

**FRANCISCO CRISOLOGO, PETITIONER AND APPELLANT, VS.
VICENTE S. DEL ROSARIO, AS FORMER MAYOR OF CEBU CITY,
SERGIO OSMEÑA, JR., AS INCUMBENT CITY MAYOR, FELIPE B.
PAREJA, AS CITY T...**

G.R. No. 12909. August 24, 1960

Ponente: PADILLA, J.

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PADILLA, J.:

This is a pauper's appeal from a judgment rendered by the Court of First Instance of Cebu dismissing the appellant's petition for "prohibition and mandamus with damages."

On 2 July 1946 the appellant was appointed patrolman in the Cebu City Police Department. On 4 December 1948 he took the civil service examination for patrolman of chartered cities and passed it with a rating of 78.08% (Exhibit B). On 16 October 1953 the appellant's services were terminated due to the abolition of his salary item in the appropriation of the City of Cebu for the fiscal year 1953-1954. In view thereof, the City Auditor declined to pass in audit and the City Treasurer refused to pay the appellant his salary. On 2 January 1954 he wrote to the Mayor of the City of Cebu requesting that he be reinstated to his position as patrolman (Exhibit A). On 11 February 1954 the Mayor reinstated him to the service (Exhibit B) and on 13 February 1954 resumed the performance of his duties as patrolman. On 26 April 1954 Rufino Abayan brought an action for quo warranto and mandamus against the Mayor and the appellant in the Court of First Instance of Cebu questioning the legality of his removal from the position of patrolman and the appointment of the appellant in his place and stead (case No. R-3508). On 21 February 1955 the Court rendered judgment holding that the appellant's appointment to the position of Abayan was illegal and ordering that the latter be reinstated to his position. On 17 March 1955 the Mayor complied with the judgment of the Court and terminated the services of the appellant. The appellant sought reinstatement to his position. On 29 December 1955 his attorney wrote to the Mayor requesting that he be reinstated to his former position whose salary item was abolished in the appropriation for the fiscal year 1953-1954 (Exhibit C). On 10 January 1956 he filed this petition for "prohibition and mandamus with damages" in the Court of First Instance of Cebu.

The appellant assails the legality and validity of the abolition of his salary item as patrolman in the Cebu City Police Department in the appropriation for the fiscal year 1953-1954 and seeks reinstatement to his position. He has no cause of action because on 11 February 1954 he was reinstated to his position (Exhibit 6) and on 13 February 1954 resumed the performance of his duties. However, his right to the office was contested by Rufino Abayan in case No. R-3508 of the Court of First Instance of Cebu, which held that his appointment was illegal and ordered the reinstatement of Abayan. After the decision had become final and executory, the Mayor complied with the judgment of the Court. Since the appellant did not appeal from that judgment, he is now barred from seeking reinstatement in these proceedings.

The judgment appealed from is affirmed, without pronouncement as to costs.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur.

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