

JUAN MARBELLA, PLAINTIFF AND APPELLEE, VS. DOMINGO SAMSON ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 6164. March 29, 1912

Ponente: JOHNSON, J.

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JOHNSON, J.:

The facts in this case have been stipulated by the respective parties. The stipulation is as follows:

"1. That the plaintiff was appointed election inspector of the precinct of Daraga, municipality of Albay, on the 13th day of September, 1909, and did qualify and act as such election inspector in the general elections held in this province on November 2, 1909.

"2. That on February 26, 1910, the plaintiff presented to the municipal council of Albay his written resignation from the office of election inspector.

"3. That the municipal council of Albay, at its session of March 7, 1910, accepted the resignation tendered by the plaintiff.

"4. That on March 21, 1910, at the session held by the municipal council of Albay, the municipal president of the said municipality appointed the plaintiff lieutenant of police of Albay, which appointment was unanimously approved by the council; and on the following day, March 22, 1910, the municipal president issued to the said plaintiff the proper certificate of appointment.

"5. That on March 22, 1910, the plaintiff legally qualified for, and took possession of, the office of lieutenant of police of the municipality of Albay.

"6. That on March 26, 1910, the municipal president of Albay, acting in pursuance of an order received from the provincial governor, suspended the plaintiff's appointment and summoned the latter to appear before the provincial board of Albay on the 29th of March, 1910, for the purpose of deciding upon the legality of his appointment as such lieutenant of police, in view of his having discharged the duties of election inspector in the last election.

"7. That on March 29, 1910, the plaintiff, through his attorney, appeared before the provincial board and demanded that it abstain from passing any resolution with respect to the legality of the said appointment, alleging that the said board lacked both the power and the jurisdiction so to do; but that the board did, notwithstanding, disapprove the resolution passed by the municipal council of Albay on March 21, 1910.

"8. That on March 26, 1910, the plaintiff, ceased to discharge the duties of the office of lieutenant of police of Albay, and, by the aforecited resolution of the provincial board, is prevented from holding the said office in the future.

"9. That the municipal council of Albay resolved not to appeal, and did not appeal, administratively to the Honorable Governor-General from the resolution of the provincial board, and the said council does not permit nor will it permit the plaintiff to occupy or again to take possession of the said office.

"10. That the provincial board is disposed to carry out its resolution disapproving the appointment of the plaintiff, and to prevent the latter from continuing in the discharge of the duties of the office of lieutenant of police.

"11. Both parties agree, furthermore, that the court admit and consider the following documents, attached hereto and marked as Exhibits A, B, C, D, E, F, G, H, and I."

Section 15 of the Election Law (Act No. 1582) contains the provision for the appointment of inspectors of elections, among other things. Said section also provides that:

"Said inspectors shall be ineligible to be elected or appointed to any other office during their term of office."

Said section further provides that the "inspectors of elections * * * shall hold office for two years," from the date of their appointment.

From the stipulated facts above quoted, it will be seen that the plaintiff was appointed as election inspector on the 13th of September, 1909, and resigned on the 26th of February, 1910, and was appointed by the municipal president as "teniente de policia" on the 21st of March, 1910, which appointment was approved by the municipal council on the 22d of March, 1910. It will thus be seen that the plaintiff accepted an appointive position within the period of two years from the date of his appointment as election inspector. The provincial board, upon receiving notice of the appointment as "teniente de policia," immediately ordered the municipal council to revoke the appointment, relying upon the provisions of section 15 above referred to. Immediately upon the revocation of said appointment, the plaintiff presented a petition for a writ of prohibition against the provincial board as well as the municipal council, to prevent them from carrying into effect the said revocation. The lower court issued said writ. From that order the defendants appealed to this court.

Several questions are presented by the brief filed by the Attorney-General. The plaintiff presented no brief.

In our opinion the only question which it is necessary to discuss in the present case is whether or not that provision of section 15 which provides that "said inspectors shall be ineligible to be elected or appointed to any other office during their term of office," renders ineligible an inspector of elections from accepting an appointive office after the acceptance of his resignation and within his "term of office" (two years). Of course what is said here with reference to the acceptance of an appointive office will also be applicable to the acceptance of an elective office.

The lower court reached the conclusion that said provision did not apply after the resignation of the inspector, and cited in support of that conclusion the case of *Barnum vs. Gilman* (27 Minn., 466, decided March 29, 1881). The constitution of the State of Minnesota, among other things, provides that -

"No senator or representative (state) shall, during the time for which he is elected, hold any office, under the authority of the United States, or the State of Minnesota, except that of postmaster."

In that case (*Barnum vs. Gilman*) the respondent was elected as lieutenant-governor of the State of Minnesota in the year 1879, for the term commencing January 1, 1880 at the time of his nomination he was holding the office of representative in the legislature, under an election for the term extending to the 1st of January, 1881; but prior to the said state election he resigned his office as representative and his resignation was duly accepted. Mr. Justice Cornell, in writing the opinion in that case ;for the majority of the court, said;

"When he ceases to be such (senator or representative) whether by the lapse of time, resignation or otherwise, the disability terminates. The clause, 'during the time for which he is elected can not properly be construed as enlarging the scope of the prohibition so as to include persons not in fact members of the legislature."

This case (Barnum vs. Gilman) has been cited in support of the proposition that after the resignation of officers included in the provisions of the constitution, and the resignation is accepted, such persons are no longer bound by such provisions. We find, however, that this same question came before the supreme court of the State of Minnesota again in the case of State vs. Sutton (63 Minn., 147, decided December 12, 1895). The supreme court of Minnesota, referring to the case of Barnum vs. Gilman, said:

"We must regard what was there said in reference to the constitutional provision here under consideration as mere obiter."

