

**MELANIA C. SALAZAR, PETITIONER, VS. ISMAEL MATHAY, SR.,
AUDITOR-GENERAL AND ABELARDO SUBIDO, COMMISSIONER OF
CIVIL SERVICE, RESPONDENTS.***G.R. No. L-44061. September 30, 1976*

Ponente: MARTIN, J.

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The main issue in this appeal is whether or not the services of petitioner as "confidential agent" in the Office of the Auditor, GSIS was validly terminated on the alleged ground of loss of confidence, and if not, whether or not she could still be reinstated to said position after accepting the position of Junior Examiner in the same office.

On January 20, 1960, petitioner Melania C. Salazar was appointed by the Auditor General "confidential agent" in the Office of the Auditor General, Government Service Insurance System with compensation of P3,120.00 per annum, to take effect on January 27, 1960 upon her assumption of office. Her appointment was noted by the Commissioner of Civil Service under Section 5, paragraph (j) of Republic Act No. 2260,[1] subject to the usual physical and medical examination. On March 28, 1962 she was extended another appointment by way of promotion, as "confidential agent" in the same office with compensation of P3,300.00 per annum, to take effect on April 1, 1962. On August 28, 1964, her salary as "confidential agent" was adjusted to P4, 200.00 per annum, effective July 1, 1964.[2] On February 12, 1965, the Acting Deputy Commissioner of the Civil Service issued a third indorsement to the Auditor General stating that the petitioner has qualified in the general examination held on February 27, 1969 and her appointment which have been previously approved as provisional under Section 24 (c), Republic Act 2260, was approved anew subject to the usual physical and medical examination.[3] Again, on October 7, 1965, petitioner's salary as "confidential agent" was adjusted to P5,500.00 per annum effective July 1, 1965.[4]

On March 18, 1966, much to her surprise, petitioner received a notice from the Auditor General that her services as "confidential agent" in the Office of the Auditor, Government Service Insurance System have been terminated as of the close of office hours on March 31, 1966.[5]

On March 31, 1966 the Auditor General upon favorable recommendation of Mr. Pedro Encabo, Auditor of the Government Service Insurance System issued an appointment to petitioner Melania C. Salazar as Junior Examiner in his office with a compensation of P2,400.00 per annum, to take effect on April 1, 1966. Said appointment was approved by the Commission of Civil Service under Section 24(c) of Republic Act No. 2260 with a notice that general clerical eligibility is not appropriate for the position involved.[6] On the same day, petitioner assumed the position of Junior Examiner in the Office of the Auditor, GSIS, with the salary of P2,400.00 which was later adjusted to P2,580.00 per annum effective July 1, 1966.[7]

On December 27, 1966, petitioner wrote the Commissioner of Civil Service requesting that she be reinstated to her former position as "confidential agent" in the Office of the Auditor, GSIS.[8] However, no action was taken on said letter.[9]

On March 18, 1967, petitioner filed a petition for mandamus with the Supreme Court docketed as G.R. No. L-37256 to compel the Auditor General to reinstate her to her former position as "confidential agent" in the Office of the Auditor, GSIS, effective April 1, 1968 but the Supreme Court dismissed the petition for mandamus without prejudice to her filing the proper action to the Court of First Instance^[10] which petitioner did by filing the proper action in the Court of First Instance of Manila an action for mandamus to compel the Auditor General to return her to her former position as "confidential agent" in the Office of the Auditor General.

The crux of the problem in this appeal hinges on the nature of the position held by the petitioner in the Office of the Auditor, GSIS — whether it is primarily confidential or not. If it is, then her services as confidential agent can be terminated any time at the pleasure of the appointing power.^[11] There are two instances when a position may be considered primarily confidential: (1) When the President upon recommendation of the Commissioner of Civil Service (now Civil Service Commission) has declared the position to be primarily confidential;^[12] or (2) In the absence of such declaration when by the nature of the functions of the office, there exists "close intimacy between the appointee and appointing power which insures freedom of intercourse without embarrassment or freedom from misgiving or betrayals of personal trust or confidential matters of state."^[13] In the case before Us, the provision of Executive Order No. 265,^[14] declaring "x x x confidential agents in the several departments and offices of the Government, unless otherwise directed by the President, to be primarily confidential" brings within the fold of the aforementioned executive order the position of confidential agent in the Office of the Auditor, GSIS, as among those positions which are primarily confidential. Since the position of the petitioner falls under the first category of primarily confidential positions, it is no longer necessary to inquire into the nature of the functions attached to the office in order to determine whether her position is primarily confidential or not. Her position being primarily confidential, petitioner cannot complain that the termination of her services as confidential agent in the Office of the Auditor, GSIS is in violation of her security of tenure. In the case of *Delos Santos vs. Mallari*, *supra*, primarily confidential positions are excluded from the merit system, and dismissal at pleasure of officers or employees therein is allowed by the Constitution, although in *Ingles vs. Mutuc*,^[15] this assumption was held to be inaccurate. According to the Court, the proper expression to be used is that the term of the incumbent merely expires. Thus in said case, the Court held:

"This should not be misunderstood as denying that the incumbent of a primarily confidential position holds office at the pleasure only of the appointing power. It should be noted, however, that when such pleasure turns into displeasure, the incumbent is not "removed" or "dismissed" from office — his "term" merely "expires," in much the same way as an officer, whose right thereto ceases upon expiration of the fixed term for which he had been appointed or elected, is not and cannot be deemed "removed" or "dismissed" therefrom upon the expiration of said term. The main difference between the former — the primarily confidential officer — and the latter is that the latter's term is fixed of definite, whereas that of the former is not pre-fixed, but indefinite, at the time of his appointment or election, and becomes fixed and determined when the appointing power expresses its decision to put an end to the services of the incumbent. When this event takes place, the latter is not "removed" or "dismissed" from office — his term has merely "expired."

