

ANTONIO RODRIGUEZ, PETITIONER-APPELLANT, VS. THE HON. ANDRES REYES, PRESIDING JUDGE, BRANCH VI, CFI, RIZAL, ET AL., RESPONDENTS?APPELLEES.*G.R. No. L-26396. December 28, 1970*

Ponente: MAKALINTAL, J.

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These three cases are inter-related. G.R. No. L-26396 is an appeal by Dr. Antonio Rodriguez from the judgment of the Court of First Instance of Rizal dismissing the petition for certiorari he had filed against Abelardo Subido, Com-missioner of Civil Service, in connection with the lat-ter's decision in two administrative cases against said petitioner. G.R. Nos. L-27026 and L-27027 are original petitions for certiorari and prohibition filed in this Court by Commissioner Subido, questioning the actuation of the Civil Service Board of Appeals in taking cognizance of the appeal from the same decision rendered by him against Dr. Rodriguez.

Dr. Rodriguez was Medical Adviser (Chief of Section) in the Bureau of Medical Services. On July 1, 1959, he was detailed as head of the National Mental Hospital by the then Secretary of Health, Dr. Elpidio Valencia. On July 8, 1960 he was administratively charged on nine counts (Adm. Case No. R-23237), to investigate which the Secretary formed a committee composed of several members. Pending investigation, or on May 29, 1961, Dr. Rodriguez was appointed "Chief of Hospital IV (R-54) in the Hospi-tal Services (National Mental Hospital), Field Operations," which appointment was approved by the Acting Chief, Per-sonnel Transaction Division, in behalf of then Commis-sioner of Civil Service Amado del Rosario. After the in-vestigation, where evidence was adduced by both parties, the committee rendered its report on November 20, 1961, finding the respondent innocent. Upon its recommendation the Secretary of Health exonerated him completely and indorsed the findings to Commissioner del Rosario, who, how-ever, in his decision dated May 417, 1962, found Dr. Rod-riguez "guilty of indiscretion" in connection with spe-cification "b" of the charges, for having caused slaugh-tered pigs (belonging to the National Mental Hospital) to be given to his superior and to the Auditor General." The penalty administered to him was an "admonition to be more careful in his activities."

On June 29, 1962 Dr. Rodriguez moved for reconsider-ation. In his motion he did not question the factual find-ings in the decision; he simply pointed out that the of-fense of "indiscretion" did not exist in the statutes or in the civil service rules and regulations. His prayer was that the verdict on that particular count "be entirely deleted from the records of the case." Eight months there-after, or on February 22, 1963, Rodriguez wrote a letter to the Commissioner of Civil Service withdrawing his mo-tion for reconsideration and manifesting his conformity to the decision of May 17, 1962. The reason he gave for the withdrawal was that the administrative case had been pend-ing for a long time and affected not only his peace of mind but also the "interest of (the) public institution committed to his responsibility." On March 18, 1963 the request for withdrawal was granted by the Department Le-gal Counsel of the Civil Service Commission, who signed the corresponding indorsement "For the Commissioner." On May 6, 1963 Abelardo Subido, then Acting Commissioner of Civil Service, revoked the grant of withdrawal as having been issued without authority.

Meanwhile, under date of January 23, 1962, another administrative complaint, No. 24354, had been lodged with the Secretary of Health against Dr. Rodriguez. One of the seven charges was electioneering. Again the Secretary created an investigating committee, to which he issued the following directive:

"To study the nature of such charges and determine the merit of each case. In case this committee finds sufficient grounds for investigation, it is hereby directed that a formal investigation be conducted in accordance with existing rules and regulations. After the investigation of the case, the Committee shall submit to the under-signed its findings, comments and recommendations."

The investigating committee required Dr. Rodriguez to submit his explanation, which he did on March 6, 1962. On August 29, 1962 the committee, on the basis of the said explanation alone and without conducting a formal investigation, rendered a memorandum report recommending exoneration. On October 29, 1962 the Secretary of Health indorsed the recommendation, with his full concurrence, to the Civil Service Commissioner.

