

**ALEJANDRO FERRER, TEODORO P. FOJAS, OCTAVIO HERNANDEZ
AND JESUS GARCIA, PETITIONERS-APPELLANTS, VS. HON. RUFINO
HECHANOVA, IN HIS CAPACITY AS SECRETARY OF FINANCE, HON.
JOSE B. ...**

G.R. No. 24418. January 25, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

This is an appeal in a petition for mandamus filed in the Court of First Instance of Manila by four employees dismissed from the Bureau of Customs to compel their reinstatement with payment of back salaries and attorney's fees.

Petitioner Alejandro Ferrer was issued on June 25, 1958 a probational appointment as Special Police Officer in the Bureau of Customs. On June 25, 1959, he was extended an appointment as Special Agent in the same Bureau, his designation having been changed from Special Police Officer to Special Agent under Republic Act 2300 (Appropriation Act). This latter appointment was attested to by the Civil Service Commissioner as provisional "pending determination as to whether the position occupied will be placed in the classified or unclassified position."

Ferrer—who was not a civil service eligible—accepted said appointments and assumed office thereunder. On June 20, 1963, the Secretary of Finance and the Commissioner of Customs dismissed him on the stated ground of loss of confidence.

Petitioner Teodoro P. Fojas was a permanent and regular employee in the Bureau of Customs having been extended an appointment as Special Agent. From said position he was separated or dismissed by the Secretary of Finance and the Commissioner of Customs on June 24, 1963, also for "loss of confidence." Fojas was a second grade civil service eligible.

Petitioner Jesus Garcia was a regular and permanent employee in the Bureau of Customs, as Special Police Officer, having been appointed thereto, from which he was separated from the service by the Secretary of Finance and Commissioner of Customs on June 20, 1963 for "loss of confidence". Garcia had no civil service eligibility.

Petitioner Octavio Hernandez was a regular and permanent employee as Police Private in the Port Patrol Division, Bureau of Customs, having been extended an appointment thereto. Not a civil service eligible, he, too, was dismissed by the Secretary of Finance and Commissioner of Customs in December 1962 for "loss of confidence."

Petitioners Ferrer, Fojas and Garcia, on December 12, 1963 and petitioner Hernandez, on February 21, 1964, requested the Secretary of Finance and Commissioner of Customs to reinstate them, but said requests were denied. Also, Hernandez, thru his father, wrote the Secretary of Finance on January 9, 1964 requesting reconsideration of his dismissal. The Secretary has not replied to said letter.

On March 9, 1964 the petitioners filed the present suit in the court a quo against the Secretary of Finance, the Commissioner of Customs and the Auditor of the Bureau of Customs.

The Court of First Instance, on January 6, 1965, rendered judgment dismissing the petition, without costs, on the finding that the positions from which petitioners had been dismissed belong to the classified service, and that petitioners, except Fojas, not being civil service eligibles, they must be deemed holders of appointments temporary in nature with no fixed tenure in office, terminable at the pleasure of the appointing power. As to Fojas, the same principle was applied, on the ground that his second grade civil service eligibility is not appropriate for the position of Special Agent in the Port Patrol Division of the Bureau of Customs.

And, hence, petitioners appealed therefrom to this Court.

Appellants contend that their positions do not call for civil service eligibility on their part, arguing that there is no law passed by Congress declaring said positions as falling under the classified service. They stress the point that said positions had been declared by executive orders[*] as primarily confidential. As ruled by this Court, however, in *Peñero vs. Hechanova*, L-22562, October 22, 1966, with the advent of the Civil Service Act of 1959 (R.A. 2260, effective June 19, 1959), it is the nature of the functions attached to the position that determines ultimately whether an administrative position is primarily confidential, policy determining or highly technical. And as further held in said case, in the absence of proven facts to show such close intimacy and trust between the appointing power and the appointees as would support a finding that confidence was the primary reason for the existence of the positions held by them or for their appointment thereto, said positions can not be deemed primarily confidential in nature. Said ruling applies to the present case, since there is here likewise no evidence showing the nature of the civil service positions in question to be primarily confidential.

From the above it follows that notwithstanding the designation of petitioners Hernandez and Garcia as "permanent" appointees, they are in legal contemplation actually not permanent appointees within the meaning of the Civil Service Law; for a permanent appointment implies civil service eligibility (*Sigue vs. Rayabaya*, L-11717, December 27, 1958), which they admittedly do not possess.

The same is true with petitioner Fojas, because his second grade civil service eligibility is, as pointed out by the court below, not appropriate for the position he occupied, that of Special Agent in the Port Patrol Division of the Bureau of Customs, so that he is likewise without the requisite civil service eligibility.

Petitioner Ferrer, as stated, held only a provisional appointment at the time he was dismissed. A provisional appointment is good only until replacement by a civil service eligible and in no case beyond thirty (30) days from the date of receipt by the appointing officer of the certificate of eligibles (Sec. 24/c7, R.A. 2260; Rule VI, Secs. 13 and 14 of Revised Civil Service Rules; *Peñero vs. Hechanova*, supra).

Petitioners Fojas, Hernandez and Garcia, who, as stated, are not possessed of the required civil service eligibility, but who were issued so-called permanent appointments, should be deemed provisional appointees in their respective positions, since it is not questioned that except for this requisite they otherwise meet the requirements for appointment to the said regular positions in the competitive service. Their stay therein, therefore, should also continue only up to their replacement by eligibles and in no case beyond thirty (30) days from the receipt by the appointing officer of the certificate of eligibles.

Since "loss of confidence" is not a valid ground for dismissal of the aforesaid provisional appointees occupying positions in the classified service, their reinstatement must be ordered, with payment of back salaries. This however is without prejudice to their replacement by civil service eligibles nor shall they continue in said positions as provisional appointees for more than thirty (30) days from receipt by their appointing officer of the

appropriate register of eligibles, from which list their replacement be chosen.

Wherefore, the judgment appealed from is hereby set aside; petitioners are ordered reinstated with payment of back salaries from the dates of their dismissal up to their reinstatement, or, if they have been replaced by civil service eligibles, up to said replacement; in the absence of said replacement, petitioners shall continue in said positions but in no case beyond thirty (30) days from receipt by the proper appointing officer of the certificate of eligibles. No costs. So ordered.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

[*] No. 397, Series of 1941 and No. 94, Series of 1947.

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