

HILARIO DAVIDE, PETITIONER-APPELLEE, VS. HON. ALEJANDRO R. ROCES, BENIGNO ALDANA AND FRUCTUOSO YANSON, RESPONDENTS-APPELLANTS.

G.R. No. L-21754. October 13, 1975

Ponente: ANTONIO, J.

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ANTONIO, J.:

Writ of certiorari to review the judgment of the Court of First Instance of Cebu (Branch VI) granting the petition for mandamus and prohibition filed in Civil Case No. R-7715.

Petitioner Hilario Davide was a District Supervisor in Mactan District, comprising the municipalities of Opon and Cordova, Province of Cebu. He had been a District Supervisor for fourteen years. On June 17, 1961, upon the effectivity of Republic Act No. 3134, the Municipality of Opon was converted into the City of Lapu-Lapu, and providing, among other positions, that of City Superintendent of Schools, who shall have all the powers and duties in respect to schools of the city as are vested in division superintendents in respect to schools of their divisions.

On November 6, 1961, President Carlos P. Garcia extended an ad interim appointment to petitioner as City Superintendent of Schools of the City of Lapu-Lapu. The appointment was among those transmitted to the Commission on Appointments on December 26, 1961 for confirmation. On May 3, 1962, the Commission confirmed the said appointment. Petitioner was notified thereof on May 17, 1962, and on May 26, 1962, he took his oath of office. Immediately thereafter, he assumed the duties of his office and exercised the rights and powers appurtenant thereto. As a consequence thereof, the Division Superintendent of Schools of Cebu no longer exercised control and supervision over the schools within the territorial jurisdiction of Lapu-Lapu City. His actions as such official was recognized by the Director of Public Schools as shown by the fact that the appointments signed by petitioner were approved by the Director of Public Schools and by the Bureau of Civil Service.

In the annual budget for the City of Lapu-Lapu for FY 1962-1963, an appropriation for the position of City Superintendent of Schools for the period May 27 to June 30, 1962 (Exhibit "L-6") was included. On June 25, 1962, respondent Director of Public Schools wrote respondent Secretary of Education (Exhibit "1") informing the latter that the budget of Lapu-Lapu City did not carry an item for the position of City Superintendent of Schools, although such a position was provided in the national budget beginning July 1, 1962. The Director inquired from the Secretary as to the proper action which his office should take regarding the matter. The Director's query was referred to the Office of the President, and on August 9, 1962, the Assistant Executive Secretary, in a second indorsement (Exhibit "K-3"), informed the Secretary of Education that Petitioner's ad interim appointment dated November 6, 1961 had not been released by the Office of the President as it was affected by Administrative Order No. 2, dated December 31, 1961, issued by President Diosdado Macapagal, which withdrew, recalled and declared without effect all ad interim appointments extended or released by former President Garcia after December 13, 1961, hence, the confirmation of petitioner's appointment by the Commission on Appointments

may be disregarded, and petitioner should be directed to desist from performing the duties of City Superintendent of Schools of Lapu-Lapu City. In a third indorsement dated September 3, 1962 (Exhibit "K-2"), the Secretary of Education invited the attention of the Director of Public Schools to the Assistant Executive Secretary's second indorsement. With the approval of the Secretary of Education, the Director of Public Schools authorized the Division Superintendent of Schools of Cebu, respondent Fructuoso R. Yanson, to exercise supervision and administration over all schools in Lapu-Lapu City (Exhibit "G"). By virtue of said authority, Yanson exercised such supervision and administration.

On October 8, 1962, petitioner filed a petition for mandamus and prohibition, with prayer for preliminary injunction, with the Court of First Instance of Cebu (Civil Case No. R-7715). After hearing, a writ of preliminary injunction was issued. On May 30, 1963, judgment was rendered the dispositive portion of which reads:

"IN VIEW OF ALL THE FOREGOING, the Court renders judgment: (1) declaring the petitioner the officer de jure of and to the office of the City Superintendent of Schools of Lapu-Lapu City, his appointment thereto and the confirmation thereof being valid, legal and subsisting; (2) perpetually (a) enjoining the respondents, individually and collectively, from enforcing the recommendation granting respondent Fructuoso Yanson authority to exercise administration and supervision over the schools of the Division of Lapulapu City, (b) restraining them, jointly and severally from divesting or excluding the petitioner in the exercise of his right to the office of City Superintendent of Schools of Lapulapu City or excluding him from such office; (3) declaring the recommendation of respondent Benigno Aldana dated August 21, 1962, authorizing respondent Fructuoso Yanson to exercise supervision and administration over the schools of the division of Lapulapu City and the approval thereof by respondent Alejandro Roces as illegal and therefore null and void.

"No pronouncement as to costs.

"SO ORDERED."

Hence, this appeal by the respondents.

Respondents contend that since petitioner's appointment was never released by the Office of the President, the said appointment was therefore effectively withdrawn and rendered null and void by Administrative Order No. 2.

