

KAGAWADS JOSE G. MENDOZA, ROSARIO B. ESPINO, TERESITA S. MENDOZA, JORGE BANAL, CHAIRMAN OF THE SPECIAL INVESTIGATION COMMITTEE ON ADMINISTRATIVE CASES AGAINST ELECTED BARANGAY O...

G.R. No. 146875. July 14, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Is the taking of an oath of office anew by a duly proclaimed but subsequently unseated local elective official a condition sine qua non to the validity of his re-assumption in office where the Commission on Elections (COMELEC) orders the relinquishment of the contested position?

This is the legal question raised in this petition under Rule 45 of the 1997 Rules of Civil Procedure, assailing the November 13, 2000 Summary Judgment[1] of the Regional Trial Court of Quezon City, Branch 77, which set aside the decision of the City Council of Quezon City finding respondent Barangay Captain Manuel D. Laxina guilty of grave misconduct.

On May 27, 1997, respondent took his oath and thereafter assumed office as the duly proclaimed and elected barangay captain of Barangay Batasan Hills, Quezon City, in the 1997 Barangay Elections. Meanwhile, Roque Fermo, his rival candidate, filed an election protest with the Metropolitan Trial Court of Quezon City, Branch 40. On January 18, 1999, Fermo was declared as the winner in the Barangay Elections. Respondent filed a notice of appeal with the COMELEC while Fermo filed a motion for execution pending appeal.

On January 20, 1999, an order was issued by the trial court granting the motion for execution pending appeal. Hence, respondent vacated the position and relinquished the same to Fermo. Thereafter, respondent filed a petition with the COMELEC questioning the January 20, 1999 order of the trial court. On September 16, 1999, the COMELEC issued a resolution[2] annulling the order which granted the execution of the decision pending appeal on the ground that there existed no good reasons to justify execution. The dispositive portion thereof reads:

WHEREFORE, in view of all the foregoing, the Commission En Banc GRANTS the petition. Accordingly, the January 20, 1999 Order of the Court a quo is hereby ANNULLED. Private respondent ROQUE FERMO is hereby ORDERED to CEASE and DESIST from further performing the functions of Punong Barangay of Barangay Batasan Hills, District II, Quezon City and to relinquish the same to Petitioner MANUEL LAXINA, SR, pending final resolution of appeal.

SO ORDERED.[3]

On October 27, 1999, the COMELEC issued a writ of execution directing Fermo to vacate the office of Barangay Chairman of Barangay Batasan Hills. On October 28, 1999, Fermo was served a copy of the writ of execution but refused to acknowledge receipt thereof. He also refused to vacate the premises of the barangay hall of Batasan Hills.[4] This did not, however, prevent respondent and his staff from discharging their functions and from

holding office at the SK-Hall of Batasan Hills.[5] On the same date, respondent appointed Godofredo L. Ramos as Barangay Secretary[6] and on November 8, 1999, he appointed Rodel G. Liquido as Barangay Treasurer.[7]

On November 12, 1999, the COMELEC, acting on respondent's motion to cite Fermo for contempt,[8] issued an alias writ of execution,[9] which was likewise returned unsatisfied. Finally, on November 16, 1999, respondent took his oath of office as Barangay Captain of Batasan Hills, Quezon City before Mayor Ismael Mathay, Jr.[10] The following day, November 17, 1999, Roque Fermo turned over to respondent all the assets and properties of the barangay.[11]

On November 20, 1999, the Barangay Council of Batasan Hills issued Resolution No. 001-S-1999 ratifying the appointment of Godofredo L. Ramos as Barangay Secretary, effective November 1, 1999[12] and Resolution No. 002-S-1999 ratifying the appointment of Rodel G. Liquido, as Barangay Treasurer, also effective November 1, 1999.[13]

However, the appointees of Roque Fermo to the same position registered objections to the said Resolutions. In order to accommodate these appointees, respondent agreed to grant them allowances and remunerations for the period of November 1- 7, 1999.[14]

In Resolution No. 017-S-99 dated December 11, 1999, the barangay council of Batasan Hills, authorized the appropriation of P864,326.00 for the November to December 1999 salary of its barangay officials and employees.[15] Pursuant thereto, the barangay payroll was issued on December 18, 1999, enumerating the names of respondent and his appointed barangay secretary and barangay treasurer as among those entitled to compensation for services rendered for the period November 8, 1999 to December 31, 1999.[16] Petitioners Jose G. Mendoza, Jr., Rosario E. Espino and Teresita S. Mendoza, who were barangay councilors, refused to sign Resolution No. 017-S-99 as well as said payroll.[17]

