

TEODORG OLGADO, PLAINTIFF AND APPELLANT, VS. THE MUNICIPAL COUNCIL OF THE MUNICIPALITY OF LIPA AND THE PROVINCIAL BOARD OF BATANGAS, DEFENDANTS AND APPELLEES.

G.R. No. 4901. March 22, 1910

Ponente: MAPA, J.

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MAPA, J.:

The appellant was elected municipal president of Lipa, in the Province of Batangas, at the election held on November 5, 1907, without having previously resigned the office which he was holding as member of the local school board of the said municipality. In January, 1908, he took possession of the office of municipal president to which he had been elected, and in the same month the candidate defeated in that election filed a protest against the election of the appellant, on the ground of the latter's ineligibility on account of his not having resigned the said office as member of the local school board. The proper information having been filed, the municipal council of Lipa, in view of the result thereof, declared the said office of municipal president of Lipa to be vacant, which resolution was affirmed by the provincial board of Batangas and the latter designated the opponent, Guillermo Catigbac, to occupy the said office.

With these facts as a basis, the appellant instituted suit in the Court of First Instance of Batangas, in which he demanded:

First. That he be declared eligible to the office of municipal president of Lipa, notwithstanding his not having expressly resigned the office of member of the local school board.

Second. That, therefore, the resolution of the municipal council of Lipa, declaring vacant the office of president of the same municipality, be declared null and void; and

Third. That the designation of Guillermo Catigbac, made by the provincial board, to occupy the said office of municipal president, be likewise annulled.

To this complaint the respondents filed a demurrer, and among other reasons alleged lack of jurisdiction of the court to try the case, which demurrer was admitted by the court on the said ground. The case has been forwarded to this court by virtue of the appeal filed by the petitioner against the order of the court.

Section 12 of the Election Law, No. 1582, as amended by Act No. 1726, in its last paragraph, reads as follows:

"Any councilor or other municipal officer or other person who has information that a municipal officer is ineligible shall immediately report the matter to the municipal council, which shall hold an investigation giving the officer opportunity to present the evidence in his favor. The council shall declare the office vacant or dismiss the proceedings as the facts may warrant. A record of the proceedings and evidence shall be kept and forwarded to the provincial board which, within thirty days, shall affirm or reverse the action of the council.

"The Governor-General, upon receipt of proof satisfactory to him that an ineligible person is holding any provincial or municipal office or employment, may summarily remove such person."

As the appellees say in their brief, and with which we agree, the provision just quoted reserves to the municipal council, with the due approval of the provincial board, and also to the Governor-General, the power to remove from office any person elected as a municipal officer and who is subsequently proven to be ineligible, although he be already holding the office, and in no part of the Election Law is jurisdiction granted to the Courts of First Instance to review the resolution of the municipal council and the approval thereof, in such a case, of the provincial board, wherein such removal is ordered. Such a resolution is final and conclusive, in the sense that it can not be reviewed by the Courts of First Instance, and is so provided by the Election Law. It is superfluous to add that this law, being special and exclusive as it is in the matter of elections, is the one applicable to the present case, rather than any other of a general character. (Sec. 288, Code of Procedure in Civil Actions.)

The order appealed from is affirmed, with the costs in this instance against the appellant. So ordered.

Arellano, C. J., Torres, Johnson, and Carson, JJ., concur.

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