

sion and control of the financial affairs of the provincial, city and municipal governments," and providing, among other matters, for the submission to the said Secretary, through the Secretary of the Interior, of the local budgets which are "to contain the plantilla of personnel."

Petitioner contends that Republic Act No. 528, approved on June 16, 1950, abrogated Executive Order No. 167 and that, moreover, that executive order is unconstitutional in that thereby the Chief Executive assumes control as well as supervision of local governments, whereas by Section 10(1) of Article VII of the Constitution the President only has "general supervision" over such governments.

Republic Act No. 528 amended Section 2081 of the Revised Administrative Code so as to read as follows:

"Section. 2081. *Employment of subordinates.*— The Provincial Board shall fix the number of assistants, deputies, clerks, and other employees for the various branches of the provincial government and in accordance with the Salary Law to fix the rates of salary or wage they shall receive.

"After their number and compensation shall have been thus determined, the Provincial Governor shall, any provision of existing law to the contrary notwithstanding, appoint, upon recommendation of the chief provincial official concerned, all the subordinate officers and employees in the various branches of the provincial government whose salaries, compensation or wages are paid, wholly from provincial funds, in conformity with the provisions of the Civil Service Law, except those whose appointments are now or may hereafter be vested in the President or proper Department Head, teachers and other school employees and transient officials or employees who shall, as heretofore, be appointed by the proper chief of provincial office with the approval of the Department Head concerned x x x"

Assuming, without deciding, that this Act has superseded previous enactments and executive orders inconsistent therewith, yet, it will be noticed, the powers conferred on local entities by the statute are subject to the condition that they be exercised in accordance with the Salary Law and the Civil Service Law. Upon this assumption the question then arises, is petitioner's new salary of P3,600 yearly in conformity to the Salary Law? No question is raised as to the petitioner's civil service eligibility.

Executive Order No. 94, series of 1947, "reorganizing the different departments, bureaus, offices, and agencies of the Government of the Republic of the Philippines, etc." and issued by virtue of Republic Act No. 51, entitled "An act authorizing the President of the Philippines to reorganize within one year the different executive departments, bureaus, offices, agencies and other instrumentalities of the Government, including the corporations owned or controlled by it," amended Commonwealth Act No. 402, The Salary Law, and classifies into 15 grades, with salaries ranging from P2,400 to P6,000 per annum, chiefs of divisions, chiefs of sections, supervisory positions and positions of equal ranks, the rates of compensation being based on the nature of work performed, "latitude for the exercise of independent judgment," the importance and size of divisions or sections, on the technical, professional and experience of the incumbents, and the like.

Petitioner alleges in his petition that his position as secretary to the provincial governor "requires and imposes on him the exercise and performance of judgment and functions falling under Grade 1 which prescribes a salary of P6,000 per annum." He stated in his memorandum in the court below that he is "the administrative head or chief of the Office of the Governor," "required to perform the administrative direction and with a very wide latitude for the exercise of independent judgment." And in his brief filed in this instance the claim is made that he "supervises the personnel of such (Governor's) office and the provincial jail," "is also the head of the local and municipal divisions in Samar," and "carries out confidential measures required of him by the Governor." He says in addition that "he is a lawyer of long experience in practice."

On the other side, it is asserted that the petitioner's position comes under Grade 13 for which the compensation authorized is P2,760 per annum.

The classification of positions by Executive Order No. 94, series

of 1947, is loose and the demarcation lines between the grades quite indefinite. But it is fairly certain that, giving petitioner the full extent and benefit of his description of his job, the Secretary of Finance has not departed from the standard set by the schedules of salaries laid down in the executive order just mentioned, in placing petitioner's position within Grade 12-15. Actually, it has been seen, he is allowed the salary provided for Grade 11, which we believe calls for a latitude of independent judgment, technical training and experience, and supervisory work and ability well above those demonstrated by the allegations.

The claim that the position of secretary to the provincial governor of a first class A province comes within 1-8, inclusive, is at best highly controversial. But granting again, for the purpose of this case, that by a very liberal interpretation petitioner could qualify under any of these grades as well as Grades 12 to 15, the opinion of the Secretary of Finance, nevertheless, should be entitled to respect and preference in case of overlapping of grades and their definitions and of divergence of views, this official being the instrumentality charged with supervising the allocation of salaries in local governments. He is to judge the kind and degree of ability, experience, training and other circumstances needed to discharge the duties of each position. It is a manifest policy of Congress that there be a central authority to establish uniformity in the emoluments of officers and employees of equal ranks in the numerous provinces and other local entities. Determination of the rates of compensation of such officers and employees cannot be left to the will and discretion of each provincial board or city or municipal council, if there is to be "standardization of salaries," "equal distribution of funds for salary expenses among the different provincial offices," or security of "the financial solvency and stability of the provinces," as provided by Executive Order No. 167, series of 1938.

