

HON. LUIS MARIO M. GENERAL, COMMISSIONER, NATIONAL POLICE COMMISSION, PETITIONER, VS. HON. ALEJANDRO S. URRO, IN HIS CAPACITY AS THE NEW APPOINTEE VICE HEREIN PETITIONER HON. LU...

G.R. No. 191560. March 29, 2011

Ponente: BRION, J.

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BRION, J.:

Before the Court are the Consolidated Petitions for Quo Warranto,[1] and Certiorari and/or Prohibition[2] with urgent prayer for the issuance of a temporary restraining order (TRO) and/or preliminary injunction filed by Atty. Luis Mario General (petitioner). The petitioner seeks to declare unconstitutional the appointments of Alejandro S. Urro, Constancia P. de Guzman and Eduardo U. Escueta (collectively, the respondents) as Commissioners of the National Police Commission (NAPOLCOM), and to prohibit then Executive Secretary Leandro Mendoza and Department of Interior and Local Government (DILG) Secretary Ronaldo V. Puno from enforcing the respondents' oath of office. Particularly, the petitioner asks that respondent Urro be ousted as NAPOLCOM Commissioner and he be allowed to continue in office.

THE ANTECEDENTS

On September 20, 2004, then President Gloria Macapagal-Arroyo (PGMA) appointed Imelda C. Roces (Roces) as acting Commissioner of the NAPOLCOM, representing the civilian sector.[3] On January 25, 2006, PGMA reappointed Roces as acting NAPOLCOM Commissioner.[4] When Roces died in September 2007, PGMA appointed the petitioner on July 21, 2008[5] as acting NAPOLCOM Commissioner in place of Roces. On the same date, PGMA appointed Eduardo U. Escueta (Escueta) as acting NAPOLCOM Commissioner and designated him as NAPOLCOM Vice Chairman.[6]

Later, PGMA appointed Alejandro S. Urro (Urro) in place of the petitioner, Constancia P. de Guzman in place of Celia Leones, and Escueta as permanent NAPOLCOM Commissioners. Urro's appointment paper is dated March 5, 2010; while the appointment papers of De Guzman and Escueta are both dated March 8, 2010.[7] On March 9, 2010, Escueta took his oath of office before Makati Regional Trial Court Judge Alberico Umali.[8]

In a letter dated March 19, 2010, DILG Head Executive Assistant/Chief-of-Staff Pascual V. Veron Cruz, Jr. issued separate congratulatory letters to the respondents. The letter uniformly reads.

You have just been appointed COMMISSIONER xxx National Police Commission. xxx Attached is your appointment paper duly signed by Her Excellency, President Macapagal Arroyo.[9]

After being furnished a copy of the congratulatory letters on March 22, 2010,[10] the petitioner filed the present petition questioning the validity of the respondents' appointments mainly on the ground that it violates the constitutional prohibition against midnight appointments.[11]

On March 25, 2010 and April 27, 2010, respondents Urro and de Guzman took their oath of office as NAPOLCOM Commissioners before DILG Secretary Puno and Sandiganbayan Associate Justice Jose R. Hernandez, respectively.[12]

On July 30, 2010, the newly elected President of the Republic of the Philippines, His Excellency Benigno S. Aquino III, issued Executive Order No. 2 (E.O. No. 2) "Recalling, Withdrawing, and Revoking Appointments Issued by the Previous Administration in Violation of the Constitutional Ban on Midnight Appointments." The salient portions of E.O. No. 2 read:

SECTION 1. Midnight Appointments Defined. - The following appointments made by the former President and other appointing authorities in departments, agencies, offices, and instrumentalities, including government-owned or controlled corporations, shall be considered as midnight appointments:

(a) Those made on or after March 11, 2010, including all appointments bearing dates prior to March 11, 2010 where the appointee has accepted, or taken his oath, or assumed public office on or after March 11, 2010, except temporary appointments in the executive positions when continued vacancies will prejudice public service or endanger public safety as may be determined by the appointing authority.

(b) Those made prior to March 11, 2010, but to take effect after said date or appointments to office that would be vacant only after March 11, 2010.

(c) Appointments and promotions made during the period of 45 days prior to the May 10, 2010 elections in violation of Section 261 of the Omnibus Election Code.

SECTION 2. Recall, Withdraw, and Revocation of Midnight Appointments. Midnight appointments, as defined under Section 1, are hereby recalled, withdrawn, and revoked. The positions covered or otherwise affected are hereby declared vacant. (Emphasis supplied.)

