

**AMBROCIO LACUNA, PETITIONER-APPELLANT, VS. BENJAMIN H. ABES, RESPONDENT-APPELLEE.***G.R. No. L-28613. August 27, 1968*

Ponente: REYES, J. B. L., J.

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Appeal from a dismissal, after trial, of a petition for quo warranto (Civil Case No. 306 of the Court of First Instance of Nueva Ecija, Branch V, Gapan) challenging the eligibility of the herein respondent-appellee, Benjamin Abes, to the position of mayor of Peñaranda, Nueva Ecija, to which he was duly proclaimed elected in the elections of 14 November 1967.

Mayor-elect Abes (appellee herein) had been convicted of the crime of counterfeiting treasury warrants and sentenced to an indeterminate penalty of six (6) years and one (1) day to eight (8) years, eight (8) months, and (1) day of prison mayor, and to pay a fine of five thousand pesos (P5,000.00). After he had partially served his sentence, he was released from confinement on 7 April 1959 by virtue of a conditional pardon granted by the President of the Philippines, remitting only the unexpired portion of the prison term and fine (Annexes "F" & "G" to the Petition for Quo Warranto). Without the pardon, his maximum sentence would have been served on 13 October 1961 (Annex "F" to Petition for Quo Warranto, CFI Record Wrapper, page 12).

With the approach of the 1967 elections, Abes applied for registration as a voter under the new system of registration, but the Election Registration Board of the municipality of Peñaranda denied his application. The denial notwithstanding, he filed his certificate of candidacy for the office of mayor, and in the ensuing elections in November, he came out the winner over three other aspirants. On 16 November 1967, the municipal board of canvassers proclaimed appellee Abes fully elected mayor. Petitioner-appellant Lacuna placed second.

On 23 November 1967, Lacuna filed his petition for quo warranto with application for preliminary injunction in the Court of First Instance of Nueva Ecija.

On 7 December 1967, on the same day when hearing was held on the application for preliminary injunction, the President of the Philippines granted to the respondent, Benjamin Abes, an absolute and unconditional pardon and stored to him "full civil and political rights".

After the scheduled hearing on 21 December 1967 and the submission of memoranda, the court, with commendable dispatch, rendered, on 28 December 1967, its decision, dismissing the petition for quo warranto with application for preliminary injunction and declaring the eligibility of mayor-elect Abes to the position of mayor, in view of the Presidential full pardon granted him before he qualified for the office.

Petitioner Lacuna appealed to this Court.

Appellant's theory is that, by reason of his conviction and non-registration as a voter, Abes was not a qualified voter "at the time of the election", and was therefore, ineligible to the position of mayor, because Section 2174 of the Revised Administrative Code requires the qualifications of a voter for eligibility to an elective municipal

office; that the restoration to him of his civil and political rights by the presidential plenary pardon on 7 December 1967 did not retroact to move the disqualification existing anterior to the grant of the pardon.

Appellee's defense is two-pronged: first, that at the time of the elections he was a qualified voter, notwithstanding his non-registration, because registration as elector is not a qualification and because the term or duration of his disqualification arising from his conviction has expired; and, second, that the absolute pardon blotted out all the consequences of his conviction, including his disqualification.

The lower court rejected the theory of the petitioner, passed sub silentio the respondent's first defense, but sustained him on the second.

On the first defense of respondent-appellee Abes, it must be remembered that appellee's conviction of a crime penalized with prison mayor carried the accessory penalties of temporary absolute disqualification and perpetual special disqualification from the right of suffrage (Article 42, Revised Penal Code); and Section 99 of the Revised Election Code disqualifies a person from voting if had been sentenced by final judgment to suffer one year or more or imprisonment.

The accessory penalty of temporary absolute disqualification disqualifies the convict for public office and for the right to vote, such disqualification to last only during the term of the sentence (Article 27, paragraph 3, & Article 30, Revised Penal Code) that, in the case of Abes, would have expired on 13 October 1961.

But this does not hold true with respect to the other accessory penalty of perpetual special disqualification for the exercise of the right of suffrage. This accessory penalty deprives the convict of the right to vote or to be elected to or hold public office perpetually, as distinguished from temporary special disqualification, which lasts during the term of the sentence. Article 32, Revised Penal Code, provides:

"Art. 32. Effects of the penalties of perpetual temporary special disqualification for the exercise of the right of suffrage. - The perpetual or temporary special disqualification for the exercise of the right of suffrage shall deprive the offender perpetually or during the term of the sentence, according to the nature of said penalty, of the right to vote in any popular election for any public office or to be elected to such office. Moreover, the offender shall not be permitted to hold any public office during the period of disqualification."

