ONE YEAR OF ELECTION LAW AND THE LAW OF PUBLIC OFFICERS: 1954

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I. INTRODUCTION

The recent years have been replete with practical lessons in popular government. To the mind of the public are still fresh the many assaults perpetrated against the purity of the ballot and the flagrant attempts by the unscrupulous to subvert the free expression of the sovereign will. With equal freshness are the frustrated violations of the tenure of office by those in power not unusually for answering political expediency and achieving uniformity of loyalties. Had these practices been left to prosper toward their calculated objectives, the result would have been fatal as well to the country as to democracy. Fortunately, the supremacy of the ballot was maintained and the security of tenure was upheld.

To this end the Supreme Court has contributed its invaluable share. Once again it has proved itself a true bulwark of our democratic processes and institutions. The decisions of said Court in this branch of public law for 1954 bear this point out.

II. CASES ON ELECTION LAW

The law that governs all elections of public officers by the people and all votings in connection with plebiscites is Republic Act No. 180, as amended by Republic Acts Nos. 599 and 867.[1] Its main purpose is to achieve the maximum freedom and purity of elections, which after all is one of the more important and fundamental requisites of popular government.[2] In keeping with these fundamental objectives is the trend of the 1954 decisions of the Supreme Court.

1. *Residence qualification of candidates.*—One of the requirements for eligibility to any elective public office is residence.[3] In order to be a qualified candidate for a provincial office, one must have been, among others, a bona fide resident of the province for at least one year prior to the election.[4]

The case of *Faypon v. Quirino*,[5] where the respondent's eligibility for the office of Provincial Governor of Ilocos Sur was challenged, is illuminating in this connection. There was no question that the res-

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[1] Sec. 2, Revised Election Code.

[2] 29 Philippine Law Journal, 81 (1954).

[3] See Art. VI, Sec. 4 and Art. VII, Sec. 3, of the Constitution; also Revised Administrative Code, Secs. 2071 and 2174.

[4] Sec. 2071, Revised Administrative Code.

[5] G.R. No. L-7068, December 22, 1954.

pondent was born in the municipality of Caoayan, Ilocos Sur, in June, 1895; came to Manila to pursue his studies, went to the United States for the same purpose; returned to the Philippines in 1923; lectured in the University of the Philippines; and engaged in newspaper work in Manila, Iloilo and later on again in Manila. There was also no question that the respondent was proclaimed by the provincial board of canvassers elected to the office of Provincial Governor of Ilocos Sur. The crucial and pivotal fact was the registration of respondent as voter in Pasay City in 1946 and 1947. In rendering judgment in favor of the respondent, the Supreme Court stated that mere absence from one's residence of origin — domicile — to pursue studies, engage in business, or practice his vocation, is not sufficient to constitute abandonment or loss of such residence. The determination of a person's legal residence or domicile largely depends upon intention which may be inferred from his acts, activities and utterances. The party who claims that a person has abandoned or lost his residence of origin must show and prove preponderantly such abandonment or loss of such residence. The Court also stated that a previous registration as voter in a municipality other than that in which he is elected is not sufficient to constitute abandonment or loss of his residence of origin.[6] For despite such registration, the *animus revertendi* to his home, to his residence of origin, has not forsaken him. This may be the explanations why the registration of a voter in a place other than his residence of origin has not been deemed sufficient to constitute abandonment or loss of such residence. This finds justification in the natural desire and longing of every person to return to the place of his birth. This strong feeling of attachment to the place of one's birth must be overcome by positive proof of abandonment for another.[7]

2. *Power to correct election returns.*—The question as to whether the Commission on Elections has the power to order the municipal board of canvassers to correct a mistake committed in addition in the canvass it has made after the candidate erroneously proclaimed had assumed office and the period to contest his election had expired, was decided by the Supreme Court in the case of *De Leon v. Imperial.*[8] In this case the petitioner was one of the candidates for councilor in the municipality of Makati, Rizal, in the elections held on November 13, 1951. There were eight councilors to be elected and as a result of the canvass made by the board of canvassers on November 18, 1951, petitioner occupied the eighth place and was proclaimed elected, having obtained 3,160 votes. On April 12, 1952, or four months and twenty-four days after the petitioner's proclamation, Fortunato Gutierrez, hereafter de-

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[6] *Yra v. Abaño*, 52 Phil. 380 (1928); *Vivero v. Murillo*, 52 Phil. 694 (1929); *Larena v. Teves*, 61 Phil. 36, 38 (1934); *Gallego v. Verra*, 73 Phil. 453 (1941).

[7] *Faypon v. Quirino*, see note 5, *supra*.

[8] G.R. No. L-5758, March 30, 1954.

signated as respondent, filed a petition in the Commission on Elections alleging that due to a mistake in addition the municipal board of canvassers credited petitioner with 3,160 votes when in fact he obtained only 3,060 votes over the petitioner. In accordance with the prayer of the respondent, the Commission directed the municipal board of canvassers to reconvene and recanvass the election returns, and, having found that the respondent had polled more votes than the petitioner, proclaimed the former eighth councilor-elect of Makati.

The Constitution provides:

> "The Commission on Elections shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law. It shall decide, save those involving the right to vote, all administrative questions, affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and of other election officials . . ." [9]

The Revised Election Code supplements what other powers may be exercised by said Commission. It is clear that powers not expressly or impliedly granted to it are deemed withheld.

