

GENEROSO R. SEVILLA, PETITIONER, VS. THE HON. COURT OF APPEALS AND NERITO L. SANTOS, RESPONDENTS.

G.R. No. 88498. June 09, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

May an officer who was appointed to an office in an "acting" capacity, bring a quo warranto action against the permanent appointee to the position?

The petitioner has been in the government service since 1949. His last appointment was as Assistant City Engineer of Palayan City which he discharged until he was designated Acting City Engineer of Cabanatuan City by President Ferdinand E. Marcos on May 2, 1981. He unhesitatingly assumed the latter position and discharged its functions and responsibilities until "People Power" and the EDSA Revolution intervened. The subsequent twists and turns in his professional career are recited in the decision dated May 31, 1989 of the Court of Appeals in CA-G.R. SP No. 14489 as follows:

"The advent of the 1986 Revolution and the 1987 Freedom Constitution spelled changes and upheavals, particularly within the Career Civil Service. On August 18, 1986, the then Officer-in-charge (OIC Mayor) of Cabanatuan City, Cesar Vergara, appointed defendant-appellant Santos as city engineer of Cabanatuan City, and on August 28, 1986, defendant-appellant Santos assumed the position of city engineer. On that very same day, a memorandum informing petitioner-appellee Sevilla of the appointment of defendant-appellant Santos was sent by the then OIC Mayor. As petitioner-appellee Sevilla was on leave at the time, the memorandum was received on his behalf by Anita de Guzman, the administrative officer of the Department of Public Works and Highways (DPWH) Office of Cabanatuan City, where petitioner-appellee Sevilla also holds office.

"A few months later, or on November 14, 1986, petitioner-appellee Sevilla was designated by then Minister Rogaciano Mercado of the MPWH as acting district engineer of Pasay City. Petitioner-appellee Sevilla served in that capacity until he was removed from that office by the new Secretary of the DPWH on February 3, 1987. This was what precipitated the present controversy.

"Petitioner-appellee then returned to Cabanatuan City. On March 27, 1987, he filed a petition for quo warranto against defendant-appellant Santos, which was docketed as Civil Case No. 879-134 (AF) before the Regional Trial Court of Cabanatuan City, Branch 27. On January 29, 1988, the lower court rendered the impugned decision reinstating petitioner-appellee Sevilla and entitling him to payment of vacation and sick leaves for the duration of his absence. The dispositive part of that decision reads:

" 'WHEREFORE, judgment is hereby rendered for petitioner and against the respondent, to wit:

" 'a. Ousting and excluding respondent Nerito Santos from the position of City Engineer;

" 'b. Declaring petitioner Generoso Savilla as the person lawfully entitled to hold aforesaid position; and

" 'c. Declaring petitioner Generoso Sevilla as entitled to payment of vacation and sick leave during the period he was prevented from rendering service by reason of this case.' " (pp. 53-54, Rollo.)

On August 18, 1986, the OIC Mayor of Cabanatuan City, Cesar Vergara, appointed Nerito L. Santos as the new city engineer of Cabanatuan City. Santos assumed the position on August 28, 1986. On the same day, a memorandum was addressed to Sevilla informing him of Santos' appointment as city engineer of Cabanatuan City. Anita de Guzman, administrative officer of the Department of Public Works and Highways (DPWH) unit in Cabanatuan City received the notice for Sevilla who was on leave at the time.

On November 14, 1986, the Minister of Public Works and Highways, Rogaciano Mercado, designated Sevilla as Acting District Engineer of Pasay City. He served in that capacity for a little over two months or until he was removed on February 3, 1987 by the new DPWH Secretary, Jesus Jayme, forcing him to return to the Cabanatuan City Engineer's Office which, however, was already occupied by Nerito Santos.

On March 27, 1987, Sevilla filed a petition for quo warranto against Santos. It was docketed as Civil Case No. 8795-134 (AF) in the Regional Trial Court of Cabanatuan City-Branch 27. On June 8, 1987, the complaint was amended to include a petition for mandamus against the new OIC Mayor Evangelina Vergara, widow and successor of the deceased OIC Mayor Cesar Vergara, but the mandamus petition was dismissed by the trial court, which proceeded to hear the quo warranto petition only.

In his quo warranto petition, Sevilla argued that, being a presidential appointee, he could not be removed from office by an OIC mayor. And, even supposing that the OIC mayor had such authority, his (Sevilla's) separation from office was illegal because none of the grounds for the separation/replacement of public officials and employees set forth in Section 3 of Executive Order No. 17 dated May 28, 1986, was cited to justify the termination of his service. Section 3 of E.O. No. 17 provides:

"SECTION 3. The following shall be the grounds for separation/replacement of personnel:

"1. Existence of a case for summary dismissal pursuant to Section 40 of the Civil Service Law;

"2. Existence of a probable cause for violation of the Anti-Graft and Corrupt Practices Act as determined by the Ministry Head concerned;

"3. Gross incompetence or inefficiency in the discharge of functions;

"4. Misuse of public office for partisan political purposes;

"5. Any other analogous ground showing that the incumbent is unfit to remain in the service or his separation/replacement is in the interest of the service."

On January 29, 1988, the lower court rendered a decision reinstating Sevilla as acting City Engineer of Cabanatuan City with right to payment of vacation and sick leaves for the duration of his absence (pp. 26-34, Rollo).

