

RAMIRO V. ARAGON, PETITIONER-APPELLEE, VS. HON. MACARIO PERALTA, JR., ET AL., RESPONDENTS-APPELLANTS.*G.R. No. 21390. November 18, 1967*

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

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Appeal from the judgment of the Court of First Instance of Rizal (in Sp. Civil Action No. 7174), declaring Captain Ramiro V. Aragon, a reserve officer in the active service of the Armed Forces of the Philippines, exempted from the operation of Sections 1 and 2 of Republic Act 2334, and permanently enjoining the Secretary of National Defense, the Chief of Staff of the Armed Forces and the Acting Chief of the Philippine Constabulary, from reverting him into inactive status.

There is no dispute as to the following facts:

Ramiro V. Aragon joined the 7th Allied Intelligence Bureau, 7th Military District, a duly recognized guerrilla unit, on January 10, 1944. His name was concededly included in the initial roster of troops of that unit (Appellant's Brief, p. 11). He was given the rank of third lieutenant until March 28, 1945, when he was made a second lieutenant. By November 16, 1945, he had the rank of a first lieutenant. In January, 1946, Aragon was processed, given a serial number (0-29888) and assigned to duty at Camp Spencer, La Union. On January 23, 1947, he was formally commissioned as first lieutenant in the Reserve Force of the Philippine Army, and was promoted to captain on February 1, 1955.[1]

The records show that Aragon was paid his arrears in pay (base pay and quarters allowance) as third lieutenant, from January 10, 1944 to July 4, 1944, and as second lieutenant from July 5, 1944 to March 28, 1945; his application for educational benefits was approved by the Philippine Veterans Board on June 13, 1951, and he was paid his backpay corresponding to the period of from February 27, 1945 to September 26, 1945, as evidenced by Acknowledgment No. 18352[2] of the Bureau of Treasury dated March 24, 1960.

On February 28, 1962, the Philippine Constabulary authorities issued Special Order No. 196, providing, among other things, for the reversion of Captain Ramiro Aragon to inactive status, effective June 19, 1962. He sent a letter to the Secretary of National Defense, through the Armed Forces Chief of Staff, requesting for reconsideration of the aforesaid Special Order; and receiving no reply thereto, Aragon instituted on June 11, 1962, in the Court of First Instance of Rizal, prohibition proceedings against therein respondents Secretary of National Defense, the Chief of Staff of the Armed Forces of the Philippines and the Acting Chief of the Philippine Constabulary or their agents to prohibit or enjoin petitioner's reversion to inactive status.

Respondents tried to justify the disputed Special Order allegedly issued pursuant to Section 2 of Republic Act 2334, directing the reversion into inactive status of reserve officers on active duty. It was alleged that petitioner has to his credit only a total of 7 years, 10 months and 24 days of active accumulated commissioned service, computed from his formal commission into the Army on July 23, 1947, or short of the 10-year period required under Republic Act 1382 and, consequently, he falls within the coverage of Republic Act 2334. Petitioner's

voluntary civilian (guerrilla) service from January 10, 1944 to July 23, 1947 was not considered in computing his total accumulated service, because petitioner's name does not appear in the approved reconstructed roster of his guerrilla unit. Respondents also put up the defenses of non-exhaustion of administrative remedies and the impropriety of prohibition proceedings to secure the relief sought by petitioner.

On February 18, 1963, judgment was rendered for the petitioner; the trial Court declared him exempted from the operation of Republic Act 2334, and respondents were permanently enjoined from ordering the reversion of petitioner to inactive status. Respondents interposed the present appeal.

The controversy in this case arose from the enforcement of the following provisions of Republic Act 2334:

"SEC. 2. After the approval of this Act, and except in time of emergency, no reserve officer shall be called to extended tours of active duty exceeding a total of two years within any period of five consecutive years: Provided, That reserve officers on active duty for more than two years on the date of approval of this Act, with the exception of those covered by section three of this Act, shall be reverted to inactive status within three years from the approval of this Act: x x x.

"SEC. 3. The provisions of section two of this Act shall not apply to reserve officers covered by the provisions of Republic Act Numbered Thirteen hundred eighty-two x x x." (Emphasis supplied)

On the other hand, Republic Act 1382 referred to above, and approved on June 18, 1955, provides as follows:

"SECTION 1. Reserve Officers with at least ten years of active accumulated commissioned service who are still on active duty at the time of the approval of this Act shall not be reverted into inactive status except for cause after proper court martial proceedings or upon their own request: Provided, That for purposes of computing the length of service, six months or more of active service shall be considered one year." (Emphasis supplied)

As appellants themselves put it, the main question here is whether or not as of June 18, 1955, petitioner-appellee had at least 10 years of accumulated active commissioned service in the Philippine Army to his credit, to entitle him to exemption from the operation of Republic Act 2334. Since appellee's service as a regularly commissioned officer commenced only on July 23, 1947, the issue calls for a determination of whether or not his voluntary civilian (guerrilla) service, from January 10, 1944 to January 23, 1947, should be considered active commissioned service.

