

JOSE S. JIMENEZ, PETITIONER-APPELLANT, VS. ANTERO U. ROA, C. B. AMORES AND HON. ABELARDO SUBIDO, RESPONDENTS-APPELLEES.

G.R. No. L-30496. May 31, 1971

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Appeal from the order of the Court of First Instance of Misamis Occidental dismissing appellant's petition for declaratory relief and certified to this Court by the Court of Appeals as involving purely questions of law.

The case background is thus given in the appellate court's certification resolution: "Petitioner alleged that he is a civil service eligible appointed by respondent mayor (Antero U. Roa) of Clarin, Misamis Occidental, as chief of police of said municipality effective January 1, 1964, on which date he assumed office and performed his duties; that his appointment was forwarded for attestation to the respondent provincial treasurer, (C. B. Amores) who, on March 10, 1964, returned it to the mayor, without the attestation, because petitioner had a pending criminal case for violation of Section 2753 of the Revised Administrative Code and because there was no vacant position to which petitioner could be appointed as the former chief of police had not resigned; that when the mayor returned petitioner's appointment to the Provincial treasurer, the latter endorsed it to the respondent commissioner of civil service (Abelardo Subido); that on July 17, 1964, the mayor terminated the services of petitioner and three days later, recalled his appointment from the civil service commissioner; and that on August 20, 1964, petitioner relinquished his office.

"Respondent mayor filed a motion to dismiss contending, among other things, that under the provisions of the Rules of Court on declaratory relief, the averments of the petition do not make out a case for declaratory judgment. In his answer, respondent provincial treasurer also prayed for dismissal inasmuch as the appointment, which was, in the first place, not alleged to have been confirmed by the municipal council, had already been recalled or withdrawn. On his part, respondent commissioner of civil service averred that petitioner does not possess the appropriate civil service eligibility to qualify him for the position of chief of police; that his appointment has never become effective for lack of attestation by the provincial treasurer as required under Section 20 of Rep. Act No. 2260 and not having become effective the municipal mayor could withdraw it, as the latter in fact did.

"The trial court issued an order dismissing the petition, '(S)ince the appointment has already been recalled by the appointing power and the services of the petitioner had been terminated, there is no more appointment the validity of which is to be passed upon. The petition does not state a cause of action. This Court is not being asked to determine the validity of the recall of his appointment.'"

Petitioner-appellant contends on appeal that the lower court erred in holding that his petition failed to state a cause of action, particularly since petitioner's unattested appointment had been recalled and petitioner had not asked it to determine the validity of such recall of appointment.

The Court finds no error in the lower court's dismissal order.

Prescinding from the question of whether petitioner's action, based on an incomplete appointment, could properly come within the terms of Rule 64, section 1 for declaratory relief actions,[1] his petition failed to make out a proper case for declaratory relief. This is Patent from the prayer of his petition, whereby he petitioned the lower court "to exercise its power to determine the validity of petitioner's appointment should it be attested pending final disposition of the criminal case against herein petitioner for alleged violation of section 2753 of the Revised Administrative Code."

Since the petition itself was premised on the happening of a contingent event - the attestation of his appointment, which as alleged in the very petition, was never given and instead, his appointment was recalled - there was no issue ripe for judicial determination and petitioner had no legal interest entitling him to declaratory relief. His alleged right of appointment had not come into being for the simple reason that the contingency of attestation thereof had not come about.

The courts are not called upon to resolve problems as a "pure academic exercise", as stated in *Aragones vs. Subido*[2]; "(T)he general rule has always been that courts cannot furnish answers to purposeless questions that do not exist. Even in cases of declaratory relief, there must be an actual and justiciable, not merely theoretical, controversy." The requisites of justiciability of an action for declaratory relief must be present, satisfying the court that "an actual controversy, or the ripening of one exists between parties all of whom are sui juris and before the court, and that the declaration sought will be a practical help in ending the controversy." [3]

Appellant's ancillary contentions on appeal that the lower court should have determined the validity of the recall of his appointment by respondent mayor is manifestly untenable. His petition plainly sought a determination, of the validity of his appointment "should it be attested" and in no way, of the validity of its subsequent recall. The lower court therefore correctly ruled that with such recall "there is no more appointment the validity of which is to be passed upon" and properly exercised its discretionary power as provided in section 5 of the Rule.[4]

Petitioner-appellant complains in his brief that he "had performed an essential public service for sometime without having received compensation because said compensation would depend on the attestation of the appointment." This is a completely different question for which petitioner would have to avail of an ordinary action for recovery of compensation for services rendered, should he establish a legal and factual right thereto, considering the factual objections to his appointment tendered by respondents viz., that the position to which he was appointed was not vacant and that he lacked the appropriate civil service eligibility.

ACCORDINGLY, the order of dismissal appealed from is hereby affirmed. Without costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Barredo, and Villamor, JJ., concur.
Ruiz Castro, Fernando, and Makasiar, JJ., took no part.

[1] SECTION 1. Who may file petition. -- Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, or ordinance, may, before breach or violation thereof, bring an action to determine any question of construction or validity arising under the instrument or statute and for a declaration of his rights or duties thereunder. x x"

[2] 25 SCRA 95 (Sept. 23, 1968) and cases cited.

[3] Vide 3 Moran's Rules of Court, 1970 Ed., pp. 145-146.

[4] "Sec 5. Discretionary. -- Except in actions falling under paragraph 2 of section 1 of this rule, the court may

refuse to exercise the power to declare rights and to construe instruments in any case where a decision would not terminate the uncertainty or controversy which gave rise to the action, or in any case where the declaration, or construction is not necessary and proper at the time under all the circumstances."

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