

JESUS T. GESOLGON, ET AL., PETITIONERS AND APPELLEES, VS. ARSENIO H. LACSON, ETC. ET AL., RESPONDENTS AND APPELLANTS.

G.R. No. 16507. May 31, 1961

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal by respondents from the decision of the Court of First Instance of Manila, dated December 8, 1959, the dispositive portion of which reads—

"For the foregoing considerations, the Court hereby renders judgment, commanding the respondents to provide for the payment of back salary increases to each of herein petitioners from February 1, 1953 up to October 31, 1955, and from November 1, 1955 up to the present, in accordance with the standardization of pay provided for in the various budget ordinances."

The facts, embodied in the Stipulation of Facts entered into by the parties, are substantially as follows:

Petitioners are members of the Detective Bureau of the Manila Police Department, while respondents Lacson, Sarmiento and Erestrain are, respectively, the incumbent Mayor, Treasurer and Auditor for the City of Manila, and are sued in their official capacity. On different dates in July, 1952, petitioners were dismissed from the service by respondent mayor. Upon suits separately filed questioning their dismissal, the Court of First Instance of Manila ordered petitioners' reinstatement, who were accordingly reinstated on September 14, 1955, except petitioner Rosendo Meneses, who was reinstated on March 14, 1956. Thereafter, petitioners were paid their salaries for the period of their separation at the same rate that they were receiving prior to dismissal.

Meanwhile, on October 31, 1952, during petitioners' separation, respondent mayor approved Ordinance No. 3538, the budget for the City of Manila for the fiscal year 1952-1953, where provisions were made for salary increases to all members of the Manila Police Department. Pursuant thereto, promotional appointments, effective February 1, 1953, were extended to a majority of the MPD police force.

On September 10, 1955, respondent mayor approved Ordinance No. 3667, the City of Manila budget for the fiscal year 1955-1956, which provided further increases in the salaries of the members of the Manila Police Department, pursuant to which, promotional appointments were again extended to some members of the Manila Police Department. On March 14, 1958 and on July 9, 1958, the City budgets covering the fiscal years 1957-1958 and 1958-1959 were also approved.

Petitioners have not enjoyed the full benefits of these ordinances, the majority of them continuing to receive the same rate they had prior to their dismissal, except five of them who have since then been granted increases, but still short of those provided in Ordinance No. 3667 for the fiscal year 1955-1956 (Exhibit "M" "T"). On August 11, 1958, petitioners formally demanded from respondent mayor the payment to them of the salary increases under the aforesaid ordinances, but this demand was denied by a letter dated August 29, 1958 (Exhibits "S" & "T").

In issuing the writ of mandamus prayed for below, the lower court acted on the belief that the desired increases in petitioner's salaries were not promotions, but merely standardization or adjustment in pay; that consequently, the issuance in favor of petitioners of promotional increases under the budget ordinances aforesaid was a purely ministerial act on the part of the respondent mayor and, assuming that he enjoyed discretion on the matter, that respondent mayor committed a grave abuse of discretion in refusing to extend promotional appointments to petitioners. The contrary propositions are maintained in this appeal.

We are aware of no law, rule or regulation, and are pointed to none, which grants to a civil service employee the right to automatically enjoy the salary to which his item has been increased while occupying the same. That an increase in the salary attached to a position is considered a promotion, has to be conceded. Section 256 of the Revised Administrative Code provides:

"Where a new position is created or the salary of an existing position is increased, appointment to such new position or promotion to the increased salary shall not be effective, unless expressly so provided, prior to the enactment of the law creating the new position or authorizing the higher salary; and aside from exceptional cases approved as such by the proper Head of Department, an appointment or promotion shall not be effective as of a date prior to that upon which the appointment or promotion is actually made." (emphasis supplied)

Note that while the afore-quoted provision speaks of the time at which an appointment shall be deemed effective, it is nevertheless apposite as to the meaning and scope of promotion, which, under said provision, appears to include increases in salary. Also, promotions in the service, as laid down by the Office of the President in its Circular dated March 5, 1954 (see *Administrative Investigations* by Pangramuyen & Daga, Appendix 37, p. 259), are limited to "not more than two grades for promotions in the same position or from the position to another without any increase in duties and responsibilities." (emphasis supplied). Even without a change in position a salary increase is still a promotion. Where the law does not distinguish, the courts should not.

