100 Phil. 683

[G.R. Nos. L-10360 and L-10433. January 17, 1957]

JULIANO A. ALBA, IN HIS CAPACITY AS ACTING VICE MAYOR OF ROXAS CITY, PETITIONER, VS. HONORABLE JOSE D. EVANGELISTA, JUDGE OF THE COURT OF FIRST INSTANCE OF CAPIZ AND VIVENCIO C. ALAJAR, RESPONDENTS. VIVENCIO C. ALAJAR, PETITIONER AND APPELLEE, VS. JULIANA A. ALBA, RESPONDENT AND APPELLANT.

D E C I S I O N

FELIX, J.:

On January 1, 1964, the President of the Philippines appointed Vivencio Alajar as Vice-Mayor of the City of Roxas (Annex D). He took his oath and assumed office on January 6, 1954; on March 31 of that year, his appointment was confirmed by the Commission on Appointment (Annex D-1) and he continued holding office until November, 1955, when he received a communication from Assistant Executive Secretary Enrique C. Quema informing him that the President had designated. Juliano Alba in his stead as Acting Vice-Mayor of the City of Roxas and requesting him to turn over his said office to Mr. Alba effective immediately. This communication wherein the President directed the writer thereof to convey to Mr. Alajar his appreciation for the invaluable services he had rendered as Vice-Mayor of the City of Roxas (Annex C), was confirmed by a telegram that Alajar received from the President dated November 23, 1955 (Annex B).

On the other hand, Executive Secretary Fred Ruiz Castro addressed Juliano A. Alba a communication through the Mayor of the City of Roxas wherein Alba was informed that the President has designated him as Acting Vice-Mayor of the City of Roxas vice Vivencio Alajar, and instructed/him to qualify and enter upon the performance of the office, furnishing the Commissioner of Civil Service with the copy of his oath

(Annex A). On November 19, 1955, Juliano A. Alba took his oath and assumed office (Annex A-l).

Not satisfied with the action of the President, Vivencio C. Alajar instituted *quo warranto* proceedings in the Court of First Instance of Capiz against Juliano A. Alba (Civil Case No. V-2041), contending:

> (a) That he was appointed Vice-Mayor of Roxas City on 1 January 1954 and his appointment was confirmed by the Commission on Appointments on 31 March 1954 and that on 19 November 1955, Juliano A. Alba usurped the office of Vice Mayor of Roxas City;
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> (b) That there existed no vacancy of said office at the time oof the designation by the President of the Philippines of Juliano A. Alba as Acting Vice-Mayor of Roxas City; and
> (c) That there existed no legal cause or reason whatsoever for the removal or disqualification of said Vivencio C. Alajar by the appointment of Juliano Alba by the President of the Philippines as Acting Vice-Mayor of Roxas City.

After proper proceedings and hearing, the parties submitted the case for decision on the only issue of whether the alleged *removal* of the petitioner and the designation in his place of respondent as Vice-Mayor of Roxas Gity was legal or illegal. On this point, the lower court held; that the petitioner (Vivencio C. Alajar) was "entitled to remain in office as Vice-Mayor of the City of Roxas with all the emoluments, rights and privileges appurtenant thereto until he resigns, dies or is removed for cause. Without costs." (Decision, Annex C).

From this decision, Juliano A. Alba appealed to Us by filing a notice of appeal dated February 3, 1956. Four days later, the appeal notwithstanding, Vivencio Alajar filed a petition (Annex D) praying for immediate execution of the judgment, and despite the strong opposition of appellant, the motion was granted by the Court on February 18, 1956 (Annex E), based on the special reasons adduced by the petitioner and

> "Moreover, to uphold the supremacy of the law and constitution, which is the supreme and fundamental authority, pertinent provisions of which are involved in this case, and considering that the immediate and positive effect of the motion, if the same is denied, is to prolong the status of illegality of the appointment of the second appointee and present incumbent to the position of Vice-Mayor of the City of Roxas and the question of who is entitled to occupy the same and to exercise the public function of the office which affects public interest and public service, this Court, if it is to be consistent with its pronouncement, conclusion or judgment, as it should be, is constrained to grant said motion."

