A PURELY LOCAL AFFAIR

The law is a field of controversies. It sounds paradoxical especially if one considers that the avowed aim of the law is precisely to impose order and put an end to controversies. But it becomes comical when one learns that the law itself is often the culprit, the sole reason behind the controversy. For the question "What is the law?" does not always meet a simple and definite response and must await, frequently for long periods of time, a judicial decision. Sometimes this too fails. Reversals of decisions are not merely subjects of wishful thinking, entertained by losing counsels; they occur in reality.

One such controversy is the question of the presidential power of removal and suspension of local officials. Philippine jurisprudence reports quite a number of cases on the point, thus attesting to its controversial character. Perhaps the reason partly lies in the fact that the matter easily lends itself to heavily political coloring. For where there is power, there is expectedly a contest.

From a strictly legal and more profound viewpoint, however, the controversies, to be sure, find a legal basis. There is a certain indefiniteness in the law and also in the decisions. The pertinent law is scattered over many sources — the Constitution, the Revised Administrative Code and the various city charters. In the reading, construction, correlation and reconciliation of these, differences inevitably result. As a consequence, the precedents have failed to attain a desired stability.

The first major area of dispute on the matter concerns the nature of the presidential power of suspension and removal of local officials. There is no question that blanket powers have been granted to the Chief Executive and Section 64 (b) of the Revised Administrative Code clearly provides that the President shall have the power:

> (b) To remove officials from office conformably to law and to declare vacant the offices held by such removed officials. For disloyalty to the (United States) Republic of the Philippines, the (Governor General) President of the Philippines may at any time remove a person from any position of trust or authority under the Government of the (Philippine Islands) Philippines.

On the other hand, Section 2190, paragraph 2 of the same Code has this to say:

> If in the opinion of the board, the case is one requiring more severe discipline and in case of appeal, it shall without unnecessary delay forward to the President within eight days after the date of the decision of the provincial board certified copies of the record in the case, including the charges, the evidence and the findings of the board x x x.

Section 2191 further provides:

> Upon receiving the papers in any such proceedings, the President shall review the case without unnecessary delay and shall make such order for the reinstatement, dismissal, suspension or further suspension of the official as the facts shall warrant and shall render his final decision upon the matter within 30 days after the date on which the case was received.

The question thus arises as to whether the President can directly and immediately suspend an erring municipal officer or can he do so only in cases of appeal. Phrased more technically, is the President's power original and concurrent with the provincial board or merely appellate?

An early decision [1] of the Supreme Court asserted the original and concurrent nature of the presidential power. Taking cognizance of the Revised Administrative Code's express grant to the provincial board of disciplinary powers, it nevertheless rejected the conclusion that therefore such grant was exclusive and precluded other officers, like the Secretary of Interior from exercising a similar power. The Court reasoned out that if the President by the petitioner's own admission, possessed the power to *remove* local officials, [2] "it would be a legal incongruity if he were to be devoid of the lesser power of suspension." Continuing, it maintained that the incongruity would be even "more patent" if, possessing the power both to suspend and remove a provincial official, [3] the President were to be without the authority to suspend a lower-ranking municipal official.

Actually the big issue in the case centered more on whether or not it was proper for the Secretary of Interior to suspend by himself the petitioner, a municipal mayor. But that the President in the first instance, without awaiting action from the provincial board, had the power to suspend a municipal official, there was little doubt in the mind of the court. In fact, the impression the decision leaves on the reader is that this much was taken for

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[1] Villena v. Sec. of Interior, 67 Phil. 451 (1939).

[2] Sec. 2191, REV. ADM. CODE.

[3] Secs. 2078-82, REV. ADM. CODE.

granted.[4] The problem was whether the President had to act personally on the matter or could the Secretary do it for him, which act would then be valid unless reprobated by the Chief Executive. Ultimately the Court chose the second part of the proposition, to recognize the validity of the Secretary's act, holding that such was the necessary consequence of the presidential type of government the Constitution has elected to establish.

At any rate, the petition for the writ of prohibition was accordingly denied and the rule was thus enunciated that the President exercises original jurisdiction, concurrent with the provincial board, over municipal officials.

The rule was to stand for more than a decade as shown by the case[5] which followed fourteen years later, brought at the instance of the petitioner in the first case. In fact, in this action, the Court confined its ruling to a mere quotation of the syllabus of the earlier case.

What is worthy of note, however, in this second petition of Villena is that a different mode of procedure was followed. Here, the President, through the Executive Secretary, did not immediately and directly act on the matter. Rather after the administrative complaint was filed against the mayor, the President referred the same first to the provincial governor concerned for appropriate action. Unfortunately, the provincial officials failed to act, which impelled the complainant to draw the attention of the President to their inaction. Only then did the Acting Executive Secretary write the mayor that the President was assuming jurisdiction over the case.

It was this presidential interference that drew a sharp dissent from Justice Tuason, which was very conspicuous as no dissent was ever registered in the earlier *Villena* case. The dissent, however, while significant in view of the cases that followed, was not decisive. For it too conceded the concurrence of the President with the provincial board's jurisdiction over municipal

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[4] Apparently this is the reason why in *Hebron v. Reyes, G.R. No. L-9124, July* 28, 1958, the Supreme Court held that the nature of the President's power, whether original or appellate, was passed over "sub silentio" in this case. It seems clear, however, from the facts that the Secretary of Interior suspended the petitioner, Jose Villena, without his case first being heard by the provincial board. Also, the *Hebron* case, in what appears to be an inconsistency, duly directed the reversal or modification as the case may be of the *Villena* case which evidently would hardly be necessary if indeed the case passed over the issue "sub silentio".

