

BENJAMIN H. AVES, IN HIS CAPACITY AS MUNICIPAL MAYOR OF PEÑARANDA, NUEVA ECIJA, PETITIONER-APPELLANT, VS. HON. EDUARDO L. JOSON, IN HIS CAPACITY AS GOVERNOR OF NUEVA ECIJA, AND ...

G.R. No. L-29922. August 29, 1969

Ponente: FERNANDO, J.

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FERNANDO, J.:

In this petition for certiorari filed on July 9, 1968 with the Court of First Instance of Nueva Ecija, the Municipal Mayor of Peñaranda, Nueva Ecija, Benjamin H. Ayes, prayed for a declaration of nullity of the order of preventive suspension of sixty days effective July 5, 1968 issued by the Provincial Governor of Nueva Ecija, respondent Eduardo L. Joson.[1] The petition for certiorari failed, the lower court in its decision of August 31, 1968 dismissing the same, respondent Provincial Governor being upheld. Hence, this appeal to us. We reverse the lower court on the authority of *Sarcos v. Castillo*,[2] a decision promulgated by us on January 31, 1969, where it was categorically held that, under the Decentralization Act of 1967,[3] the power of preventive suspension of a municipal mayor "has been withheld from the provincial governor and may no longer be exercised by him."

The facts as found by the lower court follow: "(1) That petitioner Benjamin H. Ayes is duly elected Mayor of Peñaranda, Nueva Ecija, and has been holding and exercising the duties and functions of said offices since January 1, 1968; (2) That on July 3, 1968 respondent Governor Joson filed an administrative complaint with the Provincial Board of Nueva Ecija * * * charging the petitioner with alleged 'Official Misconduct' and 'Illegal Employment of Municipal Policemen'; (3) That on the basis of the said charges, respondent Governor Joson on July 3, 1968 issued an order suspending the petitioner from office effective July 5, 1968 for a period of sixty (60) days * * *; (4) That upon instructions of respondent Governor Joson, respondent Vice-Mayor Lacuna took his Oath as Acting Mayor of Peñaranda, Nueva Ecija, on July 5, 1968 * * * and forthwith assumed such office and exercised the duties and functions thereof on the same date. This fact has been expressly admitted by the petitioner thru counsel orally in open [court] and in writing * * *." [4]

The crucial issue then was the validity of the preventive suspension of petitioner ordered by respondent Provincial Governor. The answer cannot be in doubt. As was made clear by us in the *Sarcos* decision, such an authority he does not possess under the Decentralization Act of 1967. That much is clear in the light of the explicit statutory language employed. To quote from the *Sarcos* opinion: "1. Under the former law then in force which stands repealed by virtue of the Decentralization Act, the provincial governor, if the charge against a municipal official was one affecting his official integrity, could order his preventive suspension. At present, the law is anything but that. A reading of the pertinent paragraph above-quoted makes manifest that it is the provincial board to which such a power has been granted under conditions therein specified. The statutory provision is worded differently. The principle, that the deliberate selection of language other than that used in an earlier act is indicative that a change in the law was intended, calls for application." [5] As was therein Stated further: "Here, clearly, no such authority is vested in the provincial governor. Instead, the statutory scheme, complete on its face, would locate

such power in the provincial board. There would be no support for the view, then, that the action taken by the provincial governor in issuing the order of preventive suspension in this case was in accordance with law." [6]

This being another instance where a suspension of a municipal official belonging to a party other than that to which the provincial governor is affiliated, it may not be amiss to stress anew one of the basic purposes implicit in the Decentralization Act of 1967, namely, to minimize, if not to do away entirely with, the evils of partisanship. In terms of a desirable end to be achieved, that would constitute a further justification of the view that the provincial governor is bereft of the previously granted authority to order a preventive suspension. Our observation in the Sarcos case bears repeating: "Such a restraining influence is indeed needed for the undeniable facts of the contemporary political scene bear witness to efforts, at times disguised, at other times quite blatant, on the part of local officials to make use of their positions to gain partisan advantage. Harrassment of those belonging to opposing factions or groups is not unknown. Unfortunately, no stigma seems to attach to what really amounts to a misuse of official power. The truism that a public office is a public trust, implicit in which is the recognition that public advantage and not private benefit should be the test of one's conduct, seems to have been ignored all too often. The construction of any statute therefore, even assuming that it is tainted by ambiguity, which would reduce the opportunity of any public official to make use of his position for partisan ends, has much to recommend it." [7]

This being a certiorari proceeding, the ultimate question being the absence of authority or the lack of jurisdiction on the part of the provincial governor, it suffices to declare null and void his order of preventive suspension, there being no need to pass upon the other questions raised in the petition. That our decision should be limited to the disposition of this crucial issue is further reinforced by the fact that the preventive suspension ordered was only for a period of sixty days dating from July 5, 1968, and there is nothing in the record, nor in petitioner's brief filed on February 11, 1969 as well as in his motion for an early decision submitted August 16, 1969 to show that petitioner had not as yet been reinstated to his position.

WHEREFORE, the decision of the lower court of August 31, 1968 dismissing the petition is reversed and another entered granting this petition for certiorari, declaring null and void the order of preventive suspension of July 3, 1968 issued by the provincial governor. Without pronouncement as to costs.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Capistrano, Teehankee and Barredo, JJ., concur. Reyes, J., is on official leave.

[1] The other respondent named is the Vice-Mayor of Peñaranda, Demetrio R. Lacuna.

[2] 26 SCRA 853 (1969).

[3] Republic Act No. 5185.

[4] Appendix, Brief for Petitioner-Appellant, pp. 33-34.

[5] Sarcos v. Castillo, 26 SCRA 858-859 (1969).

[6] Ibid, p. 859.

[7] Ibid, pp. 864-865.

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