SUPREME COURT DECISIONS

I

Genaro Visarra, Petitioner vs. Cesar Miraflor, Respondent, G.R. No. L-20508, May 16, 1963, Bengzon, C.J.

1. CONSTITUTIONAL LAW; COMMISSION ON ELECTIONS; COMMISSIONERS, TENURE OF OFFICE.—In establishing the Commission on Elections, the Constitution provided that the Commissioners shall hold office for nine years and may not be reappointed. However, it also provided that of those first appointed, "one shall hold office for nine years, another for six years and the third for three years."

2. ID.; ID.; CHANGES OF MEMBERSHIP OF THE COMMISSION.—Since 1941, changes occurred in the membership of the Commission. And in March 1955, in a similar dispute [Republic vs. Imperial, 51 O.G. 1886] we had occasion to discuss the terms of office and the tenure of said officers. We held that the term of the first chairman (Jose Lopez Vito, 9 years) began on June 21, 1941, and ended on ed June 20, 1950; that the term of the second member (Francisco Enage, 6 years) began on June 21. 1941, and ended June 20, 1947; and that of the third member (3 years — left vacant) began on June 21, 1941 to terminate June 20, 1944. Proceeding further, we held that when in 1945 Vicente de Vera was appointed member, he must have been placed in the only vacant position at that time, namely, the position whose term expired in June 1944 (third member — and that he must be deemed to have been appointed to a nine-year term (expiring June 1953), which is the term given by law to all commissioners(c) appointed after June 20, 1944. Then upon the first vacancy by expiration of the initial 6-year term (second member) and the cessation of Commissioner Enage in November 1949, Rodrigo Perez was appointed (December 1949) to the nine-year term expiring in June 1956. Afterwards, in May 1947, chairman Jose Lopez Vito died before the expiration of his full term. To succeed him as chairman, Commissioner de Vera was appointed — which appointment, we held, could only be for the unexpired period of Lopez Vito's original term, i.e., up to June 20, 1950. To fill the vacancy of third member arising upon Vera's assumption of the chairmanship, Leopoldo Rovira was appointed member on May 22, 1947, and his tenure of office could not legally extend beyond that of former Commissioner Vera, June 20, 1953. Upon expiration of Chairman Vera's term on June 20, 1950, Domingo Imperial assumed the office with a term due to expire on June 20, 1959.

3. ID.; ID.; ID.; APPOINTMENT OF DR. GAUDENCIO GARCIA AS CHAIRMAN OF THE COMMISSION; TERM OF OFFICE EXPIRED ON JUNE 20, 1960.—In May 1955, the President appointed Gaudencio Garcia a member for a term expiring June 20, 1962 to succeed Leopoldo Rovira, who died in office in September 1954 (Rovira was holding over as **de facto**, the term of his office having expired June, 1953); in December 1956, Sixto Brillantes was appointed member to succeed Rodrigo Perez; and in May 1958, Jose P. Carag was appointed to succeed Domingo Imperial (resigned) as chairman; Carag's terms and tenure ended in June 1959; and on May 12, 1960, the President appointed Garcia as Chairman

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to hold office up to June 1962, and the latter assumed the chairmanship accordingly.

4. ID.; ID.; ID.; APPOINTMENT OF GENARO VISARRA AS MEMBER OF THE COMMISSION; TERM OF OFFICE EXPIRED IN JUNE, 1962; CESAR MIRAFLOR APPOINTED TO SUCCEED VISARRA.—On May 12, 1960, Genaro Visarra, was also appointed member of the Commission. Then in August 1962, Juan V. Borra was named chairman to succeed Garcia, whose tenure expired in June 1962. And in November 1962, the President appointed Miraflor as member, on the assumption that Visarra's term of office had expired in June 1962.

5. ID.; ID.; ID.; DR. GARCIA WAS IN THE THIRD LINE OF SUCCESSION IN MAY, 1960 AND WHEN APPOINTED AS CHAIRMAN, VISARRA OCCUPIED THE POSITION VACATED BY HIM AND TERM OF OFFICE EXPIRED ON JUNE 20, 1962.—Garcia in May 1960, was in the third line of succession, his term of office and tenure to expire in June 1962. When he was appointed chairman in May 1960, **he left that line** and **entered the line** of succession of the chairman, with his tenure still to expire in June 1962 (Garcia's appointment expressly stated that it would expire June, 1962). Therefore, upon his appointment, Visarra merely occupied the position vacated by Garcia (In fact he took his oath only on October 13, 1960, **after Garcia had** qualified as chairman,) whose **fixed term of office** (third member) expired on June 20, 1962 (Up to the end of the term only. See footnote (c). Visarra's later appointment (fixing a term up to June 1968) could neither effect nor extend such fixed term of office (of Garcia in the third line).

6. ID.; ID.; ID.; RULING IN REPUBLIC VS. IMPERIAL, 51 O.G. 1886, REITERATED.—Visarra claims, however, that when Garcia was appointed chairman, **he did not leave** his position in the third line of succession but continued therein; so that the vacant position which he (Visarra) filled was the one left by Carag, the fixed term of which is due to expire in 1968; and that, consequently, Borra should be deemed to occupy the position left by Garcia in the third line. The flaw in the argument is that it contradicts our ruling in Republic vs. Imperial, 51 O.G. 1886. There we held that when Commissioner Vera was appointed Chairman **he left the third line** of succession to enter the first, viz, that of the Chairman; and upon his assumption of the Chairmanship, his position as member **became vacant.** We now fail to perceive any valid reason to change our views on that point, according to which Garcia must be held to have **left his line** to assume the position of Chairman. **Stare decisis** — not mere **obiter** dictum.

7. ID.; ID.; ID.; VISARRA'S TERM OF OFFICE EXPIRED IN JUNE 1962; REASON FOR THE RULE.—It is true that Visarra's appointment was extended expressly for a term of office ending June 20, 1968; but as explained in the decision of Republic vs. Imperial, 51 O.G. 1886, such appointment could only be for a position whose term would expire in June 1962, because that was the only vacant position, inasmuch as the term due to expire in June 1968 (for the chairman) was then occupied by Chairman Garcia. (When Garcia assumed the chairmanship, **he ipso** facto resigned his position as member; and the appointment of Visarra to membership could only be for the **unexpired balance** of the term of member (Republic vs. Imperial, supra) up to June 1962.)

8. ID.; ID.; ID.; TERM OF OFFICE OF CHAIRMAN BORRA; TENURE OF OFFICE OF COMMISSIONERS BRILLANTES AND MIRAFLOR.—Chairman Borra occupies the position of Chairman, with a term expiring June 20, 1968, and his tenure beginning August 1962 ends on June 20, 1968 (notwithstanding his appointment fixed on June 20, 1971 as expiration thereof.); the position of Member Brillantes carries a term that expires June 20, 1965 and his tenure should end on the same date; and the term for the position of Member Miraflor expires June 1971, his tenure expiring on the same date.

9. ID.; ID.; ID.; TENURE OF OFFICE OF THE CHAIRMAN OR MEMBER CANNOT EXTEND BEYOND THE FIXED TERM OF POSITION HE IS TO OCCUPY.—It may be necessary to add that although the appointment of the chairman or of the member (subsequent to those originally appointed in the nineteen forties) is **generally** for a term of nine years, his **tenure** can not extend beyond the **fixed term** for the position he is supposed to occupy (If the vacancy is due to death, resignation or disability, the appointment can only be for the unexpired balance of the term, Republic vs. Imperial, 51 O.G. 1886) in the fixed line of succession as heretofore indicated, in accordance with the evident intention of the pertinent Constitutional provisions.

BAUTISTA ANGELO, J., Concurring Opinion:

10. ID.; ID.; TERM OF OFFICE OF NEW COMMISSIONER; TO SERVE ONLY UNEXPIRED PORTION OF TERM OF PREDECESSOR; REASON OF THE RULE.—The President appointed Cesar Miraflor in 1962 a member of the Commission on Elections to fill the position left vacant by Genaro Visarra whose term expired in June, 1962, in keeping with the ruling laid down in the case of Republic v. Imperial, 51 O.G., 1886. This ruling is to the effect that subsequent appointments to be made after the first members appointed in the Commission who were to hold office with a staggering difference of three years from each other as required by our Constitution can only be for the unexpired portion of the term of the predecessor of the appointee in order to prevent a President from making more than one appointment during his term of office to the end that the member may preserve and safeguard his freedom and impartiality in the performance of his duties.