According, it can be said that petitioner was not removed from her office as confidential agent in the office of the Auditor, GSIS, but that her term in said position has already expired when the appointing power terminated her services.

But even granting for the sake of argument, that petitioner's position was not primarily confidential and that therefore her removal from said position for loss of confidence was in violation of her security of tenure as a civil service employee, yet by her acceptance of the position of Junior Examiner in the Office of the Auditor, GSIS on April 1, 1976, she was deemed to have abandoned her position of "confidential agent" in the same office. To constitute abandonment, there must be a total abandonment to clearly indicate an absolute relinquishment of the

office.[16] The officer should manifest a clear intention to abandon the office and its duties which may be inferred from his conduct. In one case, the Court held that abandonment of an office by reason of the acceptance of another, in order to be effective and binding should spring from and be accompanied by deliberation and freedom of choice, either to keep the old office or renounce it for another.[17] In the instant case, the day after her services as "confidential agent" in the Office of the Auditor, Government Service Insurance System were terminated, petitioner accepted unqualifiedly the position of Junior Examiner in the same office. She took her oath of office, performed the duties thereof and received her salary. All these clearly indicate that she has completely abandoned her former position. In *Summers vs. Ozaeta*, [18] a cadastral judge accepted the position of judge-at-large of the Court of First Instance, took his office as such, performed the powers and duties thereof, and withdraw the salary of judge-at-large, the Court held that he has abandoned his former position. In *Agapuyan vs. Ledesma*, [19] where an acting chief of police after his removal from office accepted an appointment as a permanent ranger in the Bureau of Forestry, the Court likewise held that he was deemed to have abandoned his former office. That petitioner had the clear intention to abandon her old position is firmed up by the fact that after her services as "confidential agent" in the Office of the Auditor, GSIS, she did not even bother to find out the reason for the termination of her services. Right the next day, she accepted the position of Junior Examiner in the same office. It took almost a year when she her mind and wanted to return to her old position. Certainly, by her conduct she has shown her clear intention to abandon it.

WHEREFORE, the decision appealed from is hereby affirmed with costs against petitioner.

SO ORDERED.

Teehankee (Chairman), Makasiar, and Conception Jr., JJ., concur.

Munoz Palma, J., concurs in the result.

Conception Jr., J., was designated to sit in the First Division.

[1] "SF.C. 5. The Non-Competitive Service.—The non-competitive service shall be composed of positions expressly declared by law to be in the non-competitive service and those which are policy-determining, primarily confidential or highly technical in nature.

The following specific officers and employees shall be embraced in the non-competitive service:

xxx xxx xxx

(j) Confidential assistants, confidential agents, investigation agents and special and secret service agents;"

[2] Exhibit C.

[3] Exhibit D.

[4] Exhibit E.

[5] Exhibit F.

[6] Exhibit H.

[7] Exhibit I.

[8] Annex J of the Petition.

[9] Exhibits J, J-1, J-2, 1st Indorsement to Auditor General.

[10] Exhibits K, K-l, Resolution of April 13, 1967.

[11] De los Santos vs. Mallari, 87 Phil. 289.

[12] SEC. 2. Rule XX, Civil Service Commission. Upon recommendation of the Commissioner, the President may declare a position as policy-determining, primarily confidential, or highly technical in nature. Such declaration shall not affect the incumbent of a position belonging to the competitive or classified service who holds a permanent position and such declaration shall refer only to the particular position and not to similar position or positions subsequently created. If, upon audit, the Commissioner or his representative finds that a position previously declared policy determining, primarily confidential or highly technical is no longer such, the Commissioner shall recommend that the position be restored to the competitive or classified service when it becomes vacant.

[13] Piñero vs. Hechanova, 1,-22562, Oct. 22, 1966, 18 SCRA 417.

[14] "Executive Order No. 265. — Declaring certain positions as primarily confidential in accordance with the provisions of Section (g) of Commonwealth Act No. 402 and amending for this purpose the second Paragraph of Section 1 of Executive Order No. 244, dated December 31, 1939.

xxx Pursuant to the provisions of section one (g) of Commonwealth Act Numbered Four hundred and two and for the purposes of this Order, the positions of advisers, xxx one private secretary to each Justice of the Supreme Court; and secret or confidential agents in the several departments and offices of the Government are, unless otherwise directed by the President, hereby declared as primarily confidential; Provided, That officers and employees mentioned in this paragraph should conform to the rates prescribed in section three of Commonwealth Act Numbered Four hundred and two. x x x."

[15] Vol. 26. SCRA. 171.

[16] Am. Jur. 27.

[17] Teves vs. Sindiong, 81 Phi). 658.

[18] 81 Phil. 754.

[19] G.R. No. L-10533, April 25, 1957.

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