On September 12, 1963 Commissioner Abelardo Subido rendered a joint decision in the two cases. In Case No. 23237 he found Dr. Rodriguez guilty of misconduct in office for having loaned government construction materials to a private contractor in connection with a project the latter was doing for the National Mental Hospital. It was a charge not touched upon in the motion for reconsideration of Dr. Rodriguez, and of which he had already been found innocent by the investigating Committee created by the Secretary of Health, by the Secretary himself and by Civil Service Commissioner del Rosario. In Case No. 24354 the Commissioner found the respondent guilty of the charge of electioneering. The penalty imposed was dismissal from office, which the Commissioner ordered, in the same decision, immediately executed "in the public interest."

Dr. Rodriguez personally received a copy of the decision on September 14, 1963. On the same day he filed a petition for certiorari with preliminary injunction in the Court of First Instance of Rizal, alleging that the decision had been rendered without due process of law, and without jurisdiction or with grave abuse of discretion. The injunction was issued by the Court, restraining immediate execution of the verdict of dismissal.

On February 23, 1966 Dr. Rodriguez appealed the decision of Commissioner Subido to the Civil Service Board of Appeals. On May 4, 1966 the Court of First Instance dismissed the petition for certiorari on the ground of non-exhaustion of administrative remedies. Dr. Rodriguez moved to reconsider, and after his motion was denied, filed a petition for review with preliminary injunction in the Court of Appeals, which thereafter certified the case to this Court, where it was docketed as Case No. 26396.

Commissioner Subido, on his part, tried to have the Civil Service Board of Appeals dismiss the respondent's appeal before it on the ground that the same had been filed out of time and that his decision was already final. The Board turned down the plea, and Commissioner Subido came to this Court on certiorari and prohibition, his petition being docketed under Nos. L-27026 and 27027.

On January 5, 1967, this Court issued an order temporarily restraining the Civil Service Board of Appeals from taking cognizance of and assuming jurisdiction over the appeal taken by Dr. Rodriguez, but the order failed to take effect because two days before, or on January 3, the Board had decided the appeal, declaring the decision of Commissioner Subido null and void for having been rendered "without jurisdiction and without due process of law," and ordering the reinstatement of Dr. Rodriguez to his position.

There are two issues presented for resolution: (a) whether or not the decision of Commissioner Subido was rendered with jurisdiction and/or due process; and (b) whether or not the appeal taken by Dr. Rodriguez to the Civil Service Board of Appeals was timely.

1. With respect to Administrative Case No. 23237 our position is that the decision of Commissioner Amado del

Rosario dated May 17, 1962, finding Dr. Rodriguez guilty of indiscretion and imposing upon him the penalty of admonition, had already become final and therefore beyond the jurisdiction of Commissioner Subido to set it aside when he did so and rendered his own decision on September 12, 1963. True, Dr. Rodriguez moved for re-consideration of the del Rosario decision. But he withdrew that motion on February 22, 1963; and since no action thereon had yet been taken at the time, the withdrawal was a matter of right on his part, subject neither to approval nor to disapproval by the Commissioner.

It has been said, however, that the complainant in the said administrative case sent a letter to the Commissioner on December 20, 1962, asking for a "revaluation of the entire evidence in this case" We do not believe, however, that the step thus taken by the complainant kept the case open independently of the motion of Dr. Rodriguez and its subsequent withdrawal. It bears emphasis that this motion of Dr. Rodriguez did not question the findings of fact in the del Rosario decision. The only point it raised was a legal one - that in connection with the specific charge of which he had been found guilty, there was no such offense in the civil service law or regulations as "indiscretion"; and on this ground he asked that the decision be modified accordingly.

The letter of the complainant was evidently not intended to be a motion for reconsideration, since the complainant was later on to request the Commissioner that it be considered as such a motion - this on April 3, 1963, after Dr. Rodriguez had withdrawn his own motion. If the letter was but an answer or opposition to the said motion of Dr. Rodriguez, then it became functus officio after the latter was withdrawn. On the other hand, if it was an independent motion for reconsideration in itself then it was filed out of time - more than seven (7) months after the del Rosario decision was rendered. In either case that decision had already become final when Commissioner Subido reconsidered it and rendered his own decision on September 12, 1963.

