LAW ON MUNICIPAL CORPORATIONS, PUBLIC OFFICERS, AND ELECTIONS *

Edgardo J. Angara **
Pablo B. Badong ***

I. MUNICIPAL CORPORATION

1. Local Autonomy

The extent of the Presidential power of supervision over local governments has been a frequent subject of unresolved conflicts. More than once in the past, an assertive President had taken upon himself the exercise of powers transcending the bounds of his legitimate prerogative. [1] The court rose equal to every challenge, successfully putting the Presidential assaults to a hurried end. The rule of law ultimately triumphed. The decisions, deciding, as they did, fundamental issues left unanswered an important one. A recurring question, the extent of the powers of general supervision, lingers on and haunts the court with every questionable exercise of Presidential power brought to its attention.

Behind the several decisions stand, however, a singularly welcome fact: a noticeable judicial attitude in favor of local autonomy. To practically emasculated local governments, the demonstrated receptiveness, even the mere inclination, is a much-needed shot in a failing body. This favorable attitude is confidently taken as a prophesying rod by which to divine the future trend of judicial thinking in the face of actual or threatened assaults against the nearly-beaten local governments. Surely, the judicial trend cannot but unmistakably continue to incline on the side of local autonomy.

Until the decision in *Alba v. Evangelista.* [2] This time, the Supreme Court held that the President may, at any time and at his slightest pleasure, replace an appointive vice-mayor who, by a subtly refined phraseology of the law, holds "office at the pleasure of the President." [3]

The implications of this case viewed in the perspective of an increasingly growing movement for local autonomy are far-reaching. The mischievous phrase may easily become a standard provision in creating statutes, furnishing the President an added strength in his strangle-hold over local officials and resulting to more and more dependent and weak local governments. If the event occurs, the President's power of general supervision becomes purely theoretical. One need not be initiated in the law to know that the power is control. Surely, when the President is granted the power of "general supervision over local government as may be provided by law" the constitution mean *supervision* and not *control.*

---

* Budgetary and spatial limitations compel us to print the articles which follow in finer types.—Editor's note.

** Member, Student Editorial Board, Philippine Law Journal, 1957-58.
*** Administrative Assistant, Philippine Law Journal, 1957-1958.

1 Lacson v. Roque. 49 OG 93 (1953).
Joven v. Barra, GR No. L-6782, July 25, 1953.
Rodriguez v. Del Rosario, GR No. L-6715, October 30, 1953.

2 GR No. L-10360, January 12, 1957.

3 Cf. De Los Santos v. Mallari, 48 OG 1791 where the Revised Administrative Code provision giving the President the power to "remove at pleasure" had been declared inconsistent with the Constitutional provision that "no officer or employee in the Civil Service may be suspended or removed except for cause as provided by law" and held to have been repealed by the Constitution.

A decision overshadowed by the shattering impact of the *Alba* case is *Dominguez, et al v. Pascual.* [4] The Court upheld the prerogative of the provincial board of abolishing four positions in the provincial government for insufficiency of funds. It held that the President and the Secretary of Finance have no power to disapprove the action of the provincial board. The President, the Court reiterated can claim no greater authority than "general supervision." Neither does the power of supervision vested upon the Secretary of Finance over financial matter support his disapproval, the suppression of the positions not being a financial matter. [5]

2. Removal of Police Officers:

Republic Act No. 557 entrusts to the Municipal Council or board the exclusive power to investigate and remove members of the municipal police force. The investigation must be conducted by the council or board as a body. [6] An investigation made by either a member or a committee thereof is void, even if the council shall ratify the recommendation of its investigating member or committee. [7]

The dismissal, therefore, of a member of the city police force on the basis of the recommendation of a police committee of the board was illegal. [8] So also was void the relief based on the findings of a member of the board, even if the board had approved the action. [9] Since, an investigating committee has neither power to render a decision nor to investigate charges, any so-called "decision" rendered by it could never become final. [10]

