Supreme Court E-Library

It is true that the probationary status does not exceed six months but under the peculiar circumstances of this case Evelyn's probationary or temporary status was extended for one month due to the investigation. This may well be considered an exceptional case. Evelyn is not the kind of employee who can invoke security of tenure.

WHEREFORE, I vote to reverse the resolution of the National Labor Relations Commission and to dismiss the complaint for reinstatement of Evelyn Elona-Fernando.

EN BANC

[G.R. No. 59343. April 24, 1985]

CARLOS C. PONTAWE and LOUIE P. LOPEZ, *petitioners*, *vs.* COMMISSION ON ELECTIONS, ROSARIO T. CABANGON and ALFREDO B. FLORES, *respondents.*

[G.R. No. 61497. April 24, 1985]

FEDERICO C. PONTAWE, *petitioner*, *vs.* COMMISSION ON ELECTIONS, ROSARIO T. CABANGON and CARLOS C. PONTAWE, *respondents.*

SYLLABUS

1. **CONSTITUTIONAL LAW; ELECTIONS; 1978 ELECTION CODE; SUBSTITUTION OF DISQUALIFIED CANDIDATES; DISQUALIFICATION IMMEDIATELY EXECUTORY.**— Section 28 of the 1978 Election Code allows the substitution of candidates who may have been disqualified after the last day for filing the certificates of candidacy. The substitution may be on or before mid-day of the day of the election. A substitute is one who takes the place of another who is no longer a candidate, otherwise the former would be an additional, not a substitute candidate. And, if the disqualification is not immediately executory, there would be no need of nominating a substitute. Having been disqualified before election

Supreme Court E-Library

day, the votes "Pontawe" and "Lopez" could not be counted for Federico and Wilfredo, but should be credited as they were by the Municipal Board of canvassers in favor of Carlos and Louie.

2. **ID.; ID.; ID.; ORDER OF CANCELLATION OF CERTIFICATE OF CANDIDACY, IMMEDIATELY EXECUTORY.**— It will be noted that the second paragraph of paragraph 3 of Section 186 provides that the decision, order or ruling of the Commission cancelling a certificate of candidacy *shall be immediately executory*. In the case at bar, the order of disqualification by the COMELEC took place before the elections. The fact that it occurred sooner or before the proclamation would not matter. What matters is, a disqualification was ordered and, as a consequence, a substitution was in order.

3. **ID.; ID.; BINDING COMELEC RULING; PROPER OBJECT OF APPEAL BY CERTIORARI.**— The fact that Federico Pontawe and Wilfredo Lopez filed a Petition for Certiorari (G.R. No. 52433) with this Court questioning their disqualification by the COMELEC does not mean that the COMELEC ruling was not immediately executory. It is their right to ask for a review of a COMELEC ruling as provided for by the Constitution, Section 11, Article XII thereof. The question remains not as to whether the COMELEC ruling was appealable, but whether it was already effective and binding on election day. The facts and law in the case at bar would indicate that it was.

PLANA, *J., dissenting:*

CONSTITUTIONAL LAW; ELECTIONS; ELECTION CODE; AMENDMENT OF PROVISION ON SUBSTITUTION OF CANDIDATES; IMPERATIVE.— The instant case vividly illustrates a notable defect of the Election Code. Be it noted that substitute candidates Carlos Pontawe and Louie Lopez filed their certificates of candidacy just one day before the election. Under the circumstances, there was hardly any chance for the voters to know that they have substituted Federico Pontawe and Wilfredo Lopez. Indeed, right on election day, the COMELEC Registrar of Sta. Barbara, Pangasinan, did not know if Federico Pontawe and Wilfredo Lopez were still candidates

Supreme Court E-Library

or had been replaced. He had to verify from COMELEC. Now, if by the application of the rules prescribed in the Election Code for the appreciation of ballots, the votes cast for PONTAWE only or for the Nacionalista Party candidates, or even votes cast for F. PONTAWE would be counted in favor of the substitute candidates (Section 155 paragraphs 1, 8, 9 and 26), the Election Law would become an unholy instrument for foisting upon the public an electoral fraud. This underscores the need to amend the Election Code with reference to substitute candidates so as to avoid what practically amounts to an electoral fraud. A substitute candidate bearing the same name as the substituted candidate ought to be barred or, if allowed to be a candidate, he should be governed by a different set of rules for the appreciation of ballots.

