

TOMAS BESA, PETITIONER, VS. PHILIPPINE NATIONAL BANK; HON. ROBERTO S. BENEDICTO, PRESIDENT OF THE PHILIPPINE NATIONAL BANK; THE BOARD OF DIRECTORS, PHILIPPINE NATIONAL BANK; HON...

G.R. No. L-26838. May 29, 1970

Ponente: FERNANDO, J.

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FERNANDO, J.:

The constitutional safeguard against removal from office except for cause is invoked by petitioner Tomas Besa in this proceeding for certiorari, prohibition and quo warranto.[1] Appointed Chief Legal Counsel with the rank of Vice-President of respondent Philippine National Bank in 1962, he was shifted, by virtue of a resolution of respondent Bank on October 19, 1966, to the office of its President, respondent Roberto S. Benedicto, as Consultant on Legal Matters,[2] with respondent Conrado E. Medina being assigned to his position. While petitioner would seek to nullify the above resolution and enjoin its enforcement, his action is essentially one of quo warranto. Its success is thus dependent on his being able to sustain the burden of demonstrating that what was done by respondent Bank, through its Board of Directors, all of whom were likewise named respondents, could in law be characterized as a removal with-out cause contrary to the explicit mandate of the Constitution. That he was not able to do. The petition must fail.

There is no dispute as to the facts. Petitioner was appointed on July 12, 1962 as Chief Legal Counsel of respondent Bank with the rank of Vice-President. On October 20, 1966, a letter-directive was issued by the then President of the Bank, respondent Benedicto, that he was transferred to his office as Consultant on Legal Matters. The justification for such a move was Resolution No. 1053 of respondent Board of Directors of the Bank, wherein it was expressly stated "that Vice President Tomas Besa be shifted to the Office of the President as Consultant on Legal Matters, without change in salary and other privileges."

Thereafter, on October 24, 1966, petitioner, in a letter addressed to the respondent Board of Directors and respondent President Benedicto, sought a reconsideration of the action above taken. Under date of October 27, 1966, the Secretary of respondent Board of Directors advised petitioner of the denial of his motion for reconsideration. In the aforesaid letter-directive of October 20, 1966, respondent Conrado E. Medina was designated Vice-President and Chief Legal Counsel effective as of that day.

In its answer, respondents admitted the above facts and stressed that respondent Medina far from usurping the position of petitioner "is Vice President and Chief Legal Counsel of the respondent Bank who has assumed office and discharged the duties thereof starting October 20, 1966 by virtue of a valid appointment extended to him by the respondent Board of Directors and a letter-directive issued pursuant thereto by respondent PNB President Roberto S. Benedicto." [3] The action taken in the case of petitioner was explained thus: "The transfer of petitioner from the Legal Department is further justified by the following facts and circumstances: a) The position of Chief Legal Counsel carries a special confidential relationship of lawyer and client. In this regard, the Bank has the

prerogative to designate or change its lawyer, that is, to choose the lawyer, in whom it may have confidence, to head its Legal Department; b) As a matter of fact, it was on this same principle of confidence that in 1962 the petitioner, who was then an outsider (private practitioner), was appointed as Vice President and Chief Legal Counsel by the transfer of Atty. Ramon B. de los Reyes, who was then head (for twenty-one years) of the Legal Department, to a new position of Technical Assistant to the Executive Vice President, with only the rank of Assistant Vice President; c) The transfer of petitioner from the Legal Department was made by the respondent Board, in the exercise of its powers upon the recommendation of the respondent PNB President. The respondent Board had authorized the PNB President to revitalize the Legal Department, * * *."[4]

As was made clear at the outset, the law is not on the side of petitioner. His plea cannot be granted.

1. Petitioner's reliance on the constitutional provision against removal without cause is misplaced. It is appropriate to invoke it when an officer or employee in the civil service enjoying a fixed term is made to lose his position without warrant or justification. It certainly finds no application when the duration of one's term depends on the will of the appointing power. That is so where the position held is highly confidential in character. Such is the case of the Chief Legal Counsel of respondent Philippine National Bank. That is our answer to the specific question before us. Our decision is limited to the validity of the action taken by respondent Bank. We do not by any means intimate an opinion as to the legal consequences attaching to an action similar in character taken by any other office or agency of the government concerning a lawyer in its staff, especially one who was not employed precisely because of the marked degree of confidence reposed in him, but rather because of his technical competence.

As far as the petitioner is concerned, however, it is our conclusion that he could not plausibly contend that there was a removal in the constitutional sense as what did take place was a termination of official relation. Accepting as he did the position of chief legal adviser, the essence of which is the utmost degree of confidence involving such "close intimacy which insures freedom of intercourse without embarrassment or freedom from misgivings of betrayals" whether of personal trust or official matters,[5] he could not have been unaware that his term could be cut short any time without giving rise to any alleged infringement of the above constitutional safe-guard. There was no removal which according to such a mandate is only allowable for cause. Hence the lack of persuasive character of petitioner's plea.

The matter was set forth with precision and clarity by the present Chief Justice in a recent decision.[6] Thus: "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 can not 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 or 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 in-cumbent. When this event takes place, the latter is not 'removed' or 'dismissed' from office — his term has merely 'expired'."

