

RAMON V. MITRA, PETITIONER AND APPELLEE, VS. ABELARDO SUBIDO, IN HIS CAPACITY AS ACTING COMMISSIONER OF CIVIL SERVICE, ET AL., RESPONDENTS AND APPELLANTS.

G. R. No. 21691. September 15, 1967

Ponente: ANGELES, J.

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ANGELES, J.:

This is an appeal from the decision of the Court of First Instance of Manila, dated July 26, 1963, in Civil Case No. 53006 entitled Ramon V. Mitra, petitioner, us, Abelardo Subido, et al., respondents, declaring null and void the order of the Acting Commissioner of Civil Service terminating the services of Ramon V. Mitra as Senior Technical Assistant in the Office of the Mayor, City of Manila, and ordering the respondent City Auditor to authorize the other respondent City Treasurer to pay the salary of the petitioner beginning January 16, 1963, and during his tenure of office as Senior Technical Assistant in the Office of the City Mayor, Antonio J. Villegas.

The record of the proceeding had in this case in the court a quo shows the antecedent facts that gave rise to the controversy, as follows:

Effective July 1, 1962, Mayor Antonio J. Villegas, of the City of Manila, appointed the petitioner as Senior Technical Assistant in his office, with compensation at the rate of "P8,400 per annum. This appointment was forwarded to the Civil Service Commission for approval, and after processing the same, was released with the required approval as follows:

"APPROVED: subject to the usual physical and medical examination. Subject to the availability of funds as an exceptional case under Sec. 256 of the Revised Administrative Code, (x)

A. DEL ROSARIO

Commissioner of Civil Service

By: (Sgd.) EPI REY PANGRAMUYEN

Chief, Personnel Transactions Division

(x) Provided the provision of Par, 3, Sec. 23 of Republic Act 2260 have been observed."

The appointee Ramon V. Mitra qualified for and assumed the position of Senior Technical Assistant in the Office of the Mayor of Manila on said date, July 1, 1962. Since then, he discharged the duties of the position and was paid the corresponding salary for his services, until January 15, 1963.

On January 11, 1963, the Acting Commissioner of Civil Service, Abelardo Subido, wrote to the City Mayor informing him that the appointment extended to the petitioner was in violation of the certification requirement prescribed by the Civil Service Law and was incomplete, because the approval thereof by Epi Rey Pangramuyen, Chief, Personnel Transactions Division, was "ultra vires," the latter having acted beyond the scope of his delegated authority. In the same communication, the acting Commissioner of Civil Service ordered the termination of the services of Ramon V. Mitra, upon receipt of said letter by the City Mayor, who was "requested to notify accordingly the employee affected and to advise" the Civil Service Commission of the date of said notice.

On January 14, 1963, the said letter-order of the Acting Commissioner of Civil Service was received by the City Mayor who, on the same date, returned it to the sender with a first indorsement wherein he explained that the duties of Ramon V. Mitra as Senior Technical Assistant in his office involved the knowledge of the law profession and as such, was entitled to the full benefits of Republic Act 1080, as amended. In the concluding paragraph of the indorsement, the City Mayor requested the Commissioner to withdraw his aforesaid letter-order of January 11, 1963, terminating the services of the petitioner.

On January 14, 1963, the Acting Commissioner of Civil Service simultaneously sent to the City Treasurer and the City Auditor, both of Manila, and the General Manager of the Government Service Insurance System communications furnishing each of them with a copy of his order terminating the services of the petitioner as Senior Technical Assistant in the Office of the Mayor, City of Manila.

On January 17, 1963, the City Auditor wrote a letter to the City Treasurer requesting that the salary of the petitioner Ramon V. Mitra be suspended beginning with the period from January 16 to 31, 1963. The City Treasurer forwarded this communication with his first indorsement to the City Mayor informing the latter that the salary of Ramon V. Mitra would be suspended corresponding to the period from January 16 to 31, 1963. The same communication was returned on January 25, 1963 by the City Mayor with his second indorsement to the City Treasurer, directing him to continue paying the salary of the petitioner unless otherwise expressly ordered by his Office.

