

DOMINGO B. MADDUMBA, JUSTICE OF THE PEACE OF SOLANO AND BAGABAG, NUEVA VIZCAYA, PETITIONER, VS. ROMAN OZAETA, IN HIS CAPACITY AS SECRETARY OF JUSTICE AND RAFAEL DE GUZMAN, RESPO...*G.R. No. L-2061. December 14, 1948*

Ponente: MONTEMAYOR, J.

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Both parties, the petitioner Domingo B. Maddumba and respondent Rafael de Guzman, are agreed on the following facts:

Maddumba actually is the Justice of the Peace of the municipalities of Solano and Bagabag, province of Nueva Vizcaya, appointed on July 31, 1946 by the President of the Philippines, said appointment having been confirmed by the Commission on Appointments on August 9, 1946. Since then up to the present time he has been discharging the duties of said office. Respondent De Guzman was originally appointed Justice of the Peace for the same municipalities in November 1937. In January 1939, under the provisions of Commonwealth Act No. 1 known as the National Defense Act, he was called, presumably for training, although he calls it a tour of duty in the Philippine Army and was detailed to work on immigration matters with the rank of Second Lieutenant, up to May 1940 when he resumed his office as Justice of the Peace of the same municipalities in June 1940, and continued discharging his duties as such until June 1941. In July 1941 he joined the Philippine Constabulary with the rank of First Lieutenant and continued in that service until the outbreak of the Pacific war in 1941. According to him, without denial by the petitioner, he (De Guzman) went to Bataan and after surrender, he was made a prisoner of war.

The petitioner equally claims, without denial by the respondent that the latter served during the Japanese occupation in the Inspector Division, Bureau of Constabulary, and was instructor in law subjects in Constabulary Academy No. 3; that upon liberation he (respondent) was reactivated to the Philippine Army and promoted to the rank of Captain and was on duty with the Recovered Personnel Division from April 21, 1945. De Guzman was demobilized from the Philippine Army on March 10, 1947, and, two days after, he wrote to the then Secretary of Justice, the other respondent Honorable Roman Ozaeta, expressly asking for his reinstatement to his old post of Justice of the Peace of Solano and Bagabag, invoking the benefits of the provisions of Commonwealth Act No. 1 (National Defense Act) and Republic Act No. 65 (Philippine Army Bill of Rights). The application, was favorably considered by the Secretary of Justice, and was endorsed to the Chief of the Executive Office, with his recommendation that pursuant to section 1 of Republic Act No. 65, "De Guzman be re-appointed to his pre-war position as Justice of the Peace of Solano and Bagabag, province of Nueva Vizcaya, it appearing that he is a member of the Bar and therefore qualified for the position." It was likewise recommended in the same endorsement that "Mr. Domingo B. Maddumba, the present incumbent be advised to tender his resignation and that, if he fails or refuses to do so, the office will be declared vacant."

While the matter was still being considered by the Executive Office, respondent De Guzman, on September 1, 1947, filed his certificate of candidacy for the position of Vice Mayor of Lingayen, Pangasinan, in the elections of November 11, 1947. He went through the elections but was not elected. Then on December 12, 1947, after having failed in his political venture, De Guzman wrote to the Secretary of Justice, requesting information as to the status of his application for reinstatement as Justice of the Peace of the circuit of Solano and Bagabag. Thereafter, respondent Secretary of Justice Ozaeta issued Administrative Order No. 13, series of 1948, dated February 13, 1948, bearing the heading — "Reinstating certain Justices of the Peace to their pre-war positions", wherein, invoking the decisions of this Court in the cases of Tavora vs. Gabina et al. (G.R. No. L-1257[1]) and Garces vs. Bello et al. (G.R. No. L-1363[2]), a number of former justices of the peace were ordered reinstated, among them the respondent Rafael de Guzman as Justice of the Peace of Solano and Bagabag, and the petitioner Doraingo B. Maddumba was ordered to vacate his post and surrender the same to Rafael de Guzman.

In his petition, dated March 6, 1948, and filed in this Court on the same date, which petition was subsequently amended, the petitioner seeks to enjoin the respondent Secretary of Justice "from enforcing said Administrative Order No. 13, series of 1948, in so far as the petitioner is concerned; likewise restraining respondent Rafael de Guzman from entering into the discharge of the duties of the office of Justice of the Peace of Solano and Bagabag, Nueva Vizcaya; and restraining both respondents from molesting and interfering in any manner with the said office." Upon the filing of a bond in the sum of 5100.00, this Court issued a writ of preliminary injunction restraining the Secretary of Justice from enforcing said Administrative Order No. 13, series of 1948, in so far as the petitioner is concerned and restraining respondent De Guzman from entering into the discharge of the duties of the office of Justice of the Peace of Solano and Bagabag, and restraining further both respondents from molesting and interfering in any manner with the said office until further orders of this Court. The petitioner now seeks to have this writ of preliminary injunction made permanent.

