

CATALINO ORTIZ AIROSO, PETITIONER, VS. LORENZO DE GUZMAN, RESPONDENT.*G. R. No. 26144. September 07, 1926*

Ponente: VILLAMOR, J.

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The present action, originally instituted in this court, is for the purpose of obtaining a declaration of the nullity and illegality of the occupation of the office of justice of the peace of Bongabon, Nueva Ecija, by the respondent, and that the petitioner be declared to be entitled to continue, occupy, and discharge the office of justice of the peace of the said municipality from which he was illegally ousted.

The petitioner alleges that, having been appointed justice of the peace of Bongabon, Nueva Ecija, on May 12, 1914, under Act No. 2041 he has occupied and discharged said office up to May 3, 1923, when he ceased after various and repeated requests made to him by the Honorable Hermogenes Reyes to resign from the office on account of having reached the age of 65 years; that by virtue of said requirements the petitioner was compelled to surrender the office to the justice of the peace of Laur for fear of being prosecuted for contempt; that the judicial order which ousted the petitioner from his office of justice of the peace is based upon Act No. 3107, which has no retroactive effect and which is not applicable to justices of the peace appointed prior to March 17, 1923, when said law began to operate; that said petitioner, after being illegally deprived and ousted from his office, prayed for a reconsideration of the order of the court, but his petition was denied by the same court.

The respondent, in his answer, alleges as a special defense, that the petitioner voluntarily, and without any protest, left said office, for which reason he has lost all right of action to ask for reinstatement; that the respondent was duly appointed on November 19, 1923, his appointment having been confirmed by the Philippine Senate under date of February 8, 1924, and that on April 1, 1924, the respondent took possession of said office without the petitioner having protested nor objected to his taking possession.

The record shows that the petitioner discontinued in the office of justice of the peace on May 3, 1923, by an order of the judge of the Court of First Instance for the reason that he was more than 65 years of age, which is the age limit for justices of the peace and their auxiliaries as provided by Act No. 3107; and that after a reconsideration of the order of the Court of First Instance of April 23, 1923, ousting him from the office, had been denied, the said petitioner has not taken any step to defend what he considers his right, until June 16, 1926, when he filed a complaint in this case.

On the other hand, the attorney for the respondent at the trial of this case stated before the court, without having been contradicted by the other party, that the petitioner presented himself as a candidate for municipal president in the elections of 1925, which indicates it was his intention to leave the office of the justice of the peace which he was discharging.

Supposing that Act No. 3107, which provides that 65 years is the age limit for justices of the peace and their auxiliaries to hold office is not applicable to the petitioner who was appointed before said law was enforced, the

question raised in this appeal is whether the petitioner, after having allowed three years to elapse since he was ousted from the office without having taken any steps to reclaim it, can now ask for his reinstatement in the same office.

The same question has been passed upon many times by the courts of the United States, who generally uphold the doctrine that a public employee who voluntarily abandons his office for a long time, is estopped from asking for reinstatement.

"In order to constitute an abandonment of office, it must be total, and under such circumstances as clearly to indicate an absolute relinquishment. This is shown for example when a city officer suddenly leaves for a foreign country pending proceedings by the council for his removal, and thereafter makes no claim to his office for many months. Temporary absence is not sufficient where no statute fixes the period beyond which the absence must not continue. In all cases the officer should manifest a clear intention to abandon the office and its duties. Yet this intention may be inferred from his conduct. If his acts and statements are such as clearly indicate absolute relinquishment, a vacancy will thereby be created and no judicial determination is necessary. When once abandoned the former incumbent cannot legally repossess the office even by forcible re-occupancy." (22 R. C. L., p. 560, par. 264.)

We are of the opinion that the fact that the petitioner allowed three years to elapse without making any attempt to reclaim the office in question, and having presented himself as a candidate for municipal president in 1925, constitutes sufficient evidence that he has voluntarily abandoned the office of justice of the peace which he occupied and is now estopped from reclaiming the said office.

Therefore, the petition must be, as hereby is, denied with the costs against the petitioner. So ordered.

Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

Avanceña, C. J., and Street, J., concur in the result.

CONCURRING

JOHNSON, J.,

I fully agree with Mr. Justice Villamor that this petition must be denied for the reason that the petitioner had completely abandoned his right to be reinstated in the office which he now seeks. I desire to add that at the time this case was voted it was understood by the entire court that the doctrine heretofore announced in the case of *Agcaoili vs. Suguitan* (48 Phil., 676) was in no way modified by this decision.

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