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Paulino Garcia, petitioner vs. the Honorable Executive Secretary, and Juan Salcedo, Jr., in his capacity as Acting Chairman of the National Science Development Board, respondents, G. R. No. L-19748, September 13, 1962, Barrera, J.

1. CIVIL SERVICE; ADMINISTRATIVE INVESTIGATION; PREVENTIVE SUSPENSION; AS PROVIDED IN THE NEW CIVIL SERVICE LAW AND REVISED ADMINISTRATIVE CODE; LIFTING OF PREVENTIVE SUSPENSION PENDING ADMINISTRATIVE INVESTIGATION NOT FOUND IN ADMINISTRATIVE CODE. — Section 35, Republic Act 2260 (Civil Act of 1959) is a new provision in our Civil Service law. In the Revised Administrative Code, in its Article VI on "Discipline of Persons in Civil Service", is found the same power of preventive suspension exercisable by the President and the chief of a bureau or office with the approval of the proper head of department, as is now provided in Section 34 of Republic Act 2260, but there is no counterpart in the Administrative Code, of Section 35 pending administrative investigation.

2. ID.; ID.; EVILS OF INDEFINITE SUSPENSION DURING ADMINISTRATIVE INVESTIGATION. — The insertion for the first time in our Civil Service law of an express provision limiting the duration of preventive suspension is significant and timely. It indicates realization by Congress of the evils of indefinite suspension during investigation, where the respondent employee is deprived in the meantime of his means of livelihood, without an opportunity to find work elsewhere, lest he be considered to have abandoned his office. It is for this reason that it has been truly said that prolonged suspension is worse than removal. And this is equally true whether the suspended officer or employee is in the classified or unclassified service, or whether he is a presidential appointee or not.

3. ID.; ID.; NO DISTINCTION BETWEEN PREVENTIVE SUSPENSION OF OFFICER APPOINTED BY THE PRESIDENT AND SUSPENSION OF SUBORDINATE OFFICERS OR EMPLOYEES.—There is nothing in Section 35, Civil Service Act, which distinguishes between the preventive suspension of an officer appointed by the President and the suspension of subordinate officers or employee undergoing administrative investigation.

4. ID.; ID.; LIFTING OF PREVENTIVE SUSPENSION PENDING ADMINISTRATIVE INVESTIGATION APPLICABLE TO OFFICERS AND EMPLOYEES SUSPENDED BY THE PRESIDENT.—The phrase "officer or employee" used in Section 35, Civil Service Act, is not modified by the word "subordinate" as employed in Section 34 when speaking of the preventive suspension ordered by the chief of a bureau or office. In fact, the last sentence of Section 35 which provides that, "if the respondent officer or employee is exonerated, he shall be restored to his position with full pay from the period of suspension", is undeniably applicable to all officers and employees whether suspended by the President or by the Chief of office or bureau, or investigated by the Commissioner of Civil Service, or by a presidential investigating committee.

5. ID.; ID.; DISCIPLINARY ADMINISTRATIVE CASES SHOULD PASS THROUGH SCRUTINY OF COMMISSIONER OF CIVIL SERVICE; APPEAL OF DECISION TO CIVIL SERVICE BOARD OF APPEALS.—The first sentence of Section 35, Civil Service Act, stating that "when the administrative case against the officer or employee under preventive