THE PETITION

The petitioner claims that Roces was supposed to serve a full term of six years counted from the date of her appointment in October (should be September) 2004.[13] Since she failed to finish her six-year term, then the petitioner is entitled to serve this unexpired portion or until October (should be September) 2010.[14] The petitioner invokes Republic Act (R.A.) No. 6975[15] (otherwise known as the Department of the Interior and Local Government Act of 1990) which requires that vacancies in the NAPOLCOM "shall be filled up for the unexpired term only." [16] Because of the mandatory word "shall," the petitioner concludes that the appointment issued to him was really a "regular" appointment, notwithstanding what appears in his appointment paper. As a regular appointee, the petitioner argues that he cannot be removed from office except for cause.

The petitioner alternatively submits that even if his appointment were temporary, a temporary appointment does not give the President the license to abuse a public official simply because he lacks security of tenure.[17] He asserts that the validity of his termination from office depends on the validity of the appointment of the person intended to replace him. He explains that until a presidential appointment is "officially released," there is no "appointment" to speak of. Since the appointment paper of respondent Urro, while bearing a date prior to the effectivity of the constitutional ban on appointments,[18] was officially released (per the congratulatory letter dated March 19, 2010 issued to Urro) when the appointment ban was already in effect, then the petitioner's appointment, though temporary in nature, should remain effective as no new and valid appointment was effectively made.

The petitioner assails the validity of the appointments of respondents De Guzman and Escueta, claiming that they were also made in violation of the constitutional ban on appointments.

THE COMMENTS OF THE RESPONDENTS and THE OFFICE OF THE SOLICITOR GENERAL (OSG)

Prefatorily, the respondents characterize Escueta's inclusion in the present petition as an error since his appointment, acceptance and assumption of office all took place before the constitutional ban on appointments started. Thus, there is no "case or controversy" as to Escueta.

The respondents posit that the petitioner is not a real party-in-interest to file a petition for quo warranto since he was merely appointed in an acting capacity and could be validly removed from office at anytime.

The respondents likewise counter that what the ban on midnight appointments under Section 15, Article VII of the Constitution prohibits is only the making of an appointment by the President sixty (60) days before the next presidential elections and until his term expires; it does not prohibit the acceptance by the appointee of his appointment within the same prohibited period.[19] The respondents claim that "appointment" which is a presidential act, must be distinguished from the "acceptance" or "rejection" of the appointment, which is the act of the appointee. Section 15, Article VII of the Constitution is directed only against the President and his act of appointment, and is not concerned with the act/s of the appointee. Since the respondents were appointed (per the date appearing in their appointment papers) before the constitutional ban took effect, then their appointments are valid.

The respondents assert that their appointments cannot be considered as midnight appointments under the *Dominador R. Aytona v. Andres V. Castillo, et al.*[20] ruling, as restated in *In Re: Appointments* dated March 30, 1998 of Hon. Mateo A. Valenzuela, et al.[21] and *Arturo M. de Castro v. Judicial and Bar Council, et al.*,[22] since the petitioner failed to substantiate his claim that their appointments were made only "for the purpose of influencing the Presidential elections," or for "partisan reasons." [23]

The respondents pray for the issuance of a TRO to stop the implementation of E.O. No. 2, and for the consolidation of this case with the pending cases of *Tamondong v. Executive Secretary*[24] and *De Castro v. Office of the President*[25] which similarly assail the validity of E.O. No. 2.

On the other hand, while the OSG considers the respondents' appointments within the scope of "midnight appointments" as defined by E.O. No. 2, the OSG nonetheless submits that the petitioner is not entitled to the remedy of quo warranto in view of the nature of his appointment. The OSG claims that since an appointment in an acting capacity cannot exceed one year, the petitioner's appointment ipso facto expired on July 21, 2009.[26]

PETITIONER'S REPLY

The petitioner argues in reply that he is the legally subsisting commissioner until another qualified commissioner is validly appointed by the new President to replace him.[27]

The petitioner likewise claims that the respondents appeared to have skirted the element of issuance of an appointment in considering whether an appointment is made. The petitioner asserts that to constitute an appointment, the President's act of affixing his signature must be coupled with the physical issuance of the appointment to the appointee - i.e., the appointment paper is officially issued in favor of the appointee through the President's proper Cabinet Secretary. The making of an appointment is different from its issuance since prior to the official issuance of an appointment, the appointing authority enjoys the prerogative to change his mind. In the present case, the respondents' appointment papers were officially issued and communicated to them only on March 19, 2010, well within the period of the constitutional ban, as shown by the congratulatory letters individually issued to them.