The foregoing communications of the City Mayor did not in any way afford relief in the predicament that the petitioner found himself in, as the Acting Commissioner of Civil Service did not heed the request of the City Mayor to withdraw the letter-order of the former terminating the services of the petitioner; similarly, the City Treasurer did not comply with the directive contained in the second indorsement of the City Mayor, dated January 25, 1963, directing him to continue paying the salary of petitioner; and accordingly, Ramon V. Mitra did not receive his salary for the period from January 16 to 31, 1963. Consequently, on February 5, 1963, Ramon V. Mitra filed with the Court of First Instance of Manila, this case which is a petition for mandamus with preliminary mandatory injunction against Abelardo Subido, in his capacity as Acting Commissioner of Civil Service; Manuel Cudiarnat, in his capacity as City Treasurer of Manila; and Jose Erestain, in his capacity as City Auditor.

Pending trial of the case on the merits, petitioner prayed for the issuance of a writ of preliminary mandatory injunction to restrain the Acting Commissioner of Civil Service from enforcing his order of January 11, 1963, terminating his services as Senior Technical Assistant in the Office of the Mayor, and to order the City Auditor and City Treasurer to authorize and pay, respectively, his salary corresponding to the period from January 16 to 31, 1963, and those which may thereafter become due and payable. On the basis of the evidence adduced at the

hearing thereof, however, the lower court found no extfeme necessity justifying the issuance of the writ prayed for; and in its order dated March 9, 1963, denied the prayer for the issuance of the writ of preliminary mandatory injunction.

Finally after due trial on the merits in the main cause, the court a quo on July 26, 1963, rendered the decision appealed from, holding that the appointment of petitioner Ramon V. Mitra as Senior Technical Assistant in the Office of the Mayor at P8,400.00 per annum effective July 1, 1962, bears the valid approval of the Civil Service Commission and is complete; that the order of the Commissioner of Civil Service dated March 11, 1960 did not limit the authority of the Chief, Personnel Transactions Division of said Office to approve appointments; that his being a member of the bar, in relation to the position of Senior Technical Assistant in the Office of the Mayor is equivalent to "first grade" eligibility under Republic Act 1080, as amended by Republic Act No. 1844, because the position involves professional knowledge of the law; that the certification requirement of the law is not necessary in the appointment; that the principle of exhaustion of administrative remedies is not applicable to the case; that the Acting Commissioner of Civil Service has no authority to order the cancellation of petitioner's appointment; and that the order of the Acting Commissioner terminating the services of the petitioner dated January 11, 1963, was null and void. Conformably thereto, the Court rendered the decision appealed from which as aforestated in the opening paragraph of this opinion, declared null and void the order of the Acting Commissioner of Civil Service terminating the services of Ramon V. Mitra as Senior Technical Assistant in the Office of the Mayor of Manila, and ordered the respondent City Auditor of said City to authorize the City Treasurer to pay the salary of the petitioner beginning January 16, 1963, and during his tenure of office in his position as Senior Technical Assistant.

Respondent Acting Commissioner of Civil Service and City Auditor of Manila have come to us on appeal, specifically assigning as errors the above-enumerated holdings of the lower court.

Appellant contend that the appellee, Ramon V. Mitra, does not possess the necessary eligibility required by the position to which he was appointed. It is alleged that his being a member of the bar, considered in relation to his position as Senior Technical Assistant in the Office of the Mayor, City of Manila, which does not involved the knowledge of the law profession, is equivalent to "second grade" civil service eligibility under Republic Act No. 1080, as amended by Republic Act No. 1944, and is, therefore, not appropriate for the position aforementioned which involves a compensation of P8,400.00 per annum and requires a "first grade" civil service eligibility.

We shall examine the provision of the law invoked in relation to the duties of the appellee under the position in question. Section 1 of Republic Act 1080, as amended by Republic Act 1844 provides among others, as follows:

'Section 1. — The bar examinations and the examinations given by the various boards of examiners of the Government are declared as civil service examinations, and shall, for purposes of appointment to the positions in the classified service the duties of which involve the knowledge of the respective professions, except positions requiring highly specialized knowledge not covered by the ordinary board examinations, be considered as equivalent to first grade regular examination given by the Bureau of Civil Service if the profession requires at least four years of study in college, and as equivalent to the second grade regular examination if the profession requires less than four years of college study: Provided, However, That such bar or board examination shall be equivalent to the next lower grade of civil service examination when the person is to be employed in a position other than one requiring his professional knowledge;

