

FRANCISCO B. SEBASTIAN, PETITIONER-APPELLANT, VS. MANUEL F. CABAL, AS CHIEF OF STAFF, ARMED FORCES OF THE PHILIPPINES, AND ISAGANI V. CAMPO, AS CHIEF, PHILIPPINE CONSTABULARY, ...*G.R. No. L-25699. April 30, 1970*

Ponente: MAKALINTAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/da2132b8e56e/>**MAKALINTAL, J.:**

When Captain Francisco B. Sebastian, an officer in the Philippine Constabulary, initially commenced on March 13, 1961 a petition for prohibition with preliminary injunction before the Court of First Instance of Quezon to prevent his reversion from active duty to inactive status, the main respondents in said case were Generals Manuel F. Cabal and Isagani V. Campo, then Chief of Staff, AFP, and Chief of the Philippine Constabulary, respectively. During the pendency of the case however, Generals Cabal and Campo retired; and to succeed them in their respective positions Generals Alfredo M. Santos and Nicanor D. Garcia were appointed.

On May 13, 1964 the lower court, formally informed by petitioner's counsel that respondents were no longer in the government service, temporarily postponed the hearing of the case until such time as "counsel for the petitioner shall have filed the amended pleading as mentioned by him." On May 15, 1964 petitioner simply filed a motion to substitute Generals Santos and Garcia for Generals Cabal and Campo without, however, including a notice of the time and place of hearing of his motion.

On July 27, 1965 the lower court dismissed the main petition on the ground that despite the lapse of over a year since counsel for petitioner was ordered to amend the complaint, he had not done so and neither had he taken the proper steps for the substitution of parties. Petitioner's plea for reconsideration having been denied, this case is before us on appeal from that order of dismissal.

Petitioner maintains that his filing of the "Motion for Substitution of Parties" dated May 15, 1964 was a substantial compliance with the previous order of the lower court for the amendment of the petition. This contention would probably merit some attention were it not for the motion's inherent defect that cannot be lightly disregarded - it did not contain a written notice of the time and place of hearing.

The Rules of Court are quite clear. For motions in general, Rule 15, Sections 4 and 5, provides that notice of a motion shall state the time and place of hearing and shall be served upon all parties concerned at least three days in advance. And according to section 6 of the same Rule no motion shall be acted upon by the court without proof of such notice. Indeed it has been held that in such a case the motion is nothing but a useless piece of paper. The reason is obvious: unless the movant sets the time and place of hearing the court would have no way to determine whether the adverse party agrees or objects to the motion, and if he objects, to hear him on his objection, since the Rules themselves do not fix any period within which he may file his reply or opposition (*Manila Surety and Fidelity Co., Inc. vs. Bath Construction and Company et al.*, L-16636, June 24, 1965; 14 SCRA 435; *Fulton Insurance Company vs. Manila Railroad, et al.*, L-24263, November 18, 1967; 21 SCRA 974).

Certain additional considerations brought up by the Solicitor General in his brief in behalf of the respondents,

deserve to be mentioned in passing, although they touch on petitioner's cause on the merits and not on the Strictly procedural question before us. In their answer to the petition below respondents alleged that "the Armed Forces of the Philippines has suspended the reversion of reserve officers who, like petitioner, have to their credit no less than five (5) years of active commissioned service as of June 19, 1959 by virtue of a letter directive of the Chief of Staff... dated March 18, 1961;" and that "with the suspension of petitioner's reversion, the issues raised by the petition have become purely academic."

On March 2, 1962 petitioner filed a pleading also entitled "petition," in which he alleged that after the lower court issued the writ of preliminary injunction dated March 14, 1961, ordering respondents to refrain from reverting petitioner to inactive status, he received a notice on October 6, 1961 from the AFP Chief of Staff, through the AFP Review Board, "that he will be investigated, the subject of which is: Separation from the Service." Acting on his prayer in said subsequent petition the lower court issued another writ of preliminary injunction, dated October 26, 1962, order-ing respondents to refrain from investigating petitioner.

On July 13, 1965 respondents filed a motion to dismiss petition and to dissolve the writs of preliminary injunction. Relied upon as ground for the motion was the decision of this Court in the case of "Constante Alzate vs. GHQ Efficiency and Separation Board," wherein it was held that Section 1 of Republic. Act No. 1382 (June 18, 1955), which provides that reserve officers with at least ten years of service... "shall not be reverted into inactive status except for cause after proper court-martial proceedings or upon their own request," which provision was invoked by petitioner in his original petition, did not prohibit the investigation of a reserve officer by the GHQ Efficiency and Separation Board of the AFP for the purpose of determining "his suit-ability to remain or be separated from the service by reason of certain charges against him."

As the matter stands, therefore: (1) respondents have denied that there is a move to revert petitioner to inactive status, and hence there is no cause for him to invoke the provisions of Republic Act No. 1382; and (2) as far as the right of respondents to have him investigated for purposes of separation is concerned, the question has been settled in the Alzate case mentioned above.

The foregoing additional considerations are, of course, set forth merely to underscore the fact that the dismissal of the petition by the trial court has not really prejudiced petitioner in his substantial rights.

WHEREFORE, the order appealed from is affirmed, without pronouncements as to costs.

Concepcion, C.J., Reyes, JBL, Dizon, Zaldivar, Ruiz Castro, Fernando, Teehankee, and Villamor, JJ., concur.
Barredo, J.,no part.

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.