

LETTER OF ASSOCIATE JUSTICE REYNATO S. PUNO OF THE COURT OF APPEALS DATED 14 NOVEMBER 1990.

A.M. No. 90-11-2697-CA. June 29, 1992

Ponente: PADILLA, J.

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PADILLA, J.:

Petitioner Associate Justice Reynato S. Puno, a member of the Court of Appeals, wrote a letter dated 14 November 1990 addressed to this Court, seeking the correction of his seniority ranking in the Court of Appeals.

It appears from the records that petitioner was first appointed Associate Justice of the Court of Appeals on 20 June 1980 but took his oath of office for said position only on 29 November 1982, after serving as Assistant Solicitor General in the Office of the Solicitor General since 1974.[1]

On 17 January 1983, the Court of Appeals was reorganized and became the Intermediate Appellate Court pursuant to Batas Pambansa Blg. 129 entitled "An Act Reorganizing the Judiciary, Appropriating Funds Therefor and For Other Purposes." [2] Petitioner was appointed Appellate Justice in the First Special Cases Division of the Intermediate Appellate Court. On 7 November 1984, petitioner accepted an appointment to be deputy Minister of Justice in the Ministry of Justice; he thus ceased to be a member of the Judiciary.[3]

The aftermath of the EDSA Revolution in February 1986 brought about a reorganization of the entire government, including the Judiciary. To effect the reorganization of the Intermediate Appellate Court and other lower courts, a Screening Committee was created, with the then Minister of Justice, now Senator Neptali Gonzales as Chairman and then Solicitor General, now Philippine Ambassador to the United Nations Sedfrey Ordoñez as Vice Chairman. President Corazon C. Aquino, exercising legislative powers by virtue of the revolution, issued Executive Order No. 33 to govern the aforementioned reorganization of the Judiciary.[4]

The Screening Committee recommended the return of petitioner as Associate Justice of the new Court of Appeals and assigned him the rank of number eleven (11) in the roster of appellate court justices. When the appointments were signed by President Aquino on 28 July 1986, petitioner's seniority ranking changed, however, from number eleven (11) to number twenty six (26).[5]

Petitioner now alleges that the change in his seniority ranking could only be attributed to inadvertence for, otherwise, it would run counter to the provisions of Section 2 of Executive Order No. 33, which reads:

"SECTION 2. Section 3, Chapter 1 of Batas Pambansa Blg. 129, is hereby amended to read as follows:

"SEC. 2. Organization. — There is hereby created a Court of Appeals which shall consist of a Presiding Justice and fifty Associate Justices who shall be appointed by the President of the Philippines. The Presiding Justice shall be so designated in his appointment and the Associate Justice shall have precedence according to the dates of their respective appointments, or when the appointments of two or more shall bear the same date, according to the order in which their appointments were issued by the President. Any Member who is reappointed to the Court after rendering service in any other position in the government shall retain the

precedence to which he was entitled under his original appointment, and his service in the Court shall, for all intents and purposes be considered as continuous and uninterrupted."[6]

Petitioner elaborates that President Aquino is presumed to have intended to comply with her own Executive Order No. 33 so much so that the correction of the inadvertent error would only implement the intent of the President as well as the spirit of Executive Order No. 33 and will not provoke any kind of constitutional confrontation (between the President and the Supreme Court).[7]

Petitioner points to the case of Justice Oscar Victoriano, former Presiding Justice of the Court of Appeals who, according to petitioner, was transferred from his position as Justice of the Court of Appeals to the Ministry of Justice as Commissioner of Land Registration and in 1986 was reappointed to the Court of Appeals. Petitioner states that his (Victoriano's) stint in the Commission of Land Registration did not adversely affect his seniority ranking in the Court of Appeals, for, in his case, Executive Order No. 33 was correctly applied.[8]

In a resolution of the Court en banc dated 29 November 1990, the Court granted Justice Puno's request.[9] It will be noted that before the issuance of said resolution, there was no written opposition to, or comment on petitioner's aforesaid request. The dispositive portion of the resolution reads:

"IN VIEW WHEREOF, the petition of Associate Justice Reynato S. Puno for correction of his seniority ranking in the Court of Appeals is granted. The presiding Justice of the Court of Appeals, the Honorable Rodolfo A. Nocon, is hereby directed to correct the seniority rank of Justice Puno from number twelve (12) to number five (5). Let copies of this Resolution be furnished the Court Administrator and the Judicial and Bar Council for their guidance and information."[10]

A motion for reconsideration of the resolution of the Court en banc dated 29 November 1990 was later filed by Associate Justices Jose C. Campos, Jr. and Luis A. Javellana, two (2) of the Associate Justices affected by the ordered correction. They contend that the present Court of Appeals is a new Court with fifty one (51) members and that petitioner could not claim a reappointment to a prior court; neither can he claim that he was returning to his former court, for the courts where he had previously been appointed ceased to exist at the date of his last appointment.[11]

The Court en banc in a resolution dated 17 January 1992 required the petitioner to file his comment on the motion for reconsideration of the resolution dated 29 November 1990.

