

**ERNESTO R. RODRIGUEZ, JR., PETITIONER VS. CARLOS QUIRINO, RESPONDENT.***G.R. No. 19800. October 28, 1963*

Ponente: REYES, J.B.L., J.

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Petition for quo warranto.

The petitioner, Ernesto Rodriguez, Jr., claims the right to hold the position of Director of Public Libraries, and assails the validity of the appointment of the respondent, Carlos Quirino, to said office.

The verified pleadings and supporting documents show that the petitioner was on 1 June 1961, appointed ad interim to the position in question by then President of the Philippines, Carlos P. Garcia. However, no commission or paper evidencing the appointment was ever released. Nonetheless, in a letter dated 26 December 1961 to the Commission on Appointments, but received by it on 29 December 1961, the former President submitted for confirmation numerous appointments, one of them being for:

"Mr. Ernesto Rodriguez, Jr., as Director of Public Libraries, date of appointment, June 1, 1961."

At 5:20 p.m. of 30 December 1961, the petitioner was notified by telegram that an ad interim appointment was extended to him by the President, that the appointment will be submitted to the Commission on Appointments in due time, and congratulating him. The sender of the telegram appears after the body of "the message as "SEC GALLARES". On 5 January 1962, the petitioner took an oath of office as ad interim appointee before a notary public, whose commission admittedly has expired previously, but the oath does not appear to have been recorded in the proper government office.

After the promulgation of the resolution by the Supreme Court in the case of *Aytona vs. Castillo*, G.R. No. L-19313, 19 January 1962 (refusing to interfere with the President's recalling Administrative Order No. 2), the Auditor General disauthorized the payment of the petitioner's salary. Protesting the disauthorization, the petitioner wrote two (2) letters, dated 1 and 2 February 1962, respectively, to the Auditor General, furnishing copy to the Secretary of Education, the Auditor, and the Cashier and Disbursing Officer of the Bureau of Public Libraries, wherein he explained that his appointment did not come within the purview of the "midnight appointments", and that even if it did, the fact was that he had not taken his oath of office by reason of said appointment.

On 27 April 1962, the Commission on Appointments, acting on former President Garcia's letter of 26 December 1961, confirmed the appointment of the petitioner. But prior to the confirmation, on 10 April 1962, the petitioner received a letter from the Office of the President informing him that the respondent, Carlos Quirino, had been designated as Acting Director of Public Libraries by President Diosdado Macapagal, and advising petitioner to turn over the office to the said respondent. Over petitioner's refusal to vacate the position, the respondent assumed the duties of the position just the same, and so the petitioner sought redress before this Court.

We find no merit in the petition.

In the first place, while the petitioner's ad interim appointment appears dated on the first of June 1961, it was not communicated to him until the 30th of December of that year, and nothing in the record indicates that its existence was made known to any one before the last days of 1961. It can be inferred from this secrecy that the appointing power did not desire to make the selection final and operative until the last day of President Garcia's term. Consequently, this petitioner's appointment should be regarded as part and parcel of the 300 and more "midnight" appointments referred to in our decision in *Aytona vs. Castillo*, G. R. No. L-19313, and is covered by the rule laid down therein.

A second and stronger reason, in the opinion of the writer, militates against the petitioner's contention. It is that his appointment ad interim violates the intent and spirit of the Constitution. It must be remembered that an ad interim appointment contradicts the theory of checks and balances of the fundamental charter in that it permits the Executive alone to make an appointment permanent and effective in character without the previous scrutiny and concurrence of the legislative power, acting through the Commission on Appointments. While the power to appoint ad interim when the legislature is not sitting has been expressly granted by the Constitution [Article VII, section 8 (4)], its exceptional character is nonetheless apparent, and the grant is justifiable only on the theory of an existing clear and present urgency caused by an impending obstruction or paralyzation of the functions assigned to the office to be filled if no immediate appointment is made. To my knowledge, no other reason has ever been attributed to such a grant of authority to the Executive that permits him to dispense with the previous concurrence of the Commission on Appointments, reciprocally circumscribing the latter, if opposed to the Executive's selection, to merely terminate the interim appointment, but without affecting its effectiveness or the validity of any action taken by the appointee.