2. Going now to Administrative Case No. 24354, our view is that the decision of the Commissioner suffers from a basic infirmity - that it violated the principle of due process, having been rendered without investigation and without first affording the respondent an opportunity to defend himself. It must be remembered that the authority given by the Secretary of Health to the investigating committee he had created was "to study the nature of (the) charges and determine the merit of each case (and) in case this committee finds sufficient grounds for investigation, it is hereby directed that a formal investigation be conducted in accordance with existing rules and regulations."

The validity of the Subido decision is sought to be justified by the argument that under Section 32 of the Civil Service Act of 1959 Dr. Rodriguez had the right to elect a formal investigation, and since he made no such election he cannot later on be heard that an investigation was denied him. There is here a confusion as to the order of priority among the rungs of the procedural ladder. Dr. Rodriguez could hardly have asked for a formal investigation at the stage in which the administrative case was at the time. He had merely been required to submit his explanation in writing, which he did. The committee was still to determine whether there were sufficient grounds for investigation, and if there were, to conduct a formal investigation. This is explicit in the instruction given by the Secretary of Health. The committee found, on the basis of the charges and the explanation, that no formal investigation was necessary, and hence it recommended that the charges be dropped for lack of merit. The recommendation was thereupon favorably indorsed by the Secretary of Health to the Commissioner of Civil Service. There was manifestly neither need nor occasion for Dr. Rodriguez to elect a formal investigation pursuant to the Civil Service Law. It would have been not only premature but inconsistent for him to ask that he be formally investigated on charges of which he had already been exonerated.

If, despite the findings of the investigating committee and the concurring recommendation of the Secretary of Health, the Civil Service Commissioner still considered the charges grave enough to warrant further action, the basic principle of due process required that Dr. Rodriguez be first heard in his own defense, or at least allowed to

express a choice to undergo a formal investigation or not in accordance with Section 32 of the Civil Service Act. This right was not accorded him. Ironi-cally enough Dr. Rodriguez was found guilty of elect-ioneering on the strength of a letter he had annexed to his explanation submitted to the investigating com-mittee - a letter which, if anything, was exculpatory in the light of the charge against him and the explana-tion that he had submitted. He was accused of electioneering for the benefit of the Nacionalista Party; the letter was sent to him by some Liberal Party men in Bulacan thanking him for having employed fourteen (14) skilled workers who turned out to be "Liberals."

A revealing sidelight on this aspect of the case, which shows how precipitate and groundless was the pro-nouncement, of the guilt of Dr. Rodriguez, is the follow-ing excerpt from the decision of the Civil Service Board of Appeals:

"In the instant case, the Commissioner, without giving the re-spondent a chance to be heard, found him guilty of partisan poli-tical activity on the basis of a letter from Liberal Party officials thanking him for having employed skilled laborers, 14 of whom were election inspectors of the party in Malolos, Bulacan. If a hearing had been conducted by the Commis-sioner before he convicted the re-spondent of electioneering, the latter could have had the opportu-nity to explain how he came to employ the 14 skilled laborers referred to. Upon questioning by the Board at the hearing of this appeal, the respondent informed the Board that he did not know the 14 men be-fore he employed them; that they were screened by a screening com-mittee in the hospital, before they were employed, together with hund-reds of other recommendees; that these 14 were only part of the 300 casual laborers employed in the hospital because it was greatly un-dermanned; that the screening com-mittee recommended the employment of the 14 because they were found to be skilled and with tools; that these applicants for employ-ment who were not skilled or did not have tools were not employed in the hospital regardless of re-commendation; that the 14 workers were not employed at the same time, but they represent the to-tal workers from Malolos who had been employed at various times; and that he came to know that the 14 were election inspectors of the Liberal Party in Malolos after he had already the letter of thanks regarding their employment. Respondent, however, was barred from making this explanation by his immediate conviction and dismissal without a hearing. Consequently, respondent was denied due process."

3. Assuming that Commissioner Subido could validly render his joint decision of September 12, 1963, the next question is was the appeal taken by Dr. Rodriguez to the Civil Service Board of Appeals timely? As al-ready observed hereinabove, over the Commissioner's ob-jection the Board took cognizance of the appeal, held itself with jurisdiction to entertain the same, and on January 3, 1967 promulgated its resolution declaring the decision appealed from null and void and ordering the reinstatement of Dr. Rodriguez to his position.

