

## **MATIAS S. CARILLO, PETITIONER, VS. THE COURT OF APPEALS AND CESAR U. DE LA VICTORIA, CORNELIO DE LA REY, AND MUNICIPALITY OF MATANAO, DAVAO, RESPONDENTS.**

*G.R. No. L-24554. May 31, 1977*

Ponente: MUÑOZ PALMA, J.

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### **MUÑOZ PALMA, J.:**

The lone point of controversy<sup>[1]</sup> in this seventeen-year old Quo Warranto suit which commenced on March 16, 1960 before the Court of First Instance of Davao centers on the interpretation and application of Sec. 1, R.A. 1551 which provides:

"Section 1. Hereafter, all employees whose salaries are paid out of the general funds of the municipality shall, subject to the civil service law, be appointed by the Municipal Mayor upon the recommendation of the corresponding chief of office; Provided, That in case of disagreement between the chief of office concerned and the municipal mayor, the matter shall be submitted for action to the proper provincial department head whose decision shall be final: Provided, further, That the chief of police and members of the police force of the municipality shall be appointed by the mayor with the consent of the municipal council."

In his complaint, petitioner herein, Matias S. Carillo, sought his reinstatement as chief of police of the municipality of Matanao, province of Davao, claiming that he was validly appointed to said position but was subsequently replaced by the respondent Municipal Mayor Cesar U. de la Victoria with the appointment of the other respondent Cornelio de la Rey as chief of police.

The Court of First Instance on motion of respondent-public officials dismissed Carillo's complaint holding that the evidence of Carillo does not establish an essential element for the validity of his appointment which is the approval or consent of the municipal council. Carillo appealed to the Court of Appeals but the latter court affirmed the trial court's order of dismissal.<sup>[2]</sup> Hence, this Petition for Review on Certiorari.

The uncontroverted facts as summarized in the brief filed by the Solicitor General for the respondents-appellees, follow:

"Petitioner-appellant was appointed Chief of Police of Lower Matanao effective July 8, 1957; (Exh. E).

"He was again appointed to that position effective July 8, 1958, but his appointment was 'subject to the provision of Section 1 of Republic Act No. 1551.' (Exh. F).

"Petitioner-appellant had previously qualified in the examinations for Chief of Police conducted on January 11, 1963 (Exh. G) and for patrolman taken on August 21, 1937 (Exh. H).

"Pursuant to Memorandum No. 1 s. 1960, issued by the newly elected Mayor Cesar U. de la Victoria, petitioner-appellant was called to the Mayor's Office and asked to resign (Exhs. J, J-1 and J-2).

"On January 11, 1960, petitioner-appellant applied for and was granted leave of absence for sixty days (Exhs. B and B-1).

"On March 13, 1960, the petitioner-appellant notified the appellee Mayor that he was not willing to serve as detached service but that he will serve only as Chief of Police (Exh. A or 1).

"On May 15, 1960, appellee de la Rey was appointed Acting Chief of Police of Matanao, Davao, vice 'Matias S. Carillo (Lesser Civil Service Eligibility),' effective May 16, 1960, and was attested by the Provincial Treasurer under Section 20, Republic Act No. 2260. This appellee was then a regular junior teacher and regular senior teacher civil service eligible.

"On May 16, 1960, appellant could not discharge his duties as Chief of Police because appellee de la Rey had already assumed office (Exh. D)." (pp. 1-2, appellee's brief)

It is claimed by petitioner that the requirement of the law that an appointment of a chief of police be made with the consent of the municipal council was complied with in his case when the municipal council of Matanao in a special session held on July 11, 1957, approved the plantilla of personnel with his name appearing as incumbent in the position of chief of police for the fiscal year ending June 30, 1958. Such approval to all intents and purposes constituted consent by the municipal council to his appointment, petitioner asserts.

Petitioner's submittal is without legal basis.

We hold that under the law the approval by the municipal council of an appointment of a chief of police must be express and should appear on the appointment itself; the consent is not to be presumed or implied. It is the approval of the municipal council which gives validity to the appointment extended by the municipal mayor. The *raison d'être* of the requirement is to be found in the nature of the functions of members of the police force. The maintenance of peace and order is of vital concern to the community and more than any where else appointments to the police force are to be based on integrity, honesty, and competence of the appointees to be adjudged not only by the mayor who may be guided solely by political considerations and personal loyalties but also by members of the municipal council which after all is the legislative governing body of the municipality. The approval of the Commissioner of Civil Service attests solely to the appointee's civil service eligibility, the attestation being "merely a check to assure compliance with the civil service law." [3]

