

ROBERTO V. MERRERA, PETITIONER VS. HON. JUAN R. LIWAG, LEON G. JAYME AND ALFONSO CASTILLO, RESPONDENTS.

G.R. No. L-20079. September 30, 1963

Ponente: BARRERA, J.

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BARRERA, J.:

This is an original petition for mandamus filed by Roberto V. Merrera to compel the Secretary of Justice and the Financial Officer of the Department of Justice to pay him his salary as acting Justice of the Peace of Binmaley, Pangasinan, for the period of from December 27, 1961 to February 19, 1962 and from May 16, 1962 to July 31, 1962, and for such period thereafter that he is actually discharging the functions of said office. The facts of the case are not disputed, thus:

August 21, 1961—Judge Raymundo V. Vinluan, incumbent Justice of the Peace of Binmaley, Pangasinan, took an indefinite leave of absence on the ground of illness.

September 7, 1961—Petitioner Roberto V. Merrera applied for the position of Auxiliary Justice of the Peace of Binmaley, Pangasinan (which was then vacant).

September 8, 1961—The Secretary of Justice recommended the appointment of petitioner as Auxiliary Justice of the Peace of Binmaley, stating in his letter to the President that "the immediate filling of the position is necessary in the interest of public service". September 11, 1961—The Executive Judge of the Court of First Instance of Pangasinan -wrote the Secretary of Justice, urging the immediate appointment of an Auxiliary Justice of the Peace for Binmaley, in the interest of the efficient administration of justice, stating that there were many cases pending in that municipality that required attention.

November 6, 1961—Petitioner was extended an ad interim appointment as Auxiliary Justice of the Peace of Binmaley, Pangasinan.

December 20, 1961—The appointment was released to the appointee.

December 26, 1961—Petitioner's ad-interim appointment, together with 2 other appointments, was forwarded to the Commission on Appointments for confirmation.

December 27, 1961—Petitioner took his oath of office as ad-interim Auxiliary Justice of the Peace and immediately entered upon the discharge of his functions as acting Justice of the Peace of Binmaley, in place of the absent incumbent.

January 18, 1962—The Executive Judge of the Court of First Instance of Pangasinan designated petitioner to act as Justice of the Peace of Lingayen, Pangasinan during the absence of the incumbent thereof, effective January 19, 20 and 22, there being no auxiliary justice of the peace in said municipality. Pursuant to this designation, he held office in those 3 days in Lingayen.

January 29, 1962— Petitioner was informed by the Executive, Judge of Pangasinan of the receipt of a telegram from the Secretary of Justice directing that petitioner be advised not to assume, office in view of the President's Administrative Order No. 2 and the decision of the Supreme Court in the Aytona-Castillo case. January 31,

1962—Petitioner answered the Executive Judge stating in his letter (Annex A to Petitioner's memorandum), that his case is not covered by the Administrative Order No. 2. of the President nor does it come within the doctrine of the Aytona case, his appointment not being a "midnight appointment" within the spirit and rationale of said case. In the same letter, he also prayed that the Secretary of Justice allow him to continue in office and to order the payment of his salary for services already rendered.

February 19, 1962—The Executive Judge, by a 3rd Indorsement on a communication from the Department of Justice; gave petitioner 24 hours to cease acting as auxiliary justice of the peace.

February 20, 1962—Petitioner desisted from holding office as Justice of the Peace of Binmaley.

February 26, 1962—Petitioner wrote a letter to the Executive Judge giving the reasons and the nature of his cessation from discharging the functions of the office, stating that he did so not because he was waiving his right but only as a gesture of respect to the authorities, expressing the hope that further developments may establish the legality and validity of his said appointment.

April 27, 1962—Petitioner's ad-interim appointment as Auxiliary Justice of the Peace of Binmaley, Pangasinan, was confirmed by the Commission on Appointments.

May 16, 1962—Petitioner again took possession of the office and discharged the functions thereof.

June 29, 1962—The Secretary of Justice again advised petitioner to refrain from holding office.