11. ID.; ID.; APPOINTMENT OF COMMISSIONERS EXTENDED BY CHIEF EXECUTIVE IS FOR NINE YEARS; SUPREME COURT LIMITED THE TENURE TO UNEXPIRED TERM OF PREDECESSOR OF APPOINTEE. — The Chief Executive, in filling the vacancies in the positions held after the members first appointed, has always extended appointments for a term of nine years, never for the unexpired period, and these appointments have always met the sanction of Congress. Only that their tenure was limited by judicial fiat to the unexpired term to conform to the spirit of the rotation system. If the rotation system can not be maintained because of unavoidable human factors that may supervene, such as death, resignation, or disability in any form, that system should not be allowed to stand against the clear purpose of the Constitution of giving to every subsequent appointee a term of office of nine years. But this opinion was ruled out. Hence, the President, following the ruling of the majority, extended an appointment to Miraflor as already adverted to.

12. ID.; ID.; PROHIBITION AGAINST REAPPOINTMENT OF COMMISSIONER.—It must be noticed from the provisions of Section 1, Article X, of the Constitution that the prohibition against reappointment comes as a continuation of the requirement that the Commissioners shall hold office for a term of nine years. This imports that the Commissioners may not be reappointed only after they have held office for nine years. **Reappointment is not prohibited when a Commissioner** has held office only for, say, three or six years, provided his term will not exceed nine years in all. x x x It may then be said as a fair interpretation of the Constitution that reappointment may be made in favor of a Commissioner who has held office for less than nine years, pro-

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warranto case against him, it retains the presumption of validity. The least that can be said is that he was a de facto Chairman during his incumbency, the term of which position could not have been conferred on herein petitioner by the very same appointing power. It would be unreasonable to assume that the President, in promoting Garcia, thought in this wise; that his appointment being null and void anyway, he neither filled the vacancy left by ex-chairman Carag nor assumed the term thereof — from 1959 to 1968 — for which reason, therefore, they were given to Visarra instead albeit only as Commissioner.

CONCEPCION, J., Dissenting Opinion:

21. ID.; ID.; TERMS OF OFFICE OF THE FIRST THREE COMMISSIONERS; OF THE OTHER COMMISSIONER.—Although applying the "rulings" laid down in the first part of the decision — to the effect that the terms of the first three Commissioners on Elections should commence simultaneously with the organization of the Commission on Elections under Commonwealth Act No. 657, it was, likewise, held that the terms of the other members thereof shall begin, not on the date of their appointment or assumption of office, but upon the expiration of the term of their respective predecessors in office, consistently with the "deliberate plan to have a regular rotation or cycle in the membership of the Commission, by having subsequent members appointable only once every three years.

22. ID.; ID.; IMPERIAL CASE CANNOT JUSTIFY THE APPLICATION OF THE PRINCIPLE OF **STARE DECISIS** ON THE VALIDITY OF DE VERA'S APPOINTMENT.—The decision in the Imperial case cannot justify the application of the principle of **stare decisis** on the question of the validity of De Vera's aforementioned appointment and on the consequences thereof. Whatever had been said in connection therewith, in the Imperial case, was — considering the explicitly hypothetical nature of its predicate — merely an aside, and, hence, an **obiter dictum**, or an utterance made only to avoid giving the erroneous impression that the Court had overlooked De Vera's appointment as Chairman of the Commission and that of Rovira as member thereof in determining the beginning and the end of the term of respondents Imperial and Perez.

23. ID.; ID.; MAJORITY OF MEMBERS OF SUPREME COURT PARTICIPATING IN THE IMPERIAL CASE NOT IN FAVOR OF OPINION OF CHIEF JUSTICE MORAN REGARDING REAPPOINTMENT PROVIDED TERM WILL EXCEED 9 YEARS.—What is more, our views in the Imperial case indicate that a majority of the members of Supreme Court who participated therein were **not** in favor of the opinion of Chief Justice Moran, to the effect that "reappointment is not prohibited when a Commissioner has held office for, say, three or six years, provided his term will not exceed nine years in all". Thus, it was declared, in said case, that Commissioner Rovira — appointed on May 22, 1947, to fill the vacancy created by De Vera's assumption of the Chairmanship, "if" his appointment thereto were "at all valid". — "could only fill out the balance of Vera's term, until June 20, 1953, and **could not be reappointed thereafter.**" Considering that Rovira had been served only a little over six years, this statement necessarily implied a **rejection** of said opinion of Chief Justice Moran. **And this is why Mr. Justice Padilla, who concurred in that opinion, dissented from this phase of the majority decision in the Imperial case.**

24. ID.; ID.; ID.;—The majority view therein, as regards de Vera's tenure as Chairman of the Commission on Elections — "if" his appointment as such were "at all valid" — is, likewise, inconsistent with said opinion of Chief Justice Moran, for we, similarly, declared in the Imperial case, that De Vera's tenure as such Chairman "expired x x x on June 20, 1950, the end of Lopez Vito's original term," and that "a **vacancy, therefore, occurred on that date that Vera could no longer fill, since his reappointment was expressly prohibited by the Constitution.**" Indeed, by June 20, 1950, De Vera had been in said Commission for a little less than five (5) years since his original appointment on July 12, 1945. Hence, he could still be reappointed for a tenure of over four (4) years more, under said opinion of Chief Justice Moran. Accordingly, **such opinion was, in effect, repudiated by** seven members of this Court in the Imperial case, namely, Justice Reyes (J.B.L.), who penned the decision therein, and Justices Pablo, Bengzon, Montemayor, Jugo, Labrador and the writer hereof, who concurred in that decision.

25. ID.; ID.; PROHIBITION AGAINST REAPPOINTMENT IN THE COMMISSION; REASONS OF THE CONSTITUTIONAL PROHIBITION.—The provision of the Constitution prohibiting reappointment in the Commission on Elections has for its purpose to bolster up the **independence** of said Commission, in the same manner as the constitutional prohibition of reappointment of the Auditor General seeks to promote the independence of the General Auditing Office. The wisdom of such prohibition or its efficacy to achieve said purpose is immaterial to the interpretation or application of the law. The important thing is that the framers of our Constitution considered the feasibility of reappointment as a factor that may adversely affect the independence of the Commission on Elections or, at least, the popular reliance or belief in its independence.

26. ID.; ID.; VITAL ROLE OF THE COMMISSION ON ELECTIONS IN OUR POLITICAL SYSTEMS.—But neither must we underestimate the vital role that the Commission on Elections plays in our political system and, hence, its transcendental impact upon our life as a republican State. Nor should we overlook the passion, fire and, sometimes, fury with which our election campaigns are undertaken. In the context of this background, and of the conditions prevailing in many parts of our country, it is extremely essential to the healthy growth of our faith in and adherence to democratic principles, practices and processes that all possible doubts or causes for doubt on the independence and impartiality of the Commission on Elections be avoided.

27. ID.; ID.; CONSTITUTIONAL PROVISION PROHIBITING REAPPOINTMENT; DRAFTED AND PROPOSED BY THE NATIONAL ASSEMBLY; COMPOSING MEMBERS OF GREAT WEALTH OF EXPERIENCE; INDEPENDENCE OF THE COMMISSION; PURPOSE OF PROHIBITION FOR REAPPOINTMENT.—Then, too, the constitutional provision prohibiting reappointment in said Commission is too plain and simple to admit of any qualification. The provision was drafted and proposed by the then National Assembly, most of whose members had a great wealth of experience, not only in wordly matters, in general, but, also, in the field of practical politics, in particular. What is more, the prohibition tended to limit **their own authority** in the exercise of their prerogatives, as members of the administration, in connection with the organization of the constitutional agency that would supervise **their own election** or bid for reelection or the election of **their own followers** or successors in the political arena. Their failure to qualify said prohibition must be construed, therefore, as an expression of their deliberate intent to make no exceptions thereto.

28. ID.; ID.; VISARRA'S APPOINTMENT WILL EXPIRE ON JUNE 20, 1968.—In conclusion, when petitioner Visarra was appointed on May 12, 1960, there were two (2) members of the Commission on Elections, namely, Commissioner Garcia, whose term was nine (9) years, from June 21, 1953 (upon the expiration of De Vera's original term, partly served by Rovira) to June 20, 1962, and Commissioner Brillantes,

whose term is nine (9) years, from June 21, 1956 (upon the expiration of Perez's term) to June 20, 1965. **There was, accordingly, only one (1) position vacant,** at the time of Visarra's appointment that was vacated by Carag, on June 20, 1959, upon the expiration of Imperial's original term, part of which — from May 19, 1958 — was served by Carag. Hence, Visarra was appointed for that vacant position, whose subsequent term of nine (9) years began on June 21, 1959, to end on June 20, 1968. **And this was the intent of the appointing power,** and, hence, of the Commission on Appointments which confirmed his appointment, for the same specified that it was "for a term expiring June 20, 1968."

