

JULIANA B. BRILLANTES, PLAINTIFF-APPELLANT, VS. MARIANO R. GUEVARRA, DEFENDANT-APPELLEE.*G.R. No. L-22586. February 27, 1969*

Ponente: SANCHEZ, J.

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This appeal, solely "on questions of law", [1] tests the applicability of the constitutionally secured tenure provision to a 1962 administrative order requiring the transfer of principal teachers who have completed five years or more of service in one station, under which appellant, a principal assigned to Sinalang Elementary School, Bangued, Abra, was reassigned in 1963 to head the Peñarrubia Elementary School in Peñarrubia of the same province.

Upon the issue tendered, we turn to the facts:

Juliana B. Brillantes had been in the government service for 34 years. She was a PNC and ESE graduate with Junior and Senior Teacher eligibilities. On June 6, 1929, she started as a classroom teacher in the Manabo Elementary School, Bangued, and thereafter was transferred to different stations: Bangued, Peñarrubia, Sinalang, Padre Gomez and Bangued East Elementary Schools.[2] On September 1, 1951, she was assigned to Sinalang Elementary School in Bangued as acting principal thereof. She continued as principal in that school when she was permanently appointed, effective July 1, 1952, as "Principal (Elementary School) in the Bureau of Public Schools, Department of Education", in an appointment dated December 29, 1954.[3] When the Sinalang Elementary School was converted into a division pilot demonstration school, she was officially designated on September 19, 1961 principal thereof by the Superintendent of Schools, then Federico B. Ablan.[4]

Controversy started when Mariano E. Guevarra, the new Division Superintendent of Schools, released Division Letter 31 on April 16, 1963, advising all the elementary school principals in Abra of their respective new station assignments.[5] The transfers were made by authority of a Department of Education directive dated September 11, 1962 and an implementing order of the Director of Public Schools, Circular 28, series of 1962.[6]

A copy of the division letter, which served as a transfer order, was received by Juliana Brillantes. Her new station assignment was Peñarrubia Elementary School in the town of Peñarrubia situated six kilometers from her hometown of Bangued.

Juliana Brillantes wrote Mariano R. Guevarra on April 24, 1963 requesting that she instead be assigned to the Bangued West Elementary School or be allowed to remain in Sinalang Elementary School. Three reasons were cited by her: (1) as she was a native and resident of Bangued, her husband a professional, with their child who was born abnormal requiring personal attention, her transfer would work hardships on her family; (2) her transfer was not required by the exigency of public service because there was no complaint against her as principal of Sinalang Elementary School or against the principal of Peñarrubia Elementary School; and (3) that the transfer was disciplinary in character and was made without due process of law.[7] The Superintendent stood firm.

On July 2, 1963, plaintiff filed the verified complaint below.[8] Named defendant was Mariano R. Guevarra, the

Division Superintendent of Schools. Said complaint sought a declaration of nullity of the transfer order, moral damages resulting therefrom, and preliminary mandatory injunction. It averred that defendant acted in excess of his authority, in abuse of discretion and in violation of the Civil Service Law in issuing Division Letter 31; that her transfer was a demotion in rank, disciplinary in character, and yet she was not accorded due process of law.

Defendant Mariano R. Guevarra answered on July 8, 1963 and opposed the issuance of the writ of preliminary mandatory injunction. The lower court granted the writ after hearing and upon the filing of the required bond.

After trial on the merits following a partial stipulation of facts, the lower court rendered its decision of October 24, 1963 dismissing the complaint without costs, dissolving the injunction and cancelling the bond.

On October 31, 1963, plaintiff moved to reconsider upon the ground that paragraph (a) (3) of Section 318 of the Service Manual,[9] Circular 28 and Division Letter 31, are unconstitutional, for they amount to her removal, a violation of her security of tenure protected by Section 4, Article XII of the Constitution. On November 14, 1963, defendant opposed. On November 20, 1963, the court perfunctorily rejected reconsideration.

Plaintiff appealed to this Court.

