

GAVINO R. ALEJO, PETITIONER-APPELLANT, VS. FELIMON C. MARQUEZ, LEONARDO D. SERRANO, RICARDO SUAREZ AND ABELARDO SUBIDO, RESPONDENTS-APPELLEES.

G.R. No. L-29053. February 27, 1971

Ponente: FERNANDO, J.

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FERNANDO, J.:

Petitioner in this mandamus and quo warranto suit seeks judicial relief from what he considers to be an illegal ouster from his position as Chief of Police of Obando, Bulacan. Unfortunately, he was not sufficiently alert in the defense of his rights before courts of justice. He was notified of the cessation of his services as such as far back as January 3, 1964. He waited until April 14, 1967 before filing his petition. He procrastinated too long. Such delay is fatal, the applicable Rules of Court provision giving him only one year from his separation for the invocation of the appropriate judicial remedy. Necessarily the lower court had no choice left but to dismiss his petition. Hence this appeal, which has an air of futility that hangs around it, the state of law being what it is. We affirm.

The appealed decision, after setting forth the nature of the action as one for quo warranto and mandamus filed by petitioner with Felimon C. Marquez, Mayor of Obando, Bulacan; Leonardo D. Serrano, Chief of Police of Obando, Bulacan; Ricardo Suarez, Municipal Treasurer of Obando, Bulacan; and Abelardo Subido, Commissioner of Civil Service, as respondents, immediately referred to the decisive fact of the late filing of this petition. Thus: "One of the defenses alleged by the respondents, Marquez, Serrano and Suarez, is that the present action was filed by the petitioner three years after respondent Serrano had been appointed and assumed the office of Chief of Police of Obando, Bulacan, and, therefore, it has already prescribed. This defense is well taken for it is expressly alleged in paragraph 5 of the petition that on January 3, 1964, respondent Felimon C. Marquez, Mayor of Obando, Bulacan, terminated petitioner's service as Chief of Police of said municipality by reason of his alleged lack of Civil Service Eligibility and the present action was filed only on April 14, 1967. According to Section 16, Rule 66 of the Rules of Court, petitions for quo warranto must be filed within one (1) year after the cause of the ouster or the right of petitioner to hold office arose. Pursuant to the consistent decisions of the Supreme Court, this one (1) year period begins to run when the petitioner might lawfully have assumed office, and not from the date the incumbent began to discharge the duties of the office. The reason for this limitation is that title to public office cannot be left to continued uncertainty." [1] The lower court likewise found that on the merits petitioner could not make out a persuasive plea for his reinstatement, lacking as he did the necessary civil service eligibility when he was appointed, thus impressing the temporary character to his tenure. Such an issue need not be inquired into as the failure to institute the action within the one-year period constitutes, as pointed out in the decision, more than a sufficient basis for its dismissal.

The controlling Rules of Court provision constitutes an insuperable obstacle to plaintiff's persistent efforts to regain the office of Chief of Police of Obando, Bulacan. It explicitly provides that the action arising from an ouster from office should "be commenced within one (1) year after the cause of such ouster, or the right of the plaintiff to hold such office or position, arose; * * *." [2] Such a provision was formerly incorporated in the very

same section but of Rule 68 of the 1940 Rules of Court. *Abeto v. Rodas*[3] supplies an authoritative interpretation. Thus: "We note that this action was commenced only on March 2, 1948, or more than one year from October 12, 1946, when, according to his own theory, the petitioner should have been reinstated. Actions for quo warranto are now governed by Rule of Court No. 68, section 16 of which provides that 'Nothing contained in this rule shall be construed to authorize an action * * * an officer for his ouster from office unless the same be commenced within one year after the cause of such ouster, or the right of the plaintiff to hold office, arose; * * *.' A similar provision in the Code of Civil Procedure was given effect in *Bautista vs. Fajardo*, 38 Phil., 624, wherein this Court held: 'It cannot be supposed that the Legislature intended that the right to a public office, when dependent upon prescription, should be subject to continued uncertainty; and the public interest clearly requires that such right should be determined as speedily as practicable.' We would go farther by holding that the period fixed in the rule is a condition precedent to the existence of the cause of action, with the result that, if a complaint is not filed within one year, it cannot prosper although the matter is not set up in the answer or motion to dismiss." [4] As is made clear from the above excerpt, the doctrine goes back to *Bautista v. Fajardo*, [5] a 1918 decision, which interpreted the then applicable section of the Code of Civil Procedure. [6]

