

MANUEL R. BARTE, PETITIONER-APPELLEE, VS. DEMETRIO A. DICHOSO AND JUAN VILLEGAS (IN THEIR CAPACITIES AS CITY TREASURER AND AUDITOR, RESPECTIVELY), RESPONDENTS-APPELLANTS.

G.R. No. L-28715. September 28, 1972

Ponente: FERNANDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/86c080572aca/>

FERNANDO, J.:

It is a novel question that was raised by petitioner, now appellee, Manuel R. Barte, in this mandamus proceeding. Admittedly, he was designated to the position of Acting Vice-Mayor of Naga City under Commonwealth Act No. 588.[1] There is no question either that there was no renewal of such designation after the adjournment of Congress. Nonetheless, he would, notwithstanding the literal language of the law providing that such designation "shall in no case continue beyond the date of the adjournment of the regular session" of the National Assembly then, of the Congress of the Philippines now, claim a legal right to continue such office, thus laying a basis for this suit to compel respondents Demetrio Dichoso and Juan Villegas, the City Treasurer and Auditor, respectively, of such city, to pay him his salary. Surprisingly, the lower court acceded to his plea, brushing aside the constitutional and statutory objections raised by respondents. Hence this appeal. As will be made clear, a different disposition of the petition is called for if deference is to be paid to what is ordained in both the fundamental law and this applicable legislation.

The facts were stipulated as follows: "1. The petitioner Manuel Barte is a duly elected councilor for and in the City of Naga who was extended an ad interim appointment by President Macapagal * * * vice Vicente P. Sibulo who assumed the position of Mayor vacated by Congressman Ramon Felipe, Jr.; 2. The petitioner took his oath of office as Vice Mayor on October 11, 1965 * * *. Session of Congress adjourned January 22, 1966. The ad interim appointment was bypassed; 3. On February 25, 1966, Assistant Executive Secretary Flores Bayot sent a telegram * * * to respondent Demetrio Dichoso informing him that the appointment of the petitioner was terminated January 22, 1966; 4. On April 4, 1966, President Marcos extended to the petitioner an appointment designating said petitioner as Acting Vice Mayor of Naga * * * and took the oath of office on April 14, 1966 * * *. Thereafter, the petitioner performed the duties and functions of Acting Vice Mayor; 5. On May 26, 1966 the respondents sent a telegraphic inquiry to the Executive Secretary regarding the status of Barte's appointment inasmuch as Congress adjourned May 19, 1966 for purposes of paying the said petitioner * * * and on May 31, 1966, the Assistant Executive Secretary replied also by telegram * * * informing the respondents that Barte's appointment is deemed bypassed and a new designation is under consideration; 6. On June 3, 1966, the City Fiscal gave the opinion * * *, upon Barte's request, and opined that Barte's appointment is still valid and subsisting notwithstanding the telegram of the Assistant Executive Secretary * * *; 7. On June 21, 1966 on the strength of the telegraphic information received * * * the respondent Treasurer sent a letter * * * to the petitioner with an inclosed voucher * * * informing the latter that he can no longer pay the salary of the petitioner as Acting Vice Mayor; 8. On June 21, 1966 because of the refusal of the respondents to pass Exhibit H in audit and

payment, the petitioner referred the matter to Mr. Ros Bonete, Division Auditor for Southern Luzon * * * attaching to the said letter the City Fiscal's opinion * * *; 9. On same date, June 21, 1966 respondent auditor, in his first indorsement * * * to the Division Auditor, recommended the payment of petitioner's claim for salary and services rendered as Vice Mayor; 10. The Division Auditor, on June 28, 1966, indorsed favorably the petitioner's claim * * * to the Auditor General, Manila, stating that he is in full accord with the opinion of the City Fiscal; 11. On February 17, 1967, the Assistant Executive Secretary sent a telegram * * * to the respondent auditor and at the same time, sent a letter to the City Counsel of Naga informing the latter that the petitioner's acts as Vice Mayor after May 19, 1966 are illegal * * *; 12. On March 1, 1967, the Assistant Executive Secretary again sent another telegram to the respondents informing the latter that he furnished the City Council copy of Exhibit 8, * * *; 13. The respondent Treasurer denied payment of the salary of the petitioner stated in the voucher * * *; 14. After eight (8) months and no action was received on his claim for salary, the petitioner filed the present suit."[2]

