

JOSE AGUDO, JR., PETITIONER AND APPELLEE, VS. JOSE R. VILLANUEVA, IN HIS CAPACITY AS CITY ATTORNEY OF BUTUAN CITY, FRANCISCO MAGNO, IN HIS CAPACITY AS ACTING CITY TREASURER AND ...

G.R. No. 17405. September 26, 1964

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MAKALINTAL, J.;

In the budget of the City of Butuan for 1958-59, two positions of special counsel in the office of the City Attorney were authorized. One of them, vacated upon the promotion of the incumbent Attorney Francisco P. Parcon, was filled by Attorney Jose C. Agudo, Jr., petitioner-appellee, by virtue of an appointment extended to him by the City Mayor on January 12, 1960. This position carries a salary of P3,720 per annum. Agudo assumed office on January 14; his appointment was attested by the City Treasurer in the latter's capacity as representative of the Commissioner of Civil Service, pursuant to Section 8 of the Local Autonomy Act, R.A. 2264; and Agudo was paid his salary from January 14 to February 15, 1960.

On January 20, 1960, the Secretary of Justice, acting on the strength of section 1683 of the Revised Administrative Code, appointed Attorney Ricardo S. Castillo to the same position. Castillo took his oath of office the following February 8 and thereafter presented a voucher for his salary to the City Treasurer. Confronted with the dilemma of two appointees to one office, that official refused to honor the voucher and stopped payment of Agudo's salary after February 15, 1960. Agudo continued rendering service and on February 23, 1960 filed a petition for mandamus in the Court of First Instance of Agusan against the City Attorney, Jose R. Villanueva; the City Treasurer, Francisco Magno; and the City Auditor, Juanito Sagara, to compel them to certify, pass in audit and pay the salary of the petitioner. Ricardo S. Castillo intervened, with leave of court, alleging that he was entitled to receive the salary corresponding to the position.

The trial court rendered judgment for the petitioner on March 31, 1960 and dismissed the claim of the intervenor. From that judgment the respondents appealed in due time. The intervenor, on his part, was found by this Court to have failed to perfect his appeal within the reglementary period (resolution of January 9, 1961) and hence the judgment became final as far as he was concerned.

Appellants challenge the petitioner's right to the salary claimed by him on the ground that while the position created by the municipal board appears in the budget as that of Special Counsel, the appointment extended to the petitioner is that of "Special Counsel (Investigator-Researcher)." The point is of no importance. There can be no doubt at all as to the identity of the position, since the appointment itself carries the words "vice Attorney Francisco P. Parcon," who was the former incumbent. His words "investigator-researcher" are obviously descriptive only of the duties that the appointee was supposed to discharge and are meant to refer to another position which did not exist at all. It should be observed here that the position in question was not created by resolution or ordinance but simply included in the budget of the city of Butuan, without a description of its powers and duties. Hence, the descriptive words aforementioned must have been added for clarity and convenience.

It appears that during the pendency of this appeal, the municipal board of Butuan City passed two resolutions (Nos. 713, June 27, 1960; No. 770, Sept. 26, 1960) appropriating certain sums of money to pay for the services of Attorney Ricardo S. Castillo up to October 30, 1960; and on December 27, 1960, another board resolution (No. 822) was approved by the City Mayor creating one additional position of Special Counsel in the office of the City Attorney, from the appropriation for which position Castillo has since been drawing his salary. In view of this development, which amounts to a waiver by Castillo of his claim to the salary pertaining to the office in question as well as of the fact that the dismissal of said claim by the trial court has become final and is now before us on appeal, the only issue to be resolved is whether the respondents are in duty bound to pay the salary of the petitioner.

Considering that the position to which the petitioner was appointed by the City Mayor has been created by the municipal board and is payable from local funds; that the petitioner's appointment has been attested by the City Treasurer as representative of the Civil Service Commissioner; that according to Section 8 of Republic Act 2264, an appointment made by the City Mayor shall become effective upon such attestation and the appointee shall then be entitled to collect the rate of compensation fixed in his appointment and that the respondents have in fact recognized the validity of the petitioner's appointment by paying his salary from January 14 to February 15, 1960, the trial court committed no error in issuing the writ prayed for, such payment being a ministerial duty enjoined by law.

The judgment appealed from is affirmed without pronouncement as to costs.

Bengzon, C.J., Bautista Angela, Concepcion, Reyes, J.B.L., Paredes, Dizon, and Regala, JJ., concur.

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