

(3) that the tribunal in or before which his rights are adjudicated is so constituted as to give reasonable assurance of his honesty and impartiality; and

(4) that it is a court of competent jurisdiction."

Indeed, all the other requisites of notice and hearing would be meaningless if the ultimate decision is to come from a partial and biased judge. Now, the evidence submitted to this Court, particularly the photostatic copies of press reports, marked as Annexes G to K, to the reply, and which have been neither denied or contradicted, show that from the very beginning the President has insisted in Dr. Garcia's vacating his office as Chairman of the National Science Development Board, alleging at first that the position was a confidential nature, and later, when confronted with the fact that the tenure of the office was fixed by statute, by charging openly and publicly that —

"The trouble with this official is that he is an active politician who openly campaigned in his province for the NP candidates." (Annex J. Reply to Answer, Philippines Herald January 29, 1962; quotes in the original)

These statements, which were made without qualification, so far as the record goes, reveal that *even before the formal charges* were made in the letter of Executive Secretary Amelito R. Mutuc to herein petitioner under date of February 17, 1962, the President, who is to be the ultimate arbiter to decide the administrative case against the petitioner, had already prejudged the case and made up his mind that the petitioner had been guilty of electioneering, which is the principal charge against Garcia. While the evidence was heard and the charges tried by a committee of former magistrates whose impartiality and sense of justice are beyond challenge, the fact is that the committee's powers are purely recommendatory. The last and final word, under the law, pertains to the President, who may set aside the recommendations of the investigating committee and unfortunately, the Chief Executive's words and conduct have evidenced an attitude that is difficult to reconcile with the open mind, soberness, and restraint to be expected of an impartial judge.

The law of the land, as observed by Webster in Dartmouth College vs. Woodward (4 Wheaton 518), is one that "hears before it condemns; which proceeds upon inquiry and renders judgment only after trial."

II

Leonardo Diaz, et al., Petitioners-appellants vs. Felix Amante, respondent-appellee, G. R. No. L-9228, December 26, 1958, Bautista Angelo, J.

1. PUBLIC OFFICERS; POLICEMEN; DISMISSAL CONTRARY TO REPUBLIC NO. 557 IS ILLEGAL. — The dismissal of a civil service eligible policeman who was extended a permanent appointment as member of the police force was illegal when it had been made in a manner contrary to the procedure prescribed in Republic Act No. 557. (*Mission vs. Del Rosario, 50, O.G., No. 4, p. 1571*).
2. ID.; ID.; EXECUTIVE ORDER NO. 264 IMPLIEDLY REPEALED BY REP. ACT 557. — Executive Order No. 264 is no longer in force for the same had been impliedly repealed by Republic Act No. 557.
3. ID.; ID.; TEMPORARY APPOINTMENT; DURATION. — The appointment of a person who is not a civil service eligible at the time of his appointment, and it does not appear that he have since then qualified for the position he is holding, his appointment was only for a period of three months and not more." (*Pana, et al v. City Mayor, et al., G.R. No. L-2700, December 18, 1953*). Under the new Civil Service Act (Rep. Act 2260), temporary appointment is limited to six months.¹
4. ID.; ID.; DAMAGES; BACOLOD CITY; CITY NOT LIABLE

¹ A person may receive a temporary appointment in a position needed only for a limited period not exceeding six months, provided that preference in filling such position be given to persons on appropriate eligible lists. Sec. 24 (d) Rep. Act 2260 (*Civil Service Act of 1959*).

FOR DAMAGES DUE TO FAILURE OF MAYOR TO ENFORCE PROVISIONS OF LAW. — The respondent city mayor should be made to pay the back salaries of petitioners for the reason that under the Charter of the City of Bacolod (Section 5, Commonwealth Act No. 326), the city cannot be made liable for damages arising from the failure of the mayor to enforce any provisions of the law or from his negligence in the enforcement of any of its provisions.

5. ID.; ID.; MORAL DAMAGES ABSORBED BY BACK SALARIES. — The respondent City Mayor in separating the petitioners from the service acted with gross negligence, if not in bad faith, considering the events of contemporary history that had happened in his province and his official acts amounting to abuse of authority of which the trial court took judicial notice in its decision. The sum of P5,000.00 it slapped upon respondent as moral damages is not justified, for the same is already included in, if not absorbed by, the back salaries the City Mayor was ordered to pay to petitioners.
6. ID.; ID.; EXEMPLARY DAMAGES; IT IS IMPOSED TO CURTAIL ABUSES OF SOME PUBLIC OFFICIALS. — With regard to the sum of P2,000.00 which respondent City Mayor was ordered to pay as exemplary damages, the same is somewhat excessive, considering that respondent acted in the belief that he had the requisite authority under Executive Order No. 264 of the President which at that time as yet not been declared repealed by the Supreme Court, but these damages should be imposed if only to curtail the abuses that some public officials are prone to commit upon coming to power in utter disregard of the civil service rules which constitute the only safeguard of the tenure of office guaranteed by our Constitution. These damages should therefore be reduced to P1,000.00.

