

JOSE GUEKEKO, PETITIONER, VS. TEOFILO C. SANTOS RESPONDENT.*G.R. No. L-128. March 02, 1946*

Ponente: FERIA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/7ddf88f60d9b/>**FERIA, J.:**

Petitioner seeks to oust respondent from the office of Mayor of Malabon, Rizal, on the ground that the former, and not the latter, is entitled to hold said office.

Petitioner was elected Mayor of Malabon in the general election held on December 10, 1940, and qualified as such in January of 1941. Respondent filed an election protest against petitioner in the Court of First Instance of Pasig, Rizal, which was decided against respondent, whereupon he appealed to the Court of Appeals. The decision of the Court of Appeals has not been promulgated to date. For the purpose of deciding the petition in this case, we may assume that the petitioner was definitely elected Mayor of Malabon in the said general election.

Petitioner held the office of Mayor of Malabon throughout the Japanese occupation and after the reoccupation until the official restoration of the Commonwealth Government on February 27, 1945, when all government officials were directed to vacate their posts, and in compliance with said order petitioner vacated his office of Mayor.

On November 5, 1945, respondent was appointed Acting Mayor of Malabon, Rizal, by the President, and qualified on November 9, 1945.

Petitioner bases his claim on three main grounds: First, that his term of office has not yet expired, inasmuch as the period of Japanese occupation during which he continued to serve as Mayor should not be taken into account in fixing the term of his office. Secondly, that, assuming that his term of office had already expired, the Chief Executive should have exercised his appointing power in accordance with section 16 (b) of Commonwealth Act No. 357, and appointed the petitioner instead of the respondent, because the latter does not belong officially to the Nacionalista political party of which petitioner is a member. And thirdly, that petitioner should have been appointed to the office, on democratic principles and in accordance with the announced policy of the President to reinstate officials elected in the 1940 election, unless there be strong reasons for not doing so.

(1) As to the first ground, in the case of *Topacio Nueno vs. Angeles*, promulgated on February 1, 1946 (p. 12, ante), this Court held that "the contention that petitioners are entitled to continue in office because they have not completely served for three years due to the war, is untenable, even assuming that they had not discharged the duties of their office during the Japanese occupation of Manila. For the simple reason that the term of an office must be distinguished from the tenure of the incumbent. The term means the time during which the officer may claim to hold the office as of right, and fixes the interval after which the several incumbents shall succeed one another. The tenure represents the term during which the incumbent actually holds the office. The term of office is not affected by the hold over. The tenure may be shorter than the term for reasons within or beyond the power of the incumbent. There is no principle, law or doctrine by which the term of an office may be extended by reason of war. This ruling holds true a fortiori in the present case, for petitioner continued to discharge the duties of his

office during the occupation, although not under the legitimate government.

(2) With respect to the second, we have also decided in the case of *Topacio Nueno vs. Angeles* (supra) that provincial, city and municipal officers are not entitled to hold over. In fact, petitioner himself does not claim to have the right to hold over. Therefore, inasmuch as respondent was appointed to fill the office left vacant after the term of office of the petitioner had expired on December 31, 1943, the provisions of subsection (b), section 16, of Commonwealth Act No. 357 do not apply to the case at bar, because this subsection refers to vacancies resulting from the death, resignation, removal or cessation of the incumbent during the term of office.

But even assuming, for the sake of argument, that said subsection (b) is applicable, as the President is not required by law to appoint the petitioner or any other particular member of the Nacionalista Party, petitioner can not, in his own behalf or in that of any other person belonging to his party, claim to be entitled to the office of Mayor of Malabon.

(3) And as to the third ground, the announced policy of the President to reinstate or recall pre-war elected officials except for strong reasons, does not confer a legal right on said officials to appointment, since that policy does not impose upon the President a legal obligation to make such appointment. It is within the exclusive province and discretion of the President to follow strictly or not such policy, and therefore this court can not declare petitioner entitled to the office.

In view of the dissenting opinion of several Justices of this court which holds that under our present laws, elective municipal, city and provincial officers are entitled to hold over, reiterating in this case their stand in the case of *Topacio Nueno vs. Angeles* (supra) recently promulgated, we deem it proper to emphasize here that the dissenting opinion in the *Topacio Nueno* case is based upon an incorrect minor premise.