Republic Act No. 557, it should be observed, affords protection only to members of the provincial, city or municipal police force possessing civil service eligibility. [11] So the removal, without following the procedure of the Act, of a chief of police who was not a civil service eligible was proper. [12] His replacement by another non-eligible but who was a war veteran was authorized by the law giving preference to veterans, provided other considerations are approximately equal. [13]

3. Corporate Acts to be exercised by the Council duly assembled in session.

Members of a municipal council may pass a resolution or decision thereof only when duly assembled in session, as such body. Their individual, separate acts, when not gathered in session, are not acts of the council and do not carry the authority thereof. It is well settled that corporate proceedings cannot be conducted by individual councilors. There must be a meeting for deliberation, consultation and corporate action. This is the ruling in *Marifosque, et al v. Luna.* [14] No effect was given to the agreement of several councilors entered individually on separate dates purporting to drop the administrative charges against some policemen.

4. Powers

A. To Tax:

Municipal power to tax is not an inherent power; it is purely delegated,

4 GR No. L-10057, March 30, 1957.
5 Rodriguez v. Montinola, GR No. 1-5689, May 14, 1954.
6 Festejo v. Mayor, 51 OG 1, 121 (1955).
7 Covacha v. Amante, GR No. 1-8358, May 25, 1956.
Senanillos v. Hermosisimo, et al, GR No. L-10662, Dec. 14, 1956.
8 Jose v. Lacson, et al GR No. 1-10477, May 17, 1957.
9 Cuyo v. City Mayor, GR No. L-9912, May 23, 1957.
10 Marifosque, et al v. Luna, GR No. L-9095, May 25, 1957.
11 Orais v. Ribo, 48 OG 12, 5386.
12 Cayabyab v. Cayabyab, GR No. L10664, May 29, 1957.
13 Rep. Act No. 1368.
14 Supra Note 10.

generally only by express grant but occasionally implied as necessary to another expressly granted power.[15] The grant of the taxing power must be evident and unmistakable, and all doubts will be resolved against its exercise and in favor of the taxpayer.[16] Thus, in the case of *Jos S. Johnston & Sons Inc. v. Regondola,*[17] the Supreme Court held that the City of Zamboanga has no authority to impose a tax on the sale of lumber. The city Charter grants the Council powers "to tax, fix the license fee for, regulate the business, and fix the location" of certain establishment among them lumber yards and "the storage and sale of gunpowder, tar, pitch gasoline or any of the products thereof, and other highly combustible or explosive materials." The materials whose storage and sale are authorized to be taxed under this provision of the charter are: (1) those specifically mentioned for that purpose, namely gunpowder, etc. (2) any product made from them, and (3) all other highly combustible or explosive materials. Lumber is not specifically mentioned nor included in the category described.

Municipal taxation is subject to certain fundamental principles. One of them is that which prohibits the imposition of a tax in whatever form on goods exported from or imported into the municipality.[18] In *Panaligan v. City of Tacloban,*[19] the Supreme Court held void an ordinance of the City imposing license fees for every head of hog, cattle and carabao that was transported from Tacloban to other places. Nowhere in the charter can be found any specific provision bestowing such power. The principle expressed in the Administrative Code therefore, remains the rule on this matter.

American Bible Society v. City of Manila[20] involves the validity of an ordinance imposing a municipal license fee on retail dealers in general merchandise. The Supreme Court held this ordinance invalid if applied to the sale and distribution of bibles and other religious literature by a religious corporation. The ordinance impaired the free exercise and enjoyment of religious profession and worship as well as the right of dissimination of religious beliefs.

b. *Police Power:*

Like taxation, police power is not an inherent power of municipal corporations. Municipal corporations have been endowed with broad and rather general police powers to cope with the problems of health, safety, morals and public welfare. This grant is embodied in the *general welfare clause.*[21] The exercise of police power may assume the form of licensing intended as a regulatory measure.[22] Licenses are classified generally into:[23] (1) license for the regulation of useful occupations or enterprises; (2) licenses for the regulation or restriction of non-useful occupations; and (3) licenses for revenue only. The first two classes are based on the exercise of police power. The amount of license fees charged on the first two classes differ: The first class may only include the expense of surveillance and issuance of the license; the second class may include a much larger amount, the municipal corporation being allowed a wider discretion in the fixing of the fee.[24]