The recourse taken by Dr. Rodriguez to the Court of First Instance of Rizal on certiorari with preliminary injunction was eventually dismissed by that Court on the ground that the petitioner had not exhausted the administrative remedy available to him, namely, by ap-pel to, the Civil Service Board of Appeals. It is, to out mind, open to serious doubt whether such an appeal was an adequate remedy for the purposes sought by the petitioner in that case. He was, first of all, chal-lenging the jurisdiction of the Commissioner to render the decision with respect to the first administrative case, and pleading lack of due process and grave abuse of discretion with respect to the other. And the imme-diate relief prayed for was preliminary injunction to restrain the execution of the decision already ordered by the Commissioner. These remedies, while clearly spelled out in the Rules of Court as within the dispensation of the courts, are nebulous and unsettled when sought in administrative bodies. An appeal to the Civil Service Board of Appeals connotes a review of the case on its merits, a reappraisal of the evi-dence and of the penalty meted below. When the need of the moment, however, is to stop immediate execu-tion of that penalty and, after hearing, to set aside the decision altogether on grounds of jurisdiction and due process, we are not prepared to say the doors of the courts must remain shut. It is preferable to over-look slight deviations from procedural paths which even to the discerning may appear quite hazy than

dis-regard the greater imperatives of justice and fair play. After all the course pursued in the court below was one in equity, and the function of equity is to avert or prevent civil injury which may otherwise be irreparable.

Considering all these circumstances, we are of the view that the issuance of the writ of preliminary injunction by the Court of First Instance interrupted the running of the period within which an appeal could be taken from the Civil Service Commissioner to the Civil Service Board of Appeals; and that therefore the appeal, actually taken on the day Dr. Rodriguez received copy of the court's decision, wherein the injunction was dissolved, was a timely one. In the case of *Geu-keko vs. Araneta, etc.*, 102 Phil. 706, decided December 24, 1957, the party adversely affected by a decision of the Director of Lands relative to a disputed lot in the Tambobong estate went directly to the Court of First Instance and sought to annul the said decision instead of appealing to the Secretary of Agriculture and Natural Resources, which he was supposed to do within 60 days under the rules promulgated by that official. No injunction was issued by the court, which dismissed the case after more than two years on the ground that the plaintiff had not exhausted his available administrative remedies. An appeal was then taken from the decision of the Director of the Bureau of Lands to the Secretary of Agriculture and Natural Resources. This Court held, when the matter came up before it on mandamus and prohibition, that the institution of the court action suspended the running of the period for such appeal, making reference to the administrative policy of the Department to that effect.

In connection with the administrative cases against Dr. Rodriguez, the Civil Service Board of Appeals similarly took cognizance of his appeal and held that it was timely. Indeed in its decision it cites a number of cases where appeals (forwarded to it by the Commissioner) were entertained even after the expiration of the time limit. It did no more than what the Secretary of Agriculture and Natural Resources did in the *Geukeko* case, and with even greater justification, for there was a judicial injunction issued against the execution of the decision of the Civil Service Commissioner.

When the vote on these cases was taken, four members of this Court, including the undersigned, concurred in this opinion; two members dissented; four abstained from voting; and the last one, Justice Felix V. Makasiar, had not yet been appointed. Since the votes on either side are short of the required majority, the petition of Commissioner Abelardo Subido in G. R. Nos. L-27026 and L-27027 should be, as it is hereby, dismissed, and the jurisdiction of the Civil Service Board of Appeals in the appeal taken by Dr. Antonio Rodriguez is deemed upheld. Considering that the said Board has already rendered its decision, the petition in No. L-26396 is likewise, dismissed as moot and academic.

Concepcion, C.J., concurs in the separate dissenting opinion of Justice J.B.L., Reyes.

Reyes, J.B.L., J., dissents in a separate opinion.

Dizon, Zaldivar, Castro, and Villamor, JJ., concur.