It is thus apparent that plaintiff, by his failure to abide by the controlling Rules of Court provision, did preclude the judiciary from inquiring into the merits of his case. Whatever sympathy might be enlisted by his firm and inflexible determination to correct what in his opinion is a failure by respondents to follow the governing legal norms cannot prevail as against a definite rule that cautions a person who deems himself aggrieved by an illegal ouster to go to court within the one-year period specified upon pain of losing what could have been an appropriate judicial remedy. The lower court decision must be affirmed.

WHEREFORE, the decision of the lower court of February 8, 1968 is affirmed. No costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

[1] Decision of the lower court, Appendix to Brief for the Appellant, pp. 22-23.

[2] Section 16, Rule 66 of the Rules of Court reads as follows: "Nothing contained in this rule shall be construed to authorize an action against a corporation for forfeiture of charter unless the same be commenced within five (5) years after the act complained of was done or committed; nor to authorize an action against a public officer or employee for his ouster from office unless the same be commenced within one (1) year after the cause of such ouster, or the right of the plaintiff to hold such office or position, arose; nor to authorize an action for damages in accordance with the provisions of the last preceding section unless the same be commenced within one (1) year after the entry of the judgment establishing the plaintiff's right to the office in question." Cf. *Cui v. Cui*, L-18727, Aug. 31, 1964, 11 SCRA 755; *Morales v. Patriarca*, L-21280, April 30, 1965, 13 SCRA 766; *Villaluz v. Zaldivar*, L-22754, Dec. 31, 1965, 15 SCRA 710; *Villegas v. de la Cruz*, L-23752, Dec. 31, 1965, 15 SCRA 720; *Castro v. del Rosario*, L-17915, Jan. 31, 1967, 19 SCRA 196; *National Shipyards and Steel Corp. v. CIR*, L-21675, May 23, 1967, 20 SCRA 134; *De la Maza v. Ochave*, L-22336, May 23, 1967, 20 SCRA 142; *De la Cruz v. Gabor*, L-30774, Oct. 31, 1969, 30 SCRA 325.

[3] 82 Phil. 59 (1948).

[4] *Ibid.*, pp. 60-61. The following decisions apply the one-year limitation period of bringing action for reinstatement; *Tumulak v. Egay*, 82 Phil. 828 (1949); *Tavora v. Ofiana*, 83 Phil. 672 (1949); *Argos v. Veloso*, 83 Phil. 929 (1949); *Torres v. Quintos*, 88 Phil. 436 (1951); *Brillo v. Enage*, 94 Phil. 732 (1954); *Mesias v. Jover*, 97 Phil. 899 (1955); *Unabia v. City Mayor*, 99 Phil. 253 (1956); *Abella v. Rodriguez*, 102 Phil. 543 (1957); *Erauda*

v. Del Rosario, 103 Phil. 489 (1958); Pinullar v. Pres. of Senate, 104 Phil. 131 (1958); De la Cerna v. Osmeña, 105 Phil. 774 (1959); Madrid v. Aud. Gen., 108 Phil. 578 (1960); Mendiola v. Tancinco, 109 Phil. 317 (1960); Bumanglag v. Fernandez, L-11482, Nov. 29, 1960; Alipio v. Rodriguez, L-17336, Dec. 26, 1963, 9 SCRA 752.

[5] 38 Phil. 624. Cf. Agcaoili v. Suguitan, 48 Phil. 676 (1926); Lim v. Yulo, 62 Phil. 161 (1935).

[6] Section 216 of the Code of Civil Procedure, insofar as material, reads as follows: "Nor shall an action be brought against an officer to be ousted from his office unless within one year after the cause of such ouster, or the right to hold the office arose."

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