

**ABRAHAM C. SISON, PETITIONER, VS. HON. EPI REY PANGRAMUYEN,
COMMISSIONER OF CIVIL SERVICE; GERONIMO LIPUMANO,
MAYOR, OLONGAPO CITY; ALFREDO D. OCAMPO,
OFFICER-IN-CHARGE, CIVIL S...**

G.R. No. L-40295. July 31, 1978

Ponente: BARREDO, J.

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BARREDO, J.:

Petition denominated as for certiorari, mandamus and quo warranto and (1) seeking the annulment of the actions of respondents Regional Director and Commissioner of Civil Service in respectively attesting and affirming such attestation of private respondent Eureka F. Maliwanag's appointment as Assistant City Assessor of Olongapo City, extended by the respondent Mayor of said city on November 23, 1973, and (2) assailing the validity of said respondent Commissioner's decision of May 3, 1974 dismissing petitioner's protest and his resolution dated June 24, 1974 denying reconsideration of said decision, and (3) further asking that respondent Commissioner be mandated to appoint petitioner as such Assistant City Assessor and that private respondent Maliwanag be declared as unlawfully usurping said position under a void and illegal appointment.

In sum, petitioner would want the Court to hold that since at the time of the appointment in dispute, he was Chief Deputy Assessor exercising, according to his allegation, immediate administrative control and supervision over respondent Maliwanag, who was Senior Deputy Assessor, and inasmuch as he has superior educational and appropriate civil service eligibilities to those of said respondent, the appointment aforementioned extended to the latter by respondent City Mayor is illegal and contrary to law being violative of the rule of next-in-rank. Petitioner maintains that upon the promotion of the Assistant City Assessor to the position of City Assessor, he, petitioner, instead of respondent Maliwanag should have been appointed thereto.

We have carefully considered petitioner's contentions in his petition as well as his reply to the answers of the respondents and, at best, We find the issues raised by him to be rather controversial, with the result that it is difficult for Us to categorize respondent public official's impugned actuations as tainted with grave abuse of discretion. Maliwanag's appointment was recommended by the City Assessor and his reasons therefor, stated in said official's indorsement to the Mayor recommending dismissal of petitioner's protest thereto and quoted in the record, are substantial and well taken, as, in fact, they have been reviewed by respondent Commissioner and found to be sustainable, as he did sustain them. We are loathe to substitute Our own judgment for that of the Commissioner of Civil Service who is primarily charged with the administration of the Civil Service Law and rules and regulations, absent, as in this case, convincing showing of palpable error or grave abuse of discretion. After all, as We see it, petitioner rests his case mostly on the Organizational Chart and the position description or CSC Form No. 122-D of respondent Maliwanag, prepared by petitioner himself, which do not carry the approval of the Mayor, as Department Head, contrary to requirement of Memorandum Circular No. 5, S. 1963 of the Commission of Civil Service touching on the basis for determining the hierarchical relationships of positions, and, therefore, are not necessarily controlling.

Withal, the most fatal drawback of petitioner's cause is that he came to the courts out of time. As already stated, the appointment in controversy was made on November 23, 1973 and respondent Maliwanag assumed office on the strength thereof, albeit she claims she has not been paid her salary. On the other hand, the petition herein was filed only on March 13, 1975, clearly more than one year after the pretended right of petitioner to hold the office in question arose. This single circumstance has closed the door for any judicial remedy in his favor.

Petitioner contends in regard to this point that Section 16 of Rule 66 invoked by private respondent refers to actions of quo warranto and since his petition is also for certiorari and mandamus, said rule is inapplicable. Such contention is not correct. As earlier noted in this decision, the allegations supporting petitioner's cause or causes of action boil down to no more than the removal of respondent Maliwanag from the position to which she has been appointed in order to be replaced by him, with a new appointment in his favor. Necessarily, the ouster of Maliwanag by quo warranto has to be based on a nullification of her appointment, which petitioner seeks, albeit unnecessarily, by certiorari. His ultimate remedy, therefore, is quo warranto. Besides, even if it could be also viewed as mandamus, it is already settled that this latter remedy prescribes also after one year. (*Cornejo vs. Sec. of Justice*, L-32818, June 28, 1974, 57 SCRA 663.) And it is of no avail to petitioner that during the intervening period of more than one year, he was seeking relief from the corresponding administrative authorities. The resort to such administrative remedy does not abate the period for the judicial action. (*Torres vs. Quintos*, 88 Phil. 436; *Galano vs. Roxas*, G. R. L-31241, Sept. 12, 1975, 67 SCRA 8.)

WHEREFORE, the petition is dismissed and the restraining order heretofore issued is hereby lifted effective immediately. No costs.

Fernando, (Chairman), Antonio, Concepcion, Jr., and Santos, JJ., concur.

Aquino, J., see dissenting opinion.

DISSENTING OPINION

AQUINO, J.:

I dissent. Petitioner Abraham C. Sison, as the incumbent chief deputy assessor, is the qualified and competent next-in-rank employee who should be promoted to the contested position of assistant city assessor of Olongapo City, as contemplated in section 23 of the Civil Service Law. He is qualified for that position because he is a provincial assessor eligible and he holds a bachelor's degree in commerce. Those qualifications are required for the position of assistant city assessor.

Respondent Eureka F. Maliwanag, who was appointed by the mayor to that position, is not qualified because she is not a provincial assessor eligible and she is not a holder of a bachelor's degree. Her appointment to the contested position is in violation of section 23. Hence, the Commissioner of Civil Service revoked that appointment in his decision of May 3, 1974. However, upon motion for reconsideration, the Commissioner approved that appointment in his decision of June 24, 1974.

It is incontestable that Sison is senior to Mrs. Maliwanag. He was appointed senior deputy assessor of Olongapo City effective September 25, 1967. Then, he was promoted to the position of chief deputy assessor of that city on September 1, 1969. On that date, Mrs. Maliwanag was appointed to the position of senior deputy assessor, the position vacated by Sison (pp. 62-63, Rollo).

Thus, Sison (not Mrs. Maliwanag) was next in line for the position of assistant city assessor when that position became vacant on November 23, 1973. There is no reason why Mrs. Maliwanag should jump over Sison. The

mayor should have apprised Sison as to why he was being bypassed and why Mrs. Maliwanag was being appointed to that position. That legal requirement was not observed.

Although Sison's petition in this Court is for certiorari, mandamus and quo warranto, he has no cause of action for quo warranto because Mrs. Maliwanag holds an appointment to the contested position of assistant city assessor. She cannot be regarded as a usurper of that position. Sison's petition should be treated as one for certiorari and mandamus only. Those special civil actions are adequate for assailing the decisions of the Commissioner of Civil Service. The quo warranto aspect of Sison's petition should be disregarded.

Rule 65 of the Rules of Court does not fix any period for the filing of a petition for certiorari and mandamus. The one-year period within which the petition for quo warranto should be filed does not apply to Sison. His petition was delayed because, as he explained, he is a poor man who cannot afford to embark on an expensive and protracted litigation.

I vote for the setting aside of the questioned decisions of the Commissioner of Civil Service. The mayor should be directed to appoint Sison to the contested position. Mrs. Maliwanag should be promoted to the position of chief deputy assessor to be vacated by Sison.

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