APPEARANCES OF COUNSEL

Julian U. Vera for petitioners in 59343.

Juan A. Primicias for petitioner in 61497.

Abelardo Fermin for private respondents in 59343 & 61497.

DECISION

RELOVA, *J.:*

Federico Pontawe and Wilfredo Lopez were the candidates for the positions of Mayor and Member of the Sangguniang Bayan, respectively, of the Nacionalista Party (NP) during the elections of January 30, 1980 in Sta. Barbara, Pangasinan. On the other hand, Rosario T. Cabangon and Alfredo Flores were the candidates for Mayor and Member of the Sangguniang Bayan, respectively, of the Kilusang Bagong Lipunan (KBL). On January 24, 1980, the Commission on Elections (COMELEC) disqualified Federico Pontawe and Wilfredo Lopez on the ground of turncoatism in PDC Case No. 42.

The Nacionalista Party, on January 29, 1980, upon receipt of the notice by the COMELEC of said disqualification, nominated Carlos Pontawe, son of the disqualified Federico Pontawe, and Louie Lopez, to substitute for Federico Pontawe and Wilfredo Lopez, respectively. On the same day, January 29,

Supreme Court E-Library

1980, disqualified candidates Federico Pontawe and Wilfredo Lopez filed a Petition for Certiorari with this Court to annul the resolution of the COMELEC ordering their disqualification. The petition was docketed as G.R. No. 52433. However, upon separate manifestations of Federico Pontawe and Wilfredo Lopez that they were abandoning their appeal, this Court, on April 24, 1980 and June 10, 1980, dismissed G.R. No. 52433.

On January 31, 1980, Carlos Pontawe and Louie Lopez were proclaimed by the Municipal Board of Canvassers of Sta. Barbara, Pangasinan as the duly elected Municipal Mayor and Member of the Sangguniang Bayan, respectively. As a consequence, on February 11, 1980, Rosario Cabangon and three other KBL candidates who lost in the elections filed an election protest against Carlos Pontawe, Louie Lopez and two others in the then Court of First Instance of Pangasinan (Dagupan City).

On February 2, 1981, the lower court declared the election of Carlos Pontawe and Louie Lopez as null and void and proclaimed Rosario Cabangon and Alfredo Flores as duly elected Mayor and Member of the Sangguniang Bayan, respectively.

On November 3, 1981, the COMELEC affirmed the decision of the trial court. This decision of the COMELEC is the subject of the petition for certiorari in G.R. No. 59343. The petition was given due course and the parties have filed their respective memoranda. In the meantime, Carlos Pontawe and Louie Lopez were allowed to continue in their respective positions as Mayor and Member of the Sangguniang Bayan pending the final determination of this case.

On August 6, 1982, Federico Pontawe filed another petition for certiorari, docketed in this Court as G.R. No. 61497, against the COMELEC, Rosario Cabangon and Carlos Pontawe, questioning the refusal of the COMELEC to allow him to intervene in the electoral protest filed by Rosario Cabangon and Alfredo Flores against Carlos Pontawe and Louie Lopez. In Our resolution of August 31, 1982, We ordered the consolidation of G.R. No. 61497 and G.R. No. 59343 inasmuch as they involve the

Supreme Court E-Library

issue as to who were the duly elected Mayor and Member of the Sangguniang Bayan of Sta. Barbara, Pangasinan in the elections of January 30, 1980.

