

**HILARIO C. ANTONIO, PETITIONER, VS. HON. ARTURO R. TANCO, JR.,
IN HIS OFFICIAL CAPACITY AS SECRETARY OF AGRICULTURE AND
NATURAL RESOURCES, SUBSTITUTED FOR BY HON. JOSE LEIDO, JR...**

G.R. No. L-38135. July 25, 1975

Ponente: AQUINO, J.

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AQUINO, J.:

On September 5, 1973 the Secretary of Agriculture and Natural Resources, pursuant to Presidential Decree No. 6, which amended certain rules on discipline of government employees (68 O.G. 7971), and upon the recommendation of the Acting Director of Fisheries, charged Hilario C. Antonio, the Regional Director of Regional Office No. IV of the Bureau of Fisheries, with incompetence and conduct highly prejudicial to the best interest of the service. The complaint was embodied in a "formal charge with order of suspension" which was served upon Antonio on September 14, 1973. The suspension took effect immediately.

In that indictment it was alleged that Antonio on May 31, October 31 and November 30, 1972 issued to eleven persons closely related to, or associated with, each other twelve seaweed permits covering the whole seaweed areas of Manila Bay despite his knowledge that the official policy was that no exclusive rights over the whole seaweed areas in Manila should be awarded under exclusive seaweed licenses. It was further charged that Antonio on May 24, 1973 became a witness for the said eleven permittees, who had filed a case in the Court of First Instance of Rizal against Antonio and the Acting Director of Fisheries, so that in effect Antonio testified against himself. Other glaring inconsistencies committed by Antonio were recited in the complaint.

Antonio through counsel filed an answer which was not under oath. He justified the issuance of the seaweed permits by citing Fisheries Administrative Orders Nos. 45 and 45-1, which require permits for gathering seaweeds, and by invoking a precedent established by Acting Director Felix Gonzales, who, when he was Supervising Fishery Technologist, issued a seaweed permit to Francisco Hilvano for the Manila Bay area.

Some weeks after his suspension, or on October 24, 1973, Antonio sent the following telegraphic request for reinstatement to the President of the Philippines (capitalization supplied):

"His Excellency
President Ferdinand Marcos
Malacañang, Manila

Requesting His Excellency my immediate reinstatement as Fisheries Regional Director Region IV. Arbitrarily suspended indefinitely without investigation before suspension by Secretary Tanco since September 14 for implementing existing fisheries laws and Presidential Decree 43, section 6B, paragraph 5, regarding issuance seaweeds permits, Manila Bay area.

Secretary Tanco for free seaweeds gathering without first amending seaweeds laws. Present seaweeds controversy caused filing injunction case due to suspended permit with Pasig CFI Judge Navarro, preliminary hearing anti-graft practices Fiscal Puno, Manila, deportation proceeding against Chinese seaweeds dealer and

administrative charges incompetency and ignorance of law against Acting Fisheries Director.

Referring His Excellency to Secretary Raquiza (for) more information.

HILARIO ANTONIO
Regional Director"

The Assistant Executive Secretary referred the foregoing telegram to Secretary Tanco on December 18, 1973 for appropriate action or comment. Secretary Tanco on April 17, 1974 informed the Assistant Executive Secretary that:

"Hilario Antonio stands charged by the undersigned for: (1) incompetence in the performance of official duties, and (2) conduct highly prejudicial to the best interest of the service, and is presently suspended while case is being heard by the DANR Special Committee on Investigation chaired by Fiscal Ramon Tuason of the Department of Justice.

"Enclosed are the comprehensive comments and recommendations of the Acting Director of the Bureau of Fisheries, Felix R. Gonzales, to which we fully concur, containing the facts and circumstances resulting in the formal charge with order of suspension dated September 5, 1973. x x x.

"It is our considered opinion and recommendation that Mr. Antonio's appeal to the President for reinstatement should be denied."

Up to this time no final action has been taken on Antonio's request for reinstatement and on the Secretary's recommendation.

On November 16, 1973 or sixty-three days after his suspension, Antonio informed the Director of Fisheries that by virtue of section 35 of the Civil Service Law he was going to return to duty as Regional Fishery Director.

The Secretary in his reply of November 21, 1973 informed Antonio that his reinstatement could not be given due course under Presidential Decree No. 6 and that the charge against him was serious and the evidence of guilt was strong.

