

TEODORO M. CASTRO, PETITIONER-APPELLANT, VS. AMADO DEL ROSARIO, AS COMMISSIONER OF CIVIL SERVICE, DOMINADOR AYTONA, AS SECRETARY OF FINANCE, MELECIO R. DOMINGO, AS COMMISSIONER ...*G.R. No. L-17915. January 31, 1967*

Ponente: MAKALINTAL, J.

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This is a proceeding in quo warranto, certiorari and mandamus originally filed in the Court of First Instance of Manila. The controverted position is that of Assistant Regional Revenue Director II, Manila, which became vacant on August 24, 1959, upon the promotion of its occupant, Alfredo Jimenez. Respondent Tomas C. Toledo was appointed in his place, and it is this appointment that is being questioned by petitioner Teodoro M. Castro in this proceeding. The court a quo annulled Toledo's appointment, but did not grant Castro's prayer that respondent officials be ordered to appoint him.

Toledo's appointment by the Secretary of Finance, upon recommendation of the Commissioner of Internal Revenue, was made on November 24, 1959, effective as of October 1, 1959. When he was appointed Toledo's position was that of Chief Revenue Inspector, or Chief Revenue Examiner, stationed in Manila. The appointment was protested by Castro in a letter he wrote the Commissioner of Internal Revenue on January 19, 1960, wherein he alleged that in accordance with the provisions of Section 23 of Republic Act No. 2260, otherwise known as the Civil Service Act of 1959, he was the one who should have been considered for the position. Copy of the letter-protest was furnished the Secretary of Finance. On February 8, 1960 the Commissioner of Internal Revenue, in a first indorsement, informed Castro that "the position of Assistant Revenue Regional Director II, R-53, at P6,000.00 adjusted to P6,597.60 per annum, is for Regional District No. 3, Manila, and the appointment thereto had to be issued to the person actually performing the functions of the position," namely, respondent Toledo, who was then acting as Assistant Revenue Regional Officer II, Manila.

On March 8, 1960 Castro appealed to the Commissioner of Civil Service, who indorsed the matter to the Commissioner of Internal Revenue with a request for a statement of the comparative qualifications of Toledo and Castro. After setting forth the qualifications as requested, the Commissioner explained that the next two Assistant Revenue Regional Directors in line for the protested position, as reported for purposes of Administrative Order No. 171, were Teodoro Lucero, Assistant Revenue Regional Director I (Regional District No. 4), with a salary of P6,900 per annum; and Lauro Abraham, Assistant Revenue Regional Director I (Regional District No. 6), with a salary of P6,000 per annum, but that since the protested position was for Regional District No. 3, Manila, where Toledo was next in rank, and since he was actually performing the functions of the controverted office, there was no need to make a comparison between his qualifications and those of Castro.

On July 1, 1960 the Commissioner of Civil Service rendered his decision dismissing Castro's protest on the ground that the contested position belonged properly to Regional District No. 3, where Toledo was the next

ranking employee, while Castro was in Regional District No. 5, San Pablo City. Hence, Castro filed the present petition asking that Toledo's appointment be annulled and that he be declared entitled to the position. As already stated, the trial court rejected Castro's claim, but at the same time annulled Toledo's appointment - this last on the ground that his previous appointment as Chief Revenue Examiner was illegal.

Both sides appealed from the decision. Respondents claim that the lower court should not have nullified Toledo's appointment. They contend (1) that the question as to the legality of his previous appointment as Chief Revenue Examiner was neither raised in the pleadings nor proven at the trial with the consent of the parties; (2) that petitioner was precluded by laches from questioning said appointment; and (3) that the same was not contrary to the Revised Administrative Code.

On the other hand, petitioner argues that the lower court should have ordered respondents Commissioner of Internal Revenue and Secretary of Finance to appoint him to the controverted position because (1) he was senior in rank to Toledo and was the competent and qualified employee next in line for the position; and (2) the eight other Assistant Revenue Regional Directors I had waived their rights to the position.

Castro entered the government service in 1931 as a messenger in the Bureau of Forestry. He became a clerk in the Bureau of Internal Revenue on February 1, 1937. Then he became successively law clerk, income tax examiner, Chief of Tax Audit Branch and eventually, on July 1, 1957, Assistant Revenue Regional Director I.