In Physical Therapy Organization of the Phil. Inc. v. Mun. Board,[25] an ordinance of the City of Manila regulating the operation of massage clinics

15 Rhyne, Municipal Law 668-669 (1957).
16 Icard v. City Council of Baguio, 46 OG Supp. 11, 320 (1949).
17 GR No. L-9353, November 26, 1957.
18 Revised Administrative Code, Section 2287.
19 GR No. L-9319, September 27, 1957.
20 GR No. L-9637, April 30, 1957.
21 Revised Administrative Code, Section 2238.
22 Sinco and Cortes, Philippine Law on Local Governments, 83 (1955).
23 Cu-Unjieng v. Patstone, 42 Phil. 818 (1922).
24 Sinco and Cortes, Op. Cit., Supra, note 22 at 98.
25 GR No. L-10448, August 30, 1957.

and imposing on the operator an annual fee of one hundred pesos was attacked as an ultra vires act of the city. The ordinance is valid as a lawful exercise of police power. The purpose of the ordinance, the Court said, was to prevent the commission of immorality and the practice of prostitution in an establishment masquerading as a massage clinic. Evidently, the practice of hygienic and aethetic massage was considered by the municipal board not as a useful and beneficial occupation. Hence, the amount of the license fee was well within the board discretion of the City.

License fees, imposed in the exercise of police power, are regulatory and not for the purpose of raising revenue.[26] However, in order that an ordinance imposing a license tax may be sustained as a valid exercise of police power, it must be intended to promote or be sufficiently related to the public health, morals, safety or welfare. The ordinance in *Panal'gan v. City of Tacloban*[27] fixed an inspection fee for every head of hog, cattle and carabao that was shipped from the city to other places. The pretense was put up that the license fees were imposed as a regulatory measure in the exercise of police power. It was held that the license tax was in truth for revenue purposes under the guise of a police or regulatory measure. So, the act was invalid.

C. Power to Contract:

Within the scope of its charter power and in the manner provided by law, a municipality may enter into contractual relations.[28] When the contract calls for the expenditure of the two thousand pesos or more, the municipal treasurer must certify that funds have been duly appropriated for the purpose and the amount necessary is available.[29] Generally, it is the municipal council which is authorized to express the agreement or consent of the Municipality to the contract.[30] With regard, however to contracts for municipal public works, the law specifically directs that such contracts must be entered into by the district engineer with the approval of the municipal council.[31]

A purported contract entered into without previous appropriation as certified by the treasurer is void, and the officer assuming to make it shall be liable to the government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties.[32]

In Rivera v. Mun. of Malolos,[33] the Supreme Court disallowed the private party's claim for payments based on a contract for the supply of road construction material. The contract was made without previous appropriation to meet the obligation. Moreover, the mayor, instead of the district engineer as required by law executed the contract.

D. Power to Close Public Road

It is a fundamental rule that municipal corporations in the Philippines are mere creatures of the State. It possesses and exercises only such powers as Congress may deem fit to grant them. These powers are to be strictly construed and any doubt is to be resolved in favor of the State and against the grantee.[34] The Supreme Court in *Unson v. Lacson*[35] held that the Municipal Board of

26 Supra, note 22.
27 Supra, note 19.
28 Revised Administrative Code, Section 2165.
29 Ibid, Section 606.
30 Sinco and Cortes, Op. Cit., at 203.
31 Revised Administrative Code, Section 1920 (3).
32 Ibid, Section 608.
33 GR No. L-8847, Oct. 31, 1957.
34 Vega v. City Council of Iloilo, GR No. L-6765, May 12, 1954.
35 GR No. L-7909, January 12, 1957.

