

**LEONARDO C. GUTIERREZ, PROVINCIAL TREASURER OF BATANGAS,
THE PROVINCIAL GOVERNOR OF BATANGAS, THE PROVINCIAL
BOARD OF BATANGAS, AND THE PROVINCIAL GOVERNMENT OF
BATANGAS, PETITI...**

G.R. No. L-25972. November 26, 1968

Ponente: CONCEPCION, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a3008bbb50a0/>

CONCEPCION, C.J.:

Petitioners herein seek the review on certiorari of a decision of the Court of Appeals.

Petitioner Leonardo C. Gutierrez is the provincial treasurer of Batangas. His co-petitioners are the provincial governor, the provincial board and the provincial government of Batangas. Up to the end of February, 1960, respondent, Silvestre D. Florindo, was a regular and permanent market administrator and deputy in the office of said provincial treasurer, with a compensation of P3,300 per annum.[1] On the 25th of said month, the provincial board passed Resolution No. 545 creating, in the office of the provincial governor, a finance division under a "budget officer and fiscal analyst", with a compensation of P7,200 per annum. Florindo was appointed to said position and assumed office, on March 1, 1960. Subsequently, or on June 28, 1960, the board approved Resolution No. 1785, changing the name of said position from "budget officer and fiscal analyst" to "budget and fiscal officer", and prescribing the duties thereof. On December 6, 1960, the provincial governor issued, in favor of Florindo, an appointment as such budget and fiscal officer, with a compensation of P6,000 per annum, effective March 1, 1960. This last appointment superseded his immediately preceding appointment[2] and was approved by the Commissioner of the Civil Service, subject to availability of funds.

Despite the higher compensation attached to said position as created and under the aforementioned appointment,[3] Florindo received, from March 1, 1960 to April 30, 1962, the salary of P275 a month, corresponding to his former position as market administrator and deputy.

It appears that, prior to the date last mentioned, or on August 21, 1961, Florindo filed, with the provincial treasurer, a formal claim for his salary differential, which was denied by the latter, upon the ground that "there was no fund available for that purpose" and that there was "no valid appropriation" therefor. Florindo appealed from this ruling to the Office of the President, but nothing came out of it, in view of which, on April 16, 1962, Florindo commenced, in the Court of First Instance of Batangas, the present action, against the provincial treasurer, to compel him by mandamus to certify and make available the funds necessary to cover Florindo's salary differential, as well as to recover damages.

Presently, or on April 25, 1962, the provincial board adopted Resolution No. 872, abolishing the position of "budget and fiscal officer" and reassigning Florindo to his former position as market administrator and deputy, for which reason Florindo amended his petition-complaint in the case at bar, by including therein, as respondents, the provincial governor, the provincial board and the provincial government of Batangas.

After appropriate proceedings, said court rendered a decision dismissing the petition for mandamus, upon the ground of failure to exhaust all administrative remedies, but nullifying said Resolution No. 872 and declaring it without force and effect. Florindo's motion for reconsideration of said decision having been denied, he appealed to the Court of Appeals, which, in due course, rendered a decision promulgated on January 22, 1966 - affirming the nullification of said Resolution No. 872, but reversing the decision appealed from insofar as it dismissed the petition for mandamus, and ordering Leonardo C. Gutierrez, in his official capacity as provincial treasurer, to cause Florindo's differential salary to be paid, at the rate of P6,000 a year, effective March 1, 1960, as well as sentencing Gutierrez, in his private Capacity, to indemnify Florindo in the sums of P3,000, by way of moral damages, and P2,000, as attorney's fees, costs and other expenses of litigation.

Respondents in the lower court, petitioners herein, filed a motion for reconsideration, and soon later, a supplemental motion for reconsideration, both of which were denied by the Court of Appeals, on March 22, 1966. Upon a second motion for reconsideration, filed by Gutierrez, in his private capacity, on April 23, 1966, said Court modified its decision of January 22, 1966, by eliminating therefrom the awards for damages and attorney's fees. Soon thereafter, or on April 29, 1966, the Solicitor General filed the present petition for review of said decision of the Court of Appeals. Florindo maintains, however, that said petition should be dismissed because it had been filed out of time, apart from being without merit and merely dilatory in character.

The record shows that notice of the decision of the Court of Appeals, dated January 22, 1966, was received by petitioners here-in on February 1, 1966; that on February 15, they moved to reconsider said decision; that notice of the resolution of said Court denying the motion for reconsideration was served upon them on March 24, 1966; that petitioners had fifteen (15) days from this date, or up to April 8, 1966, inclusive, to file with this Court their petition for review of said decision; and that they did not do so until April 29, 1966. Florindo concludes, therefore, that said petition was 21 days late.

