

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HONORABLE DOMINGO IMPERIAL AND HONORABLE RODRIGO D. PEREZ, RESPONDENTS.

G.R. No. L-8684. March 31, 1955

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This is a quo warranto proceeding instituted by the Solicitor General against Honorable Domingo Imperial and Honorable Rodrigo Perez, to test the legality of their continuance in office as Chairman and Member, respectively, of the Commission on Elections.

According to the Solicitor General, the first commissioners of Elections were duly appointed and qualified on July 12, 1945, with the following terms of office:

Hon. Jose Lopez Vito, Chairman, for 9 years, expiring on July 12, 1954

Hon. Francisco Enage, Member, for 6 years, expiring on July 12, 1951

Hon. Vicente Vera, Member, for 3 years, expiring on July 12, 1948;

that upon the death of Chairman Jose Lopez Vito in May, 1947, Member Vicente de Vera was promoted Chairman by appointment dated May 26, 1947; that in accordance with the ruling of this Court in *Nacionalista Party vs. Vera*, 47 Off. Gaz., 2375, and *Nacionalista Party vs. Felix Angelo Bautista*, 47 Off. Gaz., 2356, the term of office of Chairman De Vera would have expired on July 12, 1954, that is, the date when the term of office of the first Chairman, Honorable Jose Lopez Vito, would have expired; that Chairman Vicente de Vera died in August, 1951, before the expiration of the maximum term of nine years (on July 12, 1954) of the first Chairman of the Commission; that on August 11, 1951, the respondent Honorable Domingo Imperial was appointed Chairman to succeed Honorable Vicente de Vera; that while the appointment of the respondent Honorable Imperial provided that he was to serve "for a term expiring July 12, 1960", the term for which he could legally serve as Chairman legally expired on July 12, 1954, that is, the expiration of the nine-year term for which the first Chairman, Honorable Jose Lopez Vito, was appointed; that the respondent Honorable Rodrigo Perez was appointed Member of the Commission on December 8, 1949, for "a term of nine years expiring on November 24, 1958", vice Honorable Francisco Enage, who was retired on November, 1949; that the term of office of respondent Perez legally expired on July 12, 1951, the expiration of the term of six years for which Commissioner Enage, his predecessor, was appointed. Wherefore, the Solicitor General concludes that the respondents Commissioners Imperial and Perez have ceased to have any legal or valid title to the positions of Chairman and Member, respectively, of the Commission on Elections, and that therefore, their positions should be declared vacant.

The respondents filed separate answer to the petition for quo warranto, both of which pray for the dismissal of the petition.

The defense of respondent Honorable Domingo Imperial is substantially that Honorable Jose Lopez Vito was first appointed Chairman of the Commission on Elections on May 12, 1941, for a term of nine years expiring on May 12, 1950; that when Commissioner Lopez Vito was again appointed Chairman on July 12, 1945, his nine-year, term of office under this second appointment should not be reckoned from the date thereof, that is, July 12, 1945, but from the date of his first appointment in 1941, so that the term under his second appointment expired on May 12, 1950; that respondent Imperial having been appointed after the expiration of Chairman Lopez Vito's full term of nine years in 1950, he (respondent Imperial) should serve office for a full term of nine years, ending only on August 10, 1960. Respondent Imperial stresses the unconstitutional[^] of Chairman Lopez Vito's second appointment to serve up to July 12, 1954, upon the ground that under the Constitution, he (Chairman Lopez Vito) could neither be appointed for more than nine years nor be allowed to succeed himself.

