

CARLOS C. MANAOIS, PETITIONER-APPELLANT, VS. HON. LEROY S. BROWN, CITY MAYOR, ANTOLIN TAN SANCHEZ, CITY AUDITOR, LEOPOLDO MANAPOL, IN-CHARGE, CITY ENGINEER'S OFFICE, ALL OF BASILAN...

G.R. No. L-32191. July 30, 1971

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appeal by certiorari from the decision of the Court of First Instance of Basilan City dismissing herein petitioner's special civil action for mandamus to compel the City Treasurer to pay petitioner's back salaries as City Engineer of the same City.

Petitioner was appointed City Engineer of Basilan on July 17, 1963, which appointment was confirmed by the Commission on Appointments on May 30, 1964. An administrative case was later on filed against him by the City Mayor, by reason of which the Commissioner of Public Highways, in a letter dated August 1, 1967, detailed petitioner to the central office in Manila.

The administrative case was finally decided on November 19, 1968, in Administrative Order No. 149 of the Office of the President. The dispositive portion of the order reads:

"Considering the nature of the offense committed by respondent and in view of the strained relations existing between him and complainant, a situation not conducive to the smooth functioning of their respective offices, it is believed that respondent's further stay in Basilan City will not redound to the interest of the service. Accordingly, City Engineer Carlos C. Manaois shall be transferred to another city, with the admonition to be more careful and cautious in his future conduct."

On November 28, 1968 the Commissioner of Public Highways addressed a letter to petitioner, who was then in Manila on special assignment, to proceed to Basilan City "for the purpose of turning over the City Engineering office to Leopoldo Manapol, officer-in-charge thereof." Petitioner was further instructed to make a complete clearance of his money and property accountability. The instructions were complied with on January 15, 1969.

On January 29, 1969 respondent City Treasurer of Basilan, with a concurring indorsement by respondent Mayor, advised the Commissioner of Public Highways that he considered petitioner as having ceased to be City Engineer of Basilan as of January 15, 1969, and that thereafter his salary as such would no longer be paid. The communication was returned to the City Mayor by the Commissioner, who said that under the terms of the President's Administrative Order No. 149 petitioner had merely been called to the Bureau of Public Highways in Manila on special assignment, and that pending his transfer to another city he was still the City Engineer of Basilan and therefore entitled to the salary corresponding to that position. The Office of the President itself took a hand in the matter when, in a 6th indorsement to the Auditor General dated June 5, 1969, the Assistant Executive Secretary expressed the same view, adding that petitioner's acceptance of a temporary designation in Manila did not amount to abandonment of the office to which he had been duly appointed. The Auditor General, in turn,

relayed the said indorsement to the City Auditor of Basilan for his information and guidance.

Notwithstanding the opinion of the three offices aforementioned respondent City Treasurer refused to pay petitioner's salary, whereupon the latter filed the instant petition for mandamus with damages. The court a quo rendered its decision on December 10, 1969, dismissing the petition on the ground that petitioner's act of turning over his office to respondent Leopoldo Manapol, as officer-in-charge, on January 15, 1969, constituted abandonment thereof.

The decision is erroneous. Petitioner was called on special assignment to the central office of the Bureau of Public Highways in Manila by reason of the filing of the administrative case against him. And when the said case was decided the decision merely stated that "he shall be transferred to another city," since his further stay in Basilan City would not redound to the interest of the service. Presumably, when he was instructed to turn over the office to an officer-in-charge and to clear his money and property accountability, it was in contemplation of such transfer. The fact, however, is that the transfer was not carried out. Petitioner, whose appointment as City Engineer of Basilan had been confirmed by the Commission on Appointments, has not been appointed to any other position or office. His special assignment in Manila continued. It is not correct to say therefore, as the trial court did, that petitioner's "acceptance of another office sprang from and was accompanied by deliberation and freedom of choice..." He did not accept another office by coming to Manila on special assignment; and certainly it was not of his own de-liberate and free choice that he complied with the assignment, ordered as it was by his superior in the service.

The power of appointment, removal or transfer with respect to the office here in question belongs to the President. Such appointment was given to petitioner, and not only has the President not removed or transferred him but has in fact expressly ruled, through the Executive Secretary, that petitioner is still the incumbent of said office. A becoming regard for the ruling of the President should have been guidance enough for respondents to follow, considering that said ruling stemmed from and is in accordance with his own decision in the administrative case, the implementation of which, by transferring petitioner to another office, is entirely within his authority. Pending such transfer petitioner remains the City Engineer of Basilan and hence entitled to receive the salary of the position. To hold otherwise, that is, that he had vacated the office with-out having been appointed to another, would in effect be tantamount to his removal - a result that is both without legal basis and unwarranted under the terms of the decision in the administrative case.

The case of *Marcos M. Calo vs. Francisco Magno*, G. R. No. L-18399, February 28, 1963, is relied upon by respondents and cited in the decision of the trial court. The petitioner there, a taxpayer, questioned the authority of the respondent to issue an order of distraint and levy on the petitioner's properties for the collection of his real property taxes. The respondent had been appointed by the President, and took his oath of office, as Acting Treasurer of Butuan City, vice the duly appointed Treasurer who, having been assigned to the Department of Finance in Manila, interposed no objection to such appointment. This Court upheld the authority of the said Acting Treasurer to issue the order of distraint and levy, and held that there was a temporary vacancy in the office to which he could be, and was, legally appointed, pursuant to Commonwealth Act No. 588. That case may be distinguished from the one now before us, first, in that the respondent there was not only an officer-in-charge, as respondent Leopoldo Manapol is in the present case, but the Acting Treasurer who had been duly appointed by the President and who took the corresponding oath of office; and second, in that the issue involved therein was the validity of an act performed by him in that capacity for the collection of taxes, which issue has no analogy whatsoever to the one in this case.

The argument that it is unfair to Basilan City to continue paying the salary of petitioner without receiving the equivalent thereof in services has no material bearing on the legal question involved. The remedy available to the

said city is non-judicial: to get petitioner to be appointed to another office in line with the terms of Administrative Order No. 149 of the Office of the President.

Wherefore, the decision appealed from is reversed and the writ of mandamus applied for by the petitioner is granted, directing the respondents, particularly the City Treasurer, to pay the salaries corresponding to petitioner as City Engineer. Costs against respondents except Leopoldo Manapol.

Concepcion, C.J., Reyes, J.B.L., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, and Makasiar, JJ., concur. Villamor, J., took no part.

Dizon, J., on official leave.

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