The rule enunciated in *McQuillin, Municipal Corporations*, 2d ed., Vol. 11, article 507, is the following: "In the absence of express provisions and unless the legislative intent to the contrary is manifest, municipal officers hold over until their successors are provided." This is substantially the same rule as that enunciated in 46 *Corpus Juris*, 968, which we have quoted in our decision in the said case of *Topacio Nueno vs. Angeles*, which says: "In the absence of an express or implied constitutional or statutory provision to the contrary, an officer is entitled to hold his office until his successor is appointed or elected and has qualified."

The dissenting opinion of the minority enunciates the same rule as follows: "In the absence of an express constitutional or statutory provision to the contrary, public officers have the right, as well as the duty, to continue in office under the principle of hold over until their successors are duly elected or appointed and qualified, unless there is a manifest implied intention in the Constitution or the laws to prohibit such hold over."

After enunciating the rule, however, and stating that the minority agrees with the majority in that the suppression (by Act No. 2774) of the provision for holding over found in the original provision of section 2439 of the Administrative Code, could not imply a legislative intent to abolish the rule of hold over, since that phrase (provision) would anyway be a mere surplusage for the reason that a similar provision was found in the second paragraph of section 2440 of the Administrative Code, the minority concludes without much ado that such suppression "does not imply an intention—much less a manifest intention—on the part of the legislature to prohibit the right to hold over to the members of the Municipal Board of Manila."

We say without much ado, because the dissenting opinion of the minority does not say a word on the fundamental ground of the majority opinion in the said *Topacio Nueno vs. Angeles* case, to wit: That, subsequently, the remaining hold over provision in said section 2440, as well as the identical provisions in sections 2074 and 2177 of the Administrative Code relating to elective provincial and municipal officers, respectively, were expressly

repealed by section 184 of Commonwealth Act No. 357, known as the Election Law; and that said repeal and the enactment of section 16 of said Act No. 357, which provides for the filling of all vacancies, temporary or otherwise, which might occur during and after the expiration of the term of office, so as to avoid the necessity and even the occasion for holding over, clearly show the manifest intention of Congress to suppress the hold over.

Before concluding, it may not be amiss to say that the authorities or cases cited in the dissenting opinion in support of the minority conclusion were out of place. It is evident that the rule of hold over applies where there is no express or implied legislative intent to the contrary. But it can not be applied if there is such legislative intent. Therefore, it is improper to quote cases decided in the United States, as the minority did in said dissenting opinion, in which the right of certain officers to hold over was recognized or declared, for in said cases, as in all others, the courts have applied the rule because the legislative intent, express or implied, to the contrary was not manifest. In the same way, it would have been improper and misleading for the majority to cite or quote cases or decisions in support of our conclusion (there are also many, some quoted in the concurring opinion), for in such cases the rule has not been applied because there was an express or implied legislative intent to the contrary.

In view of all the foregoing, we hold that the petitioner is not entitled to the office of Mayor of Malabon held by the respondent, and has no right to institute an action of quo warranto against the latter according to section 6, Rule 68, of the Rules of Court. It is not, therefore, necessary for us to discuss whether or not the respondent is entitled to the office or is illegally withholding it as claimed by the petitioner (*Topacio Nueno vs. Angeles*, supra).

Petition in this case is therefore dismissed with costs to petitioner. So ordered.

Jaranilla, De Soya, Pablo, Bengzon, and Briones, JJ., concur.

CONCURRING

PERFECTO, J.:

Petitioner was proclaimed elected as Mayor of Malabon, Rizal, in the local elections held on December 10, 1940. In January, 1941, he assumed office.

Defendant filed a protest against the election of plaintiff. After trial, the Court of First Instance of Rizal rendered decision dismissing the protest.

On November 8, 1945, defendant was appointed Mayor of Malabon. The next day he started to discharge the duties of the position.

Plaintiff alleges he has not been legally removed or suspended from office, did not resign or abandon the same, is not accused of any crime, and there is no pending case of treason or collaboration against him. That as a matter of legal right and based on democratic principle, he is entitled "to reinstatement to his former post," he being the people's choice in 1940, and that defendant, being the defeated candidate, is holding his office against the law and the popular will.

Defendant answered alleging that, in a decision penned by Justice Francisco Enage, concurred in by Justices Sabino Padilla, Marceliano R. Montemayor, and Serafin P. Hilado, the Court of Appeals reversed the decision of the Court of First Instance, declaring defendant as the elected mayor of Malabon with ten votes majority over plaintiff. The decision was rendered on February 26, 1942, but on June 16, after almost four months, the promulgation of the decision was temporarily suspended, following instructions of the then commissioner of justice.

