

EUGENIO ALIMON, PLAINTIFF AND APPELLEE, VS. CHIEF OF CONSTABULARY, DEFENDANT AND APPELLANT.

G. R. No. 40913. August 30, 1934

Ponente: BUTTE, J.

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This is an appeal from a judgment of the Court of First Instance of Occidental Negros in an action for writ of mandamus to compel the defendant-appellant Chief of Constabulary to pay the plaintiff-appellee a monthly pension out of the pension and retirement fund of the Philippine Constabulary from February 1, 1925.

The evidence shows that the plaintiff served as a member of the Philippine Constabulary from September 12, 1901, without interruption to January 21, 1922, when he was retired with the rank of sergeant under the provisions of section 874 of the Administrative Code. From the date of his retirement and up to January 31, 1925, he received a monthly pension of P28.30 from said fund.

On January 24, 1925, the plaintiff was convicted on appeal by this court^[1] of the crime of robbery committed on June 22, 1923, and sentenced to three years, eight months and one day of presidio mayor with the accessories prescribed in article 57 of the Penal Code. Because of this conviction, the defendant Chief of Constabulary, with the approval of the Governor-General, dropped the name of the plaintiff from the roll of retired Constabulary soldiers effective February 1, 1925, and suspended the payment of the plaintiff's monthly pension from and after said date.

Exhibit B proves that the plaintiff was born on November 15, 1868. He was not recalled to the service while he was serving his sentence which he served in part only because he was pardoned by the Governor-General. On this appeal, the Solicitor-General, on behalf of the Chief of Constabulary, makes the following assignments of error:

"1. The trial court erred in holding that the conviction of the plaintiff of the crime of robbery, for which he was sentenced to undergo imprisonment for three years, eight months and one day of presidio mayor, with the accessories prescribed in article 57 of the Penal Code, to return to the offended parties the sum of P14, and to pay the costs. did not terminate his right to further participation in the benefit of, and to receive further pension from the pension and retirement fund of the Philippine Constabulary.

"2. The trial court erred in sentencing the defendant to pay to the plaintiff the pension he may have failed to receive from February 1, 1925, up to September 26, 1933, at the rate of P28.30 a month, and thereafter and until the date of his demise a monthly pension of P28.30.

"3. The trial court erred in denying defendant's motion for a new trial."

The principal argument in support of the first and second assignments of error is that the petitioner has violated

section 875 of the Administrative Code and thereby forfeited his right to a pension. This section is as follows:

"SEC. 875. Requirement of active service from retired officers and men.—All officers and enlisted men of the Constabulary drawing pensions or retirement pay and residing in the Philippine Islands may at any time be called by the Governor-General for active service, during the period of which service they shall be entitled to receive the full pay of their rank or grade. Refusal on the part of any officer or enlisted man to perform such duty shall terminate his right to further participation in the benefit of this fund, provided he is physically fit for service, such fitness to be determined under regulations to be prescribed by the Department Head."

The argument is that although the petitioner has not at any time since his retirement been called to active service and although he has not directly refused to perform such duty, he has nevertheless indirectly refused by putting himself in a condition by his voluntary act where he could not render such service if he had been called. It is stated by the counsel for the appellant: "The case, therefore, would amount to an indirect refusal to rejoin the organization for active service in case he should be called to do so by the Governor-General." But section 875 does not speak of indirect refusals nor of, contingent or hypothetical refusals. Section 875 relates to cases where there has been an actual call to active service and an actual refusal on the part of any officer or enlisted man to perform that duty.

Moreover, the petitioner was more than fifty-five years of age at the time he was convicted of the crime of robbery. Under the provisions of Act No. 3157 which amended section 874 of the Administrative Code, the petitioner was already exempt from the duty of joining the active service. Said Act No. 3157 took effect on March 8, 1924, and the defendant, as above stated, was not finally convicted until January 24, 1925, after which date he began to serve his sentence.

In his brief, the Solicitor-General raises a question not raised in the court below, namely, that although the Governor-General is not made a party to this action, the decision invades his power to exercise his discretion as Commander in Chief and General Supervisor of the Philippine Constabulary. Section 826 of the Administrative Code is relied on. This reads as follows:

"SEC. 826. Authority of Governor-General over Philippine Constabulary.—In the exercise of its power to maintain peace, law, and order, the Philippine Constabulary shall be subject to the command and general supervision of the Governor-General." The administration of the pension fund does not seem to us to be covered by section 826 but rather by section 829 of the Administrative Code which is as follows:

"SEC. 829. Chief of Constabulary clothed with powers of Bureau chief.—For administrative purposes the Philippine Constabulary shall be deemed to be a Bureau, and the chief of Constabulary shall have all the powers conferred generally on the Bureau chief." Except for the provision in section 875 of the Administrative Code, *supra*, there is no provision in law for the forfeiture of life pensions paid to officers and enlisted men of the Philippine Constabulary who have rendered twenty or more years of actual satisfactory service and attained the age of fifty-five years or who, on account of their physical or mental condition, are prevented from continuing in active service. But though it is true that ordinarily a pension is a mere gratuity, it is to be noted that in this case the pension and retirement fund is made up in considerable part of the three per centum of the pay of every enlisted man of the constabulary which is deducted from said pay monthly. Not only is the Governor-General not a party to this action but it appears from the record that he pardoned the offense. The effect of a pardon, subject to the conditions thereof, is to wipe out the offense as if it had never been committed. As the only ground upon which the petitioner was denied the further payment of his pension was his conviction of crime as aforesaid, and as said crime in itself did not constitute a refusal to answer a call to service, even assuming that he was still liable to be called, and as the pardon of the Governor-General was accepted by the petitioner and restored him to all his civil rights and relieved him of all of the accessory penalties attaching to his conviction, we conclude that the judgment of the trial court is just and correct and should be affirmed. We take judicial notice of the official acts of the Executive, including pardons, under the

provisions of section 275 of the Code of Civil Procedure.

Judgment affirmed without special pronouncement as to costs.

Malcolm, Villa-Real, Imperial, and Goddard, JJ., concur.

[1] G. R. No. 22689, People vs. Alimon, not reported.

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