

RAFAEL M. ABAYA, PETITIONER-APPELLEE, VS. ANTONIO J. VILLEGAS, ET AL., RESPONDENTS. ABELARDO SUBIDO, RESPONDENT-APPELLANT.

G.R. No. 25641. December 17, 1966

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Petitioner Rafael M. Abaya passed the civil service examination for patrolmen held on November 24, 1962. On March 3, 1964, he was appointed Manila patrolman by respondent mayor Antonio J. Villegas.[1] The Commissioner of Civil Service,[2] respondent Abelardo Subido, approved this appointment on May 20, 1964 with the following conditions: (a) subject to the usual physical and medical examination; (b) provided that there is no pending administrative case against the appointee; no pending protest against the appointment; and no decision by competent authority that will adversely affect the approval of said appointment.

On October 16, 1964, petitioner started service.

On May 18, 1965, the Commissioner addressed to the Mayor a communication advising that because petitioner gave a false answer to his application for patrolmen's examination, he (Commissioner) cancelled petitioner's civil service eligibility derived therefrom, and that accordingly petitioner's appointment was anchored on eligibility fraudulently obtained. He directed that petitioner's employment "be terminated immediately".

The false answer just adverted to is contained in petitioner's verified application aforesaid, dated November 15, 1962. Question No. 6 thereof reads:

"6. Have you ever been accused of, indicted for or tried for the violation of any law, ordinance, or regulation, before any court, or have you ever been charged with or tried for any breach or infraction of military, naval, or constabulary discipline before any military, naval, or constabulary tribunal or other authorities ? (If so, give the date and state fully the nature of the offense. A CERTIFIED COPY OF COURT PROCEEDINGS SHOULD BE SUBMITTED WITH APPLICATION. If already submitted, give date of submission and in connection with what examination)."

To this question petitioner answered "No". The fact, however, was that at the time of the filing of the application there were cases pending against him in the Fiscal's Office and in the City Court of Manila. Cited were: Criminal Case No. F-016885, for slight physical injuries;[3] Criminal Case No. D-095207, for trespass to dwelling;[4] Criminal Case No. J-064029, for violation of section 844, Revised Ordinances;[5] and I. S. No. 61-28520, for estafa.[6]

The Mayor sought the opinion of the City Fiscal of Manila. The latter, on June 7, 1965, opined that termination of petitioner's employment "without prior hearing on the alleged violation of law and civil service rules, would be violative of the due process clause and the security of tenure guaranteed civil service employees. (Sec. 1, Art. III and Sec. 4, Art. XII, Constitution; Sec. 32, R. A. 2260)".

On June 9, 1965, the Mayor wrote the Commissioner, informing that in view of the City Fiscal's opinion he was proceeding administratively against petitioner.

But, on June 15, 1965, the Commissioner sent the Mayor another directive stating that a hearing would be "a useless act"; reiterating that petitioner's services be terminated; and reminding the city executive of the penal liability under Section 44 of the Civil Service Act of 1959 (Republic Act 2260) in the event of his failure to comply therewith.

The Mayor required petitioner to explain. In his answer, dated June 18, 1965,[7] petitioner admitted "having made a negative reply to Question No. 6" of his application for examination.

In a letter of October 18, 1965, the Mayor terminated petitioner's services in the Manila Police Department, effective immediately.

Since May, 1965, respondent City Treasurer withheld petitioner's salary.

On November 2, 1965, petitioner went to the Manila court on prohibition and mandamus. Upon the petition therefor and the answer thereto, and the stipulation of facts, the trial court, on June 15, 1966, rendered judgment, as follows:

"WHEREFORE, the respondents are hereby ordered to reinstate the petitioner into the service, to pay his salaries accruing since May, 1965, without prejudice to initiating the proper proceedings for the removal of the petitioner. Respondents shall pay the costs." [8]

The case before us is solely upon appeal taken by the Commissioner.

- The constitutionally protected security of tenure is: "[N]o officer or employee in the civil service shall be removed or suspended except for cause as provided by law". [9]

Section 32 of the Civil Service Law of 1959 echoes this precept with the provision that "[N]o officer or employee in the civil service shall be removed or suspended except for cause as provided by law and after due process." Said Section 32 adds that the officer or employee complained of "shall be entitled to a formal investigation if he so elects, in which case, he shall have the right to appear and defend himself at said investigation in person or by counsel, to confront and cross-examine the witnesses against him, and to have the attendance of witnesses and production of documents in his favor by compulsory process or subpoena or subpoena duces tecum. " A civil service employee should be heard before he is condemned. Jurisprudence has clung to this rule with such unrelentless grasp that by now it would appear trite to make citation thereof.

