

TERESO V. MATURAN, PETITIONER-APPELLANT, VS. MAYOR SANTIAGO MAGLANA OF SAN FRANCISCO, SOUTHERN LEYTE, VICE-MAYOR HONORIO MAGONCIA, MUNICIPAL COUNCILORS BONIFACIO AMARGA, JR., AL...

G.R. No. 52091. March 29, 1982

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

This case was certified to this Court by the Court of Appeals pursuant to its resolution dated October 30, 1979, the issue raised herein being purely legal, which is the interpretation of Presidential Decree No. 12-A and Letter of Instruction No. 14 in relation to the present case.

Petitioner was appointed as patrolman of San Francisco, Southern Leyte on February 1, 1965 with a compensation of P540.00 per annum. On October 1, 1967 he was promoted to the rank of police sergeant at P720.00 per annum. On October 8, 1968 and July 1, 1969 petitioner's salary was adjusted to P1,320.00 and P1,800.00 per annum, respectively. All the afore-said appointments of petitioner were provisional. On July 1, 1970 his provisional appointment was renewed. Likewise on July 1, 1971 his provisional appointment was renewed with an increase in pay in the amount of P2,640.00 per annum.

On September 15, 1972, respondent Mayor Santiago Maglana suspended the petitioner from office because of two pending criminal cases against him, namely Criminal Case No. 236, for falsification of public document by making untruthful state-ment in the narration of facts, and Criminal Case No. 312, for falsification of public document. On October 2, 1972 respon-dent Vice-Mayor Honorio Magoncia, who was then the Acting Mayor, instructed petitioner together with Chief of Police Francisco Duterte and Patrolman Asisclo Irong, to tender their resigna-tions pursuant to the Letter of Instruction No. 14 of the President of the Philippines. Petitioner submitted his letter of resignation on October 9, 1972. Petitioner's resignation was approved on January 19, 1973 and petitioner was accordingly informed thereof.

In a letter dated February 19, 1973 petitioner sought the reconsideration of the approval of his resignation for being null and void on the ground that Letter of Instruction No. 14 does not apply to him.

In the meantime, Criminal Case Nos. 236 and 312 were dismissed on January 31, 1973 and November 5, 1973, respectively.

In a letter dated January 12, 1974, Hon. Juan Ponce Enrile then Acting Chairman of the National Police Commission informed petitioner that due to the dismissal of the aforesaid criminal cases, the latter's preventive suspension has been lifted and petitioner was directed to report for duty to his Chief of Police. Petitioner reported for duty on February 1, 1974 but Chief of Police Francisco Duterte refused to accept the former in the police force.

Respondent Mayor sent a letter dated February 5, 1974 to the Chairman of the National Police Commission

requesting ad-vice as to whether the resignation tendered by petitioner pursuant to Letter of Instruction No. 14 is valid. In a reply letter dated August 13, 1974 the Deputy Executive Commissioner stated that since petitioner resigned from office on October 2, 1972, the lifting of his suspension as directed in the National Police Commission's letter dated January 12, 1974 is no longer feasible, the same having been rendered moot and academic; that said office had occasion to rule that resignations submitted by members of the police force in compliance with the provisions of Letter of Instruction No. 14 are valid, said Instruction being broad in scope to include both local and national officials.

Petitioner sought the intervention of the Governor of Southern Leyte to no avail, hence, on May 21, 1974 petitioner filed a petition for mandamus with claim for back salaries, traveling expense and damages before the Court of First Instance of Southern Leyte, Branch III.

It was alleged by petitioner that the refusal of respondents Mayor and Chief of Police to reinstate him is a violation of paragraph 7 of Presidential Decree No. 12-A which provides:

"7. Members of the police force who have been preventively suspended shall, upon exoneration be entitled to immediate reinstatement and payment of the entire salary they failed to receive during the period of suspension;"

that the case of petitioner falls squarely within the purview of Presidential Decree No. 12-A which was promulgated on October 4, 1972 and which governs policemen with pending cases; and that Letter of Instruction No. 14 under whose provisions petitioner was made to resign is not applicable to policemen.