The other respondent, Honorable Rodrigo Perez, alleges that since Chairman Lopez Vito was the first to be appointed under the Constitution on May 13, 1941, the terms of office of all the Commissioners on Election should be reckoned from that date, May 13, 1941, to maintain the three-year difference between the dates of expiration of their respective terms as provided for by the Constitution; that the term of office of Member Francisco Enage (his predecessor) should therefore be considered as having started on May 13, 1941, and since Enage was appointed only for six years, his term of office expired on May 12, 1947; and that since respondent Perez was appointed (on December 8, 1949) after Commissioner Enage's six-year term of office had already expired, he should serve for a full term of nine years from the expiration of Enage's term of office on May 12, 1947; hence, his own term of office would expire only on May 12, 1956. Respondent Perez argues that if the computation of the Solicitor General were to be followed, that is, that Commissioner Enage's term be counted from July 12, 1945 ending on July 12, 1951, this term would end at a date very close to the expiration of Commissioner Lopez Vito's term on May 12, 1950, so there would be only a difference of fourteen months between the expiration of the terms of office of Commissioners Lopez Vito and Enage, a situation which is contrary to and violative of the Constitution that prescribes a difference of three years between the dates of the expiration of the terms of the Members of the Commission.

The issues now posed demand a re-examination and application of the Constitutional amendment establishing an independent Commission on Elections (Article X) that became operative on December 2, 1940, superseding the purely statutory Commission previously created and organized along the same lines by Commonwealth Act No. 607. While this Court already had occasion to make pronouncements on the matter in previous decisions, the same are not considered decisive in view of the divergence of opinions among the members of the Court at the time said decisions were rendered.

Section 1, paragraph 1, of Article X of the Constitution reads as follows;

"Sec. 1. There shall be an independent Commission on Elections composed of a Chairman and two other Members to be appointed by the President with the consent of the Commission on Appointments, who shall hold office for a term of nine years and may not be reappointed. Of the Members of the Commission first appointed, one shall hold office for nine years, another for six years, and the third for three yearg. The Chairman and the other Members of the Commission on Elections may be removed from office only by impeachment in the manner provided in this Constitution."

The provision that of the first three commissioners appointed, "one shall hold office for 9 years, another for 6 years, and the third for 3 years," when taken together with the prescribed term of office for 9 years, without reappointment, evidences a deliberate plan to have a regular rotation or cycle in the membership of the commission, by having subsequent members appojntable only once every three years. This had already been indicated in previous opinions of this Court (Nacionalista Party vs. Angelo Bautista,[1] 47 Off. Gaz., 2356;

Nacionalista Party vs. Vera,[2] 47 Off. Gaz., 2375), where it was declared that "with these periods it was the intention to have one position vacant every three years, so that no President can appoint more than one Commissioner, thereby preserving and safeguarding the independence and impartiality of the Commission" as a body, we may add, for the impartiality and independence of each individual Commissioner's tenure was safeguarded by other provisions in the same Article X of the fundamental charter (removability by impeachment alone, and stability of compensation in sec. 1; disability to practice any profession and prohibition of conflicting interest in sec. 3).

That the rotation of the Commissioner's appointments at regular and fixed intervals of three years was a deliberate plan is shown by the history of the provision, and by selection of the fixed term of nine years for all subsequent appointees, since no other term would give such a result. Initiated under Commonwealth Act No. 607, the rotation plan was transferred without variation to the Constitution, evidently for the purpose of preserving it from hasty and irreflexive changes.

Now, the operation of the rotational plan requires two conditions, both indispensable to its workability: (1) that the terms of the first three commissioners should start on a common date; and (2) that any vacancy due to death, resignation or disability before the expiration of the term should only be filled only for the unexpired balance of the term. Without satisfying these conditions, the regularity of the intervals between appointments would be destroyed, and the evident purpose of the rotation (to prevent that a four-year administration should appoint more than one permanent and regular commissioner) would be frustrated.

While the general rule is that a public officer's death or other permanent disability creates a vacancy in the office, so that the successor is entitled to hold for a full term, such rule is recognized to suffer exception in those cases where the clear intention is to have vacancies appointments at regular intervals. Thus, in 43 Amer. prudence, sec. 159, p. 18, it is stated:

"* * * In like manner, it has been ruled that the resignation or the removal of an officer during his term and the election or appointment of a successor do not divide the term or create a new and distinct one, and that in such a case the successor is filling out his predecessor's term. It seems the term of office of one elected or appointed to fill a vacancy in a board of several officers will be held to be for the unexpired term of his predecessor only, where the clear intent of the creating power is that the entire board should not go out of office at once, but that different groups should retire at regularly recurring intervals." (Italics supplied).