Given this premise, the petitioner claims that he correctly impleaded Escueta in this case since his appointment also violates the Constitution. The petitioner adds that Escueta was appointed on July 21, 2008, although then as acting NAPOLCOM Commissioner. By permanently appointing him as NAPOLCOM Commissioner, he stands to be in office for more than six years, in violation of R.A. No. 6975.[28]

The petitioner argues that even granting that the President can extend appointments in an acting capacity to NAPOLCOM Commissioners, it may not be done by "successive appointments" in the same capacity without violating R.A. No. 6975, as amended, which provides a fixed and staggered term of office for NAPOLCOM Commissioners.[29]

THE COURT'S RULING

We dismiss the petition for lack of merit.

When questions of constitutional significance are raised, the Court can exercise its power of judicial review only if the following requisites are present: (1) the existence of an actual and appropriate case; (2) the existence of personal and substantial interest on the part of the party raising the constitutional question; (3) recourse to judicial review is made at the earliest opportunity; and (4) the constitutional question is the *lis mota* of the case.[30]

Both parties dwelt lengthily on the issue of constitutionality of the respondents' appointments in light of E.O. No. 2 and the subsequent filing before the Court of several petitions questioning this Executive Order. The parties, however, appear to have overlooked the basic principle in constitutional adjudication that enjoins the Court from passing upon a constitutional question, although properly presented, if the case can be disposed of on some other ground.[31] In constitutional law terms, this means that we ought to refrain from resolving any constitutional issue "unless the constitutional question is the *lis mota* of the case."

Lis mota literally means "the cause of the suit or action." This last requisite of judicial review is simply an offshoot of the presumption of validity accorded the executive and legislative acts of our co-equal branches of the government. Ultimately, it is rooted in the principle of separation of powers. Given the presumed validity of an executive act, the petitioner who claims otherwise has the burden of showing first that the case cannot be resolved unless the constitutional question he raised is determined by the Court.[32]

In the present case, the constitutionality of the respondents' appointments is not the *lis mota* of the case. From the submitted pleadings, what is decisive is the determination of whether the petitioner has a cause of action to institute and maintain this present petition - a *quo warranto* against respondent Urro. If the petitioner fails to establish his cause of action for *quo warranto*, a discussion of the constitutionality of the appointments of the respondents is rendered completely unnecessary. The inclusion of the grounds for *certiorari* and/or prohibition does not alter the essential character of the petitioner's action since he does not even allege that he has a personal and substantial interest in raising the constitutional issue insofar as the other respondents are concerned.

The resolution of whether a cause of action exists, in turn, hinges on the nature of the petitioner's appointment. We frame the issues under the following questions:

- What is the nature of the petitioner's appointment as acting NAPOLCOM Commissioner?
- Does the petitioner have the clear right to be reinstated to his former position and to oust respondent Urro as NAPOLCOM Commissioner?

I. Nature of petitioner's appointment

a. A staggered term of office is not

inconsistent with an acting
appointment

The petitioner asserts that contrary to what appears in his appointment paper, the appointment extended to him was really a regular appointment; thus, he cannot be removed from office except for cause. The petitioner argues that the appointment of an acting NAPOLCOM Commissioner or, at the very least, the "successive appointments" of NAPOLCOM Commissioners in an acting capacity contravenes the safeguards that the law - R.A. No. 6975[33] - intends through the staggered term of office of NAPOLCOM Commissioners.

Notably, the petitioner does not expressly claim that he was issued a permanent appointment; rather, he claims that his appointment is actually a regular appointment since R.A. No. 6975 does not allegedly allow an appointment of a NAPOLCOM Commissioner in an acting capacity.

At the outset, the petitioner's use of terms needs some clarification. Appointments may be classified into two: first, as to its nature; and second, as to the manner in which it is made.[34]

Under the first classification, appointments can either be permanent or temporary (acting). A basic distinction is that a permanent appointee can only be removed from office for cause; whereas a temporary appointee can be removed even without hearing or cause.[35] Under the second classification, an appointment can either be regular or ad interim. A regular appointment is one made while Congress is in session, while an ad interim appointment is one issued during the recess of Congress. In strict terms, presidential appointments that require no confirmation from the Commission on Appointments[36] cannot be properly characterized as either a regular or an ad interim appointment.

In this light, what the petitioner may have meant is a permanent (as contrasted to a temporary or acting) appointment to the office of a NAPOLCOM Commissioner, at least for the duration of the unexpired portion of his predecessor (Roces).

Generally, the power to appoint vested in the President includes the power to make temporary appointments, unless he is otherwise specifically prohibited by the Constitution or by the law, or where an acting appointment is repugnant to the nature of the office involved.[37] The President's power to issue an acting appointment is particularly authorized by the Administrative Code of 1987 (Executive Order No. 292).

CHAPTER 5

POWER OF APPOINTMENT

Section 16. Power of Appointment. - The President shall exercise the power to appoint such officials as provided for in the Constitution and laws.