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Further, the issue of voluntariness of the confession in Turner was submitted to the jury, but the trial judge refused to charge "that in considering the voluntariness of the confession the prolonged interrogation should be considered." At p. 65. And the appellate court considered it an indifferent circumstance that "convicted murderer" was held five days in jail. 358 Pa 350, 357, 58 A2d 61. Finally, in Turner the Supreme Court of Pennsylvania affirmed the conviction in an opinion stressing the probable guilt of the petitioner and assuming that the alternatives before it were either to approve the conduct of the police or to turn the petitioner " 'loose upon [society] after he has confessed his guilt.' " 338 US, at 65. This Court might well have disagreed in that case with findings so made, and, with less hesitation than is appropriate here, where the determinations of voluntariness have been so constant and so numerous, have reached an opposite conclusion. In this case we are not considering the validity of a conviction by certiorari to the court affirming that judgment. Voluntariness has not been here inadequately tested by a standard which refuses to take account of relevant factors. Cf. Rogers v Richmond, 365 US 634, 5 L ed 2d 760, 81 S Ct 735 (1961). To the contrary, a proper standard has been successively applied by at least two trial courts and several appellate courts, no one of which felt itself forced to choose between what it considered equally undesirable results, and with whose conclusions this Court may not so lightly disagree.

Similarly, in Fikes v Alabama, 352 US 191, 196, 197, 1 L ed 2d 246, 250, 251, 77 S Ct 281 (1957), also relied on by the Court, the confession was wrung from an "uneducated Negro, certainly of low mentality, if not mentally ill." Fikes "was a weaker and more susceptible subject than the record in that case reveals Turner to have been." Unlike Reck, Fikes was removed from the local jail to a state prison far from his home and the Court recognized that petitioner's location was a fact "to be weighed." So, too, in Fikes the petitioner's lawyer was barred from seeing him, unlike the situation here, where no request for counsel was made.

Of course, I agree with the Court that confession cases are not to be resolved by color-matching. Comparisons are perhaps upon occasion unavoidable, and, may even be proper, as in a case "on all fours" whose facts approach identity with those of one claimed opposite. I do not find that to be the situation here, however. In my view, the Court today moves onto new ground, and does not merely retread the steps it took in Turner. In my judgment, neither the elusive, measureless standard of psychological coercion heretofore developed in this Court by accretion on almost an ad hoc, case-by-case basis, nor the disposition made in Turner requires us to disagree with more than a score of impartial judges who have previously considered these same facts. Perhaps, as these cases indicate, reasonable minds may differ in the gauging of the cumulative psychological factors upon which the Court bases its reversal, but in what case, I ask, has a court dealing with the same extrinsic facts, a quarter of a century after conviction, overturned so many decisions by so many judges, both state and federal, entirely upon psychological grounds? When have the conclusions of so many legal minds been found to be so unreasonable by so few?

Certainly, I walk across this shadowy field no more surefootedly than do my brothers, but after reading the whole record and the opinions of all of the courts that have heard the case I am unpersuaded that the combined psychological effect of the circumstances somehow, in some way made Reck speak. The fact is, as the Court of Appeals said, when confronted with and accused by all three of his confederates, Reck knew the "dance was over and the time had come to pay the fiddler," quoting from Mr. Justice Jackson's opinion for the Court in Stein v New York, 346 US 156, 186, 97 L ed 1522, 1543, 73 S Ct 1077 (1953).

suspension is not finally decided by the Commissioner of Civil Service within the period of 60 days after the date of suspension of the respondent, the respondent shall be reinstated in the service", merely demonstrates the feeling of Congress that, in line with its policy of strengthening the Civil Service of the nation and protecting it from the inroads of partisan political considerations, pursuant to the spirit of the Constitution, all disciplinary administrative cases pass through the impartial scrutiny of the Commissioner of Civil Service, even though the final decision on the matter may not be his, as an appeal from such decision of the Commissioner to the Civil Service Board of Appeal is expressly authorized by Section 36 of the same law.

6. ID.; ID.; SPONSOR OF REP. ACT NO. 2260 STATED THAT PREVENTIVE SUSPENSION CANNOT BE MORE THAN 60 DAYS.—As explained by Senator Francisco A. Rodrigo, sponsor of the bill which later became the Civil Service Act of 1959 (Rep. Act 2260), "suspension cannot be more than 60 days — preventive suspension. Even if the case drags on for six months or a year, after 60 days of preventive suspension, the suspended employee is reinstated." (Senate Congressional Record, Vol. II, 69, p. 2001).