In *Torres vs. The Municipal Council of Malalag, Davao, et al.*, 1959, which the court *quo* correctly applied in deciding this case, the arguments to the contrary of petitioner Carillo notwithstanding, this Court held *inter alia* that inasmuch as Torres' appointment as patrolman showed neither approval of the municipal council nor that of the Commissioner of Civil Service and the right to the office cannot be based on a mere presumption, there was no valid appointment extended to him and his petition for reinstatement necessarily must fail. [4]

Moreover, petitioner Carillo's assertion of a substantial compliance with the law loses its validity in the face of the uncontrovertible - that the approved plantilla carrying his name as chief of police was only for the fiscal year 1957-58, after which he accepted a new appointment effective July 8, 1958 which was "subject to the provisions of Section 1 of Republic Act No. 1551" (Exh. F, per appellee's brief). Inasmuch as the new appointment of Carillo states expressly that it is subject to the consent and approval of the municipal council (Sec. 1, R.A. 1551), and the record of the case is ominously silent on the existence of such a consent, express or implied, there is no complete appointment to speak of.

At the most, pending compliance with the condition, all that petitioner Carillo was holding was a temporary appointment as chief of police which could be terminated at any time with or without cause. [5]

In *Taboada vs. Municipality of Badian*, May 31, 1961, L-14604, this Court stated that one who holds a temporary appointment has no fixed tenure of office; his employment can be terminated at the pleasure of the appointing power, there being no need to show that the termination is for cause. [6]

It is argued that Carillo was the only one qualified to the position of chief of police as there was nobody in the ranks of the police force of Matanao with higher civil service eligibility than him.[7] That fact, however, even if true is inconsequential, for his civil service eligibility affords him no protection or guarantee of security of tenure of office after he had accepted a conditional appointment which was temporary in nature while the condition was not fulfilled.

"Petitioner's appointment being temporary, it can be terminated at pleasure even if he is a civil service eligible. And this holds true notwithstanding his badge of eligibility for, having accepted a temporary appointment, he cannot invoke the security of tenure guaranteed by our Constitution. In fine, to him cannot apply the safeguard embodied in Section 32 of the Civil Service Act of 1959 which provides: 'No officer or employee in the civil service shall be removed or suspended except for cause as provided by law and after due process.'" (Edgardo R. Hojilla vs. Hon. Salvador L. Mariño, et al., L-20574, Feb. 26, 1965, 13 SCRA 293, 296. See also Tolentino vs. De Jesus, supra).

Petitioner Carillo argues further that his appointment (Exh. F) was duly attested to and approved by the Civil Service Commissioner and it was such approval which gave validity to his appointment.[8] This alleged approval is not admitted however in appellee's brief. At any rate, We repeat that Carillo's appointment, Exhibit F, was by its very terms subject to Section 1, Republic Act 1551, and that the appointment was not completed since the condition imposed by the foregoing provision of law had not been fulfilled. An appointment becomes complete upon the performance of the last act required by law of the appointing power.[9] The last act is the approval of the municipal council. It is preposterous to state that the consent or approval of the municipal council provided for in the law can be substituted by the approval of the appointment by the Civil Service Commissioner. The purpose of one is distinct from the purpose of the other as We have indicated earlier.

"The approval by both the President and the Director of the Civil Service of 'acting' appointments does not make the appointments permanent. For the President or the Director of the Civil Service to convert an 'acting' appointment into a permanent one would infringe the constitutional provision (Article VII, section 10 (1) limiting the power of the Chief Executive over local governments to 'general supervision as may be provided by law.' To change the character of a municipal appointment beyond doubt transcends 'General supervision.'" (Juan B. Mendez vs. Rodolfo Ganzon, et al., L-10483, 1957, 101 Phil. 48, 49)

It now follows that inasmuch as petitioner Carillo holds no valid right or title to the position of chief of police, the dismissal of his quo warranto suit is in order.

Long standing jurisprudence upholds the rule that in a quo warranto proceeding the person suing must show that he has a clear right to the office allegedly held unlawfully by another. Absent that right, the lack of qualification or eligibility of the supposed usurper is immaterial.[10]

We agree with respondent appellate court that "one who cannot show that he is entitled to occupy a public office, lacks the legal personality to institute quo warranto proceedings; in which case, it is not necessary to inquire into the right of the respondent to occupy said office (Guekeko vs. Santos, 76 Phil. 237; Topacio Nueno vs. Angeles, 76 Phil. 12)."[11] It is axiomatic that where there is a right, there is a remedy. In the instant case petitioner has not established any right to the office he claims, hence, no remedy or relief of reinstatement may be accorded him.

