

**PERFECTO FAYPON, PETITIONER, VS. ELISEO QUIRINO,
RESPONDENT.***G.R. No. L-7068. December 22, 1954*

Ponente: PADILLA, J.

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A petition for quo warranto under section 173 of Rep. Act No. 180, as amended, was dismissed by the Court of First Instance of Ilocos Sur. The Court of Appeals affirmed the dismissal. By a petition for a writ of certiorari under Rule 46 the last judgment is now before us for review.

The ground for the quo warranto petition is the respondent's ineligibility for the office of Provincial Governor of Ilocos Sur to which he was proclaimed elected by the provincial board of canvassers in the elections held on 13 November 1951. It is alleged that he lacks the residence in the province, as required in section 2071 of the Revised Administrative Code.

The error claimed to have been committed by the trial court in refusing; admission of an amended petition, presumably to allege an additional ground for disqualification of the respondent is no longer urged, the attempt to file such petition having been made on the day set for the hearing of the case.

The second point raised is the irregular constitution in the Court of Appeals of the division of five members that rendered the judgment in the case. It is claimed that when the unanimous concurrence of the division of three could not be had, the Presiding Justice chose or designated two additional Associate Justices in violation of the resolution of the Court in bane promulgated on 15 September 1952 which required that it be by rotation in the order of seniority. The alleged violation of the resolution does not affect the jurisdiction of the Court of Appeals to hear and decide the case before it on appeal. If the alleged irregular designation be a sufficient ground for the setting aside of the judgment rendered by the Court of Appeals and remanding the case to it for further proceedings, it would unnecessarily delay the disposition of this case to the detriment of public interest. As the judgment rendered in the case is being reviewed, the hearing and consideration of the case by this Court sufficiently guarantee and protect the petitioner's right and interest. Also, the fact that after the designation of two additional Associate Justices of the Court of Appeals to form a division of five, as provided for in the Judiciary Act of 1948, no hearing was held, is not sufficient to render the judgment void, because section 1, Rule 53, allows the consideration and adjudication of an appealed case; "by any and all of the Justices who are members of the court at the time when such matters are taken up for consideration and adjudication, whether such justices were or were not members of the court and whether they were or were not present at the date of submission * * *."

The third point is the alleged respondent's lack of residence as required by law—section 2071 of the Revised Administrative Code. The Court of Appeals found the following facts:

... That respondent-appellee was born in Cagayan, Ilocos Sur, in June, 1895; that he went to the United States in 1919 to study and returned to the Philippines in 1923; that on his return, he taught as professor in the University of the Philippines for four years. He became owner and editor of the *Intelligences*, a newspaper

published in Manila. He went to Iloilo as editor of the Iloilo Times. He became executive secretary and general manager of the NEPA (National Economic Protectionism Association) from 1936 until December 31, 1951 (Exhibits G, G-1 to G-3). He was editor of Commerce, an official organ of the Chamber of Commerce in Manila (Exhibits F, F-1 to F-11). He registered as a voter in Pasay City in 1946-1947 (Exhibit A). He owns a house and resides at 55-11th Street, Quezon City (Exhibits H-H-1).

There is no question then that he was born in the municipality of Cagayan, Ilocos Sur, in June, 1895; came to Manila to pursue his studies; went to the United States for the same purpose; returned to the Philippines in 1923; lectured in the University of the Philippines; and engaged in the newspaper work in Manila, Iloilo and later on again in Manila. There is also no question that the respondent was proclaimed by the provincial board of canvassers elected to the office of Provincial Governor of Ilocos Sur with 49,017 votes cast for him as against 19,1466 votes cast for the petitioner.

The crucial and pivotal fact upon which the petitioner relies to have the judgment under review reversed and set aside is the registration of the respondent as voter in Pasay in 1946 and 1947. In several cases we have ruled that absence from one's residence of origin—domicile—to pursue studies, engage in business, or practice his avocation, not sufficient to constitute abandonment or loss of such residence. It is contended, however, the respondent's registration in Pasay City in 1946-1947 in accordance with the provisions of the Constitution and laws on the subject, implies and means that he was a resident thereof during the six months immediately preceding such registration and of the Philippines for one year;^[1] and that such being the case he was ineligible for the office which he was elected, because—

No person shall be eligible to a provincial office unless at the time of the election he is a qualified voter of a province, has been a bona fide resident therein for at least one year prior to the election, and is not less than thirty years of age.^[2]

