POLITICAL LAW — PART THREE

THE LAW OF PUBLIC OFFICERS, ELECTION LAW, AND ADMINISTRATIVE LAW

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The trend of Supreme Court decisions to give greater discretion to heads of offices in the making of appointments and, at the same time, give greater protection to employees already in the civil service is evident in the 1969 cases.

In a rather strongly-worded decision,[1] the Supreme Court struck down what it ascertained to be interference with the appointment powers of heads of offices by the Civil Service Commissioner under his power to insure compliance with civil service laws. In another important decision,[2] the Court broadened the appointing power's field of choice in filling vacancies and brought down the next-in-rank principle from its almost automatic application to its proper level with transfers, reappointments, reinstatements, and original or new appointments. The security of tenure of public officers occupying primarily confidential positions was also examined.

A decision[3] on the security of tenure of primarily confidential employees will probably result in other cases testing the term of office of these kind of appointees.

The important cases on election law examine the boundaries between COMELEC action and court action. As in recent years, the efforts to subvert the popular will seem to be concentrated during the counting and canvassing processes. The trend of Supreme Court decisions is, therefore, towards strengthening and clarifying the powers of the Commission on Elections.

The 1969 decisions in Administrative Law continue to be the usual detailed excursions into minute and little known provisions of specific statutes governing each particular government agency and the repetition of time worn rules such as conclusiveness of findings of fact, exhaustion of administrative remedies, power to promulgate rules, etc.

THE CIVIL SERVICE

Powers and duties of the Commissioner of Civil Service

The extent of the powers of the Commissioner of Civil Service as defined in Section 16 of the Civil Service Law was again closely scrutinized

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1 Villegas v. Subido, G.R. No. 26534, November 28, 1969.

2 Pineda v. Claudio, G.R. No. 29661, May 13, 1969.

3 Gray v. De Vera, G.R. No. 23966, May 22, 1969.

and delimited by the Court. Justified or not, the present public attitude towards the integrity, efficiency, and courtesy of the civil service is highly negative. This explains the enthusiasm of the Civil Service Commissioner in making full use of his powers. However, in his zeal to implement his statutory duties, the current Commissioner has occasionally overstepped boundaries imposed not only by statute but by the Constitution.

The *Villegas v. Subido*[4] decision last year reminded the Commissioner that it is Congress and not the Commissioner who prescribes qualifications for public office.

This year, in another *Villegas v. Subido*[5] decision, the Supreme Court emphatically stressed that assignments and appointments of city public officers are the prerogative of the city mayor and that the Commissioner should limit himself to his jurisdiction. The Court stated that the Mayor of Manila has the power to designate station commanders of Manila Police precincts. Such power cannot be negated by the authority of the Commissioner of Civil Service to promulgate rules and standards dealing specifically with the supervision, the preparation and rating of all civil service examinations, the making of investigation and special reports upon all matters relating to the enforcement of the civil service law, the authority to pass upon all removal, separation, and suspension of permanent officers and employees in the competitive and classified service, and the determination of appeals instituted by any person believing himself to be aggrieved. Such powers of the Civil Service Commissioner do not have the slightest connection with the exercise by the Mayor of competence exclusively lodged with him.

The Court distinguished between assignments and appointments. It stated that if the assignments or details are appointments to positions in the classified service, which they are not, the Commissioner may at most inquire only as to the eligibility of the appointees. If the appointee is qualified, the Commissioner has no choice but to attest. The attestation is merely a check to assure compliance with the civil service laws.

The Court noted that the Commissioner cannot point to any express provision that confers on him the power to require specific eligibility for police precinct commanders. At most, he relies on an ambiguity in the Civil Service Act regarding his approval of promotions. The Court then reminded him that competence to act can not be predicated from the vagueness of a statute.

Can the Civil Service Rules be the basis for the power? The Court stated that the Commissioner cannot premise the exercise of his power on the authority to issue rules and regulations and to promulgate standards, policies, and guidelines. This would offend against the primacy accorded to statutes.

[4] G.R. No. 29588, November 29, 1968. The decision involves qualifications of the legal officer of the city of Manila.

[5] *Supra*, note 1.

Rules cannot supersede applicable statutes, not only in what they command but also in what they omit. The Court pointed out that in the hierarchy of legal norms, rules and standards occupy an inferior status. If the statute is silent as to the existence of power, there the matter rests. Only Congress can remedy the situation.

The Supreme Court reiterated the doctrine in *Reyes v. Abeleda*[6] and *Pineda v. Claudio*[7] regarding the respect accorded to the exercise of authority to appoint by the official entrusted by law to do so and the minimum interference allowed by the Commissioner of Civil Service under his power to inquire into the eligibility of the appointee. The efforts to infer power from the Constitution were rebuked by the Court when it ruled that the Constitution did not create a Civil Service Commission nor a Civil Service Commissioner. The position of Commissioner is a statutory creation, the extent of his powers being thus limited and circumscribed. It would be futile on his part to trace the existence of an alleged authority to the Constitution. The Court added that if there are any constitutional overtones in this litigation, the Mayor and the other petitioners, not the respondents, are the beneficiaries of the provision on the general supervision of the President over local governments, as may be provided by law.

In the last portion of the decision, the Court stressed that a public official exercises power, not rights. The government itself is merely an agency through which the will of the state is expressed and enforced. Its officers therefore are likewise agents entrusted with the responsibility of discharging its functions. As such there is no presumption that they are empowered to act. There must be a delegation of such authority, either express or implied. In the absence of a valid grant, they are devoid of power. Neither the high dignity of the office nor the righteousness of the motive is an acceptable substitute for the authority conferred by law.

Discretion of appointing power

The limits of the power of the Commissioner of Civil Service were also examined in the case of *Barangan v. Hernando*.[8]

A municipal mayor extended a temporary appointment on July 1, 1963 to a chief of police who did not have appropriate eligibility. When the services of the chief of police were terminated on April 30, 1965, the incumbent invoked his civil service eligibility acquired on December 30, 1963 and refused to vacate his office. The matter was elevated by the chief of police to the Commissioner of Civil Service, who ruled that he was *reapproving* Barangan's appointment as provisional. The Commissioner advised the mayor

[6] G.R. No. 25491, February 27, 1968, 65 O.G. 6148 (June, 1969). 22 SCRA 825.
[7] G.R. No. 29661, May 13, 1969, 28 SCRA 34.
[8] G.R. No. 28652, February 28, 1969.

to reinstate him. When Barangan asked for a definite and final ruling, the Commissioner ruled that Barangan was a permanent chief of police who could be dismissed only for cause.

Reiterating the *Santos v. Chico*[9] ruling, the Court held that the act of the Civil Service Commissioner in approving as provisional a temporary appointment made by the mayor constitutes an unwarranted invasion of the discretion of the appointing officer, and cannot be operative. Barangan's appointment was temporary in character and he cannot invoke the protection of a secured tenure.

Delegation of the Commissioner's authority

In *Escalante v. Subido,*[10] the petitioner superintendent of schools of Albay was administratively charged for certain irregularities in the purchase of carpentry tools for public schools in his division.

After a formal investigation, the Director of Public Schools and the Secretary of Education recommended the dropping of the charges, but that Escalante be admonished and be instructed to comply more faithfully with existing regulations in the future.

The department legal counsel of the Civil Service Commission rendered a decision "for the Commissioner of Civil Service" adopting the recommendations.

In spite of the decision by the Legal Counsel, Commissioner Subido issued an *order,* nine months later, addressed to the Secretary of Education questioning the dropping of charges. The order found petitioner guilty as charged and asked that a decision dismissing him from the service be executed immediately. The Commissioner stated that the authority to discipline subordinate officers and employees in the civil service is inherently a quasi-judicial power involving the exercise of discretion which cannot legally be delegated and that the delegation to the legal counsel of the Commission was void *ab initio.*

The Court upheld the delegation. It ruled that it is humanly impossible for the Commissioner to attend personally to the matter of appointment, promotion, and discipline of hundreds of thousands of officers and employees in the Civil Service. If the Commissioner were to discharge personally all functions requiring the exercise of judgment or discretion, this would leave all other officers and employees of the Commission without any duties whatsoever to discharge. The Court pointed out that the final authority of the Civil Service Commissioner to pass upon the removal, separation, and suspension of officers and employees is subject to the delegation authorized in Section 20 of the Civil Service Law.

[9] G.R. No. 24155, September 28, 1968.
[10] G.R. No. 22013, November 28, 1969.

The Court also questioned the action of the Commissioner in reversing a decision more than nine months after it was rendered. It ruled that the authority of the Commissioner to pass upon matters of discipline of those in the civil service and to review and revise the acts of his delegates in connection therewith, cannot be exercised any time he chooses to do so. It must be exercised seasonably.

Temporary appointments

The case of *Esquillo v. Subido*[11] is a mere reiteration of the rule that the due process guaranty protecting security of tenure cannot be availed of in the case of appointments that are temporary in character. However, the case is noted as another example of the careless manner in which two distinct types of appointment under the Civil Service Act, (prior to its amendment in 1969) are treated by the Civil Service Commission deputies.[12] The appointment of Esquillo as chief of police was approved by the Provincial Treasurer, deputy of the Commissioner of Civil Service, as a *provisional* or *temporary* one. The deputy should have known that under the applicable law, there is a clear distinction between a provisional appointment and a temporary appointment. A provisional appointment is extended when there are no eligibles at the time of appointment. A temporary appointment refers to a position which is needed for only a limited period, not exceeding six months. The Court ruled that the appointment was temporary. In fact it should have been denominated as temporary from its very inception, by the appointing power and the Civil Service Commission. Republic Act No. 6040[13] has deleted the provision regarding provisional appointments and appointments under the Civil Service Act, as amended, are now either permanent or temporary.

