

**DR. AMADEO H. CRUZ, AS ACTING SECRETARY OF HEALTH,
CESAREA GODUCO-AGULAR, AS CHIEF OF CLINICS AND ACTING
MEDICAL DIRECTOR, NATIONAL MENTAL HOSPITAL, AND JOSE
CLARIN, AS ASSISTAN...**

G.R. No. L-26428. August 07, 1975

Ponente: ESGUERRA, J.

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ESGUERRA, J.:

The only issue in this case is whether the assignment of private respondent Rodriguez, against his will, on temporary detail to the Bureau of Medical Services for a period not exceeding thirty (30) days from date of assumption of assignment thereat, unless sooner terminated or otherwise extended in accordance with law, thus taking him away from the position to which he was duly appointed, constitutes removal from office without cause and, consequently, violative of the security of tenure of office guaranteed by the Constitution to officers and employees of the civil service.

This action for certiorari and prohibition with injunction was initiated by the then Secretary of Health, Paulino J. Garcia, Cesarea Goduco Aguilar as Chief of Clinics and Acting Medical Director, National Mental Hospital, and Jose Clarin, as Assistant to the Chief and Hospital Administrator, National Mental Hospital against the Judge of the Court of First Instance of Rizal, Branch II, and the private respondent, Dr. Antonio Rodriguez, seeking to annul and set aside the Orders dated August 2, 1966, and August 11, 1966, of the respondent Court, pertinent portion of which reads:

"x x let the proper writ of preliminary injunction issue commanding the respondents, their agents and any and all persons acting in their behalf, to refrain from enforcing Department Order No. 207, series of 1966 of the Department of Health, and from interfering with the petitioner's right to continue in his present position and to exercise his present duties as Chief of Hospital IV, National Mental Hospital in Mandaluyong, Rizal, until further orders from this court."

and to abate further proceedings in Civil Case No. 9414, of that Court, entitled "Antonio Rodriguez, petitioner vs. Hon. Paulino J. Garcia, Secretary of Health, et al".

The bases of the contested respondent Court's order for issuance of the writ of preliminary injunction against the petitioners in this case are: that the petitioner (now respondent) Antonio Rodriguez alleged that he is a career civil service official with some twenty years of government service and Chief of the National Mental Hospital, Mandaluyong, Rizal; that since the early part of 1966, the respondent Secretary of Health sought his ouster from office; that to carry out his intention, the Secretary of Health on July 7, 1966, issued Department Order No. 183-A relieving petitioner Rodriguez as Chief of the National Mental Hospital and reassigning him to the Bureau of Medical Services and respondents (now petitioners) Cesarea Goduco Aguilar and Jose Clarin as Acting Medical Director-Officer in charge, and Hospital Administrator, respectively, to replace petitioner Rodriguez; that when petitioner Rodriguez contested said order which he claimed, removed him from his office as Chief of the National

Mental Hospital without his consent, in violation of his civil service rights under the Constitution and the Civil Service Law, respondent (now petitioner) Secretary of Health, to circumvent the Constitutional inhibition, issued Department Order No. 207, series of 1966, on July 27, 1966, stating that petitioner Rodriguez "is hereby temporarily relieved of his duties at the National Mental Hospital, and reassigned on detail for temporary duty to the Bureau of Medical Services, with official station in Manila", and again naming the two other respondents (now petitioners Cesarea Goduco Agular and Jose Clarin) to replace him in the petitioner's office in the National Mental Hospital in Mandaluyong, Rizal; that the subsequent order of the respondent Secretary of Health was a scheme to oust petitioner (now respondent) Rodriguez from his civil service position without his consent and over his objection; that the Secretary of Health did not deny the verified allegation of the petition; that Rodriguez belongs to the civil service from which he cannot be removed except for cause and after due process (Art. XII, sec. 1, Constitution of 1935; Civil Service Act of 1959, sec. 32); that while it is true that in the interest of public service, temporary transfer or assignments may be made of the personnel of a bureau or department without obtaining the consent of the employee concerned, "such cannot be undertaken when the transfer of the employee is with a view to his removal" and "if the transfer is resorted to as a scheme to lure the employee away from his permanent position, such attitude is improper as it would in effect result in a circumvention of the prohibition which safeguards the tenure of office of those who are in the civil service" (Garcia, et al vs. Lejano, G.R. No. L-12220, Aug. 5, 1960); that respondent Court is convinced that Department Order No. 207 will operate to remove Rodriguez from his civil service office as Chief of the National Mental Hospital in Mandaluyong, Rizal, without his consent, which cannot be countenanced because it would mean an infringement of Rodriguez's constitutional and legal rights as a civil service official; as to the lifting of the restraining order issued by the Manila Court of First Instance in Civil Case No. 66038, wherein Rodriguez questioned the validity of the Secretary of Health's Order No. 183-A issued previous to the questioned Order No. 207, the respondent Court ruled that the Manila Court of First Instance lifted the restraining order against the Secretary of Health's Order No. 183-A precisely because the said Order No. 183-A was superseded by Order No. 207 and the legal questions raised against Order No. 183-A became moot and academic.

