

RICARDO CABALUNA, PETITIONER, VS. HONORIO VENTURA, CHIEF OF THE EXECUTIVE BUREAU, AND FELIPE AGONCILLO, SECRETARY OF THE INTERIOR, RESPONDENTS.*G.R. No. 23222, December 29, 1924*

Ponente: STREET, J.

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By the amended petition in this cause the petitioner, Ricardo Cabaluna, seeks to obtain a writ of mandamus against the Honorable Felipe Agoncillo, Secretary of the Interior, and Honorio Ventura, Chief of the Executive Bureau, requiring them to order payment to the petitioner of the salary withheld from him for the period during which he had been suspended from the office of chief of police of Iloilo. A demurrer having been filed by the Attorney-General on behalf of the respondents the cause was submitted for a determination of the questions thus presented.

It appears that prior to October 16, 1923, the petitioner was chief of police of the municipality of Iloilo, upon which date he was suspended from office by the provincial governor of Iloilo by reason, of the pendency of a prosecution against him for the alleged offence of unfaithfulness in office (prevarication). In said prosecution the petitioner was convicted in the Court of First Instance of Iloilo, but upon appeal to this court the judgment was reversed and he was absolved (*People vs. Cabaluna*, G. R. No. 21461[1]). After his final acquittal the Honorable Ruperto Montinola, provincial governor of Iloilo, published an executive order reinstating the petitioner in the office of chief of police of Iloilo and concluding in the following words: "and upon the reinstatement, the incumbent shall be entitled to draw his full salary during the period of his suspension, subject to the approval of the Secretary of the Interior." This order was forwarded in usual course through the Chief of the Executive Bureau to the Honorable Felipe Agoncillo, Secretary of the Interior, and was returned to the provincial governor of Iloilo, disapproved, with the statement that, according to the opinion of the Attorney-General, the chief of police is not a municipal officer within the meaning of section 2192 of the Administrative Code, and that consequently there is no law under which the salary accruing during the suspension of the petitioner could be paid.

As the case is submitted to us two questions are presented, namely, whether a chief of police is a municipal officer within the meaning of section 2192 of the Administrative Code; and, whether, assuming that he is a municipal officer, the respondent Secretary of the Interior can be constrained to reverse his action and approve the executive order of Governor Montinola, authorizing the payment to the petitioner of the salary that has been withheld.

Upon the first of these points we do not hesitate to declare that a chief of police is a municipal officer within the meaning of section 2192 of the Administrative Code and that the Department Head has a discretion under that section to order the payment in whole or in part of the salary that was withheld from the petitioner during his suspension. Section 2169 enumerates as chief officials of the municipal government, the president, the vice-president, the treasurer, and the councillors; but said section does not pretend to enumerate all of the officers of the municipal government. In section 2 of the Administrative Code, we find a suggestive definition of "officer,"

wherein it is stated that said term, as used in the Administrative Code, refers to officials whose duties, not being of a clerical or manual nature, may be considered to involve the exercise of discretion in the performance of the functions of Government, whether such duties are precisely defined by law or not. That the chief of police exercises the functions of an officer is a matter about which there can be no doubt. That he is a municipal officer within the meaning of section 2192 of the Administrative Code is equally clear. The chief of police is appointed by the municipal president, with the consent of the council (Admin. Code, sec. 2259, as amended by Act No. 3144); his salary is paid from municipal funds (Admin. Code, sec. 2273) ; he is subject to suspension and removal by the president, with the consent of the majority of the council (Admin. Code, sec. 2201, as amended by section 6 of Act No. 3115) ; and he is subject to the same administrative discipline as other municipal officers. (*Borja vs. Agoncillo*, 46 Phil., 432.) The circumstance that he is a peace officer and subject to additional military regulations prescribed by the Chief of the Constabulary is not in any wise inconsistent with his status as a municipal officer.

Moreover, if the petitioner is to be excluded from the operation of section 2192 of the Administrative Code as not being a municipal officer within the meaning of said section, it would result that the case would be governed by section 260 of said Code, since it must at least be admitted that the chief of police is administratively subordinate to the provincial governor, who suspended him. The difference between the two sections is that under section 2192 the matter of paying salary withheld during suspension is left within the discretion of the Department Head, while under section 260 the payment of such salary is peremptorily required subject only to the disciplinary provisions of the Civil Service Law. As already indicated, the provision applicable to the case is clearly section 2192. It would indeed be singular if the Legislature had intended to exclude the chief of police from the benefit of so just a provision, and no such intention can, in our opinion, be fairly deduced from the language used.

From what has been said it is manifest that the action taken by the respondent Secretary of the Interior in disapproving the order of Governor Montinola for the payment of the withheld salary was based upon an erroneous assumption as to the state of the law. But it does not follow that this court has jurisdiction to compel the Secretary of the Interior or his correspondent, the Chief of the Executive Bureau, to order the payment of said salary. The law says that in the case that has occurred "the Department Head may order the payment of the whole or part of the salary accruing during such suspension." When this provision is read in conjunction with section 5 of the Administrative Code it will be seen that the expression "may order," as here used, implies the use of discretion, and cannot be interpreted in the sense of "shall order." For aught we know there may be other reasons besides that expressed in communication of the respondent Secretary of the Interior which would justify withholding the salary now claimed by the respondent. At any rate the law places the responsibility of deciding the matter on the administrative officer, and this court will not attempt to control him in the exercise of his official discretion.

The demurrer must therefore be sustained; and it being evident that the petition suffers from a defect not curable by amendment, an order will be entered dismissing the petition, without costs.

Johnson, Malcolm, Avancena, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

[1] Promulgated August 21, 1924, not reported.

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