On the above facts, the lower court decided in favor of petitioner in a decision of June 23, 1967. In its dispositive portion, it held "that the petitioner's appointment as Acting Vice Mayor is still valid and subsisting notwithstanding the adjournment of Congress on May 19, 1966; and such, he is entitled to all the honors, salaries and emoluments thereto appertaining. The respondents are enjoined herein to pass in audit and effect the payment of petitioner's salary for the services he has rendered and to be rendered until such time when his appointment shall have been legally and lawfully terminated by competent authority."[3] No damages were awarded and there was no pronouncement as to costs. Hence, this appeal by the then Solicitor General, now Associate Justice, Antonio P. Barredo, wherein he stressed that the two legal issues involved are "the applicability of Commonwealth Act. No. 588, providing that temporary designations made by the President pursuant thereto are effective only until the adjournment of the session of Congress, and non-exhaustion of administrative remedies."[4] On both points, he contended that the lower court erred. A careful study of such issues in the light of the constitutional provisions that have relevance, as noted in the respective briefs as well as the appealed decision, lead to the conclusion that respondent's stand is supported by the law. As noted at the outset then, the judgment on appeal cannot be affirmed.

1. It is of course undeniable that for the designation of petitioner as Acting Vice-Mayor to be valid, it must be located within the confines of the constitutional and statutory authority of the President. We start with the Constitution. The President has the power to nominate and, with the consent of the Commission on Appointments, to appoint certain constitutional officials when Congress is in session and during its recess to extend ad interim appointments effective until disapproval of the Commission or until the next adjournment of Congress.[5] The broad authority thus conferred has been construed to allow designations for acting appointments. As was set forth in *Summers vs. Ozaeta*,[6] this Court speaking through the then Justice, later Chief Justice, Paras said: "Moreover, an adinterim appointment is one made in pursuance of paragraph (4), section 10, Article VII, of the Constitution, * * *. It is an appointment permanent in nature, and the circumstance that it is subject to confirmation by the Commission on Appointments does not alter its permanent character. * * * Said appointment is of course distinguishable from an 'acting' appointment which is merely temporary, good until another permanent appointment is issued."[7] There could be no valid objection then to the designation of petitioner as Acting Vice-Mayor. At the time of the vacancy in the office of the Vice-Mayor of the City of Naga in 1965, the statutory provision then in force empowered the President to fill the permanent vacancy resulting from the cessation of the incumbent Vicente P. Sibulo, who assumed the position of Mayor as a result of the election of Congressman Ramon Felipe, Jr., its previous occupant.[8]

There was thus no impediment to the assumption by petitioner as Acting Vice-Mayor, but the duration thereof is dependent on Commonwealth Act No. 588, which expressly limits it to the period during which the legislative body is in regular session. As a matter of fact, the statute, by using negative language, was even more emphatic,

there being the explicit requirement that "such temporary designation * * * shall in no case continue beyond the date of the adjournment of the regular session of the National Assembly next following such designation." [9] It is not to be forgotten that even an ad interim appointment permanent in character ceases not only upon the adjournment following a regular session but also after a special session, as held in *Guevarra vs. Inocentes*. [10] Petitioner did admit in the stipulation of facts that his previous ad interim appointment expired upon the close of the special session on January 22, 1966. It cannot be truly said therefore that the conclusion reached by the lower court is impressed with merit. It is at war with the letter of the statute no less than the spirit of the Constitution.

