

DR. GERVASIO ERAÑA, PETITIONER, VS. DR. ERMELO VERGEL DE DIOS, RESPONDENT.

G.R. No. L-3393. November 23, 1949

Ponente: OZAETA, J.

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OZAETA, J.:

This is a quo warranto proceeding instituted by the petitioner Dr. Gervasio Eraña to test the validity of his appointment as Chairman of the Board of Dental Examiners and the right of the respondent Dr. Ermelo Vergel de Dios to continue holding that office. Petitioner prays for respondent's ouster.

On December 1, 1948, the Secretary of Health, Dr. Antonio Villarama, issued Department Order No. 68, series of 1948, whereby he appointed the following to compose the Board of Dental Examiners, effective December 1, 1948: Chairman, Dr. Ermelo Vergel de Dios; members, Dr. Alfonso C. Salcedo and Dr. Nieves Sunga Estacio. That appointment was made in accordance with section 10 of Act No. 4007, which provided that the appointees "shall serve for a period of one year and * * * shall receive compensation not to exceed five pesos per capita of the candidates examines, as the proper Department Head may fix."

On June 18, 1949, Republic Act No. 417, entitled "An Act to Regulate the Practice of Dentistry in the Philippines, and for other Purposes," was approved and took effect on said date. Section 2 of said Act provides as follows:

"Within thirty days after the approval of this Act, a Board of Dental Examiners shall be created composed of three members, one of whom is designated as chairman, to be appointed by the Secretary of Health and possessing the qualifications prescribed in section four of this Act."

Section 5 provides as follows:

"The members of the Board shall hold office for a term of three years after their appointment or until their successors shall have been appointed and duly qualified. The members of the first Board appointed under this Act shall hold office for the following terms: One member for one year, one member for two years, and the other member for three years. Vacancies shall be filled for the unexpired term only. Each member of the Board shall qualify by taking the proper oath of office prior to entering upon the performance of his duties." (Italics ours.)

Section 7 provides that the members of the Board shall each receive as compensation a fee not exceeding ten pesos per capita of the candidates examined.

On July 18, 1949, that is to say, on the thirtieth day after the approval of Republic Act No. 417, pursuant to section 2 of said Act, Dr. Regino G. Padua, as Acting Secretary of Health, issued Department Order No. 37, series of 1949, whereby he appointed the following "to compose the Board of Dental Examiners for the period beginning July 18, 1949, to the dates appearing opposite their respective names:

"Chairman: Dr. Gervasio Eraña, July 18, 1950

Members: Dr. Alfonso Salcedo, July 18, 1951; Dr. Pascual Ignacio, July 18, 1952."

Drs. Alfonso Salcedo and Pascual Ignacio took the oath of office and entered upon the performance of their duties as members of the Board of Dental Examiners immediately after their appointment. Dr. Gervasio Eraña, who was abroad at the time of his appointment, did not take the oath of office as Chairman of the Board until September 30, 1949.

In the meantime, that is to say, on September 28, 1949 Dr. Antonio Villarama, the Secretary of Health, issued Department Order No. 44, series of 1949, which reads as follows:

"September 28, 1949

"DEPARTMENT ORDER NO. 44, s. 1949

"Inasmuch as the tenure of office of the members of the Board of Dental Examiners appointed under Department Order No. 68, series of 1948, has not expired yet, Department Order No. 37, current series, is hereby set aside, thus allowing the members appointed under the former Department Order (No. 68, series of 1948) to continue performing their duties as such.

"By virtue hereof, Drs. Vergel de Dios, Salcedo and Estacio are hereby instructed to continue discharging their duties as members of said Board as heretofore.

"ANTONIO VILLARAMA

"Secretary of Health

"Copy furnished:

"Dr. Ermelo Vergel de Dios

"Dr. Alfonso C. Salcedo

"Dr. Nieves Suñga Estacio"

It is by virtue of the department order last above quoted that the respondent Dr. Ermelo Vergel de Dios, as appointee under the previous law, Act No. 4007, has remained in office as Chairman of the Board of Dental Examiners, to the exclusion of the petitioner, notwithstanding the provisions of section 2 of Republic Act No. 417 and Department Order No. 37 issued pursuant thereto by the Acting Secretary of Health, whereby he appointed Dr. Gervasio Eraña Chairman of the new Board of Dental Examiners.

The case hinges entirely on whether the abovequoted Department Order No. 44 is valid or invalid. If it is valid, the respondent has the right to continue in office until the expiration of his tenure on December 1, 1949; if it is invalid, Department Order No. 37 subsists and the petitioner is the one entitled to said office.

