

FILEMON MARIBAO, PETITIONER AND APPELLANT, VS. LUCIO ORTIZ, AS MAYOR OF RONDA, CEBU. THE PROVINCIAL TREASURER AND THE PROVINCIAL AUDITOR OF CEBU, RESPONDENTS AND APPELLEES.*G.R. No. 13760. July 30, 1960*

Ponente: PADILLA, J.

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This is an action to compel the mayor of the municipality of Ronda, province of Cebu, to approve and sign the municipal payroll for the period from 16 to 31 January 1956 and subsequent payrolls, and the provincial auditor, the provincial treasurer and the municipal treasurer to pass them in audit, approve and pay the salary of the petitioner as chief of police, and to recover from them actual, moral and exemplary damages in the sum of P5,000. The answer of the respondents is that the petitioner was appointed by councilor Toribio Chiong, who had no authority to make the appointment, and that the respondent mayor, by executive order No. 4, dated 16 January 1956, advised the petitioner of the illegality of his appointment and terminated on that date his services as such chief of police. They prayed for the dismissal of the petition with costs against the petitioner.

This case was jointly heard with civil case No. R-4699 of the Court of First Instance of Cebu entitled Domingo Cui, et al., vs. Lucio Ortiz, et al., and the two cases were submitted for judgment upon a stipulation of facts. The part of the stipulation concerning this case (No. R-4909) is as follows:

15.—That petitioner Filemon Maribao is of legal age, married and resident of the municipality of Ronda, Cebu;

16.—That the respondents are likewise of legal age, the first, being the Municipal Mayor of Ronda, Cebu, who assumed office on January 1, 1956, after the local elections of November, 1955; and the second, being the Municipal Treasurer of Ronda, Cebu, holding their respective offices in the municipality of Ronda, Cebu; and the third and fourth respondents are holding their respective Offices at the Capitol Building, Cebu City;

17.—That petitioner is a civil service eligible who was appointed by Councilor Toribio Chiong as Chief of Police of Ronda, Cebu, on December 16, 1955, who was then Acting Municipal Mayor of Ronda, Cebu, a copy of his appointment therefor being hereto attached, marked as Annex "D" and made an integral part hereof;

18.—That Councilor Toribio Chiong who signed the said appointment of Filemon Maribao was at that time a councilor who obtained the fifth place according to the number of votes obtained in the local elections of November, 1951, in Ronda, Cebu;

19.—That Mr. Toribio Chiong, number five Councilor of the Municipal Council of Ronda, Cebu, was acting as Municipal Mayor of Ronda, Cebu, on December 16, 1955; that the ranking councilor at the time of the appointment of Mr. Toribio Chiong as Acting Municipal Mayor of Ronda, Cebu, was Councilor Lourdes V. Dima who obtained the second highest number of votes in the election of November, 1951, in Ronda, Cebu, vice the number one Councilor Lucio Ortiz who was a candidate for Mayor in the election of 1955, who automatically resigned as Councilor of Ronda, Cebu, in accordance with the provisions of the Election Code;

20.—That by virtue of said appointment signed by No. 5 councilor Toribio Chiong, petitioner Filemon Maribao accepted and qualified as Chief of Police of Ronda, Cebu, and received his salaries from the time of his appointment up to and including January 15, 1956;

21.—That on January 16, 1956, respondent Mayor Lucio Ortiz served upon petitioner Executive Order No. 4, series of 1956, advising the latter to vacate the office of the Chief of Police of Ronda, Cebu, and turn over all properties to the Municipal Treasurer of said municipality, who will in turn deliver them to Honorato Villafañe who was appointed by respondent Mayor Lucio Ortiz for the reason stated in the said executive order, a copy of which is marked as annex "L", being hereto attached and made an integral part hereof;

22.—That upon complaint by petitioners in both cases, respondent Mayor Lucio Ortiz was administratively investigated and temporarily suspended for one month after which he was reinstated;

23.—That for failure of the Municipal Mayor Lucio Ortiz, respondent herein, to affix his signature in the payroll of the petitioners covering the period from January 16 to 31, 1956, the said respondent Municipal Treasurer of Ronda, Cebu, to avoid responsibility, referred the matter to the Cebu Provincial Auditor, P. Ordoñez, and the latter returned the papers to the Municipal Treasurer of Ronda, Cebu per his 11th Indorsement, dated March 20, 1956, a true copy of which is hereto attached, marked as Annex "M" and made an integral part hereof;

