MUNICIPAL CORPORATIONS, PUBLIC OFFICERS AND ELECTION LAW

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MUNICIPAL CORPORATIONS

I. Immunity from Suit

A municipal corporation has two aspects: governmental or public and private or corporate or proprietary. In its public or governmental capacity, it is an agent of the state for the government of the territory and inhabitants within the municipal limits.[1] In the case of *Department of Public Services Labor Unions v. The CIR, et al.*,[2] the court ruled that in the collection and disposal of garbage, the city of Manila does not obtain a special corporate benefit or pecuniary profit but acts in the interest of health, safety and the advancement of the public good or welfare. Such being the case, the City of Manila acts as an agent of the state and is immune from suit unless consent thereto has been given. Such consent must be expressed in unequivocal language and here no consent of the government has been shown.

II. Municipal Officers and Employees

A. *Powers and functions of the City Mayor*

The city mayor is the chief executive of the city. He exercises general supervision over local administrative affairs. Section 11 of the city charter of Manila provides among other things the power of the mayor to appoint all officers and employees of Manila except those whose appointments are vested within the President. The Court applied this provision in the case of *Fernandez-Subido v. Lacson*,[3] stating that the power of appointment is an executive function which cannot be controlled by the courts. The method of exercise of such function is confided to the conscience, judgment and discretion of the city mayor. However, the court limited the scope of the power of appointment of the mayor in the case of *Garcia v. Pascual et al.*,[4] where it was held that the provisions of R.A. 1551 clearly show that what it intended to be made subject to appointment by the municipal mayor are the subordinate officials in the municipality like em-

* Members, Student Editorial Board, *Philippine Law Journal*, 1961-62.
[1] Sinco and Cortes, Philippine Law on Local Governments, 2nd Edition, p 229.
[2] G.R. No. L-15458, Jan. 28. 1961.
[3] G.R. No. L-16494, August 29, 1961
[4] G.R. No. L-16950, Dec. 22, 1961.

ployees in the executive branch and employees in the municipal council or board.

B. *Abolition of Positions by Ordinance*

The power to abolish positions may be given to municipal corporations. When the power is subject to certain conditions, such conditions must be complied with.[5] Thus, in the case of *Arcel and Calinawan v. Osmeña Jr.*,[6] the court ruled that the authority of the Municipal Board of Cebu to reduce the number of or even abolish positions in the service of the city government cannot be used to discharge employees in violation of civil service laws. This doctrine was reiterated in the case of *Gonzales v. Osmeña Jr., et al.*[7] Likewise in the case of *Cuneta et al. v. Court of Appeals, et al.*,[8] a reorganization plan reducing the number of detectives of the city was held to have no valid effect because it was never submitted to the President for approval as required by Executive Order 175 series of 1938.

C. *Removal of Municipal Officers*

In the case of *Lota v. The Court of Appeals*,[9] where a caretaker of the municipal cemetery of Taal, Batangas, was ousted from office by the mayor, the court ruled that the mayor can for cause suspend any non-elective officer or employee over whose position he has the power of appointment. But be it the municipal mayor or any other local officer, he cannot dismiss a duly appointed caretaker without cause. In the case at bar no formal charges for irregularities have been filed against the petitioner.

III. Municipal Ordinances

Ordinances are legislative acts passed by the municipal council in the exercise of its lawmaking authority.[10] The requisites of a valid ordinance are: (1) it must not contravene the constitution or statutes; (2) it must not be oppressive; (3) it must be impartial, fair and general; (4) it must not prohibit but may regulate trade; (5) it must be consistent with public policy; and (6) it must not be unreasonable.[11]

Under Republic Act 938 as amended by Republic Act 1224, "The municipal or city board or council of each chartered city and the mu-

[5] Sinco and Cortes, *supra*, p. 96
[6] G.R. No. L-14956, Feb. 27, 1961.
[7] G.R. No. L-15901, Dec. 30, 1961.
[8] G.R. No. L-18264, Feb. 28, 1961.
[9] G.R. No. L-14803, June 30, 1961.
[10] Revised Adm. Code, sec. 2227.
[11] Sinco and Cortes, *supra*, p. 181.

nicipal council of each municipality and municipal district shall have the power to regulate or prohibit by ordinance the establishment, maintenance and operation of nightclubs, cabarets, dancing schools, pavilions, cockpits, bars, saloons, bowling alleys and other similar places of amusement x x x."

A municipal ordinance authorizing cockfighting on Thursdays was declared void by the Supreme Court in the case of *Quimsing v. Lachica et al.*[12]; "Cockpits" and "cockfighting" are regulated separately by our laws. The authority of local governments to regulate cockfighting except insofar as the same must take place in a duly licensed cockpit. Such authority must be distinguished from the days on which cockfighting shall be held and the frequency thereof. Neither can a municipality abolish the distance requirement of cockpits from any public building, school, hospital and church by an ordinance. The authority to determine the distance does not carry with it the authority to exempt cockpits from observing any distance at all. That the legislature did not intend to give the council such authority to dispense entirely with the distance limitation in case of cockpits is evident from the fact that even in those cases specifically declared exempted from any ordinance fixing distances, the law requires the observance of certain restrictions designed to promote the peace, health and the general welfare of the community.[13]

The validity of Ordinance No. 3941 of the City of Manila which provides "that no license for the operation of machines and apparatus commonly known as 'pinball' machines shall be granted under any circumstances" was upheld in the case of *Miranda v. City of Manila.*[14] The court ruled that the municipal board of Manila acted rightly in enacting said ordinance since pinball machines have generally been held gambling devices. The winning therein depends mostly if not wholly upon chance or hazard. The ordinance properly comes under the general welfare clause of the Charter of Manila.

In the case of *Pampanga Bus Company Inc. and La Mallorca v. Mun. of Tarlac,*[15] the municipal council of Tarlac, Tarlac enacted Ordinance No. 1 prohibiting the establishment of bus or freight terminals within a certain area. The petitioners who jointly owned and operated a bus terminal in a building of strong materials in said area filed an action in the Court of First Instance of Tarlac against the municipality of Tarlac to have said ordinance declared null and void:

[12] G.R. No. L-14683, May 30, 1961.
[13] Marcelo Sarmiento v. Belderol, G.R. No. L-15719, May 31, 1961.
[14] G.R. Nos. L-17252-76, May 31, 1961.
[15] G.R. No. L-15759, Dec. 30, 1961.

(1) The municipality contends that the ordinance is a valid exercise of the board powers granted to it under the general welfare. *Held:* The ordinance in question falls short of the standard required of ordinances pursuant thereto. As found by the trial court the bus terminal is built of strong materials and equipped with modern toilet facilities and is not a nuisance and causes no injury to the municipality but instead helps relieve pedestrian congestion on the sidewalks.