Fernando, Teehankee, and Barredo, JJ., did not take part.

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DISSENTING OPINION

CONCEPCION, C.J.:

I concur in the foregoing dissenting opinion of Mr. Justice Reyes (J.B.L.)

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DISSENTING OPINION

REYES, J.B.L., Acting C.J.:

I am constrained to dissent from the majority opinion penned by Hon. Makalintal, because it expresses principles that, in my humble opinion, are contrary to the public interest.

(1) In connection with Administrative Case No. 2323 (which is the subject of G. R. No. L-26396), the majority opinion holds that the withdrawal (on 22 February 1963) by Dr. Antonio Rodriguez of the motion for reconsideration filed by him eight (8) months previously, on 29 June 1962, against the adverse decision of former Civil Service Commissioner Del Rosario, precluded the latter's successor, Abelardo Subido, from reconsidering the del Rosario decision, and barred him from rendering another decision of his own in the same administrative case.

Frankly, I fail to understand why administrative justice should be fettered in this manner and treated as if it were the sole concern of the official investigated. Questions of official misconduct are of public interest and the people at large are as much interested as the one charged that a petition for reconsideration be thoroughly analyzed and that the attacked decision should be reviewed in order that full justice should be done. If errors were committed to the prejudice of the respondent, the decision should be rectified; but if he was unduly favored, why should the reviewing authorities not be entitled to mete appropriate sanction if the first decision failed to do so? Why should the official under investigation have power to brake the course of justice and cut off a review that he has sought himself, by withdrawing his motion for reconsideration even if the reviewing officer has not finished his restudy of the case?

The practice of the courts has always been to the effect that once a case or appeal is submitted for decision, its withdrawal should not be, at the discretion of the party, but dependent on the assent thereto of the adjudicating authority. Thus, this Court has held that:

"After a case has been submitted, appellants in order to withdraw their appeals must obtain the consent of the adverse party or parties, or show that such consent is being withheld for insufficient reasons, must make proper motion in this court, and must obtain the leave of the court" (Dee See Choon vs. Stanley, 38 Phil. (1918), page 208).

"We hold that the rule announced in the case of Dee See Choon vs. Stanley (page 208, ante) is applicable to criminal as well as to civil cases, and that, after a case has been heard and is sub-mitted to the Court for decision, the appellant can not, at his election, withdraw the appeal." (U. S. vs. Sotto, 38 Phil. 666, at page 677). (See also Krivenko vs. Register of Deeds, 79 Phil., 461, 466, and Rule 50, section 4, Revised Rules of Court).

A motion for reconsideration being in the nature of an appeal against the decision sought to be reconsidered, the

foregoing principles should apply. That the proceeding is administrative and not judicial is of no moment. What is important is that once the finality of the questioned judgment has been arrested by a motion for reconsideration, the reviewing officer should be given full opportunity to restudy the records and satisfy himself whether justice has been done; and if convinced that it was not done, to revise and correct the judgment as the interest of justice requires, irrespective of whether the defendant will be favored or prejudiced. The public interest demands no less. As the Spanish proverb goes, justice is "no mas pero no menos".

By the same token, once the finality of a decision has been already arrested, the complainants should not be barred from calling attention to what they consider to be errors incurred by former Commissioner Del Rosario, even if they did so beyond the period of 30 days fixed for filing motions to reconsider, since the finality of the decision has been already precluded. Had Rodriguez not moved for re-consideration, the duty of complainants to move for review within the period set by the law is logical, because their failure to do so will cause the decision to become final. But since the finality has been barred by respondent officer's own motion for review, no useful purpose would be served by depriving the complainants of their right to file their objections to the decision assailed by the other party, so long as they do so before a new decision is promulgated. Justice does not necessarily consist in the absolution of the officer charged.