Section 17. Power to Issue Temporary Designation. -

(1) The President may temporarily designate an officer already in the government service or any other competent person to perform the functions of an office in the executive branch, appointment to which is vested in him by law, when: (a) the officer regularly appointed to the office is unable to perform his duties by reason of illness, absence or any other cause; or (b) there exists a vacancy;

(2) xxx

(3) In no case shall a temporary designation exceed one (1) year.

The purpose of an acting or temporary appointment is to prevent a hiatus in the discharge of official functions by authorizing a person to discharge those functions pending the selection of a permanent or another appointee. An

acting appointee accepts the position on the condition that he shall surrender the office once he is called to do so by the appointing authority. Therefore, his term of office is not fixed but endures at the pleasure of the appointing authority. His separation from the service does not import removal but merely the expiration of his term -- a mode of termination of official relations that falls outside the coverage of the constitutional provision on security of tenure[38] since no removal from office is involved.

The power to appoint is essentially executive in nature[39] and the limitations on or qualifications in the exercise of this power are strictly construed.[40] In the present case, the petitioner posits that the law itself, R.A. No. 6975, prohibits the appointment of a NAPOLCOM Commissioner in an acting capacity by staggering his term of office. R.A. No. 6975, on the term of office, states:

Section 16. Term of Office. - The four (4) regular and full-time Commissioners shall be appointed by the President upon the recommendation of the Secretary. Of the first four (4) commissioners to be appointed, two (2) commissioners shall serve for six (6) years and the two (2) other commissioners for four (4) years. All subsequent appointments shall be for a period of six (6) years each, without reappointment or extension.

Generally, the purpose for staggering the term of office is to minimize the appointing authority's opportunity to appoint a majority of the members of a collegial body. It also intended to ensure the continuity of the body and its policies.[41] A staggered term of office, however, is not a statutory prohibition, direct or indirect, against the issuance of acting or temporary appointment. It does not negate the authority to issue acting or temporary appointments that the Administrative Code grants.

Ramon P. Binamira v. Peter D. Garrucho, Jr.,[42] involving the Philippine Tourism Authority (PTA), is an example of how this Court has recognized the validity of temporary appointments in vacancies in offices whose holders are appointed on staggered basis. Under Presidential Decree (P.D.) No. 189,[43] (the charter of the PTA, as amended by P.D. No. 564[44] and P.D. No. 1400[45]), the members of the PTA's governing body are all presidential appointees whose terms of office are also staggered.[46] This, notwithstanding, the Court sustained the temporary character of the appointment extended by the President in favor of the PTA General Manager, even if the law[47] also fixes his term of office at six years unless sooner removed for cause.

Interestingly, even a staggered term of office does not ensure that at no instance will the appointing authority appoint all the members of a body whose members are appointed on staggered basis.

The post-war predecessor of the NAPOLCOM was the Police Commission created under R.A. No. 4864.[48] Pursuant to the 1987 constitutional provision mandating the creation of one national civilian police force,[49] Congress enacted R.A. No. 6975 and created the NAPOLCOM to exercise, inter alia, "administrative control over the Philippine National Police." Later, Congress enacted R.A. No. 8551 which substantially retained the organizational structure, powers and functions of the NAPOLCOM.[50] Under these laws, the President has appointed the members of the Commission whose terms of office are staggered.

Under Section 16 of R.A. No. 6975, the NAPOLCOM Commissioners are all given a fixed term of six years (except the two of the first appointees who hold office only for four years). By staggering their terms of office however, the four regular commissioners would not vacate their offices at the same time since a vacancy will occur every two years.

Under the NAPOLCOM set up, the law does not appear to have been designed to attain the purpose of preventing the same President from appointing all the NAPOLCOM Commissioners by staggering their terms of office. R.A. No. 6975 took effect on January 1, 1991. In the usual course, the term of office of the first two regular commissioners would have expired in 1997, while the term of the other two commissioners would have expired in 1995. Since the term of the President elected in the first national elections under the 1987 Constitution expired on

June 30, 1998, then, theoretically, the sitting President for the 1992-1998 term could appoint all the succeeding four regular NAPOLCOM Commissioners. The next President, on the other hand, whose term ended in 2004, would have appointed the next succeeding Commissioners in 2001 and 2003.

It is noteworthy, too, that while the Court nullified the attempt of Congress to consider the terms of office of the then NAPOLCOM Commissioners as automatically expired on the ground that there was no bona fide reorganization of the NAPOLCOM,[51] a provision on the staggering of terms of office is evidently absent in R.A. No. 8551 - the amendatory law to R.A. No. 6975. Section 7 of R.A. No. 8551 reads:

Section 7. Section 16 of Republic Act No. 6975 is hereby amended to read as follows:

"SEC. 16. Term of Office. - The four (4) regular and full-time Commissioners shall be appointed by the President for a term of six (6) years without re-appointment or extension."

