

ROBERT F. ONG, PETITIONER, VS. MARIA TERESITA HERRERA-MARTINEZ, THE CITY COUNCIL OF MANILA AND THE CITY TREASURER OF MANILA, RESPONDENTS.

G.R. No. 87743. August 21, 1990

Ponente: PARAS, J.

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PARAS, J.:

Petitioner Robert F. Ong assails the appointment and assumption of duties as Councilor in the City Council of Manila of respondent Ma. Teresita Herrera-Martinez, in place of deceased Councilor Saturnino Herrera who represented the Third District of Manila.

It appears that Saturnino Herrera, who was the father of respondent Martinez, was one of the Liberal Party candidates duly elected as Councilor for Manila's Third District in the local elections of January 18, 1988. He performed his duties as such councilor until his death on October 14, 1988, thus leaving the position open for the appointment of a qualified replacement from the same political party where the deceased councilor belonged.

Petitioner, who was a defeated candidate of the Liberal Party in the Third District of Manila, on the strength of an indorsement by the Treasurer of the said party in the district which was allegedly supported by 80% of the ward leaders of the party of the same district as embodied in their resolution, was appointed on February 9, 1989 as member of the Sangguniang Panglunsod (City Council) by the Secretary of Local Government to fill the vacancy created by the late Councilor Saturnino Herrera. On the same date, petitioner took his oath of office as such councilor after which the Secretary of Local Government informed Mayor Gemiliano Lopez, Jr. and Vice-Mayor and Presiding Officer Danilo Lacuna of the appointment of petitioner. Likewise, in his 1st Indorsement of March 13, 1989, the Undersecretary of Local Government forwarded petitioner's appointment to Presiding Officer of the City Council Danilo Lacuna.

In the regular session of the City Council held on March 9, 1989, said Council, acting on the letter of the Secretary of Local Government dated February 9, 1989 informing them of the four appointments including that of petitioner, moved to exclude petitioner and the other appointees from the session hall. In the subsequent session of the Council on March 14, 1989, petitioner and his co-appointees were formally excluded from the session hall with sixteen (16) councilors voting for such exclusion and none against it, with the rest of the Council members abstaining.

The records show that respondent Martinez went through the legal formalities or standard procedure prior to her appointment to the vacated position subject of this controversy.

Thus, on November 4, 1988, nine out of the eleven incumbent LP Councilors in the City Council endorsed the appointment of respondent per their resolution. This resolution was forwarded to the Office of the Chairman of the Liberal Party, Manila Chapter.

On March 1, 1989, aforesaid Chairman, in turn, nominated respondent for appointment per his letter - nomination

to President Corazon Aquino thru the Secretary of Local Government. On March 8, 1989, Senate President Jovito Salonga as National Head of the Liberal Party was furnished with a copy of this letter - nomination.

On March 13, 1989, Congressman Leonardo Fuguso as President of the LP Third District Chapter also nominated respondent to National President Salonga of the Party. President Salonga, in turn, nominated respondent to Secretary Luis Santos of the Department of Local Government pursuant to Section 50 of the Local Government Code.

On March 17, 1989, Secretary Santos, acting for the President, issued an appointment to respondent.

Then on March 21, 1989, the first session day after respondent's appointment, the City Council, by a vote of twenty-four members in favor with no member opposing, recognized her as member of said Council.

Finally, the Presiding Officer of the City Council directed its Secretariat to include the name of respondent in the payroll of the City Council.

Respondent thus assumed and performed her duties as Councilor for the Third District of Manila until the restraining order of the Court issued on April 20, 1989 was received by respondent.

This petition now seeks to annul the appointment of respondent Martinez and to declare petitioner to be the holder of the position of Councilor in place of deceased Saturnino Herrera.

Petitioner anchors his appeal on the following grounds:

1. The Secretary of the Department of Local Government, in appointing respondent Martinez on March 17, 1989, violated the election ban on appointments under Res. No. 2054 of the Comelec dated December 7, 1988 since her appointment was not cleared for exemption from the election ban and, therefore, the same was made beyond and in excess of the Secretary's authority and by reason of which, the appointment is null and void.
2. Respondent Martinez is not a member of the Liberal Party and cannot be appointed to the position of Councilor, a vacancy created by the death of a member of said Party.
3. Petitioner's appointment is valid, complete and beyond recall.
4. Petitioner is entitled to the position held by respondent.

