

JOSE V. RICAMARA, PETITIONER-APPELLEE, VS. ABELARDO SUBIDO, IN HIS CAPACITY AS COMMISSIONER OF CIVIL SERVICE, MANUEL CUDIAMAT AND JOSE ERESTAIN, IN THEIR CAPACITIES AS CITY TREASURERS...

G.R. No. L-28801. June 25, 1980

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court affirms the decision of the Manila court of first instance which set aside as null and void the action of respondent-appellant Commissioner of Civil Service invalidating petitioner-appellee's civil service eligibility as patrolman and terminating his services in the Manila Police Force on the ground that he had been previously convicted of a crime (the offense of anti-littering for which he paid a fine of P5.00). The Civil Service Law^[1] requires, as the Court has time and again held, that a civil service employee may not be removed from office without due process and being previously afforded an opportunity to be heard.

The facts as recited in petitioner-appellee's memorandum before the trial court and adopted by the latter in its decision are as follows:

"x x x that he [petitioner] obtained a general rating of 72.05% in the November 24, 1962 patrolman examination and that he was issued a report of rating by the Civil Service Commissioner, a photostatic copy of which was presented in evidence as Exh. 'A'; that before he took the patrolman examination in question he was required to accomplish an application form (C.S. No. 2) and he answered 'yes' to question No. 6 thereof and he placed thereon his only offense of anti-littering for which he was convicted and paid a fine of P5.00 and that he accompanied his application with the disposition paper of his conviction for anti-littering (Exh. 'C'); that his first appointment was provisional in character (Exh. 'B'); that subsequently, he was extended a permanent appointment as evidenced by Exh. 'D', 'D-1' and 'D-2'; that before he joined the Manila Police Department, he submitted clearances from the City Fiscal's Office of Manila, the City Court of Manila, the Court of First Instance of Manila, the Manila Police Department, the National Bureau of Investigation, the Philippine Constabulary, and the Bureau of Prisons to the appointing power; that he also submitted two (2) letters of good moral character from two reputable and responsible citizens in the community; that before the approval of his appointment the appointing power conducted a character investigation on his person; and that before joining the force he underwent six (6) months training course conducted by the Manila Police Academy;

"x x x that while in the service and already enjoying a permanent appointment, respondent Civil Service Commissioner without conducting an inquiry on the matter cancelled and nullified the eligibilities and terminated the services of many policemen including himself as evidenced by his letter dated October 20, 1965 to Manila Mayor Antonio J. Villegas on the ground that they made fraudulent statement in their application forms for the patrolman examination conducted on November 24, 1962 (Exh. 'E'); that Mayor Villegas answered respondent's letter with the statement among others that, 'In the case of Patm x x Ricamara x x x it appears from the Honorable Commissioner's own observations that they 'may not be proceeded against under Sec. 2674 of the Revised Administrative Code,' inasmuch as they have not committed any irregularity

either in the applications (CSC Form No. 2) when they took the patrolman examination in 1962, or in the information sheets which they sub-sequently executed. Hence, this Office finds no ground for which they may be administratively charged' (Exh. 'F' and 'F-1'); that notwithstanding the cancellation of his eligibility and the termination of his services by the respondent Commissioner of Civil Service he is still allowed to continue to perform his du-ties by the appointing power; that subsequent to the issuance of Exh. 'E', respondents City Treasurer and City Auditor did not want to pay his salary be-cause the two were urged to comply with Exh. 'G' not to pay his salary; that while in the service he was an awardee of a Department Commendation for bravery and devotion to duty as evidenced by Exh. 'H'; that he has been receiving his salary from October 16, 1965 up to the present because the trial court granted his prayer for the issuance of the writ of mandatory injunction pending the trial on the merits of the main case of mandamus." (Italics supplied)

Hence, petitioner-appellee Ricardo Ricamara filed on July 15, 1966 with the Court of First Instance of Manila a petition for mandamus with preliminary mandatory injunction praying of the court to annul the questioned order of respondent Commissioner of Civil Service cancelling his civil service eligibility and ordering the termination of his ser-vices as patrolman and to direct the other respondents-officials concerned to cause the payment of his salaries during his tenure of office.

After hearing, the trial court granted the petition in its decision of January 15, 1968 and consequently, directed (1) the Commission-er of Civil Service to restore the said petitioner-appellee to his former position; (2) the City Auditor to authorize the payment of his salaries; and (3) the City Treasurer of Manila to pay the said salaries of petitioner during his tenure of office; and thus declared as permanent the writ of preliminary mandatory injunction to the same effect it had earlier is-sued on August 26, 1966 after having heard the parties.

Hence, this appeal which we find to be devoid of merit.

In *Abaya vs. Villegas, et al.*[2] where, as in the case at bar, the petitioner-appellee's eligibility had been cancelled and his services terminated without a previous inquiry conducted by the Commissioner of Civil Service, the Court voided such peremptory cancellation and termi-nation of services, holding that:

"The constitutionally protected security of tenure is: '[No] officer or employee in the civil service shall be removed or suspended except for cause as provided by law.'

"Section 32 of the Civil Service Law of 1959 echoes this precept with the provision 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.' Said Section 32 adds that the officer or employee complained of 'shall be entitled to a formal investigation if he so elects, in which case, he shall have the right to appear and de-fend himself at said investigation in person or by coun-sel, to confront and cross-examine the witnesses against him, and to have the attendance of witnesses and production of documents in his favor by compul-sory process or subpoena or subpoena duces tecum.' A civil service employee should be heard before he is condemned. Jurisprudence has clung to this rule with such unrelentless grasp that by now it would ap-pear trite to make citation thereof.

"Two acts adverse to petitioner were done: Appellant Commissioner's cancellation of his eligibility, and respondent Mayor's order of dismissal. Concededly, however, there was no investiga-tion prior to the cancellation of petitioner's civil ser-vice eligibility and before he was eased out of the service. Consequently, petitioner was denied due process."

The Court likewise stressed in *Aguilar vs. Valencia*[3] that:

"x x x Even if the alleged facts 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."

Since it clearly appears that petitioner-appellee was denied due process and that respondent commissioner did not conduct an investigation and give petitioner-appellee an opportunity to be heard before issuing his peremptory order for the cancellation of petitioner-appellee's civil service eligibility for patrolman and the termination of his services, no error was committed by the trial court in order-ing petitioner-appellee's retention in the service.

Having reached this conclusion, the Court need not pass upon the correctness of the trial court's ruling "that the offense of anti-littering which the petitioner-appellee admittedly committed for which he paid a fine of P5.00 and which fact he did not conceal, cannot be taken as an offense involving moral turpitude" (which under section 5 [c], Rule II of the Civil Service Rules is the type of conviction that disqualifies one from the civil service), in connection with respondent commissioner's assignment of error that section 17 of Executive Order 175, series of 1938 disqualifies anyone with a "criminal record" even if it were one for violation of an anti-littering ordinance, as in the case at bar, on the basis of the commissioner's theory that the earlier Executive Order provision stands unrepealed by the later enactment of the Civil Service Law, Republic Act 2260. If respondent commissioner's successors share the same strict interpretation, they may raise the question anew by initiating new proceedings at which petitioner shall be duly heard and given an opportunity to present his side, unlike what was done in this case.

ACCORDINGLY, the appealed judgment is hereby affirmed.

Makasiar, Fernandez, De Castro, and Melencio-Herrera, JJ., concur.

Guerrero, J., took no part.

[1] Sec. 32, Republic Act No. 2260.

[2] 18 SCRA 1034 (1966).

[3] G.R. L-30396, July 30, 1971, 40 SCRA 210.

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