

CONSUELO CARAAN-MEDINA, PETITIONER, VS. CARMELO Q. QUIZON, RESPONDENT.

G. R. No. 23162. October 29, 1966

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

At bar is a petition for quo warranto, filed directly with this Court, wherein the petitioner asks that she be declared the rightful occupant of the position of "third assistant provincial fiscal" of Batangas. Her theory is to the effect that when respondent Carmelo Q. Quizon was appointed thereto, she was already legally occupying the position and hence there was no vacancy therein to which he could have been validly appointed.

Originally, Marcelo T. Lota was also named as party respondent allegedly in view of his refusal to join the petitioner, but eventually he was excluded (see Second Amended Petition).

The pertinent facts are as follows:

Section 1674 of the Revised Administrative Code, before its amendment by Republic Act 732, provided for three "assistant provincial fiscals" of Batangas without any classification except as to salary, thus:

"SEC. 1674. Assistant Provincial Fiscals.- In the following provinces there shall be assistant provincial fiscals in such numbers and with such salaries as are hereinafter provided: x x x "Batangas, three assistant provincial fiscals, two at three thousand pesos each per annum and one at two thousand four hundred pesos per annum" As amended by Republic Act 732, however, the said section of the Code read:

"SEC. 1674. Assistant Provincial Fiscals.- In the following provinces there shall be assistant provincial fiscals in such numbers as are hereinafter provided: x x x

"Batangas, three assistant provincial fiscals; x x x

"Assistant provincial fiscals shall receive such salaries as hereinafter provided:

"(A) In first class provinces A and B (to which category the province of Batangas belonged), the first assistant provincial fiscal, four thousand five hundred pesos per annum, the second assistant provincial fiscal four thousand two hundred fifty pesos per annum, and the other assistant provincial fiscals three thousand six hundred pesos each, per annum; x x x

"These officers shall be appointed by the President of the Philippines with the consent of the Commission on Appointments of the Congress of the Philippines, and their salaries shall be paid by the provinces concerned. . . . Provided, however, That incumbent assistant provincial fiscals whose appointments have been duly acted upon and approved by the Commission on Appointments of the Congress of the Philippines prior to the approval of this Act, shall be deemed reappointed and their appointments confirmed and, therefore, entitled to the benefits of this Act." (Underscoring ours)

On account of such amendment, the Under Secretary of Justice issued, on June 15, 1953, Administrative Order 110 establishing the order of rank of incumbent provincial fiscals:

"Conformably to the provisions of Section 1674 of the Revised Administrative Code, as amended by Republic Act No, 732, effective June 18, 1952, the order of rank of Assistant Provincial Fiscals in different provinces is established as follows: x x x

BATANGAS

Geminiano Beloso

First Assistant Provincial Fiscal

Jose T. Lantin

Second Assistant Provincial Fiscal

Pedro Sara

Assistant Provincial Fiscal

On June 1, 1955 Congress passed Republic Act 1228 further amending section 1674 of the Revised Administrative Code so as to increase the number of assistant provincial fiscals of Batangas from three to four. Whereupon, on June 16, 1955 the President extended an ad interim appointment to Marcelo T. Lota as "fourth assistant provincial fiscal" of Batangas, which appointment was eventually confirmed by the Commission on Appointments. Actually, there was at the time no position specifically denominated by law as "fourth assistant provincial fiscal" of Batangas; in the terminology of section 1674 of the Revised Administrative Code, as it then existed, there were provided for Batangas one "first assistant provincial fiscal," one "second assistant provincial fiscal" and two mere "assistant provincial fiscals". Quite obviously, therefore, when Marcelo T. Lota was appointed "fourth assistant provincial fiscal," the word "fourth" was merely used in the generic or descriptive sense, that is, as there were already three incumbent assistant provincial fiscals of Batangas at the time, Lota was going to be the fourth, to complete the staff of four assistant fiscals then allowed by law for that province. (Cf Agudo, Jr. vs. Villanueva, et al., L-17405, Sept. 26, 1964.)