Thus, as the law now stands, the petitioner's claim that the appointment of an acting NAPOLCOM Commissioner is not allowed based on the staggering of terms of office does not even have any statutory basis.

Given the wide latitude of the President's appointing authority (and the strict construction against any limitation on or qualification of this power), the prohibition on the President from issuing an acting appointment must either be specific, or there must be a clear repugnancy between the nature of the office and the temporary appointment. No such limitation on the President's appointing power appears to be clearly deducible from the text of R.A. No. 6975 in the manner we ruled in *Nacionalista Party v. Bautista*.^[52] In that case, we nullified the acting appointment issued by the President to fill the office of a Commissioner of the Commission on Elections (COMELEC) on the ground that it would undermine the independence of the COMELEC. We ruled that given the specific nature of the functions performed by COMELEC Commissioners, only a permanent appointment to the office of a COMELEC Commissioner can be made.

Under the Constitution, the State is mandated to establish and maintain a police force to be administered and controlled by a national police commission. Pursuant to this constitutional mandate, the Congress enacted R.A. No. 6975, creating the NAPOLCOM with the following powers and functions:^[53]

Section 14. Powers and Functions of the Commission. -- The Commission shall exercise the following powers and functions:

(a) Exercise administrative control and operational supervision over the Philippine National Police which shall mean the power to:

xxxx

b) Advise the President on all matters involving police functions and administration;

c) Render to the President and to the Congress an annual report on its activities and accomplishments during the thirty (30) days after the end of the calendar year, which shall include an appraisal of the conditions obtaining in the organization and administration of police agencies in the municipalities, cities and provinces throughout the country, and recommendations for appropriate remedial legislation;

d) Recommend to the President, through the Secretary, within sixty (60) days before the commencement of each calendar year, a crime prevention program; and

e) Perform such other functions necessary to carry out the provisions of this Act and as the President may direct. [Emphasis added.]

We find nothing in this enumeration of functions of the members of the NAPOLCOM that would be subverted or

defeated by the President's appointment of an acting NAPOLCOM Commissioner pending the selection and qualification of a permanent appointee. Viewed as an institution, a survey of pertinent laws and executive issuances[54] will show that the NAPOLCOM has always remained as an office under or within the Executive Department.[55] Clearly, there is nothing repugnant between the petitioner's acting appointment, on one hand, and the nature of the functions of the NAPOLCOM Commissioners or of the NAPOLCOM as an institution, on the other.

b. R.A. No. 6975 does not prohibit
the appointment of an acting
NAPOLCOM Commissioner in
filling up vacancies in the NAPOLCOM

The petitioner next cites Section 18 of R.A. No. 6975 to support his claim that the appointment of a NAPOLCOM Commissioner to fill a vacancy due to the permanent incapacity of a regular Commissioner can only be permanent and not temporary:

Section 18. Removal from Office. - The members of the Commission may be removed from office for cause. All vacancies in the Commission, except through expiration of term, shall be filled up for the unexpired term only: Provided, That any person who shall be appointed in this case shall be eligible for regular appointment for another full term.

Nothing in the cited provision supports the petitioner's conclusion. By using the word "only" in Section 18 of R.A. No. 6975, the law's obvious intent is only to prevent the new appointee from serving beyond the term of office of the original appointee. It does not prohibit the new appointee from serving less than the unexpired portion of the term as in the case of a temporary appointment.

While the Court previously inquired into the true nature of a supposed acting appointment for the purpose of determining whether the appointing power is abusing the principle of temporary appointment,[56] the petitioner has not pointed to any circumstance/s which would warrant a second look into and the invalidation of the temporary nature of his appointment.[57]

Even the petitioner's citation of Justice Puno's[58] dissenting opinion in *Teodoro B. Pangilinan v. Guillermo T. Maglaya, etc.*[59] is inapt. Like the petitioner, Pangilinan was merely appointed in an acting capacity and unarguably enjoyed no security of tenure. He was relieved from the service after exposing certain anomalies involving his superiors. Upon hearing his plea for reinstatement, the Court unanimously observed that Pangilinan's relief was a punitive response from his superiors. The point of disagreement, however, is whether Pangilinan's lack of security of tenure deprives him of the right to seek reinstatement. Considering that the law (Administrative Code of 1987) allows temporary appointments only for a period not exceeding twelve (12) months, the majority considered Pangilinan to be without any judicial remedy since at the time of his separation, he no longer had any right to the office. Justice Puno dissented, arguing that Pangilinan's superiors' abuse of his temporary appointment furnishes the basis for the relief he seeks.

