

BENJAMIN A. GRAY, PLAINTIFF-APPELLANT, VS. JACOBO S. DE VERA, ENRIQUE J.L. RUIZ, MANUEL T. LEELIN, SERGIO ORTIZ LUIZ, SALUD V. PARREÑO, PEDRO FERNANDEZ AND TEOFILO DEL CASTILLO,...

G.R. No. L-23966. May 22, 1969

Ponente: CAPISTRANO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/0f30b2abfec3/>

CAPISTRANO, J.:

On September 23, 1954, Benjamin A. Gray was appointed Secretary to the Board of Directors of the People's Homesite and Housing Corporation, hereinafter referred to as the PHHC. On October 1, 1956, he was given a promotional appointment, effective November 1, 1956, as Board Secretary with compensation raised from P7,200.00 to P7,800.00 per annum.

On January 12, 1959, Board Secretary Gray sent a te-telegram to President Carlos P. Garcia, which reads:

"AYE SUGGEST COMPLETE REVAMP PHHC BOARD STOP MEMBERS SHOULD NOT USURP MANAGEMENT FUNCTIONS COMMA SHOULD WILLINGLY ATTEND MEETINGS COMMA SHOULD NOT GRAB AS QUOTAS DWELLING AWARDS DESPITE APPLICANTS OF LONG STANDING COMMA SHOULD NOT DIVIDE AMONG THEMSELVES EMERGENCY POSITIONS COMMA SHOULD CREATE POSITIONS ONLY IN CASE OF NECESSITY AND NOT BECAUSE THEY WANT TO ACCOMMODATE THEIR USELESS MEN COMMA AND SHOULD RESPECT CIVIL SERVICE LAW."

On the following day the Board of Directors of the PHHC passed Resolution No. 331 terminating the services of Gray "on account of loss of confidence" due to treachery or dis-loyalty to the Board, and Resolution No. 332 designating Jacobo de Vera as Acting Board Secretary effective immediately.

On January 15, 1959, Gray filed in the Court of First Instance of Rizal an action (Civil Case No. Q-3804) for quo warranto against Jacobo S. de Vera. The complaint was amended on February 12, 1959 by including the members of the Board of Directors of the PHHC as defendants. On March 4, 1959, a supplemental complaint was filed by Gray including, as party defendant, Teofilo del Castillo, who had been appointed Secretary to the Board on February 19, 1959. In his complaint the plaintiff alleged, among others, that he was illegally and arbitrarily removed from office without lawful cause and without hearing and replaced by De Vera and, subsequently, by Del Castillo. He prayed that the resolution of the Board of Directors terminating his services be declared null and void; that he be restored to the position of Secretary to the Board; that his salary from January 14, 1959 until the date of his reinstatement be ordered paid; and that the defendants be ordered to pay him, jointly and severally, P50,000.00 as actual and moral damages, exemplary damages in the amount to be fixed by the court, P2,000.00 attorney's fees, and the costs of the suit. In their answer the defendants-directors admitted having terminated without hearing the services of the plaintiff, but alleged that such termination was justified because it was based on loss of confidence. According to said defendants, loss of confidence was a valid ground for plaintiff's removal

because the position of Board Secretary in the PHHC had been declared "primarily confidential in nature" by Section 14 of Executive Order No. 399, dated January 5, 1951, otherwise known as the Uniform Charter for Government Corporations, and for this reason the said position was excluded from the operation and protection of the Civil Service Law, rules and regulations. The defendants prayed that the complaint be dismissed.

After trial, the court a quo rendered its decision upholding the validity of Resolution No. 331 on the ground that Board Secretary Gray's telegram to President Carlos P. Garcia was an act of treachery or disloyalty to the Board of Directors and constituted cause for his removal from office at any time considering that the position of Board Secretary was primarily confidential in nature. Judgment was rendered dismissing the complaint.

The plaintiff appealed from the judgment to the Court of Appeals. Said court, however, certified the case to this Court on the ground that it involved only questions of law. This Court accepted the certification.

The errors assigned by the appellant boil down to the following:

1. The lower court erred in not finding that the Board of Directors that passed Resolution No. 331 was illegally constituted.
2. The lower court erred in not finding that appellant's removal from office was without cause and without due process of law.
3. The lower court erred in not holding that appellant has legal title to the office in question superior to that of defendants-appellees De Vera and Del Castillo.
4. The lower court erred in not awarding in favor of appellant the damages claimed in the complaint.