[5] Villena v. Roque, 93 Phil. 363 (1953).

officials. [6] What it found disagreeable was the interference, the "taking over" from the board. Justice Tuason maintained that after the board has taken cognizance of the case, the prerogative of finishing the same attached to it as it assumed jurisdiction to the exclusion of others.

Nevertheless, Justice Tuason succeeded in opening up the way for the other view on the matter. At least, the debatable issue, which might not have been posed clearly in the earlier case, was placed in proper focus. The justice argued that the power of suspension, being drastic and penal in nature, could not be the mere subject of inference and manifestly the line of reasoning employed in the earlier *Villena* case proceeded that way. Secondly, the inference itself was not well-taken. For the powers of the President over provincial officials could be found in a chapter separate from that devoted to municipal ones. Hence, one could not validly argue from one to the other. Moreover, that a difference between the supervision of municipal and provincial officials should exist was understandable in the light of the background of Sections 2188-90. These provisions were enacted to protect municipal officers as the disciplinary powers over them had been abused in the past. Thus, the Code deemed it necessary to lay down a detailed and strict procedure. Thus viewed, it would become easy to understand why the presidential power would be appellate in their case and original in the case of provincial officials who never were victims of abuse from the national authorities. Thirdly, Justice Tuason pointed out that closer analysis revealed that the provisions [7] granting supervisory authority to the provincial officials were very minute compared to the grant to the President. [8] And well-settled had the rule been in statutory construction that between a special and general law, the former should prevail.

The other view first found expression four Philippine Reports volumes later from the case of *Villena v. Roque* [9] in *Mondano v. Silvosa*. [10] Ironically, Mondano relied on the *Villena v. Sec. of Interior* case and Section 79 (c) of the Revised Administrative Code to enjoin the board and the governor from suspending and investigating him as Mayor of Mainit, Surigao. While he won the

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[6] Justice Tuason wrote: "The most that could be said for the respondents is that the power of the President to investigate and suspend municipal officials is concurrent with that of the provincial governor or the provincial board".

[7] Secs. 2188-90, REV. ADM. CODE.

[8] Sec. 64 (b), REV. ADM. CODE.

[9] *Supra*.

[10] 97 Phil. 143 (1958).

case anyway on the ground that his suspension was not for cause as required by law, he was nevertheless overruled on this point. The Supreme Court made no explicit reversal of the *Villena* cases but what it in effect stated as the proper rule was diametrically opposed to it.

At the start, the *Mondano* ruling conceded the disciplinary powers lodged in the Department Head. But these, it maintained must be strictly confined to public officers under his command. The Court called attention to the well-established distinction in administrative law between supervision and control. Supervision means overseeing or the power or authority of an officer to see to it that his subordinates perform their duties and if they fail, to take such steps as may be necessary to compel them to do so. Control, on the other hand, wields a more effective sway. It is the power of an officer to alter, modify, nullify or set aside what a subordinate officer has done in the performance of his duties and to substitute the judgment of the former for that of the latter.

Now, while the Constitution grants the President *control* over executive departments, it grants him only *general supervision* over local governments.[11] Hence, he cannot, through the Department Head, substitute for the provincial board and governor in matters concerning the discipline of municipal officials. At most, he may take steps to make sure that they perform their duties under the law, in this case, investigation and suspension. But definitely the highest executive officer of the land can go no further. The reason is simple — otherwise he will in effect be exercising control and this runs counter to the express provision of the fundamental law.

What about Section 79 (c) then of the Revised Administrative Code which reads as follows:

> The Department Head shall have direct control, direction and supervision over all bureaus and offices under his jurisdiction and may, any provision of existing law to the contrary notwithstanding, repeal or modify the decisions of the Chiefs of said bureaus or offices when advisable in the public interest.[12]

The Supreme Court answered thus:

> If the provisions of Section 79 (c) of the Revised Administrative Code are to be construed as conferring upon the corresponding de-

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[11] Art. VII, Sec. 10, par. 1, CONST.

[12] The Department of Interior has since been abolished by Executive Order 383, series of 1950 and its powers, duties and functions transferred to the Office of the President.

> partment head direct control, direction and supervision over all local governments and for that reason he may order the investigation of an official of a local government for malfeasance in office, such interpretation would be contrary . . . to the Constitution.
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> If general supervision over all local governments is to be construed as the same power granted to the department head in Section 79 (c) of the Revised Administrative Code, then there would no longer be any distinction between the power of control and that of supervision.

With respect to Section 86 which at first blush seemed to grant powers of control to the department head, the Court opined that either the section added nothing to the powers of the President or else it had been abrogated by the Constitution. Certainly, in the light of the Constitutional grant of mere supervision, it could not be construed anymore in such a way as to place local affairs under the control of the President. In either case, the conclusion stands: the presidential power to suspend is not original but merely appellate.

