

EMILIO MENDENILLA, PETITIONER AND APPELLANT, VS. JOSE MANUEL ONANDIA, RESPONDENT AND APPELLEE.

G. R. No. L-17803. June 30, 1962

Ponente: BARRERA, J.

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BARRERA, J.:

From the decision of the Court of First Instance of Albay (in Civil Case No. 2224 for quo warranto) declaring respondent Jose Manuel Onandis as the lawful and right-full holder of the office of Chief of Police of Legaspi City, and entitled to the costs of the suit, petitioner Emilio Mendenilla, interposed the present appeal.

The facts of the case, which are undisputed, are stated in the decision of the trial court, to wit:

"Petitioner Emilio Mendenilla was appointed Chief of Police of the then Municipality of Legaspi, Albay, on June 21, 1954 by the Municipal Mayor. He was and has always been a second grade civil service eligible, and a veteran of World War II. The appointment was extended to him, pursuant to the law then existing and applicable, more particularly under the Municipal Law embodied in the Revised Administrative Code, by virtue of which, the appointment of the Chief of Police of a municipality, of which Legaspi was then one at that time, is vested in the Municipal Mayor. It was approved by the Office of the President and by the Civil Service Commission.

"On June 12, 1959, Republic Act No. 2234, otherwise known as the charter of the City of Legaspi, took effect, which law, converted the former Municipality of Legaspi (s) into the City of Legaspi (z). Singling out one of the provisions of the aforesaid statute, Section 22, Article V thereof, provides: 'The President of the Philippines, with the consent of the Commission on Appointments, shall appoint * * * the chief of police * * * and other heads of such city departments as may be created.' Thus, under the charter of the City of Legaspi, the appointment of the Chief of Police is now vested in the President of the Philippines.

"The petitioner, even beyond the effectivity of Republic Act No. 2234 on June 12, 1959, held the position of the Chief of Police. On February 5, 1960, the Acting City Treasurer, in a communication to the petitioner (Exhibit 'F'), informed the latter that the payment of his salary as Chief of Police, was suspended until his duly approved appointment was submitted to his office. What must have been meant by the 'duly approved appointment' was the appointment of the petitioner by the President of the Philippines, pursuant to the charter. On February 6, 1960, the petitioner, ostensibly acting upon the advice of the Acting City Treasurer addressed a letter to the President (Exhibit 'G'), wherein he applied and solicited the position of Chief of Police of the City of Legaspi. On February 25, 1960, the petitioner again addressed a letter to the President (Exhibit '6'), wherein he requested that he be extended the appointment as Acting Chief of Police, to take effect retroactive to June 12, 1959, to enable him to collect his salary. On February 26, 1960, the President, through the Executive Secretary, designated the petitioner as Acting Chief of Police of the City of Legaspi, which designation, was retroactive to June 12, 1959, the date of the effectivity of Republic Act No. 2234. He then took his oath of office as Acting Chief of Police, on March 11, 1960.

"On March 15, 1960, respondent Jose Manuel Ocandia was nominated Chief of Police of the City of Legaspi, by the President, Congress then being in session. On March 18, 1960, the designation of the petitioner as

Acting Chief of Police was terminated by the President and, forthwith, the Executive Secretary sent the petitioner a notice of termination, by means of a telegram and letter (Exhibits '2' and '3', respectively). On the same date, March 18, 1960, the respondent was designated by the President as Acting Chief of Police of the City of Legaspi, vice the petitioner (Exhibit 'I'). He took his oath of office, and assumed the duties of the position on the same date.

"On March 24, 1960, the petitioner filed the present petition for quo warranto, when he was still supposed to be on official leave of absence. Upon representation of the petitioner, it is stated in the stipulation of facts that he received the letter and telegram, requesting him to turn over the office to the respondent, on March 25, 1960. This could not be true, for the reason that he could not have filed his petition for quo warranto on March 24, 1960, one day before his alleged receipt. As a matter of fact, the memorandum for the petitioner corrects this, and admits that the petitioner received such advice on March 24, 1960.

"On March 25, 1960, the petitioner turned over the office of Chief of Police to the respondent. He collected his salary as Acting Chief of Police, from June 12, 1959 to March 30, 1960. On May 11, 1960, the nomination of respondent Jose Manuel Onandia, as Chief of Police of the City of Legaspi, was confirmed by the Commission on Appointments. By virtue of his nomination and confirmation as such, the respondent took his oath of office as regular Chief of Police, on May 25, 1960, and immediately thereafter, assumed the duties of the position."

