

## GUILLERMO BA. SOREÑO, PETITIONER, VS. THE SECRETARY OF JUSTICE, ET AL., RESPONDENTS.

*G.R. No. 20272. December 27, 1963*

Ponente: LABRADOR, J.

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### LABRADOR, J.:

This is an action for mandamus and prohibition instituted by petitioner against the Secretary of Justice and the Judicial Superintendent and the Chief Accounting Officer of the Department of Justice to require or order the latter to authorize the payment of the salaries of the petitioner as Justice of the Peace of Vallehermoso, Negros Oriental and to desist from preventing the petitioner from discharging the duties of said office of the Justice of the Peace of Vallehermoso to which position he claims to have been duly appointed. It is alleged in the petition that he was appointed Justice of the Peace of Vallehermoso, Negros Oriental on December 13, 1961; that his appointment signed by then President Garcia was transmitted to him in due course of business and he took oath of office for the position mentioned on December 26, 1961 before the executive judge of the province; that his appointment was confirmed by the Commission on Appointments on April 27, 1962; that upon qualification for such position he immediately assumed the duties of the position to which he was appointed; and that he is not one of the 350 appointees appointed by former President Garcia on December 29, 1961.

Upon being served with summons respondents filed an answer to the petition alleging that the appointment extended by President Garcia in petitioner's favor was withdrawn on December 31, 1961 by virtue of Administrative Order No. 2, of President Diosdado Macapagal; that the confirmation of petitioner's appointment was null and void; that the petitioner is one of the 350 appointees of former President Garcia on December 29, 1961 and his appointment may be considered as falling under the decision in the case of Aytona vs. Castillo, et al., G.R. No. L-19131, January 22, 1962; that the fact that the petitioner did not demand payment of his salaries until August 1, 1962 shows that he does not believe in the legality of his alleged appointment; that the petitioner has no clear legal right to the office of Justice of the Peace of Vallehermoso, Negros Oriental.

The petition was originally filed with this Court on September 18, 1962. The case was submitted on November 5, 1962. On October 10, 1963 one Marcelo Z. Culi asked the Court to allow him to intervene, alleging that he has a legal title to the office of Justice of the Peace of Vallehermoso, Negros Oriental, he having been appointed to the said position on December 4, 1962, that he took his oath of office as such Justice of the Peace on July 10, 1963 and began discharging the duties of said office on August 1, 1963. The petition for intervention having been admitted the intervenor filed his answer in intervention, alleging practically all the same facts alleged in his motion to intervene, and alleging further that the appointment of petitioner Guillermo Ba. Soreno was withdrawn and declared without effect by Administrative Order No. 2 of President Macapagal; that he was appointed to the position of Justice of the Peace of Vallehermoso on December 4, 1962 and took his oath of office and assumed the position of Justice of the Peace of Vallehermoso on August 1, 1963 and that he has discharged the functions of said office receiving the salaries for said office, until the present, etc.

The record discloses that on December 13, 1961 former President Carlos P. Garcia extended an appointment in

favor of petitioner Guillermo Ba. Soreno as Justice of the Peace of Vallehermoso (Annex A to the Petition); that the appointment was forwarded to petitioner thru the Secretary of Justice and the office of the Judicial Superintendent thereof transmitted the appointment to the petitioner in an indorsement dated December 22, 1961 (Annex A-1) and that said appointment was transmitted thru the Executive Judge of the province of Negros Oriental to the petitioner in an indorsement dated December 26, 1961. On that same day, December 26, 1961, petitioner took the oath of office as ad interim Justice of the Peace of Vallehermoso before the Executive Judge, Hon. Macario P. Santos at Dumaguete City (Annex B). The above appointment of the petitioner was confirmed by the Commission on Appointments in its meeting on April 27, 1962 (Annex C).

On June 26, 1962 the Secretary of Justice wrote to the Executive Judge of the Court of First Instance of Negros Oriental at Dumaguete City informing the latter that the ad interim appointment of Guillermo Ba. Soreno, although dated December 13, 1961, was released by the office of the President on December 22, 1961 and the same was considered withdrawn and recalled, and declared without effect pursuant to Administrative Order No. 2 of President Macapagal (Annex D). The said letter of the Secretary of Justice having been transmitted to him (petitioner) he endorsed the same to the Executive Judge informing the latter that his appointment was a legal and valid one and that he would continue holding office as usual refusing to yield the position as demanded (Annex E). On August 1, 1962 he wrote a communication to the Secretary of Justice thru the Judicial Superintendent of the Department of Justice asking that the salaries that had accrued from December 27, 1961 to August 8, 1962, exclusive of the periods wherein he was on vacation, be paid to him (Annex F). On August 6, 1962 the Secretary of Justice answered the said letter of the petitioner refusing to make the payment demanded (Annex G), enclosing a copy of Administrative Order No. 2 of President Macapagal (Annex H).

For his part intervenor presented evidence which shows that he was appointed to the same position of Justice of the Peace of Vallehermoso, Negros Oriental on December 4, 1962 (Annex A to Answer in Intervention) and took oath of office as such Justice of the Peace before the Secretary of Justice on July 10, 1963. (Annex B), that he assumed office as such Justice of the Peace on August 1, 1963 (Annex D), and had been rendering services in such capacity since then to date.

A consideration of the circumstances surrounding petitioner's appointment lead Us to believe that upon its (the appointment) being signed by President Garcia, it was promptly released and transmitted to the Secretary of Justice to be forwarded to petitioner. The appointment was in turn transmitted to the petitioner on December 22, 1961 and it reached him on December 26, 1961, the petitioner taking his oath of office on the same date. The record also shows that the ad interim appointment was forwarded to the Commission on Appointments on December 26, 1961. It is not true, therefore, as claimed by respondents, that petitioner was one among the midnight appointees of President Garcia whose names were forwarded to the Commission on Appointments on December 29, 1961 and who qualified immediately on the same date.

The regularity of the appointment and the fact of its transmission through channels to petitioner in the ordinary course of official business attest to the regularity thereof and the absence of any of the irregularities and special circumstances attending the so-called midnight appointments confirm such regularity. The presumption of regularity attends the appointment, hence it may not be considered affected by Administrative Order No. 2 of President Macapagal withdrawing the midnight appointments, which administrative order was not interfered with by Us in its implementation in the case of *Aytona vs. Castillo, et al.*, *supra*.

Besides when the administrative order was promulgated on December 31, 1961, the petitioner had already taken the oath of office and fully qualified, his taking the oath also taking place regularly, without the haste, and the consequent irregularity of the midnight appointments.

Wherefore, the opposition to the issuance of the writ subject of the petition is hereby overruled, the writ is hereby granted, and the respondents the Secretary of Justice, the Judicial Superintendent and the Chief Accounting Officer of the Department of Justice, are hereby directed to allow petitioner to perform his duties as Justice of the Peace of Vallehermoso, Negros Oriental, and to order the payment of his salary from the date of his assumption of duty. Without costs. It is so ordered.

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

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