

ANTONIO VILLANUEVA, PETITIONER VS. FELIX BALALLO, RESPONDENT.

G.R. No. 17745. October 31, 1963

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

This is an appeal from a decision of the Court of First Instance of Ilocos Sur involving purely questions of law.

The main facts are set forth in said decision, from which we quote:

"On November 24, 1959, 14 days after the general elections of November 10, 1959, Inocencio Espiritu, then chief of police of the municipality of Santa, Ilocos Sur, resigned effective at the close of office hours on that day for the reason that he wanted to seek another job (Exh. E).

Jose Burgonio, the incumbent mayor then on December 28, 1959, three days before his term expired on December 31, 1959, extended an appointment to the petitioner Antonio Villanueva as chief of police of Ilocos Sur (Exh. A). On the same date, the provincial treasurer of Ilocos Sur as deputy of the Commissioner of Civil Service and pursuant to the provision of Republic Act No. 2260 approved the appointment.

On December 30, 1959, the petitioner Antonio Villanueva took his oath of office as chief of police of Santa, Ilocos Sur before the then mayor Jose Burgonio (Exh. 1). It also appears that the appointee Antonio Villanueva is a civil service eligible having passed the examination for patrolman (qualifying) on October 2, 1937 with a rating of 86.5 per cent (Exh. J).

On January 5, 1960, Jesus R. Bueno, newly elected mayor of Santa, Ilocos Sur, at the election of November 10, 1959, extended an appointment to Atty. Felix Balallo for the same position of chief of police 'vice Mr. Inocencio Espiritu, resigned' (Exh. 2). The record shows that Atty. Balallo is also a civil service eligible per his application to be entered in the register of eligible pursuant to the provisions of Republic Act No. 1080, as amended by Republic Act 1844 (Exh. 1). Before the former appointment of the petitioner Antonio Villanueva could be finally attested by the Commissioner of Civil Service on March 4, 1960 the Commissioner of Civil Service approved the appointment of the respondent Atty. Felix Balallo subject to the usual physical and medical examination and to the availability of funds, that is, 'provided the former incumbent Inocencio Espiritu has no more leave with pay to his credit.

Since the appointment of the petitioner Antonio Villanueva he has been performing his duties as chief of police of Santa and receiving the emoluments therefor. However, the provincial auditor has annotated in the payroll that the payment of the petitioner's salary is subject to reimbursement if and when the matter is decided against him. In view of this predicament, the Commissioner of Civil Service in his 4th indorsement dated May 13, 1960 to the provincial treasurer (Exh. 5) finally decided that the attestation made by the provincial treasurer under section 20, Republic Act 2260 is not final for it is subject to review by the Commissioner of Civil Service; that the appointment made to Antonio Villanueva has been revoked upon the appointment of Atty. Felix Balallo to the same position. By virtue of the aforementioned indorsement (Exh. 5), Mayor Jesus Bueno advised the petitioner Antonio Villanueva * * * to cease rendering further service in the Police Department * * * and to return all the property of the said department * * * to the municipal treasurer.' (Exh. 7).

On June 3, 1960, the petitioner filed this quo warranto proceedings and as prayed for, the Court on June 6, 1960 issued the writ of preliminary mandatory injunction upon the petitioner filing a bond in the sum of P2,000." (Record, pp. 91-93)

In due course, the Court of First Instance of Ilocos Sur rendered judgment sustaining the action taken by the Commissioner of Civil Service and, accordingly, dismissing the complaint without costs, as well as dissolving the writ of preliminary injunction issued by said court on June 7, 1960. Hence, this appeal by Villanueva.

