

NICOLAS B. POTOT, PETITIONER, VS. JUAN L. BAGANO, THE HONORABLE SECRETARY OF JUSTICE AND THE JUDGE OF COURT OF FIRST INSTANCE OF CEBU, RESPONDENTS.

G.R. No. L-2456. January 25, 1949

Ponente: TUASON, J.

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TUASON, J.:

This is a quo warranto proceeding instituted by a pre-war Justice of the Peace whose position was filled by the appointment and confirmation of the respondent after liberation.

The facts bring this case within the authority of *Luis Floresca vs. Amparo Quetulio*, supra, p. 128 and *Domingo Maddumba vs. Roman Ozaeta*, supra, p. 345. Petitioner's acceptance of other public offices incompatible with judicial functions operate as an abandonment of the position to which he seeks reinstatement.

It results that petitioner was appointed Justice of the Peace for the municipality of Pilar, province of Cebu, in November, 1933. He held that office until April 24, 1944 (Exhs. 1 and 2), when he ceased to act for reasons not disclosed in the record. On August 19, 1945, the jurisdiction of the Justice of the Peace of San Francisco, Poro and Tudela, Vicente de Roda, was extended to comprise the municipality of Pilar (Exhs. 3, 4 and 5). Vicente de Roda was later succeeded by Felixberto R. Sosmeña, who was Justice of the Peace until April 14, 1946. From the latter date to September 1, 1946, the office of justice of the peace of Pilar was vacant. It was on the last mentioned date that the respondent entered upon the performance of his duties in that office.

Petitioner joined the police force of the City of Cebu as lieutenant from June 11, 1947 to January 15, 1948. From January 16, 1948, to April 24 of the same year, he was Assistant Provincial Warden (Exhs. A, B and C).

That petitioner was forced to seek or accept these jobs in order to live would not alter the case even if we assume, for the sake of argument, that economic necessity was a valid plea. The Government was not the only source of gainful employments that could have tied him over while waiting, as he says, for reappointment to his old position. The truth is that for almost two years after liberation, before he accepted other Government positions, he got along outside the Government. All that time, when his old position was without any permanent incumbent, he did not enter public service, and he did not raise a finger to claim his judicial post. It would seem that he lost all interest in the same until he changed his mind or found he had made a mistake.

The petition is dismissed with costs.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Bengzon, Briones, and Montemayor, JJ., concur.

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