(2) The municipality argues that the ordinance is a zoning ordinance. *Held:* Zoning is the separation of the municipality into districts and the regulation of buildings and structures within the districts so created in accordance with their construction, nature and extent of their use. Nowhere is there any reference made to zoning.

(3) Appellant initiates that the appellees' bus terminal is a nuisance that may be abated by the municipal council under the provisions of Sec. 2242 of the Revised Administrative Code. *Held:* In the abatement of nuisance the provisions of the Civil Code must be observed and followed. This appellant failed to do.

IV. Municipal Revenue

A. *License Fees and Taxes Distinguished*

The chief sources of revenue of Philippine municipal corporations are taxes, license fees, fines and allotments from internal revenue taxes.[16] Three classes of municipal licenses are generally recognized: (1) licenses for the regulation or restriction of useful occupations; (2) licenses for the regulation or restriction of non-useful occupations; and (3) licenses for revenue only. The first and second kinds of fees may be implied from the police power. The amount of fee for the first kind may be sufficient to cover the expense of issuing the license and cost of necessary inspection and police surveillance. The third kind, not being a license fee properly speaking rests on the taxing power and must be expressly granted by charter or statute.[17]

Our Supreme Court had the occasion to apply these distinctions between license fees and taxes in a number of cases. In *Morcoin Co. et al. v. The City of Manila et al.*,[18] the court declared an annual license fee of ₱300.00 imposed by an ordinance for the installation and use of jukeboxes as prohibitive, extortionate and confiscatory. The power to regulate and impose license fees for the operation of jukebox machines should not be construed as including the power to

[16] Sinco and Cortes, *supra*, p. 258.
[17] Cu Unjieng v. Patstone. 42 Phil. 818.
[18] G.R. No. L-15851, Jan. 28, 1961.

impose license taxes for revenue purposes. The amount of ₱300.00 is unreasonable and far exceeds the expenses of issuing the license and of regulation and operation. The same doctrine was applied in *Genera et al. v. The City of Manila, et al.*[19]

Likewise in the case of *American Mail Line et al. v. The City of Basilan et al.*,[20] the court held that the city of Basilan had no authority to collect anchorage fees of ½ centavo per registered gross ton of the vessel on any foreign vessel which may anchor at any port for loading or unloading. The Court said: "The City of Basilan was not granted a blanket power of taxation. x x x Appellants argue that the ordinance in question was validly enacted in the exercise of the city's police power. The power to regulate as an exercise of police power does not include the power to impose fees for *revenue purposes.* x x x The fees in question are for revenue purposes. Being based on the tonnage of vessels, the fees have no proper or reasonable relation to the cost of issuing the permits and the cost of inspection or surveillance. x x x"

B. *Manufacturer's and Dealer's Tax Distinguished*

Citing the case of *Cebu Portland Cement Co. v. City of Manila*,[21] the Court in the case of *Co Tuan v. The City of Manila* [22] held that a manufacturer is excluded within the term "dealer" for purposes of the imposition of a dealer's tax of license fee where it only deals on or sells its own products. The sole exception to this rule appears to be when the manufacturer carries on the business of selling its own products at stores or warehouses apart from its place of manufacture. In the case at bar, it appears that Co Tuan made sales at wholesale at the factory where they were manufactured as well as at his retail store. He is, therefore, subject to the dealer's tax in addition to the manufacturer's tax.

C. *Refund of Taxes Paid Under an Ordinance Subsequently Declared Void*

For the recovery of taxes paid, later on held by the courts to have been illegally imposed by a municipal corporation, a protest is a condition precedent *when the charter so requires.* (underscoring supplied). The Charter of the City of Cebu does not provide for and require such a condition. Even if the taxes in question were not paid under protest, petitioners would still be entitled to a refund. Moreover, inasmuch as the appellees had paid to the appellants

[19] G.R. No. L-16505, Jan. 28, 1961.
[20] G.R. No. L-12647, May 31, 1961.
[21] G.R. No. L-14229, July 26, 1960.
[22] G.R. No. L-12481, Aug. 31, 1961.

the total sum of ₱97,542.57 under the protest which they had sought to recover and succeeded to recover by a judicial declaration of nullity of the ordinances and during the pendency of the case the appellees had paid in some instances under protest and in others without protest, they may be deemed to have continued to pay under protest even without expressly stating so.[23]

V. Municipal Property

Provinces, municipalities and cities in the Philippines are expressly given authority to acquire and hold property. Such property are divided into property for public use which includes provincial roads, city and municipal streets, squares, fountains, public waters and public works for public service and patrimonial property which includes all other municipal property.[24]

A. *Ownership of Waterworks*

In the case of *Municipality of Lucban v. Nawasa,*[25] plaintiff municipality of Lucban has always managed and controlled the operation of its water system. Subsequently, Republic Act 1383 creating the NAWASA and vesting in it control, jurisdiction and supervision over all waterworks belonging to municipal corporations which shall forthwith transfer control of the water system to the NAWASA. *Held:* The waterworks system was a patrimonial property of the municipality and not for the public use since only those who were willing to pay the charge could make use of it. While Congress has the power to transfer the property of a government agency to another, such power is limited and one of its limitations is the constitutional prohibition on expropriation of private with just compensation. Said law is unconstitutional insofar as it vests definite authority over the waterworks without just compensation.

B. *Municipal Franchise*

Sections 2318-2320 of the Revised Administrative Code provides that a municipal council shall have authority to acquire or establish municipal ferries and to either conduct said public utility on account of the municipality or let it to the private party who is the highest and best bidder for one year or for a longer period not exceeding five years upon the approval of the provincial board. Thus, in the case of *Reyes v. Pascual,*[26] it was held that the holder of an award and contract from the municipal council granting him the exclusive

[23] Santos Lumber Co. et al. v. City of Cebu, G.R No. L-14618, May 30, 1961.
[24] Sinco and Cortes, *supra*, p. 229.
[25] G.R. No. L-15525, Oct. 11, 1961.
[26] G.R. No. L-16659, April 26, 1961.

lease and operation of the municipal ferry line and of a bay and river license from the Bureau of Customs will prevail over the holder of a bay or river license from the Bureau of Customs but without an award from the municipality. The authority to grant exclusive right of privilege to operate the municipal ferry service lies with the municipality concerned.

VI. Actions and Remedies

The conduct of public affairs on the local level is subject to detailed and extensive judicial review. Ultimately all questions concerning the creation and existence of municipal corporations, their powers and functions, officers and agents, contracts, property and liabilities come up before the courts for final settlement.[27]

A. *Proper Parties*

When a municipality is the real party to a suit, it must be so included in the pleadings instead of its officers.[28] This rule was, however, relaxed in the case of *Gonzales v. Osmeña Jr. et al.*,[29] where the court held that substantial compliance with the requirement is sufficient, and that the ends of justice and equity would be served best if the inclusion of the city or municipality were considered a mere formality. The inclusion of the city mayor, the auditor and the treasurer and even the municipal board of the city as party defendants was a substantial compliance with the requirement.