The *Mondano* ruling was affirmed and with more decisiveness in the leading case of *Hebron v. Reyes,*[13] a petition for the writ of quo warranto. Hebron was then mayor of Carmona, Cavite. On May 22, 1945, he received a communication from the Office of the President, informing him of his immediate suspension in view of the filing of administrative charges against him for oppression, grave abuse of authority and serious misconduct in office. The provincial fiscal investigated the charges and submitted his report to the President. The latter, however, failed to take any action on the report and Hebron, realizing that his term was about to expire with no decision forthcoming from the President brought the matter to the Court. Reyes, the vice-mayor, had in the meantime taken over.

The *Hebron* case reiterates the distinction between control and supervision, laid down in *Mondano.* Held against the constitutional provision granting merely supervisory powers to the President insofar as local governments are concerned, the distinction snatches away from the presidential palm any original jurisdiction over municipal officials. For then he will not be merely supervising, he will be exercising control contrary to the constitutional intent.

Secondly, the Court brought out the pronouncement made in *Lacson v. Roque*[14] to the effect that the President lacks the in-

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[13] No. L-9124, July 28, 1958.

[14] 92 Phil. 456, (1953).

herent power to remove or suspend local officials. If he does have it, the *Lacson* case avers, the same must necessarily be limited to officers he has himself appointed but not elective ones. And it is to the latter group that Hebron and other local officials belong. Besides, there is again that constitutional provision to reckon with.

It was admitted, however, that under Section 64 (b) of the Revised Administrative Code, the President is empowered to remove any public official. Nevertheless, the Court pointed out, the same provision states that such disciplinary act must be exercised *conformably to law*. The general rule, said the Court, is that suspension is governed by the particular law applicable, subject to the limitations imposed by the Constitution. This rule applies with greater force to the President for he only has supervisory powers "as may be provided by law." Any ascendancy therefore that he exercises over local officials must be moored on specific provisions of statute.

Evidently, Sections 2188-91, granting disciplinary powers to the provincial board, are the provisions particularly applicable to municipal officers. In fact, it was duly noted, no other provisions spell out the procedure for the suspension of local officials in greater detail than these. It is therefore in strict conformity to these that the President must exercise his power to suspend.

Moreover, the Court went on, in the absence of a clear and express provision to the contrary, the procedure laid down in the aforementioned sections must be deemed exclusive. Manifestly relating particularly to municipal corporations they must apply in the first instance before anything else. They are, in short, mandatory.

Neither can the President deprive the provincial officials of the disciplinary powers vested in them by law. And yet this would be the effect if the President were allowed to bypass the provincial board and directly suspend local officials. Such suspension then must be illegal. The President assumes a power that is not his.

The Supreme Court also clarified Sections 79 (c) and 86 of the Revised Administrative Code. As to the latter, it quoted approvingly the *Mondano* doctrine. Section 86 [15] could not be relied upon as a ground to justify the original jurisdiction of the President. Regardless of its implications, either the section add-

[15] Section 86 provides: "The Department of Interior shall have executive supervision over the administration of provinces, *municipalities*, chartered cities and other local political subdivisions . . ."

ed nothing to the powers of the President or else it had been abrogated by the Constitution. With respect to Section 79 (c), the Court observed that it was enacted during the time of the Philippine Legislature when the Jones Law still governed. Under the Jones Law, control over local governments had been vested in the Governor-General. But this was true no longer. The Constitution was clear. Thus, said the Court, the President could not even disapprove an ordinance, the power to do so having been lodged elsewhere.

Section 79 (c) therefore, if it must stand, must be read in the light of the Constitution. Like Section 86, it cannot justify the original character of the President's power to suspend local officers.

In contrast to the *Mondano* case, *Hebron v. Reyes* announces itself as the prevailing rule:

> . . . that so much of the rule laid down in Villena vs. Sec. of Interior (67 Phil. 451) and Villena vs. Roque (No. L-6512, June 19, 1953) as may be inconsistent with the foregoing views should be deemed and are hereby reversed or modified accordingly.

The doctrine, as it now stands, therefore adheres to the appellate character of the presidential suspension; a direct suspension by the Chief Executive is contrary to law.

In *Querubin v. Castro* [16], the Supreme Court thus erases all doubts:

> When the President, without giving the provincial governor and board opportunity to investigate the administrative charges against a municipal official, announces to that official that he is assuming "directly the investigation of the administrative charges" against him, he is illegally usurping the powers conferred upon the provincial governor and board by Sections 2188-91 of the Revised Administrative Code.

Stripped of the power to suspend directly, what is left to the President? As stated in the *Hebron* case itself, all that the President can do now is investigate and take such appropriate measures to insure the performance by the provincial officials concerned of their duties under the law, in this case Section 2188-90 of the Revised Administrative Code. Said the Court:

> The executive department of the national government, in the exercise of its general supervision over local governments may conduct investigations with a view to determine whether municipal officials

[16] No. L-9779, July 31, 1958.

> are guilty of acts or omissions warranting the administrative action referred to in said sections,[17] as a means only to ascertain whether the provincial governor and the board should take such action.

The *Mondano* and *Hebron* cases, however, have a limited scope for they extend only over *municipal* officers. The rule which obtains with respect to other local officials, namely the city and the provincial is different for the simple reason that the law is also different. Thus while the President in disciplining municipal officers is limited to cases on appeal, the limitation is not found when the officer he is whipping into order is a provincial or city officer. His jurisdiction, in the latter events, is original.