In his Comment, petitioner argues that, by virtue of Executive Order No. 33 read in relation to B.P. Blg. 129, his seniority ranking in the Court of Appeals is now number five (5) for, though President Aquino rose to power by virtue of a revolution, she had pledged at the issuance of Proclamation No. 3 (otherwise known as the Freedom Constitution) that "no right provided under the unratified 1973 Constitution (shall) be absent in the Freedom Constitution." [12]

Moreover, since the last sentence of Section 2 of Executive Order No. 33 virtually re-enacted the last sentence of Sec. 3, Chapter 1 of B.P. Blg. 129, statutory construction rules on simultaneous repeal and re-enactment mandate, according to petitioner, the preservation and enforcement of all rights and liabilities which had accrued under the original statute.[13] Furthermore, petitioner avers that, although the power of appointment is executive in character and cannot be usurped by any other branch of the Government, such power can still be regulated by the Constitution and by the appropriate law, in this case, by the limits set by Executive Order No. 33[14] for the power of appointment cannot be wielded in violation of law.[15]

Justices Javellana and Campos were required by the Court to file their reply to Justice Puno's comment on their motion for reconsideration of the resolution of the Court en banc dated 24 January 1991.

In their Reply and Supplemental Reply, Associate Justices Javellana and Campos submit that the appeal or request for correction filed by the petitioner was addressed to the wrong party. They aver that as petitioner himself had alleged the mistake to be an "inadvertent error" of the Office of the President, ergo, he should have filed his request for correction also with said Office of the President and not directly with the Supreme Court.[16] Furthermore, they point out that petitioner had indeed filed with the Office of the President a request or petition for correction of his ranking, (seniority) but the same was not approved such that his recourse should have been an appropriate action before the proper court and impleading all parties concerned. The aforesaid non-approval by the Office of the President they argue, should be respected by the Supreme Court "not only on the basis of the doctrine of separation of powers but also their presumed knowledgeability and even expertise in the laws they are entrusted to enforce"[17] for it (the non-approval) is a confirmation that petitioner's seniority ranking at the time of his appointment by President Aquino was, in fact, deliberate and not an "inadvertent error" as petitioner would have the Court believe.[18]

The resolution of this controversy is not a pleasant task for the Court since it involves not only members of the next highest court of the land but persons who are close to members of this Court. But the controversy has to be resolved. The core issue in this case is whether the present Court of Appeals is a new court such that it would negate any claim to precedence or seniority admittedly enjoyed by petitioner in the Court of Appeals and Intermediate Appellate Court existing prior to Executive Order No. 33 or whether the present Court of Appeals is merely a continuation of the Court of Appeals and Intermediate Appellate Court existing prior to said Executive Order No. 33.

It is the holding of the Court that the present Court of Appeals is a new entity, different and distinct from the Court of Appeals or the Intermediate Appellate Court existing prior to Executive Order No. 33, for it was created in the wake of the massive reorganization launched by the revolutionary government of Corazon C. Aquino in the aftermath of the people power (EDSA) revolution in 1986.

A revolution has been defined as "the complete overthrow of the established government in any country or state by those who were previously subject to it"[19] or as "a sudden, radical and fundamental change in the government or political system, usually effected with violence or at least some acts of violence." [20] In Kelsen's book, *General Theory of Law and State*, it is defined as that which "occurs whenever the legal order of a community is nullified and replaced by a new order . . . a way not prescribed by the first order itself." [21]

It was through the February 1986 revolution, a relatively peaceful one, and more popularly known as the "people power revolution" that the Filipino people tore themselves away from an existing regime. This revolution also saw the unprecedented rise to power of the Aquino government.

From the natural law point of view, the right of revolution has been defined as "an inherent right of a people to cast out their rulers, change their policy or effect radical reforms in their system of government or institutions by force or a general uprising when the legal and constitutional methods of making such change have proved inadequate or are so obstructed as to be unavailable." [22] It has been said that "the locus of positive law-making power lies with the people of the state" and from there is derived "the right of the people to abolish, to reform and to alter any existing form of government without regard to the existing constitution." [23]

The three (3) clauses that precede the text of the Provisional (Freedom) Constitution, [24] read:

"WHEREAS, the new government under President Corazon C. Aquino was installed through a direct exercise of the power of the Filipino people assisted by units of the New Armed Forces of the Philippines;

"WHEREAS, the heroic action of the people was done in defiance of the provisions of the 1973 Constitution, as amended;

"WHEREFORE, I, Corazon C. Aquino, President of the Philippines, by virtue of the powers vested in me by the sovereign mandate of the people, do hereby promulgate the following Provisional Constitution." [25]

These summarize the Aquino government's position that its mandate is taken from "a direct exercise of the power of the Filipino people." [26]

Discussions and opinions of legal experts also proclaim that the Aquino government was "revolutionary in the sense that it came into existence in defiance of the existing legal processes" [27] and that it was a revolutionary government "instituted by the direct action of the people and in opposition to the authoritarian values and practices of the overthrown government." [28]