B. *In Quo Warranto Proceedings*

Any person claiming to be entitled to a public office may bring an action of quo warranto without the intervention of the Solicitor General or fiscal. Only the person who is in unlawful possession of the office and all who claim to be entitled to that office may be made parties in order to determine their respective rights thereto on the same action. The inclusion of the municipality is, therefore, not an essential nor even necessary party to this action.[30]

C. *Mandamus*

The writ of mandamus may be used to compel a municipal corporation to perform an act which the law enjoins upon it as a duty. Three essential conditions must be met: (1) That the municipal duty is plain and ministerial; (2) that the right of the petitioner must be clear and controlling; (3) that there is no other adequate legal

[27] Sinco and Cortes, *supra*, p. 249.
[28] *Supra*, p. 251
[29] G.R. No. L-15901, Dec. 30, 1961.
[30] Lota v. The Court of Appeals and Moises Sangalang, G.R. No L-14803, June 30, 1961.

remedy available for the petitioner. It is not granted to control a discretionary act.[31] Thus, where the law gives to the mayor ample authority and discretion to extend the work schedule of employees and laborers beyond the prescribed number of days and hours of labor, the right to overtime compensation for extra hours of work of such employees is at best a matter of administrative policy that is discretionary and dependent upon the city's financial conditions.[32] However, mandamus may lie against the city mayor, city treasurer and the members of the provincial board to compel them to implement the provisions of the minimum wage law considering that the provisions of said law are mandatory and it appearing that they have no other remedy in the ordinary course of law, appellant should comply with their ministerial duty.[33] In the case of *Perez v. The City Mayor et al.*,[34] the Court denied a petition for mandamus to compel respondents to appropriate at least 7% of the annual general income for the provincial hospital where it appears that there is no mention that the chief of the provincial hospital may bring any action against the provincial city and/or municipality concerned in order that the latter may be made to give the contribution.

VII. Exhaustion of Administrative Remedies

The doctrine of exhaustion of administrative remedies has been applied by the courts in actions against municipal corporations. In an action for mandamus to compel the mayor to reinstate petitioner to his position as general bridge foreman, the court held that petitioner should have appealed his dismissal by the mayor to the department head, the Secretary of Public Works and Communications as provided for in Sec. 21, Commonwealth Act 58 in accordance with the doctrine of the exhaustion of administrative remedies.[35] Likewise in the case of *Fernandez-Subido v. Lacson*,[36] one of the bases of the court in dismissing an action for mandamus to compel the mayor to reinstate her was the failure to show that petitioner has appealed to the President of the Philippines or to the Department head, from the refusal of respondent mayor to reinstate her.

PUBLIC OFFICERS

I. Termination of Tenure

The official relation between a person and the public office which he holds may be terminated in several ways, namely: by expiration

[31] Sinco and Cortes, *supra*, p. 253.
[32] *Supra*, note 2
[33] Rivera, et al. v. Colago, G.R. No. L-12323, Feb. 24, 1961.
[34] G.R. No. L-16786, Oct. 31, 1961.
[35] Booc v. Osmeña, Jr., G.R. No. L-14810, May 31, 1961.
[36] *Supra*, note 3.

of the term of office, by resignation, by abandonment, by removal or impeachment, by abolition of the office, and by the death of the incumbent.[38]

A. *Resignation from Office*

To constitute a complete and operative act of resignation the officer or employee must show a clear intention to relinquish or surrender his position. In *Gonzales v. Hernandez* [39] the Supreme Court ruled that a resignation which is made subject to the result of the officer's appeal with the Civil Service Board of Appeals does not constitute such a resignation as will preclude the officer from reinstatement to his office once the Civil Service Board of Appeals decides in his favor. Such *conditional* resignation did not show a clear intention to relinquish his position.

B. *Abandonment of Office*

The acceptance of another office, which is incompatible with the first, is sufficient evidence of the abandonment of the first.[40] There was no such abandonment in the case of *Gonzales v. Hernandez* [41] because the position of Gonzales as emergency helper in the Government Service Insurance System, which was merely temporary in nature, was not incompatible with his position in the Department of Finance.

II. Back Salaries

A. *Under Sec. 260 par. 2, Discretionary with the President*

"In the case of a person suspended by the President of the Philippines, no salary shall be paid during the suspension unless so provided in the order of suspension; but upon subsequent reinstatement or exoneration of the suspended person any salary so withheld may be paid in whole or in part *at the discretion* of the officer by whom the suspension was effected." [42]

The petitioner, a justice of the peace, in the case of *Abuda v. Auditor General* [43] was denied the right of payment of back salaries because his order of reinstatement did not contain a provision for the payment of salaries during the period of his suspension. The right to order payment of back salaries is discretionary with the President and once he had exercised that discretion the Supreme Court is without power to substitute its own for it.

[38] U.S. v. Abejuela, 12 Phil. 30 (1908).
[39] G.R. No. L-15482, May 31, 1961
[40] Santiago v. Agustin, 46 Phil. 14 (1924).
[41] *Supra*, note 39.
[42] Sec. 260 par. 2 Revised Administrative Code.
[43] Abuda v. Auditor General, G.R. No. L-16071, April 29, 1961.

The Court mentioned in this case that Sec. 35 [44] of Republic Act 2260 is not applicable because such Act only took effect on June 19, 1959, subsequent to the President's order of reinstatement which was dated March 6, 1956.

B. *Complete Exoneration Requisite to Payment of Back Salaries*

Back salaries are paid to an officer only if he is completely exonerated of the charge against him and the suspension or dismissal have been found to be illegal.[45]

C. *Trial Court Without Jurisdiction to Order Payment of Back Salaries*

In a criminal case [46] wherein a public official was of malversation of public funds, the Court of First Instance of Quezon City found the accused innocent of the charge and acquitted him, ordering as well the payment of his salary during suspension from office. On appeal the Supreme Court held that the trial court had no jurisdiction to order the payment of back salaries. In at least three previously decided cases [47] the Court has ruled that the trial court in a criminal action for malversation of public funds wherein the accused is acquitted, is without power to order the payment of his salary during the period of suspension. The reason is that the only issues joined by the plea of not guilty is whether or not the accused committed the crime charged in the information, and in such case, the only judgment that the court is legally authorized to render is either one of acquittal or of conviction with the indemnity to the injured party and the accessory penalties provided by law. While an accused acquitted of malversation may claim payment of back salaries, his relief lies not in the same criminal case but in in the proper administrative or civil action prescribed by law.