Manila had no power to enact an ordinance withdrawing a public alley from public use and declaring the same as the patrimonial property of the City. The Court ruled that from the power granted by the City Charter to the Municipal Board "to provide for the laying out, construction and improvement of streets, avenues, alleys and other public places" no authority to close any of them was granted. Properties devoted to public use, the court observed, such as public streets, alleys and parks are presumed to belong to the State. Hence, a municipal corporation may not establish title adverse to the State without any express, or at least, clear grant of authority therefore by Congress.

It should be noted that, by explicit provision of law, municipal councils of regularly organized municipalities are vested with the power to close any municipal road, street, alley, park or square, provided that persons prejudiced thereby are duly indemnified and there is a previous approval of the Department Head.[36]

II. Election Law:

1. Qualification of Municipal officers:

Feliciano v. Aquino[37] is the most important case in election law decided by the Supreme Court this year. It is an uncommon case because the whole controversy was sparked exclusively by, and was almost ingeniously built upon, a punctuation. Surprisingly, the disagreement over the punctuation produced a sharply divided 6 to 5 count. Remarkably enough, the case received the happy benefit of full presentation of all the legal issues involved, both from the pattern-conscious majority and a spirited, uphold-the-voter's minority.

The case arose out of the election of November 8, 1955. Benigno Aquino Jr. overwhelmingly won the post of Mayor of Concepcion, Tarlac. Shortly thereafter, Nicolas Feliciano instituted quo warranto contesting Aquino's eligibility. Aquino, at the time of the election, was nineteen days short of the age of 23 years. The legal provision involved is that which provides:

"Section 2174 — *Qualification of Elective Municipal Officers.* An elective municipal officer must, at the time of the election be a qualified voter in his municipality and must have been a resident therein for at least one year; he must be loyal to the Republic of the Philippines and not less than twenty-three years of age..."[38]

Aquino contended that the 23-age requirement need not exist at the time of the election. The age requisite was satisfied if he was 23 years of age at the time of his assumption of office. The semi-colon, he argued, separating the voting and residence requirements on the one hand and the loyalty and the age requirements on the other, indicated that the last two conditions need not be present at the time of the election.

Justice J. B. L. Reyes, writing for the majority, thoroughly disagreed with this view. The spirit of the law as well as it's natural and obvious sense is that the candidate must not be less than twenty-three years of age at the time of the election. The Constitution and the laws have established a pattern of requiring candidates from President to provincial officers to possess the requisite age at the time of the election.[39] There is no reason why the law should sud-

36 Revised Administrative Code, Section 2246.
37 GR No. L-10201, September 23, 1957.
38 Revised Administrative Code.
39 Qualifications of Candidates for President are provided in Art. VII, Sec. 3 of the Constitution; in Article VI, Sec. 4, for Senators; in Art. VI, Sec. 7, for Congressman; and in Section 2071-2072, Revised Administrative Code, for provincial officers. The respective age requisite of these officials must be present at "the time of the election."

denly change the requirement in the case of municipal offices. Justice Reyes wrote:

> "We deem this reliance upon punctuation all together too shallow a foundation upon which to rest a conclusion that would upset the obvious pattern of the constitution and the laws of requiring candidates to possess the requisite age at the time of the election, without any cogent reason to justify departure from such requirement in the case of municipal offices."

Supporting its conclusion, the majority inquired into the legislative history of the provision. Section 12 of Act 1582, of which Section 2174 was a practical reproduction, required the candidate to be not less than 23 years of age at the time of the election, if only to be a qualified voter.[40] Consequently, the present law must have intended also that the age requisite must exist at the time of the election, as demanded by the model legislation.

Eligibility, according to Justice Reyes, embraces the attainment of the requisite age. Now, eligibility as used in the Election Code has reference to the time of the election. So it follows that the candidate must be 23 years of age at the time of the election in order that he be eligible.

As originally voted upon, the case resulted in 5 to 5 deadlock. The division was: Justices Padilla, Montemayor, Bautista Angelo, J. B. L. Reyes and Concepcion voting in favor of the foregoing opinion; Chief Justice Paras, Justices Bengzon, Labrador, A. Reyes and Endencia voting against it. Justice Felix finally broke the tie in favor of the first group.