Sometime in January 2000, petitioner barangay councilors filed with the Quezon City Council a complaint[18] for violation of the anti-graft and corrupt practices act and falsification of legislative documents against respondent and all other barangay officials who signed the questioned resolution and payroll, namely, Barangay Secretary Godofredo L. Ramos, Barangay Treasurer Rodel G. Liquido, Barangay Kagawad Charlie O. Mangune, Gonzalo S. Briones, Sr., Maryann T. Castañeda, Elias G. Gamboa, and SK-Chairman Sharone Amog. They contended that defendants made it appear in the payroll that he and his appointees rendered services starting November 8, 1999 when, in truth, they commenced to serve only on November 17, 1999 after respondent took his oath and assumed the office of barangay chairman. They further claimed that the effectivity date of the barangay secretary and barangay treasurer's appointment, as approved in Resolution No. 001-S-1999, was November 16, 1999, but respondent fraudulently antedated it to November 1, 1999. Petitioners also contended that respondent connived with the other barangay officials in crossing out their names in the payroll.

In their joint counter-affidavit,[19] defendants claimed that the taking anew of the oath of office as barangay chairman was a mere formality and was not a requirement before respondent can validly discharge the duties of his office. They contended that respondent's appointees are entitled to the remuneration for the period stated in the payroll as they commenced to serve as early as October 28, 1999. They added that the names of the 3 petitioner barangay councilors who refused to sign the assailed resolution and daily wage payroll were crossed out from the said payroll to prevent any further delay in the release of the salaries of all barangay officials and employees listed therein.[20]

On October 2, 2000, the Special Investigation Committee on Administrative Cases of the City ruled that respondent had no power to make appointments prior to his oath taking on November 16, 1999.[21] The Committee, however, found that respondent and the other barangay officials who signed the questioned resolution

and payroll acted in good faith when they erroneously approved the grant of renumerations to respondent's appointees starting November 8, 1999. Nevertheless, it found respondent guilty of grave misconduct and recommended the penalty of 2 months suspension. The charges against Barangay Secretary Godofredo Ramos and Barangay Treasurer Rodel Liquido were dismissed, inasmuch as the City Council's disciplinary jurisdiction is limited to elective barangay officials only. As to Barangay Kagawad Charlie O. Mangune, Gonzalo S. Briones, Sr., Maryann T. Castañeda, Elias G. Gamboa, and SK-Chairman Sharone Amog, the charges against them were likewise dismissed on the ground that there was no "separate and independent proof that [they] conspired with Punong Barangay Laxina ...Ramos and Liquido in committing the acts therein complained of." [22]

On October 3, 2000, the Quezon City Council adopted the findings and recommendations of the Committee. [23] Respondent filed a motion for reconsideration. [24] On October 9, 2000, however, the City Council implemented the decision and appointed Charlie Mangune as acting barangay chairman of Batasan Hills, Quezon City. [25]

Respondent filed a petition for certiorari [26] with the Regional Trial of Quezon City, Branch 67, seeking to annul the decision of the Quezon City Council. In their answer, petitioners prayed for the dismissal of the petition, arguing that respondent failed to exhaust administrative remedies and the trial court has no jurisdiction over the case because appeals from the decision of the City Council should be brought to the Office of the President.

On November 13, 2000, a summary judgment was rendered by the trial court in favor of respondent. It did not rule on the propriety of the re-taking of the oath office by the latter, but nevertheless, exonerated him on the basis of the finding of the City Council that he did not act in bad faith but merely "misread the law as applied to the facts." The dispositive portion of the said decision, states:

WHEREFORE, the decision finding herein petitioner guilty of grave misconduct and imposing upon him the penalty of suspension and loss of concomitant benefits for two (2) months is hereby annulled and set aside. The suspension of the petitioner is hereby lifted and all benefits due to him are ordered restored.

The motion for a preliminary hearing on the affirmative defense of respondents and the motion to drop City Councilor Banal as party respondent are both denied.

SO ORDERED. [27]

Petitioners filed the instant petition for review raising pure questions of law.