The petitioner contends that respondent has already lost his right to the office in question by reason of his joining the Philippine Constabulary or Army, and if not, by, his having filed his certificate of candidacy in September 1947, as provided by section 26 of Republic Act N6. 180; and that section 1 of Republic Act No. 65 does not and cannot apply to a case like the present where a judicial position is involved. On the other hand, respondent equally maintains that he is protected by Commonwealth Act No. 1 and Republic Act No. 65, and that, furthermore, section 26 of the Election Code did not apply to him for the reason that when he filed his certificate of candidacy, he was not holding the office of Justice of the Peace of Solano and Bagabag.

After a careful study of the legal aspects of the present case, particularly in relation to the Constitution, Commonwealth Act No. 1, Republic Act No. 65, and Republic Act No. 180 known as the Election Code, we are constrained to agree with the petitioner that the respondent has lost his right to the position of Justice of the Peace of Solano and Bagabag, by abandonment, or else, thru forfeiture. Respondent bases his claim and right to reinstatement, first on Commonwealth Act No. 1, particularly section 49 thereof. Section 49 of Commonwealth Act No. 1, reads as follows:

"Any employee of the Government called for trainee instruction, or for regular annual act duty training, shall not be compelled to lose his position or to suffer a lose of pay due to his absence in the fulfillment of his military obligations." (Underlining is ours)

In order to properly and intelligently construe said section, understand the meaning and scope of the clause "called for trainee instruction or for regular annual active duty training" used therein and apply it to an actual case, particularly the present one, we have to consider the whole Commonwealth Act No. 1. Said Act divides the Philippine Army contemplated by it into the Regular Force and the Reserve Force (Sec. 17). The respondent claims, and there is reason to believe, that his claim is correct, that he belonged not to the regular force but to the

reserve force. He himself admits that, had he served in the regular force, his position there would have been permanent, and incompatible with his office as Justice of the Peace and that, by accepting appointment to the regular force, he would have had to abandon his judicial office.

Then, section 52 of the same Commonwealth Act No. 1, provides as follows:

"The obligation to undergo military training shall begin with youth in school, commencing at the age of ten years, and shall extend through his schooling until he shall reach the age of eighteen years. At this age he shall enter the Junior Reserve to which he shall be assigned until he is twenty-one years of age when he shall become subject to service with the colors, and thereafter with the Reserve Force until he shall reach fifty years of age. The training which he may undergo prior to the calendar year in which he attains twenty-one years of age shall be termed "Preparatory Military Training."

"All school girls shall receive such instruction and training as the Chief of Staff may deem necessary for auxiliary service.

"All able-bodied male citizens between the ages of twenty years and fifty years, both inclusive, except those specifically exempted, shall be classified as follows:

"Trainees Those between the ages of twenty and twenty-two who have been selected to receive military training.

"First Reserve.— Those between the ages of twenty-two years and thirty years, both inclusive, and including also all those who have completed trainee instruction even though they may not have attained the age of twenty-two.

"Second Reserve.— Those between the ages of thirty-one years and forty years, both inclusive.

"Third Reserve.— Those between the ages of forty-one years and fifty years, both inclusive."

It is evident that because of his age when called for training in the year 1939, the respondent must have responded not as a trainee but as a reservist, either as first, second, or third, depending upon his age then. He claims that he was a reserve officer. Title II, Article VII of Commonwealth Act No. 1 is entitled "Active Duty Training of Reservists". Section 47 under the same title and article provides that: "In so far as may be practicable, the active duty periods for the three echelons shall be as follows: First Reserves, annually, not less than ten days; Second Reserves, annually, not less than five days; and Third Reserves, every third year, not less than seven days." It further provides that, "Except with his own consent, no enlisted reservist may be required in time of peace to serve more than thirty days on active duty in any calendar year."