In the case of State vs. Sutton, supra, the supreme court (of Minnesota) held that under this constitutional provision, the disability of a member of the legislature to hold office does not cease until the expiration of the full period of time for which he was elected.

Even granting that the decision in the case of Barnum vs. Gilman decided that a senator or representative might be relieved from the operation of the constitutional provision by resigning, the same is expressly overruled in the case of State vs. Sutton, supra. In the latter case Mr. Sutton was elected to the office of representative on the 6th of November, 1894, for the term commencing on the first Monday of January, 1895, and ending on the first Monday of January, 1897. Pursuant to his election he duly qualified and entered upon the discharge of his duties as such member and served until the 2d of May, 1895. On the 4th of May, 1895, Mr. Sutton was appointed to the public office of inspector of boilers for the fourth congressional district, and qualified and entered upon the performance of the duties of that office. Proceedings were commenced to oust him of his office and the court in deciding the case said:

"We are of the opinion that the respondent, in holding the office of inspector of boilers, as charged in the writ of quo warranto, comes within the prohibition of the constitution (art. 4, sec. 9), and it is therefore adjudged that said respondent, John B. Sutton, is guilty of unlawfully holding and exercising the office of inspector of boilers for the fourth congressional district in this state. And it is further ordered and adjudged that said John B. Sutton be ousted and excluded from said office of inspector of boilers and that judgment be entered accordingly."

The question which we are discussing here came before the supreme court of the State of Michigan in the case of Ellis vs. Lennon (86 Mich., 468, decided June term, 1891). In Michigan the general law for the incorporation of cities contains the following provision:

"No alderman shall be elected or appointed to any other office in the city during the term for which he was elected as alderman, nor appointed to any other office in the city within one year thereafter."

The constitution of the State of Michigan also provides the following:

"No person elected a member of the legislature shall receive any civil appointment within this State, or to the Senate of the United States, from the governor, the governor and senate, from the legislature, or any other State authority, during the term for which he is elected."

In the said case of Ellis vs. Lennon supra, a member of the city council resigned his position and was appointed chief of police. Quo warranto proceedings were commenced against him. The supreme court decided that:

"An alderman, * * *, can not, by resigning his office prior to the expiration of the term for which he was elected, render himself eligible to receive the appointment of chief of police."

In the case of Waldo vs. Wallace (12 Ind., 569) it appears that Wallace was mayor of the city of Indianapolis and that during the continuance of his term of office as such he resigned, became a candidate and received the highest number of votes for the office of sheriff of his county. His right to hold the office of sheriff was presented to the

courts. The court held that he could not exercise the duties of the office of sheriff, for the reason that his election to the latter office occurred during the continuance of his term as mayor. (See also *Gulick vs. New*, 14 Ind., 93.)

Provisions similar to that contained in said section 15 of Act No. 1582 are found in the constitutions of many of the States of the United States. It is a common provision of municipal charters. The purpose of such provision is to guard against trafficking in office and the further purpose is to remove from the incumbent of the office any inducement for causing a vacancy. (*Ellis vs. Lennon*, 86 Mich., 468; *Waldo vs. Wallace*, 12 Ind., 569; *Shelby vs. Alcorn*, 36 Miss., 273; *Sublett vs. Bedwell*, 47 Miss., 266; *Smith vs. Moore*, 90 Ind., 294; *Story on Constitutional Law*, sections 867-869.)

Another purpose for the existence of such constitutional or statutory provisions is to prevent officers from using their official positions in the creation of offices for themselves, or for the appointment of themselves to other more lucrative positions. The law of course recognizes the right of an official to resign under certain circumstances, but the policy of the law as announced in said section 15 of Act No. 1582 is to take away from public officials all inducements to the vacation of their office. The provision of said section 15 seems to be clear. It says that "said inspectors shall be ineligible to be elected or appointed during their term of office." The time included within the phrase "during their term of office" is easy to compute. Laws should be given their natural interpretation. Had the legislature intended that said inspectors should be ineligible to be elected or appointed simply during the time which they held the office of an inspector, the language of the statute would have been different. The statute naturally would have read: "During the time they continue to hold the office of inspector." The statute, however, is broader. It used the phrase "during their term of office.[1]" In reading said section it will be noted that inspectors of elections are appointed for a term of two years. Statutes should be construed so as to give every word and phrase used its common and approved meaning. If it had been the intention of the Legislature to limit the prohibition to the term of actual service, or simply to make inspectors of elections ineligible to other offices during the term of actual service, the phrase "during their term of office" would have been substituted by the phrase "during the term of actual service."

For the foregoing reasons we are fully persuaded that inspectors of elections are ineligible to be elected or appointed to any other office during their term of office, and this prohibition is not limited to their term of actual service.

The judgment of the lower court is therefore hereby reversed and the defendants are absolved from any liability under the petition presented in the lower court for the writ of prohibition, with costs against the plaintiff.

Arellano, C. J., Torres, Mapa, Carson, Moreland, and Trent, JJ., concur.

[1] After the beginning of the present action (February 3, 1911), the Philippine Legislature amended section 16 of Act No. 1582, so that said section, in part, now reads as follows:

"Any person appointed as inspector, who accepts appointment and qualifies for the office, shall be ineligible to be elected or appointed to any other office during the entire time for which he was appointed as such inspector." (Sec. 8, Act No. 2045.)

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