

PABLO D. SUAREZ, GUILLERMO C. LUCAS AND GERARDO I. BAUTISTA, PETITIONERS, VS. THE COMMISSION ON ELECTIONS, EDILBERTO REGALADO, ENRIQUE ROA, AND NESTORIO BAUTISTA, RESPONDENTS.

G.R. No. L-26605. July 27, 1967

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

In its session on March 29, 1966, the respondent Commission on Elections (COMELEC) "RESOLVED to appoint", amongst others, the petitioners Pablo D. Suarez, Guillermo C. Lucas and Gerardo I. Bautista--then holding positions of "Election Registrar(s) of the Commission on Elections" corresponding to items provided for "Municipal Registrars", under duly approved appointments dated February 1, 1964, but actually detailed to and performing duties as such in Manila by virtue of alleged verbal assignments made by the COMELEC--as permanent election registrars for the first, second and fourth congressional districts of Manila, respectively, and directed its Personnel Office "to prepare and issue the corresponding appointment papers effective upon assumption of duty". Evidently, the COMELEC was motivated to so act by its desire to rectify its erstwhile practice of appointing election registrars without designation of specific station having in view the new Registration Law, Republic Act 3588, the ruling in Puyat vs. Commission on Elections, G.R. L-24329, April 8, 1965, and moves in Congress toward a more definitive expression of legislative intent to make the offices of election registrars permanent.

Before the resolution aforesaid could be implemented, however, one Ernesto Verdejo, also an election registrar detailed to the city of Manila, invited the attention of the COMELEC to an unresolved letter-petition he had priorly addressed to the latter praying for his retention as one of the four election registrars to be permanently stationed in Manila. This triggered a restudy of the disposition of permanent appointments of city registrars throughout the country. The permanent appointments of 33 city registrars were soon to be approved by the COMELEC upon recommendation of the Chief of its Registry Operations Division who conducted the restudy aforesaid. But action on those of four permanent registrars for Manila was deferred pending a more thoroughgoing examination of the service records of all the election registrars who have been detailed in Manila with a view to determining who among them would best qualify for the said positions.

Eventually, on August 24, 1966, acting on the recommendation of its screening committee, and after evaluating the qualifications and service records of the several prospective appointees in accordance with specific guidelines it laid down, the COMELEC "RESOLVED to permanently appoint * * * as Election Registrars in the City of Manila" - instead of the petitioners - the respondents Enrique, Roa, Edilberto Regalado and Nestorio Bautista, together with Ernesto Verdejo heretofore mentioned. Their appointment papers were issued and were thereafter approved by the Civil Service Commission; they then duly qualified as such.

Notified of this development and directed to yield their offices and turn over their property and other

accountabilities to the new permanent appointees, the forty-one other election registrars (the petitioners included) then detailed in Manila, to a man demurred and refused to heed the aforesaid order. For this disobedience, the COMELEC forthwith charged them administratively and ordered their preventive suspension.

Rebuffed in their efforts to obtain a reconsideration of the directives of the COMELEC, the petitioners came to this Court in this three-pronged action: prohibition to stop the COMELEC from relieving them from their present positions and from proceeding with the administrative investigation; mandamus to compel the COMELEC to issue their appointment papers pursuant to the resolution of March 29, 1966; and quo warranto to declare them duly entitled to the offices of permanent election registrars for the first, second and fourth districts of Manila. Their ancillary prayer for preliminary injunction was allowed and, upon bond duly filed and approved, the corresponding writ was issued.

The original position taken by the petitioners has undergone a substantial metamorphosis. In their petition, they staked their claim upon the COMELEC's resolution of March 29, 1966 which, they contended, amounted to a final and completed exercise of appointing power by the COMELEC and therefore vested in them title to the respective offices in question. In their subsequent memorandum, they stand solidly upon the proposition that their original appointments of February 1, 1964 vested in them irrevocable titles to the offices of election registrars for the City of Manila, of which they may not be divested against their will without doing violence to their constitutional right to security of tenure. They now regard the March 29, 1966 resolution as merely reappointing them to the same positions and not conferring "new" appointments upon them.

Whichever stance they assume, the petitioners can derive no comfort.