Considering the legal provision above-mentioned, it is apparent that section 49 of Commonwealth Act No. 1 already above reproduced, particularly the benefits thereof relative to retaining the position and pay of any government employee called for training under the provisions of said act, refers only to those employees called for trainee instruction (persons between the ages of 20 and 22), which, of course, cannot apply to the respondent herein, and to those employees called for "regular annual active duty training", such as the respondent herein when called for training in the year 1939. It is important to bear in mind that this is only annual active duty training. It is not exactly service in the army but only training, and, as already stated, said training cannot be extended to more than 30 days in any calendar year in time of peace except with consent of the reservist. In other words, the law contemplated mere absence or non-attendance, and a temporary one at that, on the part of the employee, from his public office or government work. In fact section 49 uses the word "absence", denoting a provisional or temporary failure to attend or be present at the office; and it was but just and fair when it is provided in section 49 of the National Defense Act that when the Army calls its reservists for annual active duty training for several days a year not exceeding 30 days, said reservists should not lose their government positions or pay while undergoing such

training during a short period of time. But when the respondent joined the Philippine Constabulary in July, 1941, during peace time and' stayed with it indefinitely and up to the outbreak of the Pacific war, we have serious doubts that he did so only for the regular annual active duty training of merely several days not exceeding 30 days. There is reason to believe that he joined the regular force of the Constabulary for the regular enlistment, not for mere annual active duty training. Again, when after liberation he was reactivated into the Philippine Army, it was not, and could not have been, on the basis of the regular annual active duty training for only several days or weeks not exceeding 30 days, but for regular service in the armed forces of the Philippines, because at that time, after liberation men were being called or urged to join the Philippine Army, not for any training as contemplated by the National Defense Act, but for regular enlistment and service, because said army was then being reorganized. As a matter of fact, after the Pacific war, respondent served in said armed forces for about two years until he was demobilized in March, 1947. Even the word "demobilized", used by both parties in describing the separation of the respondent from the Philippine Army, implies the mustering out and disbanding or dismissal from service with the colors and not the cessation of the annual training of trainees or reservists for a short period of time. When a reserve officer or a trainee, employed in the Government, is called for training for, say, days or weeks, at the end of the period of the training he is not demobilized, for the simple reason that he was not in regular military service under an enlistment or commission. He merely resumes his interrupted work in the government. For this reason, we believe and hold that section 49 of Commonwealth Act No. 1 does not apply to the case of the respondent who, in July, 1941 left his post as Justice of the Peace, not to undergo the regular annual active duty training for several days, or at the longest, weeks, but to join the regular Constabulary force with which he stayed up to the outbreak of the last war, and who, later, after liberation, re-enlisted in the Philippine Army, not for training, but for military service where he remained in mustered out in 1947. It is unreasonable to believe that said section 49 could have contemplated and intended holding a public office, specially a judicial position Like that of Justice of the Peace, not only open but as still being held (including the salary corresponding to it) by one who leaving it in July 1941, joined the Army for military service and stayed with it for several years, and seeks to return to it only after he was mustered out in 1947.

Let us next consider section 1 of Republic Act No. 65. It reads as follows:

"Officers and enlisted men in good standing of the Philippine Army and of recognized or deserving guerrilla organizations who took active participation in the resistance movement, and/or in the liberation drive against the enemy, who, in civilian life, were actually occupying appointive positions in any office, instrumentality, branch or agency of the Commonwealth Government, or in any government-owned or subsidized corporation, and who, upon being inactivated or mustered out of the armed forces, desire to resume their old positions or employments, are hereby granted the right to do so, and, upon proper application, shall be recalled to their respective pre-war positions or employments, unless they have committed any act which under existing laws would disqualify them from further holding public office. For the purpose herein set forth, it shall be the duty of the official who is by law authorized to recall and/or make the appointments of officials and employees above mentioned to hold open the positions and employments referred to in this section until six months after the approval of this Act: Provided, however, That if any such positions had already been filled with the appointment of any person other than the veteran, the said position is automatically declared vacant and open upon the application of the veteran."

The above provision of law is intended to create a right or privilege where said right or privilege did not exist before. In other words, under said law, the government employees who served in the Philippine Army or in guerrilla organizations, are granted the right to be reinstated or recalled to their old posts or positions in the government. If the position now involved in these proceedings were an ordinary one, say, one in the executive department, Republic Act No. 65, might apply, because the law or any civil service rule or regulation governing appointment and tenure and salary under which any government employee is appointed, may be changed,

amended or even repealed by the Legislature by any subsequent Act, like Republic Act No. 65. However, the Constitution of the Philippines, particularly section 9, Art. VIII thereof, secures to the members of any court, including that of the justice of the peace court, life tenure, conditioned on and during good behavior and capacity to discharge the duties of the office, tho, up to the age of 70 years. This constitutional guaranty in tenure of office in favor of the petitioner as Justice of the Peace cannot be adversely affected and terminated by any act of the legislature, especially, a law promulgated after the appointment and qualification of said petitioner, however just, patriotic and plausible the reason and motive behind the statute. (Republic Act No. 65 was approved, October 18, 1946.) For this reason, we also hold that section 1 of Republic Act No. 65 is not applicable to the present case which involves the office of Justice of the Peace.

