

MARIANO QUITQUIT, PETITIONER AND APPELLANT, VS. SALVADOR VILLACORTA, IN HIS CAPACITY AS CITY ENGINEER OF THE CITY OF DAGUPAN, RESPONDENT AND APPELLEE.

G.R. No. 15048. April 29, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

This is an appeal from decision of the Court of First Instance of Pangasinan dismissing appellant's petition for mandamus.

The facts are not disputed. Appellant Mariano Quitquit served as temporary checker-computer in the Office of the Auditor, Bureau of Public Works, Manila, from January 1, 1939 to December 8, 1941; as temporary computer in the Accounting Division of the same Bureau from December 23, 1948; and as temporary right-of-way agent in the Department of Public Works, Dagupan City, from January 3, 1949 to July 31, 1956.

On August 1, 1956, he was extended a promotional appointment to the same position, which corresponded to Item No. 29 of the Consolidated National Plantilla of Floating Personnel, Fiscal Year 1956-57. This last appointment was authorized by the Commissioner of Civil Service under Section 682 of the Revised Administrative Code [1] "to continue until replaced by an eligible but not beyond (30) days from receipt of certifications of eligibles." On July 1 1957, the City Engineer of Dagupan City, herein appellee, recommended appellant for promotion from a salary of P1,680.00 to P1,800.00 per annum, but the proposed appointment was not favorably acted upon by the higher authorities in view of the policy of "not allowing promotions to non-eligible employees who are occupying positions in the classified service." Subsequent to the disapproval of this last proposed appointment, appellee requested for the extension of appellant's appointment dated August 1, 1956 to be effective only from February 2, 1958 to May 2, 1958. The request was granted and the appointment was approved by the Commissioner of Civil Service under Section 682 of the Revised Administrative Code.

About a month before the expiry of appellant's extended appointment, appellee wrote him a letter in the following tenor:

"In view of the austerity program of the Government and due to temporary character of your appointment, the undersigned regrets to advise you that your services will no longer be needed effective May 2, 1958. However, as soon as there will be available projects with funds in which your services can be utilized to advantage, you will be duly notified."

In answer to the above quoted letter, appellant replied as follows:

"I am in receipt of your letter dated March 27, 1968, in which you have stated, among other things, that my services are no longer needed effective May 2, 1958.

With due respect to your opinion, I regret to differ with your opinion on this matter for the reason that my position and employment is guaranteed by Civil Service Rules and Regulations and that I cannot be separated

from the government service without cause. I wish to take exception to the contents of your letter it being a clear case of persecution and conviction without due process and will be ready to take up the matter to proper authorities if necessary."

Not having been allowed to continue working after May 2, 1958, appellant filed the present petition for mandamus against the City Engineer of Dagupan City for allegedly excluding him without just cause from the use and enjoyment of his office. He claims that under and by virtue of Republic Act No. 186,[2] he is a civil service eligible with permanent status." The respondent, herein appellee on the other hand, maintains the contrary and argues that appellant's appointment being of a temporary character, made pursuant to Sec. 682 of the Revised Administrative Code, he may be removed at the pleasure of the appointing power. Appellee also claims that appellant is estopped from asserting a right to remain and occupy his position beyond May 2, 1958 because he accepted the appointment and enjoyed the right and privileges thereunder knowing that the appointment was temporary and of limited duration; and that appellant has adequate administrative remedy by appealing from appellee's actuations to the Secretary of Public Works or to the President.

After the submission of the case on the pleadings and a short stipulation of facts, the trial court rendered a decision dismissing the petition for lack of merit. Hence, this appeal.

The decision appealed from must stand.

The appointment of appellant being temporary in character, the same can be terminated at pleasure by the appointing power.

"* * * temporary appointment is similar to one made in an acting capacity, the essence of which lies in its temporary character and its terminability at pleasure by the appointing power. And one who bears such an appointment cannot complain if it is terminated at a moment's notice.

"Thus, in Villanosa, et al. vs. Alera, et al., G. R. No. L—10586, May 29, 1957, we held:

"* * * Since it is an admitted fact that the nature of the appointments extended to petitioners was merely temporary, the same cannot acquire the character of permanent positions. What characterizes an appointment is not the nature of the item filled but the nature of the appointment extended. If such "were not the case, then there "would never be temporary appointments for permanent positions. This is absurd. The appointments being temporary, the same have the character of "acting appointments" the essence of which is that they are temporary in nature." (Cuadra vs. Cordova, 103 Phil., 391; 51 Off. Gaz. [35] 8063; see also Reyes, et al. vs. Dones, et al., 103 Phil., 884; 56 Off. Gaz. [3] 509; University of the Philippines vs. CIR, et al., 104 Phil., 086; 66 Off. Gaz. [27] 5012.)

Even assuming, therefore, that appellant had become a civil service eligible by virtue of Republic Act No. 186 because he had continuously served the government for more than ten years, he cannot now claim such permanency in the civil service as would entitle him to protection under the security of tenure guaranteed by the Constitution. In the case of Roque, et al. vs. President of the Senate, etc. (G. R. No. L-10949, July 25, 1958), which was a petition for reinstatement, the petitioners originally held office as permanent employees but accepted temporary appointment and actually entered the service in such temporary capacity. Holding that by repeatedly accepting employment of temporary character in the same office said petitioners have acquiesced or assented thereto, this Court ruled that they were barred from questioning the legality of their dismissal or lay-off. (See also Pinullar vs. President of the Senate, 104 Phil., 131.) And in Tolentino, et al. vs. Torres, etc. (96 Phil., 522; 51 Off. Gaz, 753), which was also an action for reinstatement, this Court upheld the termination of petitioner's employment the same being temporary notwithstanding the latter's civil service eligibility. (See also Ramon vs. Porras, et al., CA decision, 53 Off. Gaz. 7285.)

In view of the foregoing, the decision appealed from is hereby affirmed, with cost against appellant.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and Barrera, JJ., concur.
Padilla, J., took no part.

[1] The pertinent portion of this section 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 * * *."

[2] Sec. 2, of Rep. Act No. 186, which took effect on June 21, 1947, provides that "Officials or employees holding civil service positions in any branch of the government service other than that provided for in the preceding section (referring to teachers) continuously for at least ten successive years, shall be considered civil service eligibles with permanent status under the following classification. * * *."

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