7. ID.; ID.; NO DISTINCTION BETWEEN PREVENTIVE SUSPENSION OF OFFICERS BY THE PRESIDENT AND THAT BY CHIEF OF OFFICE OR BUREAU.—It may be noted that Senator Rodrigo did not make any distinction between the preventive suspension of officers by the President and that by the chief of office or bureau, and Section 35, Republic Act 2260 as passed did not contain any such distinction. Neither is such distinction justifiable, for there is no cogent reason — and none has been suggested — why the protection granted to subordinate employees is not to be applied to more important public officers.

8. ID.; ID.; PERSONS IN THE UNCLASSIFIED SERVICE NOT EXCLUDED FROM BENEFITS EXTENDED TO THOSE IN THE CLASSIFIED SERVICE.—There is no reason for excluding persons in the unclassified service from the benefits extended to those belonging to the classified service. Both are expressly declared to belong to the Civil Service, hence, the same rights and privileges should be accorded to both. Persons in the unclassified service are so designated because the nature of their work and classification, which is not true of those appointed to the classified service. This can not be a valid reason for denying privileges to the former that are granted to the latter. (Unabia vs. Hon. City Mayor, 53 O.G. No. 1, p. 133-134)

9. CONSTITUTIONAL LAW; CIVIL SERVICE LAW; INDEFINITE PREVENTIVE SUSPENSION NOT ALLOWED; CONTRARY TO ROBUST, EFFECTIVE, AND EFFICIENT CIVIL SERVICE.—To adopt the theory of respondents that an officer appointed by the President, facing administrative charges, can be preventively suspended indefinitely, would be to countenance a situation where the preventive suspension can, in effect, be the penalty itself without a finding of guilt after due hearing, contrary to the express mandate of the Constitution and the Civil Service Law. This, it is believed, is not conducive to the maintenance of a robust, effective and efficient civil service, the integrity of which has, in this jurisdiction, received constitutional guarantee, as it places in the hands of the Chief Executive a weapon that could be wielded to undermine the security of tenure of public officers. Of course, this is not so in the case of those officers holding office at the pleasure of the President.

10. CIVIL SERVICE; ADMINISTRATIVE INVESTIGATION; PREVENTIVE SUSPENSION; PUBLIC OFFICERS WITH FIXED TERM CANNOT BE PREVENTIVELY SUSPENDED INDEFINITELY.—But where the tenure of office is fixed, as in the case of herein petitioner, which according to the law he could hold "for 6 years and shall not be removed therefrom except for cause", to sanction the stand of respondents that an officer appointed by the President, facing administrative charges, can be preventively suspended indefinitely, would be to nullify and render useless such specific condition imposed by the law itself.

11. ID.; ID.; ID.: INDEFINITE PREVENTIVE SUSPENSION WOULD RENDER MEANINGLESS FIXED TENURE OF OFFICE AND REMOVAL FOR CAUSE.—If petitioner could be preventively suspended indefinitely, until the final determination of the administrative charges against him (and under the circumstances, it would be the President himself who would decide the same at a time only he can determine) then the provisions of the law both as to the fixity of his tenure and the limitation of his removal to only for cause would be meaningless. In the guise of a preventive suspension, his term of office could be shortened and he could, in effect, be removed without a finding of a cause duly established after due hearing, in violation of the Constitution. This would set at naught the laudible purpose of Congress to surround the tenure of office of the Chairman of the National Science Development Board, which is longer than that of the President himself, with all the safeguards compatible with the purpose of maintaining the office of such officer, considering its highly scientific and technological nature, beyond extraneous influences, and of insuring continuity of research and development activities in an atmosphere of stability and detachment so necessary for the fulfillment of its mission, uninterrupted by factors other than removal for cause.

