

GUILLERMO D. ABAÑO, PETITIONER AND APPELLEE, VS. SOFRONIO D. AGUIPO, RESPONDENT AND APPELLANT.

G. R. No. L-23850. December 24, 1965

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal from the decision of the Court of First Instance of Leyte in a quo warranto proceeding; declaring the appellee, Guillermo D. Abaño, to be the lawful Acting Chief of Police of Ormoc City, and excluding appellant from the right to such an office. Originally, the appeal was taken to the Court of Appeals but was certified to Us on the ground that the questions raised are questions of law.

Both the parties submitted a stipulation of facts for the decision of the Court, reading:

"1. That the regular Chief of Police of Ormoc City, in the person of Ciriaco Porcadilla is under suspension by reason of the pendency of a criminal case against him in the Court of Appeals, Manila;

"2. That because of the suspension of the regular Chief of Police petitioner was, on February 17, 1960 designated by the then President Garcia thru Executive Secretary Natalio Castillo and said designation bears the following; quote; to continue during: the suspension of the regular incumbent Chief of Police' That the said designation is marked as EXHIBIT 'A' that on February 18, 1960, petitioner qualified for and assumed office as Acting Chief of Police of Ormoc City, his oath of office is hereto attached and marked as EXHIBIT 'A-1';

"3. That petitioner on November 17, 1961, was appointed Assistant Chief of Police of Ormoc City by the City Mayor of Ormoc City by virtue of a resolution of the Municipal Board, Ormoc City, creating such office, the appointment is marked as EXHIBIT 'B'; and the Oath of Office is marked as EXHIBIT 'B-1'; and the Resolution of the Municipal Board of Ormoc City, is marked as EXHIBIT 'B-2';

"4. That petitioner at the time of his designation as Acting Chief of Police of Ormoc City, was the Chief of the Secret Service Division of the same department; that from the time petitioner was elevated to the position of Asst. Chief of Police he was already discharging the duties of the Acting Chief of Police of Ormoc City, and continued to act in such capacity until terminated by the President of the 'C and his oath as Exhibit 'c-1';

"5. That petitioner while acting Chief of Police of Ormoc City from February 17, 1960, by virtue of his designation by the then President of the Philippines as such, discharged the duties of the said position and received the salary attached thereto, and since then continuously up to January 15, 1962, continued to receive the salary of Chief of Police of Ormoc City;

"6. That on January 5, 1962, the President of the Philippines thru Executive Secretary Amelito Mutuc terminated the services of Petitioner as Acting Chief of Police of Ormoc City, and on the same letter DESIGNATED respondent, Atty. Sofronio D. Aguipe as Acting Chief of Police of Ormoc City, and the said document is marked as Exhibit '1' hereof;

"7. That on the same date, January 5, 1962, the President of the mes, thru Executive Secretary Amelito Mutuc designated Atty. Sofronio D. Aguipe as Acting Chief of Police of Ormoc City and the said appointee qualified

as such on January 9, 1962 before Vice President Emmanuel Pelaez in Manila, the said designation and oath of office are marked as EXHIBIT '2' and '2-A', respectively;

"8. That on January 15, 1962, Atty. Sofronio D. Aguipo presented his pertinent credentials to the City Mayor, Esteban C. Conejos of Ormoc City, in the latter's office, together with the termination papers of petitioner, but said Mayor refused to accept the said documents and to recognize respondent, Atty. Sofronio D. Aguipo, so that on the same date, respondent Aguipo furnished the said Mayor copies of his (Aguipo's) designation as Acting Chief of Police of Ormoc City, Oath of Office; and the original copies of the communication of Executive Secretary Mutuc, dated January 5, 1962, terminating the services of petitioner by registered mail copies of said communications were furnished the persons named therein, a copy of the same is marked as EXHIBIT '3', and registry receipts are marked as EXHIBITS '3—A', '3—B', '3—C', '3—D' and '3—E', hereon;

