SUPREME COURT
EN BANC

ARTURO B. PASCUAL,
***Petitioner-Appellant*,**

-versus-

G.R. No. L-11959
October 31, 1959

HON. PROVINCIAL BOARD OF NUEVA ECIJA,
***Respondent-Appellee*.**
x----------x

D E C I S I O N

GUTIERREZ DAVID, *J.*:

We are asked in this Appeal to revoke an Order of the Court of First Instance of Nueva Ecija denying appellant's petition for a writ of prohibition with preliminary injunction.

Petitioner-appellant Arturo B. Pascual had been elected mayor of San Jose, Nueva Ecija, in November 1951 and reelected in 1955. On October 6, 1956, the Acting Provincial Governor of that province filed with the Provincial Board three administrative charges against the said appellant. Charge III was for "Maladministrative, Abuse of Authority, and Usurpation of Judicial Functions," committed as follows:

"Specification I — That on or about the 18th and 20th day of December, 1954, in the municipality of San Jose, Nueva Ecija, the above-named respondent, being municipal mayor of San Jose, Nueva Ecija, and while the justice of the peace of the said municipality was present therein, did then and there willfully, feloniously, criminally, without legal authority, and with grave abuse of authority, assumed and usurped the judicial powers of the said justice of the peace by accepting the criminal complaint filed in Criminal Case No. 3556, of the said court, conducting the preliminary investigation thereof, fixing the bail bond of P6,000.00, and issuing the corresponding warrant of arrest; and after the accused in the said criminal case had been arrested, while the justice of the peace was in his office in San Jose, Nueva Ecija, the herein respondent, in defiance of the express refusal by the justice of the peace to reduce the bail bond of the accused in Criminal Case No. 1556, acted on the motion to reduce bail and did reduce the bail bond to P3,000.00.

After the presentation of evidence regarding the first two charges, petitioner-appellant filed with the respondent-appellee, the Provincial Board, a motion to dismiss the third charge above referred to, on the main ground that the wrongful acts therein alleged had been committed during his previous term of office and could not constitute a ground for disciplining him during his second term. Upon opposition filed by a special counsel for the respondent-appellee, the motion to dismiss was denied by resolution of the Board.

After the denial of a motion for reconsideration of that resolution, the appellant filed with this Court a petition for a writ of prohibition with preliminary injunction (G. R. No. L-11730), to enjoin the Provincial Board of Nueva Ecija from taking cognizance of the third charge, but the petition was denied by minute resolution of December 21, 1956 "without prejudice to action, if any, in the Court of First Instance." Accordingly, the petitioner-appellant filed with the Court of First Instance of Nueva Ecija a petition for prohibition with preliminary injunction seeking to inhibit the said Provincial

Board from proceeding with the hearing of Charge No. III, for lack of jurisdiction.

Instead of filing an answer, the respondent-appellee moved for the dismissal of the case on the ground that it states no cause of action because the petitioner-appellant had not complied with the cardinal principle of exhaustion of administrative remedies before he could appeal to the courts, and because the Provincial Board had jurisdiction over Charge No. III. After responsive pleadings had been filed by both parties, the court below issued an order dismissing the petition "for being premature", for the reason that the petitioner had not first appealed to the Executive Secretary. From that order, the case was brought before us on appeal. Upon urgent petition, a writ of preliminary injunction was issued restraining the respondent-appellee from investigating petitioner-appellant on the charge abovementioned.

In his brief, petitioner-appellant claims that the court below erred: (1) in not holding that the alleged usurpation of judicial functions in December 1954 is not a legal ground for disciplining the appellant during his second term of office after a reelection, and in not holding that the respondent patently has no authority or jurisdiction to take cognizance of Charge No. 3; (2) in holding that the petition for prohibition is premature and that the appellant must first exhaust all administrative remedies available to him under the Revised Administrative Code; and (3) in dismissing the petition for prohibition.

