

FELICISIMO M. ORENCIA, PETITIONER AND APPELLANT, VS. JUAN PONCE ENRILE, AS SECRETARY OF JUSTICE, HON. ANTONIO H. NOBLEJAS, IN HIS PERSONAL CAPACITY & HON. GREGORIO BILOG, JR. AS...

G.R. No. L-28997. February 22, 1974

Ponente: FERNANDO, J.

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FERNANDO, J.:

Petitioner, in his appeal against a lower court decision dismissing his suit for mandamus to compel respondent officials, the then Secretary of Justice, the then Commissioner of Land Registration and the then Commissioner of Civil Service,[1] to recognize his alleged right as Assistant Chief, Clerks of Court Division, Land Registration Commission, is confronted with obstacles not only formidable but insurmountable in character. For all the skill evident in his brief as appellant, submitted by his counsel, former Delegate Ramon Gonzales, he was not able to demonstrate his clear legal right to such a position. Nor is the procedural hurdle the only one that stands in the way. There are barriers substantive in character that refuse to yield even under the most vigorous and insistent attack. For the crucial issue, a public office being involved and public interest being the prime consideration, is whether the choice for the position of Assistant Chief of the Clerks of Court Division of the Land Registration Commission should fall on respondent Guillermina M. Gener, a member of the Bar, rather than on petitioner, whose educational attainment was that of a high school graduate. For respondent officials, the answer was not in doubt. Since there was a new legal provision to be construed, one which admittedly, to follow the approach of counsel for petitioner, has an ambiguous aspect, they chose to follow the principle that a public office is a public trust. Certainly, such a contemporaneous construction, one moreover dictated by the soundest constitutional postulate, is entitled to the highest respect from the judiciary. In manifesting such an attitude, the lower court could not have been in error. We affirm.

What did transpire in this suit? From petitioner's own statement of the case: "On June 20, 1967, petitioner-appellant filed the said petition for mandamus with preliminary injunction before the Manila Court of First Instance against respondents docketed as Civil Case No. 69840, alleging substantially that he is the deputy clerk of court of the Clerks of Court Division of the Land Registration Commission, and he has been performing functions of Assistant Chief of said division and has been considered and recognized as such, until Rep. Act 4040, enacted June 18, 1964 increasing the salaries of Assistant Chiefs of Divisions, among others, was implemented where he was left out while co-assistant chiefs of the nine (9) other divisions of the Land Registration Commission were so recognized and extended increased compensation, in spite of his protest to respondents Secretary of Justice, Land Registration Commissioner, and Commissioner of Civil Service; and to add insult to injury, respondent Guillermina M. Gener, was appointed assistant chief of the Clerks of Court Division, when there was no vacancy to said position and given an increased compensation of P9,600.00 for the said position, while petitioner continued to receive the old rate of P3,070.08 per annum, and praying that he be extended similar recognition as assistant chief of the Clerks of Court Division of the Land Registration Commission, and paid the

corresponding salary under Rep. Act 4040 and that the appointment of respondent Guillermina M. Gener be declared null and void, with damages and attorney's fees. On July 17, 1967, respondents filed their answer, and after usual admissions and denials, interposed a defense that petitioner is unqualified for the position of Assistant Chief, Clerks of Court Division, and being a new position created under Republic Act 4040, the same can only be filled by a qualified person; that respondent [Gener], being a lawyer, is more qualified than petitioner who is only a high school graduate with second grade civil service eligibility, and praying that the petition be dismissed." [2]

Then from his statement of facts: "Petitioner is a deputy clerk of court of the Clerks of Court Division, Land Registration Commission, having been appointed as such on July 16, 1962 after having [risen] from the ranks for the last 23 years in said office * * * with compensation of P3,070.08 per annum * * *. The Clerks of Court Division is one of the ten (10) divisions in the Land Registration Commission, all of which prior to Rep. Act 4040 are headed, each by a Chief and Assistant Chief, but none of them carries an appointment of Division Chief and Assistant Chief, although they are considered and recognized as such, * * *." [3] Then on the very next page of his brief, petitioner made clear that his position was not Assistant Chief of the Clerks of Court Division, for there was none as yet existing, but Deputy Clerk of Court. [4]

The rest of his statement of facts follows: "On July 6, 1964, petitioner formally requested respondent Commissioner of Land Registration Commission for recommendation and payment of his differential salary, which request was, however, denied on July 10, 1964. * * * On September 1, 1964, petitioner appealed to the Secretary of Justice, but his appeal was likewise denied * * *. From the ruling of the Secretary of Justice, he appealed to respondent Commissioner of Civil Service on June 3, 1965, and, again, he was rebuffed on February 21, 1966 * * *. On July 29, 1966, said respondent Gener was appointed Assistant Chief of the Clerks of Court Division effective July 1, 1966, by the respondent Secretary of Justice, upon recommendation of respondent Land Registration Commission, and duly attested to by the Commissioner of Civil Service * * *. Aggrieved, petitioner has brought the present suit." [5]