Provisional appointments

With the passage of Republic Act No. 6040, the decision in *Festejo v. Barreras*[14] becomes academic. The ruling distinguishes between a temporary appointment and a provisional appointment. It points out that a temporary appointment may be terminated anytime but a provisional appointment may be terminated only upon the certification of an appropriate eligible. The many cases cited by the appellants and the indorsements of the Commissioner of Civil Service relied upon refer to temporary appointments and not provisional ones.

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[11] G.R. No. 30341, August 22, 1969.

[12] See Fernandez v. Romualdez, G.R. No. 26208, April 3, 1968 where a "probationary" appointment was approved when it should have been "temporary."

[13] Effective August 4, 1969.

[14] G.R. No. 25074, December 27, 1969.

Filling up of vacancies

A far-reaching ruling was enunciated by the Supreme Court in *Pineda v. Claudio.*[15] The principles of next-in-rank and seniority have been mistakenly given such undue importance over the years that the overwhelming mass of government employees think these are the only criteria for filling up vacancies in the upper echelons of the competitive service. There is basis for the observation that the poor managerial content of most government offices is partly due to the fact that employees who should never have progressed beyond clerical assignments somehow found their way to the top simply by hanging on to their jobs and waiting for the automatic operation of next-in-rank or seniority promotions while their more progressive contemporaries went to private enterprises or to other offices.

It may be argued that the next-in-rank and seniority rules protect the civil service from the spoils system. Actually they do not, because some of the most avid seekers of political influence in matters of promotion may be found within the civil service itself. The effect of these rules has been to discourage brilliant young men and women from entering the civil service. Capable persons are dismayed by the low salaries at the bottom ranks and by the thought that they must wait until all the slow moving personnel above them are promoted before they may move up.

The *Pineda v. Claudio* ruling gives a wider field of choice to the appointing power.

Section 4 of the Decentralization Act (Republic Act No. 5185) provides that in cases of vacancies in the offices of heads of local offices, the governor or mayor shall fill them by appointment from a list of the five next ranking eligible and qualified persons as certified by the Civil Service Commission. Section 23 of the Civil Service Act as amended provides that a vacancy in a competitive position shall be filled by promoting the officer or employee next in rank who is competent and qualified to hold the position and who possesses an appropriate civil service eligibility.

When the position of Pasay City police chief became vacant, Deputy Chief of Police Basilio M. Pineda brought a petition for mandamus to compel the city mayor to appoint him as chief of police. Instead of appointing the deputy chief, who was next in rank, the mayor appointed a state prosecutor in the Department of Justice. Abelardo Subido, the Civil Service Commissioner held the appointment in abeyance until other persons, who in the Commissioner's opinion, had preferential right to appointment, had been considered.

The stand of Subido was based on the *Millares v. Subido*[16] ruling where the Court held that vacancies are filled by promotion of the ranking of-

[15] G.R. No. 29661, May 13, 1969.
[16] G.R. No. 23281, August 10, 1967, 65 O.G. 4235 (April 28, 1969).

ficer who is competent, qualified, and with appropriate eligibility. If for special reasons, made known to the next-in-rank, he cannot be promoted, the vacancy must be filled by transfer, re-employment, or by getting from the certified list of appropriate eligibles, *in that order*. Subido submitted the name of Basilio Pineda as next in rank for promotion and several other names under the headings of transfer, reinstatement, re-employment, and certification, if, for special reasons, the next-in-rank could not be promoted.

The Court ruled that the law does not peremptorily require the mayor to promote the officer next in rank. To require that vacancies must be filled by promotion, transfer, reinstatement, re-employment, or certification, *in that order*, would be legislative appointment, according to the Court and, therefore, unconstitutional. What the law requires is that, as far as practicable, the person next in rank should be promoted, otherwise the vacancy may be filled by the other methods as the appointing power sees fit. To construe Section 23 as Pineda urged would be to unduly interfere with the power and prerogatives of local executives as well as frustrate the policy of the Police Act to achieve a higher degree of efficiency in local police agencies, according to the Court.

The Court further stated that the cited ruling in the *Millares* decision was not really necessary to decide the case and there was no occasion to apply Section 23. But in the *Pineda v. Claudio* case, the question was presented squarely and the Court ruled that the principles of seniority and next-in-rank apply only to cases of promotion. Where the appointing power chooses to fill the vacancy not by promotion but by transfer, reinstatement, re-employment or certification (not necessarily in that order), he is not required to explain his action.

Under Section 23 of the Civil Service law when the appointing power does not promote the next-in-rank but promotes somebody else, the special reason or reasons why the next-in-rank was not promoted must be stated in writing by the appointing power, the next-in-rank must be informed, and opportunity to appeal the matter to the Commissioner of Civil Service is provided.

The Court explained that in promotions, rankings are disturbed. There is reason for the next-in-rank principle. But where a vacancy is filled by transfer, reinstatement, or original appointment, there are no rankings, no higher or lower positions. The next-in-rank employee cannot claim he has a higher rank than one who has never been in the government service before or one who transfers from a private firm. The next-in-rank official cannot claim any preferential right to appointment to the vacancy over others equally certified to be qualified and eligible for appointment by transfer, reinstatement or re-employment, or by appropriate certification. The Court

also stated that to hold otherwise would be to substitute the judgment of the Commissioner of Civil Service for that of the appointing authority.

Under this ruling, city mayors may appoint from the list of the five next ranking eligible and qualified persons certified by the Civil Service Commission and from certified lists of eligible and qualified persons who may be transferred, reinstated, re-employed, or originally appointed.

Tenure of primarily confidential positions

Among the more perplexing questions in civil service law is the nature of a primarily confidential position.

A well-known practice, which has almost become traditional, is for top positions in various government offices and agencies including many with fixed terms, to be vacated with every change of administration. When the new department secretaries, administrators, commissioners, directors, governors, etc. assume office they bring with them confidential secretaries, special assistants, confidential agents, and other confidential personnel who do not have civil service eligibility but who get higher pay than competitive personnel doing comparable jobs in the same agency. When these top officials resign or leave their offices, it is also traditional for all their confidential employees to leave with them, unless they have been absorbed into the regular work force during their incumbency.

May the employment of these primarily confidential employees be terminated any time? The forum answer was — yes, whenever the appointing power loses confidence in the employee. Primarily confidential has been understood as denoting not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which insures freedom of intercourse without embarrassment or freedom from misgivings or betrayals of personal trust or confidential matters of state. Obviously, if this close intimacy is gone, confidence is lost.

It must have been this view of a primarily confidential position which moved the PHHC board of directors in *Gray v. de Vera*[17] to terminate the services of Gray, the Board Secretary on account of loss of confidence due to treachery or disloyalty to the board. The dismissal arose from a telegram which Gray sent to President Carlos P. Garcia, suggesting revamp of the PHHC board and charging the members with various anomalies. De Vera was appointed to replace Gray.

The Court of First Instance decided in favor of De Vera in the quo warranto petition. On appeal, the Supreme Court reversed. The Supreme Court held that even if the position of the secretary was primarily confidential in nature, it does not follow that he could be dismissed without a

[17] G.R. No. 23966, May 22, 1969.

formal charge and the opportunity to be heard. A position declared primarily confidential comes within the purview of Section 4, Article XII of the Constitution. The permanent incumbent can only be removed or suspended for cause as provided by law. The act of Gray in sending a telegram to the President reporting acts of mismanagement and misconduct of the members of the board is an act of civic duty if sent in good faith and capable of being proved by evidence. It is not a ground for removal. It is in consonance with the honesty and integrity required for the position.

The Court defined the loyalty that is part of a primarily confidential position as loyalty in the interest of good government and not in the personal interest of the directors to the extent of concealing the wrongdoings of the board. If the charges of mismanagement and misconduct contained in the telegram were false, the Board of Directors should have required Board Secretary Gray to show cause why he should not be removed from office for making such false charges. The board secretary would have been given an opportunity to be heard. If he could not substantiate his charges, the Board could have made a finding to that effect and removed him from office for serious misconduct but not for treachery or disloyalty to the board. Even if the telegram was lawful cause for removal, the fact remains that he was summarily removed one day after he sent it. No formal charge was filed against him stating the ground for removal and giving him an opportunity of being heard. He was, thus, removed from office without due process of law, in view of which his removal was illegal.

If an employee occupying a primarily confidential position can be removed only for cause, after hearing, the mass exodus of confidential employees after every change of administration should stop. In fact, the entire concept of "primarily confidential" appointments should be re-examined. If loyalty to good government is the test of confidence, why should there be any distinction between confidential employees and those recruited through competitive examinations? All public officers should be loyal to good government but primarily confidential employees are, in addition, expected to be personally loyal to their immediate superiors. If the *Gray v. De Vera* ruling is limited to a situation where loyalty to government conflicts with loyalty to the boss, not many questions will arise. But suppose the employee continues to be loyal to good government, to be efficient, etc., but his boss has completely lost personal confidence in him? Would the statements in *Gray v. De Vera* also apply? What formal charges must be filed? What are the grounds that are unique for primarily confidential positions as differentiated from the grounds for removal common to all employees?

Preventive suspension of municipal officials

A municipal mayor of Surigao del Sur was charged with misconduct and dishonesty in office by the provincial governor. The governor preventively

suspended him and designated the vice-mayor as acting mayor. Are the actions of the governor valid? Does he have the power of preventive suspension?

The decision in *Sarcos v. Castillo*[18] says he does not. The power has been transferred by law to the provincial board. Under Section 2188 of the RAC, which was repealed by Section 25 of the Decentralization Act, the provincial governor, if the charge against a municipal official was one affecting his official integrity, could order his preventive suspension.[19] The Decentralization Act omits the mention of the governor as the suspending authority. Neither does it specify positively who may exercise the power.

The Supreme Court stated that Section 5 of the Republic Act No. 5185 makes manifest that it is the provincial board which has the power to suspend under conditions therein specified. Deliberate selection of language other than that used in an earlier act is indicative that a change in the law is intended.[20] Any other view would be to betray lack of fidelity to the purpose so manifest in the controlling legal provision. The construction here reached as to the absence of power on the part of provincial governors to suspend preventively a municipal mayor is buttressed by the avoidance of undesirable consequences flowing from a different doctrine.