In the present case, the petitioner does not even allege that his separation from the office amounted to an abuse of his temporary appointment that would entitle him to the incidental benefit of reinstatement.[60] As we did in *Pangilinan*,[61] we point out that the petitioner's appointment as Acting Commissioner was time-limited. His appointment ipso facto expired on July 21, 2009 when it was not renewed either in an acting or a permanent capacity. With an expired appointment, he technically now occupies no position on which to anchor his quo warranto petition.

c. The petitioner is estopped

from claiming that he was
permanently appointed

The petitioner's appointment paper is dated July 21, 2008. From that time until he was apprised on March 22, 2010 of the appointment of respondent Urro, the petitioner faithfully discharged the functions of his office without expressing any misgivings on the character of his appointment. However, when called to relinquish his office in favor of respondent Urro, the petitioner was quick on his feet to refute what appeared in his appointment papers.

Under these facts, the additional circumstance of estoppel clearly militates against the petitioner. A person who accepts an appointment in an acting capacity, extended and received without any protest or reservation, and who acts by virtue of that appointment for a considerable time, cannot later on be heard to say that the appointment was really a permanent one so that he could not be removed except for cause.[62]

II. An acting appointee has no
cause of action for quo warranto
against the new appointee

The Rules of Court requires that an ordinary civil action must be based on a cause of action,[63] which is defined as an act or omission of one party in violation of the legal right of the other which causes the latter injury. While a quo warranto is a special civil action, the existence of a cause of action is not any less required since both special and ordinary civil actions are governed by the rules on ordinary civil actions subject only to the rules prescribed specifically for a particular special civil action.[64]

Quo warranto is a remedy to try disputes with respect to the title to a public office. Generally, quo warranto proceedings are commenced by the Government as the proper party-plaintiff. However, under Section 5, Rule 66 of the Rules of Court, an individual may commence such action if he claims to be entitled to the public office allegedly usurped by another. We stress that the person instituting the quo warranto proceedings in his own behalf must show that he is entitled to the office in dispute; otherwise, the action may be dismissed at any stage.[65] Emphatically, Section 6, Rule 66 of the same Rules requires the petitioner to state in the petition his right to the public office and the respondent's unlawful possession of the disputed position.

As early as 1905,[66] the Court already held that for a petition for quo warranto to be successful, the suing private individual must show a clear right to the contested office.[67] His failure to establish this right warrants the dismissal of the suit for lack of cause of action; it is not even necessary to pass upon the right of the defendant who, by virtue of his appointment, continues in the undisturbed possession of his office.[68]

Since the petitioner merely holds an acting appointment (and an expired one at that), he clearly does not have a cause of action to maintain the present petition.[69] The essence of an acting appointment is its temporariness and its consequent revocability at any time by the appointing authority.[70] The petitioner in a quo warranto proceeding who seeks reinstatement to an office, on the ground of usurpation or illegal deprivation, must prove his clear right[71] to the office for his suit to succeed; otherwise, his petition must fail.

From this perspective, the petitioner must first clearly establish his own right to the disputed office as a condition precedent to the consideration of the unconstitutionality of the respondents' appointments. The petitioner's failure in this regard renders a ruling on the constitutional issues raised completely unnecessary. Neither do we need to pass upon the validity of the respondents' appointment. These latter issues can be determined more appropriately in a proper case.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Nachura, Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, and Sereno, JJ., concur.
Carpio Morales, J., no part.

[1] Under Rule 66 of the Rules of Court.

[2] Under Rule 65 of the Rules of Court.

[3] Rollo, p. 201.

[4] Id. at 202.

[5] On July 31, 2008, the petitioner took his oath of office before DILG Secretary (and NAPOLCOM Chairman) Ronaldo V. Puno; id. at 10.

[6] Id. at 33 and 180.

[7] Id. at 337 and 179.

[8] Id. at 162.

[9] Id. at 336, 338 and 340.

[10] Id. at 11.

[11] Article VII, Section 15 of the 1987 Constitution.

[12] Rollo, pp. 149 and 162.

[13] Id. at 201.

[14] Ibid.

[15] An Act Establishing the Philippine National Police under a Reorganized Department of the Interior and Local Government, December 13, 1990.

[16] Section 18, R.A. No. 6975.

[17] Rollo, pp. 18-19.

[18] The constitutional ban on appointments started on March 10, 2010.

[19] Rollo, p. 160.

[20] G.R. No. L-19313, January 19, 1962, 4 SCRA 1.

[21] A.M. No. 98-5-01-SC, November 9, 1998, 298 SCRA 408.

