

CEFERINO NOROMOR, PETITIONER AND APPELLEE, VS. THE MUNICIPALITY OF ORAS, ET AL., RESPONDENTS AND APPELLANTS.*G.R. No. 18637. February 28, 1963*

Ponente: BAUTISTA ANGELO, J.

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On August 14, 1950, Ceferino Noromor was appointed a member of the police force of Oras, Samar, with a salary of P540.00 per annum by Mayor Florentino P. Lomuntad, having assumed the position by taking the necessary oath on August 15, 1950. On December 11, 1950, Noromor was charged by the fiscal with frustrated murder in Criminal Case No.-1272 before the Court of First Instance of Samar as a result of which he was suspended from office on January 16, 1951. Because of his suspension the municipal treasurer stopped the payment of his salary from said date.

Having been found guilty of less serious physical injuries, Noromor appealed to the Court of Appeals where he was acquitted of the charge on July 16, 1954, the decision of the lower court having been reversed, with costs de oficio. Because of his acquittal the mayor of Oras reinstated him to his position on September 1, 1954 and immediately he took his oath of office. After his reinstatement, Noromor demanded payment of his salary during his suspension from January 16, 1951 to August 31, 1954 at P45.00 a month, or a total of P1,957.50, which demand was favorably endorsed by the mayor to the municipal treasurer. This official prepared the voucher for said amount but its payment could not be effected for lack of the necessary appropriation in the municipal budget. Hence, Noromor filed a petition for mandamus before the Court of First Instance of Samar against the new mayor of Oras and the members of the incumbent municipal board, including the municipal treasurer, praying that respondents be ordered to approve a supplemental budget appropriating the necessary amount to pay his entire salary during his suspension and to grant him such other relief as may be just and equitable in the premises.

Respondents, in their answer aver that petitioner was not reinstated but reappointed to his former position as policeman after his acquittal and that his claim for the payment of his salary during his suspension cannot be granted because he is a civil service non-eligible. They further aver that Republic Act No. 557 under which petitioner seeks to collect his salary during his suspension only applies to a policeman who is civil service eligible and so it cannot be invoked by petitioner.

After trial, the court a quo rendered decision ordering respondents to pay petitioner the amount of P1,957.50 and ordering further the municipal board to immediately convene in special session to appropriate said amount in order that the municipal treasurer may effect its payment to petitioner. No costs, however, were awarded to petitioner.

Respondents interposed the present appeal which was certified to us because it only involves questions of law.

Section 4 of Republic Act No. 557 which is invoked by petitioner in claiming the payment of his salary during his suspension provides:

"Sec. 4. 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."

It is evident that a member of the municipal police force who is suspended from office because of a charge filed against him involving a felony or a violation of law is entitled to the payment of the entire salary he failed to receive during his suspension in case of his acquittal. The provision of the law on this matter is clear and unmistakable. The law says: "in case of acquittal, the accused shall be entitled to payment of the entire salary he failed to receive during his suspension." This provision appears to be mandatory and the same fully sustains the claim of petitioner.

It is true that petitioner is not a civil service eligible and Republic Act No. 557 only protects those who have civil service eligibility, but the inquiry before us is not whether petitioner is entitled or not to reinstatement or to be reappointed to his position as a result of his separation or dismissal, but one which concerns the salary he failed to receive during his illegal suspension. There is no question that had he not been suspended he would have continued in office and received the salary corresponding to his service, the question of his eligibility not being material to be reckoned with. This question of eligibility has never been raised when his appointment was made except now in an attempt to block the collection of his salary. Moreover, the law as we quoted above does not make any distinction between eligible and non-eligible policeman when it comes to the payment of his salary during his suspension in case he is acquitted, and this doubt, if any there is in the law, should be resolved in favor of petitioner.

The contention that petitioner, being a civil service non-eligible, cannot serve more than three months unless his appointment is renewed for another three months at the pleasure of the appointing power, is also untenable, it appearing that the appointment extended to petitioner does not have any limitation in point of time. As a matter of fact, this appointment was submitted to the Commissioner of Civil Service and there is nothing in the record that would show that the same has been disapproved. Apparently, there is still no person with civil service eligibility that may be appointed to take his place, which accounts for the reason why he was indefinitely continued in office.

Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

Bengson, C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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