In respondents' answer dated July 3, 1974, they set up the defense that petitioner has falsely entered in his duly sworn information sheet that he is a high school graduate of the University of Manila during the school year 1954-55, but in his Personal Data Sheet, CS Form No. 212, dated October 8, 1968 he feloniously alleged and/or entered therein that he is a graduate of the Pana-on Academy in the school year 1950-51 when in truth he was only a second year high school student; that petitioner, who has voluntarily resigned, needs a new appointment and has to meet the qualifications required by law among which, are, that he must be at least a high school graduate and not over 33 years of age; that petitioner falls short of these requirements; and that petitioner is notoriously undesirable, publicly known to be of bad moral character and oftentimes got drunk while on duty.

On February 4, 1975 respondent court issued a decision dismissing the petition for lack of merit. The court agreed with the opinion of the National Police Commission that resignations submitted by members of the police force in compliance with the provisions of Letter of Instruction No. 14 are valid. Since petitioner has been separated from the service, reinstatement is not the proper remedy. The court also said that the evidence of conflicting entries on petitioner's two information sheets have not been denied or rebutted, hence the preponderance of evidence is against the petitioner that he is not a high school graduate, as he could not have graduated in two high schools, one in the University of Manila during the school year 1954-55 and the other at the Pana-on Academy during the school year 1950-51. Lastly, the trial court ruled that since all petitioner's appointments were provisional, he can be removed at any time by the appointing power, Mayor Maglana.

On appeal to the Court of Appeals, petitioner filed his brief on June 28, 1976. For failure of respondents to submit their brief, the case was submitted for decision on November 16, 1976.

Petitioner made the following assignment of errors:

"FIRST ERROR

THE LOWER COURT ERRED IN HOLDING THAT THE RESIGNATION OF PETITIONER FROM THE POSITION OF POLICE SERGEANT OF THE SAN FRANCISCO POLICE FORCE AND THE

ACCEPTANCE OF SUCH RESIGNATION BY RESPONDENT MAYOR MAGLANA DURING THE PENDENCY OF A CRIMINAL CASE FILED AGAINST PETITIONER AND WHILE PETITIONER WAS UNDER PREVENTIVE SUSPENSION ARE LEGAL AND VALID;

"SECOND ERROR

THE TRIAL COURT ERRED IN HOLDING THAT PETITIONER CAN BE REMOVED FROM THE OFFICE AT ANY TIME BY RESPONDENT MAYOR MAGLANA;

"THIRD ERROR

THE LOWER COURT ERRED IN RULING THAT RESPONDENT MAYOR COULD NOT BE COMPELLED TO REINSTATE AND/OR REAPPOINT PETITIONER WHO POSSESSED CIVIL SERVICE ELIGIBILITY AS PATROLMAN AND WITH POLICE TRAINING AT THE POLCOM ACADEMY; and

"FOURTH ERROR

THE COURT BELOW ERRED IN DISMISSING THIS CASE AND DISALLOWING PETITIONER TO COLLECT HIS BACK SALARIES AND TRAVELING EXPENSES."

Petitioner contends that under Presidential Decree No. 12-A promulgated on October 4, 1972 the power to dismiss or remove a member of the police force has been transferred from the Mayor to the Police Commission. Hence, the acceptance of petitioner's resignation by respondent Mayor on January 19, 1973 is null and void because the latter is no longer clothed with authority to dismiss or remove a member of the police force on said date. Furthermore, petitioner stresses that Letter of Instruction No. 14 under whose provisions he was made to resign is not applicable to him as said Instruction covers only officials and employees with pending capes excluding policemen. Lastly, petitioner banks on his testimonial eligibility which he obtained on October 10, 1974 to justify his reappointment.

