

DOMINADOR JOVER, PETITIONER, VS. JUAN BORRA, RESPONDENT.

G. R. No. L-6782. July 25, 1953

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for quo warranto to test the legality of the removal of the petitioner from the office of Mayor of the City of Iloilo and the designation of the respondent as acting Mayor of the said City.

The following facts are not controverted: That on 9 February 1953 the petitioner was appointed Mayor of the City of Iloilo and on 26 March 1953 his appointment was confirmed by the Commission on Appointments; that on 28 June 1953 the petitioner was advised by the Secretary to the President by telegram followed by a letter both dated 27 June 1953 that he was relieved from his office as Mayor and that in his place and stead the respondent was designated as acting Mayor; and that on 27 June 1953 the respondent was designated as acting Mayor of the City of Iloilo by the President of the Philippines and took his oath of office.

By agreement of the parties the decision on the merits in the case will be confined to the legality or illegality of the removal of the petitioner and the designation of the respondent. Both parties waived determination of other points incident thereto.

The petitioner claims that under and pursuant to the charter of the City of Iloilo^[1] his tenure of office is six years and that for that reason he may be removed only for cause as provided by law.

The respondent sets up the special defense that the office of Mayor of the City of Iloilo is policy-determining and primarily confidential; that for that reason the petitioner is subject to removal at the pleasure of the President; and that any statute which deprives the President of the power to remove the petitioner is unconstitutional because it encroaches upon his prerogative—upon his constitutional power to remove incumbents of such positions or offices.

The provision of the Constitution invoked by the respondent reads, as follows:

A civil service embracing all branches and subdivisions of the Government shall be provided by law. Appointments in the Civil Service, except as to those which are policy-determining, primarily confidential or highly technical in nature, shall be made only according to merit and fitness, to be determined as far as practicable by competitive examination.^[2]

Granting that the office of Mayor of the City of Iloilo is policy-determining—a point we need not decide—still we find that the appointment of this class of officers is only an exception to the general rule that it "shall be made only according to merit and fitness, to be determined as far as practicable by competitive examination." The above-quoted constitutional provision does not say that officers appointed under the exception are removable at pleasure.

"The Legislative power shall be vested in a Congress of the Philippines, which shall consist of a Senate and a House of Representatives."^[3] In the exercise of that power the National Assembly of the Philippines passed Commonwealth Act No. 158 amending Commonwealth Act No. 57. Section 8 of Commonwealth Act No. 158, as

amended by Republic Act No. 276, provides:

The Mayor shall be the chief executive of the city.

He shall be appointed by the President of the Philippines with the consent of the Commission on Appointments. He shall be appointed solely on the basis of his executive and administrative qualifications. The selection shall not be limited to inhabitants of Iloilo. He shall hold office for six years unless removed, and shall receive a salary of seven thousand two hundred pesos per annum. A discretionary fund of three thousand pesos a year shall be appropriated out of the funds of the city to be placed at the disposal of the Mayor.

The fixing by Congress of a period of time during which the Mayor of the City of Iloilo is to hold office is a valid and constitutional exercise of a legislative power.

The legislative intent to provide for a fixed period of office tenure for the Mayor of the City of Iloilo and not to make him removable at the pleasure of the appointing authority may be inferred from the fact that whereas the appointment of the Vice-Mayor of the same city, as provided for in an amendatory act,[4] and those of the Mayors and Vice-Mayors of other cities[5] are at pleasure, that of the Mayor of the City of Iloilo is for a fixed period of time, as provided for in the original charter,[6] and this continued unchanged despite subsequent amendatory acts.[7]

"The President shall have control of all the executive departments, bureaus, or offices, exercise general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed." [8] The President cannot derive from this constitutional provision the authority to relieve or remove the petitioner from office, because his power is merely one of general supervision over all local governments and such supervision is to be exercised "as may be provided by law."

In *Lacson vs. Roque* [9] we said—

The most liberal view that can be taken of the power of the President to remove the Mayor of the City of Manila is that it must be for cause. Even those who would uphold the legality of the Mayor's suspension do not go so far as to claim power in the Chief Executive to remove or suspend the Mayor at pleasure. Untrammelled discretionary power to remove does not apply to appointed officers whose term of office is definite, much less elective officers. As has been pointedly stated, "Fixity of tenure destroys the power of removal at pleasure otherwise incident to the appointing power * * *. The reason of this rule is the evident repugnance between the fixed term and the power of arbitrary removal. * * *"

"An inferential authority to remove at pleasure cannot be deduced, since the existence of a defined term, ipso facto, negatives such an inference, and implies a contrary presumption, i.e., that the incumbent shall hold office to the end of his term subject to removal for cause." (State ex rel. Gallagher vs. Brown, 57 Mo. Ap., 203, expressly adopted by the Supreme Court in State ex rel. vs. Maroney, 191 Mo., 548; 90 S.W., 141; State vs. Crandell, 269 Mo., 44; 190 S. W., 889; State vs. Salval, 450, 2d, 995.; 62 C. J. S., 947.)

The legislative department having provided for an office tenure of six years for the Mayor of the City of Iloilo, the President cannot remove the petitioner without cause as provided by law.[10]

The petitioner not having been removed in accordance with the provisions of the Revised Administrative Code referred to, his relief or removal from office is unauthorized and illegal. Hence the designation of the respondent as acting Mayor is also without authority of law.

Petition granted, without costs.

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

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- [1] Commonwealth Act No. 158, as amended by Republic Act No. 276.
- [2] Section 1, Article XII, Constitution of the Philippines; section 668, Revised Administrative Code.
- [3] Section 1, Article VI, Constitution of the Philippines.
- [4] Republic Act No. 365.
- [5] Section 2545, Revised Administrative Code; Commonwealth Acts Nos. 162; 170, as amended; 179, as amended; 183; 288, as amended; 305; 306; 327; 328; 521; 523; 525, as amended; 537; and 603.
- [6] Commonwealth Act No. 57.
- [7] Commonwealth Act No. 158; Republic Acts Nos. 276 and 365.
- [8] Section 10, par. (1), Article VII, Constitution of the Philippines.
- [9] 49 Off. Gaz. 93, 101-102; 92 Phil. 456.
- [10] Section 4, Article XII, Constitution of the Philippines; sections 64-b, 694 and 2078, Revised Administrative Code.

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