Respondent, on the other hand, argues:

1. Petitioner misled the Court in claiming that he has a right to the contested position. His appointment was indorsed only by the Treasurer of the LP Chapter, 3rd District of Manila. The Treasurer's indorsement was not known nor authorized by the head of the LP in said district. Neither was the nomination brought to the attention of the Chairman of the LP, Manila Chapter. The proper procedure was not observed by petitioner. The unauthorized action of petitioner cannot be cured or ratified by an alleged resolution of 80% of ward leaders and which resolution was adopted long after the appointment of petitioner. Hence, petitioner's appointment was void from the very beginning for lack of authority of the Treasurer who nominated him.

Contrary to petitioner's claim, respondent also contends that the former has not assumed office; neither has he exercised or performed the functions of the position because he was prevented from doing so by the outright refusal of the City Council to recognize his appointment.

2. Petitioner has no right to the position and for which reason, he lacks the legal personality to institute the present petition for quo warranto, mandamus and prohibition.

While petitioner claims that he took his oath on February 9, 1989 which was a calculated move to avoid the

election ban on appointments, he used a Residence Certificate issued on February 22, 1989 only. This means that he could not have taken his alleged oath before the issuance of the residence certificate.

3. The appointment of respondent possesses all the requisites of a valid appointment according to legal and regular procedures. She avers that her appointment was indorsed by nine out of eleven LP incumbent councilors and that her nomination was favorably indorsed by the Liberal Party hierarchy from the Chairman of the Third District, thru the Chairman of the Manila Chapter up to the National President of the LP; and, that she was duly appointed on the basis of the series of nominations of the LP hierarchy.

4. The appointment of respondent is not covered by the election ban contemplated under Sec. 261 (g) of the Omnibus Election Code.

The case for respondent appears meritorious. Respondent had gone through the regular and standard nomination process which had been officially acknowledged by the Secretary of Local Government.

Sec. 50 of the Local Government Code specifically provides:

“In case of permanent vacancy in the sangguniang panlalawigan, sangguniang panglungsod, sangguniang bayan, or sangguniang barangay, the President of the Philippines, upon recommendation of the Minister of Local Government, shall appoint a qualified person to fill the vacancy in the sangguniang panlalawigan and sangguniang panglungsod of highly urbanized and component cities; the governor, in the case of sangguniang bayan members; or the city or municipal mayor, in the case of sangguniang barangay members. Except for the sangguniang barangay, the appointee shall come from the political party of the sangguniang member who caused the vacancy, and shall serve the unexpired term of the vacant office.” (Underscoring supplied)

Since deceased Councilor Saturnino Herrera who had caused the contested vacancy comes from the Liberal Party, it follows that his mode of replacement should be governed by the standing rules of the aforementioned Party.

Thus, We quote the pertinent sections of the 1967 Liberal Party Revised Rules (1971 Reprint furnished by the Comelec):

"Rule 32. Approval of Resolution of District, Provincial, City or Municipal Government. Resolutions adopted by provincial, district, city or municipal committee shall not be final unless approved by the National Directorate, the Executive Committee, or the Party President." (Under Chapter III on The Manila City Special Rules)

Thus, too, Section A (3) of Rule 10 of the Liberal Party Rules (on the Powers of the National Directorate) provides:

"3) To choose and proclaim official candidates of the Party for provincial positions, and whenever necessary, convenient or proper, also for Municipal and City positions, in accordance with the requirements of these Rules."

Conformably with the aforequoted provisions of the Liberal Party Rules, all resolutions, which may include resolutions nominating replacements for deceased city councilors, should first be approved either by the National Directorate, the Executive Committee or the Party President in order that said resolutions could be considered final and valid.

Logically and by analogy, the National Directorate or in its stead, the Executive Committee or the Party President may choose and nominate the party's proposed appointee, from among its members, to the position vacated by a deceased city councilor.

Correspondingly, We quote hereunder the body of the letter - nomination of the then LP National President Jovito

R. Salonga explicitly manifesting the full support of the party hierarchy for herein respondent. Thus -

"I hereby nominate in behalf of the Liberal Party of which I am the incumbent President Ms. Maria Teresita Herrera-Martinez, to take the place of Councilor Saturnino C. Herrera of the Liberal Party who passed away on October 14, 1988.