Santos appealed the decision to the Court of Appeals (CA-G.R. SP No. 14489) alleging that:

1. Sevilla has no legal standing to bring an action for quo warranto, because his designation to the disputed position was in an acting capacity only;
2. his acceptance of another position in Pasay City precludes him from filing a quo warranto action; and
3. the OIC mayor had legal authority to appoint Santos as city engineer.

In a decision dated May 31, 1989 (pp. 53-57, Rollo), the Court of Appeals set aside the lower court's decision and entered a new one, dismissing the petition for quo warranto. The Court of Appeals held that by accepting another office, Sevilla in effect voluntarily surrendered his former office, and was thereby precluded from maintaining a

quo warranto action against Santos. When he accepted the position in Pasay City, he lost his right to the position in Cabanatuan City. The Court ruled that Santos' appointment was valid because it was confirmed by Minister Rogaciano Mercado of the Ministry of Public Works and Highways.

Sevilla filed this petition for review alleging that the Court of Appeals erred:

1. in not applying the provisions of Executive Order No. 17;
2. in not considering his appointment as acting city engineer of Cabanatuan City as a specie of permanent appointment covered by civil service security of tenure and outside the doctrine enunciated in *Austria vs. Amante* (79 Phil. 790) cited by the respondent court as basis of its decision; and
3. in declaring that he "voluntarily surrendered his former office," (p. 1, Rollo) instead of finding that he merely complied with the memorandum of the Minister of Public Works and Highways assigning him in Pasay City.

The petition is devoid of merit.

An "acting" appointment is merely temporary, one which is good only until another appointment is made to take its place (*Austria vs. Amante*, 79 Phil. 784). Hence, petitioner's right to hold office as "Acting City Engineer of Cabanatuan City" was merely temporary. It lapsed upon the appointment of Nerito Santos as the permanent city engineer of Cabanatuan City on August 18, 1986.

Petitioner was the incumbent city engineer of Palayan City when he was designated as Acting City Engineer of Cabanatuan City. There is a difference between an appointment and a designation. Appointment is the selection by the proper authority of an individual who is to exercise the functions of an office. Designation, on the other hand, connotes merely the imposition of additional duties, upon a person already in the public service by virtue of an earlier appointment or election (*Santiago vs. Commission on Audit*, 199 SCRA 125; *Political Law Review* by Gonzales, pp. 184-185). A mere "designation" does not confer upon the designee security of tenure in the position or office which he occupies in an "acting" capacity only. Thus did this Court make such a distinction:

"Appointment may be defined as the selection, by the authority vested with the power, of an individual who is to exercise the functions of a given office. When completed, usually with its confirmation, the appointment results in security of tenure for the person chosen unless he is replaceable at pleasure because of the nature of his office. Designation on the other hand connotes the imposition by law of additional duties on an incumbent official x x x. It is said that appointment is essentially executive while designation is legislative in nature.

"Designation may also be loosely defined as an appointment because it likewise involves the naming of a particular person to a specified public office. That is the common understanding of the term. However, where the person is merely designated and not appointed, the implication is that he shall hold the office only in a temporary capacity and may be replaced at will by the appointing authority. In this sense, the designation is considered only an acting or temporary appointment, which does not confer security of tenure on the person named.

"Even if so understood, that is, as an appointment, the designation of the petitioner cannot sustain his claim that he has been illegally removed. x x x. Appointment involves the exercise of discretion, which because of its nature cannot be delegated." (*Binamira vs. Garrucho*, 188 SCRA 158.)

Consequently, the designation of petitioner as Acting City Engineer of Cabanatuan City merely imposed upon him the additional functions of the City Engineer of Cabanatuan City on top of his regular duties as City Engineer of Palayan City. He may claim security of tenure as City Engineer of Palayan City but he may not lay such a claim to the position of City Engineer of Cabanatuan City for he holds no appointment to the latter office.

The power of appointment is essentially discretionary. Its exercise may not be controlled by the courts. The choice of an appointee from among qualified candidates or applicants is a political and administrative decision calling for considerations of wisdom, convenience, utility and the interests of the service which can best be made by the head of office concerned for he is familiar with the organizational structure and environmental circumstances within which the appointee must function. (*Lusterio vs. Intermediate Appellate Court*, 199 SCRA 255.) The appointing authority in this particular case is the Mayor of Cabanatuan City (B.P. Blg. 337 or the Local Government Code which provides that "the city engineer shall be appointed by the city mayor, subject to civil service law, rules and regulations"). The appointment of Santos by OIC City Mayor Vergara was valid and binding for it was confirmed by the Minister of Public Works and Highways, and approved by the Civil Service Commission.

An action for quo warranto may be commenced by "a person claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another" (Sec. 6, Rule 66, Rules of Court). In as much as the petitioner does not aver that he is entitled to the office of City Engineer of Cabanatuan City and that Nerito L. Santos is a mere usurper of said office, the Court of Appeals committed no reversible error in dismissing petitioner's action for quo warranto. Petitioner's ouster upon, and by virtue of Santos' appointment as City Engineer of Cabanatuan City, was not illegal for the petitioner's right to discharge the functions of Acting City Engineer of Cabanatuan City was extinguished when a permanent appointment to the same office was made in favor of the private respondent, Engineer Nerito L. Santos.

WHEREFORE, the petition for review is DENIED. The decision of the Court of Appeals dismissing petitioner's action for quo warranto is AFFIRMED. Costs against the petitioner.

SO ORDERED.

Cruz, (Chairman), Medialdea, and Bellosillo, JJ., concur.

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