Plaintiff, against the insistence of school authorities that she proceed to Peñarrubia Elementary School pending appeal, refused to occupy the position for the reason that such action might be construed as a waiver of her right to appeal and render the issue academic. Instead, on December 5, 1963, pending perfection of her appeal, she registered in the court below a motion for status quo. Opposed by defendant, the motion was denied by the lower court on December 17, 1963. On August 6, 1964, she reiterated her request in this Court by filing a Petition for a Declaration of Status Quo Pending Appeal.[10] The provincial fiscal, representing defendant Superintendent, offered no objection to the petition,[11] gave a retroactive application to Circular 18, series of 1964, which modified Circular 28, series of 1962, to the effect that transfers of principals must first be approved by the Director of Public Schools. But the Solicitor General opposed the petition,[12] against which plaintiff filed a refutation.[13]

An administrative charge for insubordination was instituted against Juliana B. Brillantes. On September 29, 1964, the Commissioner of Civil Service decided the administrative case for insubordination against plaintiff by dismissing her from the service. Upon appellant's motion for reconsideration of her dismissal, this sentence was modified on June 23, 1965 by reducing it to suspension for ten months without pay coupled with a warning.

Plaintiff thus petitioned this Court that status quo be maintained and that the Commissioner be ordered to show cause why he should not be dealt with for contempt for declaring her guilty of insubordination pending appeal before this Court.

Finally, on March 22, 1966, this Court resolved (a) to deny the petition for declaration of status quo; (b) to defer action on the petition that the Commissioner of Civil Service be required to show cause why he should not be punished for contempt and that the decision and resolution of the Commissioner finding plaintiff guilty of insubordination be declared null and void ab initio, until the decision of this case on the merits.

1. Arguing that an appointment as principal in the Bureau of Public Schools and assignment to a particular school are inseparable, plaintiff maintains that her unconsented transfer to another school by virtue of an administrative directive amounts to a removal - prohibited by the Constitution[14] and the Civil Service Act - which cannot be done unless for causes specified by law.

Plaintiff's confident stride falters. She took too loose a view of the applicable jurisprudence. Her refuge behind the mantle of security of tenure guaranteed by the Constitution is not impenetrable. She proceeds upon the

assumption that she occupies her station in Sinalang Elementary School by appointment. But her first appointment as Principal merely reads, thus: "You are hereby appointed a Principal (Elementary School) in the Bureau of Public Schools, Department of Education,"[15] without mentioning her station. She cannot therefore claim security of tenure as Principal of Sinalang Elementary School or any particular station. She may be assigned to any station as exigency of public service requires, even without her consent.[16] She thus has no right of choice.

The rule pursued by plaintiff only goes so far as the appointment indicates a specific station. Otherwise, the constitutionally ordained security of tenure cannot shield her. In appointments of this nature, this Court has consistently rejected the officer's demand to remain - even as public service dictates that a transfer be made - in a particular station. Judicial attitude toward transfers of this nature is expressed in the following statement in *Ibanez vs. Commission on Elections*:^[17]

"That security of tenure is an essential and constitutionally guaranteed feature of our Civil Service system, is not open to debate. The mantle of its protection extends not only against removals without cause but also against unconsented transfers which, as repeatedly enunciated, are tantamount to removals which are within the ambit of the fundamental guarantee. However, the availability of that security of tenure necessarily depends, in the first instance, upon 'the nature of the appointment (*Hojilla vs. Marino, et al.*, G.R. L-20574, February 26, 1965). Such that the rule which proscribes transfers without consent as anathema to the security of tenure is predicated upon the theory that the officer involved is appointed - not merely assigned - to a particular station (*Miclat vs. Ganaden, et al.*, G.R. L-14459, May 30, 1960; *Jaro vs. Valencia, et al.*, G. R. L-18352, August 30, 1963)."

We hold that the transfer order by itself is not constitutionally infirm.

2. The attack against the September 11, 1962 directive of the Department of Education and Circular 28, series of 1962, of the Director of Public Schools dated December 3, 1962, is as misdirected.

By the foregoing directive and circular, a policy exists that certain school officials, amongst them elementary school principals, whose salaries are payable from the national funds are to be transferred upon completion of five years of service in one station in order to prevent a situation where they become "stale and unchallenged by new situations and conditions" and "administrative problems accumulate."^[18]

The administrative order applies only to principals, supervisors, superintendents and administrative officers whose salaries are payable from the national funds and who, presumably, hold appointments of the same nature as plaintiff's, that is, without specific station. The order cannot therefore be violative of the constitutionally enshrined security of tenure. The only secured right of a holder of an appointment without specific station is the position itself but not the station to which he may have been assigned.

