

ADRIANO PALAGOD, ET AL., PETITIONERS AND APPELLEES, VS. BERNARDO TORRES, ET AL., RESPONDENTS AND APPELLANTS.

G. R. No. 10027. June 30, 1958

Ponente: BENGZON, J.

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BENGZON, J.:

The ten petitioners were provincial guards in the provincial jail at Baybay, Leyte, when in January 1955 the respondent Governor Bernardo Torres terminated their services and replaced them with the other respondents (except Enrique Grandos, Homobono Bardillon, Esmeraldo Galenzoga, Secretary of the Provincial Board and wardens, respectively).

Claiming the protection of Republic Act 65 as amended, and Republic Act 557 they instituted this proceeding to test the legality of their ouster. They alleged they neither resigned nor gave legal cause for removal. The case was submitted in the court below, mainly upon a stipulation of facts. Petitioners won, and respondents appealed to this Court.

The pertinent portions of the said stipulation read as follows:

'That petitioners Alejandro Acedillo, Adriano Catorce and Cresencio Bagaslao, are veterans; and Adriano Palugod, Quirino Japon, Diosdado Piastro and Epifanio Enclona are members or enlisted men of good standing of the recognized guerilla under recognition of the Republic Act No. 65, as amended by Republic Act 154, and were all appointed within the three year period under the Republic Act No. 65, as amended from the date of approval of that Act;

That Adronico Morfe was a member or enlisted man of good standing by the recognized guerilla unit under Republic Act No. 65; * * *;

That up to the date of their terminations, the petitioners Quirino Japon, Alejandro Acedillo, Zosimo Macaraya, Cresencio Bagaslao, Epifanio Enclona, Adriano Catorce, Andronico Morfe, Bernardo Corsanes, Adriano Palugod and Diosdado Piastro, have never resigned nor have been removed for any cause stated in Republic Act 557; * * *;

That the respondents guards made applications for their positions to the respondent Bernardo Torres, Provincial Governor, as evidenced by Exhibits 1, 1-A to 1-I, and were duly appointed to their respective positions as follows: * * *;

That the above respondents have asumed office and have taken their oaths on the dates following their respective dates of terminations of the petitioners, and are still serving till at present;

That none of the petitioners are civil service eligibles, except Alejandro Acedillo, who received his report of rating on July 29, 1955, of the examination of Patrolman Qualifying, taken by him at Tacloban City on November 27, 1954, with the rating of 70.68% as evidence by Exhibit "E". * * *."

There was proof that respondents, at the time of their appointments were civil service eligibles.

Apparently the respondents argued that petitioners had no reason to complain inasmuch as they were civil service non-eligibles^[1] who were substituted by persons with civil service eligibility. This was not heeded, and judgment issued for petitioners.

We think the court erred in so far as it denied the power of appointing officers to replace non-eligibles holding civil service positions for more than three months and in violation of sec. 682 of the Revised Administrative Code. Indeed in *Manigbas vs. De Guzman*^[2]—replacement of a temporary Chief of Police having no civil service eligibility by another non-eligible—this Court through Mr. Justice Alex. Reyes applying the three months limitation in said sec. 682 reiterated the view that "the holding of a position by a temporary appointee until replaced by an eligible in disregard of the time limitation of three months is unauthorized and illegal," the replacement of non-eligibles by non-eligibles being authorized conformably to sec. 682 of same Code. We further held that "as positions of members of the police department of a city are embraced within the classified (civil) service, non-eligibles appointed to these positions cannot continue in office for more than three months and can therefore, be thereafter replaced by other non-eligibles."

What was said of members of the police force equally applies to provincial guards, the tenure of office of both classes being protected by the same civil service law and by Republic Act No. 557. There is no question that all of the guards herein replaced had been serving for more than three years under appointments temporary in nature because non-eligible.

On behalf of eight petitioners who are veterans or guerrillas, the provisions of Republic Act No. 65 as amended by Republic Act 154 are invoked. Said Act gives veterans and guerillas "preference in appointments and promotions in and to any government office * * * the provisions of law as to civil service eligibility notwithstanding." But that preference was to last for "three years from the time of the passage of this Act" on October 18, 1946. It lapsed in October 1949. These appointments of their substitutes took place in 1955. It may not of course be contended that once a non-eligible veteran is appointed to a civil service position pursuant to Act No. 65 he may not thereafter be changed even after the expiration of the three-year special privilege. It should be stated here that these eight veterans were replaced by civil service eligibles.^[3]

As to Alejandro Acedillo, his having passed the Civil Service examination after he had been replaced is immaterial. It does not render illegal what was legal when made.

Respondents, it appears, have filed against petitioners a counterclaim for damages, which was dismissed by the lower court. They now insist on their right to recover. However, they failed to except and appeal from the order of August 17, 1955, dismissing such counterclaim. They only appealed from the court's judgment of September 15, 1955, declaring the petitioners entitled to resume and hold their positions as guards.

In view of the foregoing, and applying our three decisions herein mentioned in the *Manigbas*, *Orais* and *Paña* cases, we hereby reverse the appealed decision and dismiss petitioners' quo warranto complaint with costs against them.

Paras, C. J., Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia and Felix, JJ., concur.

[1]Except Alejandro Acedillo, who qualified six months after his ouster July 1955. Theirs were temporary appointments under section 682 of the Administrative Code.

[2]94 Phil., 245; See also *Orais vs. Ribo*, 93 Phil., 985; *Paña vs. City Mayor*, 50 Off. Gaz. 146, 94 Phil., 103.

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