

ANTERO M. BONGBONG, PETITIONER-APPELLEE, VS. JAMES P. PARADO AND ALFREDO A. ESPORLAS, RESPONDENTS-APPELLANTS.*G.R. No. L-30361. June 28, 1974*

Ponente: FERNANDO, J.

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The sole issue raised in this action for mandamus and quo warranto, more appropriately that of the latter, is who, as between petitioner Antero M. Bongbong and respondent Alfredo A. Esporlas,[1] is entitled to the position of Municipal Health Officer of Palompon, Leyte. The Court of First Instance of Leyte, presided by Judge Numeriano G. Estenzo, decided in favor of petitioner. This, too, inspite of the admissions made by petitioner in the stipulation of facts that while his appointment was that of Rural Health Physician in the Bureau of Rural Health Units Projects, he took his oath of office as Municipal Health Officer of Palompon, Leyte.[2] Thereafter, he was directed by respondent Parado, the Provincial Health Officer, to proceed to Kananga, Leyte, as its Municipal Health Officer. He did protest, but he was reminded that "his appointment did not specify any place or town of assignment [with the] office having a free hand in assigning him to a place where his services are most needed and x x x there is already a Municipal Health Officer in the Municipality of Palompon, previously assigned by the Regional Health Director, x x x ."[3] The decision of respondent Parado assigning petitioner to Kananga was thereafter approved by the Regional Health Director.[4] The last three paragraphs of the stipulation of facts read thus: "That petitioner was appointed to the Rural Health Units Project Region No. 6, Field Operations without specifying the place of assignment; That at the time of the transfer of Dr. Virginia A. Martinez, whose item was taken by petitioner on October 16, 1963, she was assigned to Palompon, Leyte and discharging her duties thereof although her appointment does not specify the place of assignment; That respondent Alfredo Esporlas was relieved of his duties as Municipal Health Officer of Kananga, Leyte on October 31, 1962, pursuant to unnumbered special order of the Regional Health Director and assigned to and assumed duty as Municipal Health Officer of Palompon, Leyte, almost one year previous to the effectivity of petitioner's appointment which transfer was made pursuant to the request of respondent Dr. Esporlas." [5]

It did come as a surprise then, the law being what it is, when the lower court decided in favor of petitioner. The matter was elevated to the Court of Appeals which certified the case to us as only questions of law were raised. As will now be shown, the appeal is meritorious and a reversal is called for.

1. Nothing is better settled than that a petitioner in a quo warranto proceeding must be able to show that he is entitled to the office. Absent such an element, he cannot prevail. His action must be dismissed. This is a principle that goes back to *Acosta v. Flor*, [6] a 1905 decision. As was so clearly and vigorously stressed by Justice Mapa: "As a consequence of what has been said no individual can bring a civil action relating to the usurpation of a public office without averring that he has a right to the same; and at any stage of the proceedings, if it be shown that such individual has no such right, the action may be dismissed because there is no legal ground upon which it may proceed when the fundamental basis of such action is destroyed as is the case here. This is what actually happened in this case. After all of the evidence presented by the plaintiff had been introduced, it was found, and

he himself so admitted that he had failed to establish in any way, shape, or form that he had any right to the office of municipal president of the town of Laoag as he had alleged in his complaint without foundation for such allegation." [7] A host of cases, the latest of which is the *Philippine Public School Teachers Association v. Apostol*, [8] attests to the vitality and persistence of such a doctrine. [9] In one of those cases, *Austria v. Amante*, [10] the then Justice, later Chief Justice, Bengzon, stressed: "The pivotal issue is whether petitioner is lawfully entitled to continue discharging the duties and powers of the town executive. Well-known is the principle, in litigations of this nature, that the plaintiff will succeed only when he proves his right to the office." [11] There was a reiteration of such a view in *Castro v. Del Rosario*, [12] where this Court, through the then Justice, now Chief Justice, Makalintal did point out that a quo warranto proceeding must be brought by the proper person at the proper time, one who "does not claim to be entitled" not being "the proper party to raise that issue, x x x." [13]

2. *Ibañez v. Commission on Elections*, [14] supplies an even more apt analogy. There, petitioners, sought to justify the right to be "permanent election registrars for the City of Manila, x x x." [15] They were however appointed to the positions of election registrars in the Commission on Elections. Their action did not meet with success. As explained by the ponente, Justice Castro: "Assayed upon the foregoing legal crucible, the petitioners' case suffers an initial setback. The appointments upon which they respectively anchor their claim clearly state that they were merely appointed as 'Election Registrars in the Commission on Elections'. Nowhere is it there intimated, much less stated, to which city, municipality or municipal district they are appointed as such registrars. On top of this, it is there specifically indicated that they were to fill Items 179 (165) and 179 (1271), page 2576, Republic Act 4642, both of which correspond to positions of 'municipal registrars'. Therefore, * * *— there can be no gainsaying the fact that the petitioners were not appointed to, and consequently not entitled to any security of tenure or permanence in, any specific station. On general principles, they may be transferred as the exigencies of the service require. They ordinarily have no right to complain against any change of assignment." [16]

So it should be in a case like the present, where, from the very stipulation of facts, the appointment of petitioner was only for that of Rural Health Physician, without any specific designation of place, with respondent *Esporlas* being shown as having been assigned to and assuming the duty of Municipal Health Officer of Palompon, Leyte, almost one year previous to the effectivity of petitioner's appointment. The *Ibañez* doctrine calls for application. There is no reason to depart therefrom. The lower court clearly did commit an error in ruling otherwise.