In *State ex rel. Rylands vs. Pinkerman*, 63 Conn. 176, 28 Atl. 110, 22 LRA 643, the Court, discussing provisions in the charter of the city of Bridgeport requiring two city Commissioners to serve for 2 years, and another two to serve for 4 years, said:

"* * * The evident intent of section 50 is to secure to the city at all times, so far as possible, the services of commissioners, half of whom have had the benefit of at least a year's experience in office, and to divide the membership of each half equally between the leading political parties. *Parmater vs. State*, 102 Ind. 90, 93. Such a board had existed in Bridgeport since 1868. The charter of that year provided for the election of two commissioners to serve for one year, and two for two years, and for the annual election thereafter of two to serve for two years, and secured a nonpartisan character to the board by allowing no one to vote for more than two out of the four, and requiring the election of deputy commissioners to replace each elected commissioner in case of a vacancy. From that time until the resignation of the entire board, in December, 1890, its membership had been annually renewed by the appointment of two commissioners for a term of two years, each belonging to a different political party from the other. Were the contention of the defendant well founded, the successors of the four commissioners who resigned in December, 1890, should have been, and in law were, appointed each for two-year term, thus totally and forever frustrating the carefully devised scheme of alternating succession which had been followed for twenty years." (Cas. Cit., 22 LRA, 669)

The following cases also support the rule:

"When the Constitution fixes the duration of a term of office, and at the same time provides for its being filled at a fixed time occurring periodically, it necessarily follows that, a casual vacancy occurring during such term of office, necessity must arise for filling it for the unexpired term; and although the mode of filling such vacancy is prescribed by the Constitutional, yet the incumbent only holds until the time arrives for filling the office in the regular mode and at the regular time prescribed by the Constitution." (Simpson vs. Willard, 14 S. C. 191).

And in Baker vs. Kirk, 33 Ind. 517, it was held that the term of office of one appointed to fill a vacancy in one of three memberships of & board will, in the absence of any express provision therefore, be deemed to be for the unexpired term, where the statute fixes the first term at unequal lengths, so as to prevent an entire change of membership at any one time. In speaking of the reasoning to the contrary, the court said: "It would make the term of office to depend Upon the pleasure or caprice of the incumbent, and not upon the will of the legislature as expressed in plain and undoubted language in the law. This construction would defeat the true intent and meaning of the legislature, 50 LRA. (N. S.), which was to prevent an entire change of the board of directors of the prison."

Other cases to the same effect are collated in the editorial note in State Ex. Rel. Fish vs. Howell, 50 L. R. A. (N. S.), 345.

The fact that the orderly rotation and renovation of Commissioners would be wrecked unless, in case of early vacancy, a successor should only be allowed to serve for the unexpired portion of each regular term, sufficiently explains why no express provision to that effect is made in Article X of the Constitution. The rule is so evidently fundamental and indispensable to the working of the plan that it became unnecessary to state it in so many words. The mere fact that such appointments would make the appointees serve for less than 9 years does not argue against reading such limitation into the constitution, because the nine-year term cannot be lifted out of context and independently of the provision limiting the terms of the first commissioners to nine, six and three years; and because in any event, the unexpired portion is still part and parcel of the preceding term, so that in filling the vacancy, only the tenure of the successor is shortened, but not the term of office.

It may be that the appointing power has sufficient inducements at hand to create vacancies in the Commission, and find occasion for appointments thereto, whenever it chooses to do so. That possibility, however, would not in any way justify this Court in setting at naught the clear intention of the Constitution to have members of Commission appointed at regular 3-year intervals.