The said Code provides:

> "After the announcement of the result of the election in the polling place, the board of inspectors shall not make any alteration or amendment in any of its statements, unless it be so ordered by a competent court." [10]

Section 168 of the same Code, in connection with Section 163, provides:

> " . . . The municipal board of canvassers shall not recount the ballots nor examine any of them but shall proceed upon the statements presented to it. In case of contradictions or discrepancies between the copies of the same statements, the procedure provided in section one hundred and sixty-three of this Code shall be followed."

And the last section referred to provides in turn:

> "In case it appears to the provincial board of canvassers that another copy or other authentic copies of the statement from an election precinct submitted to the board give to a candidate a different number of votes and the difference affects the result of the election, the Court of First Instance of the province, upon motion of the board or of any candidate affected, may proceed to recount the votes cast in the precinct for the sole purpose of determining which is the true statement or which is the true result of the count of the votes cast in said precinct for the office in question. Notice of such proceeding shall be given to all candidates affected."

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[9] Sec. 2, Art. X.
[10] Sec. 154, Revised Election Code.

In granting the petition for certiorari and setting aside the new proclamation made on May 31, 1952, thereby declaring that the original proclamation made on November 18, 1951 should stand, the Supreme Court, through Justice Bautista Angelo, said:

> "The above pertinent provisions . . . clearly postulate that any alteration or amendment in any of the statements of election, or any contradiction or discrepancy appearing therein, whether due to clerical error or otherwise, cannot be made without the intervention of a competent court, once the announcement of the result of the election, or the proclamation of the winners, had been made. These provisions are all — inclusive in the sense that the power to authorize the correction can only be made by a competent court. They reject the idea, as now entertained by the respondent, that such error can be ordered corrected by the Commission on Elections by virtue of its constitutional power to administer the laws relative to the conduct of elections."

However, there is a dissenting opinion by Justice Reyes.[11]

In the case of *Tizon v. Doroja, et al.*,[12] the Supreme Court upheld the power of the Court of First Instance to order the correction of election returns by the board of election inspectors.

That this power existed in our election law since December 3, 1927, is the view of the Supreme Court in the case of *Clarin v. Alo, et al.*,[13] where the petitioner sought to prohibit the respondent Court of First Instance of Bohol from continuing to take cognizance of the petition of the respondent election inspectors so as to permit them to correct their minutes. In the same case, the Court also ruled that the creation later of the Commission on Elections has not altered the situation previously existing.

The correction of the report can be made when the board of inspectors so requests and the court, in the exercise of its sound discretion, so permits. The procedure, in effect, is summary and the decision of the court is final and executory solely as to the results of the election. However, it is never binding upon an election protest which could be had after the results of the election has been proclaimed.[14]

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[11] In his dissent Justice Reyes stated: "The authority of the Commission on Elections in a proper case to annul a proclamation made by a municipal board of canvassers and order a new canvass of the election returns can no longer be doubted. That authority has already been upheld by this Court in the case of *Mintu v. Enage*, G.R. No. L-1834, Dec. 31, 1947. In that case the Commission had annulled a proclamation made by a municipal board of canvassers on the basis of returns from only some of the election precincts, and this Court ruled that the Commission in so doing had neither exceeded its jurisdiction nor committed a grave abuse of discretion. If the Commission has authority to correct any irregularity of this nature, there is no reason why it may not also correct a mere clerical error such as that case. As stated by Mr. Justice Tuason in *Ramos v. Commission on Elections*, 45 O.G. Supp. No. 9, 345, 348, 'the Commission on Elections has both the power and the duty to correct any error committed by election officials in ministerial and administrative matter which do not call for the exercise of judgement.'"

[12] G.R. No. L-7312, February 26, 1954.

[13] G.R. No. L-7302, February 25, 1954.

[14] *Ibid.*

As to the prayer of the petitioner in the said case of *Clarin v. Alo*[15] asking the Court to order the provincial board of canvassers to proceed with the counting of the returns, the Court ruled that it was premature to grant the relief sought by the petitioner because the lower court had jurisdiction to decide the question of correction of election returns and proceedings therein had been left pending by the preliminary injunction. The right to be proclaimed elected, the Court observed, is valuable, in view of the experience that election protests usually consume almost half of the term of office, during whichh period the should-be declared elected is deprived of the benefits, of the salaries and emoluments corresponding thereto. Because of this care must be taken to prevent proclamations of election which may end to fraudulent results with consequent irreparable damages.[16]

3. *Sufficiency of allegation of jurisdictional facts.*—The Supreme Court considered sufficient the requisites laid down in the case of *Pobre v. Quevedo*.[17] In order to confer jurisdiction on the Court of First Instance over an election protest it is sufficient to file a motion to that effect stating the following facts:

> "(a) That the protestant has duly registered his candidacy and received votes in the election;
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> "(b) That the protestee has been proclaimed elected in said election;
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> "(c) That the motion of protest was filed within two weeks after such proclamation."