From the standpoint of the Constitution to which the petitioner would cast this case, we perceive no valid objection to the intervention by the Secretary of Finance in the application and enforcement of the Salary Law. Classification through the President of government positions is a legislative prerogative, and the President's designation by executive order of his chief financial officer to see that the classification and the Salary Law are observed by local governments, is a legitimate exercise of the power of supervision vested in the Chief Executive by Section 10 (1), Article VII, of the Constitution.

Finding no reversible error in the dismissal of the proceeding by the court below, the appealed decision is hereby affirmed, with costs against appellant.

*Paras, Pablo, Padilla, Montenegro, Reyes, Jugo, Bautista, Angelo, and Labrador, J. J., concur.*

III

*MARCELINO BUSACAY, PLAINTIFF AND APPELLANT VS. ANTONIO F. BUENAVENTURA, AS PROVINCIAL TREASURER OF PANGASINAN & ALFREDO MURAO, DEFENDANTS AND APPELLEES, G. R. No. L-5856, SEPTEMBER 23, 1953.*

**PUBLIC OFFICERS; WHEN A POSITION MAY BE DEEMED ABOLISHED.** — A was the toll collector of a bridge which was destroyed by flood; hence he and two other toll collectors were laid off. When the bridge was reconstructed and reopened to traffic A notified the provincial treasurer of his intention and readiness to resume his duties as toll collector but the treasurer refused to reinstate or reappoint him. *Held:* (1) The collapse of said bridge did not destroy but only suspended A's position; therefore, upon the bridge's rehabilitation and reoperation as a toll bridge A's right to the position was similarly and automatically restored. (2) To consider an office abolished there must have been an intention to do away with it wholly and permanently, as the word "abolish" denotes. (3) The position of toll collector is temporary, transitory, or precarious only in the sense that its life is co-extensive with that of the bridge as a toll bridge. For that matter, all offices created by statutes are more or less temporary, transitory or precarious in

that they are subject to the power of the legislature to abolish them.

*Principias, Abad, Mencias & Castillo for appellant. First Asst. Sol. Gen. Ruperto Kuyunan Jr. & Sol. Jesus A. Avanceña for appellee.*

#### DECISION

TAUZON, J.:

This is an appeal from a decision of the Court of First Instance of Pangasinan dismissing, for lack of merit, an application for mandamus and quo warrantum with a demand for back pay and/or damages.

The cause was submitted upon the pleadings and an agreed statement of facts, the relative portions of which are condensed below.

The plaintiff was a duly appointed and qualified pre-war toll collector in the office of the provincial treasurer of Pangasinan with station at the Bued toll bridge in Sison, Pangasinan. His appointment was classified by the Commissioner of Civil Service as permanent. On October 18, 1945, after liberation, he was reappointed to that position with compensation at the rate of ₱720.00 per annum. On March 21, 1946, he resigned but on April 16 he was reappointed, and had continuously served up to November of 1947, when the bridge was destroyed by flood, by reason of which, he and two other toll collectors were laid off. Previously, from July to September 10, 1946, the bridge had been temporarily closed to traffic due to minor repairs and during that period he and his fellow toll collectors had not been paid salaries because they had not rendered any service, but upon the reopening of the bridge to traffic after the repairs, he and his companions resumed work without new appointments and continued working until the bridge was washed away by flood in 1947.

When the bridge was reconstructed and reopened to traffic about the end of November, 1950, the plaintiff notified the respondent Provincial Treasurer of his intention and readiness to resume his duties as toll collector but said respondent refused to reinstate or reappoint him. Respondent Alfredo Murao, also a civil service eligible, was appointed instead of him in February, 1951, and has been discharging the duties of the position ever since. The position now carries a salary of ₱1,440.00 a year.

The Bued toll bridge is a portion of a national road and is a national toll bridge under Act No. 3932. The salaries of toll collectors thereon are paid from toll collections. In 1948, 1949 and 1950, no appropriation was set aside for these salaries, when the bridge was being rehabilitated. On September 15, 1950, the board on toll bridges approved the Bued river bridge as a toll bridge, authorized the collection of fees thereon, and prescribed corresponding rules and regulations.

