

**EDILBERTO R. BORJA, CHIEF OF POLICE OF PATEROS, RIZAL,
PETITIONER, VS. FELIPE AGONCILLO, SECRETARY OF THE
INTERIOR, ET AL., RESPONDENTS.**

G.R. No. 22906. October 31, 1924

Ponente: STATEMENT The petitioner is the chief of police of the municipality of Pateros, Province of Rizal. The respondents are the Secretary of the Interior of the Government of the Philippine Islands, Chief of the Executive Bureau, Acting Governor of the Province of Rizal, and municipal president of Pateros, Rizal, respectively. After formal allegations the petitioner alleges that this action is of general interest not only to the petitioner, but also to the majority of the chiefs of police and municipal policemen of the Philippine Islands "in whose favor this action is also presented." That the respondent Honorio Ventura, as Chief of the Executive Bureau, with the approval of Felipe Agoncillo, as Secretary of the Interior, "arbitrarily, illegally and despotically and in excess of their powers" on March 31, 1924, promulgated a provincial circular containing certain regulations prohibiting the chiefs of police and municipal policemen from affiliating with the local association known as Legionarios del Trabajo, Inc., in violation of the constitutional rights of every Philippine citizen peacefully to assemble, and of paragraph 13 of section 3 of the Jones Law. That following such instructions Juan R. Sanchez, as municipal president of Pateros, ordered and required the petitioner to resign from his office of chief of police for the sole reason that he was a member of the Legionarios del Trabajo, Inc. That the circular is unconstitutional, null and void. That after filing the original complaint in this action the respondents have suspended the petitioner as chief of police without notice or due process of law, and have unlawfully deprived him of the use, enjoyment and emoluments of his office. Wherefore, petitioner prays for an order enjoining the defendants from enforcing the provisions of the circular and removing him from his office, and that such proceedings be declared unconstitutional, null and void. Copies of the provincial circular and of the letter of the municipal president to the petitioner are attached to, and made a part of, the petition. The demurrer of the defendants having been overruled and the motion to strike the amended complaint having been denied, they filed an answer in which they deny all the material allegations of the amended complaint, except as hereinafter expressly or impliedly admitted, and as a special defense allege: "1. For the purpose of promoting efficiency and integrity in the municipal police service and to maintain proper discipline in the same, the respondent Chief of the Executive Bureau with the approval of the respondent Secretary of the Interior promulgated a provincial circular copy of which is attached to the original complaint and which the respondents, to avoid delay in these proceedings, consider as made a part of the amended complaint in accordance with the evident intention of the petitioner. "2. In promulgating the said circular, the respondent Chief of the Executive Bureau, and. the respondent Secretary of the Interior, acted under general provisions of law empowering chiefs of bureaus to make with the approval of the Department Head regulations not inconsistent with law to secure the efficient administration of their branch of the service and to carry into full effect the laws relating to matters within the jurisdiction of their respective Bureaus. " '3. The 'Legionarios del Trabajo' is a secret society the by-laws of which provide that the following shall be some of the duties of its members: " '2. To treat his fellow legionary as more than his true brother. " '3. To defend his brother on all occasions. " '5. Not to reveal to anybody, maintaining in absolute secrecy, all the works, movements and purposes of this order. " '6. To respect and comply with all the resolutions approved by any organization of this order. " '9. To accept and discharge all such offices as may be intrusted to him. " '14. To protect and help the laborers' movements on all occasions. " '16. To fulfill all the orders of the lodge to which he belongs, given by his superiors and others having high' authority in the Legion.' "4. The petitioner is a member of the secret society called 'Legionarios del Trabajo.' "5. In accordance with the said circular, the respondent municipal president of Pateros required the petitioner either to Withdraw from the said society or to resign as chief of police, in a communication dated July 23, 1924, copy of which is attached to the original complaint and which the

respondents consider annexed to the amended complaint and made a part thereof, in accordance with the clear intent of the petitioner. "6. Upon failure of petitioner to comply with the said order and circular, the respondent municipal president suspended the petitioner from his office as chief of police in a communication dated September 12, 1924, copy of which is incorporated into the amended complaint. "7. In suspending the said petitioner, the respondent municipal president acted in accordance with the said circular and all the respondents herein have acted within the scope of the powers assigned to them by law." And they pray that the amended petition be dismissed, with costs. JOHNS, J.