The decision, however, was not executed because the herein petitioner, Juliano A Alba, brought the matter up to this Superiority praying:

> (1) That pending the determination of the validity of the order of immediate execution, a writ of preliminary injunction be issued, upon previous filing of the bond fixed by this Honorable Court by the herein petitioner, restraining the herein respondent Vivencio C. Alajar from discharging the duties and functions of the Vice-Mayor of Roxas City in order that the herein petitioner shall continue unmolested as acting Vice-Mayor of Roxas City until the final determination of the question of the validity of the order for the immediate execution of the decision of the trial court;
> (2) That after hearing, judgment be rendered declaring null and void the order of respondent, Hon. Jose D. Evangelista, dated 18 February 1956 for the immediate execution of his decision in the Quo Warranto Case (Alajar *vs.*
> Alba) on the ground that the same was improperly issued as there existed no good reason for its issuance as contemplated and provided by Section 2 of Rule 39 of the Rules of Court.
> (3) For such other relief as may be just and equitable in the premises.

In this instance, the Solicitor General requested permission to intervene in the certiorari case (G. R. No. L-10360), alleging that the

order of immediate execution issued by the trial judge deprived him of the opportunity to be heard and defend the constitutionality of Republic Act No. 603 in the lower court and he desires to be heard by this Court before We proceed to determine the constitutionality of section of Republic Act No. 603 by the affirmative vote of 8 Justices thereof (section 23, Rule 3 of the Rules of Court—I Moran, Comments on the Rules of Court, 1953 ed., p. 111). The stand of the Solicitor General is that said section, 8 is constitutional (Article VI, section 1 and Article XII, section 1 of the Constitution of the Philippines; Jover *vs.* Borra, 49 Off. Gaz., 2765 and enactments of Congress subsequent to the case of Santos *vs.* Mallare, 48 Off. Gaz., 1793, etc, decclaring certain position to be terminable at the pleasure of the appointing authority—section 2545 Revised Administrative Code; Commonwealth Act Nos. 39, 51, 520, 547 and 592; Republic Acts Nos. 162, 170, as amended; 179, as amended; 183, 288, as amended; 305, 306, 327, 328, 521, 523, 525, as amended; 537, and 603) The motion for intervention of the Solicitor General was granted by this Court.

In the meanwhile, the appeal of Juliano A. Alba in said case V-2041, was given due course and reached this Court. In this Instance the parties have already filed their respective briefs and the case was submitted for decision at the hearing held on August 3, 1956. Appellant's counsel maintains that the trial Court erred:

1. In predicating its decision on the mistaken assumption that the petitioner-appellee belongs to the unclassified civil service, an assumption which begs the very issue; whether the vice-mayor of Roxas City belongs to the unclassified service as claimed by the petitioner-appellee;
2. In not declaring without the necesity of making a pronouncement of its validity, that section 8 of Republic Act 603 was precisely intended by the Congress to exclude the office of vice-mayor of Roxas City from persons belonging to the unclassified service under section 671 of the Revised Administrative Code, as amended;
3. In not declaring that in the case of Jover *vs*. Borra (49 Off. Gaz., 2767) the

Supreme Court passed upon the validity of section 8 of Republic Act No. 603;

4. In holding that the office of vice-mayor of Roxas City is neither primarily confidential nor policy-determining, and
5. In not holding that section 8 of Republic Act No. 603 is a valid exercise of the broad legislative powers vested in the Congress of the Philippines by our Constitution.

As the petition for certiorari was admitted and given due course by this Court and the writ of preliminary injunction prayed for was issued, We shall confine ourselves to the statement that appeal from a decision of the Court of First Instance in *quo warranto* proceedings is perfected by the mere presentation of the notice of appeal (sections 16 and 17, Rule 41 of the Rules of Court), and from that moment "the trial court losses its jurisdiction over the case, except to issue orders for the protection and preservation of the rights of the parties *which do not involve any matter litigated by the appeal*, and to approve compromises offered by the parties prior to the transmittal of the record on appeal (which is not required in cases of *quo warranto*) to the appellate court" (section 9, Rule 41 of the Rules of Court). Hence, in the case at bar, the trial court had no jurisdiction to provide for the issuance of the writ for the advance execution of its judgment, as it did by order of February 18, 1956 (Annex E). Consequently, We have to declare that said order is null and void and of no force and effect and to make permanent the writ of preliminary injunction iVe have issued at the instance of the herein petitioner.

