

WENCESLAO DESCUATAN, PETITIONER-APPELLANT, VS. SANCHE M. BALAYON, RESPONDENT-APPELLEE.*G.R. No. L-29865. February 28, 1969*

Ponente: FERNANDO, J.

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This is an appeal from an order of the Court of First Instance of Cotabato, Branch IV, dated April 1, 1968, which dismissed an action for quo warranto, seeking to have petitioner Wenceslao Descuatan declared as the person legally entitled to hold and exercise the position of Municipal Mayor of Norala, South Cotabato as well as to have him receive the salary for such office from September 21, 1967 until the expiration of the mayoralty term on December 31, 1967. Petitioner likewise sought the amount of P50,000.00 in the concept of damages.

Since the appeal was lodged with us on October 22, 1968, months after the expiration of the term of the Municipal Mayor of Norala, Cotabato, the occupancy of which was in dispute, we issued a resolution on December 10, 1968 to the following effect: "In Wenceslao Descuatan v. Sancho M. Balayon, G.R. No. L-29865, an appeal from an order of April 1, 1968 of the Court of First Instance of Cotabato, 16th Judicial District, Branch IV, the Honorable Abelardo Aportadera, presiding, dismissing a petition of quo warranto and prohibition by petitioner Wenceslao Descuatan, and it appearing from his own petition that the question involved is the right to the mayoralty of the Municipality of Norala, both arising from the filing of certificates of candidacy on September 15, 1967 of both its duly elected Mayor and its duly elected Vice-Mayor for such position, petitioner claiming that under Section 7 of the Local Autonomy Act, he was entitled to occupy such office, he being the councilor who obtained the largest number of votes next to the councilor who had allegedly waived her right to assume the office of the Mayor of Norala, and it being apparent that from and after January 1, 1968, the position of mayor should rightfully be occupied by whoever was elected on November 14, 1967, both petitioner Descuatan and respondent Balayon are given a period of 30 days from notice of this resolution to inform this Court why the appeal should not be dismissed, the matter raised therein having become moot and academic."

Then came, on January 18, 1969, a memorandum from petitioner to the effect that since he likewise sought the recovery of the salary to which he would have been entitled if respondent did not prevent his occupying the said office as well as damages, whether actual, moral and exemplary, the case should not be considered moot and academic. Respondent, on the other hand, sent, in accordance with the above resolution, a telegram to this Court dated January 31, 1969, stating that he could no longer afford to hire the service of a lawyer and that he was manifesting his "complete trust and confidence" that this Court would "render justice" submitting his "fate to its wisdom" and agreeing that the "matter raised [in the petition had] become moot and academic." He therefore prayed that the appeal be dismissed.

Petitioner's stand finds support from our recent decision in *Monroy v. Court of Appeals*.^[1] There it was held that in a petition for injunction and quo warranto involving the forfeiture of the office of municipal mayor by the incumbent occupant thereof and the claim to that office by the vice-mayor because of the statutory provision that considers an official resigned at the moment of the filing of the certificate of candidacy,^[2] the matter of who was

entitled to the salary in the meanwhile could be inquired into. In this case, as a matter of fact, since the right of the Vice-Mayor was sustained, he was deemed entitled to reimbursement by way of actual damages of the salary he would have received had he not been pre-vented from assuming the position which was rightfully his.

The scope of our resolution must be made clear. We do not by any means intimate that petitioner had made out a case. This is not the proper occasion for any finding of such character. The pleadings disclose a petition for quo warranto wherein petitioner sought the recovery of the salary to which he alleged he would have been entitled had he not been precluded from occupying the office sought as well as damages resulting from such failure to act in that capacity, during the period from September 21, 1967 to December 31 of that year. While it is presumed that the duly elected Municipal Mayor in 1967 is now holding office, the lower court should not have dismissed the petition but should have considered the merits thereof, at least insofar as the claim for salary as well as damages is involved. In that sense, the matter could not be considered moot and academic.

WHEREFORE, the order of dismissal of the lower court of April 1, 1968 is hereby reversed and the case remanded to it for disposition in accordance with this resolution. No pro-nouncement as to costs.

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

Sanchez, J., did not take part.

[1] 20 SCRA 620 (1967).

[2] Section 27, Revised Election Code.

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