Petitioner cannot be entirely unaware of the flaw vitiating his claim to continue acting under such designation, considering what is provided in Commonwealth Act No. 588. Hence, in his brief, he would deny its applicability to his situation. That is a position attended with grave risk. It is as if he were out perched on a limb and he would saw it off. For without this enactment, he could not have been designated at all. As was noted, there was a previous ad interim appointment, but he was bypassed. He was not extended a new one. Instead, his competence to act as Vice-Mayor was by virtue of the designation made on April 4, 1966. Such a step could be justified solely by virtue of this specific statute. It is a principle that is well-settled in public law that a public officer having the capacity to act on behalf of the Government in whom the exercise of sovereignty is vested has to be chosen in the manner and form provided by law. Otherwise, he would be a plain usurper of official functions. What is worse in this particular case was that petitioner could not have been possibly ignorant of the termination of his status as Acting Vice-Mayor. As early as May 31, 1966, he was informed by Assistant Executive Secretary Flores Bayot that his designation as Acting Vice-Mayor did cease upon the adjournment of the regular session of Congress on May 19, and that a new designation was still under consideration. [11] Petitioner appeared to have the quality of stubbornness however, for under date of February 17, 1967, in a telegram for the information and guidance of respondent City Auditor, there was again a reiteration of the presidential determination that he had ceased as such Acting Vice-Mayor, no new designation having been made after May 19, 1966. Moreover, petitioner was explicitly informed that he should not continue in office, he not having even the color of title thereto after May 19, 1966. He was likewise ordered to refrain from performing the duties of said office upon pain of the appropriate drastic action that would be taken against him. [12] This Court need not go so far as to stress the well-settled principle that an act of a department head, unless disapproved or reprobated by the President, presumptively emanates from him and is to be treated as such. [13] It does not admit of doubt, though, that considering the extensive range of authority of the Executive Secretary who ordinarily acts for and in behalf of the President, the decisions of such office which are attributable to the Executive have been performed by the Assistant Executive Secretaries. At any rate, petitioner was only to blame if, notwithstanding such plain, explicit and categorical expression of the presidential wishes on the matter, he would hold on to a position to which, in law, he has no valid claim. Hence, the reversal of the appealed decision is called for.

2. On the second issue raised that there was a failure on the part of the petitioner to exhaust administrative remedies, there is much to be said for the approach taken by the then Solicitor General Barredo, as set forth in the brief for respondents as appellants. Thus: "It will be recalled that on June 21, 1966, the appellee wrote to the Division Auditor for Southern Luzon through the City Auditor presenting his claim for salary for June 1 to 15, 1966, invoking the opinion of the City Fiscal in his favor. The City Auditor indorsed the appellee's claim to the Division Auditor recommending favorable action * * *. In turn the Division Auditor for-warded the appellee's claim to the Auditor General, concurring in the preceding indorsement of the City Auditor * * *. While the appellee did take the correct and proper step in filing his claim with the Auditor General through channels, he did not do right in filing the instant complaint without awaiting the decision of the Auditor General from which, if adverse or not satisfied therewith, he could have appealed to the President of the Philippines or to this Honorable Court." [14]

As to the mandatory character subject to well-defined exceptions of the principle that administrative remedies must be exhausted, a recent decision, *Secretary of Agriculture and Natural Resources vs. De los Angeles*,^[15] had the following to say: "The doctrine that there must be an exhaustion of administrative remedies received its first expression, without such language being employed, in *Ang Tuan Kai vs. Import Control Commission*, a 1952 decision. Thus: 'These special civil actions against administrative officers should not be entertained if superior administrative officers could grant relief.' This view given expression by Justice Alex Reyes received confirmation a year later from Justice Tuason in these words: 'Incidentally, Reyes' case is an expressive confirmation of the respondents' other contention that the petitioner has a plain, speedy and adequate remedy other than a resort to the courts of justice. What the petitioner could or should have done was to appeal to the Secretary of Finance as Reyes had done.' Later that same year, the then Justice Reyes employed the precise formulation, as is evident from this portion of the opinion: 'having failed to exhaust their remedy in the administrative branch of the Government, plaintiffs cannot now seek relief in the courts of justice.' By 1958, the then Justice, now Chief Justice, Concepcion could explicitly affirm: 'It is well-settled that before one resorts to the courts of justice, such administrative remedies as may be available should first be exhausted.' That is a ruling that has been, since then, uninterruptedly adhered to. There are exceptions of course, but the present proceeding does not fall within any of them."^[16]

WHEREFORE, the appealed decision of June 23, 1967 is reversed and the petition for mandamus is dismissed. No pronouncement as to costs.

Concepcion, C.J., Zaldivar, Castro, Teehankee, Makasiar, Antonio, and Esguerra, JJ., concur.

Makalintal, J., is on official leave.

Barredo, J., took no part.