On the other hand, as Senior Technical Assistant in the Office of the Mayor, City of Manila, petitioner was assigned to perform the following duties:

"1. To study and make the necessary recommendation on matters involving the legal, technical and administrative aspects of the city government administration, for appropriate consideration by the undersigned;

"2. To undertake research, legal or otherwise, to determine the legality and/or feasibility of the execution of projects of the city which are calculated to insure the promotion of the best interest and welfare of the city residents, and to make the necessary report thereon for consideration;

"3. To take action on official matters wherein his qualifications, knowledge and experience are required and may be utilized to fullest advantage; and

"4. To perform such other assignments as may be given to him from time to time."

It is urged by the appellants that the above-enumerated duties do not involve knowledge of the legal profession as contemplated in the law, *aforecited*. It is suggested that a distinction should be made between "professional knowledge" and "legal knowledge;" and that while Republic Act 1080, as amended, requires professional knowledge of the law, the position in question, on the other hand, like any other position in the government service, calls only for some legal knowledge. The implication is, that one need not be a lawyer to undertake legal research to determine the legality of city projects, and to study and make the necessary recommendation on matters involving the legal aspects of the city government administration for consideration of the Mayor of the City of Manila.

We find these contention and suggestion devoid of any reasonable basis. The duties devolving upon the position of Senior Technical Assistant as above described involve the capacity not only of finding what and where the law applicable to a given situation is, but also of making legal research to know the principles evolved by the courts in construing that law as applied to the given situation. Only lawyers, by reason of their academic preparation and training in law, are technically equipped with knowledge to handle such duties. When the law or the duties of the position to be filled speaks of legal work, it means proficiency in law is required which only lawyers are presumed to possess. Likewise, in passing upon legal matters involving the corporate and governmental affairs of the city of Manila, it is indispensable that the incumbent must be a lawyer, otherwise, he would not be in a position to determine the legality of a course of action which the office of the Mayor may desire to take. Neither is the observation of herein appellants, that the City Fiscal of Manila as legal adviser of the city, is the proper person to pass upon the legal aspects of city administration, entirely correct, for, such contention strikes not only at the very prerogative of the power that created the position in question, but also because it would deny the Mayor of Manila, a chance to ascertain for himself in the first instance, through his assistants, the legal aspects of matters or problems brought before him. For these reasons, appellee's admission to the bar, in relation to the position of Senior Technical Assistant in the Office of the Mayor, should be considered as equivalent to first grade eligibility under the provisions of Republic Act 1080.

It is next argued by the appellants that the appointment of Ramon V. Mitra as Senior Technical Assistant in the Office of the Mayor of Manila is in violation of the "certification requirement" of the Civil Service Law, relying upon the provisions of Section 23, Republic Act No. 2260:

"... if the vacancy is not filled by promotion as provided herein, then the same shall be filled by transfer of present employees in the government service, by reinstatement, by reemployment of persons separated through reduction in force, or by certification from appropriate registers of eligibles in accordance with rules promulgated in pursuance of this Act."

It is apparent from the foregoing provision of the Civil Service Law that prior certification of eligibles is required only if a position is not filled by promotion, by transfer of persons already in the government service, and by reinstatement or reemployment of persons separated from the service through reduction in force. In the case at bar, it was shown during the trial that the appointee was formerly employed in the Department of Foreign Affairs and the Central Bank of the Philippines. Obviously, therefore, the appointment was a reinstatement, and there was no necessity of obtaining prior certification of eligibles from the Civil Service Commission.