On January 29, 1974 Antonio, without awaiting the decision of the President on his request for reinstatement, ventilated his grievance in the judicial forum by filing the instant petition for mandamus, quo warranto and prohibition against the Secretary, the Director of Fisheries and Manuel Delima who was designated to take Antonio's place as Regional Director for Region IV.

The Solicitor General, in behalf of respondent officials, has advanced the contention that mandamus would not lie in this case because under Presidential Decree No. 6 and Letter of Instruction No. 14-A a respondent in an administrative case may be summarily dismissed or suspended. He opines that those martial law measures rendered inoperative the legal provision that a suspended employee should be reinstated after the expiration of sixty days from the date of his suspension.

He argues that the suspended employee can be reinstated only after he is exonerated and that, therefore, he can remain under suspension indefinitely. For that reason, he concludes that Antonio has no cause of action for mandamus.

The respondents also contend that Antonio has no cause of action for quo warranto because in 1964 Antonio was appointed Regional Director without a specification in his appointment of any region or district. He was assigned to Region IV. The Solicitor General argues that Antonio's suspension does not mean that he ceased to be a Regional Director. His assignment to Region IV was simply revoked. Delima did not usurp Antonio's position as Regional Director.

The respondents point out that Antonio has no cause of action for prohibition because the law empowers the Secretary to initiate the filing of charges against his erring subordinates and to refer the charges to the proper agency for investigation. In Antonio's case, a committee of the Department of Agriculture and Natural Resources was assigned to investigate the charges against him. As the Secretary and the investigating committee have jurisdiction over Antonio's case, the investigation cannot be enjoined.

The respondents further contend that Antonio's instant actions were premature because, as already noted, his telegraphic request to the President for reinstatement was referred to the Secretary who on April 17, 1974 recommended that Antonio's appeal for reinstatement should be denied. The respondents assume that Antonio should have awaited the Presidential action on his request for reinstatement before going to court.

On August 28, 1974 the investigating committee submitted its report to Secretary Arturo R. Tanco, Jr. In view of the creation of the Department of Natural Resources, headed by Jose Leido, Jr., that report presumably was referred to the new Secretary. At this writing Secretary Leido has not yet decided Antonio's case.

The issue is whether Antonio is entitled to the writ of mandamus to compel the Secretary of Natural Resources to reinstate him, it appearing that his suspension has lasted for more than twenty-one months, and, under section 35 of the Civil Service Law, as applied in *Garcia vs. Executive Secretary*, L-19748, September 13, 1962, 6 SCRA 1, when the administrative case against an employee under preventive suspension is not finally decided within sixty days after the date of the suspension, the respondent should be reinstated in the service. The quo warranto and prohibition aspects of Antonio's petition are of no moment.

We are of the opinion that the mandamus action was prematurely filed, or, as the respondents put it, the case is not yet ripe for adjudication in a court of justice, in view of the pendency in the Office of the President of Antonio's request for reinstatement. As long as that request is pending, the matter of his reinstatement is not justiciable.

A mandamus action against administrative officers should not be entertained if their superiors can grant relief (*Ang Tuan Kai & Co. vs. Import Control Commission*, 91 Phil. 143; *Resolution in Subido vs. Sarmiento*, L-5322, December 14, 1951; 3 *Moran's Comments on the Rules of Court*, 1970 Ed., p. 196). A mandamus action against the Director of Private Schools was dismissed because the matter involved in the case was still pending before the Secretary of Education. (*Peralta vs. Salcedo*, 101 Phil. 452. See *Dajao vs. Padilla*, 63 O.G. 3579).

Parties asking for a judicial review of administrative official action must first exhaust their remedies in the executive branch (*Madriñan vs. Sinco*, 110 Phil. 160; *Gonzales vs. Provincial Auditor of Iloilo*, L-20568, December 28, 1964, 12 SCRA 711; *Garcia vs. Teehankee*, L-29113, April 18, 1969, 27 SCRA 937).

The purpose behind the policy of requiring a party to first exhaust all administrative remedies before resorting to the court is to provide "an orderly procedure which favors a preliminary administrative sifting process, particularly with respect to matters peculiarly within the competence of the administrative authority" (42 Am. Jur. 581 cited in *Santiago vs. Cruz*, 98 Phil. 168, 173).

Where, as in this case, the President might be able to grant the remedy sought by the petitioner, reasons of comity and orderly procedure demand that his decision be awaited before resort to the courts can be had (*Montes vs. Civil Service Board of Appeals*, 101 Phil. 490, 493).