We will now consider the merits of respondent's appeal in case G. R. No. L-10433. The solution of the controversy hinges on the main question at issue, which may be propounded as follows:

> "Section 8 of Republic Act No. 603 creating1 the City of Boxaa provides that the Vice-Mayor shall be appointed by the President of the Philippines with the consent of the Commission on Appointments *and shall hold office at the pleasure of the President*. In view of this provision of the law, could the President of the Philippines legally

> replace respondent Vivencio C Alajar, with or without cause, by petitioner Juliano A. Alba?"

Vivencio C. Alajar and judge Jose D. Evangelista maintain of course the negative side alleging that in the case of De Ios Santos vs. Mallare, 48 Off. Gaz., 1791, a similar provision of the Administrative Code which prescribes:

> "SEC. 2545. *Appointment of City Officials.*—The President of the Philippines shall appoint, with the consent of the Commission on Appointments of the Congress of the Philippines, the mayor, the *vice-mayor* * * * and he may REMOVE *at pleasure any cf the said officers* * * * ",

has been declared incompatible with the constitutional inhibition that "no officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law", because the two provisions are mutually repugnant and absolutely irreconciliable. In express terms, one permits what the other in similar manner prohibits. And the Supreme Court then said "that the particular provisions of law (section 2545 of the Revised Administrative Code) which gives the Chief Executive power to remove an officer at pleasure (though not unconstitutional) have been *repealed* by the Constitution and ceased to be operative from the time the latter went into effect."

On the other hand, the Solicitor General in his reply memorandum considers the matter from a different angle. The views expressed by him therein refer to the tenure of office of public officials. We quote from said memorandum the following:

> "A public office is the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or *enduring at the pleasure of the creating power*, an individual is invested with some portion of the sovereign function.of

government, to be exercised by him for the benefit of the public The individual so invested is a public officer" (7Mechem, Public Officers, section 1).

"The question is whether an officer appointed for a definite time or during good behavior, had any vested interest or contract right in his office, of which Congress could not deprive him. The question is not novel. There seems to be but little difficulty in deciding that there was no such interest or right (Grenshaw *vs.* United States, 134, U. S. 99, 104).

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"Admittedly, the act of Congress in creating a public office, defining its powers, functions and fixing the "term" or the period during which the officer may claim to hold the office as of right and the "tenure" or the term during which the incumbent actually holds the office, is a valid and constitutional exercise of legislative power (Article VI, section 1, Constitution of the Philippines; Jover *vs.* Borra, G. R. No. L-6782, July 25, 1953; Nueno *vs.* Angeles, 76 Phil., 12; Francia *vs.* Pecson and Subido, 47 Off. Gar., 12 Supp. p. 296). In the exercise of that power, Congress enacted Republic-Act No. 603 on April 11, 1951, creating the City of Roxas and providing, among others for the position of Vice-Mayor and its tenure or period during which the incumbent Vice-Mayor *holds office at the pleasure of the President* (section 8, article II, Republic Act No. 603).

"In Jover vs. Borra, supra, this Court through Mr. Justice Padilla, held that;

'The legislative intent to provide for a fixed period of office tenure for the Mayor of the City of Iloilo and not to make him removable at the pleasure of the appointing authority may be inferred from the fact that whereas the appointment of the Vice-Mayor of the same city, as provided for in an amendatory act (Republic Act No. 365), and those of the Mayors and Vice-Mayors of other cities (section 2545, Rev. Adm. Code; Commonwealth Acts Nos. 39, 51, 338, 520, 547 and 592;

Republic Acts Nos. 162, 170, as amended, 179, as amended; 183, 288, as amended; 305, 306, 327, 328, 521, 523, 525, as amended; 537 and 603) *are at pleasure*, that of the Mayor of the City of Iloilo is for a fixed period of time, as provided for in the original charter (Commonwealth Act No. 57), and in this continued unchanged despite subsequent amendatory acts (Commonwealth Act No. 158; Republic Act Nos. 276 and 365).

"So, the logical inference from the above quoted excerpt of the decision of this Court promulgated long after the decision rendered in the case of De los Santos *vs.* Mallare, *supra*, is that Congress can legally and constitutionally make the tenure of certain officials dependent upon the pleasure of the President.

* * * * * * *

"The pervading error of the respondents lies in the fact that they insist on the act of the President in designating petitioner Alba in the place of respondent Alajar as one of *removal*. The replacement of respondent Alajar *is not removal, but an expiration of* its tenure, which is one of the ordinary modes of terminating official relations. On this score, section 2545 of the Revised Administrative Code which was declared inoperative in the Santos *vs.* Mallare case, is different from section 8 of Republic Act No. 603, Section 2545 refers to *removal* at pleasure while section 8 of Republic Act No. 603 refers to *holding office at the pleasure of the President*.

