

**GONZALO TOLENTINO, PETITIONER, VS. ELPIDIO QUIRINO,
SECRETARY OF THE INTERIOR, ARTEMIO RODIS, TITO ALEGRE,
AND BERNARDO CAPUPOS, RESPONDENTS.**

G. R. No. 45663. October 27, 1937

Ponente: DIAZ, J.

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DIAZ, J.:

This is a petition to reverse and set aside a certain decision rendered by the Secretary of the Interior on April 14, 1937, in an administrative case arising from a complaint filed by the petitioner Gonzalo Tolentino against the respondents Artemio Rodis, Tito Alegre, and Bernardo Capupos, chief of police and policemen, respectively, of the municipality of Alfonso, Province of Cavite, charging them with grave coercion and arbitrary detention, and praying for their dismissal from the service, in accordance with the provisions of section 2272 of the Administrative Code.

The petitioner alleges in his brief that the Secretary of the Interior acted in excess of his jurisdiction in rendering his decision in question, and that he has no recourse in view of the fact that there is no appeal or any other remedy available to him. The decision in question literally reads as follows:

"It appears that sometime in January, 1935, Gonzalo Tolentino filed an administrative complaint against the respondents for grave coercion. On the date set for trial, Tolentino defaulted and the council forthwith dismissed his complaint. From this dismissal Tolentino appealed to the provincial board. Said board not only entertained the appeal but also allowed the complainant to file an additional charge against the respondents for arbitrary detention and set a date for trial. The respondents refused to submit to the investigation alleging that the board had not legally acquired jurisdiction to try the case. The board nevertheless proceeded with the trial of the case ex parte and dismissed the respondents from office.

"Under the facts above stated the action of the provincial board was not in accordance with law. The provincial board should have remanded the case to the municipal council for investigation of the case and not try the same on its merits, for under the law then in force, the provincial board had no original jurisdiction to investigate charges against members of the police force. Under section 2272 of the Administrative Code, as amended, the provincial board was vested with appellate jurisdiction and not original. In exercising original jurisdiction in this case, therefore, the provincial board had gone beyond the powers vested in it by the law and consequently its decision was without legal effect.

"In view of the foregoing, the respondents should be, and they are hereby, reinstated in office from the date they receive copy of this decision, without prejudice to such administrative action as may be warranted by the findings of the Commissioner of Public Safety who is hereby requested to have the charges against the respondents fully and thoroughly investigated in accordance with the provisions of Commonwealth Act No. 88.

"Done at the City of Manila, this 14th day of April, in the year of Our Lord, nineteen hundred and thirty-seven.

(Sgd.)

"ELPIDIO QUIRINO

"Secretary"

It appears from the pleading before this court and from the documents attached thereto that the petitioner, on January 22, 1935, filed a complaint with the municipal council of Alfonso, Cavite, charging the last three respondents with the crime of grave coercion only, alleging that, by means of, threats, and revolver in hand, they prevented him and his companions from continuing their journey by car on the pretext that they then had jueteng paraphernalia with them and that said respondents wanted said paraphernalia to be turned over to them. The investigation of the charges was to have been made before the committee of three councilors appointed by the municipal council of Alfonso, on the date set by said committee for that purpose, that is on December 19, 1935; but as the petitioner, as complainant, had failed to appear at the hearing, notwithstanding the fact that he had been notified of his obligation to do so two days prior thereto (Exhibit 3), the committee had to dismiss the case, without taking further action except that of informing the municipal council of its act, which was approved by the latter on January 2, 1936 (Exhibit 5).

As soon as the petitioner was informed of the action taken by the investigation committee of the municipal council, he appealed therefrom to the provincial board of Cavite, alleging in the pleading filed by him to that effect (Exhibit 6), that the decision of said committee is "against the law and the weight of authority for the reason that the herein complainant (referring to himself) has presented his waive of right to declare before the Committee on Investigation before the investigation was conducted."

After the case had been brought to the provincial board, the petitioner, on April 8, 1936, filed with it a new complaint (Exhibit 7), then charging the respondents not only with grave coercion but also with arbitrary detention. The provincial board of Cavite, ignoring the objections interposed by the respondent policemen who alleged (a) that it had no original jurisdiction to try the new complaint or the administrative case filed against them, on the ground that there was no decision of the municipal council of Alfonso from which the petitioner could have appealed; (b) that the only jurisdiction conferred upon it by law is appellate jurisdiction; and (c) that the municipal council of Alfonso did not conduct any investigation and did not even receive any evidence in connection with the complaint, because the petitioner failed to appear, went ahead and started to investigate the new charges' preferred against the respondent policemen, after requiring the interested parties to present their respective evidence. The respondent policemen refused to submit to the investigation.

