CARLETON v. CIVIL SERVICE COMMISSION

10 Conn. App. 209 (1987) | Cited 5 times | Connecticut Appellate Court | March 17, 1987

The defendant[1] appeals from ajudgment for the plaintiff in this quo warrantoproceeding brought against the city of Bridgeportcivil service commission (commission) and itssuperintendent of treatment plants, LouisRenkavinsky. The defendant claims that the trialcourt erred (1) in finding that the position ofsuperintendent of treatment plants was a publicoffice for purposes of a quo warranto action, (2)in finding that the plaintiff had standing tobring this action, and (3) in finding that thedefendant could be ousted from his position afterhis, permanent certification to it. We find no error.

The following facts found by the trial court are notin dispute. An open competitive examination was conductedby the commission for the position of superintendent

[10 Conn. App. 211]

of treatment plants for the city of Bridgeport.Louis Renkavinsky received a grade of 93.6percent, the highest score on this exam. OnApril 27, 1984, he was temporarily certified tothe position. Following a six month probationaryperiod, Renkavinsky was permanently certified tothe position.

The plaintiff had also taken the examination andobtained the second highest score, 89.4 percent,on the test. On May 21, 1984, during thedefendant's probationary period, the plaintiffbrought a mandamus action against the commission,in which Renkavinsky intervened, requesting thatthe commission add five points to his rating for atotal and leading score of 94.4 percent, under theprovisions of General Statutes 7-415[2] allowingsuch credit to veterans for wartime service. Thetrial court granted the relief requested by theplaintiff and five points were added to theplaintiff's score, thereby giving him the highestoverall score on the test. No appeal was takenfrom that decision by either the commission orRenkavinsky. The commission, however, thereafterrefused to certify the plaintiff to the positionof superintendent.

The plaintiff then commenced this quo warranto action,requesting that the commission and Renkavinsky establishthe latter's legal right to the office of superintendent

[10 Conn. App. 212]

of treatment plants. The trial court foundthat the position of superintendent of treatmentplants was a public office. Therefore, theincumbency of that office was subject to challengeby a quo warranto proceeding. It also found thatRenkavinsky was not appointed in accordance withthe requirements of

the law. Consequently, hiscertification to that position was invalid. Itconcluded by finding that Renkavinsky held hisposition de facto, rather than de jure, and thatthe office or position of superintendent wasvacant.

The defendant's first claim is that the trialcourt erred in finding that the position ofsuperintendent was a public office for purposes ofa quo warranto proceeding.[3] An action in thenature of quo warranto may be brought to challengea person's legal authority to hold public office.State ex rel. Neal v. Brethauer, 83 Conn. 143,145-46, 75 A. 705 (1910). It may not be used tochallenge the appointment of a mere governmentalemployee. Id., 146-47; see 17 E. McQuillin,Municipal Corporations (3d Ed. Rev.) 50.07.

In order for a governmental position toconstitute a public office falling under the quowarranto statute, two conditions must exist: (1)it must have its source in a sovereign authorityspeaking through the constitution or legislation;and (2) its incumbent, by virtue of his incumbency,must be invested with some portion of the sovereignpower which he is to exercise for the benefit of thepublic. State ex rel. Neal v. Brethauer, supra, 146.The trial court found that "[t]he obligation to providefor sewage disposal and, therefore, treatment thereof,

[10 Conn. App. 213]

is fixed upon the City of Bridgeport by obligationfrom the state, pursuant to its charter." GeneralStatute 7-148 (c) provides that "[a]nymunicipality shall have the power to do any of thefollowing, in addition to all powers granted tomunicipalities under the constitution and generalstatutes: . . . (6)(B)(i) Lay out, construct,reconstruct, repair, maintain, operate, alter,extend and discontinue sewer and drainage systemsand sewage disposal plants . . . ." The dutiesprescribed for the superintendent of treatmentplants and specified in the notice of opencompetitive examination by the commission were asfollows: "Responsible supervision of theadministration, operation and maintenance of theentire sewerage system, including the treatmentplants. Exercises direct authority over all plantfunctions and system personnel, in accordance withapproved policies and procedures."

