

ARTEMIO MOJICA, PETITIONER, VS. FELIPE AGONCILLO, IN HIS CAPACITY AS SECRETARY OF THE INTERIOR, RESPONDENT.*G.R. No. 23530. February 27, 1925*

Ponente: STATEMENT For a writ of mandamus, the petitioner alleges that on December 15, 1920, he was a duly appointed and qualified policeman of the City of Manila upon which date he was suspended from office by the Mayor of the City for having killed one Crispin Macasinag; that later he was charged with the offense of homicide, and on April 4, 1921, he was convicted of the crime by the Court of First Instance of Manila, and sentenced to suffer fourteen years, eight months and one day of reclusion temporal. It is then alleged that: "On April 22, 1921, the Mayor of Manila ordered his dismissal from the service but without prejudice to his reinstatement if finally acquitted, said order to have retroactive effect from December 15, 1920." That the petitioner appealed from the judgment of the lower court and was acquitted by the Supreme Court[1] upon the ground that he acted in self-defense. That on February 18, 1922, he was reinstated in the service upon the recommendation of the Chief of Police and the Mayor of Manila, and that he applied for the payment of his salary from December 15, 1920, to February 18, 1922, amounting to P1,269. That the defendant unlawfully and unjustly denied his petition. That the order of the Mayor dated December 15, 1920, was an order of suspension only, and that the same thing is true as to the order of December 15, 1921. That the petitioner has no speedy or adequate remedy at law, and therefore prays that a writ of mandamus be issued, ordering the defendant to approve the payment of his back salary, so that he may receive it. Later, the complaint was amended to read that on February 18, 1922, the petitioner was actually reinstated in the service, and then applied for the payment of his back salary amounting to P1,535.57, which is the actual amount due the petitioner. After a demurrer to the complaint was overruled, the defendant made a general denial, and as a special defense plead the copy of the order of dismissal as Exhibit 1, and the new appointment of the petitioner as Exhibit 2. That there is no law authorizing the payment of the back salary. That the petitioner was removed and not merely suspended, and that he is not legally entitled to the payment of any salary during the period that he was removed. The case was submitted upon an agreed statement of facts, from which it appears: "1st Indorsement "OFFICE OF THE MAYOR "CITY OF MANILA Dec. 24, 1920. "Respectfully returned to the Chief of Police, hereby ordering the suspension of patrolman Artemio Mojica, pending investigation of the charge preferred against him, attention in this connection being invited to the memorandum order of the Governor-General dated November 7, 1917. "Return hereof with report of action taken, is requested. "By authority of the Mayor. (Sgd.) "ROS. ALMARIO "Secretary to the Mayor" "2nd Indorsement "OFFICE OF THE CHIEF OF POLICE "Manila, December 29, 1920. "Respectfully returned to His Honor, the Mayor, City of Manila, with the information that patrolman Artemio Mojica was suspended effective December 15, 1920. (Sgd.) "EDWIN C. BOPP "Chief of Police" As a result of the conviction of the petitioner in the Court of First Instance of Manila on April 4, 1921, the following order was made: "CITY OF MANILA "OFFICE OF THE MAYOR, MANILA "2nd Indorsement "April 22, 1921. "Respectfully returned to the Chief of Police, with the instruction that patrolman Artemio Mojica be dismissed from the service effective as of December 15, 1920, without prejudice to his reinstatement should he be acquitted in the criminal complaint for homicide preferred against him. "Return hereof with report of action is requested. (Sgd.) "R. J. FERNANDEZ "Mayor, City of Manila" As a result of his acquittal in the Supreme Court, the following order was made: "CITY OF MANILA "February 21, 1922. "Sir: I have the honor to request approval of the within appointment, by reinstatement, of Mr. Artemio Mojica as third class patrolman in the Manila Police Department, at a yearly salary of P1,020, the same to take effect as of the 18th of Feb., 1922. "Mr. Mojica was dismissed from the City Police Force on December 15, 1920, without prejudice to his reinstatement should he be acquitted in the criminal complaint for homicide preferred against him for shooting one Crispin Macasinag, a Philippine Constabulary soldier. On the fifteenth instant, the Supreme Court of the Philippine Islands acquitted Mr. Mojica of the charge of homicide for which he was convicted by