In arriving at this interpretation, the Court reiterated the rule that strict construction of law relating to suspension and removal is the universal rule. When dealing with elective posts, the necessity for restricted construction is greater. Deference to such a doctrine possessed of intrinsic merit calls for due care lest by inadvertence the power to suspend preventively is given to officials other than those specifically mentioned in the Act.

The Court explained that municipalities, as much as cities and provinces, are by the Decentralization Act invested with greater freedom and ampler means to respond to the needs of their people and promote their prosperity and happiness. It is implicit in our constitutional scheme that full autonomy be accorded the inhabitants of the local units to govern themselves. Their choice as to who should be their public officials must be respected. Those elected must serve out their term. If they have to be removed at all, it should be for cause in accordance with the prescribed procedure and by the specific officials of higher category entrusted with such reponsibility. The Court showed how the vesting of power to suspend in the provincial board is a safeguard against the temptation to use it for purely partisan ends. *Aves v. Joson*[21] repeats the ruling in *Sarcos v. Castillo.*

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[18] G.R. No. 29755, January 31, 1969.

[19] The Court makes reference to Hebron v. Reyes, 104 Phil. 175 (1958) and Ochate v. Deling, 105 Phil. 384 (1959).

[20] Brewster v. Gage, 280 US 327, 50 S.Ct. 115, 74 L.Ed. 457 (1929).

[21] G.R. No. 29922, August 29, 1969.

Transfer and assignments

Section 32 of the Civil Service law provides that no officer or employee in the civil service shall be removed or suspended except for cause as provided by law and after due process, provided, that a transfer from one position to another without reduction in rank or salary shall not be considered disciplinary when made in the interest of public service.[22]

Three government employees who tried to show in separate cases that their transfers violated this provision on security of tenure were told by the Supreme Court that their "transfers" were not really transfers but merely assignments or details which the heads of office could validly make.

In *Brillantes v. Guevarra*[23] the petitioner with appropriate eligibilities and educational attainment and with 34 years government service was transferred from principal of Sinalang Elementary School in Bangued, Abra to principal of Penarrubia Elementary School in Penarrubia, Abra, which was about 6 kilometers from her hometown of Bangued. She contested the transfer on grounds of family hardship, that the transfers was not required by contingency of service as there was no complaint against her, and that it was disciplinary in character and made without due process.

The Court ruled that the security of tenure which protects against transfers tantamount to removal necessarily depends upon the nature of the appointment. The rule which proscribes transfers without consent as violative of the security of tenure is predicated upon the theory that the officer involved is *appointed* — not merely *assigned* — to a particular station.

It stated that the only secured right of a holder of an appointment without specific station is the position itself but not the station to which he may have been assigned. Brillantes was appointed an elementary school principal in the Bureau of Public Schools without mention of station. She cannot claim a right to her Bangued assignment.

The Court found that the re-assignment to another school was based on a valid exercise of the rule making power of the Secretary of Education governing the internal regulation of officers under his Department, found in Section 79(b) of the Revised Administrative Code. The Court called the attention of petitioner to a directive of the Department of Education and to Circular 28, series of 1962, of the Director of Public Schools, which provides that certain school officials, among them elementary school principals paid from national funds, are to be transferred upon completion of five years of service in one station in order to prevent a situation where

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[22] Rep. Act No. 6040 (1969), sec. 11 adds that if the employee believes there is no justification for the transfer, he may appeal his case to the Commission on Civil Service through the Department Head. Pending appeal and decision thereof, his transfer is held in abeyance.

[23] G.R. No. 22586, February 27, 1969.

they become stale and unchallenged by new situations and where administrative problems accumulate.

A transfer, aside from requiring an appointment, must not involve any reduction in rank and pay. Brillantes claimed a reduction in rank. The Court ruled that assigning a principal from a school with 23 teachers to a school with only 13 teachers is not a demotion. Neither did it jeopardize her chances of promotion. The Court stated that the criteria for promotion are educational qualifications, civil service eligibility, efficiency, experience, and educational leadership and executive ability. The number of teachers supervised is not a factor to be considered.

The Court, however, admonished the school authorities by stating that where appeal is pending resolution in the Supreme Court, the school authorities should be cautious in charging before the Civil Service Commission a school teacher with insubordination for failure to comply with their directive. While the interests of the service may be urged in enforcing such directive, there are factors which should outweigh the exercise thereof while the court case remains unresolved.

Details pending administrative investigations

May a public officer facing administrative charges be detailed or assigned to various offices pending a final decision?[24] Is not an assignment to an office of lower rank a transfer, which is tantamount to demotion or removal? The Court's answer is that he may be detailed and such detail is valid. It is not removal.

In *Subido v. Gopengco*,[25] Deputy Commissioner of Civil Service Varela was found guilty of misconduct in office, insubordination, and presumptuous conduct by the President and considered resigned from the service. Varela countered by asking for a restraining order against the enforcement of the President's order. He averred that the administrative proceedings against him were void because he was suspended without being afforded an opportunity to explain; that he was suspended even before the start of the investigation, that the Executive Secretary had no power to suspend him and that the power to suspend was in the Civil Service Commissioner. The petition in the Supreme Court for certiorari and prohibition was directed at the trial court's mandatory injunction directing the reinstatement of Varela and the order enjoining the enforcement of the President's decision and disturbing Varela in his position.

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[24] The Civil Service Rules, Rule XVIII, sec. 23 states that certain officers and employees described therein whose preventive suspension has expired but where no final decision has been rendered, may be divested of the powers and duties of their positions and assigned to duties not connected therewith until the cases against them are finally decided.

[25] G.R. No. 25618, March 28, 1969.

In setting aside the mandatory injunction, the Court stated that the basic assumption underlying the issuance of the writ was that Varela's transfer from one office to another while his administrative case was pending was equivalent to removal without cause. The main thrust of his case was that his assignment to positions which are of a lower rank than his former position was a virtual removal without cause. The Supreme Court upheld the argument of the Solicitor General that the detail of Varela to various offices was merely temporary and intended to clear an atmosphere of animosity in the Civil Service Commission. Section 35 of the Civil Service Law states that if an administrative case is not decided within 60 days, a suspended employee must be reinstated in the *service*. Only if he is finally exonerated must he be restored to *his position* with full pay for the period of suspension. The Court found that the respondent's case did not come to court with such urgency as to call for a mandatory injunction to restore relations so recently ruptured. It set the injunction aside.

Assignment to another office

In *Garcia v. Teehankee*[26] the assistant clerk of court of the Court of First Instance of Pasay City was assigned to the judiciary division of the Department of Justice and required to finish all the stenographic transcripts due from her in appealed cases while at her new assignment. The petitioner alleged that the transfer was virtually a demotion and reduction in rank; that the transfer without her consent amounted to an illegal removal from her present position without lawful cause, an infringement of her constitutional rights and could not be justified by the statement that it was in the interest of public service.

The Court stated that the text of the directive transferring her reveals that the purpose of the assignment was to compel transcription of the notes taken by her as court stenographer as soon as possible. The assignment, therefore, was on its face temporary, and justified by the needs of the service, particularly that of a speedy administration of justice. Like the two other cases, this was no transfer but a mere assignment.

According to the Court the record shows that the petitioner had disputes and strained relations with the other personnel of the Court of First Instance in Pasay City. The situation was not conducive to a speedy transcription of petitioner's notes and the directive, in this respect, was neither faulty nor improper. The overriding consideration was the avoidance of delay in the disposition of pending cases.

That her assignment to the Department of Justice carried no specific date of termination is due to the fact that the Secretary could not anticipate when she would finish transcribing her stenographic notes. Instead of being

[26] G.R. No. 29113, April 18, 1969, 27 SCRA 937.

evidence of a desire to surreptitiously effect her removal, as she claims, the indefiniteness of the assignment was inevitable.

Abolition of public office

An abolition of a public office which results in removal of permanent civil service employees must be done in good faith. Otherwise, it is violative of the constitutionally protected security of tenure of those in the civil service.

Enciso v. Remo[27] illustrates a purported abolition which was no abolition at all.

Sergeant Enciso of the Goa, Camarines police force went on leave of absence. While he was on leave, a non-eligible was appointed in his stead. When Enciso returned for duty, he was told that his office had been abolished by the municipal council pursuant to a directive of the Secretary of Finance. Enciso is a civil service eligible.

Regarding the abolition of the office, the Supreme Court found that there was merely a change in the designation of the office from sergeant to corporal. The position held by Enciso, although given the rank of sergeant, was actually that of corporal. Although Enciso erroneously called himself a sergeant of police and every municipal budget of Goa prior to that which allegedly abolished the item, compounded the error by recognizing that rank, the fact remains that, in law, the item Enciso occupied was that of corporal. The directive from the Secretary of Finance did not ask for the abolition of existing positions but merely a change in designation in order to conform to the new legislation. It could not be argued, the Court stated, that there was no position to which the petitioner could be restored as it was not legally abolished. The Court found to be patently false the respondent mayor's contention that the item was abolished. It found that Remo defied the orders of the Office of the President and disregarded an order of the Secretary of Finance. It found political differences between Enciso, a Liberal and Remo, a Nacionalista. It ruled that when a public office goes outside the scope of his duty, particularly when acting tortiously, he is not entitled to protection on account of his office, but is liable for his acts like any private individual. It found respondents liable for back salaries. However, it ruled that the award of back salaries already includes and absorbs the claim for moral damages.