This question on the sufficiency of allegation of jurisdictional facts received due consideration of the Supreme Court in *Jalandoni v. Sarcon*.[18] Demetrio Sarcon and Leopoldo Jalandoni were candidates for the office of Mayor of Midsayap, Cotabato, and had been voted for as such in the elections held on November 13, 1951. In the canvass by the Municipal Board of Canvassers, Sarcon obtained 3,181 votes and Jalandoni 3,088 votes, and as a result the former was proclaimed elected. In due time, the latter filed an election protest in the Court of First Instance of Cotabato.

Sarcon contended that the motion of protest did not contain jurisdictional facts because it failed to state that the protestant was a candidate voted for in the elections held on November 13, 1951, and that he had presented the required certificate of candidacy. He claimed that these allegations are essential and the failure to include them in the motion of protest operates to divest the court of its jurisdiction over the case.

Deciding in favor of the protestant, the Supreme Court stated:

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[15] *Supra*, note 13.
[16] *Ibid.*
[17] 52 Phil. 359, 360-361 (1928).
[18] G.R. No. L-6496, January 27, 1954.

"We agree with counsel that the Court of First Instance when taking cognizance of election protests, act as a court of special jurisdiction . . . But we disagree with counsel that the motion of protest in the present case does not allege facts sufficient to confer jurisdiction upon the lower court.

"Among the important allegations appearing in the motion of protest are that the protestant is a qualified elector and one of the registered candidates voted for in the general elections held on November 13, 1951, that in accordance with the certificate of canvass of the municipal board of canvassers, the protestee received 3,181 votes and the protestant 3,088 votes, and on December 3, 1951, the protestee was declared elected to the office of Mayor of Midsayap. In our opinion, these allegations substantially comply with the law and are sufficient to confer upon the court the requisite jurisdiction . . . Indeed, to countenance the plea of protestant would be to defeat an otherwise good case through a mere technical objection, which is the duty of the courts to prevent, for 'it has been frequently decided, and it may be stated as general rule recognized by all the courts, that statutes providing for election contest are to be liberally construed, to the end that the will of the people in the choice of public officers may not be defeated by merely technical objections. To that end immaterial defects in pleadings should be disregarded and necessary and proper amendments should be allowed as promptly as possible.'[19] As a corollary, it should be stated that the lower court did right in allowing the presentation in evidence of the certificate of candidacy of protestant which is necessary to establish a material jurisdictional fact."

4. *Sufficiency of cause of action against ineligible person.*—When a person who is not eligible is elected to a provincial or municipal office, his right to the office may be contested by a registered candidate for the same office before the Court of First Instance of the province within one week after the proclamation of his election, by filing a petition for *quo warranto*.[20] Construing this provision is the case of *Calano v. Cruz*.[21] Here Pedro Cruz was proclaimed a councilor-elect in Orion, Bataan, by the Municipal Board of Canvassers. Petitioner Calano filed a petition for *quo warranto* under section 173 of the Revised Election Code[22] contesting the right of Cruz to the office of municipal councilor.

The Supreme Court ruled that to legalize the contest in the section just mentioned does not require that the contestant prove that he is entitled to the office.[23] In *Llamos v. Ferrer*[24] the Supreme Court

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[19] *Heyfron v. Mahoney*, 18 Am. St. Rep., 757, 763 (1890); *Galang v. Miranda*, 35 Phil. 269 (1916).

[20] Sec. 173, Revised Election Code.

[21] G.R. No. L-6404, January 12, 1954.

[22] Rep. Act No. 180, as amended.

[23] In *Llamos v. Ferrer*, 47 O.G. No. 2, p. 727 (1951), wherein petitioner Llamos who claimed to have received the next highest number of votes for the post of mayor, contested the right of respondent Ferrer to the office for which he was proclaimed elected, on the ground of ineligibility, the Supreme Court held that section 173 of the Revised Election Code while providing that any registered candidate may contest the right of one elected to any provincial or municipal office on the ground of ineligibility, it does not provide that if the contestee is later declared ineligible, the contestant will be proclaimed elected.

[24] Supra, note 23.

practically declared that under section 173, any registered candidate may file a petition for *quo warranto* on the ground of ineligibility, and that would constitute a sufficient cause of action. It is not necessary for the contestant to claim that if the contestee is declared ineligible, he (contestant) be declared entitled to the office. As a matter of fact, in the *Llamos* case, the Supreme Court declared the office vacant.

5. *Recounting in contested elections.*—The Revised Election Code provides that upon the petition of any interested party, or *motu proprio*, if the interests of justice so require, the court shall immediately order that the copies of the registry lists, the ballot boxes, the election statements, the voters' affidavits, and other documents used in the election be produced before it and that the ballots be examined and the votes recounted, and for such purpose it may appoint such officers as it may deem necessary.[25]

In *Orio v. Bello*,[26] the remedy sought was certiorari. The question involved was: Did the Court of First Instance commit an abuse of discretion in declaring the results of an election solely on the result of the recounting of the votes cast at the protested precincts omitting entirely the votes obtained by the contending parties in the precincts not contested?