It is argued that under the rule, one may be appointed for a much shorter term than nine years, say one year or even less, and his independence would be thereby reduced. The point is, however, that the majority of the Commission would not be affected (save in really exceptional cases) and independence of the majority is the independence of the whole Commission.

For the same reasons it must be admitted that the terms of the first three Commissioners should be held to have started at the same moment, irrespective of the variations in their dates of appointment and qualification, in order that the expiration of the first terms of nine, six and three years should lead to the regular recurrence of the three-year intervals between the expiration of the terms. Otherwise, the fulfillment and success of the carefully devised constitutional scheme would be made to depend upon the willingness of the appointing power to conform thereto.

It would be really immaterial whether the terms of the first Commissioners appointed under the Constitutional provision should be held to start from the approval of the constitutional amendment (December 2, 1940), the reorganization of the Commission under C. A. 657, on June 21, 1941, or from the appointment of the first

Chairman, Honorable Jose Lopez Vito, on May 13, 1941. The point to be emphasized is that the terms of all three Commissioners appointed under the Constitution began at the same instant and that, in case of a belated appointment (like that of Commissioner Enage), the interval between the start of the term and the actual qualification of the appointee must be counted against the latter. No other rule could satisfy the constitutional plan.

Of the three starting dates given above, we incline to prefer that of the organization of the constitutional Commission on Elections under Commonwealth Act 657, on June 21, 1941, since said act implemented and completed the organization of the Commission that under the Constitution "shall be" established. Certainly the terms can not begin from the first appointments, because appointment to a Constitution office is not only a right, but equally a duty that should not be shirked or delayed. On the basic tenets of our democratic institutions, it can hardly be conceded that the appointing power should possess discretion to retard compliance with its constitutional duty to appoint when delay would impede or frustrate the plain intent of the fundamental law. Ordinarily, the operation of the Constitution can not be made to depend upon the Legislature or the Executive, but in the present case the generality of the organizational lines under Article X seems to envisage prospective implementation.

Applying the foregoing rulings to the case at bar, we find that the terms of office of the first appointees under the constitution should be computed as follows:

Hon. Jose Lopez Vito, Chairman, nine-year term, from June 21, 1941 to June 20, 1950.

Hon. Francisco Enage, Member, six year term, from June 21, 1941 to June 20, 1947.

The first 3 year term, from June 21, 1941 to June 20, 1944, was not filled.

Thereafter, since the first three-year term had already expired, the appointment (made on July 12, 1945) of the Honorable Vicente de Vera must be deemed for the full term of nine years, from June 21, 1944, to June 20, 1953.

The first vacancy occurred by expiration of the initial 6-year term of Commissioner Enage on June 21, 1937 (although he served as de facto Commissioner until 1949). His successor, respondent Rodrigo Perez, was named for a full nine-year term. However, on the principles heretofore laid, the nine-year term of Commissioner Perez (vice Enage) should be held to have started in June 21, 1947, to expire on June 20, 1956.

The second vacancy happened upon the death of Chairman Jose Lopez Vito, who died on May 7, 1947, more than two years before the expiration of his full term. To succeed him as Chairman, Commissioner Vicente de Vera was appointed. Such appointment, if at all valid, could legally be only for the unexpired period of the Lopez Vito's term, up to June 20, 1950.

To fill the vacancy created by Vera's assumption of the Chairmanship, Commissioner Leopoldo Rovira was appointed on May 22, 1947. Pursuant to the principles laid down, Rovira could only fill out the balance of Vera's term, until June 20, 1953, and could not be reappointed thereafter.

Commissioner Vera's tenure as Chairman (vice Lopez Vito) expired, as we have stated, on June 20, 1950, the end of Lopez Vito's original term. A vacancy, therefore, occurred on that date that Vera could no longer fill, since his reappointment was expressly prohibited by the Constitution. The next Chairman was respondent Commissioner Domingo Imperial, whose term of nine years must be deemed to have begun on June 21, 1950, to expire on June 20, 1959.

