

**MELECIA M. MACABUHAY, PETITIONER, VS. HON. JUAN L. MANUEL,
SECRETARY OF EDUCATION AND CULTURE; HON. NARCISO
ALBARRACIN, CHAIRMAN, INVESTIGATING COMMITTEE; NELLIE
TANSIOCO AND CR...**

G.R. No. L-40872. December 05, 1978

Ponente: CONCEPCION JR., J.

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CONCEPCION JR., J.:

This is a petition for prohibition and mandamus, with a prayer for the issuance of a writ of preliminary injunction, premised upon the following facts:

Petitioner, Melecia M. Macabuhay, is the Division Superintendent of Schools for the Division of Batangas I, province of Batangas,[1] while respondent, Galo Manalo, is the Division Superintendent of Schools for the Division II, of the same province.[2]

On December 19, 1973, one Irma P. Ortiz, a resident of Bo. Balisong, Taal, Batangas, filed with the Office of the Secretary of Education and Culture, a sworn-letter complaint[3] against the petitioner and Adela A. Pesigan, Principal Teacher of Balisong Elementary School, District of Taal, Batangas. On April 22, 1974, the respondent Secretary of Education and Culture rendered a decision,[4] considering the petitioner resigned from the service and dismissing Adela A. Pesigan.

Claiming that they were not accorded due process by the respondent Secretary of Education and Culture and the respondent Director of Public Schools, they filed in this Court, a petition for prohibition and mandamus, docketed as G.R. NO. L-38568, entitled "Melecia M. Macabuhay, et al. vs. Hon. Juan L. Manuel, et al.," which was dismissed by this Court, on July 31, 1974 for having become moot and academic, after the parties -- upon this Court's suggestion -- had arrived at an agreement on a modus operandi in the disposition of the administrative complaint against the petitioners.[5]

In the meantime, while the reinvestigation of the administrative complaint against the petitioner was underway, the reorganization of the Department of Education and Culture, pursuant to Presidential Decree No. 1, was implemented. Divisions I and II of the Province of Batangas were merged into one Division of Batangas.[6]

Believing that respondent Galo Manalo would be appointed to the new Division of Batangas as Division Superintendent,[7] the petitioner instituted the instant petition praying among others that respondents Secretary of Education and Culture, Director of Public Schools and Commissioner of Civil Service be prohibited from appointing respondent Galo Manalo as Division Superintendent of the New Division of Batangas and from filling permanently the said position pending the termination of the administrative case against her, and in the event that she is exonerated of the charges, the said respondents should, instead, be ordered to appoint her to the said position; that respondent members of the Investigating Committee be ordered to hold more frequent and longer hearings in order to expedite the termination of the administrative case against her; and that the respondent

Secretary of Education and Culture be ordered to pay her salaries during the period of her leave under the terms of the agreement of the parties in G.R. No. L-38568.[8]

On July 2, 1974, this Court issued a temporary restraining order, enjoining the respondent Secretary of Education and Culture, Director of Public Schools and Commissioner of Civil Service from appointing respondent Galo Manalo as Public Schools Superintendent of the New Division of Batangas and from filling permanently the said position.[9]

Meanwhile, after the respondent public officials had filed their comment[10] to the petition, the President of the Philippines directed and/or instructed all department heads, including the respondent Secretary of Education and Culture, to submit a list of government officials and employees under their respective departments facing administrative charges. In compliance therewith, respondent Secretary of Education and Culture, submitted the list required, which included the names of petitioner Melecia M. Macabuhay and Adela A. Pesigan. On September 19, 1975, on the occasion of the celebration of the third anniversary of the New Society, the President of the Philippines announced during his speech the weeding out of undesirable employees and officials from the government service.[11] Among those purged from the Department of Education and Culture, as published in the October 1, 1975 issue of "Bulletin Today", was the petitioner.[12]

Thereafter, the petitioner filed a reply to respondents' comment with supplemental pleading,[13] claiming, among others, that respondent Secretary of Education and Culture acted oppressively and vindictively in including her name in the list submitted to the President of the Philippines,[14] and accordingly pleads that the said list be declared as illegal and null and void as basis of her dismissal from the government service.[15]

In their rejoinder to petitioner's reply and comment on the supplemental pleading,[16] respondent public officials, by and thru the Solicitor General, alleged inter alia that the instant case had become moot and academic due to the dismissal of the petitioner from the service by the President of the Philippines.[17]

Considering that the purpose of the main petition in the present case is to have the petitioner appointed as Public Schools Superintendent of the New Division of Batangas, and since the petitioner had already reached the compulsory age of retirement on August 25, 1976,[18] the same is now moot and academic.