A question which naturally comes to mind is whether the then existing legal order was overthrown by the Aquino government. "A legal order is the authoritative code of a polity. Such code consists of all the rules found in the enactments of the organs of the polity. Where the state operates under a written constitution, its organs may be readily determined from a reading of its provisions. Once such organs are ascertained, it becomes an easy matter to locate their enactments. The rules in such enactments, along with those in the constitution, comprise the legal order of that constitutional state." [29] It is assumed that the legal order remains as a "culture system" of the polity as long as the latter endures [30] and that a point may be reached, however, where the legal system ceases to be operative as a whole for it is no longer obeyed by the population nor enforced by the officials. [31]

It is widely known that Mrs. Aquino's rise to the presidency was not due to constitutional processes; in fact, it was achieved in violation of the provisions of the 1973 Constitution as a Batasang Pambansa resolution had earlier declared Mr. Marcos as the winner in the 1986 presidential election. [32] Thus it can be said that the organization of Mrs. Aquino's Government which was met by little resistance and her control of the state evidenced by the appointment of the Cabinet and other key officers of the administration, the departure of the Marcos Cabinet officials, revamp of the Judiciary and the Military signalled the point where the legal system then in effect, had ceased to be obeyed by the Filipino.

The Court holds that the Court of Appeals and Intermediate Appellate Court existing prior to Executive Order No. 33 phased out as part of the legal system abolished by the revolution and that the Court of Appeals established under Executive Order No. 33 was an entirely new court with appointments thereto having no relation to earlier appointments to the abolished courts, and that the reference to precedence in rank contained in the last sentence of Sec. 2, BP Blg. No. 129 as amended by Executive Order No. 33 refers to prospective situations as distinguished from retroactive ones.

But even assuming, *arguendo*, that Executive Order No. 33 did not abolish the precedence or seniority ranking resulting from previous appointment to the Court of Appeals or Intermediate Appellate Court existing prior to the 1986 revolution, it is believed that President Aquino as head of then revolutionary government, could disregard or set aside such precedence or seniority in ranking when she made her appointments to the reorganized Court of Appeals in 1986.

It is to be noted that, at the time of the issuance of Executive Order No. 33, President Aquino was still exercising the powers of a revolutionary government, encompassing both executive and legislative powers, such that she could, if she so desired, amend, modify or repeal any part of B.P. Blg. 129 or her own Executive Order No. 33. It should also be remembered that the same situation was still in force when she issued the 1986 appointments to the Court of Appeals. In other words, President Aquino, at the time of the issuance of the 1986 appointments, modified or disregarded the rule embodied in B.P. Blg. 129 as amended by Executive Order No. 33, on precedence or seniority in the case of the petitioner, for reasons known only to her. Since the appointment extended by the President to the petitioner in 1986 for membership in the new Court of Appeals with its implicit

ranking in the roster of justices, was a valid appointment anchored on the President's exercise of her then revolutionary powers, it is not for the Court at this time to question or correct that exercise.

ACCORDINGLY, the Court GRANTS the Motion for Reconsideration and the seniority rankings of members of the Court of Appeals, including that of the petitioner, at the time the appointments were made by the President in 1986, are recognized and upheld.

SO ORDERED.

Paras, Griño-Aquino, Regalado, Davide, Jr. and Romero, JJ., concur.

Feliciano and Bellosillo, JJ., see separate concurring opinions.

Narvasa (C.J.), joins Justices Gutierrez, Jr. and Cruz in their dissents.

Gutierrez, Jr., J., see dissent.

Cruz, J., joins Justice Gutierrez, Jr., and files own dissent.

Bidin, Medialdea, and Nocon, JJ., join in the dissent of Justice Gutierrez, Jr.

[1] Rollo, p. 10.

[2] B.P. Blg. 129 was passed by the Batasang Pambansa on 10 August 1981 and signed into law by President Ferdinand E. Marcos on 14 August 1981.

[3] Rollo, p. 4.

[4] Executive Order No. 33 was issued on 28 July 1986 by President Corazon C. Aquino.

[5] Rollo, p. 2.

[6] Rollo, pp. 5, 5-A.

[7] Ibid., p. 5-A.

[8] Ibid.

[9] Rollo, pp. 1-3.

[10] Ibid., p. 3.

[11] Ibid., p. 18.

[12] Rollo, pp. 28-29. Remarks of President Corazon C. Aquino at a media briefing announcing the promulgation of a transition Constitution (otherwise known as the Freedom Constitution) at the Freedom Hall, Malacañang, March 25, 1986.

[13] Rollo, pp. 26-27. See also Alcantara, Statutes, 1990 ed., p. 164 citing Crawford: Statutory Construction and Agpalo, Statutory Construction, 1990 ed., p. 304 citing American Bible Society vs. City of Manila, 101 Phil. 386.

[14] Rollo, p. 41.

[15] Ibid., p. 42.

[16] Rollo, pp. 47-50.