Justice Bengzon wrote for the minority Justices. In case of doubt, according to him, uphold the voters choice. Statutory provisions imposing qualification should be interpreted liberally in favor of the people's right of choice. The court should have confirmed the popular choice, provisions of the Election law being mandatory before election, but directory thereafter.

The primary rule of interpretation is that a law should be read as punctuated. The semi-colon, quoting a grade-school grammar book, is "used to separate two independent statements." The adverbial phrase "at the time of the election" should, therefore, qualify only the first part of the quoted provision. Moreover, the majority view in American jurisprudence holds that eligibility has reference to the commencement of the term of office. So, Aquino was eligible

Justice Concepcion, in his concurring opinion to the majority, supplied the answers to the foregoing arguments of the dissent. The rule that the provisions of the Election law are mandatory before the election but directory thereafter is not controlling. The election law merely prescribes the method by which the will of the electorate shall be determined. But qualifications for an office are matters of substance, not of procedure. Thus, Section 2174 is found in the Revised Administrative Code, forming part not of *Election law* but of the *Municipal law*. The majority rule in the United States that eligibility has reference to the commencement of the term should not be followed in the Philippines. Not only that the American states adopting the said rule had no constitutional and statutory pattern after which a statutory provision like Section 2174 should be synchronized, but that New York and California, two of the American states from which our present law had been taken, have adhered to the minority rule: that eligibility has reference to the time of the election.

2. Certificate of Candidacy:

The election Code provides that no person shall be eligible unless with-

40 At the time, the voting age was 23 years.

in the time fixed by law he filed a duly signed and sworn certificate of candidacy.[41] The failure to comply with this requirement, however, if not invoked prior to the election, will not affect after the election the right of the winning candidate.[42] A victorious candidate whose certificate of candidacy was annulled prior to the election by the Commission on Elections for non-compliance with the requisites of the law is ineligible for the post to which he was elected. Being ineligible, his title to the position is a proper subject of quo warranto proceedings. This is the ruling in *Luison v. Garcia.*[43] The certificate of candidacy filed by the Liberal party on behalf of Garcia was signed merely by the chairman of the local committee. The law requires that the certificate of candidacy must state that the person is officially nominated candidate and it must be signed under oath by the president and the secretary of the party concerned.[44]

The court distinguished Luison case from the cited case of *Cecilio v. Belmonte.* In the *Luison* case, unlike in *Cecilio* where the lack of a certificate of candidacy was not raised before the election, the validity of Garcia's certificate of candidacy was passed upon and resolved adversely before the election and he did not seek review of that ruling of the Commission on Elections from the Supreme Court.

3. Election Contest

The election of a provincial or municipal official may be contested in two ways: by a *quo warranto* or by an election protest. The ground for the former is ineligibility, while the latter, irregularity in the election.[45] In *quo* warranto, the proceedings must be instituted within one week after the proclamation of the election.[46] In an election protest, the action must be brought within two weeks after the proclamation of the election.[47]

Quo warranto under Section 173 and election protest under Section 174 cannot be joined in a single petition.[48] However, it is proper for the Court of First Instance to take cognizance of both *quo warranto* and election protest regarding the same contested election, if the two actions are filed *separately* and *in different proceedings.* When both actions are so properly filed, therefore, it would be unwarranted to dismiss one because of the pendency of the other.[49]

In a case,[50] the court held that a protestant, whose certificate of candidacy was invalidated by the Commission on Elections for non-compliance with the law, has no valid cause of action in bringing a *quo warranto.* It should be noted that under the law, a *quo warranto* may only be instituted by any registered candidate.[51] A candidate whose certificate was voided by the Commission on Elections before the election is ineligible.

