

JOSE A. F. UBALDO, PLAINTIFF AND APPELLEE, VS. PATERNO BISCO, DEFENDANT AND APPELLANT.

G.R. No. 43811. October 26, 1935

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The defendant Paterno Bisco appeals to this court from a decision of the Court of First Instance of Sorsogon, the dispositive part of which reads:

"For all the foregoing, the court is of the opinion that the Department of the Interior exceeded its powers in annulling the appointment made in favor of Jose A. F. Ubaldo, and hereby renders judgment in favor of the latter, declaring him entitled to hold the office of municipal president of Matnog, Sorsogon, and ousting and removing the defendant Paterno Bisco completely from the office of municipal president which he now occupies illegally, and ordering likewise that the said plaintiff Jose, A. F. Ubaldo be placed in the possession of said office, with costs to the defendant. It is so ordered."

In support of his appeal the appellant assigns the following errors alleged to have been committed by the trial court in its decision, namely:

"1. The court erred in not declaring that the plaintiff has no cause of action and in not dismissing the complaint for this reason, and in revoking *motu proprio* the order issued by the Secretary of the Interior declaring null and illegal the appointment made by the provincial board of Sorsogon by virtue of resolution No. 360 of November 12, 1934, in favor of the petitioner. The said order of the Secretary of the Interior is Exhibit 1 of the defendant.

"2. The court erred in admitting Exhibit H as evidence for the plaintiff and in not finding as a proven fact that the defendant Paterno Bisco, and not the petitioner Jose A. F. Ubaldo, belongs to the faction or party to which the deceased Rafael Gata, elected municipal president of Matnog, Sorsogon, belonged at the time of his election.

"3. The court erred in holding that the Department of the Interior exceeded its powers in annulling the appointment made by the provincial board of Sorsogon in favor of the petitioner by virtue of resolution No. 360 of November 12, 1934 (Exhibit F of the plaintiff), and in holding in its decision that the Department of the Interior in the exercise of its high power of supervision and control over provincial and municipal governments is without authority or power to regulate for the public good the authority granted by law to the provincial board in section 2180 (c) of the Revised Administrative Code.

"4. The court erred in rendering judgment in favor of the petitioner Jose A. F. Ubaldo, declaring him entitled to hold the office of municipal president of Matnog, Sorsogon, and ousting and removing the respondent Paterno Bisco from the office of municipal president which he has been discharging by virtue of the provisions of section 2177 of the Revised Administrative Code."

The pertinent facts necessary to resolve the questions raised on appeal are those set out in the appealed decision as follows :

"At the general elections held in June, 1934, Rafael Gata was elected municipal president of Matnog, Sorsogon. He was murdered before assuming his office, for which reason the defendant Paterno Bisco, who held the office of municipal president of Matnog, continued in office and up, to the present time holds the same. On October 17, 1934, the provincial governor of Sorsogon, acting in accordance with resolution No. 322 (Exhibit B) of the provincial board, appointed as municipal president of the aforesaid municipality (Exhibit A) the, plaintiff Jose A. F. Ubaldo, who took his oath of office, and required the defendant Paterno Bisco to yield possession of the office, which was refused by the latter. The action taken by the provincial board in appointing Jose A. F. Ubaldo as municipal president of Matnog, however, lacked the requisite provided in section 2180, subsection (c). of the Administrative Code, inasmuch as the Honorable Secretary of the Interior had not yet decided whether the successor of the president elect, Rafael Gata, should be appointed by the provincial board or elected in a special election; but subsequently, that is on December 24th of the same year, the Honorable Secretary of the Interior, believing that a special election is not advisable under the prevailing circumstances, decided that the successor of Rafael Gata should be appointed by the provincial board of Sorsogon, and authorized the latter to appoint the successor of said Rafael Gata among those proposed by the party or faction to which said Rafael Gata belonged at the time of his election (Exhibit D). By virtue of Exhibit D, on November 12, 1934, the provincial board of Sorsogon again appointed as municipal president of Matnog the herein plaintiff Jose A. F. Ubaldo, who took his oath of office (Exhibits E, F, and G) and again required the defendant Paterno Bisco to yield said office to him, but said defendant refused to do so. The two appointments made in favor of the plaintiff were, however, nullified by the Honorable Secretary of the Interior, declaring them illegal, the first in his telegram of November 10, 1934 (Exhibit 12) and the second in his endorsement of December 3, 1934 (Exhibit 1) in which telegram and endorsement the said Honorable Secretary of the Interior required the provincial board to appoint the defendant Paterno Bisco as municipal president of Matnog, and ruled that, in the meantime, said Paterno Bisco should continue to occupy the office of president.