Appellee's argument, that his guerilla service should be included in the computation of his accumulated active military service, is based on Executive Order No. 21, of the late President Sergio Osmeña, issued on October 28, 1944 reading as follows:

"EXECUTIVE ORDER No. 21

"DECLARATION TO BE ON ACTIVE SERVICE IN THE PHILIPPINE ARMY ALL PERSONS NOW ACTIVELY SERVING IN RECOGNIZED MILITARY FORCES IN THE PHILIPPINES

WHEREAS, these military forces have contributed in a large measure to all Allied Military effort and to the liberation of the Filipino people from the yoke of the Japanese invader;

WHEREAS, it is the desire of the Government of the Philippines to recognize this allegiance;

NOW, THEREFORE, I, SERGIO OSMEÑA, President of the Philippines by virtue of the authority vested in me by the Emergency Power Law, Section 22(a) and Section 27 of the Commonwealth Act Numbered One notwithstanding, do hereby ordain and promulgate the following:

1. All persons of any nationality or citizenship, who are actively serving in recognized military forces in the

Philippines, are hereby considered to be on active service in the Philippine Army.

2. The temporary grades of enlisted men, enlisted or promoted in the field by Commanders of recognized military forces or by their delegated authority, are hereby confirmed.
3. The temporary ranks of all officers, appointed or promoted in the field prior to this date by Commanders of recognized military forces are hereby confirmed.
4. The date of entry into active service in the Philippine Army will be that of joining a recognized military force.
5. The effective date of rank for commissioned officers and enlisted men will be the date on which they were appointed or promoted to such ranks by the Commander of recognized military forces.
6. A recognized military force, as used herein, is defined as a force under a Commander who has been appointed, designated or recognized by the Commander-in-Chief, Southwest Pacific Area." (Emphasis supplied)

Appellants do not contest the applicability of the abovequoted presidential order to guerrilla-services like those of appellee. It is claimed, however, that said executive order is not by itself self-executory; that the benefits granted thereunder may only be availed of by persons whose claims were duly verified and whose names were included in the roster of recognized guerrillas; and, since the name of appellee is not carried in the revised roster[3] of members of the military unit to which he supposedly belonged, then for all intents and purposes, he is an unrecognized guerrilla whose services cannot be considered active commissioned service in the Army. In other words, notwithstanding appellants' acknowledgment or admission of the fact that appellee had been initially a member of a legitimate guerrilla organization as of January 10, 1944 (pp. 3-4, Appellants' brief), they would not credit him for such services and would withhold the benefits to which he may be entitled by reason thereof, simply because his name is not in the roster of recognized guerrillas.

For legal and equitable considerations, appellants' theory must be rejected. The entries in the Army's roster of recognized guerrillas, assuming them to be the official acts of duly authorized public officers, are merely prima facie evidence of the facts therein stated.[4] Otherwise stated, this roster or list is not to be considered the sole and exclusive evidence of the government's recognition of the actual services of civilian volunteers; there is nothing in the law making inadmissible other proof of such recognition, where they are material and relevant. Furthermore the recognized roster (drawn up primarily for backpay purposes) must yield to the initial roster, which shows that appellant was already serving even six months before the Leyte landing of the liberation troops.

Thus, in the present case, there can be no other logical conclusion than that the Philippine government recognized appellee's war-time and post liberation services in the army. Not only does appellee's name appear in the initial roster, but he was paid

the corresponding officer's base pay and quarter's allowance, from January 10, 1944 to March 28, 1945, as "a member of the Army of the Philippines in the service of the United States Armed Forces" (Annex B, p. 14, C.F.I. Record); there was recognition of appellee's guerrilla services when he was given backpay for services rendered from February 27, 1945 to September 26, 1945, in an Acknowledgment by the National Treasurer dated March 24, 1960; when the Philippine Veterans Board approved his claim for educational benefits; when the military authorities themselves formally commissioned him in the Philippine Army, by considering his voluntary civilian services as proper substitute for actual combat duty - a prerequisite to such commission (Annex E, pp. 20-21, C. F. I. Record); and when he was promoted as captain (permanent) on February 1, 1955. Neither can it be argued that these benefits were granted on the erroneous assumption that appellee was a recognized guerrilla, because some of them were given or made long after the roster of members of appellee's guerrilla unit was revised, and appellee's name was left out therefrom.

In the circumstances, and there being adequate showing that petitioner-appellee's volunteer civilian services started since January 10, 1944, and were duly recognized by the Philippine government, it would be inequitable to deny him the rights duly appertaining to one with such accumulated length of service in the military, just because for reason or reasons not disclosed in the records, his name did not appear in the revised list of recognized guerrillas.

Appellant's allegation that there was failure to exhaust administrative remedies in this case, is, similarly, without merit. The present proceedings, having been brought against a department secretary, an alter ego of the President, and allegedly involving a threatened violation or disregard of the petitioner's right that requires immediate judicial intervention, the rule on exhaustion of administrative remedies may be relaxed.[5]

There is equally no necessity for the Republic of the Philippines to be impleaded. Unlike in the case of *Ruperto vs. Moore*,[6] which essentially involved a pecuniary claim against the Treasury of the United States (payment of backpay), and consequently, the latter government must be given opportunity to be heard, the issue in the case at bar concerns only the validity of the Armed Forces Special Order reverting herein petitioner-appellee to inactive status in the Reserve Force, which order he claims to be in violation of his right as an officer with the required minimum length of service.

WHEREFORE, finding no error in the decision appealed from, the same is hereby affirmed. No costs.

SO ORDERED.

Concepcion, C.J., Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] Annex G, p. 24, C.F.I. Record.

[2] Issued only to members of the Armed Forces of the Philippines and recognized guerrillas. (p. 19, Record).

[3] Appellee's name appeared in the initial roster of his unit. - p. 11, Appellants' Brief.

[4] Sec. 38, Revised Rule 130; Sec. 35, Rule 123, old Rules of Court.

[5] See *Gonzales vs. Hechanova*, L-21897, Oct. 22, 1963, and cases cited therein.

[6] 91 Phil. 185.

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