the Court of First Instance of the city. Copy of the absolutory decision of the Supreme Court is hereto attached. "Very respectfully, (Sgd.) "R. J. FERNANDEZ "Mayor, City of Manila "The Honorable, the SECRETARY OF THE INTERIOR (thru the Director of Civil Service), Manila." And on the same date, the following order was made: "PHILIPPINE CIVIL SERVICE "CITY OF MANILA "MANILA, February 21, 1922. "Mr. ARTEMIO MOJICA c/o Police Department City of Manila. "SIR: You are hereby appointed a third class patrolman in the Department of Police, City of Manila, with compensation at the rate of ten hundred twenty (P1,020) pesos per annum, the appointment to take effect Feb. 18, 1922. "Very respectfully, (Sgd.) "R. J. FERNANDEZ "Mayor, City of Manila" "Recommended by: (Sgd.) "..... "Attested: (Sgd.) "JOSE GIL "Actg. Director of Civil Service "Approved: by the Secretary of the Interior in an indorsement dated March 24, 1922. (Sgd.) "TEODORO M. KALAW "Secretary of the Interior" This last order was approved by the Secretary of the Interior March 24, 1922. JOHNS, J.: It will be noted that the petition alleges: "That on April 22, 1921, the Mayor of Manila ordered his dismissal from the service but without prejudice to his reinstatement if finally acquitted, said order to have retroactive effect from December 15, 1920." It will also be noted that there is no proof that the order was "to have retroactive effect from December 15, 1920." Also that the order dated February 21, 1922, recites that "you are hereby appointed a third class patrolman, etc., the appointment to take effect Feb. 18, 1922," and it was that order which was approved by the defendant on March 24, 1922. The order of April 22, 1921, recites that the petitioner "be dismissed from the service effective as of December 15, 1920, without prejudice to his reinstatement should he be acquitted." The proof is conclusive that nothing more was done than to appoint the petitioner a third class patrolman in the City of Manila, which appointment recites that it is "to take effect February 18, 1922," and that nothing whatever is said in the appointment about reinstatement or suspension. Although the appointment itself was made February 21, 1922, and J. W. Green, as Chief of Police, on March 13, 1922, strongly recommended that the petitioner be reinstated, the appointment was not approved by the Secretary of the Interior until the 24th of March, 1922, more than thirty days after it was made. The defendant was required to answer upon the allegation made in the petition that "said order to have retroactive effect from December 15, 1920," and upon that point there is a failure of proof. The record is conclusive that nothing more was done than to appoint the petitioner a third class patrolman, which appointment expressly recites that it shall "take effect February 18, 1922." If the order of April 22, 1921, in which the petitioner was dismissed from the service "without prejudice to his reinstatement if finally acquitted," had been made retroactive, as the petition alleges, another and a different question would have been presented. For such reasons, it follows that the petition for the writ must be denied. Be that as it may, every member of this court is clearly of the opinion that, as a simple act of justice, the city should pay petitioner the full amount of his claim. In its opinion acquitting the petitioner of the crime with which he was charged, this court says: "A police officer, in the performance of his duty, must stand his ground and cannot, like a private individual, take refuge in flight; his duty requires him to overcome his opponent. The force which he may exert therefore differs somewhat from that which may ordinarily be offered in self-defense. Bearing this in mind, we do not think that the appellant in using his revolver against the deceased can be said to have employed unnecessary force. The deceased attacked him with a deadly weapon; he might, perhaps, have saved himself by running away, but this his duty forbade. * * * "Considering the threatening attitude of Macasinag, the appellant had the best of reasons for believing that his life was in imminent danger and we think the means employed by him for his defense were, in the circumstances, reasonably necessary." (U. S. vs. Mojica, 42 Phil., 784.) Here, the petitioner was a policeman, and although it is true that he killed the man, it is equally true that he acted in self-defense. In other words, to save his own life, he had to kill Macasinag. Because he protected his own life he was first suspended and then dismissed from the service. His suspension or dismissal in the event of his acquittal should have been made retroactive and to take effect as of December 15, 1920. That was not done. The petitioner did not commit any crime or violate any law, and the final result clearly shows that his summary dismissal was an act of injustice. As pointed out by Chief of Police Green, such proceedings have a very demoralizing influence on the morale of the police force. Although we are clearly of the opinion that in the interest of justice, the city should pay petitioner's claim, yet, upon the stipulated facts, we must deny the writ. Neither party to recover costs. So

ordered. Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur. [1] U. S. vs. Mojica, 42 Phil., 784.
DISSENTING JOHNSON, J.

