

DEMOCRITO M. CASTRO, PETITIONER, VS. MANUEL SOLIDUM, RESPONDENT.

G.R. No. L-7750. June 30, 1955

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is a petition for quo warranto wherein petitioner seeks to be reinstated as Governor of Romblon which, it is claimed, is illegally occupied by respondent.

In the general elections held in November, 1951 Jovencio Q. Mayor was the candidate of the Liberal Party for the office of governor of the province of Romblon, Democrito M. Castro was the candidate of the same party for the office of member of the provincial board and Manuel Solidum, a member of the Nationalista Party, was another candidate for the office of member of the provincial board. The three were elected and took their oath of office.

On September 11, 1953, Governor Mayor resigned from his office as governor to be a candidate for the office of congressman for the lone district of Romblon and, on the same date, Democrito M. Castro was designated by the President as Acting Provincial Governor. Castro took his oath of office on September 14, 1953.

On January 6, 1954, as a result of the presidential elections in 1953, Manuel Solidum was designated by the President as Acting Provincial Governor of Romblon, vice-Democrito M. Castro, and when Solidum took his oath of office, Castro did not object but surrendered the office to Solidum, limiting his efforts to working for his reappointment as provincial governor. And when his efforts failed, he instituted the present action, claiming that respondent has usurped and is now illegally occupying the position.

In claiming that respondent is illegally holding the position of governor, petitioner invokes section 21 (b) of the Revised Election Code, which provides:

"(b) Whenever in any elective local office a vacancy occurs as a result of the death, resignation, removal or cessation of the incumbent, the President shall appoint thereto a suitable person belonging to the political party of the officer whom he is to replace, upon the recommendation of said party, save in the case of a mayor, which shall be filled by the vice-mayor."

Respondent, on the other hand, claims that petitioner has no right to institute the instant case because, having been merely designated by the President as Acting Provincial Governor of Romblon, he could only hold that office at the pleasure of the President, or until another is chosen either by appointment or by designation, a power which the President has exercised when he designated the herein respondent as acting governor.

There is merit in this claim of respondent. In litigations where plaintiff seeks reinstatement to an office on the ground of usurpation or illegal deprivation, well known is the principle that, to succeed, the plaintiff must prove his right to the office. He must establish that, when dispossessed, he was entitled to the office. Unless his right is shown, the action must fail, even if the appointment of the successor is put in issue. (*Acosta vs. Flor*, 5 Phil., 18; *Nueno, et al. vs. Angeles, et al.*, 42 Off. Gaz., [No. 8], pp. 1868, 1875; *Lumontad vs. Cuenco*, 41 Off. Gaz. 894;

Moran, Rules of Court, 1952 ed., Vol. II, p. 213)

This is the issue in *Austria vs. Amante* decided on January 9, 1948 (79 Phil., 780). On February 6, 1946, Austria was appointed acting Mayor by the President. On August 2, 1946, Amante was appointed Mayor, vice Austria, also by the President, and on September 4, 1946, Amante assumed office. And because Austria was not agreeable to the manner he was eased out, he brought suit for reinstatement. What makes this case parallel to the present is that, like Castro, Austria was appointed merely in an acting capacity. We there held that an acting appointment is merely temporary, or one which is good until another appointment is made to take its place. And if another person is appointed, the temporary appointee should step out and cannot even dispute the validity of his successor's appointment. The following is our comment on the matter:

"Lastly, the appointment of petitioner by the President of the Philippines was merely as Acting Mayor. It is elementary 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 this 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.

"There is no need of a notice to the 'acting' appointee or any form of hearing. Such procedural requirements apply where the officer is removable only for cause. This is not the case. In changing an acting appointee, the appointing power has full discretion, and is not limited to removals 'for cause.'

"It becomes unnecessary at this time to decide whether the appointments made by the President may be upheld in view of his emergency powers, because both parties do not raise the question, even assume its existence. Neither can petitioner assail the respondent's appointment by a Presidential agent, because his appointment (petitioner's) by the Secretary to the President Exhibit 2, being in the same category, would also be invalid, and then he has to fall back on his 'designation' by the acting governor of the province, which as hereinbefore indicated fails to support his claim. (Cf. *Topacio Nueno vs. Angeles*, supra.)

"Net result of the foregoing discussion is that claimant has no solid ground upon which he may be ordered reinstated. Wherefore, his petition is denied." (Italics supplied.)

Of a similar vein is our comment in the case of *Adante vs. Dagpin*, (96 Phil., 789):

"It appears that petitioner's appointment in 1953 caused the ouster of respondent Dagpin, the then incumbent, without just cause; hence, his (petitioner's) own appointment as Mayor was illegal and void. A private person who claims to have been deprived of a public office in a complaint for quo warranto must prove that he is entitled and has the right to the position which he alleges the respondent usurped or unlawfully holds; and when it does not appear that petitioner has a valid right or title to the public position allegedly usurped or unlawfully held by the respondent, he has no cause of action and his petition must be dismissed." (Italics supplied.)

There is no dispute that petitioner has been merely designated by the President as Acting Provincial Governor of Romblon on September 11, 1953 (Annex D). 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. This appointment may not be in accordance with the letter of section 21 (b) of the Revised Election Code if we are to entertain the claim that Solidum belongs to a political party different from the one he is to replace, but, as we have already said, it becomes unnecessary for us to determine this aspect of the case, it appearing that petitioner's right to the office has not been established. Such is the concern of the Solicitor General who, we are sure, will take quick action if it were necessary to promote public interest. In the meantime, suffice it to state that petitioner has no legal ground upon which he may claim his reinstatement.

Wherefore, petition is denied, with costs.

Bengzon, Acting C.J., Padilla, Reyes, A., Jugo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

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