

**MANUEL S. GAMALINDA, PETITIONER, VS. JOSE V. YAP,
RESPONDENT.***G. R. No. L-6121. May 29, 1953*

Ponente: PARAS, C.J.

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PARAS, C.J.:

The respondent was proclaimed elected in the 1951 general elections as mayor of the municipality of Victoria, Tarlac. In an election protest the Court of First Instance of Tarlac ruled that the respondent was ineligible, and the decision of said court was, upon appeal, affirmed by this Court. On September 3, 1952, the Acting Executive Secretary, by order of the President, designated the respondent as acting mayor of Victoria, pending the election and qualification of the permanent mayor. After the respondent had taken the corresponding oath of office, the petitioner, as duly elected and qualified Vice Mayor of said municipality, demanded that the respondent turn over to the former the office of mayor, and upon the respondent's refusal to do so, the petitioner instituted the present petition for quo warranto in this Court, seeking a judicial declaration that the petitioner is entitled to occupy the said office.

The petitioner relies on section 2195 of the Revised Administrative Code and on section 21, paragraph (b) of the Revised Election Code, Republic Act No. 180. Upon the other hand, the respondent invokes section 21, paragraphs (c), (d) and (e) of the Revised Election Code, in connection with paragraph 1, section 10, Article VII of the Constitution.

Section 2195 of the Revised Administrative Code is clearly not in point, since, as its subject denotes, it has reference to a temporary disability. More particularly, it speaks of the "absence, suspension, or other temporary disability," logically contemplating a case where the mayor continues to be so, though actually unable to discharge the functions of his office due to the causes mentioned which, however, are not of permanent character.

Section 21 of the Revised Election Code reads as follows:

"Sec. 21. Vacancy in elective provincial, city or municipal office.- (a) Whenever a temporary vacancy in any elective local office occurs, the same shall be filled by appointment by the President if it is a provincial or city office, and by the provincial governor, with the consent of the provincial board, if it is a municipal office.

"(b) Whenever in any elective local office a vacancy occurs as a result of the death, resignation, removal or cessation of the incumbent, the President shall appoint thereto a suitable person belonging to the political party of the officer whom he is to replace, upon the recommendation of said party, save in the case of a mayor, which shall be filled by the vice-mayor.

"(c) Whenever the election for local office fails to take place on the date fixed by law, or such election result in a failure to elect, the President shall issue, as soon as practicable, a proclamation calling a special election to fill said office.

"(d) When a local officer-elect dies before assumption of office, or fails to qualify for any reason, the President may in his discretion either call a special election or fill the office by appointment.

"(e) In case a special election has been called and held and shall have resulted in a failure to elect, the President shall fill the office by appointment.

"(f) The person appointed or elected to fill a vacancy in an elective provincial, city or municipal office shall hold the same for the unexpired term of office. (The Revised Election Code, Rep. Act No. 180)."

The petitioner also relies on paragraph (b) which, in our opinion, is not applicable, because it deals with a vacancy resulting from the death, resignation, removal, or cessation of the incumbent, thereby implying that the latter is, as correctly contended by the Solicitor General, a de jure officer, the vacancy occurring only by virtue of a cause arising subsequent to his qualification.

The Solicitor General, while admitting that there is a failure of election in the case at bar, contemplated by paragraph (c), nevertheless argues that the respondent's appointment as acting mayor is warranted under paragraphs (d) and (e). Paragraph (d) is obviously not applicable, for it does not cover a case where there is failure of election. But it is argued that, if the President can under paragraph (e) fill an elective municipal office by appointment after a special election has been called and held, which has resulted in a failure to elect, there is no reason why he cannot make the appointment pending the calling of a special election under paragraph (c). This contention is untenable, as paragraph (e) deals expressly with a situation where a special election has already been called and held, resulting in a failure to elect.

In our opinion, the Solicitor General is correct in stating that paragraph (c) must be applied, because the 1951 elections resulted in a failure to elect a mayor in the municipality of Victoria. Indeed, this Court already held in *Topacio vs. Paredes* (23 Phil. 238), that the effect of a decision declaring a person ineligible to hold an office is only that the election fails entirely.

We therefore incline to hold, by the logical process of elimination, that the failure of election herein has created a temporary vacancy within the meaning of paragraph (a), which shall be filled by appointment by the President if it is a provincial or city office, and by the provincial governor, with the consent of the provincial board, if it is a municipal office. The vacancy has to be temporary, for the simple reason that the President is called upon, under paragraph (c), to call a special election as soon as practicable.

It appearing that, although the designation of the respondent was made by the President, the appointment expressly stated that it was upon the recommendation of the provincial board of Tarlac, it can properly be deduced that said designation carried the sanction of the provincial governor and the provincial board. This necessarily leads us to conclude that the disputed appointment may be deemed as having been extended in effect by the provincial governor, with the consent of the provincial board.

Wherefore, the petition is dismissed without costs. So ordered.

Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

Tuason, J., concurs in the result.

DISIDENTE

PABLO, M.,

Tratase de un recurso de quo warranto. El recurrente reclama tener derecho de ocupar el cargo de alcalde del municipio de Victoria, provincia de Tarlac.