The defendant argues that the position of thesuperintendent of treatment plants is not providedfor in the city charter and is, therefore, not apublic office. We disagree with this argument.The failure of a position to be enumeratedspecifically in a city charter does not requirethe conclusion that such position is not a publicoffice. All that is required is that the powersand duties of the position have their source insovereign authority and that such position beinvested with some portion of such sovereign powerto be expended for the benefit of the public.State ex rel. Neal v. Brethauer, supra. The powersexercised by the superintendent of treatmentplants are exercisable because of the authorityimposed by the state upon the municipalitypursuant to General Statutes 7-148 (c)(6)(B)(i). The trial court found that the office wasresponsible for the supervision of administrationand operation of the entire sewage system,including treatment plants. Its duties alsoincluded direct authority over all plant functionsand system personnel in accordance with approvedpolicies and

procedures.

[10 Conn. App. 214]

We agree with the trial court's conclusion thatthe position of superintendent constitutes apublic office for the purpose of a quo warrantoaction. See, e.g., Beccia v. Waterbury, 192 Conn. 127,470 A.2d 1202 (1984) (Beccia II) (firemarshal); Cheshire v. McKenney, 182 Conn. 253,438 A.2d 88 (1980) (town councilman); State ex rel.Gaski v. Basile, 174 Conn. 36, 381 A.2d 547 (1977)(fire chief); State ex rel. Giusti v. Barbino,170 Conn. 113, 365 A.2d 408 (1976) (members of municipalboards).

The second issue is whether the trial courterred in finding that the plaintiff had standingto bring this action. The defendant argues that anindividual is not entitled to the remedy of quowarranto where that individual lacks a clear andimmediate right to the position in question. Insupport of this argument, he cites Andrews v. NewHaven, 153 Conn. 156, 215 A.2d 102 (1965) (writ ofmandamus); and Chambers v. New Haven,31 Conn. Sup. 362, 331 A.2d 347 (1974) (permanentinjunction). Neither case involved a quo warrantoproceeding. They are, therefore, inapposite to thequestion now under consideration.

Underlying the defendant's claim is hiscontention that the examination should have been"promotional" rather than "open competitive." Hemaintains that the plaintiff lacks a clear andimmediate right to the position because he was nota legitimate candidate for a "promotional"examination as there were two or more persons ofinferior rank within the department who wereeligible and who had applied for this test.[4] This

[10 Conn. App. 215]

argument is without merit and misconstrues thenature of a quo warranto proceeding. A quowarranto action seeks to oust an illegal incumbentfrom public office, not to induct a rightfulclaimant into the office. A successful action inquo warranto ousts the wrongful office holder anddeclares the position vacant. Once the quowarranto action declares the contested officevacant, a claimant may then proceed in mandamus toseek his own appointment to the position if he canestablish his own clear legal right thereto.Beccia v. Waterbury, 185 Conn. 445, 456-57,441 A.2d 131 (1981) (Beccia I); State ex rel. Eberlev. Clark, 87 Conn. 537, 540-41, 89 A. 172 (1913);State ex rel. Comstock v. Hempstead, 83 Conn. 554,559, 78 A. 442 (1910); State ex rel. Oakey v.Fowter, 66 Conn. 294, 300-301, 32 A. 162 (1895).This procedure is illustrated in Beccia 11, supra.In that case, following the decision in Beccia I,supra, the plaintiff brought two independentactions in the trial court. In the first action,in quo warranto, he successfully ousted theincumbent from the position of city fire marshal,which was then declared to be vacant. In the

[10 Conn. App. 216]

second action, seeking an order of mandamus, heunsuccessfully sought to secure his ownappointment as fire marshal. The actions of thetrial court were upheld on appeal.

The standing to proceed in quo warranto isdetermined by the nature of the interest of therelator in the contested public office. Thegovernment which created the office in questionmay, of course, institute such an action. Oneentitled to claim the office, such as theplaintiff here, has the requisite interest in theoffice giving him standing to seek such a writ.65 Am.Jur.2d, Quo Warranto 74. A taxpayerqualifies for standing because as such he isinterested in having the duties annexed to theseveral public offices recognized by the citycharter performed by persons legally elected orappointed thereto whether or not another personclaims the office. State ex rel. Waterbury v.Martin, 46 Conn. 479, 482 (1878). The plaintiffwas a proper party to institute this quo warrantoaction to test the defendant's right to holdoffice de jure.