The lower court in the instant case refused to count the votes in the unprotested precincts arguing that, inasmuch as they were not protested, it could not receive evidence regarding the same, notwithstanding that it had before it Exhibits E, FF, GG, and HH which showed the votes that the candidates litigants obtained from said precincts. It did not want to take into account the fact that it could not logically determine who of those elected for the two positions of councilors in dispute if the votes obtained by the litigants from the uncontested precincts were not added to those obtained from the precincts in question . . . Nor did it want to take into account the fact that it had at its disposal the official documents showing the votes in said uncontested precincts, despite the fact that Section 175 of the Revised Election Code gives to the court authority to order *motu proprio*, if the interests of justice require it, to be brought before it the list of voters, the ballot boxes, the minutes of the board of inspectors, and other documents used in the election so as to examine them and recount the votes.

In view of the foregoing, the Supreme Court granted the petition for certiorari.

6. *Rules for the appreciation of ballots.*—The Revised Election Code provides rules to be observed in the reading and appreciation of ballots.[27] These rules have been enriched by two cases decided by the

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[25] Sec. 175.
[26] G.R. No. L-6288, March 25, 1954.
[27] Sec. 149, Rep. Act No. 180, as amended.

Supreme Court: *Caraecle v. Court of Appeals* and *Castillo v. Court of Appeals*[28] jointly decided, and *Hilao v. Bernados*.[29]

In *Hilao v. Bernados*[30] the only question presented to the Supreme Court for determination hinged on the appreciation of the ballots in the protested and counter-protested precincts. This means, in the language of the Court, that the findings of fact of the Court of Appeals with regard to the evidence *aliunde* submitted by both parties were no longer open for review, the function of the Supreme Court in this case being limited to determining if the appreciation made of said ballots by the Court of Appeals, apart from the evidence alluded to, was made in accordance with law and the rulings of this Court.

Ballot TB-37 was rejected by the Court of Appeals as a marked ballot because the candidates for senators were voted for in the spaces for councilors, and the only reason advanced for its rejection was that the voter appeared to be intelligent and could not have innocently committed the mistake of writing in the wrong places the names of the candidates and, therefore, this interchange of names must have been deliberately resorted to for the only purpose of identifying his ballot. The Supreme Court believed this finding to be an error for under paragraph 13 of section 149 of the Revised Election Code, said votes should be considered as stray votes and as such they do not invalidate the whole ballot. Such interchange of votes shall be considered innocent unless it should clearly appear that the intention of the writer was to mark the ballot.[31]

In *Caraecle v. Court of Appeals*,[32] *ballot* B-26 of precinct No. 1 showed the following words or names: "Governor Adaza" on the fifth space for Senators; the word "Mayor" on the third space for councilors; the name "F. del Castillo" on the fourth space for councilors; and the name "L. Ubas" on the sixth space for councilors. There being no person voted for mayor on the space provided for it in the ballot, the word "Mayor" on the third space for councilors and the name "F. del Castillo" on the fourth space for councilors written by the voter sufficiently indicate his intention to vote in favor of F. del Castillo for mayor of the municipality.

Ballots RH-25 and RH-342, in the *Hilao* case, were objected to because on the last spaces for councilors the name Leon Ka. Tongohan was written with additional epithets. Thus in ballot RH-25 "Leon Bakitong Pasikat" was written on the sixth line for councilors ,whereas in ballot RH-342 "Leon Baliw Tongohan" was also written on the sixth line for councilors, and it was contended that the additional epithets were written by the electors with the only purpose of identifying the ballots. It was proven that Tongohan was a conspicuous local politician and the

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[28] G.R. Nos. L-6589 and L-6655, January 29, 1954.
[29] G.R. No. L-7704, December 14, 1954.
[30] *Supra*, note 29.
[31] *Ibid.*
[32] *Supra*, note 28.

campaign manager and most aggressive orator of Hilao, and consequently a bitter political enemy of Bernardos, but it was well known that he was not a candidate for any office . . . The Supreme Court merely considered this as a stray vote.[33]

Ballot RH-344 contained the words "Catapusan si Hilao" (meaning "I place Hilao last") in the last space for councilors. The Supreme Court believed this expression irrelevant and unnecessary and ruled that this was undoubtedly written as distinguishing mark.[34]

Ballot RH-32 contained all the names of the candidates voted for written in ordinary writing except for the name of "T. Bernardos" which was written in capitalized block-type letters or in printed form in the space for mayor. The Court held this as a mere variation which under paragraph 18 of section 149 of the Revised Election Code cannot have the effect of invalidating the ballot.[35]

In ballot RH-257, all the names of the candidates voted for were written in ordinary writing with the exception of the name of "Teodulo Bernardos," which was written in big Gothic letters with a flower drawn underneath in the space for mayor. The Court commented that Gothic lettering can no longer be considered a mere variation in the writing of the voter. This ballot was rejected as marked ballot.[36] The same ruling was made in the *Caraecle* case as to ballot A-2 of precinct No. 1-a, because the names of the other candidates voted for were written in Roman characters while that of Eligio Caraecle was in Arabic.[37]

In ballot RH-167, the lower court found that the name written on the space for mayor was "T. Bamndiao" and, consequently, rejected this ballot for Bernados because said name is not *idem sonans* for T. Bernados. The Supreme Court held that there was no question that the ballot was not so defective enough as to fail to show that the intention of the voter was to vote for Bernados.[38] A similar holding was made in the *Caraecle* case where the word "Cebarle" appearing on the line for mayor in ballot B-12 of precinct No. 1 was deemed to have the sound of "Caraecle."[39]