June 30, 1962— Petitioner informed the Executive Judge that for the reasons stated in his letter, he regretted that he could not desist from performing the duties of his office and reiterated his request that his salary for services already rendered be paid.

August 15, 1962—Petitioner stopped holding office as Acting Justice of the Peace of Binmaley in view of the return from leave of absence of its incumbent Judge Raymundo Vinluan.

Clearly, we are here only called upon to determine whether or not under the aforesaid facts, the ruling laid down in the Aytona case may be invoked and applied in the present controversy.

Note that in declining to disregard the President's Administrative Order No. 2 in the Aytona case, this Court considered the circumstances surrounding the issuance of 350 appointments, of which therein petitioner Aytona's was one, in the night of December 29, 1961, such as the "scramble" in Malacañang of candidates for positions trying to get their written appointments or having such appointments changed to more convenient places; the fact that such mass appointments were issued a few hours before the inauguration of the new President. Thus, after observing that the appointing President could not have exercised the care necessary to insure that said appointments would be approved by "a Commission on Appointments different from that existing at the time of the appointments", this Court declared that such act lends "force to the contention that those appointments fall beyond the intent and spirit of the constitutional provision granting to the Executive authority to issue ad interim appointments". Such circumstances were therein found to fit the "exceptional circumstances justifying revocation" of said appointments. But this Court, realizing the danger of over-stretching the effect of that decision beyond the extreme and extraordinary circumstances particularly attending the case, wisely stated that:

"The filling up of vacancies in important positions if few, and so spaced as to afford some assurance of deliberate action and careful consideration of the need for the appointment and the appointee's qualifications may undoubtedly be permitted". (Italic supplied.)

The present case comes squarely within this qualification of the Aytona ruling. That there was need for filling the vacancy is attested by the communication of the Executive Judge of the Court of First Instance of Pangasinan. That the herein petitioner was qualified for the position is shown by the favorable recommendation of the

Secretary of Justice as early as September 8, 1961. That there was deliberate action and careful consideration on the part of the appointing power is borne by the fact that the appointment was extended on November 6, 1961,—even before the election day. All these and the fact that petitioner qualified and entered upon the discharge of his official functions days before the "scramble" in Malacañang, argue that petitioner's appointment does not fall within the ruling of the Aytona case.

Neither can it be seriously contended that petitioner abandoned the office when he vacated the same on August 15, 1962, or that he is guilty of laches for failing to file the appropriate action after he was required to desist from discharging the functions of the office in January, 1962. As may be seen from the recital of facts, petitioner consistently insisted on his right to the office, claiming and rightly so, that he does not fall within the coverage of the cited ruling of this Court. And through all these exchanges of communications, petitioner kept on praying for the payment of his salary, which is the object of this petition. Certainly, his desistance to hold office from February 20 to May 15, "in a gesture of respect to the authorities" and in obedience to the order of the Secretary of Justice, can not be held against the petitioner as constituting laches. On the contrary, it evinces the character of the petitioner as a man of law. Such an attitude is indeed worthy of praise and not condemnation. However, when his appointment was confirmed, he again resumed the discharge of his duties until on August 15, he had to cease acting as justice of the peace by reason of the return of the incumbent.

In view of the foregoing considerations, petitioner is declared entitled to the position of Auxiliary Justice of the Peace of Binmaley, Pangasinan and the corresponding emoluments attached thereto, and respondents are hereby directed to pay petitioner's salary for the period that he actually discharged the functions of his office. Without costs. So ordered.

Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon, Regala, and Makalintal, JJ., concur;

PADILLA, J.:

I dissent for the same reason stated in my opinion in the case of Aytona vs. Castillo, G.R. No. L-19313, promulgated on 19 January 1962. However, the petitioner is entitled to his salary as acting Justice of the Peace of Binmaley, Pangasinan, from 27 to 29 December 1961.

BAUTISTA ANGELO, J.:

I dissent as per my opinion in the Aytona Case.

Petition granted.

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