24.—That the appointment of petitioner Filemon Maribao as Chief of Police of Ronda, Cebu, was not approved by the Commissioner of Civil Service, nor by the Executive Secretary, Office of the President of the Philippines, and that his appointment was withdrawn by respondent Mayor Lucio Ortiz before the Bureau of Civil Service and file Office of the President of the Philippines could act on them, true copy of said telegram of withdrawal (Annex "I"), together with the copy of the telegram addressed to respondent Mayor Lucio Ortiz, dated April 11, 1956, sent by Executive Secretary Fortunato de Leon, informing, among others, that the appointments of Filemon Maribao etc., were then not as yet received, being marked as Annex "J", both of which telegrams being hereto attached and made integral parts hereof;

25.—That on August 11, 1956, respondent Mayor Lucio Ortiz received a letter dated July 26, 1956, thru the Commissioner of Civil Service, Manila, and the Provincial Governor of Cebu, signed by Enrique C. Quema, Assistant Executive Secretary, Office of the President of the Philippines (Annex "K"), together with a copy of the letter dated at Manila on July 18, 1956, signed by Fortunato de Leon, Executive Secretary, Office of the President of the Philippines, addressed to Mr. Filemon Maribao, Ronda, Cebu (Annex "K-1"); and an initialed true copy of the first indorsement of the Bureau of Civil Service, dated July 10, 1956, to the Executive Secretary, signed by A. del Rosario, Commissioner of Civil Service, (Annex "K-2"), all made as integral parts hereof; and

26.—That the parties hereto submit the foregoing stipulation of facts as the basis of the decision by this Honorable Court, in both cases, reserving, however, to either party the right to present additional evidence on points not agreed by the parties. The parties agree further to submit their respective memoranda in support of their theories.

From a judgment dismissing the petition, the petitioner has appealed.

The appointment of the petitioner as chief of police of the municipality of Ronda, province of Cebu, was signed by councilor Toribio Chiong, who on 16 December 1955 took over the office of mayor by designation made by ex-mayor Fortunato Villalon. In the general elections of November 1951, Fortunato Villalon was elected mayor, and the councilor who obtained the highest number of votes among the candidates for councilor was Lucio Ortiz. After Lucio Ortiz the next councilor who received the highest number of votes was Lourdes V. Diama. In the general election of November 1955, Lucio Ortiz ran for municipal mayor of Ronda, was elected, and assumed office on 1 January 1956. Mayor Fortunato Villalon designated Toribio Chiong as acting mayor during his absence and that of the vice-mayor, because Lucio Ortiz, the first councilor, could not act as mayor, he having

filed a certificate of candidacy for the office of mayor of Ronda. During the incumbency of Toribio Chiong as acting Mayor of Ronda by designation, the petitioner was appointed chief of police. Having been elected to the office of mayor and after assuming the office on 1 January 1956, Lucio Ortiz found that the appointment of the petitioner as chief of police was illegal, so he served upon him notice of the termination of his service.

Section 2195 of the Revised Administrative Code provides:

Upon the occasion of the absence, suspension, or other temporary disability of the mayor, his duties shall be discharged by the vice-mayor, or if there be no vice-mayor, by the councilor who at the last general election received the highest number of votes.

The designation by Fortunato Villalon of councilor Toribio Chiong who was the fifth in point of number of votes received in the general elections of 1951 is not as provided in the above quoted section of the Revised Administrative Code. Such being the case, his designation to act as mayor was illegal. Not being a de jure officer he could not appoint the petitioner as chief of police of the municipality of Ronda. In fact the petitioner's appointment as chief of police was neither approved by the Commissioner of Civil Service nor by the President of the Philippines, as required in paragraph 14, Executive Order No. 175, series of 1938, and was withdrawn by the respondent mayor before the Bureau of Civil Service and the Office of the President of the Philippines could act on it, and the appointment of Honorato R. Villafañe, also a civil service eligible, as chief of police of the municipality of Ronda, effective 16 January 1956 was approved.

The judgment appealed from is affirmed, without pronouncement as to costs in both instances.

Paras, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, and Gutierrez David, JJ., concur. Bengzon, J., took no part.

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