As regards the effect, if any, of the filing of the certificate of candidacy by the respondent in the elections of November 11, 1947, we also agree with the petitioner that by filing said certificate of candidacy, the respondent automatically lost and forfeited any right which he might have had to the office of Justice of the Peace of Solano and Bagabag. The applicable provisions of law on the subject is section 26 of Republic Act No. 18(p, otherwise known as the Revised Election Code, which reads thus:

"Every person holding a public appointive office or position shall ipso facto cease in his office or position on the date he files his certificate of candidacy."

But the respondent contends that, at the time he filed his certificate of candidacy, he was not holding the office of Justice of the Peace of Solano and Bagabag, and for that reason section 26 of the Election Code, above quoted is not applicable. From this contention we infer that at the time, he was not the Justice of the Peace of that circuit, but that he merely had some kind of right to it. Following his line of reasoning, then he does not and cannot invoke the provisions of section 49, Commonwealth Act No. 1 which provides that "an employee of the government called for trainee instruction or for regular annual active duty training shall not be compelled to lose his position or to suffer a loss of pay," etc. If said provision were to be applied, to his case, then the respondent in leaving his post of Justice of the Peace in 1941, did not lose his position, but retained it and kept on holding it, and that he merely went on an extended leave of absence, in which case, it must necessarily and logically follow that he was, at the time of filing his certificate of candidacy, still holding the office of Justice of the Peace, whose duties he could validly resume after his extended leave of absence and his alleged period of training. In that case, section 26, Article II of the Election Code will apply. The result would be that he automatically ceased in and lost the office as Justice of the Peace when he filed his certificate of candidacy in 1947.

In our opinion, section 26, Art. II of the Election Code contemplates the complete severance and cutting off of all relations with and right to a public appointive office on the part of one who files his certificate of candidacy in an election. The law embodied in section 26 of the Revised Election Code is clear and emphatic. It uses the phrase "shall ipso facto cease in his office." Webster's New International Dictionary, Second Edition, defines the word "cease" thus: To bring to an end; to discontinue or leave off etc. One cannot, very well, renounce or lose his right to a public appointive office by filing his certificate of candidacy for an elective post, as provided by law, and at the same time tie a string to said appointive position, holding the other end so that he could pull and have it back and keep it in the event that he lost in the elections.

In conclusion, we hold that the provisions of section 49 of Commonwealth Act No. 1, known as National Defense Act, allowing employees of the government to keep their positions and continue receiving the pay corresponding to them, refer only to those trainees and reservists called for trainee instruction or for regular annual active duty training, for a short and limited period of time each year, involving a short, temporary absence from duty in the government office concerned; and they cannot apply to a government employee or official who leaves his post to join the Constabulary or armed forces, not for mere training but for regular service and for a long period of time.

Furthermore, even assuming for a moment that under section 49 of the National Defense Act, "The respondent did not lose his position of Justice of the Peace of Solano and Bagabag, in spite of his joining the Philippine Constabulary in July 1941. and, later, the Army, in 1945, and staying away from his old judicial post for over six years, then he lost any and all right to said position by reason of his having filed'.his certificate of candidacy for the elective post of Vice-Mayor of Lingayen, Pangasinan, in the elections in November 1947. Vfe further hold that section 1 of Republic Act No. 65 cannot apply to a post of Justice of the Peace where the present incumbent thereof had qualified and assumed office prior to the promulgation of said Act because the application of the provisions of said law would be violative of the constitutional guaranty on the tenure in office in judicial positions.

In view of the foregoing, we declare Administrative Order No, 13, series of 1948, void and of no effect as far as the petitioner herein is concerned; and we declare the petitioner as the lawful Justice of the Peace of Rolano and Bagabag, province of Nueva Vizcaya, entitled to all the rights, privileges, emoluments and prerogatives Appurtenant thereto; and it is hereby ordered that the 'writ of preliminary injunction heretofore issued by this Court be made permanent. No pronouncement as to costs. So ordered.

Moran, C.J., Paras, Pablo, Perfecto, Bengzon, Briones, and Tuason, JJ., concur.

FERIA, J.,

I concur in the result on the third ground set forth in the decision. I dissent from the other two grounds.

Writ made permanent.

[1] 79 Phil. 421.

[2] 80 Phil., 153.

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