29. ID.; ID.; PROMOTIONAL APPOINTMENT OF COMMISSIONER GARCIA CANNOT AFFECT TERM OF VISARRA; REASONS.—The promotional appointment of Commissioner Garcia on May 12, 1960 as Chairman of the Commission cannot affect such term of Visarra because: 1) that promotion violated the constitutional injunction against reappointment; 2) the terms of the Chairman and members of the Commission — after the first three (3) members (including the Chairman) thereof — are for nine (9) years each, and **the Constitution makes no distinction** as to "line of succession," pertaining to each office; and 3) in fact, said promotion was "for a **term** expiring June 20, 1962," which was **Garcia's** term when he was appointed **member** of the Commission, so that he did **not** shift to the line vacated by Carag, the next term of which was from June 21, 1959 to June 20, 1968, which was the term given to and is filled by petitioner Visarra. What is more, this view was **confirmed by the appointment of Juan Borra** on August 2, 1962, as Chairman of the Commission on Election, "for a term expiring on June 20, 1971," which is the term following that of **Garcia,** as member of said Commission.

30. ID.; ID.; RESPONDENT MIRAFLOR'S APPOINTMENT IS NULL AND VOID FOR NO VACANCY WHERE HE CAN BE APPOINTED.—On October 29, 1962, when respondent Miraflor was appointed thereto, there was, therefore, **no vacancy** therein. The three (3) positions in the Commission were then held: (1) by Borra as Chairman, for a term of nine (9) years, from June 21, 1962 to June 20, 1971; (2) by Visarra, for a similar term, from June 21, 1959 to June 20, 1968; and (3) by Brillantes, for an analogous term, from June 21, 1956 to June 20, 1965. Hence the appointment of respondent Miraflor is null and void.

REYES, J.B.L., Dissenting Opinion:

31. ID.; ID.; RESPONDENT VISARRA NEVER SUCCEEDED ASSOCIATE COMMISSIONER GARCIA; APPOINTMENT OF DR. GARCIA AS CHAIRMAN NULL AND VOID.—Petitioner Visarra was, and could only have been, validly appointed in 1960 for a nine (9) year term (until 1968) to fill the only vacancy created by the expiration of the term of ex-chairman Jose P. Carag on June 20, 1959. Visarra never succeeded Garcia. The reason is that the 1960 appointment of then Associate Commissioner Gaudencio Garcia to the post of Chairman of the Commission was null and void for being in violation of Article X, section 1, of the Constitution.

32. ID.; ID.; CONSTITUTIONAL PROTECTION OF COMMISSIONERS FROM INFLUENCES WHICH AFFECT THEM IN DISCHARGE OF THEIR DUTIES.—It is clear from the provisions of Sec. 1, Art. X, of the Constitution, that being acutely conscious of the crucial importance of the functions of the Commission on Elections to candidates for elective positions, and aware of the consequent pressures and influences that would be brought to bear upon the Commissioners, the framers of this part of the Constitution sought as much as possible to shield the Commission members from any force or influence that might affect them in the discharge of their duties. To this end, the Constitution not only disqualified the Commissioners from holding outside interests that might be affected by their official functions (section 3); it expressly protected the Commissioners against danger of possible retaliation by (a) giving them a **fixed term** of nine (9) years not terminable except by impeachment, and by (b) prohibiting any **diminution** of their salaries during their term of office.

33. ID.; ID.; ID.;—The Constitution went even further: cognizant that human conduct may be influenced not only by fear of vindictiveness but also, and even more subtly and powerfully, by prospects of advancement, our fundamental law has likewise provided that members of the Commission on Elections (c) may **not** be reappointed, and that (d) their salaries may **not be increased** during their terms. The plain purpose of all these safeguards is that the Commissioners, once appointed and confirmed, should be free to set as their conscience demands, without fear of retaliation or hope of reward; that they should never feel the inducement of either the stick or the carrot. For only the man who has nothing to fear, and nothing to expect, can be considered truly independent.

34. ID.; ID.; APPOINTMENT OF COMMISSIONER GARCIA TO CHAIRMAN VIOLATED CONSTITUTIONAL PROHIBITION AGAINST REAPPOINTMENT AND SALARY INCREASE.—The promotion of Dr. Gaudencio Garcia from Associate Commissioner to Chairman of the Commission, with the attendant higher compensation and requisites, violated the Constitutional prohibition against both **reappointment** and **salary increase.** If, by express mandate of the fundamental charter a commissioner can not be validly reappointed not even to the same position that he has occupied, then, there can be no excuse for holding that he may validly be appointed again to a higher position within the Commission. It is undeniable that a promotion involves a second appointment, i.e., a reappointment that is expressly forbidden by the Constitution.

35. ID.; ID.; ID.; APPOINTMENT OF COMMISSIONER GARCIA TO CHAIRMAN NEVER LEFT HIS "LINE" TO PASS TO COMMISSIONER CARAG; CARAG'S LINE WAS LAWFULLY FILLED BY COMMISSIONER VISARRA.—If the appointment of Dr. Garcia to chairman was null and void, he never left his "line" to pass to that of Carag; and the one who lawfully filled Carag's line was Visarra. The Supreme Court's decision in the case of Nacionalista Party vs. Vera, 47 O.G. 2371, **appears** to have sanctioned the promotion of Commissioner Vicente de Vera to the Chairmanship. It will be noted, however, that the legality of that promotional appointment was supported only by the votes of four (4) Justices: Moran, Bengzon, Padilla, and Torres. Justices Montemayor and Reyes concurred only in the result. A majority of Justices agreed only insofar as it was held that the validity of the Vera promotion could not be tested by a petition for a writ of prohibition, as prayed for by the petitioner Nacionalista Party, but by proceedings in **quo warranto**; and of course, this ruling is not applicable to the case at bar, because Commissioner Gaudencio Garcia is no longer in office. In the subsequent case of Republic vs. Imperial, L-8684, promulgated on March 31, 1956, the Supreme Court did not declare that Associate Commissioner Vera validly succeeded former Chairman Lopez Vito; on the contrary, the Court openly expressed doubts about the validity of Vera's promotion when it stated that Vera's appointment to the Chairmanship, "if at all valid", could only hold for the unexpired term of his predecessor. The Court did not elaborate on this doubt because it was not necessary for the purpose of the doctrine laid down in that decision.

36. ID.; ID.; ID.; RULING IN THE CASE OF NACIONALISTA PARTY VS. VERA, NOT BINDING PRECEDENT ON VALI-

DITY OF COMMISSIONER GARCIA'S PROMOTIONAL APPOINTMENT TO CHAIRMAN.—The ruling in the case of Nacionalista Party vs. Vera, 47 O.G. 2371, is not binding precedent on the validity of Gaudencio Garcia's promotion from Associate Commissioner to Chairman of the Commission on Elections, and that such promotion was done in violation of the Constitution, and, therefore, was **ab initio** void. The logical consequence of such invalidity is that the vacancy in the line of succession of ex-Chairman Carag was filled not by Garcia's promotion but by the appointment of petitioner Genaro Visarra for a full nine (9) year term.

37. ID.; ID.; ID.; COMMISSIONER GARCIA'S PROMOTIONAL APPOINTMENT TO CHAIRMAN BEING UNCONSTITUTIONAL AND VOID, HE CAN ONLY BE REGARDED AS **DE FACTO** CHAIRMAN.—Gaudencio Garcia's promotion being unconstitutional and void, he can only be regarded as **de facto** chairman from May 1960 to June 1962, but without leaving the third line where he was. When his own term expired in 1962, he was succeeded in the same third line by the present incumbent, Juan V. Borra, legally appointed for a nine-year term, June 1962 to June 1971.

38. ID.; ID.; PRESENT CONSTITUTION OF THE COMMISSION.—The present constitution of the Commission is, therefore, as follows:

First Line: Visarra (vice Carag), 1959 to 1968;
Second line: Brillantes, 1966 to 1965;
Third line: Borra (vice Garcia) Chairman, 1962 to 1971.

Hence, Miraflor's appointment is void, since there is no vacancy in the Commission, and there will be none until 1965, when the term of Brillantes expires.