Section 28 of the 1978 Election Code provides:

"SEC. 28. *Candidates in case of death, withdrawal or disqualification of another.*— If, after the last day for filing certificates of candidacy, a candidate with a certificate of candidacy duly filed should die, withdraw or be disqualified for any cause, any voter qualified for the office may file his certificate of candidacy for the office for which the deceased, the candidate who has withdrawn, or disqualified person was a candidate in accordance with the preceding sections on or before mid-day of the day of the election, and if the death, withdrawal or disqualification should occur between the day before the election and the mid-day of election day, said certificate may be filed with any election committee in the political subdivision where he is a candidate: *Provided, however,* That if the candidate who died, withdrew or was disqualified is the official candidate of a political party, group or aggrupation, only a person belonging to, and certified by, the same political party, group or aggrupation may file a certificate of candidacy for the same office."

Carlos Pontawe and Louie Lopez were nominated as substitute candidates in lieu of Federico Pontawe and Wilfredo Lopez whose disqualification were decreed by the COMELEC on January 24, 1980. The substitution was made on January 29, 1980, or the day before the election, by the Nacionalista Party to which the disqualified candidates belong. Thus, there is no question that there was a valid nomination of Carlos Pontawe and Louie Lopez in which case all the Pontawe and Lopez votes should be credited to them (Carlos Pontawe and Louie Lopez), including those cast by block voting in favor of the Nacionalista Party to which they were affiliated.

The Municipal Board of Canvassers favored Carlos Pontawe with 7,124 votes as against 5,632 for Rosario Cabangon. However, the Court of First Instance ruled that Federico Pontawe and Wilfredo Lopez were still candidates on January 30, 1980 because of the appeal taken by them to the Supreme Court disputing the order of disqualification by the COMELEC which they did not

Supreme Court E-Library

consider as final and executory. The lower court found that the final total votes of the protestees and the protestants are as follows: (pp. 16-17, *Rollo* of G.R. No. 59343)

"CARLOS PONTAWE

as per revision		7,462
minus Federico Pontawe & F. Pontawe votes	1,013	
minus PONTAWE votes (stray)	5,346	6,359
Final total votes		1,103

"LOUIE LOPEZ

as per revision		6,442
minus Wilfredo, William & W. Lopez votes	2,190	
minus LOPEZ votes (stray)	3,333	5,523
Final total votes		919

"ROSITA CABANGON

as per revision (uncontested)	5,627
Final total votes	5,627

"ALFREDO FLORES

as per revision (uncontested)	5,331
Final total votes	5,331

The issue then is whether or not Federico Pontawe and Wilfredo Lopez were still candidates on election day. If they were, then the votes "Pontawe" or "Lopez" would be considered stray. On the other hand, if they were not, said votes would be credited to Carlos Pontawe and Louis Lopez.

On this point, We hold that Federico Pontawe and Wilfredo Lopez were no longer candidates on election day, January 30, 1980.

Supreme Court E-Library

1. Section 28 of The 1978 Election Code allows the substitution of candidates who may have been disqualified after the last day for filing the certificates of candidacy. The substitution may be on or before mid-day of the day of the election. A substitute is one who takes the place of another who is no longer a candidate, otherwise the former would be an additional, not a substitute candidate. And, if the disqualification is not immediately executory, there would be no need of nominating a substitute. Having been disqualified before election day, the votes "Pontawe" and "Lopez" could not be counted for Federico and Wilfredo, but should be credited as they were by the Municipal Board of Canvassers in favor of Carlos and Louie.

2. Section 186 of The 1978 Election Code reads:

"SEC. 186. *Measures to ensure enforcement.*— For the effective enforcement of the provisions of this Code, the Commission is further vested and charged with the following powers, duties and responsibilities:

"x x x x x x x x x

"3. To cancel at any time before proclamation the certificate of candidacy of any candidate found, through summary proceedings, to have (a) given money or other material inducements to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) solicited or received contributions from foreigners or foreign government; (d) violated the provisions regulating campaign propaganda; (e) committed any of the prohibited acts provided in Section 178 hereof; (f) knowingly tolerated his supporters in committing such acts; or (g) spend for his campaign more than the amount provided in Section 51 hereof.

"Any decision, order or ruling of the Commission cancelling a certificate of candidacy as provided in the preceding paragraph shall be immediately executory."

