

DEMETRIO M. BATARIO, JR., PETITIONER VS. JOSE J. PARENTELA, JR., RESPONDENT.*G.R. No. 20485. November 29, 1963*

Ponente: PAREDES, J.

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On December 13, 1961, then President Carlos P. Garcia extended to petitioner Demetrio M. Batario, Jr., an ad interim appointment, as Justice of the Peace of Sariaya, Quezon Province, presumably released on December 14, 1961. At the time of the appointment, the position of Justice of the Peace of Sariaya, was occupied by Dionisio Q. Vendiola, whose compulsory retirement, because of age, was due on December 26, 1961. The law did not provide for the position of auxiliary Justice of the Peace of Sariaya. Petitioner took his oath of office on December 26, 1961, and entered into the performance of his duties the day immediately following. On May 14, 1962, his appointment was confirmed by the Commission on Appointments. He occupied the position from December 27, 1961 until October 30, 1962, when respondent José J. Parentela, Jr., who was appointed ad interim Justice of the Peace of Sariaya, by President Diosdado Macapagal on October 19, 1962, took over the office. Claiming that respondent wrongfully and unlawfully usurped the office and that there is no other plain, speedy and adequate remedy in the ordinary course of law, petitioner presented the instant Quo warranto proceedings, with a prayer for the immediate issuance of a Writ of Preliminary Injunction, to restrain respondent Parentela, Jr., from discharging and performing the functions and duties of the Justice of the Peace of Sariaya; and that after hearing, judgment be rendered, declaring him (petitioner), the de jure Justice of the Peace. The ad interim appointment of herein respondent was confirmed by the Commission on Appointments on May 23, 1963.

This Court gave due course to the petition and required respondent to answer within ten (10) days from receipt of summons. No injunction was issued.

Answering the petition, respondent, thru the Solicitor General, after admitting some allegations in the petition and denying others, interposed special and affirmative defenses, to wit—

- (1) petition does not state sufficient cause of action;
- (2) appointment of petitioner is null and void, pursuant to the ruling of this Court in the Aytona vs. Castillo case (L-19313, Jan. 19, 1962) and Administrative Order No. 2, dated Dec. 30, 1961, of President Macapagal, declaring said appointment, among others, of no effect;
- (3) appointment of petitioner is also null and void, it appearing that the time petitioner was appointed to the position, the same was not vacant;
- (4) that at the time petitioner was appointed to the position, he did not have the necessary qualifications as required by Republic Act No. 2613; because he was admitted as member of the Philippine Bar only on May 9, 1959.

In the memorandum and other pleadings subsequently presented by him, petitioner claimed that his appointment

was not included among those declared null and void in the Aytona-Castillo case, since he was appointed on December 13, 1961 and only appointments made after December 13, 1963 were invalidated by this Court. He admitted, that at the date of his appointment, the position of Justice of the Peace of Sariaya was still occupied by Vendiola, but he qualified only, after the incumbent had retired on December 26, 1961; that while on the date of his appointment he did not have the necessary qualifications as required by Rep. Act No. 2613, upon his confirmation by the Commission on Appointments, on May 14, 1962, such defect was cured.

It has been held that in quo warranto proceedings, the person suing must show that he has a clear right to the office or to use or exercise of the office allegedly usurped or unlawfully held by respondent (*Castro vs. Solidum*, 97 Phil., 278; *Dante vs. Dagpin*, G .R. No. L-7784, Apr. 13, 1957), for quo warranto is a proceeding to determine questions of disputable title to public office (*Remata vs. Javier*, 36 Phil., 483). In the case at bar, we find that petitioner herein is not entitled to the office or to exercise its functions and prerogatives.

As the time of appointment, petitioner did not have the necessary qualifications for the office of a Justice of the Peace. This fact is admitted by petitioner, but argues that at the time he was confirmed, he already had all the qualifications. Pertinent provision of Republic Act No. 2613, provides—

"No person shall be eligible for appointment as Justice of the Peace unless he * * * (4) has been admitted by the Supreme Court to the practice of law, and (5) has practiced law in the Philippines for a period of not less than three years or has held during a like period, within the Philippines an office requiring admission to the practice of law in the Philippines as an indispensable requisite." (Sec. 71).

On December 13, 1961, petitioner was merely 2 years, 7 months and 4 days in the legal profession, having been admitted only on May 9, 1959. Even on the date he was sworn in, on December 26, 1961, as ad interim Justice of the Peace, the petitioner was still lacking the legal qualifications, as such.

Finding that petitioner has not established a clear title and/or right to the position in question, the Writ should be, as it is hereby denied, without pronouncement as to costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Dizon, Regala and Makalintal, JJ., concur. Barrera, J., concurs in the result.

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