Upon the other hand, petitioners herein allege that, on March 25, 1966,[4] Gutierrez had filed a motion for extension of time and for leave to file a second motion for reconsideration, which was granted; that, thereupon, Gutierrez filed said second motion for reconsideration, which was likewise, granted on April 23, 1966; that the reglementary period to petition the Supreme Court for a review on certiorari of the decision of the Court of Appeals, should begin to run from notice of the resolution of said Court of April 23, 1966[5]; and that the petition filed with the Supreme Court, on April 29, 1966, was well within said period.

The reliefs granted to Florindo in the original decision of the Court of Appeals, promulgated on January 22, 1966, were: (1) the annulment of Resolution No. 872; (2) the payment of salary differential; and (3) moral damages and attorney's fees. In the amended petition and complaint filed by Florindo with the trial court, the first remedy was the object of his third cause of action against the provincial governor, the provincial board and the provincial government of Batangas; the second was prayed for under his first cause of action against Gutierrez, in his official capacity as provincial treasurer; and the third was sought, under Florindo's second cause of action, against Gutierrez, in his private capacity.

It should be noted, also, that the first and second remedies are not dependent upon the third; that the motion of Gutierrez for extension of time and for leave to file a second motion for reconsideration explicitly alleged that the same would "only touch on the portion of the judgment which makes him personally liable for moral damages and attorney's fees, in his private capacity;" and that said second motion for reconsideration, likewise, stated that he filed it "in his private capacity" and limited itself to urging the elimination of said personal liability for "moral damages" and "attorney's fees".

Inasmuch as the official liability of petitioners herein for the first two (2) remedies aforementioned does not

spring or arise from and is not dependent upon the personal liability of Gutierrez, for moral damages and attorney's fees, under the original decision of the Court of Appeals, and the second motion for reconsideration of Gutierrez was filed by him alone and in his private capacity, it follows that said motion did not inure to his benefit, in his official capacity, let alone to that of his co-respondents in the lower court and co-petitioners herein, in their official capacity. Neither did it have the effect of suspending the running of the reglementary period to seek a review on certiorari of the decision of the Court of Appeals, insofar as the pronouncements therein made other than said moral damages and attorney's fees are concerned. Thus, in *Facundo v. Pabalan and Ulep v. Carbonnel*[6], we held that where "the decision x x although only one, contains separate and independent findings for each of the parties and makes distinct and independent rulings for each of them," the appeal by one of such parties "cannot be an obstacle to the execution of the decision" insofar as the other party is concerned.

Considering, moreover, that Gutierrez, in his official capacity, and his co-petitioners herein, had not moved to suspend the running of said period, pending resolution of the second motion for reconsideration filed by him, in his private capacity, it is clear that the decision of the Court of Appeals, as regards the annulment of Resolution No. 872 and Florindo's right to collect his differential pay, became final and executory on April 9, 1966, and that the petition for review herein was filed too late.

Petitioners herein allege that they had to wait for the resolution of the aforementioned second motion for reconsideration of Gutierrez, in his private capacity, before filing their petition for review on certiorari, because, if the same were granted, it would be "necessary for this Court to order the Court of Appeals to certify x x to this (Supreme) Court the entire record of the case." This argument is based upon an erroneous premise. In petitions for review on certiorari, like the one under consideration, the records of the lower court are not certified to the Supreme Court. In fact, the records of the Court of Appeals, in connection with the case at bar, have not been forwarded to us.

It may not be amiss to point out that "a party may" - in the language of Section 1 of Rule 45 of the Rules of Court - "appeal by certiorari, from a judgment of the Court of Appeals," by filing with the Supreme Court a petition for certiorari, "within fifteen (15) days from notice of judgment or of the denial of his motion for reconsideration filed in due time x x x." The motion for reconsideration of petitioners herein - including Gutierrez in his official capacity - was denied on March 22, 1966, and notice thereof was received by them on March 24, 1966. Their fifteen (15) days to appeal by certiorari began to run, therefore, from this date. It should not be computed from April 23, 1966, when the Court of Appeals acted on the second motion for reconsideration: (a) because the same was filed, not by petitioners herein, but, by Gutierrez, in his private capacity, who as such, is not of petitioner herein; and (b) because the resolution of the Court of Appeals of April 23, 1966, did not deny any motion for reconsideration, but, instead granted the second motion for reconsideration of Gutierrez, in his private capacity.

