

**CITY OF MANILA AND MAYOR ANTONIO J. VILLEGAS IN HIS
CAPACITY AS CITY MAYOR OF MANILA, PETITIONERS, VS.
ABELARDO SUBIDO, IN HIS CAPACITY AS COMMISSIONER OF CIVIL
SERVICE, HERMINI...**

G.R. No. 25835. May 20, 1966

Ponente: BENGZON, C.J.

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BENGZON, C.J.:

In March 1966, when the appointments of about 500 employees of the City Government of Manila were submitted to him, the Commissioner of Civil Service Abelardo Subido refused to take action on the same, and he returned the papers to City Mayor Antonio Villegas (who had issued them) with an official letter stating that said Mayor was no longer Mayor, because he had vacated his office when in June 1965, he assumed the position of Director of National Waterworks and Sewerage Authority (NAWASA).

Commissioner Subido applied the rule in the law of public officers about abandonment of office where another one is accepted.

This special civil action now raises two principal questions: (a) whether the Commissioner has power or jurisdiction to declare vacant the position of Mayor of Manila; and (b) whether Mayor Villegas had actually abandoned his office upon joining the NAWASA Board.

It is admitted that petitioner Antonio Villegas qualified for the Office of Mayor of Manila after being elected in November 1963 for a term that expires in 1968; and that in July 1964, he began to perform the duties of Director of NAWASA pursuant to a designation issued by then President Diosdado Macapagal, of the following tenor:

"Pursuant to the provisions of existing laws, you are hereby designated Acting Member of the Board of Directors of the National Waterworks and Sewerage Authority, vice Emigdio Tanjuatco. * * *."

There is also no question that Mayor Villegas has hitherto continued to act as Mayor, and that he resigned from the NAWASA Board at the beginning of this year.

For the petitioning City Executive, it is argued that he did not abandon his office of Mayor, because he had been merely designated acting member—not appointed as Member of the Board; that such membership was not a public office and, therefore, the rule on incompatibility of offices does not apply; that even if the two were "offices", no incompatibility exists, since the latter is complementary to the first, because the City of Manila and its inhabitants are vitally affected by the NAWASA administration; that he showed no intention to leave the mayoralty; and lastly, that it is the courts—not the Commissioner—who have the right to oust Mayor Villegas, supposing that, indeed, he had forfeited his seat as Manila Chief Executive.

For the respondent, it is contended that as the officer having exclusive jurisdiction over the approval of all appointments in the Civil Service, "he must necessarily determine first whether said appointments were extended

by the proper appointing authority; otherwise, there are no valid appointments to act upon". This is on the question of his jurisdiction or power.

On the merits, he insists there was incompatibility, and that it was immaterial that Mayor Villegas had been merely designated as acting member, or acted in a temporary capacity. Abandonment did not need to be openly shown, he argues, because vacancy resulted by operation of law.

A similar situation arose in Manila many years ago. In November 1923, Geronimo Santiago was the duly elected (1922) and incumbent councilor and President of the Municipal Board of Manila. Then, he was designated Acting Mayor of Manila. He took the oath and acted as City Executive. Meantime, Segundo Agustin was appointed to take his place as councilor of Manila. When Santiago's stint as Acting Mayor terminated, he started to resume his duties as Manila councilor; but Agustin resisted; claiming that Santiago had relinquished his office as councilor upon taking up the duties of Mayor. This Court held, in deciding the controversy, that Santiago had not forfeited his office as member (and President) of the Council, because he had been merely designated as Acting Mayor and acted as such. The opinion explained that,

"Mr. Santiago took the oath of office and qualified for the position of Acting- Mayor of the City of Manila. He indicated to the Municipal Board his intention to fill the new office temporarily and then return to his position as member of the Municipal Board. Mr. Santiago never took the oath of office as Mayor of the City of Manila. He never qualified for the office of Mayor. He never accepted the office of Mayor. He did not at any time disclose an intention to abandon the office of member of the Municipal Board. There was no resignation, express or implied, from the latter office."

So with Mayor Villegas: he has not vacated his office as Mayor because he was merely designated as Acting Director of the NAWASA.

In this view, we deem it unnecessary to go into the incidental issues raised by him, such as (a) that the position of member of the NAWASA Board is not an office; and that (b) anyway, the mayoralty of Manila was not incompatible with membership in the NAWASA Board.

On the other hand, it is seriously to be doubted whether the Commissioner has power or jurisdiction to indirectly oust an incumbent official by refusing to approve any appointment extended by the latter. The law points out how an official actually performing his duties may be ousted: quo warranto proceedings by the Solicitor-General or by the party who claims to be entitled to the office.[1]

We do not believe that the Civil Service Law intended to empower the Commissioner to declare vacant the position of any officer, Department Head, Director of Bureau, Chief of an office, etc. whose official act in extending appointments is sent to the Commissioner under the Civil Service Law, All he has to do is to see whether the said law has been observed. Should he have reasons to believe that an appointing officer has committed an act that produced forfeiture of his office, he may 'inform the Solicitor-General so that the latter may take action to oust the incumbent by quo warranto proceedings. Generally, he may not, in the guise of approving (or disapproving) appointments pass upon the qualification or tenure of the person making the appointment; especially where— as in this case—such person is actually holding the office of Mayor and discharging its functions.[2] The Commissioner is not to inquire into the right of the person (making the appointment) to hold the office.[3] He may, however, inquire whether the office itself (or the officer as such) possesses the prerogative to issue the appointment.[4] To that extent the respondent has the duty and power to determine "whether the appointments were extended by the proper appointing authority".

There being no question that the 500 appointments had been extended by the Mayor of Manila, and that such officer, as such, is empowered to make them, the Commissioner of Civil Service must be required to act on the

same and approve them if and when such appointments are found to be in accordance with the rules of the Civil Service.

The Mayor has included as respondents other officers of the City, because he believed and alleged that they seconded Commissioner Subido's opinion and acted or threatened to act in accordance therewith. However, such officers expressed no preference, took no sides on the issue and requested that it be resolved by this Court in this proceeding.

Wherefore, dismissing the action against these other officers, we hereby render judgment holding that petitioner Antonio Villegas is still the Mayor of Manila, and commanding the Civil Service Commissioner to recognize his signature in the said appointments as the signature of the Mayor of Manila and to officially act on the same in accordance with the Civil Service Law. So ordered.

Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Dizon and Makalintal, JJ., concur.

Petition granted.

[1] Quo Warranto as the exclusive remedy. (See 44 Am. Jur. 101; 74 Corpus Juris Sec. p. 179; Nacionalista Party vs. Bautista, 85 Phil. 101, 112; Nacionalista Party vs. De Vera, 85 Phil 127.)

[2] In this connection, the principle of "officer de facto" should be recalled.

[3] He could not, for instance, inquire whether the Mayor had been properly elected, nor inquire whether the appointing officer (e. g. the Bureau Director) had in turn been properly appointed.

[4] Example of distinction between the person holding the office and "the officer" as such. (44 Am. Jur. sec, 23. Quo Warranto.)

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