

JOSE G. TECSON, PETITIONER-APPELLANT, VS. HON. RAFAEL SALAS, EXECUTIVE SECRETARY, HON. ANTONIO V. RAQUIZA, SECRETARY OF PUBLIC WORKS AND COMMUNICATIONS, HON. MARCIANO D. BAUTIST...*G.R. No. L-27524. July 31, 1970*

Ponente: FERNANDO, J.

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It was not a light burden petitioner Jose G. Tecson, Superintendent of Dredging, Bureau of Public Works, had taken upon himself in seeking through this special civil action for certiorari and prohibition the nullification of his detail to the Office of the President according to a directive of the then Executive Secretary, Rafael Salas, acting by presidential authority, imputing to it the character of a removal without cause.[1] Thus, on its face, it could not be asserted with confidence that the petition was sufficiently compelling. It was no surprise then that the lower court, the Honorable Juan O. Reyes presiding, sustained a motion to dismiss filed by respondents. The matter is now before us on appeal. The fate in store for it is not any different. There is no valid legal reason for reversing the lower court, the applicable legal norms grounded on a realistic appraisal of the power lodged in the President by the Constitution and statute alike calling for a recognition of such competence on his part. We affirm the order of dismissal.

The amended petition for certiorari and prohibition filed against respondents on November 15, 1966 prayed that the detail dated October 14, 1966 of petitioner Superintendent of Dredging of the Bureau of Public Works to the Office of the President to assist in the San Fernando Port Project be declared illegal, null and void. There was a motion to dismiss filed on November 29, 1966 by the then Solicitor General, now a member of this Court, the Honorable Antonio P. Barredo, primarily based on a lack of cause of action, as the power of the then Executive Secretary, acting by authority of the President to detail petitioner, was beyond question. Such a motion elicited a favorable response from the lower court, as shown by its order of December 17, 1966 dismissing the petition without pronouncement as to costs and lifting the restraining order previously issued.

The basic question was set forth in such order. Thus: "Stripping off the unnecessary allegations and data contained in the voluminous allegations of the petitioner and the respondents in their respective pleadings, and after a perusal of the amended petition, the Court finds that the principal issue between petitioner and the herein respondents in the amended petition, is whether or not the assignment of herein petitioner on temporary detail to the office of Commodore Santiago Nuval, Presidential Assistant on Ports and Harbors, by the President of the Philippines thru the Executive Secretary, constitutes removal from office without cause." [2] It incorporated the challenged directive of the then Executive Secretary addressed to the Secretary of Public Works and worded as follows: "Mr. Jose G. Tecson, Superintendent of Dredging, Bureau of Public Works, is hereby detailed to the Office of the President, effective immediately, to assist in the San Fernando Port Project. Mr. Tecson shall report directly to Commodore Santiago Nuval, Presidential Assistant on Ports and Harbors." [3] It was clearly set forth therein that it was issued "by authority of the President."

Then came this portion of the lower court's order of dismissal: "It is to be presumed that the Presidential directive, thru the Salas Order, must have been decided by Malacañang in the interest of public service, and such official act should be considered regularly issued. Petitioner, however, argues that the Salas detail order although issued by Authority of the President, should be approved by the Budget Commissioner and the Commissioner of Civil Service as there is no specification of the period of assignment. This contention of the petitioner, if it were to be followed, would contravene the generally accepted principle which recognizes presidential 'power control' over the executive department. For then the acts of the President of the Philippines would be subject to a subsequent approval or action by his subordinate officials in the executive department." [4] Why there was no removal from office without cause was explained in such order thus: "The respondents further argue that the temporary assignment of the petitioner to the Office of the President is not a demotion in rank and salary. Neither is it to be considered as a disciplinary action taken against him. The detail does not involve removal from his present position by transferring him to another position in a lower class. He will retain his position as Superintendent of Dredging and will receive all the emoluments and privileges appurtenant thereto. In citing Sec. 32 of the Civil Service Act of 1959, petitioner seems to be of the impression that he is being transferred from one position to another, but this is not the case as regards the above-quoted detail order of Secretary Salas. The same Sec. 32 of Civil Service Act of 1959 provides 'that a transfer from one position to another without reduction in rank or salary shall not be considered disciplinary when made in the interest of public service.'" [5] It was the conclusion of the lower court, therefore, that there was likewise a statutory authority for such detail in the Office of the President, which was neither a demotion nor a disciplinary action and as such valid. Hence the order of dismissal.