The record shows that when, on January 13, 1959, the five directors of the PHHC Board convened and passed Resolution No. 331 terminating Gray's services, the position of Chairman of the Board was vacant. The directors designated Director Enrique J.L. Ruiz as Acting Chairman. With the Acting Chairman presiding over the meeting, the Board passed Resolution No. 331 terminating Board Secretary Gray's services effective at once. Appellant contends that the designation by the Board of Directors of Director Ruiz as Acting Chairman was illegal and void on the following grounds: (1) Section 7 of Executive Order No. 399 vests the authority to appoint the Chairman in the President of the Philippines with the consent of the Commission on Appointments; and (2) Section 10 of said Executive Order provides that "[n]o chairman or member of the Board of Directors of a corporation shall at the same time serve in the corporation in any capacity whatsoever other than as chairman or member thereof unless otherwise authorized by the President."

The contention is untenable. The prohibition in Section 10 of Executive Order No. 399 can only refer to the holding by the Chairman or the Directors of other positions in the corporation. Sections 7 and 10 cannot be interpreted as precluding the Board of Directors from designating one of the directors as Acting Chairman when the position of Chairman is vacant. Otherwise, in case the position of Chairman has not yet been filled by the President, the Board of Directors will not be able to transact business. This will result in paralyzation of corporate activities.

In the absence of evidence to the contrary, it is to be presumed that the act of the Board in designating Director Ruiz as Acting Chairman in view of the fact that the position of Chairman was vacant, was in accordance with the charter of the PHHC or the practice of the Board.

Benjamin A. Gray's appointment to the position of Secretary to the Board effective November 1, 1956, was a permanent appointment. Although the President, in Executive Order No. 399, declared the position of secretary to the board of a government corporation "primarily confidential in nature," it does not follow that a board

secretary whose appointment was permanent may be removed from office without a formal charge specifying the ground for removal and without giving him an opportunity of being heard. A position declared primarily confidential comes within the purview of Section 4, Article XII of the Constitution with respect to removal of the permanent incumbent thereof. In the case of *Cariño, et al. vs. ACCFA, et al.*, G.R. No. L-19808, September 29, 1966, Mr. Justice Sanchez, speaking for the Court, said:

"Section 1, Article XII of the Constitution, on this point reads:

'Section 1. A Civil Service embracing all branches and subdivisions of the Government shall be provided by law. Appointments in the Civil Service, except as to those which are policy-determining, primarily confidential or highly technical in nature, shall be made only according to merit and fitness, to be determined as far as practicable by competitive examination.'

"This Court recently ruled that the foregoing constitutional precept merely excepts primarily confidential positions from the coverage of 'the rule requiring appointments to the Civil Service to be made on the basis of merit and fitness as determined from competitive examinations' (citing *Jover vs. Bora*, 49 O.G. [No. 7] 2755), but that 'the Constitution does not exempt such positions from the operation of the principle emphatically and categorically enunciated in Section 4 of Article XII, that ?

"No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law."

and which recognizes no exception."

In the later case of *Ingles, et al. vs. Mutuc, et al.*, G.R. No. L-20390, November 29, 1968, the Court, speaking thru Mr. Chief Justice Concepcion, said:

"Defendants-appellees thus assume that an officer holding a position which is primarily confidential in nature is 'subject to removal at the pleasure of the appointing power.' This assumption is inaccurate. It is evidently based upon a statement in *De los Santos vs. Mallare* (87 Phil., 289), to the effect that 'three specified cases of positions - policy-determining, primarily confidential and highly technical - are excluded from the merit system and dismissal at pleasure of officers and employees appointed therein is allowed by the Constitution.' This was, however, a mere obiter, because the office involved in said case - that of City Engineer of Baguio - did not belong to any of the excepted classes, and, hence, it was not necessary to determine whether its incumbents were removable or not at the pleasure of the appointing power. What is more, said obiter, if detached from the context of the decision of which it forms part, would be inconsistent with the constitutional command to the effect that 'no officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law,' (Section 4 of Article XII of the Constitution), and it is conceded that one holding in the Government a primarily confidential position is 'in the Civil Service.' In fact, in the *De los Santos* case, this Court cited with approval the view, expressed in *Lacson vs. Romero* (84 Phil., 740), to the effect 'that officers or employees in the unclassified' - to which plaintiffs herein admittedly belong - 'as well as those in the classified service are protected by the above cited provision of the organic law.'"

The removal of Board Secretary Gray from the primarily confidential position to which he had been permanently appointed was illegal in view of the following considerations:

(1) There was no lawful cause for removal. The sending of the telegram of January 12, 1959 to President Carlos P. Garcia suggesting a complete revamp of the Board of Directors of the PHHC due to the Board's acts of mis-management and misconduct, the most serious of which was that the directors were grabbing as "quotas dwelling awards despite applicants of long standing," was an act of civic duty. The telegram was a privileged communication presumably made in good faith and capable of being substantiated by evidence.

