

FEDERICO MATFFCAHAS, PETITIONER, VS. THE BOARD OP REGENTS OF THE UNIVERSITY OF THE PHILIPPINES, RESPONDENT.

G. R. No. 42148. September 04, 1934

Ponente: BUTTE, J.

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BUTTE, J.:

This is a petition for writ of mandamus against the Board of Regents of the University of the Philippines in which the petitioner, Federico Mangahas, alleges in substance that the president of the University recommended to the Board of Regents the appointment of Mangahas as temporary. instructor in a communication which is in part as follows:

"(2) To take the place of Professor Thomas for this semester, I recommend the appointment of Mr. Federico Mangahas as temporary instructor, to be paid according to the number of class sections he will be asked to handle. Mr. Mangahas is a Ph. B. graduate, major in English, from this University, at present doing graduate work in the Department, having already completed the academic requirements for his M. A. and will soon take his oral examination for that degree, presenting as his thesis subject 'Humor in Tagalog Literature.' He is a veteran newspaperman and columnist, and a regular instructor in English in a private University."

On June 18, 1934, the Board of Regents adopted the following resolution:

"Upon recommendation of the President the Board approved:

"3. The appointment of Mr. Federico Mangahas as temporary part-time Instructor in English at P60 a month (net), effective upon entrance to duty and to remain in effect until the end of the examination week of the first semester of 1934-35 (Budget item 414)."

On June 19, 1934, as appears from the answer of the respondent, the petitioner was notified of the action of the Board of Regents in a letter which reads as follows:

"MANILA, June 19, 1934

"SIR: I have the honor to inform you that on June 18, 1934, the Board of Regents of the University of the Philippines passed a resolution appointing you temporary part-time Instructor in English in the College of Liberal Arts of this University at a salary of sixty pesos (T60—net) a month, effective upon entrance to duty and to remain in effect until the end of the examination week of the first semester of 1934-35, unless sooner revoked by the Board. (Original appointment.)

"Very respectfully,

"F. Calderon

"Acting President

"Attested:

"V. LONTOK

"Acting Secretary

"Mr. FEDERICO MANGAHAS

"University of the Philippines"

It is stated in the petition that on June 19, 1934, after receiving notice of appointment from the president of the University, the petitioner accepted said appointment and entered upon the duties of said position.

On July 11, 1934, while petitioner was discharging the duties of said position and without hearing or notice to the petitioner, the Board of Regents adopted the following resolution :

"The President called attention to the following resolution of the Board of Regents adopted on March 8, 1928: 'That no employment shall be permitted which is incompatible with the official duties of the members of the faculty/ and requested action on the case of Mr. Federico Mangahas who was appointed by the Board on June 18, 1934, as temporary part-time Instructor in English, College of Liberal Arts. Upon motion duly seconded the Board resolved to revoke the appointment of Mr. Mangahas, effective July 12, 1934, in view of the fact that said Board considered his connection with the Tribune, a local daily, as a regular columnist as incompatible with his duties in the University of the Philippines in the light of the resolution of the Board of Regents above quoted."

Petitioner contends that the Board of Regents revoked his appointment as aforesaid without authority of law and in violation of the provision of the Charter of the University of the Philippines—Act No. 1870 as amended by Act No. 2759 which provides:

"SEC. 4. Subsection (e) of section six of the same Act is hereby amended to read as follows:

"(e) To appoint, on the recommendation of the president of the University, professors, instructors, lecturers, and other employees of the University, to fix their compensation, hours of service, and such other duties and conditions as it may deem proper, to apply to them in its discretion the Leave Law, any other provision of law to the contrary notwithstanding, and to remove them for cause after an investigation and hearing shall have been had."

If the facts of petitioner's case fell within the statutory requirement of said section 6, paragraph (e), supra, there is no doubt that mandamus would be the proper remedy. However, the petitioner accepted his appointment as notified to him by the president of the university with the express understanding that the appointment should run for the period specified in the letter of June 19, 1934, unless sooner revoked by the board. That such a right of revocation was reserved is indicated further in the expression "temporary part-time instructor." The word "temporary" which occurs both in the resolution of the Board of Regents and in the letter of the president must be given some meaning and effect; and we accept the interpretation given to it by the president in his notification to the petitioner in the clause "unless sooner revoked by the board." This notification appears to be a formal notice, doubtless, similar to that used in all other appointments of temporary instructors in the university. It may be observed that the president is himself a member of the Board of Regents and presumably entirely familiar with its policies and practices. We have no authority to interfere with the discretion of the Board of Regents of the University in making the appointments of temporary instructors revocable at any time by the board and taking this

particular class of appointments out from the provisions of section 6 (e) of Act No. 1870, supra. That being so, it is not for this court to question the wisdom or propriety of the action of the Board of Regents in the case of the petitioner. However illogical and unjust it may seem to the petitioner that the Board of Regents on July 11, 1934, found his outside employment to be incompatible with his official duties whereas on June 19, 1934, they apparently accepted it as one of his special qualifications for the appointment, this court can do no more than hold the petitioner to the conditions in the appointment which he accepted.