It will be noted that the second paragraph of paragraph 3 of Section 186 provides that the decision, order or ruling of the Commission cancelling a certificate of candidacy *shall be immediately executory.* In the case at bar, the order of

Supreme Court E-Library

disqualification by the COMELEC took place before the elections. The fact that it occurred sooner or before the proclamation would not matter. What matters is, a disqualification was ordered and, as a consequence, a substitution was in order.

3. The fact that Federico Pontawe and Wilfredo Lopez filed a Petition for Certiorari (G.R. No. 52433) with this Court questioning their disqualification by the COMELEC does not mean that the COMELEC ruling was not immediately executory. It is their right to ask for a review of a COMELEC ruling as provided for by the Constitution, Section 11, Article XII thereof. The question remains not as to whether the COMELEC ruling was appealable, but whether it was already effective and binding on election day. The facts and law in the case at bar would indicate that it was.

ACCORDINGLY, the decision of the COMELEC sustaining the election of Rosario Cabangon and Alfredo Flores for the positions of Mayor and Member of the Sangguniang Bayan of Sta. Barbara, Pangasinan, respectively, is hereby SET ASIDE and another one rendered declaring CARLOS PONTAWE and LOUIE LOPEZ as having been duly elected to the said positions. With this decision the issue raised in G.R. No. 61497 has become moot and academic.

SO ORDERED.

Teehankee, Abad Santos, Melencio-Herrera, Escolin, and *Cuevas, JJ.*, concur.

Fernando, C.J., concurring *pro hoc vice.*

Aquino and *Alampay, JJ.*, took no part.

Concepcion Jr., J., concur and he signed before he went on leave on March 21, 1985.

Makasiar and *de la Fuente, JJ.*, join the dissent of *JJ.* Plana and Gutierrez, Jr.

Plana, J., please see dissent.

Gutierrez, Jr., J., please see dissenting opinion.

Supreme Court E-Library

PLANA, *J., dissenting:*

The facts of the case may be capsulized as follows: Federico Pontawe, Nacionalista Party (NP) candidate for Mayor, and Wilfredo Lopez, NP candidate for Member of the Sangguniang Bayan, Sta. Barbara, Pangasinan, were disqualified by COMELEC on January 24, 1980 on the ground of turncoatism. On January 29, 1980 — or just one day before the election — the NP nominated Carlos Pontawe (then student son of Federico Pontawe) and Louie Lopez (his relationship to Wilfredo Lopez does not appear) as substitute candidates to replace Federico Pontawe and Wilfredo Lopez. Nonetheless, Federico Pontawe and Wilfredo Lopez did not accept the COMELEC verdict. On the same day that Carlos Pontawe and Louie Lopez became candidates, Federico Pontawe and Wilfredo Lopez challenged the COMELEC decision disqualifying them by filing a petition for certiorari with the Supreme Court.

In the mayoralty election on January 30, 1980, there were only 117 votes cast for CARLOS PONTAWE, or C. PONTAWE; 1,013 for FEDERICO PONTAWE, or F. PONTAWE; 5,346 for PONTAWE only, with no indication as to whether the person voted for was Federico or Carlos; a few thousand votes for NP candidates; and 5,627 for Rosario Cabangon, the KBL candidate. As to the election for members of the Sangguniang Bayan, there were only 110 votes cast for LOUIE LOPEZ or L. LOPEZ; 6,332 for LOPEZ only, without any indication as to whether the person voted for was Wilfredo or Louie Lopez; and 5,331 for Alfredo Flores, a KBL candidate.

If both Federico Pontawe and Carlos Pontawe were candidates for Mayor, Federico would be credited with 1,013 votes; Carlos Pontawe 117 votes; Cabangon 5,627 votes. Votes cast for PONTAWE only without further identification (5,346) as well as those cast for NP would be deemed stray votes vis-a-vis Federico and Carlos Pontawe. Cabangon would win. Analogously, if Wilfredo Lopez and Louie Lopez were both candidates, Louie would be credited with 110 votes only; and Alfredo Flores 5,331 votes. The votes cast for LOPEZ only without

Supreme Court E-Library

further identification (6,332) would be deemed stray votes. Alfredo Flores would win.