(2) Furthermore, the obvious step for Dr. Rodriguez to take in the face of Subido's adverse decision was to bring his case to the Civil Service Board of Appeals, the body expressly established by law^[1] to review and correct any erroneous or improper rulings of the Commissioner of Civil Service as promptly and expeditiously as possible, and not run immediately to court. Note that to this end the Civil Service Law of 1959 (Republic Act No. 2260) provided in its Section 36 that appeals to the Board may be made by the party adversely affected within 30 days from notice of the decision and that while a motion for reconsideration shall suspend the running of the appeal period, only one petition for reconsideration shall be entertained. Then Section 32 of the Revised Civil Service Rules prescribes that the Board of Appeals "shall decide all appeals within a period of 90 days" after submission, and "its decision in such cases shall be final. Also, the Regulations adopted by the Civil Service Board of Appeals exact, in turn, that petitions for reconsideration should be filed by either party, appellant or appellee, within 15 days after notice of the Board's decision. The time may be extended, but "in no case shall it exceed five (5) days" and "no second petition for reconsideration shall be entertained". Expediency, therefore, is the watchword in administrative proceedings; and this is understandable, for charges against officials 'affect the efficiency of the government and the people's respect for it. Public interest demands that an innocent officer should be quickly vindicated and restored to his post and that no guilty one should remain in office longer than is absolutely necessary.

It is a well entrenched rule in this jurisdiction that -

"No recourse to courts can be had until all administrative remedies have been exhausted and special civil actions against administrative officers should not be entertained if superior administrative officers could grant relief" (De la Torre vs. Trinidad, G.R. No. L-14907, 31 May 1960)."

"The rule in this jurisdiction is that when an administrative remedy is provided by law, relief must be sought by exhausting this remedy before the Courts will act. Failure to exhaust this remedy is fatal." (Llarena vs. Lacson, 108 Phil. 510, 512, cit. cases).

And in *De la Rea vs. Subido*, G.R. No. L-26082, 1 March 1968, 22 SCRA 953, 964, this Court, through Mr. Justice Arsenio Dizon, reiterated the principle once more in the following words:

" In this connection, We deem it firmly settled in this jurisdiction that prohibition and other extraordinary legal remedies are not mere substitutes for remedies --- judicial or administrative --- available to the aggrieved party in the ordinary course of the law; that if through his own fault the aggrieved party failed to

avail himself of the latter remedies, he may resort to the proper extraordinary legal remedy only if the judgment or order complained of is an absolute nullity."

Thus public policy can not look with favor on any attempt to by-pass the Civil Service Board of Appeals, and bring a decision of the Civil Service Commissioner directly to the courts for review, as petitioner Rodriguez has done. The perennial clogging and consequent delay of cases in our courts furnishes ample justification for the norm. It is no excuse that petitioner wished to block the immediate enforcement of the Commissioner's decision, which the latter ordered to be executed pending appeal. In the first place, it would be inherent in the Civil Service Board of Appeals' jurisdiction to review and, when proper, to reverse the appealed decision, that said Board of Appeals should be possessed with discretion and power to restrain the immediate execution of the appealed order, even if the law be silent on the matter; for otherwise, the prospective decisions of the Board could be rendered nugatory. In the second place, if the Board would not issue the restraining order, nothing precluded Rodriguez from interposing in due time an appeal to the Civil Service Board of Appeals, while simultaneously seeking injunction against immediate execution of the order of removal.

It is thus clear that the appellant could have obtained all the requisite remedies from the executive authorities without need of immediate recourse to the Judiciary. Hence, the Court of First Instance of Rizal, in my opinion, correctly dismissed the case brought by Dr. Rodriguez, for non-exhaustion of administrative remedies before resorting to the courts for relief. Said the trial court:

"..... The appeal to the Civil Service Board of Appeals is mandatory as it is an administrative body constituted by law to review the decision of the Commissioner of Civil Service. And when an administrative remedy is provided by law, relief must be sought by exhausting this remedy first before going to courts of justice. This is necessary, and as pointed out by the Solicitor General: 'In order to provide an orderly procedure which favors' a preliminary administrative sifting process particularly with respect to matters peculiarly within the competence of the administrative authority.' The Civil Service Board of Appeals as constituted in this jurisdiction is better equipped than the Courts by reason of specialization, by insight gained thru experience aside from the fact that the law requires that every member thereof should have the same qualifications as justices of the Court of Appeals. Besides, it is presumed that an administrative agency like the Civil Service Board of Appeals if given a complete chance to pass upon, the merits of the case will decide correctly." (Decision, pages 4-5)