Presidential Decree No. 12 dated October 3, 1972 created the Adjudication and Investigation Boards in the Police Commission to review and dispose of all administrative cases of city and municipal forces referred to the Commission. On October 4, 1972 Presidential Decree 12-A was promulgated providing for the procedure to be followed in case an administrative charge is filed against any member of the local police agency or when a member of the police force is accused in court of any felony or violation of law. Nowhere in the provisions of said Presidential Decrees show that the power to dismiss or remove has been transferred from the Mayor to the Police Commission as contended by petitioner. It was only on August 8, 1974 when such power was removed from the Mayor pursuant to Presidential Decree No. 531 integrating the municipal police forces in all the municipalities of the province of Southern Leyte. Presidential Decree No. 531 states:

"SEC. 6. Power of administrative control and supervision. - Administrative control and supervision over the several police and fire departments and jails composing each of the Integrated Police Forces herein constituted shall, prior to the transfer provided for in Section 7 hereof, remain with the offices, agencies and officials in which said power is vested in accordance with existing laws; x x x. Accordingly, administrative matters, such as appointment, promotion, suspension, separation and other disciplinary action x x x and such other matters pertaining to personnel administration which are currently vested in and exercised by other officials pursuant to existing laws, rules and regulations shall remain with said officials, x x x.

"SEC. 7. Administrative control and supervision to be transferred to the Philippine Constabulary. - After one year, but not later than two years, from the effectivity of this Decree, the power and administrative control and supervision provided for in Section 6 hereof shall be taken over and exercised by the Philippine Constabulary. x x x."

It is clear therefore that at the time petitioner's resignation was approved by respondent Mayor on January 19, 1973 the latter still had the power to dismiss or remove the former.

Petitioner did not dispute that at the time he was appointed member of the Police Force of San Francisco, Southern Leyte, he had neither qualified in an appropriate examination for the position of policeman nor was he possessed with any civil service eligibility for any position in the government. Such lack of a civil service eligibility makes his appointment temporary^[1] and without a definite term and is dependent entirely upon the pleasure of the appointing power.^[2] Although indicated as provisional and approved under Section 24 (c)^[3] of Republic Act 2260 the petitioner's appointment did not acquire the character of provisional appointment because of his lack of appropriate civil service eligibility for the position of municipal policeman. The Civil Service Commission cannot even legally approve his appointment as provisional as this act would constitute an unwarranted invasion of the discretion of the appointing power.^[4] If the approval of his appointment as provisional under Section 24 (c) of Republic Act 2260 did not make it so, the fact remains that his appointment was temporary which could be terminated without any need to show that the termination was for cause.^[5]

The fact that petitioner subsequently obtained a testimonial eligibility on October 10, 1974 is of no moment. At the time he received his appointment, as aforesaid, petitioner had no eligibility. As such what is required is a new appointment, not merely reinstatement. But even then, he cannot compel the Mayor to reappoint him for the power to appoint is in essence discretionary and the appointing power enjoys sufficient discretion to select and appoint employees on the basis of their fitness to perform the duties and assume the responsibilities of the position filled.^[6]

WHEREFORE, the decision dated February 4, 1975 of the lower court is hereby affirmed. No costs.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., Erica, and Escolin, JJ., concur. Abad Santos, J., on official leave.

[1] Ramos vs. Romualdez, 32 SCRA 590.

[2] Mendiola vs. Tancinco, 52 SCRA 66; Cuñado vs. Gamus, 8 SCRA 77.

[3] (c) Provisional Appointment. - A provisional appointment may be issued upon prior authorization of the Commissioner in accordance with the provisions of this Act and the rules and standards promulgated in pursuance thereto to a person who has not qualified in an appropriate examination but who otherwise meets the requirement for appointment to a regular position in the competitive service, whenever a vacancy occurs and the filling thereof is necessary in the interest of the service and there is no appropriate register of eligibles at the time of the appointment.

[4] Re: Elvira C. Arcega, 89 SCRA 318; Santos vs. Chico, 25 SCRA 343.

[5] Ata vs. Namocatcat, 47 SCRA 315; Hojilla vs. Mariño, 13 SCRA 825.

[6] Reyes vs. Abeleda, 22 SCRA 825.

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