

PHILIPPINE LAND-AIR-SEA LABOR UNION (PLASLU), PETITIONER VS. COURT OF INDUSTRIAL RELATIONS AND CEBU PORTLAND CEMENT COMPANY, RESPONDENTS.

G. R. No. 17950. August 31, 1964

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

This is a petition for review by certiorari of an order of respondent Court (Judge Arsnnio I. Martinez,) dated 24 November 1959 and of the resolution of the said Court en banc denying petitioner's motion for reconsideration. Both order and resolution re incidents in CIU Case No. 241-V.

In that case, entitled Philippine Land-Air-Sea Labor Union (PLASLU) vs. Cebu Portland Cement Company, judgment was rendered on 27 April 1951 granting certain demands of the union. The portion of the judgment from which the present case arose reads as follows:

"Demand (e) that all employees and latxm-fs who havn worked with the company for a period of three (3) months be made permanet is hereby granted on condition that said employees and laborers were hired intentionally for permanent position. Employees and laborers hired for piece work or for a specified period of time shall not be included under this grant."

On 8 June 1953 a probational appointment was extended to Dr. Pantaleon Hermosisima as Medical Director of the Cebu Portland Cement Company, with compensation at the rate of P4,800.00 per annum. Dr. Hermosisima assumed office on 19 June 1953. For lack of civil service eligibility—the position being in the classified category—the appointment was authorized by the CommisHioner of Civil Service as temporary pursuant to section (i82 of the Revised Administrative Code, under which such an appointment shall continue only for a period iiot exceeding three months.

Thereafter, at the end of every three-month period Dr. Hermosisima's appointment was renewed except on 18 September 1954, in view of the return to duty of the permanent Medical Director, Dr. Miguel Enriquez. However, Dr. Hermosisiinn was appointed as "physician" for a specified period of three month?, with the same compensation as before. On 20 December 1954 he was re-appointed Acting Medical Director vice Dr. Miguel Enriquez, who had died in the meantime. Again his appointment was authorized as temporary, for a period of three months, by the Commissioner of Civil Service pursuant to section 682 of the Revised Administrative Code.

Upon the expiration of three months from 20 December 1954 Dr. Hermosisima's appointment was not renewed any- more, and in the budget and plantilla of the Cebu Portland Cement Company for the fiscal year 1955-56 the position of Medical Director thus left vacant was abolished.

On 10 March 1955 petitioning uniort filed a motion in case No. 241-V, alleging that Dr. Hermosishna had occupied the position of Medical Director for more than three months and hence should be considered as a permanent employee under the judgment of respondent; court dated 27 April 1951, particularly with respect to

demand (e), quoted above. Alleging further that as such permanent employee the doctor could not be dismissed except for cause and after due investigation, the petitioner prayed for his reinstatement and the payment of his back salaries from the date of his dismissal.

Respondent Court, acting en banc, affirmed the order of Judge Araenio I. Martinez denying the motion; and the matter is now before us for review on certiorari.

The judgment of respondent Court in the main case specifies three requirements in order that an employee of Respondent Company may be given a permanent status, namely: first, that the employee has worked with the company for a period of three (3) months; second, that said employee has been hired "intentionally for permanent position" and third, that he has not been hired for piece work or for a specified period.

In the case of Dr. Hermosisirna the first requirement has been satisfied: he worked with respondent company more than three months. But the second and third conditions have not been met. It cannot be said that he was hired "intentionally for permanent position," for there could not have been any such intention on the part of the appointing power, considering his lack of civil service eligibility. Every appointment extended to him was expressly made for a period of three months, because that was the time limit authorized by law. The Cebu Portland Cement Company, it may be observed, is a government-owned and controlled corporation, and is therefore governed by the Civil Service Law according to Section 21 of the Executive Order No. 399, series of 1950, otherwise known as the Uniform Charter for Government Corporations."

The fact that upon the expiration, on 20 March 1956, of the three-month period of Dr. Hermosisirna's last appointment the same was not renewed did not constitute dismissal. Although the position of Medical Director was itself permanent the appointee's incumbency was temporary and ceased automatically at the time designated (Cuadra vs. Cordova, G. R. No. L-11632, April 21, 1958).

It is contended that Dr. Hermosisirna was entitled to a permanent appointment, having acquired civil service eligibility under the provisions of Republic Act 1080, which became effective on 15 June 1954. Section 1 of said Act reads:

"The bar examinations and the examination given by the various boards of examiners of the Government are declared as Civil Service examinations, and shall, for purposes of appointment to positions in the classified service the duties of which involve knowledge of the respective profession, except positions requiring highly specialized knowledge not covered by the ordinary board examinations, be considered as equivalent to the first grade regular examination given by the bureau of civil service if the profession requires at least four years of study in college and the person has practiced his profession for at least two years, and as equivalent to the second grade regular examination if the profession requires less than four years of college study."

Section 3 of the same Act authorizes the Commissioner of Civil Service to promulgate rules and regulations for its implementation and pursuant to such authority the following regulation was promulgated:

"1. Applicants for eligibility under the provisions of Republic Act No. 1080 shall file with the Bureau of Civil Service a verified application in the form and manner to be prescribed by the Commissioner of Civil Service, showing among other things, that:

(a) The applicant has duly qualified in the bar or board examination, having the the date of examination and the general average obtained therein;

(b) Practiced his profession for at least two years; or in lieu of such practice that he has been employed in a position involving knowledge of his profession for at least two years following qualification in the bar or board examination. Reference in support of experience stated in the application may be submitted subject to verification." (Circular of the Bureau of Civil Service dated August 9, 1954)."

Dr. Hermosisima did not comply with the regulation just quoted. On this point respondent Court found as follows:

"... reference is made to Exh. 'D-1', which is an application purportedly accomplished by Dr. Hermosisima in accordance with said Republic Act for purposes of civil service eligibility. We have carefully scrutinized Exh. 'D-1' but there is nothing therein to show that the same was duly filed with the Commissioner of Civil Service for due accreditation. It is not even subscribed and sworn to by Dr. Hermosisima, a very important and essential requisite for the approval of the application. The omission of the oath in Exh. D-1 leads us to believe that if the said exhibit was really filed, as petitioner Hermosisima claims, the same was disapproved, taking into consideration the statement therein contained which states: '(THE APPLICATION WILL BE DISAPPROVED, IF OATH IS OMITTED)'. Hence, the testimony of Dr. Hermosisima cannot be taken on its face value that he is a civil service eligible by virtue of the provisions of Republic Act No. 1080 in view of his failure to present incontrovertible proof of his civil service eligibility.

"Petitioner also makes mention of a civil service card, Exh. 'D' in an attempt to show, likewise, Dr. Hermosisima's civil service eligibility. Again, the said exhibit does not show anything in favor of the claim of petitioner except what is stated therein, which we quote: "This certifies that being a registered Physician with certification No. 3488 dated April 23, 1931, and having paid the annual registration fee, Pantaleon G. Hermosisima is entitled to practice as a registered physician in the Philippines for the year 1955."

"Clearly, from the above quoted phraseology of Exh. 'D', this court cannot see any statement to the effect that Dr. Hermosisima is a civil service eligible by virtue of Republic Act No. 1080. The most that the court could gather from Exh. 'D' is that Dr. Hermosisima is a registered physician with Certificate No. 3188 dated April 28, 1931 and had paid the annual registration fee, and, consequently was entitled to practice as registered physician in the Philippines for the year 1955."

The foregoing is a factual finding which, being supported by substantial evidence, is binding upon this Court.

The judgment of respondent Court is affirmed, with costs.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes and Regala, JJ., concur.

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