It is elementary that the petitioner for writ of mandamus must make "a clear showing that he has a substantial right which has been violated. This the petitioner has failed to do and the petition for writ of mandamus must therefore be denied with costs against the petitioner.

Avancena, C. J., Street, Malcolm, Villa-Real, Abad-Santos, Vickers, Imperial, and Diaz, JJ., concur.

DISSENTING

GODDARD, J.,

I dissent.

On June 18, 1934, the petitioner was appointed by the Board of Regents of the University of the Philippines as instructor in English in that university for a specified time, upon the recommendation of the president of that institution. One of petitioner's qualification for that position, according to the president's letter to the board, was that

"He is a veteran newspaper man and columnist." Later the board concluded, reasons not specified, that his employment as a "newspaper man and columnist" was incompatible with his official duties as such instructor and, on July 11, 1934, while the petitioner was discharging the duties of said position, the Board of Regents revoked his appointment, solely on that ground, without notice or hearing. "Tempora mutantur, et nos mutamur in illis." I suppose that "the times" can change within less than a month. If they did change in this case, it is obvious that the herein petitioner did not "change with them". He continued to be a veteran newspaper man and a columnist. His fate should serve as a warning to one and all.

It should be noted that the phrase "unless sooner revoked by the board" does not appear in the resolution of the Board of Regents of June 18, 1934, approving the appointment of Mangahas. However, it does appear in the letter of the president of the University notifying the petitioner of his appointment. Either the president exceeded the authority granted by the board by adding that phrase, or a like phrase is used in notifying all persons appointed to positions in the university. The petitioner certainly had a right to rely on his appointment and not on the letter notifying him of that appointment. If the president exceeded his authority the remedy prayed for should be granted. If that phrase is used in all letters of notification, as a matter of form, then all of subsection (e) of section 6 of Act No. 1870, as amended, is applicable to the facts of record in this case. That subsection now reads:

"To appoint, on the recommendation of the president of the University, professors, instructors, lecturers, and other employees of the University, to fix their compensation, hours of service, and such other duties and conditions as it may deem proper, to apply to them in its discretion the Leave Law, any other provision of law to the contrary notwithstanding, and to remove them for cause after an investigation and hearing shall have been had."

I prefer to assume that the president did not intend to exceed his authority by inserting the above mentioned

phrase in his letter of notification; that he did not intend to limit or modify the resolution of the Board of Regents and that the phrase in question is that ordinarily used in notifying a person of his appointment to any of the positions mentioned in subsection (e), quoted above.

If this presumption is correct it follows that the petitioner could only be removed for cause after an investigation and hearing.

Looking at the matter from another angle, the following appears in the majority opinion:

"* * * However, the petitioner accepted his appointment as notified to him by the president of the University with express understanding that the appointment should run for the period specified in the letter of June 19, 1934, unless sooner revoked by the board." Admitting that the petitioner did accept his appointment with the express understanding that it should run for the period specified in the president's letter of June 19, 1934, unless sooner revoked by the board, I contend that the petitioner had a right to assume that his appointment would not be revoked in a summary manner, without notice or hearing, and in violation of subsection (e) of section 6 of Act No. 1870, as amended, the law which creates the university, specifies its duties and powers and prescribes the procedure to be followed in appointing and removing professors, instructors, lecturers, and other employees.

The language of subsection (e) is plain, unequivocal and understandable. It needs no interpretation. It makes no distinction between permanent and temporary part-time appointments. A temporary part-time instructor, such as the herein petitioner, has just as much right to a notice and hearing before removal as the most eminent and learned professor has under this subsection. It appears to me, with my limited knowledge of the English language, that the majority opinion of this court has modified subsection (e) of section 6 of Act No. 1870, as amended, by reading into that subsection a meaning not warranted by its wording.

With all due respect to the opinion of my highly esteemed associates of this court and to the opinion of the learned members of the Board of Regents of the University of the Philippines, some of whom are my personal friends of long standing, I am constrained to note my dissent in this case. I hold that the petitioner's case falls within the statutory requirement of subsection (e) of Section 6 of Act No. 1870 and that the writ of mandamus, prayed for, should be granted.

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