

PACIFICO M. BRAGANZA, PETITIONER, VS. THE COMMISSION ON ELECTIONS, THE COMMISSIONER OF CIVIL SERVICE AND BENJAMIN ABELLA, RESPONDENTS.

G.R. No. 27017. August 15, 1967

Ponente: CASTRO, J.

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CASTRO, J.:

The object of the present petition for prohibition and mandamus, with preliminary injunction, is to bar the respondent Benjamin Abella from the position of permanent election registrar of Mabini, Pangasinan, and to compel the respondent Commission on Elections (COMELEC) to annul his appointment to said post and to extend, in lieu thereof, another appointment thereto in favor of the petitioner Pacifico M. Braganza.

On November 2, 1964 provisional appointments as "Election Registrar in the Commission on Elections", without designation of any specific official station, were extended by the COMELEC to the petitioner Pacifico M. Braganza (Item No. 178[816], page 2455, R.A. 4164) and to the respondent Benjamin Abella (Item No. 178[825], page 2455, R.A. 4161). Both appointees were subsequently directed, in identical telegrams dated November 9, 1964, to report and assume duties as election registrars for Mabini, Pangasinan. They thereafter duly qualified - the petitioner on November 11, 1964, the respondent Abella on November 19, 1964 - and forthwith complied with the telegram-directive aforesaid. On August 20, 1965 the petitioner was designated officer-in-charge of the election registrar's office at Mabini, Pangasinan, with full administrative supervision over other registrars assigned thereto.

On September 7, 1966, however, the COMELEC appointed Abella as permanent "Election Registrar for Mabini, Pangasinan" under Item No. 179(997), page 2587, R.A. 4848. In due course, this appointment was certified by the Civil Service Commission and, on November 8, 1966, the said respondent formally qualified and commenced the discharge of the duties of his office as such.

The petitioner thereafter moved the COMELEC - to no avail - to reconsider the aforesaid appointment of the respondent and to have himself retained as permanent election registrar in the said municipality.

Hence, the present recourse.

The petitioner's case hinges on the basic issue of whether or not he has acquired a vested right to the office of permanent election registrar of Mabini, Pangasinan, with the concomitant security of tenure therein.

In urging the affirmative side of this issue, the petitioner proceeds from the premise that his provisional appointment was irregular in that the COMELEC, at the time it extended such appointment, did not have any discretion in the premises but to extend to him a permanent appointment with a specific designation of official station. Accordingly, he contends that in extending to him, instead, a provisional appointment without designation of official station, the COMELEC acted illegally and with grave abuse of discretion, and therefore his appointment should be regarded as a permanent one which, supplemented by his telegraphic assignment to

Mabini, Pangasinan, legally vested in him title to the office of election registrar of that municipality. Upon the foregoing assumption, he argues that, inasmuch as the guidelines adopted by the COMELEC on the matter accord him superior and preferential right to be retained in that office as against the respondent Abella, the appointment of the latter thereto is illegal and that, instead, that appointment should have been, and should now be, extended to him.

Actually, if the petitioner's thesis in assailing the regularity of his provisional appointment is to be sustained, his claim to the office in question will collapse like the proverbial house of cards. Without deciding on the actual legal status of that appointment - as, indeed, it is unnecessary to do so - it is quite evident that the petitioner's pose here is untenable. For one thing, it is too late for the petitioner to assail the validity of his appointment. Having accepted the same, discharged the functions it imposed, exercised the rights it conferred, and reaped the benefits it afforded, the petitioner cannot now be heard to impugn its validity. Besides if that appointment was indeed illegally extended, that illegality vitiated the entirety thereof, and the appointment cannot, in the same breath, be denounced as illegal and yet considered as a valid one of another category. If it was void, to start with, it was void thru and thru - there can be no middle ground. Since a void appointment confers no rights whatsoever except, perhaps, those recognized under the general de facto doctrine, then the petitioner cannot predicate his claim to preference to the office involved upon that appointment. Otherwise stated, the petitioner's argument carries its own refutation.

Prescinding from this flaw in the petitioner's stand, however, the resolution of the case at bar must still have to reckon with the effects of that appointment, assuming its validity. We have already spelled out with sufficient specificity our position on this matter in our opinion in *Ibañez, et al. vs. Commission on Elections, et al.*, G.R. L-26558, April 27, 1967. There, as here, where the appointments of election registrar relied upon did not indicate any particular places to which the respective appointees were to be officially stationed, but the appointees were subsequently merely detailed to particular localities by means of appropriate directives, we declined to give our imprimatur to the therein petitioners' pose that they acquired a right to the offices claimed sufficient to shield them against unconsented transfers therefrom. This is in consonance with the doctrine that only such officers as are appointed - not merely assigned - to particular stations are entitled to seek refuge under the aegis of the constitutional guaranty of security of tenure (*Hojilla vs. Marino, et al.*, G.R.L-20574, February 26, 1965; *Miclat vs. Ganade, et al.*, G.R.L-14459, May 30, 1960; *Jaro vs. Valencia, et al.*, G.R.L-18352, August 30, 1963). Since the *Ibañez* ruling afore-cited, we have had occasion to re-iterate this doctrine in three cases (vide: *Commission on Elections, et al.*, G.R.L-26956, July 21, 1967; *Salazar, et al. vs. Commission on Elections, et al.*, G.R.L-27121, July 21, 1967; *Suarez, et al. vs. Commission on Elections, et al.*, G.R.L-26605, July 27, 1967). We do so once again. Inasmuch as the appointments of both the petitioner and the respondent Abella do not state that they are appointed election registrars of Mabini, Pangasinan, their detail thereto by subsequent directives of the COMELEC does not entitle either one to assert as against the other any right to be retained as permanent election registrar thereof.

Considering that -

"The power to appoint is in essence discretionary on the part of the proper authority. * * * The appointing power has the right of choice which he may exercise freely according to his judgment, deciding for himself who is best qualified for any competitive position in the Civil Service * * *" (*Jimenez vs. Francisco*, G.R.L-9699, February 1957), and

"What position should be deemed 'most advantageous to the government' for the respondent to occupy is a question to be decided by the representative of the government, and * * * the government cannot be denied the right to determine, experimentally or otherwise, in what position it could make use of respondent's services to the best advantage of the service and of the public * * *" (*Gorospe vs. De Veyra*, G.R.L-8408, February 17,

1955),

the determination made by the COMELEC respecting the question of who between the contenders should be retained in Mabini, Pangasinan as permanent election registrar must be respected.

The petitioner's reliance upon the so-called "Guide-lines In The Assignment Of Election Registrars" adopted by the COMELEC in its session of February 17, 1966 is misplaced. As pointed out by the respondents and confirmed by the certi-fied copy of said guidelines, the rules of preference therein provided were intended merely as criteria for "the assignment of election registrars without making new appointments". Said guidelines, unmistakably, were not intended to control the discretion of the COMELEC in making appointments of permanent election registrars.

From what has been said, it is clear that the peti-tioner has not made out a case calling for the exercise by this Court of its powers of intervention.

ACCORDINGLY, the petition is denied, at petitioner's cost.

Reyes, J.B.L., Makalintal, Bengzon, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.
Concepcion, C.J., and Dizon, J., did not take part.

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