Defendant alleges also that the term of office in dispute between plaintiff and defendant had already expired; that plaintiff was appointed and duly qualified as mayor of Malabon under the Philippine Executive Commission and the "Republic" of the Philippines during the Japanese occupation, so that when the Commonwealth of the Philippines was reestablished on February 27, 1945, the plaintiff was holding no office under the Commonwealth? that the wisdom or unwisdom, the motives or reasons, the justice or injustice, of the exercise of the appointing power by the Chief Executive cannot be inquired into by the judiciary under the principle of separation of powers of government; that among the well-founded considerations why plaintiff does not merit the trust of the appointing power may be mentioned:

"(a) The plaintiff actively and sincerely collaborated with the Japanese during the Japanese occupation;

"(b) The plaintiff was the Chairman and Campaign Manager of the Malabon Chapter of the KALIBAPI, a pro-Japanese institution for the propagation among others of the ideas of the Greater East Asia Co-Prosperity Sphere, and earnestly campaigned for its principles to the extent of ordering distributors of prime commodities not to give rations of family heads who did not sign the Kalibapi membership cards;

"(c) The plaintiff zealously campaigned for the surrender of guerrillas and firearms during the Japanese occupation;

"(d) The plaintiff gave out to the Japanese army able bodied residents of Malabon for forced labor against the United States forces; etc.; and

"(e) The plaintiff was not the choice of the people in the elections of December 10, 1940, for Mayor of Malabon."

Defendant alleges also that after the liberation, Malabon had no mayor until April 2, 1945, when Victor Gaza was designated to act in said position; that it is the policy of the state that collaborationists be not placed in positions of political and economic influence.

Plaintiff alleges in his reply that no such decision of the Court of Appeals as mentioned by defendant had been promulgated; that according to section 16 (b) of the Election Code, the position of mayor of Malabon being vacant, the President shall appoint thereto a suitable person belonging to the political party of the officer whom he is to replace, and in the present case "morally and legally" the appointment should go to the plaintiff or to his vice-mayor or, at any rate, to some other person belonging to the Nacionalista Party, the one which came out victorious in the last local elections.

On the strength of the legal doctrines we have maintained in our concurring opinion in the case of Topacio Nueno vs. Angeles (p. 12, ante), we also concur in the majority's decision to dismiss the complaint in this case.

Although the affidavit signed by the clerk of the Court of Appeals, presented as Exhibit D of plaintiff's reply, corroborates defendant's allegation to the effect that the Court of Appeals rendered a decision declaring defendant as elected mayor of Malabon, Rizal, instead of plaintiff— which fact at least makes doubtful who the people's choice was in the local elections of December 10, 1940—the controversy in the electoral protest is immaterial in the present case, it appearing that the term of office of the position in dispute between plaintiff and defendant had already expired in December, 1943, and, therefore, no one can claim now the right to occupy the position of mayor of Malabon on the strength of the result of the 1940 elections.

Plaintiff's theory that, on the hypothesis that he was the one who was elected in 1940, the position of mayor which became vacant due to failure to elect the officer who should serve for the 1944-1946 term of office, must be filled by the vice-mayor or any other person belonging to the Nacionalista Party to which plaintiff belongs, invoking to said effect section 16 (b) of the Election Code, shows conclusively that plaintiff himself admits that he is not

entitled, as a matter of personal right, to the position in question. This being the case, under section 6 of Rule 68 of the Rules of Court and on the strength of the legal doctrine we laid down in the case of *Lomuntad vs. Cuenco* (41 Off. Gaz., 894), plaintiff lacks the legal personality to institute the present complaint for quo warranto.

Under the provision of section 16 (b) of the Election Code, it is clear that the right to claim to fill a vacant position, if there is any, belongs not to any individual, but to the political party concerned.

In the present case, even in the disputed supposition that it was the Nacionalista Party which won the local elections in Malabon, and not the Democrata Party to which defendant belongs, it appears that the appointing power in the present is, better than any other, the one qualified to represent the Nacionalista Party. We can take judicial notice, as a matter of contemporary political history, that the present Chief Magistrate of the Philippines, the one who issued defendant's appointment, belongs to, and is the supreme head of, the Nacionalista Party.

