

VICENTE E. GROSPE, PETITIONER AND APPELLANT VS. THE SECRETARY OF PUBLIC WORKS AND COMMUNICATIONS THE BUDGET COMMISSIONER THE COMMISSIONER OF CIVIL SERVICE AND THE DIRECTOR OF PO...

G. R. No. 11090. January 31, 1959

Ponente: PADILLA, J.

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PADILLA, J.:

Vicente E. Grospe was employed in the Bureau of Posts as letter carrier. On 27 February 1951 the Commissioner of Civil Service found him and his co-respondent Mamerto Bejec guilty of grave misconduct in office for the loss of a check and were ordered dropped from the service as of 26 September 1950, the date of suspension, "without prejudice to their reemployment, if and when there is a suitable position for them and after the appointing officer has been apprised of the instant case." (Administrative Case No. R-4639; pp. 6, 51 and 5k., record of the case.) On 21 March 1951 he requested, the work in the Bureau of Posts as clerk with a salary of M.,320 per annum. On 27 April 1951, upon recommendation of the Director of Posts, the Undersecretary of Public Works and Communications extended to him the appointment (pp. 19, 53, 60, record of the case), which was sent to the Bureau of Civil Service. On 13 January 1954 the Director of Posts wrote a letter to the appointee terminating his services as clerk effective at the close of business hours on 31 January 1954, because his appointment had not yet been approved by the Commissioner of Civil Service and the latter had previously ordered him dismissed from the service for grave misconduct (pp. 3, 57, record of the case). On 24 February and 26 March 1954 he wrote to the Director of Posts requesting that the previous action be reconsidered (pp. 9, 10, record of the case). On 24 April 1954 the Director of Posts denied his request, reminding him that in administrative case No. R-4639 the Commissioner of Civil Service had ordered him dropped from the service on 26 September 1950, and informing him that it was the policy of the administration to weed out from the service employees who had been involved in anomalies connected with the performance of their duties (p. 11, record of the case). He and his counsel wrote several letters to the Director of Posts asking for reconsideration (pp. 12, 14, record of the case) which were denied (pp. 13, 16-17, record of the case). On 20 December 1954 the Director of Posts sent to the appointee a copy of his appointment for actual services rendered as clerk at P1,320 per annum from 26 April 1951 to 30 June 1952, and at P1,440 per annum from 1 July 1952 to 31 January 1954 (pp. 18, 19, 59, 60, record of the case).

On 15 February 1955 Vicente E. Grospe filed in the Court of First Instance of Manila a petition for mandamus praying that the Secretary of Public Works and Communications and the Director of Posts be ordered to reinstate him in the service, and the Commissioners of Civil Service and of the Budget, to delete from his appointment the notation that the same was to expire on 31 January 1954 (Civil No. 25367).

The Solicitor General, appearing for the respondents, answered that the petitioner's reinstatement in the service was subject to the availability of a suitable position and after the appointing, officer had been informed of the case against him in administrative case No. R-4639; that although the Undersecretary of Public Works and Communications had reinstated him in the service as clerk, the appointment was withdrawn by the appointing

officer upon being apprised of the administrative case; that the appointment was disapproved by the Commissioners of Civil Service and of the Budget; and that mandamus will not lie to reinstate in the service an employee who has been discharged while on probation; it will not lie to reinstate one who may be employed only when there is a suitable position available; and it will not lie to reinstate a discharged employee just because he is a civil service eligible.

After the parties had submitted the case for judgment on the pleadings and filed their memoranda, the Court rendered judgment dismissing the petition without costs. The petitioner appealed to the Court of Appeals. The latter certified the appeal to this Court because it involves purely questions of law. The facts are not disputed, as the case was submitted by the parties for judgment on the pleadings.

The appellant was found guilty of grave misconduct in office by the Commissioner of Civil Service after proper investigation and ordered dismissed from the service as of 26 September 1950. As he did not appeal the decision of the Commissioner became final and executory. The appellant contends that being a civil service eligible, the appointment reinstating him in the service as clerk with compensation at the rate of P1,320 per annum, extended to him by the Undersecretary of Public Works and Communications, became vested in him from the date of its issuance and could no longer be recalled.

Section 79 (D) of the Revised Administrative Code provides that:

The Department Head, upon the recommendation of the chief of the Bureau or office concerned, shall appoint all subordinate officers and employees whose appointment is not expressly vested by law in the President of the Philippines, and may remove or punish them except as especially provided otherwise, in accordance with the Civil Service Law.***.

Section 662 of the same Code provides that:

The civil-service rules shall, among other things, prescribe the conditions which shall govern certification from eligible registers, appointments to the service, separations therefrom, suspensions, deductions from pay, reductions, reinstatements, and transfers, and shall define the procedure to be followed in such matters, xxx. (Underscoring supplied.)