III. Retirement

The retroactive extension of the retirement benefits under Republic Act 910 made by Republic Act 1057 by adding section 2-A was made upon the express condition that at the time of his cessation in office or retirement as Justice of the Supreme Court or the Court of Appeals he possessed all the requirements prescribed by Republic Act 910. This means, concretely, that if the Justice ceased

[44] ". . . If the respondent officer or employee is exonerated he shall be restored to his position with *full* pay for the period of his suspension."
[45] *Supra*, note 39.
[46] People v. Daleon, G.R. No. L-15630, March 24, 1961.
[47] People v. Mañago, 69 Phil. 481 (1940); Pueblo v. Lagutan, 70 Phil. 481 (1940); Manila Railroad Company v. Baltazar, G.R. No. L-5451, Sept. 14, 1953.

to hold office at or above 57 but below 70 years of age in order to accept another government position, he must possess a service record of 20 years, 10 of them continuously as Justice or as a judge of a court of record.[48]

IV. Absence from Office

In *Grapilon v. Municipal Council* [49] the question before the court was whether the vice-mayor could assume the office of mayor during the absence of the latter on official business in Manila. The Court held that he could not, stating that it is only such absence as *disables* the mayor from exercising the powers and prerogatives of his office that will entitle the vice-mayor to assume the office of mayor. In this case the Mayor was in Manila precisely in his capacity as Mayor and exercising his powers and prerogatives. Sec. 2195 of the Revised Administrative Code considers "absence" on the same level as "suspension" and other forms of "temporary disability."

In a later case [50] the court used the "effective absence test" to determine when the vice-mayor would be entitled to assume the office of mayor. The weight of authority seems to be that under the legal provisions authorizing a municipal or city vice-mayor to discharge the duties of the mayor in the "absence" of the latter said term must be reasonably construed and so construed means "effective absence." "Effective absence" means one that renders the officer concerned powerless, for the time being, to discharge the powers and prerogatives of his office, as when a mayor leaves the Philippines for Japan. According to the court the case of *Grapilon v. Municipal Council* [51] was not in point because in that case the mayor never left the Philippines but merely left Leyte for Manila.

CIVIL SERVICE

I. Coverage

Article XII of the Constitution which contains provisions on the Civil Service contemplates the entire Civil Service regardless of whether the employees therein belong to the classified or unclassified service. Officers and employees in the unclassified service like those occupying classified positions are protected by the aforementioned article of the organic law.[52]

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[48] Sison v. GSIS, G.R. No. L-15637, Feb. 22, 1961.
[49] G.R. No. L-12347, May 30, 1961.
[50] Paredes v. Antillon, G.R. No. L-19168, Dec. 22, 1961.
[51] *Supra*, note 49.
[52] Arcel v. Oameña, Jr., G.R. No. L-14956, Feb. 27, 1961.

II. Removal of Civil Service Eligibles

A. *Only for Cause*

The removal of several detectives in the regular police force by virtue of a reorganization plan was held to be illegal. As part of the regular police force they belonged to the unclassified class of the civil service, and in view of the nature of their office, their removal can only be accomplished in accordance with law, particularly Art. IV, Sec. 20, par. 2 of Republic Act No. 283.[53] Our Constitution, moreover protects their tenure of office when it postulates that "No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law." And the manner and mode by which they may be suspended and removed from office are also prescribed in Sec. 1, Republic Act No. 557.

B. *Protection Extends to Those with Permanent Status*

In the case of *Booc v. Osmeña* [54] the court ruled that since the facts showed that the appellant's appointment was merely temporary, he is not covered by the mantle of protection against arbitrary dismissal afforded to permanent employees holding permanent items. The petitioner in *Taboada v. Municipality* [55] was denied the right to be reinstated to his position as patrolman on the ground that Republic Act No. 557 only guarantees the tenure of office of municipal policemen who are eligibles. Appellee was admittedly a non-eligible. The court further stated: "And even eligibles who accept *temporary* appointment cannot claim and are not entitled to the protection of security of tenure guaranteed by the Constitution." Such was likewise the holding in *Roque v. President of the Senate*,[56] *Pinular v. President of the Senate*,[57] *Quitiquit v. Villacorta*.[58]

The petitioners in *Gabio v. Ganzon* [59] were validly dismissed inasmuch as they were merely temporary employees at the time of their dismissal. Petitioners had not become permanent employees by virtue of Sec. 2 of Republic Act 186 because they had not yet rendered ten years continuous service and such is a requirement to being granted civil service eligibility with a permanent status under the above-mentioned section.

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[53] "All other officers and employees of the city whose appointment is not otherwise provided for by law shall be appointed by the Mayor upon recommendation of the corresponding city department head in accordance with the Civil Service Law."

[54] G.R. No. L-14810, May 31, 1961.

[55] G.R. No. L-14604, May 31, 1961.

[56] G.R. No. L-10949, July 25, 1958.

[57] G.R. No. L-11667, June 30, 1958.

[58] G.R. No. L-15048, April 29, 1960.

[59] G.R. No. L-11664, March 16, 1961.

III. Promotions

An appointment to office is intrinsically an executive act, involving the exercise of judgment and discretion. Promotions in the civil service, while a discretionary function of the appointing power, must never be based on considerations alien to the fitness of the employee and his performance of his job as shown by the records. Integrity in public service, as a goal yet to be achieved, demands that government must not become parasitic pawns of a whimsical bureaucracy.[60]

IV. Veterans

Although Republic Act 1363 and Administrative Order No. 130 issued by the Chief Executive in implementation thereof grant to a world war veteran a preferential right in government positions, it is not enough to be a veteran to be entitled to such privilege. Among other things, the party concerned must obtain: (1) a certificate regarding his status as a veteran from the Philippine Veterans Board; (2) must have previously qualified in an appropriate Civil Service examination; and (3) shall have filed application for preference with the Commissioner of Civil Service.[61]

In *Flores v. Cordova*[62] Solomon Flores was appointed as temporary third-class patrolman by Mayor Cordova. He is a veteran who is not a civil service eligible. He was subsequently dismissed and Patrocinio Flores a veteran and a civil service eligible, was appointed in his place. The Court held that the removal of Soloman Flores was legal and valid since he had not complied with the requisites to entitle one to the privilege granted by Republic Act No. 1363.

V. Procedure

A. *Exhaustion of Administrative Remedies*

One of the most well-settled doctrines in our jurisdiction is that a resort to review by the court cannot be had until all administrative remedies have been exhausted.

The Court had occasion to apply this doctrine anew in the case of *Booc v. Osmeña, Jr.*[63] when it denied petitioner's action for mandamus, stating that he should have appealed to the Secretary of Public Works and Communications as provided in Sec. 21 of Commonwealth Act No. 58.

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[60] Geslogon v. Lecson, G.R. No. L-16507, May 31, 1961.
[61] Golan v. Cordova, G.R. No. L-11515, Nov. 29, 1958.
[62] G.R No. L-15071, Sept 26, 1961.
[63] *Supra*, note 54.

But where an appeal had been filed immediately but was not forwarded to the Commission of Civil Service by the mayor or committee which pigeonholed such appeal, the plaintiffs were considered as having appealed the decision of the municipal corporation and to have exhausted all administrative remedies.

