

GENE M. TULAWIE, PETITIONER AND APPELLEE, VS. THE PROVINCIAL AGRICULTURIST OF SULU, RESPONDENT AND APPELLANT.

G.R. No. 18945. July 31, 1964

Ponente: REGALA, J.

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REGALA, J.:

On August 20, 1959, the petitioner-appellee Gene M. Tulawie was extended by the Secretary of Agriculture and Natural Resources (hereinafter referred to as the Secretary) a temporary appointment as Assistant Provincial Agriculturist of Sulu, upon the recommendation of the Director of Agricultural Extension (referred to as Director). This appointment was approved by the Commissioner of Civil Service and was forwarded to the Provincial Agriculturist of Sulu.

On November 7, 1959, the said petitioner appeared before the Provincial Agriculturist of Sulu, herein respondent-appellant, and requested that he be allowed to enter upon the performance of his duties as per his appointment. But the said respondent-appellant asked him to come back and start working on the 16th of that month.

A few days thereafter, or on November 10, 1959, the respondent-appellant Provincial Agriculturist sent a telegram to the Director of Agricultural Extension, reading: "personnel PLANTILLA RECEIVED FROM YOUR OFFICE LISTED BENJAMIN LAJOT AS ASSISTANT PROVINCIAL AGRICULTURIST STOP GENE TULAWIE ALSO HAS APPOINTMENT SAME POSITION PLEASE WIRE CLARIFICATION."

In answer to this telegram the Director wrote the respondent-appellant telling him that it was Gene Tulawie, and not Mr. Lajot, who had been appointed to the position in question. Pertinent portion of the letter reads:

"* * * please be informed that Mr. Tulawie has been appointed Asst. Provincial Agriculturist and not Mr. Lajot. This is because of the insistence of the Governor for his appointment to this position as according to him. the former is a native of Sulu, a Moslem and son of the former Governor of that province and was, therefore, in a better position to teach the farmers in modern agriculture. Those are stated in his letter dated August 20, 1959, copy hereto inclosed. Although Mr. Tulawie is not eligible his appointment is authorized under Sec. 23 of Rep. Act 2260 under the paragraph on cultural minorities.

"Mr. Lajot was listed in the plantilla because this office had a plan to propose him for appointment to Assistant Provincial Agriculturist. At that time h

"For this reason and following the policy initiated by the former Director of this Bureau that the Provincial Governor be given initiative in filling positions in the Agricultural Fund, this office recommended Mr. Tulawie for the position of Asst. Provincial Agriculturist of that province."

On November 12, 1959, respondent-appellant wrote a confidential letter to the Director, pertinent portion of which reads:

"Now the election is over. It is significant because the results will have a direct bearing on the appointment of Mr. Tulawie as well as the future relationship of our office with the newly elected members of the Provincial Board. Before I explain this point further, permit me to mention that the appointment of Mr. Tulawie was made possible thru the personal intervention of Governor Fernandez in spite of the fact that Mr. Lajot a Sr. Teacher of Agriculture eligible was recommended for the position. This would have been all right if Governor Fernandez was reelected. In fact, I asked Mr. Tulawie to report on November 15, 1959 but since Governor Fernandez was not reelected, the picture so to speak changed. The elected Governor Atty. Benjamin Abubakar as well as the Vice Governor and two Board Members who belong to the Liberal Party were personally attacked during the election campaigns especially the Governor and Vice Governor elect by Atty. Rene Tulawie, the brother of Gene, both sons of Ex-Governor Arolas Tulawie, Campaign Manager of the NP during the election. I am sure these two Governor elects will not just take the attacks on their persons lying down and will see in the appointment of Mr. Gene Tulawie if he will be allowed to report for duty immediately their chance to hit back which may also boomerang on us for allowing him to become a personnel of our office in spite of the results of the election.

* * * * *

"In view of the above developments, I would recommend therefor the following if I may be permitted to do so without forgetting also the fact that your say on the matter is final:

"1. That Mr. Tulawie must be directed not to report for duty until after the new provincial administration takes over on January 1, 1960.

"2. That Mr. Tulawie can only report for duty after he can present a written note or letter from the new Governor concurring his appointment."

On November 16, 1959, the respondent-appellant received wire from the Regional Administrator instructing him to defer the assumption of office of the petitioner-appellee. Petitioner's entrance into office was thus deferred for months.

On June 10, 1960, Tulawie sent a letter to the respondent-appellant Provincial Agriculturist, reiterating his desire to assume office. A week thereafter, the said petitioner-appellee took his oath of office before a Justice of the Peace, on the same day executing a statement of his assets and liabilities. Notwithstanding his oath, however, he was not allowed to assume office. Feeling aggrieved, he filed with the Court of First Instance of Sulu a petition for mandamus with preliminary injunction against the Provincial Agriculturist of Sulu, alleging that he had been unlawfully excluded from the enjoyment of an office to which he is entitled; that he suffered damages amounting to no less than P1,102.10 and that he has no other plain, speedy and adequate remedy in the ordinary course of law.

After the filing of the case, the Provincial Fiscal who was requested to appear for the respondent-appellee wired the Secretary informing him about it and at the same time inquiring if the said Secretary was really objecting to Tulawie's assumption to office and if so, what grounds.

