

MANUEL G. TORRES, PETITIONER AND APPELLANT, VS. THE MUNICIPAL COUNCIL OF THE MUNICIPALITY OF MALALAG, DAVAO, ET AL., RESPONDENTS AND APPELLEES.*G.R. No. 13225. November 28, 1959*

Ponente: MONTEMAYOR, J.

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Manuel G. Torres is appealing from the decision of the Court of First Instance of Davao (Branch II) in Special Civil Case No. 101, dismissing his petition for mandamus, seeking his reinstatement as patrolman, on the ground that the Municipal Ordinance No. 33 of the Municipality of Malalag, Davao, creating the position to which he had been appointed, was invalid for lack of the necessary approval of the Secretary of Finance.

The facts in the case are not disputed. On September 15, 1955, the Municipal Council of Malalag enacted General Appropriation Ordinance No. 33 for the fiscal year 1955-1956, and created six additional positions for patrolman in the police force, at the same time appropriating the sum of P22440.00 for the entire police force, including the six additional positions for patrolman, as against the amount of P14,760.00 for said police force for the preceding fiscal year. The ordinance was sent directly to the Department of Finance, but on November 19, 1955, the department referred the same to the Provincial Treasurer of Davao, who in turn referred it to the Municipal Treasurer of Malalag, requesting that a budget analysis and plantilla of personnel be submitted. On February 21, 1956, the Davao Provincial Treasurer returned the Ordinance to the Secretary of Finance, recommending that the creation of six additional positions for patrolman be held in abeyance until the municipality could pay the Provincial Government its obligation amounting to P6,892.20.

In the meantime, on November 15, 1955, appellant Torres, a patrolman civil service eligible; was appointed by Mayor Lanzar to one of the six additional positions created by Ordinance No. 33. There is no evidence showing that said appointment was made with the consent of the Municipal Council, as required by Section 2159 of the Revised Administrative Code, as amended, which reads thus:

"Appointments to all non-elective positions in the municipal service shall be made by the municipal mayor by and with the consent of a majority of all the members of the municipal council except that of the municipal secretary which shall be made exclusively by the mayor. This requirement shall not however apply to the employment of laborers engaged for the performance of authorized works, nor to local employees or laborers whose duties are connected with health work and who shall be appointed by the Chief local health officer upon recommendation of the mayor." (Italics supplied)

On January 9, 1956, upon the advent of the new local administration, the new Municipal Council passed Resolution No. 13, abolishing the six positions of patrolman aforementioned, including the one then already occupied by Torres, the reason given for the abolition being that Appropriation Ordinance No. 33 had not been approved by the Secretary of Finance and also because there was a letter by the Provincial Treasurer's Office, advising the Municipal Council to abolish said six positions because the municipality of Malalag had a standing

obligation of P7,029.00 as of that date.

On January 14, 1956, the new Mayor issued an official order implementing Resolution No. 13, declaring appellant Torres one of those separated from the service, effective on the close of office hours on January 15, 1956. Torres went to the Mayor, requesting that he be retained in the service, but the Mayor told him that he could not do anything on the matter. Torres next wrote to the PCAC about his alleged illegal dismissal, and although the PCAC sent a representative to Davao to look into the matter, no action was taken on his complaint.

On June 31, 1956, the same Municipal Council that passed Resolution No. 13 abolishing¹ the six positions of patrolman, passed Resolution No. 76, increasing the police force of Malalag by five (one lieutenant, two corporals, and two patrolmen), the reason given being that "the Municipality of Malalag is now capable to pay the salaries of additional positions in the police force as well as other positions, after paying the standing obligation of the Municipality to the provincial government." Upon the creation of these five additional positions in the police force, Torres again went to the Mayor, asking for his reinstatement, but his request was denied. So, on July 24, 1956, Torres initiated the present case for mandamus. After hearing, the trial court dismissed the petition, holding in effect that the position to which appellant Torres had been appointed did not legally exist, nor the amount appropriated for it, for the reason that Appropriation Ordinance No. 33, Series of 1955, had never been approved by the Secretary of Finance.

To us, the important and decisive question involved is whether or not Appropriation Ordinance No. 33, Series of 1955, of the Municipal Council of Malalag was valid and effective at the time that petitioner Torres was appointed to one of the six additional positions for patrolman created by said ordinance. After a careful study of this legal point, we agree with the trial court, presided by Judge Amador E. Gomez,, who incidentally, rendered an exhaustive and well prepared decision, that said Appropriation Ordinance No. 33 required the approval of the Secretary of Finance. Section 2296 of the Revised Administrative Code as amended by Republic Act No. 1062, in part reads as follows:

"SEC. 2296. Appropriation Ordinance.—Upon receipt of the budget, the municipal council shall, on the basis thereof, enact the general appropriation ordinance, including therein all statutory and contractual obligations of the municipality and upon enactment by the council and approved by the mayor, the ordinance shall, on the date therein fixed for its effectivity and subject to appeal to the provincial board as hereinafter provided, be in full force and effect: Provided however, that if the aggregate amount so appropriated exceeds the said estimated receipts, then the ordinance shall be effective only when approved by the Secretary of Finance. * *

*" (Italics supplied).