12. ID.; ID.: ID.; PREVENTIVE SUSPENSION OF OFFICERS APPOINTED BY THE PRESIDENT WITH A FIXED TERM AND REMOVABLE ONLY FOR CAUSE CANNOT BE INDEFINITE; REASONS OF THE RULE. — There is unanimity of opinion among the members of the Supreme Court that the preventive suspension in the case of officers, although appointed by the President but with a fixed term and removable only for cause, cannot be indefinite. To some of the members, the provisions of Section 35 of Republic Act 2260 limiting the duration to 60 days is applicable to herein petitioner, as, in their view, it evinces a legislative policy that preventive suspension of a public officer is not lightly to be resorted to, but only after a previous serious and thorough scrutiny of the charges and that the prompt and continued hearing thereof should not be hampered, both in justice to the suspended officer who is without salary during suspension, and in the interest of public service to avoid as much as possible the interruption of the efficient functioning of the office that the suspended official holds. Other justices, however, are of the opinion that while said period may not apply strictly to cases of presidential appointees facing administrative charges to be decided by the President, the preventive suspension shall nevertheless be limited to a responsible period, and in the circumstances of the present case, they too believe that the further suspension of herein petitioner, who has been under preventive suspension since February 18, 1962. would no longer be reasonable.

CONCURRING OPINION OF JUSTICE J.B.L. REYES:

1. CONSTITUTIONAL LAW; DUE PROCESS; REQUISITES.— One of the elementary requisites of due process is that a case should be decided by an impartial tribunal or authority. The requisites of due process are: (1) that he shall have due notice, which may be actual or constructive, of the institution of the proceedings by which his legal rights may be affected; (2) that he shall be given a reasonable opportunity to appear and defend his rights, including the right himself to testify, to produce witnesses, and to introduce relevant documents and other evidence; (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. (3 Willoughby — Constitution of the United States, 1709)

2. ID.; ID.; LAW OF THE LAND; REQUISITES.—The law of the land is one that "hears before it condemns; which proceeds upon inquiry and renders judgment only after trial". (Dartmouth College vs. Woodward, 4 Wheaton, 518).

D E C I S I O N

This is a petition filed by petitioner, Dr. Paulino J. Garcia, Chairman of the National Science Development Board created by Republic Act 2067 otherwise known as the "Science Act of 1958" against the respondents Executive Secretary and Juan Salcedo, Jr., the latter in his capacity as Acting Chairman of the same National Science Development Board, in the form of quo warranto and prohibition with preliminary injunction, with prayer that the further preventive suspension of petitioner beyond the maximum period of 60 days, provided in Section 35 of the Civil Service Act of 1959 (Rep. Act 2260), be declared illegal and void, and that respondent Juan Salcedo, Jr., be likewise declared guilty of unlawfully holding and exercising the functions of the office of Chairman of the National Science Development Board since April 10, 1962, date of the expiration of the said 60-day period.

Succinctly stated, the pertinent facts of this case are as follows:

Upon the enactment on June 13, 1958 of Republic Act 2067, creating the National Science Development Board for the avowed purpose of implementing the declared policy of the State to integrate, coordinate, promote and intensify scientific and technological research and development and to foster invention and utilize scientific knowledge as an effective instrument for the promotion of national progress, petitioner herein, Dr. Paulino J. Garcia, was appointed by the President of the Philippines, which appointment was duly confirmed by the Commission on Appointments, as the first Chairman of the National Science Development Board for a fixed term of six years, pursuant to Section 6 of the Science Act. Accepting such appointment, petitioner duly qualified, assumed the performance of the functions of the office on July 15, 1958, and organized and since then built up the Board into a real effective instrument for scientific advancement that it is today.

