

JOSE D. VILLENA, PETITIONER VS. HON. MARCIANO ROQUE, ETC., ET AL., RESPONDENTS.*G. R. No. L-6512. June 19, 1953*

Ponente: JUGO, J.

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In view of the mutual relations of the two above entitled cases, they were submitted to this Court and considered together.

In case G. R. No. L-6512, on December 16, 1952, the Provincial Fiscal of Rizal filed an information in the Court of First Instance of said province against Mayor Jose D. Villena charging him with falsification of a public document in criminal case No. 3874 of said court. On January 9, 1953, the court, after due trial, found him guilty and sentenced him to suffer imprisonment of from eight years, eight months and one day to nine years and eight months. On October 29, 1952, the complainant, Catalina Esteban, who considered herself an aggrieved party, filed with the Office of His Excellency, the President of the Philippines, administrative charges against said Mayor based on the falsification. On October 31, 1952, the Office of the President referred said charges to the Provincial Governor of Rizal for appropriate action. On December 17, 1952, the Office of the President addressed a communication to said Governor inviting his attention to the fact that an information had been filed in court against Mayor Villena, and on the same date the Governor suspended Mayor Villena. After the expiration of thirty days, that is, on January 16, 1953, the Governor reinstated him in accordance with section 2189 of the Revised Administrative Code. Inasmuch as the Provincial Board had not conducted any investigation of the charges, Catalina Esteban filed a petition with the Office of the President inviting his attention to that fact. On February 9, 1953, the Acting Executive Secretary, Marciano Roque, by authority of the President, addressed a communication to Mayor Villena, as follows:

"MANILA, February 9, 1953

"SIR:

"Please be advised that His Excellency, the President, has decided, for the good of the public service, to take over and assume directly the investigation of the administrative charges against you, for falsification of public documents in connection with the lease of the Makati-Mandaluyong Ferry, engaging in the practice of law without previous permission, and extortion, which are now pending investigation before the Provincial Governor and the Provincial Board of that province, and to designate the Provincial Fiscal of Rizal as special investigator of this Office to conduct the investigation of the said charges. Copy of the designation of the said official as Special Investigator is enclosed, for your information.

"In view of the serious nature of the aforementioned charges against you and in order to promote an orderly, fair, and impartial investigation thereof, you are hereby suspended from office effective immediately, your suspension to last until the termination of the administrative proceedings against you aforementioned.

"The provincial Governor and the Special Investigator had been advised hereof.

"Respectfully,

"By authority of the President:

"MARCIANO ROQUE

Acting Executive Secretary"

The Provincial Fiscal of Rizal was appointed by the Office of the President as investigator in the following communication:

"MANILA, February 9, 1953

"Sir:

"Pursuant to the provisions of section 64 (c) of the Revised Administrative Code in relation to section 79 (c) of the same Code, you are hereby designated Special Investigator to conduct an investigation of the administrative charges against Mr. Jose D. Villena, Municipal Mayor of Makati, Rizal, for falsification of public documents in connection with the lease of the Makati-Mandaluyong Ferry, engaging in the practice of law without previous permission, and extortion. Copy of the original complaint for falsification of public documents is enclosed. You may request the Provincial Governor of Rizal or the Provincial Board to turn over to you all the papers regarding the said charges, attention being invited to the enclosed copy of our letter of even date to the Provincial Board.

"In this connection, we wish to state that the respondent should be given sufficient notice in advance of the date and place of the investigation, and full opportunity to defend himself personally or by counsel.

"Immediately after the investigation, please submit to this office the complete records of the aforesaid charges including the transcript of the stenographic notes and exhibits, together with your findings and recommendation.

"Respectfully,

"By authority of the President,

"MARCIANO ROQUE

Acting Executive Secretary"

"The Provincial Fiscal

Pasig, Rizal

"Copy furnished:

"The Honorable

The Secretary of Justice

MANILA"

It will be noticed that the Fiscal was instructed in the above communication "that the respondent should be given sufficient notice in advance of the date and place of the investigation, and full opportunity to defend himself personally or by counsel."

