

FELIPE HORTILLOSA, PETITIONER AND APPELLANT VS. HON. RODOLFO GANZON, MAYOR OF THE CITY OF ILOILO, RESPONDENT AND APPELLEE*G. R. No. 11169. January 30, 1959*

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-11169-2/>**PADILLA, J.:**

Felipe Hortillosa entered the service of the Government as patrolman in the police department of Iloilo City sometime in 1936 (Exhibit C). While in the service, he took and passed the examination for patrolman given by the Bureau of Civil Service in Iloilo City on 18 September 1937 (Exhibit H). He has been in the service continuously and promoted successively to the ranks of corporal, sergeant, 2nd lieutenant, and on 23 June 1955, to the rank of captain (Exhibits C & B). The last promotional appointment was authorized by the Commissioner of Civil Service as temporary under section 682 of the Revised Administrative Code. On 4 April 1956 the Mayor of Iloilo City issued executive order No. 15—terminating the services of the petitioner as captain in the police department of Iloilo City and declaring his position vacant effective the next day (Exhibit A; Exhibit 4). On 6 April 1956 he wrote a letter to the Mayor acknowledging receipt of a copy of executive order No. 15 and inquiring whether his services as temporary captain, 2nd lieutenant and member of the police department had been terminated (Exhibit E). On 7 May 1956 his attorney wrote a letter to the Mayor requesting that the petitioner be reinstated to his position as captain and that as a member of the police department of Iloilo-City, he is protected by the provisions of Republic Act No. 557 (Exhibit G). The Mayor has not answered the two letters.

On 10 May 1956 he filed in the Court of First Instance of Iloilo a petition for a writ of mandamus praying that executive order No. 15 issued by the respondent City Mayor be declared illegal and that the latter be ordered to reinstate him in the service (civil No. 3905) The respondent answered that the petitioner's appointment as captain in the police department was temporary, hence he could be replaced by an eligible at any time.

After trial, the Court rendered judgment dismissing the petition without costs. He has appealed.

The Constitution ordains the establishment of "A Civil Service embracing all branches and subdivisions of the Government * * *" It provides that "Appointments in the Civil Service, except as to those which are policy-determining, primarily confidential or highly technical in nature, shall be made only according to merit, and fitness, to be determined as far as practicable by competitive examination." [1] Pursuant to this cardinal rule, the Civil Service Law provides that:

No person shall be appointed to or employed in any position in the classified service until he passed the examination provided, therefor: x x x. [2] (Italics supplied.)

Appointment to the position of chief or assistant chief of a bureau or office and to any other position in the classified service shall be made by the promotion of persons in the competitive service, if there be such who are competent and available and who in the judgment of the appointing power possess the qualifications required. [3]

Section 661 of the Revised Administrative Code vests the Commissioner of Civil Service with the power and authority to promulgate rules, subject to the approval of the President, to carry out the provisions and purposes of the Civil Service Law and to secure an efficient administration of the Government within its scope. Among the fundamental principles required to be embodied in the rules is that "Promotion examinations, competitive or noncompetitive, shall be prescribed when practicable.[4]

Acting upon the proposed promotional appointment of the appellant to the rank of captain in the police department of Iloilo City, submitted to the Commissioner of Civil Service for approval, the Deputy Commissioner said that he is a "1st class patrolman eligible;"

x x x that the maximum salary allowable for 1st class patrolman eligible in chartered cities is P2760 per annum. The position involved is usually filled by promotion from the qualified members in the ranks in accordance with section 1 of Civil Service Rule IX and section 3 of Administrative Order No. 63, series of 1938. From the attached roster of police officers in the Iloilo City Police Department, it appears that there are no ranking members with appropriate civil service eligibility who could be promoted to the position involved. Moreover, attention may be invited to the representations made in the third indorsement hereon particularly to the statement made, therein to the effect that "his two ranking superiors in the force, 1st Lieut. Levy Cariño and 1st Lieut. Antipas Delotavo, are officers of excellent record but whose services in the department have been properly limited to the conduction of the band, in the case of Lieut. Cariño, and in the office work, in the matter of Lieut. Delotavo." It may be stated, in this connection, that Mr. Cariño is not a civil service eligible, while Mr. Delotavo has qualified only in the 1st class patrolman examination and the maximum salary for which is only P2760 per annum as above stated.