The provision governing provincial officials in this regard is found in Section 2078, Revised Administrative Code which prescribes:

> *Suspension and removal of provincial officials by the President of the Philippines.* — Should the President of the Philippines have reasons to believe that any provincial official or any lieutenant-governor of a sub-province is guilty of dishonesty, disloyalty, oppression or misconduct in office, he may suspend him from the discharge of the duties of his office and after due notice to the suspended officer, shall investigate the cause of suspension and either remove him from office, or reinstate him, as the circumstances may require.

To date, however, there appears to be no case involving the provision that has reached the Court and consequently no judicial ruling on the matter is available.

The only big issue that the provision may give rise to is the question of its constitutionality. At first blush, the law seems to surrender to the President control over the provinces, contrary to the Constitution's manifest intent to limit the Executive' powers to mere supervision. Indeed this poses a debatable question but then it has to await judicial resolution.

At any rate, the argument gathered from the foregoing cases may be interposed offhand that suspension or any disciplinary power does not intrinsically denote control. On the contrary, it precisely bespeaks of supervision, of insuring that subordinates perform their duties under the law. To be sure, disciplining does not necessarily imply nullifying, altering, modifying or setting aside the judgment of a subordinate and substituting another in its stead. Hence the power of suspension granted to the President under Section 2078 of the Revised Administrative Code is not necessarily a grant of control violative of the Constitution.

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[17] Secs. 2188-91, REV. ADM. CODE.

However, the President must strictly conform to that provision. He cannot deviate from, much less act in complete indifference to, it. For then, he will be exercising control which he does not possess in the first place. But as long as he follows the law, control remains in the legislature to which it properly belongs and all the President does is enforce that body's will.

Indeed the major reason for the illegality of the suspension of Mondano and Hebron consists in the President's disregard of Sections 2188-91, the particular law which governs. Had these provisions not been in the Code, the President would have acted rightly and the suspension would have been unquestionable. But since they are very much in force, the President, possessing mere supervisory authority, must act in conformity to them.

The case for city officials brings us to *Lacson v. Roque*.[18] Arsenio Lacson, Mayor of Manila, charged Celestino Juan, Deputy Chief of Police, criminally for malversation of public property. Juan was acquitted by Judge Montesa and Lacson, vehemently disagreeing with the decision, let loose slanderous remarks against the judge in his radio program. The judge filed a criminal action for libel. As a result of these developments, the President suspended Lacson, allegedly in pursuance of the administration's policy of suspending local officials charged with any offense involving moral turpitude. Lacson in turn filed a petition for prohibition with preliminary injunction.

Presented as a core issue is the prerogative of the Executive to suspend the Mayor of Manila. Resort to the city charter, R. A. No. 409, proved fruitless for while it contained provisions for the suspension and removal of the members of the municipal board and other city officials, it was strangely silent in the case of the mayor. There was only one provision on which the Court could fall back and that was Section 9 which read: "the Mayor shall hold office for four years unless sooner removed". But who shall remove him, how and for what cause? The charter provided no answers. In view of this silence, the Court concluded that the general law would then have to govern and that would be Section 64 (b) [19] of the Revised Administrative Code. Undeniably the city mayoralty post was under the Government of the Philippines and also a position of trust and authority.

A second reason is Section 9 itself, which despite its vagueness, does provide a clue. The section contains the phrase "unless sooner removed". This, said the Court, has a set meaning in administrative law, which Congress must be presumed to have

[18] *Supra* note 14.
[19] *Ibid.*

known when it passed the charter. Legally when to the statutory specification of the term of office are added the words "unless sooner removed", it implies the power in the appointing authority to remove the holder of such office. As such, therefore, strictly speaking, it finds application only to appointive officers. But the mayor of Manila is elected. The President, therefore, has no inherent power to suspend the Manila mayor. But why then did the charter include the phrase in defining the mayor's term? It seems meaningless. To render it effective, th Supreme Court reasoned that the phrase must mean elective officials too are subject to removal. Hence, as completed, the phrase should read "unless sooner ousted as provided by other laws". The way for Section 64 (b) is open. As a final conclusion therefore, the President can suspend the mayor of Manila.

Thirdly, as the concurring opinion of Chief Justice Paras pointed out:

> It is hard and illogical to believe that while there are express legal provisions for the suspension and removal of provincial governors and municipal mayors, it could have been intended that the mayor of Manila should enjoy an over-all immunity or sacrosanct position, considering that a provincial governor or municipal mayor may fairly be considered in parity with the city mayor insofar as they are all executive heads of political subdivisions. Counsel for petitioner calls attention to the fact that the peculiarly elevated standard of the City of Manila and its populace might have prompted the lawmakers to exempt the city mayor from removal or suspension. Much can be said about the desirability of making the executive head of Manila as strong and independent as possible but there should not be any doubt that awareness of the insistence of some sort of disciplinary measures has a neutralizing and deterring influence against any tendency toward officials' misfeasance, excesses or omission.

The resolution of this issue gives rise to a second question. Section 64 (b) speaks only of *removal* but Lacson's case is one of *suspension*. Echoing *Villena v. Sec. of Interior*, the Court observed that the power of suspension is already implied in the power to remove. In fact, said the Court, the two, in the final analysis, are not too far apart, the difference being one of degree merely. Suspension is also expulsion, only it is qualified. But in the long run, their effects are the same.

As may be gathered therefore from this decision, the same general rule applies. The President's disciplinary acts must proceed from some provision of law. For he has no control; he can only supervise. In the case of cities, the charter prevails but in its deficiency, the general law applies, namely the Revised

Administrative Code. When the latter applies, the city official becomes amenable to action by the President under Section 64 (b).