Petitioner's own summation of the matter thus renders clear that until the passage of Republic Act No. 4040, there was no such position as Assistant Chief of the Clerks of Court Division. It would be only through the utmost straining of words that an assertion may be made as to his right thereto, especially so as his designation was specifically that of Deputy Clerk of Court. Where, then, is that clear legal right so indispensable for a suit of mandamus to prosper? His claim being far-fetched and untenable, it is not for him to dispute the appointment of respondent Gener, possessed of the very qualification of membership in the Bar which petitioner sadly lacks. That is to accord the principle of the public office being a public trust. Moreover, in a case where such appointment was sustained by respondent Secretary of Justice and found favor with respondent Commissioner of Civil Service, the contemporaneous construction thus placed on the legal provision in Republic Act No. 4040, admitting its ambiguity, is for this Court to uphold. Hence, as noted at the outset, the appealed decision must be affirmed.

1. "Mandamus," as held in *JRS Business Corporation vs. Montesa*, [6] a 1968 decision, "is the proper remedy if it could be shown that there was neglect on the part of a tribunal in the performance of an act, which specifically the law enjoins as a duty or an unlawful exclusion of a party from the use and enjoyment of a right to which he is entitled. * * * According to former Chief Justice Moran, 'only specific legal rights may be enforced by mandamus if they are clear and certain. If the legal rights of the petitioner are not well defined, clear, and certain, the petition must be dismissed.' In support of the above view, *Viuda e Hijos de Crispulo Zamora vs. Wright* was cited. As was there categorically stated: 'This court has held that it is fundamental that the duties to be enforced by mandamus must be those which are clear and enjoined by law or by reason of official station, and that petitioner must have a clear, legal right to the thing demanded and that it must be the legal duty of the defendant to perform the required act.' As expressed by the then Justice Recto in a subsequent opinion: 'It is well established that only specific legal

rights are enforceable by mandamus, that the right sought to be enforced must be certain and clear, and that the writ not issue in cases where the right is doubtful.' To the same effect is the formulation of such doctrine by former Justice Barrera: 'Stated otherwise, the writ never issues in doubtful cases. It neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed.'"[7] A month after the JRS Business Corporation vs. Montesa decision, Justice J. B. L. Reyes, in Valdez vs. Gutierrez,[8] categorically affirmed: "It is a rule well-entrenched in this jurisdiction that mandamus requires a showing of clear and certain right, and it never issues in doubtful cases."[9]

2. This is not the worst of it. It is not merely that petitioner does not have a clear legal right. The more accurate way of putting it is that he has no right at all to the position of Assistant Chief to the Clerks of Court Division. The ingenuity displayed by counsel, worthy of a better cause, it might be added, cannot obscure the undeniable fact that without Republic Act No. 4040, there would be no such position that is now the subject of dispute between him and respondent Gener. His position left untouched, it is to be assumed, is that of deputy clerk. As was made mention of, he did so admit, for that was something he could not very well deny. He would argue however that he might as well "be considered as Assistant Chief, Clerks of Court Division." [10] This is not the language of affirmation but of surmise. It does credit to petitioner's respect for the truth, but it certainly leaves his contention legally without support. Nothing daunted, petitioner would argue that to view the matter in a way opposed to his would in effect "sanction removal of petitioner from such position, without cause, in violation of the Constitution * * *." [11] Here, he seeks shelter within the provision of Section 4 of the 1935 Constitution. [12] There is here a glaring misapprehension. To so construe such provision by way merely of assurance of term to a government functionary and to lose sight of the paramount public interest involved is to ignore and disregard the fundamental postulate that a public office is a public trust. That accounts for the rather qualified and limited sense it possesses as property safeguarded by the due process clause. [13] The essential requirement then for a place in the government service is the possession of the requisite ability and competence. Only thus may there be fulfillment of a trust. Evidently, that was in the mind of respondent dignitaries. A member of the bar, respondent Gener met the prescribed standard. The position in question is that of Assistant Chief, precisely of the Division for the Clerks of Court.

On the other hand, it is not disputed that petitioner's scholastic background is much more limited, he being merely a high school graduate. [14] Under such circumstances, his previous experience in his capacity as Deputy Clerk of Court attesting to his years of service could not avail. As this Court had occasion to observe in Aguilar vs. Nieva, Jr.: [15] "Whatever sympathy might be elicited for public officials who had stayed long in the public service and who, for some reason or another, did not receive the promotion to which they felt they should be entitled, cannot obscure the discretion that the law leaves in the hands of the appointing official. * * * The basic intent of the law itself is to foster a more efficient public service. It is ever timely to keep in mind the public trust character of any governmental office. Its creation is justifiable only if it serves to assure that the functions of government, whether through the traditional public offices or government-owned or controlled corporations, be attended to with dispatch and competence. Necessarily then, the appointing official, especially so where his position is a constitutional creation, as in this case, must be left that necessary latitude of choice as to who can best discharge the responsibilities of the office where the vacancy occurs. This is what happened here, and no legal infirmity can validly be said to have vitiated such an appointment. The impassioned plea of counsel for petitioner, while not without its plausibility, if the individual welfare of those in the ranks of government personnel were considered, certainly cannot merit our approval in the light of the greater and more exigent public interest which has to be served." [16]

3. Presumably not unaware of the inherent weakness of his stand, petitioner would discern an alleged legislative intent in Republic Act No. 4040 to accord him the recognition his heart is set on. What he sees is a mirage.