DECISION

Leonardo Diaz and Alberto Aguilar filed a petition for mandamus in the Court of First Instance of Negros Occidental against Felix P. Amante in his capacity as Mayor of Bacolod City to compel the latter to reinstate them to their positions as members of the police force of said city.

The trial court, after hearing, rendered judgment ordering the respondent to reinstate petitioners as prayed for and to pay them (a) their unpaid salaries from August 16, 1951 up to the date of their reinstatement; (b) the sum of P5,000.00 as moral damages; (c) the sum of P2,000.00 as exemplary damages; and (d) to pay the costs of the proceedings. Respondent took the case on appeal to this Court on the ground that the only issue involved is one of law.

Leonardo Diaz was given a temporary appointment as third class patrolman on July 23, 1946 with an annual salary of P480.00. On October 1, 1946, he was given a promotion in salary in the amount of P600.00 per annum. On November 18, 1946, he was appointed also in a temporary capacity as second class officer with a salary of P690.00 per annum. On January 16, 1947, he was promoted to first class traffic officer with a salary of P930.00 per annum. On April 1, 1947, he was promoted in salary to P720.00 per annum. On July 1, 1947 he was given for the first time a permanent appointment as second class detective with a salary of P900.00 per annum. On July 1, 1948 and July 1, 1949, he was given a salary increase as permanent second class detective with a salary of P960.00 and P1,020.00 per annum respectively. On June 1, 1950, he was again promoted to first class detective with a salary of P1,080.00 per annum. And on July 1, 1951, his salary as permanent first class detective was increased to P1,320.00

ing examination for patrolman with a rating of 83%.
Alberto Aguilar is not a civil service eligible but on September 8, 1949 he was appointed as patrolman effective July 1, 1949. On February 8, 1950, he was promoted to second class detective, and when he was dismissed on August 15, 1951, he was a first class detective. He is an old veteran, having been a guerrilla under Lt. Col. Salvador Abcede.

On August 15, 1951, both Diaz and Aguilar were notified by respondent of their separation from the service effective at the

close of business hours of said day for lack of trust and confidence upon the recommendation of the chief of police. With regard to Aguilar, he was separated on the additional ground of immorality and of maintaining a house of prostitution. His position was filled by a civil service eligible on August 16, 1951. As a justification for the action he has taken against petitioners, respondent invoked the provisions of Executive Order No. 264 promulgated by President Quezon on April 1, 1940 believing that petitioners as detectives who occupy confidential positions could be separated upon a moment's notice for lack of trust and confidence, and his authority to dismiss them was sustained by the Executive Secretary who in an indorsement intimated that the removal of a detective from the service for lack of confidence was lawful. His action was also sustained by a provincial circular issued on April 3, 1954 by the Executive Secretary confirming the propriety of his action.

With regard to petitioner Diaz, who admittedly was a civil service eligible and was extended on more than one occasion a permanent appointment as member of the police force of Bacolod City, there is no question that his dismissal was illegal for having been made in a manner contrary to the procedure prescribed in Republic Act No. 557. Executive Order No. 264 is no longer in force, the same having been implicitly repealed by said Act. Thus, in *Mission v. Del Rosatio*, 59 O. G., No. 4, 1571, this Court said: "It appearing that petitioners, as detectives, or members of the police force of Cebu City, were separated from the service not for any of the grounds enumerated in Republic Act No. 557 and without the benefit of investigation or trial therein prescribed, the conclusion is inescapable that their removal is illegal and of no valid effect. In this sense, the provisions of Executive Order No. 264 of the President of the Philippines should be deemed as having been implicitly repealed in so far as they may be inconsistent with the provisions of said Act."

A different consideration should be made with regard to petitioner Aguilar for it appears that he was not a civil service eligible even if he was extended several appointments as detective or patrolman by the City Mayor of Bacolod, for not being a civil service eligible, he is not qualified for a permanent appointment. Thus, in one case, this Court said: "In accordance with Section 682 of the Rev. Adm. Code, when a position in the classified service is filled by one who is not a qualified civil service eligible, his appointment is limited to the period necessary to enable the appointing officer to secure a civil service eligible, qualified for the position, and in no case is such temporary appointment for a long period than three months. As petitioners herein were not civil service eligibles at the time of their appointment, and it does not appear that they have since then qualified for the positions they are holding, their respective appointments were only for a period of three months and not more." (*Pana, et al. v. City Mayor, et al.*, G. R. No. L-2700, December 18, 1953).² The case of Aguilar comes squarely within the purview of this ruling.