"9. That respondent Atty. Sofronio D. Aguipo assumed office as Acting Chief of Police of Ormoc City, on the 16th day of January 1962, but was refused entry in the police blotter of his assumption to duty by the Desk Sergeant, and on the same date, wrote the City Mayor a letter by registered mail, a copy of which is marked as EXHIBIT '4' and the registry receipts as EXHIBITS '4-a' '4-B', respectively;

"10. That on January 17, 1962, Atty. Sofronio D. Aguipo reported for duty as Acting Chief of Police of Ormoc City, but to his consternation all the gates of the Police Headquarters were closed and guarded, and was refused entry by policemen, hence, was compelled to hold office under the Mabololo tree within the immediate vicinity of the Police Headquarters of same city;

"11. That on January 17, 1962, respondent wrote a letter to CO 59th PC Company, Camp Downes, Ormoc City, a copy of which is marked as EXHIBIT '5', and registry receipts are marked as EXHIBITS '5-A' and '5-B', hereof; and another letter to the Honorable Executive Secretary Mutuc, a copy of which is marked as EXHIBIT '6' and reg. receipt as EXHIBITS '6-A' and '6-B'; and moreover, another letter was mailed by respondent to the City Auditor, dated January 18, 1962, the copy of which is marked as EXHIBIT '7', and the reg. receipt as EXHIBITS '7-A', hereof,

"12. That on January 18, 1962, respondent (Aguipo) for duty and was finally allowed entry by petitioner, and the office of the Chief of Police was turned over to the respondent (Aguipo) by petitioner;

"13. That respondent Atty. Sofronio D. Aguipo from January 16, 1962, continuously up to the present has been discharging the duties of the Acting Chief of Police of Ormoc City, and has been receiving the compensation of the said office since then, up to the present;

"14. That the City Treasurer has been paying the salary of respondent (Atty. Aguipo) as Acting Chief of Police of Ormoc City, from the time he assumed the office up to the present;

"15. That from January 16, 1962, up to present, petitioner was reverted and assumed the position of Assistant Chief of Police of Ormoc City, and since then up to the present has discharged the duties of the said position and is receiving the salary appertaining thereto;

"16. That respondent Atty. Sofronio D. Aguipo is a member of the Philippine Bar, having been admitted to the practice of law in the Philippines in February 1958; since his admission to the bar up to his appointment as Acting Chief of Police had been in the active private practice of his profession in Ormoc City and its neighboring towns; that respondent (Aguipo) was a member of the Philippine Air Force (AFP), from May 11, 1948 continuously up to and including May 11, 1957; when he started to prepare to take the bar examinations; and furthermore, respondent Aguipo is a Civil Service eligible aside from his being a lawyer by profession,, having passed the civil service examination for Patrolmen for the City of Manila in 1956;

"17. That on the other hand, petitioner is a Patrolman Civil Service Eligible; completed the Associate in Arts (A.A.); graduated Police Training sponsored by the NBI; ex-serviceman of the Philippine Constabulary; and a public school teacher (class room) previously; and a former guerrilla officer; .

"18. That petitioner did not write any communication to the Executive Secretary, or other administrative officers, prior to the filing of this petition, regarding petitioner's termination from service as acting Chief of Police."

It appears that the petitioner, Guillermo D. Abaño, was originally the Chief of the Secret Service Division of the Police Department of Ormoc City. On February 17, 1960, he was designated Acting Chief of Police by President Garcia, "the designation to continue only during the suspension from office of the regular incumbent (Ciriaco Porcadilla)."

On November 17, 1961, Abaño was appointed Assistant Chief of Police by the City Mayor of Ormoc, following the creation of that position by resolution of the Municipal Board. Nevertheless, petitioner continued discharging the duties of an Acting Chief of Police until January 15, 1962 when he was advised by President Macapagal, through then Executive Secretary Amelito Mutuc, that his designation has been terminated and that respondent, Sofronio D. Aguipo, a member of the Bar, has been designated Acting Chief of Police. Following this advice, petitioner reassumed the office of Assistant Chief of Police to which he had been appointed.

