

**JUAN CAILLES, PETITIONER, VS. ARSENIO BONIFACIO,
RESPONDENT.***G.R. No. 45937. February 25, 1938*

Ponente: LAUREL, J.

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This is an original action in the nature of quo warranto instituted by the petitioner under the provisions of section 408 of the Election Law for the purpose of ousting the respondent from the office of provincial governor of Laguna. It is contended that at the time he filed his certificate of candidacy and was elected to office, the respondent was a captain in the reserve force of the Philippine Army and, for this reason, is ineligible to that office. Two grounds are advanced in support of this contention: (a) the alleged disqualification of the respondent under section 431 of the Election Law and section 2071 of the Administrative Code; and (b) the alleged prohibition against him as member of the armed forces under section 2 of Article XI of the Constitution and section 449 of the Election Law.

With reference to the first ground, the petition alleges that:

"* * * al tiempo de haber presentado y registrado su candidatura al cargo de Gobernador Provincial y al tiempo de su eleccion, el recurrido era Capitan del Ejercito Filipino, si bien pertenecia al Cuerpo de Reserva, pero cuyo status es identico al servicio regular activo del Ejercito Filipino, sin haber dimitido de dicho cargo hasta la fecha, y por tanto, no podia tener las calificaciones para ser elector, bajo el articulo 431 de la Ley Electoral;

"4.º Que por tal motivo no reuniendo el recurrido las debidas calificaciones para ser elector, uno de los requisitos para que pueda ser legalmente candidato elegible para el cargo de Gobernador Provincial, de acuerdo con el articulo 2071 delCodigo Administrativo no era elegible, por tanto, para el cargo de Gobernador Provincial de Laguna y consiguientemente su eleccion y los votos recibidos para el citado cargo son nulos, y no tiene derecho a ocupar ni continuar ocupando el referido cargo."

Section 2, Article XI of the Constitution prohibits members of the armed forces from engaging in any partisan political activity, or otherwise taking part in any election except to vote, but it does not ex vi termini grant or confer upon them the right of suffrage. It prohibits partisan political activity or the taking part in any election except to vote, but permits the exercise of the right to vote only if such right is granted by law. As section 431 of the Election Law, as amended by Commonwealth Act No. 233, disqualifies from voting only members in the active service of the Philippine Army and no claim is made that this discrimination is violative of the Constitution, it follows that the respondent, being in the reserve force, is not disqualified from voting. Stated otherwise, the respondent being a qualified elector and the possession by him of the other qualifications prescribed for an elective provincial office not being challenged, he is not ineligible to the office of provincial governor to which he has been elected. The first ground on the petition is, therefore, without merit.

With reference to the second ground the petition avers that the respondent

"* * * como tal Capitan del Ejercito Filipino es y era un funcionario del mismo quien el articulo 449 de la Ley

Electoral prohíbe influir en manera alguna y tomar parte en cualquiera eleccion, excepto el ejercicio del derecho de votar, y por tanto, no podia legalmente ser candidato para el cargo de Gobernador Provincial, ni ser elegible para el mismo cargo;

"* * * como Capitan del Ejercito Filipino era miembro de las 'fuerzas armadas' de Filipinas quienes, segun el articulo 2, Titulo XI de la Constitucion de Filipinas, no podran tomar parte directa ni indirecta, 'en campañas politicas de partido, ni en ninguna eleccion excepto para votar,' y por tanto, no podia ser legalmente candidato al cargo de Gobernador Provincial, ni ser elegible para el mismo."

Section 2, Article XI, of the Constitution is as follows:

"Sec. 2. Officers and employees in the Civil Service, including members of the armed forces, shall not engage directly or indirectly in partisan political activities or take part in any election except to vote."

The prohibition as originally proposed in the Convention was section 2, Article XII, of the formal draft of the Constitution and was of the following tenor:

"Sec. 2. Public officers and employees in the Civil Service shall not engage directly or indirectly in political activities or take part in any election except to vote; they are servants of the people and not the agents of any political group."

It was evident that the intention was to continue by incorporation in the Constitution the then existing prohibition against officers and employees of the Civil Service from engaging in political or electoral activities except to vote, for the reason that public officers and employees in the Civil Service "are servants of the State and not the agents of any political group". "Members of the armed forces" were not included in the original draft but finally it was thought advisable by the Constitutional Convention to extend the prohibition to them. In including members of the armed forces in the prohibition only those in the active service were contemplated. Upon the other hand, a contrary interpretation would lead to the disqualification of all able-bodied male citizens between the ages of 20 and 50 years—not specifically exempted by the National Defense Act—from holding elective public offices or otherwise taking part in any election except to vote and this result, for obvious reasons, should be avoided.

The respondent calls attention to paragraph (f) of section 405 of the Election Law, as amended by Commonwealth Act No. 233, which provides that the presentation of his certificate of candidacy operated automatically to vacate his position as captain of the reserve corps. From the view we take of this case, it is unnecessary to pass upon this point.

The petition prayed for is hereby dismissed, without pronouncement as to costs. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Concepcion, JJ., concur.

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