"Clearly, what is involved here is not the question of removal, or whether legal cause should precede or not that removal. What is involved here is the creation of an office and the tenure of such office, which has been made expressly dependent upon the pleasure of the President.

"The cases relied upon by respondents are, therefore, inopposite to the instant proceedings. For all of them relate to *removal* of officials in violation of laws which *prescribe fixity of term*.

"Even

> assuming for the moment that the act of replacing Alajar constitutes removal, the act itself is valid and lawful, for under section 8 of Republic Act No. 603, *no fixity of tenure* has been provided for, and the pleasure of the President has been exercised in accordance with the policy laid down by Congress therein.

"Thus, in Lacson *vs.* Roque (49 Off. Gaz., 93, 101-102), this Court made clear that:

> 'The most liberal view that can be taken of the power of the President to remove the Mayor of the City of Manila is that it must be for cause. Even those who would uphold the legality of the Mayor's, suspension do not go so far as to claim power in the Chief Executive to remove or suspend the Mayor at pleasure. *Untramelled discretionary power to remove does not apply to appointed officers whose term of office is definite*, much less elective officers. As has been pointedly stated: "*Fixity of tenure destroys the power of removal at pleasure otherwise incident to the appointing power;* the reason of this rule is the evident repugnance between the fixed term and the power of arbitrary removal. * * *
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> '*An inferential authority to remove at pleasure cannot be declared, since the existence of a defined term, ipso facto, negatives such an inference, and implies a contrary presumption, i.e.,* that the incumbent shall hold office to the end of his term subject to removal for cause'. (State ex rel. Gallaghar vs. Brown, 57 Mo. Ap., 302, expressly adopted by the Supreme Court in State ex rel. vs. Maroney, 191 Mo., 548; etc.)
>
> 'It is only in those cases in which the held at the pleasure of the appointing power and where the power of removal is exercisable at its mere discretion, that the officer may be removed without notice or hearing.'"

"Thus, in Jover vs. Borra, supra, the same rule was reiterated:

'The legislative intent to provide for a *fixed period* of office tenure for the Mayor of the City of Iloilo *and not to make him removable at the pleasure of the appointing authority may be inferred* from the fact that *whereas* the appointment of the Vice-Mayor of the same city, as provided for in an amendatory act (Republic Act No. 365), and those of the Mayors and Vice-Mayors of other cities (section 2545, Revised Administrative Code; Commonwealth Acts Nos. 39, 51 338, 520, 547 and 592; Republic Acts Nos. 162; 170, as amended; 179, as amended; 183, 288, as amended; 305; 306; 327; 328; 521; 523; 525, as amended; 537; and 603) *are at pleasure*, that of the Mayor of the City of Iloilo is for a fixed period of time, as provided for in the original charter (Commonwealth Act No. 57), and this continued unchanged despite subsequent amendatory acts (Commonwealth Act No. 153; Republic Acts Nos. 276 and 365).'

"It is an established rule that when the law authorizes a superior officer to remove a subordinate at pleasure his discretion in the exercise of the power of removal is absolute. As long as the removal is effected in accordance with the procedure prescribed by law, it may not be declared invalid by the courts, no matter how reprehensible and unjust the motives of the removal might be (State *vs.* Kennelly, 55 Atl. 555).

"For respondent judge to ignore these judicial doctrines brought to his attention by petitioner Alba even during the quo warranto proceedings and in the face of their impressive clarity to rashly resolve his doubt against the constitutionality of section 8 of Republic Act No. 603 is to exert his discretion with the greatest measure of abuse as to amount to lack of jurisdiction (Abad Santos, vs. Tarlac, 38 Off. Gaz., 830).