Be that as it may, We find the petitioner's supplemental petition to be meritorious. In including the petitioner's name in the list of officials and employees in the Department of Education and Culture facing administrative charges, the respondent Secretary acted not only oppressively but also in flagrant violation of the agreement of the parties in the previous case (L-40872), to wit:

xxx xxx xxx

"2. The evidence already presented will remain on the record. Counsel for petitioners will be allowed to cross-examine the witnesses who testified ex-parte against them during the investigation conducted by Atty. Dumlao.

xxx xxx xxx

"4. As stated in the respondents' manifestation of July 26, 1974, 'the administrative investigation of petitioners

will continue to be conducted with the formalities and under the rules and procedure provided for by law in administrative hearings and that, needless to say, both the complainant and respondents in the said investigation will be accorded a fair and impartial investigation consonant with the requirements of due process.'

"5. Afterwards, a new decision will be rendered."

Obviously, the petitioner's inclusion in the aforesaid list and her consequent summary dismissal from the government service are unwarranted, and in effect, deprived the petitioner of her right to due process. Hence, petitioner's summary dismissal is null and void.[19]

Petitioner is in no way to blame for the unreasonably long delay in the investigation of the administrative case against her. Because of the protracted investigation, she reached the compulsory age of retirement without any decision being reached in the administrative case against her. Nonetheless, she is entitled to such a decision.

WHEREFORE, the petition to have Melecia C. Macabuhay appointed Public Schools Superintendent of the New Division of Batangas, being moot and academic in view of her reaching the age of compulsory retirement, is hereby dismissed. However, the prayer in her Reply with Supplemental Pleading, dated November 6, 1976, is granted. Administrative Case No. R-423 against Melecia C. Macabuhay is consequently considered dismissed and terminated and she is absolved and declared innocent of all the charges against her. Furthermore, she is hereby granted all the retirement benefits she is entitled to under the law at the time of her compulsory retirement on August 25, 1976[20] and the immediate payment of such benefits by the Government Service Insurance System is hereby ordered. Without costs.

SO ORDERED.

Fernando, Antonio, Muñoz Palma, Santos, Fernandez, and Guerrero, JJ., concur.

Teehankee and Barredo, JJ., concurs in a separate opinion.

Makasiar, J., concurs in the result.

Castro, C.J., and Aquino, J., took no part.

[1] p. 3, rollo (L-40872).

[2] p. 4, Ibid.

[3] Annex "A", p. 7, rollo (L-38568)

[4] Annex "O", p. 145, Ibid.

[5] Annex "A", p. 27, rollo (L-40872). The terms of the agreement of the parties are summarized as follows:

"1. The investigation, this time, will be conducted by a committee to be appointed by the respondent Secretary of Education and Culture, as in fact, he has already constituted said committee, composed of the Undersecretary of Education and Culture, Hon. Narciso Albarracin, as Chairman, and two members, one of them being Atty. Nellie Tansio. Inasmuch as there is a protest against the membership in said committee of Atty. Antonio G. Dumlaog, the petitioners have agreed to replace him, the replacement to be made as soon as possible.

2. The evidence already presented will remain on the record. Counsel for petitioners will be allowed to

cross-examine the witnesses who testified ex-parte against them during the investigation conducted by Atty. Dumlao.

3. Petitioners will go on official leave with pay, pending the continuation of the investigation of the charges against them. (They have already done so).

4. As stated in the respondents' manifestation of July 26, 1974, "the administrative investigation of petitioners will continue to be conducted with the formalities and under the rules and procedure provided for by law in administrative hearings and that, needless to say, both the complainant and respondents in said investigation will be accorded a fair and impartial investigation consonant with the requirements of due process.'

5. Afterwards, a new decision will be rendered." (p. 28, rollo).

[6] pp. 9-10; 58, rollo (L-40872).

[7] pp. 10, 11-12, Ibid.

[8] pp. 23-24, rollo (L-40872).

[9] pp. 37-38, rollo (L-40872).

[10] pp. 54-76, Ibid.

[11] pp. 127-132, 219, Ibid.

[12] pp. 128-129, 167, Ibid.

[13] pp. 95-150, Ibid.

[14] pp. 134-135, Ibid.

[15] p. 147, Ibid.

[16] pp. 212-224, Ibid.

[17] pp. 222-224, Ibid.

[18] See Motion for Timely Decision, dated and filed on June 1, 1976.

[19] It is to be presumed that the President would not have ordered the dismissal of petitioner had he been properly apprised by respondent public officials of the pendency of this case and its antecedents.

[20] Cf. Villanos vs. Subido, L-23169, May 31, 1972, 45 SCRA 299.

SEPARATE CONCURRING OPINION

TEEHANKEE, J.:

I concur.

