

NANCY Q. SISON, AS VICE GOVERNOR OF PANGASINAN, PETITIONER AND APPELLEE, VS. PEDRO M. GIMENEZ, AS AUDITOR GENERAL, JORGE AMBROSIO, AS PROVINCIAL AUDITOR OF PANGASINAN, AND LICER...*G.R. No. 21195. May 31, 1966*

Ponente: BARRERA, J.

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This is an appeal by the Auditor General from the decision of the Court of First Instance of Pangasinan (in Civil Case No. 14225-1), directing therein respondents Auditor General, Provincial Treasurer and Auditor of Pangasinan to pass in audit and encash all vouchers for per diems and allowances due to Nancy Q. Sison, as Vice-Governor of that province, for the period of from January 2 to May 14, 1962, inclusive. There is no controversy as to the facts of this case.

The position of Vice-Governor of the province of Pangasinan was considered vacated when Nancy Q. Sison, who was duly elected to that post, filed her certificate of candidacy and ran for Congress in the election of 1961. Having failed in her bid to win the congressional seat, on December 7, 1961, the President of the Nacionalista Party to which Mrs. Sison is affiliated, submitted her name to the President for appointment to the same position of Vice-Governor vacated by her, pursuant to Section 21 (b) of the Revised Election Code. This was favorably considered, and on December 29, 1961, President Garcia extended to her an ad-interim appointment as Vice-Governor of Pangasinan. Mrs. Sison qualified on the same day, and immediately entered into the discharge of the duties and functions of the office.

On account of the issuance by newly-elected President Macapagal of his Proclamation No. 2, withdrawing, recalling, and declaring without effect all ad-interim appointments extended or released by President Garcia after December 13, 1961, the Auditor General denied the demand of Mrs. Sison for payment of per diems and allowances due her as Vice-Governor of Pangasinan. In the meantime, and presumably on the theory that her appointment by President Garcia had lapsed or was invalid, Mrs. Sison was extended another ad-interim appointment by President Macapagal on May 24, 1962. In view of the action taken by the Auditor General on her claim, Mrs. Sison instituted mandamus proceeding in the Court of First Instance of Pangasinan to compel therein respondents to pass in audit and encash all vouchers for per diems and allowances granted to her by law and tradition, from January to May, 1962.

Answering respondent Auditor General justified the denial of petitioner's claim by the argument that, as her ad-interim appointment extended by President Garcia was rendered inoperative and ineffective by Proclamation No. 2 of President Macapagal, only her appointment by the latter on May 24, 1962 was valid, under which she could enjoy allowances, salaries, emoluments and other privileges appertaining to the office of Vice-Governor. On February 26, 1963, the court rendered the decision granting the petition, which is the subject of the present appeal.

Plaintiff-appellee was extended an ad-interim appointment by the President on December 29, 1961, pursuant to Section 21 (b) of the Revised Election Code, which provides:

"(b) Whenever in any elective local office a vacancy occurs as a result of the death, resignation, removal or cessation of the incumbent, the President shall appoint thereto a suitable person belonging to the political party of the officer whom he is to replace, upon the recommendation of said party, save in the case of a mayor, which shall be filled by the vice-mayor."

Analyzing the power of appointment granted to the President in the foregoing provision of the Revised Election Code, this Court in the case of *Ramos vs. Alvarez*[1] said:

"* * * Examining the provision of section 21 (b) of the Revised Election Code, we find that while it says that the President shall make the appointment, it does not say that the appointment is not to be subject to the consent of the Commission on Appointments, that is, that it is to be made by the President alone. Such being the case, the President's appointment must be deemed subject to the general requirement that the same is to be with the consent of the Commission on Appointments. In other words, a person appointed by the President under Section 21 (b) of the Revised Election Code would fall under the third group of officers, mentioned in paragraph 3 of section 10, article VII of the Constitution[2] namely 'those whom he (the President) may be authorized by law to appoint' and, therefore, subject to the requirement that the appointment shall be with the consent of the Commission on Appointments. * * *"

In other words, such an appointment is not one that the President alone can make.

Since under the ruling above-quoted, appellee's December 29, 1961-appointment is necessarily ad interim, the question that should be resolved in this appeal is whether appellee's appointment is covered by the pronouncement in the *Aytona vs. Castillo*[3] case and, therefore, considered withdrawn, cancelled or invalidated by Proclamation No. 2 of President Macapagal.

It may be pointed out that the *Aytona*-ruling did not categorically declare Proclamation No. 2 valid, and all of the so called "midnight" appointments invalid or ineffective. [4] It was there clearly indicated that the decision and pronouncements therein made were more influenced by the doubtful character of the appointments themselves and not by the strength of the recall-order of the President. [5] Thus, this Court, in several instances,[6] passed upon the validity of those "midnight" appointments by taking into consideration the particular circumstances and merit of every case.

In the case at bar, appellee's appointment to the position was recommended by then Senate President Rodriguez, as president of the Nacionalista Party, before December 13, 1961, specifically on December 1, 1961, in strict compliance with the specific provisions of Section 21-b of the Revised Election Code. Although the appointment was released only on December 29, 1961, it cannot be viewed as one of those "rush appointments" attended by "hurried maneuvers and other happenings" which were the objectionable features of the appointments declared irregular by the *Aytona*-ruling. It can not also be charged that the appointment in dispute lacked the required presidential deliberation on and consideration of appellee's qualifications and suitability. Not only was she recommended by the political party which has the right to nominate the person to fill the vacant position, but appellee had already occupied that post in her own right, by election. Certainly, appellee cannot be said to be unqualified or unsuitable to hold the office. As a matter of fact, she was extended another appointment to the same position by the very President who had issued the proclamation which is now the basis of appellants' denial of the claim of appellee. As Mrs. Sison had immediately qualified to and discharged the functions of the office on the basis of her valid ad-interim appointment which is free from all taint of irregularity envisioned in the *Aytona* case, she is entitled to the rights and privileges appertaining thereto.

Wherefore, in view of the foregoing considerations the decision appealed from is hereby affirmed, and the respondents are hereby ordered to pass in audit and encash all vouchers for per diems and/or salary and allowances legally accruing to appellee for the period January to May, 1962- No costs. So ordered.

Bengzon, C.J., Concepcion, Reyes, J.B.L., Dizon, Regala, Bengzon, J.P., Zaldivar and Sanchez, JJ., concur.

Judgment affirmed.

[1] 97 Phil., 844.

[2] SEC. 10 * * ' * *

"(3) The President shall nominate and with the consent of the Commission on Appointments, shall appoint (1) the heads of the executive departments and bureaus, (2) officers of the Army from the rank of colonel, of the Navy and Air Forces from the rank of captain or commander, and (3) all other officers of the Government whose appointments are not herein otherwise provided for, and those whom he may be authorized by law to appoint; but the Congress may by law vest the appointment of (4) inferior officers, in the President alone, in the courts, or in the heads of departments." (Art. VII, Philippine Constitution).

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

[4] Minute Resolution of March 30, 1962, Aytona vs. Castillo, *supra*.

[5] Gillera vs. Fernandez, G. R. No. L-20741, January 31, 1964. 1964.

[6] Merrera vs. Liwag, G.R. No. L-20079, September 30, 1963; Jorge vs. Mayor, G.R. No. L-21776, February 28, 1964; Quimsing v. Tajanglangit, G.R. No. L-19981, Feb. 29, 1964; Gillera vs. Fernandez, *supra*.

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