"If the text of the Constitution be taken literally, no municipal officer could be appointed by the President alone to a vacancy not originating in the recess of the Senate., It appears, however, that under the sanction of the maxim, *qui haeret in litera haeret in cortice*,' and of the 'argumentum ab inconvenienti of the power has been understood to extend, in cases of necessity or urgency, to vacancies happening to exist in the recess of the Senate. In the case, for example, of an appointment to a vacancy by the President and Senate of a person dead at the time, but not known to be so till after the adjournment and dispersion of the Senate, it has been deemed within the reason of the constitutional provision that the vacancy should be filled by the President alone, the object of the provision being to prevent a failure in the execution of the laws, which without such a scope to the power must very inconveniently happen, more especially in so extensive a country. Other cases of like urgency may occur, such as an appointment by the President and Senate rendered abortive by a refusal to accept it." (Madison's Writings, Vol. 4, 351, cited in 2 Watson on the Constitution, 995) (Italics supplied)

'Its sole purpose was to render it certain that at all times there should be, whether the Senate was in session or not, an officer for every office, entitled to discharge the duties thereof.

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"The framers of the Constitution were providing against a real danger to the public interest, not an imaginary one. They had in mind a period of time during which it would be harmful if an office were not filled; not a constructive, inferred or imputed recess, as opposed to an actual one." (Senate Judiciary Committee Report, cited in 2 Watson on the Constitution, 993-994) (Italics supplied)

It thus follows that in the absence of an exigency that made the appointment urgent or peremptory, the latter constitutes an abuse of power on the part of the Executive. Of course, the determination of the need and urgency of the interim appointment corresponds primarily to the President making the appointment, and it is to be presumed that an ad interim appointment was made because it was needed; but in the petitioner's case now before us, the fact that his appointment was made as early as 1 June 1961, but was neither made public nor even notified to the appointee for the space of six months thereafter, is conclusive proof that no paralyzation, or blocking, of

functions impended that could justify and call forth the ad interim appointing power. This conclusion is made more evident when account is taken of the fact that petitioner himself was already discharging the functions of the office covered by the appointment by virtue of his prior designation as Acting Director of Public Libraries. What acts was the de jure Director of Public Libraries urgently required to perform that the Acting Director could not do, before the Legislature convened and the Commission on Appointments was organized?

Much less can it be said that urgent necessity arose on the last day of the Garcia administration that made it impossible to postpone the choice to a later occasion, since the three succeeding days (December 30 to January 1) were non-working days.

From all these circumstances, no conclusion is derivable but that in the making of the petitioner's appointment the purpose and spirit of the Constitution were violated; hence, the appointment was ab initio void, and it could not be validated by its subsequent confirmation.

There are other features in the case before us that emphasize the irregularity of petitioner's position. Not only was the notice to him given only after President Macapagal had assumed office at noon of 30 December, and petitioner's oath of office taken on 5 January 1962, days after the new President had issued and published his Administrative Order No. 2 recalling appointments made by his predecessor under circumstances similar to those surrounding petitioner's; but the latter's oath of office was actually void because the notary public's commission had expired, and had not been renewed. And instead of attempting to cure the invalidity by another qualifying oath, petitioner Rodriguez, in his letters to the Auditor General, copies of which were furnished to the Secretary of Education and other officials, asserted and insisted that he was occupying the office in an acting capacity, a conduct that evidenced non-acceptance of the ad interim Appointment now being asserted.

In view of the foregoing, and no clear title having been shown by petitioner Rodriguez to the office of Director of Libraries, the writ of quo warranto should be, and is, denied. No costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Paredes, Dizon, Regala, and Makalintal, JJ., concur.  
Concepcion, J., concurs in the result.

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## CONCURRING

### BARRERA, J.;

I concur in the conclusion that in the circumstances of the case, petitioner Rodriguez has not shown a clear title to the office of Director of Libraries, and hence, in the denial of his petition for a writ of quo warranto.

I am not prepared, however, to go as far as to say that this Court could inquire into the necessity of filling vacancies in the government service and decide, upon our own determination of the presence or lack of that necessity, on the legality of ad interim appointments of the executive specially in the executive department. The citations from Watson quoted in the majority opinion precisely state the reason for the authority to make ad interim appointments to be the prevention of a failure in the execution of the laws. And the execution of the laws is primarily the responsibility of the executive. If ad interim appointments may thus be judicially scrutinized, the executive may find it necessary to resort to appointments in acting capacity, a practice more susceptible to abuse and more fraught with unwholesome effect.

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