39. ID.; ID.; MAJORITY DECISION PERMITS PRESENT CHIEF EXECUTIVE TO APPOINT NOT ONLY TWO BUT THREE COMMISSIONERS.—By sanctioning promotion of one Associate Commissioner to the Chairmanship, the majority decision enables a President to appoint **two** Commissioners (the one promoted and the replacement for the latter) at one time whenever a chairman fails to complete his own term. This despite the avowed intention of the constitutional plan of staggered terms, so that no President should appoint more than one Commissioner, unless unavoidable. As circumstances would have it, the majority permits the present Chief Executive to appoint not only two but three Commissioners; Borra and Miraflor in 1962, and the successor to Commissioner Brillantes, whose term expires in June of 1965.

BARRERA, J., Dissenting Opinion:

40. ID.; ID.; PRIMORDIAL CONCERN IN THE CREATION OF THE COMMISSION; IT MUST BE COMPLETELY INDEPENDENT AND FREE FROM ALL INFLUENCES AND INTERFERENCES.—I take the view that we are all agreed, including the majority, that the Constitution's primordial concern in the creation of the Commission on Elections, is to make and keep that body as completely independent and free, as is humanly possible to provide, from all influence and interference in the discharge of its delicate and important mission of insuring free, orderly and honest elections. As one of the means of insuring and preserving that independence, the Constitution has adopted the staggered manner of appointing the three members thereof at stated intervals of three years from each other in order that no one President (except when reelected) could appoint two members.

41. ID.; ID.; MAJORITY DECISION PERMITS A PRESIDENT DURING HIS TERM OF FOUR YEARS TO APPOINT, NOT ONE, NOT TWO, BUT ALL THE THREE MEMBERS OF THE COMMISSION.—I am compelled to disagree with my colleagues in the majority in adopting, albeit unwittingly, an interpretation that precisely permits the mischievous result of enabling the appointing power to do exactly what the Constitution plainly purports to prevent — the situation where a President during his own term of four (4) years, may appoint, not one, not two, but all the three members of the Commission on Elections and practically on the eve of a presidential election.

42. ID.; ID.; PROMOTIONAL APPOINTMENT OF A COMMISSIONER TO CHAIRMAN CONSTITUTES NEW APPOINTMENT TO A NEW POSITION; REAPPOINTMENT PROHIBITED IN THE CONSTITUTION INCLUDES PROMOTIONAL APPOINTMENT.—The majority opinion is significantly silent on the point raised during our deliberations that the Constitution prohibits reappointment. Since it is the theory of the majority that such a promotion to the Chairmanship produces the effect that the one appointed **leaves his own line and term** and assumes those of the Chairman which are entirely different and distinct from his own original position and term, such a promotion must constitute, in the full legal sense, a new appointment to a new position in the Commission. Reappointment prohibited in the Constitution is not limited to reappointment to the same identical position in the Commission. It includes promotional appointment, for the evil sought to be avoided by outlawing reappointment is obviously even greater in the case of promotional appointment.

43. ID.; ID.; MAJORITY DECISION SANCTIONS SEPARATION OF TENURE FROM TERM OF OFFICE.—The majority decision sanctions in effect the separation of tenure from the term of office. Indeed, it held that when Dr. Gaudencio Garcia was promoted to the Chairmanship, he left his term which would expire in June, 1962, and took the term of the Chairman which expires in June, 1968. Since Visarra, it went on to say, was appointed vice Garcia, Visarra ceased to be member upon expiration of Garcia's original term in June. 1962. Likewise, Garcia, as Chairman, ceased as such in June, 1962, although the term he assumed expires in June, 1968, since his **tenure** can not be more than 9 years. Thus, according to the majority opinion, Visarra ceased being a member because of the expiration of his term and Garcia ceased to be a member because of the expiration of his **tenure**. This, to me, is absurd. You can not separate tenure from the term of office. The term determines the tenure. Without the term of office there is no right of tenure. It is this absurdity that produces the simultaneous ending of the incumbency of two members, thereby disrupting the three-year staggering procedure contemplated in the Constitution.

44. ID.; ID.; MAJORITY OPINION IF FOLLOWED WILL SANCTION, THREE YEARS LATER TWO VACANCIES WOULD OCCUR AT THE TIME.—For, under the sanction of the majority opinion, if this practice is followed (that is, the promotion of one of the members of the Chairmanship when this becomes vacant by expiration of its term, so that three years later two vacancies would occur at the same time, that of the Chairman because of the ending of the **tenure** of the one promoted, and that of his successor as member, because of the expiration of the **term** he left) — which practice is surely to be followed because of its consequent political advantage — then inexorably every nine years the same anomally will occur and recur regularly, setting at naught the deliberate plan of staggered appointments ordained by the Constitution and consistently recognized, reiterated and reinforced in all the decisions of this Court on the matter — a veritable **stare decisis**, if there is one discernible in these cases, notably the Imperial case relied upon by the majority, where the entire **ratio decidendi** repeats with emphasis "the clear intention of the Constitution to have members of the Commission appointed at regular 3-year intervals."

45. ID.; ID.; COMMISSIONER PROMOTED STAYS IN HIS OWN LINE RETAINING HIS OWN TERM AND TENURE TOGETHER.—The majority opinion appears to have adopted a defeatist attitude. The minority are not that pessimistic. For one, there is nothing so absolutely and completely untenable in the proposition offered during the deliberations that promotion to the Chairmanship does not necessarily mean a jumping from one line to another. The member promoted **stays in his own line retaining his own term and tenure together, although in his changed** capacity as Chairman. No vacancy is thereby artificially created requiring a new member to be appointed. It may thus be even said that there would then be no reappointment in the sense prohibited by the Constitution. As a result, there would be no disturbance in the lines of succession, each term terminating in the staggered manner provided in the fundamental law.

46. ID.; ID.; MINORITY OPINION FULFILLS ALL CONSTITUTIONAL PRECEPTS AGAINST REAPPOINMENT; AND INCREASE OF SALARY DURING TERM OF OFFICE.—The minority opinion frankly and forthwithly meets and fulfills all the constitutional precepts against reappointment, increase of salary during the term of office and disruption of the staggered system of appointments. It sustains the dissenting opinion of Mr. Justice Bautista in the Imperial case that all appointments to the Commission should be for the full 9-year term, unlike the majority opinion which he now supports which shortens the full term of 9 years of Visarra. In fine, the view of the minority as expressed in the dissenting opinion of Mr. Justice Reyes is the only interpretation that gives meaning and effect to the integral concept of a truly independent Commission on Elections.

47. ID.; ID.; INTERPRETATION OF MAJORITY IS WRONG.; IT SHORTENS TENURE OF BORRA, AND EXTENDS TENURE OF MIRAFLOR. — The interpretation of the majority, in my opinion, is not only wrong but may provoke other controversies, because although it upholds the validity of the appointments of Borra and Miraflor, it shortens the tenure of Borra from 1968 to 1971 contrary to his appointment, and extends Miraflor's tenure beyond the expiry date stated in his appointment from 1968 to 1971. There is thus created another constitutional problem, can Miraflor continue holding office beyond 1968, expiry date stated in his appointment, without any further action on the part of the appointing power but on the strength merely of the declamation to that effect in the majority opinion.

48. ID.; ID.; MAJORITY OPINION EXTENDS COMMISSIONER MIRAFLOR'S TENURE OF OFFICE TO 1971.—On the other hand, can the President now amend Miraflor's ad-interim appointment by inserting therein 1971 as the expiry date of his term and tenure, to conform with the majority opinion, in spite of the fact that Miraflor has already accepted his appointment with an earlier date of expiration and after actually taking his oath, assuming the office, and discharging the functions thereof? If the answer to these questions is in the negative, as I believe it must be, then another vacancy will be created in 1968, not because of the operation of the Constitution, but as consequence, although unintended of the majority opinion.

PAREDES, J., Dissenting Opinion:

49. ID.; ID.; DECISION OF A HARD CASE UPON APPARENT EQUITABLE GROUNDS FREQUENTLY RESULTS IN A BAD LAW.—The decision of a hard case, upon apparent equitable grounds frequently results in a bad law. In my judgment, this is such a case, and the result reached in the majority, opinion is amiss.

50. ID.; ID.; DECISION ON A POINT NOT DIRECTLY RAISED WILL NOT PRECLUDE ITS CONSIDERATION IN A LATER CASE.—A decision of the Supreme Court on a point not directly raised is still open and will not preclude its consideration in a later case in which it is directly presented (Fajardo v. del Rosario, 36 Phil. 159).