2. Petitioner in his memorandum apparently was encouraged by the long, unbroken, unquestioned course of impressive adjudication of this Court that has given a well-nigh all-embracing scope to the mantle of protection covering civil service personnel against removal without cause. So it has been from *Lacson v. Romero*[7] to the above-cited *Ingles v. Mutuc* decision.[8] So, it is to be expected, it would continue to be. Petitioner's cause did not thereby gain ground however. For as had just been made clear, there was in his case no question of removal. The

excerpts cited by him from a few of the authoritative precedents thus do not commend themselves for their pertinence or relevance.[9]

There is a question raised by petitioner in his memorandum though, unfortunately not given the fullness of attention devoted to the removal aspect, which deserves to be further looked into. While the mode of inviting our attention to it could have benefited from a more precise delineation of its implications, reference to our *Corpus v. Cuaderno*[10] ruling would indicate that what petitioner had in mind was the permanency of the terms of an official whose line of work is likewise of a technical character. As was made clear by Justice J. B. L. Reyes, who penned the opinion: "The tenure of officials holding primarily confidential positions (such as private secretaries of public functionaries) ends upon loss of confidence, because their term of office lasts only as long as confidence in them endures; and thus their cessation involves no removal. But the situation is different for those holding highly technical posts, requiring special skills and qualifications. The Constitution clearly distinguished the primarily confidential from the highly technical, and to apply the loss of confidence rule to the latter incumbents is to ignore and erase the differentiation expressly made by our fundamental charter."

Petitioner did satisfy himself with citing the title of the above decision and that of two subsequent cases[11] that adhere to the above principle. It could be that he was more than persuaded that such a succinct and abbreviated form of argumentation would suffice to carry the day. It does not, however, as a more careful analysis of the above doctrine would indicate.

It cannot be denied of course that the work of the Chief Legal Counsel of respondent Bank, as of any lawyer for that matter, is impressed with a highly technical aspect. As had been pointed out, however, it does not mean that thereby a client is precluded from substituting in his stead another practitioner. That is his right; his decision to terminate the relationship once made is impressed with the attribute of finality. The lawyer cannot be heard to complain; it is enough that his right to compensation earned be duly respected.

In that sense, it is equally clear that where the position partakes of the attributes of being both technical and confidential, there can be no insistence on a fixed or a definite term if the latter aspect predominates. To paraphrase the language of the Chief Justice in the opinion previously cited, the incumbent of a primarily confidential position, as was the case of petitioner, should realize that at any time the appointing power may decide that his services are no longer needed. As thus correctly viewed, *Corpus v. Cuaderno* cannot be read as lending support to petitioner's efforts to retain his position as Chief Legal Counsel of respondent Bank, contrary to its wishes as so explicitly declared in its Resolution No. 1053.

3. It is manifest from the foregoing that we have considered the crucial issue posed from the standpoint of the right enjoyed by respondent Bank to choose who its legal counsel should be and how long he would remain as such. We have not seen any need to pass upon the conflicting claims raised as to the alleged failure of petitioner in the discharge of his functions to extend the utmost protection to the interests of respondent Bank nor of the vigorous defense of his actuations as such, which if given full credence, would erase the slightest doubt as to his competence and proficiency. For as above noted, the decisive issue is the confidential character of petitioner's position, which negates reliance on the removal-for-cause guarantee of the Constitution. We thus leave open for future determination, when and if such a litigation arises, a case involving the other vice-presidents of the respondent Bank, where it would appear the overriding factor in their selection is not that degree of the utmost confidence reposed in a lawyer but their technical skills in the performance of the duties entrusted to them.

WHEREFORE, this petition for certiorari, prohibition and quo warranto is dismissed. Without pronouncement as to costs.

Concepcion, C.J., Reyes, Makalintal, Teehankee, Barredo, and Villamor, JJ., concur.

Dizon and Zaldivar, JJ., did not take part.
Castro, J., on leave.

[1] Art. XII, Sec. 4 of the Constitution provides: "No officer or employee in the Civil Service shall be removed or suspended except for cause."

[2] Resolution No. 1053.

[3] Answer, II, par. 2.

[4] Ibid, III, par. 9.

[5] *De los Santos v. Mallare*, 87 Phil. 289 (1950). This formulation is followed in *Arrieta v. Bellos*, L-17162, Oct. 31, 1964, 12 SCRA 296; *Corpus v. Cuaderno, Sr.*, L-23721, Mar. 31, 1965, 13 SCRA 591; *Hernandez v. Villegas*, L-17287, June 30, 1965, 14 SCRA 544; *Cariño v. Agricultural Credit and Cooperative Financing Adm.*, L-19808, Sept. 29, 1966, 18 SCRA 183; *Piñero v. Hechanova*, L-22562, Oct. 22, 1966, 18 SCRA 417; *Ingles v. Mutuc*, L-20390, Nov. 29, 1968, 26 SCRA. 171.

[6] *Ingles v. Mutuc*, L-20390, Nov. 29, 1968, 26 SCRA 171 cited with approval in *Ramos v. Romualdez*, L-27946, April 30, 1970.

[7] 84 Phil. 740 (1949).

[8] L-20390, Nov. 29, 1968, 26 SCRA 171.

[9] Petitioner in his memorandum cites the following decisions promulgated by us: *Lacson v. Romero*, 84 Phil. 740 (1949); *De los Santos v. Mallare*, 87 Phil. 289 (1950); *Jener v. Borra*, 93 Phil. 506 (1953); *Rodriguez v. Del Rosario*, 93 Phil. 1070 (1953); *Miclat v. Ganaden*, 108 Phil. 439 (1960); *Garcia v. Lejano*, L-12230, Aug. 6, 1960; *Board of Directors v. Alandy*, L-15391, Oct. 31, 1960; *Hernandez v. Villegas*, L-17287, June 30, 1965, 14 SCRA 544.

[10] L-23721, March 31, 1965, 13 SCRA 591.

[11] *Piñero v. Hechanova*, L-22562, Oct. 22, 1966, 18 SCRA 417 and *Ferrer v. Hechanova*, L-24418, January 25, 1967, 19 SCRA 105.

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