

**NICANOR G. JORGE, PETITIONER VS. JOVENCIO Q. MAYOR,
RESPONDENT.***G.R. No. L-21776. February 28, 1964*

Ponente: REYES, J.B.L., J.

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Petition for mandamus and quo warranto, filed directly in this Court to have petitioner declared as the sole legally appointed and qualified Director of Lands, and to require respondent to return over said office to the petitioner as well as to desist from holding himself out as "Acting Director, Bureau of Lands".

It is undisputed that petitioner, Nicanor G. Jorge, is a career official in the Bureau of Lands. He started working there as a Junior Computer in the course of 38 years service, from February 1, 1922 to October 31, 1960, and attained the position of Acting Director, through regular and successive promotions, in accordance with civil service rules. On June 17, 1961, he was designated Acting Director of the same Bureau, and on December 13, 1961 was appointed by President Carlos Garcia ad interim Director. He qualified by taking the oath of office on the 23rd December of 1961. This appointment was on December 26, 1961, transmitted to the Commission on Appointments, and on May 14, 1962, petitioner's ad-interim appointment as Director of Lands was confirmed by the Commission.

Petitioner discharged the duties as Director until on November 14, 1962 he received a letter from Benjamin Gozon, then Secretary of Agriculture and Natural Resources of the Macapagal Administration, informing him that pursuant to a letter from the Assistant Executive Secretary Bernal, served on petitioner on November 13, his appointment was among those revoked by Administrative Order No. 2 of President Diosdado Macapagal; that the position of Director of Lands was considered vacant; and that petitioner Jorge was designated Acting Director of Lands, effective November 13, 1962. Upon learning that respondent Mayor, an outsider, had been designated by the President to be Acting Director of Lands, Jorge protested (in a letter of November 16, 1962) to the Secretary of Agriculture informing the latter that he would stand on his rights, and issued office circulars claiming to be the legally appointed Director of Lands. Finally, on September 2, 1963, he instituted the present proceedings.

The answer of respondent pleads that the ad interim appointment of petitioner and its confirmation were invalid, having been duly revoked by President Macapagal by Administrative Order No. 2 dated December 31, 1961; that petitioner voluntarily relinquished his position and accepted his designation as Acting Director, issuing press statements to said effect, and voluntarily accompanying and introducing respondent to most officials of the Bureau as the newly acting Director of Lands.

The fundamental issue is whether Administrative Order No. 2 of President Macapagal operated as a valid revocation of petitioner's ad interim appointment. We think it has not done so.

The official text of said Administrative Order, as published in the Official Gazette (Vol. 58, page 3, No. 1) is as follows:

"WHEREAS, ad interim appointments were extended and released by President Carlos P. Garcia after the joint session of Congress that ended on December 13, 1961;

NOW, THEREFORE, I, DIOSDADO MACAPAGAL, President of the Philippines, pursuant to the authority vested in me by law, do hereby withdraw and recall and declare without any further effect, all the said appointments and all communications relative thereto, including those to the defunct Commission on Appointments.

Done in the City of Manila, this 31st day of December, in the year of Our Lord, nineteen hundred and sixty-one and of the Independence of the Philippines, the sixteenth.

DIOSDADO MACAPAGAL

President of the Philippines

By the President:

AMELITO MUTUC

Executive Secretary"

Petitioner Jorge's ad interim appointment is dated December 13, 1961, but there is no evidence on record that it was made and released after the joint session of Congress that ended on the same day. It is a matter of contemporary history, of which this Court may take judicial cognizance, that the session, ended late in the night of December 13, 1961, and, therefore, after regular office hours. In, the absence of competent evidence to the contrary, it is to be presumed that the appointment of Jorge was made before the close of office hours, that being the regular course of business. The appointment, therefore, was not included in, nor intended to be covered by, Administrative Order No. 2, and the same stands unrevoked. Consequently, it was validly confirmed by the Commission on Appointments, and thereafter, the office never became vacant.

It is an error to consider petitioner's case as within the purview of our ruling in the Aytona vs. Castillo case (L-19313, Jan. 20, 1962). If in that case this Court refused to interfere with the application of the Chief Executive's Administrative Order No. 2, it was because the circumstances of the appointments therein involved rendered it doubtful whether the appointees' equitable rights could be invoked,

"considering the rush conditional appointments, hurried maneuvers and other happenings detracting from that degree of good faith, morality and propriety which form the basic foundation of claims to equitable relief."

There is certainly no parity between the appointment of petitioner in December 13, 1961 and the confused scramble for appointments in and during the days immediately preceding the inauguration of the present administration. For aught that appears on the record before us, the appointment of petitioner Jorge was the only one made in that day, and there is nothing to show that it was not—"so spaced as to afford some assurance of deliberate action and careful consideration of the need for the appointment and the appointee's qualifications"

that could be validly made even by an outgoing President under the Aytona ruling (Castillo vs. Aytona, L-19313, Jan. 20, 1962; Merrera vs. Liwag, L-20079, Sept. 30, 1963; Gillera vs. Fernandez, L-20741, Jan. 31, 1964).

