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SECOND DIVISION

[G.R. No. L-30858. March 29, 1977]

GAVINO BITANGCOL, *petitioner-appellants, vs.* **THE HONORABLE COURT OF APPEALS and AMELIA J. GORDON,** *respondents-appellees.*

SYLLABUS

ELECTION LAWS; ELECTION PROTEST; WHERE THE POSITION DISPUTED HAD EXPIRED, THE RESOLUTION OF AN APPEAL IN SUCH PROTEST WILL SERVE NO USEFUL PURPOSE.— What is more, the term of office of Mayor of Olongapo, the position disputed by petitioner and private respondent, had by this time expired. Clearly the matter is thus purely of academic interest. It will serve no useful purpose, therefore, for this Tribunal to make any pronouncement on the matter.

RESOLUTION

FERNANDO, *J.*:

What gave rise to this *certiorari* proceeding filed by petitioner Gavino Bitangcol against private respondent Amelia J. Gordon was a resolution of the Court of Appeals dismissing for insufficiency in form his appeal in an election protest. The sad plight in which respondent found himself was due to the failure to follow procedural norms. There was a resolution of this Court on February 11, 1969[1] requiring petitioner to file a suit for *certiorari* inasmuch as the appeal he filed directly with this Court was perfected after Republic Act No. 5440.[2] Subsequently, after compliance therewith, this Court sent his petition for review on *certiorari* to the Court of Appeals as the issues raised by

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[1] *Bitangcol v. Gordon*, L-30143.

[2] Petition for *Certiorari*, par. 1.

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him were factual in character.[3] In turn, respondent Court, on April 23, 1969, issued a resolution dismissing the appeal.[4] That is the resolution which is the subject matter of this *certiorari* proceeding.

The reason for the dismissal of the appeal was set forth in such resolution of respondent Court. Thus: "On October 18, 1968, the Court of First Instance of Zambales rendered a decision in its Civil Case No. 311-0 (Election Protest) entitled [Gavino Bitangcol], Protestant, versus [Amelia Gordon], Protestee,' dismissing the protest and confirming the election and proclamation of protestee Amelia Gordon as the duly elected City Mayor of Olongapo with a majority of 2,751 votes over her nearest opponent, protestant Gavino Bitangcol. Instead of appealing the said decision to this Court in spite of the fact that he intended to bring up questions of fact and of law, the protestant brought the matter up to the Supreme Court where, pursuant to a resolution of that Court dated February 11, 1969, he filed a petition for review on *certiorari* on March 26, 1969."[5] After quoting the then applicable section of the Revised Election Code,[6] it was set forth in such resolution: "Accordingly, to perfect an appeal from a decision of a Court of First Instance to this Court in an election protest, the procedure prescribed in the Rules of Court, insofar as it is not in conflict with the Revised Election code, must be observed. In this case, this Court cannot consider the purported appeal to the Supreme Court as an appeal validly and properly taken to this Court, the protestant having failed to allege and show from the records observance of the provisions of Rule 122 governing the perfection of appeals in criminal cases from the Court of First Instance to this Court, particularly Section 3 thereof which provides, thus, 'Sec. 3. How appeal taken. — An appeal shall be taken by filing with the court in which the judgment or order was rendered a notice stating the

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[3] *Ibid.* par. 3.

[4] *Ibid.* Annex A.

[5] *Ibid.* Annex A. 1-2.

[6] Section 178.

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appeal, and by serving a copy thereof upon the adverse party or his attorney.'"[7] It was the claim of petitioner that he had duly complied with such procedure of the Rules of Court. In the answer of private respondent, the allegation that there was such notice of appeal was denied. In a memorandum submitted thereafter, there being no appearance on the day schedule for oral argument, petitioner made mention of the failure of counsel for private respondent to state, admit or deny whether he had received the notice of appeal and that insofar as the alleged failure to follow the period prescribe under Section 178 of the Revised Election Code, the time that was consumed by the procedural missteps ought not to be considered.

The question then was whether under the circumstances above narrated, this Court was in a position to rule that there was indeed a grave abuse of discretion on the part of respondent Court of Appeals, considering that the facts as found by it, which is not for us to disturb, militated against the claim of petitioner. What is more, the term of office of Mayor of Olongapo, the position disputed by petitioner and private respondent, had by this time expired. Clearly the matter is thus purely of academic interest. It will serve no useful purpose, therefore, for this Tribunal to make any pronouncement on the matter.

WHEREFORE, the petition is dismissed for being moot and academic.

Aquino and *Concepcion Jr., JJ.*, concur.

Barredo, J., concurs in the result.

Antonio, J., concurs because the case has become moot. I disagree with the ruling of the Court of Appeals.

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[7] Petition, Annex A, 3.