J/SR. SUPT. JOSUE G. ENGAÑO, PETITIONER, VS. HONORABLE COURT OF APPEALS, DILG SECRETARY JOSE D. LINA, JR., AND CHIEF SUPT. ARTURO W. ALIT, RESPONDENTS.

G.R. NO. 156959. June 27, 2006

Ponente: GARCIA, J.

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GARCIA, J.:

Assailed and sought to be set aside in this petition for review under Rule 45 of the Rules of Court with prayer for a temporary restraining order (TRO) and writ of preliminary mandatory injunction, are the following issuances of the Court of Appeals (CA) in CA-G.R. SP No. 72590, to wit:

> - Decision[1] dated November 22, 2002, affirming an earlier decision of the Regional Trial Court (RTC) of Quezon City declaring the appointment of petitioner Sr. Supt. Josue G. Engaño to the position of Chief, Bureau of Jail Management and Penology (BJMP), as null and void for petitioner's failure to meet the minimum qualification standards set by the Civil Service Commission (CSC); and
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> - Resolution[2] dated January 21, 2003, denying petitioner's motion for reconsideration.

Stripped to the bare essentials, the material facts may be stated as follows:

Private respondent Arturo W. Alit occupied, since July 1999, the position of Jail/Chief Superintendent, Deputy Chief, Bureau of Jail Management and Penology (BJMP), Department of the Interior and Local Government (DILG). On March 29, 2001, he was designated Officer-in-Charge (OIC) of the Bureau in view of the resignation of then BJMP Director, P/Maj. Gen. Aquilino G. Jacob, Jr.

Petitioner Josue G. Engaño, on the other hand, held during the period material the position of Jail Senior Superintendent of the BJMP.

Pursuant to Memorandum Circular No. 4 of the Office of the President, the Chief Directorate for Personnel of the BJMP submitted to the DILG Selection Board for Senior Executive Positions (SB-SEP) a seniority lineal list from which were culled the names of eligible candidates for the position of Director, BJMP.

Of the eleven (11) candidates interviewed, the Board ranked private respondent Alit first, being the only one who fully met the CSC Qualification Standards for the position in question, more particularly, the one-year experience requirement as Chief Superintendent. Consequently, then DILG Secretary Jose D. Lina recommended the appointment of private respondent Alit to the interested position.

However, despite Secretary Lina's recommendation, the President, on September 6, 2001, appointed petitioner Engaño instead.[3] After being sworn into office, Engaño appeared to have assumed the post of BJMP Chief on September 27, 2001.[4]

On September 28, 2001, in the Regional Trial Court (RTC) of Quezon City, private respondent Alit instituted quo warranto proceedings against petitioner Engaño claiming that the latter's appointment was highly irregular and

illegal due to his lack of the minimum qualifications required for the position.

After due hearing, the trial court denied private respondent Alit's plea for a TRO and set the case for hearing on his application for prohibition and injunction.

In a Memorandum[5] of October 2, 2001, the Executive Secretary informed Secretary Lina that petitioner Engaño's appointment as head of the BJMP was being held in abeyance pending resolution of the legal issues raised by the DILG involving his qualifications.

Subsequently, the trial court, in an Order[6] dated October 8, 2001, directed the Office of the President to take a definite stand as to whether or not it is appointing petitioner Engaño as permanent BJMP Chief or retaining private respondent Alit as OIC thereof. In the same order, the trial court additionally directed as follows:

> In the interest of public service and in the exercise of judicial activism, a cease and desist order is hereby issued restraining both parties, Arturo W. Alit and Josue G. Engaño from performing and discharging the duties of the Office of Director BJMP, and in order not to prejudice the operation and control of the said office, the Court hereby designate[s] Jose Lina in his capacity as Secretary of DILG to perform the duties of the Director, BJMP for a period of twenty (20) days.
>
> In the meantime, set the Application for Preliminary Injunction and Prohibition and Quo Warranto on October 24, 2001 at 8:30 A.M.[7]

In compliance with the aforequoted directive, Secretary Lina assumed the duties and functions of Director, BJMP.