51. ID.; ID.; STATUTE ACCEPTED AS VALID AND APPLIED IN MANY CASES WHERE ITS VALIDITY WAS NOT RAISED; CONSIDERATION OF ITS VALIDITY IN A LATTER CASE WAS NOT RAISED.—"The fact that a statute has been accepted as valid, and invoked and applied for many years in cases where its validity was not raised or passed on, does not prevent a court from later passing upon its validity where that question is properly raised and presented" (McGirr v. Hamilton and Abreu, 30 Phil. 563).

52. ID.; ID.; RE-EXAMINATION OF THE DOCTRINE LAID DOWN IN IMPERIAL AND VERA CASES.—And even granting that we may have had enunciated a doctrine in this case, that circumstance, a withal, does not preclude Us from re-examining the same and rule accordingly.

53. ID.; ID.; OVERRULING DOCTRINE LAID DOWN IN AN EARLIER DECISION.—The doctrine of an earlier decision will be overruled where it seems proper to do so (10 Phil. Digest p. 282, citing Jayme v. Gamboa, 75 Phil. 479).

54. ID.; ID.; MAJORITY DECISION; NOT DOING JUSTICE TO THE RULINGS LAID DOWN IN THE IMPERIAL AND VERA CASES; SUBVERSION OF THE INDEPENDENCE OF THE COMMISSION ON ELECTIONS.—The majority opinion, to my mind, far from doing justice to the rulings laid down in the Imperial and Vera cases, does violence to them and seek to foster the circumstances which the constitutional provisions precisely wanted to avoid — the subversion of the independence of the Commission on Elections.

DIZON. J., Dissenting Opinion:

55. ID.; ID.; RE-APPOINTMENT DEFINED.—The term re**appointment** generally means a second appointment to one and the same office. The occupant of an office obviously needs no such second appointment unless, for some valid cause, such as the expiration of his term or resignation, he had ceased to be the legal occupant thereof.

56. ID.; ID.; ID.; CONSTITUTIONAL PROHIBITION AGAINST RE-APPOINTMENT OF A COMMSSIONER CONSRTUED AND APPLIED.—The constitutional prohibition against the reappointment of a Commissioner refers to his second appointment to the same office after he has held it for nine years. Consequently, if after holding office only for three years a Member of the Commission on Elections legally ceased to be such because of resignation, for instance, his re-appointment to the same office would not violate the Constitution, provided his term will not exceed nine years in all. This would naturally apply to the case of a Member who, under somewhat similar circumstances, is merely promoted to chairman.

57. ID.; ID.; ID.; — Let us now apply this principle to the case of former Member and later Chairman, Gaudencio Garcia. As stated hereofore, he was originally appointed as Member in May 1955 for a term expiring on June 20, 1962 to succeed Leopoldo Rovira. who died in office in September, 1954. On May 12, 1960, (One year and eleven months before the expiration of his term of office), he was appointed Chairman expressly to hold office only up to June 1962. Why was this so expressly provided? It could not have been for any reason other than that, whether as Chairman or as a Member, he shall not serve for more than nine years, as provided for in the Constitution.

58. ID.; ID.; ID.; WHEN COMMISSIONER GARCIA WAS APPOINTED CHAIRMAN, HE DID NOT CEASE TO BE MEMBER OF THE COMMISSION; APPOINTMENT OF MIRA-

FLOR WAS VOID.—When Garcia was appointed Chairman, did not cease to be a Member of the Commission. The only effect of such appointment was to promote him to the Chairmanship; to add to his condition as Member, that of Chairman. In other words, his appointment as Chairman did not at all affect or disturb his membership in the Commission, albeit his right to act as Member and Chairman was limited up to June 1962 in obedience to the Constitution. It appears clear, therefore, that when petitioner Visarra was appointed Member on May 12, 1960, Garcia's original position as Member was **not vacant**, the only existing vacant position at the time being that formerly occupied by Carag whose term and tenure ended in June 1959. As a result, on May 1960, Visarra was and could have been legally appointed only to fill the position vacated by Carag, for a term beginning June 1959 and ending in June 1968. Therefore respondent's appointment in his place in November, 1962 is void.

59. ID.; ID.; ID.; THEORY OF THE MAJORITY; WHEN A MEMBER IS PROMOTED TO CHAIRMAN, HE LEAVES HIS OWN LINE AND TERM; FLAW OF THE MAJORITY OPINION.—The theory of the majority — that when a Member (like Garcia) is promoted to Chairman (as Garcia was), he leaves his own line and term and assumes those of the Chairman he was replacing, entirely distinct and separate from his own original position and term, and that upon assumption of the Chairmanship his position as Member becomes vacant — suffers fatally from this flaw: it assumes erroneously that the Chairmanship of the Commission is something entirely distinct and separate from Membership therein, when it must be obvious to everyone that the Chairmanship is but incidental to Membership; that the Chairman is as such a Member of the Commission as the other two; that, under the Constitution, he can not be chairman at all without being a Member.

60. ID.; ID.; ID.; CHAIRMANSHIP IN THE COMMISSION IS AN INCIDENT OF MEMBERSHIP; ONE OF THE THREE MEMBERS SHOULD BE CHAIRMAN.—In creating the Commission of Elections, the Constitution provides that it shall be composed "of a Chairman and two other members" (Bold supplied), and that "Of the **Members** of the Commission first appointed, one shall hold office for nine years, another for six years, and the third for three years." (Bold supplied). Clearly inferable from all these provisions is that the Chairmanship in the Commission is nothing more than an incident of Membership therein, the Constitution providing in this connection that one of the three Members should be the Chairman. If it is so, I fail to perceive any force at all in the majority's view that when an incumbent Member is promoted to Chairman, he leaves his own original "line of succession" to enter "the line of succession of the chairman".

61. ID.; ID.; ID.; **STARE DECISIS** SHOULD BE ADHERED TO FOR THE SAKE OF DIGNIFIED AND STABLE JUDICIAL OPINION; WHEN IT SHOULD NOT BE FOLLOWED.—True, the doctrine of **stare decisis** should, as a rule, be adhered to for the sake of dignified and stable judicial opinion, but certainly this is no valid justification for stubbornly and desperately clinging to an opinion even after it has been found to be wanting. Courts of Justice should be the last to consider themselves hopeless and irretrievably governed by the "dead hand of the Past".

62. ID.; ID.; ID.; CHANGE MEANS PROGRESS; COURTS MUST NOT FEAR CHANGE, NOR SEEK REFUGE BEHIND DEFENSIVE SHIELD OF **STARE DECISIS** TO RESIST CHANGE.—Change means Progress, and is the law of life. Courts, therefore, must not fear change, nor ever consider their decision as perfect beyond change; they must not — ostrichlike — bury their head in the sand to avoid seeing the light, nor seek refuge behind the defensive shield of **stare decisis** to resist change, even when change appears to be imperative.

D E C I S I O N

The parties hereto are litigating over the position of third member of the Commission on Elections, which according to the Constitution, consists of one chairman and two members. Actual chairman is the incumbent Hon. Juan V. Borra; the undisputed incumbent member is Hon. Sixto Brillantes.

In establishing the Commission, the Constitution provided that the Commissioners shall hold office for nine years and may not be reappointed. However, it also provided that of those first appointed, "one shall hold office for nine years, another for six years and the third for three years."

Since 1941, changes occurred in the membership of the Commission. And in March 1955, in a similar dispute [Republic vs. Imperial](a), we had occasion to discuss the terms of office and the tenure of said officers. We held that the term of the first chairman (Jose Lopez Vito, 9 years) began on June 21, 1941, and ended on June 20, 1950(b); that the term of the second member (Francisco Enage, 6 years) began on June 21, 1941, and ended June 20, 1947(b); and that of the third member (3 years — left vacant) began on June 21, 1941 to terminate June 20, 1944. Proceeding further we held that when in 1945 Vicente de Vera was appointed member, he must have been placed in the only vacant position at that time, namely, the position whose term expired in June 1944 (third member) — and that he must be deemed to have been appointed to a nine-year term (expiring June 1953), which is the term given by law to all commissioners(c) appointed after June 20, 1944. Then upon the first vacancy by expiration of the initial 6-year term (second member) and the cessation of Commissioner Enage in November 1949(d), Rodrigo Perez was appointed (December 1949) to the nine-year term expiring in June 1956. Afterwards, in May 1947, chairman Jose Lopez Vito died before the expiration of his full term. To succeed him as chairman, Commissioner de Vera was appointed — which appointment, we held, could only be for the unexpired period of Lopez Vito's original term, i.e., up to June 20, 1950. To fill the vacancy of third member arising upon Vera's assumption of the chairmanship, Leopoldo Rovira was appointed member on May 22, 1947, and his tenure of office could not legally extend beyond that of former Commissioner Vera: June 20, 1953(e). Upon expiration of Chairman Vera's term on June 20, 1950, Domingo Imperial assumed the office with a term due to expire on June 20, 1959.

