

WASHINGTON P. PONCE, PETITIONER-APPELLEE, VS. EUGENIO E. VAÑO, IN HIS CAPACITY AS CITY TREASURER, CITY OF LAPULAPU, FAUSTO DE LA SERNA, IN HIS CAPACITY AS CITY AUDITOR, CITY OF ...

G.R. No. L-20723. July 30, 1969

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

Appeal from the writ of mandamus issued by the Court of First Instance of Cebu, recognizing petitioner-appellee as the duly appointed Municipal Judge of the City of Lapulapu.

In this case, which appears to be the last of the many cases that arose after the Castillo vs. Aytona case,[1] where this Court "declined to disregard the Presidential Administrative Order No. 2" cancelling some 350 "midnight" or "last minute" appointments made on December 29, 1961 by the outgoing President on the eve of the expiration of his term, the qualifying doctrine enunciated in the case of Merrera vs. Liwag[2] and other similar cases[3] that "the fill-ing up of vacancies in important positions if few, and so spaced as to afford some assurance of deliberate action and careful consider-ation of the need for the appointment and the appointee's qualifications may undoubtedly be permitted,"[4] is applicable.

Upon a review of the record of the case before us, we are satisfied that no error was committed by the trial judge, Hon. Mateo Canonoy, in holding petitioner's case to be outside the purview of this Court's ruling in the Aytona vs. Castillo case.

The case, after joinder of the issues, was submitted upon a stipulation of facts marked as Exhibit "X" for the Court. As summarized by the trial court, the facts were: "The petitioner, Washington P. Ponce, was the Justice of the Peace of Cordova, Cebu. On July 17, 1961, he was designated as Acting Municipal Judge of Lapulapu City, a newly created City, by the Secretary of Justice. On November 6, 1961, he was extended an ad interim appointment as Municipal Judge of the said City. A copy of said appointment was released and received by him before November 10, 1961. On December 29, 1961, his ad interim appointment was certified by then President Carlos P. Garcia to the Commission on Appointments for confirmation. Having terminated all his pending cases in Cordova as Justice of the Peace of the said muni-cipality, he took his oath of office and assumed the position of Munici-pal Judge of Lapulapu City on January 16, 1962. On April 27, 1962, his ad interim appointment was confirmed by the legally constituted Commission on Appointments. His salary as Acting Municipal Judge of Lapulapu City from July 17, 1961 to January 15, 1962 was paid by the respondents, and, also his salary as Municipal Judge from January 16, 1962 to February 1, 1962. On February 8, 1962 the payment of his salary was withheld upon order of Deputy Auditor General Jesus Iriarte who based his action upon the opinion of the Secretary of Justice that the appointment of the petitioner was withdrawn by the President in the Executive Order No. 2, dated December 21, 1961, withdrawing all appointments issued by then President Carlos P. Garcia. A memo-randum of the Auditor General also directed the withholding the payment of the salaries of the petitioner.

On May 9, 1962, after the confirmation of the petitioner's appointment by the Commission on Appointments, he again claimed the payment of his salary from February 8, 1962 to April 30, 1962 but, again, the respondents refused to pay the same. On June 11, 1962, he filed his claim for his salary for May, 1962, but the respondents still refused to pay the same for grounds already stated. He has thus exhausted all administrative remedies to enforce payment of his salary, for he had already made due demands and representations to the Deputy Auditor General and to the Secretary of Justice who advised him to go to the court to secure a final adjudication on his claim."^[5] The trial Court thereupon upheld the validity of petitioner's appointment on November 6, 1961 and its subsequent confirmation by the Commission on Appointments on April 27, 1962, holding that petitioner "was already Acting Municipal Judge of Lapulapu City when he was issued the adinterim appointment on November 6, 1961. It could not be said that the President had acted hastily and without regard to the qualification of the petitioner. On the contrary it is to be presumed that the petitioner was appointed because of his merit, since it was issued before the President even dreamed or thought that he would be defeated in the elections of November 14, 1961."^[6]

