

QUIRICO ABETO, PETITIONER, VS. SOTERA RODAS, RESPONDENT.*G.R. No. L-2041. November 03, 1948*

Ponente: PARAS, J.

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This is an original action for quo warranto in which the petitioner seeks the ouster of the respondent as presiding Judge of the Sixth Branch of the Court of First Instance of Manila and the reinstatement of the petitioner to said judicial position. It is alleged that the petitioner was occupying the position until August 1, 1941, when he was suspended by the President of the Commonwealth upon recommendation of this Court; that on October 12, 1946, after proper investigation, the petitioner was exonerated by the President of the Philippines from the charges that gave rise to his suspension; that notwithstanding his exoneration, the petitioner was not restored to his former position then held by the respondent. The petitioner herein invokes his right to the constitutional tenure of judges.

We note that this action was commenced only on March 2, 1948, or more than one year from October 12, 1946 when, according to his own theory, the petitioner should have been reinstated. Actions for quo warranto are now governed by Rule of Court No. 68, Section 16 of which provides that "Nothing contained in this rule shall be construed to authorize an action * * * an officer for his ouster from office unless the same be commenced within one year after the cause of such ouster, or the right of the plaintiff to hold office, arose; * * *." A similar provision in the Code of Civil Procedure was given effect in *Bautista vs. Fajardo*, 38 Phil. 624, wherein this Court held: "It cannot be supposed that the Legislature intended that the right to a public office, when dependent upon prescription, should be subject to continued uncertainty; and the public interest clearly requires that such right should be determined as speedily as practicable." We would go farther by holding that the period fixed in the rule is a condition precedent to the existence of the cause of action, with the result that, if a complaint is not filed within one year, it cannot prosper although the matter is not set up in the answer or motion to dismiss.

We are therefore constrained to dismiss the present action. So ordered, without costs.

Moran, C.J., Pablo, Bengzon, Tuason, and Montemayor JJ., concur.

DISSENTING**FERIA, J.:**

I strongly dissent from the decision of the majority. The pertinent provision of Section 16, Rule 68, is substantially taken from Sec. 216 of the old Code of Civil Procedure, Act No. 190, as amended, which read as follows:

"SEC. 216. Limitations.—Nothing herein contained shall authorize an action against a corporation for forfeiture of charter, unless the same be commenced within five years after the act complained of was done or committed; nor shall an action be brought against an officer to be ousted from his office unless within one year after the cause of such ouster, or the right to hold the office, arose."

This Court in construing the above quoted provisions in the case of *Bautista vs. Fajardo* (38 Phil. 624) quoted in the decision of the majority and the case of *Agcaoili vs. Suguitan*, 48 Phil. 697, has held that said section provides for limitation of an action of quo warranto.

In the case of *Bautista vs. Fajardo* it was said:

"* * * if a petitioner delays bringing his action, as in this case, for more than one year after his right to hold the office arises, the action is barred although the usurper or other person holding the office at the time of the institution of the proceeding to oust him may not himself have been in adverse possession for a full year.

* * * * *

"It cannot be supposed that the Legislature intended that the right to a public office, when dependent upon prescription, should be subject to continued uncertainty; and the public interest clearly requires that such right should be determined as speedily as practicable. It is evident that where the action to recover an office has once prescribed it can not be revived by any change in the personality of the incumbent; and it cannot be admitted that a new right, different from that which he had previously possessed, accrued to the petitioner upon May 6, 1917, when the respondent was inducted into office. If the petitioner had any right it had existed at least from the beginning of the official term, and the prescription must be computed from that date." (38 Phil. 627, 628.)

And in the case of *Agcaoili vs. Suguitan*, this Court held:

"In our opinion, even granting that section 216 is applicable to the appellant, the period of prescription had not begun to run at the time of the commencement of the present action. He was justified in delaying the commencement of his action until an answer to his protest had been made. He had a right to await the answer to his protest, in the confident belief that it would be resolved in his favor and that action would be unnecessary." (48 Phil. 576, 697)

The very caption of the above quoted provisions, and of section 16, Rule 68, plainly shows that it refers to "Limitation" of action. Second paragraph of Act 356 of the Code of Commerce which provides that;

"The purchaser shall have a right action against the vendor for defect in the quantity or quality of merchandise received in bales or packages, provided he brings his action within the four days following that of its receipt, and the damage is not due to fortuitous event, inherent defect of the thing, or fraud."

has been construed by this Court in the case of *Ban Kiat & Co. vs. Atkins. Kroll & Co.* (44 Phil. 4, 12-13) as to provide for limitation of actions, because it refers to the time for bringing an action, and therefore it was superseded by the statute of limitation contained in the old Code of Civil Procedure, according to this Court.