[22] G.R. No. 191002, G.R. No. 191032, G.R. No. 191057, A.M. No. 10-2-5-SC, G.R. No. 191149, G.R. No. 191342, and G.R. No. 191420, March 17, 2010.

[23] Rollo, p. 166.

[24] Docketed as G.R. No. 192987.

[25] Docketed as G.R. No. 192991.

[26] Citing Section 17(3), Chapter 5, Title I, Book III of E.O. No. 292; and *Pimentel, Jr. v. Ermita*, G.R. No. 164978, October 13, 2005, 472 SCRA 587.

[27] *Rollo*, pp. 222-223.

[28] *Id.* at 268.

[29] *Id.* at 279-280.

[30] *Integrated Bar of the Philippines v. Zamora*, G.R. No. 141284, August 15, 2000, 338 SCRA 81.

[31] *Sotto v. Commission on Elections*, 76 Phil. 516 (1946).

[32] *People v. Vera*, 65 Phil. 56 (1937).

[33] R.A. No. 6975, Section 16 reads:

Section 16. Term of Office. - The four (4) regular and full-time Commissioners shall be appointed by the President upon the recommendation of the Secretary. Of the first four (4) commissioners to be appointed, two (2) commissioners shall serve for six (6) years and the two (2) other commissioners for four (4) years. All subsequent appointments shall be for a period of six (6) years each, without reappointment or extension.

R.A. No. 8551, Section 7 reads:

Section 7. Section 16 of Republic Act No. 6975 is hereby amended to read as follows:

"SEC. 16. Term of Office. -- The four (4) regular and full-time Commissioners shall be appointed by the President for a term of six (6) years without re-appointment or extension."

[34] See *Marohombsar v. Court of Appeals*, G.R. No. 126481, February 18, 2000, 326 SCRA 62.

[35] *Marohombsar v. Alonto, Jr.*, G.R. No. 93711, February 25, 1991, 194 SCRA 390.

[36] See *Calderon v. Carale*, G.R. No. 91636, April 23, 1992, 208 SCRA 254.

[37] *Cabiling v. Pabualan*, G.R. Nos. L-21764 and L-21765, May 31, 1965, 14 SCRA 274, citing *Tañada and Carreon*, *Philippine Political Law*, 1961 ed.

[38] *Achacoso v. Macaraig*, G.R. No. 93023, March 13, 1991, 195 SCRA 235.

[39] *Pimentel, Jr. v. Ermita*, *supra* note 24.

[40] *Sarmiento III v. Mison*, No. L-79974, December 17, 1987, 156 SCRA 549.

[41] *Isagani A. Cruz*, *Philippine Political Law*, 2002 ed. p. 301.

[42] G.R. No. 92008, July 30, 1990, 188 SCRA 154.

[43] AMENDING PART IX OF THE INTEGRATED REORGANIZATION PLAN BY RENAMING THE DEPARTMENT OF TRADE AND TOURISM AS THE DEPARTMENT OF TOURISM, AND CREATING THE DEPARTMENT OF TOURISM WITH A PHILIPPINE TOURIST AUTHORITY ATTACHED TO IT IN LIEU OF PHILIPPINE TOURIST COMMISSION; May 11, 1973.

[44] REVISING THE CHARTER OF THE PHILIPPINE TOURISM AUTHORITY CREATED UNDER PRESIDENTIAL DECREE NO. 189, DATED MAY 11, 1973; October 2, 1974.

[45] FURTHER AMENDING PRESIDENTIAL DECREE 564, AS AMENDED, OTHERWISE KNOWN AS THE REVISED CHARTER OF THE PHILIPPINE TOURISM AUTHORITY, AND FOR OTHER PURPOSES;

June 5, 1978. Section 2 of P.D. No.1400 reads:

Section 2. Section 23 is hereby amended by adding a new Section to read as follows:

"Section 23-A. General Manager. Appointment and Tenure. The General Manager shall be appointed by the President of the Philippines and shall serve for a term of six (6) years unless sooner removed for cause; Provided, That upon the expiration of his term, he shall serve as such until his successor shall have been appointed and qualified."

[46] Sections 14-16 of P.D. No. 564 reads:

Section 14. Board of Directors Composition. The corporate powers and functions of the Authority shall be vested in and exercised by a Board of Directors, hereinafter referred to as the Board, which shall be composed of: (a) the Secretary of Tourism as Chairman; (b) the General Manager of the Authority as Vice Chairman; and (c) three (3) part-time members who shall be appointed by the President of the Philippines. The Chairman of the Board may at the same time be appointed by the President as General Manager of the Authority.

Section 15. Term of Office. The term of office of the part-time members of the Board shall be six years. Of the part-time members first appointed, one shall hold office for six years, one for four years, and the last one for two years. A successor to a member whose term has expired shall be appointed for the full term of six years from the date of expiration of the term for which his predecessor was appointed.