[17] Cuervo vs. Commission on Audit, 166 SCRA 657 citing Tagum Doctors Enterprises v. Gregorio Apsay, et al., G.R. No. 81188, August 30, 1988.

- [18] Rollo, p. 49.
- [19] *Kitlow v. Kiely*, 44 F. Ed. 227, 232.
- [20] *State v. Diamond*, 202 P. 988, 991.
- [21] Kelsen, *General Theory of Law and State* (1946), p. 117.
- [22] H. Black, *Handbook of American Constitutional Law II*, 4[th] edition, 1927.
- [23] Political Rights as Political Questions. The Paradox of *Luther v. Borden*, 100 *Harvard Law Review* 1125, 1133 (1987).
- [24] Proclamation No. 3 (1986).
- [25] *Ibid.*
- [26] Proclamation No. 1 (1986) and Proclamation No. 3 (1986).
- [27] J. Bernas, Proclamation No. 3 with Notes by Joaquin Bernas, S.J. 3 (1986).
- [28] Address by U.P. President, now Senator Edgardo Angara, Bishops-Businessmen's Conference, March 21, 1986, 27 *U.P. Gazette* 28, 29.
- [29] Fernandez, *Law and Polity: Towards a Systems Concept of Legal Validity*, 46 *Phil. Law Journal*, 390-391 (1971).
- [30] *Id.*, at 422.
- [31] Fernandez, *supra* note 29.
- [32] 1973 Constitution, Art. VII, Sec. 5.

FELICIANO, J., concurring:

I agree with the conclusion reached in the majority opinion written by my learned brother, Padilla, J. In particular, I agree that the Court of Appeals established by Executive Order No. 33 is a new court, and was not merely the old Intermediate Appellate Court with a new label.

If one examines the provisions of B.P. Blg. 129, known as "The Judiciary Reorganization Act of 1980," relating to the old Intermediate Appellate Court, it is quite clear that the previously existing Court of Appeals was abolished and a new court, denominated the Intermediate Appellate Court, was created. Thus, Section 3 of B.P. Blg. 129 reads as follows:

"Sec. 3. Organization. — There is hereby created an Intermediate Appellate Court which shall consist of a Presiding Appellate Justice and forty-nine Associate Appellate Justices who shall be appointed by the President of the Philippines. The Presiding Appellate Justice shall be so designated in his appointment, and the Associate Appellate Justices shall have precedence according to the dates of their respective appointments, or when the appointments of two or more of them shall bear the same date, according to the order in which their appointments were issued by the President. Any member who is reappointed to the Court after rendering service in any other position in the government shall retain the precedence to which he was entitled under his original appointment, and his service in Court shall, to all intents and purposes, be considered as continuous and uninterrupted." (Italics supplied)

Section 44 of the same statute provided as follows:

"Sec. 44. Transitory provisions. — The provisions of this Act shall be immediately carried out in accordance with an Executive Order to be issued by the President. The Court of Appeals, the Courts of First Instance, the Circuit Criminal Courts, the Juvenile and Domestic Relations Courts, the Courts of Agrarian Relations, the City Courts, the Municipal Courts, and the Municipal Circuit Courts shall continue to function as presently constituted and organized, until the completion of the reorganization provided in this Act as declared by the President. Upon such declaration, the said courts shall be deemed automatically abolished and the incumbents thereof shall cease to hold office. The cases pending in the old Courts shall be transferred to the appropriate Courts constituted pursuant to this Act, together with the pertinent function, records, equipment, property and the necessary personnel.

xxx xxx xxx (*Italics supplied*)

Executive Order No. 33, promulgated on 28 July 1986, provided in part as follows:

"Section 2. Section 3, Chapter I of Batas Pambansa Blg. 129, is hereby amended to read as follows:

'SEC. 3. Organization — There is hereby created a Court of Appeals which shall consist of a Presiding Justice and fifty Associate Justices who shall be appointed by the President of the Philippines. The Presiding Justice shall be so designated in his appointment, and the Associate Justices shall have precedence according to the dates of their respective appointments, or when the appointments of two or more of them shall bear the same date, according to the order in which their appointments were issued by the President. Any member who is reappointed to the Court after rendering service in any other position in the government shall retain the precedence to which he was entitled under his original appointment, and his service in the Court shall, for all intents and purposes, be considered as continuous and uninterrupted.'" (*Italics supplied*)

Although Executive Order No. 33 spoke of amending Section 3, Chapter 1 of B.P. Blg. 129, it will be seen that what really happened was the re-enactment of said Section 3, Chapter 1 of B.P. Blg. 129. In other words, much more happened than simply the renaming of the old Intermediate Appellate Court into (once again) Court of Appeals. If all that Executive Order No. 33 wanted to achieve was the relabeling of the old Intermediate Appellate Court into the "Court of Appeals," there was no need to amend or re-enact Section 3 of B.P. Blg. 129. For Section 8 of Executive Order No. 33 provided as follows:

"SECTION 8. The terms 'Intermediate Appellate Court, Presiding Appellate Justice and Associate Appellate Justice(s)' used in the Judiciary Reorganization Act of 1980 or in any other law or executive order shall hereafter mean Court of Appeals, Presiding Justice and Associate Justice(s), respectively."