But not only that. Executive Order No. 94, series of 1947, issued pursuant to Republic Act No. 51, entitled "An Act Authorizing the President of the Philippines to Reorganize Within 1 Year the Different Executive Departments, Bureaus, Offices, Agencies and other Instrumentalities of the Government, including the Corporations owned or controlled by it", among others, classifies positions into "Chiefs of Divisions, Chief of Sections, Supervisory Positions & Positions of Equivalent Rank" on one hand, and "Subordinate Clerical or Equivalent Positions" on the other. The first classification provides for fifteen (15) grades with the corresponding salary rates ranging from P2,400.00 to P6,000.00 per annum; the second, divided into eight (8) grades, with salary rates ranging from P1,440 to P2,280 per annum. The desired increases in petitioners' salaries definitely would involve ascent into the higher salary grades as classified in the above Executive Order. Authorities have held that "each salary group in the same classification of positions constitutes a separate group of positions for the purpose of promotion." (67 C.J.S., p. 220).

As a matter of established practice in the government, enjoyment of an increased salary attached to an item has not been regarded as an absolute right or an automatic acquisition.

"We take judicial notice of the practice being followed in the Philippine Civil Service that an increase in the salary appropriated for a position does not actually accrue to the holder of the position until and unless said holder (of the position) has been given the increased salary. * * * An increase in an appropriation or salary should not automatically entitle the holder of the position to such increased salary; this increase may have possibly been effected because of the greater importance or responsibility attached or to be attached to the recreated position. But the fact that an employee holds that position does not necessarily imply that he is fully entitled or qualified to receive the increased salary provided for." (*Board of Directors of Philippine Charity Sweepstakes Office vs. Alandy, et al.*, 110 Phil., 1062; 60 Off. Gaz. 7200 (italics supplied).)

In official indorsements issued by the Office of the President (Exhibits "1" & "2"), pertaining to appointments of policemen in the City of Manila, the same view is maintained:

"* * * this Office is of the view that the increase of the salary attached to an item occupied by an employee, whether made singly or in mass as in so-called salary readjustments, does not automatically entitle the employee to receive the full item. It is usual in the public service that an employee may be appointed to receive a salary lower than that provided for in the item to be occupied by him; it is only when the employee is promoted to the higher salary rank that he may enjoy his full item. This is done only when the employee is deserving. * * *"

Interpretations of administrative officials in charge of enforcing a law are entitled to great weight and consideration (In Re Allen, 2 Phil., 630; Gov't of P.I. vs. Mun. of Binalonan, 32 Phil., 634; Guano vs. Fernandez, 55 Phil., 814, and others). Far from being automatic, enjoyment of an increased salary in an item appears conditioned on a promotional appointment, pursuant to law and as laid down by practice. And, corollarilly, it has been held that:

"An appointment to office is intrinsically an executive act, involving the exercise of judgment and discretion.

"The power to appoint to office carries with it discretion the exercise of the power and a valid appointment requires a choice by the appointing power of the person appointed. * * *. The right to an appointive office rests on a due and proper appointment. * * *" (67 C.J.S. 157; 158-59).

