

CRISTOBAL CAYABYAB, PETITIONER, VS. LUIS T. CAYABYAB, RESPONDENT.*G. R. No. 10664. May 29, 1957*

Ponente: PADILLA, J.

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The petitioner instituted this quo warranto proceedings to test the legality of his dismissal as chief of police of the municipality of San Carlos, province of Pangasinan, and of the appointment of the respondent to the same position, as of 1 January 1956, and to secure his reinstatement to, and ouster of the respondent from, the position.

The respondent filed his answer claiming that his appointment as chief of police of the municipality of San Carlos, Pangasinan, and the dismissal of the petitioner therefrom, are all in accordance with law.

After hearing, the Court rendered judgment dismissing the petition. From this judgment the petitioner has appealed.

It appears that the petitioner Cristobal Cayabyab had served in the municipal police force of San Carlos, Pangasinan, as first-class patrolman from 16 September 1949 to 15 March 1952; as police lieutenant from 16 March 1954 to 31 December 1954; and as chief of police from 1 January 1955 to 1 January 1956 when he was relieved; that he is not a civil service eligible; that no criminal or administrative complaint or charge has been filed against him; and that the respondent Luis T. Cayabyab who is not a civil service eligible but a veteran of the World War II was appointed chief of police on 1 January 1956 to replace the petitioner.

The petitioner contends that he can be removed as chief of police of San Carlos, Pangasinan, only for cause and in accordance with the provisions of Republic Act No. 557. The petitioner who is not a civil service eligible cannot invoke the protection afforded by Republic Act No. 557, because it can only be invoked by civil service eligibles.[1]

The petitioner claims that Republic Act No. 65, as amended by Republic Act No. 154, does not authorize the replacing of a non-eligible actually holding an office by another non-eligible who is a veteran.[2] But Republic Act No. 1363, which took effect on 18 June 1955, expressly gives veterans such preference, provided "other considerations" are "approximately equal."

The cases of *Mission vs. Del Eosario*, 94 Phil., 483, 50 Off. Gaz. 1571; *Abella vs. Rodriguez*, 95 Phil., 289, 50 Off. Gaz. 3039; *Uy vs. Del Rosario*, 95 Phil., 493, 50 Off. Gaz. 3574; *Olegario vs. Lacson*, 97 Phil., 75; and *Quintos vs. Lacson, et al.*, 97 Phil., 290, 51 Off. Gaz. 3429, relied upon by the petitioner in support of his claim that Republic Act No. 557 applies to non-eligibles involve not provincial guards or members of the city or municipal police force but detectives or members of the secret service whose positions had been declared to be primarily confidential by Executive Order No. 264, series of 1940, and who need not be civil service eligibles. Unlike the case of detectives there has been no similar executive pronouncement that provincial guards and members of the city and municipal police force are primarily confidential and need not be civil service eligibles.

Said positions are embraced within the classified civil service for which the law requires eligibility.[3] A non-eligible who holds a position in the classified civil service is charged with the knowledge that he holds the position only in a temporary capacity and subject to the provisions of section 682 of the Revised Administrative Code, as amended.

The judgment appealed from is affirmed, with costs against the petitioner.

Bengzon, Montemayor, Reyes, A., Bautista Angela, Labrador, Conception, Reyes, J. B. L., Endencia and Felix, JJ., concur.

[1] Orais, et al. vs. Kibo 93 Phil., 985, 49 Off. Gaz. 5386; Pafia, et al. vs. Medina, et al, 94 Phil., 108, 50 Off. Gaz. 146; and Aurora, et al vs. Bibera et al., 99 Phil., 1, 62 Off. Gaz., [6] 3015.

[2] Pursuant to section 8, Republic Act No. 65, preference for veterans lapsed on 18 October 1949; and pursuant to section 1, Republic Act No. 154, amending section 8, Republic Act No. 65, preference for veterans expired on 14 June 1950.

[3.] Sections 668 and 670 in connection with section 671 of the Revised Administrative Code.

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