

MARCELA M. BALDOZ, PETITIONER, VS. OFFICE OF THE PRESIDENT, DEPARTMENT OF COMMERCE AND INDUSTRY (NOW DEPARTMENT OF TRADE) AND CIVIL SERVICE COMMISSION, RESPONDENTS.

G.R. No. L-44622. August 26, 1977

Ponente: FERNANDO, J.

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FERNANDO, J.:

A statement of respondent Presidential Assistant Ronaldo B. Zamora,[1] in his decision[2] denying a petition for review based on the indisputable evidence of record renders evident why this certiorari proceeding intended to secure the reinstatement as Commercial Attache of petitioner Marcela M. Baldoz is doomed from the start, the safeguard accorded by the Constitution to a civil service officer or employee being unavailing.[3] It reads thus: "This case, has been the subject of three decisions of this Office." [4]

She formerly occupied such position, her assignment being in Berne, Switzerland. Formal charges were filed against her on April 22, 1971 for insubordination and for violation of office regulations, more specifically, for going on home leave without the approval of the then Secretary of the Department of Commerce and Industry, Ernesto Maceda.[5] After being duly investigated by a special committee, she was found guilty of the charges and ordered dismissed effective July 16, 1971.[6] As the penalty imposed was removal, her case was elevated to the Civil Service Commission, the then Civil Service Commissioner concluding that the penalty should be reduced to a fine equivalent to ten days' pay.[7] There was a request for reconsideration filed by Secretary Maceda, favorably acted upon by the Commissioner of Civil Service, who modified his decision to the effect that petitioner was required to seek transfer to another office within a period of not less than ninety days, otherwise she would be considered resigned from the office.[8] There was a further modification of such a decision by the Commissioner of Civil Service in view of a plea for reconsideration by the petitioner herself.[9] The dispositive portion of the decision of the then Acting Commissioner of Civil Service reads thus: "Wherefore, the penalty requiring her to transfer to another office within a period of not less than 90 days otherwise she will be considered resigned is hereby modified in the sense that in case she is unable to seek transfer after the prescribed 90-day period, she shall be considered resigned without prejudice to her subsequent re-instatement to another position in the same Department at the discretion of the appointing authority." [10] It was at that stage, on July 10, 1973, that petitioner appealed to the Office of the President.[11] On November 5, 1973, respondent Ronaldo B. Zamora, then Assistant Executive Secretary, ruled on her case as follows: "After a careful consideration of the case and pursuant to the recommendation of the Acting Commissioner of Civil Service and the provision of Section 37 of Republic Act No. 2260, as amended, you are hereby granted executive clemency in the sense that you may be reinstated to your former position as Commercial Attache, Department of Trade, at the discretion of the appointing authority and subject to Civil Service law and rules." [12] Accordingly, there was a request for reinstatement in the then Department of Trade and Tourism which could not be granted by the then Secretary Troadio T. Quiazon, Jr., not only in view of the abolition of her item under the reorganization staffing pattern of the Bureau of Foreign Trade, but also on account of her lack of appropriate civil service eligibility for the position.

Again, the matter was taken to the Office of the President. It was likewise respondent Zamora, still as Assistant Executive Secretary, who, in a communication to her dated January 28, 1974, informed her that the Acting Secretary possessed discretion as appointing authority whether or not to retain, her in the service. It was therein further stated: "For the commutation or removal by the President of the administrative penalties or disabilities does not entitle the recipient thereof to automatic reinstatement in the service or payment of his back salaries inasmuch as in filing the corresponding petition for clemency in accordance with Section 37 of the Civil Service Law (Rep. Act No. 2260, as amended by Rep. Act No. 6040), the petitioner is deemed to have admitted his guilt." [13] Petitioner was anything if not persistent. There were subsequent letters by her dated July 11, 1974 and April 8, 1975, but her pleas were to no avail. As set forth in the letter of the then Deputy Executive Secretary Roberto V. Reyes: "In this connection, I wish to inform you that after another searching restudy of the case, this Office fails to view your petition as being impressed with merit to warrant a departure from the adverse finding of the Acting Secretary of Trade that you lack the corresponding appropriate civil service eligibility as well as the previous determination of this Office that the matter of your reappointment to your former position is essentially discretionary with the appointing authority, your having been granted executive clemency on November 25, 1973, notwithstanding." [14] It was at that stage that petitioner, undeterred and intransigent, filed anew on March 17, 1976 an urgent motion for review [15] leading to the decision of August 9, 1976, the subject of this certiorari proceeding.