But discretion is not a blanket authority for its abusive exercise. Except as to petitioners Eusebio Campillo and Jose Gonzales, we agree with the lower court that respondent mayor committed a grave abuse of discretion in refusing to issue promotional appointments to petitioners. As of March, 1959, their average length of service spanned more than 22 years, individually ranging from 12 to 34 years (Exhibit "AA"). Of petitioners, seven (7) received the same rate that they had prior to their illegal dismissal, and while Ruben del Rosario, Eduardo Advincula and Gorgonio Mariano now receive more than what they did prior to dismissal, it is still short of that provided in the present salary scale (Exhibit "M"). And yet, almost all of petitioner's efficiency ratings have consistently been well above 85% from the semester ending December, 1955 to December, 1958, except as to Campillo and Gonzales, who appear to have obtained ratings much below 85% in many semesters covered by the period. As to the rest, their ratings, as observed, have been well above 85%, even during the semester ending June, 1952, prior to their illegal separation from the service (the rating of Meneses for the semester preceding his illegal dismissal was not available, but this is not essential because his record upon reinstatement shows ratings above 85%).

No evidence of any pending administrative or criminal charges exists against almost all of petitioners, at the time the ordinances providing for increased salaries took effect and up to the present. Mariano and Gesolgon appear, to have had pending administrative cases on the effectivity of said ordinances, but these were dismissed on November 14, 1955 and October 3, 1956, respectively. Saldaña was charged only on October 28, 1958, and even this stood as dismissed as of March 24, 1959 (Exhibit "FF"). Clearly, these dismissed charges could not have been valid impediments to promotion.

In fact, however, it is undisputed, and the records abundantly show, that promotional appointments were extended to others who either had a pending case (Exhibit "EE"; "CC") or against whom there were records of administrative charges subsequently dropped (Exhibits "EE"; "CC"; "CC-3"; "CC-4"; "CC-5"; "CC-6"; "CC-7"; "CC-9"; "CC-12"; "CC-13"; "CC-15"). All of which show that even respondent mayor did not consider dismissed charges an impediment to promotion. Petitioners' previous dismissal, which by court decisions were all held to have been illegally effected, should not also bar their promotion. Moreover, promotions have also been given to at least two policemen. Who, along with petitioners, had been illegally dismissed but subsequently reinstated, and

who now receive the rates established in the present salary scale (Exhibits "E"; "Y"; "Z"; par. 15, Stipulation)

The circumstances under which petitioners have been refused promotional appointments show discrimination. Promotions in the civil service, while a discretionary function of the appointing power, must never be based on considerations alien to the fitness of the employee and his performance of his job as shown by records. Integrity in public service, as a goal yet to be achieved, demands that government employees must not become parasitic pawns of a whimsical bureaucracy. To tolerate these tendencies is to sanction further demoralization of the public service and to encourage practices that would undermine faith in popular government. At bar is a case where, to correct a gross abuse of discretion, a palpable excess of authority resulting in manifest injustice, mandamus will lie (see *Villanueva vs. Araneta, et al.*, 47 Phil., 836; *Tavera-Luna Inc. vs. Nable*, 67 Phil., 340; *Antiquiera vs. Baluyot, et al.*, 91 Phil., 213).

What clearly reveals the arbitrary and discriminatory nature of respondent Mayor's conduct is his refusal or failure to give any plausible reason for denying increased salaries to petitioners who are civil service personnel. Neither here nor in the court below has he attempted to justify his keeping their salaries at such a level that a lieutenant (Gesolgon) still receive the same pay that is now that of a sergeant. Such arbitrariness can not constitute legal discretion.

But while petitioners have shown themselves entitled to promotion (except Campillo and Gonzales whose ratings in many semesters fall below 85%), we see no reason for ordering the payment to them of back salaries. Section 256 of the Revised Administrative Code is explicit in laying down that appointments are not to take effect prior to the date of appointment, unless so provided by the Head of Department for exceptional reasons. Moreover, petitioners themselves aver that these appointments have yet to be passed upon and approved by the Office of the President thru proper channels. To order payment of back salaries is to impose on a co-equal branch of the government.

Wherefore, the appealed decision is set aside; and another is entered ordering the issuance of promotional appointments to herein petitioners (except Eusebio Campillo and Jose C. Gonzales), within the limits allowed by law, and the pertinent rules and regulations, effective from date of appointment; and, without delay, to forward these appointments to the proper authorities for approval pursuant to law. Without costs.

Bautista Angelo, Labrador, Barrera, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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