

MANUEL P. COVACHA PETITIONER, V.S. FELIX P. AMANTE, IN HIS CAPACITY AS MAYOR OF THE OF THE CITY OF BACOLOD, RESPONDENT.*G.R. No. L-8358. May 25, 1956*

Ponente: CONCEPCION, J.

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This is an appeal, taken by petitioner Manuel Covacha, from a decision of the Court of First Instance of Negros Occidental denying his petition for a writ of mandamus to compel respondent Felix P. Amante, as Mayor of the City of Bacolod, to reinstate him as Sergeant Second Class of the police force thereof.

It appears that petitioner was, prior to August 31, 1951, a second class sergeant of said police, force with compensation at the rate of 11,320 per annum. Shortly after respondent Felix P. Amante assumed office as ad interim city mayor of Bacolod, on or about August 11, 1951, the then acting chief of police of Bacolod Capt. Eliodoro Infante, issued special order No. 20, dated August 15, 1951, relieving petitioner of his duty as property custodian of said police force and transferring him to Its uniformed division, at the same time directing him to make an inventory of the properties under his responsibility and to turn over the same to Pat. A. Miraflor, who, thereafter, would assume his duties as such property custodian. The special order further provided that, after said inventory, petitioner shall report to the chief of said uniformed division for duty and instructions. Before petitioner could fully comply with said order, he received a letter of respondent mayor, dated August 31, 1951, stating that, pursuant to Republic Act No. 557, he (petitioner) was thereby separated from the service as of said date, on the recommendation of the chief of police, upon the ground that he had committed serious irregularities in the performance of his duties. Having vainly sought reinstatement from respondent mayor, as well as from the Commissioner of Civil Service and the President of the Philippines,, petitioner filed, with the Integrity Board, an administrative complaint against respondent mayor. Said Board, however, withheld action on said complaint owing to the pendency of civil case No. 2457 of the Court of First Instance of Negros Occidental, entitled "Juan G. Segovia vs. Felix P. Amante," involving allegedly a similar issue. Hence, petitioner instituted the present case for mandamus, to secure his reinstatement with salary from September 1, 1951, and to recover moral and exemplary damages.

Respondent mayor alleged in his answer that, on August 15, 1951, the Chief of Police of Bacolod filed administrative charges, against petitioner, involving serious irregularities in the performance of his duties and infidelity in the custody of exhibits; that, thereupon, respondent suspended petitioner herein and then created a "police committee of the city council" to investigate said charges; and that, after due notice to petitioner, who failed to appear before said committee, the same, on August 24, 1951, received evidence on the aforementioned charges, found him guilty of the irregularities imputed to him and recommended his dismissal, It is, likewise, alleged in said answer that petitioner is a temporary appointee, and that his dismissal from the service had been approved by the Office of the President, but these allegations are not borne out by the record. What is more, it appears therefrom, and His Honor, the trial Judge found, that petitioner was, at the time of his dismissal by the

respondent, a civil service eligible and a regular employee of the police department of Bacolod City.

Petitioner-appellant raises several questions in his brief. To our mind it is not necessary to pass upon each one of those questions. The case hinges and this is the only issue that need be settled - on whether or not petitioner's dismissal has taken place in conformity with the provisions of Republic Act No. 557, section 1 of which reads;

"Members of the x x x city police x x x shall, not be removed and, except in cases of resignation, shall not be discharged except for misconduct or incompetency, dishonesty, disloyalty to the Philippine Government, serious irregularities in the performance of their duties, and violation of law or duty, and in such cases, charges shall be preferred by x x x the city mayor in cases against a member of the city police, x x x and investigated by x x x the city x x x council, x x x in public hearing, and the accused shall be given opportunity to make their defense. In every such case filed, a copy of the charges shall be furnished the accused by the said xxx. city mayor x x x' personally or by registered mail, within five days from the date of the filing of the charges, and the investigating body shall try the case within ten days from the date the accused has been notified of the charges, unless the accused, for good reasons, shall ask for a longer period to prepare his defense. The trial of the case shall be finished within a reasonable time, and the investigating body shall decide the case within fifteen days from the time the case is submitted for decision." (Underscoring supplied.)