In this connection, Exhibit "A" presented by petitioner is a copy of his appointment dated November 6, 1961. It is not signed by President Garcia, but the words "Original Signed" are stamped above the President's name. There is no certification that it is a duplicate original, or that it is a true copy of the original. On the witness stand, petitioner testified that he was verbally notified of his appointment on or about November 10, 1961, by the City Mayor, that on or about December 9, 1961, he was given a copy of his appointment (Exhibit "A"), and that he never received the original thereof. The admission of Exhibit "A" was objected to by respondents on the grounds that it was not properly authenticated by the proper authority and it had not been properly identified. It was, however, admitted in evidence as part of petitioner's testimony. Respondents did not adduce any testimonial evidence, but on the issue of whether or not petitioner's appointment was released to him, they introduced in evidence Exhibit "3-C", which is the second indorsement dated August 9, 1962, of the Assistant Executive Secretary, stating that petitioner's appointment "has not been released" from the Office of the President.

An examination of the cases decided by this Court involving ad interim appointments extended by President Garcia during the last months of his term in office clearly indicates that in those cases where the validity of the appointment was not sustained, the same was more influenced by the doubtful character of the appointments themselves than by the contention that President Macapagal had validly recalled them. Thus, where the ad interim appointments are "so spaced as to afford some assurance of deliberate action and careful consideration of the need for the appointment and the appointee's qualifications", such appointments were sustained as having been made

regularly after a full consideration of the qualifications of the candidate and, therefore, removed from the interdiction in *Aytona vs. Castillo*.^[1] As this Court explained in the cases of *Merrera*,^[2] *Gillera*,^[3] and *Quimsing*,^[4] *Aytona vs. Castillo* did not declare Administrative Order No. 2 of President Macapagal valid and all appointments made by then outgoing President Garcia ineffective.

" 'x x x the resolution of the majority in this case has not specifically declared the 'midnight' appointments to be void. The resolution in substance held that the Court had doubts about their validity, and having due regard to the separation of powers and the surrounding circumstances, it declined to overthrow the executive order of cancellation and to grant relief.'

"In other words, this Court not only did not categorically declare Administrative Order No. 2 valid and all appointments made by then outgoing President Garcia, ineffective, but clearly indicated that its decision was more influenced by the doubtful character of the appointments themselves and not by the contention that the President had validly recalled them. As a matter of fact, in the decision in that *Aytona* case it was stated that, 'the filling up of vacancies (by the outgoing President) in important positions, if few, and so spaced as to afford some assurance of deliberate action and careful consideration of the need for the appointment and the appointee's qualifications may undoubtedly be permitted.' It is for the foregoing basic consideration, i.e., the necessity of filling the position, that the appointee is qualified, and that it was not one of those 'mass ad interim appointments' issued in a single night, that this Court upheld the validity of an appointment to the position of Auxiliary Justice of the Peace (*Merrera vs. Liwag*, G.R. No. L-20079, promulgated September 30, 1963), extended by President Garcia and released on December 20, 1961, notwithstanding Administrative Order No. 2 of President Macapagal."^[5]

Indeed, the validity of the appointments made after December 13, 1961 by former President Garcia was considered by the Court not in the light of Administrative Order No. 2 recalling such appointments but on the basis of the nature, character and merit of the individual appointments and the particular circumstances surrounding the same.^[6] Evident in afore-mentioned pronouncements is this Court's continuing concern for the constitutional prohibition against removal from office without lawful cause. Thus, in *Jorge vs. Mayor*,^[7] wherein the promotional appointment on December 13, 1961 of Nicanor Jorge as the Director of Lands, a career official in the civil service, was sustained, Justice J.B.L. Reyes, speaking for the Court, emphasized that Jorge's appointment is featured by a recognition of his tenure by the Macapagal administration itself, since he was allowed to hold and discharge undisturb his duties as de jure Director of Lands for nearly eleven months, and it was only in mid-November 1962 that the attempt was actually made to demote him and appoint an outsider in his place, and "[i]f 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 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 the instant case, it is not disputed that appellee Hilario Davide was extended an ad interim appointment as City Superintendent of Schools of Lapu-Lapu City on November 6, 1961, as a result of deliberate action and careful consideration of the need for the appointment and the appointee's qualifications. As a matter of fact, in the letter of the Director of Public Schools, dated September 25, 1962, to the appellee, said official recognized that the "ability and loyalty as a public servant" of the appellee was "beyond question." (Exhibit "K"). It has been shown also that appellee was furnished a copy of his appointment as City Superintendent of Schools (Exhibit "A") sometime in November 1961, duplicate copy of which was furnished the Secretary of Education (Exhibit "4"). We find, therefore, that appellee's case is not within the purview of those appointments that have been proscribed in *Aytona vs. Castillo* (*supra*).

WHEREFORE, the appeal is hereby dismissed, and the decision of the court a quo dated May 30, 1963 declaring appellee to be the duly appointed, confirmed and qualified City Superintendent of Schools of Lapu-Lapu City is hereby affirmed.

Barredo, (Acting Chairman), Muñoz Palma[*], Aquino, and Martin[*], JJ., concur.

Fernando and Concepcion, Jr., JJ., on leave.

[*] Designated to sit in the Second Division.

[1] 4 SCRA 1.

[2] Merrera vs. Liwag, 9 SCRA 204.

[3] Gillera vs. Fernandez, 10 SCRA 233.

[4] Quimsing vs. Tajanglangit, 10 SCRA 447.

[5] Gillera vs. Fernandez, supra, 236-237.

[6] Quimsing vs. Tajanglangit, supra.

[7] 10 SCRA 331.

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