The vacancy created by the legal expiration of Rovira's term on June 20, 1953 appears unfilled up to the present. The time elapsed, as we have held, must be counted against his successor, whose legal term is for nine years, from

June 21, 1953 to June 20, 1962.

The fact must be admitted that appointments have heretofore been made with little regard for the Constitutional plan. However, if the principles set in this decision are observed, no difficulty need be anticipated for the future.

And it appearing, from the foregoing, that the legal terms of office of the respondents Perez and Imperial have not as yet expired, whether the original terms started from the operation of the Constitutional amendments or the enactment of C. A. 657, the petition for quo warranto is hereby dismissed without costs.

Pablo, Bengzon, Montemayor, Jugo, Labrador, and Concepcion, JJ., concur.

[1] 85 Phil., 101.

[2] 85 Phil., 126.

CONCURRING AND DISSENTING OPINION

PADILLA, J., concurring and dissenting:

I agree to the opinion of Mr. Justice J.B.L. Reyes except as to the prohibition on reappointment. I believe the prohibition applies only to those who have served a term of nine years.

BAUTISTA ANGELO, J., dissenting and concurring:

This case concerns the interpretation of the provision of the Constitution regarding the tenure of office of the members of the Commission on Elections who are appointed to succeed those first appointed in case they resign, retire, or die before the expiration of their term of office. The majority holds that the appointees can hold office only for the unexpired term even if their appointments run for a full term of nine years. With this I disagree. The pertinent provision of the Constitution is contained in section 1, Article X, which reads:

"Section 1. There shall be an independent Commission on Elections composed of a Chairman and two other Members to be appointed by the President with the consent of the Commission on Appointments, who shall hold office for a term of nine years and may not be reappointed. Of the Members of the Commission first appointed, one shall hold office for nine years, another for six years, and the third for three years. The Chairman and the other Members of the Commission on Elections may be removed from office only by impeachment in the manner provided in this Constitution."

It would appear that the framers of the Constitution intended to give to the members of the Commission on Elections a term of office of nine years without reappointment. The only exception is with regard to the first appointees one of whom shall hold office for nine years, another for six years, and the third for three years. With regard to the latter, nothing is provided as to their reappointment which led some members of the Court to believe that they can be reappointed provided the whole tenure would not exceed nine years. The Constitution is likewise silent as to the manner any vacancy that may occur in the positions held by the members first appointed should be filled.

I fully agree with the theory that the purpose of providing for a difference of three years in the tenure of office of the members first appointed is to establish a cycle or rotation system to prevent a four-year administration from appointing more than one member not only to insure the continuity of the policy of the Commission on Elections but also to safeguard its independence and that of its members. This purpose is plausible if only it can be carried out to the letter, but experience has shown that it is impracticable and has never been observed either by the Chief

Executive or by Congress. An analysis of the appointments heretofore made to fill vacancies in the membership of said Commission will bear this out. The Chief Executive in filling the vacancies in the positions held by the members first appointed have extended appointments for a term of nine years never for the unexpired period, and these appointments have always met the sanction of Congress.

This uninterrupted practice and contemporaneous construction placed on the above provision of the Constitution by the two branches of our Government, the executive and the legislative, cannot lightly be brushed aside because they are the constitutional agencies which have adopted that amendment to the Constitution and have implemented it having due regard for its provision of events. And such interpretation should be given due weight and recognition if we are to accord due respect to the principle of comity that should exist among the three branches of the Government

"This official ruling of the executive officials is now entitled to consideration by the courts. Courts will and should respect the contemporaneous construction placed upon a statute by the executive officers whose duty it is to enforce it, and unless such interpretation is clearly erroneous will ordinarily be controlled thereby. (In *re Allen* (1903), 2 Phil., 630, following *Penneyer vs. McConaughy* (1890), 140 U. S. 363, *Government of Philippine Islands Ex. Rel. Municipality of Cardona vs. Municipality of Binangonan* (1916), 34 Phil., 518)." (*Molina vs. Rafferty*, 37 Phil., 545, 555).

