

## **SOCORRO A. GILILERA, PETITIONER, VS. CORAZON FERNANDEZ AND ABELARDO SUBIDO, AS EXECUTIVE OFFICER OF THE BOARD OF EXAMINERS, RESPONDENTS.**

*G. R. No. 20741. January 31, 1964*

Ponente: BARRERA, J.

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### **BARRERA, J.:**

The following are the undisputed facts of the case:

On December 26, 1961, Socorro A. Gillera was extended an ad-interim appointment as Member of the Board of Pharmaceutical Examiners by then President Carlos P. Garcia, for a fixed term of three years to fill the position being vacated by Board Examiner Dr. Federico Cruz, whose term was expiring December 28, 1961. Gillera accepted the appointment, took the oath of office on December 28, 1961, assumed and discharged the functions appertaining thereto—preparing the questions on the subjects assigned to her for the examinations which, actually were given on January 2, 3, 4, and 7, 1962. In the meantime or under date of December 31, 1961, she received a communication from the Executive Secretary informing her of the "withdrawal" or recall of her ad-interim appointment in view of the President's Administrative Order No. 2.

On January 11, 1962, the President designated Gillera as Acting Member of the Board of Pharmaceutical Examiners, effective January 2, 1962, "to continue only until after the results of the Pharmaceutical Examinations now being given by the Board has been approved by this Office and released." It was therein stated that said designation was made "as a matter of emergency in order not to disrupt public service and not to prejudice the candidates in the current pharmacist examination." Allegedly in view of the fact that the session of Congress terminated without the examination result having been released, the President issued to Gillera another designation, on May 18, 1962, also until the results of the examination were approved and released. On the other hand, her ad-interim appointment of December 28, 1961 was confirmed by the Commission on Appointments on May 9, 1962.

The results of the pharmaceutical examinations were released on June 14, 1962. In the succeeding examinations, which were given on July, 1962, Gillera again took part as Member of the Board. On December 29, 1962, Corazon C. Fernandez was appointed to the same position vacated by Dr. Cruz which at the time, was already occupied by petitioner. Alleging that the designation of Fernandez to the position occupied by her and to which she had qualified was null and void, Socorro Gillera filed the instant petition for quo warranto and prohibition against said appointee and the Civil Service Commissioner, as Executive Officer of the Board of Examiners.

In the answer filed by the Solicitor General for the respondents, it was contended, among others, that the valid discharge by petitioner Gillera of the functions of Member of the Pharmaceutical Board in connection with the January, 1962 examinations was not due to the ad-interim appointment extended to her on December 26, 1961, because that was withdrawn and recalled pursuant to Administrative Order No. 2 of the President, but by virtue of the two presidential designations on January 11 and May 18, 1962, which terminated upon the release of the

examination results on June 14, 1962; that her participation in the July, 1962 examinations was effected upon the verbal permission and on the belief of the former Executive Secretary of the Board of Examiners, Amado del Rosario, that in the absence of a successor, petitioner could continue discharging the office of examiner under the "hold-over" doctrine; that the designation of respondent Fernandez to the position of Dr. Cruz which petitioner (Gillera) was occupying by virtue of her designation" indicated that the latter's right to the same position had already ceased.

The only issue to be determined here is whether petitioner's ad-interim appointment of December 28, 1961 was validly recalled or withdrawn by the President's Administrative Order No. 2, in the light of the ruling laid down by this Court in the case of *Aytona vs. Castillo*.<sup>[1]</sup>

There is no question that petitioner was extended an ad-interim appointment on December 26, 1961 (although to take effect December 28, 1961) or after December 13, 1961, and apparently is covered by Administrative Order No. 2, which, according to respondents, was declared valid by this Court in the *Aytona* case. It must be remembered however, that in our resolution of March 30, 1962 clarifying the ruling enunciated in the aforementioned case, we said:

"\* \* \* the resolution of the majority in this case has not specifically declared the 'mid-night' appointments to be void. The resolution in substance held that the Court had doubts about their validity and having due regard to the separation of powers and the surrounding circumstances, it declined to overthrow the executive order of cancellation and to grant relief."

In other words, this Court not only did not categorically declare Administrative Order No. 2 valid and all appointments made by then outgoing President Garcia, ineffective but clearly indicated that its decision was more influenced by the doubtful character of the appointments themselves and not by the contention that the President had validly recalled them. As a matter of fact, in the decision in that *Aytona* case it was stated that, "the filling up of vacancies (by the outgoing President) in important positions, if few, and so spaced as to afford some assurance of deliberate action and careful consideration of the need for the appointment and the appointee's qualifications may undoubtedly be permitted." It is for the foregoing basic consideration, i.e., the necessity of filling the position, that the appointee is qualified, and that it was not one of those "mass ad-interim appointments" issued in a single night, that this Court upheld the validity of an appointment to the position of Auxiliary Justice of the Peace<sup>[2]</sup> extended by President Garcia and released on December 20, 1961, notwithstanding Administrative Order No. 2 of President Macapagal.

In the instant case, even the new President recognized the need for the immediate filling of the position of Member of the Board of Pharmaceutical Examiners, in view of the examination that was given on January 2, 8, 4, and 7, 1962, that he (the President) saw it fit, "as a matter of emergency in order not to disrupt public service" to "designate" petitioner herself to the same position to which she was previously appointed and had qualified. There is also no allegation that petitioner is not qualified to the said office, or that her appointment was one of those attended by the "mad scramble in Malacañang" in the evening of December 29, 1961. On the contrary, it is not controverted by respondents that petitioner's appointment was extended on December 26, 1961 or even before the actual expiry of the term of Examiner Cruz, which was a few days before the examinations would take place, although said appointment was to take effect only on December 28, 1961, and in fact petitioner took her oath of office only on the latter date. Clearly, it cannot be said that in the instant case, petitioner's appointment was not the result of the President's deliberate action, considering her qualification and the exigency of the service.

Wherefore, petitioner's appointments which was duly confirmed by the Commission on Appointments is hereby declared valid and she is entitled to the position of Member of the Board of Pharmaceutical Examiners. Respondent Corazon C. Fernandez is directed to vacate the position and deliver the same to petitioner. Without

costs. So ordered.

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

Petition granted.

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[1]G. R. No. L-19313, promulgated January 19, 1962.

[2]Merrera vs. Liwag, G. R. No. L-20079, Promulgated September 30, 1963.

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### **DISSENTING OPINION**

#### **PADILLA, J.:**

For the reasons stated in my concurring opinion in the case of Aytona vs. Castillo, G. R. No. L-19313, 19 January 1962, to which I make reference and which I re-incorporate and reiterate to avoid repetition, the ad-interim appointment of the petitioner Socorro A. Gillera on 26 December 1961 by the then President of the Republic to fill the position of Dr. Federico Cruz, as member of the Board of Pharmaceutical Examiners, whose term was to expire on 28 December 1961, and the assumption of office to which she had been appointed and the performance of the duties thereof by her on and from the last mentioned date, lapsed, ended or expired on 30 December 1961. As she was not appointed ad interim after the 30th day of December 1961 only, which, it must be presumed, she had accepted by performing the duties of the office, the confirmation of her appointment by the Commission on Appointment on 9 May 1962 was of no validity and effect, as she had no ad-interim appointment that was to be or could be confirmed. The ad interim appointment of the petitioner having expired on 30 December 1961 and the confirmation of her lapsed or non-existent ad interim appointment being of no validity and effect, she is not entitled to the position or office to which the respondent Corazon C. Fernandez has been lawfully appointed. The petition for a writ of quo warranto should be dismissed.

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