

PERFECTO LIMCHAYPO, FRANCISCO CEBALLOS, HERACLEO TERADO, ET AL., PETITIONERS, VS. THE HON. COURT OF APPEALS (SECOND DIVISION), ANATOLIO CABIDOG, ANTONIO SUDARIO, ET AL., RESPOND...

G.R. No. 19528. December 29, 1964

Ponente: BARRERA, J.

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BARRERA, J.:

From the decision of the Court of Appeals, reversing a favorable ruling of the Court of First Instance of Leyte in a quo warranto case filed therein, Perfecto Limchaypo, Francisco Ceballos, Heracleo Terado, Julio Calumag, Benigno Camposano, Genaro Nuevas, Carlito Ugat, and Esteban Mazo filed the instant petition for review, praying that their removal from office as municipal policemen of Dagami, Leyte, and the appointment of non-eligibles as their substitutes, be declared illegal, and they be paid the corresponding salaries for the period of their separation from the service. Petitioners' claim is predicated on their alleged preferential right to the positions of municipal policemen, petitioner Limchaypo being a civil service eligible; Ceballos, Terado, Calumag and Camposano, being veterans entitled to the right granted under Republic Act 65, as amended by Republic Act No. 154;^[1] and petitioners Nuevas, Ugat and Mazo, being veterans who were appointed to the said positions long before the enactment of Republic Act 1363^[2] in June 18, 1955.

Petitioners were extended original appointments as policemen on the following dates:

Ceballos, on August 20, 1945;
Terado, on May 22, 1947;
Calumag, on December 15, 1947;
Limchaypo, on March 1, 1949;
Camposano, on September 9, 1949;
Nuevas, Ugat, and Mazo, on July 3, 1950, January 10, 1952 and January 12, 1952, respectively.

On July 1, 1953, petitioners were all extended promotional appointments at P480.00 per annum, which appointments, with the exception of Limchaypo's, were approved by the Commissioner of Civil Service and the Office of the President, as "Temporary, under section 682 of the Revised Administrative Code".^[3] Limchaypo's appointment was approved "as temporary pending receipt of the required medical certificate". On February 6, 1956, petitioners' services were terminated by the newly elected municipal mayor. Their replacements were subsequently appointed and assumed office. Petitioners thereafter instituted the quo warranto proceedings that gave rise to the decision now under review.

It appears from the records, however, that after the election of 1959, the newly elected mayor reinstated the petitioners in their respective positions. Hence, the issue has been reduced to the question of who could be entitled to salary from February 6, 1956 (date of removal) to December 31, 1959.

It is not here disputed that, with the exception of Limchaypo, petitioners are non-civil service eligibles who were

appointed as members of the police department of the municipality of Dagami, Leyte positions which have been declared to be embraced in the classified service.[4] Also, it is not denied that said petitioners accepted promotional appointments which were approved by the proper authorities as temporary under section 682 of the Revised Administrative Code. As such appointments were valid at least for a period of 3 months only, the termination of the appointees' services after said period is lawful.

It is claimed, however, that petitioners Ceballos, Calumag, Limchaypo, and Camposano, as veterans, should have preference in the filling of the vacancies thus created, over the respondents who did not enjoy the same privilege. This argument perhaps could have been sustained if the appointments in question were extended when petitioners could still invoke the provisions of said Republic Act 65. The fact remains that when respondents were appointed to the vacancies created by the termination of petitioners' services (on February 6, 1956), the latter no longer possess the preferential rights granted under the law.[5] Neither could they invoke the provisions of Republic Act 1363, because they have not been certified as such veterans in accordance with section 4 of the said act.[6] The appointing power, therefore, had legal authority to appoint respondents to the positions of policemen.[7] The foregoing conclusion is similarly applicable to petitioners Nuevas, Ugat, and Mazo whose original appointments were, made after October 18, 1949, and who also accepted temporary appointments on July 1, 1953.

With regard to petitioner Limchaypo, it is true that he had qualified in the patrolmen's examination given in 1937. But his certification to this effect was obtained by him from the Civil Service only after his ouster and the filing of this case. But even assuming arguendo that under the retroactive provision of Republic Act 1079[8] he may be considered as possessing an eligibility at the time of his original appointment, his subsequent acceptance of his promotional appointment as temporary, removed him from the constitutional protection to security of tenure.[9] It cannot also be contended that the approval of his promotional appointment as "temporary, pending receipt of the required medical certificate" did not affect a previously permanent appointment. It is clear from such approval that the appointment becomes conditional, that is, temporary until the fulfillment of the condition required therein.[10] Petitioner Limchaypo does not pretend to have submitted the required medical certificate. He maintains, however, that such failure to submit the certificate did not alter his status as a civil service eligible. It must be remembered, however, physical fitness is already required of applicants for examination in the Civil Service.[11] It is but logical that such requirement of physical fitness is essential for employment in the Government. Having failed to submit the required medical certification, petitioner Limchaypo's appointment remained temporary and his removal from the service cannot be considered illegal.

WHEREFORE, the decision of the Court of Appeals, declaring the termination of petitioners' services as lawful, is hereby affirmed, with costs against petitioners.

SO ORDERED.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes, Dizon, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

[1]"Sec. 8. For a period of three years from the time of the passage of this Act (June 14, 1947), the persons mentioned in sections one and two hereof (war veterans) shall, all other qualifications being equal:

- (1) Have preference in appointments and promotions in and to any Government office, agency or instrumentality, or in and to any Government-owned or subsidized corporation, the provisions of law as to civil service eligibility notwithstanding: Provided, That in examinations where experience is an element of qualification the time spent in the military or naval service of the United States or of the Philippines shall be credited in a veteran's rating where his actual employment in a similar vocation to that for which he is

examined was interrupted by such military or naval service."

[2]"Specifying the veterans" entitled to preference in appointments and promotions.

[3] Which shall continue for a period not exceeding 3 months.

[4] See *Pena vs. City Mayor*, 94 Phil., 103; also *Manigbas vs. De Guzman*, 94 Phil., 245.

[5] Rights granted under Sec. 8 of Republic Act 65, as amended, expired 3 years from October 18, 1946.

[6]"Sec. 4. The term 'veteran' as employed in this Act shall refer to: (1) veterans of the Philippine Revolution as certified to by the Board of Pensions for Revolutionary Veterans; (2) veterans of World War II as certified to by the Philippine Veterans Board; and (3) honorably discharged soldiers and officers of the Armed Forces of the Philippines who have served therein for at least five years."

[7] *Orais vs. Ribo*, 93 Phil., 985; *Peña vs. City Mayor*, supra, *Inocente vs. Ribo*, 94 Phil., 652, and others.

[8] Making civil service eligibility permanent and without time limit, which provision was made retroactive "to include persons whose civil service eligibility had expired" prior to the approval of the Act.

[9] *Pinullar vs. President of the Senate*, 104 Phil., 131; *Roque vs. Senate President*, G. R. No. L-10949, July 25, 1958.

[10] *Reyes vs. Dones*, 103 Phil., 884; *Pineda vs. Velez*, G.R. No. L-8859, October 31, 1956.

[11] Sec. 663 (c), Revised Administrative Code.

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