

not have referred to the material allegations of the complaint for the simple reason that they were specifically denied in the answer and therefore the latter has tendered an issue which could not be the subject of a judgment on the pleadings. This is the only conclusion that can be drawn from a careful analysis of the contents of the motion of defendant. A contrary interpretation would be incongruous and contrary to its very purpose. It is for these reasons that we believe that the lower court committed an error in considering the aforesaid motion as an implied admission of all the material allegations of the complaint and in rendering judgment accordingly.

Wherefore, the decision appealed from is hereby revoked, with-out pronouncements as to costs. The case is remanded to the lower court for further proceedings.

Paras, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes, Jago and Labrador, J. J., concur.

XX

Mamerto Mission, et al., Petitioners, vs. Vicente S. del Rosario, as Acting Mayor of Cebu City, et al., Respondents, G. R. No. L-8754, February 26, 1954.

1. PUBLIC OFFICERS; "DETECTIVE" DEFINED.—"The word 'detective', as commonly understood in the United States, is defined as one of a body of police officers, usually dressed in plain clothes, to whom is intrusted the detection of crimes and the apprehension of the offenders, or a policeman whose business is to detect wrongs by adroitly investigating their haunts and habits." [Grand Rapids & I. Ry. Co. v. King, 83 N.E. 778, 780, 41 Ind. App. 707, citing Am. Dict. and Webst. Dict. (Vol. 12, Words and Phrases, p. 312).]
2. IBID; "POLICEMAN" DEFINED. — The term "policemen" may include detectives (62 C.J.S. p. 1091).
3. IBID; "POLICE" DEFINED.—"The term 'police' has been defined as an organized civil force for maintaining order, preventing and detecting crimes, and enforcing the laws, the body of men by which the municipal law, and regulations of a city, town, or district are enforced."
4. IBID; COMMON FUNCTION OF POLICEMEN AND DETECTIVES.—With few exceptions, both policemen and detectives perform common functions and duties and both belong to the police department. In contemplation of law therefore both shall be considered as members of the police force.
5. IBID; REMOVAL OF CITY POLICE UNDER REPUBLIC ACT NO. 557.—Section 1 of Republic Act No. 557 provides, in so far as may be pertinent to their case, that the members of the city police shall not be removed "except for misconduct or incompetency, dishonesty, disloyalty to the Philippine government, serious irregularities in the performance of their duties, and violation of law or duty," and in such cases, charges shall be preferred by the city mayor and investigated by the city council in a public hearing, and the accused shall be given opportunity to make their defense. A copy of the charges shall be furnished the accused and the investigating body shall try the case within ten days from notice. The trial shall be finished within a reasonable time, and the investigating body shall decide the case within fifteen days from the time the case is submitted for decision. The decision of the city council shall be appealable to the Commission of Civil Service.
6. REMOVAL OF CITY POLICE UNDER EXECUTIVE ORDER NO. 264.—Executive Order No. 264, on the other hand, prescribes a more summary procedure. It applies to secret service agents or detectives and provides in a general way that the appointing officer may terminate the services of the persons appointed if he deems it necessary because of lack of trust or confidence and if the person to be separated is a civil service eligible, the advice of his separation shall state the reasons

therefor. Under this procedure no investigation is necessary, it being sufficient that the appointee be notified of his separation based on lack of confidence on the part of the appointing officer.

7. IBID; ILLEGAL REMOVAL OF DETECTIVES; CASE AT BAR.—Some detectives in the Police Department of Cebu City were removed by the Mayor because he had lost his confidence in them. The detectives maintain that their removal is illegal because it was made in violation of the law and the Constitution which protect those who are in the civil service. On the other hand, the mayor contends that their positions being primarily confidential, their removal can be effected under Executive Order No. 264 of the President, on the ground of lack of trust or confidence. HELD: (1) Sec. 1 of Republic Act No. 557 provides, in so far as may be pertinent to their case, that the members of the city police shall not be removed "except for misconduct or incompetency, dishonesty, disloyalty to the Philippine government, serious irregularities in the performance of their duties, and violation of law or duty," and in such cases, charges shall be preferred by the city mayor and investigated by the city council in a public hearing, and the accused shall be given opportunity to make their defense, etc. Executive Order No. 264, on the other hand, prescribes a more summary procedure. It applies to secret service agents or detectives and provides in a general way that the appointing officer may terminate the services of the persons appointed if he deems it necessary because of lack of trust or confidence and if the persons to be separated is a civil service eligible, the advice of his separation shall state the reasons therefor. Under this procedure no investigation is necessary, it being sufficient that the appointee be notified of his separation based on lack of confidence on the part of the appointing officer. An analysis of the pertinent provisions of the Charter of the City of Cebu (Com. Act No. 58) will reveal that the position of a detective comes under the police department of the city. This is clearly deducible from the provisions of sections 32, 34, and 35. Therefore, the detectives were illegally removed from their positions.