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STATEMENT

The petitioner is the chief of police of the municipality of Pateros, Province of Rizal. The respondents are the Secretary of the Interior of the Government of the Philippine Islands, Chief of the Executive Bureau, Acting Governor of the Province of Rizal, and municipal president of Pateros, Rizal, respectively. After formal allegations the petitioner alleges that this action is of general interest not only to the petitioner, but also to the majority of the chiefs of police and municipal policemen of the Philippine Islands "in whose favor this action is also presented."

That the respondent Honorio Ventura, as Chief of the Executive Bureau, with the approval of Felipe Agoncillo, as Secretary of the Interior, "arbitrarily, illegally and despotically and in excess of their powers" on March 31, 1924, promulgated a provincial circular containing certain regulations prohibiting the chiefs of police and municipal policemen from affiliating with the local association known as Legionarios del Trabajo, Inc., in violation of the constitutional rights of every Philippine citizen peacefully to assemble, and of paragraph 13 of section 3 of the Jones Law. That following such instructions Juan R. Sanchez, as municipal president of Pateros, ordered and required the petitioner to resign from his office of chief of police for the sole reason that he was a member of the Legionarios del Trabajo, Inc. That the circular is unconstitutional, null and void. That after filing the original complaint in this action the respondents have suspended the petitioner as chief of police without notice or due process of law, and have unlawfully deprived him of the use, enjoyment and emoluments of his office. Wherefore, petitioner prays for an order enjoining the defendants from enforcing the provisions of the circular and removing him from his office, and that such proceedings be declared unconstitutional, null and void. Copies of the provincial circular and of the letter of the municipal president to the petitioner are attached to, and made a part of, the petition.

The demurrer of the defendants having been overruled and the motion to strike the amended complaint having been denied, they filed an answer in which they deny all the material allegations of the amended complaint, except as hereinafter expressly or impliedly admitted, and as a special defense allege:

"1. For the purpose of promoting efficiency and integrity in the municipal police service and to maintain proper discipline in the same, the respondent Chief of the Executive Bureau with the approval of the respondent Secretary of the Interior promulgated a provincial circular copy of which is attached to the original complaint and which the respondents, to avoid delay in these proceedings, consider as made a part of the amended complaint in accordance with the evident intention of the petitioner.

"2. In promulgating the said circular, the respondent Chief of the Executive Bureau, and, the respondent Secretary of the Interior, acted under general provisions of law empowering chiefs of bureaus to make with the approval of the Department Head regulations not inconsistent with law to secure the efficient administration of their branch of the service and to carry into full effect the laws relating to matters within the jurisdiction of their respective

Bureaus.

" '3. The 'Legionarios del Trabajo' is a secret society the by-laws of which provide that the following shall be some of the duties of its members:

" '2. To treat his fellow legionary as more than his true brother.

" '3. To defend his brother on all occasions.

" '5. Not to reveal to anybody, maintaining in absolute secrecy, all the works, movements and purposes of this order.

" '6. To respect and comply with all the resolutions approved by any organization of this order.

" '9. To accept and discharge all such offices as may be intrusted to him.

" '14. To protect and help the laborers' movements on all occasions.

" '16. To fulfill all the orders of the lodge to which he belongs, given by his superiors and others having high authority in the Legion.'

"4. The petitioner is a member of the secret society called 'Legionarios del Trabajo.'