On the other hand, if Federico Pontawe and Wilfredo Lopez were *no longer* candidates as of election day (January 30, 1980), the votes for PONTAWE only, those cast for NP candidates, and perhaps even those for F. PONTAWE would all be counted for Carlos Pontawe; similarly, the votes for LOPEZ only would be counted for Louie Lopez; and both Carlos Pontawe and Louie Lopez would win. (See 1978 Election Code, Sec. 155, paragraphs 1, 8, 9 and 26).

Under the circumstances, the crucial issue is whether Federico Pontawe and Wilfredo Lopez were still candidates as of January 30, 1980 despite the COMELEC decision of January 24, 1980 declaring them disqualified, taking into account the petition for certiorari they filed with the Supreme Court on January 29, 1980. The answer to this question depends, in turn, on whether the COMELEC decision declaring Federico Pontawe and Wilfredo Lopez disqualified was immediately executory.

The former Court of First Instance of Pangasinan (Dagupan Branch) and the COMELEC ruled that Federico Pontawe and Wilfredo Lopez were still candidates on January 30, 1980, and declared Rosario Cabangon and Alfredo Flores winners. This ruling is now challenged in this special civil action. The main opinion penned by Mr. Justice Relova would reverse the ruling.

With reluctance borne of my high respect for the learned Mr. Justice Relova, I beg to dissent along the line so forcefully voiced by the equally learned Mr. Justice Gutierrez. I wish however to articulate on the following points:

1. Under Article XII, Sec. 11 of the Constitution, a party aggrieved by a decision or ruling of the COMELEC may challenge the same before the Supreme Court by filing a petition for certiorari within 30 days from receipt of the COMELEC decision or ruling. In the instant case, if the COMELEC decision of January 24, 1980 adjudging Federico

Supreme Court E-Library

Pontawe and Wilfredo Lopez disqualified were immediately executory, such that they could not be voted for on election day, their constitutional right to challenge the COMELEC ruling would in effect be nullified. For even if the Supreme Court in the end reverses the COMELEC, the candidates wrongly disqualified would have an empty victory. As they were not candidates on election day, no votes could thereafter be counted for them. Such a reading of the Election Law, which writes off a remedy provided for in the Constitution, should be eschewed.

2. Equitable considerations likewise argue against the Pontawes and the Lopezes and their political aggrupation. After Federico Pontawe and Wilfredo Lopez had been disqualified, they caused to be nominated by their political party one day before the election, not just any qualified candidate, but persons bearing their own surnames - a move evidently adopted so that the substitute candidates could get credit for the votes intended for the disqualified candidates, since the voters would hardly have the chance to know the substitute candidates. Out of abundant caution, however, Federico Pontawe and Wilfredo Lopez still considered themselves as candidates and continued to fight for their candidacies before and after election day. Indeed, as aforesaid, one day before the election, they filed a petition for certiorari with the Supreme Court by way of appeal from the COMELEC decision declaring them disqualified. But after their substitute candidates, Carlos Pontawe and Louie Lopez, had been proclaimed winners and had assumed office, Federico and Wilfredo voluntarily abandoned their appeal. Then, after the Court of First Instance and the COMELEC had ruled against Carlos Pontawe and Louie Lopez and adjudged Rosario Cabangon and Alfredo Flores as victors, Federico Pontawe and Wilfredo Lopez made another turn-about, this time seeking to revive their candidacies by filing a motion for intervention with the COMELEC, which rightly rejected the motion.

3. The instant case vividly illustrates a notable defect of the Election Code. Be it noted that substitute candidates Carlos Pontawe and Louie Lopez filed their certificates of candidacy just one day before the election. Under the circumstances, there

Supreme Court E-Library

was hardly any chance for the voters to know that they have substituted Federico Pontawe and Wilfredo Lopez. Indeed, right on election day, the COMELEC Registrar of Sta. Barbara, Pangasinan, did not know if Federico Pontawe and Wilfredo Lopez were still candidates or had been replaced. He had to verify from COMELEC. Now, if by the application of the rules prescribed in the Election Code for the appreciation of ballots, the votes cast for PONTAWE only or for the Nacionalista Party candidates, or even votes cast for F. PONTAWE would be counted in favor of the substitute candidates (Section 155, paragraphs, 1, 8, 9 and 26), the Election Law would become an unholy instrument for foisting upon the public an electoral fraud.