Pursuant to petitioners' prayer in this case, then Chief Justice Roberto Concepcion, issued a temporary restraining order, dated August 23, 1966, to wit:

"Now therefore, effective immediately and until further orders from this Court, You (respondent judge) are hereby Restrained from executing or implementing the orders dated August 2, 1966 and August 11, 1966, and from issuing a writ of preliminary injunction, and otherwise taking further cognizance of and in any manner assuming jurisdiction over Civil Case No. 9414 of the Court of First Instance of Rizal, entitled "Antonio Rodriguez, petitioner vs. The Hon. Paulino J. Garcia, Secretary of Health, et al. respondents"; and you (respondent Antonio Rodriguez) are hereby restrained from further continuing with the performance of your duties at the National Mental Hospital, and otherwise impeding the implementation of Department Order No. 207, series of 1966 of the Department of Health."

The basic issue raised in this case should have been decided together with the issues raised in the cases of "Antonio Rodriguez vs. Hon. Abelardo Subido, et al.", G.R. No. L-26396, and "Abelardo Subido et al. vs. Civil Service Board of Appeals et al.", G.R. No. L-27026-27 which We decided jointly on December 28, 1970, not only because the issues raised in the four cases are all related to the principal question of the legality and propriety of the removal of Dr. Antonio Rodriguez as head of the National Mental Hospital, but also because as early as August 8, 1968, both the petitioners and the private respondents in this case were agreed that all of these cases must be decided jointly because they are closely related to each other.

We deem it not only expedient but necessary to consider Our decision in the above mentioned cases as a firm basis for resolving the question before Us, for We cannot sufficiently determine the motive of the then Secretary

of Health when he issued Department Orders No. 183-A and No. 207, which "temporarily relieved of his duties at the National Mental Hospital", private respondent Dr. Antonio Rodriguez without refreshing Our memory of the factual background of those cases.

In G.R. No. L-26396, entitled "Antonio Rodriguez, petitioner appellant vs. Hon. Andres Reyes, et als., respondents-appellees", Rodriguez appealed from the judgment of the Court of First Instance of Rizal dismissing the petition for certiorari he filed against the then Commissioner of Civil Service, Abelardo Subido, in connection with the latter's decision in two administrative cases against him. On the other hand, G.R. No. L-27026 and L-27027, entitled "Abelardo Subido, as Commissioner of Civil Service vs. The Civil Service Board of Appeals et al., respondents", were original petitions for certiorari and prohibition filed with this Court by then Commissioner Subido questioning the actuations of the Civil Service Board of Appeals in taking cognizance of the appeal from the same decision rendered by Commissioner Subido against Dr. Rodriguez.

The facts stated in Our joint decision promulgated December 28, 1970, 36 SCRA, p. 503, 505-508, are as follows:

"Dr. Antonio Rodriguez was Medical Adviser (Chief of Section) in the Bureau of Medical Services. On July 1, 1959, he was detailed as head of the National Mental Hospital, by the then Secretary of Health, Dr. Elpidio Valencia. On July 8, 1960, he was administratively charged on nine counts (Adm. Case No. R-23237), to investigate which the Secretary formed a committee composed of several members. Pending investigation, or on May 29, 1961, Dr. Rodriguez was appointed "Chief of Hospital IV (R-54) in the Hospital Services (National Mental Hospital), Field Operations", which appointment was approved by the Acting Chief, Personnel Transaction Division, in behalf of then Commissioner of Civil Service Amado del Rosario. After the investigation, when evidence was adduced by both parties, the committee rendered its report on November 20, 1961, finding the respondent innocent. Upon its recommendation the Secretary of Health exonerated him completely and indorsed the findings to Commissioner del Rosario, who, however, in his decision dated May 17, 1962, found Dr. Rodriguez "guilty of indiscretion" in connection with specification "b" of the charges, for having caused slaughtered pigs (belonging to the National Mental Hospital) to be given to his superior and to the Auditor General". The penalty administered to him was an "admonition to be more careful in his activities". On June 29, 1962, Dr. Rodriguez moved for reconsideration. In his motion he did not question the factual findings in the decision; he simply pointed out that the offense of "indiscretion" did not exist in the statutes or in the civil service rules and regulations. His prayer was that the verdict on that particular count be entirely deleted from the records of the case". Eight months thereafter, or on February 22, 1963, Rodriguez wrote a letter in the Commissioner of Civil Service withdrawing his motion for reconsideration and manifesting his conformity to the decision of May 17, 1962. The reason he gave for the withdrawal was that the administrative case had been pending for a long time and affected not only his peace of mind but also the "interest of (the) public institution committed to his responsibility". On March 18, 1963, the request for withdrawal was granted by the Department of Legal Counsel of the Civil Service Commission, who signed the corresponding endorsement "For the Commissioner". On May 6, 1963, Abelardo Subido, then Acting Commissioner of Civil Service, revoked the grant of withdrawal as having been issued without authority.