B. *Period within which to File Action for Reinstatement*

For reasons of public policy any person claiming the right to a position in the Civil Service should file his action within one year from his illegal removal from office; otherwise he is considered as having abandoned the same.[64] Thus was a petition for mandamus, which was filed by the petitioner more than two years from the time when he was dismissed, denied.[65]

C. *Decision of Commissioner of Civil Service Bars Execution of Judgment for Reinstatement*

It appears in *City of Butuan v. Ortiz*[66] that administrative charges were filed against Soriano on March 3, 1954 and on the 11th he was suspended by the mayor. The Municipal Board found him guilty as charged on May 9, 1954 and on the same date Soriano appealed to the Commissioner of Civil Service. He filed a special civil action to be reinstated on June 1, 1954 inasmuch as the 60-day period provided by Republic Act No. 557 had already elapsed and the case against him had not yet been finally decided. The trial court rendered a decision in favor of Soriano on August 13, 1954, ordering the mayor to reinstate him pending termination of the administrative charges against him.

On November 11, 1954 the Commissioner affirmed the decision of the provincial board and on January 12, 1960 (less than 5 years from the date of judgment) counsel for Soriano filed an ex-parte motion to execute the judgment for reinstatement.

The Court held that although the decision of the court of first instance in the special civil action continued to be executory when the motion for execution was presented because the five-year period within which a decision of the court may be enforced by motion had not yet expired, it was shown that the Commissioner of Civil Service had already affirmed the decision of the Municipal Board finding Soriano guilty. On the date when the decision was rendered the right to reinstatement was, therefore, barred by such decision. This decision was a valid impediment to the execution of the decision for

[64] Unabia v. City Mayor of Cebu, G.R. No. L-8750, May 25, 1956.
[65] Gonzales v. Rodriguez, G.R. No. L-12976, March 24, 1961.
[66] G.R. No. L-18054, Dec. 22, 1961.

reinstatement. In other words a supervening cause had arisen which has rendered the decision no longer enforceable.

It has been repeatedly held and it is now well settled in our jurisdiction that when, after judgment has become final, facts and circumstances transpire which render its execution imposable or unjust, the interested party may ask the court to harmonize the same with justice and the facts.[67]

ELECTION LAW

Although 1961 is election year, it is not so, as far as the Philippine jurisprudence on Election Law is concerned. In the first place, the number of election cases that reached and were decided by the Supreme Court is insignificant. This may be explained by the fact that the election cases which arose as results of the 1959 elections had already been disposed of by the Supreme Court during the previous years so the 1961 election cases were but remnants of those filed in 1959. In the second place, no novel question has been raised. The decided cases were but reiterations of established rules and principles.

I. Right of Suffrage

The right of suffrage is a constitutional right granted to Filipino citizens. Art. V of the Philippine Constitution prescribes the necessary qualifications in order that a citizen may possess this right. These qualifications can neither be diminished nor increased by Congress for that would in effect amend the above constitutional provision.

A. Necessity of Registration—Is registration a necessary qualification for a person to be considered a qualified voter? The Supreme Court in the case of *Aportadera v. Sotto* [68] answered the same in the negative.

In that case, respondent Sotto was duly proclaimed the elected vice-governor of Davao over his nearest rival, petitioner Aportadera. The petitioner brought a *quo warranto* petition and alleged that the respondent was not a qualified voter of Davao since he was a registered voter in the 4th district of Manila; that on Oct. 3, 1959 the respondent registered as a voter in Davao City without first cancelling his previous registration in Manila; that his application for cancellation of his previous registration was filed only 34 days after the prescribed period and hence void and illegal; that in order to

[67] Molina v. de la Riva, 8 Phil. 569 (1904); Behn, Meyer & Co. v. McMicking, 11 Phil. 276 (1908); Mata v. Lichauco, 36 Phil. 809 (1917).
[68] G.R. No. L-16876, Nov. 30, 1961.

register as a new voter in Davao City, he must subscribe to an oath that he was not actually registered in any other precincts; that he thereby committed a felony under Arts. 172 and 171 of the Revised Penal Code; and that because of said crime, he is disqualified as a voter and hence ineligible to the office of Vice-Governor. Sec. 2071 of the Revised Administrative Code provides that a provincial candidate must be, at the time of his election, a qualified voter of the province. One of the issues raised was whether registration is a prerequisite to be considered a qualified voter. The petitioner lays stress upon the clause "in which he had registered" found in Sec. 98 [69] in support of his claim that registration is a necessary qualification of a voter. The Supreme Court in rejecting this contention said that the purpose why registration in a given precinct is mentioned in Sec. 98 is to enable that person to vote *in said precinct.* The Court said that Sec. 98 can't be construed as adding another requirement of a qualified voter for that would be unconstitutional as violative of Art. V of the Constitution which does not require registration.

B. Effect of Registration—The Supreme Court in the case of *Aportadera v. Sotto* [70] discussed the legal effect of registration. The Court said that registration is essential to the *exercise* of the right of suffrage, not to the possession thereof. Indeed, only those who have such right may be registered. In other words the right must be possessed before the registration. The latter does not confer it.[71]

C. Disqualification—Art. V of the Constitution expressly grants Congress the power to disqualify anyone from the right to vote. Pursuant to this power, Congress in Sec. 99 of the Election Code enumerates those who are disqualified to vote. A cursory reading of the above provision will immediately show that (a) and (b)[72] requires a final judgment or conviction before anyone can be disqualified to vote. The Supreme Court in the *Aportadera v. Sotto* case [73] so held. In that case, the petitioner claims that when the respondent subscribed to an oath that he (respondent) was not actually registered in any other precinct when in fact he was, he committed a felony which disqualifies him as a voter. The Court held that the contention is without merit since no conviction has ever been shown.

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[69] Sec. 98 of the Election Code provides: *Qualifications prescribed for a voter.*—Every citizen of the Philippines, whether male or female, twenty-one years of age or over, able to read and write, who has been a resident of the Philippines for one year and of the municipality in which he has registered during the six months immediately preceding, who is not otherwise disqualified, may vote in the said precinct at any election.

[70] *Supra,* note 68.

[71] Yra v. Abano, 52 Phil. 380; Vicero v. Murillo, 52 Phil. 695; Larena v. Teves, 61 Phil. 36.

[72] Sec. 99 provides in part: *Disqualifications*—The following persons shall not be qualified to vote:

(a) Any person who has been sentenced by final judgment to suffer one year or more of imprisonment, such disability not having been removed by plenary pardon.

(b) Any person who has been declared by final judgment guilty of any crime against property.

[73] *Supra,* note 68.