The said telegram was on June 24, 1960 indorsed to the Director of Agricultural Extension, for comment. On July 5, 1960, the telegram was forwarded to the Secretary in an indorsement, to wit:

"* * * In view of the representations made to this Office by Provincial Agriculturist Yanga and the objection of the Governor to the proposed appointment of Mr. Gene Tulawie as Assistant-Provincial Agriculturist whose salary will be paid from the Provincial Agricultural Fund and who has not yet taken his oath of office although his appointment has already been approved by all authorities concerned, this office in order to insure the cooperation of the local Government authorities in the administration of the agricultural extension service in that province has seen fit to shift Mr. Tulawie to the position of Provincial Rural Clubs Agent with assignment

in the province of Agusan at a higher salary range. Anyway this item to which Mr. Tulawie will be shifted is still in the provincial level.

"Mr Tulawie was appointed as Asst. Provincial Agriculturist mainly because he is an agricultural college graduate and although he has no civil service eligibility his employment with respect to this requirement has been dispensed with under the clause of cultural minorities, in line with the policy of Congress to accelerate their integration, under Sec. 23 of Republic Act No. 2260. Provincial Agriculturist Yanga has accordingly been instructed to return to Jolo and advise the Provincial Fiscal of the action proposed to be taken by this Office."

This indorsement was returned to the Director of Agricultural Extension, duty noted.

On August 8, 1960, the said Director again forwarded the papers to the Secretary, together with a copy of an indorsement sent by the said Director to the Provincial Agriculturist of Sulu in connection with the proposed change in the designation of Mr. Tulawie from Assistant Provincial Agriculturist to Provincial Rural Clubs Agent of Agusan. The Director, in returning the papers to the Secretary, reiterated the inadviability of petitioner's occupying the position of Asst. Provincial Agriculturist of Sulu and recommended that h's appointment as such be revoked and another one be prepared to designate him Rural Clubs Agent for Agusan.

In a 5th Indorsement, also dated August 8, 1960, the Secretary manifested to the Director that he had no objection to the revocation of petitioner-appellee's questioned appointment. In line therewith, said petitioner was appointed Provincial Clubs Agent, with a higher salary. The respondent-appellant was duly notified of this arrangement.

The trial of the case thus proceeded and after its submission for decision, the lower court, on April 17, 1961, rendered judgment declaring that petitioner had been duly appointed and had qualified in office as Assistant Provincial Agriculturist of Sulu and is entitled to collect all the emoluments pertaining to the office from June 17, 1960 until he shall have entered upon the performance of his duties as Provincial Rural Clubs Agent of Agusan.

The respondent, represented by the Solicitor General, has appealed.

The appeal is without merit.

Firstly, there is nothing in the argument of the Solicitor General that the petitioner-appellee has not exhausted all administrative remedies before coming to court. It is quite clear from the facts that the case had reached the Secretary of Agriculture and Natural Resources and the latter being the alter ego of the President, his action bears the implied approval of the latter (*Dimaisip vs. Court of Appeals*, 106 Phil., 237; 57 Off. Gaz., 4425; *Villena vs. Secretary*, 67 Phil. 451). The principle is that failure to appeal a decision of a Department Secretary to the President is not a violation of the exhaustion rule.

Going into the merits of the case, there is no question that when the petitioner-appellee appeared before the respondent-appellant for the first time on November 7, 1959, intendedly to assume office, he was holding a valid appointment as Assistant Provincial Agriculturist of Sulu, said appointment having been duly signed by the Secretary and approved by the Commissioner of Civil Service. The appointment states that it shall take effect upon entrance to duty of the appointee. Under these circumstances, it is very plain that the petitioner-appellee Tulawie had the right to occupy the questioned position and it was ministerial upon the respondent Provincial Agriculturist to allow him after the taking of his oath of office. The reason relied upon by the respondent, that petitioner-appellee did not belong to the political party of the governor elect, is not a valid reason for denying him the right to the office.

It is true that a temporary appointment may be withdrawn at any time. Note, however, that the Secretary here who is the appointing authority, did not actually withdraw or cancel the questioned appointment. Instead, he appointed the petitioner-appellee as Provincial Rural Clubs Agent of Agusan. If this latter appointment may constitute an

implied revocation of the previous one, nevertheless, it would not alter the fact that the petitioner-appellee was illegally deprived of his right to that office. Indeed, he had his rights under the first appointment until it was revoked. There is likelihood that if the respondent-appellant did not take it upon himself to bar petitioner's entrance into the duties of the position of Assistant Provincial Agriculturist, the latter would have taken his oath earlier than June 17, 1960. As a matter of fact, he was ready as early as November 7, 1959.

Considering the circumstances, we are inclined to award in favor of the petitioner-appellee the emoluments of the office of Assistant Provincial Agriculturist of Sulu for six months, which is the maximum period for a temporary appointment (Sec. 24[d], Rep. Act 2260)[1], starting upon the date of his oath. However, if within this period the petitioner-appellee had entered into the performance of his office as Rural Clubs Agent, he is entitled to said emoluments only up to that time that he assumed the latter position.

With the only modification that he is entitled to collect the emoluments of the office of Assistant Provincial Agriculturist for a period not exceeding six months, the judgment of the lower court is hereby affirmed. Costs de oficio.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Paredes and Makalintal, JJ., concur.

[1] This supersedes Sec. 682 of the Revised Administrative Code which fixes the maximum period to three months.

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