The first question posed is whether or not it was legally proper for petitioner-appellant to have come to court without first bringing his case to the Executive Secretary for review. True it is that, in this jurisdiction, the settled rule is that where the law has delineated the procedure by which administrative appeal or remedy could be effected, the same should be followed before recourse to judicial action can be initiated (Ang Tuan Kai vs. Import Control Commission, 91 Phil., 143; Coloso vs. Board, 92 Phil., 938; Miguel vs. Reyes, 93 Phil., 542, and several other cases), but we believe that this rule is not without exceptions, as

> in a case like the present, where the only question to be settled in the prohibition proceedings is a purely legal one — whether or not a municipal mayor may be subjected to an administrative investigation of a charge based on misconduct allegedly committed by him during his prior term.
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> "The rule is inapplicable where no administrative remedy is provided. Likewise, the rule will be relaxed where there is grave doubt as to the availability of the administrative remedy; where the question in dispute is purely a legal one, and nothing of an administrative nature is to be or can be done; where although there are steps to be taken, they are, under the admitted facts, merely matters of form, and the administrative process, as a process of judgment, is really over; or where the administrative remedy is not exclusive but merely cumulative or concurrent to a judicial remedy. A litigant need not proceed with optional administrative process before seeking judicial relief." (73 C.J.S. p. 354) (Emphasis ours)

On the above authority, we are inclined to agree with the petitioner-appellant that his bringing the case to court is not a violation of, but merely an exception to, the cardinal rule above referred to.

In a case (Mondano vs. Silvosa[*] 51 Off. Gaz., [6], p. 2884), this Court granted a writ of prohibition against the provincial board of Capiz, notwithstanding the fact that the petitioner therein did not appeal to the Executive Secretary, the only question therein involved being whether or not the charged filed against the municipal mayor of Calibo, Capiz, constituted any one of the grounds for suspension or removal provided for in sec. 2188 of the Revised Administrative Code.

We now come to the main issue of the controversy - the legality of disciplining an elective municipal official for a wrongful act committed by him during his immediately preceding term of office.

In the absence of any precedent in this jurisdiction, we have resorted to American authorities. We found that cases on the matter are conflicting due in part, probably, to differences in statutes and constitutional provisions, and also, in part, to a divergence of views with respect to the question of whether the subsequent election or

appointment condones the prior misconduct. The weight of authority, however, seems to incline to the rule denying the right to remove one from office because of misconduct during a prior term, to which we fully subscribe.

> "Offenses committed, or acts done, during previous term are generally held not to furnish cause for removal and this is especially true where the constitution provides that the penalty in proceedings for removal shall not extend beyond the removal from office, and disqualification from holding office for the term for which the officer was elected or appointed." (67 C.J.S. p. 248, citing Rice vs. State, 161 S.W. 2d. 401; Montgomery vs. Nowell, 40 S.W. 2d. 418; People ex rel. Bagshaw vs. Thompson, 130 P. 2d. 237; Board of Com'rs of Kingfisher County vs. Shutler, 281 P. 222; State vs. Blake, 280 P. 388; In re Fudula, 147 A. 67; State vs. Ward, 43 S.W. 2d. 217).

The underlying theory is that each term is separate from other terms, and that the reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor (43 Am. Jur. p. 45, citing Atty. Gen. vs. Hasty, 184 Ala. 121, 63 So. 559, 50 L.R.A. (NS) 553. As held in Conant vs. Brogan (1887) 6 N.Y.S.R. 332, cited in 17 A.I.R. 281, 63 So. 559, 50 LRA (NS) 553 —

> "The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. When the people have elected a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the court, by reason of such faults or misconduct to practically overrule the will of the people."

In view of the foregoing, the order appealed from is hereby revoked; the writ of prohibition prayed for is hereby granted and the preliminary injunction heretofore issued made permanent. Without special pronouncement as to costs.

Paras, *C.J.*, Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Reyes, Endencia and Barrera, *JJ.*, concur.

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[*] 97 Phil., 143.