"5. In accordance with the said circular, the respondent municipal president of Pateros required the petitioner either to Withdraw from the said society or to resign as chief of police, in a communication dated July 23, 1924, copy of which is attached to the original complaint and which the respondents consider annexed to the amended complaint and made a part thereof, in accordance with the clear intent of the petitioner.

"6. Upon failure of petitioner to comply with the said order and circular, the respondent municipal president suspended the petitioner from his office as chief of police in a communication dated September 12, 1924, copy of which is incorporated into the amended complaint.

"7. In suspending the said petitioner, the respondent municipal president acted in accordance with the said circular and all the respondents herein have acted within the scope of the powers assigned to them by law." And they pray that the amended petition be dismissed, with costs.

JOHNS, J.:

Under the admissions made in the pleadings and the briefs of opposing counsel, there is no dispute about any of the material facts, and in the final analysis the question is squarely presented as to whether the Secretary of the Interior and the Chief of the Executive Bureau have the legal right to promulgate the circular letter in question and to enforce its provisions. The case is one of first impression in this court. It is admitted that the petitioner is a chief of police and a member of the association known as Legionarios del Trabajo, Inc., and that as such member he has taken an oath or obligation "to treat his fellow legionary as more than his true brother" and to "defend his brother on all occasions," "to respect and comply with all the resolutions approved by any organization of this order," and "to fulfill all the orders of the lodge to which he belongs, given by his superiors and others having high authority in the Legion." As chief of police he is an executive officer, and has taken oath of office in substance that he will support the constitution and fearlessly enforce the law as to all persons without fear or favor, and there is a sharp conflict between his oath of office as chief of police and the obligation which he took as a member of the association. So long as he is chief of police his primary duty under his oath of office is to enforce, uphold and defend the law, and as an executive officer of the Government, he has no constitutional or moral right to take any oath or obligation which directly or indirectly conflicts with his oath as a government official. As a chief of police

he has no right or license "to treat his fellow legionary as more than his true brother." Neither has he such right "to defend his brother on all occasions." As such an officer it is his sworn duty to enforce the law against all persons alike and not to shelter or protect anyone who violates the law even though he is a brother. Neither as an officer has he any right to take an obligation "to protect and help the laborers' movements on all occasions," or to take any obligation which would conflict directly or indirectly with the discharge of his official duty. Neither has he any right "to fulfill all the orders of the lodge to which he belongs, given by his superiors or others having high authority in the Legion." As chief of police his first duty is to the Government which he has sworn to uphold and defend and by whom he is employed and by whom he is paid for his services, and to perform his official duties as specified and required by his oath of office. To permit a chief of police or any other executive officer of the Government to take an obligation which is in direct conflict with his oath of office would lead to mob law, invite anarchy, overthrow and destroy the Government itself. Among other things, it is the sworn duty of police officers to keep and maintain peace and order, apprehend violators of the law and prosecute them for such violations. Under the obligation which the petitioner took as a member of the association, he is bound to treat his fellow legionary "as more than his true brother," "to defend him on all occasions," "to protect and help the laborers' movements on all occasions" and to fulfill all the orders of the lodge given to him by his superiors and those having high authority in the legion. In other words, even though there may be a conflict between his oath of office and the discharge of his official duty and the obligation which he took as a member of the order, his first and primary duty under his obligation would be to protect and defend his brother on all occasions and fulfill the orders of the association, even though they were in violation of his oath of office. That ought not to be done by any public official and it ought not to be tolerated by any government. The foundation of all government is law and order, and the government itself can act and speak only through its public officials who are sworn to uphold and defend it, and the obligation of the petitioner is in direct conflict with his oath of office as a public official. The contention that the Chief of the Executive Bureau, with the approval of the Secretary of the Interior, does not have the authority to promulgate such a rule and regulation, and that the power, if any, is vested in the Chief of Constabulary is not tenable.