It is true that under the legal provisions above-reproduced, the approval of the Secretary of Finance is required if the aggregate amount appropriated exceeds the estimated receipts. However, it is in our opinion also clear that the inclusion in the said appropriation ordinance of all statutory and contractual obligations of the municipality is mandatory, otherwise, the non-inclusion of said statutory and contractual obligations and provisions for their payment might result in an unbalanced budget, namely, that the municipality would be appropriating and spending more money than it has or it will have during the fiscal year, the very case or situation included in the proviso, namely, the aggregate amount appropriated exceeding the estimated receipts, which require the approval of the Secretary of Finance for the effectivity of the appropriation ordinance. As the trial court wisely observed, failure to state in an appropriation ordinance the statutory and contractual obligations of the municipality and appropriation or provision for their payment would "violate and ignore the essence of all appropriation measures, which is, that they must provide not only for the contemplated expenditures but also for the payment of outstanding obligations." There is a similar provision of law regarding provincial budgets, contained in Section 2120 of the Revised Administrative Code, as amended by Republic Act No. 1063. In the instructions of the

Provincial Treasurer to all Municipal Treasurers in the Province of Davao, as contained in his Office Circular No. 517, dated April 12, 1956, regarding the effectivity of appropriation ordinances, the following provisions appear:

"Under the provisions of Republic Acts Nos. 1063 and 1062, provincial and municipal budgets shall be in full force and effect on the date therein mixed for their effectivity by the provincial board and municipal council respectively, provided that:

(1) Full provisions have been made for all statutory and/or current contractual obligations;

(2) The aggregate amount appropriated does not exceed the receipts estimated by the Treasurer; Therefore, if any or both of these conditions are met, the budget shall riot take effect unless approved by the Department of Finance in the manner prescribed by law," It is true that said office circular, being dated April 12, 1956, was subsequent to the approval by the Municipal Council of Appropriation Ordinance No. 33, but we find that said Office Circular No. 517 was based on and was copied verbatim from Provincial Circular No. 10, dated July 81, 1954, of the Department of Finance, which reads as follows:

* * * * *

"Effectivity of Budgets

"Under the provisions of Republic Acts Nos. 1063 and 1062, provincial and municipal budgets shall be in full force and effect 'on the date therein-fixed for their effectivity by the provincial board and municipal council, respectively provided that:

(1) Full provisions have been made for all statutory and or current contractual obligations; and

(2) The aggregate amount appropriated does not exceed the receipts estimated by the treasurer.

"Therefore, if any or both of these two conditions are not met, the budget shall not take effect unless approved by the Department of Finance in the manner prescribed by law."

The above-reproduced circular of the Department of Finance of July 31, 1954 certainly was binding on the effectivity of municipal appropriation ordinances passed by municipal councils, particularly, Appropriation Ordinance No. 33; which was passed in 1955. It will be observed from this circular No. 10 that the approval of the Department of Finance is required not only when the aggregate; amount appropriated exceeds the estimated receipts' but also when there is failure to provide for the payment of all statutory and current contractual obligations of the municipality. This circular of the Department of Finance may be considered as a Contemporaneous interpretation of Section 2296 of the Revised Administrative Code, as amended, by the Department concerned, and constitutes persuasive authority to which we agree. We believe that when a municipality has standing obligations, statutory or contractual, it should state the same in its appropriation ordinance and provide for their payment, and if the municipality concerned fails to do so, it is reasonable that the Department of Finance take a hand in the matter and make suggestions or impose conditions for the payment or liquidation of said obligation before the appropriation ordinance becomes effective, which effectivity depends on the approval by the Department of Finance.

Having arrived at this conclusion, we deem it unnecessary to determine the effect of Resolution No. 13 of January 9, 1956, abolishing the six positions of patrolman, including the one then occupied by petitioner Torres, for the reason that if the appropriation ordinance creating said additional positions did not take effect because it was never approved by the Secretary of Finance, and consequently, said six additional positions did not legally exist, then there was nothing to abolish.

In conclusion, we hold that the position to which petitioner Torres was appointed as patrolman did not exist at the

time of his appointment on November 15, 1955. Consequently, there was no position to which he could be reinstated. Furthermore, as already stated, petitioner failed to prove that he was legally appointed with the consent of the municipal council, which consent is necessary for a valid appointment by the Mayor. In a case of mandamus, the petitioner should establish a clear right, not one based on a mere presumption of the law that in the absence of evidence to the contrary, his appointment was consented to by the municipal council. The copy of his appointment, Exhibit "B", shows neither approval of the municipal council nor that of the Commissioner of Civil Service.

However, considering the circumstances surrounding the present case, we cannot help but sympathize with the petitioner. He is a civil service eligible, was appointed to a position which he thought existed, accepted the appointment and occupied the position. Legally, there was no such position, and therefore, there could have been no valid appointment. However, the Municipal Council of Malalag later created five positions in its police force. Why petitioner, considering his civil service eligibility was not appointed to one of said positions, even as patrolman, at least to make amends for the error of the municipal council and the Mayor and for the trouble caused to the petitioner, is not explained. It might be a good idea and an act of simple justice if the Mayor or the council could appoint petitioner to one of said five positions in the police force if not yet filled, or else accord him preference in appointment to the next vacancy. But this is a mere idea or suggestion, not an order.

In view of the foregoing, the decision appealed from is hereby affirmed.

No costs. We deem it unnecessary to discuss and determine the other questions raised in the appeal.

Paras, C, J., Bengzon, Padilla, Bautista Angela, Labrador, Endencia, Barrera, and Gutierrez David, JJ., concur.

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