Lacson v. Roque was subsequently affirmed in *Ganzon v. Kayanan*: [20]

> At the outset, it should be stated that petitioner is the duly elected mayor of the City of Iloilo whose charter speaking of his removal merely provides that he "shall hold office for six years unless removed" (Sec. 8, C.A. No. 158, as amended). The charter does not contain any provision as regards the procedure by which he may be removed. Nevertheless as this court has once said:
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> > the rights, duties and privileges of municipal officers (including city officials) do not have to be embodied in the charter, but may be regulated by provisions of general application specially if these are incorporated in the same code of which the city organic law forms part (Lacson vs. Roque 49 O.G. No. 1, pp. 93, 97).
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> The Code herein referred is the Revised Administration (sic) Code.

A second major area of dispute concerns the reason for the presidential action over the discipline of local officials. For, granted that the President undeniably possesses powers of suspension and removal, appellate in the case of municipal officials and original as regards provincial and city officials, it does not necessarily follow that he can exercise these powers arbitrarily. There must be a cause, in the legal sense of the term. Cause, as legally defined, excludes the pleasure of the appointing power. As laid down in *Lacson v. Roque*: *For cause x x x has been universally accepted to mean for reasons which the law and sound public policy recognize as sufficient ground for removal, that is, legal causes, and not mere cause which the appointing power in the exercise of discretion may deem sufficient.*

On the other hand, it may legitimately be wondered about whether or not there are instances when the presidential action may be based solely on his discretion. And in those instances when the suspension or removal must be for cause, what would constitute legal cause?

With respect to municipal officials, the rule clearly announces that they can be suspended or removed only for cause. The law is specific on the point and as indicated earlier, the President cannot depart from the statute which grounds his power. Besides, the contrary view would certainly contravene the constitutional provision which precludes from the Chief Executive the power

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[20] G.R. No. L-136, August 30, 1958.

of control over local governments. Doubtless, a suspension based on his mere discretion is control. Limited to cause provided by law, it remains supervision.

Section 2188 of the Revised Administrative Code enumerates only four causes under which municipal officials may be held subject to disciplinary measures, to wit: neglect of duty, oppression, corruption or other forms of maladministration of office and conviction by final judgment of any crime involving moral turpitude. The cases clarify the meaning of these terms. Their construction, however, as directed by *Lacson v. Roque*, is always guided by the maxim that suspension and removal are drastic measures and in *Cornejo v. Naval*[21] even penal in nature. As such they are construed *in strictissime juris*.

The case of *Mondano v. Silvosa* is particularly illustrative. Here Mondano, mayor of Mainit, Surigao, was charged with rape and concubinage before the Presidential Complaints and Action Committee. Upon the strength of this complaint, the provincial board suspended him. The argument that won the case for him precisely was that his suspension was not for cause. The first issue he raised, based on *Villena v. Sec. of Interior*, that it should be the President, not the board, who should suspend him, was denied. But on the second issue, the Court sustained him because, observed the Court, neither rape nor concubinage could be found mentioned in Section 2188. If at all Mondano could be suspended legally, it would be under the fourth ground, *viz* conviction by final judgment of any crime involving moral turpitude. But then this cause required conviction and Mondano, on the date of his suspension, had not yet been tried, much less convicted by final judgment.

In this regard, in the light of the *Mondano* ruling which limits the causes for suspension to the four cited in Section 2188, the case of *Villena v. Roque* appears strange. This case came after the *Lacson v. Roque* decision and was being relied on by Villena.

As was pointed out earlier, the reason for Lacson's suspension was the criminal charge for libel filed against him. He was not yet convicted at the time of his suspension. On the other hand, in *Villena vs. Roque*, the Makati mayor was suspended on account of his criminal conviction by final judgment of falsification of public documents in connection with the Makati-Mandaluyong ferry lease.

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[21] 54 Phil. 809 (1930).

[22] 43 Am. Jur. 39.

The Court ruled that Villena's reliance on the *Lacson* case was erroneous. The case was not in point and it gave the following reasons.

In the first place, while Lacson has been merely indicted, Villena has already been convicted by final judgment. Secondly, Lacson was being accused of libel which, said the Court, did not constitute any of the grounds provided by law for suspension. It was not misconduct in office within the legal meaning of the phrase because this requires that the wrongful act bear an essential relation to the performance of the official's duties. In other words, to constitute misconduct in office, the misdemeanor should be such that it would not have been possible for the officer to commit it had he not been in office. His public position must be an element of the offense. Obviously, a person would be able to commit libel regardless of whether or not he is a mayor. Hence, Lacson's ouster was not for cause and consequently illegal.

On the other hand, Villena's misconduct consisted in the falsification of public documents, which he was able to commit precisely in his capacity as Mayor of Makati. This, said the court, was, legally speaking, misconduct in office. Therefore, his suspension, unlike Lacson's, was for cause.