"Ms. Martinez is likewise the recommendee of the Liberal Party, Manila Chapter headed by former Assemblyman Lito Atienza. She is also recommended by Congressman Leonardo Fuguso. Please be advised that the Liberal Party, under which the late Councilor Saturnino C. Herrera was elected, has no nominee to the vacated position other than Ms. Maria Teresita Herrera-Martinez. This is also to serve notice that no other person is authorized to nominate any LP member to any vacancy in the City Council of Manila." (Underscoring supplied)

Acting on the solid recommendation of the LP hierarchy, from the district level up to the national level, the Secretary of Local Government correspondingly issued the letter-appointment to respondent Martinez, the pertinent portion of which reads as follows:

"Upon the recommendation of the President of the Liberal Party and the Chapter President of the Liberal Party, 3rd District of the City of Manila, and pursuant to the provisions of existing laws, you are hereby appointed member of the Sangguniang Panglungsod, City of Manila, Vice Councilor Saturnino Herrera." (Underscoring supplied)

Notably, respondent's appointment was accepted or recognized by the City Council in its session of March 21, 1989. The minutes of said session reveal that twenty-four (24) councilors voted to accept the appointment of respondent and not a single member objected to or opposed the acceptance. Right then and there, the Presiding Officer announced the acceptance of respondent's appointment and the Chair directed the Secretariat to include her name as a new member of the City Council.

In the case of petitioner, however, a very different scenario took place. The letter dated February 9, 1989 of Secretary Luis Santos informing Vice-Mayor and Presiding Officer Lacuna that he had appointed petitioner and three other appointees, carried a request that due recognition be accorded to them, particularly petitioner as member of the Council. Petitioner and the other appointees, as per minutes of the Council's session of March 9, 1989, were excluded from the session hall by reason of the seconded motion of the Majority Floor Leader. In the subsequent session of the Council on March 14, 1989, petitioner and his co-appointees were formally excluded from the session hall when sixteen (16) members of the Council voted in favor of their exclusion and no one against it. Significantly, such exclusion meant that the City Council refused to recognize their appointments.

As a conclusive confirmation of the non-recognition of petitioner's defective appointment, the Secretary of Local Government recalled the former's appointment in his letter of March 17, 1989. The letter thus reads:

"Dear Mr. Ong:

"In connection with our letter of February 9, 1989, appointing you as Sangguniang Panglungsod member of the City of Manila as a consequence of the death of Councilor Saturnino C. Herrera, please be informed that we are recalling said appointment it appearing that you were not recommended for the position by the appropriate leader of the Liberal Party as mandated by the sub-section b(1), Rule XIX of the Rules and Regulations Implementing the Local Government Code (Batas Pambansa Blg. 337)." (Underlining supplied)

Both petitioner and respondent have invoked the election ban imposed under Sec. 261 (g) of the Omnibus Election Code. The election ban covered the period from February 11 to March 27, 1989 by reason of the Barangay election held on March 28, 1989. Both parties have capitalized on the prohibitive provision for the purpose of having their respective appointments declared illegal or null and void.

Sec. 261 (g) of the Omnibus Election Code provides thus:

"(g) Appointment of new employees, creation of new position, promotion, or giving salary increases. - During the period of forty-five days before a regular election and thirty days before a special election, (1) any head, official or appointing officer of a government office, agency or instrumentality, whether national or local, including government-owned or controlled corporations, who appoints or hires any new employees, whether provisional, temporary or casual, or creates and fills any new position, except upon prior authority of the Commission. The Commission shall not grant the authority sought unless, it is satisfied that the position to be filled is essential to the proper functioning of the office or agency concerned, and that the position shall not be filled in a manner that may influence the election.

"As an exception to the foregoing provisions, a new employee may be appointed in case of urgent need: Provided, however, That notice of the appointment shall be given to the Commission within three days from the date of the appointment. Any appointment or hiring in violation of this provision shall be null and void."

The aforequoted provision does not apply to both assailed appointments because of the following reason:

The permanent vacancy for councilor exists and its filling up is governed by the Local Government Code while the appointment referred to in the election ban provision is covered by the Civil Service Law.

For having satisfied the formal requisites and procedure for appointment as Councilor, which is an official position outside the contemplation of the election ban, respondent's appointment is declared valid.

The issue on the alleged discrepancy between the dates of petitioner's oath and his residence certificate need not be tackled now because it will not anymore affect the recalled appointment of petitioner. If ever, the matter casts a doubt on petitioner's credibility and honesty.

WHEREFORE, the petition is hereby DISMISSED, and the temporary restraining order is correspondingly LIFTED.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Gancayco, Padilla, Cortes, Grino-Aquino, Medialdea, and Regalado, JJ., concur.

Bidin and Sarmiento, JJ., on leave.

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