This underscores the need to amend the Election Code with reference to substitute candidates so as to avoid what practically amounts to an electoral fraud. A substitute candidate bearing the same name as the substituted candidate ought to be barred or, if allowed to be a candidate, he should be governed by a different set of rules for the appreciation of ballots.

4. There is a keen need to finish this election case right away. Only 117 voters of Sta. Barbara, Pangasinan voted for Carlos or C. Pontawe, and just 110 voted for Louie or L. Lopez. On the other hand, 5,627 votes were cast for Rosario Cabangon and 5,331 for Alberto Flores. Yet, Carlos Pontawe and Louie Lopez have been holding office for more than 4 years now. This is a very anomalous situation which should be stopped soonest.

GUTIERREZ, JR., *J., dissenting opinion:*

I am constrained to dissent from the opinion of the Court written in such a trenchant and learned manner by Mr. Justice Relova.

To me, however, the issues are more far reaching than the individual fortunes of Mr. Federico C. Pontawe, Mr. Wilfredo Lopez, Mr. Louie Lopez, Ms. Rosario Cabangon, and Mr. Alfredo Flores. They even transcend the desires of the good people of Sta. Barbara, Pangasinan.

Supreme Court E-Library

Federico Pontawe was candidate for mayor of the Nacionalista Party in the 1980 local elections.

On January 24, 1980, the COMELEC declared him disqualified to run for mayor on the ground of turncoatism.

On January 29, 1980, Carlos Pontawe, the son of Federico Pontawe was nominated to be a substitute candidate for his father.

During the elections on January 30, 1980, 5,346 votes were cast for *Pontawe,* with no indication whether they were for Federico Pontawe or Carlos Pontawe. The respondent COMELEC considers these votes as stray.

If Federico Pontawe had only respected the COMELEC resolution disqualifying him as a candidate and respected the decision of his son and of his party that Carlos Pontawe would be a substitute candidate for him, there would be no question on how the votes for "Pontawe" should be appreciated.

But the elder Pontawe acted otherwise. He insisted during the elections that he was still a candidate for mayor. Long after the elections were over, when he filed his motion for intervention after December 19, 1981, Federico Pontawe continued to assert that he was still a candidate on the day of the elections. How then can we rule that there was only one Pontawe running for mayor on January 30, 1980 and that Mr. Federico Pontawe — the insistent candidate — was already out of the picture?

On January 29, 1980, Federico Pontawe filed with the Supreme Court a petition for certiorari to annul with COMELEC decision disqualifying his candidacy. In other words, on January 30, 1980 when the elections were held, Federico Pontawe considered himself a candidate otherwise he would not have appealed the COMELEC decision to us. And we should consider him as having continued to be a candidate on the day of the election unless he wants to make an appeal to this Court a meaningless thing or an empty gesture devoid of significance and with no effect whatsoever on the candidacy of Federico Pontawe and of his son Carlos Pontawe. Suppose the Supreme

Supreme Court E-Library

Court reversed COMELEC and ruled that Federico Pontawe was not guilty of turncoatism? How would the "Pontawe" votes be evaluated? Should the appreciation of the "Pontawe" votes not depend on who were the candidates on the day of the election and not on developments that arise months or years later?

Section 28 of the Revised Election Code of 1978 provides:

"SEC. 28. *Candidates in case of death, withdrawal or disqualification of another.*— If, after the last day for filing certificates of candidacy, a candidate with a certificate of candidacy duly filed should die, withdraw or be disqualified for any cause, any voter qualified for the office may file his certificate of candidacy for the office for which the deceased, the candidate who has withdrawn, or disqualified person was a candidate in accordance with the preceding sections on or before mid-day of the day of election, and if the death, withdrawal or disqualification should occur between the day before the election and the mid-day of election day, said certificate may be filed with any election committee in the political subdivision where he is a candidate: Provided, however, That if the candidate who died, withdrew or was disqualified is the official candidate of a political party, group or aggrupation, only a person belonging to, and certified by, the same political party, group or aggrupation may file a certificate of candidacy for the same office."