The Solicitor General, who filed an answer and argued the case for the respondent at the request of the Secretary of Health, according to him, contends: "(1) That the Board of Dental Examiners created by the Revised Administrative Code had not been abolished by Republic Act No. 417; (2) that by virtue of his appointment as Chairman of the Board of Dental Examiners on December 1, 1948, the respondent was and is the de jure Chairman of the Board of Dental Examiners since that date up to the present; (3) that there being no vacancy in the office of Chairman of the Board of Dental Examiners, no valid appointment could be extended to the petitioner at any time mentioned in the complaint; (4) that, at any rate, before the petitioner took his oath of office on September 30, 1949, Department Order No. 37, series of 1949, had already been revoked and the petitioner's invalid appointment withdrawn on September 28, 1949, by the Incumbent Secretary of Health through Department Order No. 44, series of 1949, and that therefore the petitioner's attempt to take the oath of office on September 30, 1949, was ineffectual to vest in him the legal title to the office of Chairman of the Board of Dental Examiners; (5) that the Undersecretary of Health had no authority or power to issue and promulgate rules and orders or perform acts of a permanent nature, such as the extension of permanent appointments to fill vacancies, if

any, in the Board of Dental Examiners, there being at that time a permanent and incumbent Secretary of Health who was merely absent from the Philippines on official business; and (6) that at all events, all appointments made by the Under secretary of Health during the absence on official business of the legal and incumbent Secretary of Health could only be of a temporary nature subject to confirmation or revocation by the Secretary of Health."

First.—Formerly, the Dental Law was Chapter 32, sections 784-808, of the Revised Administrative Code, as amended by section 10 of Act No. 4007. Section 784 said: "This chapter shall be known as the Dental Law." Subsequently, Republic Act No. 417 was passed. Section 1 of said Act also says: "This Act shall be known as the Dental Law." It is evident that the latter is intended to supersede the former, at least insofar as they are in conflict, for there cannot be two conflicting laws on the same subject. As a matter of fact, section 30 of Republic Act No. 417 expressly repeals "all laws, parts of laws, orders, ordinances, or regulations in conflict with the provisions of this Act, as pertain to the practice of dentistry."

The validity of Republic Act No. 417 is not challenged. It is contended, however, that the previous law, "particularly sections 785 to 787 of the Revised Administrative Code, is not inconsistent with Republic Act No. 417 and is therefore capable of being enforced simultaneously with the latter. We think that contention is untenable. Sections 785 and 787 of the Revised Administrative Code, as modified by section 10 of Act No. 4007, provided for qualifications of members of the Board of Dental Examiners and tenure of office, respectively, which are different from those now provided of Republic Act No. 417. Section 785 only required that the members of the Board be (1) reputable dentists practicing in the Philippines at the time of their appointment and (2) graduates of some reputable dental college or institution constituted and recognized as such by the Government, whereas section 4 of Republic Act No. 417 requires that every member shall (1) be a citizen of the Philippines and actually a resident thereof; (2) be a holder of a degree of either Doctor of Dental Medicine or Doctor of Dental Surgery conferred by a reputable and legally constituted university, college, school, or institute; (3) be at least thirty years of age; (4) be a duly registered dentist in the Philippines; and (5) have had at least five years' practice of the profession immediately prior to his appointment. Section 787, as modified by section 10 of Act No. 4007, provided that each member of the Board shall hold office for a term of one year; whereas section 5 of Republic Act No. 417 provides that the members of the Board shall hold office for a term of three years, except that the first Board appointed under this Act shall hold office for the following terms: One member for one year, one member for two years, and the other member of three years." Thus the two laws contain inconsistent provisions as to qualifications and tenure of office. Moreover, the new law provides a higher compensation than that provided in the old law. Transparent, therefore, is the intention of the lawmaker to replace the pre-existing Board with the new Board created by Republic Act No. 417.

There can not be two Boards of Dental Examiners, one under the old law and another under the new law. Section 2 of Republic Act No. 417 expressly provides that within thirty days after the approval of said Act (i.e., on or before July 18, 1949) a Board of Dental Examiners shall be created composed of three members to be appointed by the Secretary of Health and possessing the qualifications prescribed in section 4 of said Act. The validity of said section is not impugned. Yet said section would be rendered completely nugatory if it be sustained that the Board appointed under the previous law could not be replaced until December 1, 1949, when the tenure of office of its members would expire.

Although of no decisive influence on the result of the case, we note that the abolition of the pre-existing Board of Dental Examiners by Republic Act No. 417 caused no prejudice whatsoever upon the members thereof. Their one-year term of office ending on December 1, 1949, will not embrace the next examination of candidates for the practice of dentistry to be held on December 13, 1949. They had already held two examinations during their one-year term—one in December, 1948, and another in June, 1949.[1] Since their compensation is fixed at five

pesos per capita of the candidates examined, It is apparent that they had already received all the compensation to which they are entitled during their term of office when the new Board was created.

We find, therefore, that the first three contentions urged by the Solicitor General on behalf of the respondent are untenable.

