

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**PURIFICACION V. GARCIA,
*Petitioner-Appellant,***

-versus-

**G.R. No. L-28184
September 11, 1980**

**ANGELO PEREZ,
*Respondent-Appellee.***

X-----X

DECISION

DE CASTRO, J.:

Purificacion V. Garcia appeals on pure questions of law,^[1] from a Decision dated 29 June 1967 of the Court of First Instance of Manila, Branch XXII, in Civil Case No. 67679 entitled "Purificacion V. Garcia, Petitioner, versus Angelo Perez, Respondent", which dismissed the petition for quo warranto instituted by petitioner-appellant questioning the authority of respondent-appellee to occupy and discharge the duties of the position of Senior Clerk in the Fiscal Management and Budget Division, Court of Appeals, identified as Item No. 104, Page No, 2473, Republic Act No, 4164 for FY 1964-65.

The antecedent facts which led to this suit are set forth in the decision of the court a quo,^[2] thus:

“In September 1964, the position of Senior Clerk in the Fiscal Management and Budget Division of the Court of Appeals with an authorized salary of P4,800 per annum, became vacant. The petitioner, Purificacion V. Garcia, who was then occupying another position of Senior Clerk in the same division but with compensation at the rate of P3,400 per annum, filed with the Presiding Justice of the Court of Appeals a written application for the vacant position stating therein her qualifications.

“On September 12, 1964, upon the recommendation of the Clerk of Court of Appeals, the Presiding Justice of said Court, appointed respondent Angelo Perez to the vacant position, with compensation at the rate of P4,200 per annum, effective on September 14, 1964. At that time, the respondent was holding the position of Cash and Payroll Clerk in the same division, with compensation at the rate of P3,960 per annum.

“On September 21, 1964, the petitioner filed with the Civil Service Commission, a protest against the appointment of the respondent on the ground that she was next in rank, better qualified and entitled to preferential appointment to the position. The Commissioner of Civil Service indorsed the petitioner’s protest to the Court of Appeals for comment. In a second endorsement, the Presiding Justice of the Court of Appeals, recommended approval of the appointment of the respondent. In a separate communication to the Commissioner of Civil Service, the Chief of the Fiscal Management and Budget Division of the Court of Appeals stated that the recommendation for the approval of the appointment of the respondent was made “after carefully studying the records and efficiency ratings of the ranking employees in said division where the vacancy exists” and that while the herein petitioner occupies an item in his division, she never worked therein and “has no knowledge or experience about the nature or kind of work being performed” in said division. The first Deputy Clerk of Court and Administrative Officer of the Court of Appeals also informed the Commissioner of Civil Service that the position of Cash and Payroll Clerk, was considered next in rank to the position of Senior Clerk to which the respondent was appointed

and this ranking was based in the “hierarchical organization of the Fiscal Department and Budget Division to which the two above-mentioned positions belong, the degree of relationship between these two positions and the similarity in the nature of the duties inherent in them.”

“On August 8, 1966, the Commissioner of Civil Service approved the appointment of the respondent as Senior Clerk with compensation at the rate of P4,200 per annum.

“Upon being informed of the approval of respondent’s appointment, the petitioner filed a motion for the reconsideration of the decision of the Commissioner of Civil Service denying her protest. On October 7, 1966, the petitioner’s motion for reconsideration was denied by the Commissioner of Civil Service.

“To the position of Cash and Payroll Clerk vacated by the respondent, the Presiding Justice of the Court of Appeals appointed Virginia Soriano thereto. On November 23, 1966, the petitioner sent to the Commissioner of Civil Service her protest against said appointment on the ground that it violated the Civil Service Rules on Promotion, with the statement that the formal protest would be sent later.

“On November 25, 1966, the petitioner commenced the present action but three days later, or on November 28, 1966, she went her formal protest against the appointment of Mrs. Soriano, with a prayer that it be disapproved and to cause the appointment of the petitioner to said position.”

