

FEDERICO G. REAL, JR., PETITIONER VS. THE COMMISSION ON ELECTIONS, THE COMMISSIONER OF CIVIL SERVICE, AND ROGELIO BENJAMIN, RESPONDENTS.

G. R. No. L-27266. September 29, 1967

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

The petitioner Federico G. Real, Jr., by virtue of an appointment extended by the Commission on Elections (COMELEC) on October 1, 1964, and denominated "permanent", but approved by the Commissioner of Civil Service "under Sec. 24(c) RA 2260", i.e., as provisional, which did not designate any specific official station, is an "Election Registrar in the Commission on Elections". After his qualification as, such, he was directed, per telegraphic order of the COMELEC of October 14, 1964, to proceed to Sibulan, Negros Oriental and discharge the functions of election registrar thereat — which he did. Thereafter, with the approval of the COMELEC given on January 15, 1965, he exchanged assignments with one Romeo T. Katada, then election registrar assigned to Bais, Negros Oriental and, thenceforth, took over the duties of election registrar in the latter municipality.

On December 29, 1966, however, the respondent Rogelio Benjamin, theretofore an offdandon election registrar under provisional and temporary appointments, was extended by the COMELEC a permanent appointment as "ELECTION REGISTRAR in the COMMISSION ON ELECTIONS for Bais, Negros Oriental". Apprised of this development, Real petitioned the COMELEC for his retention as permanent election registrar of Bais, Negros Oriental, invoking as bases, amongst others, his alleged preferential right to the said position by reason of seniority and better efficiency as envisioned in a set of "Guidelines" adopted by the COMELEC on February 17, 1966, governing the assignment of election registrars. The COMELEC, however, declined to oblige mainly because the permanent appointment extended to Benjamin, having been approved by the respondent Commissioner of Civil Service, may no longer be disturbed except for cause provided by law.

Thus rebuffed, Real came to this Court in the present action for prohibition and mandamus with preliminary injunction. Upon bond duly filed, preliminary injunctive relief was granted.

The gravamen of the petitioner's pose is that, the office of election registrar being a permanent one with a specific official station as envisioned by the spirit of, and expressed in the amendments to, Republic Act 3588, the extension to him by the COMELEC of an appointment without specific official station, and the approval thereof by the Commissioner of Civil Service as a mere provisional one, are illegal. He argues that the said respondents had no discretion on the matter but to comply with the law, and that therefore the appointment extended to him, as supplemented by his subsequent telegraphic assignment to Bais, Negros Oriental, should be regarded as a permanent appointment to the position of election registrar of the said municipality. Thus, he concludes that he has acquired a vested right to the said position" and therefore the subsequent permanent appointment of the respondent Benjamin is not only violative of the guidelines adopted by the COMELEC but is also tantamount to a removal from office without cause which trenches upon his right to security of tenure guaranteed by the

Constitution and the Civil Service Law.

On all fours to the case at bar is *Braganza vs. Commission on Elections, et al.*, G.R. L27017, August 15, 1967, in which similar contentions were advanced. There, we ruled:

"Actually, if the petitioner's thesis in assailing the regularity of his provisional appointment is to be sustained, his claim to the office in question will collapse like the proverbial house of cards. Without deciding on the actual legal status of that appointment as, indeed, it is unnecessary to do so — it is quite evident that the petitioner's pose here is untenable. For one thing, it is too late for the petitioner to assail the validity of his appointment. Having accepted the same, discharged the functions it imposed, exercised the rights it conferred, and reaped the benefits it afforded, the petitioner cannot now be heard to impugn its validity. Besides, if that appointment was indeed illegally extended, that illegality vitiated the entirety thereof, and the appointment cannot, in the breath, be denounced as illegal and yet considered as a valid one of another category. If it was void, to start with, it was void thru and thru — there can be no middle ground. Since a void appointment confers no rights whatsoever except, perhaps, those recognized under the general de facto doctrine, then the petitioner cannot predicate his claim to preference to the office involved upon that appointment. Otherwise stated, the petitioner's argument carries its own refutation.

"Prescinding from this flaw in the petitioner's stand, however, the resolution of the case at bar must still have to reckon with the effects of that appointment, assuming its validity. We have already spelled out with sufficient specificity our position on this matter in our opinion in *Ibanez, et al. vs. Commission on Elections, et al.*, G.R. L-26558, April 27, 1967. There, as here, where the appointments of election registrar relied upon did not indicate any particular places to which the respective appointees were to be officially stationed, but the appointees were subsequently merely detailed to particular localities by means of appropriate directives, we declined to give our imprimatur to the therein petitioners' pose that they acquired a right to the offices claimed sufficient to shield them against unconsented transfers therefrom. This is in consonance with the doctrine that only such officers as are appointed — not merely assigned — to particular stations are entitled to seek refuge under the aegis of the constitutional guaranty of security of tenure (*Hojilla vs. Marino, et al.*, G.R. L-20574, February 26, 1965; *Miclat vs. Ganaden, et al.*, 108 Phil. 439; *Jaro vs. Valencia, et al.*, G.R.L18352, August 30, 1963). Since the *Ibanez* ruling aforesaid, we have had occasion to reiterate this doctrine in three cases (vide: *Co vs. Commission on Elections, et al.*, G.R.L26956, July 21, 1967; *Salazar, et al. vs. Commission on Elections, et al.*, G.R. L-27121, July 21, 1967; *Suarez, et al. vs. Commission on Elections, et al.*, G.R.L-26605, July 27, 1967). We do so once again. Inasmuch as the appointments of both the petitioner and the respondent *Abella* do not state that they are appointed election registrars of *Mabini, Pangasinan*, their detail thereto by subsequent directives of the COMELEC does not entitle either one to assert as against the other any right to be retained as permanent election registrar thereof.

"Considering that —

"The power to appoint is in essence discretionary on the part of the proper authority. . . . The appointing power has the right of choice which he may exercise freely according to his judgment, deciding for himself who is best qualified for any competitive position in the Civil Service . . . ' (*Jimenez vs. Francisco*, G.R.L9699, February 1957), and

"What position should be deemed 'most advantageous to the government' for the respondent to occupy is a question to be decided by the representative of the government, and . . . the government cannot be denied the right to determine, experimentally or otherwise, in what position it could make use of respondent's services to the best advantage of the service and of the public . . . ' (*Gorospe vs. De Veyra*, 96 Phil 545).

the determination made by the COMELEC respecting the question of who between the contenders should be retained in *Mabini, Pangasinan* as permanent election registrar must be respected.

"The petitioner's reliance upon the so-called 'Guidelines In The Assignment Of Election Registrars' adopted by

the COMELEC in its session of February 17, 1966 is misplaced. As pointed out by the respondents and confirmed by the certified copy of said guidelines, the rules of preference therein provided were intended merely as criteria for 'the assignment of election registrars without making new appointments'. Said guidelines, unmistakably, were not intended to control the discretion of the COMELEC in making appointments of permanent election registrars." (*Italics supplied*)

No reason has been advanced to warrant a departure from the foregoing view which, likewise, controls the present case.

Accordingly, the petition is dismissed, and the writ of preliminary injunction heretofore issued is dissolved, at petitioner's cost.

Concepcion, C.J., Reyes, J.B.L, Dizon, Makalintal, Zaldivar, Sanchez, Angeles and Fernando, JJ., concur.

Petition dismissed.

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