"At the same time, the contemporaneous construction of the law by two departments of the Government—one of the legislative branch responsible for its enactment, and the other the executive branch responsible for its enforcement—while not controlling on the Judiciary, is entitled to our respectful consideration. For the orderly and harmonious interpretation and advancement of the law, the courts should, when possible, keep step with the other departments." (*Yra vs. Abano*, 52 Phil., 380, 384.)

"And it is a rule repeatedly followed by this court that the construction placed upon a law at a time by the officials in charge of enforcing it should be respected." (*Guanio vs. Fernandez*, 55 Phil., 814, 819.)

The above interpretation seems to be the most reasonable and more in line with the letter and spirit of the Constitution. The purpose is to establish "an independent Commission on Elections" and it was thought the best way it could be accomplished is to give to its members a term of office of nine (9) years in the hope that this would give them that feeling of security which would make them impartial in the performance of their functions. The provision regarding the cycle or rotation system in the appointments of the members first appointed is a further safeguard to promote such independence but if that cycle cannot be maintained because of unavoidable human factors that may supervene, that should not be allowed to stand against the above purpose of giving to every subsequent appointee a term of office of nine (9) years. The former should give way to the latter.

The theory that, merely to maintain the cycle at any cost, if a vacancy occurs in the office of the members first appointed, the new appointee can only be appointed for the unexpired term, would defeat the independence of the poll body rather than promote it, for the new appointees would be holding their positions without that feeling of security that would guarantee their independence as they would be angling for a reappointment or for other plums in the government service. Moreover, such interpretation would run counter to the well-known rule that where only the length of the term is fixed by the Constitution and neither the commencement nor termination is prescribed, or nothing is provided regarding the filling of the unexpired term, the subsequent appointee holds the office for full term, and not merely for the unexpired portion. And our Constitution comes within the purview of this rule.

"When merely the length of the term is fixed, without reference to an unexpired term, or to a vacancy in the term of office, as distinguished from a vacancy in the office itself, it is held in some cases that on the happening of a vacancy the office reverts to the people or sovereign and when again vested it is not for the

unexpired term, but for the full term. This rule, in the absence of constitutional or statutory provisions regulating the filling of vacancies, has been applied in the case of elective officers where the law provides that they shall be elected for a term of a specified number of years." (67 C. J. S.(216.)

"On the other hand where no time is fixed for the beginning or end of the period during which a public office is to be occupied, and the duration of such period is alone designated, the contrary conclusion is reached, and a person selected to fill a vacancy in such office may serve the full term and not merely the unexpired balance of the prior incumbent's term. This is true especially where no authority exists in the legislature for fixing the beginning or the ending of the term, or where such authority rests in the legislature, and the legislature has not exercised it. The reason for this rule is that when a vacancy happens by death, resignation, or removal, the term is gone and the office reverts, as it did at common law to the crown, to be again filled on like condition, for the full term prescribed." (22 R. C. L., 553)

Why is it that the Constitution does not contain any provision relative to the filling of any vacancy in the office held by the members first appointed? The answer is simple: the first sentence of section 1, Article X already provides that future appointments should be made for a term of nine (9) years. If the intention were otherwise, the framers of the Constitution would have inserted therein a proviso similar to that covering vacancies in the office of senators or representatives wherein it was clearly directed that the new incumbent shall only serve for the unexpired term (Section 8, (2) Article VI, Constitution).

If this theory is entertained it follows that respondent Domingo Imperial, who was appointed on August 11, 1951 for a term of nine (9) years ending on July 12, 1960, and respondent Rodrigo D. Perez who was appointed on November 8, 1949, for a term of nine (9) years ending on November 24, 1958, are still entitled to their positions, and, therefore, the present petition for quo warranto should be dismissed. As this is the conclusion reached by the majority opinion, I concur in the result

Paras, C.J., and Reyes, A., J., concur.

Petition dismissed.

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