

MANUEL MORATA, PETITIONER, VS. THE COURT OF APPEALS AND MANRIQUE RAYMUNDO, RESPONDENTS.

G.R. No. 18978. May 25, 1964

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

The review by certiorari of a decision of the Court of Appeals is sought by petitioner Manuel Morata.

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

"The parties submitted a partial stipulation of facts, which was admitted as evidence in the case together with the annexes therein mentioned. Petitioner rested his case exclusively upon the facts stipulated therein. Respondent testified that he received, on April 4, 1960, a copy of the decision of the Commissioner of Civil Service dated January 22, 1959, and that despite the receipt of said copy of the decision he continued to discharge the functions of Chief of Police of Bulan.

"It appears that on November 25, 1957, respondent-appellant Morata, a civil service eligible, was the Chief of Police of Bulan, Sorsogon, receiving an annual salary of P1,800.00. On said date, then Mayor Eulogio M. Santos filed against said respondent a complaint for serious irregularity in the performance of and/or gross violation of duty, with the Municipal Council, being Administrative Case No. 4, on account of which he was suspended for 30 days without pay. On December 25, 1957, respondent was again suspended for 30 days without pay by reason of another Administrative Case No. 5 for violation of duty, and on January 24, 1958, he continued to be suspended for still another 30 days without pay on account of the first Administrative Case No. 4.

"The investigation of Administrative Case No. 4 took the Municipal Council to finish from December 24, 1957 to September 22, 1958, when respondent was ordered 'dismissed from service, forfeiture of all privileges, without prejudice to his eligibility.' On October 2, 1958, respondent filed notice of appeal from the decision of the Municipal Council to the Commissioner of Civil Service. In the meantime, on November 24, 1958, respondent filed with the Court of First Instance of Sorsogon a petition for Mandamus against then Municipal Mayor Eulogio M. Santos seeking reinstatement in office. However, effective January 1, 1960, Mayor Santos ceased to be such, he having been defeated and succeeded by Rosendo L. Haylo as Municipal Mayor of Bulan, Sorsogon, and respondent still continued suspended from office.

"On January 22, 1959, the Commissioner of Civil Service handed down his decision in respondent's appeal in Administrative Case No. 4, the dispositive portion whereof reading, 'In view of the foregoing, respondent-appellant Manuel G. Morata is found guilty as charged. Wherefore, he is hereby considered as resigned effective on the date of his suspension without prejudice to reinstatement, except in the police service.' Respondent having testified that he received a copy of the decision of the Commissioner of Civil Service only on April 4, 1960, on May 3, 1960, he filed a petition for reconsideration of said decision, which petition for reconsideration was still pending when this case was decided by the lower court.

"On November 25, 1958, the respondent being still under suspension, as already stated above, Mayor Eulogio M. Santos appointed the herein petitioner-appellee, Manrique Raymundo, also a civil service eligible, Chief of

Police of Bulan, with salary at P1,800.00 per annum. This appointment was forwarded for approval to the Bureau of Civil Service and the Office of the President, and it was not until April 20, 1960, that the same was approved by the latter Office. On January 1, 1960, when Mayor Rosendo L. Haylo assumed office, petitioner's services as Chief of Police of Bulan were terminated, and herein respondent-appellant was reinstated. Hence, this action, which was initiated on January 15, 1960, at first, as petition for injunction against Mayor Haylo and Morata; then, petition for Mandamus and Quo Warranto with damages against the same persons, and, lastly, as petition for Quo Warranto against Morata alone."

The Court of Appeals sustained the view taken by the court of origin, to the effect that Morata's reinstatement by the new mayor of Bulan, Sorsogon, on January 1, 1960, was null and void, because it was contrary to the decision of the Commissioner of Civil Service, dated January 22, 1959, considering Morata as "resigned effective on the date of his suspension". Morata assails this conclusion upon the ground that, although said decision was dated January 22, 1959, it did not have an effect until it was officially released or promulgated on April 4, 1960, when copy of the decision was formally served upon him, and because on May 3, 1960, he had moved for a reconsideration of said decision.

This argument is not decisive in favor of Morata's contention, for, even if official notice thereof was served upon him on April 4, 1960, the fact is that said decision considered him resigned from his suspension on November 25, 1957, so that he could not be legally reinstated by the municipal mayor on January 1, 1960. Although, on May 3, 1960, Morata moved for a reconsideration of said decision, this motion was denied by the Commissioner of Civil Service on May 2, 1961. In other words, as a consequence of the aforementioned decision he is deemed to have compulsorily resigned from office on November 25, 1957, so that the mayor could not re-instate him on January 1, 1960, without contravening said decision.

This notwithstanding, we can not agree with the same insofar as it restores Manrique Raymundo to the position of chief of police of Bulan, Sorsogon, and declares him lawfully entitled to hold said position, for he was appointed thereto on November 25, 1958, when the position was not as yet vacant, Manuel Morata being then the incumbent chief of police, although suspended from office. Since the office was not vacant, the appointment thereto made in favor of Raymundo was null and void ab initio. Although the Commissioner of Civil Service declared Morata resigned as of November 25, 1957, the decision to this effect was not rendered until either: January 22, 1959, the date appearing in the decision, or April 4, 1960, when it was promulgated. Such decision could not have cured the defect of said appointment of Raymundo, for being void ab initio and, hence, non-existent from a legal viewpoint, it could not be revived by a subsequent act.

WHEREFORE, neither Manuel Morata nor Manrique Raymundo are entitled to the office of chief of police of Bulan, Sorsogon, and the appealed decision of the Court of Appeals is, accordingly, modified, without special pronouncement as to costs.

IT IS SO ORDERED.

Padilla, Bautista Angelo, Labrador, Barrera, Paredes, Dizon, and Makalintal, JJ., concur.

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