"By virtue of the appointment made in his favor, dated November 12, 1934, the plaintiff now states in his complaint that he is entitled to occupy the office of municipal president of Matnog, and asks that the present incumbent Paterno Bisco be declared to be illegally and without right occupying said office. The defendant Paterno Bisco, in turn, contends that, under the provisions of section 2177 of the Administrative Code, he has a right to continue holding the office until his successor is duly elected or appointed, and alleges that he had been proposed for said office by the local committee of the Partido Nacionalista Pro-Independencia and by the provincial committee thereof in the Province of Sorsogon to succeed the, deceased Rafael Gata (Exhibits 2 and 3), and that the plaintiff Jose A. F. Ubaldo does not belong to the party of the deceased Rafael Gata, and that his appointment was annulled by the Secretary of the Interior."

The only question of importance to decide in the instant appeal, which is raised in the third assigned error and upon the resolution of which depends that of the other assigned errors, is whether the trial court erred in holding that the Department of the Interior is without authority to annul the appointment made by the provincial board of Sorsogon in favor of the petitioner-appellee Jose A. F. Ubaldo to hold the office of municipal president of Matnog, of said province.

Section 2180, subsection (c), of the Revised Administrative Code, provides as follows:

"Sec. 2180. Vacancies in municipal office.—

* * * * *

"(c) In case of the failure of an election for any municipal office, or when the officer elect declines to qualify or dies before qualifying, or there is no successor for any other reason, such successor shall, in the discretion of the Secretary of the Interior, be appointed by the provincial board or elected at a special election convened by the Governor-General the same as other special elections."

From the legal provisions above quoted it will be seen that when an officer elect to a municipal office dies before assuming office and the latter becomes vacant, the Secretary of the Interior shall decide whether the filling of said

vacant office should be by appointment by the provincial board or by special election. The law is silent as to the person who may be appointed, or as to those who may propose such appointment in the event the Secretary of the Interior should decide that the vacant position should be filled by appointment by the provincial board.

The juridical rule on the power to appoint is condensed in the following note appearing on page 1404, Note 57 (a), Vol. 4, of the Corpus Juris:

"Choice of person to fill office essence of appointment.— (1) The decisions of this and other courts, State and Federal, as to the meaning of the word "appointment", and what constitutes an appointment under the law, are to the effect that the choice of a person to fill an office constitutes the essence of the appointment; that the selection must be the discretionary act of the officer or board clothed with the power of appointment; that while he or it may listen to the recommendation or advice of others, yet the selection must finally be his or its act, which has never been regarded or held to be ministerial "

If, as we have seen, the power which section 2180, subsection (c), of the Revised Administrative Code, confers upon the Secretary of the Interior is only to determine if the filling of a vacancy by reason of the death of the person elected to a municipal office should be by appointment by the provincial board or by special election; if said section does not authorize said Secretary of the Interior to propose the person to be appointed by the said provincial board, and if, under the jurisprudence above quoted, the power to appoint involves the power to select the person to be appointed, the law has lodged in the provincial board the power to choose the person to be appointed to fill the vacant office of municipal president; consequently, the appointment made by the provincial board of Sorsogon in favor of the herein plaintiff-appellee Jose A. F. Ubaldo for the office of municipal president of Matnog, Sorsogon, is legal and valid and may not be annulled by said Secretary of the Interior.