The aforesaid denial of the last petition for review explained clearly why respondent Presidential Assistant Zamora had no choice on the matter. Thus: "The petition raises several issues relative to the proceedings conducted and the decisions rendered in petitioner's case. These issues are, however, rendered moot and academic by an affirmative answer to the issue: Whether the letter-decision dated November 5, 1973, of this Office was responsive to petitioner's letter-petition dated July 10, 1973." [16] Then came this portion: "It is alleged that petitioner's letter of July 10, 1973, was misconstrued and that the executive clemency granted her in this Office's letter decision of November 5, 1973, 'is a patent nullity.' Quite simple and plain is the language of said petitioner's letter in question to have escaped the human comprehension of this Office. With the citation and quotation in said letter of the very provisions of the law upon which she asked this Office to act - and upon which the aforesaid letter-decision of November 5, 1973 was based this Office could not have missed or misconstrued the true import and substance of petitioner's letter in question." [17] Respondent Zamora did consider all the points raised by petitioner. He continued: "It is, however, claimed that petitioner is 'unschooled in law' and that her real intention in the letter was 'not to ask for mercy to commute or remove (her) penalty' but to appeal. The wording of the law cited and quoted in her letter in question are quite so simple and plain that even one who is 'unschooled in law' can readily comprehend their meaning. The petitioner claims to be a holder of a master's degree obtained at the world-renowned New York University, U.S.A., and to have been a professor and lecturer at various prestigious universities and colleges in Manila. With such prestigious educational background, petitioner could not have missed or failed to comprehend the import or meaning of the simply-worded provisions of the law under which she sought protection and benefit." [18]

Further on this point: "This becomes more significant in the light of the fact that, after receiving the letter-decision of this Office dated November 5, 1973, granting her executive clemency, she tried to enforce the qualified directive therein relative to her reinstatement. Had her intention in her questioned letter of July 10, 1973, been contrary to what had been granted her in said letter-decision of November 5, 1973, she would have come back to this Office to question the same, instead of attempting or trying first to enforce or implement the qualified directive in said executive clemency. But she came back to this Office only after the non-enforcement by the appointing authority of such qualified directive in the executive clemency - that is, only after she was denied reinstatement. This fact eloquently evidences her unqualified acceptance of the executive clemency granted her

under this Office's letter-decision dated November 5, 1973, and is, undoubtedly, expressive of the responsiveness of said letter-decision to petitioner's letter-petition dated July 10, 1973. It can be assumed then, without fear of contradiction, that petitioner came to entertain this theory of misconstruction only after she failed to enforce the qualified directive in the executive clemency granted her, and not before the receipt thereof. This change of position or theory is, however, understandable."[19] Lastly, came its dispositive portion. It reads as follows: "In view of the foregoing, the instant petition for review should be, as it is hereby, denied for lack of merit."[20]

The antecedent proceedings speak for themselves. Their import is not susceptible to any misinterpretation. Petitioner has not shown any justification for the exercise of our certiorari jurisdiction. There was no violation of the due process guarantee, whether in its procedural or substantive aspects. The decision of respondent Presidential Assistant Zamora has not thus been successfully assailed. So it was stressed vigorously in the comment, considered as the answer, of the then Acting Solicitor General, now Associate Justice of the Court of Appeals, Hugo E. Gutierrez, Jr.[21] To repeat, this petition must fail.

1. There is persuasiveness in this excerpt from the comment of the Acting Solicitor General to the effect that petitioner was accorded procedural due process: "At any rate, petitioner had been heard in her defense by the Special Committee that investigated the charges against her. She had availed herself of her right to ventilate her side when she filed a petition for reconsideration * * * of the decision of the Commissioner of Service requiring her to seek transfer to another office within 90 days * * *. Indeed, pursuant to her said petition, the decision was modified in the sense that in the event she is unable to seek transfer, she shall be considered resigned without prejudice to subsequent reinstatement to another position in the Department of Commerce and Industry at the discretion of the appointing authority."[22] In the recent decision of *Reyes v. Subido*,[23] reference was made to the leading case of *Lacson v. Romero*. [24] The doctrine announced in that case, interpreting the provision found both in the 1935 and the present Constitutions as to removal or suspension being only for cause, was to the effect that "there must first be an investigation at which he must be given a fair hearing and an opportunity to defend himself." [25] So it has been since then, *Reyes v. Subido* being the last in an impressive number of adjudications notable for their unanimity. [26]

