

DIMAS REYES, ET AL., PETITIONERS AND APPELLANTS, VS. DR. FIDEL D. DONES, ET AL., RESPONDENTS AND APPELLEES.

G.R. No. 11427. May 28, 1958

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On August 16, 1956, petitioners filed in the Court of First Instance of Cavite an action for mandamus to compel respondents to reinstate them with back salaries on the ground that their separation from office was illegal.

The case was submitted on documentary evidence. No oral evidence was introduced. Thereafter, the court rendered decision dismissing the petition. Petitioners took the present appeal.

Petitioner Dimas Reyes was appointed as detective corporal, Secret Service Division, Cavite City Police Department, on December 1, 1953, which appointment was noted as temporary by the Deputy Commissioner of the Civil Service "pending receipt of the required medical certificate." Petitioner Leonardo Espiritu was appointed as first class detective, Secret Service Division, of the same Department, on December 1, 1953, which appointment was also noted as temporary by the Deputy Commissioner of the Civil Service "pending receipt of the required medical certificate." And Geronimo Mojica was appointed police detective, Secret Service Division, of the same Department, on December 1, 1953, which appointment was likewise noted as temporary by the Deputy Commissioner of the Civil Service "pending receipt of the required medical certificate."

The three appointments above adverted to were approved "as noted by the Bureau of Civil Service" by the Assistant Executive Secretary by authority of the President. On March 1, 1954, upon the termination of the three-months period, the three petitioners were served notice of their separation from the service by the Chief of Police effective "as of the closing hours of February 28, 1954, for lack of confidence and better qualifications", in view of a communication received from the city mayor. Petitioners were granted leave credit upon request corresponding to the period from March 1, to 15, 1954, except petitioner Reyes whose leave credit had already been exhausted.

On March 16, 1954, the Acting City Mayor of Cavite, Dominador Mangubat, appointed German Noche, Napoleon Arce and Mariano Veluz in lieu of petitioners who were considered separated due to expiration of their appointments.

Petitioners contend that they cannot be separated from office except for any of the grounds mentioned in Republic Act No. 557 inasmuch as their appointments are permanent in nature, whereas respondents maintain that since their appointments are merely temporary and they are not civil service eligibles, they can be removed at a moment's notice under the provisions of Section 682 of the Revised Administrative Code.

There is no dispute that petitioners are non-civil service eligibles and were given temporary appointments. Thus, their appointments were noted as temporary by the Deputy Commissioner of Civil Service "pending receipt of the required medical certificate", and were approved as thus noted by authority of the President. Their appointments,

therefore, are not only temporary but conditional, with the particularity that they never acquired medical certificate. And because of the temporary character of their appointments, upon the expiration of three months, they were served notice of their separation. We see nothing improper or illegal in this action. This is in line with a recent decision of this Court. Thus, in the case of *Pineda vs. Velez*, G. R. No. L-8859, wherein the appointment of appellant was noted by the Commissioner of Civil Service as "temporary pending report from the GSIS as to the appointee's insurability and subject to Section 7 of Civil Service Rule VIII", this Court said:

"It being admitted that the appointment of the appellant was noted by the Commissioner of Civil Service 'as temporary pending report from the GSIS as to the appointee's insurability and subject to Section 7 of Civil Service Rule VIII' we cannot get away from the conclusion that appellant's appointment was of a temporary character. The nature of the condition that made appellant's appointment temporary is immaterial. It is sufficient that, pending compliance with, said condition, namely, appellant's insurability, his appointment was and remained temporary. There is no dispute that said condition had not been fulfilled prior to his separation. The following pronouncements in *Pedro Tolentino, et al. vs. Ramon Torres, etc.*, 51 Off. Gaz., 753, 755, are of square application:

'As to Jose Real, his appointment was, by the Civil Service Authorized as temporary pending report from the Government Service Insurance System as to the appointee's physical and medical examination.' There is no question that up to the 'removal' no such report has been made, because petitioner Jose Real failed to submit to a physical and medical examination. And yet it must be clear that his appointment was approved subject to his passing such physical examination, within a reasonable time, of course. As he has not passed it, we cannot see our way clear to 'require his reinstatement, he having failed to meet a condition attached to his appointment.

'On this point we have not overlooked petitioner's argument that such examination could not have been a condition sine qua non of his appointment, it being only for the insurance benefits, 'because he could not have qualified as patrolman civil service eligible if he had not been found to be physically fit.' However, we have noticed that he took such examination in 1948 and his appointment was made in 1952. The condition of health may have deteriorated after the passage of four years; and for a guard, health is most essential.'"

The lower court, in considering the appointments of petitioners as temporary, took into account the fact that they are not civil service eligibles. It entertained the opinion that a person lacking civil service eligibility cannot fill a permanent appointment. The trial court said: "Even if his appointment paper is not labelled permanent or temporary, so long as he has not passed any civil service examinations in accordance with the rules and regulations of the civil service, the nature of his appointment is always temporary in character and his continuance in office should be governed by the provisions of section 682. of the Revised Administrative Code, as amended." This opinion finds support in the following decision of this Court:

"* * * In accordance with. Section 682 of the Revised Administrative Code, when a position in the classified service is filled by one who is not a qualified civil service eligible, his appointment is limited to the period necessary to enable the appointing officer to secure a civil service eligible, qualified for the position, and in no case is such temporary appointment for a longer period than three months. As petitioners herein were not civil service eligibles at the time of their appointment, and it does not appear that they have since then qualified for the positions they are holding, their respective appointments were only for period of three months and not more." (*Pana, et al vs. City Mayor, et al.*, 94 Phil., 103; 50 Off. Gaz. [1], 146).

It is argued that petitioners are members of the police force of Cavite City and are filling classified positions and as such can only be removed for any of the causes specified in Republic Act No. 557. While this law provides that members of the city police shall not be removed except for causes mentioned therein, and the ground for which petitioners were removed is not one of those, it does not follow that their removal was illegal, for they are not civil service eligibles. The appointments mentioned therein refer only to eligibles and as such are considered

permanent. They do not refer to appointments made in favor of non-eligibles. Non-eligibles do not come under the protection of said Act.

"Appointment made under the section (Section 682, Revised Administrative Code) are temporary, when the public interest so require and only upon the prior authorization of the commissioner of civil service, not to exceed three months and no case shall extend beyond thirty days from receipt by the chief of the bureau or office of the commissioner's certification or eligibles. The fact that the petitioners hold the positions for more than three months does not make them civil service eligibles. Also the fact that the acting commissioner of civil service authorized their appointments 'under section 682 of the Revised Administrative Code to continue only until replaced by an eligible' does not make them eligibles. 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.

"Republic Act No. 557 is also invoked by the appellants Bienvenido Gonzales and Constancio Acasio. The act guarantees the tenure of office of provincial guards and members of city and municipal police who are eligibles. Non-eligibles like the two appellants do not come under the protection of the act invoked by them." (Orais, et al. vs. Ribo, et al., 49 Off. Gaz., p. 5386; 93 Phil., 985.) Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

Paras, C.J., Bengzon, Montemayor, Labrador, Reyes, J.B.L., Endencia and Felix, JJ., concur.

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