

G.R. No. 246679 – GOVERNOR EDGARDO A. TALLADO v. COMMISSION ON ELECTIONS, NORBERTO B. VILLAMIN, and SENANDRO M. JALGALDO.

Promulgated:
September 10, 2019

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DISSENTING OPINION

JARDELEZA, J.:

The Constitution provides that the term of elective local officials, except barangay officials, shall be three years, and no such official shall serve for more than three consecutive terms.¹ Subsequently, We held in a number of cases that the following requisites must concur for an elective official to be disqualified to run for an elective local office: (1) the official concerned has been elected for three consecutive terms in the same local government post; and (2) he has fully served three consecutive terms.²

This controversy centers on the second requisite. Edgardo A. Tallado (Tallado) was elected to the post of Governor of Camarines Norte for three consecutive national and local elections. On his third term, the Office of the Ombudsman (Ombudsman), in two successive adverse Decisions, dismissed him from the service. These Decisions, being executory even pending appeal pursuant to the Ombudsman's rules of procedure,³ Tallado was removed from office. He was first removed on November 8, 2016 by virtue of the DILG Order⁴ of even date implementing the Ombudsman's April 18, 2016 Decision finding him guilty of grave misconduct and oppression/abuse of authority, and imposing upon him the penalty of dismissal from the service.⁵ On December 12, 2016, however, the Court of Appeals (CA) issued a temporary restraining order⁶ (TRO) enjoining the implementation of the Ombudsman Decision. Consequently, Tallado reassumed his post.⁷ On January 10, 2018, the Ombudsman issued another Decision⁸ finding Tallado administratively liable for grave misconduct and dismissing him from the service. Tallado was removed from his post by virtue of the DILG's March 14, 2018 memorandum,⁹ but reinstated on October 29, 2018 pursuant to a DILG Order¹⁰ confirming Tallado's service of six months' suspension imposed by the CA in lieu of dismissal.

¹ CONSTITUTION, Article X, Sec. 8.

² *Abundo, Sr. v. Commission on Elections*, G.R. No. 201716, January 8, 2013, 688 SCRA 149, 167; *Bolos, Jr. v. Commission on Elections*, G.R. No. 184082, March 17, 2009, 581 SCRA 786, 793; and *Latasa v. Commission on Elections*, G.R. No. 154829, December 10, 2003, 417 SCRA 601, 609.

³ See Sec. 7, Rule III of Administrative Order No. 7, the Rules of Procedure of the Office of the Ombudsman, as amended.

⁴ *Rollo*, p. 215.

⁵ *Id.* at 232-237.

⁶ *Id.*

⁷ *Rollo*, p. 58.

⁸ *Id.* at 238-245.

⁹ *Id.* at 246.

¹⁰ *Id.* at 502.

Ultimately, the issue brought for the Court's consideration is whether the implementation of the Ombudsman's Decisions dismissing Tallado from the service caused an involuntary interruption in his term that prevented the application of the three-term limit rule. The *ponencia* ruled in the affirmative. However, I disagree. While the Court has not heretofore made a ruling on similar facts, this does not place the case in a gray area. Law and jurisprudence dictate that the case be dismissed.

The Court has adopted the yardstick of strict interpretation in favor of term limitation. Section 8, Article X of the 1987 Constitution provides that the term of office of elective local officials, except barangay officials, shall be three years and no such official shall serve for more than three consecutive terms. The framers of the Constitution deemed it best to define the term of office of elective officials to avoid the evil of a single person accumulating excessive power over a particular territorial jurisdiction as a result of a prolonged stay in the same office.¹¹ We have held that the wording and circumstances surrounding the provision's formulation impresses upon the Court "the clear intent to make term limitation a high priority constitutional objective whose terms must be strictly construed and which cannot be defeated by, nor sacrificed for, values of less than equal constitutional worth."¹² Thus, in a number of cases, We interpreted the term limit rule in favor of limitation rather than its exception.¹³ Consistency, prudence, and a due regard to the Constitutional value espoused by the above provision demand that We view this case through the same measure. This necessitates a ruling that Tallado was merely interrupted in the exercise of his functions but did not lose title to his office involuntarily. His third term was not interrupted, so that he should have been held ineligible to run in the 2019 national and local elections.