Mayor Villena now comes to this Court praying that the Provincial Fiscal of Rizal be ordered to desist from proceeding with the investigation and that his (Villena's) suspension be declared null and void. One of the points raised by the petitioner is that sections 2188 and 2190 of the Revised Administrative Code vest the power to investigate a municipal official in the provincial board. This power is not exclusive. As held in the case of Jose D. Villena vs. The Secretary of the Interior (67 Phil., 451, 452, 459, 460), (April 21, 1939) "the fact, however, that the power of suspension is expressly granted by section 2188 of the Administrative Code to the provincial

governor does not mean that the grant is necessarily exclusive and precludes the Secretary of the Interior from exercising a similar power."

"1. SECRETARY OF THE INTERIOR; EXECUTIVE SUPERVISION OVER THE ADMINISTRATION OF PROVINCES, MUNICIPALITIES, CHARTERED CITIES AND OTHEER LOCAL POLITICAL SUBDIVISIONS.—Section 79 (c) of the Administrative Code speaks of direct control, direction, and supervision over bureaus and offices under the jurisdiction of the Secretary of the Interior, but this section should br interpreted in relation to section 86 of the same Code which grants to the Department of the Interior "exclusive supervision over the administration of provinces, municipalities, chartered cities and other local political subdivisions."

"2. ID.; ID.; INVESTIGATION OF CHARGES; MEANING OF THE WORD "SUPERVISION".—In the case of Planas vs. Gil (37 Off. Gaz., 1228) this court observed that "Supervision is not a meaningless thing. It is an active power. It is certainly not without limitation, but it at least implies authority to inquire into facts and conditions in order to render the power real and effective. If supervision is to be conscientious and rational and not automatic and brutal, it must be founded upon a knowledge of actual facts and conditions disclosed after careful study and investigation. The principle there enunciated is applicable with equal force to the present case. The Secretary of the Interior is invested with authority to order the investigation of the charges against the petitioner and to appoint a special investigator for that purpose.

"3. ID.; ID.; ID.; SUPERVISION BY THE SECRETARY.—As regards the challenged power of the Secretary of the Interior to decree the suspension of the herein petitioner pending an administrative investigation of the charges against him, the question, it may be admitted, is not free from difficulties. There is no clear and express grant of power to the Secretary to suspend a Mayor of a municipality who is under investigation. On the contrary, the power appears lodged in the Provincial Governor by section 21SS of the Administrative Code which provides that "The provincial governor shall receive and investigate complaints made under oath against municipal officers for neglect of duty, oppression, corruption or other form of maladministration of office, and conviction by final judgment of any crime involving moral turpitude."

"4. ID.; ID.; ID.; POWERS OF THE PRESIDENT OF THE PHILIPPINES.— The fact, however, that the power of suspension is expressly granted by section 2188 of the Administrative Code to the Provincial Governor does not mean that the grant is necessarily exclusive and precludes the Secretary of the Interior from exercising a similar' power. For instance, counsel for the petitioner admitted in the oral argument that the President of the Philippines may himself suspend the petitioner from office in view of his greater power of removal (sec. 2191, as amended, Administrative Code) to be exercised conformably to law."

The case of Lacson vs. Hon. Marciano Roque, etc., et al., 92 Phil. 456 (49 Off. Gaz., [1] 93) is different from the present one, for the following reasons:

- (1) Lacson had only been indicted but not yet convicted;
- (2) Lacson was accused of libel which was not a misconduct in office; whereas in the present case, the petitioner was accused of falsification of a public document essentially in relation to the performance of his duties as mayor; and
- (3) Lacson was not subjected to an administrative investigation; whereas in the order appointing the Provincial Fiscal of Rizal to conduct the administrative investigation, the fiscal was enjoined to give the petitioner "sufficient notice of the date and place of the investigation, and full opportunity to defend himself personally or by counsel."

Section 2078 of the Revised Administrative Code clearly provides that the Governor-General (the President of the Philippines) has the power to suspend, and, if found guilty of disloyalty, dishonesty, oppression, or misconduct in office, after investigation, to remove any provincial officer including an elective governor (section 2082). If he

can do this with regard to provincial officers, it stands to reason that he has also the same power with regard to municipal officers.