Thus the line of succession, terms of office and tenure of the chairman and members of the Commission as of March 1955, may be outlined as follows:

	Incumbent	Office Term	Tenure
Chairman (9-yr. original)	Lopez Vito	June 21, 1941 to June 20, 1950	June 1941 to May 1947
	V. Vera		May 1947 to June 1950
	D. Imperial	June 1950 to June 1959	June 1950 to June 1959

(a) 51 Of. Gaz. 1886.
(b) Or should be considered to have began in the eyes of the law.
(c) Except when vacancy occurs by reason of death, resignation or disability — in which cases the appointee may serve only up to the end of the term. (Republic vs. Imperial supra.)
(d) Hold over as **de facto** (1947-1949)
(e) Nacionalista Party vs. Bautista, 47 Of. Gaz. 2356.

Second Member (6-yr. original)	F. Enage	June 21, 1941 to June 20, 1947	June 1941 to June 1947 (x)
	R. Perez	June 1947 to June 1956	Dec. 1949 to June 1956
Third Member (3-yr. original)	Vacant	June 1941 to June 1944	
	Vera	June 1944 to	July 1945 to May 1947
	Rovira (x)	June 1953	May 1947 to June 1953

(x) held office June 1947 to November, 1949 as **de facto**.
(x) held office June 1953 to September, 1954 as **de facto**.

To repeat, this was the legal state of affairs in the Commission on Elections in March 1955 when our aforesaid decision was promulgated. (ee)

Thereafter, in May 1955, the President appointed Gaudencio Garcia a member for a term expiring June 20, 1962 to succeed Leopoldo Rovira, who died in office in September 1954(f); in December 1956, Sixto Brillantes was appointed member to succeed Rodrigo Perez; and in May 1958, Jose P. Carag was appointed to succeed Domingo Imperial (resigned) as chairman; Carag's term and tenure ended in June 1959; and on May 12, 1960, the President appointed Garcia as Chairman to hold office up to June 1962 and the latter assumed the chairmanship accordingly.

On May 12, 1960, Genaro Visarra, was also appointed member of the Commission. Then in August 1962, Juan V. Borra was named chairman to succeed Garcia, whose tenure expired in June 1962. And in November 1962, the President appointed Miraflor as member, on the assumption that Visarra's term of office had expired in June 1962.

In this suit, Visarra challenges the right of Miraflor to hold (as against him) the office of member.

It was admitted at the oral argument that if we follow the holding and the implications of our decision in Republic vs. Imperial, **supra**, the respondent Miraflor must be declared the winner. Indeed, in said decision, we established three lines of succession, to wit: (1) that of the chairman; (2) that of the second member, Enage; and (3) that of the third member (see outline above).

Garcia in May 1960, was in the third line of succession, his term of office and tenure to expire in June 1962. When he was appointed chairman in May 1960, he **left that line** and **entered the line** of succession of the chairman, with his tenure still to expire on June 1962(g). Therefore, upon his appointment, Visarra merely occupied the position vacated by Garcia(h) whose **fixed term of office** (third member) expired in June 20, 1962. (hh) Visarra's later appointment(i) could neither effect nor extend such fixed term of office (of Garcia in the third line).

Visarra claims, however, that when Garcia was appointed chairman, **he did not leave** his position in the third line of succession but continued therein; so that the vacant position which he (Visarra) filled was the one left by Carag, the fixed term of which is due to expire in 1968; and that, consequently, Borra should be deemed to occupy the position left by Garcia in the third line. The flaw in the argument is that it contradicts our ruling in Republic vs. Imperial. **supra**. There we held that when Commissioner Vera was appointed Chairman, **he left the third** line of succession to enter the first, viz, that of the Chairman; and upon his assumption of the Chairmanship, his position as member became vacant. We now fail to perceive any valid reason to change our views on that point, according to which Garcia must be held to have **left his line** to assume the position of Chairman. **Stare decisis** — not mere **obiter dictum**.

In other words, and graphically to demonstrate the three lines of succession continuing after March 1955 — as we see them:

	Incumbent	Office Term	Tenure
Chairman (9-yr. original)	Carag	June 1950 to June 1959	May 1958 to June 1959
	Garcia	June 1959 to	May 1960 to June 1962
	Borra	June 1968	Aug. 1962 to June 1968
2nd Member (6th-yr. original)	Perez	June 1947 to June 1956	Dec. 1949 to June 1956
	Brillantes	June 1956 to June 1965	Dec. 1956 to June 1965
3rd Member (3rd-yr. original)	Garia	June 1953 to	May 1955 to May 1960
	Visarra	June 1962	May 1960 to June 1962
	Miraflor	June 1962 to June 1971	Oct. 1962 to June 1971

NOTE: For convenience, date of appointment — not qualification — is noted here.

It is true that Visarra's appointment was extended expressly for a term of office ending June 20, 1968; but as explained in our decision of Republic vs. Imperial, such appointment could only be for a position whose term would expire in June 1962, because that was the only vacant position, inasmuch as the term due to expire in June 1968 (for the chairman) was then occupied by Chairman Garcia.(j)

As a result of the foregoing, and to be specific, we declare: Chairman Borra occupies the position of Chairman with a term expiring June 20, 1968, and his tenure beginning August 1962 ends on June 20, 1968(k); the position of Member Brillantes carries a term that expires June 20, 1965 and his tenure should end on the same date; and the term for the position of Member Miraflor expires June 1971, his tenure expiring on the same date.

It may be necessary to add that although the appointment

(ee) Omitting other unimportant circumtances.
(f) Rovira was holding over as **de facto**, the term of his office having expired June 1953.
(g) Garcia's appointment expressly stated that it would expire June 1962.
(h) In fact he took his oath only on October 13, 1960, **after Garcia** had qualified as chairman.
(hh) Up to the end of the term only. See footnote (c).
(i) Fixing a term up to June 1968.
(j) When Garcia assumed the chairmanship, he **ipso facto** resigned his position as member; and the appointment of Visarra to membership could only be for the **unexpired balance** of the term of member (Republic vs. Imperial, **supra**) up to June 1962.
(k) Notwithstanding his appointment fixed June 20, 1971 as expiration thereof.

of the chairman or of the member (subsequent to those originally appointed in the nineteen forties) is **generally** for a term of nine years, his **tenure** can not extend beyond the **fixed term** for the position he is supposed to occupy(1) in the fixed line of succession we have heretofore indicated, in accordance with the evident intention of the pertinent Constitutional provisions.

Wherefore, in line with the foregoing considerations this quo warranto proceeding should be and is hereby dismissed. No costs.

Padilla, Labrador, and Regala, JJ., concurred.

BAUTISTA ANGELO, J., concurring:

The President appointed Cesar Miraflor in 1962 a member of the Commission on Elections to fill the position left vacant by Genaro Visarra whose term expired in June, 1962, in keeping with the ruling laid down by this Court in Republic v. Imperial.[1] This ruling is to the effect that subsequent appointments to be made after the first members appointed in the Commission who were to hold office with a staggering difference of three years from each other as required by our Constitution can only be for the unexpired portion of the term of the predecessor of the appointee in order to prevent a President from making more than one appointment during his term of office to the end that the member may preserve and safeguard his freedom and impartiality in the performance of his duties. Thus, we declared therein that "any vacancy due to death, resignation or disability before the expiration of the term should be filled only for the unexpired balance of the term" as otherwise "the regularity of the intervals between appointments would be destroyed, and the evident purpose of the rotation (to prevent that four-year administration should appoint more than one permanent and regular Commissioner) would be frustrated."