Tallado submits that when the Ombudsman's Decisions dismissing him from the service were implemented, he was divested of his title to the office of the Governor. He had to vacate his office twice and was relegated to the status of a private citizen. He was unable to discharge the functions of his office and collect the salaries and benefits that came with the post. He asserts that his eventual reinstatement did not change the fact that he had lost his title to office so that the continuity of his service was involuntarily interrupted.¹⁴

The *ponencia* agrees, ruling that "[w]ithout doubt, the execution of the OMB's dismissals x x x resulted in the petitioner's loss of title to the office of Governor."¹⁵ Even as it acknowledges the non-finality of the Ombudsman's Decisions dismissing Tallado from office, it held that "he was dismissed *for all intents and purposes of the law* x x x even if he had appealed. In that status, he *ceased* to hold the title to the

¹¹ *Latasa v. Commission on Elections*, G.R. No. 154829, December 10, 2003, 417 SCRA 601, 614.

¹² *Aldovino, Jr. v. Commission on Elections*, G.R. No. 184836, December 23, 2009, 609 SCRA 234, 253.

¹³ In *Aldovino, Jr. v. Commission on Elections*, *supra* at 255-256, We held that *Ong v. Alegre* (G.R. No. 163295, January 23, 2006, 479 SCRA 473) and *Rivera v. COMELEC* (G.R. No. 167591, May 9, 2007, 523 SCRA 41) "are important rulings for purposes of the three-term limitation because of what they directly imply. Although the election requisite was not actually present, the Court still gave full effect to the three-term limitation because of the constitutional intent to strictly limit elective officials to service for three terms. By so ruling, the Court signalled how zealously it guards the three-term limit rule. Effectively, these cases teach us to strictly interpret the term limitation rule in favor of limitation rather than its exception."

¹⁴ *Rollo*, p. 27.

¹⁵ *Ponencia*, p. 13.

office *in the fullest sense*.”¹⁶ The *ponencia* goes further to state that when Tallado was dismissed, “the vacancy [created] was not temporary because the petitioner was fully divested of his title to the office of Governor in both instances of dismissal.” Instead, “permanent vacancy in the office of Governor ensued.”¹⁷ In effect, the *ponencia* compels Us to consider Tallado’s dismissals as having existed in a vacuum and discount the law, jurisprudence, and the realities of the situation.

I am unable to subscribe to the majority ruling for the following reasons:

First, Tallado’s removal from office was by virtue of non-final but immediately executory Decisions of the Ombudsman. The Ombudsman Rules do not attach permanent effect to dismissals pending appeal.

Section 7, Rule III of Administrative Order No. 07 (A.O. No. 7), as amended, otherwise known as the Rules of Procedure of the Office of the Ombudsman, states that a Decision rendered by the Ombudsman dismissing an elective official from the service in an administrative case is immediately executory but not yet final pending a timely appeal with the Court of Appeals (CA). If respondent wins such appeal, he shall be considered as having been under preventive suspension.¹⁸ In this connection, We have held that in all cases of preventive suspension, the suspended official is barred from performing the functions of his office and does not receive salary in the meanwhile. However, he does not vacate and lose title to his office. Loss of office is a consequence that only results upon an eventual finding of guilt or liability.¹⁹

Here, Tallado timely filed respective petitions for review with the CA to question the Ombudsman’s Decisions dismissing him from the service. Hence, he stepped down from his post on two occasions with the consciousness that he can obtain a favorable outcome from his appeals and that his predicament may only be temporary. And temporary it had been indeed, as the CA restrained the implementation of the Ombudsman Decision in the Dela Cruz case and reduced to six months suspension the penalty of dismissal imposed in the second Gonzales case. These rulings enabled Tallado to be reinstated to his gubernatorial post.

