

**VICENTE CABILING, ET AL., PETITIONERS AND APPELLEES, VS.
EUSEBIO PABULAAN, ET AL., RESPONDENTS AND APPELLANTS.
TEODORO M. PEPITO, ET AL., PETITIONERS AND APPELLEES, VS.
LUCILO A...**

G. R. Nos. L-21764-65. May 31, 1965

Ponente: DIZON, J.

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DIZON, J.:

On August 10, 1960 Teodoro N. Pepito and Ernesto Garcia were designated by President Garcia, pursuant to Section 10 of Republic Act 180 as Acting Mayor and Acting: Vice-Mayor, respectively, while Policarpio Valero, Jose Cajés, Melecio Tilanduca, Marcelo Salintao and Roberto Laoyan were also appointed as Acting Municipal Councilors of the municipality of Valencia, Bukidnon, then newly created under Executive Order No. 360 dated October 11, 1959, and duly qualified thereafter. On May 19, 1961 they were extended new acting designations to the same positions and qualified therefor on August 15 of the same year, performing the functions of their respective offices uninterruptedly and receiving from the Municipal Treasurer of Valencia their salaries and per diems from November 6, 1960 to June 23, 1962.

On September 28, 1961, Vicente Cabiling and Paulino Gonzales were similarly designated as Acting Mayor and Acting Vice-Mayor, respectively, and Ernesto Cayanong, Agapito Ayuban and Ramon Caspe as Acting Municipal Councilors, of the municipality of Dangcagan likewise newly created under Executive Order No. 444 issued by former President Garcia on August 29, 1961. On October 26 of the same year they took the corresponding oath of office. Jose Galamiton, Lucio Sarajena and Pedro Leuterto were likewise appointed as Acting Municipal Councilors of said municipality on December 8, 1961, the latter two qualifying for the office on December 19 of the same year. All of them, with the exception of Jose Galamiton, discharged their respective duties continuously, and were paid their salaries and per diems by the Municipal Treasurer of Dangcagan up to June 23, 1962.

December 18, 1961 Benigno U. Aquino, officer in of processing all presidential appointments, revived instructions from the Executive Secretary to have all previous "Acting designations" converted into "Ad-interim appointments" and have them antedated. On December 25, 1961, President Garcia signed said ad-interim appointments, including those of the aforementioned officers, which were antedated as of June 1, 1961, in the case of the appointments of the municipal officials of Valencia, and December 8, 1961 in that of the municipal officials of Dangcagan. The following day, the appointments were forwarded to the Commission on Appointments together with several hundred others, and in May, 1962, the Commission confirmed the ones involved in the case now before Us.

On December 31, 1961, President Macapagal issued Administrative Order No. 2, withdrawing, recalling, and declaring without effect all ad-interim appointments extended or released by President Garcia after December 13, 1961.

On June 6, 1962, President Macapagal extended acting appointments to Lucilo Alkuino, as Mayor, Solomon

Gaoay as Vice-Mayor, Hugo Limbo, Segundo Dumaguita, Emilio Ermio, Alfredo Acasio and Escolastico Hugo Ogario, as Councilors, of the municipality of Valencia. On the same day, Eusebio Pabulaan and Emigdio Ofima were similarly appointed as Acting Mayor and Acting Vice-Mayor, respectively, of the municipality of Dangcagan, while Nicanor R. Baticolon, Nicolas Paeste, Raymundo Salazar, Donato Pabulaan, Victor Ampuan and Conrado Tosem were appointed as Acting Councilors thereof. All officials qualified for their respective office in June, and were paid their respective salaries and per diems.

On December 4, 1962 Vicente Cabiling and his co-appellees filed a petition for quo warranto with the First Instance of Bukidnon (Case No. 240) claiming the right to hold the positions of Mayor, Vice-Mayor and Councilors of the municipality of Dangcagan and assailing the validity of the appointments of Eusebio Pabulaan, et al. to the same offices, with a prayer for the issuance of a writ of preliminary injunction to restrain the Municipal Treasurer of Dangcagan from paying the salaries diems of the latter during the pendency of the case.

A similar petition was filed by Teodoro N. Pepito and his co-appellees with the same court (Case No. 239) assailing the validity of the appointments of Lucilo Alkuino, et al., to the positions of Mayor, Vice-Mayor and Councilors of the municipality of Valencia, with a prayer for the issuance of a writ of preliminary injunction against the municipal treasurer of Valencia.