The matter was elevated to us on appeal, petitioner, now appellant, stressing that he had a valid cause of action as there was a removal or, at the very least, a transfer from his present position to another without his consent, contrary to the constitutional provision, at the same time disputing the presidential authority under his power of control to order such a detail. On that issue decisive of this controversy, we find for respondents and, as noted, affirm the order of dismissal.

1. The basic philosophy of the presidential type of government adopted in our Constitution was expounded with force and lucidity by Justice Laurel in *Villena v. Secretary of Interior* [6] in words the validity of which has not been impaired by the passage of time. It upheld in that case an order of suspension of the petitioner municipal mayor by such department head, notwithstanding the lack of statutory authority. This the Court was able to do, surmounting what otherwise should have been an insuperable obstacle, by attaching to such order of suspension the character of a presidential act. Thus: "After serious reflection, we have decided to sustain the contention of the government in this case on the broad pro-position, albeit not suggested, that under the presidential type of government which we have adopted and considering the departmental organization established and continued in force by paragraph 1, section 12, Article VII, of our Constitution, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or the law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive." [7]

Justice Laurel then proceeded to make clear why such an assumption is a logical corollary of the conferment of the totality of executive power in the President. As he pointed out: "With reference to the Executive Department of the Government, there is one purpose which is crystal-clear and is readily visible without the projection of judicial searchlight, and that is, the establishment of a single, not plural, Executive. The first section of Article VII of the Constitution, dealing with the Executive Department, begins with the enunciation of the principle that The

executive power shall be vested in a President of the Philippines. "This means that the President of the Philippines is the Executive of the Government of the Philippines, and no other. The heads of the executive departments occupy political positions and hold office in an advisory capacity, and, in the language of Thomas Jefferson, 'should be of the President's bosom confidence' (7 Writings, Ford ed., 498), and, in the language of Attorney-General Cushing (7 Op., Attorney-General, 453), 'are subject to the direction of the President.' Without minimizing the importance of the heads of the various departments, their personality is in reality but the projection of that of the President. Stated otherwise, and as forcibly characterized by Chief Justice Taft of the Supreme Court of the United States, 'each head of a department is, and must be, the President's alter ego in the matters of that department where the President is required by law to exercise authority' (Myers vs. United States, 47 Sup. Ct. Rep., 21 at 30; 272 U. S., 52 at 133; 71 Law. ed., 160)."[8]

A few months earlier, in *Planas v. Gil*,^[9] Justice Laurel already had occasion to emphasize such plenitude of authority vested in the President. These were his words then: "Viewed from the totality of powers conferred upon the Chief Executive by our Constitution, we should be reluctant to yield to the proposition that the President of the Philippines who is endowed with broad and extraordinary powers by our Constitution, and who is expected to govern with a firm and steady hand without vexatious or embarrassing interference and much less dictation from any source, is yet devoid of the power to order the investigation of the petitioner in this case. We should avoid that result."^[10]

It is true that insofar as presidential intervention over local affairs is concerned, the Villena decision no longer speaks with authority. It did lend itself to the criticism that it was not sufficiently mindful of the distinction under the Constitution delineating the power of the President to "have control of all the executive departments, bureaus, or offices" and his limited power to "exercise general supervision over all local governments as may be provided by law, * * *."^[11] In the Villena as well as the *Planas v. Gil* cases, Justice Laurel appeared to have taken a rather expansive view of such supervisory authority, the effect of which could blur the line distinguishing it from control. *Hebron v. Reyes*,^[12] with the then Justice, now Chief Justice, Concepcion as the ponente, clarified matters. As was pointed out, the presidential competence is not even supervision in general, but general supervision as may be provided by law. He could not thus go beyond the applicable statutory provisions, which bind and fetter his discretion on the matter. Moreover, as had been earlier ruled in an opinion penned by Justice Padilla in *Mondano v. Silvosa*,^[13] referred to by the present Chief Justice in his opinion in the Hebron case, supervision goes no further than "overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them the former may take such action or step as prescribed by law to make them perform their duties."^[14] Control, on the other hand, "means the power of an officer to alter or modify or nullify or set aside what a subordinate had done in the performance of their duties and to substitute the judgment of the former for that of the latter." It would follow then, according to the present Chief Justice, to go back to the Hebron opinion, that the President had to abide by the then provisions of the Revised Administrative Code on suspension and removal of municipal officials, there being no power of control that he could rightfully exercise, the law clearly specifying the procedure by which such disciplinary action could be taken.^[15]

