

BEOFNATO ATAY AND EUSEBIO YAMUTA, PETITIONERS AND APPELLANTS, VS. DIEGO H. TY DELING, ET AL., RESPONDENTS AND APPELLEES.

G.R. No. 14580. April 30, 1960

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal by petitioners from an order of the Court of First Instance of Misamis Occidental, Hon. Patricio C. Ceniza, presiding, dismissing their "petition for mandamus with damages" in Civil Case No. 2053, entitled Beofnato Atay and Eusebio Yamuta, petitioners vs. Diego H. Ty Deling, et al., respondents.

The petition filed on December 13, 1957, alleges that petitioner Beofnato Atay was appointed janitor guard in the Office of the Provincial Treasurer of Misamis Occidental effective May 16, 1956. A true copy of his appointment is attached to the petition as Annex "A". As to petitioner Eusebio Yamuta, it is alleged that he is a private provincial guard in the Office of the Provincial Warden of Misamis Occidental and was on July 1, 1957 extended promotional appointment as shown by Annex "B" to the petition. The other allegations of the petition are: That petitioner Beofnato Atay was directed on September 18, 1957, by the respondents Provincial Governor and Provincial Treasurer to cease his services effective September 16, 1957 (Annexes "C" and "D"); that petitioner Eusebio Yamuta was directed on July 15, 1957 by the Assistant Provincial Warden to terminate his services effective July 16, 1957 (Annex "E"), but that he failed to comprehend the order so that he continued reporting for duty until September 16, 1957, when he was advised by the respondent Provincial Warden that his services end as of that date; that the removal of petitioners was not for cause provided by law, and without any previous hearing or investigation, contrary to the provisions of the Constitution and the rules of the civil service; that from their appointment up to their removal petitioners have rendered faithful, satisfactory and continuous service, and that neither one of them has been under any administrative or criminal investigation or indictment; that since their removal, petitioners were not paid salaries by respondents; that the positions left by petitioners were and or will be filled by appointees of the respondent Provincial Governor; that they have no other plain, speedy and adequate remedy in law; that they were forced to hire counsel for P2,000 and they suffered exemplary damages in the amount of P10,000. Petitioners pray the court to declare their removal as illegal and void, to order respondents to reinstate petitioners to their former positions with right to receive back salaries from time of removal, to order respondents Provincial Treasurer and Provincial Auditor to approve and pay petitioners' salaries, and to order respondent Provincial Governor to pay attorney's fees and exemplary damages.

On December 20, 1957, respondents filed a motion to dismiss on the ground that the petition states no cause of action. Movants argued that the petition does not allege that petitioners are civil service eligibles and, therefore, pursuant to the decisions of the Supreme Court in the cases of Orais, et al. vs. Ribo, et al., 93 Phil., 985; 49 Off. Gaz. (12) 5386; Paña vs. City Mayor, 94 Phil., 103; 50 Off. Gaz. (1) 146; Jimenez vs. Francisco, 100 Phil., 1025; 53 Off. Gaz. No. 15, p. 4804; Mendez vs. Ganzon, 101 Phil., 48; 53 Off. Gaz., No. 20, p. 7285, the petitioners may be removed at will by the appointing power, without previous hearing. Petitioner opposed the motion,

claiming that they are embraced in the classified civil service and are, therefore, entitled to protection under Constitutional and statutory provisions and can not be removed at will without hearing and for cause. The court below on July 30, 1958, dismissed the petition, taking into consideration the decision of the Supreme Court in the case of Palagod, et al. vs. Torres, et al., 104 Phil., 72; 56 Off. Gaz. (2) 268. A motion for reconsideration of the order filed by petitioners was denied by the court, hence this appeal.

On this appeal the only question involved is whether the removal of petitioners was lawful or otherwise.

Petitioner Atay was appointed janitor-guard on May 16, 1956 and was removed, after notice, on September 16, 1957, while petitioner Yamutai was extended a promotional appointment on July 1, 1957 and was removed, also after notice, on September 16, 1957. As petitioners' appointment and removal took place before the new Civil Service Law, Republic Act No. 2260, took effect on June 19, 1959, this new law, not having retroactive effect, does not apply to petitioners. What govern are the provisions of the Revised Administrative Code.

Petitioners admit in their brief that they are not civil service eligibles and that their appointments are temporary. The positions of private provincial guard and janitor-guard belong to the classified civil service because they are not among those enumerated as belonging to the unclassified civil service in Section 671 of the Revised Administrative Code. Consequently, petitioners fall under Section 682 of the Revised Administrative Code, which provides:

"Temporary appointment without examination and certification by the Commissioner of Civil Service or his local representative shall not be made to a competitive position in any case, except when the public interests so require, and then only upon the prior authorization of the Commissioner of Civil Service; and any temporary appointment so authorized shall continue only for such period not exceeding three months as may be necessary to make appointment through certification of eligibles, and in no case shall extend beyond thirty days from receipt by the chief of the bureau or office of the Commissioner's certification of eligibles. * * *."

Under this provision of law, the appointment of the petitioners expires every three months, after which they could be replaced if the appointing power believes it convenient. Accordingly, the respondent Governor could remove them lawfully and replace them with others. Their removal is, therefore, lawful. As this Court has previously held, temporary employees, because of the nature of their appointment, can be removed and replaced by eligibles or non-eligibles after the expiration of their appointment, or after three month's service, in accordance with the aforequoted Section 682.

"Appointments made under the section are temporary, when the public interests so require and only upon the prior authorization. of the Commissioner of Civil Service, not to exceed three months and in no case shall extend beyond thirty days from receipt by the chief of the bureau or office of the Commissioner's certification of eligibles. The fact that the petitioners held 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. The temporary appointment of other non-eligibles to replace those whose term have expired is not prohibited. Hence the replacement of Teodulo T. Orais, David Lim, Domingo Saligo and Eulalio Bernadez, who are non-eligibles by Isidro Magallanes, Pedro Flores, Francisco Tayera and Narciso Ravago, who are eligibles, is in accordance with law. The replacement of non-eligibles by non-eligibles is lawful under and pursuant to section 682 of the Revised Administrative Code. (Orais, et al. vs. Ribo, et al., G. R. No. L- 4945, Oct. 28, 1943; see also Erauda, et al. vs. Del Rosario, et al., G. R. No. L-10552, April 28, 1958; Jiminez vs. Francisco, 53 Off. Gaz. No. 15, 4804; Paña vs. City Mayor, G. R. No. L-5700, Dec. 18, 1953; Ramos vs. Porras, 53 Off. Gaz. No. 20, p. 7285; Mendez vs. Ganzon, 53 Off. Gaz. No. 15, p. 4835; and Palagod vs. Torres, G. R. No. L- 10027, June 30, 1958.)

Even admitting, therefore, the truth and correctness of the allegations contained in the petition, still petitioners would not be entitled to the reliefs prayed for by them because, as shown above, their removal was in accordance with law.

Wherefore, the order of dismissal appealed from is affirmed, with costs against petitioners-appellants.

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

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