The petitioner is a municipal as distinguished from a Constabulary officer and, as such, is amenable to any reasonable rules and regulations of his superiors for the good of the service. It is very apparent that the order in question was made for that purpose and to rid the Government of all public officials alike who have taken an obligation which is in direct conflict with their oath of office and which would tend to interfere with the discharge of their official duties. The circular in question is a salutary regulation and was made in the interest of law and order and good government.

Upon the admitted facts, the petitioner does not have any vested right in his office as chief of police. He took and accepted it with the implied legal understanding and agreement that he would keep his official oath and perform his official duty against any and all persons without fear or favor, and that he would not shield or protect anyone. That is one of the conditions precedent to his right to hold his office.

When by his actions and conduct a public official violates his oath of office or voluntarily assumes a position which would be in direct conflict with the proper discharge of his official duty under his oath of office, he no longer has a vested right in his office and is subject- to removal under reasonable rules and regulations. As it was written of old, he cannot serve two masters. As a public official he cannot keep and respect the obligation in question and be loyal to the Government and to the discharge of his official duty.

The circular in question, being in the nature of an executive order made for the good of the service and to promote the enforcement of the law, and it being a reasonable rule and regulation, this court should not interfere with its enforcement.

Upon the admitted facts, there may be some merit in the contention of the Attorney-General that the petition does not state facts sufficient to constitute a cause of action. Be that as it may, the petitioner has not made out a case on the merits.

The writ prayed for is denied, the action is dismissed, with a judgment for costs against the petitioner and in favor of the respondents. So ordered.

Johnson, Street, Avanceña, Villamor, Ostrand, and Romualdez, JJ., concur.

DISSENTING

MALCOLM, J.:

My views on this case may be briefly and bluntly stated. The Legislature may impose any reasonable condition upon holding office. The Legislature may delegate to administrative officers the right to promulgate regulations not inconsistent with law. Neither the Legislature nor any public officer, acting under powers granted by the Legislature, may breach any man's constitutional rights, may deprive any person of life, liberty, or property, without due process of law, or deny to any person the equal protection of the laws, or abridge the right of assembly.

But in the Philippines, there is no law which declares that public officers may not affiliate with secret organizations. The Chief of Constabulary who is permitted to "prepare and promulgate general regulations for the good government, discipline, and inspection of the municipal police, compliance wherewith shall be obligatory for all members of the organizations" (Administrative Code, sec. 2260), has not acted. On the contrary, the provincial circular in question although dealing with a subject of paramount importance which, if it is to be regulated, should receive legislative consideration, has been prescribed and enforced by the chief of a bureau not authorized to prescribe or enforce it.

Instead also of the attempted removal of the chief of police of Pateros being in accord with the law, it is in contravention of law. Be it remembered that section 2272 of the Administrative Code provides that "Members of the municipal police shall not be removed, and except in case of resignation, shall not be discharged except for misconduct or incompetency, disloyalty to the Government, serious irregularities in the performance of their duties, and violation of the law, and in such cases charges shall be preferred and investigated by the municipal council in public hearing, and defendants shall be given an opportunity to make their defense." The herein petitioner has violated no one of these provisions, and has not had the charges preferred and investigated as provided by law. His only offense consists in continuing as a member of the Legionarios del Trabajo, a society legally incorporated pursuant to the laws of the Philippine Islands, in defiance of the fiat of the Chief of the Executive Bureau.

One may agree entirely with all that is said in the prevailing opinion on the subject of good government and yet disagree in the result. The point is we are not called upon in this case to decide if the Philippine Legislature could pass a law prohibiting: public officers from joining secret societies, or if the Chief of Constabulary could legally subject municipal policemen to such a burden. All there is to the case is that a circular has been promulgated by an officer unauthorized to do so.

Limiting myself exclusively to the facts at bar, in my judgment, the circular of the Executive Bureau should be declared null, and the chief of police who is the petitioner should be ordered returned to his public position.

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