In the deliberation of said case, and in the written opinion I submitted in connection therewith, I expressed the view that, while this purpose is plausible if only it can be carried out to the letter, because it would indeed free the members from extraneous influence and would give them an untrammelled freedom in the performance of their duties, experience however has shown that it is impracticable as it has never been observed either by the Chief Executive or by Congress. An analysis of the appointments heretofore made to fill vacancies in the membership of the Commission will bear this out. The Chief Executive, in filling the vacancies in the positions held after the members first appointed, has always extended appointments for a term of nine years, never for the unexpired period, and these appointments have always met the sanction of Congress. Only that their tenure was limited by judicial fiat to the unexpired term to conform to the spirit of the rotation system. I then concluded that if the rotation system can not be maintained because of unavoidable human factors that may supervene, such as death, resignation, or disability in any form, that system should not be allowed to stand against the clear purpose of the Constitution of giving to every subsequent appointee a term of office of nine years. But this opinion was ruled out. Hence, the President, following the ruling of the majority, extended an appointment to Miraflor as already adverted to.

But Mr. Justice Reyes, (J.B.L.) the writer of the majority opinion in the Imperial case, a dissenter in the present, advances now the theory that the appointment of the then member Gaudencio Garcia in 1960 to the post of Chairman of the Commission was null and void for being in violation of our Constitution with the result that he never left **his line** to pass to that of Carag and that the one who lawfully filled Carag's line was Visarra. So, he concludes, Visarra who was appointed in 1960 continued the line of Carag whose term of office will expire only in 1968. And when Borra was appointed, he filled the line vacated by Garcia in 1962, whose term will expire in 1971. Consequently, he avers that there was no vacancy to which Miraflor could have been appointed and, hence, his appointment is void. Mr. Justice Reyes predicates his opinion on the constitutional provision that a member "shall hold office for a term of nine years and may not reappointed."

The issue raised by Mr. Justice Reyes has already been squarely presented and discussed in Nacionalista Party. et al. v. Vera,[2] wherein the appointment of Vicente de Vera, then Associate Commissioner, to Chairman of the Commission, was impugned as invalid on the ground that it was made in violation of our Constitution. This Court, under the pen of former Chief Justice Moran, while it held it was not a proper subject for determination because it was raised not in a petition for **quo warranto**, but in one for prohibition, nevertheless, categorically stated that "the **majority** deems it advisable to also express its views" on the matter. And after analyzing the pertinent provisions of our Constitution.[3] the Court said: "It must be noticed from this provision that the prohibition against reappointment comes as a continuation of the requirement that the Commissioners shall hold office for a term of nine years. This imports that the Commissioners may not be reappointed only after they have held office for nine years. **Reappointment is not prohibited when a Commissioner has held office only for, say, three or six years, provided his term will not exceed nine years in all.** x x x It may then be said as a fair interpretation of the Constitution that reappointment may be made in favor of a Commissioner who has held office for **less** than nine years, provided it does not preclude the appointment of a new member every three years, and provided further that the reappointee's term does not exceed nine years in all." (Bold supplied) Elaborating further on the matter, the Court continued:

> "It is maintained that the prohibition against reappointment applies not only to the Commissioner appointed for nine years, but also to those appointed for a shorter period, because the reason underlying the prohibition is equally applicable to them. the prohibition being, according to this theory, intended to prevent the Commissioners from being exposed to improper influences that are apt to be brought to bear upon those aspiring for reappointment. It is, however, doubtful whether this apparently persuasive reasoning is fully justified and supported by the wording of the Constitution. As above stated, the language of the Constitution does not warrant the interpretation that the prohibition against reappointment applies not only to Commissioners who have held office for nine years but also to those appointed for a lesser term. Upon the other hand, reappointment is not the only interest that may affect a commissioner's independence, for he may also aspire to another position in the Government that is higher and better paid, and that also may affect his independence. And it is perhaps useless to prohibit reappointment to the same office if appointment to higher and better paid positions is not at the same time prohibited. This, apart from the consideration that reappointment is not altogether disastrous. A Commissioner, hopeful of reappointment may strive to do good. Whereas, without that hope or other hope of material reward, his enthusiasm may decline as the end of his term approaches and he may even lean to abuses if there is no higher restrain in his moral character.

(1) If the vacancy is due to death, resignation or disability, the appointment can only be for the unexpired balance of the term. (Republic vs. Imperial, **supra.**)

1. 51 O.G., 1886.

2. 47 O.G., 2375.

3. "There shall be an independent Commission on Elections composed of a Chairman and two other Members to be appointed by the President with the consent of the Commission on Appointments, who shall hold office for a term of nine years and may not be reappointed. Of the Members of the Commission first appointed, one shall hold office for nine years, another for six years, and the third for three years. The Chairman and the other Members of the Commission on Elections may be removed from office only by impeachment in the manner provided in this Constitution."

Moral character is no doubt the most effective safeguard of independence. With moral integrity, a commissioner will be independent with or without possibility of reappointment. Without moral integrity, he will not be independent no matter how emphatic the prohibition on reappointment might be. That prohibition is sound only as to a Commissioner who has held office for nine years, because after such a long period of heavy and taxing work, it is but fair that the venerable Commissioner be given either a rest well earned or another honorable position for a change."

I am not in accord with the view that the ruling in the Vera case, supra, is not a binding precedent on the validity of Gaudencio Garcia's promotion from Associate Commissioner to Chairman of the Commission for the reason that the same only finds support in the votes of four justices because two others merely concurred in the result for, as already stated, on this issue, the Court clearly stated that **"the majority deems it advisable to also express its views"**, and the justices who concurred in the result did not elaborate on how they arrived at that conclusion. Moreover, to hold that the promotion of an Associate Commissioner to Chairman is banned by the Constitution merely by judicial fiat would be to relegate a member forever to his position as such without hope of enjoying the privileges incident to the chairmanship while giving a premium to an outsider who may be less deserving except probably his political ascendancy because of his lack of experience on the mechanics of that delicate and important position. Be that as it may, we now re-affirm that opinion which to us appears just, fair and sound. Its effect is to stimulate hard work, greater zeal and increased efficiency for a member in the hope that his efforts would someday be rewarded with a promotion. The contrary would relegate him to apathy, indifference, hopelessness and inaction. It is never a good policy to stultify one's legitimate ambition to betterment and progress.

I am also not in accord with the view that the appointment of Associate Commissioner Garcia to Chairman of the Commission constitute an increase in salary which is prohibited by the Constitution which decrees that the salaries of the members "shall be neither increased nor diminished during their term of office." This prohibition can not be stretched to mean that if an Associate Commissioner is appointed to Chairman of the Commission he cannot be given the salary prescribed for the latter. The prohibition merely means that during their incumbency their salaries can neither be increased nor diminished by Congress thereby impairing their freedom and independence. As aptly expressed by Mr. Justice Reyes, "The plain purpose of (this safeguard) is that the Commissioners, once appointed and confirmed, should be free to act as their conscience demands, without fear of retaliation or hope of reward; that they should never feel the inducement of either the stick or the carrot. For only the man who has nothing to fear and nothing to expect can be considered truly independent." If the appointment of an Associate Commissioner to Chairman of the Commission is legally feasible as abovestated. no plausible reason is seen why the reception by him of the salary prescribed for the latter position would be unconstitutional.

Much stress is laid by Mr. Justice Barrera that if the appointment of Miraflor is sanctioned the effect would be to give to the President the privilege of appointing two members, if not more, during his term of office which is contrary to the intent of the Constitution. But who should be blamed if such predicament should happen? Can it be helped if such is the inexorable rule of nature? This is the danger I envisioned when in the Imperial case I advocated the disregard of the staggering term in the commission membership and the adoption of the rule as expressed in our Constitution that subsequent appointments be made always for a full term of nine years. If that rule is adopted there would be less occasion for the danger now dreaded by the minority to happen, while we would strengthen the security of tenure of the incumbent. But my opinion was overruled by the majority and the same is now the law of the case. We have no other alternative than to abide by it.

Since the appointment of Associate Commissioner Garcia to Chairman of the Commission is valid, and the President in appointing Cesar Miraflor member of the Commisson, vice member Genaro Visarra, merely followed the ruling of this Court in the Imperial case, it is now unfair to declare that he acted improvidently in doing so. For these reasons, I vote with the majority.

MAKALINTAL, J: concurring:

I vote with the majority for the dismissal of the petition on the authority of Republic v. Imperial, 51 O.G. 1886, and Nacionalista Party et al v. Vera, 85 Phil. 126. It appears to me that those cases have quite clearly established the theory that the position of Chairman of the Commission on Elections is distinct from that of each of the two members; that the three positions carry their own respective terms of nine years, staggered in such a way that they begin and end at three-year intervals; and that if a Commissioner is promoted to the chairmanship he vacates his old position and gives up the term pertaining to it, and assumes the new position of Chairman, with its own term, subject to the limitation that his entire tenure in both capacities shall not exceed nine years. Thus in the Vera case it was held that when Commissioner Vicente de Vera was appointed Chairman to succeed the former incumbent, Jose Lopez Vito, who had died in office in 1947, such appointment could legally be only for the unexpired portion of Lopez Vito's term, which was up to June 20, 1950. This notwithstanding the fact that the term of the position of Commissioner to which Vera was originally appointed was from June 1944 to June 1953.