The abolition of position in *Adle v. La Castellana*[28] is different from *Enciso v. Remo*. The former reiterates the principle that an abolition in good faith of a position in the civil service is not removal without cause. A police sergeant who had passed the civil service examination was await-

[27] G.R. No. 23670, September 30, 1969.
[28] G.R. No. 23922, June 30, 1969.

ing the results of his physical and medical examination which would make his appointment permanent when he was included in a charge for murder. Ten years elapsed before his acquittal. In the meantime, nine years earlier, his position had been abolished so the municipality could comply with the Minimum Wage Law by reducing positions. When he sued for back salaries under Republic Act No. 557, the law governing charges against municipal policemen, the court held that valid abolition of his position terminated not only his employment but also his right to any further compensation.

Nature of membership in municipal board

Perez v. De la Cruz[29] holds that a vice-mayor who is the presiding officer of the municipal board of a chartered city is not necessarily a member of that board. Section 3 of Republic Act No. 2259 installs the vice-mayor as the presiding officer of the board in chartered cities, but does not install the vice-mayor as a member thereof. She cannot, therefore, vote twice — once to create a tie vote and the second time around, to break such tie with her vote as presiding officer. The cases of the vice-mayor of Quezon City, Cabanatuan City, and Cagayan de Oro City could not be cited as precedents because the charters of these cities specifically provide that the vice-mayor shall be a member of the municipal board while the charter of Naga City does not.

Back salaries of de facto officer

The *Descuatan v. Balayon*[30] decision reiterates the ruling in *Monroy v. Court of Appeals* that in a petition for injunction and quo warranto involving the forfeiture of the office of municipal mayor by the incumbent occupant thereof and the claim to that office by the vice-mayor because of the statutory provision that considers an official resigned at the moment of the filing of the certificate of candidacy, the matter of who was entitled to the salary in the meanwhile could be inquired into. In this case, since the right of the vice-mayor was sustained, he was deemed entitled to reimbursement by way of actual damages of the salary he would have received had he not been prevented from assuming the position which was rightfully his.

Back salaries of superseded officer

Avila v. Gimenez[31] states that not all public officers who are reinstated after an administrative investigation may be paid back salaries.

Avila was preventively suspended by the Auditor General from his position as Provincial Auditor of Bukidnon in 1951 and was not recalled to the service until August 15, 1963 when he was appointed Acting Provincial

[29] G.R. No. 29458, March 28, 1969.
[30] G.R. No. 29865, February 28, 1969.
[31] G.R. No. 24615, February 28, 1969.

Auditor of the same province, a period of more than twelve and a half years. He filed an action for the recovery of his salaries from the time of his suspension. The Court ruled that back salaries may be ordered paid only if he is exonerated of the charge against him and his suspension or dismissal is found and declared illegal. Plaintiff should not be ordered paid of back salaries where he was not completely exonerated, as in this case, it appearing that although the decision of the Commissioner of Civil Service was modified and the plaintiff was allowed to be reinstated the decision ordered him to forfeit two months pay and not to be given back salaries.

GSIS retirement benefits

Two decisions involving retirement of public officers were handed down in 1969.

The case of *Anciano v. Otadoy*[32] illustrates the exclusive nature of GSIS retirement benefits. In this case, Anciano, the municipal treasurer of the municipality of Poro retired from the government service. During his employment as municipal treasurer, he was also deputy provincial treasurer with respect to collection of revenues, pursuant to Section 2208 of the Revised Administrative Code.

Upon retiring in 1958, he was granted GSIS retirement benefits as deputy provincial treasurer and postmaster. His application for retirement compensation as municipal treasurer was disapproved because Poro, not being a first class municipality, was not compulsorily covered by the GSIS. He applied for benefits under the Osmeña Retirement Act as amended, Act 2589. The Court ruled that any public office who retires under the GSIS law cannot claim any gratuity from his employing office. Upon receipt of GSIS retirement insurance benefits, Anciano, by his own voluntary act, divested himself of his right to gratuity under Act 2589.

Under this decision, we have a public officer who served and received pay under two distinct categories and two muncipal corporations — a municipality and a province. His right to retirement pay under the GSIS law was, however, exclusive of his right to other retirement gratuities.

Service beyond compulsory retirement

In *U.P. Board of Regents v. Auditor General*,[33] the Supreme Court looked into the power of heads of offfices to extend the services of public officers beyond retirement age. It ruled that where the applicable statute removes from the President, Senate President, Speaker of the House of Representatives and Chief Justice the power to extend appointments of retired public officers, the UP Board of Regents is powerless to extend the service of a

[32] G.R. No. 21267, February 28, 1969.
[33] G.R. No. 19617, October 31, 1969.

UP professor who has reached the compulsory retirement age of 65. The UP Charter must be deemed restricted or limited by the amendment found in Republic Act No. 3096. The Court stated that academic freedom is not violated as the law deals on retirement and not appointment. All government employees are members of the GSIS and similarly situated are governed thereby and UP professors are not exempt therefrom.

A footnote to the decision points out that Republic Act No. 4968, effective June 2, 1967, restores to the President of the Philippines, President of the Senate, the Speaker of the House of Representatives and the Chief Justice of the Supreme Court, the power to allow an employee to serve in the respective branch of government after the age of 65 years if he possesses special qualifications and the corresponding department secretary certifies in writing that his services are needed. The paragraph on compulsory retirement is not also applicable to elective officials and constitutional officers whose tenure of office is guaranteed.

The retired faculty member was, however, permitted to be paid for his services as a contractual employee. The Court stated that the unique and peculiar circumstances under which Professor Jamias' services were sought, engaged and harnessed anew, despite his having reached the compulsory age of retirement, sufficiently justified a special contract of services up to April 15, 1962. The Board of Regents could enter into this contractual relationship even as it had no power to extend his original term.

Anti-Graft and Corrupt Practices Act

The Anti-Graft and Corrupt Practices Act was interpreted in the case of *Luciano v. Provincial Governor.*[34]

Mayor Maximo Estrella of Makati, Rizal, the vice-mayor, and four councilors were charged for violation of the Anti-Graft and Corrupt Practices Act arising from the gross overpricing of traffic reflectors. In the efforts to suspend the accused pursuant to Section 13 of the Anti-Graft and Corrupt Practices Act, various issues in the law of public officers came up.

The first issue refers to the legal effect of re-election on acts done by public officials prior to their re-election. Estrella and the other respondents contend that under the rulings in *Pascual v. Provincial Board*[35] and *Lizares v. Hechanova*[36] their re-election erected a bar to their removal from office for misconduct committed prior to the last general elections. The Supreme Court ruled that the two cited cases laid down the precept that a re-elected public officer is no longer amenable to administrative sanctions for acts committed during his former tenure. What is involved here, however, is not an

[34] G.R. No. 30306, June 20, 1969.
[35] 106 Phil. 466 (1959).
[36] G.R. No. 22059, May 17, 1966, 17 SCRA 58.

administrative case but a criminal prosecution under the Anti-Graft and Corrupt Practices Act. This law makes no time distinctions. It is immaterial when a repressible act is committed by a public officer. In fact, under the Act one of the penalties is perpetual disqualification from public office.

Another question is whether suspension of an accused official under the Anti-Graft Act is automatic. The Court ruled that when the law states "shall be suspended from office", it speaks in mandatory terms. However, the law also states that the suspension follows the pendency in court of a criminal prosecution under a "valid information". There must first be a determination that the information filed is valid. Suspension, while mandatory, is not automatic and self-operative.

Who, then, exercises the power to suspend? Is it the provincial governor under Section 2188 of the Revised Administrative Code? Following the ruling in *Sarcos v. Castillo*[87] is it the Provincial Board under Section 5 of the Decentralization Act? Or is it solely the court in which the criminal case has been filed under Section 13 of the Anti-Graft and Corrupt Practices Act? The Supreme Court ruled that it is the court where the criminal case is pending. Once a case is filed in court, all other acts connected with the discharge of court functions should be left to the Court of First Instance. Since removal from office is within the power of the court, it should also have the power to suspend. Furthermore, Section 13 of the Anti-Graft and Corrupt Practices Act requires as a pre-condition to suspension that there must be a valid information. The validity of the information is determined by the court where the case is pending. That is a judicial function. Suspension is a sequel to that finding, an incident to the criminal proceedings before the court. In administrative proceedings, it is the provincial board that suspends but not in criminal cases before the Court of First Instance.

Regarding the standing of the councilor who received the highest number of votes to prosecute the case, the Court held that Councilor Luciano performs the duties and exercises the powers of mayor, except the power to appoint, suspend or dismiss employees, because there is a temporary incapacity of the mayor to perform the duties of his office. Temporary incapacity is not limited to physical disabilities. It includes lack of physical or intellectual power or of natural or legal qualifications. Mayor Estrella and Vice-Mayor Gealogo were suffering from temporary incapacity because of their suspension. The councilor moved up.

As regards the suspension, in turn, of Luciano by the Provincial Governor of Rizal, on account of charges brought against Luciano under the Anti-Graft and Corrupt Practices Act, the Court ruled that the authority to suspend is not lodged with the Governor but with the Court of Instance

[87] G.R. No. 29755, January 31, 1969, 26 SCRA 853.

where Luciano was charged. Unless that Court suspends Luciano, no reason exists why he should not be allowed to sit as acting mayor.

ELECTION LAW

Meaning of "next general elections"

Republic Act No. 5777 creating the municipality of Oppus, Southern Leyte provides for the election of municipal officials at "the next general elections".

Section 9 of the Decentralization Act of 1967, Republic Act No. 5185 provides that elective offices in any new province, city, municipality, or municipal district shall be filled by regular or special election to coincide with the next regular presidential or local election, unless created within thirty days before a regular presidential or local election.

Does next general elections in Republic Act No. 5777 refer to the presidential elections which were held five months after the creation of the municipality of Oppus, or to the next local elections, two years after the presidential elections?

The Supreme Court in *Yñiguez v. Comelec*[38] stated that the fact of general elections in the Philippines being staggered every two years — one for national offices and another for local offices — rules out the conclusion that the term "next general elections" used in the Act necessarily refers to the very first general election following the enactment. The more reasonable interpretation is that the reference is to the general election for local officials, since the offices to be filled are local and not national in nature.