Was Federico Pontawe disqualified on the day of the election? With an appeal pending in the Supreme Court and Mr. Pontawe himself insisting on his candidacy and on his not being disqualified, I prefer to rule that he was not disqualified as of that date.

The argument that a decree of disqualification is immediately executory would make the decision of the COMELEC final and non-appealable. There would be no sense in this Court's examining the appeal from that decision if legally speaking and for all intents and purposes, the elder Pontawe had already been substituted beyond recourse and beyond change. And as earlier stated, suppose this Court ruled that he was not disqualified.

The real problem presented by this case is that our politicians do not respect the constitutional provision which seeks to bring about greater stability in our political system through more

Supreme Court E-Library

responsible, dedicated, and disciplined political parties. As long as the constitutional provision is not repealed and legislation implementing it has not been struck down, the Constitution and the law should be respected.

Section 10, Article XII-C of the Constitution which provides:

"SEC. 10. No elective public officer may change his political party affiliation during his term of office, and no candidate for any elective public office may change his political party affiliation within six months immediately preceding or following an election."

was intended by the framers in the Constitutional Convention and the sovereign people who ratified it to avoid the sorry spectacle of politicians jumping from one party to another for personal and selfish reasons and not because they adhere to the platforms and ideologies of the party to which they belong nor because they really want to dedicate their lives to the service of the country. The provision was intended to do away with so-called "political butterflies."

Our present political system, while termed a "modified parliamentary" form of government by most people, is probably more of a modified presidential form with generous infusions of parliamentary characteristics. But whatever description we give to it, a pre-condition for its success is the presence of disciplined political parties. Thus, the opposition party must be organized and united in its challenge. It must be a more or less permanent and dedicated group with its key members, the ones holding or aspiring for elective office, not flitting from one party to another as their selfish motives dictate. The opposition must be moderate and not irresponsible, ready with a viable and excellent alternative program that can be implemented if the people elect that party to power. The provision on turncoatism is supposed to bring about greater stability into our political system. Until such time as better measures are devised and the provision against turncoatism is shelved or replaced with a hopefully better provision, it is the duty of the Court to sustain its enforcement.

I mention the factor of turncoatism because it is no coincidence that Federico Pontawe's substitute was his son Carlos Pontawe.

Supreme Court E-Library

The Pontawe's wanted to keep the mayorship for their family - never mind the provisions of the Constitution. I feel the Court should not help them in this objective.

The problem of turncoatism is a most complex one with countless ramifications. I abide by the choice of methods by the legislature and the executive since this is essentially a matter of policy.

One final consideration.

The decisions, orders, and rulings of the Commission on Elections are appealable to us only on certiorari. (Section 11, Article XII-C, Constitution) Certiorari is available only when the respondent Commission has acted without or in excess of jurisdiction or with grave abuse of discretion. (Section 1, Rule 65) There can be no question about COMELEC jurisdiction in this case. Has COMELEC acted with grave abuse of discretion?

Moreno's *Philippine Law Dictionary*, 1982 Edition, pp. 270-271, defines grave abuse of discretion as:

"Such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction.

"Where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law. - Alafriz *v.* Nable, 72 Phil. 278.

"The capricious and arbitrary exercise of judgment. - Palma *v.* Q & S, Inc., 123 Phil. 960.

"Error of judgment. Both differ in that grave abuse of discretion means capricious and arbitrary exercise of judgment while error of judgment means the mistake actually committed in adjudication.- Ferrer *v.* Fortun, SP-06839, January 26, 1978."

I feel that *the most* anyone should find in the COMELEC decision is perhaps some kind of error but not grave abuse of discretion.

I, therefore, vote to dismiss the petition for lack of merit.