1962, in virtue of a resolution of the Board of Directors of the Philippine Virginia Tobacco Administration, hereinafter referred to as PVTA, petitioner Godofredo N. Favis was extended an appointment to the position of Assistant General Manager, signed by the board-chairman, with compensation at P14,532.00 per annum. Favis accordingly took the oath of office and thereafter discharged the functions thereof.

On May 6, 1964, the same board of directors, on the allegation that Assistant General Manager Favis "has been remiss in the performance of his duties and has committed acts constituting a breach of the trust and confidence which (this) Board has reposed in him as such officer," declared the position vacant and appointed thereto, Canuto Farinas, Jr. The latter was sworn into office on the same day.

Favis immediately instituted the present proceeding for quo warranto, claiming that his removal from the position of Assistant General Manager of the corporation was made in violation of Section 32 of the Revised Civil Service Law (Rep. Act 2260), and the appointment of respondent Farinas to the same position constituted usurpation and unlawful possession thereof.

In their answer to the petition, respondents contend that the position of Assistant General Manager of the PVTA, is, by its nature, highly confidential and the occupant thereof is, therefore, removable at the pleasure of the appointing power, which is the PVTA Board of Directors; and that even if the position may be considered as belonging to the competitive or classified service, petitioner cannot be said to have been duly appointed thereto, because his appointment has never been approved by, nor submitted to, the Commissioner of Civil Service. Consequently, it is maintained that petitioner is at most a de facto officer, and can be removed from office even without cause.

The only issue to be resolved in the instant case is whether petitioner's appointment to the position of Assistant General Manager entitled him to the right to security of tenure as guaranteed by the Constitution and the Civil Service law and rules.

The PVTA is a government-owned corporation created by Republic Act 2265 to carry out the objective and purposes enumerated therein designed to promote our Virginia tobacco industry.[.1] The functions of the corporation are to be exercised by a board of directors, consisting of a chairman and six members, appointed by the President with the consent of the Commission on Appointments.[2] Among the specific powers also lodged on the board is the appointment of the General Manager and Assistant General Manager of that entity.[2a] The law further prescribes:

"Sec. 12. Application of Civil Service Laws and Rules.—All officers and employees of the PVTa shall be subject to the Civil Service Law and Rules, except those whose positions may, upon recommendation of the Boards of Directors, be declared by the President of the Philippines as policy-determining, primarily confidential, or highly technical in nature."

It may here be stated that the position of Assistant General Manager has never been so declared, as policy-determining primarily confidential or highly technical, by the President.

Positions in the civil service are classified into three categories—the competitive or classified, non-competitive or unclassified, and exempt. Considering that the position involved in this controversy is not one of those enumerated in the law as falling in the non-competitive^[3] and exempt^[4] classes, it follows as a logical conclusion that the same belongs to the classified or competitive service.

In this connection, the Civil Service Rules, implementing Section 16 (h) of Republic Act 2260 which conferred upon the Commissioner of Civil Service exclusive jurisdiction over the "approval under the Civil Service Law and rules of all appointments including promotions to positions in the competitive service", provide:

"Rule VI. APPOINTMENT

* * * * *

"Sec. 2. (a) All appointments including promotions to positions in the competitive or classified service must be in accordance with the provisions of the Civil Service Act and Rules and the WAPCO plans. Said appointments, prepared in the prescribed form and duly signed by the appointing officer, shall be submitted to the Commissioner for approval and such approval shall be a sufficient authority for the payment of salary to the appointee, unless otherwise provided by law." (Italics supplied.)

There is no question, therefore, that for an appointee to a classified position to be entitled to the protection of the law against unjust removal, his appointment must receive the proper approval of the Commissioner of Civil Service. For, as this Court has ruled—

" * * * an appointment made by an officer duly empowered to make it is not final or complete until after the Commissioner of Civil Service has certified that such appointment may be made.[4a]

Even in cases of appointments by provincial governors and municipal and city mayors, which are specifically declared by the law to be effective upon attestation thereof by the provincial or city treasurer, as the case may be, they are considered finally approved only after the lapse of 180 days from receipt of such appointments by the Commissioner of Civil Service without the latter correcting or revising the attestation.^[5] Stated differently, although appointments made by the provincial, city or municipal mayors become effective upon attestation thereof by the provincial or city treasurer, acting as "deputies of the Commissioner of Civil Service", the finality and validity of said appointments are subject to the resolutive condition that the Commissioner shall, not correct or revise the attestation within the specified period of 180 days. In short, such appointments are still subject to the approval, although tacit, of the Commissioner.

It is evidently for the same reason, i.e., necessity of the approval by the Commissioner of Civil Service of the appointment before an appointee may be considered part of the civil service and entitled to the protection of the law, that we construed the appointment of a civil service eligible to a classified position to be merely temporary when the same was approved by the Commissioner of Civil Service as "temporary pending report from the GSIS as to the appointee's physical and medical examination." His dismissal even without cause was sustained.^[6] In another case,^[7] involving' an unclassified position, we said:

"It being admitted that the appointment of the appellant was noted by the Commissioner of Civil Service 'as

temporary pending report from the GSIS as to the appointee's insurability and subject to Sec. 7 of Civil Service Rule VIII,' we cannot get away from the conclusion that appellant's appointment was of a temporary character. The nature of the condition that made appellant's appointment temporary is immaterial. It is sufficient that, pending compliance with said condition, namely, appellant's insurability, his appointment was and remained temporary. There is no dispute that said condition had not been fulfilled prior to his separation."

In the present case, respondents' allegation that petitioner's appointment was not approved by the Commissioner of Civil Service has not been controverted. Of course, we may take judicial notice of the fact that as a matter of practice, the positions of officials in government corporations are being treated by the offices concerned not only as non-competitive, but their appointments are considered effective and complete upon the appointee's assumption of office. And the central personnel agency is merely furnished with copies of the appointment or of the oath of office—for record—purposes only. This must be the reason why petitioner remained in occupancy of the position, drawing the corresponding salary therefor, for almost two years without anybody questioning his right to such possession.

But this situation does not create or bestow upon the petitioner any right to the position or to the guarantees provided by law. The tolerance, acquiescence or mistake of the proper officials, resulting in the non-observance of the pertinent rules on the matter does not render the legal requirement, on the necessity of approval by the Commissioner of Civil Service of appointments, ineffective and unenforceable. In the circumstances, for the duration of his occupancy of the position in question, the petitioner may be considered as a *de facto* officer,[8] and may consequently be removed from office even without cause.

Wherefore, the petition is hereby dismissed, without costs. So ordered.

Bautista Angela, Reyes, J.B.L., Dizon, Regala, Maltalintal, Zaldivar and Sanchez, JJ., concur.

Petition dismissed.

[1] Sec. 2, Rep. Act 2265.

[2] Sec. 5, *id.*

[2a] Sec. 7(b), Rep. Act 2265.

[3] Sec. 5, Rep. Act 2260.

[4] Sec. 6, *id.*

[4a] *Gorospa vs. Secretary of Public Works*, L-11090, January 31, 1959.

[5] Art. V, Sec. 20, *id.*; *Dichoso vs. Valdepeñas*, L-17448, August 31, 1962.

[6] *Tolentino vs. Torres*, L-6787, January 31, 1955.

[7] *Pineda vs. Velez*, L-8859, October 31, 1956; *Reyes vs. Dones*, L-11427, May 28, 1958.

[8] *Montero vs. Castellanes*, L-12694, June 30, 1960.

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