

PRIMO PANTI, ET AL., PETITIONERS. PRIMO PANTI, PETITIONER AND APPELLANT, VS. THE PROVINCIAL BOARD OF CATANDUANES, ETC., AND THE HON. EXECUTIVE SECRETARY, RESPONDENTS AND APPELLEES.

G.R. No. 14047. January 30, 1960

Ponente: GUTIERREZ DAVID, J.

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GUTIERREZ DAVID, J.:

This is an appeal from an order of the Court of First Instance of Catanduanes dismissing the petition for certiorari and mandamus filed by herein appellant Primo Panti and four others for being insufficient in substance to justify the relief prayed for.

For a better understanding of the case, the antecedent proceedings, which are on record, are here stated as follows: On September 4, 1957, Governor Juan Alberto of the province of Catanduanes, finding merit after proper investigation in certain complaints preferred against Mayor Primo Panti of Virac, his vice-mayor and some councilors, sent letters to the Provincial Board wherein he formally lodged charges of irregularities against said officials. On September 5, Governor Alberto notified Mayor Panti of his suspension effective on said date. The mayor was likewise notified of the hearing of the charges which was set on September 12.

When the day set for the hearing arrived, Mayor Panti and his co-respondents, however, did not appear so that the hearing had to be postponed. After two more postponements due to their absence, on October 7, of that Panti, et al. vs. Provincial Board of Catanduanes, and Hon. Executive Secretary same year, the said officials filed with the Court of First Instance of Catanduanes two separate petitions, one for certiorari with preliminary injunction and another for mandamus, disputing the legality of their suspension and praying for their reinstatement.

On October 11, the date last set for the hearing of the administrative charges, Mayor Panti and his co-respondents appeared for the first time before the Provincial Board with their counsel. At that hearing, however, they questioned for the first time the Board's jurisdiction to try the case because, according to them, the charges bear no relation with their official duties. As the question was resolved adversely, Mayor Panti again moved for postponement. The motion, however, was denied and the Board ordered the fiscal to present his evidence. After the hearing, the Provincial Board, on October 21, rendered decision finding the charges substantiated and recommending the dismissal of the suspended officials. Thereafter, the record of the case was forwarded to the Executive Secretary for final action.

In the meantime, the two cases filed before the Court of First Instance of Catanduanes were consolidated because of the interrelation existing between them, and after trial, the court rendered decision dismissing the case insofar as Mayor Panti was concerned for lack of merit, but ordering the reinstatement of the other respondents, it being held that the Governor exceeded his authority in ordering their suspension. That decision, on appeal by Mayor Panti to this Court, was affirmed, the Court holding that the alleged irregularities as duly substantiated by sufficient evidence were committed by him in connection with the performance of his official duties and that his

preventive suspension was within the 30-day period authorized by law, the interruptions in the hearing having been due to his requests for postponement or to his absence. (*Panti vs. Alberto*, supra, p. 181).

On February 28, 1958, the Executive Secretary, acting upon the appeal by the suspended officials, ordered a rehearing of the charges in the interest of justice, with the warning, however, that no petition for postponement will be entertained. Complying with that order, the Provincial Board of Catanduanes set the rehearing of the administrative charges on March 21, 1958. When the Board convened on that date, Mayor Panti and his co-respondents appeared but they again asked for postponement to give them reasonable time to bring in their counsel and witnesses. The request, however, was denied although the Board allowed the suspended officials until March 25 to enter into trial. On that last date mentioned, Mayor Panti and his co-respondents were present before the Board. They were, however, without counsel and for that reason they reiterated their motion for postponement. Their motion having been denied, they filed with the Court of First Instance of the province a petition for certiorari and mandamus against the Provincial Board joining as party respondent the Hon. Executive Secretary. The petition alleges, among other things, that notice of the hearing of the administrative charges set for March 21, 1958 was received by petitioner Primo Panti only at about 2:00 o'clock in the afternoon of March 20, when it was relayed to him in Manila by his wife from Virac; that he returned on that same date to Virac and from there sent telegrams to their lawyers in Manila, informing them of the hearing; that the said attorneys, who could not come, requested for postponement of the hearing to March 26, which request was denied by the Provincial Board, that the denial of the postponement of the hearing has caused great and irreparable injury to petitioner for "the alleged administrative case against them shall be decided finally, on unilateral evidence of the prosecution alone;" that there is no appeal, or any other plain, speedy and adequate remedy available to petitioners in the ordinary course of law; and that the order of the respondent Board denying the petitioners' request for postponement of the hearing was a grave abuse of discretion amounting to an act in excess of its jurisdiction. The petition, therefore, prays that respondents be required to answer; that a preliminary injunction be issued to restrain respondents from further proceeding with the administrative case until after the special civil action shall have been terminated; and that after hearing on the merits, the order of the respondent Board dated March 21, 1958 denying petitioners' motion for postponement be declared null and void and the respondents be ordered to reset the administrative case for hearing giving petitioners reasonable time to bring in their counsel and witnesses.

On June 9, 1958, the lower court finding "the substance of the petition insufficient as to warrant the issuance of an order or process to compel the respondents to answer", issued an order dismissing the petition without pronouncement as to costs. From that order, Primo Panti has appealed to this Court.

The order of dismissal must stand.

The matter of adjournments and postponements of trial is generally within the discretion of the hearing board or tribunal. Such discretion will not be interfered with by mandamus or by appeal, unless a grave abuse thereof is shown. (See *Moran's Rules of Court*, Vol. 1, 1957 ed., pp. 439-440.) Considering the instruction of the Hon. Executive Secretary—as contained in an indorsement attached to the petition below as Annex "B"—that no further postponement shall be entertained during the rehearing, we do not think that the dismissed petition had made out a case against the respondent Provincial Board, and much less against the Executive Secretary, as could be the proper subject of the extraordinary civil remedies of certiorari and mandamus.

In any event, the rule is settled that no recourse to courts can be had until all administrative remedies have been exhausted and that special civil actions against administrative officers should not be entertained if superior administrative officers could grant relief. The lower court in its order of dismissal held that the order of the Provincial Board denying appellant's motion for postponement could very well be corrected by the Executive Secretary. That said official has such power is not denied. As a matter of fact, the petition itself avers that when

appellant together with the other suspended officials complained and appealed to the Executive Secretary against the alleged irregularity committed by the Provincial Board in the conduct of the hearing of the charges against them, the said Secretary ordered a re-hearing. Appellant's apprehension, therefore, that this worthy official will not grant him relief from the alleged irregularities, if warranted by the facts and circumstances, is groundless.

In view of the foregoing, the order of dismissal appealed from is hereby affirmed, with costs against appellant.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, and Barrera, JJ., concur.

Reyes, J. B, L., J., concurs on the ground of non-exhaustion of administrative remedies.

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