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STATEMENT

For a writ of mandamus, the petitioner alleges that on December 15, 1920, he was a duly appointed and qualified policeman of the City of Manila upon which date he was suspended from office by the Mayor of the City for having killed one Crispin Macasinag; that later he was charged with the offense of homicide, and on April 4, 1921, he was convicted of the crime by the Court of First Instance of Manila, and sentenced to suffer fourteen years, eight months and one day of reclusion temporal.

It is then alleged that:

"On April 22, 1921, the Mayor of Manila ordered his dismissal from the service but without prejudice to his reinstatement if finally acquitted, said order to have retroactive effect from December 15, 1920."

That the petitioner appealed from the judgment of the lower court and was acquitted by the Supreme Court[1] upon the ground that he acted in self-defense. That on February 18, 1922, he was reinstated in the service upon the recommendation of the Chief of Police and the Mayor of Manila, and that he applied for the payment of his salary from December 15, 1920, to February 18, 1922, amounting to P1,269. That the defendant unlawfully and unjustly denied his petition. That the order of the Mayor dated December 15, 1920, was an order of suspension only, and that the same thing is true as to the order of December 15, 1921. That the petitioner has no speedy or adequate remedy at law, and therefore prays that a writ of mandamus be issued, ordering the defendant to approve the payment of his back salary, so that he may receive it. Later, the complaint was amended to read that on February 18, 1922, the petitioner was actually reinstated in the service, and then applied for the payment of his back salary amounting to P1,535.57, which is the actual amount due the petitioner.

After a demurrer to the complaint was overruled, the defendant made a general denial, and as a special defense plead the copy of the order of dismissal as Exhibit 1, and the new appointment of the petitioner as Exhibit 2. That there is no law authorizing the payment of the back salary. That the petitioner was removed and not merely suspended, and that he is not legally entitled to the payment of any salary during the period that he was removed.

The case was submitted upon an agreed statement of facts, from which it appears:

"1st Indorsement

"OFFICE OF THE MAYOR

"CITY OF MANILA

Dec. 24, 1920.

"Respectfully returned to the Chief of Police, hereby ordering the suspension of patrolman Artemio Mojica, pending investigation of the charge preferred against him, attention in this connection being invited to the memorandum order of the Governor-General dated November 7, 1917.

"Return hereof with report of action taken, is requested.

"By authority of the Mayor.

(Sgd.)

"ROS. ALMARIO

"Secretary to the Mayor"

"2nd Indorsement

"OFFICE OF THE CHIEF OF POLICE

"Manila, December 29, 1920.

"Respectfully returned to His Honor, the Mayor, City of Manila, with the information that patrolman Artemio Mojica was suspended effective December 15, 1920.

(Sgd.)

"EDWIN C. BOPP

"Chief of Police"

As a result of the conviction of the petitioner in the Court of First Instance of Manila on April 4, 1921, the following order was made:

"CITY OF MANILA

"OFFICE OF THE MAYOR, MANILA

"2nd Indorsement

"April 22, 1921.

"Respectfully returned to the Chief of Police, with the instruction that patrolman Artemio Mojica be dismissed from the service effective as of December 15, 1920, without prejudice to his reinstatement should he be acquitted in the criminal complaint for homicide preferred against him.

"Return hereof with report of action is requested.

(Sgd.)

"R. J. FERNANDEZ

"Mayor, City of Manila"

As a result of his acquittal in the Supreme Court, the following order was made:

"CITY OF MANILA

"February 21, 1922.

"Sir: I have the honor to request approval of the within appointment, by reinstatement, of Mr. Artemio Mojica as third class patrolman in the Manila Police Department, at a yearly salary of P1,020, the same to take effect as of the 18th of Feb., 1922.

"Mr. Mojica was dismissed from the City Police Force on December 15, 1920, without prejudice to his reinstatement should he be acquitted in the criminal complaint for homicide preferred against him for shooting one Crispin Macasinag, a Philippine Constabulary soldier. On the fifteenth instant, the Supreme Court of the Philippine Islands acquitted Mr. Mojica of the charge of homicide for which he was convicted by the Court of First Instance of the city. Copy of the absolatory decision of the Supreme Court is hereto attached.

"Very respectfully,

(Sgd.)

"R. J. FERNANDEZ

"Mayor, City of Manila

"The Honorable, the SECRETARY OF THE INTERIOR

(thru the Director of Civil Service), Manila."

And on the same date, the following order was made:

"PHILIPPINE CIVIL SERVICE

"CITY OF MANILA

"MANILA, February 21, 1922.

"Mr. ARTEMIO MOJICA

c/o Police Department

City of Manila.