Section 9 of the Decentralization Act provides for two ways to fill elective offices in a newly created municipality — by regular or special election to coincide with the next regular presidential or local elections. Obviously, if the next regular election is a local one, there need be no special election to fill such offices. The election for that purpose is considered also regular. However, if the next regular election is presidential, then the election to coincide with it in order to fill such local offices necessarily has to be a special one. But Republic Act No. 5777 does not provide for special elections. It says "next *general* elections".

Prohibited practices

The petitioners in the case of *Gonzales v. Commission on Elections*[39] challenged as violative of constitutional guarantees, Sections 50-A and 50-B of the Revised Election Code on the prohibition against too early nomination of candidates and the limitation upon the period of election campaign or partisan political activity. The majority voted against the validity of

[38] G.R. No. 31127, November 5, 1969.
[39] G.R. No. 27833, April 18, 1969.

these sections but for want of the necessary two-thirds majority, the law could not be declared unconstitutional. The provisions, therefore, continue to be valid and enforceable. The case is discussed thoroughly in the survey on "Constitutional Law," this issue.

Summary nature of registration case

The *Tan Cohon v. Election Registrar*[40] decision affirms that the summary character of an exclusion case for purposes of election registration under Republic Act No. 5178 renders the decision of the court of first instance on either inclusion or exclusion final and unappealable. However, even if final and no longer appealable, the decision does not bar future action on the subject passed upon in the exclusion case. Thus, if the city court or the court of first instance decides that an applicant for registration is indeed a citizen whose application should be approved, such a decision does not pass upon and finally determine the important and often intricate matter of citizenship. A voter's inclusion case cannot be used as backdoor to gain status of Filipino citizenship by judicial declaration. The decision is final as regards his voting in the elections but not as regards his citizenship.

Recanvass of tampered returns

The Revised Election Code provides remedies for election anomalies at various stages of the election process. If election anomalies are isolated instances appearing at a particular step in the procedure, it would be relatively easy to pinpoint the corresponding remedy. However, illegal acts such as frauds, terrorism, tampering, and other similar practices are usually committed throughout the election process, from nomination through the campaign, registration, voting, counting, canvassing, and proclamation. As a result, victimized candidates find themselves confused on the overlapping use of various remedies.

For instance, when does a candidate apply to the COMELEC for a re-canvass of returns instead of applying to a competent court for an alteration or amendment of statements of the board of inspectors? When should the remedy be a judicial recount instead of a re-canvass of returns or alteration of statements or election protest?

The nature and use of these remedies and the interpretation of some of their requirements were the subject of 1969 decisions.

Several questions which may come up regarding the canvass of votes were answered by the *Balindong v. Commission on Elections*[41] decision.

If a member of a municipal board of canvassers is disqualified to act on the board, the law requires that his substitute should come from his

[40] G.R. No. 29166, August 29, 1969.
[41] G.R. No. 29610, March 28, 1969.

political party. But suppose the disqualified member has changed parties since he was elected? Where shall his substitute come from?

The Court stated that Section 167 of the Revised Election Code was interpreted in the *Ibuna v. Commission on Elections*[42] decision as requiring the substitute members of the municipal board of canvassers to be recommendees of the political party to which the substituted members belonged *at the time of their disqualification.* Even where the Commmission on Elections, prior to the *Ibuna* ruling ordered the appointment as substitute members of recommendees of the party to which the disqualified members belonged *at the time of their election in 1963,* this fact does not validate the appointments and the action of the board. It stated that a canvassing and proclamation by an illegally constituted board, contrary to the Ibuna ruling, is illegal and invalid.

Another question referred to the requirement of notice. The Court ruled that for failure to give sufficient notice to a member of the municipal board of canvassers who is not disqualified, and to the candidates, the meeting of the board is null and void. Such failure is, at least, violative of the regulations of the COMELEC.

The main ruling, however, referred to the procedure which must be taken when returns from a precinct are palpably tampered. The Court stated that it is the ministerial function of a board of canvassers to count the results as they appear in the returns which on their face do not reveal any irregularities or falsities. *A contrario,* a canvass based on tampered returns is illegal. Alleged tampering must, therefore, be ascertained, first by the canvassing board and then by COMELEC.

Now, if it is discovered that the returns from a precinct are palpably tampered, what is the procedure for ascertaining the true vote cast in the precinct for purposes of proclamation? May the board of inspectors be made to file petitions for correction under Section 154 of the Revised Election Code? The Court said this is not the proper procedure. It ruled that the COMELEC view that the board of inspectors should file a petition for correction in the Court of First Instance is erroneous. Correction is a distinct remedy, unrelated to the investigatory procedure for tampered returns before the COMELEC. Furthermore, the petition is a privilege left to the members of the board of inspectors themselves. The unanimous consent of all the members of the board is required to effect correction. Courts may not coerce inspectors to file petitions for correction.

The Court stated that the only reliable and untampered documents reflecting the results of the election in the disputed precinct are the certificates of votes of candidates issued to the watchers. But these certificates cannot serve as returns for canvassing purposes as they are not returns.

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42 G.R. No. 28328, December 29, 1967.

The Court pointed out that judicial recount cannot be had either. Recount is possible only in case of contradictions or discrepancies between the copies of the same statements. The Court adverted to jurisprudence that said discrepancies must appear among the authentic returns and not tampered returns.

If the remedy is not correction under Section 154; if it is not judicial recount; and if the untampered certificates given to watchers cannot be used for canvassing purposes, what then should be done?

The Court ruled that the remedy is to recanvass the return from the precinct in question. To preserve the integrity of the election return, the falsified words and figures on the return must be deleted and the original restored. When an election return has been tampered with and it is still possible to salvage and ascertain the original entries, the votes originally entered should be considered as votes in said return for purposes of the canvass. The Court directed the Commission on Elections to instruct the legally reconstituted board of canvassers to convene immediately for the recanvass of all the returns for mayor in all the precincts in dispute.[43]

Alteration or amendments in statements

Section 154 of the Revised Election Code states that 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 is so ordered by a competent court. The board must be unanimous as to the existence of the error which requires rectification.[44]

In *Cuenco v. Laya*,[45] the Court held that the action for correction of errors in election returns authorized by section 154 of the Revised Election Code is a summary one, having in view the limited time before proclamation within which the court must act. As such, the petition for authority to correct may be entertained and granted only if it is made upon the unanimous petition of the members of the board of inspectors. For when the members do not agree on the existence of an error, the matter becomes contentious and it requires a full-dress hearing.

But suppose one of the members of the board of inspectors changes his mind after the filing of the petition? The Court stated that under section 154, unanimity need only exist upon the filing of the petition or before the court issues the order of correction. Thereafter any change of heart or mind on the part of any of the members of the board of inspectors, no matter how well or badly motivated, can have no effect on the petition. Other-

[43] Cf. Mutuc v. Comelec, G.R. No. 28517, February 21, 1968, 65 O.G. 6594 (June, 1969), re—a Comelec recount.

[44] Astilla v. Asuncion, G.R. No. 22264, February 29, 1964; Javier v. CFI of Antique, G.R. No. 24747, February 28, 1966.

[45] G.R. No. 31252, December 22, 1969.

wise, any of one of the inspectors could trifle with facility with the law and the court would be going through the motions of a useless and meaningless act. The Court pointed out that the facts in the *Javier v. Court of First Instance of Antique*[46] and the case at bar are disparate. In the former case, the court never acquired jurisdiction under section 154 because when the judicial petition was filed, the inspector did not sign it but opposed it although he joined earlier similar petitions filed with the municipal treasurer and board of canvassers which are not the lawful bodies to act thereon. In this case, the inspector joined with all the other inspectors in signing the judicial petition but disowned or withdrew her signature later on after the petition had been decided and the correction had been made.

Another question decided in *Cuenco v. Laya* refers to notice to the candidate affected. The petitioner, one of the candidates involved, requested the Court of First Instance that he should be informed of any action that his opponent may file in connection with the election returns. May the Court consider a petition under section 154 *ex parte*, notwithstanding this request? The Court stated that notice need not be given in this particular case.

The Court ruled that the summary nature of the proceeding under section 154 does not preclude notice to other affected candidates as the alteration or amendment sought to be made would materially affect the election. Indeed, it would be a good practice to require such notice in appropriate cases, particularly when there is sufficient time therefor and there are circumstances indicating that the allegations of the petition for correction may not be entirely truthful.

However, it added that where the omission from the election return of mention of a name of a candidate and of the votes that he garnered was a patent mistake and that the other party does not deny that said candidate obtained votes in that election precinct covered by the election return or assert that the election return if corrected would materially affect the result of the election, the petition for correction may be heard without notice given to the adverse candidate without violating due process.

In *Solidum v. Macalalag*[47] a petition for certiorari and prohibition attacked the jurisdiction of the CFI of Aklan to hear a case for correction of election returns and/or judicial recount of votes.

Solidum and Sulam were two of the candidates for the eight council seats in Ibajay, Aklan. On November 20, 1967 while the municipal board of canvassers was canvassing returns, it was discovered that Precinct 25 returns did not contain the name of Sulam and the votes obtained by him. Over the objections and after the walkout of three members, the remaining

[46] G.R. No. 24747, February 28, 1966.
[47] G.R. No. 28666, May 20, 1969.

four members proceeded with the canvass and proclaimed Solidum as the 8th councilor-elect. The three election inspectors of Precinct 25 signed an affidavit before the municipal judge stating that Sulam received 34 votes in that precinct. These 34 votes, if counted, would affect the results of the election for the 8th council seat. Solidum questioned the jurisdiction of the Court of First Instance to correct the returns.