* * * * *

In case G. R. No. L-6540, when Mayor Villena was suspended by order of the President, Bernardo Umali was the Vice-Mayor. He should, automatically, have assumed the office of Mayor, but he could not do so, because on November 16, 1952, the Municipal Council had suspended Bernardo Umali and Councilor Abundio Suck, under section 2223 of the Revised Administrative Code, for alleged "disorderly conduct" which consisted in that Umali and Suck objected to and protested against the minutes of the Municipal Council in which it was made to appear that the council had ratified and validated the contract entered into in behalf of the Municipality of Makati by Mayor Jose D. Villena, by means of the falsified public document above mentioned. The Provincial Governor of Rizal appointed Ignacio Babasa the Councilor who had received the highest number of votes, as acting Mayor. It is evident that the objection and protest made by Umali and Suck did not constitute, in any way, "disorderly conduct." The Office of the President ordered the reinstatement, of Umali as vice-mayor and Suck as councilor, but this order was ignored.

Bernardo Umali and Abundio Suck filed a petition with the Court of First Instance of Rizal, in which, in addition to the principal remedy for their reinstatement, they prayed for a preliminary mandatory injunction to restore them to their offices. After the filing of the proper bond the judge issued said order.

The petitioners herein filed a motion with the Court of First Instance asking for the dissolution of the preliminary injunction. The court denied the motion for dissolution and ordered the arrest of Ignacio Babasa for contempt for not complying with the injunction, but he was allowed to appeal to this court with the filing of a bond. The petitioners now ask this court for the annulment of the order of preliminary mandatory injunction and the order of contempt. They contend that the lower court had no jurisdiction to issue said injunction. There are cases where a mandatory injunction may be issued in order to restore the parties to the status quo.

In the case of the Manila Electric Railroad and Light Company vs. Del Rosario, et al., (22 Phil., 433, 434), Doroteo Jose was suspected by the company of misappropriating electric current. He was accused of theft but was acquitted. Notwithstanding this acquittal, the company tried to collect the value of the alleged misappropriated current from him and upon his refusal, it cut-off the service. This court issued a preliminary mandatory injunction to compel the company to continue furnishing current until the question of the misappropriation should have been finally determined. In the present case, the petitioners by arbitrarily and illegally charging Umali and Suck with "disorderly conduct", suspended Umali from his position of vice-mayor to prevent him from assuming the office of acting mayor upon the suspension of Mayor Villena. In the case of Laxamana vs. Baltazar, 92 Phil. 32, it was decided that the vice-mayor, by operation of law, assumes the office of acting municipal mayor during the suspension of the mayor, and the Provincial Governor has no power to designate anyone else to such position. The mandatory injunction was properly issued by the court below in order to place vice-mayor Umali in the position of acting mayor from which he was ousted without cause, pending the final determination of the question as to who is entitled to discharge the duties of Mayor. This is even a stronger case than that of the Manila Electric Railroad and Light Company vs. Del Rosario, et al., just cited.

In view of the foregoing, the petition in each of the two cases above mentioned-G. R. Nos. L-6512 and L-6540 is denied with costs against the petitioners. So ordered.

Paras, C. J., Pablo, Bengzon, Padilla, Montemayor, Reyes, Bautista Angelo and Labrador, JJ., concur.

DISSENTING

TUASON, J.,

Sections 2188, 2189 and 2190 of the Revised Administrative Code provide:

SEC. 2188. Supervisory authority of provincial governor over municipal officers.—The provincial governor shall receive and investigate complaints made under oath against municipal officers for neglect of duty, oppression, corruption or other form of maladministration of office, and conviction by final judgment of any crime involving moral turpitude. For minor delinquency, he may reprimand the offender; and if a more severe punishment seems to be desirable, he shall submit written charges touching the matter to the provincial board, furnishing a copy of such charges to the accused either personally or by registered mail, and he may in such case suspend the officer (not being the municipal treasurer) pending action by the board, if in his opinion the charge be one affecting the official integrity of the officer in question. Where suspension is thus effected the written charges against the officer shall be filed with the board within five days.