We find no merit in the appeal of the Solicitor General on behalf of respondent officials. The Solicitor General makes no claim in appellants' brief that there was any parity between petitioner's appointment and the "confused scramble for appointments" in and during the last days of the then outgoing administration that resulted in the 350 mass "midnight" appointments, whose cancellation by the new administration's Presidential Administrative Order No. 2 this Court declined to overthrow. Appellants' principal contention that said Administrative Order, which had declared without effect all ad interim appointments extended or released by the outgoing President after December 13, 1961, when the joint session of Congress to proclaim the winners in the Presidential elections ended, was conclusive and binding on all departments, offices and agencies of the government, has been resolved by this Court in the case of *Merrera vs. Liwag* case and other similar cases. (*supra*, fn. 2 and 3). As this Court held in *Sison vs. Gimenez et al*, "It may be pointed out that the *Aytona* ruling did not categorically declare Proclamation No. 2 valid, and all of the so-called 'midnight' appointments invalid or ineffective. It was there clearly indicated that the decision and pronouncements therein made were more influenced by the doubtful character of the appointments themselves and not by the strength of the recall-order of the President. Thus, this Court, in several instances, passed upon the validity of these 'midnight' appointments by taking into consideration the particular circumstances and merit of every case."^[7]

The only other question that requires resolution is the Motion for New Trial filed on November 27, 1963 by the Solicitor General, after he had previously filed appellants' brief on July 2, 1963, which this Court deferred for consideration until, its decision of the case on the merits. The pertinent allegations of the Motion for New Trial read:

"3. That during the hearing a stipulation of facts which is marked as Exhibit 'X' (p. 31, Rec.) was entered into and signed by Amadeo D. Seno, counsel for the petitioner and Miqueas Tumalak, counsel for the respondents, the City of Lapulapu, the City Treasurer, Eugenio Vaño, and the City Auditor, Fausto de la Cerna;

"4. That paragraph 3 of said stipulation of acts reads:

'3. That while performing the duties as Acting Municipal Judge of the City of Lapulapu by virtue of the designation made by the Secretary of Justice, petitioner was extended an ad-interim appointment by then President Carlos P. Garcia as Municipal Judge of the City of Lapulapu pursuant to the provisions of Article VII, Section 16, paragraph 4 of the Constitution and existing law, which appointment was dated November 6, 1961, copy of which was released to and received by the petitioner before the election of November 10, 1961.' (Underscoring supplied);

"5. That the underscored portion of said paragraph 3 which states:

'x x x copy of which was released to and received by the petitioner before the election of November 10, 1961'

is not true for, as a matter of fact, said appointment including the original and all copies therein are still in the possession of the Office of the President and certified to by the Assistant Executive Secretary, Juan Cancio, which is hereto attached as ANNEX 1, as a basis of the affidavit of merits."

x x x x x

"7. That there being a mistake of fact in said stipulation and which was the main basis of the decision of the trial court, there is a necessity of having a new trial for the admission of the vital fact as stated in the certification of the Assistant Executive Secretary (Annex 1)."

It was prayed that a new trial be granted for the admission of then Assistant Executive Secretary Cancio's certification executed two years later on November 11, 1963, that "the ad interim appointment dated November 6, 1961 of Mr. Washington Ponce as Municipal Judge of the City of Lapulapu, which was signed by then President Carlos P. Garcia after December 25, 1961, has not been released and is still in the Office" or in the alternative, that this Court "take judicial cognizance" of said certification.

We find no reason to grant the Motion for New Trial. Even taking judicial cognizance of then Assistant Executive Secretary Cancio's certification, the same refers only to the alleged fact that the ad interim appointment of petitioner dated November 6, 1961 "has not been released." This does not in any way affect the fact and merits of the appointment, as above discussed and neither does it change the stipulated and undisputed fact that petitioner duly took his oath of office and assumed the position of Municipal Judge of Lapulapu City on January 16, 1962 by virtue of his ad interim appointment, which was submitted to and confirmed by the Commission on Appointments on April 27, 1962.

ACCORDINGLY, the judgment appealed from is hereby affirmed. Without costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Capistrano and Barredo, JJ., concur.
Zaldivar, J., did not take part.
Fernando, J., in the result.

[1] 4 SCRA 1.

[2] 9 SCRA 204.

[3] Cunanan vs. Tan, Jr., 5 SCRA 1; Soreño vs. Secretary of Justice, 9 SCRA 869; Gillera vs. Fernandez 10 SCRA 233; Jorge vs. Mayor, 10 SCRA 331; Quimsing vs. Tajanlangit, 10 SCRA 446; Sison vs. Gimenez, 17 SCRA 347, Morales Jr. vs. Patriarca, L-21280, April 30, 1965.

[4] 9 SCRA, at p. 208.

[5] Decision, pp. 406.

[6] Decision, p. 12.

[7] 17 SCRA 347, pp. 350-351.

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