On the matter of their reliance upon their original appointments of February 1, 1964, our ruling in *Ibañez, et al. vs. Commission on Elections, et al.*, G.R. L-26558, April 27, 1967, controls. There, where the therein petitioners relied upon appointments which, like those of the petitioners herein, did not specify a particular station, and the assignment of the appointees to particular places was made by mere detail thereafter, we ruled that the said appointments did not entitle the appointees to any security of tenure or permanency in the places to which they were assigned. This, because -

"* * * The subsequent assignment of the appointees thereunder that the said respondent held in reserve to be exercised as the needs of each locality justified did not in any way detract from the perfection attained by the appointments beforehand. And the respective appointees were entitled only to such security of tenure as the appointment papers concerned actually conferred - not in that of any place to which they may have been subsequently assigned. This is particularly true in the case at bar where the offices filled by the petitioners were those of 'municipal registrars', whereas the assignments given to them were stations corresponding to 'city registrars' - which they were not - covered by item numbers in the current appropriations act which time altogether different from those stated in their respective appointments. As things stand, in default of any particular station stated in their respective appointments, no security of tenure can be asserted by the petitioners on the basis of the mere assignments which were given to them. A contrary rule will erase altogether the demarcation line we have repeatedly drawn between appointment and assignment as two distinct concepts in the law of public officers." (*Ibañez, et al. vs. Commission on Elections, et al.*, supra.)

The final resolution of the COMELEC against retaining the petitioners herein as election registrars with permanent station in Manila cannot therefore be denounced as an infringement of their right to security of tenure.

Nor may the petitioners find sanctuary in the COMELEC resolution of March 29, 1966. Under either alternative in their shifting view thereof - that is, as either an original appointment or as a reappointment to the same position - the said resolution cannot be imbued with the character of a completed exertion of appointing power which vested in the petitioners irrevocable title to the offices concerned. Indubitable is the rule that an

appointment attains finality, from the standpoint of the appointing authority, upon the performance of the last act required of it as such appointing authority; but the mere issuance of the resolution aforesaid was not, in the case at bar, the last act which would take the matter completely out of the control of the appointing authority. We have hereto-fore ruled that, under existing appointing machinery in this jurisdiction -

"* * * an appointment made by an officer duly empowered to make it is not final or complete until after the Commissioner of Civil Service has certi-fied that such appointment may be made. Hence, with-out such certification, the appointment may be re-called or withdrawn by the appointing officer. * * *." (Grospe vs. Secretary of Public Works, et al., 56 O.G., No. 24, pp. 4097, 4100).

Here, there is not even an insinuation that that certification was had; the appointment papers of the petitioners have not even been issued. It is true that in Villanueva vs. Balallo, G.R. L-17745, October 31, 1963, we held that when the appointee is qualified, the certification of the appointment by the Commissioner of Civil Service becomes ministerial. Here, it can hardly be averred that the petitioners' qualifications and preferential right over all others to the positions in ques-tion have been finally ascertained. At the very least, it must be conceded that the pending letter-petition of Ernesto Verdejo to which the attention of the COMELEC was seasonably called cast serious doubts on the correctness of the initial choices made by the COMELEC. Which is why it was impelled to order a restudy of the entire matter and to set more specific guidelines for such restudy. Nor is there anything in the ruling adverted to which intimates that certification by the Civil Service Commissioner can be dispensed with. It still must be had as the ultimate act required to complete the ap-ointment. Not until then does the appointee become entitled to the protection of the law against unjust removal - a rule we reiterated in Favis vs. Rupisan, et al., G.R.L-22823, May 19, 1966, in which we quoted with approval the pronouncements made in the earlier case of Grospe vs. Secretary of Public Works, et al., heretofore cited.

As we look in retrospect at the developments contempo-raneous with the issuance of the resolution of March 29, 1966, we are satisfied that the seasonable action of the COMELEC in ordering a restudy of the disposition of the permanent appoint-ments for city election registrars, including those for Manila now claimed by the petitioners - evidently, due to doubts gen-erated by the letter-petition of Ernesto Verdejo -- and its subsequent action of revising the resolution of March 29, 1966 by appointing the respondents, in lieu of the petitioners, were still well within its power to take. No question is here raised as to the reasonableness of the criteria or guidelines relied upon by it in making its final choices. And we have been shown no valid reason for substituting our own discretion for that it exercised in the premises.

It follows ineluctably that the present petition must fall.

ACCORDINGLY, the petition is dismissed, writ of preliminary injunction heretofore issued is dissolved, at peti-tioners' cost.

Reyes, JBL, Makalintal, Bengzon, JP, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., and Dizon, J., did not take part.

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