

DR. NENITA PALMA-FERNANDEZ, PETITIONER, VS. DR. ADRIANO DE LA PAZ, DR. SOSEPATRO AGUILA, AND THE SECRETARY OF HEALTH, RESPONDENTS.

G.R. No. L-78946. April 15, 1988

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This is a Petition for Quo Warranto filed by petitioner, Dr. Nenita Palma-Fernandez, claiming entitlement to the position of Assistant Director for Professional Services at the East Avenue Medical Center (formerly Hospital ng Bagong Lipunan) alleged to be unlawfully held by private respondent, Dr. Sosepatro Aguila.

The background facts follow:

On 1 May 1985, petitioner was extended a permanent appointment to the position of Chief of Clinics at the Hospital ng Bagong Lipunan (now East Avenue Medical Center) by then Minister of Health and Chairman of the Board of Governors of the Center, Jesus C. Azurin.

Previous to this appointment, petitioner, a career physician occupied the positions of Medical Specialist I in 1978, Medical Specialist II from October 1982 to April 1985, until her appointment as Chief of Clinics on 1 May 1985. Even during her incumbency as Medical Specialist II, petitioner was already designated as Acting Chief of Clinics since September 1983 up to her permanent appointment to said position.

As Chief of Clinics, petitioner exercised direct control and supervision over all heads of departments in the Medical Center.

In 1986, the new organizational structure of the Center retitled the position of Chief of Clinics to Assistant Director for Professional Services. In partial implementation of this new set-up, respondent Dr. Adriano de la Paz, as Medical Center Chief, issued Hospital Order No. 30, Series of 1986, on 8 August 1986, designating petitioner as Assistant Director of Professional Services (Annex 3, Comment, p. 48, Rollo). As such, she continued to exercise direct control and supervision over all heads of departments in the Medical Center.

On 30 January 1987, Executive Order No. 119 known as the "Reorganization Act of the Ministry of Health" was promulgated.

On 29 May 1987, respondent De la Paz, as Medical Center Chief, designated respondent Dr. Aguila, who was then Medical Specialist I, as Assistant Director for Professional Services "vice Dr. Nenita Palma-Fernandez, who will be transferred to the Research Office." (Hospital Order No. 21, series of 1987, Annex B, Petition). Said order was purportedly issued "in the interest of the hospital service".

On the same date, Hospital Order No. 22, series of 1987, (Annex C, Petition), was issued by respondent De la Paz, whereby petitioner was relieved "of her present duties and responsibilities as Chief of Clinic and hereby transferred to the Research Office. This order being issued in the interest of the hospital service".

Upon receipt of Hospital Order No. 22, petitioner filed on 1 June 1987 a letter-protest with respondent Secretary of Health, furnishing copies to respondents De la Paz and Aguila, as well as to the Commissioner of Civil Service and the Chairman of the Government Reorganization Commission.

Failing to secure any action on her protest within a month's time, petitioner filed on 8 July 1987 the instant Petition for Quo Warranto with Preliminary Injunction against respondents Dr. de la Paz, Dr. Aguila, and the Secretary of Health.

On 14 July 1987, this Court issued a Temporary Restraining Order enjoining the implementation of Hospital Orders Nos. 21 and 22, series of 1987.

After considering and deliberating on all Comments, the Reply, and the Rejoinder of the Solicitor General to said Reply, the Court, on 17 March 1988, Resolved to give due course to the Petition, and dispensing with memoranda, declared the case submitted for resolution.

The Solicitor General has aptly framed the issues for resolution as follows:

- Whether or not respondent De la Paz has the power or authority to issue the two Hospital Orders in question;
- Whether or not petitioner has a valid cause of action; and
- Whether or not the rule on exhaustion of administrative remedies precludes the filing of the instant Petition.

The Solicitor General, on behalf of the Secretary of Health, makes common cause with petitioner and answers the first and third issues in the negative, and the second in the affirmative. For their part, Respondents De la Paz and Aguila uphold the opposite views.

We rule for petitioner.

- Since the East Avenue Medical Center is one of the National Health Facilities attached to the Department of Health, the power to appoint and remove subordinate officers and employees, like petitioner, is vested in the Secretary of Health, not the Medical Center Chief. The latter's function is confined to recommendation. Thus, Section 79 (D) of the Revised Administrative Code provides:

"Section 79 (D). Power to appoint and remove. The Department Head, upon the recommendation of the Chief of the bureau or office concerned, shall appoint all subordinate officers and employees whose appointment is not expressly vested by law in the President of the Philippines, and may remove or punish them, except as especially provided otherwise, in accordance with the Civil Service Law. x x x

"The Department Head also may, from time to time, in the interest of the service, change the distribution among the several bureaus and offices of his Department of the employees or subordinates authorized by law."