It is obvious, from this provision, that petitioner's dismissal is illegal and void, for;

- Pursuant to Republic Act No. 557, the city council has the exclusive power to investigate charges against members of the city police force, and we so held in *Manuel vs. De la Fuente* (48 Off. Gaz., 4829). In the case at bar, the investigation was conducted by a committee created, not by the city council, but by respondent herein, who as mayor and president of said council, has no authority to arrogate upon himself the powers of said body and does not appear', or even claim, to have been authorized to act on its behalf.

- It is, to say the least, doubtful whether the council could delegate to a committee of members thereof the investigation of members of the police force. In the case *Festejo vs. Municipal Mayor of Nabua* (51 Off. Gaz., 121), we held:

"The main issue posed by appellant Chief of Police is that the decision of the Integrity Board that heard his case was a complete nullity under sec. 1, of Rep. Act 557, that requires the investigation of municipal police to be conducted by the municipal council and not by a mere committee thereof; wherefore, there being no final decision of his case, he was entitled to be reinstated to his post after sixty days.

"The contention is meritorious. While the previous legislation on the matter (sec. 2272 of the Administrative Code of 1917) authorized the investigation of municipal police members by either the municipal council or a committee of three councilors, designated for said purpose by a majority of the council', the new law, Republic Act No. 557, sec. 1, expressly requires charges against a member of the municipal police to be investigated by the municipal council in public hearing.

x x x x

"Nowhere does the act authorize the council to delegate the investigation to a committee, and it is apparent that the change was designed to give the investigated officers protection against the possibility of having to face an investigation would necessarily influence the final decision of the council to be rendered upon their report.

"Now, Republic Act No. 557, enacted on June 17, 1950, and" effective upon its approval, was the law of the case when the petitioner-appellant Festejo was investigated by the so-called Integrity Board created by the Municipal Council of Nabua; hence the said board could not lawfully conduct the investigation, over the objection of the respondent Chief of Police. Much less could said Integrity Board decide the case on its merits, without referring the matter to the council; for even under the previous legislation authorizing hearing before a

committee of three councilors, it was prescribed that the committee shall submit its report and findings to the council within ten days after the conclusion of the trial and the council shall decide the case within fifteen days from the receipt of the report.' (Sec. 2272, Adm. Code.)

"The investigation and decision of appellant's case was illegal, under both Republic Act 557 and the preceding legislation. It follows that it was totally null and void."

It is true that in *Santos vs. Mandoza* (48 Off. Ga., 4801), it was said that Republic Act No. 557 does not prohibit, the delegation of the power to investigate policemen to a committee composed of members of the municipal or city council or board. However, the decision in the *Santos* case is earlier, in point of time, to that of the *Festejo* case, which must, therefore, prevail.

- The power to decide whether or not a member of the police force shall be dismissed is vested, by Republic Act No 557, solely upon the city council - subject to appeal to the Commissioner of Civil Service - and we so declared in the *Santos* case. The mayor has no power whatsoever, in connection therewith, except in the exercise of his "right to vote on all matters submitted to the council" and in the performance of his duty to execute the decision thereof (Com. Act No. 58, sec. 15, as amended by Rep. Act Nos. 300 and 354).

It is clear, therefore, that the decision appealed from should be reversed.

As regards petitioner's claim for moral and exemplary damages, it is to be noted that the assessment thereof, except the liquidated ones, "is left to the discretion of the court, according to the circumstances of each case" (Art. 2216 Civil Code of the Philippines); that "exemplary damages cannot be recovered as a matter of right; the court will decide whether or not they should be adjudicated" (Art. 2233, do.); that this case does not come within the purview of Art. 2219, of the Civil Code of the Philippines, specifying the cases in which moral damages are recoverable; and that there is neither allegation nor proof that respondent mayor had been prompted by any motive other than the promotion of public interest. Under these circumstances we do not feel that petitioner is entitled to recover damages.

WHEREFORE, the decision appealed from is hereby reversed, and another one shall be entered, directing the respondent mayor, or his successor in office, to reinstate petitioner herein in his former position as sergeant second class of the police force of the City of Bacolod, with pay from September 1, 1951.

IT IS SO ORDERED.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., and Endencia, JJ., concur.

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