It is evident that the provisions of the Election Code with which we are dealing has been drafted with the avowed purpose of protecting the political rights and interests, not of the individuals, but of political parties; and this is in conformity with the philosophy of the Election Code to recognize personality in political parties, this fact being better illustrated in the provisions regarding the appointment of election inspectors and poll clerks.

The former political affiliation of the appointee appears not to have more weight than the political interests of the party entitled to have the position in dispute. In practical democracy, there is no reason for frowning against the practice of the chief executive's selecting to positions in the government, not only persons belonging to his own political party, but others belonging to opposing parties, such practice having been followed with great success by President Franklin Delano Roosevelt. The most important thing is that, with the appointment, public interest will be advanced, and that can be accomplished by the selection of the most fitted, no matter to what party he belongs. The merit system should rule the selection of any appointee to any government position. Partisan considerations must be subordinated to public interests. This aphorism is unassailable. We rank it among the primary principles of a sound political philosophy. There is no better public policy than by abiding by it as an inexorably obligatory rule of conduct and practice.

Our vote is for the dismissal of the complaint.

DISSENTING

HILADO, J., with whom concur MORAN, C. J., OZAETA and PARAS, JJ.:

For the reasons and arguments set forth in our dissenting opinion in case No. L-89, *Topacio* (p. 12, ante), wherein we maintain the theory that, under our laws existing before the Pacific War, which remain the same up to the present as regards the questions involved in this case, elective provincial and municipal officials are entitled to the right to hold over until their successors have been duly elected or appointed and qualified, which reasons and arguments—be it said with all due respect—the majority opinion herein has, we think, not successfully met, we dissent from said opinion.

Quite apart, nevertheless, from our arguments predicated upon the principle of hold over, the specific provisions of the different subsections of section 16 of the Election Code, particularly subsection (c), would seem clearly to support our solution of the problem here presented. For the sake of convenience, let us restate our views on this aspect of the case as stated in our aforesaid dissent, with some slight changes in the mode of presentation.

Section 16 (a) of the Election Code refers to a temporary vacancy in an elective local office and provides for the mode of filling the same. The vacancy being temporary, the appointment to be made by the President or the

Provincial Governor, as the case may be, as therein authorized, necessarily has to be likewise temporary—coeval with the vacancy itself. When the temporary vacancy ceases by the return to office of the incumbent, the temporary substitute gives way to him. (Revised Administrative Code, section 2439.) This is clearly not the case of a vacancy caused by the expiration of the incumbent's term where there is no hold over. In the latter case, the vacancy is permanent and naturally the election or appointment, which ever is authorized by law, of the successor to fill that vacancy has to be permanent.

Evidently, the phrase "temporary vacancy" used by our legislators in section 16 (a) of the Election Code refers to a case where the office has not lost its incumbent permanently so as to necessitate the election or appointment of a permanent substitute. Undoubtedly, the Philippine National Assembly which enacted the Election Code had the legitimate power to use this phrase and the word "vacancy" and to give them the meaning that they saw fit without being bound by technical definitions of the same terms in other jurisdictions. If we were to give the term "vacancy" in said subsection the meaning that the office is without an incumbent, then, in our opinion, the vacancy would no longer be temporary but permanent. As we understand the provision, the lawmaker had to devise a phrase to denote the situation of an office having an incumbent but who is unable to exercise or is not actually exercising its functions due to some temporary cause or reason.

Subsection (b) deals with the case of an elective local office which becomes vacant as a result of the death, resignation, removal or cessation of the incumbent. It also provides the method of filling the vacancy therein referred to. In the very nature of things, there can be no question of hold over here, as the incumbent who dies, resigns, is removed or ceases, cannot possess such a right. This is unquestionably not the case before us.

Subsection (c) speaks of the case where the election for a local office "fails to take place on the date fixed by law, or such election results in a failure to elect." And it directs the procedure primarily to be followed "to fill said office," and it is this:

"* * * the President shall issue as soon as practicable, a proclamation calling a special election to fill said office."

Secondarily, that is, in case such special election "has been called and held and shall have resulted in a failure to elect, the President shall fill the office by appointment." (Subsection [e].)

Thus for the specific contingency spoken of in subsection (c)—which is our case—the law provides a special procedure for the selection of the incumbent's successor, viz., primarily, by a special election which shall be called "as soon as practicable" by Presidential proclamation; and, secondarily (under subsection [e]), in case such special election has been called and held and shall have resulted in a failure to elect, then by Presidential appointment.