"Meanwhile, under date of January 23, 1962, another administrative complaint, No. 24354, had been lodged with the Secretary of Health against Dr. Rodriguez. One of the seven charges was electioneering. Again the Secretary created an investigating committee, to which he issued the following directive: "x x x ". The investigating committee required Dr. Rodriguez to submit his explanation, which he did on March 6, 1962. On August 29, 1962, the committee, on the basis of the said explanation and without conducting a formal investigation, rendered a memorandum report recommending exoneration. On October 29, 1962, the Secretary indorsed the recommendation, with his full concurrence to the Civil Service Commission.

"On September 12, 1963, Commissioner Abelardo Subido rendered a joint decision in the two cases (Administrative Cases Nos. 23237 and 24354). In Case No. 23237 he found Dr. Rodriguez guilty of misconduct in office for having loaned government construction materials to a private contractor in connection

with a project the latter was doing for the National Mental Hospital. It was a charge not touched upon in the motion for reconsideration of Dr. Rodriguez, and of which he had already been found innocent by the investigating committee created by the Secretary of Health, by the Secretary himself and by Civil Service Commissioner del Rosario. In case No. 24354 the Commissioner (Subido) found the respondent guilty of the charge of electioneering. The penalty imposed was dismissal from office, which the Commissioner ordered, in the same decision, immediately executed "in the public interest". Dr. Rodriguez personally received a copy of the decision on September 14, 1963. On the same day he filed a petition for certiorari with preliminary injunction in the Court of First Instance of Rizal, alleging that the decision had been rendered without due process of law, and without jurisdiction or with grave abuse of discretion. The injunction was issued by the Court restraining immediate execution of the verdict of dismissal.

"On February 23, 1966 Dr. Rodriguez appealed the decision of Commissioner Subido to the Civil Service Board of Appeals. On May 4, 1966, the Court of First Instance of Rizal dismissed the petition for certiorari on the ground of non-exhaustion of administrative remedies. Dr. Rodriguez moved to reconsider, and after his motion was denied, filed a petition for review with preliminary injunction in the Court of Appeals, which thereafter certified the case to this Court, where it was docketed as Case No. L--26396.

"Commissioner Subido, on his part, tried to have the Civil Service Board of Appeals dismiss the respondent's appeal before it on the ground that the same had been filed out of time and that his decision was already final. The Board turned down the plea, and Commissioner Subido came to this Court on certiorari and prohibition, his petition being docketed as Nos. L-27026 and 27027.

"On January 5, 1967, this Court issued an order temporarily restraining the Civil Service Board of Appeals from taking cognizance of and assuming jurisdiction over the appeal taken by Dr. Rodriguez, but the order failed to take effect because two days before, or on January 3, the Board had decided the appeal, declaring the decision of Commissioner Subido null and void for having been rendered "without jurisdiction and without due process of law" and ordering the reinstatement of Dr. Rodriguez to his position". (Italics supplied).