Two acts adverse to petitioner were done: Appellant Commissioner's cancellation of his eligibility, and respondent Mayor's order of dismissal. Concededly, however, there was no investigation prior to the cancellation of petitioner's civil service eligibility and before he was eased out of the service. Consequently, petitioner was denied due process.

- But the thrust of appellant's argument is that formal investigation is unnecessary because petitioner has admitted that he made "a negative reply to Question No. 6 of his application for examination", heretofore transcribed. From this, appellant draws the conclusion that petitioner made a "false negative answer" and that formal investigation would be but an act of supererogation.

We go to the controlling principle. Rule II, Article 4, of the Civil Service Rules,[10] in its proviso, reads:

"That when an applicant for examination intentionally makes a false statement of any material fact in his application, or practices or attempts to practice any deception or fraud in connection with his examination, the Commissioner shall invalidate his examination and such offense shall be ground for his removal from the

service."

The accent is on the word intentionally. The fact that petitioner made an answer which is at war with the truth does not connote the idea that it was intentionally made. Conceivably, situations may exist which could bring up that answer to the level of one given in good faith. Without evidence, we are loathe to tar and feather petitioner as a perjurer. Short of an inquiry which proves that the false answer was intentionally made, we cannot attribute thereto a meaning which would make a felon out of petitioner. It should then go without saying that the vitality of the constitutional principle of due process cannot be allowed to weaken by sanctioning cancellation of an employee's civil service eligibility and/or his dismissal from service — without hearing — upon a doubtful assumption that he has admitted his guilt for an offense against civil service rules. It is pertinent here to recall that good faith is always presumed;^[11] In the context just presented, we are constrained to state that petitioner received less than a fair treatment. Due process, in the end, merely is "the embodiment of the sporting idea of fair play".^[12]

And again we say that petitioner was not accorded his right to due process.

- The prematurity of petitioner's complaint is next relied upon by appellant. Appellant's thesis on this score is that petitioner has not exhausted administrative remedies — he did not appeal from the order of dismissal, but went straight to court.

Exhaustion of administrative remedies is not an iron-clad rule.

Such exhaustion is not necessary here. And for a number of reasons. First, because in the situation in which petitioner was found, dismissed from the job, denied his pay and with a family to support, it is easy to perceive that he had to look up to the courts for speedy relief. In this factual environment, administrative remedy — appeal to the Civil Service Board of Appeals — is not expeditious and adequate.^[13] Second, the question presented is "purely a legal one"; the controverted act is "patently illegal",^[14] and "nothing of an administrative nature is to be or can be done".^[15] Third, petitioner was denied due process.^[16] Each of the three instances just mentioned — and they are all present here — is an exception to the rule of exhaustion of administrative remedies. Petitioner's reinstatement becomes ministerial; payment of his back salary merely incidental to reinstatement.^[17]

UPON THE RECORD, we vote to affirm the judgment under review. No costs.

SO ORDERED.

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

[1] Hereinafter referred to as Mayor.

[2] Hereinafter referred to as Commissioner.

[3] Dismissed on February 19, 1963.

[4] This case was dismissed on August 12, 1959, long before petitioner filed the application for examination.

[5] Id., dismissed provisionally on December 4, 1957.

[6] Apparently filed in the City Court as MC-E-110004, this case was dismissed on February 14, 1963. See p. 5, petitioner's memorandum filed with the lower court on January 5, 1966.

[7] This answer is not attached to the record.

[8] By resolution of this Court of May 25, 1966, respondents Mayor and City Treasurer of Manila were ordered to cause the payment of withheld salaries during the period from May to October 18, 1965.

[9] Section 4, Article XII, Constitution.

[10] Adopted pursuant to Sec. 16(e) of the Civil Service Act of 1959; italics supplied.

[11] Article 527, Civil Code.

[12] Frankfurter, Mr. Justice Holmes and the Supreme Court, pp. 32-33, cited in Tañada and Fernando, Constitution of the Philippines, 4th ed., Vol. I, p. 85. See also: Lisenba vs. California, 314 U. S. 219, 236, 86 L ed., 166, 180; Galvan vs. Press, 347 U.S. 522, 530, 98 L. ed., 911, 921.

[13] Marinduque Iron Mines Agents, Inc. vs. Secretary of Public Works and Communications, L-15982, May 31, 1963.

[14] Gonzales vs. Hechanova, etc., et al., 60 O.G. No. 6, pp. 802, 806, and cases cited; Cariño, et al., vs. Agricultural Credit and Cooperative Financing Administration, et al., L-19808, September 29, 1966.

[15] Tapales vs. President and Board of Regents, etc., L-17523, March 30, 1963.

[16] Borja vs. Moreno, etc., et al., L-16487, July 31, 1964.

[17] Tan vs. Gimenez, etc., et al., L-12525, February 19, 1960.

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