

TOMAS B. BERVA, PETITIONER AND APPELLANT, VS. THE CITY MAYOR AND CITY TREASURER OF NAGA CITY, RESPONDENTS AND APPELLEES.

G.R. No. L-9724. March 23, 1959

Ponente: ENDENCIA, J.

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ENDENCIA, J.:

Appeal from a decision of the court of first instance of Camarines Sur dismissing appellant's petition whereby he sought reinstatement to the position of detective of the Naga Police and Fire Department of the City of Naga. On April 14, 1953, appellant was appointed by Mayor Leon Sa. Aureus as detective in the Naga Police Force and Fire Department, with a compensation of P1,140 per annum, effective April 16, 1953. Prior to his appointment, he was a clerk-typist in the office of the Social Welfare Council of Naga. He has no civil service eligibility, so his appointments in said positions were of temporary character.

On January 31, 1954, and in accordance with Sec. 682 of the Revised Administrative Code, appellant was relieved from service by City Mayor Antonio P. Sibulo. On February 2, 1954, appellant, in a communication to the Honorable, the Executive Secretary, requested for the commutation of his vacation and sick leave, which was granted, and for which he was paid the sum corresponding to 54 days of service.

On August 18, 1954, appellant commenced this action against the City Treasurer and the City Mayor of Naga City to compel them to reinstate him as detective of the Naga City Police and Fire Department, effective February 1st, 1954, and to secure payment of back salary to be counted from that date. Respondents-appellees, answering the petition, alleged that appellant was merely a temporary employee for lack of civil service eligibility; that he was legally separated from service by Mayor Sibulo in accordance with Sec. 682 of the Revised Administrative Code, and therefore he has no right to be reinstated nor to demand payment of back salary. The lower court upheld the contention of respondents-appellees, hence the appeal.

There is no dispute that appellant is not a civil service eligible, and that his appointment was never approved by the Commissioner of Civil Service. Neither is there proof that his appointment as detective was of permanent nature. Obviously, such appointment should necessarily be considered temporary, as only civil service eligibles are entitled to a permanent appointment. Consequently, the lower court correctly dismissed the case, and in this instance we find no reason for disturbing such dismissal. Appellant, however, contends that under Republic Act No. 557 he cannot be dismissed without just cause and without proper investigation, further invoking our ruling in the case of Antonio Uy vs. Jose Rodriguez, 95 Phil., 493; 50 Off. Gaz., [8] S574, as reiterated in the case of Olegario vs. Lacson, 97 Phil. 75. Appellant argues that under the provisions of R. A. 557 and the doctrine 'laid down in these two cases, his dismissal was illegal because his appointment was not temporary, despite the fact that he has no civil service eligibility, for his salary is on a yearly basis. This contention is not well taken, for the doctrine laid down in the above cases refers to detectives whose appointments were permanent in character; thus, in the Uy case, we held that "unless it is shown that a detective's appointment was temporary, he may not be

dismissed except in accordance with Republic Act No. 557." This ruling was reiterated in the case of Olegario vs. Lacson, supra the facts of which are similar to the Uy case. In the case at bar, however, it is admitted by the appellant that he has no civil service eligibility, hence his appointment could not be permanent in nature, for a permanent appointment implies civil service eligibility. And in the case of Orais, et al., vs. Ribo, et al., 93 Phil., 985; 49 Off. Gaz., No. 12, pp. 53865393, we held that persons appointed under sec. 682 of the Revised Administrative Code could be replaced at any time, after three months from the date of their appointment.

As to appellant's contention that his appointment should be considered as permanent because the salary stated therein is on a yearly basis, suffice it to say that the phrase "per annum" appearing in the appointment does not make the same permanent, but is placed there merely for budgetary purposes.

Wherefore, the decision appealed from is hereby affirmed.

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

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