Before going into the substantive issues, we shall first resolve the issue on exhaustion of administrative remedies.

The trial court ruled that Section 67 of the Local Government Code, which allows an appeal to the Office of the President, is not applicable because the decision of the City Council is final and executory. It added that respondent correctly filed a petition for certiorari because he had no other plain, speedy and adequate remedy. The trial court further ratiocinated that an appeal to the Office of the President before going to the regular courts might render the case moot and academic inasmuch as the penalty of suspension might have been fully served by the time the court renders a decision.

Sections 61 and 67 of the Local Government Code, provide:

Section 61. Form and Filing of Administrative Complaints. A verified complaint against any erring local elective official shall be prepared as follows:

x x x x x x x x

(c) A complaint against any elective barangay official shall be filed before the sangguniang panlungsod or sangguniang bayan concerned whose decision shall be final and executory. (emphasis supplied)

Sec. 67. Administrative Appeals. -- Decisions in administrative cases may, within thirty (30) days from receipt

thereof, be appealed to the following:

x x x x x x x x

(b) The Office of the President, in the case of decisions of the sangguniang panlalawigan and the sangguniang panlungsod of highly urbanized cities and independent component cities.

Decision of the Office of the President shall be final and executory.

In interpreting the foregoing provisions, the trial court did not consider Section 68 of the same code which provides:

An appeal shall not prevent a decision from being final and executory. The respondent shall be considered as having been placed under preventive suspension during the pendency of an appeal in the event that he wins such appeal. In the event the appeal results in an exoneration, he shall be paid his salary and such other emoluments during the pendency of the appeal.

Obviously, the said Code does not preclude the taking of an appeal. On the contrary, it specifically allows a party to appeal to the Office of the President. The phrases "final and executory," and "final or executory" in Sections 67 and 68, respectively, of the Local Government Code, are not, as erroneously ruled by the trial court, indicative of the appropriate mode of relief from the decision of the Sanggunian concerned. These phrases simply mean that the administrative appeals will not prevent the enforcement of the decisions.[28] The decision is immediately executory but the respondent may nevertheless appeal the adverse decision to the Office of the President or to the Sangguniang Panlalawigan, as the case may be.[29]

It is clear that respondent failed to exhaust all the administrative remedies available to him. The rule is that, before a party is allowed to seek the intervention of the court, it is a pre-condition that he should have availed of all the means of administrative processes afforded him. Hence, if a remedy within the administrative machinery can still be availed of by giving the administrative officer concerned every opportunity to decide on a matter that comes within his jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the court's intervention is fatal to one's cause of action.[30]

The application of the doctrine of exhaustion of administrative remedies, however, admits of exceptions, one of which is when the issue involved is purely legal.[31] In the case at bar, the issues of whether or not the decision of the Sangguniang Panlungsod in disciplinary cases is appealable to the Office of the President, as well as the propriety of taking an oath of office anew by respondent, are certainly questions of law which call for judicial intervention.[32] Furthermore, an appeal to the Office of the President would not necessarily render the case moot and academic. Under Section 68, in the event the appeal results in his exoneration, the respondent shall be paid his salary and such other emoluments during the pendency of the appeal. Hence, the execution of the penalty or expiration of term of the public official will not prevent recovery of all salaries and emoluments due him in case he is exonerated of the charges. Clearly, therefore, the trial court correctly took cognizance of the case at bar, albeit for the wrong reasons.

We now come to the substantive issues.

To be sure, an oath of office is a qualifying requirement for a public office; a prerequisite to the full investiture with the office. It is only when the public officer has satisfied the prerequisite of oath that his right to enter into the position becomes plenary and complete.[33] However, once proclaimed and duly sworn in office, a public officer is entitled to assume office and to exercise the functions thereof. The pendency of an election protest is not sufficient basis to enjoin him from assuming office or from discharging his functions.[34] Unless his election is annulled by a final and executory decision,[35] or a valid execution of an order unseating him pending appeal is

issued, he has the lawful right to assume and perform the duties of the office to which he has been elected.