Did the respondent's registration as voter in Pasay City in 1946 and 1947 constitute abandonment or loss of his residence of origin? The determination of a person's legal residence or domicile largely depends upon intention which may be inferred from his acts, activities and utterances. The party who claims that a person has abandoned or lost his residence or origin must show and prove preponderantly such abandonment or loss. If we are to take literally the meaning of a voter's oath^[3] which he files with the board inspectors of his registration as such, there is no doubt that the respondent having registered in 1946 and 1947 as voter of Pasay City must have acquired residence of origin. But in several decisions we have laid down the rule that a previous registration as voter in a municipality other than that in which he is elected is not sufficient to constitute abandonment or loss of his residence of origin. In *Yra vs. Abaño*, 52 Phil. 380, the election of the protestee to the office of municipal president of Meycauyan, Bulacan, was upheld, notwithstanding the fact that he had registered as voter in Manila. In *Vivero vs. Murillo*, 52 Phil. 694, where the protestee had registered as voter in the municipality of Burauen, Leyte, we held that such registration had not caused the loss of his residence of origin (La Paz, same Province), where he was elected municipal president. In *Larena vs. Teves*, 61 Phil. 36, 28, we upheld the election of Pedro Teves to the office of municipal president of Dumaguete where he was born, because he has not lost his residence of origin which was Dumaguete, "notwithstanding the fact that in the year 1919 he registered in the list of voters of the municipality of Bacong; ran for representative for the second district of Oriental Negros to which said municipality of Bacong belongs; again ran for reelection in the year 1922; and launched his candidacy for member (membership) of (in) the provincial board of Oriental Negros in 1925, stating under oath in his certificate of candidacy that he was a resident of said municipality of Bacong, Oriental Negros, without having ever registered as voter in any of the precincts of the municipality of Dumaguete from said year, 1919, up to the present, and having ordered the cancellation of his name in the list of voters of said municipality of Bacong only on April 5, 1934." And, in the case of *Gallego vs. Verra*, 73 Phil. 453, where it appears that Pedro Gallego

worked in several provinces other than his native town (Abuyog, Leyte), registered as elector and voted in Malaybalay, Bukidnon, in 1938, took his residence certificate in Malaybalay in 1940 where it appeared that he had resided in that municipality for one and a half years, we held that he had not lost his residence of origin and the protest against his election in 1940 to the office of municipal mayor of Abuyog was dismissed.

The rule laid down in the foregoing cases is not devoid of reason and justification. A citizen may leave the place of his birth to look for “greener pastures,” as the saying goes, to improve his lot, and that, of course, includes study in other places, practice of his avocation, or engaging in business. When an election is to be held, the citizen who left his birthplace to improve his lot may desire to return to his native town to cast his ballot but for professional or business reasons, or for any other reason, he may not absent himself from the place of his professional or business activities; so there he registers as voter as he has the qualifications to be one and is not willing to give up or lose the opportunity to choose the officials who are to run the government especially in national elections. Despite such registration, the animus revertendi to his home, to his domicile of residence of origin, has not forsaken him. This may be the explanation why the registration of a voter in a place other than his residence of origin has not been deemed sufficient to constitute abandonment or loss of such residence. It finds justification in the natural desire and longing of every person to return to the place of his birth. This strong feeling of attachment to the place of one’s birth must be overcome by positive proof of abandonment for another.

Counsel for the petitioner argues that in addition to other qualifications residence for at least one year in the municipality where the municipal officer is elected, as provided for in section 2147 of the Revised Administrative Code, is sufficient; whereas the residence requirement for a provincial officer such as that of the provincial governor must be a bona fide residence in the province for at least one year prior to his election, and concludes that the rule laid down in the cases cited and invoked is not applicable to and does not and cannot benefit the respondent. We fail to see the difference between the requirement of not less than one year residence for municipal officers and of not less than one year bona fide residence for provincial officers. If any interference is to be drawn from the words “bona fide,” it is in the case of a municipal office in addition to other qualifications an actual residence in the municipality for at least one year of a candidate for municipal office would be sufficient to make him eligible for such office; whereas in the case of a provincial office in addition to other qualifications a residence in good faith in the province for not less than one year of a candidate for provincial office, although he may not actually be present therein, would be enough to make him eligible for such office. But this would be a hair-splitting differentiation. The residence requirement for elective provincial and municipal officials is the same; and the rule that a previous registration a voter of a municipal mayor-elect in a municipality other than the one in which he is elected is no ground for disqualifying him because of alleged loss or abandonment of his residence of origin in the municipality where he is elected, applies with equal force to elective provincial officials.

The case of *Tansec v. Artech*, 57 Phil. 227, upon which the petitioner relies cannot be invoked as authority to reverse the judgment under review, because apart from a long stay in Manila, where he had engaged in the practice of his profession, Artech, elected provincial governor of Samar, admitted in a brief submitted by his law firm in his behalf in a criminal case where he was charged of serious slander, that he had been a bona fide resident of the City of Manila years before he ran for the office of Governor. This fact is stated twice in the decision of this Court on p. 234, *supra*. So, he admitted that he had lost and abandoned his residence of origin in the province of Samar and acquired another in Manila. The abandonment or loss of his residence of origin was not denied but admitted and the only point decided was that he did not reacquire his residence of origin. Two Justices dissented and were of the opinion that he did not lose his residence of origin in the province of Samar. In the case before us there is no such admission.

In *Nuval v. Guray*, 52 Phil. 645, referred to in *Tansec v. Artech*, *supra*, there was no question as to the

intention of protestee Guray to change his residence from Luna to Balaoan, and the only point decided was that he did not reacquire his residence of origin in Luna one year before his election to the office of municipal president in the latter municipality.

Upon the authority of cases decided by this Court, we are of the opinion and so hold that on the evidence found by the Court of Appeals, the respondent has not lost his residence of origin.

The judgment under review is affirmed, without pronouncement as to costs.

Bengzon, Montemayor, Reyes, A., Jugo, Bautista Angelo and Labrador, JJ., concur

Mr. Justice Concepcion and Mr. Justice J.B.L. Reyes, took no part.

[1] Section 1, Article V of the Constitution; Section 98 and 109, Revised Election Code, Rep. Act No. 180, as amended.

[2] Section 2071, Revised Administrative Code.

[3] Section 109, Revised Election Code, Rep. Act No. 180, as amended.

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