"When an adequate remedy may be had within the Executive Department of the government but nevertheless a litigant fails or refuses to avail himself of the same, the judiciary shall decline to interfere. This traditional attitude of the courts is based not only on convenience but likewise on respect: convenience of the party litigants and respect for a co-equal office in the government. If a remedy is available within the administrative machinery, this should be resorted to before resort can be made to the courts, not only to give the administrative agency

opportunity to decide the matter by itself correctly but also to prevent unnecessary and premature resort to (the) courts" (Cruz vs. Del Rosario, L-17440, December 26, 1963, 9 SCRA 755, 758).

As correctly observed by the Solicitor General, Antonio, by requesting the President to revoke Secretary Tanco's suspension order precluded judicial intervention in his case while his request is pending consideration (Compare with Kordovez vs. Carmona, L-21473, October 31, 1967, 21 SCRA 678 and Romero vs. Municipal Mayor of Baljoon, Cebu, L-22062, March 29, 1968, 22 SCRA 1374, where the petition for reinstatement after the expiration of the sixty-day period was denied because the petitioners had contributed to the delay in the disposition of their administrative cases by appealing to the Commissioner of Civil Service).

WHEREFORE, the petition is dismissed with costs against the petitioner.

SO ORDERED.

Makalintal, C.J., Castro, Fernando, Makasiar, Antonio, Esguerra, Muñoz Palma, Concepcion, Jr., and Martin, JJ., concur.

Barredo, J., see concurring opinion.

Teehankee, J., took no part.

CONCURRING OPINION

BARREDO, J.:

I concur, but, to my mind, the more correct basis for dismissing the instant petition is failure to state a cause of action or, in fact, obviously indubitable lack of merit thereof, rather than prematurity. I am not for leaving any suggestion no matter how remote that in the event the President-should act unfavorably on petitioner's telegram request for reinstatement, he would have any ground to seek judicial remedy. He has come to Us not because respondent Secretary has gravely said his discretion in suspending him but because the period of such (preventive) suspension has already exceeded the 60-day limit fixed by Section 35 of the Civil Service Law which this Court held to be mandatory in *Garcia vs. Executive Secretary*, 6 SCRA 1. In other words, the only issue for Our resolution is whether or not Presidential Decree No. 6, has repealed, as contended by the Solicitor General, the procedure in administrative cases prescribed by the Civil Service Law, including said Section 35. In this respect, there is no doubt in my mind that the Solicitor General's contention is well taken. It is thus clear to me that even if the President should deny his telegraphic request, petitioner would not be entitled to reinstatement by judicial order, as there could be no legal basis for such a relief.

Presidential Decree No. 6 pertinently provides as follows:

"WHEREAS, under Presidential Decree No. 1, dated September 23, 1972, the Integrated Reorganization Plan was adopted and made part of the law of the land;

WHEREAS, in the reorganization of the Government, it is necessary that we clean the public service of undesirable officials and employees; and.

WHEREAS, it is essential that administrative cases against such officials and employees be disposed of in the most expeditious manner;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to

Proclamation No. 1081, dated September 21, 1972, and General Order No. 3, dated September 22, 1972, do hereby promulgate the following amendatory rules on the administrative discipline of government officials and employees:

SECTION 1. Grounds for disciplinary action. — The following shall be grounds for disciplinary action:

XXX XXX XXX

h. Inefficiency and incompetence in the performance of official duties.

XXX XXX XXX

aa. Conduct prejudicial to the best interest of the service.

XXX XXX XXX

SECTION 2. Disciplinary jurisdiction. — The Department Head shall have authority to remove, separate, suspend and otherwise discipline officers and employees under their jurisdiction, except presidential appointees. Their decisions shall be final, except in the case of removal. In case the penalty imposed is removal, the respondent may appeal the decision to the Civil Service Commission. An appeal shall not stop the decision from being executory, and in the event that the respondent wins on appeal, he shall be considered as having been under suspension during the pendency of the appeal.

Chiefs of bureaus and offices shall investigate and decide administrative complaints against employee under their jurisdiction. Their decision shall be final if the penalty imposed is suspension without pay for not more than 30 days or fine of not more than 30 days' salary. If the penalty imposed is higher, the decision may be appealed to the Department Head, and pending appeal, the same shall be executory except when the penalty is removal.

An investigation may be entrusted to regional directors or similar officials who shall make the necessary report and recommendation to the chief of bureau or office within five (5) days from termination of the investigation which shall be finished within ten (10) days.