Second.—The fourth and fifth contentions to the effect that the Undersecretary of Health had no authority to promulgate Department Order No. 37, whereby the petitioner was appointed Chairman of the Board of Dental Examiners pursuant to section 2 of Republic Act No. 417, are likewise untenable. In the first place, Doctor Padua did not promulgate said department order in his capacity as Undersecretary of Health; he did so in the exercise of his powers and duties as Acting Secretary of Health by virtue of his designation as such by the President of the Philippines on June 4, 1949, "to continue only during the absence of the regular incumbent of the position," so reads the letter of designation Exhibit A. In the second place, section 2 of Republic Act No. 417 required the Secretary of Health within thirty days from June 18, 1949, to create a Board of Dental Examiners by appointing three members, one of whom was to be designated chairman, possessing the qualifications prescribed in section 4 of said Act. As the Secretary of Health was abroad during that period of thirty days, the duty fell on the Acting Secretary of Health to comply with such requirement.

Third.—Lastly, it is contended for the respondent that "all appointments made by the Undersecretary of Health during the absence on official business of the legal and Incumbent Secretary of Health could only be of a temporary nature subject to confirmation or revocation by the Secretary of Health." Again this contention is based on the wrong premise that the appointment of the petitioner was made by Doctor Padua as Undersecretary and not as Acting Secretary of Health. He was not then a subordinate of the Department Head; he was the Acting Department Head. His official acts had the same efficacy or legal effect as the acts of the regular incumbent.

Fourth.—A Department Secretary may revoke an appointment or order issued by his predecessor or even by himself, provided that by so doing he does not contravene any law or statute; for ours is—and must ever be—a government of laws and not of men, under which not even the head of the nation is above the law. It may seem platitudinous, but we deem it necessary and opportune to reaffirm and emphasize this basic principle. In the instant case, we find that Department Order No. 44 revoking Department Order No. 37, if enforced, would contravene Republic Act No. 417 because, by revoking the appointment of the new Board of Dental Examiners and reinstating the members of the old Board which to all intents and purposes had been abolished by sections 2, 4, and 5 of said Act, the latter would be rendered nugatory and ineffective.

We find, therefore, and so hold that Department Order No. 44, being contrary to law, is null and void ab initio. Hence Department Order No. 37 subsists, and the petitioner was thereby validly appointed Chairman of the Board of Dental Examiners.

The petition is granted, without any finding as to costs.

Moran, C.J., Paras, Padilla, Tuason, Montemayor, Reyes, and Torres, JJ., concur.

[1] Under both the old law and the new law, semiannual examinations are given on the second Tuesday of June and December of each year.

CONCURRING

BENGZON, J.:

I agree that the Acting Secretary of Health had legal authority to make a permanent appointment, and that the appointment made by him in favor of petitioner Dr. Eraña was valid under Act No. 417.

As to whether the Secretary of Health had the power subsequently to revoke that appointment, the precedents say:

"In the case of an appointment made by a single executive, it is undisputed that the appointment once made and completed is irrevocable, whether that executive is the President, a governor, a mayor, or other officer." (42 American Jurisprudence, Public Officers, Sec. 105, p. 960.)

"At first sight, it would seem entirely reasonable and in accord with public policy to allow the appointive power the privilege of reconsideration. From the point of view of the one appointed to the office, however, to permit such reconsideration, after the power of appointment has been completely and finally exercised in the manner prescribed by law and the title to the office has become fixed, is to take from him a vested right. Also, from the point of view of stability and certainty in the administration of public affairs, it is desirable that there should be some point of time at which an appointment to office becomes finally and irrevocably fixed. As said in the famous case of *Marbury vs. Madison* (1303) 1 Granch (U. S.) 137, 2 L. ed. 60: 'Some point of time must be taken when the power of the executive over an officer, not removable at his will, must cease. That point of time must be when the constitutional power of appointment has been exercised.'

"Although there are circumstances under which an appointment to office may be reconsidered and revoked, it may be stated as a general rule that an appointment once made is irrevocable and not subject to reconsideration. This view represents the great weight of authority." (Note found at page 135 of 89 American Law Reports, supported by innumerable decisions) (Italics ours.)

On several occasions we have followed United States precedents in relation to administrative law and the law of public officers; and there is no reason to depart now from such justified practice.

Of course the circumstances justifying the revocation must be shown. Otherwise the appointment stands. In this litigation the revocation was expressly stated to be for the reason that "tenure of office" of the previous Board of Dental Examiners had "not expired yet". But this is not true, as explained in the majority opinion. Wherefore the attempted revocation was without cause and had no effect.

Anyway, granting the power unrestrictedly to revoke, I submit that, in law and equity, such revocation should be communicated to the appointee before the moment he qualifies. Any revocation thereafter is tantamount to removal and must be judged according to the rules applicable to removal.

Now, it appearing that the petitioner was notified of the revocation only on October 7, 1949, i. e., after he had taken the oath of office, the question is, may the Secretary of Health legally remove the chairman of the Board of Dental Examiners? He may, under section 8 of Act No. 417 after proper investigation, on the grounds enumerated therein. Yet the Secretary of Health admittedly did not exercise his power of removal in this instance. He cited none of the grounds of removal specified by section 8. Furthermore the prerequisite administrative investigation has not been conducted.

The result is that as petitioner has been properly appointed, has qualified and has not been validly removed from office, he is entitled to the relief he seeks.

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