On the other hand, Toledo first worked in the Metropolitan Water District on July 16, 1948. He became employed in the Bureau of Internal Revenue on December 4, 1952, when he was appointed distillery agent. At the time he left the Bureau on January 15, 1958 his position was that of income tax examiner with a salary of P3,300 per annum. On said date he became a Technical Assistant to the Executive Secretary of the President of the Philippines at P7,200 per annum. On July 1, 1958, when he returned to the Bureau, he was appointed Chief Revenue Inspector (a new position created under the Appropriation Act of 1958-1959, which took effect on July 1, 1958) at P6,787 per annum.

This case is principally a special civil action in quo warranto. A quo warranto proceeding is one to determine the right to the use or exercise of a franchise or office and to oust the holder from its enjoyment, if his claim is not well founded, or if he has forfeited his right to enjoy the privilege.[1] The action may be commenced for the Government by the Solicitor General or by a fiscal;[2] or a person claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another may bring an action in his own name.[3] Where a private person files the action, he must prove that he is entitled to the controverted position, otherwise respondent has a right to the undisturbed possession of his office.[4]

Castro claims the position by virtue of Section 23, paragraph 3, Republic Act 2260, which provides:

"Whenever a vacancy occurs in any competitive or classified position in the government or in any government-owned or controlled corporation or entity, the officer or employee next in rank who is competent and qualified to hold the position and who possesses an appropriate civil service eligibility shall be promoted thereto: Provided, That should there be two or more persons under equal circumstances, seniority shall be given preference: And provided, however, That should there be any special reason or reasons why such officer or employee should not be promoted, such special reason or reasons shall be stated in writing by the appointing official and the officer or employee concerned shall be informed thereof and be given opportunity to be heard by the Commissioner of Civil Service, whose decision in such case shall be final. If the vacancy is not filled by promotion as provided herein, then the same shall be filled by transfer of present employees in the government service, by reinstatement, by reemployment of persons separated through reduction in force, or by certification from appropriate registers of eligibles in accordance with rules promulgated in pursuance of this Act."

It appears that for internal revenue tax purposes the Philippines is divided into ten regional districts, with Manila as District No. 3. Each district has a Revenue Regional Director and an Assistant Revenue Regional Director. The Revenue Regional Director for the Manila District outranks the nine other Revenue Regional Directors, while the Assistant Revenue Regional Director for Manila outranks the nine other Assistant Revenue Regional Directors. These nine Assistant Revenue Regional Directors therefore usually aspire to be promoted either to the position of Revenue Regional Director or to that of Assistant Revenue Regional Director for Manila.

At the time the controverted position became vacant Toledo was occupying the position of Chief Revenue Inspector, (or Examiner) while the positions of Assistant Revenue Regional Director outside the Manila District were occupied by the following:

Name Salary

1. Teodoro Lucero P 6900
2. Lauro D. Abraham 6000
3. Ricardo A. Rivera 6000
4. Gaspar L. Angeles 5100
5. Jaime Araneta 6000
6. Policronio Blanco 6000
7. Francisco Tantuico 6266.40
8. Pedro D. Uy 6000
9. Teodoro M. Castro 6000

According to the Commissioner of Internal Revenue, the next two in line for the position in question were Lucero and Abraham. Obviously the position of Chief Revenue Inspector (Examiner) was considered to be of the same rank as the position of Assistant Revenue Regional Director for regions other than Manila. And Toledo, who was then Chief Revenue Inspector (Examiner), was chosen because in the opinion of the Commissioner of Internal Revenue he was already in the region where the vacancy occurred and therefore was more familiar with the work there, and both his salary range and efficiency rating[5] were higher than Castro's aside from the fact that he was already performing the functions of the office.

Even on the assumption that Castro possessed, as he claims, better qualifications and a higher efficiency rating than Toledo, it would avail him nothing because he has failed to prove that his position was the one next in rank to the vacant office. He was not even the most senior among the different Assistant Revenue Regional Directors outside the Manila District. However, he insists that the eight other Assistant Revenue Regional Directors waived their rights to the position by their failure to complain against Toledo's appointment.

Waiver is the intentional relinquishment of a known right. The silence of the eight other Assistant Revenue Regional Directors does not amount to a waiver on their part. Waiver must be predicated on more concrete grounds. The evidence must be sufficient and clear to warrant a finding that the intent to waive is unmistakable.

Castro himself, when he testified, could not categorically state that the eight others were not interested in the position.[6] Not having shown either seniority in rank among the nine Assistant Revenue Regional Directors outside the Manila District or waiver on the part of those who were senior to him Castro has failed to establish a

clear right to the office which would entitle him to oust respondent Toledo.