PREMISES CONSIDERED, We affirm the dismissal of petitioner's complaint without pronouncement as to costs. So Ordered.

Teehankee, (Chairman), Makasiar, Antonio, and Martin, JJ., concur.

[1] Petitioner-appellant cites in his brief Art. 2199 of the Revised Administrative Code as the provision of law involved; however, Sec. 2199 has been repealed by R.A. 1551, which took effect on June 16, 1956. Hence, the law in point is Sec. 1, R.A. 1551 and Sec. 2259 of the Revised Administrative Code, quoted hereunder:

"Sec. 2259. Appointment of members of police force. - The chief of police and other members of the force shall be appointed by the mayor, with the consent of the municipal council. In case of disagreement between the mayor and the municipal council regarding the appointment of the chief of police, if such disagreement extends over more than three months after the submission of the nomination by the mayor, the provincial board shall take action and decide such disagreement, and its decision shall be final."

[2] The decision of the Special Sixth Division in CA-G.R. No. 32477-R was promulgated on February 22, 1965, with Justice Gregorio S. Narvasa, ponente, and Justices Francisco R. Capistrano and Antonio G. Lucero, concurring, pp. 10-13 rollo.

[3] Villanueva vs. Balallo, L-17745, Oct. 31, 1963, 9 SCRA 407, 410-411

[4] 106 Phil. 638, 644-645.

See also Aguila vs. Castro, et al., L-23778, Dec. 24, 1965, 15 SCRA 565, 568; Valdez vs. Gutierrez, et al., L-25819, May 22, 1968, 23 SCRA 661.

[5] Aguila vs. Castro, supra, p. 568, citing Tolentino, et al. vs. Torres, 96 Phil. 522; Pineda vs. Velez, 100 Phil. 1085.

See also Tulawie vs. Provincial Agriculturist of Sulu, L-18945, July 31, 1964, 11 SCRA 611; Hojilla vs. Mariño, L-20574, Feb. 26, 1965, 13 SCRA 293; Santos vs. Chico, L- 24155, Sept. 28, 1968, 25 SCRA 343; Barañgan vs. Hernando, et al., L-28652, Feb. 28, 1969, 27 SCRA 239; Ramos vs. Romualdes, L-27946, April 30, 1970, 32 SCRA 590; Mendiola vs. Tancinco, 52 SCRA 66; Tolentino vs. De Jesus, 56 SCRA 167; Alfiler vs. De los Angeles, L- 27314, Sept. 26, 1974, 60 SCRA 17.

[6] 2 SCRA 412, 417, citing U.P., et al. vs. CIR, et al., 107 Phil. 848 & Montero, et al. vs. Castellanes, 108 Phil. 744.

To the same effect, following a long line of decisions, are these cases, among others: Ferrer vs. Hon. De Leon, et al., 109 Phil. 202; Quitiquit vs. Villacorta, 107 Phil. 106; Mendez vs. Ganson, et al., 101 Phil. 48; Quiatchon, et al. vs. Villanueva & City of Bacolod, 101 Phil. 989; Paña, et al. vs. City Mayor of Ozamis, 94 Phil. 103; Orais, et al. vs. Ribo, et al., 93 Phil. 985; Cuñado vs. Gamus, L-16782, May 20, 1963, 8 SCRA 77; Jimenea vs. Guanzon, L-24795, Jan. 29, 1968, 22 SCRA 224; Santos vs. Chico, L- 24155, Sept. 28, 1968, 25 SCRA 343; Barañgan vs. Hernando, et al., L-28652, Feb. 28, 1969, 27 SCRA 239

See also the cases under footnote 4.

[7] p. 8, appellant's brief.

[8] pp. 3, 6, appellant's brief.

[9] Villanueva vs. Balallo, supra.

[10] Moran, Rules of Court, Vol. 3, 1970 ed., pp. 208-209; Acosta vs. Flor, 5 Phil. 18; Concordia vs. Tolentino, 93 Phil. 471; Adante vs. Dagpin, 96 Phil. 789; Castro vs. Solidum, 97 Phil. 278; Lota vs. CA, L-14803, June 30, 1961, 2 SCRA 715; Batario, Jr. vs. Parentela, Jr. L-20485, Nov. 29, 1963, 9 SCRA 601; Caraan-Medina vs. Quizon, L-23162, Oct. 29, 1966, 18 SCRA 562; Bongbong vs. Parado, L-30361, June 28, 1974, 57 SCRA 623; Philippine Public School Teachers Association (PPSTA) vs. Apostol, et al., L-26966, Feb. 28, 1974, 55 SCRA

743.

[11] p. 13, rollo.

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