The court a quo dismissed the complaint on the ground that: “A careful reading of the plaintiff’s complaint and the stipulation of facts submitted by the parties disclose that the petitioner does not claim to be entitled to the position but she merely asserted a ‘preferential right’ to be appointed thereto. Considering that she has not been appointed to the position in question, she cannot, therefore, be placed and made to occupy it. Under the situation, the petitioner has no cause of action against the respondent.”^[3] The court a quo further noted that: “Another circumstance

which militates against the present action is that it was commenced beyond the period of one year from the time the alleged right of the petitioner to hold the office in question arose. The respondent was appointed Senior Clerk effective September 14, 1964, and since then, he immediately discharged the duties of the position. Considering that the petitioner contends that the appointment of the respondent to said position and his exercise of its functions was unlawful and prejudicial to petitioner's rights, she should have commenced her action (assuming that she has the right to do so) within a period of one year from said appointment, as she was in effect deprived of a right to occupy the position. The complaint in this case was filed only on November 25, 1966 and accordingly, it is already barred."^[4]

Hence, this appeal wherein petitioner-appellant has assigned four (4) errors of the court a quo,^[5] thus:

I

“THE LOWER COURT ERRED IN DENYING APPELLANTS’ RIGHT TO INSTITUTE THE INSTANT QUO WARRANTO PETITION.

II

“THE LOWER COURT ERRED IN HOLDING THAT APPELLANT SHOULD HAVE COMMENCED THIS ACTION WITHIN ONE (1) YEAR FROM THE APPOINTMENT OF APPELLEE.

III

“THE LOWER COURT ERRED IN NOT DECLARING NULL AND VOID APPELLEE’S APPOINTMENT TO THE CONTESTED POSITION AND IN NOT DECLARING APPELLANT AS THE EMPLOYEE NEXT IN RANK TO SAID POSITION AND ELIGIBLE AND QUALIFIED FOR APPOINTMENT THERETO.

IV

“THE LOWER COURT ERRED IN DISMISSING APPELLANT’S PETITION, INSTEAD OF GRANTING APPELLANT’S PRAYER THEREIN.”

The pivotal question thus presented, to which all others are subordinated is whether the petitioner-appellant has the right to bring a quo warranto proceeding questioning the legality of the appointment of the respondent.

Nothing is better settled than that a petitioner, in a quo warranto proceeding to try title to a public office, must be able to show that he is entitled to said office. Absent such an element, the petition must be dismissed. This is a principle that goes back to *Acosta vs. Flor*,^[6] a 1905 decision. There, the doctrine has been laid down that: “No individual can bring a civil action relating to usurpation of a public office without averring that he has a right to the same; and at any stage of the proceedings, if it be shown that such individual has no right, the action may be dismissed because there is no legal ground upon which it may proceed when the fundamental basis of such action is destroyed.” This has been the exacting rule, since then,^[7] followed with stricter firmness in *Cuyegkeng vs. Cruz*,^[8] where this Court held that one who does not claim to be entitled to the office allegedly usurped or unlawfully held or exercised by another, but who “merely asserts a right to be appointed” thereto, cannot question the latter’s title to the same by quo warranto. In other words, one whose claim is predicated solely upon a more or less remote possibility, that he may be the recipient of the appointment, has no cause of action against the office holder. This is precisely the situation in the case at hand, and there is no cogent reason to change the rule. Perforce, the instant appeal may be dismissed, even on this ground alone.

Should greater liberality be accorded to appellant by considering her action as one for mandamus whereby she would seek the appointing power to be compelled to withdraw the appointment of appellee and issue in its place one for appellant, a procedural obstacle stands on the way, the appointing power, the Presiding Justice of the Court of Appeals, not having been impleaded as a party. This on the

assumption that appellant has a clear legal right to the contested position, which she has not.

The observation just made finds relevance to the issue raised in appellant's second assignment of error, relative to the fatal consequence of her failure to institute the present quo warranto proceedings within the reglementary period of one year from the accrual of the cause of action (Sec. 16, Rule 66, Rules of Court). In said assignment of error,^[9] petitioner-appellant maintains that the lower court erred in holding that this action should have been commenced within one (1) year from the appointment of appellee and argues that her cause of action arose only after notice of the denial of her motion for reconsideration of the decision of the Commissioner of Civil Service on her protest against the appointment of respondent appellee. Moreover, she insists that the pendency of the protest in the Civil Service Commission suspended the running of the one-year period, citing the Supreme Court's ruling on the finality of appointment in the case of *Grospe vs. Sec. of Public Works and Communication*, L-11090, January 31, 1959,^[10] the dissenting opinion of Justice Perfecto in the case of *Tumulak vs. Egay*, 82 Phil. 828 concerning the one-year period,^[11] and the ruling in the case of *Agcaoile vs. Saguitan*, 48 Phil. 676.^[12]