While the petitioner's original petition (as former Division Superintendent of Schools for Division I of the Province of Batangas which was abolished with the merger thereof with Division II into one single division) to be declared entitled to appointment by merit and qualifications to the new position of Division Superintendent for the entire province of Batangas may now be declared moot due solely to the fact of petitioner's compulsory retirement on August 25, 1976 by reason of age, the same is not true with reference to her prayer for supplemental relief that

her dismissal from the service as a result of her inclusion in the list of purged "undesirable" government officials and employees on September 19, 1975 be declared by the Court as oppressive, illegal and null and void.

The Court has squarely ruled on the merits of the supplemental petition and held that petitioner's inclusion by respondent officials in the September 19, 1975 purge list of "undesirable" officials and employees and her consequent summary dismissal was "unwarranted deprived (her) of her right to due process (and) null and void." That such summary dismissal was oppressive, illegal and null and void may be readily seen from the following facts and considerations:

1. The previous attempt to arbitrarily dismiss petitioner from the service without due process of law was thwarted by the Court in an earlier case, L-38568[1], wherein on July 31, 1974 the ex parte dismissal of petitioner (by declaring her resigned from the service) on the same administrative complaint subject of the case at bar was set aside upon respondents' agreement to give petitioner the right to cross-examine complainant's witnesses and to adduce evidence on her behalf and that "the administrative investigation of petitioners will continue to be conducted with the formalities and under the rules and procedure provided for by law in administrative hearings and that, needless to say, both the complainant and respondents in said investigation will be accorded a fair and impartial investigation consonant with the requirements of due process." [2]
2. During the pendency of the continuation of such administrative investigation of the complaint against petitioner, she had been constrained to file the present petition to prohibit respondents from filling permanently the disputed position and appointing her rival applicant thereto pending the outcome of the administrative case against her and to require the investigating committee to hold more frequent and longer hearings in order to expedite the termination thereof, and the Court, through the Second Division, finding prima facie merit had accordingly issued on July 2, 1975 a temporary restraining order enjoining the permanent filling of the disputed position, as prayed for by petitioner. [3]
3. The matter of petitioner's dismissal from the service was in effect sub judice by virtue of this case and its antecedents as above narrated. Petitioner's summary dismissal through her inclusion in the purge list of "undesirables" was a clear and unmitigated violation of respondents' express undertaking in the first case, L-38568, to accord petitioner a fair and impartial investigation of the administrative complaint against her in consonance with the requirements of due process and the restraining order in the case at bar which enjoined the permanent filling of the disputed position and the appointment thereto of petitioner's rival applicant until the final outcome of the investigation. What respondents could not do directly, they would do indirectly and illegally by the inclusion of her name in the purge list of those with pending administrative cases and leaving the field open for the appointment of her rival applicant, thereby frustrating the Court's restraining order. (It is to be presumed that the President would not have ordered petitioner's dismissal, had he been properly apprised of the pendency of the case at bar and its antecedents).
4. Considering that it is respondents' resort to the illegal and void device of including petitioner's name in the September 19, 1975 purge list of undesirables that caused her unjustified dismissal from the service once again denying her due process and their inaction on the investigation until she reached the compulsory retirement age almost a year later on August 25, 1976 that prevented the proper and just determination thereof on the basis of evidence duly submitted by the parties, the Court aside from declaring such dismissal as null and void has properly cleared petitioner's name and declared her exonerated from the administrative complaint. [4] It has thus been made indubitably clear that aside from her being entitled to all benefits of retirement as of the date of her "dismissal" on September 19, 1975 by virtue of her inclusion in the purge list of "undesirables" (since the President had declared that all such officials and employees so separated from the service were to be given all retirement benefits for which they were qualified), petitioner is further entitled to the immediate payment of all

such retirement benefits up to the date of her having reached the compulsory retirement age on August 25, 1976.

In short, the judgment orders that she be paid all such retirement benefits not by virtue of her "dismissal" on September 19, 1975 (which dismissal has been declared null and void since it constituted a gross violation of the Court's orders in this case and in the first case) but because of her being plainly entitled thereto as of the date she reached the compulsory retirement age on August 25, 1976, by virtue of her right to exoneration from the complaint against her.

[1] Entitled "Melecia M. Macabuhay, et al. vs. Hon. Juan L. Manuel, et al."

[2] See pp. 2-3, and fn. 5, decision.

[3] See p. 4, decision.

[4] Cf. Villanos vs. Subido, 45 SCRA 299 (1972), per Barredo, J. and separate concurring opinions of Fernando, J. concurred in by Castro, now C.J., and of Teehankee, J. concurred in by Makasiar and Antonio, JJ.

