

SIMPLICIO SERAFIN, PLAINTIFF AND APPELLEE, VS. JUSTO C. CRUZ, DEFENDANT AND APPELLANT.

G.R. No. 39224. October 24, 1933

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the respondent Justo C. Cruz from the judgment rendered by the Court of First Instance of Bulacan, the dispositive part of which reads as follows:

"Wherefore, it is but just and equitable that judgment be rendered in this case in favor of the plaintiff Simplicio Serafin, declaring that he is entitled to hold the office of chief of police of the municipality of Quingua, and it is hereby ordered that he be reinstated therein with all the privileges and emoluments appurtenant thereto in conformity with the law, from the date of this decision.

"The defendant herein cannot be sentenced to pay the costs on the ground that the municipal president who is liable therefor, was not included as a party defendant herein. Neither can the defendant be deprived of the emoluments already collected by him on the ground that he rendered services and collected such emoluments on the strength of the appointment issued in his favor by the municipal president himself."

In support of his appeal the appellant assigns the following alleged errors in the decision of the trial court, to wit:

"I. The lower court erred in not declaring that the decision rendered by the former provincial board of Bulacan, dated October 3, 1931, being final and conclusive, the plaintiff is not entitled to any other remedy except to invoke the authority of intervention of the Governor-General of the Philippine Islands in case of manifest abuse of discretion on the part of said provincial board.

"II. The lower court erred in not declaring that the actual provincial board of the Province of Bulacan has no jurisdiction over the case.

"III. The lower court erred in not declaring that the decision of the actual provincial board of the Province of Bulacan, dated January 21, 1932, decreeing the reinstatement of the plaintiff in the position of chief of police of the municipality of Quingua, Bulacan, is null and void.

"IV. The lower court erred in not finding that by virtue of the final decision of the former provincial board of Bulacan, dated October 3, 1931, ousting the herein plaintiff from the position of chief of police of the municipality of Quingua, Bulacan, said municipality had, in accordance with law, the right to declare said position vacant and to appoint another one in lieu of said plaintiff.

"V. The lower court erred in declaring that the former provincial board of Bulacan had committed errors in decreeing the complete separation of the plaintiff from the service as chief of police of the municipality of Quingua, Bulacan.

"VI. The lower court erred in ordering the reinstatement of the plaintiff Simplicio Serafin in the position of chief of police of the municipality of Quingua, Bulacan, with all the privileges and emoluments from the date of the decision of the court, December 20, 1932, and in not declaring that herein defendant Justo C. Cruz is the

rightful chief of police of said municipality, entitled to all privileges and emoluments corresponding to his position from his appointment until he be legally ousted from said position."

The following pertinent facts are necessary for the solution of the questions raised in this appeal, to wit:

On January 12, 1931, Father Victorino Lopez, Parish Priest of Quingua, Bulacan, filed with the provincial board of Bulacan, administrative charges against the appellee herein, Simplicio Serafin, in his capacity as chief of police of the aforesaid municipality of Quingua, Bulacan, for negligence in the performance of his duties. Inasmuch as said charges were endorsed to the municipal council of Quingua for appropriate investigation and decision, said municipal council, after conducting the necessary investigation of the case, issued on February 13, 1931, resolution No. 9 (Exhibit 1) exonerating the said complainant herein.

From this resolution, the complainant therein, Father Victorino Lopez, appealed to the provincial board then composed of Jose Padilla, provincial governor, and Aniceto Crisostomo and Teofilo Sauco, members, which, after due hearing, rendered judgment therein on October 3, 1931, the dispositive part of which reads as follows.

"Wherefore, the board is of the opinion that due to his inefficiency, misconduct, and record, the herein respondent should be separated from the service, particularly during this time when there are so many eligibles, and government institutions are entitled to select the officials who have a keen sense of responsibility.

"Therefore, it is hereby ordered that the respondent chief of police of the municipality of Quingua be dismissed.

"It is so resolved."

Teofilo Sauco, member of the aforesaid provincial board, dissented from the resolution in question in the belief that dismissal was too severe a penalty therefor and that suspension for six months would be sufficient.

In view of the foregoing, on October 14, 1931, the municipal president of Quingua, Anselmo D. Garcia, issued executive order No. 1, series of 1931, dismissing the said appellee chief of police of the municipality of Quingua, Simplicio Serafin, from the service and appointed the herein respondent-appellant, Justo C. Cruz, permanent chief of police of the municipality of Quingua (Exhibit F). After having been submitted to the new council of Quingua for approval during its session of October 16, 1931, said appointment was definitely confirmed by a vote of four to three.

