

**QUIRICO A. ABELA, PETITIONER, VS. HON. COURT OF APPEALS,
BRAULIO D. AVELINO, SALVADOR B. MEDINA, ET AL., RESPONDENTS.**

G.R. No. L-17311. August 31, 1962

Ponente: LABRADOR, J.

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LABRADOR, J.:

Petition for certiorari to set aside a decision of the Court of Appeals, dismissing the petition for a writ of quo warranto instituted by Quirico A. Abela against Braulio D. Avelino, the position subject of controversy between the two being that of secretary of the municipal board of Roxas City.

On January 3, 1956 the municipal board of Roxas City approved a resolution appointing Quirico Abela secretary to the municipal board to serve as such during the term of the members thereof. The term provided for in the resolution for Abela corresponds with the provisions of Section 13 of the Charter of Roxas City which reads as follows:

"SEC. 13. Appointment, salary and duties of Secretary of Board.—The Board shall have a secretary who shall be appointed by it to serve during the term of office of the members thereof. * * *".

Notwithstanding the fact that the term of office of Abela was to coincide with the term of office of the municipal board, which is from the date of his appointment to December, 1959, on November 19, 1956, by majority vote, with the vice mayor voting to break the tie, the position of secretary to the municipal board, then held by petitioner Quirico A. Abela, was declared vacant and immediately thereafter Braulio D. Avelino was appointed to the same position by virtue of Resolution No. 24, Series 1956. On the same day, November 19, 1956, petitioner herein sent a telegraphic protest to President Ramon Magsaysay against his ouster from office without cause.

On April 11, 1957 an original petition for quo warranto was filed by petitioner before this Court, the case being docketed as G.R. No. L-12246, Quirico A. Abela vs. Braulio D. Avelino, et al. This petition was dismissed without prejudice to filing the action in the proper court of first instance. On April 24, 1957 a motion for reconsideration was presented by petitioner but the same was denied in an order dated April 29, 1957. Copy of this order was received by the petitioner herein on May 3, 1957.

On April 2, 1957 petitioner filed an application for the commutation of his accrued vacation and sick leaves. On May 25, 1957 he was cleared from his money and property accountability by the presiding officer of the municipal board. On May 28, 1957 he was also cleared of his money and property accountability by the city treasurer, and on the same day he received the compensation due him in the amount of P351.61, representing his accrued vacation and sick leaves.

More than two months thereafter he instituted the petition for quo warranto in the Court of First Instance of Capiz. The court of first instance declared petitioner herein, Quirico A. Abela, entitled to the position of secretary to the municipal board of Roxas City, to hold the said position until the expiration of his term of office on December 31, 1959. The decision orders the auditor of Roxas City, and the city treasurer, to pay his salary from November 19,

1956 until his final reinstatement.

Against the above decision the case was appealed to the Court of Appeals. This Court set aside the judgment of the lower court and dismissed the petition. In arriving at its decision the Court of Appeals ruled as follows:

"By long usage in the Government service 'terminal leave' has a distinct meaning. It is applied for by, and is granted to, an employee separated from service by ouster or resignation. We believe the petitioner understood it in this sense when he filed his own application for terminal leave in which he stated, among others:

" 'SIR: I have the honor to make application for 51 Calendar Days (Vacation/sick) under the provision of Commonwealth Act Nos. 220 and 490 from November 19, 1956 to January 8, 1957 inclusive. I intend to spend this leave in Roxas City. Commutation of vacation and sick leave standing to my credit incident to separation from the service effective Nov. 19, 1956 pursuant to the provisions of Rep. Act 611, as amended by Rep. 1081.' (p. 107 of Record)

"The application was granted and the petitioner received the payments of the compensation due him in the amount of P351.61, as shown by the City Voucher dated May 28, 1957 (Exh. Q). Furthermore, it appears that the petitioner was cleared from his money and property accountability by the Presiding Officer of the Municipal Board and the City Treasurer on May 25, 1957 and May 28, 1957, respectively (Exhs. 8-C and 8-D). He accepted the certificates issued therefor in which he was alluded to as former Secretary to the Board. Thus, we find the petitioner's behavior literally meaning an acquiescence to his separation from office as Secretary to the Municipal Board of Roxas City.

"The filing of this action has not altered the situation in which the petitioner placed himself, unless we permit inconsistency as means of promoting one's own personal interest. Indeed, the petitioner can hardly turn back after he had admitted his separation from the service in his application for terminal leave, received the compensation he sought thereby and consented to be alluded to in other documents as an Ex-Secretary to the City Municipal Board."

Against the above decision the present petition for certiorari has been presented by the petitioner, he claiming that the commutation of his accrued vacation and sick leaves does not constitute acquiescence to the illegal ouster.

Our study of the decision appealed from creates the belief that the decision does not hold that the receipt and acceptance of the accumulated vacation and sick leaves constitute per se an acquiescence to petitioner's ouster. It is rather that the successive acts of petitioner disclose or prove that he (the petitioner) was renouncing or desisting from his move to continue with his case. The circumstances which lead to this conclusion are (1) his statement that commutation of his vacation and sick leaves was being asked for as "an incident to separation from the service effective from November 19, 1956"; (2) the fact that he must have asked for his clearance from money and property accountability from the presiding officer of the municipal board; and (3) his having secured a clearance from the city treasurer for his money and property accountability on May 28, 1957. It is to be noted that at the time he secured the clearances from the two offices above mentioned, his petition in this Court had been dismissed and he had been notified of such dismissal. At that time also, he had not presented any new petition for quo warranto before the court of first instance. For a period of more than two months he did not take steps to revive the action that had been dismissed in this Court. We note that he did not expressly state or indicate that he was getting his accumulated vacation and sick leaves because he needed money, or that he received his pay and secured his clearances but was reserving to himself the right to continue his quo warranto action. The presentation of his complaint in July, 1957 was made only two months after he received his money as his termination pay. Under the circumstances we rather believe that the filing of the present case was an after-thought, coming to him after he had already desired to renounce his right to continue the action and received his termination pay. We therefore agree with the Court of Appeals that the acts of the petitioner herein indicated a renunciation of the

action that he had begun.

The finding of the Court of Appeals, that the acts constitute a renunciation of his right to continue his action for quo warranto, is a finding of fact that the Court of Appeals made, which finding of fact we cannot review. The conclusion of the Court of Appeals is a conclusion of fact arising from a series of acts of the petitioner; it is a finding of fact to the effect that the petitioner renounced the action that he had to enforce his rights. Taking into account that this is a conclusion of fact made by the Court of Appeals upon consideration of the circumstances surrounding the case, and finding no abuse of discretion on the part of the Court in arriving at this conclusion, We are constrained to deny the petition. The writ is hereby denied, without costs.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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