In the light of the foregoing precedents, I believe that when Commissioner Gaudencio Garcia was promoted to the chairmanship of the Commission in May 1960 to succeed Jose P. Carag, who had retired in 1959 upon the expiration of his term, Garcia vacated his old position and assumed that of Chairman, as did Vera years before. That being so, the only position to which petitioner herein, Genaro Visarra, could be appointed was that formerly occupied by Garcia, the term of which would expire in June 1962. I cannot subscribe to the proposition, advanced in the dissent, that when Garcia became Chairman the term pertaining to that position — which was from 1959 to 1968 — was left dangling, so to speak, to be enjoyed by Visarra in his capacity as mere member.

But, the dissent continues, Garcia's promotion was null and void because it was violative of the constitutional prohibition against reappointment (Art. X, Section 1), and if it was null and void, then petitioner Visarra was validly appointed for the nine-year term (until 1968) pertaining to the position left by Chairman Carag in June 1959. I do not think it proper or timely, in the present case, to inquire into and decide the constitutionality of the appointment of Garcia. It is not one of the issues raised by the parties. Garcia is not a respondent, indeed had already retired from the service when the petition here was filed; and whatever might be said on the point could be nothing but **obiter dictum**, unduly relied upon to support an opinion in favor of a party who does not contest such appointment. By the same token, I do not find it necessary to concur, for purposes of the instant petition, in any categorical affirmation of the validity of the promotion of a Commissioner to Chairman although the question seems to have been set at rest by the Vera case. However, since Garcia's appointment as Chairman has not been successfully challenged in a proper quo warranto case against him, it retains the presumption of validity. The least that can be said is that he was a **de facto** Chairman during his incumbency, the term of which position could not have been conferred on herein petitioner by the very same appointing power. It would be unreasonable to assume that the

President, in promoting Garcia, thought in this wise: that his appointment being null and void anyway, he neither filled the vacancy left by ex-chairman Carag nor assumed the term thereof — from 1959 to 1968 — for which reason, therefore, they were given to Visarra instead albeit only as Commissioner.

The separate dissenting opinions of Justice Concepcion, J.B.L. Reyes, Barrera, Paredes and Dizon will be published in the forthcoming July issue of this Journal.

II

Eloy Prospero, plaintiff-appellee vs. Alfredo Robles, et al, defendants-appellants, G.R. No. L-16870, May 31, 1963. Dizon, J.

1. RELIEF FROM JUDGMENT; LACK OF ALLEGATIONS IN PETITION OF FACTS CONSTITUTING NEGLIGENCE, MISTAKE OR ABANDONMENT.—The mere allegation made by appellants in the petition for relief from judgment that the default was due to the gross negligence or mistake and/or abandonment of their attorney, without stating the facts that constitute such negligence, mistake, or abandonment, is not legally sufficient to justify the granting of the relief provided for in Rule 38.
2. ID.; AFFIDAVIT OF MERIT; IT MUST CONTAIN FACTS, WHICH WOULD CONVINCE THE COURT THAT AGGRIEVED PARTY HAS MERITORIOUS CASE.—It has been repeatedly held that, to merit petition for relief from judgment, it is not sufficient to allege that the aggreived party has good and strong evidence to support his case, this being clearly a mere conclusion. The affidavit of merit required by the rules must contain and submit to the court such facts as would probably convince the latter that the aggrieved party has a meritorious case.
3. JURISDICTION; INJUNCTION; ISSUANCE OF WRIT PROPER TO ENJOIN PICKETING WHERE EMPLOYER-EMPLOYEE RELATIONSHIP NO LONGER EXIST.—Appellants claim that the lower court erred in assuming jurisdiction over the case and issuing a writ of injunction against them, claiming that picketing is a legitimate exercise of freedom of speech and can not be enjoined in labor disputes. HELD: The only trouble with this contention is that the lower court made an express finding — which can not now be reviewed — that, at the time of the picketing, there was totally no employer-employee relations between plaintiff and appellants and the action was merely an ordinary one for damages and and a restraining order.

D E C I S I O N

Eloy Prospero filed the present action on January 30, 1959, to recover damages and obtain a writ of injunction against appellants. The preliminary writ was issued upon his filing a bond in the sum of ₱1,000..

On February 18, 1959, appellants, represented by Attys. Beltran and Lacson, filed a motion to dismiss the complaint, but the same was denied for lack of merit. The order of denial required them to file their answer — presumably within the usual reglementary period after service of summons — "the period to be computed from the notification of this court."

On May 16, 1959, appellee filed a motion for default, but the same was denied on the ground that, according to the record, appellants' period for the filing of their answer had not yet expired.

On May 20, 1959, appellants filed a motion for the reconsideration of the order denying their motion to dismiss, but the same was denied on May 23 of the same year. Notice of this order was received by appellants on the 29th of the same month.

On July 8, 1959, appellee filed a second motion for default alleging, among other things, that, up to that time, appellants had not filed their answer. As this allegation was found substantiated by the record, the court entered the corresponding order of default, proceeded to receive the evidence of appellee and subsequently rendered decision as follows:

"WHEREFORE, this Court hereby renders judgment ordering the defendants to pay jointly and severally to the plaintiff the sum of:

'(1) ₱1,000.00 for his pecuniary loss due to the injury to his good will and patronage;

'(2) ₱1,000.00 as moral damages;

'(3) ₱1,000.00 as attorney's fees; and

'(4) Costs.

"Finally, the Court hereby orders the defendants, Alfredo Robles, Ignacio Loyola, Emilio Magcalos, Lucio Bersamin and Andoy "Doe," singly and en masse, including their attorneys, representatives, agents and any other person or persons assisting them, to refrain permanently from establishing picket lines in and around the premises and/or places where the plaintiff may perform professional musical services."

On October 26, 1959, appellants, this time through Atty. Edgardo Diaz de Rivera, filed a verified motion for new trial, alleging that their failure to answer the complaint was due to accident, mistake or the excusable negligence of their former counsel, Atty. Aurelio S. Arguelles, Jr., and alleging further that the decision and the writ of injunction were against the law. The court denied this motion on December 2, 1959 on the ground that it was not supported by any affidavit of merit nor did it allege facts sufficient to constitute a ground for relief from a final judgment. The order of denial further stated that appellants had no standing in court because the order of default entered against them had not been set aside.

On January 8, 1960, appellants filed a petition for relief from judgment, verified by appellant Robles who, in a separate affidavit, alleged that he was the president of the Philippine Musicians Guild, a registered labor union; that he was one of the defendants in the case; that they were declared default because their former lawyer, Atty. Aurelio S. Arguelles, Jr., failed to file their answer to the complaint and that because of his "mistake or excusable negligence", the substantial rights of his clients had been prejudiced; that had they been able to present evidence, the decision rendered against appellants would have been different.

Appellee naturally opposed the petition, and on February 8, 1960, the court denied the same firstly, because it was filed out of time, and secondly, because it did not rely on any ground sufficient to meet any of the reglamentary requirements.

The present appeal from the order last mentioned is without merit.

As the lower court held, the petition for relief was filed out of time. Appellants admit that they had knowledge of the order and decision by default rendered against them since **October 21, 1959.** It is clear, therefore, that the petition for relief filed on January 8, 1960, or seventy-nine (79) days after appellants knew of the order and decision by default, came too late — beyond the period of sixty (60) days provided for in Rule 38, Rules of Court.

Moreover, neither their motion for new trial nor the petition for relief was supported with any affidavit sufficient in form and substance to prove even one of the grounds provided for in Rule 38 of the Rules of Court, nor to show that appellants have a good and meritorious defense.

The mere allegation made by appellants in the petition for relief that the default was due to the gross negligence or mistake and/or abandonment of their attorney, without stating the facts that constitute such negligence, mistake, or abandonment, is not legally sufficient to justify the granting of the relief provided for in Rule 38. Likewise, it has been repeatedly held that, to merit the relief, it is not sufficient to allege that the aggrieved party has good and strong evidence to support his case, this being clearly a mere conclusion. The affidavit of merit required by the rules must contain and submit to the