Eventually, the trial court rendered on October 29, 2001 judgment in favor of private respondent Alit, disposing as follows:

> Viewed from the foregoing considerations it appears that [petitioner] Engaño does not possess the minimum qualifications required by law for the position of Director, Bureau of Jail Management and Penology (BJMP) and as such his appointment thereto is hereby declared null and void. There being no valid appointment to the contested position [respondent] Alit's prior designation as Officer-in-Charge, Bureau of Jail Management and Penology (BJMP) remains unless revoked by the President or a permanent and valid appointment is made.
>
> SO ORDERED.[8] (Word in bracket added.)

Following the trial court's denial of his motion for reconsideration, petitioner Engaño elevated the case to the CA whereat his appellate recourse was docketed as CA-G.R. SP No. 72590.

As stated at the outset hereof, the CA, in its decision[9] of November 22, 2002, affirmed that of the trial court. With his motion for reconsideration having been denied by the appellate court in its equally challenged Resolution of January 21, 2003, petitioner is now with us via this petition for review with prayer for a TRO and writ of preliminary injunction.

In its Resolution of March 17, 2003, the Court issued a TRO enjoining public respondent DILG Secretary Jose D. Lina, Jr., his agents, representatives, or anyone acting in his behalf, from enforcing DILG Department Circular No. 2001-25 and performing the duties and functions as concurrent Director of the BJMP.

Meanwhile, May 13, 2003 marked petitioner Engaño's last day of government service, he having reached compulsory retirement age as of that date. Subsequently, President Gloria Macapagal-Arroyo appointed private respondent Alit BJMP Director.

Petitioner Engaño, in his Memorandum, raises eight issues, foremost of which are the following:

1.) Whether the prerogative of the President xxx to appoint persons of his/her trust and confidence to certain

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positions in government duly classified as presidential appointees can be declared null and void by the court;

2.) Whether a nominee to a presidential appointive position can validly maintain an action for quo warranto against the person appointed thereto by the President;

3.) Whether a mere nominee can acquire a vested right to an appointment to the contested post upon a court finding that the person appointed lacks the minimum qualifications;

4.) Whether the compulsory retirement of petitioner Engaño has rendered this petition moot and academic;

5.) Whether petitioner Engaño is entitled to salary differential, emoluments, rata, allowances, rank of director and all benefits attached to the position of Chief, BJMP, being unlawfully and arbitrarily deprived by public respondent DILG Secretary Lina; and

6.) Whether petitioner Engaño is entitled to moral, nominal, exemplary and corrective damages as provided particularly in Articles 2218, 2219, 2220, 2221, 2222, 2223, and 2229 of the Civil Code due to the alleged deliberate, willful, arbitrary, baseless, unfounded and wrongful acts of private respondent Alit and public respondent DILG Secretary Lina.

The petition must fail.

Indeed, on issue No. 4 alone, the present petition must be dismissed for having become moot and academic due to supervening events, namely, the compulsory retirement of petitioner Engaño from the service, and the appointment of private respondent Alit as Director of the BJMP. Since then, Alit has also taken his oath of office and has assumed and performed the duties of the position.

Time and again, courts have refrained from even expressing an opinion in a case where the issues have become moot and academic, there being no more justiciable controversy to speak of, so that a determination thereof would be of no practical use or value.[10]

The suit commenced at the RTC was one for quo warranto, which, by its nature, is an action against the usurpation of a public office or position.[11] The issue thereat thus turns on who, between petitioner Engaño and private respondent Alit, is entitled to the position of BJMP Director. Petitioner Engaño having retired in the meantime, and private respondent Alit having been subsequently appointed by President Gloria Macapagal-Arroyo to the contested position, all questions on the validity of the previous appointment of Engaño have become moot.