We have repeatedly held that the provisions of the law and the rules concerning the manner and period of appeal are mandatory and jurisdictional requirements essential to enable the appellate court to take cognizance of the appeal.[7]

At any rate, the present appeal is devoid of merit. Indeed, petitioners insist that Florindo has no cause of action, he having failed to appeal from the decision of the provincial board to the Secretary of Finance. Florindo, however, did appeal to the President, who referred the matter to the Secretary of finance, but the latter did not act thereon, despite Florindo's follow-up letters. Besides, the issues posed in this case are purely legal in nature[8], and the action complained of by Florindo - his removal by Resolution No. 872 as budget and fiscal officer - is patently illegal, arbitrary and oppressive. It is well-settled that, under such conditions exhaustion of administrative remedies is not indispensable.[9]

It is next urged that the creation, by the provincial board, of the position of budget and fiscal officer was ultra vires and illegal, because the functions of said officer conflict with those of the provincial treasurer. This argument has no factual basis. Section 2089 of the Revised Administrative Code provides that the provincial treasurer shall:

- (a) "Advise the provincial board, the provincial officers, and the national officers concerned on all matters relative to the public finance and the acquisition and alienation of property of the Government."
- (b) "Collect the taxes and other revenues authorized by law."
- (c) "Have the custody and supervision of all provincial funds and property, and assign rooms to provincial officers and other public officials entitled to office space in the provincial building."
- (d) "Have charge of the disbursement of all provincial funds and other funds the custody of which may be entrusted to him."
- (e) "Acquire for the provincial government all necessary supplies, material, and office equipment."
- (f) "Act as chief internal-revenue officer in the province."
- (g) "Act as public land officer."
- (h) "Act as agent of the Philippine National Bank."
- (i) "Inspect the operation of public utilities belonging to, leased, or operated by the provincial government or other local governments."

Upon the other hand, as set forth in the resolution creating the position of budget and fiscal officer, the same shall: (1) "serve as chief fiscal adviser of the provincial governor"; (2) "advise and consult with members of the provincial board on budgetary, accounting and fiscal programs of the provincial government, to promote maximum social services and economic development"; (3) "prepare estimates of revenue and maintain up to date control devices of revenue and expenditure trends"; and (4) "prepare and review provincial annual budget, supplemental budgets and special and other budgets". We find in these duties nothing inconsistent with those of the provincial treasurer.

Besides, not having been raised in the trial court, the issue on the alleged illegality of the creation of the position in question could not be taken up, for the first time, either in the Court of Appeals or in this Court, consistently with the appellate nature of the jurisdiction of both over the present case^[10], apart from the change of theory that such new issue would entail^[11].

Petitioners argue that, having created the position of budget and fiscal officer, the provincial board may abolish the same. The avowed abolition of said office by the provincial board was, however, a mere subterfuge to remove Florindo therefrom, without due process of law. As stated in Resolution No. 872, the reason therefor was that "the position of budget and fiscal officer was primarily created to locate funds which are being allegedly hidden by the provincial treasurer from the (provincial) governor and the members of the (provincial) board" and that "from the time of the creation of his position he has failed to do his job." In fact, one of the members of the board objected to the resolution, upon the ground that "Florindo should be heard before he is condemned." Needless to say, there is neither proof nor allegation regarding the existence of the hidden funds he had failed to detect. It is, also, clear that, being a permanent employee, with a first grade civil service eligibility, Florindo cannot be removed except for cause and after due notice and hearing, which he has not had.

In *Cruz v. Primicias*^[12], we explicitly declared, reiterating previous rulings^[13], that "where the abolition (of office) is made to circumvent the constitutional security of tenure of civil service employees, it is null and

void."

Petitioners allege, finally, that there were no funds available for his salary as budget and fiscal officer. The Court of Appeals, however, held otherwise,[14] and, involving as it does a question of fact, its finding thereon is not subject to our review, apart from the circumstance that there is substantial evidence in support of said finding.[15]

WHEREFORE, the decision of the Court of Appeals is hereby affirmed, with costs against petitioners herein.

SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando and Capistrano, JJ., concur.

[1] Or P275 a month.

[2] As budget officer and fiscal analyst.

[3] P7,200 and P6,000 a year, respectively.

[4] Or the day following that of notice of denial of the motion for reconsideration.

[5] Granting the second motion for reconsideration of Gutierrez.