II. Eligibility of Candidate

One of the general requirements for any candidate is that he must possess the necessary age provided by law. If he does not possess the required age at the time of his election he can be ousted by a *quo warranto* proceeding despite the fact that he has received popular mandate. The age requirement is not merely directory.[74] This principle was reiterated by the Supreme Court in the case of *Sanchez v. del Rosario*.[75] In that case, the respondent was only 21 years old at the time of his election when Sec. 2174 of the Revised Administrative Code requires an age qualification of at least 23 years. In overruling the contention of the respondent that the age requirement becomes directory after the election, the Court merely invoked the case of *Feliciano v. Aquino*.[76]

III. Certificate of Candidacy

A person who desires to run for a public office must file a certificate of candidacy as required by Sec. 35 of the Election Code. The purpose is to appraise the public of his candidacy; that he is an eligible candidate, a resident of the municipality; and that he belongs to a party and is the duly nominated standard bearer thereof.[77] Consequently, the Supreme Court has held that mere substantial compliance with Sec. 35 is sufficient.[78] This was reiterated by the Supreme Court in the case of *Alialy v. Comelec*.[79] In that case, the petitioners on Sept. 1, 1959 filed a collective certificate of candidacy with the Comelec which was ignored by the latter on the ground that it was not subscribed under oath by the secretary of the party as required by Sec. 35. On Oct. 29, the petitioners presented a motion for reconsideration on the ground that the original certificate of candidacy has been duly amended Oct. 26 and now bears the signature of the secretary. This motion was denied by the Comelec on the ground that the absence of the secretary's signature was a fatal defect rendering the original certificate void and since the amended certificate was filed after the deadline for the filing of the certificate (which was Sept. 11) it could not have amended the original certificate.

Held: The absence of the secretary's signature in the original certificate of candidacy did not render the certificate invalid. The amendment of the certificate, althought at a date after the deadline,

[74] Feliciano v. Aquino, G.R. No. L-10201, Sept. 28, 1957.
[75] G.R. No. L-16878, April 26, 1961.
[76] *Supra*, note 74.
[77] Alialy v. Comelec, G.R. No. L-16165, July 31, 1961.
[78] Canceran v. Comelec, G.R. No. L-1632, March 40, 1960.
[79] *Supra*, note 77.

but before election was substantial compliance with the law and the defect was cured.

"When the Election Law does not provide that a departure from a prescribed *form* will be fatal and such departure has been due to an *honest mistake or misinterpretation of the Election Law* on the part of him who was obligated to observe it, and such departure has not been used as a means for fraudulent practices . . . the law will be held directory and such departure will be considered a harmless irregularity." [80]

"When the original defects of a certificate of candidacy are cured by the allegations of a motion for reconsideration filed in due time (before the election) with the Comelec, there is substantial compliance with the statutory requirement of Sec. 35." [81]

IV. Nature of Exclusion Case; *Res Judicata*

The Supreme Court in an obiter in the case of *Mayor v. Villacete* [82] said that the principle of *res judicata* does not apply in an exclusion case because of its summary character. In the said case, Burquiete, a registered voter, filed several petitions to exclude the petitioners from the registry of voters on the ground that they were not Filipino citizens. The petitioners moved to dismiss the petitions on the ground that the CFI has no jurisdiction because the petitions are based on lack of citizenship which can't be inquired into in an exclusion case. The motion being denied, the petitioners filed a petition for prohibition with preliminary injunction in the Supreme Court. The petition in the Supreme Court was given due course only on Nov. 9 and the Supreme Court could not immediately act on the matter. Meanwhile, the CFI continued with the hearing of the case because of its urgent nature and thereafter declared that the petitioners were not Filipino citizens. Consequently, the petitioners were not able to vote in the Nov. 10 elections. On Dec. 11, the petitioners brought this action for certiorari on the ground that the respondent judge acted with abuse of discretion. The Supreme Court dismissed the petition on the ground that the issue involved therein became moot.[83] However, the Court went further and said that "considering the summary character of an exclusion case the decision that the CFI may render thereon, even if final and non-appealable, does not acquire the nature of *res judicata*." [84] In this

[80] Gariner v. Romulo, 26 Phil. 521 cited in De Guzman v. Bd. of Canvassers of La Union v. Lucero, 48 Phil. 211, 214-215.
[81] Gabaldon v. Comelec, G.R. No. L-9895, Sept. 12, 1956; Canceran v. Comelec, G.R. No. L-16132, March 30, 1960.
[82] G.R. Nos. L-16190 & L-16369, May 31, 1961.
[83] Moot question is discussed in part XII.
[84] Nuval v. Guray, 52 Phil. 645.

sense, it does not operate as a bar to any further action that a party may take concerning the object passed upon in the exclusion case." Consequently, the petitioners can still file an action for their reinstatement in the registry list for the next coming elections if they prove that they are Filipino citizens.

V. Municipal Board of Canvassers

The municipal board of canvassers is the body designated by the Election Code to canvass election returns and proclaim the candidate receiving the highest number of votes for municipal offices. And in the performance of this duty, the municipal board of canvassers is performing a ministerial function. This was the ruling of the Supreme Court in the case of *Miralles v. Gariando.*[85] In that case, the petitioners, who were candidates for the municipal offices filed with the CFI a petition for prohibition and mandamus to prohibit the municipal board of canvassers from making a canvass of the election returns and to proclaim the petitioners as the elected officials on the ground that heir opponents failed to file the required certificate of candidacy under Sec. 35. The trial court dismissed the petition. Hence this appeal.

Held: The CFI has no jurisdiction to restrain the municipal board of canvassers from performing its ministerial duty. Under Sec. 168 of the Election Code, it is the duty of the municipal board of canvassers to meet immediately after the election and to count the votes cast for the candidates from the statement of elections submitted to it by the municipal treasurer and thereafter to proclaim as elected those who pooled the largest number of votes. Said board is merely a ministerial body which is empowered only to accept as correct those returns submitted to it in due form and to ascertain and declare the result as it appears therefrom. Its duty is purely mechanical and extends only to the counting up of the votes and awarding the certificate to those who may have received the highest number. It cannot open the ballot boxes or recount the votes. It has no judicial power. It must depend exclusively upon the statements of returns made by the various election inspectors.[86] It being the imperative duty of the board of canvassers to meet immediately after the election, the courts cannot intervene to prevent that board from fulfilling such duty, except only in those cases that

[85] G.R. No. L-16584, May 23, 1961
[86] Galang v. Miranda & de Leon, 36 Phil. 316; Dizon v. Provincial Bd. of Canvassers of Laguna, 54 Phil. 47

are expressly provided for by law.[87] The instant case is not one of them.

VI. Canvassing of Votes; When Ballot may be Recounted

Sec. 168 [88] in relation to Sec. 163 [89] of the Election Code authorizing the court to recount the ballots was applied by the Supreme Court in the case of *Lim v. Maglanoc.*[90] In that case, petitioner Lim and respondent Francia were mayoralty candidates for the 1959 elections. The canvass of the election returns by the municipal board of canvassers showed that the petitioner and respondent received 458 and 481 votes respectively in 6 or 9 precincts.