If anyone is entitled to the protection of the civil service provisions of the Constitution, particularly those against removals without lawful cause, it must be the officers who, like herein petitioner, entered the Civil Service in their youth, bent on making a career out of it, gave it the best years of their lives and grew gray therein in the hope and expectation that they would eventually attain the upper reaches and levels of the official hierarchy, not through political patronage, but through loyalty, merit, and faithful and unrelenting toil. In *Lacson vs. Romero*, 84 Phil. 740, this Court had occasion to voice its concern for these civil servants:

"* * *. To hold that civil service officials hold their office at the will of the appointing power subject to removal or forced transfer at any time, would demoralize and undermine and eventually destroy the whole Civil Service System and structure. The country would then go back to the days of the old Jacksonian Spoils System under which a victorious Chief Executive, after the elections could, if so minded, sweep out of office, civil service employees differing in political color or affiliation from him, and swoop in his political followers and adherents, especially those who have given him help, political or otherwise. A Chief Executive running for reelection may even do this before election time not only to embarrass and eliminate his political enemies from office but also to put his followers in power so that with their official influence they could the better help him and his party in the elections. As may be gathered from the report of the Committee of the Constitutional Convention which we have reproduced at the beginning of this opinion, the framers of our Constitution, at least the Civil Service Committee thereof, condemned said spoils system and purposely and deliberately inserted the constitutional prohibition against removal except for cause, which now forms the basis of this decision."

In common with the Gillera appointment sustained by this Court less than a month ago, Jorge's appointment is featured by a recognition of his tenure by the Macapagal administration itself, since he was allowed to hold and discharge undisturbed his duties as de jure Director of Lands for nearly eleven months; it was only in mid November of 1962 that the attempt was actually made to demote him and appoint a rank outsider in his place in the person of respondent Mayor.

As to the alleged voluntary acquiescence and relinquishment by petitioner of his position as de jure Director of Lands, the evidence is that he did protest against his demotion in letters to the Secretary of Agriculture and in office circulars. That he did not immediately adopt a hostile attitude towards the authorities, and the respondent herein, was merely evidence of that courtesy, and "delicadeza" to be expected of a man in a high position, who does not wish to obstruct the functions of the office, and is in no way incompatible with his determination to protect his rights. It must also be remembered that the precedent case of the former Chairman of the National Science Board, suspended indefinitely on charges that were subsequently found to be false, did not encourage precipitate action, and was a reminder of the unpleasant consequences of defying the administration. At any rate, "abandonment of an office by reason of acceptance of another, in order to be effective and binding, should spring from and be accompanied by deliberation and freedom of choice, either to keep the old office or renounce it for another" (*Teves vs. Sindiong*, 81 Phil. 658, and the record is unconvincing that the alleged acts of acquiescence, mostly equivocal in character, were freely and voluntarily accomplished).

Wherefore, the writs applied for are granted, and the petitioner Nicanor G. Jorge is declared to be the duly appointed, confirmed, and qualified Director of Lands, and the respondent, Jovencio Q. Mayor, is required to turn over said office to the petitioner and to desist from holding himself out as "Acting Director of Lands". Respondent shall pay the costs.

Bengzon, C. J., Labrador, Concepción, Barrera, Regala, and Makalintal, JJ., concur.
Paredes, J.: In the result.

Bautista Angelo, J.: I concur in part and dissenting in part for reasons stated in my concurring opinion in the Aytona case.

CONCURRING, IN PART, AND DISSENTING, IN PART

DIZON, J.:

I concur with the majority opinion in so far as it holds that the appointment of herein petitioner-involved in this case—does not fall within the purview of our ruling in the Aytona case. Said appointment was made under the same extraordinary and unusual circumstances which surrounded the making and release of the appointments voided as a result of the aforesaid ruling.

However, I am constrained to dissent from the majority opinion in view, of the reasons given in the dissenting opinion of Mr. Justice Padilla in the Aytona case, with which I concurred.

DISSENTING

PADILLA, J.:

For the reasons stated in my concurring opinion in Aytona vs. Castillo, G. R. No. L-19313, 19 January 1962, and dissenting opinion in Gillera vs. Fernandez, et al., G. R. No. L-20741, 31 January 1964, which I re-incorporate and reiterate herein, the ad interim appointment of the petitioner as Director of Lands made on 13 December 1961 by the then President of the Republic ended or expired on 30 December 1961. As the petitioner was not appointed to the same office after the 30th day of December 1961, the confirmation of his ad interim appointment as Director of Lands by the Commission on Appointments on 14 May 1962 was of no legal validity and effect. The respondent was lawfully appointed to the office and the petitioner is not entitled to hold it. The petition for writ of quo warranto should be dismissed.

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