

ENRIQUE FERRER, PETITIONER AND APPELLANT, VS. HON. E. L. DE LEON, ETC., RESPONDENT AND APPELLEE.

G.R. No. 15076. August 29, 1960

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

An appeal by petitioner from an adverse decision of the Court of First Instance of Rizal.

The facts are set forth in said decision, from which we quote:

"The petitioner instituted this quo warranto proceedings to test the legality of his suspension as patrolman of the municipality of Parañaque, province of Rizal, and to secure his reinstatement to the position and recover his salaries from March 15, 1958, up to the time he is actually reinstated at the rate of P120.00 a month, plus damages.

"It appears that the petitioner was appointed patrolman of the municipality of Parañaque on January 7, 1956, On January 7, 1957, he was reappointed to the same position (Exhibit 2). Both appointments were 'probational' in character.

"On March 15, 1958, petitioner was charged with the crime of qualified trespass to dwelling before the Justice of the Peace Court of Parañaque, Rizal, which case was docketed as Criminal Case No. 5692. The criminal complaint was amended by the Chief of Police sometime on June 18, 1958 (Exhibit 3).

On March 19, 1958, petitioner was charged with the crime of acts of lasciviousness by one Ligaya Catipon before the Justice of the Peace Court of Parañaque, Rizal. The complaint was docketed as Criminal Case No. 5699, of said court (Exhibit 4). Again, on March 26, 1958, the petitioner was 'charged by one Irineo Santos before the office of the Provincial Fiscal of Rizal, Pasay City Branch, of the crime of qualified trespass to dwelling (Investigation Slip No. 562-P), which case is now undergoing preliminary investigation in said office. As a result of the filing of Criminal Case No. 5692 for qualified trespass to dwelling against the petitioner by the Chief of Police of Parañaque, Rizal, the respondent suspended the petitioner from his office effective March 15, 1958 (Annex A of the amended petition).

"On May 29, 1958, counsel for the petitioner sent a letter to the respondent which reads in part:

'I have the honor to bring to your kind attention the matter of the case of Patrolman Enrique Ferrer of the Parañaque Police Department whom you suspended by virtue of the pendency of criminal cases filed against him before the Justice of the Peace Court of Parañaque, Rizal.

'Please be advised that more than sixty days have since elapsed from the date of his suspension and therefore entitled to reinstatement pursuant to Section 3, of Republic Act No. 557. * * *' (Annex B of the amended petition).

"On June 16, 1958, respondent, in answer to the aforesaid letter of petitioner's counsel, said:

'In connection with your letter of May 29, 1958, I have the honor to inform you that in my honest opinion,

Section 4, of Republic Act No. 557, is the one applicable in the case at bar, for the simple reason that criminal, cases were filed in the court and which cases are still pending' (Annex C of the amended petition).

"As the respondent refused to reinstate petitioner and pay his back salaries during the period of his suspension, petitioner filed the instant case on August 11, 1958.

"On August 21, 1958, the respondent sent a letter to the petitioner of the following tenor:

'You are hereby notified that your services as temporary patrolman of this municipality are no longer needed and you are hereby considered separated from the service effective March 15, 1958, date of your suspension (Exhibit 1; Annex 'E', Amended Petition)."

Upon the foregoing facts, the Court of First Instance of Rizal rendered the aforementioned decision dismissing appellant's petition, without costs.

Petitioner now alleges that:

"1. The lower court erred in holding that petitioner's suspension was legal.

"2. The lower court likewise erred in holding that petitioner-appellant's dismissal was legal."

It is well settled that one holding an office in a temporary capacity may be ousted therefrom at any time with or without cause (Austria vs. Amante, 79 Phil., 780; Summers vs. Ozaeta, 81 Phil., 754; 46 Off. Gaz. 416; Cuadra vs. Cordova, 103 Phil, 391; 54 Off. Gaz. [35] 8063; Villanosa, et al., vs. Alera, et al., L-10586 [May 29, 1957]; Mendoza m Ganzon, 101 Phil., 48; 53 Off. Gaz., [15] 4835; Orais vs. Ribo, 93 Phil., 985; 49 Off, Gaz. 5386; Erauda vs. Del Rosario, 103 Phil., 489; 54 Off. Gaz., [24] 6253; Pineda vs. Velez, L-8859 [October 31, 1956]; Amora vs. Bibera, 99 Phil., 1; 52 Off. Gaz., [6] 3015; Cayabyab vs. Cayabyab, 101 Phil., 681; 54 Off. Gaz., 1800; Paña vs. Medina, 94 Phil., 103; 50 Off. Gaz., 146). In the case at bar, it is not disputed that petitioner-appellant had merely a probational or temporary appointment. Hence, he could be removed at any time, in the discretion of the appointing power. What is more, he being non-eligible, apart from having a probational or temporary appointment, the same shall—pursuant to section 632 of the Revised Administrative Code—"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." In other words, he should have been dropped from the service since April 7, 1957, or three (3) months from the date of his last appointment. Although he passed the civil service examinations in October, 1958, this took place after his separation from the service, and hence, cannot affect the legality thereof.

Relying upon Section 4 of Republic Act No. 557, reading:

"When a member of the provincial guards, city police or municipal police is accused in court of any felony or violation of law by the provincial fiscal or city fiscal, as the case may be, the provincial governor, the city mayor or the municipal mayor shall immediately suspend the accused from office pending the final decision of the case by the court and, in case of acquittal, the accused shall be entitled to payment of the entire salary he failed to receive during his suspension."

appellant maintains that his suspension was void, because the criminal charges against him were preferred by the chief of police of Parañaque, not the provincial fiscal. There is no merit in this pretense, for said Section 4 refers to cases in which the local executive is bound to suspend members of the police force. It does not bar the exercise by said official of the discretion vested in him by Section 3 of said Republic Act No. 557, which provides:

"When charges are filed against a member of the provincial guards, city police or municipal police under this

Act, the provincial governor, city mayor or municipal mayor, as the case may be, may suspend the accused, and said suspension to be not longer than sixty days. If during the period of sixty days, the case shall not have been decided finally, the accused, if he is suspended, shall ipso facto be reinstated in office Without prejudice to the continuation of the case until its final decision, unless the delay in the disposition of the case is due to the fault, negligence, or petition of the accused, in which case the period of the delay shall not be counted in computing the period of suspension herein, provided."

It is next urged that tile suspension ordered under this provision cannot be longer than sixty (60) days, and that petitioner should have been reinstated, therefore, since May 16, 1958. If, as already adverted to, being temporary and non-eligible, petitioner could have been removed at any time, and should have been removed since April 7, 1957, it stands to reason that he could, also, be similarly suspended, especially under the facts obtaining in the present case. Indeed, having been accused of offenses involving abuse of authority, it was wise to divest him of the power to victimize the people whom he was bound to protect. Besides, it was necessary to strip him, at least, for the time being, of the authority to intimidate the witnesses against him.

Wherefore, the decision appealed from is hereby affirmed, with costs against petitioner-appellant. It is so ordered.

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

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