2. Neither could it be plausibly maintained that there was a denial of substantive due process. Even a cursory reading of the annexes to her petition leads to no other conclusion except that the various government agencies which acted on the controversy were guided solely by what the law prescribes. On the facts as duly established, to which attention was called in the various orders and decisions, which petitioner would have this Court examine anew, it is indisputable that the conclusions arrived at could not be susceptible to the reproach of unfairness. The reasons on which they were based were clearly specified. There is no iota of evidence that would serve to indict the Office of the President of lack of judicious appraisal of all the questions raised. There could be no imputation then of arbitrariness or caprice, which could be the proper basis of denial of substantive due process. [27]

3. There is this further consideration which, as noted in the comment, militated against her claim to reinstatement. The position which she would like to occupy anew was abolished. Under the circumstances, her plea certainly cannot be granted. It would be an undue interference with the discretion vested in the executive department if on a petition such as this, even on the assumption that the decision arrived at in an administrative case for disciplinary action was tainted with arbitrariness, not only would there be a finding by this Court of an existence of an infirmity but also would further direct that petitioner be reinstated to an office no longer in existence. That is not the holding in *Bendanillo, Sr. v. Provincial Governor*. [28] As set forth in the opinion: "The law on abolition of positions is well-settled. It gives rise to no doubt. It is notable for its clarity. For petitioner, it is an insurmountable obstacle." [29] Reference was then made to *Manalang v. Quitoriano*, a 1954 decision, [30] with the then Justice, later Chief Justice, Concepcion as the ponente. Thus: "The pretense cannot be sustained. To begin with, petitioner has never been Commissioner of the National Employment Service and, hence, he could not have been, and has not been removed therefrom. Secondly, to remove an officer is to oust

him from office before the expiration of his term. A removal implies that the office exists after the ouster. * * * Accordingly, the constitutional mandate to the effect that 'no officer or employee in the civil service shall be removed or suspended except for cause as provided by law' (Art. XII, Sec. 4, Phil. Const.), is not in point, for there has been neither a removal nor a suspension of petitioner Manalang, but an abolition of his former office of Director of the Placement Bureau, which, admittedly, is within the power of Congress to undertake by legislation." [31] Then there is Cruz v. Primicias, Jr., [32] where Justice J. B. L. Reyes, speaking for the Court, reiterated the Manalang doctrine and noted the exception thereto, which is the absence of good faith, in this wise: ' "We find in this point, urged by respondents, to be without merit. No removal or separation of petitioners from the service is here involved, but the validity of the abolition of their offices. * * * As well-settled as the rule that the abolition of an office does not amount to an illegal removal of its incumbent is the principle that, in order to be valid, the abolition must be made in good faith. Where the abolition is made in bad faith, for political or personal reasons, or in order to circumvent the constitutional security of tenure of civil service employees, it is null and void * * *.' Since it is evident from the records of the case that there is no showing of bad faith and that the step taken by the Provincial Board is a clear indication of its decision to abolish the position of petitioner, what was done by the lower court is free from any legal infirmity." [33] As in Cruz v. Primicias, so in this case, there was no finding of bad faith as to the abolition of the position in question. It is precisely then in accordance with settled legal norms that no judicial remedy is available to petitioner, however much her valiant but losing struggle to hold on to her former position may elicit a degree of sympathy. There is comfort in the thought that with her conceded educational qualifications, she would be able to obtain an employment where her talents may be put to good use.

WHEREFORE, this petition for certiorari is dismissed. No costs.

Barredo, Antonio, Concepcion, Jr., and Santos, JJ., concur.

Aquino, J., did not take part.

[1] The other respondents named are the Department of Commerce and Industry (now Department of Trade) and the Civil Service Commission. As in other certiorari petitions contesting an order of the Office of the President, this Court considered the proceeding filed against Presidential Assistant Ronaldo B. Zamora, who signed the order on behalf of such office.

[2] Petition, Annex A.

[3] According to Article XII, B, Section 3 of the Constitution: "No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law,"

[4] Petition, Annex A.