SEPARATE CONCURRING OPINION

BARREDO, J.:

I concur in the result.

I hold that the legal effect of the inclusion of petitioner's name among those "purged from the Department of Education and Culture, as published in the October 1, 1975 issue of Bulletin Today," is a live issue that the court must resolve in this case. Petitioner has charged that such inclusion was oppressive and vindictive. The issue she has thus raised should be resolved in this case in the interest of justice. I cannot see how a "dismissal" she precisely impugning can render petitioner's case moot, as respondents claim.

Petitioner was not an ordinary employee of the government. She was a school superintendent, who, in the provinces particularly, is somebody being looked up to and highly regarded. When the Department of Education and Culture was required by the Office of the President to submit a list of those in the Department facing administrative charges, those who complied with the directive should have assumed that whatever the purpose of the requirement was, it was important that the nature and status and pertinent details of the charges be known by the Department. The Department knew that petitioner's retirement was impending. She had served the government during the best years of her life. If there was an administrative case against her, it was not, first of all, of such a grave nature as to warrant "capital" punishment. More importantly, her case had the peculiar element that the proceedings to be followed therein had been the subject of an agreement sanctioned by the Supreme Court in order to insure that she would not be denied due process. Paragraph 4 of said agreement is emphatic on this point. It says:

"4. As stated in the respondents' manifestation of July 26, 1974, 'the administrative investigation of petitioners will continue to be conducted with the formalities and under the rules and procedure provided for by law in administrative hearings and that, needless to say, both the complainant and respondents in said investigation will be accorded a fair and impartial investigation consonant with the requirements of due process.'"

This particular detail should have been brought pointedly to the attention of the Office of the President, for to ignore it cannot be less than ignoring a directive of this Court.

I believe it was not legal for petitioner to have been removed from the service without the investigation above referred to being duly terminated and properly decided in the manner contemplated in the Court's resolution. I hold that it is only in keeping with the dignity of the Court that respect be accorded to it by the other departments of the government in a situation like this. In effect, the Court's approval of the agreement was at least an admonition that petitioner should not be punished except in the manner indicated therein. And I cannot see how the interests of the public service could have been prejudiced by the Department making it clear in submitting the list required by the Office of the President, that the sole administrative ease against petitioner had to be excepted because of the peculiar circumstances just referred to. Since, regrettably, nothing of this appears to have been done. I believe petitioner had the right to ask this Court in her supplemental petition to declare the unqualified inclusion of her name in the list submitted by the Department as oppressive, and even vindictive, considering she had succeeded in having the previous action against her by her superiors set aside by the Court and stigmatized as a denial of due process. Furthermore, the fact that she was contesting the appointment of somebody else, apparently favored — undeservingly, according to petitioner — by the Department, as Superintendent of the Division of Batangas may not be entirely ignored in this regard.

Indeed, it is a matter of public knowledge that the so called "purge" of September, 1975 had caused injustice in many cases — some of which, fortunately, have already been righted — , by no less than the President himself, and the evidently routinary inclusion of petitioner in the list of the Department is illustrative of such cases of outright injustice. I do not deny the government's power to reorganize, much less the need to clear the government of undesirables, but a blind general condemnation that totally ignores the possibility of mistake in regard to peculiar cases of some employees leaves something to be desired. Not every charge against a government employee is made in good faith, and surely, a charge not duly investigated to its legitimate conclusion is far short of being a fair and just ground for punitive action.

In the case of herein petitioner, therefore, and in the light of the foregoing considerations, I consider her inclusion in the purge as null and void. Her separation from the government in the manner that it was done is to my mind more of a cause for indictment against her superiors than a blot on her record as a public servant, since I must presume her to be innocent of any fault, considering the investigation of her case was not allowed to come to a regular conclusion. I like to believe that something can still be done to give her the measure of justice she richly deserves. I am not saying that she is innocent of the charge against her. The fact is that she did not admit it and she was ready to defend herself and had gone to great lengths in doing so. What is undeniable is that she has been deprived of the opportunity to clear her name, only because not enough care and prudence were exercised to see to it that the intent of this Court in the resolution of petitioner's first case were not thwarted by the indiscriminate implementation of a well-intentioned effort on the part of the Office of the President to improve the public service, albeit I concede that it is very likely that as had happened with the President, the Secretary of Education and Culture must have been misled by his bureaucratic subalterns in the preparation of the Department's list. In any event, having been denied due process two times already, I hold that petitioner's retirement on August 25, 1976 should be given due course as if there were no administrative case against her anymore. I know that her purported separation in the purge would entitle her just the same to retirement rights, but under this decision, the record must be made to show that she retired solely because she has reached the compulsory retirement age and not by the grace that came with those who were "purged."

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