[1] Commonwealth Act No. 588, An Act Authorizing the President of the Philippines to Make Temporary Appointments in Certain Public Offices, insofar as relevant, provides: "Sec. 4. Any provision of existing law to the contrary notwithstanding, when an officer in the Executive Department of the Government, appointed by the President of the Philippines with the consent of the Commission on Appointments of the National Assembly or by the President alone, is unable to perform the duties of his office owing to illness, absence, or other cause, or in case of a vacancy in the office, the President may designate another officer already in the service or any other competent person to act temporarily in said office, and such person shall, during the period of his temporary incumbency, receive the compensation corresponding to the regular incumbent, which compensation shall be paid out of the appropriations for the office concerned, unless he is already in the Government service in which case he shall receive only such additional compensation as, with his existing salary, shall not exceed the salary authorized by law for the position filled: Provided, That with respect to vacancies in offices the regular incumbents of which are appointed by the President with the consent of the Commission on Appointments of the National Assembly, such temporary designation and any other made to the same office during the period of such vacancy shall in no case continue beyond the date of the adjournment of the regular session of the National Assembly next following such designation." (1940).

[2] Decision of the lower court, Appendix to Brief for Respondents as Appellants, 22-25.

[3] Ibid, 40.

[4] Brief for Respondents as Appellants, 8.

[5] Art. VII, Sec. 10, pars. 3 and 4 of the Constitution read: "The President shall nominate and with the consent of

the Commission on Appointments, shall appoint the heads of the executive departments and bureaus, officers of the Army from the rank of colonel, of the Navy and air forces from the rank of captain or commander, and all other officers of the Government whose appointments are not herein otherwise provided, and those whom he may be authorized by law to appoint; but the Congress may by law vest the appointment of inferior officers, in the President alone, in the courts, or in the heads of departments." (3) "The President shall have the power to make appointments during the recess of the Congress, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress." (4)

[6] 81 Phil. 754 (1948).

[7] Ibid, 760-761. *Austria vs. Amante*, 79 Phil. 780 (1948), was cited.

[8] Section 21 of Republic Act No. 180, par. (b) provides: "Whenever in any elective local office a vacancy occurs as a result of the death, resignation, removal or cessation of the incumbent, the President shall appoint thereto a suitable person belonging to the political party of the officer whom he is to replace upon the recommendation of said party, save in the case of a mayor, which shall be filled by the vice-mayor." There would have been no problem created had the vacancy occurred after the effectivity of the Decentralization Act, Republic Act No. 5185, which took effect on September 12, 1967. For, according to its section 7: "In case a vacancy occurs in the office of Vice-Governor or Vice-Mayor, the board or council member, as the case may be, who obtained the highest number of votes, or in cases of provinces, cities, or municipalities where the provincial, city or municipal board members are elected by districts, the highest percentage of total votes cast in the last election, shall succeed to the officer: Provided, however, That such member meets all the requirements for the position: Provided, further, That in case of a tie, the pertinent provisions of the Revised Election Code shall apply."

[9] Cf. *Nacionalista Party vs. Bautista*, 85 Phil. 101 (1949).

[10] L-25577, March 15, 1966, 16 SCRA 379.

[11] Exhibit 2, as noted in the Decision of the lower court, Appendix to Brief for Respondents as Appellants, 30.

[12] Exhibit 7, Ibid, 31.

[13] *Tecson vs. Salas*, L-27524, July 31, 1970, 34 SCRA 275. The following cases were cited in such decision: *Marc Donnelly and Associates vs. Agregado*, 95 Phil. 145 (1954); *Cabansag vs. Fernandez*, 102 Phil. 151 (1957); *Acting Collector of Customs vs. Court of Tax Appeals*, 102 Phil. 244 (1957); *Commissioner of Customs vs. Auyong Hian*, 105 Phil. 561 (1959); *People vs. Jolliffe*, 105 Phil. 677 (1959); *Demaisip vs. Court of Appeals*, 106 Phil. 237 (1959); *Juat vs. Land Tenure Administration*, L-17080, Jan. 28, 1961, 1 SCRA 361; *Tulawie vs. Provincial Agriculturist of Sulu*, L-18945, July 31, 1964, 11 SCRA 611; *Lacson-Magallanes Co. vs. Paño*, L-27811, Nov. 17, 1967, 21 SCRA 895.

[14] Brief for Respondents as Appellants, 16-17.

[15] L-30215, February 29, 1972, 43 SCRA 494.

[16] Ibid, 499-500, citing *Ang Tuan Kai vs. Import Control Commission*, 91 Phil. 143 (1952); *Coloso vs. Board of Accountancy*, 92 Phil. 938 (1953); *Miguel vs. Vda. de Reyes*, 93 Phil. 542 (1953); *Vda. de Villanueva vs. Ortiz*, 103 Phil. 875 (1958).

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.