After Marcelo T. Lota assumed office, the four incumbent assistant provincial fiscals of Batangas were as follows:

Geminiano Beloso

First Assistant Provincial Fiscal

Pedro Sara

Second Assistant Provincial Fiscal

Gregorio Panganiban

Assistant Provincial Fiscal

Marcelo T. Lota

Assistant Provincial Fiscal

On June 21, 1957, Congress passed Republic Act 1799 further amending section 1674 of the Revised Administrative Code so as, among other things, to increase the number of assistant provincial fiscals of Batangas

from four to five, and raise their salaries. As thus amended, said section of the Code read:

“SEC. 1674. Assistant Provincial Fiscals.- In the following provinces there shall be assistant provincial fiscals in such numbers as are hereinafter provided: x x x

"Batangas, five assistant provincial fiscals; x x x

"Assistant provincial fiscals shall receive such salaries as hereinafter provided:

"(A) In first class provinces A and B, the first assistant provincial fiscal, six thousand pesos per annum, the second "assistant provincial fiscal, four thousand eight hundred pesos per annum, and the other assistant provincial fiscals, four thousand two hundred pesos each, per annum; x x x

“. . . incumbent assistant provincial fiscals whose appointments have been duly acted, upon approved by the Commission on Appointments of the Congress of the Philippines prior to the approval of this Act, shall be deemed reappointed and their appointments confirmed and, therefore, entitled to the benefits of this Act.”
(Underscoring ours)

On September 14, 1957 the President extended an ad interim appointment to Consuelo H. Caraan (maiden name of petitioner) as "assistant provincial fiscal" of Batangas, which was later confirmed by the Commission on Appointments.

On September 26, 1957 the Secretary of Justice, in view of the aforesaid amendment of section 1674 of the Revised Administrative Code by Republic Act 1799, issued Administrative Order 149 establishing anew the order of rank of incumbent provincial fiscals:

"Conformably to the provision of Section 1674 of the Revised Administrative Code, as amended by Republic Act No. 1799, effective June 22, 1957, the order of rank of Assistant Provincial Fiscals in different provinces is established as follows: x x x

BATANGAS

Geminiano Beloso.....

First Assistant Provincial Fiscal

Pedro Sara.....

Second Assistant Provincial Fiscal

Gregorio Panganiban

Assistant Provincial Fiscal

Marcelo T. Lota.....

Assistant Provincial Fiscal

Consuelo H. Caraan.....

Assistant Provincial Fiscal

On September 14, 1961 Gregorio Panganiban, the third ranking assistant provincial fiscal, filed his certificate of candidacy for representative of the first district of Batangas, thereby vacating his position (Sec. 26, Revised Election Code). In view of the vacancy thus created, on May 16, 1963 the Secretary of Justice issued

Administrative Order 187 designating respondent Carmelo Q. Quizon as "acting assistant provincial fiscal" of Batangas, thus:

"In the interest of the public service and pursuant to the provision of Section 1679 of the Revised Administrative Code, as amended, Mr. Carmelo Quizon, Special Counsel in the Office of the Provincial Fiscal of Batangas, is hereby designated Acting Assistant Provincial Fiscal of the same province, with compensation as provided for by law, effective immediately and to continue until a regular incumbent is appointed or until further orders."

On June 22, 1963, Congress approved Republic Act 3719, to take effect on July 1 of the same year, fixing the salaries of provincial and city fiscals and their assistants, as follows:

"SEC. 3. The annual salaries of provincial and city fiscals, city attorneys and their assistants shall be as hereinbelow fixed: x x x (b)

In first class provinces and in first class cities that have obtained during the next preceding fiscal year a total annual revenue of one million five hundred thousand pesos or more but less than five million pesos: For the provincial and city fiscals, eleven thousand four hundred pesos; for the first assistant provincial and city fiscals, nine thousand pesos; for the second assistant provincial and city fiscals, eight thousand one hundred pesos; for the third assistant provincial and city fiscals, seven thousand two hundred pesos; for the fourth assistant provincial and city fiscals, six thousand six hundred pesos; and for the fifth and remaining assistant provincial and city fiscals, six thousand three hundred pesos;

x x x

"SEC. 5. * * * the incumbent provincial and city officials and their assistants mentioned in this Act, whose appointments have already been confirmed by the Commission on Appointments of the Congress of the Philippines prior to the approval of this Act, shall automatically be entitled to the benefits of this Act, without further need of another appointment and confirmation; Provided, That no incumbent provincial and city officials or any of their assistants shall suffer any diminution in their salaries by virtue of the provisions hereof; Provided, further, That nothing herein provided shall be construed as creating new positions which on the approval of this Act are not authorized by law or ordinance. x x x

"SEC. 9. All Acts, executive orders, administrative orders, rules and regulations or parts thereof, inconsistent with any of the provisions of this Act, are hereby repealed or modified accordingly" (Underscoring ours)

At the time of the effectivity of said Republic Act 3719, the aforementioned Administrative Order 149 issued by the Secretary of Justice on September 26, 1957 establishing the order of rank of assistant provincial fiscals was still in force; and the plantilla for the Office of the Provincial Fiscal of Batangas read as follows:

1) Benedicto M. Sanchez.....