The election protest shall be decided within six months after it is presented in case of a municipal office, and within one year in case of provincial

41 Revised Election Code, Section 31.
42 Cecilio v. Belmonte, 52 Phil. 540 (1929).
43 GR No. L-10916, May 30, 1957.
44 Revised Election Code, Section 35.
45 Martin, Administrative Law, Law of Public Officers and Philippine Law on Elections, 324-325, (1954.
46 Revised Election Code, Section 178.
47 Ibid, Section 174.
48 Dela Rosa v. Yamson, 52 Phil. 446 (1928).
49 Luison v. Garcia, supra, note 43.
50 Sollomon v. Pancito, GR No. L-10661, May 23, 1957.
51 Revised Election Code, Sec. 173.

office.[52] It is the policy of the law to have an election contest speedily determined for the obvious reason that the term of the contested office grows shorter with the passing of each day.[53] In line with this legislative policy, a substantial amendment introducing new grounds of protests (new matter or new precincts) is only allowed within the time granted by law for the filing of a protest or counter protest.[54] Hence, in *Almeda vs. Silvosa*,[55] and *Robles vs. del Rosario*,[56] the Court held that an amendment of a counter-protest by the introduction of new precincts months after the case began cannot be allowed.

Molina vs. Panaligan decided that the right to vote can no longer be disputed by a protestant in an election protest where he failed to do so when the voters presented themselves for registration before the board of inspectors. In the election contest proceeding, the registry list shall be conclusive in regard to the question as to who had the right to vote in said election.[58] The Court held further, that the permanent voters of barrio Olongapo, a U.S. Naval reservation, possess the right to vote for the elective officials of the municipality of Subic. Though declared a naval reservation, Olongapo still forms part of the municipality of Subic and comes under its government. The Philippines, under the bases agreement, did not abdicate its sovereignty over the bases as part of Philippine territory.

4. Appreciation of Ballots

The case of *Ferrer v. Alban*[59] is illustrative of the application of the rules of the appreciation of ballots.[60]

The following ballots were considered void because used for identification purpose:[61]

(a) Ballots signed by the elector himself;
(b) Ballot on which appeared the capital letter "A";
(c) Ballot on which was written the following impertinent expressions: "Manila Rum", "dinendeng," "Mangassi", "Ammesia", "jugador", and
(d) Ballot on which appeared the indecent word "Que Que."

The following ballots were merely considered as stray votes and did not invalidate the entire ballot:

(a) Ballot on which the voter wrote the names of the candidates for mayor on the spaces intended for Senators;[62]
(b) Ballot on which there appeared the names of persons who were not candidates;
(c) Ballot on which persons who were not candidates were voted as senators; and
(d) Ballot on which appeared the name "Kamlon" or "Kamlos" written on the eight space for councilors.

The following ballots were considered valid:

---

52 Ibid, Section 177.
53 Velez v. Varela, GR No. 6, May 29, 1953.
54 Orencia v. Araneta, 47 Phil. 880 (1925).
55 GR No. L-10988, January 31, 1957.
56 GR No. L-10918, February 15, 1957.
57 GR No. L-10842, May 27, 1957.
58 Revised Election Code, Section 178.
59 GR No. L-12083, July 31, 1957.
60 Revised Election Code, Section 149.
61 Ibid, Section 149, Par. 9.
62 Id., Section 149, Par. 13.

(a) Ballot on which the names of candidates from the second space for members of the provincial board down to the seventh place for councilors were written in capital letters while those of other candidates were written in small letters;

(b) Ballot on which the name of Pacita Warns was preceded by the words "Angking Mahal" and

(c) Ballot on which were written the name of a person who had withdrawn from the election contest, said withdrawal being of no consequence since it might not have been well known to the people.

5. Election Offenses

A complaint for violation of the Election Code under Section 49 should not be confused with an action for *quo warranto* even if the former may have the effect of disqualifying a candidate to hold the office to which he was elected. In *Gorospe v. Peñaflorida* [63] the Court of Appeals erroneously reasoned that a complaint for violation of Section 49 based on corrupt practices was equivalent to a petition for *quo warranto* which must be brought within one week after the proclamation of the election. The Supreme Court pointed out the differences between the two actions. The purpose of a *quo warranto*, according to the Court, is merely to prevent a person elected from assuming office on the ground of ineligibility. On the other hand, while it carries an accessory penalty of disqualification from holding office in case of conviction, a criminal prosecution is principally aimed at the punishment of the offender, be he a candidate or not. An election offense prescribes after two years from the commission of the offense, and if the discovery is made on the occasion of an election contest, the period shall commence on the date the judgment becomes final. [64]