The petition alleged that in the remaining 3 precincts, there were discrepancies in the statement of election returns, to wit:

Precinct 1—The votes obtained by the petitioner appear "one hundred seven" in words but "117" in figures.

Precinct 3—The number of votes garnered by respondent written in words was illegible.

Precinct 6—The votes listed for the respondent appear "seventy-nine" in words but only "19" in figures.

The board of canvassers, pursuant to Secs. 163 and 168 of the Election Code elevated the matter to the respondent judge. Because of the failure of the board to file the pleadings, the petitioner presented a Petition To Recount. The respondent judge refused to make the recount but merely based the corrections on the corresponding tally sheets. Hence this appeal.

As regards Precinct 1, respondent Francia insists that the discrepancy does not warrant the opening of the ballot boxes since Sec. 163 refers to "discrepancies between another copy or other authentic copies of the election returns from a precinct" and Sec. 168 speaks of "contradictions and discrepancies between copies of the same statements," thereby excluding within its purview the discrepancy in question. There is no discrepancy between copies of the same statement. The respondent thereupon insists that the rule of statutory construction that words prevail over the figures should

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[87] Sec. 163 of the Election Code provides: *When statements of a precinct are contradictory*— In case it appears to the provincial board of canvassers that another copy or other authenic 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.

[88] Sec. 88 provides in part: *Canvass of the election for municipal offices*— x x x In case of contradictions or discrepancies between the copies of the same statements, the procedure provided in Sec. 163 of this Code shall be followed.

[89] *Supra*, note 87

[90] G.R. No. L-16566, Aug. 31, 1961.

apply. The Supreme Court, in overruling this contention, invoked the case of *Parlade v. Judges Quicho and Alcasid*[91] and *held:* "The whole theory of the election law rests on the prima facie presumption of honesty and integrity of the board of inspectors. On that presumption, it directs the board of canvassers to make the proclamation on the basis of such reports (statements) as the inspectors shall make. Aware however of the failings of human nature and foreseeing the possibility of error, the Legislature has permitted the correction by the court in clear cases *at the request* of the inspectors themselves.[92] Also where there are conflicts between one copy of their statement and another copy or authentic copy thereof (*or in the statement itself, words contradicting figures*), there arises *ex necessitate rei* the need of finding, which statement or number should be followed by the board. So the law gives the CFI the power to recount the votes cast in the precinct.

As regards Precinct 3, the Court held that the number of votes received by the respondent is clear as testified to by the provincial treasurer. Mere difficulty encountered by certain members of the board of canvassers in reading the written words does not justify the opening of the ballots.

As regards Precinct 6, the Court held that there was no discrepancy since the respondent has secured a certification from the Comelec that he received 78 votes in words and figures.

VII. Election Protest

A. Right of the Party to Withdraw the Protest—Although an election protest is charged with public interest in the sense that the people of the municipality have the right to know what actually happened, the protestant in an election protest has the right to withdraw his protest. This was the ruling of the Supreme Court in the case of *Mohamad-Ali Dimaporo v. Estipona.*[93] In that case, Lluch, a defeated candidate for the position of provincial governor filed an election protest with the CFI against Mohamad to annul the election in 92 precincts on the ground of fraud and irregularities committed by the latter. Six months thereafter, the protestant Lluch filed a motion to stop recanvassing in 366 precincts covered by his protest on the ground that after the 29th precinct (where he won) he found it unnecessary to continue the recanvass. The CFI dismissed the motion on the ground that the protest, being based

[91] G.R. No. L-16259, Dec. 29, 1959.

[92] Sec. 154 of the Election Code provides: *Alterations in the statement*—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.

[93] G.R. No. L-17358, May 30, 1961.

on alleged irregularities, is vested with public interest and therefore could not be withdrawn. Upon reconsideration, the respondent judge reversed itself and granted the withdrawal over the 36 precincts. Hence this appeal. The petitioner contends that to allow the withdrawal is tantamount to amending the protest which can no longer be done since the period fixed for doing so had already expired. The Court in rejecting this contention *held:* "The motion for withdrawal is not to amend his protest but merely to inform the court that he was desisting from it with regard to said 36 precincts. While election protests are impressed with public interest so that the public is interested in what actually happened, that issue is not involved here. This is a matter that wholly depends upon the protestant. Even if the withdrawal is not effected, if the protestant desists from acting thereon or from presenting evidence to substantiate it, that will be the end of the case."

B. Power of the Court to Order the Delivery of the Keys to the Ballot Boxes—The Supreme Court in the case of *Mohamad-Ali Dimaporo v. Estipona*[94] recognized the power of the courts to order the delivery of the keys to the ballot boxes. In that case, the respondent judge of the CFI, upon request of the protestant, ordered the keys to the ballot boxes which had not yet been recanvassed to be turned over to the clerk of court so that they may be available at any time when needed. This was opposed by the petitioner contending that to authorize the clerk of court to hold all the keys would violate Sec. 70 of the Election Code which requires that each of the keys to the ballot boxes be in the hands of the provincial commander or provost marshal and provincial fiscal, and would moreover place the clerk in a precarious situation where he would be easily subject to duress on the part of the protestant. The Court held that this contention is untenable. "The requirement of Sec. 70 is subject to the discretion of the court. Thus, it provides that the keys shall remain in the possession of said officials if before said date the court did not otherwise direct.[95] The legislature has foreseen that circumstances may supervene during the substantiation of an election protest which may warrant the delivery of the keys to other officials in order that the purpose of the protest may not be defeated. Thus, not all the three officials may be able to attend the recanvassing due to the pressures of their official duties and thus will unnecessarily delay the recanvass. The fear that the clerk may be subjected to

[94] *Ibid.*

[95] Sec. 70 provides in part: Ballot boxes—(a) x x x Said officials shall keep the envelopes containing the keys intact during a period of three months. Upon the lapse of this period, if before said date the courts did not order otherwise, the provincial commander or provist marshal and the provincial fiscal shall deliver to the provincial treasurer the envelopes for the keys under their custody.

duress is mere conjecture and it is presumed that he will do his duties properly."

C. Other Powers of the Court—The Supreme Court has also held in the *Mohamad-Ali Dimaporo case*,[96] that in order to facilitate the work and avoid unnecessary delay in an election protest, the CFI may order the recanvass to be made even though only two of the three commissioners are present.