Thus, President Aquino was quite free, legally speaking to appoint to the new Court of Appeals whoever in her judgment was fit and proper for membership in that new court in an order of precedence that she was just then establishing.

The sentence found in Section 3 of B.P. Blg. 129 as amended or re-enacted through the medium of Section 2 of Executive Order No. 33 —

"Any Member who is reappointed to the Court after rendering service in any other position in the government shall retain the precedence to which he was entitled under his original appointment, and his service in the Court shall, for all intents and purposes, be considered as continuous and uninterrupted."

which my distinguished brother in the Court, Gutierrez, Jr., J., very heavily stressed, contemplates in my submission the situation of a member of the new Court of Appeals accepting appointment to some other department or branch of government, outside the Judiciary, and who later receives an appointment once again to that same Court of Appeals. But Mr. Justice Reynato S. Puno was not in such a situation. The last preceding appointment to the Judiciary of Mr. Justice Reynato S. Puno was to the then Intermediate Appellate Court newly

created by B.P. Blg. 129. In 1984, he left that court to become Deputy Minister in the Ministry of Justice. His next appointment to the Judiciary was not to the old Intermediate Appellate Court, which by that time had passed on to history. His appointment dated 28 July 1986, was, in my view, as already noted, to the new Court of Appeals established by Executive Order No. 33. Thus, the last sentence of Section 3 of B.P. Blg. 129 (before re-enactment by Executive Order No. 33) afforded no basis for a claim to the same numerical precedence in the new Court of Appeals that he would have been entitled to had the old Intermediate Appellate Court not gone out of existence. It is difficult for me to understand how a claim to a particular position in an order of precedence can be made where the court itself, to which the new appointment is made, is a new and distinct court.

I vote to grant the Motion for Reconsideration.

BELLOSILLO, J., concurring:

I agree with the ponencia of Mr. Justice Padilla, so I vote to grant the motion for reconsideration of Our Resolution of November 29, 1990. I am for respecting the seniority ranking of the Associate Justices of the Court of Appeals at the time they were appointed by the President on July 31, 1986.

I must admit that, like Mr. Justice Gutierrez, Jr., and Mr. Justice Padilla, it was not easy for me to decide to participate in the deliberations in this case considering that it involves esteemed colleagues in the Court of Appeals. As such, when subject Resolution was promulgated, I did not react despite the proddings of well-meaning friends. I refused to be dragged into the "fray" in deference to Justice Reynato S. Puno who would be adversely affected. I remained firm in my resolve to stay away from the controversy. It was to me a personal privilege so to do, which I could waive, as I did.

But circumstances have changed; not that I no longer revere my friendship with Justice Puno, but as a member now of this Court it has become my duty — no longer a mere privilege, much less a right — to aid the Court in resolving this controversy in the fairest possible way, a responsibility I find no justification to shirk.

On August 1, 1986, at the oath-taking ceremonies for the newly-appointed members of the Court of Appeals at Malacañang, when I noticed Justice Puno take a seat on my right,[1] I asked him to transfer to the left where our senior justices were assigned. I was assuming that he should be on the left because he was appointed to the old Appellate Court ahead of me. But he showed me the list where he appeared as No. 26, Justice Lising, No. 25, and I was No. 24. Since he appeared perturbed with his new rank, I suggested to him to seek the help of then Justice Secretary Neptali A. Gonzales, Chairman of the Screening Committee that processed the appointments of the new members of the Court of Appeals, and who was then just a meter and a half in front of us. But after talking to Secretary Gonzales, Justice Puno returned to his original assigned seat. When I asked him what happened, he simply shrugged his shoulders. Obviously, he failed in his bid.

We then took our oath in the order we were ranked in the list.

Some two (2) months or so later, in an En Banc session back in the Court of Appeals, as we were seated side by side with Justice Puno,[2] I inquired again from him as to what happened to his request with Malacañang conveyed through the Presiding Justice for the correction of his ranking. Justice Puno told me it was not granted.

The letter of then Presiding Justice Emilio A. Gancayco dated August 7, 1986, which was his second in fact on the subject, addressed to Executive Secretary Joker P. Arroyo, is enlightening and informative —

"Dear Sir:

In relation to my letter of August 5, 1986 informing you of the possible over-sight in the ranking of Mr. Justice

REYNATO S. PUNO in his reappointment as member of this Court, I am furnishing you a certification of the Clerk of Court to the same effect, and also in relation to the ranking of Messrs. Rodolfo A. Nocon and Jorge A. Coquia who in accordance with their original appointment to this Court are more senior than Mr. Justice Oscar R. Victoriano in the said order.