In view of the foregoing and in the absence of appropriate eligibles who may be appointed to the position in question, this office would offer no objection to authorizing the attached appointment (copy only) of Mr. Hortillosa as temporary under section 682 of the Revised Administrative Code to continue until he is replaced by an appropriate eligible. (Exhibit 6-A.)

As noted, his promotional appointment was —

Authorized as temporary under Sec. 662 of the Revised Administrative Code to continue until he is replaced by an appropriate eligible.

Not having passed the civil service examination for captain in the police force of chartered cities, the appellant could not be extended a permanent appointment as captain in the police department of Iloilo City, although he was a first class patrolman eligible. Having accepted the position in a temporary capacity, he is not entitled to the protection afforded to members of the corps of provincial guards, city police and municipal police by Republic Act No. 557. Under section 682 of the Revised Administrative Code, temporary appointments shall continue only for a period not exceeding three months and a temporary appointee may be replaced by an eligible at any time.

The appellant invokes the pronouncement of this Court in *Amora vs. Bibera*, 52 Off. Gaz. 3015, that "There is no law that prohibits the appointment of one who had passed a civil service examination to a position other than that for which he had qualified, especially when the position to which he has been appointed does not call for special knowledge or skill," The pronouncement cannot bolster up the appellant's case because there It does not appear that the appointment extended by the appointing officer was permanent. "Moreover, the very nature of the position of captain in the police force of a chartered city calls for a higher grade of examination than that of first class patrolman.

In the appellant's information sheet (Exhibit C) it appears that after the war he was reinstated in the service as sergeant in a temporary capacity; that his appointment as second lieutenant on 1 January 1946 and his promotion in salary in the same position on 1 July 1946 were temporary. In his promotional appointments in salary in the

same position effective 1 July 1943. (Exhibit 1) and 1 January 1949 (Exhibit 2), it appears that the Commissioner of Civil Service attested, them only in an acting capacity. He cannot, therefore, lay claim to any vested right in any of the positions to which he had been extended promotional appointments in a temporary or an Page 28, transcript of stenographic notes. acting capacity.

Counsel for the appellant complains that there is nothing in the record to show that Jose Z. Tiapon, the one appointed to succeed the appellant, is a civil service eligible. In his brief he quotes the answer of the respondent to a question asked, by the trial court which shows that Jose Z. Tiapon was certified to be "a civil service eligible and as chief of police patrol, police of the last war, Major in the army.[1] If the respondent's testimony was not correct a rebuttal evidence should have been introduced. At any rate, it does not appear that the appointment is permanent, so it is one under section 682 of the Revised Administrative Code.

Reinstatement to the position in the police department of Iloilo City, as prayed for in his petition, to which he would be entitled according to his civil service eligibility, cannot be granted in this proceedings, because the incumbent has not been impleaded as party-respondent, a remedy which could be granted in quo warranto proceedings. But even if the incumbent had been impleaded, he could not be ousted from the position by the petitioner who voluntarily had vacated it by accepting a promotion in a temporary or acting capacity, if the incumbent is a civil service eligible.

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

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

[1]Section 1, Article XII, Constitution of the Philippines. See section 666, Revised Administrative Code.

[2] Section 672, Revised Administrative Code. Reiterated in section 2, Rule III, of the Civil Service Rules.

[3] Section 679, *ibid*.

[4] Section 663 (b), Revised Administrative Code.

[1] Page 28, transcript of stenographic notes.

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