The provisions of our law on quo warranto were taken from the laws or statutes in force in the States, and there is no statute or decision in the States of the Union which considers the time within which a special civil action of quo warranto as a condition precedent to the institution of the action. It has always been construed or established as a limitation of action (51 C. J. p. 330; 44 Am. Jur. p. 62)

The limitation provided for in said Section 16, Rule 68 applies not only to action against an officer for the ouster from office, whether a public office or an office in a private corporation, but also to actions against a corporation for forfeiture of charter, and against the person ousted for damages. It was substantially taken from Secs. 211 and 216 of old Code of Civil Procedure and it can not have a different import from the latter's provisions because this Supreme Court has no power under the Constitution to promulgate Rules providing for limitation of actions, as well as conditions precedent to the bringing of an action, for they are not matters of procedure, pleading and practice, but of substantive law. Said Sec. 211 provided that the person declared entitled to the office may, at any

time within one year after the date of the judgment, bring an action the person ousted and recover the damages sustained by reason of Ms usurpation; and Sec. 216 prescribed that no action shall be brought against a corporation for forfeiture of charter, or against an officer to be ousted from his office unless within one year after the cause of such ouster or the right to hold office arose. Besides, there is absolutely reason why the time within which such actions must be instituted should be considered as a condition precedent to the institution of an action or right of action.

In the case of *Sempio vs. Del Rosario*, 44 Phil. 1, this Court construed the period of nine days as a condition precedent to or essential element of the right of legal redemption, because said period refers to the exercise of legal redemption and not to the institution of the action to redeem. That is, that the legal redemptioner in such case has, within that period, to exercise his right or make demand upon the purchaser of an adjacent rural estate with an area less than one hectare and offer the repurchase price, because if he does not do so, he loses or waives his right of legal redemption. If the latter refuses to accept it, he may file the corresponding action at any time with the corresponding period of limitation provided by law. A substantive right may be exercised without necessity of instituting a judicial action against the one having the correlative obligation unless the latter refuses or fails to perform it.

The extinction of a substantive right must be distinguished from the bar by the statute of limitation of the action to enforce it. The right to institute an action may be barred by statute of limitation, and yet the substantive right subsist, as shown by the fact that if the defense of prescription of action or statute of limitation is not set up, the plaintiff or the person having the right may enforce it may recover. But the extinction of a right carries necessarily with it the extinction of the corresponding right of action, as well stated by the late Chief Justice Arellano in the case of *Domingo vs. Osorio* (7 Phil. 405).

BRIONES, J.:

I concur in the foregoing dissenting opinion.

DISSENTING

PERFECTO, J.:

The majority is of opinion that petitioner, in order that he may legally seek the remedy prayed for in his petition, should have filed the same within the one year provided by Section 16 of Rule 68 which reads as follows:

"SEC. 16.—Nothing contained in this rule shall be construed to authorize an action against a corporation for forfeiture of charter unless the same be commenced within five years after the act complained of was done or committed; nor to authorize an action against an officer for his ouster from office unless the same be commenced within one year after the cause of such ouster, or the right of the plaintiff to hold office, arose; nor to authorize an action for damages in accordance with the provisions of the last preceding section unless the same be commenced within one year after the entry of the judgment establishing the plaintiff's right to the office in question."

The above quoted reglementary provision is invoked by the majority to defeat petitioner's tenure of office as guaranteed by the first clause of Section 9 of Article VIII of the Constitution which reads as follows:

"SEC. 9. The members of the Supreme Court and all judges of inferior courts shall hold office during good behavior, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office. They shall receive such compensation as may be fixed by law, which shall not be diminished during their continuance in office. Until the Congress shall provide otherwise, the Chief Justice of the Supreme Court

shall receive an annual compensation of sixteen thousand and each Associate Justice fifteen thousand pesos."

On August 1, 1941, upon the Supreme Court's recommendation, petitioner was suspended by the President of the Commonwealth of the Philippines as judge presiding over one of the branches of the Court of First Instance of Manila.

After due investigation of the charges filed against petitioner, disregarding the recommendation of the Supreme Court, the President of the Philippines issued on October 12, 1946, Executive Order No. 12, exonerating petitioner from the charges against him and ordering the payment of his salaries from August 1 to December 31, 1941, plus five months' salary in accordance with Administrative Order No. 167 dated December 12, 1941, and Administrative Order No. 27 dated December 7, 1945.

Notwithstanding his exoneration, petitioner alleges that he was not yet restored to his position as judge of first instance of Manila which is illegally withheld by respondent.

Respondent Judge Sotero Rodas was given by this Court ten days from notice within which to answer the petition. No answer has been filed, and the case has been submitted for decision without said answer on July 23, 1948.

The facts in this case are not disputed and upon them, there cannot be any question that petitioner is still a judge of first instance of Manila. He was not ousted from his position. He was only suspended by reason of the charges filed against him from which he was at last completely exonerated. There is no dispute and there has never been any dispute as to the fact that there is no ground to remove him from office. There is also no pretense that petitioner has reached the age of seventy. Under the Constitution, he is entitled to hold office until he reaches the age of seventy unless found guilty of misbehavior or he becomes incapacitated to discharge the duties of his office. He has been exonerated from charges of misbehavior and there is no showing that he has become incapacitated. He is entitled to continue holding his office as a constitutional right.