The defendant's final claim is that the trialcourt erred in finding that the defendant could beousted from his position following his permanentcertification. He argues that the plaintiff, byfailing to take steps to stop the defendant'spermanent certification, has waived any right hemay have possessed to challenge the defendant'sappointment. We do not agree that the failure ofthe plaintiff to enjoin the commission's permanentcertification of the defendant constituted awaiver of his right to challenge the appointmentin this quo warranto proceeding.

"[Q]uo warranto is the exclusive method of tryingthe title to an office . . . ." Scully v. Westport,145 Conn. 648, 652, 145 A.2d 742 (1958). The legalityof a public office is not determined or establishedby the temporary or permanent nature of the incumbent's

[10 Conn. App. 217]

appointment, and its legality is subject tochallenge by quo warranto during the entire periodof incumbency. Because of the public's interest inits government by legal public officers, there canbe no waiver of quo warranto entitlement byinaction during the passage of time. Thedefendant's appointment was void ab initio, andwas not cured by his serving of a probationaryperiod and obtaining permanent certification.Since at all times he exercised the powers of theoffice de facto, and not de jure, he is subject toremoval by quo warranto.

There is no error.

In this opinion the other judges concurred.

1. The complaint was brought against thecity of Bridgeport civil service commission and LouisRenkavinsky. This appeal was filed on behalf of thedefendant Renkavinsky only. As used in this opinion,the term defendant refers to Renkavinsky.

2. General Statutes 7-415 provides: "Any veteranwho served in time of war, if he is not eligible fordisability compensation

or pension from the UnitedStates through the Veterans' Administration and if hehas attained at least the minimum earned rating on anyexamination held for the purpose of establishing anemployment list for original appointment shall havefive points added to his earned rating. Any suchveteran, if he is eligible for such disabilitycompensation or pension and if he has attained atleast the minimum earned rating on any suchexamination, shall have ten points added to hisearned rating. Names of veterans shall be placedon the list of eligibles in the order of suchaugmented rating. Credits shall be based uponexaminations with a possible rating of one hundredpoints. No such points shall be added to anyearned rating in any civil service or merit examinationexcept as provided in this section, the provisionsof any municipal charter or special act notwithstanding."

3. General Statutes 52-491 is the statutoryauthorization for quo warranto proceedings, andprovides: "When any person or corporation usurpsthe exercise of any office, franchise orjurisdiction, the superior

4. Section 9 of the Rules of Civil ServiceCommission provides in relevant part: "The personneldirector shall, from time to time, as conditions warrant,hold tests for the purpose of establishing employmentlists for the various positions in the competitivedivision of the classified service. Such tests shallbe public, competitive and open to all persons whomay be lawfully appointed to any position withinthe class for which such examinations are held withlimitations specified in the rules of the commission asto residence, age, health, habits, moral characterand prerequisite qualifications to perform theduties of such position, provided applicants shallbe citizens of the United States. Promotion testsshall be public, competitive and free only to allpersons examined and appointed under or holding anoffice or position by virtue of section six ofthis act and who have held a position for one yearor more in a class or rank previously declared bythe commission to involve the performance ofduties which tend to fit the incumbent for theperformance of duty in the class or rank for whichthe promotion test is held. Efficiency andseniority in service shall be considered inconnection with tests whenever there shall be anopening in a superior class to be filled. Theexamination shall be open to those in inferiorrank in the same class, the duties of whichdirectly tend to fit the incumbents thereof forthe performance of the duties of the Superiorgrade. A person who has served less than one yearin a lower grade shall not be eligible for apromotion. If fewer than two persons submitthemselves for a promotion test, or if after suchtest has been held, all applicants shall fail toattain a general average of not less than theminimum standard fixed by the rules of thecommission, said director shall forthwith hold anoriginal entrance test and certify from the employmentlist resulting therefrom. . . . (Emphasis added.)