The charge that the order is arbitrary may not be entertained. The Department of Education directive of September 11, 1962 is a valid exercise of the rule-making power of the Secretary of Education governing the internal regulation of officers under his Department. This power is granted to him by Section 79(B) of the Revised Administrative Code, quoted as follows:

"Section 79(B). Power to regulate. - The Department Head shall have power to promulgate, whenever he may see fit to do so, all rules, regulations, orders, circulars, memorandums, and other instructions, not contrary to law, necessary to regulate the proper working and harmonious and efficient administration of each and all of the offices and dependencies of his Department, and for the strict enforcement and proper execution of the laws relative to matters under the jurisdiction of said Department; x x x."

In the same manner then, the implementing order of the Director of Public Schools in Circular 28, series of 1962,

as well as the implementing letter of defendant Division Superintendent of Schools dated April 16, 1963 are not tainted with arbitrariness.

3. Besides, the Department of Education directive left the door open for exemptions to the policy. It says: "Individual cases requiring exemption from this general policy [of transfers upon completion of five years] may be submitted to this Office for appropriate decision." The Secretary of Education could thus authorize such exemption.

But plaintiff did not make any formal application of this nature with the Secretary of Education. If we treat her request made with the Director of Public Schools as equivalent to an application for exemption with the Secretary of Education, we cannot easily downgrade the former's decision denying her request. For, we perceive no abuse of discretion.

Of course, she went to court on questions of law. By jurisprudence, this suffices to take her case out of the operative area of the principle of exhaustion of administrative remedies. Even in this, however, her cause must fail. We find nothing illegal or unconstitutional about her transfer.

4. Dissentient, plaintiff insists that her unconsented transfer is a demotion in rank and therefore disciplinary. In which case, so she argues, the transfer cannot be made without any previous investigation. She thumbs with meticulous care the difference between Peñarrubia Elementary School to which she was transferred and Sinalang Elementary School which she occupied. The first is not a pilot demonstration school. It is six kilometers from her hometown and has only thirteen teachers. On the other hand, the latter, being a pilot school located in her hometown, receives funds from the ICA-NEC and is already staffed with twenty-three teachers.

Indeed, the WAPCO Classification Pay Plan[19] categorizes principals into Principal I and Principal II. Principal I has a staff of seven to twenty-five teachers. Principal II has a faculty of more than twenty-five teachers. Transfers must be made in accord with this classification.[20] A principal I may not be transferred to a school having more than twenty-five teachers. In turn, a principal II may not be transferred to a school with a faculty of twenty-five or less teachers. In the same manner, transfers must be made within the same salary range. When, however, the number of teachers in a particular school, which previously had only twenty-five or less teachers, increases to more than twenty-five, the Division Superintendent of Schools should make a recommendation to effect a reclassification of the principal assigned to that school to Principal II.[21]

It is on this last point that plaintiff anchors her complaint. That just as she had almost reached the required number of teachers under her staff to enable her reclassification to Principal II, she was transferred to Peñarrubia Elementary School with only thirteen teachers. This, according to her, delays her promotion to Principal II. It is, she stresses, a demotion in rank, disciplinary in character.

But, again, this claim must be brushed aside. It is, at best, speculative. Who can say whether Sinalang will soon or will eventually have more than twenty-five teachers? The point is that plaintiff is a Principal I. Peñarrubia Elementary School, with its thirteen teachers, belongs to the Principal I classification. Plaintiff's transfer therefore did not reduce her rank of Principal I.

Nor does it delay her promotion. Promotion or demotion is from the rank of Principal I to that of Principal II and vice-versa. If her transfer is a demotion prestige-wise, it should not be allowed to hamper the demands of public service. Plaintiff is a principal of a pilot school. Her experience as such is needed in other schools. Public service would not be enhanced if she were allowed to stay permanently in Sinalang Elementary School.

The fact, too, that her former station is a pilot demonstration school does not give plaintiff a higher rank than Principal I. The conversion of the Sinalang Elementary School to a pilot school involves no promotion in rank. A

principal of an ordinary school and that of a pilot school have the same qualifications.[22]

We find no reason to disturb the lower court's statements on this point, viz:

"As to plaintiff's allegation that her chance of promotion to Principal II is remote inasmuch as in Sinalang Pilot Elementary School there are 23 teachers while in Peñarrubia Elementary School there are only 13 teachers is not only denied by the defendant, but Circular No. 22, Series of 1960, of the Bureau of Public Schools dated July 20, 1960, entitled 'Merit and Seniority Ranking System', Exhibit '6' (Roll of Exhibits), shows that in the selection of personnel for promotion to higher positions several items should be considered in preparing the rank list of elementary school principals, such as (a) educational qualifications, (b) civil service eligibility, (c) efficiency, (d) experience and (e) educational leadership and executive ability, so that the number of teachers under the supervision of the candidate is not a factor to be considered. Moreover, G.L. No. 77 dated June 1, 1959, of the Director of Public Schools, Exhibit '11' (Roll of Exhibits), states that 'x x x Elementary school principals in schools with 25 or more teachers are classified as Elementary School Principal II and those assigned in school with less than 25 teachers (sic) are classified as Elementary School Principal I.[23] So that it is immaterial whether plaintiff as Elementary School Principal I should have 13 or 23 teachers under her. Consequently, plaintiff's transfer to Peñarrubia Elementary School does not in any way affect her rank as Elementary School Principal I. It is further contended by plaintiff that her transfer in question was a demotion because it was not only motivated by personal reasons, on account of a misunderstanding with the herein defendant, but also because her choice of station was disregarded, x x x result of which would work hardship to her family, hence, defendant's act was illegal and arbitrary. x x x this contention defendant vehemently denied, for if that were true, he could have ordered plaintiff's transfer to a school farther away from her home than Peñarrubia. Aside from this, however, the evidence shows that she was not the only one who was transferred to another station but also all the other elementary school principals, whose respective assignments were made for public interest. The fact is also clear that her transfer to Peñarrubia Elementary School does not affect her promotion, rank and salary. This fact is corroborated by the Certificate of the Record Clerk of the Division of Abra dated July 31, 1963 to the effect that as Principal I for the year 1963-64, she will receive an annual salary, based on WAPCO Pay Plan, the amount of P3,432.00, instead of her present salary of P3,264.00 (Exh. '5', Roll of Exhibits). In other words, there is no demotion to speak of, since there is no reduction in her position, rank, or salary as a result of such transfer. There being no reduction in position, rank, or salary, this Court is of the opinion that the act of the defendant in transferring the plaintiff is not disciplinary in nature." [24]

5. Surely, the argument that defendant acted arbitrarily because there was no complaint filed against plaintiff as Principal of Sinalang Elementary School and that therefore her transfer was not required by the exigency of public service is a narrow concept of the meaning of public service. The reason put forth by defendant that her efficiency and her experience as Principal in a pilot school would spur the improvement of small schools is enough to justify her transfer.[25] It is in the interest of public service.[26] Her know-how may be utilized more effectively in Peñarrubia Elementary School.[27]

6. In a case like the present, where appeal is pending resolution in the Supreme Court, school authorities should be cautious in charging - before the Civil Service Commission - a school teacher with insubordination for failure to comply with their directive, subject of appeal in an appellate court and which was not stopped by injunction. While the interest of the service may be urged in enforcing such directive, factors there are which should outweigh the exercise thereof whilst the court case remains unresolved.

First, plaintiff acted in good faith believing that her refusal to obey the transfer was legally defensible. She felt that a wrong had been committed against her. Her transfer from her post as principal teacher in a pilot elementary school with 23 teachers in the provincial capital, Bangued, her place of residence - meant inconvenience as well as loss of prestige. For, she was to be transferred to a small town with but only 13 teachers. In this situation, it is

not so easy to erase from her mind the thinking that transfer took the form of disciplinary action, even if, as later found, some such thoughts were mis-conceived. She went to court for redress. She had faith in the administration of justice. She entertained the belief that to bow to the demands of her superiors pending her appeal would jeopardize such appeal. This is, of course, a mistake. But again, it is quite understandable.

And then, public officials should not give cause for suspicion on the part of their subordinates that persecution has taken the better part of discretion. At the time the transfer here involved took place, the superintendent's authority to transfer in the interest of the service could easily be abused. It would seem to us, on the face, of subsequent events, that such practice could have really generated low morale amongst the teachers. That power was, in fact, reduced when Circular 18, series of 1964 - while this case was pending appeal - was promulgated by the Director of Public Schools. That circular exacted approval by the Director of Public Schools, prior to implementation, of any transfer plan to be made by the Division Superintendent.[28] Then came the Magna Carta for Public School Teachers, Republic Act 4670, approved on June 18, 1966. A teacher may not now "be transferred without his consent from one station to another" except "for cause and as herein otherwise provided." The Magna Carta enjoins that "[w]here the exigencies of the service require the transfer of a teacher from one station to another, such transfer may be effected by the school superintendent who shall previously notify the teacher concerned of the transfer and the reason or reasons therefor." If the teacher believes there is "no justification for the transfer", he may appeal his case to the Director of Public Schools or to the Director of Vocational Education, as the case may be. And, pending his appeal and the decision thereon, "his transfer shall be held in abeyance."[29]