The lower court ordered respondent not only to reinstate petitioners but also to pay them their back salaries and moral and exemplary damages in the aggregate amount of P7,000.00. We agree with the trial court that respondent should be made to pay the back salaries of petitioners for the reason that under the Charter of the City of Bacolod (Section 5, Commonwealth Act No. 326), the city cannot be made liable for damages arising from the failure of the mayor to enforce any provisions of the law or from his negligence in the enforcement of any of its provisions. We may also agree with the trial court in holding that respondent in separating the petitioners from the service acted with gross negligence, if not in bad faith, considering the events of contemporary history that had happened in his province and his official acts amounting to abuse

of authority of which the trial court took judicial notice in its decision, but we believe that the sum of P5,000.00 it slapped upon respondent as moral damages is not justified, for the same is already included in, if not absorbed by, the back salaries he was ordered to pay to petitioners. And with regard to the sum of P2,000.00 which respondent was ordered to pay as exemplary damages, the same is somewhat excessive, considering that respondent acted in the belief that he had the requisite authority under Executive Order No. 264 of the President which at that time has not yet been declared repealed by the Supreme Court. But these damages should be imposed if only to curtail the abuses that some public officials are prone to commit upon coming to power in utter disregard of the civil service rules which constitute the only safeguard of the tenure of office guaranteed by our Constitution. These damages should therefore be reduced to P1,000.00.

Wherefore, the decision appealed from is hereby modified as follows: respondent, or the incumbent Mayor of Bacolod City, is ordered to reinstate petitioner Leonardo Diaz as prayed for; respondent Amante is ordered to pay petitioner Diaz his unpaid salaries from August 16, 1951 up to the date of his reinstatement and the sum of P1,000.00 as exemplary damages. In all other respects, the decision appealed from is hereby reversed. With costs against respondent.

Paras, C.J., Padilla, Labrador, Concepcion, J.B.L. Reyes and Endeneña, JJ., concurred.

Bengzon, J., took no part.

III

In re: Disbarment Proceedings Against Atty. Diosdado Q. Gutierrez, Respondent, Adm. Case No. 363, July 31, 1962, Makabintal, J.

1. ATTORNEYS-AT-LAW; REMOVAL AND SUSPENSION BY REASON OF CONVICTION OF CRIME INVOLVING MORAL TURPITUDE SUCH AS MURDER.— Under Section 5 of Rule 127 a member of the bar may be removed or suspended from his office as attorney by the Supreme Court by reason of his conviction of a crime involving moral turpitude. Murder is, without doubt, such a crime.
2. ID.; MORAL TURPITUDE; WHAT MAY IT INCLUDE.— The term "moral turpitude" includes everything which is done contrary to justice, honest, modesty or good morals. (In re Carlos S. Basa, 41 Phil. 275.)
3. ID.; ID.; IN DISBARMENT STATUTES; MEANING OF.— As used in disbarment statutes it means an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellowmen or to society in general, contrary to the accepted rule of right and duty between man and man. (State ex rel. Conklin v. Buckingham, 84 P. 2nd 49; 5 Am. Jur. Sec. 279, pp. 428-429.)
4. ID.; ID.; PARDON; WHEN IT MAY BE A BAR TO DISBARMENT PROCEEDING.—When proceedings to strike on attorney's name from the rolls are founded on, and depend alone, on a statute making the fact of a conviction for a felony ground for disbarment, it has been held that a pardon operates to wipe out the conviction and is a bar to any proceeding for the disbarment of the attorney after the pardon has been granted.
5. ID.; ID.; ID.; EFFECTS OF ABSOLUTE PARDON.—A person reaches both the punishment prescribed for the offense and the guilt of the offender; and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense. If granted before conviction, it prevents any of the penalties and disabilities, consequent upon conviction, from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as if it were, a new man, and gives him a new credit and capacity.

¹ Uy v. Rodriguez, July 30, 1954, 50 O.G., No. 8, pp. 3574-76; Abella v. Rodriguez, June 29, 1954, 50 O.G., No. 7, pp. 3039-41; *Mission v. Del Rosario*, Feb. 26, 1954, 50 O.G., No. 4, pp. 1571, 1573-74; *Palamino v. Zagado*, March 5, 1954, 50 O.G., No. 4, pp. 1566-67.

² See also *Reyes, et al. v. Dones, et al.*, G.R. No. L-11427, May 28, 1958.