Fernando S. Ruiz for petitioners.
Jose L. Abad for respondents.

DECISION

BAUTISTA ANGELO, J.:

Petitioners were detectives in the Police Department of the City of Cebu duly appointed by the Mayor of the city. Some of the appointees were civil service eligibles. Their rank, length of service, and efficiency rating appear in the certification attached to the petition.

On May 11, 12, and 19, 1953, petitioners were notified by the Mayor that they had been removed because he has lost his confidence in them. Following their removal, the City Treasurer and City Auditor stopped the payment of their salaries, and after their positions had been declared vacant because of their removal, the City Mayor immediately filled them with new appointees who are presently discharging the functions and duties appertaining thereto.

Considering that their removal was made in violation of the law and of the Constitution which protect those who are in the civil service, petitioners filed the present petition for mandamus in this Court praying that their removal be declared illegal and without effect and that their reinstatement be ordered and their salaries paid from the date of their removal up to the time of their reinstatement.

Respondents in their answer tried to justify the removal of petitioners contending that, their positions being primarily confidential, their removal can be effected under Executive Order No. 264 of the President of the Philippines, on the ground of lack of trust or confidence. They claim that the Mayor of Cebu City has lost confidence in them, and so he separated them from the service upon due notice.

The only issue involved in this petition hinges on the determina-

tion of the nature of the positions held by petitioners at the time of their removal. Petitioners contend that, having been appointed as detectives, they should be regarded as members of the Police Department of Cebu City and, therefore, they are members of the city police. As such they can only be removed in line with the procedure laid down in Republic Act No. 557. On the other hand, respondents contend that petitioners are not members of the police force, but of the detective force, of the City of Cebu, and, therefore, their removal is governed by Executive Order No. 264.

Let us first make a brief outline of the procedure concerning removal laid down in the legislation invoked by the parties before passing on to determine the nature of the positions held by petitioners.

Section 1 of Republic Act No. 557 provides, in so far as may be pertinent to their case, that the members of the city police shall not be removed "except for misconduct or incompetency, dishonesty, disloyalty to the Philippine government, serious irregularities in the performance of their duties, and violation of law or duty," and in such cases, charges shall be preferred by the city mayor and investigated by the city council in a public hearing, and the accused shall be given opportunity to make their defense. A copy of the charges shall be furnished the accused and the investigating body shall try the case within ten days from notice. The trial shall be finished within a reasonable time, and the investigating body shall decide the case within fifteen days from the time the case is submitted for decision. The decision of the city council shall be appealable to the Commission of Civil Service.

6. Executive Order No. 264, on the other hand, prescribes a more summary procedure. It applies to secret service agents or detectives and provides in a general way that the appointing officer may terminate the services of the persons appointed if he deems it necessary because of lack of trust or confidence and if the person to be separated is a civil service eligible, the advice of his separation shall state the reasons therefor. Under this procedure no investigation is necessary, it being sufficient that the appointee be notified of his separation based on lack of confidence on the part of the appointing officer.

An analysis of the pertinent provisions of the Charter of the City of Cebu (Commonwealth Act No. 58) will reveal that the position of a detective comes under the police department of the city. This is clearly deducible from the provisions of sections 32, 34 and 35. Section 32 creates the position of Chief of Police "who shall have charge of the police department and everything pertaining thereto, including the organization, government, discipline, and disposition of the city police and detective force." Section 34 creates the position of Chief of the Secret Service who shall, under the Chief of Police, "have charge of the detective work of the department and of the detective force of the city, and shall perform such other duties as may be assigned to him by the Chief of Police." And section 35 classifies the Chief of Police and Assistant Chief of Police, the Chief of the Secret Service and all officers and members of the city police and detective force as peace officers. Under this set-up it is clear that, with few exceptions, both policemen and detectives perform common functions and duties and both belong to the police department. In contemplation of law therefore both shall be considered as members of the police force of the City of Cebu.

