

## VENANCIO SAN GABRIEL, PETITIONER AND APPELLANT, VS. MIGUEL RIOS, RESPONDENT AND APPELLEE.

*G.R. No. 32558. October 15, 1930*

Ponente: JOHNS, J.

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### JOHNS, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }

Among other things, the parties stipulated:

"Be it resolved, That the petition of the Municipal President to appoint Mr. Venancio San Gabriel as Chief of Police of this municipality be disapproved.

"Be it resolved further, That this question of appointments of Mr. Rios and Mr. San Gabriel as Chief of Police be referred to proper authorities requesting as to who shall be legally entitled to the position." (See Exhibit D.)

Section 2259 of the Administrative Code, as amended provides:

"Appointment of Members of Police Force.—The chief of police and other members of the force shall be appointed by the president, with the consent of the municipal council. In case of disagreement between the president and the municipal council regarding the appointment of the chief of police, if such disagreement extends over more than three months after the submission of the nomination by the president, the provincial board shall take action and decide such disagreement, and its decision shall be final."

That is to say, the power to appoint a chief of police is vested in the municipal president, but the appointment when made is subject to the consent and approval of the municipal council, and the appointment does not become valid until such time as it is approved by the council, and it is stipulated that the appointment, was never approved by the council, and that in, truth and in fact it was disapproved on the day it was made. It must follow that the petitioner had no legal right to the office of chief of police, and as a sequel he had no legal right to maintain quo warranto against the respondent. Under this view, it is not necessary to discuss or decide any of the remaining questions presented on the appeal. It having been stipulated that the appointment of the petitioner was not only never confirmed, but in truth and in fact was rejected by the council on the day it was made, the judgment of the lower court, dismissing the petition, is affirmed, with costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Villamor, Ostrand, Romualdez and Villa-Real, JJ., concur.

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