The word "perpetually" and the phrase "during the term of the sentence" should be applied distributively to their respective antecedents; thus the word "perpetually" refers to the perpetual kind of special disqualification, while the phrase "during the term of the sentence" refers to the temporary special disqualification. The duration between the perpetual and the temporary (both special) are necessarily different because the provision, instead of merging their durations into one period states that such duration is "according to the nature of said penalty" --- which means according to whether the penalty is the perpetual or the temporary special disqualification.

Since, under the criminal code, the second accessory penalty of perpetual special disqualification for the exercise of the right of suffrage, deemed imposed on appellee Abes, did not expire on 13 October 1961, or thereafter, he was, at the time of the election on 14 November 1967, not qualified to vote or be voted for, or to hold public office, if the effect of his subsequent absolute pardon is not to be considered. He is thus thrown back upon his second defense.

Thus, the decisive issue in the case becomes whether or not a plenary pardon, granted after the election but before the date fixed by law for assuming office, had the effect of removing the disqualifications prescribed by both the criminal and electoral codes.

On this point, appellant Lacuna urges that the presidential prerogative mercy is prospective in operation and, when granted to Abes on 7 December 1967 did not retroact to the time of the election; that Abes' political and

civil rights were lost through his conviction and were restored, not at the time of the election, but only upon the grant of the plenary pardon; that, not being a qua lifted voter at the time of the election, Abes was not eligible to the office in question.

Certain authorities (67 C. J. S.578) do hold that a pardon is not retrospective.[1] But the view consistently adopted in this jurisdiction is that the pardon's effects should not be unnecessarily limited as it would lead the impairment of the pardoning power, which was not contemplated in the Constitution (Cristobal vs. Labrador, 71 Phil. 34, 39; Pelobello vs., Palatino, 72 Phil. 441; Mijares vs.Custorio, 73 Phil. 507).

More specifically, this Court, in Pelobello vs. Palatino, 72 Phil. 441, through Justice Laurel, stated:

“----- . Without the necessity of inquiring into the historical background of the benign prerogative of mercy, we adopt the broad view expressed in Cristobal vs. Labrador, C.R.No. 47941, promulgated December 7, 1940[2] that subject to the limitations imposed by the Constitution, the pardoning power cannot be restricted or controlled by le-gislative action; that an absolute pardon not only blots out the crime committed but removes all disabilities resulting from conviction; and that when granted after the term of imprisonment has expired, absolute pardon removes all that is left of the con-sequences of conviction. While there may be force in the argument which finds support in well considered cases that the effect of absolute pardon should not be extended to cases of this kind, we are of the opinion that the better view in the light of the constitutional grant in this jurisdiction is not to unnecessarily restrict or impair the power of the Chief Executive who, after inquiry into the environmental facts, should be at liberty to atone the rigidity of law to the extant of relieving completely the party or parties concerned from the accessory and resultant disabilities of criminal conviction. ----- . Under these circumstances, it is evident that the purpose in granting him absolute pardon was to en-able him to assume the position in deference to the popular will; and the pardon was thus extended on the date mentioned hereinabove and before the date fixed ----- for assuming office. We see no reason for defeating this wholesome purpose by a restrictive judicial interpretation of the constitutional grant to the Chief Executive. We, therefore, give efficacy to executive action and disregard what at bottom is a technical objection.” (Emphasis supplied)

Upon the authority of the three cases previously cited, we conclude that the pardon granted to appellee Abes has removed his disqualification, and his election and assumption of office must be sustained.

Appellant Lacuna emphasizes the non-registration of Abes as a voter in order to differentiate the case at bar from Pelobello vs. Palatino, 72 Phil, 441. The fact stressed does not, however, make the cases dissimilar, because registration as a voter is not a qualification for a candidate or a voter, within the meaning of "qualified voter" in Section 2174 of the Revised Administrative Code it is merely a step towards voting (Rocha vs. Cordis, 103 Phil. 327). Moreover, the non-registration of Abes as voter was predicated upon the same disqualifying effects of his previous conviction that were blotted out by the plenary pardon.

FOR THE FOREGOING REASONS, The appealed decision is hereby affirmed. No costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles and Fernando, JJ., concur.

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[1] Applied in Rep. v. Maglanoc, G.R. No. L-16848, 27 February 1963, a naturalization case.

[2] 71 Phil. 34.

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