

FLORENTINO PILAR, PETITIONER AND APPELLANT, VS. THE SECRETARY OF THE DEPARTMENT OF PUBLIC WORKS AND COMMUNICATIONS, COMMISSIONER OF CIVIL SERVICE, HON AMELITO R. MUTUC, ET AL.,...

G.R. No. L-21039. February 18, 1967

Ponente: DIZON, J.

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DIZON, J.:

Appeal taken by Florentino Pilar from the decision of Court of First Instance of Manila dismissing his petition against the Secretary of the Department of Public Works and Communications and others (Civil Case No. 51041). Said petition was for declaratory relief, mandamus and injunction to declare null and void the classification made by the Office of the President of the Philippines of the positions of Chief and Assistant Chief, Radio Control Division, Department of Public Works and Communications, as primarily confidential and/or highly technical in nature; to declare that Roberto M. San Andres is not qualified to said office; to exclude him therefrom and to compel the Secretary of Public Works and Communications to appoint appellant in his stead.

On December 1, 1957 appellant was appointed Assistant Chief of the Radio Control Division of the Department of Public Works and Communications, and had held, on several occasions thereafter the position of Acting Chief of said office. On February 26, 1962, upon recommendation of the Secretary of Public Works and Communications, the Office of the President of the Philippines declared the positions of Chief and Assistant Chief of the Radio Control Division as primarily confidential and/or highly technical in nature. This classification was subsequently noted by the Commissioner of Civil Service. Prior to this change, said positions were embraced in the classified civil service.

On April 26, 1962, the Secretary of Public Works and Communications appointed Roberto San Andres as Chief of the Radio Control Division effective March 26, 1962, said position having become vacant due to the retirement of the incumbent Mr. Guillermo Canon. The appointment was duly noted by the Commissioner of Civil Service as per training to the unclassified service under paragraph Section 5 of Republic Act No. 2260. San Andres assumed office on March 26, 1962.

After due hearing, the court rendered the appeals judgment.

Upon the facts set forth above, it is clear that the action filed by appellant was correctly dismissed.

As an action for declaratory relief the case can not stand, the allegations of the petition themselves showing beyond doubt that appellant's alleged right to the office of Chief of Radio Control Division of the Department of Public Works and Communications had already been breached upon the appointment of Roberto San Andres who had assumed all the rights, duties and privileges appertaining to said office since March 26, 1962, that is, four months prior to the filing of the petition.

Neither may appellant's petition prosper as an action for mandamus, it being well settled law in this jurisdiction

that for the writ of mandamus to lie in a case like the one before Us, it must be shown that petitioner has a clear legal right to a particular public office and that the respondent is unlawfully preventing him from occupying the same. It does not appear to be so in the present case. And as stated heretofore, another has already been appointed to and is" already occupying the disputed office. This means that the proper action is Quo Warranto. Moreover, even assuming that the position to which appellant lays claim is still embraced in the classified civil service, he does not appear to have a clear legal right to it, because even under the classified civil service the appointing power enjoys sufficient discretion to select and appoint employees on the basis of their fitness to perform the duties and assume the responsibilities of the position to be filled (Section 23, paragraph 2, Republic Act No. 2260).

Lastly, it appears that appellant filed a protest against the appointment of San Andres, but his protest notwithstanding, said appointment was approved by the Commissioner of Civil Service (Exhibit 2). Appellant failed not wily to move for a reconsideration of said approval but also to appeal therefrom to proper authorities- Thus, it is -clear that he took the matter to court without exhausting available administrative remedies. This is fatal to his case (Pineda vs. Court of First Instance of Davao, G.R. No- L-12602, April 25, 1961).

Wherefore, the order appealed from is hereby affirmed, with costs.

Concepcion, C. J., Reyes, J.B.L., Regala, Makalintal, Bengzon, J. P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

Order affirmed.

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