To my mind, what is decisive is Tallado’s reinstatement to office, which occurred not once, but twice. I am unable to subscribe to the majority opinion because it attributes permanent effect to the dismissals pending appeal, when such permanency is not contemplated by the very Rules that sanction such dismissal. The Ombudsman rules provide a remedy when the non-final but executory dismissal is overturned, *i.e.*, the respondent is considered to have been under preventive suspension for which he shall be paid the salary and other emoluments that he did

¹⁶ *Id.* at 14. Italics in the original.

¹⁷ *Id.* at 16.

¹⁸ Administrative Order No. 07 (Rules of Procedure of the Office of the Ombudsman) as amended, Rule III, Section 7 pertinently provides:

Sec. 7. Finality and execution of decision. x x x

x x x x

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

x x x x

¹⁹ *Aldovino, Jr. v. Commission on Elections*, *supra* note 12 at 262.

not receive by reason of his removal. This is a glaring indication that no permanent effect of the dismissal pending appeal is contemplated so that none should attach.

While the Ombudsman's Rules admittedly do not contemplate every situation, the effects of the dismissals in this case should not be construed outside the intention of such Rules. Any interpretation of its provisions should not depart from its spirit. Accordingly, if there is any provision in the Rules by which guidance may be obtained to resolve a situation that was not directly provided for, then the Court must apply the Rules by analogy and not venture into its own interpretation. This is a becoming deference to the Ombudsman who was authorized by the Constitution to promulgate its own rules of procedure,²⁰ and thus remains the authority in their interpretation. Hence, Tallado should have been considered as preventively suspended under the Ombudsman Rules and not permanently dismissed, since he was eventually restored to his post.

In this regard, I fully agree with the Commission on Elections (COMELEC) *En Banc*'s finding, to wit:

The undeniable fact that [Tallado] was able to reassume his post as Governor when the Court of Appeals, in OMB-L-A-15-0480, issued the Temporary Restraining Order staying the dismissal order and, in OMB-L-A-16-0360, modified the dismissal order to a penalty of suspension for 6 months, only proves that the vacancies created by the implementation of the dismissal orders were temporary and did not result in the loss of title of [Tallado] to the Office of the Governor. Therefore, there is no valid interruption that would cause a break in the continuity of the service on the part of [Tallado] as would entitle him to be qualified to run again for a fourth (4th) term as Governor of Camarines Norte.²¹ (Emphasis omitted.)

Second, there is an inherent incongruity between the *ponencia*'s characterization of the vacancy created in the Governor's office as "permanent" and the absence of permanent incapacity on the part of Tallado to reassume as Governor.

Section 44 of the Local Government Code (LGC) states that "a permanent vacancy arises when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office." On the other hand, Section 46 of the LGC states that there is temporary vacancy when the local elective official is temporarily incapacitated to perform his duties for physical or legal reasons such as, but not limited to, leave of absence, travel abroad, and suspension from office.

It is clear from these definitions that the nature of the vacancy, whether permanent or temporary, *depends* on the cause of the elective official's incapacity to hold office. In other words, the nature of the vacancy is merely a *consequence* of such incapacity. Being merely a consequence, it may not be construed independently

²⁰ See CONSTITUTION, Article XI, Section 13(8).

²¹ *Rollo*, pp. 53-54.



of the cause of incapacity. Thus, if an elective official is temporarily unable to hold office for the enumerated or analogous reasons, the vacancy created is merely temporary. On the other hand, permanent incapacity to hold office would lead to a permanent vacancy in that office. The law does not contemplate a situation where a temporary incapacity would lead to a permanent vacancy, and vice versa.

Going back to Section 44 of the LGC, its enumeration of what creates a permanent vacancy in a local elective office is not exhaustive and is qualified by the phrase “or is otherwise permanently incapacitated to discharge the functions of his office.” This is the guiding parameter in determining whether a permanent vacancy exists.

