

RE: INQUIRY ON THE APPOINTMENT OF JUDGE ENRIQUE A. CUBE*A.M. No. 93-7-428-METC. October 13, 1993*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a-m-no-93-7-428/>**PER CURIAM:**

Judge Enrique A. Cube was on May 31, 1993 appointed Presiding Judge of the Metropolitan Trial Court, Branch 22, Manila. Subsequently, information was received by the Judicial and Bar Council that he had previously been dismissed as Assistant Fiscal of Pasay City. The matter was referred to the Office of the Court Administrator, which immediately conducted an inquiry.

In a Memorandum dated July 7, 1993, Head Executive Assistant Ronaldo C. Olalia of the Department of Justice informed the Judicial and Bar Council that, per their records, an administrative case for gross misconduct and dereliction of duty was filed against Fiscal Enrique A. Cube by Secretary of Justice Vicente Abad Santos for failure to prosecute a criminal case which led to its dismissal with prejudice. Cube was found guilty as charged. On September 27, 1972, the President of the Philippines signed Administrative Order No. 341 "Removing Mr. Enrique A. Cube from office as Assistant City Fiscal of Pasay City."

Cube applied for appointment to the Judiciary sometime in 1992. In the Personal Data Sheet he was required to accomplish, one of the questions asked (Question No. 25) was: "Have you ever been retired, dismissed, forced to resign from any employment for reason other than lack of funds or dropped from the rolls?" His answer was: "Optional under RA 1145 effective 1996."

RA 1145 is entitled "An Act Creating the Philippine Coconut Administration" and does not deal with retirement, optional or otherwise. Cube's Service Record made no mention of his having been employed in this agency.

Required to comment, Judge Cube gave the following explanation:

Without discussing the merits of the Resolution of Secretary Vicente Abad Santos in recommending my removal, the same being moot and academic, it is noteworthy to mention that the action of the President done six (6) days after the declaration of Martial Law on September 27, 1972, was removal WITHOUT PREJUDICE, which legally and technically mean that I am still qualified to hold any position in the government for the service of my country which was realized when I have returned to the government service appointed as Chief of Office of the Community Relations Office and later, as Director of Civil Security and then as Secretary to the Mayor in Local City Government, which offices I have handled with sincerity and dedication, until my optional retirement, when I then decided to humbly join the judiciary.

The Curriculum Vitae which I submitted to the Judicial and Bar Council had been done with honesty and clear conscience specially so on questions number 24, "Do you have any pending administrative or criminal case?" Precisely, I answered "No" because, at the time I filed my application with the Judicial and Bar Council, there was no ongoing Administrative or Criminal Case filed against me in any Administrative Body or Court of the Philippines. Administrative Order No. 341 issued by the President Marcos has long been terminated (21 years ago) hence, it cannot be construed as pending.

On question No. 25, "Have you ever been retired/dismissed or forced to resign for reason other than lack of

funds?" My answer was "Optional Under RA 1145 effective 1996," because actually, I have filed my optional retirement as a government employee holding the position of Secretary to the Mayor which was approved by the City Local Government as well as the GSIS. To this incident, I was referring to all my government services when I returned to service of the government again. Hence, I do believe that with these answers, I have not committed any dishonesty (gross or otherwise) both on status of having omitted any Information or having committed any act of misleading the forum concerned relative to my application to be a member of the Bench.

Likewise, it is my humble opinion that there would be an inconsistency and absence of logic in my answer considering the chronological arrangement profounded in the question as follows: "Have you ever been retired, dismissed or forced to resign x x x?" Thus, I answered in good faith and without malice aforethought, that I optionally retired from my public service under RA 1145 which was approved by the government.

Moreover, I honestly believe that I did not commit any gross dishonesty in filling-up my application form because, first, my removal from office was WITHOUT PREJUDICE which legally mean that I can still be recalled by the government to render public service, second, I was in fact RECALLED AND APPOINTED to sensitive positions in the government prior to this appointment and lastly, I was allowed by the same government to avail the Optional Retirement under RA 1145.