[5] Ibid, Annex H.

[6] Ibid, Annex G.

[7] Ibid, Annex J.

[8] Ibid, Annex F.

[9] Ibid, Annex L.

[10] Ibid, Annex E.

[11] Ibid, Annex M.

[12] Ibid, Annex D.

[13] Ibid, Annex C.

[14] Ibid, Annex B.

[15] Ibid, Annex O.

[16] Ibid, Annex A, 2.

[17] Ibid.

[18] Ibid, 3.

[19] Ibid.

[20] Ibid, 4.

[21] He was assisted by Assistant Solicitor General Santiago M. Kapunan and Solicitor Oswaldo D. Agcaoili.

[22] Comment, 22-23.

[23] L-27916, August 21, 1975, 66 SCRA 203.

[24] 84 Phil. 740 (1949).

[25] Ibid, 753.

[26] Cf. Pulutan v. Dizon, 99 Phil. 168 (1956); Unabia v. City Mayor, 99 Phil. 253 (1956); Abaya v. Villegas, L-25641, Dec. 17, 1966, 18 SCRA 1034; Mitra v. Subido, L-21691, Sept. 15, 1967, 21 SCRA 127; Perez v. Subido, L-26791, June 22, 1968, 23 SCRA 1074; Gray v. de Veyra, L-23966, May 22, 1969, 28 SCRA 268; Esquillo v. Subido, L-30341, Aug. 22, 1969, 29 SCRA 3; Sta. Maria v. Lopez, L-30773, Feb. 18, 1970, 31 SCRA 637; Villanos v. Subido, L-23169, May 31, 1972, 45 SCRA 299; Cornejo v. Secretary of Justice, L-32818, June 28, 1974, 57 SCRA 663.

[27] Cf. Ermita-Malate Hotel and Motel Operators Association v. City Mayor of Manila, L-24693, July 31, 1967, 20 SCRA 849; Morfe v. Mutuc, L-20387, Jan. 31, 1968, 22 SCRA 424; Pepsi-Cola Bottling Company of the Philippines, Inc. v. City of Butuan, L-22814, Aug. 28, 1968, 24 SCRA 789; Victorias Milling Co., Inc. v. Workmen's Compensation Commission, L-25665, May 22, 1969, 28 SCRA 285; J. M. Tuason and Co. v. The Land Tenure Administration, L-21064, Feb. 18, 1970, 31 SCRA 413; People v. Ferrer, L-32613-14, Dec. 27, 1972, 48 SCRA 382; Flores v. Flores, L-28930, Aug. 17, 1973, 52 SCRA 293; Vinzons v. Ardales, L-35738, March 29, 1974, 56 SCRA 492; Panaligan v. Adolfo, L-24100, Sept. 30, 1975, 67 SCRA 176.

[28] L-28614, January 17, 1974, 55 SCRA 34.

[29] Ibid, 37.

[30] 94 Phil. 903.

[31] Ibid, 907. Cf. Eraña v. Vergel de Dios, 85 Phil. 17 (1949); Rodriguez v. Montinola, 94 Phil. 964 (1954); Gabriel v. GSIS, 103 Phil. 651 (1958); Gacho v. Osmeña, Jr., 103 Phil. 837 (1958); Briones v. Osmeña, Jr., 104 Phil. 588 (1958); Masagana v. Auditor General, 107 Phil. 900 (1960).

[32] L-28573, June 13, 1968, 23 SCRA 998.

[33] Ibid, 1003. Cf. Cuneta v. Court of Appeals, L-13264, Feb. 28, 1961, 1 SCRA 663; Facundo v. Pabalan, L-17746, Jan. 31, 1962, 4 SCRA 375; Ulep v. Carbonell, L-17808, Jan. 31, 1962, 4 SCRA 375; Llanto v. Dimaporo, L-21905, March 31, 1966, 16 SCRA 599; Ocampo v. Duque, L-23812, April 30, 1966, 16 SCRA 962;

Guillergan v. Ganzon, L-20818, May 25, 1966, 17 SCRA 257; Abanilla v. Ticao, L-22271, July 26, 1966, 17 SCRA 652; Arao v. Luspo, L-23982, July 21, 1967, 20 SCRA 722; Enciso v. :Remo, L-23670, Sept. 30, 1969, 29 SCRA 580.

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