Ballot RH-341 was rejected by the lower court because it contained the word "Agnos" before the name of Teresa M. Jugo, a candidate for councilor, which was considered as a distinctive mark. Since Jugo was the lone woman candidate for councilor, the Court ruled that the word "Agnos" might have been added only to her name as a mere nickname or appellation of friendship[40] and so admitted the ballot.[41] But ballot

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[33] *Hilao v. Bernados*, see note 29, *supra*.
[34] *Ibid.*
[35] *Ibid.*
[36] *Ibid.*
[37] *Caraecle v. Court of Appeals*, see note 28, *supra*.
[38] *Hilao v. Bernados*, see note 29, *supra*.
[39] *Caraecle v. Court of Appeals*, see note 28, *supra*.
[40] Sec. 149, par. 9, Revised Election Code.
[41] *Hilao v. Bernados*, see note 29, *supra*.

A-4 of precinct No. 7 in the case of *Caracle v. Court of Appeals*[42] containing the letters "MBDC" written on the third space for Senators, was rejected as not coming within the purview of section 149, paragraphs 15 and 18, of the Revised Election Code.

7. *Presumption as to spoiled ballots.*—If a voter shall soil or deface a ballot in such a way that it cannot lawfully be used, he shall surrender it folded to the inspector or poll clerk from whom he received it . . . and such spoiled ballot shall without unfolding it and without removing the detachable coupon be distinctly marked with the word "spoiled" and signed by the inspectors on the indorsement fold thereof and immediately placed in the box for spoiled ballots.[43]

In the case of *Hilao v. Bernados*,[44] the Supreme Court stated that the law presumes that ballots deposited in the red box are spoiled ballots, whether or not they contain a notation to that effect. However, in the instant case the Court believed that the facts proven, as found by the Court of Appeals, sufficiently overcome such presumption pointing to the inevitable conclusion that said ballots were placed in the red box, not at the time they were cast by the elector, but during the canvassing of the votes, and, therefore, they can still be the subject of review as marked ballots.[45]

8. *Dismissal of election protests.*—The case of *Villalux v. Candido*[46] illumines one point in the procedural aspect of election protests. This was an election protest over the office of mayor of the municipality of Hinatuan, Surigao, in the election held on November 13, 1951. The difference in the number of votes between the candidates was only 6 votes. The protest having been answered, the judge of the lower court appointed commissioners with detailed instruction to revise the ballots, and they submitted their report on time.

On motion of the protestant, the hearing was set on July 14, 1952 at 8:30 in the morning, in Surigao, Surigao. On said morning the hearing was called and the protestant or his attorney having failed to appear, the lower court dismissed the protest without special pronouncement as to costs.

It appeared that the protestant having taken a boat, the "M/V Limteangteng" which ply regularly every week between Hinatuan and the town of Surigao, on July 12, 1952; the vessel which ordinarily would have docked at Placer at 6 o'clock in the morning of the 14th of July, was delayed at an intermediary port of Tandang. The ship docked at Placer at 8 o'clock and the protestant arrived in court at Surigao at 10 o'clock in the morning.

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[42] *Supra*, note 28.
[43] Sec. 136, Revised Election Code.
[44] *Supra*, note 29.
[45] *Ibid.*
[46] G.R. No. L-7028, March 6, 1954.

It also appeared that one of the lawyers of the protestant, one Olimpio Epis, a member of the Provincial Board of Surigao holding office in the town of Surigao, appeared in court at 8:30 in the morning of July 14th immediately after the judge had given the order dismissing the case. Despite the efforts of said lawyer to have the judge reconsider the order of dismissal, the latter refused to accede to the request, telling the lawyer that he (lawyer) "cannot be more interested than your client."

The absence of the protestant at the time of the hearing having been satisfactorily explained, the Supreme Court held that the refusal of the judge to hear the protest was an erroneous exercise of discretion.

III. Cases on the Law of Public Officers

No officer or employee in the Civil Service shall be removed or suspended except for cause provided by law.[47] There is thus a guarantee of security of tenure to officers and employees in the Civil Service. This guarantee is of utmost value in maintaining morale and in promoting efficiency. Any employee whose continuance in office is dependent upon the whim and fancy of his superior, is likely to be the victim of fear and insecurity. His inefficiency can be expected to follow as a matter of course.[48]

The decisions of the Supreme Court during the year 1954 deal mostly with security of tenure. They concern such objects as abolition of office, removal and reinstatement.

1. *Abolition of the office.*—One of the causes for cessation of the right to office is abolition of the office.[49] In *Brillo v. Enage*[50] the right of the petitioner to the office in question hinged on whether the same was abolished or not. The Supreme Court answered in the negative. The petitioner in this case was the Justice of the Peace of the municipality of Tacloban, Leyte, from November 7, 1921 and was such on June 12, 1953. On June 20, 1952, Republic Act No. 760 was approved, converting the municipality of Tacloban into a chartered city with the same territorial jurisdiction. The Charter of the City contains the customary article on the municipal court. It provides that there will be a municipal judge for the city whose jurisdiction will be the same as that which the law confers upon the justice of the peace of the place.