After a joint trial of the petitions, the court, on June 7, 1963, rendered judgment as follows:

Wherefore, judgment is hereby rendered declaring the petitioners in all these cases to be the legal occupants of the positions to which they were appointed with the right to the salaries and emoluments thereof from the date of their removal until reinstatement, and the respondents are hereby ousted and altogether excluded therefrom, with costs against the said respondents."

From the above decision respondents interposed the present appeals.

Section 10 of Republic Act No. 180, provides as follows:

"When a new political division is created the inhabitants of which are entitled to participate in the elections, the elective officers thereof shall, unless otherwise provided, be chosen at the next, regular election. In the interim, such offices shall, in the discretion of the President, be filled by appointment by him or by a special election which he may order."

The trial court ruled that the "acting appointments" extended to appellees were permanent because all appointments made by the Chief Executive under the legal provision quoted above are necessarily permanent, to last until the elective officers of the newly created political subdivision are chosen at the next regular election. This means that, in the opinion of the trial court, the "acting" appointments extended in favor of appellees were necessarily up to or until the general elections of 1963. We can not agree with this view, there being nothing in the legal provision aforementioned to justify it, directly or indirectly.

Generally, the power to appoint vested in the Chief Executive includes the power to make temporary appointments, unless he is otherwise specifically prohibited by law, or a temporary or acting appointment is repugnant to the nature of the office to be filled. This is based upon the theory that the whole includes and is greater than the part (Tañada and Carreon, Philippine Political Law, 1961 Edition, pp. 316-317).

In the case of officials of newly created municipalities, there is no law nor public policy requiring that they must be filled by permanent appointees. The applicable legal provision already quoted above—merely gives the Chief Executive the option to fill the offices by appointment. Of course, if the appointment made is permanent, it should last up to or until the elective officials of the newly created municipality have been chosen at the next regular election.

To the above We must add the circumstance that appellees are estopped from claiming that their acting appointments were, in reality, permanent appointments. As already stated, President Garcia extended in their favor acting appointments twice. On the other hand, that they were so intended conclusively shown by the fact that on December 18, 1961, the Office of the President gave out the order to have all previous acting appointments converted into "ad-interim" appointments. Appellees having accepted the appointments thus extended to them without any protest or reservation, and having acted thereunder for a considerable time it is clear that they can not now be heard to say that such appointments were, in reality, permanent and that, by reason of their being so, they could not be removed, except for cause, before the end of the term for which they were supposedly appointed.

It is not disputed that the ad-interim appointments extended in favor of appellees were signed by President Garcia only on December 25, 1961, and that they were among the several hundred similar appointments forwarded by the Office of the President to the Commission on Appointments on December 26, 1961. This being so, appellees' appointments should be regarded as an integral part of the so called "mid-night appointments" voided by our decision in the Aytona case.

There is still another factor that makes appellees' stand untenable. The preponderance of evidence,—to say the least—shows that their ad-interim appointments had never been released. As a consequence, the action taken thereon by the Commission on Appointments must be deemed of no legal effect (*Rosales vs. Yencko* G. R. No. L-20618, May 1965). It is true that appellee Ramon Caspe (G. R. No. L-21764) produced in evidence a telegram which purported to advise him of the signing of his ad-interim appointment, but said telegram was received only in January 1962 after the issuance of the Executive Order withdrawing and cancelling all appointments made by the previous Chief Executive after December 13, 1961. In G. R. No. L-21765, a similar attempt was made by appellees Pepito and Cajos who presented as evidence the telegrams now marked as Exhibits A and B. The fact is, however, that the telegram Exhibit A was sent only on January 1, 1962, while the telegram Exhibit B was sent on December 31, 1961, and both were received on January 2, 1962, also after the recall of their appointments. As a matter of fact, appellee Pepito testified that up to the time when he took the witness stand, he had not received a copy of his ad-interim appointment, and he also admitted that he had never taken his oath of office as ad-interim Mayor.

In view of all the foregoing, the decisions appealed from are reversed, with the result that the petition for quo warranto under consideration are dismissed, with costs.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Paredes, Regala, Makalintal, Bengzon, J. P. and Zaldivar, JJ., concur..

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