3. How then could the lower court arrive at a different conclusion? The explanation, as pointed out in the second assignment of error, may be gleaned from an equivocal statement from the then Acting Secretary of Health, Dr. Rodolfo T. Canos, in a letter to respondent *Parado*, where he made a request to assign petitioner and respondent *Esporlas* "to their respective bonafide municipalities." [17] Correctly construed, the "bonafide" municipality of petitioner is that of Kananga. So it is clear from the above. It would have been different, of course, if instead of such an ambiguous communication, the language of command was used. There is no question that as such department head, Dr. Canos could issue the corresponding order and could clarify the status of petitioner if such indeed were his intention. Moreover, it is equally clear, following the *Villena* ruling, [18] that such a directive, performed in the regular course of business, unless disapproved or reprobated, would be presumptively the act of the President. No more binding authority could therefore be relied upon. [19] It was far from the case, however. Unfortunately, the lower court appeared insensible of this all-important distinction. It was guilty again of another error in the interpretation accorded to the letter of the Acting Secretary of Health and thus sustained petitioner in this action which, as pointed out earlier, is bereft of support in law.

WHEREFORE, the appealed decision by Judge Numeriano G. Estenzo of March 11, 1965 is reversed, and the action for mandamus and quo warranto filed by Antero M. Bongbong is dismissed. With costs against petitioner.

Barredo, Antonio, Fernandez, and Aquino, JJ., concur.
Zaldivar, J., (Chairman), did not take part.

[1] The other respondent is the Provincial Health Officer, James P. Parado.

[2] Stipulation of Facts, Brief for the Respondents-Appellants, pars. 1-3.

[3] Ibid, par. 6.

[4] Ibid, par. 9.

[5] Ibid, pars. 11-13.

[6] 5 Phil. 18.

[7] Ibid, 22.

[8] L-36966, February 28, 1974, 55 SCRA 743, per Teehankee, J.

[9] Cf. Acosta v. Flor, 5 Phil. 18 (1905); Nicolas v. Alberto, 51 Phil. 370 (1928); Tayko v. Capistrano, 53 Phil. 866 (1928); Cui v. Cui, 60 Phil. 37 (1934); Topacio Nueno v. Angeles, 76 Phil. 12 (1946); Tavora v. Gavina, 79 Phil. 421 (1947); Austria v. Amante, 79 Phil. 780 (1948); Cruz v. Ramos, 84 Phil. 226 (1949); Concordia v. Tolentino, 93 Phil. 471 (1953); Adante v. Dagpin, 96 Phil. 789 (1955); Cuyegkeng v. Cruz, 108 Phil. 1147 (1960); Lota v. Court of Appeals, L-14803, June 30, 1961, 2 SCRA 715; Batario v. Parentela, L-20485, Nov. 29, 1963, 9 SCRA 601; Morales v. Patriarca, L-21280, Oct. 21, 1965, 15 SCRA 127; David v. Dancel, L-21485, July 26, 1963, 17 SCRA 696; Caraan-Medina v. Quizon, L-23162, Oct. 29, 1966, 18 SCRA 562; Castro v. Del Rosario, L-17915, Jan. 31, 1967, 19 SCRA 196; Ibañez v. Commission on Elections, L-26558, April 27, 1967, 19 SCRA 1002.

[10] 79 Phil. 780 (1948).

[11] Ibid, 783.

[12] L-17915, January 31, 1967, 19 SCRA 196.

[13] Ibid, 204.

[14] L-26558, April 27, 1967, 19 SCRA 1002.

[15] Ibid, 1005.

[16] Ibid, 1012. The Ibañez ruling was subsequently followed in Co v. Commission on Elections, L-26959, July 21, 1967, 20 SCRA 757; Salazar v. Commission on Elections, L-27121, July 21, 1967, 20 SCRA 761 and Braganza v. Commission on Elections, L-27017, August 15, 1967, 20 SCRA 1023.

[17] Second Assignment of Error, Brief for the Respondents-Appellants, 12.

[18] Villena v. Secretary of Interior, 67 Phil. 451 (1939).

[19] Cf. The Philippine American Management Co. v. The Philippine American Management Employees Association, L-35254, May 25, 1973, 51 SCRA 98.

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