'After all the foregoing circumstances are found to be present, it must be shown that the statute *violates the constitution dearly, palpably, plainly, and in such manner as to leave no doubt or hesitation in the mind of the court* (Sharpless *vs.* Mayer, 21 Pa. 147).; The court *presumes* that every statute is *valid*. This presumption is based upon the theory of separation of powers which makes the enactment and repeal of laws exclusively a legislative function. As Chief Justice Marshall said: "It is but a decent respect

> due to the wisdom, the integrity, and the patriotism of the legislative body, by which any law is passed, to presume in favor of its validity, until its violation of the constitution *is proved beyond all reasonable doubt*." (Darmouth College *vs.* Woodward, 4 Wheat, 625.)
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> "It should be remembered in this connection that before a legislature passes.a bill, it is presumed that it has decided the measure to be constitutional; and when the executive approves that bill it is also presumed that he has been convinced of its validity. Under these conditions, *therefore, if a statute is reasonably susceptible of two interpretations, one making it unconstitutional and other valid, it is the duty of the court to adopt the second construction in order to save the measure*. (U. S. *vs.* Delaware & Hudson Co., 213 U. S. 366.) Sinco, Philippine Political Law, 10 ed., pp. 525-526; Italics supplied.'"

We certainly agree with the foregoing views of the Solicitor General because they constitute a clear and fair exposition of the law on the matter. Anyway, the provision of Section 8 of Republic Act No. 603 empowering the President of the Philippines to appoint, with the consent of the Commission on Appointments, the Vice-Mayor of Roxas City, the *latter to hold office at the pleasure of the President*, can not by any stretch of imagination, be considered unconstitutional and void.

Wherefore, on the strength of the foregoing considerations, and upon declaring the order of the Court of February 18, 1956 (Annex E) null and void and of no effect and upon making permanent the writ of preliminary injunction issued by this Court in the present case, We hereby dismiss the *quo warranto* proceedings, for respondent Vivencio C. Alajar has no right to continue occupying the office of Vice-Mayor of Roxas City after the President of the Philippines, in the exercise of his power of allowing said respondent to hold office, at his pleasure, displaced him from said office and designated petitioner Juliano A. Alba as Acfing Vice-Mayor

of said City. Costs in both cases are taxed against Vivencio C. Alajar.

Bengzon, Padilla, Reyes, A., Bautista Angelo, Labrador, Reyes, J. B. L., and *Endencia, JJ.,* concur.

CONCURRING
Concepcion, J.:

The majority opinion quotes, with approval, from the memorandum of the Solicitor General, who states, among other things, "* * * that Congress can legally and constitutionally make the *tenure* of certain officials dependent upon the pleasure of the President"; that "the replacement of respondent Alajar is not removal but an expiration of its *tenure*, which is one of the ordinary modes of terminating official relations"; and that "what is involved here is the creation of an office and the *tenure* of such office, which has been made expressly dependent upon the pleasure of the President". (Italics supplied.)

I believe that the word "tenure" in the foregoing expressions should be submitted by "term", for:

> "* * * the term of an office must be distinguished from the tenure of the incumbent. *The term means the time during which the officer may claim to hold office as of right,* and fixes the interval after which the several incumbents shall succeed one another. The tenure represents the term during which the incumbent actually holds the office. The term of office is not affected by the hold-over. The tenure may be shorter than the term for reasons within or beyond the power of the *incumbent*." Topacio Nueno et al. *vs.* Angeles, 76 Phil,, .12, 21-22; italics supplied.)

The distinction between "term" and "tenure" is important, for, pursuant to the Constitution, "no officer or employee in the Civil Service may be removed or suspended except for cause, as provided by law" (Art. XII, section 4), and this fundamental principle would be defeated if

Congress could legally make the *tenure* of some officials dependent upon the pleasure of the President, by clothing the latter with blanket authority to replace a public officer before the expiration of his *term*.

In the case at bar, the *term* of respondent Alajar as Vice-Mayor of the City of Roxas is *not fixed by law*. However, the latter, in effect, *vests in the President the power to fix such term*. When, in November, 1955, petitioner Alba was designated as Acting Vice-Mayor of said City, the term of respondent Alajar was, thereby, fixed implicitly by the President, in the exercise of his aforementioned authority. Thus, the *term* of office of Alajar expired and his right to hold office was extinguished, with the same legal effect as if the *term* had been fixed *by Congress* itself. In other words, Alajar was not removed from office, for "to remove an officer is to oust him from office *before the expiration* of his term" (Manalang vs. Quitoriano et aL, 50 Off. Gaz., 2515). Alajar merely lost the right to hold the office of Vice-Mayor of the City of Roxas by *expiration* of his *term* as such.

Subject to the foregoing qualifications, I concur in the opinion penned by Mr. Justice Felix.

Paras, C. J.,and *Montemayor, J.*,concur.

Date created: October 13, 2014