On the basis of the above factual findings, the trial court, on October 3, 1960, rendered the decision above adverted to.

As correctly stated by the trial court in its decision, the main issue in this case is: who, between the petitioner and the respondent, is legally entitled to the office of the Chief of Police of the City of Legaspi. The resolution of said issue necessarily depends on the determination of the question of what happened to the municipal offices existing at the time of the dissolution of the Municipality of Legaspi and upon the creation of the City of Legaspi. Stated differently, what legal effect had the conversion of Legaspi into a city on the municipal offices then existing?

Well-settled is the rule that "the power to create or establish municipal corporations, to enlarge or diminish their area, to reorganize their governments, or to dissolve or abolish them altogether, is a political function, which rests solely in the legislative branch of the government and, in the absence of constitutional restrictions, the power is practically unlimited." (37 Am. Jur. 626; McQuillin, *Municipal Corporations* [3rd Ed.] 509-512). In this country, the power to create or abolish municipal corporations resides in Congress which, under the Constitution, is given general legislative powers (*Tiaco vs. Forbes*, 228 U. S. 549; *Asuncion vs. Yriarte*, 28 Phil., 67). Municipal corporations are mere creatures of Congress (*Unson vs. Lacson, et al.*, 100 Phil., 695). Municipal corporations are here created under a general law, i.e., pursuant to the Municipal Law embodied in the Revised Administrative Code, in the case of municipalities proper, and, under special charters, in the case of chartered cities. Pursuant to the aforementioned legislative power, Congress enacted Republic Act No. 2234, otherwise known as the charter of the City of Legaspi, which became effective on June 12, 1959.

With the creation of the City of Legaspi on said date, the legal personality of the Municipality of Legaspi was extinguished, and the city, which superseded the municipality, came into being as a new legal entity or municipal corporation. The consequent effect of said dissolution, was the abolition of all municipal offices then existing under the superseded municipality, including that held by petitioner, save those excepted in the charter itself. Petitioner's appointment of June 21, 1954 by the then municipal mayor of the municipality of Legaspi, therefore, ceased to have legal force and effect. The weight of authorities support this view:

"The absolute and unconditioned repeal of a municipal corporation without any saving- clause, as to the right of officers under the former charter, abolishes all offices thereunder. The adoption of a general law or charter abolishes all offices not expected * * *." (62 C. J. S. Sec. 465.)

"Statutory offices may be altered or abolished by the legislature. * * *The same general principle applies to municipal offices. They may be abolished, extended or vacated by the municipal authority by which the corporation itself was created * * *." (Mechem, Public Officers, Sec, 465.)

"In the absence of a provision to the contrary, the superseding of the old charter by the new, has the effect of abolishing the offices under the old charter. The general rule is, that the repeal of a charter destroys all offices under it, and puts an end to the functions of the incumbents." (People vs. Brown, 83 111. 95; People vs. Chambers, 78 Ky. 140; Waterlist vs. Colonio, 27 App. Div. 394, 50 NYS 487; Wasloin vs. Hillsboro, 48 N. D. 1113, 138 N. W. 738; Adler vs. Jonkins, 53 Okla. 117, 124 Pac. 29, cited in McQuillin, Municipal Corporations [3rd Ed.] 569.)

The only offices expressly excepted from said abolitions were those mentioned in Section 96, Article XVII of the Charter, which reads:

"SEC. 96. Change of Government.—The incumbent Mayor, Vice-Mayor and members of the Municipal Board shall continue in office as the Mayor, Vice-Mayor and members of the Municipal Board of the City, respectively, until the expiration of their present terms of office."

Applying the principle of "expressio unius, est exclusio al-terius" in statutory construction, all municipal offices including that held by petitioner, in the then municipality of Legaspi not included in the above-excepted offices were deemed abolished.

Petitioner contends that the office of chief of police of the municipality and that of the city are one and the same. The argument is not legally tenable. If it were so, Congress would not have recreated and provided for the office of the chief of police who shall have charge of the police department, under Section 37 Republic Act No. 2234.

Petitioner cites the case of Brillo vs. Enage (94 Phil., 732; 50 Off. Gaz., 3100) in support of his theory that there was no abolition of the municipal offices upon the dissolution of the municipality of Legaspi. But the cited case is inapplicable. As the trial court correctly observed:

"In that case, the petitioner was a Justice of the Peace of the Municipality of Taeloban, having been appointed by the Governor General (now equivalent to the President of the Philippines) on November 7, 1921. On June 20, 1952, Republic Act No. 760, otherwise known as the charter of the City of Tacloban, took effect. It is conceded that Republic Act No. 760, creating the City of Tacloban, is substantially the same as Republic Act No. 2234, creating the City of Legaspi. The Supreme Court in the aforementioned case said in effect that the creation of the City of Tacloban did not have the consequence of abolishing the office of the Justice of the Peace of the defunct Municipality of Tacloban.