The phrase "as soon as practicable" in said subsection (c), in our opinion, clearly indicates that the legislator foresaw the possibility of delay in the issuance of the required Presidential proclamation or the holding of the special election, the duration of which delay—long or short—he had no means of foretelling. But the legislator, of course, knew that in case of such delay, whether short or long, the office would be left vacant if he should prohibit the incumbent from holding over in the meantime. He has not expressly imposed this prohibition. As a general proposition, the country had nothing to gain and everything to lose by such prohibition. Shall we imply that the lawmaker intended it? We are not prepared to indulge such implication. Neither are we prepared to believe that the legislature excluded the possibility of war being the cause of the delay—when the Election Code was enacted the possibility of another world war and its involving the Philippines was not at all out of the question. In the absence of a positive contrary showing, we must presume that the representatives of the people in the legislature acted not only with foresight but with farsightedness and wisdom, and accordingly intended against leaving the

office vacant, pending the selection and qualification of the incumbent's successor according to the procedure which they were laying down.

As already pointed out, that selection could only be by Presidential appointment under subsection (e) in case the special election required by subsection (c) has been called and held and has resulted in a failure to elect.

The Legislature, in the case spoken of in said subsection (c) did not see fit to authorize the President to appoint a successor to serve during the interregnum from the date fixed by law for the election (which has not taken place) till the date of the actual election and qualification of a permanent successor—not even under subsection (a) We say not even under subsection (a.) because if there is no hold over, as maintained by the majority, the vacancy created by the expiration of the term—such expiration is understood in the case of subsection (c)—is permanent and not temporary as in the case of subsection (a). An appointment to fill a permanent vacancy in cases authorized by law is necessarily permanent—"for the unexpired term of the office" in the words of subsection (f). If there is hold over, as maintained by us, it is clear that no appointment would be authorized under the same subsection (a) either.

We understand a vacancy to be permanent where the office permanently loses its incumbent by some physical or legal reason of a permanent nature—such as expiration of the term, death, resignation, removal, abandonment, permanent physical or mental disability or the like, and speaking concretely of a vacancy created by the expiration of the term, to say that it may be filled by appointment, is to render impossible the special election provided for in subsection (c) because under subsection (f) the appointee would, in such case, "hold the same (office) for the unexpired term" (*italics supplied*), which in the same case, could only refer to the next ensuing term.

Subsection (d) is concerned with the case of a local officer-elect who dies before assumption of office or, having been elected provincial or municipal officer, his election is not confirmed by the President for disloyalty, or who fails to qualify, for any reason. Admittedly, this is not our case.

Subsection (e) has already been considered in connection with subsection (c).

Subsection (f) merely provides that the person appointed or elected to fill a vacancy in an elective provincial or municipal office shall hold the same for the unexpired term of the office. It clearly refers to a permanent vacancy. And referring, as it does, to an elective provincial or municipal office, in case the next election for said office should fail to take place on the date fixed by law, or should such election result in a failure to elect, then again subsection (c) would be brought into play, and if it fails to secure an election, then subsection (e) will provide the remedy.

It is self-evident that if the person appointed or elected to fill a vacancy in an elective provincial or municipal office is to hold the office "for the unexpired term," in the words of subsection (f) of section 16 of the Election Code, such appointment or election is permanent, as contradistinguished from a temporary one. If so, said vacancy must of necessity be likewise permanent—it would be a contradiction in terms to say that a temporary vacancy is to be filled by a permanent appointment or election. Hence, the appointment or election mentioned in said subsection (f) cannot refer to the case of subsection (a), firstly, because the latter subsection speaks only of appointment and not election, and, secondly, because it is concerned with a temporary vacancy. Therefore, subsection (f) can only relate to the cases of subsections (b), (c), (d), and (e). And since, as above demonstrated, subsection (f) refers to a permanent vacancy, it is clear that the vacancy involved in subsections (b), (c), (d), and (e) is a permanent vacancy. Now, that vacancy is in the very nature of things permanent from its inception down to the end. So that, in the specific case of subsection (c), for example, we cannot say that in one part of its duration the vacancy is temporary, and in the remaining part it is permanent. If, then, there can be no temporary vacancy under subsection (c), there can be no temporary appointment in its case under the authority of subsection

(a).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.