The undersigned in his sixty-two (62) years of existence, has never committed any act of dishonesty in any of his application to any of his position when he returned to serve the government, more so, when he filed his application to serve the Judiciary, maintaining his philosophy that the stature of a judicial member or member of the Bench is one who ought to be with clear and clean conscience. If the Supreme Court would take my answers to such questions as deliberated by the Judicial and Bar Council to be one of Gross Dishonesty, then I would say that when I gave those answers in my application for appointment to the Bench, I answered them in good faith and my conscience is clean and the answers given thereto, are honestly true.

I repeat, that the action of President then (that was 21 years ago) up to my optional retirement which was in 1989, was that my removal was WITHOUT PREJUDICE, and I returned to the service of the government, continuously, dedicatedly and conscientiously served the same, honestly, up to the time I filed my Optional Retirement.

When I filed my application with the Judicial and Bar Council, I have never had any pending administrative criminal case. And that I honestly believe that since I have optionally retired myself from the government service with clean name, the other two last words of Question No. 25, "x x x, dismissed or forced to resign," is NOT applicable to me as I was granted optional retirement in 1989. It is a fundamental policy of the government that dismissed or forced to resign employees are NOT QUALIFIED or ENTITLED to RETIRE.

With this COMMENT, I leave my fate to the Honorable and Justiciable Justices of Supreme Court.

August 25, 1993, Manila.

The Comment is a clever evasion but it is not clever enough. It does not satisfactorily explain why Judge Cube did not disclose the relevant fact that he had been dismissed for gross misconduct in the discharge of his duties as Assistant Fiscal of Pasay City. That fact was deliberately suppressed. Judge Cube would now equate his dismissal with retirement and give both modes of separation an innocent character. It is a wonder that he even hoped to convince this Court of such a feeble if not absurd argument.

No amount of circumlocution can wash away the fact that Judge Cube was dismissed from the public service and that he purposely did not disclose this dismissal when he accomplished the bio-data form required by the Judicial and Bar Council. By such non-disclosure, the Council was led to believe, on the strength of his (mis)representations, that he had a clean record and was not disqualified from appointment to the Judiciary.

The circumstance that his dismissal was without prejudice is not material, and neither is his subsequent

appointment to a municipal position. What is his non-disclosure (or concealment) of the fact that on September 27, 1972, he was removed as Assistant City Fiscal of Pasay City by the President of the Philippines. Judge Cube did not retire, as he declared in his Personal Data sheet. His separation in 1972 was not that blameless. He was removed after investigation and found guilty of gross misconduct and dereliction of duty in the prosecution of a smuggling case. He cannot now brush his removal aside as if it had never existed at all. It is a blot on his record that has spread even more because of his concealment of it.

In *Court Administrator vs. Estacion*, 181 SCRA 33, the respondent judge was found to have withheld from the Court the information that he was, at the time of his application for appointment to the Regional Trial Court of Dumaguete City, facing criminal charges of homicide and attempted homicide. For suppression of this vital fact, he was dismissed by this Court, which observed:

As stressed in the report, it behooves every prospective appointee to the judiciary to apprise the appointing authority of every matter bearing on his fitness for judicial office, including such circumstances as may reflect on his integrity and probity. These are qualifications specifically required of appointees to the judiciary by Article VIII, Sec. 7(3) of the Constitution. The fact alone of his concealment of the two criminal cases against him is clear proof of his lack of the said qualifications and renders him unworthy to sit as a judge.

By his concealment of his previous dismissal from the public service, which the Judicial and Bar Council would have taken into consideration in acting on his application, Judge Cube committed an act of dishonesty that rendered him unfit to be appointed to, and to remain now in, the Judiciary he has tarnished with his falsehood.

WHEREFORE, Judge Enrique A. Cube of the Metropolitan Trial Court of Manila is DISMISSED with prejudice to his reappointment to any position in the government, including government-owned or controlled corporations, and with forfeiture of all retirement benefits. This decision is immediately executory.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Bidin, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Quiason, Puno, and Vitug, JJ., concur.

Padilla and Griño-Aquino, JJ., on leave.

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