

**THE PROVINCIAL BOARD OF ZAMBOANGA DEL NORTE,
PETITIONER, VS. DOROTEO DE GUZMAN, CFI JUDGE, ZAMBOANGA
DEL NORTE, AND ROBERTO P. POCULAN, MAYOR OF RIZAL,
ZAMBOANGA DEL NORTE, RESP...**

G.R. No. 23523. November 18, 1967

Ponente: ANGELES, J.

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ANGELES, J.:

Petition for writ of certiorari to review and set aside the decision of the Court of First Instance of Zamboanga del Norte, in Civil Case No. 1435, for injunction.

The record shows that on March 7, 1963, Guadalupe C. Adaza, then Provincial Governor of Zamboanga del Norte, instituted Administrative Case No. 3 against Roberto P. Poculan who was then serving on his first term of office as muni-cipal mayor of Rizal, Zamboanga del Norte, charging the latter with abuse of authority, oppression and maladministration. Basis for the charge was an incident that took place on February 23, 1963, dur-ing which, allegedly, the mayor, "with grave abuse of authority and taking advantage of his position, with intent to oppress, did then and there, wilfully, illegally, and feloniously, assault, maul and attack with the use of his fist and a home-made gun, locally known as 'paliuntod', one ANTONIO ARAPOC," inflict-ing upon him physical injuries which caused his death two days later.[1]

On the same day, Governor Adaza issued Execu-tive Order No. 1, ordering the suspension from office of Mayor Poculan for thirty days, pursuant to sections 2188-2189 of the Revised Administrative Code. After the lapse of said period of suspension, however, the mayor was reinstated.

At the close of Mayor Poculan's term of office, the administrative case against him was still pending, the Provincial Board having failed to act upon it to its finality.

Then came the 1963 local elections. Poculan was reelected mayor of the municipality of Rizal. Felipe Azcuna was elected governor, replacing Adaza, and there was also a change in the composition of the Provincial Board.

The new members of the Provincial Board pro-ceeded to investigate the administrative case against Poculan, and on February 14, 1964, rendered decision and passed Resolution No. 42-A, ordering his suspen-sion for a period of two years. The decision was appealed by the Mayor to the President on March 6 of that year. On March 13, the Provincial Governor issued Executive Order No. 7 implementing Resolution No. 42-A, designating the Vice Mayor to act as Mayor of Rizal. On the same day also, the governor directed the commander of the Philippine Constabulary unit de-tailed in the province to serve his order upon the suspended Mayor.

Meanwhile, Mayor Poculan had filed with the Court of First Instance of Zamboanga del Norte an action for Prohibition, later amended, for Certiorari and Mandamus, with Preliminary Mandatory and Prohibi-tory Injunction, to restrain the Provincial Board from enforcing its resolution. The petition, however, was dismissed on the ground, among others, that it was not the proper remedy.

Whereupon, Mayor Poculan filed the present action for Injunction, praying once more that the Provincial Board be restrained from enforcing its order of suspension. As prayed for, a preliminary injunction writ was issued at the commencement of the proceedings. The case was submitted for decision on the pleadings. On July 3, 1964, the court, finding the petition to be meritorious, rendered judgment declaring null and void the Board's resolution suspending the Mayor, on the principle that his reelection had purged him of the administrative charges filed against him during his first term of office. Motion for reconsideration of the decision having been denied, the Provincial Board filed the instant petition.

The issue raised in this appeal is whether or not the Provincial Board of Zamboanga del Norte may proceed with the administrative investigation of reelected mayor Roberto P. Poculan for misconduct, allegedly committed by the latter during his prior term of office.

Pursuant to Section 2188 of the Revised Administrative Code, municipal officers may be dealt with administratively for "neglect of duty, oppression, corruption, or other form of maladministration of office, and conviction by final judgment of any crime involving moral turpitude." It will be noted that, for crimes involving moral turpitude, the law requires, not only a judgment of conviction, but, also, that the same be final.

Considering that the alleged illegal killing of Antonio Arapoc by respondent Poculan is not essentially connected with the performance of the official duties of the latter, it is clear, therefore, that the Provincial Board of Zamboanga cannot administratively proceed against him until after a judgment of conviction shall have been rendered by a court of justice and said judgment has become final and executory. Petitioner herein does not claim and the records do not show that there is such a final judgment against respondent Poculan.

It is true that the administrative charge against him alleges "grave abuse of authority" and "intent to oppress"; but, these averments refer to the conditions under which the crime imputed to Poculan has allegedly been committed. They are part and parcel of the commission of said offense, and, as such, should be passed upon in the corresponding criminal case. In fact, they may, if established, affect the imposable penalty. As a consequence, the administrative proceeding based upon said "abuse" and "intent" must, like the proceeding for the offense itself, be deferred until after the rendition of final judgment in the criminal case.

There is no merit in petitioner's contention that the court a quo should have declined to pass upon the decision of the provincial board in view of the appeal of said decision to the office of the President which is still pending - in other words, that the mayor failed to exhaust all administrative remedies before bringing his case to court. The principle of exhaustion of administrative remedies does not necessarily apply in cases where the question in dispute is purely a legal one and nothing of an administrative nature is to be or can be done,[2] or where circumstances are such that said remedies would be completely futile and meaningless.[3] As adverted to above, the act of the Provincial Board in taking cognizance of and resolving Administrative Case No. 3 is unjustified.

Accordingly, the decision of the lower court is hereby affirmed, and the petition for certiorari, denied. No costs at this instance

Concepcion, C.J., Dizon, Makalintal, Bengzon, Zaldivar, Sanchez, Castro, and Fernando, JJ., concur.

[1] For the same incident, an information (Criminal Case No. 3726) for murder was filed with the Court of First Instance of Zamboanga del Norte, against Mayor Poculan, on March 8, 1963

[2] 73 C.J.S. 354, cited in Pascual v. Provincial Board of Neva Ecija, G.R. No. L-11959, Oct. 31, 1959.

[3] 73 C.J.S. 359.

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