The rule which prohibits the charging of two or more offenses in a single information is aimed to give the defedant the necessary knowledge of the charge to enable him to prepare his defense. [65] *In People v. Ferrer*, [66] the court acquitted the defendant from an information charging violations of two distinct and entirely different sections of the Election Code. The information alleged that the defendant, then a member of the classified civil service, delivered speeches on behalf of the Liberal Party and caused cigarettes to be distributed to the voters. Under this information, the defendant may be convicted, if the charges are proved, under either Section 51 or Section 54, or both, of the Election Code.

III. Public Officers

1. Security of Tenure

Civil Service employees enjoy the protection of the Constitution which prohibits their suspension or removal except for cause as provided by law. [67] Security of tenure is demanded by the exigencies of service morale and efficiency. [68] Indeed, the desired efficiency cannot be expected from a body of public servants who labors under the constant fear of suspension or removal at the drop of a whim or caprice.

For financial reasons, a position occupied by a Civil Service employee may be legally abolished. [69] The abolition does not infringe upon the tenure rule

63 GR No. L-11588, July 19, 1957.
64 Revised Election Code, Section 188.
65 2 Moran, COMMENTS ON THE RULES OF COURT 615 (1957).
66 GR No. L-8957, April 29, 1957.
67 Philippine Constitution, Art. XII, Section 4.
68 Sinco, Philippine Law of Public Administration and Civil Service.
69 Dominguez v. Pascual, supra, note 4.

because it does not involve or mean removal. Removal implies that the post subsists, and that one is merely separated therefrom. But when the post itself is legally abolished, then there is no removal. [70]

Likewise, the constitutional guarantee of the security of tenure is not violated by the removal from office of persons holding their positions by virtue of acting or temporary appointments.[71] Acting appointment, in essence, is of temporary character. As such, the appointment is terminable at any time and at pleasure of the appointing power. [72]

A temporary appointment cannot acquire the character of permanence simply because the item occupied refers to a permanent position. The character of an appointment is determined not by the nature of the item filled but by the nature of the appointment extended. It would be absurd if it were not the case, for then there would never be temporary appointments for permanent positions. [73]

In *Jimenez vs. Francisco*, the petitioner claimed that after becoming a civil service eligible he was entitled to a permanent appointment to the position to which he was previously temporarily appointed. The Supreme Court held this claim to have no basis in law or regulation. The power to appoint being in essence discretionary, the appointing authority has the right of choice as to who is best qualified for any competent position in the Civil Service. He may exercise this right freely according to his own judgment. Besides, the Civil Service Commission does not insure any appointment. It only certifies an eligible to be possessed of the necessary qualifications as required for a position.

2. Expiration of the Term of Office

Expiration of the term of office is one of the ordinary modes of terminating official relation. [75] Can Congress legally make the term of office of certain officials depending upon the pleasure of the President? In *Alba vs. Evangelista*, [76] the Supreme Court answered this question in the affirmative. The law creating the City of Roxas provides that the appointive vice mayor "shall hold office at the pleasure of the President." [77] Alojar was appointed vice mayor. Later on, the President appointed Alba in the place of Alojar. Alojar contended that he was illegally removed. The Court held that the replacement was not a removal but an expiration of the term of office of Alojar.

Invoking the rule in *De los Santos vs. Mallari* [78] to the effect that the provision giving the President power to remove at pleasure being incompatible with the constitutional provision regarding suspension and removal of civil service officers must be deemed to have been repealed by the Constitution, Alojar maintained that the quoted provision was similarly inconsistent with the Constitution. The Court distinguished the two cases, thus:

> "The replacement of Alojar is not removal, but an expiration of the tenure, which is one of the ordinary modes of terminating official relation. Section 2545 (of the Revised Administrative Code involved in the Delos Santos Case) refers to removal at the pleasure while Section 8 refers to holding office at the pleasure of the President."