"There is no parallel between the office of the Justice of the Peace, which was the crux of the controversy in the Brillo case, supra, and the position at bar. In the first place, according to the Supreme Court, in the case herein invoked, the Justice of the Peace is not a municipal official, he being paid with national funds and is appointed and acts under the supervision of the national government. Besides, there is no necessity of including in the enumeration of those officials who will continue to exercise their office, for the law provides that the exercise of said office shall be until said judge reaches the age of 70 or is incapacitated and he is not affected by changes in local government.' Whereas, in contrast to the Justice of the Peace, the Chief of Police is a municipal official; that he receives his salary from the municipal coffers; and that he acts under the supervision of the municipal government. In the second place, the Justice of the peace of Tacloban was appointed on June 7, 1921 by the then Governor General (now President of the Philippines), the Chief Executive of the Philippines at that time. Under the charter of the City of Tacloban, and also under that of the City of Legaspi, the Municipal Judge is appointed by the President of the Philippines with the consent of the Commission on Appointments. There was, therefore, no change in the appointing power of the Municipal Judge of the City of Tacloban. In the instant case, the petitioner was appointed Chief of Police of the then

Municipality of Legaspi, Albay, on June 21, 1954, by the Municipal Mayor. Under the charter of the City of Legaspi, the appointment of the Chief of Police is now vested in the President of the Philippines, with the consent of the Commission on Appointments. Here Congress changed the appointing power. The power of Congress to change the appointing power of municipal officials, as in this case from the Municipal Mayor to the President, is absolute for the 'legislature has full power and control over municipal officers and the method of their selection or appointment'. (37 Am. Jur. 624). It may be said with telling effect that the change of the appointing power in the instant case had the consequent result of abolishing the position of the Chief of Police of the dissolved Municipality of Legaspi. In the third place, the Supreme Court in the Brillo case, supra, impliedly announced the doctrine that there is necessity of including in the enumeration of municipal officials who will continue to exercise their office under a new charter, with the exception of the Justice of the Peace, who is a national official. This further supports the considered view that, because the office of the Chief of Police of the extinct municipality was not among those included in Section 96 of Article XVII of the city charter, said office was perfunctorily abolished.

"With further reference to the abolition of said office, Section 100 of Article XVII of Republic Act No. 2234 provides that 'All laws or part of laws inconsistent with this Act are hereby repealed.' Inasmuch as the Municipal Law embodied in the Revised Administrative Code, under which the petitioner was appointed Chief of Police of the erstwhile Municipality of Legaspi, is inconsistent with the charter of the City of Legaspi, the former was deemed repealed or superseded by the latter, in so far as the City of Legaspi was concerned. Such repeal or superseding necessarily carried with it the abolition of the office of the Chief of Police, which the petitioner was holding on June 12, 1959. By such abolition, the right of the petitioner thereto was inevitably terminated."

Petitioner asserts that he cannot be deprived of his office, because of the alleged fixed tenure of office he enjoys as guaranteed by the Constitution and the Civil Service Law. The claim loses sight of the fundamental rule in political law that no person has a vested right to an office, except those holding constitutional offices. As a rule, all offices created by statutes are more or less temporary, transitory, or precarious that they are subject to the power of the legislature to abolish them. (See *Busacay vs. Buenaventura*, 93 Phil. 786.) The Civil Service Law can not stand in the way of the exercise by the Legislature of its power to alter, abolish, or create a municipal corporation or office. What is not countenanced is the abolition of an office in bad faith, to do away with a particular incumbent and replacing him with a political favorite. In the charter of the City of Legaspi, no office or officer was singled out. It was of general application to all appointive, officials, of which petitioner was one.

In *Manalang vs. Quitoriano, et al.*, 94 Phil. 903; 50 Off. Gaz., [6] 2515; we stated:

"To remove an officer is to oust him from office before the expiration of his term. A removal implies that the office exists after that ouster. So that, when an office has been abolished, the officer thereof could not have been removed therefrom. Where the bureau of which the petitioner is the director has been abolished, by implication the office of the director cannot exist without said bureau. By the abolition of the latter and of said office, the right thereto of its incumbent was necessarily extinguished thereby. The abolition of the office of the petitioner is not against the prohibition of the Constitution against removal of a civil service officer or employee except for cause, inasmuch as the petitioner has neither been removed nor suspended from office."