Main ground for denial of the petition by the lower court is that the position in dispute is temporary and its functions transitory and precarious. The Solicitor General in this instance simplifies the issue by confining the point of discussion to whether or not by the total destruction of the bridge in 1947 the position of toll collectors provided therefor were abolished. He opines that they were.

We agree with the Solicitor General's approach of the case but are constrained to disagree with his conclusions. To consider an office abolished there must have been an intention to do away with it wholly and permanently, as the word "abolish" denotes. Here there was never any thought, avowed or apparent, of not rebuilding the aforementioned bridge. Rather the contrary was taken for granted, so indispensable was that bridge to span vital highways in northern Luzon and to Baguio.

This being so, the collapse of said bridge did not, in our opinion, work to destroy but only to suspend the plaintiff's position, and that upon the bridge's rehabilitation and its reoperation as a toll bridge, his right to the position was similarly and automatically restored.

This position is temporary, transitory or precarious only in the sense that its life is co-extensive with that of the bridge as a toll bridge. For that matter, all offices created by statute are more or less temporary, transitory or precarious in that they are subject to the power of the legislature to abolish them. But this is not saying that the rights of the incumbents of such positions may be impaired while the offices exist, except for cause.

The fact that the destruction of the bridge in question was total and not partial as in 1945, the length of time it took to reconstruct it, and the hypothetical supposition that the new structure could have been built across another part of the river, are mere matters of detail and do not alter the proposition that the positions of toll collector were not eliminated. We believe that the cases of pre-war officers and employees whose employments were not considered forfeited notwithstanding the Japanese invasion and occupation of the Philippines and who were allowed to recuopy them after liberation without the formality of new appointments are pertinent authority for the views here expressed. Some of such cases came up before this Court and we specially refer to *Abaya v. Alvear*, G. R. No. L-1793, *Garces v. Bello*, G. R. No. L-1363, and *Tavora v. Gavina et al.*, G. R. No. L-1257.

Our judgment then is that the appellant should be reinstated to the position he held before the destruction of the Bued river bridge.

The claim for back salary and/or damages may not be granted, however. Without deciding the merit of this claim, it is our opinion that the respondent Provincial Treasurer is not personally liable therefor nor is he authorized to pay it out of public funds without proper authorization by the Provincial Board, which is not a party to the suit.

The decision of the trial court is reversed in so far as it denies the petitioner's reinstatement, which is hereby decreed, and affirmed with respect to the suit for back salary and damages, without special finding as to costs.

*Paras, Pablo, Benzon, Padilla, Montemayor, Reyes, Jugo, and Bautista Angelo, J. J., concur.*

#### IV

*Lucia Javier, Petitioner vs. J. Antonio Araneta et al., Respondents, G. R. No. L-4369, August 31, 1953.*

CIVIL PROCEDURE; CLAIM FOR DAMAGES AFTER CASE HAD BEEN DECIDED BY SUPREME COURT; DEATH OF DEFENDANT. —While the trial court was in the process of receiving evidence on damages incident to the issuance of the writ of preliminary injunction, J the defendant, died and because of this event the trial court entertained the view that the claim for damages should be denied because the claim should be filed against the estate of the deceased. HELD: The finding of the trial court that the claim for damages of respondents should be denied because of the death of the deceased and that the claim should be filed against the estate of the latter is not well taken. This result only obtains if the claim is for recovery of money, debt or interest thereon, and the defendant dies before final judgment in the Court of First Instance, (Rule 3, Section 21, Rules of Court), but not when the claim is for damages for an injury to person or property, (Rule 88, Section 1 idem). In the present proceeding, the claim for damages had arisen, not while the action was pending in the Court of First Instance, but after the case had been decided by the Supreme Court. Moreover, the claim of respondent is not merely for money or debt but for damages to said respondent.

*Alberto de Joya for petitioner, Araneta and Arancia for respondent.*

#### RESOLUTION

BAUTISTA ANGELO, J.:

On October 30, 1951, this Court dismissed the petition for certiorari interposed by Lucia Javier and dissolved the preliminary injunction issued as prayed for in said petition. Before this decision has become final, a petition was filed in this Court praying that the damages suffered by respondent resulting from the issuance of the writ be assessed either by the Supreme Court or by the court of origin. On November 21, 1951, acting favorably on said petition, this Court directed the trial court to make a finding of the damages allegedly suffered by respondent, and on August 13, 1953, this Court was furnished with a copy of the order entered by the trial court on August 12, 1953, wherein it denied the motion of respondent to assess the damages as directed by this Court