Upon the other hand, the supposed illegality of Toledo's appointment as Chief Revenue Officer of the Manila District cannot be a ground for the annulment of his appointment to the controverted position.[7] The legality of that earlier appointment may not be questioned except in a quo warranto proceeding brought by the proper person at the proper time. To be sure, as heretofore stated this is principally such a proceeding, but only insofar as the position of Assistant Revenue Regional District II is concerned. It is true there is an allegation in Castro's petition that the earlier appointment of Toledo as Chief Revenue officer was illegal.[8] But Castro does not claim to be entitled to that other position and consequently the legality of Toledo's appointment thereto is not properly in issue. Besides, even if Castro were the proper party to raise that issue, he did so beyond the time limit prescribed by law.[9] Toledo was appointed to said position on July 1, 1958. Castro had one year from that date to assail the legality of the appointment. The petition here was filed only on August 6, 1960, or beyond the one-year period.

Wherefore, the judgment appealed from is modified by eliminating therefrom that portion annulling respondent Toledo's appointment to the position in dispute, and is affirmed in other respects. Costs against petitioner.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

[1] 3 Moran's Comments on the Rules of Court, 1963 ed., page 188, citing *State v. Columbus, etc. Electric Co.*, 104 Oh. St. 120, 135 N.E., 297.

[2] The instances when either may do so are (a) when so directed by the President of the Philippines; (b) when upon complaint or otherwise he has good reason to believe that there is enough proof to maintain the proceeding (Sec. 3, Rule 66, Revised Rules of Court), or (c) at and upon the relation of another person, with the permission of the Court in which the action is to be commenced. (Sec. 4, id.)

[3] Section 6, id.

[4] Our opinion is that the law has reserved to the Attorney-General and to the provincial fiscals, as the case may be, the right to bring such action, and in but one case does the law authorize an individual to bring such an action, to wit, when that person claims to have the right to the exercise of the office unlawfully held and exercised by another. Aside from this case an individual cannot maintain such action. x x x x From the words above italicized the appellant infers that the court below should have first passed upon the right of the defendant and afterwards upon the right of the plaintiff. In our opinion this should be done at the same time and in the same judgment. It is immaterial what method the court may follow in the statement and determination of the questions in the rendition of his judgment because even though the court may pass upon the right of the plaintiff first, and the right of the defendant afterward, or vice versa, this procedure would not vitiate the judgment, provided the court does not fail to state therein what the rights of the contending parties to the office are. But all of this, of course, presupposes that the plaintiff had a right to maintain his action upon the evidence submitted by him at the trial. It is impossible to prosecute a suit without a cause of action. Wherefore, whenever before judgment it is conclusively proven that the plaintiff has no right to maintain the action since he has not the essential conditions required by law in order to bring and maintain such action, his complaint should be dismissed and it becomes unnecessary to pass upon the right of the defendant who has a perfect right to the undisturbed possession of his office, unless the action is brought by a person having a right to maintain the same under the law. *Acosta v. Flor*, 5 Phil. 18.

[5] That is, efficiency rating as of the time the appointment was made.

[6] Page 100, t.s.n., September 6, 1960.

[7] Note that while at the lower court annulled Toledo's appointment to the position of Assistant Revenue Regional Director on the ground that his appointment to the position of Chief Revenue Examiner of Manila, was illegal, yet it did not annul the latter appointment.

[8] See paragraph 29, Amended Petition.

[9] We note that in actions of quo warranto involving right to an office, the action must be instituted within the period of one year. x x x We find this provision to be an expression of policy on the part of the State that persons claiming a right to an office of which they are illegally dispossessed should immediately take steps to recover said office and that if they do not do so within a period of one year, they shall be considered as having lost their right thereto by abandonment. There are weighty reasons of public policy and convenience that demand the adoption of a similar period for persons claiming rights to positions in the civil service. There must be stability in the service so that the public business may not be unduly retarded; delays in the statement of right to positions in the service must be discouraged. x x x Further, the Government must be immediately informed or advised if any person claims to be entitled to an office or a position in the civil service as against another actually holding it, so that the Government may not be faced with the predicament of having to pay two salaries, one, for the person actually holding the office although illegally, and another, for one not actually rendering service although entitled to do so. *Unabia v. City Mayor*, 99 Phil. 253.

This action must fail on one other ground: it is already barred by lapse of time amounting to prescription or laches. Under Section 16 of Rule 66, (formerly Section 16, Rule 68, taken from Section 216 of Act 190), this kind of action must be filed within one (1) year after the right of the plaintiff to hold the office arose. *Cui v. Cui*, L-18727, August 31, 1964.

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