The authorities in the United States are of the same import. Thus, "The word 'detective', as commonly understood in the U. S., is defined as one of a body of police officers, usually dressed in plain clothes, to whom is entrusted the detection of crimes and the apprehension of the offenders, or a policeman whose business is to detect wrongs by adroitly investigating their haunts and habits." [Grand Rapids & I. Ry. Co. v. King, 83 N.E. 778, 780, 41 Ind. App. 707, citing Am. Dict. and Webster. Dict. (Vol. 12, Words and Phrases, p. 312)]. The term "policemen" may include detectives (62 C.J.S. p. 1091). And "the term 'police' has been defined as an organized civil force for maintaining order, preventing and detecting crimes, and enforcing the laws, the body of men by which the municipal law, and regulations of a city, town, or district are enforced." (Vol. 62, C.J.S. p. 1050.)

It appearing that petitioners, as detectives, or members of the

police force of Cebu City, were separated from the service not for any of the grounds enumerated in Republic Act No. 557, and without the benefit of investigation or trial therein prescribed, the conclusion is inescapable that their removal is illegal and of no valid effect. In this sense, the provisions of Executive Order No. 264 of the President of the Philippines should be deemed as having been impliedly repealed in so far as they may be inconsistent with the provisions of said Act. (See sec. 6, Republic Act No. 557.) This interpretation is the more justified considering the rank and length of service of many of the petitioners involved. The great majority of them had been in the service for 6 years, one for 9 years, one for 11 years, one for 14 years and one even for 31 years with an efficiency rating which is both commendable and satisfactory. These data give an inkling that their separation is due to causes other than those recognized by law.

Wherefore, the petition is granted, without pronouncement as to costs.

Paras, Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Labrador, Concepcion and Diokno, J. J., concur.

XXVI

Co Te Huc, Petitioner vs. Hon. Denetrio B. Encarnacion, Judge, Court of First Instance of Manila, Respondent, G. R. No. L-6415, January 26, 1954.

CRIMINAL PROCEDURE; DOUBLE JEOPARDY; DISMISSAL CONSENTED AND URGED BY COUNSEL OF THE ACCUSED.—Where an accused is dismissed provisionally not only with the express consent of the accused but even upon the urging of his counsel, there is no double jeopardy under Sec. 9, Rule 113, if the case against him is revived by the fiscal.

Amado A. Yateo for petitioner.

Denetrio B. Encarnacion, Assistant Solicitor General Guillermo E. Torres and Solicitor Jaime de los Angeles for respondents

DECISION

BAUTISTA ANGELO, J.:

This is a petition for certiorari seeking to set aside an order of the Court of First Instance of Manila which directs that petitioner be included as one of the accused in a criminal case for estafa from which he was previously excluded by an order of the court.

On July 15, 1950, several persons including petitioner, were charged with the crime of estafa in the Court of First Instance of Manila (Criminal Case No. 13229). Petitioner was arraigned and pleaded not guilty. On August 29, 1951, upon motion filed by the offended party, with the conformity of his counsel, and without objection on the part of the fiscal, the case was provisionally dismissed as to petitioner. On May 31, 1952, the fiscal filed a motion to revive the case on the ground that its dismissal with respect to petitioner "was impractical, discriminating since the ground of dismissal was not based on the merits of the case." Petitioner objected to this motion but the court granted it stating that after a reinvestigation it was found that he was just as guilty as the other accused. On November 12, 1952, petitioner moved to quash the information as to him alleging that his reinclusion in the same after it has been provisionally dismissed places him in double jeopardy. This motion was denied, and respondent Judge having refused to reconsider his order, petitioner filed the present petition for certiorari alleging that said Judge has acted in excess of his jurisdiction.

It is the theory of petitioner that the charge for estafa filed against him having been dismissed albeit provisionally without him express consent, its revival constitutes double jeopardy which bars a subsequent prosecution for the same offense under section 9, Rule 113, of the Rules of Court. This claim is disputed by the Solicitor General who contends that, considering what has transpired in relation to the incident, the provisional dismissal is no bar to his subsequent prosecution for the reason that the dismissal was made with his express consent.