What is striking here is that while *misconduct in office* can be found as one of the grounds provided by law for the suspension of provincial officials, it is not so found in Section 2188 which exclusively governs municipal officials. It seems therefore that the protracted distinction between what Lacson and Villena did is useless. Villena was a municipal mayor and surely that would have been sufficient to settle the issue. But the Court had to go on. Closely analyzed, Villena's suspension was not really for misconduct in office. It was either for conviction by final judgment of a crime involving moral turpitude or for maladministration of office. How the Court justified it on the ground of misconduct in office is to say the least mystifying. Perhaps it is because in that case, the Court still clung to the idea that the President had original jurisdiction to suspend municipal officers, based on the non-exclusive character of the application of Section 2188. At any rate, the ruling of *Villena v. Roque* has been undisturbed.

An interesting situation arises in cases of municipalities newly created by Executive Order.[23] A string of cases, however, has sufficiently disposed of the problems involved and the standing rule leaves no more doubts.

[23] With the promulgation of *Pelaez v. Auditor-General*, G.R. No. L-23825, Dec. 28, 1965, and Sec. 20 of R.A. No. 5185 or the Decentralization Act of 1967, this can no longer be done.

The rule was first promulgated in the case of *Cometa v. Andanar* [24] in 1954. On October 1, 1953, the President, by executive order, created the municipality of Sapao in Surigao and named Cometa mayor thereof. On February 8, 1954, for no apparent reason, the President removed Cometa by designating Andanar to the same post. Cometa sued for a writ of quo warranto.

The issue pivoted around the interpretation of section 10, R. A. No. 180 which provided:

> When a new political subdivision is created the inhabitants of which are entitled to participate in the elections, the elective officers thereof shall, unless otherwise provided, be chosen at the next regular election. In the interim such offices shall, in the discretion of the President, be filled by appointment by him or by a special election which he may order.

Andanar construed this as saying that the appointments are discretionary, temporary, without a fixed term and therefore at the pleasure of the appointing power. The Supreme Court, however, disagreed. The *ad interim* appointees, it held, are not temporary appointees nor are they appointed in an acting capacity but permanently until their successors are chosen at the next regular elections.

As to Andanar's contention that Cometa's appointment was not for a fixed term and was therefore terminable at the pleasure of the appointing power, the Supreme Court cited Section 7 of the aforementioned act which read:

> The officers x x x shall hold such office for four years and until their successors shall have been duly elected and qualified.

Being a permanent appointee and having a fixed term, Cometa can be removed only for cause or when his successor shall have been chosen at the next regular elections. Hence, Andanar who was but another appointee and not chosen at the next regular elections, has no claim to the office.

The *Cometa* case was affirmed in three more cases which shortly followed it — *Ocupe v. Martinez*, [25] *Lanzar v. Brandares* [26] and *Go Pace, Sr. v. Sacedon*. [27] Indeed the three were exactly on the same footing as the *Cometa* case; the only difference lay in the identities of the parties and the municipalities concerned. Hence, in the *Ocupe* case, the Court simply remarked:

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[24] 50 O.G. 3594, (1954).
[25] No. L-7591, August 10, 1954
[26] No. L-8305, March 18, 1955.
[27] No. L-8304, March 29, 1955.

> This is exactly similar to a case decided by this Court where it was held that the designation or appointment of respondent to replace the petitioner who by such designation and appointment had been removed from office without cause was unauthorized. There the petitioner was entitled under the law to hold the office of mayor, unless removed for cause, until the next general elections shall have been held and the people have chosen their mayor.

In the *Lanzar* case, it is interesting to note that counsel readily admitted the difficulty he faced in the light of the *Cometa* and *Ocupe* cases. Thus, he presented no new arguments but simply requested the Court to re-examine the rulings laid down in those cases. The Court acceded to the request but found no cogent reason to change them.

The rule thus stands that the protective mantle that covers ordinary municipal officials extend to those of newly created municipalities. True, they are appointed by the President but once appointed, the President's control over them ceases and he can remove them only for cause. They have fixed terms and without legal cause, they are entitled to remain in office until their successors shall have been chosen at the next regular elections.

In the case of provincial officials, again no judicial ruling can be found. But following the general rule that the President must strictly follow the governing law in his exercise of the powers he wields over local governments, provincial officials too must be removable only for cause. The causes are enumerated in Section 2078 of the Revised Administrative Code — dishonesty, disloyalty, oppression or misconduct in office.

A more spirited contest occurred in connection with city officials which began in the case of *Lacson v. Roque.*[28] It will be remembered that Lacson was criminally charged with libel in the Court of First Instance by an offended judge, as a consequence of which he was suspended. Lacson challenged not only the authority of the President to suspend him but also the validity of the same, assuming the President was legally authorized.

While Lacson lost on the first issue, he won on the second. For the Court ruled that as the President possessed no sweeping authority to remove local officers but on the contrary, his power was limited to that which *"may be provided by law"*, to use the constitutional phrase, any suspension or removal ordered by him must be for cause and in the manner prescribed by law and procedure. It was here where the Court categorically explicitated

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[28] *Supra.*

the standard that must guide the construction of laws governing the dismissal of local officials. These laws must be strictly construed for a remedy by removal is a drastic one and even penal in nature. This reason applies with stronger force when enforced against elective officials.

A more compelling reason, however, why the Mayor of Manila can not be removed except for cause is his fixed term according to Section 9 of the charter. Said the Court:

> An inferential authority to remove at pleasure cannot be declared since the existence of a defined term, *ipso facto* negatives such an inference and implies a contrary presumption, i.e. that the incumbent shall hold office to the end of his term subject to removal for cause (State ex rel. Gallagher vs. Brown, 57 Mo. Ap., 302 expressly adopted by the Supreme Court in State ex rel. vs. Marney, 191 Mo. 548). It is only in those cases in which the office is held at the pleasure of the appointing power and where the power of removal is exercisable at its mere discretion that the officer may be removed without notice of hearing.