Another case in point is that of *Dominguez, et al. vs. Pascual* (101 Phil., 31) wherein the Provincial Board of Rizal abolished the positions of the petitioners who were all civil service eligibles. In resolving the question as to the legality of the abolition, we pointed out that:

"Removal implies that the position exists while the officer is separated therefrom. When the position is validly abolished, there is no removal of the incumbent." (See also the case of *Facundo vs. Judge Pabalan*, 114 Phil., 307; 61 Off. Gaz., (38) 5904, citing the cases of *Rodriguez vs. Montinola*, 94 Phil., and *Castillo vs. Pajo*, 103 Phil., 515; 54 Off. Gaz., 6738).

Petitioner avers that his employment status as regular Chief of Police may not be abridged except for the causes and in the manner specified in Republic Act No. 557. This is predicated on the theory that Republic Act No. 2234 did not abolish the position of Chief of Police of the superseded municipality, because such abolition, if true, would mean removal of petitioner from his office, which removal would be contrary to Republic Act No. 557. We find no merit in the contention. As the trial court pointed out:

"There can be no removal of an incumbent from his position if his position is abolished by a statute, for removal implies that the office exists after the ouster of the incumbent. Here, there was no longer such office. Necessarily, the petitioner was not removed when his office was abolished. This point was already squarely passed upon in the case of *Manalang vs. Quitoriano*, supra.

"Moreover, in the case of *Dominguez, et al. vs. Pascual, et al.*, 101 Phil., 31 the Provincial Board of Rizal abolished the positions of the petitioners, who were civil service eligibles. Subsequently, the positions were restored. The petitioners instituted an action for mandamus to compel the members of the Provincial Board to appropriate the amount necessary to cover their salaries for the fiscal year 1952-1953. The issue in this case was whether the abolition of said positions was valid. In resolving this question, the Supreme Court enunciated the following doctrine:

'Removal implies that the position exists while the officer is separated therefrom. When a position is validly abolished, there is no removal of the incumbent. Considering that the positions abolished were the very ones that the Provincial Board created, the removal of such posts from the annual provincial budget is within the legal competence of the Board. The power of creation implies the consequent power of suppression.'

"And so, when the office of the Chief of Police of the dissolved municipality was abolished by Republic Act No. 2234, the petitioner was not removed within legal contemplation from his position. Hence, Republic Act No. 557, which provides for the removal or suspension of members of the Provincial Guards, City Police and Municipal Police, was not transgressed by Republic Act No. 2234. Even assuming, arguendo, that it was so violated, yet it was within the legal competence of Congress to enact Republic Act No. 2234, creating the City of Legaspi which had the consequent effect of abolishing the office of the Chief of Police, among others."

Petitioner assails the validity of respondent's appointment as Chief of Police of the City of Legaspi and, impliedly, questions his designation as Acting Chief of Police. As already stated, the appointment of the Chief of Police of the City of Legaspi is, under its charter, lodged with the President. Petitioner, it will be noted, solicited the position of regular Chief of Police of the City of Legaspi (Exh. G). When he could not get it, he addressed another letter (Exh. 6) to the President, requesting that he be extended the appointment of Acting Chief of Police of the City, to take effect retroactively to June 12, 1959 (date of effectivity of Rep. Act No. 2234), to enable him to collect his salary. Acting on his request, the President, on February 26, 1960, designated him as Acting Chief of Police, retroactive to June 12, 1959. Petitioner then took his oath of office as Acting Chief of Police on March 11, 1960. He acquired benefits under his said temporary appointment because he was able to collect his salary from: June 12, 1959 to March 30, 1960. By his very acts and conduct, petitioner is now estopped to question the President's authority to appoint respondent as Chief of Police of the City of Legaspi.

"When a person has acted as a public officer, he is estopped to deny that he occupied such office. Thus, one who has accepted the appointment of an office having at least a potential existence, and he has received the emoluments of it, has been held to be estopped from endeavoring¹ to show his own advantage that the office has never been lawfully created because it was not done in the proper mode, as by ordinance. This is particularly true where the incumbent has received public money by virtue of being the incumbent of a public office. (22 Am. Jur, 907.)

"Where the information is filed on the relation of a private individual to oust the incumbent and install the relator, the Court will take into consideration the conduct of the latter, and when he has himself, concurred in

the respondent's holding or where he has acquiesced or where he has delayed for an unreasonable length of time in prosecuting his claims, the relief for quo warranto will not be granted." (Mechem, Public Officers, Sec. 485.)

