

CIVIL AERONAUTICS ADMINISTRATION AND/OR ADMINISTRATOR AND JOSE ESPINA, PETITIONERS, VS. INTERMEDIATE APPELLATE COURT, VALENTIN ABAD (SUBSTITUTED BY HIS HEIRS, NAMELY JOY, JOHN, ...

G.R. No. 70120. September 02, 1992

Ponente: NOCON, J.

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NOCON, J.:

This is a petition to review the decision[1] of the Intermediate Appellate Court dated November 25, 1983, in AC-G.R. No. 55078-R, which affirmed the decision dated January 15, 1974 of the then Court of First Instance of Cebu in Civil Case No. R-13115 ordering the reinstatement or reappointment of Valentin Abad as security guard of herein petitioner Civil Aeronautics Administration and payment of damages, the dispositive portion of which reads:

“IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered in favor of the petitioner and against the respondents:

1. Ordering the immediate reappointment or reinstatement of the petitioner as supervising security guard of respondent Civil Aeronautics Administration;
2. Ordering the respondents to pay petitioner the amount of FIVE THOUSAND PESOS (P5,000.00), as moral damages, TWO THOUSAND AND TWENTY THREE PESOS (P2,023.00), as actual damages, ONE THOUSAND PESOS (P1,000.00), as attorney's fees, and the costs of this actions.

SO ORDERED.”

Hence, this appeal.

Inasmuch as private respondent Valentin Abad has already died, the decision sought to be reviewed with respect to the latter's reinstatement has become moot and academic. Hence, the only matter left to be reviewed is the award of damages.

As borne out from the records, the facts of the case are as follows:

Private respondent Valentin Abad, a civil service eligible, having passed the Patrolmen's Examination was appointed as a security guard in the Civil Aeronautics Administration at Mactan on July 1, 1968. Under the terms of the appointment, the employment of Abad was only for a period of one month or up to July 31, 1968.[2] However, Abad was reinstated on November 18, 1968 as a Special Police Officer in the Civil Aeronautics Administration and his appointment was up to December 31, 1968.[3] In the year 1969, Abad was extended plantilla appointments covering the months of January, February and March[4] and July 1 to December 31, 1969.[5] In January 1970, Abad was again extended another appointment for one (1) month.[6] Continuously from July 1, 1971 to December 31, 1971, Abad's employment was under authority of a temporary appointment

which was extended to him monthly until his services were terminated on January 1, 1972.

Petitioner claims that Valentin Abad was not dismissed but that his temporary appointment merely lapsed.

We agree with the decisions of both the trial and the appellate court.

The following are the pertinent civil service rules:

“Qualifications in an appropriate examination is required for appointment to positions in the competitive or classified service, except as otherwise provided by the Civil Service Law.”[7]

“Employees shall be selected on the basis of fitness, determined by the appointing authority to perform the duties and assume the responsibilities of the positions whether in the competitive or in the non-competitive Service, as well as on the basis of merit as provided in this Act.”[8]

“Qualifications in an appropriate examination shall be required for appointment to positions in the competitive service in accordance with the Civil Service rules, except as otherwise provided in this Act; Provided, that all those who successfully pass the examination shall be equally qualified for such appointment: Provided, further, that whenever there is a Civil service eligible actually available for appointment, no person who is not such eligible shall be appointed even in a temporary capacity to any vacant position in the competitive service in the government or in any government-owned or controlled corporation, except when the immediate filling of the vacancy is urgently required in the public interest, or when the vacancy is not permanent, in which cases temporary appointments of non-eligibles may be made in the absence of eligibles actually and immediately available”[9] ... (Emphasis supplied)

The security of tenure of an employee was defined in the case of *Pielago vs. Echavez*[10] which states:

“Under Section 23 of the Civil Service Act, a non-eligible appointee who has already more than five years of service to his credit, even though his appointment be of temporary character, acquires a right to continue holding his position upon the fulfillment of the following three conditions, namely, (1) he must have been given a qualifying examination within one year from said approval of the law, (2) he either failed in said examination or failed or refused to take it, and (3) he could be replaced only by one who has the requisite or appropriate civil service eligibility.

Thus, the mantle of protection against arbitrary dismissals is accorded to an employee even if he is a non-eligible and holds a temporary appointment.

The dismissal of Abad was undoubtedly malicious and arbitrary. As testified to by Jeremias Dekit, one of the two witnesses for the petitioner, the services of Messrs. Ranara, Duenas, Ymbong, Mahusay and Canete, who were not civil service eligibles, were not terminated.[11]

Of the 27 employees in the security unit of petitioner CAA at Mactan, only respondent and four others possessed appropriate civil service eligibilities. Yet, his services were terminated on January 1, 1972, along with two other employees who did not possess appropriate civil service eligibilities. Worst, the two others whose services were terminated along with respondent's were reappointed within the first quarter of 1972, while respondent was not. The services of Messrs. Garrque, Homigop, Debelleres and Cuizon, who passed only testimonial examinations, were not terminated.

As aptly stated by the appellate court:

“x x x Surely, this is partiality. Fourthly, less-qualified co-employees were accorded subsequent reinstatements, but appellee was not. All those indicate that the termination of appellee's service, despite the temporary nature of his job, was ‘malicious, arbitrary, and without basis in fact and in law.’ The trial court cannot therefore be faulted for its order to have appellee reappointed or reinstated. As has been aptly said by

Our Supreme Court:

‘A decent respect for the Civil Service provisions of our Constitution dictates that civil service eligibles, like petitioners herein who have rendered long and honorable service, should not be sacrificed in favor of non-eligibles given positions of recent creation nor should they be left at the mercy of political changes’ (See *Briones, et al. v. Cameña, Jr.*, L-12536, Sept. 24, 1958).

When appellants herein insist that appellee, being a temporary employee only, is ‘not covered by the mantle of security of tenure’ they miss utterly the most important point in this case: if the non-eligibles had been terminated together with him, appellant would not complain, but why ease him out only to accommodate the non-eligibles? This is the sad travesty besetting some parts of our bureaucracy. Above everything else, the Government must be fair and just.”^[12]

WHEREFORE, there being no reversible error in the order appealed herefrom, the same is hereby **AFFIRMED** in toto.

SO ORDERED.

Narvasa, C.J., (Chairman), Padilla, and Regalado, JJ., concur.

Melo, J., no part.

[1] Rollo p. 22-24, penned by Justice Edgardo L. Paras and concurred in by Justice Crisolito Pascual and Justice Serafin E. Camilon.

[2] Exhibit 1, Folder of Exhibits for Respondents, p. 1.

[3] Exhibit 2, Folder of Exhibits for Respondents, p. 2.

[4] Exhibit 23, Folder of Exhibits for Respondents, p. 23.

[5] Exhibit "E", Folder of Exhibits of Petitioner, p. 6.

[6] Exhibit 3, Folder of Exhibits of Respondents, p. 3.

[7] Revised Civil Service Rules, Rule II, Sec. 1.

[8] Civil Service Law, Sec. 23, as amended.

[9] *Ibid.*

[10] No. L-26600, 33 SCRA 264, (1970).

[11] T.S.N., September 25, 1973, pp. 80-88.

[12] Rollo, p. 24.

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