Los hechos no controvertidos son los siguientes: El recurrente fue elegido vice-alcalde de dicho municipio en las elecciones generales del 13 de noviembre de 1951, habiendose cualificado para el cargo el 1 de enero de 1952; que el electo alcalde del mismo municipio en las mismas elecciones fue declarado inelegible en la causa de quo warranto, Castañeda contra Yap[*] por decision del Juzgado de Primera Instancia de Tarlac de 29 de noviembre de 1951, y confirmada por este Tribunal en su decision promulgada en 22 de agosto de 1952, G. R. No. L-5379, Castañeda contra, Yap.

En 3 de septiembre de 1952, el Secretario Ejecutivo Interino Hon. Marciano Roque envio al recurrido Jose V. Yap una comunicacion informandole que, por recomendacion de la Junta Provincial de Tarlac, se le designaba, por orden del Presidente, alcalde interino del municipio de Victoria, Tarlac, mientras estuviese pendiente la eleccion y cualificacion de un alcalde. El recurrido asumió el cargo. El recurrente, por carta certificada, requirio al recurrido que desalojara el cargo y que lo entregara a el, y el recurrido se nego a hacerlo.

El articulo 21 delCodigo Electoral Revisado es del tenor siguiente:

"Vacante en el cargo provincial, de ciudad o municipal electivo.-(a) Siempre que ocurra una vacante temporal en cualquier cargo local electivo, la misma sera cubierta por nombramiento del Presidente si fuese un cargo provincial o de ciudad, y por el gobernador provincial, con el consentimiento de la junta provincial, si fuese un cargo municipal.

"(b) Cuando en un cargo local electivo ocurra una vacante a consecuencia del fallecimiento, dimision, destitucion o cese del que lo desempeñaba, el Presidente nombrara para el mismo a una persona adecuada que pertenezca al partido politico del funcionario a quien ha de sustituir, a propuesta de dicho partido, excepto en el caso de una alcalde, que sera cubierta por el vice-alcalde.

(c) Cuando la eleccion para un cargo local deje de tener lugar en la fecha señalada por la ley, o la eleccion no llegare a elegir al que ha de ocuparlo, el Presidente dictara, tan pronto como sea posible, un proclama convocando una eleccion extraordinaria para este fin.

(d) Cuando un funcionario electo local falleciere antes de tomar posesion del cargo, o dejare de habilitarse por cualquier motivo, el Presidente podra, a su discrecion, convocar una eleccion extraordinaria o llenar el cargo mediante nombramiento.

(e) En caso de que se hubiere convocado y celebrado una eleccion extraordinaria y no se hubiese llegado a elegir al que ha de ocupar el cargo, el Presidente llenara el cargo mediante nombramiento.

(f) La persona nombrada o elegida para cubrir una vacante en un cargo provincial, de ciudad o municipal electivo, ejercera el mismo durante el resto del periodo del cargo."

El recurrido ha sido nombrado por el Presidente de acuerdo con el parrafo (d) segun la misma carta del Secretario Ejecutivo: pero el recurrido "no ha fallecido antes de tomar posesion del cargo, ni dejo de habilitarse por cualquier motivo"; al contrario, como fue elegido, presto juramento y ocupo el cargo, pero por una decision en una causa de quo warranto, fue declarado inelegible, so le obligo a dejar el cargo y, como consecuencia, dejo vacante el cargo.

No es aplicable al caso presente el parrafo (d). Tampoco es aplicable el parrafo (c), porque la eleccion no ha dejado de tener lugar en la fecha señalada, o que la, eleccion no haya llegado a elegir al que ha de ocupar el cargo; al contrario, se efectuó la eleccion general, y se eligio al recurrido como alcalde.

El aplicable, en mi opinion, es el parrafo (b), porque el cargo de alcalde ha quedado vacante "a consecuencia del cese del que lo desempeñaba." Como el alcalde electo, que tomo posesion del cargo, cesó en el desempeño del mismo por mandato judicial, el vice-alcalde debe ocupar el cargo de alcalde. El Procurador General alega que este parrafo se refiere a funcionarios de jure que cesaren en el desempeño del cargo. Esta interpretacion es forzada,

viola la hermeneutica legal. Si la intencion del legislador fue la que sostiene el Procurador General, entonces hubiera redactado el parrafo de la manera siguiente:

"Cuando en un cargo local electivo ocurra una vacante a consecuencia del fallecimiento, dimision, destitucion o cese del que lo desempeñaba legalmente, * * *." Como no lo redactó con la palabra legalmente, la consecuencia forzosa es que era indiferente para el legislador que el que lo desempeñara fuese un funcionario de facto o uno de jure. El recurrido lo desempeño como un funcionario de facto en la misma extension y efecto legal como lo hubiera desempeñado un funcionario de jure. Cuando la ley no distingue que clase de funcionario cesa, de facto o de jure, los tribunales tampoco deben distinguir.

En el asunto de Rodriguez contra Tan, el senador de facto Tan recibio los emolumentos del cargo y, cuando el senador de jure Rodriguez reclamo el reembolso del sueldo, la mayoría de este Tribunal denegó la petición por considerar al funcionario de facto con mejor derecho al emolumento que al funcionario de jure.

En el caso presente, el alcalde electo Yap ha desempeñado el cargo, no como funcionario de jure, sino como funcionario de facto; pero lo desempeño con derecho al sueldo y, al cesar como funcionario de facto, dejó un vacante; ese vacante debe ser ocupado por el vice-alcalde por disposicion expresa del parrafo (b).

[*] 91 Phil. 819.

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