

CONRADO ESPINOSA SIGUIENTE, PETITIONER VS. THE SECRETARY OF JUSTICE, ET AL., RESPONDENTS.

G.R. No. 20370. November 29, 1963

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

Thru this petition for mandamus and prohibition, Conrado Espinosa Siguiente prays for recognition as justice of the peace of Balimbing, Sulu, and payment of salary as such.

It appears that on May 18, 1962, said petitioner took his oath as justice of the peace of the said town because,

(a) in a letter submitted by President Carlos P. Garcia to the Commission on Appointments on December 26, 1961, confirmation was requested of certain ad interim appointments extended by said President, among them an "ad interim appointment" of herein petitioner dated May 19, 1961; and

(b) such appointment was confirmed by the Commission on Appointments on May 3, 1962.

But it is uncontradicted that such appointment—the paper bearing the President's signature—was never released from Malacañang, nor delivered to petitioner.[1] And at the time of confirmation, i.e., on May 3, 1962, President Diosdado Macapagal, who assumed office in December 30, 1961, had already issued Administrative Order No. 2 (December 31, 1961) revoking and cancelling all appointments extended or released by President Garcia after December 13, 1961. Anyway, the confirmation should be regarded as a mistake, because there was no such ad interim appointment to be acted upon, since appointee had not up to that time qualified for the office. This was, obviously, one of the hurried or "mid-night appointments", the revocation of which by said Administrative Order, we refused to reverse in *Aytona vs. Castillo*. [2]

President Garcia's letter to the Commission of December 26, 1961, was at most, a nomination for Espinosa Siguiente, which could be recalled by President Macapagal [3]—and was recalled—before the Commission on Appointments began its session in January of 1962. And yet, the inclusion of petitioner's name in the letter of December 26, could not be considered as a nomination, because, in the first place, President Garcia did not intend it to be so; and in the second place, the said President could not be presumed to make an invalid appointment, for the reason that as the Commission on Appointments would meet in January 1962—after he had left the Presidency—he would thereby be making an appointment to take effect after he has ceased to be President (his term expired December 30, 1961). For it is settled that "an officer clothed with power of appointment to a public office has no right to forestall the rights and prerogatives of his successor by making a prospective appointment to fill an office, the term of which is not to begin until his own term and power have expired."—67 C.J.S. p. 159. (See also 42 Am. Jur., sec. 99.)

For the above reasons, the petition should be, and is hereby denied, with costs. The injunction hereinabove issued, is dissolved.

Padilla, Bautista Angelo, Labrador, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

Concepción and Barrera, JJ., concur in the result.

[1] He does not claim knowledge of it before the confirmation. In fact, he did not take his oath until May 16, 1962, when he found out that the Commission on Appointments had confirmed his "appointment".

[2] L-19313, January 19, 1962.

[3] * * * in cases where the nomination must be confirmed before the officer can take the office or exercise any of its functions, the power of removal is not involved and nominations may be changed at the will of the executive until title to the office is vested.—*McChezney vs. Sampson*, 23 S.W. (2d) p. 587.

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