

CELESTINO E. ESUERTE, MARIA BITOY, HONORATO LUTERO, AND ANATALIO BARCENA, PETITIONERS AND APPELLANTS, VS. DELFIN JAMPAYAS, EULOGIO VIAJEDOR, DEMETRIO B. HECHANOVA, ANTONIO MACAD...

G.R. No. L-23301. February 28, 1966

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Appeal from a decision of the Court of First Instance of Davao, in Special Civil Case No. 3950, wherein Judge Macapanton Abbas dismissed the action for prohibition and quo warranto filed by petitioners-appellants Celestino Esuerte, et al.

The facts are practically uncontested. Petitioners Celestino Esuerte, Maria Bitoy, Honorato Lutero and Anatalio Barcena had been, prior to June 1, 1961, designated in an acting capacity as Mayor, Vice Mayor, and Councilors of the municipality of Mawab, Davao, by then President Carlos P. Garcia, and had acted according to such designations. In appointments apparently dated June 1, 1961, these petitioners were appointed ad interim Mayor, Vice Mayor and Councilors, but took their oaths of office on the following dates:

Celestino Esuerte, as Mayor, ad interim, January 23, 1962;
Maria Bitoy, ad interim Vice Mayor, January 10, 1962;
Anatolio Barcena, ad interim councilor, January 10, 1962.

The lower court found, on the basis of the uncontradicted testimony of the Senior Executive Assistant in the Administrative Division of the Office of the President (Garcia), Benigno O. Aquino, that on December 18, 1961, Secretary Gallares issued a directive (Exhibit "2") that the President desired all designations be converted to ad interim appointments, and that all such appointments were made to appear to have been made long before the presidential elections of 1961, though they were actually processed on December 25, 1961, and on December 26 a letter was prepared for the transmittal of the appointments to the Commission on Appointments, and that appointments of the petitioners herein were actually received in the Commission offices on December 29, 1961. They were confirmed on April 27, 1962.

Prior to that date, however, President Diosdado Macapagal had issued, on December 30, 1961, Administrative Order No. 2, revoking and recalling the ad interim appointments issued by his predecessor after December 13, 1961; and on January 25, 1963, then President Macapagal designated respondent Delfin Jampayas as acting Mayor of Mawab, Davao; Eulogio Viajedor as acting Vice Mayor; and respondents Antonio Macadangdang, Demetrio Hechanova, Ricardo Bitoy, and Francisco Esquierdo to be acting municipal councilors of Mawab, Davao.

That petitioners were actually appointed ad interim toward the end of December, 1961 and not on the date

appearing on the appointments (June 1, 1961), as testified to by Administrative Assistant Aquino, is conclusively corroborated by their own conduct in not qualifying under their ad interim appointments until January, 1962; when their own interests dictated that they should qualify as early as possible, since as acting officers they were removable at any time and could be dispensed with for no cause at all. We note that against the testimony of Aquino, petitioners could only say that they did not remember when they were notified of their appointments or took their oaths of office.

It is thus clear that, like the one dealt with in *Rodriguez vs. Quirino*, L-19800, October 28, 1963, petitioners' appointments were part of the 350 "midnight" appointments dealt with in the *Aytona vs. Castillo* decision (G. R. No. L-19313, January 19, 1962), and are covered by the rule laid down in both cases. In the *Rodriguez vs. Quirino* case, we said:

"In the first place, while the petitioner's ad interim appointment appears dated on the first of June 1961, it was not communicated to him until the 30th of December of that year, and nothing in the record indicates that its existence was made known to any one before the last days of 1961. It can be inferred from this secrecy that the appointing power did not desire to make the selection final and operative until the last day of President Garcia's term. Consequently, this petitioner's appointment should be regarded as part and parcel of the 300 and more "midnight" appointments referred to in our decision in *Aytona vs. Castillo*, G. R. No. L—19313, and is covered by the rule laid down therein."

Considering further that the municipality of Mawab was created only by executive order, and that this Court has recently ruled that the creation of municipalities by the Executive has been eliminated by the Constitution^[1], we see no error in the lower court's refusal to interfere with the appointment of respondents herein.

Wherefore, the judgment under appeal is hereby affirmed, with costs against appellants.

Bengzon, C. J., Bautista Angelo, Concepcion, Barrera, Dizon, Regala, Makalintal, Bengzon, J. P., Zaldivar, and Sanchez, JJ., concur.

Judgment affirmed.

[1] *Pelaez vs. Auditor General*, L-23825, December 24, 1965.

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