The majority opinion declares that Subido denied Rodriguez due process because the former ruled against the latter, on the strength of his own answer to the second set of charges, hence, he was justified to immediately resorting to the court. This observation is nullified by the fact that Rodriguez himself annexed to his answer the documents upon which the ruling of Subido was based (Annex AAA), without any reservation as to their purpose. What is worse, after the Subido decision setting aside that of former Commissioner del Rosario, Dr. Rodriguez never protested to Commissioner Subido that he had not been given a chance to explain the letter (Annex AAA) upon which he was convicted of misconduct in office. Neither did he demand a formal investigation.

We are not here concerned with the merits of Commissioner Subido's 1963 decision against Dr. Rodriguez but with its finality. On the facts of record, I submit that the decision of Commissioner Subido, regardless of its merits, became final and executory for failure of petitioner Dr. Rodriguez to recourse against it to the Civil Service Board of Appeals within the period fixed by statute, 30 days after notice of the Subido decision; that his resort to the Court of First Instance of Rizal, without previous exhaustion of available administrative remedies, was legally impermissible and could not arrest the finality of the Subido decision finding Rodriguez guilty of misconduct in office; and finally, that the Rizal Court of First Instance correctly dismissed the suit filed therein by Dr. Rodriguez.

Incidentally, by appealing to the Civil Service Board of Appeals, on 23 February 1966, two years and five months after his case in the Court of First Instance had been filed (in September of 1963), Dr. Rodriguez recognized and admitted that such administrative appeal was the proper remedy for him to take. Only he took such step long after the expiration of the 30-day period prescribed by section 36 of the Civil Service law for such appeals.

3. Ignoring the fact that the administrative appeal of Dr. Rodriguez had been interposed over two years late, in violation of the Civil Service law, section 36, the Civil Service Board of Appeals took cognizance thereof, over the protests of Commissioner Subido. What is more, as amply shown by the records of Cases G. R. Nos. L-27026 and L-27027, the Board would not even await the opinion of the Secretary of Justice (the legal adviser of the Executive Department of which the Board was a part) that had been requested by Commissioner Subido, on the question of whether the latter's 1963 decision had become final and unreviewable. The Board, over Subido's protests, went ahead, heard the appeal in his absence, and reversed the decision against Dr. Rodriguez on 3 January 1967, just two days before receipt of the Supreme Court's restraining order.

The majority opinion would sustain the Board's high handed actuations, on the basis of *Geukeko vs. Araneta*, 102 Phil. 706, where We ruled that the appeal from a decision of the Director of Lands to the Secretary of Agriculture, after a civil action had been dismissed, was still timely, in view of the adopted policy of the Department to consider the filing of civil actions in court as suspending the running of said (appeal) period of 60 days fixed by the Lands Administrative Order No. 6. Unfortunately, the case now before Us is altogether different. Not only is there no similar policy declared by the Civil Service, but the 30-day period for appealing, from a decision of the Commissioner to the Civil Service Board of Appeals is one fixed by statute, and not by any Administrative Order that can be modified by administrative policy. There is no need, I think, to belabor the fact that administrative authorities can not amend a statute; but unfortunately, the majority decision implies that they can.

To be sure, the Civil Service Appeals Board cites instances where it has entertained belated appeals. But those appeals were ones forwarded and given course by the Commissioner, not objected to by him, as this one was; and the delays involved were a mere matter of days, while Dr. Rodriguez delayed his own appeal by over two (2) years and five (5) months.

The implications of the majority decision are far reaching. In effect, it lays the door wide open for losing parties in administrative proceedings to seek judicial review as a means to suspend or interrupt the period for the appeal of administrative decisions, and thereby indefinitely block the execution thereof, to the prejudice of the public service as well as of the legislative policy to expedite disposal of charges against public officers.

IN VIEW OF THE FOREGOING CONSIDERATIONS, I dissent and vote for the dismissal of the appeal in G.R. No. L-26396, and for the granting of the petition in Cases G.R. Nos. L-27026 and L-27027.

[1] Commonwealth Act No. 598 (1949); Republic Act No. 2260 (1959).

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