Appellants further maintain that the appellee in this case, had not exhausted administrative remedies, for appeal from the order of the Commissioner of Civil Service to the President was yet available and it was error on the part of the Court of First Instance of Manila to entertain the premature action instituted against them. We find no merit in this argument. It has been repeatedly held that the principle requiring the previous exhaustion of administrative remedies is not applicable where the question in dispute is purely a legal one (*Tapales vs. The President & Board of Regents of the U.P.*, L-17523, March 30, 1963), where the controverted act is patently illegal or was performed without jurisdiction or in excess of jurisdiction (*Mangubat vs. Osmena*, L-12837, April 30, 1959), where the respondent is a department secretary whose acts as an alter ego of the President bear the implied or assumed approval of the latter (*Marinduque Iron Mines Agents, Inc. vs. Secretary of Public Work*, 62 Off. Gaz. [33] 5950), or where there are circumstances indicating the urgency of judicial intervention (*Alzate vs. Aldaba*, 107 Phil. 298; *Demaisip vs. Court of Appeals*, 106 Phil. 237). Similarly, when, as in this case, in terminating the services of the appellee, the Commissioner of Civil Service acted summarily without any semblance of compliance, or even an attempt to comply with the elementary rules of due process, when the order is immediately executed and petitioner was immediately removed from office, then appeal was not a plain, speedy and adequate remedy in the ordinary course of law (*Fernandez, et al. vs. Cuneta, et al.*, 108 Phil. 427), and the employee adversely affected may forthwith seek the protection of the courts. Moreover, appellant Commissioner of Civil Service maintains that in terminating the services of the appellee, he was not acting in the exercise of his power to impose disciplinary measures to erring subordinate officers and employees which is subject to review by the Civil Service Board of Appeals and the President, but in pursuance of his power to approve or disapprove appointments, in the exercise of which latter function, his jurisdiction is exclusive (Sec. 16 [h], Republic Act 2260), which all the more renders the claim of non-exhaustion of administrative remedies in this case, untenable (*Billy Millares vs. Abelardo Subido, et al.*, 65 Off. Gaz. [17] 4235).

Regarding the holding of the lower court that the Commissioner of Civil Service had no power to cancel the appointment of the appellee, the appellants argue that said Commissioner had power to do so because the appointment in question was null and void from the beginning, and that in terminating the services of the appellee, he was merely enforcing the provisions of the Civil Service Law which should not be construed as a removal of the appointee from office. In justifying his act, reliance is made by the Commissioner of Civil Service upon Section 16 of Republic Act No. 2260, otherwise known as the Civil Service Act of 1959, and Section 693 of the Revised Administrative Code, to wit:

"Section 16. Powers and duties of the Commissioner of Civil Service,— It shall be among the powers and duties of the Commissioner of Civil Service:

"(f) To make investigations and special reports upon all matters relating to the enforcement of the Civil Service Law and rules; to inspect and audit the agencies' personnel work programs to determine compliance with the Civil Service Law, rules, standards and other requirements; and to take corrective measures when unsatisfactory situations are found;" (Republic Act No. 2260) [Italics ours]

"Section 693. Opinion of the Commissioner of Civil Service on Controverted questions related to the service.— A disbursing officer, the head of any department, bureau, or office, or the Auditor General, may apply for, and the Commissioner of Civil Service shall render, a decision upon any question as to whether a position is in the classified or in the unclassified civil service, or whether the appointment of any person to a classified position has been made in accordance with law, which decision, when rendered, shall be final unless reversed by the President of the Philippines on appeal." (Revised Administrative Code.)

There is no sense in denying that the Commissioner of Civil Service possesses ample powers to review appointments made to positions in the civil service, and to take corrective measures when unsatisfactory situations are found to exist under the above-quoted provisions of the law. It is also laudable that the Commissioner of Civil

Service sees to it that the provisions of the Civil Service Law are properly enforced. However, the power to take corrective measures should be exercised with caution.

It may be stated as a general rule that an appointment once made is irrevocable and not subject to reconsideration. This view represents the great weight of authority (note found at page 135 American Law Reports, supported by innumerable decisions). The rule is qualified, however, where the assent, confirmation or approval of some other officer or body is needed before the appointment may issue and be deemed complete. Necessarily, this calls for a determination in any given situation whether or not all the acts necessary to make an appointment complete have been performed.

"Where the power of appointment is absolute, and the appointee has been determined upon, no further consent or approval is necessary, and the formal evidence of the appointment, the commission, may issue at once. Where, however, the assent or confirmation of some other officer or body is required, the commission can issue or the appointment be complete only when such assent or confirmation is obtained." (Mechem, Law of Public Offices and Officers, Sec. 112, p. 46)

Under our Civil Service Law and the rules promulgated thereunder, an appointment to a position in the civil service must be submitted to the Commissioner of Civil Service for approval, i.e., for determination whether the proposed appointee is qualified to hold the position, and whether or not the pertinent rules had been followed in making the appointment. We have said in this connection, that the appointment made by an officer duly empowered to make it, is not final and complete until after the Commissioner of Civil Service has certified that such appointment may be made (*Gorospe vs. Secretary of Public Works*, 105 Phil. 129). The acts of the head of Department or Office making the appointment and the Commissioner of Civil Service acting together, though not concurrently, but consecutively, are necessary to make an appointment complete. And there should be no question that for an appointee in the classified position in the civil service to be entitled to the protection of the law against unjust removal, his appointment must receive the approval of the Commissioner of Civil Service (*Favis vs. Rupisan, et al.*, L-22823, May 19, 1966).

