

the affirmative. This finding, being supported by sufficient testimonial and documentary evidence, should not be disturbed.

Decision affirmed. Bautista Angelo, *J.*, *ponente*.

[No. L-9915. May 27, 1959]

CALTEX (PHILIPPINES) INC., petitioner, *vs.* PHILIPPINE LABOR ORGANIZATION, respondent.

Petition for certiorari to set aside a decision of the Court of Industrial Relations, ordering reinstatement of an employee without back wages. In view of a dispute between the Caltex Inc. and Philippine Labor Organization pending before the Court of Industrial Relations, authority was granted the former to hire one Hidpion del Rosario as laborer in its Pandacan Terminal. About two months later, the company suspended del Rosario for insubordination and, later, filed a petition with the Industrial court for authority to dismiss him. After hearing, the court found del Rosario guilty of the acts complained of. Believing, however, that a permanent dismissal was too severe a punishment, the court ordered his reinstatement without back wages. Petitioner claims that the lower court committed a serious mistake of law and grave abuse of discretion in compelling it to retain del Rosario in its employ, and in substituting its judgment for that of petitioner in determining the fitness or qualification of a temporary employee to become permanent or regular. *Held:* Considering the period of time that del Rosario had been working for petitioner before his suspension, from July to September, 1952, it can be said that he was on temporary or trial basis. The petitioner has the right to place him under this condition to determine his fitness and competency. The acts of insubordination for which del Rosario was found guilty consist of disorderly conduct and wilfull disobedience, committed in a very short period of two months. Wilfull disobedience is a justifiable ground for an employee's discharge.

Order set aside. Parás, *C. J.*, *ponente*.

[No. L-10975. May 27, 1959]

ZAMBOANGA TRANSPORTATION CO., INC., petitioner, *vs.* ROSALIO T. LIM and THE PUBLIC SERVICE COMMISSION, respondents.

Review of order of the Public Service Commission reinstating applications for certificate of public convenience. Respondent Rosalio T. Lim, operator of TPU auto-truck service granted in PSC Case No. 73310 upon representation that he was a Filipino citizen, was also applicant in PSC Cases 74068 and 76620 for approval of the sales and transfers to him of similar certificates belonging to Jose Clemente and Teodoro C. Araneta, respectively. In connection with the certificate granted to him in Case 73310, he also applied for authority to operate additional trips under the same certificate (Case No. 88935). In 1953, Lim applied for a certificate to operate an iceplant, opposed by the Zamboanga Cold Storage Co., on grounds other than alienage. After hearing, the Commission dismissed the application on the ground that Lim was registered as a Chinese national in the Bureau of Immigration. Capitalizing on this finding in the iceplant case, Zamboanga Transportation Co., Lim's competitor in auto-truck service, opposed his application in Case No. 88935. Thereafter, the Public Service Commission issued an order requiring Lim to show cause why his certificates to operate transportation service should not be cancelled and/or dismissed. In his answer, Lim alleged that he was a Filipino citizen as declared by the Commission itself in Case No. 73310 and that his alien certificate of registration had already been cancelled pursuant to the opinion of the Under-secretary of Justice dated September 17, 1954. Reiterating its finding in the iceplant case, the Commission ordered the cancellation of Lim's certificates to operate auto-truck service. But on motion for reconsideration alleging that Lim as an illegitimate child followed the Philippine citizenship of his mother and did not have to elect his citizenship upon reaching the age of majority, the Commission reconsidered its ruling and issued another order, declaring Lim a Filipino citizen, setting aside the cancellation of the certificates and reinstating his pending applications. In this petition for review, petitioner contends (1) that the Commission had no authority to declare Lim a Filipino citizen; that the Commission violated the doctrine of *res judicata*; and (3) that Lim is estopped to claim Filipino citizenship. *Held:* The first contention cannot be upheld. The Commission did not have Lim's alien certificate of registration corrected or altered. That certificate had already been cancelled by the immigration authorities pursuant to the opinion of the Under-secretary of Justice when the Commission declared Lim to be a Filipino citizen in this proceeding. On the other hand, the Commission is vested with authority to determine whether the applicant for a certificate of public convenience has the citizenship qualification. The plea of *res judicata* cannot be

sustained because, while the Commission did find Lim to be a Chinese national, still it took notice of the fact that Lim had a pending petition for cancellation of his alien certificate and for that reason dismissed the application without prejudice, in anticipation of the possibility that his alien certificate might later be cancelled. Moreover, the Commission later became convinced that, as a matter of law, it was not necessary for Lim to choose Philippine citizenship. Finally, it is argued that Lim, having registered himself as a Chinese national, is estopped to claim Filipino citizenship. But as explained by him, his alien registration was made under a misapprehension of facts, and his explanation is supported by the evidence.

Order affirmed. Reyes, A., J., *ponente*

[No. L-11078. May 27, 1959]

FILEMON R. BAGUIO, petitioner and appellant, *vs.* HON. JOSE V. RODRIGUEZ, ET AL., respondents and appellees.

Appeal from a decision of the Court of First Instance of Cebu denying a petition for "Quo Warranto, Mandamus, Injunction and Damages." On November 15, 1952, petitioner-appellant received a letter from respondent City Mayor Jose V. Rodriguez terminating his services as deputy detective inspector on the ground that he was occupying a position of confidence and the mayor had already lost his trust and confidence in him. Soon one Vicente Abella was appointed to his position; whereupon he filed a complaint for "Injunction, Quo warranto and Damages" against the mayor, Abella, the city auditor, the city treasurer and the members of the municipal board, in their official capacities. While the case was pending, petitioner was appointed by the then Acting Mayor to another position, that of senior detective inspector. But Mayor Rodriguez again dismissed him for the same reason as before. The lower court rendered its decision dismissing the petition. Respondents-appellees moved to dismiss the petition on the grounds (1) that the City of Cebu was not included as a party respondent and (2) that petitioner-appellant had not exhausted his administrative remedies. *Held*: Applicable to the instant case is the ruling in *Mangubat, et al. vs. Osmeña, et al.*, *G.R. No. L-12837, April 30, 1959, that a petition for mandamus and quo warranto seeking reinstatement of an illegally dismissed city detective and payment of his back salaries may be entertained notwithstanding the non-inclusion of the city as a party, where it appears that the naming of

* *Supra*, p. 1308.