"SIR: You are hereby appointed a third class patrolman in the Department of Police, City of Manila, with compensation at the rate of ten hundred twenty (P1,020) pesos per annum, the appointment to take effect Feb. 18, 1922.

"Very respectfully,

(Sgd.)

"R. J. FERNANDEZ

"Mayor, City of Manila"

"Recommended by:

(Sgd.) ".....

"Attested:

(Sgd.) "JOSE GIL

"Actg. Director of Civil Service

"Approved: by the Secretary of the Interior in an indorsement dated March 24, 1922.

(Sgd.)

"TEODORO M. KALAW

"Secretary of the Interior"

This last order was approved by the Secretary of the Interior March 24, 1922.

JOHNS, J.:

It will be noted that the petition alleges:

"That on April 22, 1921, the Mayor of Manila ordered his dismissal from the service but without prejudice to his reinstatement if finally acquitted, said order to have retroactive effect from December 15, 1920."

It will also be noted that there is no proof that the order was "to have retroactive effect from December 15, 1920." Also that the order dated February 21, 1922, recites that "you are hereby appointed a third class patrolman, etc., the appointment to take effect Feb. 18, 1922," and it was that order which was approved by the defendant on March 24, 1922. The order of April 22, 1921, recites that the petitioner "be dismissed from the service effective as of December 15, 1920, without prejudice to his reinstatement should he be acquitted."

The proof is conclusive that nothing more was done than to appoint the petitioner a third class patrolman in the City of Manila, which appointment recites that it is "to take effect February 18, 1922," and that nothing whatever is said in the appointment about reinstatement or suspension.

Although the appointment itself was made February 21, 1922, and J. W. Green, as Chief of Police, on March 13, 1922, strongly recommended that the petitioner be reinstated, the appointment was not approved by the Secretary of the Interior until the 24th of March, 1922, more than thirty days after it was made.

The defendant was required to answer upon the allegation made in the petition that "said order to have retroactive effect from December 15, 1920," and upon that point there is a failure of proof.

The record is conclusive that nothing more was done than to appoint the petitioner a third class patrolman, which appointment expressly recites that it shall "take effect February 18, 1922."

If the order of April 22, 1921, in which the petitioner was dismissed from the service "without prejudice to his reinstatement if finally acquitted," had been made retroactive, as the petition alleges, another and a different question would have been presented.

For such reasons, it follows that the petition for the writ must be denied.

Be that as it may, every member of this court is clearly of the opinion that, as a simple act of justice, the city should pay petitioner the full amount of his claim.

In its opinion acquitting the petitioner of the crime with which he was charged, this court says:

"A police officer, in the performance of his duty, must stand his ground and cannot, like a private individual, take refuge in flight; his duty requires him to overcome his opponent. The force which he may exert therefore differs somewhat from that which may ordinarily be offered in self-defense. Bearing this in mind, we do not think that the appellant in using his revolver against the deceased can be said to have employed unnecessary force. The deceased attacked him with a deadly weapon; he might, perhaps, have saved himself by running away, but this his duty forbade. * * *

"Considering the threatening attitude of Macasinag, the appellant had the best of reasons for believing that his life was in imminent danger and we think the means employed by him for his defense were, in the circumstances, reasonably necessary." (U. S. vs. Mojica, 42 Phil., 784.)

Here, the petitioner was a policeman, and although it is true that he killed the man, it is equally true that he acted in self-defense. In other words, to save his own life, he had to kill Macasinag. Because he protected his own life he was first suspended and then dismissed from the service. His suspension or dismissal in the event of his acquittal should have been made retroactive and to take effect as of December 15, 1920. That was not done. The

petitioner did not commit any crime or violate any law, and the final result clearly shows that his summary dismissal was an act of injustice.

As pointed out by Chief of Police Green, such proceedings have a very demoralizing influence on the morale of the police force.

Although we are clearly of the opinion that in the interest of justice, the city should pay petitioner's claim, yet, upon the stipulated facts, we must deny the writ. Neither party to recover costs. So ordered.

Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

[1] U. S. vs. Mojica, 42 Phil., 784.

DISSENTING

JOHNSON, J.:

In my opinion the prayer of the petitioner should be granted. He did his duty and was suspended without cause, as the court later found. His suspension should have been removed and he should have been restored to his duty with full salary. He was without fault. You cannot expect officers to do their full duty if they are not supported by their superiors. The esprit de corps of the police department cannot be maintained if the lawful acts of the members of that corps are punished when they comply with their duties and obligations.

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