Assuming ambiguity in the applicable statute, it must receive a construction in accordance with and not in disregard of the cardinal postulate of a public office being a public trust. Moreover, if there is any other principle of legal hermeneutics that can be invoked, it is that of contemporaneous construction. Petitioner, after the unanimity shown by the Commissioner of Land Registration, the Secretary of Justice, and the Commissioner of Civil Service on the precise point at issue, certainly is not in a position to do so. All three find his pretension bereft of any merit. They are for respondent Gener. It is not inappropriate to note that such a principle was given expression by Justice Malcolm in *Molina vs. Rafferty*[17] in these words: "Courts will and should respect the contemporaneous construction placed upon a statute by the executive officers whose duty it is to enforce it, and unless such interpretation is clearly erroneous will ordinarily be controlled thereby." [18] Later that same year in 1918, in *Madrigal vs. Rafferty*, [19] there was a reiteration of the same doctrine by the same jurist. So it has been ever since.[20]

WHEREFORE, the lower court decision of March 26, 1968, dismissing the petition for mandamus, is affirmed. No costs.

Zaldivar, (Chairman), Barredo, Antonio, Fernandez, and Muñoz Palma,* JJ., concur.
Aquino, J., took no part.

[1] Thus it was former Secretary Juan Ponce Enrile, former Commissioner of Land Registration Antonio Noblejas and former Commissioner of Civil Service Abelardo Subido who were named as respondents. In the course of litigation, their successors were substituted in their place.

[2] Statement of the Case, Brief for the Petitioner-Appellant, 2-4.

[3] *Ibid*, 5.

[4] *Ibid*, 6.

[5] *Ibid*, 8.

[6] L- 23783, April 25, 1968, 23 SCRA 190.

[7] *Ibid*, 197-198. 3 Moran, *Comments on the Rules of Court*, 1963 Edition, 172, supplies the citation. The *Viuda e Hijos de Zamora vs. Wright* decision is reported in 53 Phil. 613 (1929). The excerpt from Justice Recto comes from *Sanson vs. Barrios*, 63 Phil. 198, 202 (1936), and that from Justice Barrera is found in *Alzate vs. Aldana*, L-18085, May 31, 1963, 8 SCRA 219.

[8] L-25819, May 22, 1968, 23 SCRA 661.

[9] *Ibid*, 664. Cf. *Lemi vs. Valencia*, L-20768, November 29, 1968, 26 SCRA 203; *Commissioner of Immigration vs. Go Tieng*, L-22581, May 21, 1969, 28 SCRA 237; *Vda. de Serra vs. Salas*, L-27150, November 28, 1969, 30 SCRA 541; *Del Rosario vs. Subido*, L-30091, January 30, 1970, 31 SCRA 382; *Yuvienco vs. Canonoy*, L-23352, June 30, 1971, 39 SCRA 597; *Enriquez, Jr. vs. Bidin*, L-29620, October 12, 1972, 47 SCRA 183.

[10] Brief for the Petitioner-Appellant, 19.

[11] *Ibid*, 23.

[12] According to Article XII, Sec. 4 of the 1935 Constitution: "No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law." Such a provision in identical language is reproduced as Article XII, B, Sec. 3 of the present Constitution.

[13] Cf. *Morfe vs. Mutuc*, L-20387, Jan. 31, 1968, 22 SCRA 424.

[14] Cf. *Breif for the Petitioner-Appellant*, 24.

[15] L-28422, July 29, 1971, 40 SCRA 113.

[16] *Ibid*, 121-122.

[17] 37 Phil. 545 (1918).

[18] *Ibid*, 555, Cf. *In re Allen*, 2 Phil. 630 (1903) and *Government vs. Municipality of Binangonan*, 34 Phil. 518 (1916).

[19] 38 Phil. 414.

[20] Cf. *Phil. Sugar Centrals Agency vs. The Insular Collector of Customs*, 51 Phil. 131 (1927); *Yra vs. Abano*, 52 Phil. 380 (1928); *Guanio vs. Fernandez*, 55 Phil. 814 (1931); *People vs. Hernandez*, 59 Phil. 272 (1933); *Ortua vs. Singson Encarnacion*, 59 Phil. 440 (1934); *Bengzon vs. Secretary of Justice*, 62 Phil. 912 (1936); *Everett vs. Bautista*, 69 Phil. 137 (1939); *Tamayo vs. Manila Hotel Co.*, 101 Phil. 810 (1957).

[*] Designated to sit with the Second Division in place of Justice Aquino who is disqualified to take part.

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