

TEODOSIA ALFILER, ERLINDA BAQUIRAN, EULALIO DE LA REA, CORNELIA S. ARGUELLES, REYNALDO TIRANA, DANILO TUAZON, ARTURO JAVIER, LETICIA HERNANDEZ, DANILO HAYAG, LIGAYA BAUTISTA, CE...*G.R. No. L-27314. September 26, 1974*

Ponente: FERNANDO, J.

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There is but a single issue to be resolved, namely, the alleged failure to respect the constitutional command on security of tenure,[1] but it was brought up in a proceeding for certiorari, prohibition and mandamus[2] by the very same parties,[3] who, as petitioners, lost in a mandamus suit before the same respondent Judge Walfrido de los Angeles, and then elevated the matter to this Court.[4] Since from the appealed order of dismissal, it is quite evident that petitioners were employed in a temporary capacity, they could not in law rely on the constitutional safeguard, the termination of their status as workers being within the authority of respondent Auditor-General. Had their counsel possessed a more solid grasp of authoritative precedents, he would have realized that his efforts were doomed to futility. Moreover, his attention is likewise invited to his resorting to the far-from-commendable technique of burdening this Tribunal with two separate proceedings involving the same issue and the same parties and arising from the same order of respondent Judge. No one can be more cognizant than he that when on March 7, 1967 he instituted a certiorari, prohibition and mandamus proceeding, he had three days earlier, on March 4, 1967, already filed a notice on appeal to this Court with respondent Judge. Such a step could have been taken *ex abundanti cautela*. It could likewise be characterized as manifesting less than full respect to this Tribunal, which had to devote time and attention to two separate suits when one could have been done just as well. Not that, as was made mention of, it would do petitioners any good.

The appealed order of respondent Judge dated September 10, 1966, insofar as pertinent, reads as follows: "Before this Court is the petition of Teodosia Alfiler, Erlinda Baquiran, Eulalio de la Rea, Cornelia S. Arguelles, Reynaldo Tirana, Danilo Tuazon, Arturo Javier, Leticia Hernandez, Danilo Hayag, Ligaya Bautista, Celso Adriano, Leonardo Sarinas, Manuel Malabanan, Manuel Mesa, Ricardo Lozada, Rosella G. Guasch, Teresita Espiritu, and Elizabeth Matro, for mandamus with prayer for preliminary injunction. It appears from the records that on February 28, 1966, the respondent Auditor General issued Office Order No. 4135 terminating the services of the petitioners as of the close of office hours on the said date (February 28, 1966), and that the respondent General Manager, National Marketing Corporation (NAMARCO) was included in this suit for the reason that the compensation of petitioners are being paid out of NAMARCO funds." [5] Then came this decisive portion: "After due consideration of the pleadings on record, as well as the oral arguments of both parties in support of their respective stands on the matter, the Court believes that the Special and Affirmative defenses contained in the Answer of the respondents should be sustained. The respondent Auditor General, having been vested with authority to appoint and fix the salaries and the number of personnel in the Auditing Office of the NAMARCO, pursuant to Section 584 of the Revised Administrative Code as amended by Republic Act No. 2266, is

empowered to remove said personnel in accordance with law; that petitioners were separated from the service for reasons of economy considering that the NAMARCO is in a precarious financial condition; that the said respondent has lawfully terminated the services of petitioners considering that all their appointments were temporary in nature, hence terminable at a moment's notice at the pleasure of the appointing authority, because all of them are not civil service eligible." [6]

The lower court thus ordered the dismissal of the mandamus suit of petitioners. In reaching such conclusion, it acted in accordance with the authoritative doctrines of this Court. The validity of its order cannot be impugned.