In applying Section 16 of Rule 68, the majority would have it appear that petitioner should have filed his petition within one year from October 12, 1946, the date of Administrative Order, No. 12, exonerating him from the charges filed against him.

Section 16 of Rule 68 contemplates two starting points in a case in which a public officer is involved: (a) the date when the cause of ouster against respondent accrues, and b. the date when the right of plaintiff to hold office has arisen.

In either case, the rule is inapplicable to petitioner. The record offers no definite information as to the date Judge Rodas started to occupy petitioner's position in the Court of First Instance of Manila. Because the filling of petitioner's position by respondent cannot be attributed to any other reason than that the position was vacated as a result of petitioner's suspension from office, we are entitled to presume that respondent started to occupy the position on or about August 1, 1941, and that should be the date when the cause of respondent's ouster must have arisen. Then the application of the rule would necessarily lead us to an absurdity. How could petitioner seek respondent's ouster within a year, that is, on or before August 1, 1942, when his exoneration took place only on October 12, 1946. How could he seek respondent's ouster years before he was cleared of the charges which caused his suspension?

As a matter of fact, petitioner's suspension since August 1, 1941, has not yet been lifted. Administrative Order No. 12, exonerating petitioner from all the charges filed against him, in effect continued his suspension for an indefinite period of time, when therein it is stated: "Because his office has already been filled, his reinstatement or reappointment is not now possible."

Therein appears clearly that President Manuel Roxas who exonerated him, is the same one who refused to

reinstate him in his office.

Regarding the second case contemplated by Section 16 of Rule 68, which refers to the time when plaintiff's right to hold office has accrued, the rule is also inapplicable, because petitioner's right to hold office started since he was duly appointed as judge of first instance of Manila. Such event had taken place before his suspension on August 1, 1941. To apply to him the rule is again to exact from him an impossibility.

The authors of the rules must have used the words "to hold office" advisedly. Their meaning cannot be indentified with the idea involved in the word reinstatement. Reinstatement means assuviing again the functions of the office already held.

But, even in the false hypothesis that Section 16 of Rule 68 is applicable to the case at bar, because its application will result, in defeating the judicial permanent tenure of office guaranteed by Section 9 of Article VIII of the Constitution, it should give way to the constitutional mandate.

There is no quarrel with the pronouncement made in *Bautista vs. Fajardo* (28 Phil. 62) cited in the majority opinion that "it cannot be supposed that the legislature intended that the right to a public office, when dependent upon prescription, should be subject to continued uncertainty; and the public interest clearly requires that such right should be determined as speedily as practicable". But the pronouncement has absolutely no bearing on petitioner's case because it starts from a major premise that does not and cannot exist in this case. The premise refers to a public office "dependent upon prescription", and the pre-Commonwealth Supreme Court undoubtedly had in mind offices regulated by statutory provisions. Petitioner's office is regulated by the Constitution, under which it is imprescriptible.

There is no provision in the fundamental law setting any period for the prescription of the office of a Judge and there is no authority granted to Congress or to the rule-making pover of the Supreme Court to provide for any period of prescription of said office. The limitations set by Section 9 of Article VIII of the Constitution for Judicial tenure of office cannot be increased by statutory provision. Misbehavior or incapacity to discharge the duties of office are only the two limitations permitted by the Constitution.

We penned the majority resolution of this Court, finding petitioner guilty of the charges filed against him and recommending that he be not allowed to return to office. But having been exonerated by the President of the Philippines, regardless of the majority opinion of this Court, petitioner is entitled to all the benefits resulting from his exoneration, and this Court which, in compliance vlth official duty, recommended, the non-reinstatement of petitioner, is nov duty bound, under the law, to order his reinstatement as a necessary and unavoidable consequence of the exoneration decreed by the President of the Philippines.

Lots of time and discussion have been devoted by several Justices to the question as to whether the provision of Section 16 of Rule 68 applied by the majority to petitioner's case, has the nature of a condition precedent or the nature of a limitation of action. Those who voted to defeat petitioner's claim have done so upon the premise that the provision in question constitutes a condition precedent, but not a prescription of action. The controversy on the point appears to us immaterial. Considered as a *conditio sine qua non* or as a limitation of action, in either case, the provision affects a substantive right, so substantive that It is expressly safeguarded by Section 9 of Article VIII of the Constitution, the right of judicial tenure.

Affecting as it does a substantive right, it should not be given effect against petitioner, because the rule-making power of the Supreme Court, the authority upon which the reglementary provision has been enacted, cannot diminish, increase, or modify substantive rights, and it is so expressly provided by Section 13 of Article VIII of the Constitution.

Therefore, whether it is a condition precedent, a *conditio sine qua*, 323, a prescription, or a statute of limitation, the reglementary provision in question cannot impair petitioner's constitutional right to his tenure of office which, because expressly guaranteed by the Constitution, cannot even be limited or modified by any legislative enactment of Congress.

The petition should be granted and the petitioner is ordered reinstated in his position as Judge of the Court of First Instance of Manila, with the ouster of whoever may be actually holding said position. No costs.

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