Applying the rules above-explained, We hold that the appointment of the appellee had become complete when the appellant Commissioner of Civil Service issued his order terminating the services of the former. The appointment in question was extended to the appellee on July 1, 1962, by virtue of which the appointee assumed the duties of his position. Under the same appointment as approved by the Chief, Personnel Transactions Division in the name of the Commissioner of Civil Service, the City Auditor and City Treasurer allowed and paid, respectively, the salary of the appellee for the period from July 1, 1962, to January 15, 1963, a period of six and a half months. In the case of appointments made by local officials and attested to by Provincial Treasurers and City Treasurers under Section 20 of the Civil Service Law, the appointments are deemed to have been properly made if within a period of one hundred eighty days the Commissioner of Civil Service fails to make any correction or revision thereof. The same section of the law ordains that the Commissioner should make a review of actions taken in the discharge of delegated authority thereunder, which include those performed by chiefs of divisions and primary units in his office, to insure compliance with standards and regulations. After the lapse of the period therein allowed, corrections of mistakes may no longer be had, considering that after the lapsed of that time, the probationary period of an employee under his appointment also ends, and his appointment automatically becomes permanent. We find no plausible reason why the presumption of regularity which attaches to appointments attested to by Provincial and City Treasurers after the lapse of six months should not be applied to appointments submitted directly to the Civil Service Commissioner and approved in his name by a Chief of Division in his office. Even on the premise that the appointment of the appellee did suffer from an infirmity occasioned by the mistake of the division chief concerned who approved the appointment, the same should now be deemed complete under the circumstances and reasons above-enumerated. There should be some point of time when an appointment

made and approved should not be disturbed by reason of some violation of certain office rules that has been due to mere inadvertence. Unless the appointment is an absolute nullity, or in the absence of fraud on the part of the appointee, the irregularity must be deemed cured by the probational and absolute appointment of the appointee and should be considered conclusive.

A removal from office takes place after title to the office has become vested in the appointee, whereas revocation of an appointment is had, if it is to be successful, before the appointment is complete (42 Am. Jur. 959). The moment the appointee assumes a position in the civil service under a completed appointment, he acquires a legal, not merely equitable right, which is protected not only by statute, but, also by the Constitution, it cannot be taken away from him, either by revocation of the appointment or by removal, except for cause, and with previous notice and hearing, consistent with Section 4 of Article XII of our fundamental law, and with the constitutional requirement of due process. And when as in this case, the appointee has been regularly performing the duties of his office and been paid the corresponding salary for more than six months already under a known appointment that was never questioned by either the City Treasurer or the City Auditor of Manila before granting the salary of the appellee, the act of the Acting Commissioner of Civil Service in summarily terminating the services of the appointee, may not be said to be a reconsideration of the appointment, but is in fact, a removal from office. Like a judgment that is not void upon its face, the appointment in question is not "the serpent that may be attacked or slain at sight." The power to remove from office cannot lightly be inferred from the duty of the Commissioner of Civil Service to make investigations and take corrective measures when unsatisfactory situations are found to exist. Under the circumstances of this case, that duty should be exercised, if it is to be exercised at all, with the end in view of ratifying the appointment in question should he believe that the act of his subordinate in approving the appointment is not sufficient, considering that the appellee has been found qualified for the position to which he was appointed. In the same token, We find it unnecessary to pass upon the authority of the Chief of Personnel Transactions Division of the Civil Service Commission to approve the disputed appointment of the appellee.

Wherefore, and considering all the foregoing, the instant appeal should be, as hereby it is, dismissed, and the decision appealed from affirmed in toto. No pronouncement as to costs.

Conception, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, and Fernando, JJ , concur.

Judgment affirmed.

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