This Court, in the majority opinion penned by then Associate Justice (now Chief Justice) Querube Makalintal, concurred in by then Associate Justices Arsenio P. Dizon and Calixto O. Zaldivar and Associate Justice Fred Ruiz Castro, with then Associate Justice Jose B. L. Reyes dissenting, concurred in by then Chief Justice Roberto Concepcion, and four Associate Justices abstaining, namely Associate Justices Enrique M. Fernando, Claudio Teehankee, Antonio P. Barredo and Julio V. Villamor (Justice Makasiar was not yet a member of the court when the vote was taken), ruled that with respect to Administrative Case No. 23237, the decision of Commissioner Amado del Rosario dated May 17, 1962, finding Dr. Rodriguez guilty of indiscretion and imposing upon him the penalty of admonition, had already become final and therefore, beyond the jurisdiction of Commissioner Subido to set aside when he did so and rendered his own decision on September 12, 1963; that in Administrative Case No. 24354, the decision of Commissioner Subido suffered from a basic infirmity - that it violated the principles of due process, having been rendered without investigation and without first affording an opportunity to Dr. Rodriguez to defend himself; that the pronouncement of guilt on the charge of electioneering contained in Commissioner Subido's decision of September 12, 1963, was "precipitate and groundless"; that the appeal taken by Dr. Rodriguez to the Civil Service Board of Appeals from Commissioner Subido's decision of September 12, 1963, was timely, considering that the issuance of writ of preliminary injunction by the Court of First Instance of Rizal (Civil Case No. 7828) interrupted the running of the period within which an appeal could be taken from the Civil Service Commission to the Civil Service Board of Appeals; to dismiss the petition of Commissioner Subido in G.R. No. L-27026 and L-27027; upholding the jurisdiction of the Civil Service Board of Appeals in the appeal taken by Dr. Rodriguez from the decision of September 12, 1963, by Commissioner Subido; and considering that the Civil Service Board of Appeals had already rendered its decision of January 3, 1967, declaring the decision of Subido null and void and ordering the reinstatement of Dr. Rodriguez, the petition in No. L--26396 was dismissed

as moot and academic.

When the then Commissioner Subido asked for a reconsideration of the aforementioned decision on the principal ground that only five justices concurred with the majority opinion, this Court, in the resolution dated May 12, 1971, by a vote of six to two, resolved to deny the motion for reconsideration and reiterated the judgment in these cases on the ground that with the other justices maintaining their respective previous individual stand, Justice Enrique Fernando and Justice Villamor agreed to take part and voted in favor of the decision.

The final result of all the tedious lengthy litigation was that Dr. Rodriguez was vindicated in his fight for due process, exonerated in the administrative cases filed against him, and ordered reinstated to his previous position.

With the proper background provided, let Us focus Our attention to the contested Order No. 207, series of 1966, the enforcement of which was enjoined by the respondent Court of First Instance of Rizal, subject now of the case at bar, purportedly intended merely to "temporarily" relieve Dr. Antonio Rodriguez of his duties at the National Mental Hospital, and to re-assign him on detail for "temporary duty" to the Bureau of Medical Services, with official station in Manila, said assignment to continue for a period not exceeding thirty days from date of assumption of assignment thereat, unless sooner terminated or otherwise extended in accordance with law, with the understanding that "he shall retain his position as Chief of Hospital IV, with the same rate of salary and other emolument, and this will not involve any reduction in rank or salary nor be construed as disciplinary in nature".

To place things in their proper perspective, and to help Us understand the real intention of then Secretary Garcia when he issued the controversial Order No. 207 (whether to merely assign Dr. Rodriguez temporarily to another position for the good of public service, or to remove him from the position he was holding, thereby infringing and violating the latter's constitutional and legal rights as a civil service official not to be removed from office except for cause and after due process), We examine Department Order No. 183-A s. 1966, dated July 7, 1966, which preceded Department Order No. 207, to wit:

"July 7, 1966

"DEPARTMENT ORDER
No. 183-A s. 1966

"SUBJECT: Reassignment of Dr. ANTONIO RODRIGUEZ, Chief, National Mental Hospital, and Designation of Dr. CESAREA GODUCO-AGULAR and DR. JOSE CLARIN, as Officer-in-Charge and Acting Medical Director, and Hospital Administrator, respectively, of the same hospital.

Pursuant to the powers vested in me by Section 79 (B) of the Revised Administrative Code, Section 3 of Executive Order No. 288, Section 32 of Republic Act No. 2260, Sections 5 and 23 of the Civil Service Rules and other pertinent laws, rules and regulations, and in line with the opinion of the Department of Justice, dated April 29, 1966, the following assignments are hereby promulgated:

- DR. ANTONIO RODRIGUEZ, Chief of the National Mental Hospital is hereby relieved of his duties and re-assigned with the Bureau of Medical Services to assist the Director thereof specially in the decentralization program of the National Mental Hospital;
- DR. CESAREA GODUCO-AGULAR, Chief of Clinics, National Mental Hospital, is hereby designated as Officer-In-Charge and Acting Medical Director of the same Hospital in accordance with Department Order Nos. 4, 7 and 11, all series of 1966, and
- DR. JOSE CLARIN, Assistant to the Director, National Mental Hospital, is hereby designated as Hospital Administrator of the same Hospital, in accordance with Department Orders Nos. 4, 7 and 11, all series of 1966.