Executive Order No. 119, or the Reorganization Act of the Ministry of Health, likewise states:

"SEC. 26. New Structure and Pattern. x x x

"The new position structure and staffing pattern of the Ministry shall be prescribed by the Minister within one hundred twenty (120) days from the approval of this executive order subject to approval by the Office of Compensation and Classification and the authorized positions created thereunder shall be filled thereafter with regular appointments by him or the President, as the case may be as herein provided. x x x "

Respondent Medical Center Chief's argument that petitioner was not appointed but was merely transferred in the interest of the public service to the Research Office pursuant to Section 24 (c) of Presidential Decree No. 807, or the Civil Service Decree of the Philippines[1] will not alter the situation. Even a transfer requires an appointment, which is beyond the authority of respondent Medical Center Chief to extend, *supra*. Besides, the transfer was

without petitioner's consent, was tantamount to removal without valid cause, and as such is invalid and without any legal effect (*Garcia, et al. vs. Lejano, et al.*, 109 Phil. 116). A removal without cause is violative of the Constitutional guarantee that "no officer or employee of the civil service shall be removed or suspended except for cause provided by law" (Article IX, B, Section 2(3), 1987 Constitution).

Petitioner's "designation" as Assistant Director for Professional Services on 8 August 1986 in accordance with the organizational structure of the Department of Health under Hospital Order No. 30, Series of 1986, issued by respondent Medical Center Chief did not make her occupancy of that position temporary in character. It bears stressing that the positions of Chief of Clinics and Assistant Director for Professional Services are basically one and the same except for the change in nomenclature. Petitioner's permanent appointment on 1 May 1985 to the position of Chief of Clinics, therefore, remained effective.

Neither can respondent Medical Center Chief rely on Section 2, Article III of the Freedom Constitution and its Implementing Rules and Regulations embodied in Executive Order No. 17, Series of 1986. The relevant provision was effective only "within a period of one year from February 25, 1986".[2] The Hospital Orders in question were issued only on 29 May, 1987.

Executive Order No. 119, or the "Reorganization Act of the Ministry of Health" promulgated on 30 January 1987, neither justifies petitioner's removal. The pertinent provision thereof reads:

"Sec. 26. New Structure and Pattern. Upon approval of this Executive Order, the officers and employees of the Ministry shall, in a holdover capacity, continue to perform their respective duties and responsibilities and receive the corresponding salaries and benefits unless in the meantime they are separated from government service pursuant to Executive Order No. 17 (1986) or Article III of the Freedom Constitution."

The argument that, on the basis of this provision, petitioner's term of office ended on 30 January 1987 and that she continued in the performance of her duties merely in a hold-over capacity and could be transferred to another position without violating any of her legal rights, is untenable. The occupancy of a position in a hold-over capacity was conceived to facilitate reorganization and would have lapsed on 25 February 1987 (under the Provisional Constitution), but advanced to 2 February 1987 when the 1987 Constitution became effective (*De Leon, et al vs. Hon. Benjamin B. Esguerra, et al.*, G.R. No. 78059, 31 August 1987). After the said date the provisions of the latter on security of tenure govern.

And while it may be that the designation of respondent Aguila as Assistant Director for Professional Services and the relief of petitioner from the said position were not disapproved by respondent Secretary of Health, it by no means implies that the questioned acts of respondent Medical Center Chief were approved by the former official.

- It follows from the foregoing disquisition that petitioner has a valid cause of action. Where there is usurpation or intrusion into an office, quo warranto is the proper remedy. (*Lota vs. Court of Appeals*, No. L-14803, June 30, 1961, 2 SCRA 715).

- The doctrine on exhaustion of administrative remedies does not preclude petitioner from seeking judicial relief. This rule is not a hard and fast one but admits of exceptions among which are that (1) the question in dispute is "purely a legal one" and (2) the controverted act is "patently illegal" (*Carino vs. ACCFA*, No. L-19808, September 29, 1966, 18 SCRA 183). The questions involved here are purely legal. The subject Hospital Orders violated petitioner's constitutional right to security of tenure and were, therefore, "patently illegal". Judicial intervention was called for to enjoin the implementation of the controverted acts.

There was substantial compliance by petitioner with the requirement of exhaustion of administrative remedies since she had filed a letter-protest with the respondent Secretary of Health, with copies furnished the Commissioner of Civil Service, and the Chairman of the Government Reorganization Commission, but the same

remained unacted upon and proved an inadequate remedy. Besides, an action for quo warranto must be filed within one year after the cause of action accrues (Sec. 16, Rule 66, Rules of Court), and the pendency of administrative remedies does not operate to suspend the running of the one-year period (Cornejo vs. Secretary of Justice L-32818, June 24, 1974, 57 SCRA 663).

WHEREFORE, the Writ of Quo Warranto is granted and petitioner, Dr. Nenita Palma-Fernandez, is hereby held entitled to the position of Assistant Director of Professional Services of the East Avenue Medical Center up to the expiration of her term. The Temporary Restraining Order heretofore issued enjoining the implementation of Hospital Orders Nos. 21 and 22, both dated 29 May 1987, is hereby made permanent.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, and Griño-Aquino, JJ., concur.

[1] "SEC. 24. Personnel Actions. -

x x x x x

(c) Transfer. - A transfer is a movement from one position to another which is of equivalent rank, level, or salary without break in service involving the issuance of an appointment.

It shall not be considered disciplinary when made in the interest of public service, in which case, the employee concerned shall be informed of the reasons therefor. If the employee believes that there is no justification for the transfer, he may appeal his case to the Commission.

x x x x x".

[2] Article III, Sec. 2. All elective and appointive officials and employees under the 1973 Constitution shall continue in office until otherwise provided by proclamation or executive order or upon the designation or appointment and qualification of their successors, if such is made within a period of one year from February 25, 1986.

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