

JUAN L. ALCANTARA, MIGUEL VALDES, ADOLFO ALMEDA AND DIONISIO PATFICILINAN, PETITIONERS, VS. THE SECRETARY OF THE INTERIOR, AND THE CHAIRMAN AND MEMBERS, BALALA ELECTORAL BOARD OP...

G.R. No. 43592. May 17, 1935

Ponente: GODDARD, J.

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GODDARD, J.:

This is an original action instituted in this court by the petitioners for a writ of mandamus to compel the respondents "to register and inscribe the petitioners as qualified electors at the electoral precinct at Balala, Culion, Palawan, in order that they can vote in the plebiscite to be held on May 14, 1935, on the vital question of the acceptance or rejection of the Constitution for the Commonwealth of the Philippine Islands."

As the answer of the respondents was not received until May 10, 1935, the following telegram was sent to the attorney of the petitioners and to the respondents on May 11, 1935:

"In G. R. No. 43592, mandamus proceeding, the Supreme Court grants the writ of mandamus prayed for and the respondents are commanded forthwith to register and inscribe such of the therein petitioners as have the qualifications prescribed for voters provided in section 431 and none of the disqualifications prescribed in section 432 of the Revised Administrative Code in order that they may vote in the plebiscite on May 14, 1935."

The petitioners allege that they are qualified voters residing at Culion Leper Colony, Culion, Palawan, having voted in previous elections in the Philippine Islands; that in a public mass meeting held on April 5, 1935, they adopted a resolution demanding the right to vote in the plebiscite and requesting that electoral precincts be established within the radius of the Culion Leper Colony in order that the qualified voters therein could register, which resolution was sent to his Excellency, the Governor-General, who referred it to the Honorable, the Secretary of the Interior; that the Department of the Interior, through its legal division, ruled . that no new electoral precincts could be created at Culion Leper Colony inasmuch as the plebiscite is treated as and considered as a special election; that in view of this ruling the petitioners requested, by telegram, the Interior Department to authorize the Balala Electoral Board of Inspectors, Culion, Palawan, to register the qualified voters of Culion Leper Colony; that this request was refused upon the ground that the petitioners were not bona fide residents of Culion, Palawan; that on April 23, 1935, the petitioners Juan L. Alcantara, Miguel Valdes, Adolfo Almeda and Dionisio Pangilinan, accompanied by Attorney Martin Miras, appeared before the chairman of the Balala Electoral Board of Inspectors and requested him to register and inscribe them in the official list of qualified voters in order that they might vote on May 14, 1935, and that their request was denied on the ground that no specific instructions to register them had been received from the Department of the Interior.

The principal allegation of the respondents, by way of special defense, is "that the herein petitioners are not qualified voters, because they shall not have been residents of Culion for six months next preceding the day of voting, for they have not acquired residence in Culion as they are confined therein as lepers against their will, and

they have no intention to permanently reside there (sections 430-431 of the Administrative Code as finally amended by Acts Nos. 3387, sec. 1, and 4112, sees. 1 to 3) ; and in view thereof, the respondent Secretary of the Interior has ruled that the petitioners are not qualified voters and therefore cannot be registered under the law."

In the United States the right of suffrage is derived from the states under the state constitutions, subject to the Fifteenth Amendment to the National Constitution which limits the right of the states to discriminate against persons by reason of their race, color or previous condition of servitude. This being so it follows that, when a state constitution enumerates and fixes the qualifications of those who may exercise the right of suffrage, the legislature cannot take from nor add to said qualifications unless the power to do so is conferred upon it by the constitution itself.

At present the nearest approach to a constitution that we have in the Philippines is our Organic Act, the Jones Law, enacted August 29, 1916, by the Congress of the United States. "The organic law (or Act) of a territory takes the place of a constitution as the fundamental law of the local government." (Malcolm, Philippine Constitutional Law, p. 229.) The only provision contained in that law as to the qualification of voters reads as follows:

"Sec. 15. That at the first election held pursuant to this Act, the qualified electors shall be those having the qualifications of voters under the present law; thereafter and until otherwise provided by the Philippine Legislature herein provided for the qualifications of voters for Senators and Representatives in the Philippines and all officers elected by the people shall be as follows:

"Every male person who is not a citizen or subject of a foreign power twenty-one years of age or over (except in sane and feeble-minded persons and those convicted in a court of competent jurisdiction of an infamous offense since the thirteenth day of August, eighteen hundred and ninetyeight), who shall have been a resident of the Philippines for one year and of the municipality in which he shall offer to vote for six months next preceding the day of voting, and who is comprised within one of the following classes:

" (a) Those who under existing law are legal voters and have exercised the right of suffrage.

"(b) Those who own real property to the value of 500 pesos, or who annually pay 30 pesos or more of the established taxes.

" (c) Those who are able to read and write either Spanish, English, or a native language."

Under the authority conferred upon it by the above quoted section the Philippine Legislature has prescribed the qualifications and disqualifications of voters in sections 431 and 432 of the Revised Administrative Code, which read as follows.

"Sec. 431. Qualifications prescribed for voters.—Every male or female person who is not a citizen or subject of a foreign power, twenty-one years of age or over, who shall have been a resident of the Philippines for one year and of the municipality in which he shall offer to vote for six months next preceding the day of voting is entitled to vote in all elections if comprised within either of the following three classes:

"(a) Those who, under the laws in force in the Philippine Islands upon the twenty-eighth day of August, nineteen hundred and sixteen, were legal voters and had exercised the right of suffrage.

