

**FRANCISCO SANCHEZ, ET AL., PETITIONERS AND APPELLEES, VS.
MARTIN N. FRANCISCO, ET AL., RESPONDENTS. MARTIN N.
FRANCISCO, RESPONDENT AND APPELLANT.**

G.R. No. 12539, March 16, 1961

Ponente: DIZON, J.

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DIZON, J.:

On June 11, 1955 appellees commenced this action for Mandamus in the Court of First Instance of Cebu against Martin N. Francisco and Alejandro Jumao-as, in their capacity as then municipal mayor and municipal treasurer, respectively, of Cordova, Cebu, to compel them to reinstate them as patrolman of Cordova and to pay them their respective salaries corresponding to the period from February 22, 1955 until the date of their reinstatement, together with moral damages and attorney's fees.

From the decision of the lower court ordering appellants to reinstate appellees to their former positions but without right to collect accumulated salaries, reserving them, however, the right to file the necessary action to recover said salaries as damages from appellants, the latter appealed. However, appellant Jumao-as withdrew his appeal on August 21, 1957.

It appears that for some time prior to February 22, 1952 appellees—civil service eligibles—were members of the municipal police force of Cordova, Cebu. On that date they were dismissed after an investigation allegedly conducted by the municipal council upon complaint of appellant Francisco charging them with electioneering and threats.

Appellees claim that they had never been served with copies of the charges, but admit that they received notice that they were going to be investigated on February 19, 1952, in the municipal building of Cordova. Pursuant to said notice, they and their attorney, Mr. Nestor Legaspi, appeared before the municipal council to contest—as the lower court found—the jurisdiction of the committee appointed by the municipal council to investigate them, on the ground that said committee had not been constituted in accordance with the provisions of Republic Act No. 557, and that no formal charges had been filed against them by appellant Francisco, in his capacity as municipal mayor. The committee, however, overruled their objection, and as said committee was bent on going ahead with the investigation, appellees and their attorney left the premises. As a result of the proceedings thereafter had, appellees were found guilty of the charges and were ordered removed from office, notice of which decision was received by them on February 22, 1952.

The preponderance of the evidence sufficiently shows that, immediately after receiving notice of the decision, appellees delivered to the chief of police a notice appealing from the decision to the Commissioner of Civil Service. It appears, however, that the record of the administrative case was not elevated to the Commissioner of Civil Service, and when, under date of February 7, 1954, appellees sent a letter to the then President of the Philippines making inquiries regarding their appeal, they were subsequently informed that the records of the Office of the Commissioner failed to show that the appeal had been duly transmitted to it, and that, as a

consequence, said office considered the decision rendered against appellees as having become final. Upon this matter the lower court made the following findings:

"A perusal of Exhibit 5 (proceedings in alleged administrative case involving plaintiffs' separation) reveals that Mayor Francisco who was the prosecutor, was acting as if he were the prosecutor and sole investigator at the same time—and judge, subsequently. As a result of the one sided investigation, an order for the removal of the plaintiffs was issued, copy of which was received by plaintiffs on February 22, 1952 (Exhibit 1). Immediately, plaintiffs filed an appeal therefrom coursing same to the Honorable Commissioner of Civil Service, copy of which and all other pertinent papers were received and receipted for by the then Chief of Police of Cordova, who was sheriff ex-officio. For unknown reason, defendant municipal mayor must have pigeonholed this appeal, for nothing has been heard of it ever since (note Exhibit A 1, letter dated February 7, 1954, coursed by plaintiffs to His Excellency, the President of the Philippines, and its enclosures, Exhibits B and C).

"As of January 5, 1953, a letter (Exhibit E) was received by Francisco Sanchez, one of the plaintiffs, from Manila advising plaintiffs that the records in the office of the Commissioner of Civil Service did not show that the appeal papers (which the ex-officio sheriff and Chief of Police of Cordova had acknowledged receipt of copy thereof) had been received there so much so that the decision of the municipal council of Cordova dismissing plaintiffs became final under the provisions of Section 2, Republic Act No. 557. It is thus clear that if no appeal with its pertinent papers had been forwarded to the Commissioner of Civil Service, the defendant Mayor or the "committee" must have pigeonholed it as the presumption is inevitable that the chief of police must have complied with his duties and thus submitted the same. Defendants' assertion, therefore, that plaintiffs did not appeal from the decision of the municipal council is untenable. If no such appeal had been received by the Commissioner of Civil Service, the fault was entirely that of defendants and plaintiffs could not be blamed for their acts.

"For all legal practical purposes, therefore, plaintiffs should be, as they are hereby considered as having appealed from the decision of the municipal council and thus are presumed to have exhausted all administrative remedies open to them."

A perusal of the record discloses nothing sufficient to overcome the finding of the lower court to the effect that, in due time, appellees had taken an appeal from the decision of the municipal council of Cordova dismissing them from the service, but that appellant Francisco, in his capacity as municipal mayor at the time, "pigeonholed this appeal", thus preventing, thus far, the Office of the Commissioner of Civil Service from taking cognizance thereof. It being obvious, therefore, that the administrative investigation against appellees has not been finally disposed of, the proper remedy is not what they pray for in their complaint but to prosecute their appeal.

In view of the foregoing, the decision appealed from is modified in the sense that appellants and/or their successors in office are hereby ordered to transmit, within ten days from the finality of this decision, the record of the administrative investigation conducted by the municipal council of Cordova, through its investigating committee to the Commissioner of Civil Service, for the proper disposition of the appeal interposed by appellees against the decision dismissing them from the service.

Modified as above indicated, the appealed decision is affirmed in all other respects. With costs.

Bengzon, Acting C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, and Paredes, JJ., concur.

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