

CARMELO L. PORRAS, IN HIS CAPACITY AS MAYOR OF THE CITY OF DAVAO, PETITIONER AND APPELLEE, VS. MONEBRIO F. ABELLANA, RESPONDENT AND APPELLANT.

G.R. No. 12366. July 24, 1959

Ponente: LABRADOR, J.

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LABRADOR, J.:

The question involved in this action is the scope of the power of control lodged in the Davao City mayor by section 9 of its charter (C.A. No. 51) over the departments of the city government. Does it give him authority to require the chief of police of the city to relieve Capt. Petronilo S. Cariaga as finance and supply officer of the police department, and to assign him to field duty? The Court of First Instance of Davao, Hon. Amador E. Gomez, presiding, held that it does, and granted a petition for mandamus directing the chief of police to comply with the disputed order.

The chief of police appeals from the above order, claiming that it is beyond the scope of the mayor's authority, because the organization, government and disposition of police personnel is the sole responsibility of the chief of police, and not that of the mayor as provided for in Section 21 of the city charter, although he (chief of police) may be answerable for his acts to said mayor; that the supposed power of control of the mayor over the different departments contained in Section 9 of the charter does not infringe upon the specific powers and duties vested in the chief of police as provided in Section 21; and that no power to transfer officers or employees not appointed by the President is expressly lodged in the mayor, unlike the case in cities of Cebu and Manila. It is also claimed that the duties and powers of the chief of police are discretionary in character and may not be compelled by mandamus; and that the mayor has another speedy, adequate and plain remedy in law, which is that provided for in Republic Act No. 557.

The provisions of the Davao city charter which have reference to the question at issue are as follows:

"SEC. 9. As chief executive of the city government, the Mayor shall have immediate control over the executive and administrative functions of the different departments, subject to the supervision of the Secretary of the Interior, and shall be held accountable for the proper administration of all affairs of the city.

(2) * * * To see that the officers and employees of the city properly discharge their respective duties.

SEC. 23. Each head of department of the city government shall be in control of such department, under the supervision and control of the Mayor and shall possess such powers as may be prescribed herein or by ordinance." (Com. Act No. 51).

The lower court found that the city mayor had directed the chief of police to relieve Capt. Cariaga as finance and supply officer and ordered the latter's transfer to the field, because newspapers reported that anomalies have been committed by certain officers in the custody of records under the finance and supply officer. The court below found that the above circumstances fully justify the mayor in exercising his power. Control and supervision have

been elucidated in two cases as follows:

"In administrative law, supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them the former may take such action or step as prescribed by law to make them perform these duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter." (Mondaño vs. Silvosa, 51 Off. Gaz., 2885).

"Supervision is not a meaningless thing. It is an active power. It is certainly not without limitation, but it at least implies authority to inquire into facts and conditions in order to render the power real and effective. If supervision is to be conscientious and rational, and not automatic and brutal, it must be founded upon knowledge of actual facts and conditions disclosed after careful study and investigation." (Planas vs. Gil, 37 Off. Gaz., 1228).

If the power of control includes the power to nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute his own judgment for that of the subordinate, then it is evident that the mayor of the city of Davao has, under the power of control vested in him over the different departments of the city, the power to order the transfer of the finance and supply officer from his work in the office of the chief of police and his assignment to the field.

It is contended that the duties of the respondent appellant are discretionary in character and may not be controlled by mandamus. The argument may not be availed of in the case at bar. The respondent-appellant has not been compelled to perform a distinct duty. He is being compelled to execute an order of the mayor for the transfer of the finance and supply officer to the field. The duty to comply with this order is expressly provided by Section 21, par. (d) of C. A. No. 51, which states:

"* * * and shall promptly and faithfully execute all orders of the Mayor * * *."

Another objection raised against the petition for mandamus, is the supposed existence of another speedy, adequate and plain remedy in the ordinary course of law, which is that set forth in Republic Act No. 557. We can not see how the investigation provided for in said Act by the city council could be appropriate, adequate, or speedy. The investigation provided for in said law refers to charges preferred by the city mayor against members of the police department. The case at bar is different. The city mayor, by virtue of his power of control, can order the transfer of the finance and supply officer to the field, and he did so, evidently to avoid further commission of irregularities in the police department, which is under him. No amount of investigation by the city council would remedy the situation. The transfer of the person supposed to be responsible for the irregularity, or under whom the irregularity has persisted, is the most expedient remedy.

The judgment appealed from is hereby affirmed, in toto with cost against appellant.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Concepcion, Endencia, and Barrera, JJ., concur.

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