

JESUS C. BANAWA, COMPLAINANT, VS. HON. FERNANDO BARTOLOME, RESPONDENT.*Adm. Case No. 230-J. April 27, 1972*

Ponente: FERNANDO, J.

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In this administrative proceeding against respondent Judge, the Honorable Fernando Bartolome of the Court of First Instance of Pampanga, Branch V, by complainant Jesus C. Banawa, for ignorance of the law and grave abuse of power, there was a reliance by both parties on what for them are the implications of certain constitutional mandates. The specific act complained of was the failure of respondent Judge to honor a designation by the Secretary of Justice, the Honorable Vicente Abad Santos, of complainant as Acting Deputy Clerk of Court assigned to his sala. Such an accusation was sought to be fortified by reference to his alleged rights as a civil service employee, his service in the government amounting to twenty-eight years, twenty-six years of which being with the Court of First instance of Pampanga. There was thus an overtone of what for him is the protection to which he is entitled under the Constitution.

In a resolution of December 3, 1971, this Court required respondent Judge to comment. Such a comment came on December 23, 1971. It included a specific denial of the charge that he deliberately refused to honor an order of the Secretary of Justice. According to him, the truth of the matter was: "That the letter dated November 22, 1971 of the Secretary of Justice was addressed to the complainant informing him of his designation as Acting Deputy Clerk of Court of Branch V. It is not even addressed to the respondent ordering him to accept or have the complainants his Deputy Clerk of Court. It can not be disputed that the Secretary of Justice has the power to appoint all employees of the court without the required legal qualification of being members of the Bar, and under Sec. 46 of the Judiciary Act, as amended, all employees of the Court of First Instance shall, for administrative purposes, belong to the Department of Justice, but in the performance of their duties shall be subject to the supervision of the Presiding Judge concerned, and therefore the Judge may not have the power to revoke the designation or appointment but under his power of supervision he has the authority to prohibit the employee designated to perform any official duty in his court, if the Judge is convinced that the reputation of said employee is heavily tainted with suspicion, if not with certainty, of dishonesty and corruption, as no member of the Bar of his own province can vouch and recommend him, and his own judge prohibiting him from handling the records of any pending civil case, so that he can not repose upon said person the slightest trust and confidence. In effect, I refused to accept him. It is true that the respondent stated that if he will be forced to have an employee on whom he can not repose any trust and confidence, he is willing to step aside and let them be the Judge, for he believes that the Judge is not powerless to take the necessary precaution to defend the honor and integrity, not only of the court but also of himself, specially if the employee is to occupy a highly sensitive and confidential position. The Secretary of Justice, although he has the power to appoint, wanted or required the recommendation or approval of the respondent before he could appoint the complainant. The Department also issued Memorandum Order dated December 17, 1968 (Annex "A") requiring the approval of the Judge for every proposed appointment. That Article 231 of the Administrative Code provides for the open refusal of one to execute the order of any superior

authority, but the respondent believes that the Court and the Judge can not be ordered by the Secretary of Justice under the principle of separation of powers as they belong to or fall under the Judicial Branch of the Government. But even assuming arguendo that the Secretary of Justice can order the respondent, in this instance there is nothing in his letter dated November 22, 1971 designating the complainant ordering him to accept the complainant as his Acting Deputy Clerk of Court. What order then was he to execute and which he was alleged to have violated."[1]

Respondent Judge in comment likewise stated: "That the length of service is not the determinative factor in promotions, but the quality of service and the personal qualification of the employee. The complainant himself states in his letter complaint that he has been an employee in the Court of First Instance of Pampanga for 28 years, 20 years of which as Deputy Clerk of Court, Branch I. But how did he perform his official duties as such when not a single member of the Pampanga Bar, past and present officers, prominent practitioners of said Association, Fiscals and his own townmates with whom the respondent was able to talk to, can vouch for and recommend him to the respondent. Judge Honorio Romero and Judge Malcolm Sarmiento, the latter being the complainant's present Judge, even extended to the respondent their sympathies if complainant will be his deputy clerk of court, and Judge Malcolm Sarmiento even prohibited said complainant from handling the records of any civil case in his Court (Annex "D"). Certainly, these Judges, Fiscals and lawyers can not be that inhuman, unappreciative and ungrateful if it is true that the complainant has rendered such a faithful service as to deprive him of the position. But, why does complainant aspire to be appointed or even only designated as acting deputy clerk of court for Branch V when he is presently the Deputy Clerk of Court for Branch I, presided by Judge Sarmiento. The only plausible reason the respondent can think of is that Judge Sarmiento has lost his trust and confidence on the complainant to the extent of prohibiting him from handling the records of any pending civil case in his court, so that it will be imprudence, if not stupidity, for the respondent to accept him."[2]