The office order of respondent Auditor General terminating the services of petitioners is worded thus: "Effective as of the close of office hours on February 28, 1966, the services of the following confidential agents and laborers in the Office of the Auditor, National Marketing Corporation, are hereby terminated: 1. Teodosia Alfiler; 2. Erlinda Baquiran; 3. Eulalio de la Rea; 4. Cornelia S. Arguelles; 5. Reynaldo Tirana; 6. Danilo Tuazon; 7. Arturo Javier; 8. Leticia Hernandez; 9. Danilo Hayag; 10. Ligaya Bautista; 11. Celso Adriano, 12. Leonardo Sarinas; 13. Manuel Malabanan; 14. Manuel Mesa; 15. Ricardo Lozada; 16. Rosella G. Guasch; 17. Teresita Espiritu; 18. Elizabeth Matro. [(Sgd.) Ismael Mathay, Sr.] Auditor General." [7] There is nothing in the petition that would dispute the correctness of the above recital that petitioners were either confidential agents or laborers. Both in the petition in the lower court and in the petition for certiorari and prohibition in this Court, there was an admission of such a fact. To contend, therefore, that their tenure was not terminable at will, is to argue against reality. The lower court then had no choice except to dismiss the petition, for certainly mandamus presupposes a clear legal right which was sadly lacking in this case. Where the designation is temporary in character, the constitutional safeguard requiring removal for cause cannot be invoked. There is an abundance of cases in that respect. [8] So it was stressed in the brief for respondents submitted by the then Solicitor General, now Associate Justice, Antonio P. Barredo and the then Solicitor, now Judge Bernardo P. Pardo. Insofar as the position held is that of confidential agent, the lack of permanence is pointed out clearly in *Ingles vs. Mutuc*. [9]

WHEREFORE, in L-27701, the appealed order of dismissal of respondent Judge dated September 10, 1966 is affirmed, and in L-27314, the certiorari, prohibition and mandamus suit is dismissed for lack of merit. No costs.

Makalintal, C.J., Antonio, Fernandez, and Aquino, JJ., concur.
Barredo, J., took no part.

[1] According to Article XII, Section 4 of the 1935 Constitution: "No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law." That provision is incorporated in Article XII, B, Section 3 of the present Constitution. Cf. *Besa vs. Philippine National Bank*, L-26838, May 29, 1970, 33 SCRA 330.

[2] L-27314.

[3] Teodosia Alfiler, Erlinda Baquiran, Eulalio de la Rea, Cornelia S. Arguelles, Reynaldo Tirana, Danilo Tuazon, Arturo Javier, Leticia Hernandez, Danilo Hayag, Ligaya Bautista, Celso Adriano, Leonardo Sarinas, Manuel Malabanan, Manuel Mesa, Ricardo Lozada, Rosella G. Guasch, Teresita Espiritu, Elizabeth Matro.

[4] L-27701.

[5] Petition in L-27314, Annex F.

[6] *Ibid.*

[7] Annex A to Annex C, the suit for mandamus filed with respondent Judge.

[8] Cf. *University of the Phil. vs. Court of Industrial Relations*, 107 Phil. 848, (1960); *Quitiquit vs. Villacorta*, 107 Phil. 1060 (1960); *Atoy vs. Deling*, 107 Phil. 1146 (1960); *Azuelo vs. Arnaldo*, 108 Phil. 293 (1960); *Codilla vs. Martinez*, 110 Phil. 24 (1960); *Arcel vs. Osmena, Jr.*, 111 Phil. 171 (1961); *Gabio vs. Ganzon*, L-11664, March 16, 1961, 1 SCRA 713; *Tulawie vs. Provincial Agriculturist of Sulu*, L-18945, July 31, 1964, 11 SCRA 611; *Hojilla vs. Marino*, L-20574, Feb. 26, 1965, 13 SCRA 293; *Favis vs. Rupisan*, L-22823, May 19, 1966, 17 SCRA 190; *Jimenea vs. Guanzon*, L-24795, Jan. 29, 1968, 22 SCRA 224; *Santos vs. Chico*, L-24155, Sept. 28, 1968, 25 SCRA 343; *Barangan vs. Hernando*, L-28652, Feb. 28, 1969, 27 SCRA 239; *Azur vs. Provincial Board*, L-22333, Feb. 27, 1969, 27 SCRA 50; *Festejo vs. Barreras*, L-25074, Dec. 27, 1969, 30 SCRA 873; *Ramos vs. Romualdez*, L-27946, April 1970, 32 SCRA 590; *Mendiola vs. Tancinco*, L-26950, July 31, 1973, 52 SCRA 66; *Tolentino vs. De Jesus*, L-32797, March 27, 1974, 56 SCRA 167.

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