According to the testimony of Director Manuel T. Leelin, the act of Board Secretary Gray in sending the telegram of January 12, 1959 to the President of the Philippines was an act of treachery or disloyalty to the Board. The testimony reads:

"Sometime on January 12, one day before we passed this resolution, Mr. Gray sent a telegram to the President of the Philippines, filing charges against the members of the board and suggesting a revamp of the board. We feel that as board secretary, he should not have done that [action] because a board secretary should be loyal to the board and we consider as a treacherous act on the part of the board secretary to have done that. That is the reason why we lost confidence in him."

We cannot agree, for the following reasons:

First. As pointed out, the sending of the telegram to the President of the Philippines was an act of civic duty. The telegram was a privileged communication presumably sent in good faith and capable of being proved by evidence.

Second. The position of secretary to the board of a government corporation was declared by the President in Executive Order No. 399 primarily confidential in nature with the obvious intent that the position be filled by an appointee of unquestioned honesty and integrity. Hence, the act of Board Secretary Gray in reporting to the President the Board's acts of mismanagement and misconduct was in consonance with the honesty and integrity required for the position.

Assuming that Gray owed loyalty to the Board, that loyalty was in the interest of good government and not in the personal interest of the directors to the extent of concealing the shenanigans of the Board. About forty (40) years ago, when then Senate President Quezon broke with then Speaker Osmeña and the Nacionalista Party, he justified his act in these famous words: "My loyalty to my party ends where my loyalty to my country begins." In similar vein, Board Secretary Gray, in breaking with the Board, could have well said, "My loyalty to the Board ends where my loyalty to the cause of good government begins."

If the charges of mismanagement and misconduct contained in the telegram were false, the Board of Directors should have required Board Secretary Gray to show cause why he should not be removed from office for making such false charges. The Board Secretary would have been given an opportunity of being heard. If unable to substantiate his charges, the Board could have made a finding to that effect and remove Board Secretary Gray from office for serious misconduct (not for treachery or disloyalty to the Board).

(2) Assuming, *arguendo*, that appellant's telegram to President Garcia constituted awful cause for his removal from office, the fact remains that he was summarily removed one day after he had sent the telegram, and that no formal charge was filed against him stating the ground for removal and giving him an opportunity of being heard. He was, thus, removed from office without due process of law, in view of which his removal was illegal.

With regard to the amount of P50,000.00 sought by appellant principally as moral damages, the same cannot be granted considering that, in our opinion, the action was really against the defendants in their official capacity. In the case of *Cariño vs. ACCFA, et al.*, *supra* (citing *Diaz, et al. vs. Amante*, December 26, 1958, 55 Off. Gaz., No. 41, p. 8643), the Court said:

"Petitioners seek moral damages in the sum of P15,000 for each of them. Respondents who composed the ACCFA board were sued in their official capacities as government officials. They cannot be held personally liable because, as private individuals - as contradistinguished from their being ACCFA officials - they are not parties to this suit. Besides as we have observed a few years back, moral damages are 'already included in, if not absorbed by, the back salaries' to which petitioners are entitled. Equitable considerations stop us from breaking away from this rule. Award for moral damages is not proper."

Appellant's claim for attorney's fees is tenable. Considering the legal questions involved and the services rendered by appellant's counsel in this Court and in the court below, an award to appellant of P2,000.00 as and for attorney's fees as prayed for by him, is reasonable.

PREMISES CONSIDERED, the judgment of the lower court is reversed and another judgment is hereby rendered as follows:

- (a) Ordering appellee Teofilo del Castillo, or whoever is occupying the position of Secretary to the Board of Directors of the PHHC, to vacate the same, and enjoining him from exercising the functions of said office;
- (b) Ordering the Board of Directors of the PHHC to reinstate as of January 14, 1959, appellant Benjamin A. Gray to the position of Secretary to the Board, and to cause his total salaries at P7,800.00 per annum to be paid in lump sum from said date up to the date of his reinstatement, and thereafter his monthly salary of P650.00; and
- (c) Ordering said Board to cause to be paid to appellant or his counsel the sum of P2,000.00 for and as attorney's fees, and the costs in both instances.

SO ORDERED.

Reyes, J.B.L. (Acting C.J.), Dizon, Makalintal, Zaldivar, Sanchez, and Fernando, JJ., concur.
Teehankee and Barredo, JJ., took no part.
Concepcion, C.J., and Castro, J., on official leave.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.