The petitioner had been discharging his duties as justice of the peace of Tacloban until the city was inaugurated on June 12, 1953. Thereafter an auxiliary municipal judge was appointed and was then hearing and deciding cases of the Municipal Court of the City. On the 27th of the same month, the herein respondent was appointed *ad interim*

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[47] Art. XII, Sec. 4, Constitution.
[48] Fernando and Quibuyen, *Law of Public Administration*, p. 29 (1954).
[49] *Ibid.*, p. 174.
[50] G.R. No. L-7115, March 30, 1954.

municipal judge of Tacloban and was sworn to office on July 6, 1953, from which date he began discharging his duties as judge.

One of the questions raised by the respondent was that the Charter of Tacloban had abolished the office (of justice of the peace). The Court ruled that the court of Tacloban had not been abolished. The only change was in the name with the change of the local government. In deciding the issue in favor of the petitioner, the Supreme Court said:

> "The office of the petitioner is that of justice of the peace converted into a municipal court of the city of Tacloban, and is not vacant and the respondent was appointed without legal authority and is a usurper of the same."

A different situation prevailed in the case of *Manalang v. Quitoriano*[51] where the petitioner contested, by *quo warranto* proceedings, the title of the incumbent Commissioner of the National Employment Service, and sought to take possession of said office as the person allegedly entitled thereto.

It appeared in this case that, prior to July 1, 1953, and for some time prior thereto, petitioner was Director of the Placement Bureau, an office created by Executive Order No. 392, dated December 31, 1950. On July 1, 1953, respondent was designated and sworn in as Acting Commissioner of the National Employment Service. This designation was assailed in the present case by the petitioner as equivalent to his removal from office without cause.

The Supreme Court decided against the petitioner. The Court held that Republic Act No. 761 expressly abolished the Placement Bureau, and by implication, the office of director thereof, which, obviously cannot exist without said Bureau. By the abolition of the latter and of said office, the right thereto of its incumbent, petitioner herein, was necessarily extinguished.[52]

2. *Suspension from office.*—In a number of decisions, the Supreme Court held that the President may not remove or suspend any officer of the Philippine government in both the classified and the unclassified Civil Service except for causes expressly stated in pertinent statutes.[53] If the President of the Philippines cannot do so much less can a Governor of a province. This is the tenor of the ruling in *Burguete v. Mayor.*[54] In this case petitioner Burguete was elected municipal mayor of Badajoz, Romblon in November, 1951. On August 21, 1951, a criminal complaint for serious slander was filed against him in the justice of the peace court of Badajoz. This was forwarded to the Court of First Instance on October 7, 1952. On November 13, 1952, Governor Jo-

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[51] G.R. No. L-6898, April 30, 1954.

[52] *Ibid.*

[53] SINCO, *Political Law* (1954 ed.), p. 278, citing the cases of *Lacson v. Romero*, 47 O.G. 1778 (1951); *Santos v. Mallare*, 48 O.G. 1787 (1952); *Lacson v. Roque*, 49 O.G. 93 (1953); *Jover v. Borra*, 49 O.G. 2765 (1953).

[54] G.R. No. L-6538, May 10, 1954.

vencio Mayor suspended him as mayor on the ground that a criminal case against him is pending, and that it was the "standing policy of the administration to place under suspension any elective official against whom a criminal action involving moral turpitude is pending adjudication before the competent court." The Governor directed the vice-mayor to act as mayor.

The case for serious slander was still pending in the Court of First Instance when Burguete initiated the present proceedings. No administrative investigation by the provincial board had been conducted under section 2188 of the Revised Administrative Code.

Declaring the suspension of the petitioner illegal and unjustified, the Supreme Court stated that the question raised in this case had already been decided in the case of *Lacson v. Roque*.[55] Without elaborating, the Court pointed out the evil of this practice by saying that "it would be an easy expedient to file a criminal complaint or information against a municipal mayor for the purpose of suspending him, and the suspension would last almost indefinitely, according to the time that would elapse before the criminal case is finally terminated by conviction or acquittal."[56]

3. *Removal from office.*—Among a number of cases decided by the Supreme Court respecting the matter of removal from office, the cases of *Ocupe v. Martinez*[57] and *Cometa v. Andanar*[58] deal with the office of municipal mayor. In both cases the proceedings were instituted to test the validity of the designation and appointment of respondents as acting mayor of their respective municipalities.

In *Ocupe v. Martinez*[59] the petitioner was appointed mayor of the municipality of Polanco on November 28, 1951, qualified as such by taking her oath of office on December 8, 1951 and performed the duties and functions thereof. On January 26, 1954, the Executive Secretary, by order of the President, appointed the respondent as mayor of the same municipality to replace the petitioner. The Supreme Court ruled that the petitioner was entitled to hold the office of mayor of the municipality of Polanco, Zamboanga del Norte, to the exclusion of the respondent.

The decision in the *Ocupe* case was based on the ruling of the Supreme Court in the earlier case of *Cometa v. Andanar*.[60] This was a petition for *quo warranto* brought to question the legality of the ouster of the petitioner from office as municipal mayor of Sapao, Surigao.