In the case at bar, respondent was proclaimed as the winner in the 1997 Barangay Elections in Batasan Hills, Quezon City; he took his oath on May 27, 1997 and thereafter assumed office. He is therefore vested with all the rights to discharge the functions of his office. Although in the interim, he was unseated by virtue of a decision in an election protest decided against him, the execution of said decision was annulled by the COMELEC in its September 16, 1999 Resolution which, incidentally, was sustained by this Court on March 13, 2000, in *Fermo v. Commission on Elections*.^[36] It was held therein that "[w]hen the COMELEC nullified the writ of execution pending appeal in favor of FERMO, the decision of the MTC proclaiming FERMO as the winner of the election was stayed and the 'status quo' or the last actual peaceful uncontested situation preceding the controversy was restored..."^[37] The status quo referred to the stage when respondent was occupying the office of Barangay Captain and discharging its functions. For purposes of determining the continuity and effectivity of the rights arising from respondent's proclamation and oath taken on May 27, 1997, it is as if the said writ of execution pending appeal was not issued and he was not ousted from office. The re-taking of his oath of office on November 16, 1999 was a mere formality considering that his oath taken on May 27, 1997 operated as a full investiture on him of the rights of the office. Hence, the taking anew of his oath of office as Barangay Captain of Batasan Hills, Quezon City was not a condition sine qua non to the validity of his re-assumption in office and to the exercise of the functions thereof.

Having thus ruled out the necessity of respondent's taking anew of the oath of office, the next question to be resolved is: when is respondent considered to have validly re-assumed office - from October 28, 1999, the date of service of the writ of execution to Roque Fermo and the date respondent actually commenced to discharge the functions of the office, or from November 17, 1999, the date Roque Fermo turned over to respondent the assets and properties of Barangay Batasan Hills, Quezon City?

The records show that the COMELEC served on October 28, 1999 a writ of execution ordering Fermo to desist from performing the function of the Office of Barangay Captain, but the latter refused to comply therewith. His supporters prevented respondent from occupying the barangay hall, prompting the latter to move for the issuance of an alias writ of execution, which was granted on November 12, 1999. It was only on November 17, 1999 that the turn-over to respondent of the assets and properties of the barangay was effected. Undoubtedly, it was Fermo's defiance of the writ that prevented respondent from assuming office at the barangay hall. To reckon, therefore, the effectivity of respondent's assumption in office on November 17, 1999, as petitioners insist, would be to sanction dilatory maneuvers and to put a premium on disobedience of lawful orders which this Court will not countenance. It is essential to the effective administration of justice that the processes of the courts and quasi-judicial bodies be obeyed.^[38] Moreover, it is worthy to note that although the physical possession of the Office of the Barangay Captain was not immediately relinquished by Fermo to respondent, the latter exercised the powers and functions thereof at the SK-Hall of Batasan Hills, Quezon City starting October 28, 1999. His re-assumption in office effectively enforced the decision of the COMELEC which reinstated him in office. It follows that all lawful acts of the latter arising from his re-assumption in office on October 28, 1999 are valid. Hence, no grave misconduct was committed by him in appointing Godofredo L. Ramos and Rodel G. Liquido as Barangay Secretary and Barangay Treasurer, respectively, and in granting them emoluments and remunerations for the period served.

Respondent was also charged of conniving with the other barangay officials in crossing out the names of the petitioner barangay councilors in the payroll. The petition alleged that as a consequence of the striking out of the names of the petitioner barangay officials, they were not able to receive their salaries for the period November 8 to December 31, 1999.^[39] A reading of the payroll reveals that the names of said petitioners and their corresponding salaries are written thereon. However, they refused to sign the payroll and to acknowledge receipt

of their salaries to manifest their protest. Quod quis ex culpa sua damnum sentire. Indeed, he who suffered injury through his own fault is not considered to have suffered any damage.[40] Hence, the investigative committee correctly brushed aside this charge against respondent.

The trial court therefore did not err in exonerating respondent and pursuant to Article 68 of the Local Government Code, he should be paid his salaries and emoluments for the period during which he was suspended without pay.

WHEREFORE, in view of all the foregoing, the instant petition for review is DENIED. The Summary Judgment of the Regional Trial Court of Quezon City, Branch 77, in Civil Case No. Q-00-42155, exonerating respondent Manuel D. Laxina, Sr., of the charge of grave misconduct and ordering the payment of all benefits due him during the period of his suspension, is AFFIRMED.

SO ORDERED.

Vitug, Carpio, and Azcuna, JJ., concur.
Davide, Jr., C.J., in the result.