Insofar, however, as the power of control over all executive departments, bureaus or offices is concerned, the Villena ruling applies with undiminished force.^[16] As a matter of fact, the present Chief Justice, in a decision rendered more than a year later after *Hebron v. Reyes*, *People v. Jolliffe*,^[17] quoted extensively from the Villena ruling to stress what Justice Laurel referred to as the "qualified political agency" concept resulting in the "assumption of responsibility by the President of the Philippines for acts of any member of his cabinet." No doubt can be entertained then as to the continuing vitality of the Villena doctrine concerning the plenitude of authority lodged in the President implicit in the power of control expressly granted him by the Constitution.^[18] Nor should

any restrictive significance be attached to the wording in the Mondano decision as to the implications of such concept considering that there was no need in such case for a more elaborate treatment, all that was necessary being to distinguish it from supervision. In *Pelaez v. Auditor General*,^[19] the present Chief Justice left no doubt as to its all-embracing scope. Thus: "The power of control under this provision implies the right of the President to interfere in the exercise of such discretion as may be vested by law in the officers of the executive departments, bureaus, or offices of the national government, as well as to act in lieu of such officers."^[20] The assertion then that such a broad grant of authority could not justify the challenged directive cannot be taken too seriously. If it were not so, the result would be not observance but defiance of a constitutional command.

2. The detail of petitioner to the Office of the President was thus unobjectionable. By no stretch of the imagination could it be considered a removal. It was not even a transfer. Even if it could be so viewed, the same conclusion would emerge, as such was allowable under the Civil Service Act provision then in force, so long as there be no reduction in rank or salary, such transfer therefore not being considered disciplinary when made in the interest of public service.^[21] Nor is there any merit to the assertion made in the brief of petitioner that the directive of the Executive Secretary, acting upon authority of the President, needed the approval of the Civil Service Commission and the Commissioner of the Budget for its enforcement. Such a thought is repugnant to the very concept of a single, not a plural, executive in whom is vested the whole panoply of executive power. It is not only illogical, but it does not make sense, to require as a prerequisite to its validity the approval of subordinates to an action taken by their superior, the President, who under the Constitution is the Executive, all prerogatives attaching to such branch being vested in him solely. In that sense, for those discharging purely executive functions in the national government, he gives orders to all and takes orders from none.

3. It would seem undisputed, then, that the lower court had no alternative but to dismiss the petition. The cause of action was clearly lacking. What was done did not amount to a removal. Moreover, the power of the President to order the detail was manifestly undeniable. It would likewise appear that petitioner failed to exhibit due deference to one of the fundamental postulates of government service, namely, that a public office is a public trust. While rightfully the Constitution guarantees the security of a public official's term, as well as his right to be compensated, there can be no disputing the truth of the assertion that the overriding concern is that the task of government be performed and performed well. One in public service, therefore, should not lack awareness that whatever talents he may possess should be beneficially employed for the public welfare, the determination as to where they should be devoted being ordinarily left to the discretion of his superiors. In the language of Justice Sanchez in *Sta. Maria v. Lopez*,^[22] "the use of approved techniques or methods in personnel management to harness the abilities of employees to promote the optimum public service cannot be objected to."

When petitioner was therefore required to assist in the San Fernando Port Project, directly under the then Presidential Assistant on Ports and Harbors in the challenged directive of the Executive Secretary, acting by authority of the President, his duty as a public official was clear. He had to yield obedience. He ought to have known, as one of those entrusted with governmental functions, that what is controlling was not his choice of what should be done but what the interest of the service requires. It was made clear in the directive that he remained Superintendent of Dredging in the Bureau of Public Works. There was no demotion in rank. There was no diminution of salary. To give heed to his protest and invalidate such a detail, well within the power of the President, would be to nullify the concept of a public office being a public trust.

4. There is another consideration that militates against the stand of petitioner. The question before the judiciary in its appraisal of the validity of the acts of the President or of Congress is one of power. It is not for this Tribunal, much less for an inferior court, to inquire into the motives that may have prompted the exercise of a presidential authority. At the most, it can look into, the question of whether there is legal justification for what was done. If the answer were in the affirmative, that disposes of the matter. In the same way that the judiciary

has a right to expect that neither the President nor Congress would cast doubt on the mainspring of its orders or decisions, it should refrain from speculating as to alleged hidden forces at work that could have impelled either coordinate branch into acting the way it did. The concept of separation of powers presupposes mutual respect by and between the three departments of the government. At the very least then, the presumption is to be indulged in that the exertion of a legitimate governmental power springs from a belief that thereby public interest is served and the common weal promoted.

WHEREFORE, the order of dismissal of December 17, 1966 is hereby affirmed. Without pronouncement as to costs.

Concepcion, C.J., Makalintal, Zaldivar, Castro, Teehankee, and Villamor, JJ., concur.