On October 1, 1953, the President of the Philippines created the municipality of Sapao, Surigao, pursuant to the provisions of section 68

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[55] 49 O.G. 93 (1953).
[56] *Burguete v. Mayor*, see note 54, *supra*.
[57] G.R. No. L-7591, August 16, 1954.
[58] G.R. No. L-7662, July 31, 1954.
[59] *Supra*, note 57.
[60] *Supra*, note 58.

of the Revised Administrative Code. On the same day, the petitioner was appointed by the President mayor of the newly created municipality and qualified as such by taking the oath of office on October 7, 1953 and assumed all the duties and exercised the functions thereof. On or about February 8, 1954, the petitioner alleged that, without legal and justifiable cause, not having been charged with any malfeasance in office to warrant his removal or suspension, he was removed from office by the designation and appointment of the respondent as acting mayor of the municipality. The petitioner further alleged that he had requested the Executive Secretary to inform him of the cause of his removal from office, but that the inquiry remained unanswered.

The Court held that the respondent not having been elected at the regular election in accordance with section 7 of Republic Act No. 180, as amended by Republic Act No. 867, he could not be designated or appointed to succeed the petitioner, as the latter could only be removed from office for cause provided by law and in the manner prescribed therein.[61] There was nothing in the petition and the answer to show that the petitioner had been removed for cause provided by law. In answer to the claim of the respondent that his appointment was in response to the general demand of the inhabitants of the new political division and by unanimous resolution of the municipal council, the Supreme Court ruled that the municipal council cannot by resolution remove the municipal mayor from office, and even if the feeling of the inhabitants of a municipality be against the incumbent mayor, the President cannot, as already stated, remove a municipal mayor from office except for cause provided by law and in the manner prescribed therein.[62]

The other six cases involving removal of peace officers were decided by the Supreme Court upholding the security of tenure of office. Because of the individual significance of each of these cases, it is worthwhile considering them separately.

The petitioners in the case of *Mission v. Del Rosario*[63] were detectives in the Police Department of the City of Cebu, some of whom were civil service eligibles. On May 11, 12, and 19, 1953, petitioners were notified by the Mayor that they had been removed because he had lost his confidence in them. After their positions had been declared vacant because of their removal, the City Mayor immediately filled the same with new appointees who were, at the time of filing of this petition, discharging the functions and duties appertaining thereto.

Respondents tried to justify the removal of the petitioners on the premise that, their positions being primarily confidential, their removal could be effected under Executive Order No. 264 of the President of the Philippines on the ground of lack of trust and confidence.

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[61] *Lacson v. Roque*, 49 O.G. 93 (1953); *Jover v. Borra*, 49 O.G. 2765 (1953).
[62] *Cornata v. Andaya*, see note 58,, *supra*.
[63] G.R. No. L-6754, February 26, 1954.

In answer to this, the Supreme Court said that an analysis of the pertinent provisions of the Charter of the City of Cebu[64] will reveal that the position of a detective comes under the police department of the city. The Court further stated that it appearing that pttitioners, as detectives, or members of the police force of Cebu City, were separated from the service not for any of the grounds provided by law, and without the benefit of investigation or trial therein prescribed,[65] the conclusion is inescapable that their removal was illegal and of no valid effect.[66]

On all fours with the case of *Mission v. Del Rosario* is the case of *Abello v. Rodriguez*.[67]

Of the same tenor as the above cited cases of *Mission v. Del Rosario* and *Abello v. Rodriguez* is the case of *Uy v. Rodriguez*.[68] Petitioner in this case was a detective inspector in the police department of Cebu City until September 5, 1952, when the respondent city mayor dispensed with his services on the ground that he could no longer repose his trust and confidence in the peititioners.

The Court observed that the statement submitted by the petitioner showed that he was not a civil service eligible, but neither did it appear from the record that his appointment as member of the detective force was temporary in character or for periods of three months merely, and that he had been reappointed every three months until his separation. In view of these circumstances, together with the fact that petitioner was promoted as senior detective inspector, the Court concluded that his appointment was not temporary and therefore he could not be dismissed or removed except in accordance with the provisions of existing law. The Court ordered the respondent city mayor to reinstate the petitioner.

That a peace officer cannot be dismissed simply in accordance "with the new policy of the present administration" is the ruling in the case of *Palamine v. Zagado*.[69] Petitioners in this case were on June 12, 1953, the chief and members of the police force of Salay, Misamis Oriental. On that date they were removed from service by the respondent mayor of the said municipality. The present action was instituted to test the validity of such removal. In ordering the reinstatement of the petitioners, the Supreme Court said:

> ". . . as the record now stands, the petitioners appear to have been dismissed simply in accordance 'with the new policy of the present administration', as avowed in the letters of dismissal. Probably that is the 'legal cause' alleged by the respondents. But they forget and disregard Republic Act 557, inasmuch as no misconduct or incompetency, dishonesty, disloyalty to the Government, serious irreg-

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[64] Commonwealth Act No. 58, secs. 32, 34, and 35.
[65] Sec. 1, Rep. Act No. 557.
[66] *Mission v. Del Rosario*, see note 63, *supra*.
[67] G.R. No. L-6867, June 29, 1954.
[68] G.R. No. L-6772, July 30, 1954.
[69] G.R. No. L-6901, March 5, 1954.

> ularity in the performance of duty or violation of law has been charged and proven against the petitioners. The Legislature in said statute has wisely expressed its desire that membership in the police force shall not be forfeited thru changes of administration, or fluctuations of 'policy,' or causes other than those it has specifically mentioned."