"(b) Male persons who own real property to the value of five hundred pesos, declared in their name for taxation purposes for a period of not less than one year prior to the date of the election, or who annually pay thirty pesos or more of the established taxes.

"(c) Those who are able to read and write either Spanish, or English, or a native language. "Sec. 432. Disqualifications.—The following persons shall be disqualified from voting:

"(a) Any person who, since the thirteenth day of August, eighteen hundred and ninety-eight, has been

sentenced by final judgment to suffer not less than eighteen months of imprisonment, such disability not having been removed by plenary pardon.

"(b) Any person who has violated an oath of allegiance taken by him to the United States.

"(c) Insane or feeble-minded persons.

"(d) Deaf-mutes who cannot read and write.

"(e) Electors registered under subsection (c) of the next preceding section who, after failing to make a sworn statement to the satisfaction of the board of inspectors at any of its two meetings for registration and revision, that they are incapacitated for preparing their ballots due to permanent physical disability, present themselves at the hour of voting as incapacitated, irrespective of whether such incapacity be real or feigned."

The only question raised by the answer of the respondents whether or not the petitioners have acquired a residence for voting purposes in the municipality in which they desire to vote. The petitioners allege that they have and the respondents deny this allegation. There is no hard and fast rule by which to determine where a person actually resides. "Each case must depend on its particular facts or circumstances. Three rules are, however, well established: first, that a man must have a residence or domicil somewhere; second, that where once established it remains until a new one is acquired; and third, a man can have but one domicil at a time." (9 R. C. L., 1031.)

In order to arrive at a correct solution of the question raised by the respondents in this case one must not be misled by the decisions of the courts in states where there are constitutional provisions as to residence for voting purposes, vastly different from those of the Jones Law and the Revised Administrative Code.

In some of the states there is a constitutional provision to the effect that for the purpose of voting no person shall be deemed to have gained or lost a residence while a student at any seminary of learning. Under such a provision it has been held "that a student does not acquire a residence for voting purposes merely by attending such an institution:" (In re Barry, 164 N. Y., 18; 58 N. E., 12; 52 L. R. A., 831.) In addition to such provisions as to students, constitutions of some states provide that "For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while * * * kept at any almshouse or other asylum at public expense; * * *." (Note, 40 L. R. A. [N. S.], 168.) Under such a provision the rule in some jurisdictions is "that inmates of soldiers' homes, by going to and residing in such home, neither lose the'r old, nor gain a new, residence, though they intend to reside in the home permanently. Hence they are not entitled to vote except at their place of residence before becoming such inmates. (Powell vs. Spackman, 7 Idaho, 692; 65 Pac, 503; 54 L. R. A., 378 [citing and reviewing the cases in conflict on the point and holding to the rule stated above]; Lawrence vs. Leidigh, 58 Kan., 594; 50 Pac, 600; 62 A. S. R., 631 [overruled by Cory vs. Spencer, 67 Kan., 648; 73 Pac, 920; 63 L. R. A., 275]; Wolcott vs. Holcomb, 97 Mich., 361; 56 N. W., 837; 23 L. R. A., 215 [decision by divided court].) (Notes, 62 A. S. R., 638; 40 L. R. A. [N. S.], 168 et seq.)

"In other jurisdictions, however, a contrary conclusion has been reached, upon the theory that under such a constitutional provision an inmate of such an institution may acquire a residence at the home." (Note, 40 L. R. A. [N. S.], 168 et seq.)

"In the absence of such a constitutional prohibition the rule is that a permanent member of a soldiers' home has a residence at such home for the purpose of voting." (Lankford vs. Gebhart, 130 Mo., 621; 32 S. W., 1127; 51 A. S. R., 585 and note.) (Notes, 23 L. R. A., 215; 40 L. R. A. [N. S.], 168 et seq.)

There being no such provisions or prohibitions in the Jones Law nor in the sections of the Revised Administrative Code, quoted above, we see no reason for applying in this jurisdiction the legal doctrine of the courts of the states which have adopted such, or similar, constitutional provisions.

There are a large number of people confined in the Culion Leper Colony. They are not permitted to return to their former homes to vote. They are not allowed to visit their former homes even though they have been separated from near and dear relatives who are not afflicted as they are. Why split hairs over the meaning of residence for voting purposes under such circumstances? Assuming that the petitioners intend to return to their former homes if at some future time they are cured, this intention does not necessarily defeat their residence before they actually do return if they have been residents "of the Philippine Islands for one year and of the municipality in which they offer to vote for six months ne?ct preceding the day of voting." Surely a mere intention to return to their former homes, a consummation every humane person desires for them, not realized and which may never be realized should not prevent them, under the circumstances, from acquiring a residence for voting purposes.

This court is of the opinion that, under our liberal law, such of the petitioners as have been residents of the Philippine Islands for one year and residents for six months in the municipality in which they desire to vote and have the other qualifications prescribed for voters in section 431 of the Revised Administrative Code and who have none of the disqualifications prescribed in section 432 of the same Code were entitled to register and vote in the plebiscite of May 14, 1935. Having reached this conclusion and being unable to determine from the record whether the petitioners have the prescribed qualifications for voters and none of the prescribed disqualifications this court on May 11, 1935, sent the above mentioned telegram to the parties in this case.

It will be noted that this court had to leave the determination of the facts to the respondent, the Balala Electoral Board of Inspectors.

This opinion is promulgated now in order to make known some of the reasons for granting the writ.

Writ granted without costs.

Malcolm, Abad Santos, and Diaz, JJ., concur.

Butte, J., I concur in the result.

Writ granted.

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