

RUBEN E. CELERIAN, PETITIONER, VS. HONORABLE FRANCISCO S. TANTUICO, JR., CHAIRMAN, COMMISSION ON AUDIT, RESPONDENT.

G.R. No. 72427. September 24, 1990

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

In this petition for review, petitioner Ruben E. Celerian assails the decision of the Commission on Audit dated July 25, 1984 which disallowed in audit his claim for payment of his salary as driver during the period from August 1, 1982 to November 30, 1982 at the rate of P494.00 per month or the total amount of P1,976.00.

Petitioner Ruben E. Celerian, a non-civil service eligible, (he finished third year high school) was employed as a service driver at the City Health Office in Pagadian City, Zamboanga del Sur from December 1, 1980 to November 30, 1981 under a temporary appointment. After his appointment expired, petitioner still continued to discharge his duties as driver and in recognition of services actually rendered, the City Mayor of Pagadian City issued a memorandum dated December 1, 1981 whereby petitioner was detailed as a casual worker at the City Health Office from December 1, 1981 to January 31, 1982.[1]

Subsequently, upon learning of his imminent replacement by Virgilio Padayao, another non-eligible, who was recommended to the position of driver by Dr. Patrocinio Arao, an ex officio city health officer, petitioner lodged a protest dated January 10, 1982 with the Office of the Regional Director of Zamboanga City against the proposed appointee.[2]

Despite the fact petitioner's original temporary appointment ended on November 30, 1981, it was only on February 1, 1982 that Dr. Arao, with the approval of City Mayor Filemon Pajares, officially informed petitioner that his temporary appointment had expired on November 30, 1981 and he was advised to desist from reporting for duty as his services in that office would no longer be recognized. The appointment of Virgilio Padayao was made effective on the same day, February 1, 1982. Upon receipt of said termination advice the following day or on February 2, 1982, petitioner forthwith applied for and was paid his commuted vacation and sick leave credits for the period beginning February 2, 1982 up to March 15, 1982.[3]

From March 16, 1982 to April 15, 1982 and from June 1, 1982 to July 31, 1982, petitioner was temporarily employed as assistant equipment operator at the Office of the City Engineer in Pagadian City.[4]

After six months or on June 3, 1982, petitioner's protest against the appointment of Padayao was finally decided in his favor by Dr. Milagros Fernandez, Officer-in-Charge of the Regional Health Office in a letter addressed to the Director of the Civil Service Commission, Zamboanga City.[5] Subsequently, on July 26, 1982, the City Health Office received petitioner's "renewal appointment" dated September 1, 1981 and duly approved by the Civil Service Commission as temporary for the period from December 1, 1981 to November 30, 1982.[6] Said appointment was signed by the Regional Health Director "by authority of the Minister of Health." [7] Upon learning of the receipt of his renewal appointment, petitioner twice asked for a copy thereof but his request was refused by Belinda Bariuan, an administrative assistant at the City Health Office. Bariuan also reportedly barred

him from reporting for work upon orders from her superiors. For such conduct, petitioner instituted an administrative complaint against Bariuan which was later dismissed by the Civil Service Commission for want of substantial evidence.

On April 28, 1983, petitioner wrote the city health officer claiming his salary amounting to P1,976.00 corresponding to the period from August 1, 1982 to November 30, 1982 when he was allegedly prevented from reporting for duty.[8] In support of his claim, petitioner cited the decision of the Auditor General in the similar case of Natividad Casals[9] which stated:

"The facts and circumstances hereinbefore recited show that Miss Casals was prevented against her will, and for no valid cause, from performing the duties of the position to which she was legally appointed. Where a public officer is wrongfully deprived of his office, the rule is: 'Unless he waives his rights by abandoning the Office he may recover his salary for the time he is wrongfully prevented from entering the Office and performing its duties or for the time he is kept out of Office by wrongful removal. x x x.' (Sec. 380, 43 Am. Jur. pp. 162-163)."[10]

Petitioner's claim was forwarded by the City Mayor to the City Auditor for resolution. On August 26, 1983, the City Auditor refused to give due course to petitioner's claim and indorsed the same to the Regional Director of the Commission on Audit who disallowed the claim in audit.[11]

In its third indorsement dated July 25, 1984, respondent Commission on Audit sustained the previous actions taken by the City Auditor of Pagadian City and the COA Regional Director citing the following reasons: (1) petitioner's original and renewed appointments as driver were temporary, thus the same could be terminated at any time; (2) temporary appointments are terminable at the pleasure of the appointing authority at any time, with or without cause, and (3) petitioner had ceased to hold the position of driver from the time he had notice of the termination of his employment.[12]

In its 11th Indorsement, public respondent denied petitioner's motion for reconsideration. Hence this recourse.