As may be seen, this follows the line enunciated in the *Cometa* case. A fixed term places a protective fold around an official's tenure.

It was quickly decided that Lacson's dismissal was not for cause. Actually the debate centered more around another issue—which provision should be used in determining whether the dismissal of a city official was for cause or not, Section 2087 or Section 64 (b). The significance of this lies in the fact that while Section 2078 enumerates four causes, Section 64 (b) names only one, disloyalty. The majority opinion adhered to Section 64 (b) contending that this was the law applicable in view of the charter's silence and the law must be strictly construed. Besides, it cited the principle of *expressio unius est exclusio alterius*. Three justices insisted that a city mayor was on the same level as a provincial governor and that therefore, based on the analogy, Section 2078 must govern.

This question was not decisively settled in the case, perhaps because no matter which view one took the reason behind Lacson's suspension — a complaint for libel — did not fall under any of those enumerated by the two provisions. The dissenting opinion was precisely complaining that the decision penned by the majority suffered from a certain ambivalence on the matter, upholding one view and in the same breath sustaining the other.

It was in the subsequent case of *Ganzon v. Kayanan* that the question received final resolution. The Court implicitly re-

versed the *Lacson* ruling and upheld the dissent. Section 2078 should apply. The city mayor might be removed upon any of the four causes therein mentioned. The Court did not elaborate on its reasons but merely quoted Chief Justice Paras' concurring opinion in the Lacson case that a provincial governor might fairly be considered in parity with the city mayor insofar as they are *executive heads of political subdivisions.* To date, this is the prevailing rule.

The other ruling of the *Lacson* case, however, stood. The fixed term of local officials subjected them to removal only for cause. Six months after Lacson, in the case of *Jover v. Borra* [29] the Supreme Court found occasion to affirm this, in relation to the mayoralty post of Iloilo City.

Jover was then the appointed Mayor of Iloilo City. Later, he received a telegram from the Office of the President, informing him of his relief and the appointment of Borra in his stead. Jover filed quo warranto proceedings, and the Court disposed of the case with dispatch, granting the writ, pursuant to the *Lacson* case. The removal by the President should be for cause. In arriving at this conclusion, however, the Court laid stress on the fact that the city charter involved, C. A. No. 158, as amended by R. A. No. 276, fixed the term of the mayor, unlike other charters which made the term of office of the mayor dependent upon the pleasure of the appointing power.

It will be noted that in these cases great reliance was placed on the charter. This proves significant in a subsequent case. Implicit in the *Lacson* and *Jover* cases is the idea that much depends on the way the charter is worded. A different phraseology will result in a different ruling.

The striking illustration of this comes in *Alba v. Evangelista* [30] concerning the office of the Vice-Mayor of Roxas City. Alba, the first appointee has been replaced by Alajar, a second presidential appointee.

Consultation with the charter showed that ". . . the Vice-Mayor shall be appointed by the President of the Philippines with the consent of the Commission on Appointments and *shall hold office at the pleasure of the President.*" [31] In what appeared to be a mere play of words, the Supreme Court upheld the

[29] 93 Phil. 586 (1953).
[30] No. L-10360, January 17, 1957.
[31] Section 8, R. A. No. 603.

validity of Alba's ouster, holding that in reality it was not a removal. For the meaning of the key words, *shall hold office at the pleasure of the President* was precisely that — the term consists in the pleasure of the President and endures only for as long as the President pleases. In brief, the term of office in this case coincides with the pleasure of the President. The moment he is displeased which can be manifested by a new appointment, the tenure of the replaced official expires. Hence it is not a case of removal, requiring legal cause for its validity but an expiration of term. Is this constitutional? Yes, said the Court; Congress has the power to pass such a law.

That this now constitutes precedent is shown in the case of *Paragas v. Bernal* [32] where the Court found that Section 19 of the charter of Dagupan City (R.A. No. 170) provides that the Chief of Police "holds office at the pleasure of the President".

With this, the Court unhesitatingly applied the *Alba* case and while the issue regarding the midnight appointments was raised, Paragas, being a midnight appointee of President Garcia and actually believed by the Executive Secretary as ousted by the Administrative Order No. 2 of President Macapagal, the Court no longer ruled on the same.

The *Alba* and *Paragas* cases, however, must be considered carefully and always in the light of the particular words the governing charters particularly employed. For again, as if to show the importance of legal phraseology, there are the cases of *Fernandez v. Ledesma* [33] and *Libarnes v. Hon. Executive Secretary.* [34]

In the *Fernandez* case, the *ad interim* Chief of Police of Basilan City was summarily replaced. The charter had this to say on the matter:

> The President shall appoint, with the consent of the Commission on Appointments, the municipal judge, and auxiliary municipal judge, the city engineer and other chiefs of departments of the city which may be created from time to time and *the President may remove at his discretion any of the said appointive officials with the exception of the municipal judge who may be removed only according to law.* (Emphasis supplied).