Provincial Fiscal

2)Geminiano Beloso.....

First Assistant Provincial Fiscal

3)Pedro Sara.....

Second Assistant Provincial Fiscal

4) (VACANT) Carmelo Q. Quizon.....

Acting Assistant Provincial Fiscal

5)Marcelo T. Lota.....

Assistant Provincial Fiscal

6)Consuelo Caraan-Medina.....

Assistant Provincial Fiscal

On April 13, 1964 the President submitted to the Commission on Appointments the nomination of respondent Carmelo Q. Quizon as "third assistant provincial fiscal" of Batangas, and the same was confirmed by the Commission on April 30, 1964 notwithstanding petitioner's opposition (Annex H to Second Amended Petition) filed with the Commission, claiming that the position of "third assistant provincial fiscal" of Batangas was not vacant as Marcelo T. Lota had automatically assumed said position by operation of the aforesaid Republic Act 3719 effective July 1, 1963.

The vital issue posed in this proceeding is: has the petitioner shown a clear right to the position of third assistant provincial fiscal of Batangas?

As already stated, the petitioner's present theory is that respondent Quizon's appointment as "third assistant provincial fiscal" of Batangas was null and void, and that she is the rightful occupant of that position. Her syllogism runs as follows: When Gregorio Panganiban, who was the third ranking assistant provincial fiscal of Batangas, vacated his position on September 14, 1961, the petitioner ascended the scale of rank established by the Department of Justice and thus took over Panganiban's position as the third ranking assistant provincial fiscal of Batangas; when respondent Quizon was designated "acting assistant provincial fiscal" on May 16, 1963, the latter assumed in an acting capacity, not the position of third ranking assistant provincial fiscal, but the position of fifth ranking assistant provincial fiscal, which was the only position then vacant; upon the effectivity on July 1, 1963 of Republic Act 3719 "which raised the salaries of the "first" to the "fifth" assistant provincial fiscals of Batangas with a proviso to the effect that the incumbent assistant provincial fiscals "whose appointments have already been confirmed by the Commission on Appointments . . . prior to the approval of this Act, shall automatically be entitled to the benefits of this Act, without further need of another appointment and confirmation" the petitioner automatically assumed the position of the "third assistant provincial fiscal" stated in said Republic Act and thus became entitled to the emoluments therein fixed for said position; therefore, when respondent Quizon was subsequently appointed on April 30, 1964 as "third assistant provincial fiscal" of Batangas, his appointment as such was null and void because the position to which he was appointed was then already occupied by the petitioner.

In quo warranto proceedings, the person suing must show that he has a clear right to the office allegedly usurped or unlawfully held by another (Castro vs. Solidum, L-7750, June 30, 1955; Batario, Jr. vs. Parentela, Jr., L-20485, Nov. 29, 1963). Here, there is no such showing. The petitioners argument is flawed by the assumption that when Gregorio Panganiban, who was the third ranking assistant provincial fiscal of Batangas according to the order of rank established by the Department of Justice, vacated his position on September 14, 1961, the petitioner automatically assumed Panganiban's position and thus became the third ranking assistant provincial fiscal. Granting, in gratia argumentis, that succession in office to the next higher rank takes place automatically, then, upon the vacation by Gregorio Panganiban of his position as the third ranking assistant provincial fiscal of Batangas, the person who automatically succeeded to that position or rank is Marcelo T. Lota, who was the fourth

ranking assistant provincial fiscal at the time, and not the petitioner who was then the fifth ranking assistant. Yet, unless otherwise provided by law, succession in office to the next higher rank or position is not automatic but requires official action by the authorities concerned; as far as the case at bar is concerned, we are not cognizant of any provision of law, or any administrative order or regulation for that matter, effecting an exception.

We therefore reject the proposition that when Gregorio Panganiban left his position as the third ranking assistant provincial fiscal of Batangas, that position or rank was automatically assumed by the petitioner. And with this, the petitioner's thesis that respondent Quizon's appointment as "third assistant provincial fiscal" of Batangas was null and void because the petitioner was at the time already occupying that position, loses persuasion.

ACCORDINGLY, the present petition is dismissed, at petitioners cost.

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

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