

HERCULANO GRAPILON, PETITIONER AND APPELLEE, VS. MUNICIPAL COUNCIL OF CARIGARA, LEYTE, ET AL., RESPONDENTS AND APPELLANTS.

G.R. No. L-12347. May 30, 1961

Ponente: DIZON, J.

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DIZON, J.:

In the general elections held on November 8, 1955 in the municipality of Carigara, Leyte, Jose Aguilar and Herculano Grapilon were elected mayor and vice-mayor, respectively. Thereafter, both qualified for and assumed office in accordance with law.

On March 6, 1957, in compliance with a resolution duly approved by the municipal council, Mayor Aguilar left Carigara for Manila on official business. On that same date appellee inquired from the municipal secretary if it was true that the mayor had left for Manila, to which the municipal secretary replied in the affirmative, informing him besides that Mayor Aguilar left for Manila on official business, without designating anybody as acting municipal mayor. After receiving the secretary's answer appellee informed him "that I assume office as acting municipal mayor effective today and for the duration of his absence pursuant to the provision of Section 2195 of the Revised Administrative Code" (Exhibit A). He addressed a similar notice to the chief of police of the municipality and to the provincial governor of Leyte. In his notice (by telegram) to the latter, appellee also informed him that the municipal secretary had refused to recognize him as acting mayor and asked for advice. Answering petitioner's telegram, the provincial governor, under date of March 7, 1957, wrote him an official letter in which he said that, in view of the reasons therein stated, "in the absence of the municipal mayor when such absence is for official purpose he may not leave the office to the vice-mayor and there shall not be an acting mayor" (Annex B to Exhibit G, page 10 of the Record of Exhibits).

On March 11, 1957, alleging that the municipal council, the municipal secretary Felipe Lianza aid the chief of police Ulpiano Arpon had refused to recognize him as acting mayor and had excluded him from the use and enjoyment of the office of municipal mayor, appellee filed with the lower court a petition for mandamus praying that judgment be rendered requiring the therein respondents to (1) recognize, submit to, and respect his authority as acting municipal mayor; (2) open, unlock and allow his entry into the office of the municipal mayor in the Municipal Hall of Carigara, Leyte; and (3) perform their duties according to law and cooperate with their legitimate superior—the acting municipal mayor. He also prayed that the respondents be ordered to pay him P10,000 as moral damages, P1,500 as attorney's fees, and P100 as costs of litigation.

Upon denial of their motion to dismiss, appellants filed their answer alleging therein, inter alia, that the municipal council had no juridical personality and therefore could not be sued; that appellee had not been designated as acting municipal mayor and, therefore, had no right to exercise the rights and prerogatives of said office; that mandamus was not the proper remedy because appellee should have sought relief under the provisions of Sections 2188-2191 of the Revised Administrative Code before resorting to the courts.

After trial upon the issues thus raised, the lower court rendered the appealed decision, the dispositive part of which reads as follows:

"For all the foregoing, the Court declares that the Vice Mayor is entitled to assume and discharge the office of Municipal Mayor in accordance with Sec. 2195 of the Rev. Adm. Code in the absence of the latter without having designated anyone to act as such; and considering that there is no other plain, speedy and adequate remedy in the ordinary course of law to which the petitioner may resort, the special remedy of Mandamus is in order and by the present is granted. The respondents Municipal Secretary, Chief of Police and the five members of the Municipal Council, Dr. Benito Go, Mrs. Marpa, Mr. Torrevillas, Mr. Molo and Mr. Badiable are hereby ordered to immediately recognize the authority and personality of the petitioner as acting Municipal Mayor, of the municipality of Carigara and to pay the costs without pronouncement as to moral damages and other incidental expenses alleged in the petition or in the counterclaim."

The respondents appealed and now urge us to reverse the decision of the lower court upon the following grounds: firstly, appellee was not entitled to a writ of mandamus because he had a plain, speedy and adequate remedy in the ordinary course of the law to secure the relief sought in his petition; secondly, under the provisions of Section 2195 of the Revised Administrative Code appellee was not entitled to assume the office of municipal mayor of Carigara during the absence of mayor Aguilar on official business in Manila; and thirdly, the lower court erred in not awarding the moral damages, attorney's fees and expenses of litigation claimed in their counterclaim.

Inasmuch as the incident involved in this case happened four years ago, the principal legal question involved herein could be considered as moot were it not for the fact that appellants claim that the lower court erred in not awarding them the damages sought in their counterclaim. Their right thereto depends principally if not entirely upon whether appellee's action was justified and, if it was not, whether he filed suit in bad faith.