SEC. 3. Summary proceedings. — No formal investigation is necessary and the respondent may be immediately removed or dismissed if any of the following circumstances is present:

- a. When the charge is serious and the evidence of guilt is strong.
- b. When the respondent is a recidivist or has been repeatedly charged, and there is reasonable ground to believe that he is guilty of the present charge.
- c. When the respondent is notoriously undesirable.

SEC. 4. Repealing clause. — Any provision of existing laws, rules and regulations in conflict with this Decree are hereby modified or repealed accordingly."

Having been issued on September 27, 1972, before the ratification of the present Constitution, this decree has become part of the law of the land. Without discussing in this case, because it is not necessary to do so, whether or not said decree has acquired constitutional status, and assuming it has no more than the character of a legislative enactment, there can be no question that it could validly repeal, as it does expressly repeal, all existing laws in conflict therewith, and this includes Section 35 of the Civil Service Law, which by no means is of any constitutional level.

The complete overhaul of the system of administrative investigations relative to personnel discipline of public officers and employees is readily evident from a cursory reading of Presidential Decree No. 6. It has made the procedure thereof drastically summary, doing away with the time-consuming, elaborate and multi-stepped investigation outlined in Section 32 to 37 of the Civil Service Law and the implementing Civil Service Rules,

particularly those found in Rule XVIII thereof, more specifically Sections 22 to 33.1 cannot reconcile the apparent intent of the decree to expedite such investigations with the theory seemingly relied upon by petitioner that his preventive suspension should be deemed limited to only sixty (60) days. In respondent Secretary's reply, dated November 21, 1973, to petitioner's manifestation of November 16, 1971 that he would return to duty, petitioner was informed that the charge against him is serious and the evidence of guilt is strong. Upon this predicate, the Secretary could have even immediately removed or dismissed him by virtue of the power conferred upon him by aforequoted Section 3 read together with Section 2 of the decree, which if it had been done, would have rendered the issue being raised here futile, since in the event of exoneration even after removal immediately executed, he would be considered only as under preventive suspension.

After all, preventive suspension is practically inherent in every disciplinary action when demanded by the circumstances thereof in the public interest. As was aptly held in *Nera v. Garcia*, 106 Phil. 1031:

"In connection with the suspension of petitioner before he could file his answer to the administrative complaint, suffice it to say that the suspension was not a punishment or penalty for the acts of dishonesty and misconduct in office, but only as a preventive measure. Suspension is a preliminary step in an administrative investigation. If after such investigation, the charges are established and the person investigated is found guilty of acts warranting his removal, then he is removed or dismissed. This is the penalty. There is, therefore, nothing improper in suspending an officer pending his investigation and before the charges against him are heard and be given an opportunity to prove his innocence."

And then in *Bautista vs. Peralta*, 18 SCRA 223, the Supreme Court added: "Preventive suspension in administrative cases is not a penalty in itself. It is designed merely as a measure of precaution so that the employee who is charged may be separated, for obvious reasons, from the scene of his alleged malfeasance while the same is being investigated." (at p. 825.).

It should be borne in mind that Presidential Decree No. 6 is a follow-up of Presidential Decree No. 1 providing for the integrated reorganization of the executive branch of the national government and is designed to expedite the cleaning of the public service of undesirable officials and employees. Any happenstance which may cause any hindrance or delay in the accomplishment of such objective infringes the spirit of said decrees and should be treated as legally untenable.

It is now history that this Court has not found any constitutional infirmity in Proclamation 1081 which placed the Philippines under martial law. We have also considered it to be constitutionally permissible that the existing martial law administration utilize its broad powers for the purpose of instituting reforms tended to prevent the recurrence of the causes that brought martial law forth. Indeed, to my mind, the power to reorganize the government and maintain one in such form as would best promote the purposes for which the proclamation has been issued is probably among the first inherent prerogatives of the martial law administrator. Such being the case, I cannot perceive any legally valid objection to the drastic modification of the procedure for personnel discipline in the civil service ordered by the President in the decrees. Accordingly, until the formal declaration by the President of the lifting of martial law, the employees and officials of the government have to resign themselves to the fact that it is Presidential Decree No. 6, together with Letters of Instruction Nos. 14 and 14-A, that constitute the civil service law of the Philippines insofar as personnel discipline is concerned.

I vote to dismiss the petition.

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