

BENITO CODILLA, ET AL., PETITIONERS VS. JOSE L. MARTINEZ, ETC., ET AL.; RESPONDENTS.*G.R. No. L-14569. November 23, 1960*

Ponente: BAUTISTA ANGELO, J.

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On January 24, 1956, Hermenegildo C. Baloyo, mayor of Tagum, Davao, left for Negros Occidental to attend to a sick brother. Thereupon, he designated the vice-mayor to act in his place effective January 25, 1956 until further advice on his part. The vice-mayor in turn fell sick of certain lung trouble in view of which he designated ranking councilor Macario Bermudez as acting mayor effective January 25, 1956 until notice to the contrary. Councilor Bermudez was not also in good health and so he designated the third ranking councilor Jose L. Martinez to act as mayor effective on the same date.

Martinez accepted the designation and assumed the office on January 25, 1956, his first official act being to separate from the service the petitioners as policemen of the municipality. Petitioners immediately filed their protest invoking the right to continue in office under the provisions of Republic Act 557, but far from heeding their protest, Acting Mayor Martinez appointed Eduardo M. Duaso municipal policeman in lieu of Benito Codilla who immediately qualified by taking his oath of office. The appointment was approved by the President of the Philippines and the Commissioner of Civil Service. Martinez also appointed Juanito Redoble vice Perfecto Melendres, the appointment having been authorized by the Commission of Civil Service. Redoble also assumed office soon thereafter. Policarpio Lagura was also appointed vice Leonardo Castor, his appointment having been issued by incumbent Mayor Baloyo who in the meantime returned to office. He also immediately qualified by taking the oath of office.

On February 15, 1956, Benito Codilla and his companions filed a petition for mandamus before the Court of First Instance of Davao against Acting Mayor Martinez and incumbent Mayor Baloyo alleging that their separation from the service as municipal policemen was illegal because being civil service employees their employment cannot be terminated except for cause, and so they prayed that respondents be ordered to restore them to their former Positions with payment of their back salaries. They also Prayed for moral and exemplary damages to the tune of P7,000.00 and for attorney's fees in the amount of P1,000.00. They included as co-respondents the policemen who were appointed in their places.

Respondents in their answer set up the defense that the appointments of petitioners having been made under Section 682 of the Revised Administrative Code in a temporary capacity, because they are not civil service eligibles, the same were valid only for three months and so their continuance in office after the expiration of that period was illegal; that even assuming that Acting Mayor Martinez had no authority to terminate their employment, his action was validated when incumbent Mayor Baloyo endorsed and ratified the same by his subsequent official actuation; and that, not being civil service eligibles, petitioners may be separated from the service under the provisions of Republic Act No. 557 upon the expiration of the term of three months given to them in their appointments.

On the strength of the stipulation of facts and additional evidence submitted by the parties, the trial court rendered judgment dismissing the petition on the ground that the separation of petitioners from the service was made in accordance with law. Hence, the present appeal.

One peculiar thing that appears dominant in the present case is the fact that the official who assumed office as acting mayor of Tagum, Davao, by designation made by the ranking municipal councilor is Jose L. Martinez who was only then the third ranking councilor of the municipality for which reason petitioners argued from the very start that their separation was illegal because the designation of Martinez as acting mayor was not made in accordance with the provisions of Section 2195 of the Revised Administrative Code and Section 21 (a) of the Revised Election Code under which such designation should be made by the provincial governor with the consent of the provincial board. Nevertheless, the trial court did not consider the designation of Martinez as acting mayor entirely void, or one that would make him a usurper, but at most a de facto officer whose acts may be given validity in the eye of the law. Thus, the trial court said: "Although his designation was irregular, still he was acting under a color of authority, as distinguished from a usurper who is 'one who has neither title nor color of right to an office.' * * * The acts of Jose L. Martinez are therefore official acts of a de facto officer. If they are made within the scope of the authority vested by law in the office of the mayor of Tagum, such acts are valid and binding." To this opinion we agree it appearing that all the elements constituting a de facto office are here present.

"An officer de facto is to be distinguished from an officer de Jure, and is one who has the reputation or appearance of being the officer he assumes to be but who, in fact, under the law, has no right or title to the office he assumes to hold. He is distinguished from a mere usurper or intruder by the fact that the former holds by some color of right or title while the latter intrudes upon the office and assumes to exercise its functions without either the legal title or color of right to such office." (McQuillin, *Municipal Corporations*, Vol. 3, 3rd ed., pp. 376-377.)

"To constitute a de facto officer, there must be an office having a de facto existence, or at least one recognized by law and the claimant must be in actual possession of the office under color of title or authority. *State vs. Babb*, 124 W. Va. 428, 20 S. E. (2d) 683." (McQuillin, *Municipal Corporations*, supra footnote No. 11, p. 383.)

Another factor that may be invoked in favor of the validity of the official actuation of Acting Mayor Martinez is the fact that all his official acts done under his designation were subsequently endorsed and ratified by the incumbent mayor when he returned to office. This ratification served to cure any legal infirmity the acts of Acting Mayor Martinez may have suffered because of his irregular designation.

This brings us to the question whether the termination of employment of petitioners as municipal policemen was made contrary to the law which safeguards the rights of an employee to his office in the government service. While it may be gleaned from the surrounding circumstances that the hand of politics has intervened in the separation of petitioners who apparently had been for sometime serving the government as policemen during the previous administration, we cannot escape the fact that they were merely given temporary appointments for the reason that they do not have civil service eligibility thus making their status as employees wholly dependent upon the grace of the ruling power. And this we say because, as we ruled in a series of cases, "A temporary appointment is similar to one made in acting capacity, the essence of which lies in its temporary character and its terminability at the pleasure of the appointing power."^[1] We also postulated that "The replacement of non-eligibles by non-eligibles is lawful under and pursuant to Section 682 of the Revised Administrative Code."^[2] Petitioners cannot, therefore, invoke in their favor the provisions of Republic Act No. 557 because this Act only guarantees the tenure of office of policemen who are eligibles. Non-eligibles do not come under its protection. (*Orais, et al vs. Ribo, et al.*, supra.) Hence, much as we sympathize with petitioners, our hand is stayed by the inexorable provisions of the law.

Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

Paras, C.J., Bengzon, Padilla, Labrador, Reyes, J.B.L., Barrera, Gutierrez David, Paredes, and Dizon, JJ., concur.

Judgment affirmed.

[1] Cuadra vs. Cordova, 103 Phil., 391; 54 Off. Gaz., (35) 8063.

[2] Orais, et al. vs. Ribo, et al., 93 Phil., 985; 49 Off. Gaz., [12] 5386.

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