After receiving the evidence for the petitioner, the provincial board, in April, 1936, found that the respondent policemen really committed the crime of grave coercion against the petitioner and his companions and, therefore, ordered them dismissed from their respective positions. It later appointed others to substitute them, and the persons so appointed continued in their positions until the Secretary of the Interior, in April, 1937, issued the order in question by virtue of which the respondents were reinstated.

I. Section 2272 of the Administrative Code, as amended by Act No. 3206, reads, among other things, as follows:

"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. In every case filed against a member of the municipal police, a copy of the charges shall be furnished the accused by the

municipal president personally or by registered mail, within five days from the date of the filing of the charges, and the council or its committee shall try the case within ten days from the date the accused has been notified of the charges, unless the accused, for good reasons, shall ask for a longer period to prepare his defense. The trial of the case shall be finished within a reasonable time, and if it is tried by a committee, the same shall submit its report and findings to the council within ten days after the conclusion of the trial, and the council shall decide the case within fifteen days from the receipt of the report of the committee. If the trial is conducted by the council itself, it shall decide the case within fifteen days after the conclusion of the trial. The decision of the council shall in all cases be appealable to the provincial board. The appellant shall exercise this right by filing with the municipal president a written appeal within fifteen days from the date he has been notified of the decision, and if within this period no appeal is taken, the decision shall stand final. In case of appeal, the municipal president shall forward the case with all its records to the provincial board within twenty days from the receipt by him of the appeal, and the provincial board shall investigate the case anew and render decision thereon within thirty days from the receipt of the records of the case and its decision shall be final and conclusive."

It will be noted that the jurisdiction conferred upon the provincial board by the above-quoted legal provision—and it does not appear that there is another altering it—, is the appellate one, it being necessary, therefore, that charges filed against members of the municipal police be acted upon or investigated, in the first place, by the municipal council. This was neither done nor followed in the case under consideration because the petitioner, so as not to submit to the jurisdiction of the municipal council of, Alfonso, presented, as stated by him in his notice of appeal Exhibit 6, "his waive of right to declare before the Committee on Investigation" of said council, and it appears that he presented absolutely no evidence before said body in support of his complaint. This simply means that in interposing his appeal from the resolution dismissing his complaint on the ground of desistance on his part, he did so with the sole purpose of transferring the jurisdiction conferred by law upon the municipal council to the provincial board of Cavite whose authority in cases of this nature should only be exercised secondarily, that is, after action has been taken thereon by the municipal council. Jurisdiction or authority to try a certain case is conferred by law and not by the interested parties, much less by one of them, and should be exercised precisely by the person in authority or body in whose hands it has been placed by the law. Therefore, the provincial board acted without jurisdiction in trying the petitioner's charges and in ordering the dismissal of the respondent policemen from their respective positions, after an investigation conducted by it by halves. If it had any jurisdiction to act upon the case at all, by virtue of the petitioner's appeal, it should have confined its act to remanding the case to the municipal council for the latter to take action thereon in accordance with the law.

II. Taking into account the foregoing considerations, the Secretary of the Interior did not commit any excess of jurisdiction because, the act of the provincial board of Cavite, dismissing as it did the respondent policemen without having authority to do so, being null and void, inasmuch as it tried the complaint filed by the petitioner against said respondent policemen originally instead of trying it only on appeal, it was the Secretary's prerogative and even his duty, under the provisions of Commonwealth Act No. 88, which took effect on October 26, 1936, long before he rendered his decision in question, to reinstate said respondent policemen in their positions. Section 2 of said Act is sufficiently clear with respect to the fact that the Secretary of the Interior is the person in authority called upon to sanction the appointments to and removal from the police force and who has said force under his immediate charge and direction, with powers to carry out whatever may be advisable to promote the efficiency of its service.

For all the foregoing, the remedy applied for is denied, without special pronouncement as to costs. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Laurel, and Concepcion, JJ., concur.

Imperial, J., concurs in the result.

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