On the basis of this provision, the Court deemed the Alba case applicable. Clearly, the chief of police was holding office at the pleasure of the President who was therefore free to remove

[32] No. L-22044, May 19, 1966.
[33] No. L-18878, March 30, 1963.
[34] No. L-21505, October 24, 1963.

him without cause. In the first place, the charter was explicit: "the President may remove at his discretion." Secondly, as if to emphasize that, the last part gave a distinctive privilege to the municipal judge who "may be removed only according to law", implying that the others could be removed without cause. Thirdly, the chief of police had no fixed term and therefore *Lacson v. Roque* could not apply.

The *Libarnes* case involved another chief of police this time of Zamboanga City, again removed by presidential decree which appointed a replacement. Strikingly, while the charter was on par with the charter of Basilan, the *Libarnes* case departed from that of Fernandez's and also that of *Alba's*. The reason lay in the passage of R.A. No. 2259 before the *Libarnes* case arose on June 19, 1959.[35] In fact had Fernandez's case happened a few months later, its outcome would have been different.

R. A. No. 2259 provides in Section 5:

> The incumbent appointive city mayors, vice-mayors and councilors unless sooner removed or suspended shall continue in office until their successors shall have been elected in the next general elections x x x. *All other city officials now appointed by the President of the Philippines may not be removed from office except for cause.* (Underscoring supplied).

And in Section 9, the act repeals "all acts or parts of acts x x x" inconsistent with it.

Neither can the *Alba* case control, said the Court; the argument that Libarnes was not being removed but that his office merely expired cannot prosper. For the Zamboanga City charter does not use the words "hold office at the pleasure of the President" but "the President may remove at pleasure". This is now denied the President by R.A. No. 2259.

From the foregoing, the following conclusions may be gathered. Officials holding office for a fixed term, while subject to disciplinary action by the President, may be removed or suspended only for cause. If however they hold office at the pleasure of the President, they may be replaced without cause for such will not really be a dismissal but an expiration of their terms which necessitates no cause. If they are subject to removal at the pleasure of the President and their separation took place before R.A. No. 2259 they may be removed without cause. After R.A. No. 2259, such official may no longer be so removed. His removal must be for cause.

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[35] Libarnes' case arose on May 23, 1963, Fernandez's on April 28, 1959.

In connection with Section 3545 of the Revised Administrative Code, Chapter 61, entitled "City of Baguio", which authorizes the President "to remove at pleasure" any of the officers enumerated therein, the Court has ruled that the provision must be read with Section 4, Article XII of the Constitution in view. The constitutional provision reads:

> No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law.

If the city post is covered by the Civil Service, such as the city engineer, such authority granted by Section 2545 is deemed abrogated by the Constitution and therefore, the official concerned may be ousted only for cause.[36] At present, there is also R.A. No. 2259 to consider.

All these then, taken together constitute the present status of the controversy with respect to the presidential power of suspension and removal of local officers. To be sure, it has been a complicated dispute, branching out into many directions and involving numerous points of law. To be sure again, it cannot be averred that the controversy has completely ceased. Doubtless in the not so distant future, parties will be trooping to court, bringing out new facets, new arguments and new jurisprudence. But then perhaps that is precisely why the law stirs up these controversies. The law is the product of men, living men who can continue to survive only in the process of a dialectics.

JOSE MARIO C. BUÑAG

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[36] De los Santos v. Mallare, 48 O.G. 1787 (1950).

MIDNIGHT APPOINTMENTS IN THE LIGHT OF DAY

In the short span of a little over four years, the Supreme Court of the Philippines passed two important resolutions disposing of controversies involving what are popularly known as "midnight" appointments. The first resolution, which was adapted without prejudice to the promulgation of a more extended opinion (which never came), denied the petition of Mr. Dominador Aytona to prohibit Mr. Andres Castillo from holding the office of Governor of the Central Bank.[1] The second resolution, made on February 16, 1966 and explained in a later decision penned by Justice Felix Bautista Angelo, dismissed the petition for *quo warranto* filed by Mr. Onofre Guevara against Mr. Raoul Inocentes.[2] In both cases, the main problem faced by the Court was how to dispose of the appointments made by the out-going president at the end of his term and uphold the right of the new president to make appointments of his own choice. Today the issues discussed in those resolutions no longer excite passions; it is now safe to take a second look at them with a view to examining the rulings and their contribution to Philippine jurisprudence.

The two controversies had parallel beginnings. In the first case, Mr. Dominador Aytona claimed to be entitled to the office of Governor of the Central Bank because, upon being appointed thereto by President Carlos Garcia, he took his oath of office on December 29, 1961, three days before Mr. Andres Castillo was appointed to and qualified for the same office on January 1, 1962. Mr. Onofre Guevara, in the second controversy, challenged the right of Mr. Raoul Inocentes to hold the office of Undersecretary of Labor because he (Guevara) claimed to be the legal holder thereof since he was appointed to that office on November 18, 1965, and he took his oath on November 25 of the same year. Mr. Raoul Inocentes, on the other hand, was appointed to the same office only on January 23, 1966 by the new president, Ferdinand Marcos. It is clear that both the appointment of Aytona and the appointment of Guevara were made by the outgoing presidents after they had lost their bids for re-election and towards the end of their respective terms. Understandably, both appointments were not welcomed by the in-coming presidents.

From this point, however, the two controversies began to part ways. In the face of Aytona's appointment, which was

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[1] Aytona v. Castillo, G.R. No. L-19313, January 20, 1962.

[2] Guevara v. Inocentes, G.R. No. L-25577, March 16, 1966.