

MAXIMINO COMETA, PETITIONER, VS. WENCESLAO ANDANAR, RESPONDENT.*G.R. No. L-7662. July 31, 1954*

Ponente: PADILLA, J.

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This is a petition for quo warranto to question the legality of the ouster of the petitioner from office as municipal mayor of Sapao, province of Surigao, and to test the validity of the designation and appointment of the respondent as acting mayor of the municipality.

On 1 October 1953 the President of the Philippines created the municipality of Sapao, Province of Surigao, pursuant to the provisions of section 68 of the Revised Administrative Code.[1] On the same day, the petitioner was appointed by the President mayor of the newly created municipality and qualified as such by taking the oath of office on 7 October 1953 and assumed all the duties and exercised the functions thereof. On or about 8 February 1954, the petitioner alleges, without legal and justifiable cause, not having been charged with any malfeasance in office to warrant his removal or suspension, he was removed from office by the designation and appointment of the respondent as acting mayor of the municipality. The letter of designation was signed by the Executive Secretary by authority of the President. The respondent acted and is still acting as mayor of the municipality, exercising the duties and functions of the office. The petitioner further alleges that he has requested the Executive Secretary to inform him of the cause of his removal from office, but that the inquiry has remained unanswered.

The respondent contends that appointments made under section 10, Rep. Act No. 180, are at the pleasure of the appointing power temporary or discretionary in character and have no fixed term and are valid and effective only up to the time their successors are duly elected or appointed in accordance with law. Hence the petitioner is entitled to "continue in office only until his successor is duly elected or appointed. In other words, the appointment of the petitioner being temporary in nature, he may be removed at pleasure. The contention is without merit. Section 10, Rep. Act No. 180, provides:

When a new political division is created the inhabitant of which are entitled to participate in the election, the elective officers thereof shall unless otherwise provided, be chosen at the next regular election. In the interim such officer shall, in the discretion of the President, be filled by appointment by him or by a special election he may order.

The foregoing provisions mean that upon the creation of a new political division, the elective officers thereof shall, unless otherwise provided, be chosen at the next regular election. Meanwhile, the President may, at his discretion, appoint to such elective offices suitable persons or call a special election. If the President chooses to fill any of the positions by appointment, as he did in the case of petitioner, then the appointee shall hold office until the next regular election, not temporarily or in an acting capacity, but permanently until his successor is chosen at the next regular election. The municipality of Sapao was created on 1 October 1953 by executive order. Under section 7 of Rep. Act No. 180, as amended by Rep. Act No. 867, the next regular elections for provincial

and municipal offices shall be held "on the second Tuesday of November, nineteen hundred and fifty-five * * *." The respondent not having been elected at the regular election he cannot be designated or appointed to succeed the petitioner, as the latter can only be removed from office for cause as provided by law and in the manner prescribed therein.[2]

The respondent also contends that the office of municipal mayor not having a fixed term of office, the petitioner's continuance therein rests at the pleasure of the appointing power and may be removed even without cause. Again, this contention is not well taken. Section 7, Republic Act No. 180, as amended by Republic Act No. 867, provides that:

* * * The officials elected (at the regular elections for provincial, municipal and municipal district offices) shall assume office on the first day of January next following and shall hold such office for four years and until their successors shall have been duly elected and qualified.

The President not having called a special election but appointed the petitioner municipal mayor of Sapao, he may not be removed from office except for cause.[3] There is nothing to show in the petition and the answer that petitioner has been removed for cause as provided by law. As a matter of fact, the letter of the petitioner to the Executive Secretary asking him for the cause or ground for his removal has remained unanswered. The designation of the respondent to act as mayor of Sapao in place of the petitioner is a removal of the latter from office.

The respondent further contends that on 1 February 1954 the petitioner was formally ousted and removed from the office by unanimous resolution of the municipal council of Sapao and that his appointment as mayor is in response to the general demand of the inhabitants of the new political division and has the support of all the officials, barrio lieutenants, heads of families and residents of the municipality as expressed in a petition dated 1 April 1954 submitted by the inhabitants of the municipality to the President. The municipal council cannot by resolution remove the municipal mayor from office. And even if the feeling of the inhabitants of a municipality be against an incumbent mayor, the President cannot, as already stated, remove a municipal mayor from office except for cause as provided by law and in the manner prescribed therein. It is only at the proper time, by the exercise of the citizen's right of suffrage at the periodic election to be held, that the people may directly exercise its power of removal with or without cause.

The respondent finally alleges that the petitioner has lost his right to the office upon voluntary surrender and relinquishment of his office in favor of the respondent. There is no evidence to that effect. The respondent has usurped and unlawfully held or exercised the office of municipal mayor of Sapao to the exclusion of the petitioner.

The petitioner is entitled to the office now illegally usurped or exercised by the respondent.

Writ prayed for is granted, without costs.

Paras, C. J., Pablo, Bengzon, Montemayor, Reyes, A., Jugo, Bautista Angelo, Labrador, Concepcion and Reyes, J. B. L., JJ., concur.

[1] Executive Order No. 623, series of 1953, 49 Off. Gaz. 4231.

[2] Lacson vs. Roque, 49 Off. Gaz., (1) 93, 92 Phil., 456; Jover vs. Borra, 49 Off. Gaz., 2765, 93 Phil., 506.

[3] Lacson vs. Roque, supra; Jover vs. Borra, supra.

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