The Supreme Court held that where the board of canvassers with knowledge that the return of one precinct is undoubtedly vitiated by clerical mistake continued the canvass and proclaimed a winner based on the result of such canvass, the proclamation may be annulled. Where three election inspectors unanimously represent to the court that the election return should be corrected and amended to conform to the facts, the court of first instance can order the correction pursuant to section 154 of the Revised Election Code. It also ruled that the remedy of mandamus for the purpose of securing the correction of an election return must be brought within the two-week period within which an election contest may be filed, otherwise the right of the candidate proclaimed to the office is deemed vested.

The Court ruled that the validity of the proclamation does not preclude the filing of an action within the two-week period provided by law.

Nature of judicial recount

The nature of a judicial recount was the subject of two 1969 decisions.

Is the recount of ballots under Section 163 a judicial function that pertains to the courts or is it an administrative proceeding that must be given to the COMELEC?

The question was posed in the case of *Binging Ho v. Board of Canvassers,*[48] where the constitutionality of Section 163 of the Revised Election Code was brought in issue. The appellant contended that recount does not in itself involve a decision in a judicial controversy[49] and that it is a proceeding essentially administrative or, at most, quasi-judicial in nature, which pertains, not to the courts but to the Commission on Elections, the body empowered to determine all administrative questions relative to elections, except the right to vote.

The Court ruled that this argument overlooks the fact that the actual recount of the ballots by the court of first instance is but the necessary consequence of its resolution of a preliminary controversy, to wit, whether or not there are sufficient facts that would warrant the opening of the ballot boxes and the recount of the ballots. To ascertain that such basic facts exist according to the evidence is essentially a judicial function. The actual recount may not in itself involve a decision in a judicial controversy

[48] G.R. No. 29051, July 28, 1969.
[49] Sanidad v. Saquing, G.R. No. 27951, May 28, 1968.

but the preceding finding of a discrepancy between authentic copies of the returns is an exercise of the judicial power to ascertain the facts, pass upon their sufficiency, and apply the laws to the controversy.

In *Villalon v. Arrieta*,[50] candidate Serina asked for a judicial recount in one precinct alleging tampering of returns and discrepancy between the minutes of voting and the results as reflected in the returns. The judge denied the petition relying on the *Ong v. COMELEC*[51] ruling that allegations of falsified returns must be handled by COMELEC and not the court of first instance. A day after this denial and even before the petitioning candidate had received notice of the order of denial, the board of canvassers proclaimed Villalon as mayor. Upon motion of Serina, the judge issued an order annulling the proclamation on the ground that his ruling denying the petition for judicial recount had not yet become final as Serina was still to be notified when the board of canvassers proclaimed Villalon. Villalon questioned this order annuling his proclamation.

In resolving the issue in favor of Villalon, the Court went into the nature of a judicial recount. It stated that the procedure is a summary one precisely to accomplish its purpose of aiding the electoral authorities in ascertaining the apparent results of an election exclusively for purposes of proclamation without unnecessary loss of time and without prejudice to the final outcome of a full dress determination of the true result of the election thru an election contest.

Indeed, the Court continued, the recount can as well be performed by COMELEC officials or other officials designated by that body or by law. The only reason why it is given to courts seems to be just to impress solemnity and dignity to its results which may serve as the basis of a temporary color of title to an elective office, without implying that the courts should follow the usual cumbersome and complicated procedure of a judicial proceeding. It is more of a mechanical process rather than one requiring the exercise of judgment and discretion.

The Court stated that a recount is not an action, and strictly speaking, not even a special proceeding. It is a part of the electoral administrative process. It then cited *Binging Ho v. Board of Canvassers*[52] to indicate that the only judicial aspect of a recount is determination of the question whether the legal requirements of a recount have been met or not.

Taking into account all these characteristics of judicial recount, the Court stated that an order of the judge denying a petition for recount or an order certifying the results of a recount is immediately executory. It is not appealable and there is no period of finality before it may be executed.

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50 G.R. No. 29177, September 30, 1969.
51 G.R. No. 28415, January 29, 1968.
52 *Supra*, note 48.

In fact, the Supreme Court stated that after issuing such an order, the court becomes *functus officio* and is powerless to issue any order save those which will insure its expedient effectuation.

On the petition of Villalon to prevent the COMELEC from investigating the alleged tampered return from one precinct because the court of first instance had already made an adverse finding on its integrity, the Court stated that this finding was preparatory to a judicial recount, which the court decided it could not do because it wanted COMELEC to look into the matter. The Court then ruled that proceedings under Section 163 of the Revised Election Code are for purposes of recount only. They cannot be *res adjudicata* for other purposes, whether in court or the COMELEC. The authority of the courts is strictly limited to the recount of the votes and whether or not its certification of results is utilized properly by election officials is another matter which, if necessary, must be the subject of another proceeding. The Court reiterated the ruling in *Chiongbian v. COMELEC*[53] that where there is evidence of tampering ballots and ballot boxes prior to a judicial recount, the recount even if conducted already may still be disregarded in favor of the contents of genuine copies of the election returns.

Annulment of elections

In the case of *Borromeo v. Commission on Elections*,[54] the petitioner asked for the annulment of the Quezon City elections of 1967 on the same grounds invoked in the case of *Abes v. Commission on Elections*.[55] The petitioner Borromeo alleged that Abes had sought the annulment of the elections by the *Commission on Elections* whereas in the present case, he was applying for relief from the *Court of First Instance of Rizal*. The Supreme Court held that the question of whether or not there had been terrorism, vote-buying, and other irregularities should be ventilated in a regular election protest and not in a petition to enjoin the city board of canvassers from canvassing the returns and proclaiming the winning candidates.

The Court also ruled that the petitioner, admittedly a citizen deeply interested in honest, free, and equal elections, did not show sufficient interest to entitle him to seek relief for the annulment of an election. An interest common with the community in general is inadequate. The petition should have shown that the petitioner has suffered an injury.

Estoppel to file election contest

In *De Castro v. Ginete*,[56] after petitioner De Castro was proclaimed mayor of Bulan, Sorsogon, respondent Ginete wrote him a letter of congra-

[53] G.R. No. 19202, December 11, 1961.
[54] G.R. No. 29369, July 24, 1969.
[55] G.R. No. 28348, December 15, 1967.
[56] G.R. No. 30058, March 28, 1969.

tulations and wished him success in his administration. Ginete accompanied De Castro to the inaugural ceremonies, turned over the symbolic key of responsibility as former mayor, and delivered a speech stating the new mayor was elected with a majority vote and asking the people to cooperate with the mayor-elect. Did these acts and conduct place Ginete in estoppel to protest the election of De Castro? The Supreme Court ruled, "No".

The ruling was supported by an exposition on the nature of an election contest and the fact that it involves a public office in which the public has an interest.

The Court stated that the only case where it has held that a party is estopped to contest the election of the winning candidate is in the case of a tie where the candidates who were declared to have obtained equal number of votes had voluntarily submitted themselves to the drawing of lots to determine the winner as provided by law. Even here, the Court stated that a candidate who submits himself to the drawing of lots but who states that if the result of said drawing of lots should be adverse to him, he would file a protest before a competent court, is not estopped from doing so.

Choice of COMELEC or court remedies

In *Ondona v. Commission on Elections*,[57] petitioner went to the COMELEC for annulment of his opponent's proclamation. He also filed an election protest in the Court of First Instance. COMELEC rejected his petition. He filed a motion for reconsideration. Meanwhile, the election protest went ahead and resulted in the petitioner's losing his case. So, he turned to the COMELEC for relief. The Supreme Court ruled that the petitioner, having lost in the election protest, may not be permitted to hold on to his petition with the COMELEC the purpose of which is to declare void the proclamation on which the protest he pursued was based. He cannot be allowed to proceed with the election protest and in the event he loses, fall back on COMELEC and seek the nullification of the canvassing and proclamation. This is unfair and inequitable. By insisting that the protest proceed to its conclusion in the Court of First Instance, the petitioner recognized the validity of the proclamation and abandoned his petition for the annulment of the canvass and proclamation.

Nature of election contest

It was held in the case of *Estrada v. Sto. Domingo*[58] that impending bloodshed can never be a valid ground to restrain a lawful assumption of office by a winner in an election contest. The respondent mayor of San Juan, Rizal argued that unless the order of the trial court proclaiming Estrada

[57] G.R. No. 29199, March 28, 1969.
[58] G.R. No. 30570, July 29, 1969.

as mayor were restrained a clash between the armed men of Estrada and his (Sto. Domingo) men would result.

The Court based its decision on the nature of election contest proceedings. It stated that proceedings in election protests are special and expeditious. The periods for filing pleadings are short. Trials are swift. Decisions in municipal election contests are to be handed down in six months after the protest is presented. The time to file a notice of appeal is cut short to five days from notice of the decision. Appeal is to be decided within three months after the case is filed with the clerk of court to which appeal is taken. Preferential disposition of election contests except as to *habeas corpus* proceedings is set forth in the law. The proceedings should not be encumbered by delays. This is because the term of elective officers is likewise short. There is the personal stake of the contestants, which generates feuds and discords. Above all is the public interest. Title to public elective office must not be left long under a cloud.

Allegations in election contests

If the protestants in an election contest fail to allege that if the facts they plead are proved, the true results of the election would be in their favor, is this sufficient ground to dismiss the contest for want of a cause of action? In other words, it is necessary for one who files an election protest to plead that he would be proclaimed winner, once given the chance to prove the facts he pleads?

The Supreme Court answered in the negative in *Badelles v. Cabili.*[59] It stated that the complaints could have been more explicitly worded. Nevertheless, the seriousness and gravity of the imputed failure to have the elections conducted freely and honestly, with such irregularities alleged, gave rise to doubts, rational and honest, as to who were the duly-elected officials. Such allegations would have to be accepted at their face value for the purpose of determining whether there is a cause of action, a motion to dismiss amounting to a hypothetical admission of facts thus pleaded. The Court stated it cannot in law and in conscience then sustain the order of dismissal and that, without the lower court having so intended, the dismissal would amount to judicial abnegation of a sworn duty to inquire into and pass upon in an appropriate proceeding allegations of misconduct and misdeeds of such character.