Rule VII of the Civil Service Rules, promulgated pursuant to the foregoing enabling provisions, provides that:

Any person who has been regularly appointed to a position in the classified service and who has through no delinquency or misconduct been separated therefrom may, if no good reason to the contrary appears, upon the requisition of the proper officer and the certificate of the Commissioner, be reinstated to a vacant position of a grade not higher than that from which he was separated, ***.

Section 5, Rule II, of the same Rules, provides that:

The Commissioner may, in his discretion, refuse to examine an applicant, or to certify or attest an appointment of an eligible, who is physically unfit for the performance of the duties of the position to which he seeks appointment; or who has been guilty of a crime, or of infamous, notoriously disgraceful, or immoral conduct, drunkenness, or dishonesty; or who has been dismissed from the service for other delinquency or misconduct; or who has intentionally made a false statement in any material fact, or practiced or attempted to practice any deception or fraud in securing his examination, registration, or appointment. Any of the foregoing disqualifications shall be good cause for the removal of the person from the service after his appointment. (Italics supplied.)

Pursuant to the foregoing provisions of law and civil service rules, an appointment reinstating an employee in the service must be submitted to the Commissioner of Civil Service for approval to determine whether the proposed appointee is qualified to hold the position. The Commissioner may refuse to certify or attest the appointment of an

eligible who has been dismissed from the service for misconduct. Consequently, an appointment made by an officer duly empowered to make it is not final or complete until after the Commissioner of Civil Service has certified that such appointment may be made. Hence without such certification the appointment may be recalled or withdrawn by the appointing officer. The records show that the proposed appointment of the appellant as clerk was forwarded to the Commissioner of Civil Service; that on 10 July 1951 the latter forwarded it to the Commissioner of the Budget without attestation, informing him, among others, that the appellant had been dropped from the service for grave misconduct as of the date of suspension, without prejudice to reinstatement, if there be a suitable position and after the appointing officer had been apprised of the case (p. 54, record of the case); that on 31 August 1951, acting upon the information at hand, the Commissioner of the Budget returned the proposed appointment to the Secretary of Public Works and Communications inviting his attention to the information furnished by the Commissioner of Civil Service, and inquiring whether the Secretary would still give due course to the proposed appointment (p. 55, record of the case); that on 7 September 1951 the Undersecretary of Public Works and Communications indorsed the matter to the Director of Posts who, on 14 September 1951, referred it to the Chief, City Delivery Division, for comment and recommendation (p. 56, record of the case); that apparently the papers were misplaced and no action was taken on the proposed appointment and indorsements (pp. 58 and 61, record of the case) until 28 January 1954, when the Director of Posts, through the Secretary of Public Works and Communications, in reply to the query of the Commissioner of the Budget, sent a certified copy of the misplaced original appointment, with the request that the proposed appointment be approved only for the services actually rendered (p. 58, record of the case); and that on 29 November 1954, the Commissioner of Civil Service held that as the proposed appointment was not yet complete because it was not yet attested pursuant to Civil Service Law, the same may be withdrawn by the appointing officer (pp. 16, 17, record of the case). As the appointment of the appellant was not yet certified by the Commissioner of Civil Service, its recall by the appointing officer was a valid exercise of discretion, especially when the reason was that the proposed appointee had been previously dismissed for grave misconduct in office and it was the policy of the administration to remove from the service employees who had been involved in anomalies connected with the performance of their duties. Moreover, the act of the Commissioner of Civil Service in forwarding the proposed appointment of the appellant to the Commissioner of the Budget without attestation and in holding that since it was not yet attested, the same could be withdrawn by the appointing officer, was tantamount to a refusal on his part to certify or attest the proposed appointment. The fact that the appellant had been rendering service as clerk in the Bureau of Posts pursuant to the appointment extended to him by the Undersecretary of Public Works and Communications; had been receiving salary therefor; and had been paying insurance and retirement insurance premiums to the Government Service Insurance System, does not improve his situation. Such payment of salary was in contravention of section 690 of the Revised Administrative Code, which provides that:

Payment of money on account of salary to any officer or employee in the classified service shall not be made prior to the receipt by the disbursing officer of notification from the chief of the Bureau or Office that the appointment or employment of such officer or employee has been duly authorized as provided by the Civil Service law and rules.

Besides, mandamus will not lie to compel the reinstatement in the government service of an employee who has been previously dismissed for cause provided for by law after proper investigation. Likewise, it will not lie when reinstatement is subject to the availability of a suitable position and after the appointing officer has been apprised of a previous dismissal for misconduct in office.

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

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

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