In his Memorandum, petitioner raised two additional issues, namely, his entitlement to salary differential, representation and transportation allowances (RATA), and other benefits which he allegedly lost due to the loss of the contested position, as well as damages owing to the alleged deliberate, arbitrary and wrongful acts of both the public and private respondents.

Petitioner's money claim allegedly arising from his failure to assume the position of Director, BJMP and damages is untenable.

A public office is not a property within the context of the due process guarantee of the Constitution. There is no such thing as a vested interest in a public office, let alone an absolute right to hold it. Except constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in a public office or its salary.[12] It is only when salary has already been earned or accrued that said salary becomes private property and entitled to the protection of due process.

The right to salary and other emoluments arising from public employment is based on one's valid appointment or election to the office itself and accrues from the date of actual commencement of the discharge of official duties. As may be recalled, petitioner Engaño, albeit lacking in qualifications, was nonetheless appointed as Director of the BJMP and appeared to have entered upon the performance of the duties of the position from September 27, 2001 to October 2, 2001 when the appointing authority recalled his appointment owing to some legal issues respecting his qualification. Subsequently, however, the appointment was peremptorily nullified. In all, therefore, petitioner Engano served as head of the BJMP for six (6) days only, but as a de facto officer at best. And while a de facto officer is entitled to some form of compensation, respondents Secretary Lina and Alit cannot be held personally liable for petitioner's claim for salary, RATA and other benefits.[13] The BJMP cannot also be compelled to pay since it was not a party in the petition below for quo warranto, nor in the appellate proceedings before the CA.[14]

Neither is petitioner Engaño entitled to any damages. As it were, the records are bereft of any showing that either respondent Alit or Secretary Lina acted in a willful, arbitrary, baseless, or wrongful manner, as Engaño alleges. It is obvious that both, in good faith, believed that Engaño was unqualified for the contested position, as was subsequently found to be the case by the trial court and then by the CA. Secretary Lina's assumption of the post in a temporary capacity during the pendency of the quo warranto suit was valid as it was, in fact, pursuant to the trial's court order. Private respondent Alit, needless to stress, was also well within his rights in challenging petitioner's eligibility to the post.

Further, the two courts below were correct in asserting their respective jurisdictions over void appointments. While an appointment is an essentially discretionary executive power, it is subject to the limitation that the appointee should possess none of the disqualifications but all the qualifications required by law.[15] Where the law prescribes certain qualifications for a given office or position, courts may determine whether the appointee has the requisite qualifications, absent which, his right or title thereto may be declared void.[16]

WHEREFORE, this petition is DENIED.

Cost against petitioner.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

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[1] Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Godardo A. Jacinto and Mario L. Guarina III, concurring; Rollo, pp. 45-57.

[2] Id. at 60.

[3] See Annex "G" of the Petition; Id. at 127.

[4] See Annex "H" of the Petition; Id. at 129.

[5] Annex "K" of the Petition; Id. at 135.

[6] Annex "N" of the Petition; Id. at 142-143.

[7] Ibid, p. 143.

[8] Annex "P," Petition, Rollo pp. 147-153.

[9] Supra note 1.

[10] Garcia v. Commission on Elections, 258 SCRA 754, G.R. No. 121139, July 12, 1996; Jaafar v. Commission on Elections, 304 SCRA 672, G.R. No. 134188, March 15, 1999.

[11] Section 1, Rule 66, The Rules of Court.

[12] National Land Titles and Deeds Registration Administration v. Civil Service Commission, G.R. No. 84301, April 7, 1993, 221 SCRA 145.

[13] Mendoza v. Allas, G.R. No. 131977, February 4, 1999, 302 SCRA 623.

[14] Ibid.

[15] Luego v. Civil Service Commission, G.R. No. L-69137, August 5, 1986, 143 SCRA 327; Central Bank v. Civil Service Commission, G.R. Nos. 80455-56, April 10, 1989, 171 SCRA 744.

[16] Javellana v. Executive Secretary, G.R. No. L-36142, March 31, 1973, 50 SCRA 30, 87.

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