In a concurring opinion, Justice Barredo stated that in an election protest, it is not necessary to allege that the true results of the election in question would be in favor of protestant and against protestee on the basis of the legal votes or that the proclaimed result would be changed if the facts alleged are proven, when the sole ground of protest and the only purposes

[59] G.R. No. 29333, February 27, 1969.

of the protestant is to have the whole election in a precinct or municipality annulled and set aside.

Barrio elections

The *Tiburcio v. De los Angeles*[60] decision gives an instance where the hold-over principle cannot apply to barrio officials.

In the January 14, 1968 barrio elections in Barangka, Marikina, Tiburcio was proclaimed barrio captain by the election tellers. He took his oath of office and assumed his powers as barrio captain. However, the board of tellers filed a petition for recount with the municipal court of Marikina, stating that it failed to accomplish an accurate tally because of confusion caused by interference of outsiders. The municipal court's decision was to require delivery of the ballot boxes in order to recount the votes. It also restrained petitioner from performing his duties as barrio captain pending the recount and directed the 1964 officials to continue in a hold over capacity. On appeal, the CFI upheld the municipal court. The Supreme Court ruled that both courts erred. It stated that where a candidate for the position of barrio captain has been proclaimed as having won the position, he is required under the law to assume office immediately. There is no occasion for the hold-over principle to come into play in such a case. This is one clear instance where no justification exists for any deviation from what the Barrio Charter Law[61] commands.

ADMINISTRATIVE LAW

Power of department head

In *Pangasinan v. Secretary of Public Works and Communications*,[62] the Court reiterated the well-settled rule that the power of control of the department head includes the authority to modify, nullify, or set aside the acts of his subordinate officials and to substitute the judgment or discretion of the former for that of the latter. It also includes the right of the department head to act in lieu of the subordinate officials. The Court stated that the power of the department head to modify the decision of his subordinates includes the power to modify the action of the director of public works to create engineering districts under Section 1909 of the Revised Administrative Code.

Jurisdiction of Public Service Commission

In *Republic v. Philippine Long Distance Telephone Co.*,[63] the Court ruled that the Public Service Commission may have jurisdiction over a de-

[60] G.R. No. 30287, December 26, 1969.
[61] Rep. Act No. 3590 (1963), sec. 8.
[62] G.R. No. 27861, October 31, 1969.
[63] G.R. No. 18841, January 27, 1969.

fendant public utility corporation but not over the government telecommunications system. The telecommunications network of the latter is a public service owned by the Republic and operated by an instrumentality of the national government. The Public Service Commission has no authority to pass upon actions for the taking of private property under the sovereign right of eminent domain.

Delineation of jurisdiction of fiscals

Section 1679 of the Revised Administrative Code provides for the appointment or designation of an acting provincial fiscal in the event of a vacancy, absence, or inability to act on some duties of the regular provincial fiscal.

In the case of *Siazon v. Judge of the Cotabato CFI*,[64] the Court ruled that this provision does not contemplate a prosecution under the joint responsibility of the provincial fiscal and the designee of the Secretary of Justice. The prosecution shall be one under the sole supervision of the acting officer or designee. The provision calls for a complete take over by the designated fiscal of all the duties ordinarily discharged by the regular fiscal and which the latter shall be unable to perform.

Rule-making

It was noted in an earlier survey that the delegation of rule-making authority to administrative agencies is given in broad terms which allow agencies to promulgate almost anything that they can justify as necessary to accomplish the purposes for which they were created.[65] Except for the approval by a higher supervisor and the occasional requirement of publication in the Official Gazette, there is no uniform procedural requirement for the exercise of this important power. The distinctions between organizational rules, procedural rules, and substantive rules are generally ignored. Rules are not classified and notice is not given to prior to their promulgation or change. Jurisprudence leans too strongly in favor of agency action even when rules are sprung suddenly upon an unsuspecting public. A reading of the few cases involving the exercise of quasi-legislative powers by agencies indicates how true are the foregoing observations.

In *Deluao v. Casteel*,[66] the plaintiff-appellees argued that because the Fisheries Act does not contain any prohibition against the transfer or subletting of fishponds covered by permits or lease agreements, Fisheries Administrative Order 14, Section 7 which embodies such a prohibition is null being inconsistent with the law.

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[64] G.R. No. 29354, January 27, 1969.
[65] See *Survey on Political Law, Part Two*, 44 PHIL. L.J. 161 (1969).
[66] G.R. No. 21906, August 29, 1969.

The Court stated that Section 63 of the Fisheries Act allows only holders of permits or leases issued or executed by the department secretary to exercise the acts of entering the land and constructing fishponds thereon. A transferee or sublessee of a fishpond is *not a holder* of a permit or lease. Only a holder of a permit or lease and no one else may enjoy the benefits allowed.

The Court stated that this is a salutary rule because it is issued in fulfillment of the duty of the administrative officials concerned to preserve and conserve the natural resources of the country by scrutinizing the qualifications of those who apply for permission to establish and operate fishponds of the public domain. It pointed out that this is a necessary consequence of the executive and administrative powers of the DANR Secretary with regard to the survey, classification, lease, sale or any other form of concession or disposition and management of lands of the public domain, and more specifically with regard to the grant or withholding of licenses, permits, leases, and contracts over portions of the public domain to be utilized as fishponds.

The Court stated that the prohibition merely implements the Fisheries Act and cannot be considered an act of legislation.

Need for publication of rules

There is need for a statute which would require participation or comment by affected parties before a rule is promulgated and publication before the rule is implemented. Such a statute would not only bring about better rules but would also reduce waste and confusion from ill-advised or hasty regulations. The statute should also remove the present distinction between "mere interpretation and implementation by administrative agencies of the express and clear mandate of the law" and those rules and regulations which require publication. Any agency statement of general or particular application and future effect which is designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of any agency should be considered an exercise of the rule making function and should follow procedural requirements, which should include publication.

In the case of *Romualdez v. Arca*,[67] the respondent asked for the nullification of the memorandum of the Secretary of Finance on the ground that it violates applicable provisions of the Tariff and Customs Code. The memorandum reappraised the dutiable valuations of several types of remnants.

The Court held that the Secretary of Finance has the power to issue the questioned document. It cited the holding in *Interprovincial Autobus*

[67] G.R. No. 25924, April 18, 1969.

Co. v. Collector of Customs[68] to the effect that the regulation falls within the scope of the administrative power of the Secretary of Finance, as authorized in Section 79(b) of the Revised Administrative Code because it is essential to the strict enforcement and proper execution of the law which it seeks to implement. The regulations were declared to have the force and effect of law. The memorandum was issued in the wake of official reports that the commercial documents accompanying the importation of textiles did not state their correct current value. The Court stated that it was intended to be no more than a guideline to appraisers in the determination of the correct value of remnants at the time of importation. It does not fix tariff rates.

The Court then ruled that since the memorandum is neither a statute nor an implementation of a statute authorizing its issuance and does not prescribe any penalty for its violation,[69] publication thereof is not necessary.

Rule-making by Secretary of Education

In *Brillantes v. Guevarra,*[70] the validity of a directive of the Department of Education and Circular 28 of the Director of Public Schools was challenged. The directive and circular established a policy that certain school officials whose salaries are payable from the national funds are to be transferred upon completion of five years of service in one station, to another station in order to prevent a situation where they become stale and unchallenged by new situations and administrative problems accumulate.

The Court ruled that the order is not arbitrary. It stated that it is a valid exercise of the rule-making power of the Secretary of Education governing the internal regulation of officers under his department and that the power is granted by Section 79(b) of the Revised Administrative Code.

Hearing officers

In the exercise of quasi-judicial functions, administrative agencies usually appoint hearing officers to receive evidence from the parties. In theory, the agency is supposed to carefully consider the evidence gathered by the hearing officers and, then, arrive at and prepare its own decisions. In practice, however, the decision or recommendation of the hearing office usually becomes the decision of the agency.

Since most statutes do not provide the necessary detailed safeguards for such an assignment as hearing officer, it becomes important for the Court to strictly construe what nominal requirements are present.

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[68] 98 Phil. 290 (1956).

[69] Victorias Milling Co. v. Social Security Commission, G.R. No. 16704, March 17, 1962, 61 O.G. 5368 (August, 1965); Philippine Blooming Mills Co. v. SSS, G.R. No. 21223, August 31, 1966, 64 O.G. 4005 (April, 1968); People v. Que Po Lay, 94 Phil. 640 (1954).

[70] G.R. No. 22586, February 27, 1969.

This it did in the case of *Eastern Tayabas Bus Co. v. Public Service Commission.*[71] The Court stated that the words of Section 32 of the Public Service Act as amended[72] leave no room for doubt that the Public Service Commission may not authorize any other official not falling within the class specified in said statute to hear and investigate any case filed with the Commission and in connection therewith to receive such evidence as may be material thereto. Hence, a public utility adviser cannot be validly designated by the Commission to conduct the hearings and receive evidence. It does not matter even if he is higher than an attorney in the legal division and equivalent in rank to a division chief of the Commission.

Self-incrimination in administrative proceedings

In *Pascual v. Board of Medical Examiners,*[73] the Court held that the constitutional guarantee against self-incrimination extends to administrative proceedings which possess a penal aspect. In an administrative hearing against a physician for alleged malpractice, the Board of Medical Examiners cannot compel the person charged to take the witness stand without his consent. The Court stated that revocation of a physician's license possesses a criminal or penal aspect. For some, this is an even greater deprivation than forfeiture of property.

Judicial review

In *Uy v. Palomar*[74] the Postmaster issued General Fraud Order No. 3 declaring Manuel Uy Sweepstakes Agency as conducting a lottery through the mails and directing all postal officials to refuse mail addressed to the Agency but to return such mail to sender with the stamp "Fraudulent" upon it. In his brief, the Postmaster General pointed out that his decisions on questions of fact are final and conclusive and cannot be reviewed by the courts.