SEC. 2189. Trial of municipal officer by provincial board.—When written charges are preferred by a provincial governor against a municipal officer, the provincial board shall, at its next meeting, regular or special, set a day, hour, and place for the trial of the same and notify the respondent thereof; and at the time and place appointed, the board shall proceed to hear and investigate the truth or falsity of said charges, giving the accused official full opportunity to be heard in his defense. The hearing shall occur as soon as may be practicable, and in case suspension has been effected, not later than ten days from the date the accused is furnished or has sent to him a copy of the charges, unless the suspended official shall, on sufficient grounds, request an extension of time to prepare his defense.

The preventive suspension of a municipal officer shall not be for more than thirty days. At the expiration of the thirty days, the suspended officer shall be reinstated in the office without prejudice to the continuation of the proceedings against him until their completion, unless the delay in the decision of the case is due to the fault, neglect, or request of the accused, in which case the time of the delay shall not be counted in computing the time of the suspension: Provided, That the suspension of the accused may continue after the expiration of the thirty days above mentioned in case of conviction until the Secretary of the Interior shall otherwise direct or the case shall finally be decided by said Secretary.

SEC. 2190. Action by provincial board.—If, upon due consideration, the provincial board shall adjudge that the charges are not sustained, the proceedings shall be dismissed; if it shall adjudge that the accused has been guilty of misconduct which should be sufficiently punished by reprimand or further reprimand, it shall direct the provincial governor to deliver such reprimand in pursuance of its judgment; and in either case the official, if suspended, shall be reinstated.

If, in the opinion of the board the case, is one requiring more severe discipline, and in case of appeal, it shall without unnecessary delay forward to the Secretary of the Interior, within eight days after the date of the decision of the provincial board, certified copies of the record in the case, including the charges, the evidence, and the findings of the board, to which shall be added the recommendation of the board as to whether the official ought to be suspended, further suspended, or finally dismissed from office; and in such case the board may exercise its discretion to reinstate the official, if suspended.

The trial of a suspended municipal official and the proceedings incident thereto shall be given preference over the current and routine business of the board.

By all canons of statutory construction and, I might say with apology, common sense, the preceding sections should control in the field of investigations of charges against, and suspension of, municipal officials. The minuteness and care, in three long paragraphs, with which the procedure in such investigations and suspensions is

outlined, clearly manifests a purpose to exclude other modes of proceeding by other authorities under general statutes, and not to make the operation of said provisions depend upon the mercy and sufferance of higher authorities. To contend that these by their broad and unspecified powers can also investigate such charges and order the temporary suspension of the erring officials indefinitely is to defy all concepts of the solemnity of legislative pronouncements and to set back the march of local self-government which it has been the constant policy of the legislative branch and of the Constitution to promote.

Granting, but without conceding, that there is irreconcilable inconsistency between the powers of the provincial authorities and of the national authorities in the matter of investigations and suspensions of municipal officials, the universal rule, which admits of no exception, tells us that the latter being of general application must yield to the former which is special in character.

Conflicting statutes.—Where statutes passed at the same session are necessarily inconsistent, a statute which deals with the common subject-matter in a minute and particular way will prevail over one of a more general nature; and a legislative intent clearly expressed in a special act will prevail over any implication which can be gathered from a general statute, where both were approved contemporaneously. It is also a general rule that where statutes passed at the same session are irreconcilably inconsistent, the latest in point of time will prevail, and in this connection it has been held that, as between inconsistent statutes approved on the same day, that which takes effect last will prevail; that a statute passed later, but going into effect earlier, will prevail over one passed earlier, but going into effect later; that an act going into effect immediately will prevail over an act passed before it, but going into effect later; that where two acts, each without any repealing or emergency clause, are to take effect at the same time, the one approved last will prevail, and that one act containing an emergency clause will overcome another which does not, contain such a clause, passed on the same day, or at the same session. Where acts passed at the same session contain conflicting clauses, the whole record of legislation will be examined to ascertain the legislative intent, and such intent, if ascertained, will be given effect, regardless of priority of enactment. (59 C. J., 1055-1056.)