It is not disputed that mayor Aguilar left Carigara for Manila on March 6, 1957 on official business, in compliance with a duly approved resolution of the municipal council. While appellee contends that it was enough for the mayor to be away—not present physically—from Carigara for him to be entitled, to step into his shoes, appellants, for their part, contend that the "absence, suspension or other temporary disability of the mayor" mentioned in the legal provision relied upon by appellee refer to disability which temporarily prevents the municipal mayor from performing the duties of his office. Consequently, appellants argue, inasmuch as mayor Aguilar was in Manila on official business, he was not disabled at all but was actually performing the duties of his office. To allow the vice-mayor to act as acting mayor under such state of facts would lead to the irregular situation of two mayors for the same municipality acting at the same time.

Appellants contention seems to be logical. Section 2195 of the Revised Administrative Code considers "absence" on the same level as "suspension" and other forms of temporary disability—If a municipal mayor is suspended—as in the case of *Laxamana vs. Baltazar*, (92 Phil., 32; 42 Off. Gaz., [9] 3869) relied upon by appellee obviously he is disabled temporarily; he can not act as mayor or exercise the powers and prerogatives of his office while under suspension. The "absence" that would authorize the vice-mayor to act as acting mayor should, therefore, be construed in the same manner; it should be such absence as disables the mayor from exercising the powers and prerogatives of his office. Such is not the case in the one before us because mayor Aguilar was in Manila precisely in his capacity as mayor of Carigara transacting official business. Although physically absent from Carigara, he was in the exercise of the powers and prerogatives of his office and was naturally entitled to continue drawing his salary.

Furthermore, while the ordinary meaning of "absence" is the state of being away or not present, we believe that an officer's absence is not such as to warrant the placing of another person temporarily in his place unless said officer is absent on an occasion demanding the immediate exercise of the powers of his office. In the case before us there

is no satisfactory evidence showing that, during the absence of mayor Aguilar on official business in Manila, particularly at the time appellee attempted to assume the office of acting mayor of Carigara, an occasion had arisen demanding immediate and peremptory exercise of the powers of that office either for the preservation of public order or for the enforcement of the laws and ordinances. We, therefore, agree with appellants that under the circumstances of the case, appellee had no right to assume the office of acting mayor.

This question has already been decided by the Executive Branch of the government. On November 25, 1948 the then Secretary of the Interior rendered an opinion upon a case on all fours with the present, the pertinent portions of which are as follows:

"The phrase 'other temporary disability' found in section 2195 of the Code, follows the words 'absence' and 'suspension' and is used as a modifier of the two preceding words, under the principle of statutory construction known as ejusdem generis.

"Under American jurisprudence, 'absence' is construed to mean not merely physical absence, but absence which prevents the mayor from the active performance of his duties.

"In the case of the mayor of a municipality, it is usually provided that the president of the municipal council shall exercise all the powers of the mayor during his absence from the municipality, and under such a provision it has been held that 'absence' must be construed reasonably, and so construed means what may be called 'effective' absence. (37 American Jurisprudence, 893.' In the case of Gelinias vs. Fugere (R.I.) 180 A. 346, 351, 'effective' absence was given the same interpretation.

"In the instant case, however, Mayor Carlos E. Perez left his office for Manila, for the purpose of transacting official business affecting his municipality * * *. Under this circumstance, his absence can not be called 'effective' to warrant the assumption by the vice-mayor of his position by operation of law, as to all intents Mayor Perez continues in the exercise of his power and prerogatives even while outside the municipality and draws his salary for the period he was out of his official station." (Decision Secretary of Interior, dated November 25, 1948, pp. 54-55, The Provincial and Municipal Law, by Cortes)

While the above opinion is not necessarily controlling upon the courts, it must be accorded considerable weight giving as it does the interpretation of the Executive Department of a legal provision affecting the rights of subordinate officials.

The above notwithstanding, we find appellants' claim for damages to be without merit because there is no evidence of any kind showing that appellee had acted maliciously and in bad faith in bringing this suit for mandamus, nor is there sufficient evidence in the record to prove the damages claimed.

Wherefore, the decision appealed from is reversed insofar as it grants the writ of mandamus, and is affirmed insofar as it dismisses the counterclaim of appellants. Without costs.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, De Leon, and Natividad, JJ., concur.

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