If Her Excellency President Corazon Aquino should decide to rearrange the ranking of the incumbent justices of this Court in accordance with the provisions of Section 2, Executive Order # 33 their proper ranking should be as follows:

- No. 3 — Mr. Justice Rodolfo A. Nocon;
- No. 4 — Mr. Justice Jorge A. Coquia;
- No. 5 — Mr. Justice Oscar R. Victoriano; and
- No. 11 — Mr. Justice Reynato S. Puno."

While this letter perhaps did not elicit the desired response from Executive Secretary Arroyo as his answer did not squarely settle the issue, the message is clear, i.e., Malacañang did not grant the request for correction of what was perceived to be a "possible oversight", even after it was twice brought to its attention. Here I am reminded of the principle in procedure that a motion that is not granted, especially after an unreasonable length of time, is deemed denied, and the lapse of more than four (4) years before Justice Puno finally came to Us[3] is reasonably unreasonable.

The letter-appointment of President Corazon C. Aquino addressed to then Chief Justice Claudio Teehankee dated July 31, 1986, in fact categorically specifies the order of seniority of her appointees, thus —

"Dear Mr. Chief Justice.

I have appointed the Presiding Justice and the Associate Justices of the Court of Appeals under the following order of seniority:

1.

Hon. Emilio A. Gancayco, Presiding Justice . . .

3.

Hon. Oscar R. Victoriano, Associate Justice

4.

Hon. Rodolfo A. Nocon, Associate Justice

5.

Hon. Jorge A. Coquia, Associate Justice . . .

12.

Hon. Jose C. Campos, Jr., Associate Justice . . .

16.

Hon. Luis A. Javellana, Associate Justice . . .

26.

Hon. Reynato S. Puno, Associate Justice . . ."

xxx xxx xxx"

Considering the circumstances herein narrated, I find it difficult to yield to the proposition that an error was committed through inadvertence by Malacañang in the ranking of the justices appointed to the Court of Appeals on July 31, 1986.

The above-quoted letter of President Aquino also brings to focus the ranking of Justice Oscar R. Victoriano who was junior to Justices Nocon and Coquia in the old Court, as reflected in the letter of Presiding Justice Gancayco. However, in the letter of the President, Justice Victoriano was ranked No. 3, while Justices Nocon and Coquia were ranked No. 4 and No. 5, respectively. Hence, it is not accurate to say that Justice Victoriano was reinstated to his former rank in the old Court, but was even given a rank higher than Justices Nocon and Coquia. This "possible oversight" was also brought to the attention of Malacañang but, like the case of Justice Puno, no correction was made.

All these clearly support the view of Mr. Justice Padilla in his ponencia, as well as of Mr. Justice Feliciano in his concurring opinion, that the present Court of Appeals is an entirely different court, distinct from the old Intermediate Appellate Court or the former Court of Appeals, with a new members although some were drawn from the now defunct Intermediate Appellate Court, and that the "error" referred to by Justice Puno could not have been only through "inadvertence" but deliberate, otherwise, Malacañang could have readily effected the correction?

But whether the "error" was deliberate or committed through inadvertence, is Our Court the proper venue for the correction? Can We now correct this alleged error of the appointing authority? Worse, can We direct the Office of the President to do what is exclusively within its prerogative?

This brings me to the final point which bothers me still further. If We sustain the claim that the present Court of Appeals is merely a continuation of the old Intermediate Appellate Court, or of the old Court of Appeals, then We may be swarmed with requests not only for re-ranking but also for reinstatement of those who were not reappointed on July 31, 1986, but against whom no charges have been filed. For then, should they not be allowed to enjoy their security of tenure as civil servants under the Constitution?

In the case of Justice Jorge S. Imperial, he was a member of the old Intermediate Appellate Court who was not reappointed to the new Court of Appeals on July 31, 1986. There was no charge against him. He was later reappointed but only on January 2, 1987. Should We also order that he be reinstated to his former rank in the Intermediate Appellate Court? Then, We may have to dislodge some of the present division Chairmen of the Court of Appeals to accommodate him. That would be unsettling, disturbing, and disruptive of the present system. I do not think We wish this to happen.

[1] As prearranged by the Protocol Officer, the newly-appointed Justices were assigned seats according to seniority from left to right, so that when called to take their oath they would only have to rise, move forward, turn around, and face the President, as well as their families and friends, for their oath-taking so that seniority ranking would automatically be observed in reverse, from right to left.

[2] In En Banc sessions, even numbers are assigned consecutively on one side and odd numbers on the other side, and Justice Puno and myself were ranked No. 26 and 24, respectively.

[3] The letter-request of Justice Puno to this Court is dated November 14, 1990, while the reply of Executive Secretary Joker P. Arroyo which did not grant the request, is dated September 17, 1986.

GUTIERREZ, JR., J., dissenting opinion:

I regret that I have to differ from the position taken by Mr. Justice Padilla regarding the seniority ranking of Justice Reynato S. Puno in the Court of Appeals.