* * * * *

(d) General and special statutes.—Where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special statute, or the one dealing with the common subject-matter in a minute way, will prevail over the general statute, unless it appears that the legislature intended to make the general act controlling; and this is true a fortiori when the special act is later in point of time, although the rule is applicable without regard to the respective dates of passage. It is a fundamental rule that where the general statute, if standing alone, would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute, whether it was passed before or after such general enactment. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special statute will be construed as remaining an exception to its terms, unless repealed in express words or by necessary implication. Other statements in regard to the construction of general and special statutes relating to the same subject-matter are, that a special statute should not be construed as an exception to a general law, unless the two acts cannot otherwise be reconciled; that the functioning of public institutions of the state, operating under special statutes, is not generally affected by general restrictive laws governing the revenue collecting bureaus of the state; that when a general act has established a system of law covering a vital field in government, an exception to such general system will not readily be implied, and that where it is sought to show that provisions of a general law do not apply to a city adopting it in its entirety, and that provisions of the special charter apply, language relied on to express such intent should be reasonably plain. (59 C. J., 1056-1058.)

The Court's justification of the action of which petitioner complains by citing the power of the Governor-General

(now the President) under section 2078 to investigate, suspend or remove provincial officials is, it is submitted, not well considered. The conclusion does not so easily follow the premise. The power to suspend provincial officers does not necessarily imply power to suspend municipal officers. In the first place, section 2078 is found in the chapter of the Code which deals with provinces whereas sections 2188-90 fall under the chapter dedicated to municipalities. In the second place, both sets of provisions are clear and specific, each sufficient unto itself. In the third place, the power of suspension and removal is not acquired by inference, much less inference that would upset express statutory enactments.

Strict construction of law relating to suspension and removal is the universal rule. In *Lacson vs. Roque*, 92 Phil., 456, it was said:

The contention that the President has inherent power to remove or suspend municipal officers is without doubt not well taken. Removal and suspension of public officers are always controlled by the particular law applicable and its proper construction subject to constitutional limitations. (2 McQuillan's Municipal Corporations [Revised], Section 574.) So it has been declared that the governor of a state, (who is to the state what the President is to the Republic of the Philippines), can only remove where the power is expressly given or arises by necessary implication under the Constitution or statutes. (43 Am. Jur., 34.)"

Further, the background of present legislation will disclose that there were reasons for imposing restrictions upon investigations and suspensions of municipal, officials, and not upon those of provincial officials. With this background in mind, it becomes clear that the power of the President under section 2078 was not intended to abrogate or modify the provisions of sections 2188-90.

Municipal officers were, as they now are, subject to investigation and suspension by the provincial governor or the provincial board. These powers were abused, and this circumstance led to the enactment of the laws that were to become sections 2188-90 of the Revised Administrative Code. As stated in *Lacson vs. Roque*, supra, these provisions were "designed to protect elective municipal officials against abuses * * * of which past experience and observation had presented abundant example."

On the other hand, provincial officials were under the direct supervision and control of the insular government and, unlike municipal officials, were not harassed and embarrassed by investigations and suspensions for other than legitimate causes. There was then no compelling reason for limiting the period of preventive suspension of provincial officials and prescribing the manner in which investigations of charges against them should be conducted.

The most that could be said for the respondents is that the power of the President to investigate and suspend municipal officials is concurrent with that of the provincial governor or the provincial board. Upon this assumption the authority that takes jurisdiction of a case coming within the purview of the concurrent powers excludes the other. And viewed from this angle, and this is a very important angle, the former Villena case and the Planas case on which the Court relies inqualifiably, have no application. Those investigations were initiated by the Central Government authorities.

Here the administrative charges had already been filed, the defendant had been suspended and reinstated in accordance with express mandates of law, and the investigation was pending, when the Chief Executive wrested the case from the hands of the provincial board. Upon the principle just referred to, the provincial board has exclusive authority to proceed with and finish the task.

That the Board refused or neglected to perform its duties is beside the point. If there was anomaly or negligence in the provincial official's actuations, the respondents are not to be made to suffer for their derelictions. The remedy is to go after the Board. Here is where the general supervision of the National Government over local officials and

local affairs should step in and play its role.

Many other reasons could be adduced, in my humble opinion to show that the majority decision is contrary to law and precedents and the principles of constitutional government, but lack of time prevents me from enlarging upon this dissent. This opinion is being written after the decision was promulgated—promulgation of which unfortunately I learned only after the entry of the judgment, and which I had not anticipated.

Not having sat in the deliberation and voting on Case G. R. No. L-6540, I reserve my vote thereon.

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