[6] L-17746 and 17807, January 31, 1962.

[7] Roman Catholic Bishop of Tuguegarao v. Dir. of Lands, 34 Phil 623; Estate of Cordova v. Alabado, 34 Phil. 920; Bermudez v. Dir. of Lands 36 Phil. 774; Shioji v. Harvey, 43 Phil. 333; Miranda v. Guanzon, 92 Phil. 168 Valdez v. Acumen, L-13536, Jan. 29, 1960; Valerio v. Sec. of Agriculture, L-18587, April 23, 1963; Gov't. of the Phil. v. Antonio L-23736, Oct. 19, 1965; Antique Sawmills v. Zayco, L-20051, May 30, 1966; Roque v. Del Rosario, L- 24873, Sept. 23, 1966; Lo Chi v. De Leon, L-18584, Jan. 30, 1967.

[8] Pascual v. Provincial Board of Nueva Ecija, L-11959, Oct. 31, 1959; Gonzales v. Hechanova, L-21897, Oct. 22, 1963; Cariño v. ACCFA, L-19808, Sept. 29, 1966; C.N. Hodges v. The Mun. Board of the City of Iloilo, L-18276, Jan 12, 1967; Dauan v. Sec. of Agric. & Natural Resources, L-19547, Jan. 31, 1967; Mitra v. Subido, L-21697, Sept. 15, 1967; Provincial Board of Zamboaga del Norte v. De Guzman, L-23523, Nov. 18, 1967.

[9] Mission v. Del Rosario, 94 Phil 483; Uy v. Rodriguez, 95 Phil 493; Palamine v. Zagado, 94 Phil. 494; Manuel v. De la Fuente, 92 Phil. 302; Jose v. Lacson, L-10477, May 17, 1957; Festejo v. Mayor Nabua, 96 Phil. 286; Covacha v. Amante, L-8358, May 25, 1956; Carmona v. Amante, 99 Phil. 716; Senarilos v. Hermosisima, L-10662, Dec. 14, 1956; Briones v. Osmeña, 104 Phil. 588; Azuelo v. Arnaldo, L-15144, May 26, 1960.

[10] Baluyot v. Venegas, L-22968, Jan. 31, 1968; City of Manila v. Teotico, L- 23052, Jan. 29, 1968; Soriano v. Cia. General de Tabacos, L- 17392, Dec. 17, 1966; Plaridel Surety & Ins. Co. v. Com. of Int. Revenue, L-21520, Dec. 11, 1967; City of Manila v. Garcia L-26053, Feb. 21, 1967.

[11] Oliva v. Lamadrid, L-23196, Oct. 31, 1967; Hautea v. Magallon, L-20345, Nov. 28, 1964; Northern Motors, Inc. v. Prince Line, L-13884, Feb. 29, 1960; Jimenez v. Bucoy, L-10221, Feb. 28, 1958; Atkins, Kroll & Co. v. Cua Hian Tek, L-9871, Jan. 31, 1958; Com. of Customs v. Valencia, 100 Phil. 165; Luzon Brokerage Co. v. Samahang Luzon Brokerage Co., L-2950, Sept. 13, 1950; Agoncillo v. Javier, 38 Phil. 424; Molina v. Somes, 24 Phil. 49.

[12] L-28573, June 13, 1968.

[13] Briones v. Osmeña, 104 Phil. 588; Gacho v. Osmeña, 103 Phil. 837; Gonzales v. Osmeña, L-15901, Dec. 30,

1961; Urgelio v. Osmeña, L-14908, Oct. 31, 1963; Ocampo v. Duque, L-23812, April 30, 1966; Abanilla v. Ticao, L-22271, July 26, 1966; Arao v. Luspo, L-23982, July 21, 1967.

[14] The Court of Appeals said: "We, also, find that funds were available or could have been made available for paying the salary differentials x x x but x x x Gutierrez has unjustifiedly refused to certify as to the availability of such funds xxx."

[15] Air France v. Carrascoso, L-21438, Sept. 28, 1966; Tan v. Court of Appeals, L- 22793, May 16, 1967; Philippine Refining Co. v. Garcia, L-21871 & L-22739, Sept. 27, 1966; Philippine Air Lines v. Salcedo, L-22119, Sept. 29, 1967; Philippine Surety and Ins. Co. v. Zabal, L-21556, Oct. 31, 1967; Galarpe del Melgar v. Pagayon, L-22731, Nov. 15, 1967; Inting v. Clarin, L-28206, Dec. 28, 1967.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.