

RODRIGO COLOSO, PETITIONER AND APPELLANT, VS. BOARD OF ACCOUNTANCY, RESPONDENT AND APPELLEE.

G. R. No. L-5750. April 20, 1953

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal from the decision of the Court of First Instance of Manila, dismissing the plaintiff's, now appellant's, petition in which he prayed for a writ to compel the Board of Accountancy "to register and issue (to him) a certificate as Certified Public Accountant * * * in accordance with Act 3105 as amended."

The case was submitted on a stipulation of facts. From the agreed statement, it appears that the petitioner took the examination for certified public accountant in June 1941, and obtained the following ratings:

Practical Accounting.....

75%

Commercial Law.....

75%

Auditing.....

75%

Theory of Accounts.....

50%;

that upon, or soon after, the outbreak of the late war, the petitioner evacuated to his province, Negros Occidental where he stayed continuously until the early part of November, 1945; that in that month he asked to be allowed by the Board of Accountancy to take the examination in Auditing and Theory of Accounts only, in accordance with the Board's rules and regulations allowing a candidate who has received a grade of 75 per cent or more in two or more subjects to be exempt from such subjects in a subsequent examination, but that his request was disallowed on the ground that it had not been made within one year; that certified public accountant examinations were given in December, 1941, July and December, 1942, June and December, 1943, June 1944, December, 1945, and June and December, 1946; that while notices of the times and places of the holding of these examinations did not reach the petitioner, they were published in the Manila newspapers; that by reason of the Board of Accountancy's

refusal to grant the petitioner's request, he took the examination in all the four subjects in December, 1946, but made it understood that he was not waiving his right "to claim the privilege of removal of the subjects he previously failed in case he passed them in said examination"; that in the last-mentioned examination he obtained 88.5 per cent in Theory of Accounts, 75 per cent in Commercial Law; and 76.5 per cent in Auditing, but got only 48 per cent in Practical Accounting, a subject in which he was successful in the previous examination.

Paragraph VII of the Rules and Regulations of the Board of Accountancy provides;

"To pass the examination, a candidate must have made 75 points in each subject. In the event of a candidate receiving a grade of 75 points or more, in two or more subjects he may make application within one year in the usual manner for examination, and the Board at its option, may permit his examination to be confined to those subjects in which he had previously failed."

By express terms the application of the last clause of this rule is left to the sound discretion of the Board. There is no showing that this discretion has been abused. If for no other reason that the privilege invoked is, at the most, discretionary, the Board cannot be compelled by mandamus to grant the petitioner's demand. It is a well-recognized principle that purely administrative and discretionary functions may not be interfered with by the courts. (*Lambs vs. Thipps*, 22 Phil., 256; *Gonzales vs. Board of Pharmacy*, 20 Phil., 367, *Blanco vs. Board of Medical Examiners*, 46 Phil., 190; *Ortua vs. Encarnacion*, 59 Phil., 440.)

But the plaintiff's case does not even rest on the Board's discretion. The Board has, in our opinion, no authority whatever to give any special examination as provided in Paragraph VII of the Rules and Regulations, *supra*, unless an application therefor has been made within the period of one year.

The case of one Exequiel S. Reyes, who was permitted by the Secretary of Finance to take a re-examination after the war, only on the subjects in which he had fallen short of the passing mark before the war, can scarcely be invoked as a guide for the Board to follow. For the powers of the Department Head are wider than the Board's, and the Secretary's action in favor of Reyes was not a green-light signal for the Board to act similarly in all similar cases. Granting, without deciding, that the Department Secretary can lawfully act beyond, or make exceptions to, the rules, the Board, without the Secretary's authority, cannot. True, the Board of Accountancy makes the rules for the examination of candidates but they are subject to the approval of the Secretary of Finance. (Section 4(a) of Act No. 3105.)

Incidentally, Reyes' case is an expressive confirmation of the respondents' other contention, that the petitioner has a plain, speedy and adequate remedy other than a resort to the courts of justice. What the petitioner could or should have done was to appeal to the Secretary of Finance as Reyes had done.

The decision of the lower court will be affirmed, with costs against the appellant.

Paras, C. J., Feria, Bengzon, Montemayor, Reyes, Jugo, Bautista Angelo and Labrador, JJ., concur.

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