VIII. Right to Appeal from the Decision in Election Contests—The right to appeal is essentially a statutory right and is not ordinarily a necessary part of due process.[97] Thus, any person aggrieved by an order of a lower court must necessarily base his right to appeal an statutory provisions. The right to appeal from a decision of the CFI in an election contest is specifically provided for by Sec. 176 of the Election Code. The enumeration therein has been held to be exclusive in nature and applies only to provincial governors, members of the provincial board, city councilors and mayors. This principle was reiterated by the Supreme Court in the case of *Gonzales v. CA* [98] where the right to appeal from an adverse ruling made by the CFI against a city vice mayor was denied on the ground that his right to appeal is not supported by statutory provision. In that case, it appears that Flores was duly proclaimed the elected vice mayor of Butuan City. Within the statutory period the defeated candidate Gonzales filed an election protest with the CFI which ruled in favor of Gonzales. Flores appealed from this decision to the CA on questions of fact and of law. Gonzales filed a motion to dismiss on the ground that Sec. 178 does not authorize an appeal from a CFI decision in an election protest for vice-mayor. The CA denied the motion to dismiss. Hence, Gonzales filed the present *certiorari* petition. The Supreme Court in deciding for the petitioner said that the right to appeal is merely statutory. Sec. 178 does not provide for appeal in contests for vice-mayors and municipal councilors although it expressly allows appeal in contests for other positions.

Regarding the contention that it was not the intention of Congress to deny the right of appeal to vice-mayors which is a higher office than city councilors, the court said that the question is not whether Congress intended to deprive the parties in the latter case from taking an appeal, but whether or not it conferred that right. The court however intimated that if the issue raised were purely a question of law, appeal may be allowed pursuant to Sec. 2, Art.

[96] *Supra*, note 93.
[97] Aguilar & Casapas v. Navaro, 55 Phil. 898; Duarte v. Dade, 32 Phil. 36.
[98] G.R. No. L-18255, Nov. 21, 1961.

VIII of the Constitution.

IX. *Quo Warranto*—Sec. 173 of the Election Code grants any defeated registered candidate the right to institute a *quo warranto* proceeding against any elected provincial or municipal officer for the same office on the ground of ineligibility by filing such petition within one week from the time of proclamation. This provision clearly grants a defeated candidate the legal personality to bring the action despite the established rules that he is not entitled to the office sought to be vacated.[99] And the knowledge by the petitioner of the alleged ineligibility of the respondent before the election does not estop him to bring the *quo warranto* petition. These were the rulings of the Supreme Court in the case of *Sanchez v. del Rosario.*[100] In that case, the petitioner brought a *quo warranto* petition under Sec. 173 to oust the respondent from office on the ground that the latter does not possess the necessary age qualification at the time of his election. The respondent claims: (1) that the petitioner is estopped to bring the petition since he knew of the respondent's age disqualification before the election but never questioned the same; and (2) that the petitioner has no legal personality to bring the action since he would not be entitled to the office sought to be vacated.

Held: (1) There is no estoppel. The right to an elective municipal office can be contested only after the proclamation since there is no authorized proceeding upon which an ineligible candidate could be barred from running for an office.[101] The petitioner merely followed Sec. 173. Moreover, if the petitioner could have questioned the respondent's candidacy, it is doubtful whether the Comelec could have granted any relief at all since the Comelec's duty to give due course to the certificates of candidacy is merely ministerial. Finally, the matter in litigation is one affecting public interest so that estoppel, if at all, should be applied very sparingly and only on serious grounds.

(2) This contention is also untenable because Sec. 173 expressly grants the petitioner the legal personality to institute the present action.

In the case of *Miralles v. Gariando* [102] wherein the petitioner brought a *prohibition* and *mandamus* petition nine days after the election praying that the municipal board of canvassers be prohibited from making a canvass of the election and to proclaim the petitioners as the elected officials on the ground that their rivals, the respon-

[99] Luison v. Garcia, G.R. No. L-10981, April 25, 1958; Llamoso v. Ferrer, 47 O.G. No. 2, 727; Calano v. Cruz, G.R. No. L-6404, Jan. 12, 1954.
[100] *Supra*, note 75
[101] Castañeda v. Yap, 48 O.G. No. 8, 3364; Cesar v. Garrido, 52 Phil. 97.
[102] *Supra*, note 85.

dents, failed to file their certificate of candidacy, the Supreme Court held that since the duty of the board of canvassers in canvassing the election returns and proclaiming the duly elected officials is merely ministerial, the proper remedy is not a *prohibition* and *mandamus* but *quo warranto* under Sec. 173. But since this remedy is available only within one week from the proclamation, the same is already lost.

X. *Mandamus*—In the case of *Alido v. Alar*,[103] the petitioner, one of the elected candidates, by a petition for mandamus, prays that the respondent municipal treasurer be compelled to issue to him certified copies of Comelec Form No. 8 which contained the results of the election in 41 precincts and which was required to be accomplished pursuant to the Instructions for the Board of Inspectors. The petitioner claims that since the results are public which may be released to the public, he is entitled to the remedy sought. The court held that *mandamus* does not lie. There is no provision in the Election Code which makes it the duty of the municipal treasurer to issue certified copies of the certificate of election returns. The petitioner has not shown any law which enjoins the respondent to issue the certificates he sought. Neither did he show that he has a clear right to be furnished with the same.

XI. *Certiorari*—In the case of *Gonzales v. CA*,[104] the Supreme Court made a ruling when *certiorari* will lie. In that case, the respondent contends that *certiorari* does not lie because the petitioner failed to file the motion for reconsideration with the CA from the denial of his motion to dismiss. The Supreme Court, invoking the case of *Pajo v. Ago*,[105] held that it is only when the questions are raised for the first time before the high court in a certiorari case that the writ shall not issue unless the lower court had first been given an opportunity to pass upon the same. In this case, the issues herein raised have already been presented to and passed upon by the court *a quo*. Moreover, when the CA entertained the appeal of Flores, it acted beyond its jurisdiction since the right of appeal did not exist by statutory authority.

XII. Moot Question—Several election cases which reached the Supreme Court were dismissed on the ground that the issues involved therein became moot or academic.

In the case of *Yorac v. Magalona*,[106] the petitioner filed a petition to review the decision of the CA declaring respondent Magalona the

[103] G.R. No. L-16822, Nov. 29, 1961.
[104] *Supra*, note 98.
[105] G.R. No. L-15414, June 30, 1960.
[106] G.R. No. L-15285, Sept. 19, 1961.

elected mayor in the general elections held on Nov. 10, 1955. After filing the respective briefs, the case was considered submitted for decision March 7, 1960. On May 16, 1961, respondent Magalona filed a motion to dismiss on the ground that the issues raised therein became moot since the term of office expired Dec. 1959. The petitioner opposed this motion contending that the issues presented were important and a decision on the issues would enrich our electoral jurisprudence. However, the court held that there would be no practical value that would result on a decision on the merits of the case and accordingly dismissed the case.

In the case of *Mayor v. Villacete*,[107] the court held that the question became moot since the purpose for which they were filed has become *functus oficio*. The purpose was to prevent the CFI from hearing the case so that they may still vote in the Nov. 10, 1958 election which was already passed.

[107] *Supra*, note 85