As a result of the last national elections held in November, 1961, a change of administration took place. Shortly thereafter, or on February 9, 1962, after petitioner declined to heed what respondents admit as the new Assistant Executive Secretary Rodrigo Perez's "friendly gesture of advising petitioner to resign from his position in order to avoid the unpleasant consequences of having to face an administrative action for violation of the Revised Administrative Code on the basis of evidence then on hand", respondent Executive Secretary required petitioner in writing to explain charges for alleged electioneering based on the affidavits of four individuals. On February 15, petitioner submitted his written explanation denying under oath the said charges claiming them to be false, malicious and unsubstantial. On the following day, February 16, respondent Executive Secretary advised petitioner, by authority of the President, that his explanation was found unsatisfactory, and immediately ordered his preventive suspension from office effective upon receipt of the communication. Thus, the preventive suspension took effect on Monday, February 18, 1962. On the day previous, or on Sunday, February 17, 1962, the respondent Juan Salcedo, Jr. was designated by the President as Acting Chairman of the National Science Development Board.

By Administrative Order No. 5 dated February 17, 1962, an investigating committee was created. On February 23, another charge of dishonesty in office was filed with the investigating committee against petitioner. On February 27, the investigating committee commenced the investigation of the administrative charges and, after some delays caused by the unpreparedness of the prosecution, the hearing was indefinitely postponed because of the departure for abroad, on March 19, 1962, on an extended vacation, of one of the members of the committee (former Justice Ramon San Jose) who, before his appointment, apprised the President thereof but was advised he could go as the investigation could be postponed during his absence.

In view of his indefinite suspension, petitioner, on May 5, 1962, filed the present petition praying in effect that the 60-day period prescribed in the Civil Service law for preventive suspension having already expired on April 19, 1962, he be reinstated in the service pursuant to Section 35 of the said Act.

The clear-cut issue, therefore, before us is the effect and scope of the aforementioned Section 35 of the Civil Service Act, which reads:

> SEC. 35. *Lifting of Preventive Suspension Pending Administrative Investigation.* When the administrative case against the officer or empolyee under preventive suspension is not finally decided by the Commissioner of Civil Service within the period of sixty (60) days after the date of suspension of the respondent, the respondent shall be reinstated in the service. If the respondent officer or employee is exonerated, he shall be restored to his position with full pay for the period of suspension."

Contrary to the contention of petitioner that the provisions of the above-quoted section are mandatory and applicable to him, respondents sustain that the compulsory lifting of the preventive suspension pending administrative investigation provided in this action, applies only to officers or employees whose administrative cases are to be decided by the Commissioner of Civil Service, and that with respect to any officer appointed by the President, there is no provision of law regulating the duration of the preventive suspension pending investigation of charges against such officer, as is the case of petitioner. In other words, it is respondents' contention that Section 35 of the Civil Service Act does not *apply* to officers appointed by the President answering administrative charges against them.

At the outset, let it be said that Section 35 is a new provision in our Civil Service law. In the Revised Administrative Code, in its Article VI on "Discipline of Person in Civil Service", we find the same power of preventive suspension exercisable by the President and the chief of a bureau or office with the approval of the proper head of department, as is now provided in Section 34 of Republic Act 2260, but there is no counterpart in the Administrative Code, of Section 35 of Act 2260 regarding the lifting of preventive suspension pending administrative investigation. This insertion for the first time in our Civil Service law of an express provision limiting the duration of preventive suspension is significant and timely. It indicates realization by Congress of the evils of indefinite suspension during investigation, where the respondent employee is deprived in the meantime of his means of livelihood, without an opportunity to find work elsewhere, lest he be considered to have abandoned his office. It is for this reason that it has been truly said that prolonged suspension is worse than removal. And this is equally true whether the suspended officer or employee is in the classified or unclassified service, or whether he is a presidential appointeee or not. Having in mind the remedial purpose of the law, is respondents' contention justifiable that Section 35 of the Civil Service Act is applicable only to employees whose administrative cases are submitted to the Commissioner of Civil Service? Except for the insertion of the clause "is not finally decided by the Commissioner of Civil Service" (which would presently be discussed), there is nothing in Section 35 which distinguishes between the preventive suspension of an officer appointed by the President and the suspension of subordinate officers or employee undergoing administrative investigation. Note that the phrase "officer or employee" used in Section 35, is not modified by the word "subordinate" as employed in Section 34 when speaking of the preventive suspension ordered by the chief of a bureau or office. In fact, the last sentence of Section 35 which provides that, "if the respondent officer or employee is exonerated, he shall be restored to his position with full pay from the period of suspension", is undeniably applicable to all officers and employees whether suspended by the President or by the chief of office or bureau, or investigated by the Commissioner of Civil Service, or by a presidential investigating committee.