I agree that the resolution of the controversy is not a pleasant one for us since it involves persons who are close to the members of this Court. For me, the task is particularly difficult because apart from close personal relationship, I also highly respect the parties' considerable talents, abilities and qualifications. I have known Justice Jose C. Campos, Jr. since my student days and as a junior member of this Court, I once urged his nomination for appointment to the Supreme Court even before he started to serve in the Court of Appeals. Justice Luis A. Javellana was my colleague in the Social Security System while Justice Reynato S. Puno and I worked together in the Office of the Solicitor General.

I believe, however, that we can resolve the issues on the basis of the facts and the applicable law, in the same way that we reverse or affirm the parties' respective ponencias disregarding personal feelings or close association.

The applicable provision of law in this case was introduced into the Judiciary Act of 1948 by Rep. Act No. 5204 on June 15, 1968 when it amended the first paragraph of Section 24 to read:

xxx xxx xxx

"Provided, however, that any member of the Court of Appeals who has been reappointed to that court after rendering service in any other branch of the government shall retain the precedence to which he is entitled under his original appointment and his service in court shall, to all intents and purposes, be considered as continuous and uninterrupted . . ."

This provision was reiterated in all subsequent repealing or amendatory acts and continues to the present. It is found in Batas Pambansa Blg. 129, Section 3 and in Executive Order No. 33 under President Corazon C. Aquino reorganized the Court of Appeals.

I respectfully submit that from 1968 to 1992, there was no single moment when this provision ceased to exist. It was never repealed and never disappeared from the law. Everybody, including the appointing power is, of course, bound by the law.

I agree with Justice Padilla's discussion of President Aquino's powers in a revolutionary government, a government revolutionary in the sense that it came into existence in defiance of the existing legal processes.

I, however, believe that the appointments of the Justices of the Court of Appeals in 1986 were not a personal act of a revolutionary President. Far from it.

First, President Aquino's government ceased to be revolutionary on March 25, 1986 when she promulgated Proclamation No. 3, which she called the Freedom Constitution. Her government became a constitutional one bound by the Freedom Constitution and the executive orders issued under its authority.

Second, one significant provision of the Freedom Constitution states that "all elective and appointive officials and employees under the 1973 Constitution shall continue in office until otherwise provided by proclamation or executive order or upon the designation or appointment and qualification of their successors, if such appointment is made within a period of one year from February 26, 1986." (Section 2, Article III, italics supplied).

Third, the President implemented the above provision of the Constitution on July 28, 1986 when she issued Executive Order No. 33 which amended B.P. 129. As earlier stated, Executive Order No. 33 reiterated verbatim the provision of B.P. No. 129 which provided for retention of precedence of a member who is reappointed after a stint in another position in the government.

President Aquino was bound by the provisions of Executive Order No. 33 because it is a law enacted pursuant to constitutional authority. She could no longer act as a revolutionary President because there was a Constitution, and there were statutes under that Constitution, in existence.

More important, Executive Order No. 33 was enacted precisely to provide for the reorganization of the Intermediate Appellate Court into the Court of Appeals. The President intended that every provision of Executive Order No. 33 should be followed precisely for the purpose for which it was enacted, namely, reorganization of the appellate court. I cannot understand the reasoning which says that all provisions of Executive Order No. 33 must apply in the reorganization of the Court of Appeals except the provision on retention of seniority by a reappointed member which must be for the future only.

Even assuming that this one sentence of Executive Order No. 33 was intended to be prospective, then the President has to follow B.P. No. 129 because Proclamation No. 3, Article IV provides:

"SECTION 1. All existing laws, decrees, executive orders, proclamations, letters of instruction, implementing rules and regulations, and other executive issuances not inconsistent with this Proclamation shall remain operative until amended, modified, or repealed by the President or the regular legislative body to be established under a New Constitution."

For us lawyers, there is one signal feature of President Aquino's six years in the presidency and this is her dedicated personal observance of the rule of law. Even when some of our decisions nullified her favorite projects, she unhesitatingly ordered compliance with our interpretation of the law. I cannot believe that the President would knowingly violate one provision of a law she promulgated even as she complied with every other provision of that same law.

Not only the law but also the facts support the correctness of our November 29, 1990 resolution.

We stated in our resolution:

"Following this specific provision on seniority, the Screening Committee recommended the return and reappointment of Justice Puno as Associate Justice of the New Court of Appeals. He was assigned the seniority rank of number eleven (11) following Associate Justice Vicente V. Mendoza who was given the seniority rank of number ten (10). Unfortunately, however, due to a mistake which can only be inadvertent, the seniority rank of Justice Puno appears to have been changed from number eleven (11) to number twenty six (26), after the appointments in the new Court of Appeals were signed by President Aquino. Through his letter, Justice Puno prays for the correction of his seniority ranking alleging that he should now be given the seniority rank of number five (5) instead of number twelve (12) in the Court of Appeals.

