

PEDRO Z. YKALINA, PETITIONER, VS. ANANIAS ORICIO, RESPONDENT.

G.R. No. L-6951. October 30, 1953

Ponente: BENGZON, J.

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BENGZON, J.:

The 1951 polls of the municipality of Valladolid, Occidental Negros, resulted in the election of Manuel Z. Ykalina as mayor, and of Antipas Junio as vice-mayor. Among the councilors-elect, Pedro Z. Ykalina obtained the highest place, and Ananias Oricio the fourth. All assumed office the proper time.

On July 18, 1953, Antipas Junio wrote the Provincial Board a letter of resignation, which was duly accepted by that body on July 24, 1953.

Then on August 8, 1953, the Acting Executive Secretary suspended Mayor Ykalina by reason of certain administrative charges, and in view thereof the Acting Provincial Governor of Occidental Negros addressed to said mayor a communication of the following tenor:

"This is to inform you that a telegram dated August 8, 1953, has been received in this Office from Malacañan signed by Executive Secretary Marciano Roque, in which this Office has been requested to 'please advise Mayor Ykalina he has today been suspended in connection administrative charges against him now being investigated by provincial fiscal.'

"You are, therefore, hereby ordered to turn over the office of the mayor of that municipality to vice-mayor, Ananias Oricio, as soon as he is ready to take over.

Mayor Ykalina of course yielded the office to Ananias Oricio.

A few days later, Pedro Z. Ykalina asserted his right to substitute the mayor in view of the resignation of the vice-mayor Junio, and started here this quo warranto proceeding to contest respondent Oricio's possession of the office. He alleged that under section 2195 of the Revised Administrative Code, when the mayor of a town is suspended his duties are discharged by the vice-mayor, but if there be no vice-mayor, by the councilor who at the last general election received the highest number of votes. He alleged further in his petition that the Provincial Governor, without consultation with, nor consent of the Provincial Board had invalidly designated said respondent to act as mayor of Valladolid.

In his defense, the respondent answered that the Governor's letter merely informed Mayor Ykalina of his suspension by superior decree, and of his obligation to cease in the exercise of his powers which shall be assumed by Oricio, who had, before that time, i. e., on July 28, 1953, qualified for the office of vice-mayor in pursuance of an appointment issued by the President of the Philippines on July 25, 1953. The respondent went on to explain there was no need of any designation by the provincial governor, inasmuch as under section 2195 of the Revised Administrative Code he ipso facto succeeded to the mayorship upon the incumbent's suspension.

By way of replication, the petitioner assailed the validity of Oricio's appointment as vice-mayor, contending that it

was made by Executive Secretary Marciano Roque, and not by President Quirino himself.

Undoubtedly, under section 21(b) of the Revised Election Code, when the office of vice-mayor became vacant the President could appoint thereto a suitable person" etc. The appointment marked Exhibit 6 in favor of Ananias Oricio reads as follows:

"OFFICE OF THE PRESIDENT OF THE PHILIPPINES

Manila, July 25, 1953

Sir:

Pursuant to the provisions of section 21(b) of Republic Act No. 180, you are hereby appointed Vice-Mayor of the municipality of Valladolid, Negros Occidental, vice Antipas Junio.

By virtue hereof, you may qualify and enter upon the performance of the duties of the office, furnishing the Commissioner of Civil Service with a copy of your oath.

Very respectfully,

By order of the President:

(Sgd.)

MARCIANO ROQUE

Acting Executive Secretary

Mr. ANANIAS ORICIO

Through the Honorable

The Provincial Governor

Bacolod, Negros Occidental."

Impugning the legality of this appointment, the petitioner maintains that as the power to appoint is intrinsically an executive act involving the exercise of discretion which may not be validly delegated by the President to the Executive Secretary, the above appointment made by the latter in behalf of the President is null and void. The premises of the argument are not without juridical foundation. However, it must be observed that the writing Exhibit 6 is signed by the Acting Executive Secretary "by order of the President." Such signature means that the President himself had selected the appointee and had instructed Secretary Roque to extend the formal written appointment. That Presidential order may be contained in a written memorandum, or may be merely oral. In the light of principles of the law of public officers that order as officially evidenced by the written communication Exhibit 6 amounted to a valid appointment.

"While the appointment of an officer is usually evidenced by a Commission, as a general rule it is not essential to the validity of an appointment that a commission issue, and an appointment may be made by an oral announcement of his determination by the appointing power." (67 C.J.S. Officers, p. 189.)

The Chief Executive is vested by law with the power to appoint many officials. Probably in the appointment of those of lesser category the Executive has found it more expedient to follow the practice herein disclosed. We are shown no constitutional or legal objection to it.

For that matter, the document Exhibit 6 does not materially differ from another in the same words of appointment,

but with a rubber stamp of His Excellency's autograph, as a signature, affixed thereto by the Executive Secretary upon orders of the President. Note particularly that Exhibit 6 does not say "By authority of the President", a phrase which might imply^[1] that the Executive Secretary had been authorized by the President to select, and did select the appointee.

But President Quirino, petitioner insists, could not have chosen this particular appointee, because on July 25, 1953, he underwent a second stomach operation at Johns Hopkins Hospital in the United States. The trouble with the argument is its assumption that the directive to appoint Oricio was communicated by the President precisely on July 25, 1953. Such directive could have been made days before, considering that vice-mayor Junio's resignation had been submitted one week earlier. And it must be presumed that Secretary Roque committed no usurpation of authority nor any disloyalty to the Chief Executive. Anyway, if His Excellency has not actually ordered the appointment, it should be easy for petitioner to secure an official statement to that effect.

Petitioner's last contention is that under section 2195 of the Revised Administrative Code an appointive vice-mayor has no right to assume the mayorship inasmuch as the section evidently refers to an elective vice-mayor. That section provides that "upon the occasion of the absence, suspension, or other temporary disability of the mayor, his duties shall be discharged by the vice-mayor, or if there be no vice-mayor, by the councilor who at the last general election received the highest number of votes."

The provision makes no distinction between appointive and elective vice-mayors. *Ubi lex non distinguit nec nos distinguere debemus*. Where the law does not distinguish we should not distinguish. Indeed, if an appointive mayor may be head of the local government, as is the case in many instances, there is no reason to prevent an appointive vice-mayor from acting as mayor temporarily.

This petition will be dismissed with costs. So ordered.

Paras, C.J., Pablo, Padilla, Tuason, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

[1] The words are advisedly italicized.

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