The decision appealed from is mainly based upon our rulings in *Gorospe vs. Secretary of Public Works and Communications*, 105 Phil., 129, and *Cui vs. Ortiz*, 107 Phil., 1000 but these cases are not in point. The first involved an employee who had been found guilty of certain irregularities and, accordingly, ordered dismissed by the Commissioner of Civil Service, for which reason a subsequent appointment in favor of the same employee was disapproved by the Commissioner of Civil Service, said previous dismissal being a ground for the disapproval of the new appointment, under Section 5 of Rule II of the Civil Service Rules, reading:

"5. The Commissioner may, in his discretion, refuse to examine an applicant, or to certify or attest an appointment of an eligible, who is physically unfit for the performance of the duties of the position to which he seeks appointment; or who has been guilty of a crime, or of infamous, notoriously disgraceful, or immoral conduct, drunkenness, or dishonesty; or who has been dismissed from the service for other delinquency of misconduct; or who has intentionally made a false statement in any material fact, or practiced or attempted to practice any deception or fraud in securing his examination, registration, or appointment. Any of the foregoing disqualifications shall be good cause for the removal of the person from, the service after his appointment."

Indeed, if the grounds for disqualification enumerated in the foregoing provision are, likewise, grounds for removal, it follows that the refusal of the Commissioner of Civil Service to approve the appointment of Gorospe was fully justified, for it would serve no useful purpose to approve the appointment and, at the same time, to remove the appointee. Petitioner herein does not fall, however, under any of the aforementioned disqualifications or causes for removal.

Neither is the second case controlling in the one at bar for the appointment involved in the *Cui* case required the approval of the President which was not secured by him. Hence, his appointment was not completed. The appointment in the present case did not require said approval of the President. In fact, Mayor Burgonio had applied for presidential authority to fill the vacancy resulting from the resignation of Inocencio Espiritu as chief of police of Santa, and the Office of the President replied stating that said "authority * * * is not necessary."

The issue in this case hinges on the role of the Commissioner of Civil Service under the provisions of the Civil Service Act requiring his attestation to appointments made in the civil service. As stated by this Court in the *Gorospe* case (*supra*), the appointment of an employee in the civil service "must be submitted to the Commissioner of Civil Service for approval to determine whether the prospective appointee is qualified to hold the position". In the language of former Deputy Commissioner of Civil Service, Gregorio Rasalan (in his book on the Philippine Civil Service Law, pp. 27 and 28):

"If the appointee concerned is a civil service eligible and otherwise qualified for the position and the appointing authority has already performed all the acts necessary to make the appointment complete, a probational, promotional, transfer or reinstatement appointment may not be withdrawn without the consent of the appointee. * * *

"Pursuant to law and regulations an appointment in the service must be submitted to the Commissioner of Civil Service for determination whether the proposed appointee is qualified to hold the position. * * *."

When the appointee is qualified, as petitioner herein admittedly is, then the Commissioner of Civil Service has no

choice but to attest to the appointment. It has been repeatedly held that an appointment becomes complete upon the performance of the last act required by law of the appointing power. The attestation required of the Commissioner of Civil Service is merely a check to assure compliance with the civil service laws. In fact, upon attestation by the provincial treasurer the appointee may collect the corresponding salaries, although subject to the condition that, if the Commissioner of Civil Service should later on properly reject the appointment by reason of lack of eligibility, as provided in said Section 5, Rule II, of the Civil Service Rules, then the appointment shall lapse, despite the aforementioned attestation by the provincial treasurer. This notwithstanding, the amounts collected by the appointee, by way of salary, prior to notice of the unfavorable action taken by the Commissioner of Civil Service, shall be deemed validly paid to said appointee.

This goes to show that the appointment in question is not only valid, but, also, complete prior to said notice, for, otherwise, said payment could not be deemed legally made.

WHEREFORE, the decision appealed from is hereby reversed, and another one shall be entered granting the writ prayed for and declaring that petitioner Antonio Villanueva is the duly appointed and qualified Chief of Police of the Municipality of Santa, Ilocos Sur; that, as such, he is legally entitled to perform the powers and duties of said office and to receive the emoluments attached thereto; that respondent Felix Balallo has no right to said office and, consequently, ordering him to yield the same to the aforementioned petitioner, as well as to refrain from obstructing or interfering in any manner whatsoever in the discharge by the latter of the functions of said office, with costs against said respondent. It is so ordered.

Bengzon, C. J., Padilla, Bautista, Angelo, Labrador, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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