

JULIAN FLORENTINO, PETITIONER, VS. HONORABLE JUAN P. ENRIQUEZ, ETC., ET AL., RESPONDENTS.*G.R. No. L-8690. May 30, 1956*

Ponente: PARAS, C.J.

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In Special Proceeding No. 1448-P of the Court of First Instance of Rizal, Julian Florentino, petitioner, vs. Municipal Board, City Treasurer, and City Auditor, Pasay City, respondents, (prohibition and mandamus with preliminary injunction) the court rendered a decision on October 22, 1954, declaring the petitioner as the lawful secretary of the Municipal Board of Pasay City, entitled to its pay and emoluments until December 31, 1955, unless sooner removed for cause as provided by law; ordering the respondents to pay the costs; and declaring that the latter are not liable for the damages and attorney's fees prayed for by the petitioner. A copy of this decision was served personally on attorney for the petitioner on October 22, 1954, by a clerk employed in the Court of First Instance of Rizal. On November 18, 1954, the petitioner filed a motion for the reconsideration of the decision insofar as it exonerated the respondents from the payment of damages and attorney's fees, which was denied on November 26, 1954. The petitioner filed a notice of appeal and a cash bond on December 7, 1954. The court dismissed the appeal on the ground that, as notice of the decision was served on the petitioner on October 22, 1954, the petitioner's motion for reconsideration filed on November 18, 1954, was beyond the 15-day period fixed in section 17 of Rule 41 of the Rules of Court, thereby rendering the decision promulgated on October 22 final. Whereupon the present petition for mandamus was filed in this Court by the petitioner to compel the respondent Judge of the Court of First Instance of Rizal, Second Branch, to allow petitioner's appeal and to transmit the original record of Special Proceeding No. 1448-P to this Court.

It is argued for the petitioner that the notice of the decision served upon his attorney on October 22, 1954, was not official, because the clerk who effected the service was made to understand that there should still be official service by registered mail—which was never made. This excuse is obviously flimsy. Under section 3 of Rule 27 of the Rules of Court, service of judgments may be made either personally or by mail, the first mode being decidedly more expeditious. His alleged verbal understanding or instruction that he would wait for official notice by registered mail, cannot nullify the legal effect of the personal service already accepted. Petitioner's intimation that it was rather irregular or unusual for a clerk in the Court of First Instance of Rizal to have made the personal service in question, refers to a matter that concerned only the court and said employee. Although not shown in the record, we surmise that the clerk hastened to serve a copy on petitioner's counsel as a favor either previously solicited by the latter or volunteered by said clerk, considering that the petitioner in the main won the case. At any rate, petitioner's counsel was free not to accept the personal service.

Wherefore, the petition is dismissed with costs against the petitioner.

Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Endencia, JJ., concur.

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