In light of the *ponencia*'s ruling that Tallado's dismissal resulted in the permanent vacancy in the Governor's office,²² the fundamental point of inquiry becomes: *Did Tallado become permanently incapacitated to discharge the functions of his office when non-final but immediately executory dismissal orders of the Ombudsman were implemented?* Again, this proceeds from the premise that a permanent vacancy can only result from a permanent incapacity of the local elective official to hold office.

The question should be answered in the negative, and this is for obvious reasons. *First*, there was no final judgment dismissing Tallado from the service. Anything less than a final judgment of dismissal cannot create a permanent void in the Governor's office. *Second*, by actions rendered by the CA, Tallado was reinstated as Governor. Not much legal calisthenics is required for one to recognize that the vacancy caused by Tallado's dismissals were only temporary. Verily, Tallado was not permanently incapacitated to discharge the functions of his office, and the vacancy created in his absence was not permanent.


To my mind, the first dismissal that was enjoined by the CA should be understood as akin to a preventive suspension under the second paragraph of Section 7, Rule III of A.O. No. 7.²³ While Tallado did not yet win in his appeal, the provision should be applied by analogy since the TRO issued by the CA is obviously a provisional win for Tallado. In *Aldovino v. Comelec*,²⁴ We held that in all cases of preventive suspension, the suspended official is barred from performing the functions of his office but does not vacate and lose title thereto. By nature, it is a temporary incapacity to render service during an unbroken term and does not result to an involuntary interruption of a term.

The second dismissal that was reduced by the CA to suspension, on the other hand, should all the more be treated as a temporary vacancy since Section 44 of the LGC specified “suspension from office” as a cause for temporary vacancy.

²² *Ponencia*, p. 15.

²³ The second paragraph of this section reads: “An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.”

²⁴ *Supra* note 12.



Likewise, the enforcement of a suspension as a penalty²⁵ may prevent an office holder from exercising the functions of his office for a time but does not forfeit his title to office. It is not an effective interruption of a term.

In reality, by treating the suspension imposed by the CA as cause of permanent vacancy in Tallado's office that interrupted his term, the *ponencia* sets a dangerous precedent by placing the suspended official in a better situation than the preventively suspended one. In holding that a suspended official's term had been involuntarily interrupted, the majority decision in effect rewards administratively sanctioned officials by allowing them to perpetuate themselves in office; while preventively suspended officials, especially those that have not been subsequently found administratively liable, would have suffered a term interruption.

In light of the foregoing, to state that a permanent vacancy in the Governor's office was created when Tallado was dismissed by non-final Ombudsman Decisions is a strained interpretation of the law. His incapacity was only temporary since he was able to reassume the gubernatorial post. Any interpretation of the law that will lead to unjust or absurd results must be rejected.

Third, We cannot ignore the legal presumptions and legal consequences that arise from a declaration of a permanent vacancy in the Governor's office. As mentioned, loss of office is a consequence that only results upon an eventual finding of guilt or liability.²⁶ For this matter, I am unable to agree with the majority position that the finality or non-finality of the Ombudsman's Decisions would not have made any difference since they would produce the same effect of removal of the incumbent official from office.²⁷

It is a final judgment affirming the Ombudsman's dismissal orders that would lead to Tallado's permanent incapacity to wield the functions of his office and create a permanent vacancy in his post. But, as we have seen in this case, the non-final Decisions of the Ombudsman produced a different effect. Tallado momentarily lost his title to office, but was subsequently able to reassume when the CA acted favorably on his appeals. If there had been a final judgment affirming Tallado's dismissal, there would not have been a legal foothold for his re-assumption to office in the same term. Contrary to the *ponencia*'s finding that Tallado's loss of title to office denied him the expectancy to re-assume his term,²⁸ the fact is that his term remained and he reassumed.