[1] Penned by Judge Vivencio S. Baclig.

[2] Affirmed by the Court on March 13, 2000, in G.R. No. 140179, entitled *Fermo v. COMELEC* (328 SCRA 52).

[3] Records, p. 22.

[4] Rollo, p. 117.

[5] Supplemental Counter Affidavit, Records, p. 51; Joint Counter Affidavit, Records, p. 49.

[6] Records, p. 33.

[7] Records, p. 34.

[8] Alias Writ of Execution, Rollo, p. 117.

[9] *Id.*, p. 116.

[10] Panunmpa sa Katungkulan, Records, p. 37.

[11] Joint Affidavit and Complaint, Records, p. 45.

[12] Records, p. 35.

[13] Records, p. 36.

[14] Supplemental Counter Affidavit, p. 52; Joint Counter Affidavit, Records, p. 48.

[15] Findings of the Special Investigation Committee on Administrative Cases, Records, p. 12.

[16] Daily Wage Payroll, Records, p. 38.

[17] Joint Affidavit Complaint, Records, pp. 45-46.

[18] *Ibid.*

[19] Records, p. 50.

[20] Supplemental Counter Affidavit, Records, p. 52.

- [21] Respondent's Panunumpa sa Katungkulan, Annex "I" of the petition before the RTC, shows that respondent took his oath on November 16, 1999 and not on November 17, 1999 as stated in the findings of the committee (See Records, p. 37).
- [22] The criminal charges against respondent and the other barangay officials were also dropped considering that the committee has no authority to pass upon said charges.
- [23] Records, p. 102.
- [24] Records, pp. 106-107.
- [25] Records, p. 107.
- [26] Respondent's prayer for the issuance of a temporary restraining order to enjoin the implementation of his suspension was denied by the trial court on October 19, 2000 (See Records, p. 120).
- [27] Summary Judgment, Records, p. 156. (Petitioners' motion for reconsideration of the court's Summary Judgment and respondent's motion for the issuance of a writ of execution were both denied on January 25, 2001 (Records, p. 213).
- [28] Aquilino Q. Pimentel, The Local Government Code of 1991, 1993 edition, p. 182.
- [29] Lapid v. Court of Appeals, G.R. No. 142261, 29 June 2000, 334 SCRA 738, 752-753.
- [30] Paat v. Court of Appeals, 334 Phil. 146, 152 (1997); citing National Development Company v. Hervilla, G.R. No. L-65718, 30 June 1987, 151 SCRA 520; Atlas Consolidated Mining Company v. Mendoza, 112 Phil. 960 (1961); Aboitiz v. Collector of Customs, G.R. No. L-29466, 18 May 1978, 83 SCRA 265; Pestanas v. Dyogi, G.R. No. L-25786, 27 February 1978, 81 SCRA 574.
- [31] Castro v. Secretary Gloria, G.R. No. 132174, 20 August 2001, citing Español v. Chairman, Philippine Veterans Administration, G.R. No. L-44616, 29 June 1985, 137 SCRA 314; Cortes v. Bartolome, G.R. No. L-46629, 11 September 1980, 100 SCRA 1.
- [32] Castro v. Secretary Gloria, *supra*.
- [33] Lecaroz v. Sandiganbayan, 364 Phil. 890, 904 (1999), citing Smith v. County Engineering of San Diego County, 72 Cal. Pptr. 501, 266 C.A. 2d 645.
- [34] Cereno v. Dictado, G.R. No. L-81550, 15 April 1988, 160 SCRA 759, 762, citing Estrada v. Sto. Domingo, 139 Phil. 158 (1969).
- [35] Cereno v. Dictado, *supra*; Gustilo v. Real, Sr., A.M. No. MTJ-001250, 28 February 2001, 353 SCRA 1, 9.
- [36] G.R. No. 140179, 13 March 2000, 238 SCRA 52.
- [37] *Id.*, at 59, citing Verzosa v. Court of Appeals, 359 Phil. 425 (1998).
- [38] Ysasi v. Fernandez, G.R. No. L-28593, 30 January 1970, 31 SCRA 359, 367, citing Pacis v. Averia, 124 Phil. 1541 (1966).
- [39] Petition, p. 20.
- [40] Lee, Jr., Handbook of Legal Maxims, 1998 Edition, p. 141.

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