

**MAYOR GUILLERMO LEGASPI OF DALAGUETE, CEBU, PETITIONER,
VS. HON. RENE ESPINA, IN HIS CAPACITY AS PROVINCIAL
GOVERNOR OF CEBU AND MEMBER OF THE CEBU PROVINCIAL
BOARD; HON. OSMUND...**

G.R. No. L-30680. September 30, 1970

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

In an original action for certiorari and mandamus filed on July 9, 1969, petitioner, as mayor of Dalaguete, Cebu, questioned for lack of authority and validity respondent provincial board's decision of August 2, 1968 in Administrative Case No. 1, S. 1968 of said board, whereby the board found petitioner guilty of the charges of oppression and serious misconduct in office filed against him by respondent governor as complainant. Respondent board imposed upon petitioner the penalty of "suspension effective August 2, 1968 to continue for a period of forty (40) months and fifteen (15) days", corresponding to the unexpired term of office of petitioner as mayor.[1]

Petitioner contended that the administrative decision was rendered against him ex-parte and therefore void for lack of due process, and that at any rate, the same could not be immediately executed against him in view of the motion for reconsideration thereof filed by him with the board on August 9, 1968, which he later supplanted under date of September 17, 1968 with a notice of appeal from the decision to the Office of the President, asking that all the records of the case be forwarded to the Executive Secretary, in view of the board's "unreasonable delay" in acting thereon, which "is inescapably interpreted by respondent (petitioner herein) as a denial of his motion for reconsideration and/or new trial." [2] He therefore prayed for a writ of this Court for his immediate reinstatement.

Respondents, in their answer, traversed the factual allegations of the petition, averring that petitioner was duly notified of the board's scheduled hearing of the charges, but that after it had denied petitioner's motion, through counsel, for indefinite suspension of the hearing until after the Court of First Instance of Cebu shall have passed upon the merits of the petition for prohibition, docketed as Case No. R-10697, which petitioner had filed against respondent governor praying for a preliminary injunction against his investigation and preventive suspension from office, respondent's counsel walked out from the hearing, notwithstanding the board's admonition that his withdrawal would be taken as a waiver of petitioner's right to be present at the hearing and to submit his defense. Respondents also assailed petitioner for failure to exhaust the available administrative remedies, as well as questioned the timeliness of petitioner's appeal to the Office of the President, alleging that the appeal was filed only fifty-five (55) days after receipt of the board's adverse decision, beyond the eight-day reglementary period for appeal set by section 2190 of the Revised Administrative Code. Respondents therefore justified the immediate implementation of the board's decision for petitioner's suspension from office, on the ground that it had become final and executory.

After the case's submittal for decision last September, 1969, it now appears from the motion to dismiss dated July 10, 1970 filed by respondents, that on or about September 4, 1969, petitioner had filed his certificate of candidacy

for the position of Congressman for the fourth district of Cebu in the last national elections held on November 11, 1969, was voted for and obtained third place among the principal candidates with 3,655 votes. Respondents, averring that petitioner has herein made "no demand for damages or payment of salaries," now ask for the dismissal of the petition as moot and academic, since petitioner, having been considered resigned by operation of law^[3] from his office of mayor of Dalaguete, Cebu, upon his filing of his certificate of candidacy for Congressman in the last elections, is no longer entitled to the relief of reinstatement to the office of mayor that he seeks in the case at bar.

Petitioner in his opposition dated August 21, 1970, admits the fact of his having run for the office of Congressman in the last elections but contends that the severance from his office of mayor by virtue of section 27 of the Revised Election Code should not be applied to him "because (he) was not actually holding the position of mayor, he was suspended then and still is this date."^[4] Besides, he argues that assuming that he automatically ceased to be mayor on September 4, 1969 upon the filing of his certificate of candidacy for Congressman, he would nevertheless have a claim for back salaries from his suspension on August 2, 1968 up to said date, should his suspension be declared to be without legal basis.

Petitioner's opposition lacks merit. The automatic and permanent loss of office^[5] by any elective provincial, muni-cipal or city official "who runs for an office other than the one which he is actually holding" decreed by the Revised Election Code, refers to the local office to which the official concerned has been elected and to which he claims title and make no exception for officials under suspension at the time they file their certificate of candidacy for another office. Since petitioner thereby forfeited any right to the office of mayor of Dalaguete, Cebu as of September 4, 1969 when he filed his candidacy for Congressman, his present petition seeking reinstatement to the said office of mayor has lost all basis. The element of urgency in his petition for reinstatement should his suspension be found unwarranted under the facts and the applicable law, which led the Court to hear his petition, has likewise been lost. All that is left for him to pursue is his claim for back salaries during the period above stated, and for this purpose, he must go through the normal administrative proceedings and seek to establish his rightful claim thereto in his pending appeal with the Office of the President, subject, of course, to respondents' factual and legal defenses.

The record shows that as early as October 15, 1968, the Executive Secretary had asked respondents to forward the records of the administrative case pursuant to petitioner's appeal^[6] It may be assumed that during the interval, the records must have been so forwarded by respondents, but in the contrary case, respondents, excluding respondent Espina,^[7] are directed to so forthwith transmit the records.

ACCORDINGLY, the petition at bar is hereby dismissed. Without costs.

Reyes, Acting C.J., Dizon, Makalintal, Zaldivar, Ruiz Castro, Barredo, and Makasiar, JJ., concur.
Fernando and Villamor, JJ., did not take part.

[1] This penalty was obviously decreed pursuant to the pro-visions in Sec. 5 of the Decentralization Law (R. A. No. 5185) "that the penalty of suspension shall not exceed the unexpired term of the respondent." Petitioner went on a 15-day leave of absence effective August 2, 1970 but could no longer assume his office at the end thereof on August 18, 1968 due to the implementation of the board's decision of punitive suspension.

[2] Annex D, petition, emphasis copied; note in paren-theses supplied.

[3] Under section 27 of the Revised Election Code, (R. A. No. 180), which provides: "Any elective provincial, muni-cipal or city official running for an office, other than the one which he is actually holding, shall be

considered resigned from his office from the moment of the filing of his certificate of candidacy."

[4] Emphasis copied.

[5] See *Monroy vs. Court of Appeals* 20 SCRA 620 (1967).

[6] Annex F, petition.

[7] Respondent Espina ceased to be provincial governor upon filing for senator on September 12, 1969, and was succeeded by respondent Rama as then vice-governor. (Par. 4, motion to dismiss).

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