The authorities relied upon by appellant are, however, not in point and do not apply in this case. The first case is one of mandamus — and the case at bar cannot be considered as one, as already shown — asking for the reinstatement of an employee who was ordered dismissed for cause by the Commission on Civil Service. The second is a dissenting opinion which is not binding, as it is a mere expression of the individual view of the dissenting justice from the conclusion held by the majority of the court. The last was expressly abandoned in *Torres vs. Quintos*, 88 Phil, 436, 439 (1951), in the following tenor:

“We denied said supplemental action in a minute resolution, the effect of which is of course to reject the theory that the pendency of an administrative remedy suspends the period within which a petition for quo warranto should be filed.

“The reason is obvious. While it may be desirable that administrative remedies be first resorted to, no one is

compelled or bound to do so; and as said remedies neither are prerequisite to nor bar the institution of quo warranto proceedings, it follows that he who claims the right to hold a public office allegedly usurped by another and who desires to seek redress in the courts, should file the proper judicial action within the reglementary period. Public interest requires that the right of public office should be determined as speedily as practicable.”

This ruling has been reiterated with consistent strictness in a long line of cases, including *Sison vs. Pangramoyen*, L-40295, 31 July 1978.^[13]

As applied to the instant case, the admitted facts show that the appointment in controversy was made on 12 September 1964, effective 14 September 1964; respondent-appellee assumed office on the strength thereof, and received the salary corresponding to said position. The petition herein was filed only on 25 November 1966, clearly more than one year after the pretended right of petitioner-appellant to hold the office in question arose. This circumstance has closed the door for any judicial remedy in her favor.

This makes it unnecessary to take up in detail the other assignment of errors advanced by petitioner-appellant. Suffice it to state that petitioner-appellant has not overcome the presumption of regularity and legality in official actions anent the extension of the appointment in question by the Presiding Justice of the Court of Appeals and the approval thereof, by the Commissioner of Civil Service. Even if viewed only as a matter of equity, we cannot disregard, as if they were totally irrelevant, the facts that appellee was at the time of the issuance of the disputed appointment, receiving a higher salary than appellant; and that he, as cash and payroll clerk, had always worked in the division to which the contested position pertains, while appellant has never worked therein, although her item is that of a senior clerk of the same division, thereby giving appellee higher potentiality for, if not actually greater, competence for the duties and responsibilities of the position in question.

Likewise, three days after filing the instant petition, appellant protested with the Commissioner of Civil Service the appointment of

one Mrs. Virginia Soriano to the position of cash and payroll clerk. the position vacated by appellee, praying that she (appellant) be appointed to said position. This theory of abandonment, as advanced by appellee^[14] and raised in appellee's Motion to Dismiss,^[15] was not refuted by appellant, as she could have done by filing a reply brief which she did not. Undeniably, there is obvious validity in this contention, at least insofar as it tends to show appellant's own conviction in the weakness of her claim to be entitled to the position on dispute, which constitutes the real and actual foundation of the action of quo warranto which she has instituted.

ACCORDINGLY, the instant Petition for quo warranto is hereby **DISMISSED**. No costs.

SO ORDERED.

Teehankee, C.J., (Chairman), Makasiar, Fernandez, Guerrero and Melencio-Herrera, JJ., concur.

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- [1] p. 2, Rollo.
[2] pp. 2-5 CFI Decision, p. 20, Rollo.
[3] p. 6, Ibid.
[4] pp. 7-8, Ibid.
[5] pp. 9-10, Appellant's Brief, p. 15, Rollo.
[6] 5 Phil. 18, 22.
[7] Lino Luna vs. Rodriguez, 36 Phil. 401 (1907); Nuevo vs. Angeles, 76 Phil. 12 (1946); Adante vs. Dagpin, 96 Phil. 789 (1955); Batario vs. Parentela, 9 SCRA 601 (1963); Caraan-Medina vs. Quizon, 18 SCRA 562 (1966); Bongbong vs. Parado, 57 SCRA 623 (1974).
[8] 108 Phil. 1147.
[9] pp. 15-20, Appellant's Brief, p. 15, Rollo.
[10] pp. 15-16, Ibid.
[11] pp. 18-19, Ibid.
[12] pp. 17-18, Ibid.
[13] 84 SCRA 364.
[14] p. 35, Appellee's Brief.
[15] p. 25, Record of the Case.