The first sentence of Section 35 stating that "when the administrative case against the officer or employee under preventive suspension is not finally decided by the Commissioner of Civil Service within the period of 60 days after the date of suspension of the respondent, the respondent shall be reinstated in the service," merely demonstrates, we believe, the feeling of Congress that, in line with its policy of strengthening the Civil Service of the nation and protecting it from the inroads of partisan political considerations, pursuant to the spirit of the Constitution, all disciplinary administrative cases should pass through the impartial scrutiny of the Commissioner of Civil Service, even though the final decision on the matter may not be his, as an appeal from such decision of the Commissioner to the Civil Service Board of Appeals is expressly authorized by Section 36 of the same law. So also, it may be conceded without deciding, may the President, in the exercise of his power of control and supervision over all offices and departments of the executive branch of the government, revise, review, or revoke the decisions of the Commissioner of Civil Service and of the Civil Service Board of Appeals. But this power has nothing to do with the preventive suspension, because this is not intended to be a penalty. As explained by Senator Francisco A. Rodrigo, sponsor of the bill which later became the Civil Service Act of 1959 (Rep. Act 2260), "suspension cannot be more than 60 days — preventive suspension. Even if the case drags on for six months or a year, after 60 days of preventive suspension, the suspended employee is reinstated." (Senate Congressional Record, Vol. II, No. 69, p. 2001). It may be noted that Senator Rodrigo did not make any distinction between the preventive suspension of officers by the President and that by the chief of office or bureau, and Section 35 as passed did not contain any such distinction. Neither is such distinction justifiable, for there is no cogent reason — and none has been suggested — why the protecton granted to subordinate employee is not to be applied to more important public officers. As this Court has ruled in the case of Severino Unabia v. The Hon. City Mayor, et al. (53 O.G., No. 1, pp. 133-134) —

> "x x x There is no reason for excluding persons in the unclassified service from the benefits extended to those belonging to the classified service. Both are expressly declared to belong the Civil Service; hence, the same rights and privileges should be accorded to both. Persons in the unclassified service are so designated because the nature of their work and qualifications are not subject to classification, which is not true of those appointed to the classified service. This can not be a valid reason for denying privileges to the former that are granted to the latter."

To adopt the theory of respondents that an officer appointed by the President, facing administrative charges, can be preventively suspended indefinitely, would be to countenance a situation where the preventive suspension can, in effect, be the penalty itself without a finding of guilt after due hearing, contrary to the express mandate of the Constitution[1] and the Civil Service law.[2] This, it is believed, is not conducive to the maintenance of a robust, effective and efficient civil service, the integrity of which has, in this jursdiction, received constitutional guarantee, as it places in the hands of the Chief Executive a weapon that could be wielded to undermine the security of tenure of public officers. Of course, this is not so in the case of these officers holding office at the pleasure of the President. But where the tenure of office is fixed, as in the case of herein petitioner, which according to the law he could hold "for 6 years and shall not be removed therefrom except for cause," to sanction the stand of respondents would be to nullify and render useless such specific condition imposed by the law itself. If he could be preventively suspended indefinitely, until the final determination of the administrative charges against him (and under the circumstances, it would be the President himself who would decide the same at a time only he can determine) then the provisions of the law both as to the fixity of his tenure and the limitation of his removal to only for cause would be meaningless. In the guise of a preventive suspension, his term of office could be shortened and he could, in effect, be removed without a finding of a cause duly established after due hearing, in violation of the Constitution. This would set at naught the laudible purpose of Congress to surround the tenure of office of the Chairman of the National Science Development Board, which is longer than that of the President himself, with all the safeguards compatible with the purpose of maintaining the office of such officer, considering its highly scientific and technological nature, beyond extraneous influences, and of insuring continuity of research and development activities in an atmosphere of stability and detachment so necessary for the fulfillment of its mission, uninterrupted by factors other than removal for cause.