To the question whether non-eligibles appointed to a position in the classified civil service may be validly replaced by other non-eligibles, the case of *Manigbas v. De Guzman*[70] gives an affirmative answer. Petitioner herein was appointed Chief of Police of Rosario, Batangas, on September 21, 1951. But around three months later he was replaced by respondent. Petitioner and respondent were civil service non-eligibles and their appointments were authorized by the Commission on Civil Service as "temporary" under section 682 of the Revised Administrative Code. The Supreme Court held in this case that as the position of member of the police department of a city is embraced within the classified civil service, non-eligibles appointed to this position cannot continue in office for more than three months, and can, therefore, be thereafter replaced by other non-eligibles.[71]

In *Inocente v. Ribo*[72] the question raised by the petitioners Inocente and Galenzoga was that being civil service eligibles, they were entitled to their positions as sergeant of the provincial jail and provincial guard respectively, in the Baybay provincial jail, Leyte, to which they were appointed, and might be removed only for cause and in accordance with law.

Upholding this claim of petitioners Inocente and Galenzoga, the Court said:

> "If the petitioners Inocente and Galenzoga were appointed as sergeant of the provincial guards and provincial guard, respectively, for the province of Leyte and not with a definite station at Baybay, Leyte, their respective transfers to Maasin and Tacloban, Leyte might have a different legal aspect and effect. There is no proof that under the rules and regulations of the Department, bureau and office concerned, the petitioners are transient officials or employees who may, from time to time, be transferred from one municipality to another in the interest of public service."

In connection with the preference claimed by the other petitioners who were veterans, the Supreme Court had occasion to construe the pertinent provisions of Republic Act No. 65, as amended by Republic Act No. 154. We quote:

> "If the preference of a veteran is to be confined to the appointment and promotion only and does not include the right to continue to hold the position to which he was appointed until an eligible is certified by the Commissioner of Civil Service, then he would be in

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[70] G.R. No. L-6137, January 22, 1954.

[71] *Orais v. Ribo*, G.R. No. L-4945, October 28, 1953, and *Peña v. City Mayor*, G.R. No. L-5700, December 18, 1953, were cited.

[72] G.R. No. L-4989, March 30, 1954.

> no better situation than a non-eligible who is not a veteran. The appointment of a veteran, however, is subject to cancellation or his removal from office or employment must be made by competent authority when the Commissioner of Civil Service certifies that there is an eligible.
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> "It does not appear from the stipulation of facts that the respondents are civil service eligibles or that they are officers and enlisted men of the Philippine Army or of recognized or deserving guerrillas who took active participation in the resistance movement, and/or in the liberation drive against the enemy. And even if they were veterans under Republic Act No. 65, as amended, the respondents are not entitled to be appointed to replace the petitioners who are veterans, because the former were not appointed within the period provided in the Act." [73]

4. *Reinstatement.*—The Supreme Court had occasion to resolve the question of reinstatement in the case of *Velasquez v. Lacson.*[74] Petitioner in this case was a lieutenant in the police force of the City of Manila when he was accused together with another policeman, Federico Barba, and sentenced to 20 years imprisonment for the crime of extortion.[75] He began serving his sentence on August 18, 1944, but was set free by the guerrillas on February 13, 1945. Upon the restoration of peace, the petitioner applied for reinstatement to his old post as lieutenant of the police. Having failed to secure his reinstatement through administrative remedies, petitioner brought the present action for mandamus. In denying the petition, the Supreme Court said:

> "Counsel for petitioner-appellant invokes section 2 of Rule VII of the Civil Service Rules without considering the first paragraph of Executive Order No. 223 which is very important and which provides: 'For the sake of uniformity in matters of reinstatement of officers and employees who are separated from the service without delinquency and upon recommendation of the Commissioner of Civil Service . . .'"

The Court concluded that the petitioner, having been condemned to 20 years imprisonment, had no right to be reinstated. As to the effect of the reinstatement of Velasquez who was accused together with the petitioner and who was also convicted of the charge, the Court considered this as not obligatory on the respondent. The Supreme Court further stated that the power to appoint vested in the Mayor carries with it the free exercise of discretion and the peremptory order will issue only when the officer abuses such discretion.[76]

IV. Conclusion

It is heartening to note that the Supreme Court has been consistent in its decisions upholding the purity of the ballot and preserving inviolate

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[73] *Ibid.*

[74] G.R. No. L-7730, August 25, 1954.

[75] The prosecution was made pursuant to Act No. 65 of the Philippine Assembly under the Japanese occupation.

[76] *Velasquez v. Lacson*, see note 74, *supra*.

the expression of the sovereign will. The same may be said of the concern shown by it in guarding the security of tenure of office as one of the fundamental principles underlying our system of civil service. In connection with tenure of office, however, it is worthwhile to consider that the ruling laid down in the case of *Manalang v. Quitoriano*[77] is susceptible of interpretation, which if pushed to its logical extreme, may cause adverse effects on the morale of the civil service. The practice of abolishing a certain office to weed out political opposition and to achieve uniformity of beliefs[78] should not be countenanced as well by the Courts as by Congress.

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[77] *Supra*, note 51.
[78] *See Philippines Free Press*, March 27, 1955, p. 1.