Section 16. Vacancy Before Expiration of Term. Any member appointed to fill a vacancy in the Board occurring prior to the expiration of the term for which his predecessor was appointed shall serve only for the unexpired portion of the term of his predecessor.

[47] P.D. No. 1400.

[48] AN ACT CREATING THE POLICE COMMISSION, AMENDING AND REVISING THE LAWS RELATIVE TO THE LOCAL POLICE SYSTEM, AND FOR OTHER PURPOSES; August 8, 1966. Section 3 of R.A. No. 4864 reads:

Sec. 3. Creation of Police Commission. To carry out the objectives of this Act, there is hereby created a Police Commission under the Office of the President of the Philippines composed of a chairman and two other members, to be appointed by the President with the consent of the Commission on Appointments, and who shall hold office for a term of seven years and may not be reappointed. Of the members of the Police Commission first appointed, one shall hold office for seven years, another for five years and the other for three years. The Chairman and members of the Police Commission may only be removed from office for cause.

[49] Section 6, Article XVI of the Constitution.

[50] See *Canonizado v. Aguirre*, G.R. No. 133132, January 25, 2000, 323 SCRA 312.

[51] *Id.*

[52] 85 Phil. 101 (1949); *Brillantes, Jr. v. Yorac*, G.R. No. 93867, December 18, 1990, 192 SCRA 358.

[53] As amended by R.A. No. 8551.

[54] R.A. No. 4864 (AN ACT CREATING THE POLICE COMMISSION, AMENDING AND REVISING THE LAWS RELATIVE TO THE LOCAL POLICE SYSTEM, AND FOR OTHER PURPOSES, August 8, 1966); P.D. No. 765 (PROVIDING FOR THE CONSTITUTION OF THE INTEGRATED NATIONAL POLICE AND FOR OTHER PURPOSES, August 8, 1975); E.O. No. 1040 (TRANSFERRING THE NATIONAL POLICE COMMISSION TO THE OFFICE OF THE PRESIDENT, July 10, 1985); E.O. No. 379 (REALIGNING THE FUNCTIONS OF SUPERVISION AND CONTROL OVER THE INTEGRATED NATIONAL POLICE

PURSUANT TO SECTION 31, CHAPTER 10, BOOK III OF EXECUTIVE ORDER NO. 202, November 24, 1989).

[55] When the Police Commission was reorganized as the National Police Commission in 1972, the latter was under the Office of the President. In 1975, it was transferred to the Ministry (now Department) of National Defense. Ten years later, it was placed again under the Office of the President. In 1991, a new NAPOLCOM was created "within the Department [of Interior and Local Government.]" Later, Congress enacted R.A. No. 8551 making the NAPOLCOM an "agency attached to the Department [of Interior and Local Government] for policy and program coordination."

[56] *Marohombsar v. Alonto, Jr.*, supra note 33.

[57] In *Marohombsar v. Alonto, Jr.* *ibid.*, the Court found that there are several reasons which indicate that the maneuverings of the appointing authority were mala fide undertaken. Significantly, the Court found that what was actually issued to the appointee is not an acting but an ad interim appointment, which is actually a permanent appointment.

[58] Later, Chief Justice.

[59] G.R. No. 104216, August 20, 1993, 225 SCRA 511.

[60] Dissenting Opinion of Justice (later, Chief Justice) Puno; 225 SCRA 522.

[61] *Ibid.*

[62] *Cabiling, et al. v. Pabulaan, et al.*, 121 Phil. 1068 (1965); and *Marohombsar v. Alonto, Jr.*, supra note 33.

[63] Section 1, Rule 2 of the Rules of Court.

[64] Section 3(a), par. 2, Rule 1 of the Rules of Court.

[65] *Liban v. Gordon*, G.R. No. 175352, July 15, 2009, 593 SCRA 68.

[66] *Acosta v. Flor*, 5 Phil. 18 (1905).

[67] *Topacio v. Ong*, G.R. No. 179895, December 18, 2008, 574 SCRA 817.

[68] *Castro v. Del Rosario, et al.*, G.R. No. L-17915, January 31, 1967, 19 SCRA 196, citing *Acosta v. Flor*, 5 Phil. 18.

[69] *Sevilla v. Court of Appeals*, G.R. No. 88498, June 9, 1992, 209 SCRA 637.

[70] *Achacoso v. Macaraig*, supra note 36; and *Quitiquit v. Villacorta*, 107 Phil. 1060 (1960).

[71] *Carillo v. Court of Appeals*, G.R. No. L-24554, May 31, 1967, 77 SCRA 170.

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