The records do not show the exact date on which the herein plaintiff-appellee received notice of the decision of the provincial board, dated October 3, 1931, and of the order of his dismissal dated October 14, 1931, but the postmaster of the municipality of Quingua certified (Exhibit 2) that a registered letter, No. 979, addressed to the plaintiff-appellee was delivered to the latter on October 14, 1931.

The term of office of the members of the provincial board which issued order of dismissal dated October 3, 1931, expired on October 15, 1931, and they were substituted by Cirilo B. Santos, provincial governor, and Juan Suerte Felipe and Jose G. de Jesus, members, who were elected on June 5, 1931.

Fifteen days after October 14, 1931, that is on October 29, 1931, the plaintiff-appellee filed with the new provincial board a motion for reconsideration of the decision ordering his dismissal rendered by the former provincial board on October 3, 1931, and of which he was notified on October 14, 1931.

The new provincial board granted the said motion for reconsideration, and after conducting a new hearing of the case, rendered judgment on January 21, 1931, exonerating the plaintiff-appellee of the charge of "negligence in the performance of his duties", and by an executive order dated May 3, 1932, addressed to the president of the municipality of Quingua, ordered the immediate reinstatement of the said appellee in the office of chief of police

of the municipality of Quingua. In a communication dated May 7, 1932, addressed to the aforesaid provincial board, the said municipal president informed the latter that he had already permanently appointed another in place of the dismissed chief of police.

The purpose of the present appeal is to have the respondent herein expelled from the office of chief of police of the municipality of Quingua and the herein appellee reinstated therein.

The principal question to decide in the present appeal is not whether or not a provincial board may reconsider a decision rendered by a former board but whether or not a duly appointed and qualified chief of municipal police who has entered upon the performance of his duties as such, may be dismissed therefrom in order to reinstate another who had been dismissed from such office pursuant to a legal, valid and conclusive decision.

Section 2272 of the Administrative Code, as amended by section 2 of Act No. 3206, provides the following:

"Sec. 2272. Suspension and removal of members of municipal police.—Members of the municipal police shall not be removed and, except in cases of resignation, shall not be discharged except for misconduct or incompetency, dishonesty, disloyalty to the United States or Philippine Government, serious irregularities in the performance of their duties, and violation of law or duty, and in such cases charges shall be preferred under oath by the municipal president or by any other person and investigated by the municipal council, or a committee of three councilors designated for said purpose by a majority of the council, in public hearing, and the accused shall be given opportunity to make their defense. * * *"

Mechem in "Law of Public Offices and Officers", page 294, paragraph 461, states:

"* * * When the appointing power has once acted and the appointee has accepted the office and done what is required of him upon its acceptance, his title to the office becomes complete, and he can then be removed only in the regular way." (Marbury vs. Madison, 1 Cranch [U. S.], 137.)

In the case at bar, the herein defendant-appellant, Justo C. Cruz, was permanently appointed chief of police of Quingua by the president of the said municipality, to fill the vacancy created by the dismissal from said office of the herein plaintiff-appellee, as ordered by the provincial board of Bulacan after the necessary proceedings provided by law. The appointment in question was confirmed by the municipal council of Quingua after the appointee had qualified and entered upon the performance of his duties as chief of police. In accordance with the authority cited above, the defendant-appellant has acquired a vested right in the office and cannot be removed nor dismissed therefrom except for any of the causes designated and in accordance with the proceedings established by law. The legal provision quoted above expressly states that members of the municipal police shall not be removed and, except in cases of resignation, shall not be discharged from the service, except for misconduct or incompetency, dishonesty, disloyalty to the United States or Philippine Government, serious irregularities in the performance of their duties, and violation of law or duty. The reinstatement of the dismissed official is not one of the causes designated by the law for the removal therefrom of one who has been permanently appointed to substitute the former.

In view of the foregoing considerations, we are of the opinion and so hold that the extraordinary legal remedy of quo warranto does not lie against a duly and legally appointed chief of municipal police who has duly qualified for and has entered upon the performance of his duties, in order to reinstate another who has been legally dismissed from the office in question.

Wherefore, the judgment appealed from is hereby reversed and the quo warranto proceedings dismissed, with the costs against the appellee. So ordered.

Avanceña, C. J., Malcolm, Hull, and Imperial, JJ., concur.

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