The Supreme Court stated that the courts will interfere with the decision of the Postmaster General if it clearly appears that the decision is wrong. It ruled that its decisions recognize the availability of judicial review over the action of the Postmaster General notwithstanding the absence of statutory provision for judicial review of his action.

Substantial evidence rule

In *Mateo v. Moreno*[75] the petitioner questioned the investigation ordered by the Secretary of Public Works and Communications, alleging that it con-

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[71] G.R. No. 29623, November 28, 1969.

[72] The Commission may authorize any of the attorneys of the legal division, or division chiefs of the Commission, if they are lawyers, to hear and investigate any case filed with the Commission and in connection therewith to receive such evidence as may be material thereto.

[73] G.R. No. 25018, May 26, 1969.

[74] G.R. No. 23248, February 28, 1969.

[75] G.R. No. 21024, July 28, 1969.

stituted a grave abuse of discretion. The investigation had resulted in a finding that Sapang Cabay in Guiguinto, Bulacan, was a public navigable stream and that dikes and dams constructed across it should be removed within thirty days.

The Supreme Court stated that a review of the case did not indicate any reason to depart from the "substantial evidence rule" as a limitation upon the scope of judicial review in administrative cases. Substantial evidence is more than a scintilla; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. The Court added that, under this rule, the courts are not supposed to reassess the evidence, determine its preponderance on either side and substitute its own findings for those of the administrative agency. All that the court does is to inquire from the record if the findings are based on substantial evidence. If so, the findings are deemed conclusive.

Findings of facts

In addition to the substantial evidence rule, the 1969 decisions also reiterated earlier rulings on findings of facts of administrative agencies.

In *Castañeda v. Court of Appeals*,[76] the Court ruled that the findings of fact of the Land Tenure Administration are binding on the courts and may not be ignored or modified in the absence of fraud or mistake other than error of judgment in the appreciation of evidence. The findings refer to the question as to who is the actual occupant of a lot, whether the occupant declared a house in his name for tax purposes, whether he purchased other lots in an estate, and what part of the estate formerly included the contested lot.

In the case of *Operators Incorporated v. Cacatian*,[77] the Court ruled that the doctrine repeatedly announced is that findings of fact of the Workmen's Compensation Commission bind the Supreme Court if such findings of fact are based on the substantial evidence of record.

Exhaustion of administrative remedies

The doctrine on exhaustion of administrative remedies is long established in Philippine jurisprudence. It appears to be a consistently popular one because every year brings its generous quota of Supreme Court cases reiterating the doctrine. Among the 1969 decisions illustrating it is *Garcia v. Teehankee*.[78]

As earlier pointed out, the Justice Secretary directed the petitioner to work on her stenographic notes at the Department of Justice. The Supreme

[76] G.R. No. 25874, February 28, 1969.
[77] G.R. No. 26173, October 31, 1969.
[78] *Supra*, note 26.

Court held that the Secretary's directive of March 25, 1968 was a valid exercise of his administrative powers and was issued without abuse of discretion, and the said directive was binding on petitioner who was fully obligated to comply therewith, there having been no valid excuse for her refusal to do so.

And if the petitioner believed that Section 32 of the Civil Service Act was inapplicable to her case, the Court ruled that her primary remedy was recourse to the Commissioner of Civil Service. According to the Court, her failure to do so prevented the Supreme Court from granting the remedy she sought, on the principle that before, seeking judicial redress, a party must first exhaust the administrative remedies available.

In *Commissioner of Immigration v. Go Tieng*[79] the respondent brought an action for prohibition and mandamus against the Commissioner of Immigration to restrain him from carrying out any order of deportation, even before the deportation case could be heard. The Court ruled that a suit filed in court to review the actuations of an administrative tribunal is premature where no hearing has been conducted and no conclusions reached therein. Orderly procedure requires that the matter be threshed out where the law assigns it in the first place.

In *Rallon v. Ruiz,*[80] among the reasons why the court could not interfere with a decision of the Director of Lands and the Secretary of Agriculture and Natural Resources was the failure of the plaintiffs to exhaust their administrative remedies. They did not file their motion for reconsideration with the Secretary and did not appeal from said decision to the Office of the President.

In *Ganob v. Ramas,*[81] the Court ruled that from the decision of the Secretary of Agriculture and Natural Resources petitioners had a plain, speedy and adequate remedy by appealing therefrom to the Chief Executive. In other words, before filing the present action for certiorari in the court below, they should have availed of this administrative remedy and their failure to do so must be deemed fatal to their case.[82] To place petitioners' case beyond the pale of this rule the Court stated that they must show that their case falls — which does not — within the cases where, in accordance with Court decisions, the aggrieved party need not exhaust administrative remedies within his reach in the ordinary course of the law.[83]

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[79] G.R. No. 22581, May 21, 1969.
[80] G.R. No. 23318, May 26, 1969.
[81] G.R. No. 23282, April 28, 1969.
[82] Calo v. Fuertes, G.R. No. 16537, June 29, 1962.
[83] Tapales v. The President and the Board of Regents of the U.P., G.R. No. 17523, March 30, 1963, 62 O.G. 3148 (May, 1966); Mangubat v. Osmeña, G.R. No. 12837, April 30, 1959; Baguio v. Hon. Jose Rodriguez, G.R. No. 11078, May 27, 1959; Pascual v. Provincial Board, 106 Phil. 446 (1959).

The doctrine of exhaustion of administrative remedies is not a hard and fast one. The Supreme Court pointed out in *Ganob v. Ramas* that the rule is inapplicable where no administrative remedy is provided, and the rule will be relaxed where (1) there is grave doubt as to the availability of the administrative remedy; (2) where the question involved is a purely legal one; (3) where the steps to be taken are merely matters of form and the administrative process is really over; (4) where the administrative remedy is merely cumulative or concurrent to a judicial remedy; and (5) where to exhaust the administrative remedies will amount to a nullification of the claim.[84]

One exception is illustrated by the case of *Azur v. Provincial Board*.[85] Admitting the truth of appellants allegations in their complaint to the effect that they were separated from the service in patent violation of the Civil Service Law, the Court ruled that immediate recourse to the courts of justice is not objectionable. One of the well known exceptions to the rule of exhaustion of administrative remedies is when the controverted act is patently illegal.

The Court stated that if it admits the truth of the appellant's allegations to the effect that they were separated from the service in patent violation of the Civil Service Act, immediate recourse to the courts of justice is allowed.

In the *Escalante v. Subido*[86] decision, recourse to the courts was also questioned. The Supreme Court stated that although it is well-settled that in general, courts of justice will not interfere with or review decisions of administrative officers or organs unless the aggrieved party shall have first exhausted the administrative remedies available to him, this rule is subject to exceptions among which are those of cases involving purely legal questions — particularly when the contested act is patently illegal or has been performed without jurisdiction or in excess of jurisdiction — and those calling for urgent action.

The Court classified the case at bar as falling under these two exceptions. It pointed out that the order complained of directed the immediate execution of the decision dismissing the petitioner from office. Then, again, the Court said the order hinges upon two questions which are purely legal in nature — (1) whether the authority to render the decision in the administrative case could be validly delegated to the department legal counsel of the Civil Service Commission and (2) whether said decision was subject to review by the Commissioner of Civil Service.

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[84] I. R. CORTES, PHILIPPINE ADMINISTRATIVE LAW, 265 (1963).
[85] G.R. No. 22333, February 27, 1969.
[86] *Supra*, note 10.

Appeal from administrative action

The Court ruled in the case of *Tiongco v. Hercules Iron Mines Development,*[87] that Section 73 of the Mining Act allowing action in court applies only to a situation where no conflict or dispute concerning mining locations has been submitted to and decided administratively under Section 61. If there is a conflict and a decision is rendered by the Director of Mines and/or the Secretary of Agriculture and Natural Resources, then the only recourse of the losing party is to appeal to the court and the appeal must be taken within thirty days. The Court stated that no adverse claim shall be entertained under Section 73 once the administrative decision rendered under Section 61 has become final, otherwise, there would be multiplicity of suits involving the same parties, subject matter and cause of action, wherein conceivably there may be conflicting decisions, both of them final — one administrative and the other judicial.

In the case of *Cornelio v. Court of Appeals*[88] both petitioner Cornelio and respondent Magbanua were lessees of market stalls in the Bacolod City Central Market since before World War II and until the market was burned on April 14, 1955. After the reconstruction of the market, a committee awarded three stalls to Magbanua. However, the award was declared without force and effect by the Secretary of Finance. Magbanua did not appeal from or seek a review of the action of the Secretary. When the same stalls were awarded later on to Cornelio, Magbanua questioned the propriety of the award in a civil case filed with the court of first instance.

The Court held that where the aggrieved party fails to appeal from the administrative ruling of the Secretary of Finance regarding the award of the market stalls in question and the decision became final and executory, the wisdom of the action taken by the Secretary of Finance may not be indirectly reviewed by courts of justice in an ordinary action for the enforcement of the award.

Execution of administrative decision

One issue raised in the *Subido v. Gopengco*[89] case is that the President's order dismissing the public officer from the service was not yet final and, therefore, could not be executed.

The Court ruled that it is true the President's order is not yet final because the respondent Deputy Commissioner of Civil Service filed a motion for reconsideration, but it is equally true that decisions of this nature may be executed even before they become final. The reason given by the Court is that public service would be jeopardized if the government were

[87] G.R. No. 22662, October 30, 1969.
[88] G.R. No. 24334, September 30, 1970.
[89] *Supra*, note 25.

forced to retain in its service, during the pendency of the appeal or motion for reconsideration, an employee who has been adjudged unfit for retention in the service. On the other hand, the Court said, by making execution a matter of administrative discretion, public interest would be properly subserved and safeguarded. This is without prejudice, in the event of exoneration, to the employee's reinstatement with backpay and full restoration of his rights and privileges.