The appellant alleges that in accordance with section 21 of the Jones Law, the Governor-General, as the representative of the sovereign power in the Philippine Islands, exercises general supervision and control over all departments and offices of the Government of the Philippine Islands, and that in accordance with section 22 of the same Jones Law, all executive functions of the Government depend directly upon the Governor-General or one of the executive departments under his high supervision and control; and that the Secretary of the Interior, under whose jurisdiction the provincial and municipal governments fall, in the exercise of his power of control, direction, and supervision, issued a circular in 1921 the pertinent part of which reads:

"With reference to the filling of vacancies resulting from death or declination of a municipal official elect to qualify, under the provisions of section 2180 (c) of the Administrative Code of 1917, it has been decided by this department that the policy in those cases should be to fill the vacancy by the provincial board subject to the condition, that the person to be appointed belongs to the deceased's party or faction. In case the vacancy is that of the municipal president, the vice-president if militating on the side of the deceased's party or faction, should be given the preference and the vacancy in the office of the vice-president filled as usual in the manner provided by law. This policy is believed to be in consonance with democratic principles. The people have a right to expect that substitutes of men elected by them but unable to qualify and assume office will be selected from the rank and file of the party or faction of the candidate elected by them, in case there is any such party or faction in the locality. Should this condition meet with opposition on the part of the provincial board, it is requested that each case be reported to this department for further action, with the appropriate recommendation or recommendations of your bureau.

"Case relating to vacancies in municipal offices by reason of failure to elect will be submitted to this department for decision."

The policy followed in said circular was reiterated in another circular of the Department of the Interior dated November 13, 1922. Finally, on December 4, 1933, His Excellency, Governor-General Murphy, in a communication addressed to the Secretary of the Interior, stated:

"With regard to the second paragraph of the 2nd indorsement, the enunciation of a policy of appointing a man of the same political party and faction to take the place of a suspended official would not legally curtail the power to fill vacancies in municipal offices vested in the provincial board by section 2180 of the Administrative Code. But it has often occurred in the past that unjustified suspensions of municipal officials have been made by provincial governors for the purpose of putting in men belonging to the governor's own party, and experience has shown that since the policy was adopted of appointing men of the same political faction as the suspended official, the number of unjustified and purely political suspensions has been reduced and this reduction is greatly in the interest of orderly administration. It is desired therefore that this policy be followed by provincial boards."

The policy of good government followed in the aforesaid circulars of the Department of the Interior, and sanctioned by his Excellency, the Governor-General, although serving as a guide to provincial boards in the selection of those who are to be appointed by them to fill vacancies in municipal offices, cannot curtail the discretionary power of said provincial boards to choose those who are to fill said vacancies, which discretionary power, as we have said, is inherent in that of appointment conferred by law.

If the Secretary of the Interior could annul an appointment made by a provincial board in such cases, he could impose upon said provincial board the person to be appointed by it, thereby annulling the discretionary power of choice of said provincial board. Such an interpretation would run counter to the spirit of the above-quoted section 2180, subsection (c), of the Revised Administrative Code. The power of control, direction, and supervision over provinces and municipalities vested in the Secretary of the Interior under section 86, in connection with section 79 (B) of the Revised Administrative Code, should be exercised in accordance with law. In annulling the appointment made by the provincial board of Sorsogon in favor of the petitioner-appellee Jose A. F. Ubaldo; in requiring said provincial board to appoint the respondent-appellant Paterno .Bisco; and in ordering that in the meantime the latter should continue holding the office, the Secretary of the Interior acted without legal authority therefor, and the respondentappellant illegally holds the office of municipal president of Matnog, Sorsogon.

For the foregoing considerations, we are of the opinion and so hold, that the Secretary of the Interior in the exercise of the power of control, direction, and supervision vested in him by section 86, in connection with section 79 (B), of the Revised Administrative Code, cannot annul an appointment made by a provincial board in accordance with the provisions of section 2180, subsection (c), of the same Code, because he has no authority to do so.

Wherefore, finding no error in the appealed decision, the same is affirmed in all its parts, with the costs to the appellant. So ordered,

Malcolm, Abad Santos, Imperial, and Goddard, JJ., concur.

Judgment affirmed.

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