Petitioner may not complain that his designation as Acting Chief of Police of the City of Legaspi was terminated by the President, because said designation was terminable at will. A designation in acting capacity is at best temporary. In the case of *Austria vs. Amante* (79 Phil., 780), we held:

"An acting officer is one who acts in a given office until his successor has been duly appointed or elected or qualified. It is more or less temporary in nature."

A corollary rule is that a designation to act in a position in an acting capacity may be terminated at the pleasure of the appointing authority (*Mendez vs. Ganzon*, 101 Phil. 48). In the *Mendez* case, appellant was, pursuant to the charter of the City of Iloilo, appointed by Mayor Ganzon as acting assistant chief of police. Two years later, he was removed from office summarily. The trial court dismissed appellant's petition to enjoin the City Mayor from removing him. He appealed to us. The question posed in the appeal was whether appellant's removal from said position was valid. Resolving the issue in the affirmative, we stated:

"* * * this Court has already had occasion to consider and rule on the effect of appointments as 'acting' officers, and held that their essence lies in their temporary character, and terminability at pleasure by the appointive power. Thus, in *Austria vs. Amante*, 79 Phil., 780, this Court stated:

'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 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, we held in *Castro vs. Solidum*, 97 Phil., 273, that:

"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.'

"* * * in the case of petitioner *Mendez*, the acting (i.e., temporary) character of his appointment is beyond controversy; it was expressly so made, and he accepted it on that understanding. He cannot, therefore, evade the legal consequences thereof." [1]

In line with these rulings, it may be stated, therefore, that when the temporary designation of petitioner as Acting Chief of Police of the City of Legaspi was terminated by the President, and respondent was designated in his stead as Acting Chief of Police thereof on March 18, 1960, said termination and designation was within the lawful authority of the appointing power. It appears that petitioner's designation in an acting capacity was at his instance, and he accepted such designation on that understanding. He cannot now, therefore, complain and evade the legal consequences of his own act. And, petitioner cannot also seek refuge in the protective mantle of Republic Act 557, because of his designation in an acting capacity. For said law applies only to permanent appointments of members of the police force. Hence, a temporary appointee may be validly dismissed without regard to Republic Act No. 557.

Neither do we perceive any legal flaw in respondent's nomination as Chief of Police of the City of Legaspi on March 15, 1960, [2] which was later confirmed by the Commission on Appointments on May 11, 1960. (He took his oath of office as permanent Chief of Police on May 25, 1960 and assumed the duties of the position

immediately thereafter.) Said nomination and confirmation were pursuant to Section 22, Article V of Republic Act No. 2234, which, as already pointed out, was well within the legal competence of Congress to enact. We have stated earlier that the office of Chief of Police of the City of Legaspi is, in legal contemplation, a new and entirely different office from that of Chief of Police of the abolished Municipality of Legaspi. This is the reason why petitioner's temporary appointment as Acting Chief of Police of the City on February 26, 1960 had to be extended retroactive to the date of effectivity of the city charter on June 12, 1959. In fine, petitioner had to be appointed anew to the position of Chief of Police of the city, upon abolition of the office of Chief of Police of the municipality. And, when the office of Chief of Police of said city became vacant on March 18, 1960 by virtue of the termination of the temporary appointment of petitioner, the President designated respondent to occupy the position. Petitioner's contention, therefore, that the office of the Chief of Police of the city was not vacant, lacks merit.

Petitioner lastly argues that respondent's appointment in his stead was in violation of Republic Act No. 1363r which gives preference to veterans in appointments to the public service. In view of our conclusion that petitioner is not lawfully entitled to the position of Chief of Police, whatever flaw there might exist in the appointment of his successor can not be raised by him. Moreover, it will be observed that the President is, under Section 22 of Republic Act No. 2234, specifically empowered to appoint the chief of police and other heads of the city government of the City of Legaspi, and unlike the City Mayor, the law does not require him to consider civil service and veteran qualifications of his appointees.

Wherefore, finding no reversible error in the decision appealed from, the same is hereby affirmed in all respects, with costs against the petitioner-appellant. So ordered.

Bengzon, C. J., Bautista Angelo, Labrador, Paredes, Dizon, Regala and Makalintal, JJ., concur.

[1] See also *Madrid vs. Auditor General* 108 Phil., 578.

[2] Pending confirmation of the nomination, the President designated respondent Onandiasas as acting chief of police in place of petitioner whose appointment as acting chief of police was terminated. therefore, that the office of Chief of Police of the city was not vacant, lacks merit.

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