Respondent qualified for the office on January 9, 1962, but although he presented himself on January 16, 1962, he was not able to assume office until January 18, 1962, because he was refused entry by the policemen. On January 29, 1962, petitioner filed this suit for quo warranto against respondent.

The original decision of Judge Demetrio G. Vinson, dated April 27, 1962, dismissed the petition of Abano on the ground that he has no clear title to the office of Chief of Police of Ormoc City and the remedy of quo warranto does not lie. The decision further states that the office of Acting Chief of Police in this particular case is only temporary in nature and can be terminated at the pleasure of the President, even without cause, as the same is not covered by tenure of office.

Subsequently, on a motion for reconsideration filed by the attorney for petitioner Abaño, the Court of First Instance, thru the Honorable Judge Numeriano G. Estenzo, reconsidered the decision of Judge Vinzon and ruled: (1) that assuming that the post of assistant chief of police is held by the petitioner, the same did not abandon his claim to the position of Acting Chief of Police, the court citing *Baguio vs. Rodriguez*, G. R. No. L-11078, May 27, 1959; (2) that the designation of petitioner as acting chief of police was not temporary in the sense that it can be occupied by anyone except the regular incumbent who was then under suspension; (3) that there was no need for petitioner to exhaust all administrative remedies; and (4) that Commonwealth Act No. 588 does not empower the President to terminate designations already made, but applies only when there is an existing vacancy.

After careful consideration of the arguments advanced by both the petitioner and the respondent, We hereby reverse the judgment of the lower court.

In the first place, the very Commonwealth Act 588 empowers the President to appoint or designate any person as Acting Chief of Police of Ormoc City because the law, Section 1 of said Commonwealth Act No. 588, states that he can appoint a person to take the place of any one who is not able to perform the duties of his office owing to illness, absence, or other cause. This Court feels that "other cause" includes the suspension of the regular incumbent. And, furthermore, considering that the petitioner was merely designated in an acting capacity, which is temporary in character, hence, the President can terminate the said designation.

In a long line of cases, this Court has repeatedly held that a mere designation has always been regarded as merely temporary. As stated by this Court in *Austria vs. Amante*, 79 Phil. 780:

'Lastly, the appointment of petitioner by the President of the Philippines was merely as Acting Mayor. It is elementary rule in the law of public officers and In administrative practice that such appointment is merely

temporary, good until another permanent appointment is issued, either in favor of the incumbent acting mayor or in favor of another. In the last contingency, as in the case where the permanent appointment fell to the lot of respondent, Jose L. Amante the Acting mayor must surrender the office to the lucky appointee."

Reiterating this doctrine in *Castro vs. Solidum*, 97 Phil., 278, June 30, 1955, this Court held:

"There is no dispute that petitioner has been merely designated by the President as Acting Provincial Governor of Romblon on September 11, 1953. Such, being the case, his appointment is merely temporary or good until another one is appointed in his place. This happened when the President appointed respondent Solidum on January 6, 1954 to take his place."

The ruling in the above two cases is also found in *Mendez vs. Ganzon, et al.*, 101 Phil. 48.

The case of *Baguio vs. Rodriguez*, *supra*, cited by the petitioner, does not apply here because the said case involves the removal of a permanent officer who is protected by the civil service law.

Parenthetically, it may be added that section 19 of Republic Act 179, the Charter for the City of Ormoc, provides, among other things, that "except the judge and the auxiliary judge of the municipal court, the city treasurer, the city engineer, the city attorney, the chief of police, the chief of the fire department, and the other heads of such city department as may be created," shall hold office at the pleasure of the President. We feel that this provision cannot stand the test of constitutionality because if the appointments of these aforementioned officials have already been confirmed by the Commission on Appointments, their tenure of office is guaranteed by the Civil Service Law.

In view of the foregoing, the decision of the Court of First Instance of Leyte is hereby reversed and the petition is dismissed. Cost against the appellee.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Dizon, Makalintal, Bengzon, J. P. and Zaldivar, JJ., concur.

Conception and Barrera, JJ., concur in the result.

Judgment reversed.

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