Moreover, a final judgment of dismissal would require Tallado to suffer the accessory penalties attached to the penalty of dismissal. The January 11, 2018 Decision of the Ombudsman, for example, imposed the accessory penalty of perpetual disqualification from holding any public office. Under Article 30 of the Revised Penal Code, this has the effect of depriving the offender of the public office he has held even if conferred by popular election. Thus, as a permanently-discharged official, Tallado should have lost any right to the position and his return to office

²⁵ The suspension imposed by the CA in lieu of dismissal in the second Gonzales case was of course not a final verdict, but We consider its effects in the term under consideration.

²⁶ See *Aldovino v. Comelec*, *supra* note 12 at 262.

²⁷ *Ponencia*, p. 13.

²⁸ *Id.* at 16.



would have become a legal anomaly. Again, since the Ombudsman's Decisions were not yet final, their implementation produced a different effect.

Additionally, a final judgment removing Tallado from his post would have called for a permanent replacement of the Governor under the rules of succession in the LGC. If a permanent vacancy occurs in the Office of the Governor, the Vice-Governor shall become the governor. The assumption of the successor is permanent. Since the vacancy is permanent, the appointment of the successor authorized by law to fill the vacancy has to be permanent.²⁹ Consequently, the Vice Governor should serve as Governor until the end of the term that the Governor should have served. In this case, however, when the Ombudsman's Decisions dismissing Tallado from office were implemented, Vice Governor Pimentel assumed as Governor; but when Tallado was reinstated Pimentel also returned to his old post. This situation betrays the existence of a temporary, not permanent, vacancy in the Governor's office and arose only because there was no final judgment on Tallado's dismissal.

As seen from the foregoing circumstances, the finality or non-finality of the Ombudsman's Decisions is not inconsequential, but rather crucial. From it springs all legal consequences. In declaring that "[t]he full implementation [of the decisions of dismissal] immediately carried legal repercussions that no developments in relation to the petitioner's appeals could change or undo,"³⁰ the *ponencia* focused on Tallado's momentary loss of title to office, without more. This is akin to taking a snapshot—which does not reflect the entire reality. To be sure, by any angle, the non-finality of the Ombudsman's Decisions brought about temporary results in terms of Tallado's inability to function as Governor. Intuitively, there could not have been two permanent vacancies in the Governor's Office in a single term as a result of the supposed permanent incapacity of the same Governor to exercise his duties. If the initial vacancy had been permanent, then the succeeding one should not have arisen. It is the *ponencia*'s own perspective that appears to produce dire legal repercussions.

Overall, the majority decision rewards recidivists and wrongdoers in public service. The facts have amply demonstrated Tallado's propensity to commit infractions during his incumbency as Governor. Yet, by the majority decision which declared an involuntarily interruption in his supposed third and last term as Governor, he now enjoys the present fresh three-year term that paves the way to two more terms and a possible 18 years in public office. Accordingly, even on equitable grounds, the petition should have been dismissed. Equity does not favor, nor may it be used to reward a wrongdoer.³¹ The Court should not have allowed Tallado to benefit from his own fault.

In sum, the facts of the case sufficiently establish that the second requisite for disqualification to run for an elective local office—that Tallado fully served three consecutive terms as Governor of Camarines Norte—was satisfied. What transpired in this case was not an involuntary interruption of Tallado's term, but merely an

²⁹ *Guekeko v. Santos*, G.R. No. L-128, March 2, 1946.

³⁰ *Ponencia*, p. 17.

³¹ *Tirazona v. Philippine EDS Techno-Service Inc., (PET Inc.)*, G.R. No. 169712, January 20, 2009, 576 SCRA 625, 633.

interruption of the continuity of the exercise of his powers as Governor. A contrary ruling would run roughshod Section 8, Article X of the Constitution and its strict intent to limit an elective official's continuous stay in office to no more than three consecutive terms. Considering that Tallado is disqualified from running for a fourth term in the 2019 elections, the COMELEC committed no grave abuse of discretion in cancelling his Certificate of Candidacy.

I vote to **DENY** the petition.


FRANCIS H. JARDELEZA
Associate Justice