We find the petition for correction of ranking by Justice Puno to be meritorious. The mistake in the ranking of Justice Puno from number eleven (11) to number twenty six (26) in the 1986 judicial reorganization has to be corrected, otherwise, there will be a violation of the clear mandate of Executive Order No. 33 that 'any member who is reappointed to the Court after rendering service in any other position in the government shall retain the precedence to which he was entitled under his original appointment, and his service in the court shall, for all intents and purposes be considered as continuous and uninterrupted.' In fine, the executive service of Justice Puno as Deputy Minister of Justice should not adversely affect the continuity of his service in the judiciary upon his return and appointment thereto on July 28, 1986. Otherwise, the salutary purpose of Executive Order No. 33 which is to attract competent members of the judiciary to serve in other branches of the government without fear of losing their seniority status in the judiciary in the event of their return thereto would be defeated . . ." (Res. dtd. 11-29- 90, pp. 2-3)

Nobody disputes the fact that the Screening Committee headed by the then Secretary of Justice Neptali Gonzales and a member of which was our own Justice Leo D. Medialdea ranked Justice Reynato S. Puno as No. 11 in their recommendation.

When the appointments came out, Mr. Puno was No. 26. This, of course, violates not only Executive Order No. 33 but also the laws on the same subject which preceded it.

That the President never intended to violate a key provision of law is shown in the September 17, 1986 letter of Executive Secretary Joker P. Arroyo, appended to the Reply submitted by Justices Campos and Javellana. The explanation reads:

"17 September 1986

Hon. Emilio A. Gancayco
Presiding Justice
Court of Appeals
Manila.

Sir:

In reply to your enclosed letter of August 7, 1986, please be informed that the President had nothing to do with the order of seniority. The list and order of seniority was submitted by a screening committee and passed on to the Supreme Court for review.

Very truly yours,

(SGD.) JOKER P. ARROYO

Executive Secretary"

When Secretary Arroyo states that the President had nothing to do with the order or sequence of seniority, it means that she just followed the recommendations of her own Screening Committee, which recommendations had already been reviewed by the Supreme Court. She did not select any recommendees her own. She never deviated from the recommendations because everybody recommended was appointed. The change from No. 11 to No. 26 could not have been a deliberate act of the President as she had nothing to do with the order of seniority of the Justices she was appointing. The change could only have been an inadvertence because it was violative not only of the law but also of the recommendations of her Screening Committee.

There are other matters raised in the letter and reply of Justices Campos and Javellana which have been answered

by Justice Puno in his Comment. I find no need to comment on them at this time.

I regret if my answer to the query of Justice Campos led him to be lulled into inaction. Justice Campos called me up over the telephone inquiring about the petition of Justice Puno before I was aware that there was such a petition. I try to read all petitions filed with the court en banc but I do so only after they are placed in the agenda and are in the next order of business of a particular session. My staff never places a copy of any petition on my desk until it is entered in the agenda. It is unfortunate that Justices Campos, Camilon, dela Fuente, Javellana, Purisima, de Pano, and Bellosillo were not furnished copies of the letter-petition of Justice Puno but this is for then Chief Justice Marcelo B. Fernan and Clerk of Court Atty. Daniel T. Martinez to explain.

Justices Campos and Javellana state that "Justice Puno is 50 years old and to put him in No. 5 will destroy the chances of those displaced by him who are older than he to aspire for promotion."

The fears of the good Justices are unfounded. Except for the Presiding Justice, a greater number of "junior" Justices have been appointed in the past ten years to the Supreme Court from the Court of Appeals, than the most senior Justices of that Court. In other words, there has been more by passing of senior members than adherence to the seniority listing. In fact, the latest nominations of the Judicial and Bar Council for position to which Justice Bellosillo was appointed, included Justice Campos and excluded Justices Kapunan and Puno. I understand that in the past few vacancies in this court, Justice Campos has been nominated more often than Justice Puno.

Our resolution dated November 29, 1990 correcting the seniority ranking of Justice Puno was a unanimous decision of this Court except for Mr. Justice Padilla were discussed and fully deliberated upon. Since our resolution is based on both the facts and the law, I see no reason why we should modify or set it aside.

I, therefore, vote to reiterate the Court's resolution dated November 29, 1990.

Narvasa, C.J., Bidin, Medialdea, and Nocon, JJ., concur.

CRUZ, J., dissenting:

I join Mr. Justice Gutierrez in his dissent, with these brief additional remarks.

Sec. 3 of BP 129 laid down the original precedence rule applicable to members of the Intermediate Appellate Court. This was embodied in Sec. 2 of EO 33 without change except as to the name of the court. The first provision was not repealed. As Mr. Justice Feliciano points out, it was merely "re-enacted."

I do not think the re-enacted rule was intended to operate prospectively only. I believe it continues to be available to the former members of the Intermediate Appellate Court no less than to the members of the Court of Appeals.

It is a well-known canon of construction that apparently conflicting provisions should be harmonized whenever possible. The ponencia would instead revoke Sec. 3. of BP 129 even though Sec. 2 of EO 33 has not repealed but in fact re-enacted it. I would reconcile the two provisions and give effect to both.

Significantly, Sec. 8 of EO 33 provides that "the term Intermediate Appellate Court . . . shall hereafter mean Court of Appeals."

Motion granted.

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