

HONORATO C. PEREZ, PETITIONER, VS. PROVINCIAL BOARD OF NUEVA ECIJA, HON. EDUARDO L. JOSON, IN HIS CAPACITY AS GOVERNOR OF NUEVA ECIJA, AND VALENTIN C. ESCUADRO, IN HIS CAPACITY ...

G.R. No. L-35474. March 29, 1982

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

This is an original action for certiorari, prohibition and mandamus to annul Resolution No. 228 of the respondent Provincial Board of Nueva Ecija, dated August 21, 1972; to enjoin respondents from enforcing and implementing said Resolution; and to compel respondents to recognize petitioner Honorato Perez as acting provincial fiscal of Nueva Ecija.

The factual antecedents which gave rise to this petition are not disputed. When former provincial fiscal of Nueva Ecija, Celestino Juan was appointed judge of the Court of First Instance of Quezon, the Secretary of Justice, in Administrative Order No. 388, dated September 9, 1971, designated first assistant fiscal Emilio Cecilio of Nueva Ecija as acting provincial fiscal.[1]

On May 10, 1972, President Ferdinand Marcos nominated petitioner Honorato Perez for appointment to the position of Provincial Fiscal of Nueva Ecija.[2] It appears, however, that the nomination which was submitted to the Commission on Appointments for confirmation was by-passed upon adjournment sine die of Congress on May 18, 1972. On the following day, May 19, President Marcos designated petitioner as acting provincial fiscal.[3]

Reacting to the said designation, respondent Provincial Board enacted Resolution No. 146 addressed to the Commission on Appointments, manifesting its opposition to the confirmation of petitioner's appointment.[4] Respondent Governor Joson also filed a formal protest with the Committee on Justice of the Commission on Appointments, making known his strong and emphatic opposition to the confirmation.[5] After submission of the evidence in support of the opposition, the said Committee resolved not to recommend the confirmation of petitioner's appointment.[6]

On June 7, 1972, or during the sixth special session of Congress, petitioner was nominated anew for appointment to the office in question;[7] but the same was likewise by-passed upon adjournment of Congress on June 22, 1972.[8]

On August 11, 1972, petitioner took his oath of office as acting provincial fiscal[9] pursuant to the designation extended by the President on May 19, 1972; and on August 14, 1972, he formally assumed office.[10]

On August 21, 1972, respondent Provincial Board passed Resolution No. 228, ordering respondent Provincial Treasurer to stop payment of petitioner's salaries as acting provincial fiscal.[11]

The dispute came to a head on August 28, 1972, when respondent treasurer disapproved petitioner's requisition for various office supplies. His salary vouchers were likewise disapproved by the respondent Governor.

Hence, the instant petition, petitioner raising the following legal questions:

"1) Whether or not respondent Provincial Board has the power to pass and enact a resolution not recognizing herein petitioner as acting provincial fiscal despite the fact that the latter has assumed such office pursuant to a designation lawfully extended to him by the President of the Philippines.

"2) Whether or not respondent Provincial Board has the power to defy and/or pass judgment on the validity of the said designation and assumption."

We deem it unnecessary to pass upon the issues raised, this petition having become moot and academic. We take cognizance of the fact that petitioner Perez filed his certificate of candidacy for the office of mayor of Cabanatuan City in the local elections of January 30, 1980.[12] The mere filing of a certificate of candidacy constitutes forfeiture of his right to the controverted office under Section 29 of the Election Code of 1978 which provides:

"SEC. 29. Candidates holding appointive office or position.-Every person holding a public appointive office or position, including active members of the Armed Forces of the Philippines, and officers and employees in government-owned or controlled corporations, shall ipso facto cease in his office or position on the date he files his certificate of candidacy. Members of the Cabinet shall continue in the offices they presently hold notwithstanding the filing of certificate of candidacy, subject to the pleasure of the President of the Philippines." (Underscoring supplied).

A petition instituted to establish petitioner's right to an appointive office is rendered moot and academic where his right to said office has been forfeited by his filing of a certificate of candidacy to an elective office.

ACCORDINGLY, this petition is hereby dismissed. No costs.

SO ORDERED.

Barredo, (Chairman), Aquino, De Castro, and Ericta, JJ., concur. Concepcion, Jr., and Abad Santos, JJ., no part.

[1] Annex 3 of Answer, p. 87, Record.

[2] Annex 9 of Answer, p. 98, Ibid.

[3] Annex A of Petition, p. 15.

[4] Annex 8 of Answer, p. 96, Ibid.

[5] Annex 10 of Answer, p. 99, Ibid.

[6] p. 382, Ibid.

[7] Annex 9 of Answer, p. 98, Ibid.

[8] Annex 9 of Answer, p. 98, Ibid.

[9] Annex B.

[10] p. 326, Record.

[11] Annex C of Petition, p. 25, Ibid.

[12] Vide: Perez vs. Comelec, 105 SCRA 250.

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