The sole issue in this case is whether or not a supposedly terminated employee is entitled to the salary corresponding to the remaining period of his temporary "renewed" appointment without rendering actual service therefor. To answer this, we need to resolve the corollary issue of who has the power to appoint and consequently remove an employee of the city health office.

Under the Revised Administrative Code, the power to appoint and remove subordinate officers and employees, as in the case of petitioner, is vested in the Secretary of Health. Thus:

"SEC. 79 (D). Power to appoint and remove. - The Department Head, upon the recommendation of the chief of the Bureau or office concerned, shall appoint all subordinate officers and employees whose appointment is not expressly vested by law in the President of the Philippines, and may remove or punish them except as especially provided otherwise, in accordance with the Civil Service Law. x x x."

Petitioner's original temporary appointment as service driver (copy thereof is not found in the records) covered the period from December 1, 1980 to November 30, 1981. Thereafter, petitioner was allowed to continue in his post as a detailed casual worker under a memorandum order from the City Mayor. This order, which eventually turned out to be a superfluity, was obviously made to enable petitioner to draw his salary, as petitioner's renewal appointment, although favorably recommended and forwarded to the Civil Service Commission as early as September 1, 1981, had not yet been approved.

However, on the strength of another memorandum dated February 1, 1982 issued by City Health Officer Dr. Arao and "approved by" the City Mayor, petitioner was officially informed that his temporary appointment had expired

on November 30, 1981.

Had it been his appointment as a casual worker by the City Mayor that was being terminated, then the act of the City Health Officer as "approved by the Mayor" would have been valid under the basic principle that the power to appoint carries with it the power to remove.^[13] It should be noted, however, that when he was advised on February 2, 1982 not to report for duty anymore, what was being terminated was his temporary appointment as service driver in the City Health Office, to which position, unbeknownst to the persons involved, petitioner would eventually be re-appointed by the Regional Director, acting on behalf of the Secretary (then Minister) of Health. That new appointment, being in accordance with the organizational structure of the Department of Health, as provided in the Administrative Code then in force, and in the absence of a protest, was effective from December 1, 1981 to November 30, 1982. Since as aforesaid, the power to appoint the service driver in the City Health Office pertained at that time to the Regional Director, acting on behalf of the Secretary (then Minister) of Health, and not the City Health Officer or the City Mayor, the "official" termination of petitioner on February 2, 1982 was clearly not in accordance with law and therefore ineffective.

Respondent Commission on Audit contends that petitioner had in fact consented to his termination when he collected the cash equivalent of his terminal leave and when he later worked at the City Engineer's Office.

The argument is untenable. Petitioner should not be faulted for commuting his leave to which he was rightfully entitled and for seeking employment elsewhere for his economic survival. He was then of the honest belief that he had been validly removed from his post as driver. He had clearly acted under a mistake of fact brought about by the delay in the approval and transmittal of his "renewal appointment" papers.

Equally untenable is the allegation that petitioner should not be compensated for the period from August 1, 1982 to November 30, 1982 since he did not render actual service based on the "no work no pay" principle. Where it has been sufficiently shown, as in the instant case, that a public official was wrongfully prevented from entering the office and carrying out his duties, then he may recover his salary for the duration that he was thus prevented from assuming his post. And that proposition should apply with equal force to a temporary appointee because what is material is not the nature of the appointment but the act of wrongful deprivation of office.

The Court cannot help but admire the dogged determination and persistence shown by petitioner in pursuing his claim even if it is for a meager sum of P1,947.00. Such action could only be taken to mean that he truly believed in the merit of his cause.

We rule for petitioner. Under both legal and equitable grounds, petitioner is entitled to the payment of his salary corresponding to the period from August 1, 1982 to the expiration of his term where by reason of a combination of circumstances he was effectively prevented from carrying out his duties through no fault of his own.

WHEREFORE, respondent Commission on Audit's disallowance of petitioner's claim is hereby reversed and set aside. Respondent is directed to expedite the processing and payment of petitioner's salary in the amount of P1,947.00. This decision is immediately executory.

So Ordered.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] Records, p. 30.

[2] Records, pp. 58-60.

[3] Records, pp. 31 and 93.

[4] Records, p. 24.

[5] Records, pp. 95-96.

[6] Records, p. 25.

[7] Ibid. The records do not indicate the reason for the delay in the processing and transmittal of petitioner's "renewal appointment" papers.

[8] Records, p. 33.

[9] 4th Indorsement dated April 5, 1955, GAO File No. 3.01.

[10] Records, p. 34.

[11] Records, pp. 42-44, 45.

[12] Decision No. 342, Records, pp. 83-85.

[13] Decano vs. Edu, No. L-30070, August 29, 1980, 99 SCRA 311; Lacanilao vs. de Leon, G.R. No. 76532, January 26, 1987, 147 SCRA 266.

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