On top of all these is that implementation of the power to transfer, pending appeal in the appellate courts, may bring about an undesirable conflict of opinion. Suppose by reason of an insubordination charge, a teacher is dismissed? And then thereafter on appeal the Court pronounces judgment in favor of the teacher? In this particular situation, it is, indeed, dangerous to allow the Commissioner of Civil Service to dip his hand into a question that still awaits final resolution by courts of justice.

So it is, that this Court is duty-bound to nullify the decision and resolution of the Commissioner of Civil Service first dismissing plaintiff and thereafter reducing her penalty to 10 months' suspension without pay.

7. Finally, there is no point in ordering the Commissioner of Civil Service to show cause why he should not be punished for contempt for finding plaintiff guilty of insubordination pending her appeal before this Court. The Commissioner's decision and resolution aforesaid came as a result of an administrative charge. Defendant had not previously applied to this Court to inhibit the Commissioner from trying the administrative charge pending appeal. As aforesaid, there was no injunction. There was then no court order, violation of which could have given cause for contempt.

For the reasons given, the decision of the Court of First Instance of Abra in Civil Case No. 359 appealed from is affirmed; however, the June 23, 1965 decision of the Commissioner of Civil Service administratively sentencing herein plaintiff-appellant Juliana B. Brillantes to ten (10) months' suspension from service without pay, is hereby declared null and void.

No costs allowed.

SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] R.A., p. 72.

[2] Exhibit 6.

[3] Exhibits A and 2; emphasis supplied.

[4] Exhibit I.

[5] Exhibit M.

[6] Exhibit 4.

[7] Exhibit K.

[8] Civil Case 359, Court of First Instance of Abra, entitled "Juliana B. Brillantes, Plaintiff, versus Mariano R. Guevarra, Defendant", or "Declaration of Nullity, Injunction and Damages."

[9] Paragraph (a) (3) of Section 318 of the Service Manual (Third Revision, 1959) provides that "transfers of elementary school principals x x x may be made by the division superintendent, but in each case a report of the transfer or change in assignment should be submitted to the Director of Public Schools immediately." Exhibit 8.

[10] Rollo, p. 48.

[11] Rollo, p. 59.

[12] Rollo, p. 62.

[13] Rollo, p. 71.

[14] Sec. 4, Art. XII, Constitution: "No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law."

[15] Emphasis supplied.

[16] *Miclat vs. Ganaden*, G.R. No. L-14459, May 30, 1960; *Jaro vs. Valencia*, G.R. No. L-18352, August 30, 1963.

[17] 1967 E Phil. 257, 264, G.R. No. L-26558, April 27, 1967. Also cited in: *Suarez vs. Commission on Elections*, 1967C Phil. 167, 170; *Co vs. Commission on Elections*, 1967C Phil. 133, 135; *Salazar vs. Commission on Elections*, 1967C Phil. 136, 138; *Real vs. Commission on Elections*, 1967C Phil. 899, 901; *Braganza vs. Commission on Elections*, 191370 Phil. 359, 361; and *Amponin vs. Commission on Elections*, 1967C Phil. 903, 904.

[18] Exhibit 4.

[19] Of February 1, 1956, Exhibit 10.

[20] General Letter 77 of the Director of Public Schools, June 1, 1959, Exhibit 11.

[21] *Id.*

[22] *Tr.*, August I, 1963 (Millare), pp. 78-79.

[23] Under the WAPCO Classification Pay Plan of February 1, 1956 aforesaid - Exhibit 10 - principals of elementary schools "with a faculty of more than twenty-five teachers" are classified as "Elementary School Principal II" and those in schools "with a staff of seven to twenty-five teachers" as "Elementary School Principal I.")

[24] R.A., pp. 49-51; emphasis supplied

[25] Tr., August 1, 1963 (Millare), p. 87.

[26] Sec. 32, Civil Service Law, R.A. 2260.

[27] *Miclat vs. Ganaden*, supra; *Jaro vs. Valencia*, supra.

[28] Rollo, pp. 59-60.

[29] Section 6, Magna Carta for Public School Teachers.

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