Respondent Judge would thus seek the dismissal of the charge against him with the plea that even it be considered that the power to appoint employees belongs to the Secretary of Justice, the delicacy of the function to be discharged by a Deputy Clerk of Court and the requirement that trust and confidence be reposed in him by the Judge he serves would under the circumstances justify whatever delay was incurred in complying with what complainant did mistakenly assume to be an order from the Department of Justice. Parenthetically, it is of interest to note that stress is laid by respondent Judge on what he considers to be the correct principle in accordance with the dictates of the separation of powers concept, precluding an unfettered discretion in the department head as to the choice of the employees designated to assist judges.[3] Such an approach is not without its persuasive force. It is equally noteworthy and in line with our past opinions that mere seniority, specially in positions requiring a certain degree of confidence, is not of decisive significance.[4]

At any rate, considering both the petition and the comment, the views of the Secretary of Justice was likewise sought to be elicited in accordance with our resolution of January 6, 1972. There was received by this Court on January 19, 1972 an indorsement from such dignitary stating his position on the matter. He noted the antecedents: "Mr. Banawa filed this administrative complaint because of the refusal of the Respondent Judge to recommend his appointment as Deputy Clerk of Court in his sala. Parenthetically, it may be stated that the present policy of the Department is not to appoint any applicant for any position in the court unless he is recommended by the District Judge concerned. The undersigned was at first in favor of considering the appointment of Mr. Banawa as Deputy Clerk for Branch V of the Court of First Instance of Pampanga, in view of the fact that he has been connected with the said court for the last twenty-six (26) years, eight years of which as Deputy Clerk of Court although not assigned to a particular sala. This is the reason why despite the repeated requests of Judge Bartolome for the appointment of Atty. Porfirio Pineda as Deputy Clerk, the undersigned purposely deferred action thereon hoping that in due time Judge Bartolome would reconsider his objection against Mr. Banawa's appointment."[5] Then

came this portion indicative of the weakness of the administrative complaint against respondent Judge: "Pending final decision on the matter and in view of verbal representations made by Mr. Banawa to the Department that the Judge was already amenable to his being his Deputy Clerk, the undersigned on November 22, 1971 designated him as acting Deputy Clerk of Court for Branch V effective immediately and to continue until further orders. However, upon receipt of a copy of Banawa's designation, Judge Bartolome immediately came to see the undersigned to plead for its revocation, stating that he had never consented to Mr. Banawa's being his Deputy Clerk even in a temporary capacity. On November 24, 1971, the undersigned had to cancel the aforesaid designation of Mr. Banawa in the interest of the service. On the same date (Nov. 24th), Mr. Banawa formulated his charges against Judge Bartolome. Under the circumstances, it is no longer feasible to appoint Mrs. Banawa as Deputy Clerk for Branch V, in view of which the undersigned decided to appoint Mr. Porfirio Pineda, the Judge's recommendee, for the position. At any rate, Mr. Banawa is already a Deputy Clerk with a salary higher than that of Mr. Pineda." [6] The recommendation of the Secretary of Justice follows: "Lastly, the undersigned believes that there is absolutely no justification for Mr. Banawa to file this administrative complaint, and it is respectfully recommended that the same be dismissed for lack of merit." [7]

This Court has never betrayed hesitancy or reluctance in seeing to it that lower court judges act strictly in accordance with law and valid regulations. Certainly as dispenser of justice, the occupant of the bench would be the last to be indulged in any manifestation of actuations offensive to fairness and contrary to the dictates of conscience. It would be however, to add an intolerable burden to what is already an exacting responsibility if under the circumstances disclosed, the employment of the individual such as petitioner would be foisted on respondent Judge. It is in that spirit that the Secretary of Justice, when properly apprised of the facts, did revoke what apparently was a designation that can be attended with unhappy consequences. Nor is there any need to decide definitely on the claim of respondent Judge that on the question of who should be his aides, it is his determination that should be controlling, even if the power of appointment were vested in the Secretary of Justice, in accordance with the independence of the judiciary implicit in the fundamental principle of separation of powers. It suffices to state that this administrative complaint is devoid of any merit.

WHEREFORE, the administrative complaint filed by Jesus C. Banawa against respondent Judge for ignorance of the law and grave abuse of power is dismissed.

Reyes, J.B.L., Acting C.J., Makalintal, Zaldivar, Casto, Teehankee, Barredo, and Antonio, JJ., concur.

Makasiar, J., did not take part.

Concepcion, C.J., on official leave.

[1] Comment, pp. 15-17.

[2] Ibid, pp. 17-18.

[3] Cf. *Suanes vs. Chief Accountant*, 81 Phil. 818 (1948).

[4] Cf. *Reyes vs. Abeleda*, L-25491, February 27, 1968, 22 SCRA 825; *Del Rosario vs. Subido*, L-30091, Jan. 30, 1970, 31 SCRA 382; *Aguilar vs. Nieva, Jr.*, L-28422, July 29, 1971, 40 SCRA 113.

[5] 1st Indorsement of the Secretary of Justice, p. 1.

[6] Ibid, pp. 1- 2.

[7] Ibid, p. 2.

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