Upon these considerations, there is unanimity of opinion among the members of this Court that the preventive suspension in the case of officers, although appointed by the President but with a fixed term and removable only for cause, cannot be indefinite. To some of the members, the provisions of Section 35 limiting the duration to 60 days is applicable to herein petitioner, as, in their view, it evinces a legislative policy that preventive suspension of a public officer is not lightly to be resorted to, but only after a previous serious and thorough scrutiny of the charges and that the prompt and continued hearing thereof should not be hampered, both in justice to the suspended officer who is without salary during suspension, and in the interest of public service to avoid as much as possible the interruption of the efficient functioning of the office that the suspended official holds. Other justices, however, are of the opinion that while said period may not apply strictly to cases of presidential appointee facing administrative charges to be decided by the President, the preventive suspension shall nevertheless be limited to a reasonable period, and in the circumstances of the present case, they too believe that the further suspension of herein petitioner, who has been under preventive suspension since February 18, 1962, would no longer be reasonable.

WHEREFORE, decision is hereby rendered holding petitioner Dr. Paulino J. Garcia entitled to immediate reinstatement to his position as Chairman of the National Science Development Board, without prejudice to the final outcome of the investigation of the charges against him on which no opinion is here expressed. Respondent Juan Salcedo, Jr. is hereby oredered to immediately vacate and cease to exercise the functions of the said office and to deliver the same to herein petitioner Paulino J. Garcia, No costs.

SO ORDERED.

Bengzon, C.J., Padilla, Bautista Angelo, Labrador, Concepcion, Dizon and Macalintal, JJ., concurred.

Paredes and Regala, JJ., took no part.

REYES, J.B.L., J., *concurring.*

I concur in the opinion penned by Mr. Justice Barrera, but for the main reason that in this case there has been a denial of procedural due process in so far as petitioner Garcia is concerned.

One of the elementary requisites of due process is that a case should be decided by an impartial tribunal or authority. Willoughby, in his classic on the Constitution of the United States, Vol. 3, p. 1709, enumerates the requisites of due process to be —

> "(1) that he shall have had due notice, which may be actual or constructive, of the institution of the proceedings by which his legal rights may be affected;
>
> (2) that he shall be given a reasonable opportunity to appear and defend his rights, including the right himself to testify, to produce witnesses, and to introduce relevant documents and other evidence;

1. No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law. (Art. XII, Sec. 4, Constitution of the Philippines).
2. No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law and *after due process.* (Sec. 32, Rep. Act 2260).

(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 20, 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 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 ₱5,000.00 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 ₱2,000.00 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 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 ₱1,000.00.

D E C I S I O N

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 ₱5,000.00 as moral damages; (c) the sum of ₱2,000.00 as exemplary damages; and (d) to pay the costs of the preceedings. 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 ₱480.00. On October 1, 1946, he was given a promotion in salary in the amount of ₱600.00 per annum. On November 18, 1946, he was appointed also in a temporary capacity as second class officer with a salary of ₱660.00 per annum. On January 16, 1947, he was promoted to first class traffic officer with a salary of ₱690.00 per annum. On April 1, 1947, he was promoted in salary to ₱720.-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 ₱900.00 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 ₱960.00 and ₱1,020.00 per annum respectively. On June 1, 1950, he was again promoted to first class detective with a salary of ₱1,080.00 per annum. And on July 1, 1951, his salary as permanent first class detective was increased to ₱1,320.00 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

[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).