70 Manalang v. Quitoriano, GR No. L-6898, April 30, 1954.
71 Mendez v. Gangzon, GR No. L-10483, April 12, 1957.
Agapayan v. Ledesma, GR No. L-10535, April 25, 1957.
Quiatchon et al. v. Villanueva, GR No. L-9903, July 31, 1957.
72 Villanosa v. Alera, GR No. L-10586, May 29, 1957.
Elegida, et al vs. Gacutara, et al., GR No. L-10388, August 29, 1957.
73 Villanosa v. Alera, supra.
74 GR No. L-9699, February 28, 1957.
75 Martin, op. cit., at 104.
76 Supra, note 2.
77 Republic Act No. 603, Section 8.
78 48 O.G. 5, 1787 (1950) see note 3, supra.

Assuming, Justice Felix reasoned, that the act of replacing Alojar constituted removal, the removal is valid because the provision of the law involved fixes no term of office. What has been said in *Lacson vs. Roque* and *Jover vs. Borra* was that the President's power to remove does not apply to officers whose term of office is *definite*, for fixity of tenure destroys the power of removal at pleasure otherwise incident to the appointing power. Hence, a *sensu contrario*, the President possesses the power to remove at pleasure where *no term is fixed for the office.*

Justice Concepcion, in his concurring opinion, clarified the distinction between "term" and "tenure." The "term" means the time during which the officer may claim to hold the office as of right and fixes the interval after which the several incumbents shall succeed one another. The "tenure" represents the term during which the incumbent actually holds the office. This distinction is important because if Congress could legally make the tenure of some officials dependent upon the pleasure of the President, by clothing the latter with blanket authority to replace a public officer before the expiration of his term, it would be defeating the fundamental principles expressed in the constitution that "no officer or employee in the Civil Service shall be suspended or removed except for cause as provided by law." Justice Concepcion viewed the present case, thus:

> "Here, Alojar's term of office is not fixed by law; the law vests in the President the power to fix such term. When Alba was designated, Alojar's term was thereby fixed impliedly by the President. Hence, his term expired with the same legal effect as if the term had been fixed by Congress itself. Hence, he was not removed from office for "to remove an officer is to oust him from office before the expiration of his term." (Manalang vs. Quitoriano, 50 OG 2515) He lost his right to hold the office by expiration of his term as such."

3. Removal for Cause

A Civil Service officer or employee may be removed only for just and legal causes.[79] In *Cammayo vs. Vina*,[80] the conduct of petitioner, an assistant Fiscal of Manila, of soliciting from a prisoner serving sentence in the national penitentiary money and a fighting cock in return for his offered service for the prisoner's pardon was a valid cause for removal. His acts constitute "disgraceful conduct and show his moral unfitness for public service, especially for the position of a fiscal who is an officer entrusted with the duty to prosecute crimes."

4. Reinstatement

Reinstatement is not available to a police officer who lost his position on the reinstatement of the former occupant whose discharge was found to have been made unlawfully.[81]

5. Abandonment

A person claiming a right to an office of which he is illegally dispossessed must bring the proper action, *quo warranto*, mandamus or petition for reinstatement, within one year. After the lapse of said period, the person is considered to have lost the right to the office by abandonment.[82] This is an expression of policy on the part of the state that persons entitled to an office must immediately take steps to recover the office.[83] Hence, a delay of one year and five months,[84] or more than three years[85] defeats recovery.

79 De Los Santos v. Mallari, supra, note 78.
80 GR No. L-11196, August 30, 1957.
81 Kho v. Rodriguez, GR No. L-9032, September 28, 1957.
82 Unabia v. City Mayor, GR No. L-8759, May 25, 1957.
Tumulak v. Egay, 46 O.G. 8, 3693 (1949).
83 Jose v. Lacson, et al., GR No. L-10477, May 77, 1957.
84 Ibid.
85 Cayabyab, et al. v. Del Rosario, GR W. L-10565, May 20, 1957.
Abella, et al, v. Rodriguez, et al., GR No. L-10512, Nov. 29, 1957.