Reyes, J.B.L., and Dizon, JJ., in the result.

Barredo, J., did not take part.

[1] The other respondents' named were the then Secretary of Public Works and Communications, Antonio Raquiza; the then Undersecretary of Public Works, Marciano D. Bautista, the Officer-In-Charge of the Bureau of Public Works, Alejandro B. Delena; and the Asst. Superintendent of Dredging of such Bureau, Felix V. Bagtas.

[2] Appendix A, Brief for the Petitioner-Appellant, p. 109.

[3] Ibid, p. 110.

[4] Ibid; p. 111.

[5] Ibid, pp. 111-112.

[6] 67 Phil. 451 (1939).

[7] Ibid, p. 463.

[8] Ibid, p. 464.

[9] 67 Phil. 62 (1939).

[10] Ibid. p. 78.

[11] Art. VII, Sec. 10, par. 1, Constitution.

[12] 104 Phil. 175 (1958).

[13] 97 Phil. 143 (1955).

[14] Ibid, pp. 147-148.

[15] Reference was made to sections 2188-2191 of the Revised Administrative Code. It is to be noted that under the Decentralization Act of 1967, Republic Act No. 5185, the procedure for suspension or removal of municipal officials had been modified. Thus: "Written subscribed and sworn charges against any elective provincial and city official shall be preferred before the President of the Philippines; against any elective municipal official before the provincial governor or the secretary of the provincial board concerned; and against any elective barrio official before the municipal or city mayor or the municipal or city secretary concerned. Within seven days after the charges are preferred, the President, Governor, or Mayor, as the case may be, or his duly authorized representative, as provided in the preceding paragraph, shall notify the respondent of such charges. The President, Provincial Board and City of Municipal Council, as the case may be, shall hear and investigate the truth or falsity

of the charges within ten days after receipt of such notice: Provided, That no investigation shall commence or continue within ninety days immediately prior to an election. The preventive suspension of the respondent officer shall not extend beyond sixty days after the date of his suspension. At the expiration of sixty days, the suspended officer shall be reinstated in office without prejudice to the continuation of the proceedings against him until their completion, unless the delay in the decision of the case is due to the fault, neglect or request of the suspended officer, in which case, the time of delay shall not be counted in computing the time of suspension: Provided, however, That if the suspended officer shall have been found guilty as charged before the expiration of the thirty days, his suspension, in the case of municipal and barrio officials, may continue until the case is finally decided by the Provincial Board. "(Sec. 5.) As far as the appellate power of the President is concerned, however, no change was made in the aforesaid Act.

[16] *Marc Donnelly and Associates v. Agregado*, 95 Phil. 145 (1954); *Cabansag v. Fernandez*, 102 Phil. 152 (1957); *Acting Collector of Customs v. Court of Tax Appeals*, 102 Phil. 244 (1957); *Commissioner of Customs v. Auyong Hian*, 105 Phil. 561 (1959); *People v. Jolliffe*, 105 Phil. 677 (1959); *Demaisip v. Court of Appeals*, 106 Phil. 237 (1959); *Juat v. Land Tenure Administration*, L-17080, Jan. 28, 1961, 1 SCRA 361; *Tulawie v. Provincial Agriculturist of Sulu*, L-18945, July 31, 1964, 11 SCRA 611; *Lacson-Magallanes Co. v. Paso*, L-27811, Nov. 17, 1967, 21 SCRA 895.

[17] 105 Phil. 677 (1959).

[18] In the *Lacson-Magallanes Co.* decision, the last case citing with approval the *Villena* ruling, the writer wrote a concurring opinion quoting in full the elaborate dissertation of Justice Laurel in an opinion likewise signed by the Chief Justice.

[19] L-23825, Dec. 24, 1965, 15 SCRA 569.

[20] *Ibid*, p. 582.

[21] Sec. 32, Republic Act No. 2260 (1959). On that point the Civil Service Act, as amended by Republic Act No. 6040 (1969), has undergone a change. Thus: "No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law and after due process: Provided, That a transfer from one position to another without reduction in rank or salary shall not be considered disciplinary when made in the interest of public service, in which case the employee concerned shall be informed of the reasons therefor. If the employee believes that there is no justification for the transfer, he may appeal his case to the Commission on Civil Service through the Department Head. Pending his appeal and the decision thereon, his transfer shall be held in abeyance: Provided, however, That no transfer or detail whatever shall be made within three months before any local or national election nor shall any detail last longer than three (3) months without the consent of the employee."

[22] L-30773, Feb. 18, 1970, 31 SCRA 637.

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