This Order is promulgated in the interest of the public service, specially taking cognizance of the decision of the CFI of Rizal in Civil Case No. 7828, dismissing the petition of Dr. Rodriguez, thus giving way upon its finality to the decision of the Commissioner of Civil Service finding him guilty in two administrative cases and dismissing him from the service, as well as the pendency of other administrative cases against Dr. Rodriguez, and in order to effect a harmonious and efficient administration of the Department particularly its decentralization program of the mental patients.

This shall take effect immediately and hereby made of record.

(SGD.) PAULINO J. GARCIA, M.D.
Secretary of Health"

An examination of the foregoing Department Order No. 183-A, which preceded Order No. 207 by only a few days, hardly leaves doubt that petitioner Secretary of Health, in issuing said order had the intention to relieve respondent Rodriguez of his duties as Chief of the National Mental Hospital and to re-assign him with the Bureau of Medical Services on a permanent and not temporary basis, in effect removing him from his position as Chief of the National Mental Hospital without cause and without due process of law. That such was the petitioner Secretary's intention is eloquently displayed in the reasons given for the order, to the effect:

"This Order is promulgated in the interest of the public service, specially taking cognizance of the decision of the C.F.I. of Rizal in Civil Case No. 7828, dismissing the petition of Dr. Rodriguez, thus giving way upon its finality to the decision of the Commissioner of Civil Service finding him guilty in two administrative cases and dismissing him from the service as well as the pendency of other administrative cases against Dr. Rodriguez, x x x"

Obviously, the petitioner Secretary of Health referred to the injunction lifted by the Court of First Instance of Rizal that resulted in G.R. No. L-26396 and the decision of then Commissioner Subido dated September 12, 1963, which was declared null and void by the Civil Service Board of Appeals in its decision of January 3, 1967, which in turn We upheld in Our decision in G.R. Nos. L-26396, L-27026-27027, dated December 28, 1910. Stated otherwise, the Secretary of Health in issuing Department Order No. 183-A, Series of 1966, intended to immediately enforce the decision of then Commissioner Subido dismissing Dr. Rodriguez from the service in an indirect manner. When Dr. Rodriguez questioned Department Order No. 183-A, s. 1966, by his petition for certiorari and prohibition in Civil Case No. 66038 in the Court of First Instance of Manila, on July 9, 1966, Department Order No. 207, s. 1966 with subject "Amending and Clarifying Department Order No. 183-A s. 1966, Re: Temporary Detail of Dr. Antonio Rodriguez", was issued obviously to give an assurance by change of terminology, to Dr. Rodriguez that the latter was only "temporarily relieved" of his duties at the National Mental Hospital and not permanently removed from his position as was clearly enunciated in Department Order No. 183-A, s. 1966. Apparently, by that time, petitioner Secretary of Health already realized his mistake and intended to rectify the error committed in issuing Order No. 183-A, but he still insisted on taking away Dr. Rodriguez as head of the National Mental Hospital without making it obvious that it was an illegal act of removal without cause and without due process by concealing the obvious with the subterfuge of temporary assignment or temporary detail as contained in Department Order No. 207, s. 1966. To private respondent Rodriguez it was just like being given a bitter sugar-coated pill to swallow.

There is no question that We recognize the validity and indispensable necessity of the well established rule that for the good of public service and whenever public interest demands, public officials maybe temporarily assigned or detailed to other duties even over his objection without necessarily violating his fundamental and legal rights to security of tenure in the civil service. But as We have already stated, "such cannot be undertaken when the transfer of the employee is with a view to his removal" and "if the transfer is resorted to as a scheme to lure the

employee away from his permanent position" because "such attitude is improper as it would in effect result in a circumvention of the prohibition which safeguards the tenure of office of those who are in the civil service" (Garcia, et al vs. Lejano, G.R. No. L-12220, Aug. 5, 1960).

We are firmly convinced here that what the then Secretary of Health intended to do in issuing Department Order No. 207, s. 1966 was to remove indirectly Dr. Rodriguez as head of the National Mental Hospital (pursuant to then Commissioner Subido's decision dated September 12, 1963, which was declared null and void by the Civil Service Board of Appeals in its decision of January 3, 1967) by relieving him of his duties and reassigning him elsewhere without valid cause and without due process of law. In other words, the then Secretary of Health was trying to do indirectly what he could not do directly because the latter step would result in a patent infringement of the Constitutional and legal rights of Dr. Rodriguez to the security of his tenure in the civil service and his right to due process of law. The inevitable conclusion is that Department Order No. 207, s. 1966, is void and without effect and We declare it to be so.

WHEREFORE, the herein petition is dismissed, the temporary restraining order issued by this Court on August 23, 1966, is lifted and the preliminary injunction issued by the respondent Court in its order of August 11, 1966, is made permanent. Without pronouncement as to costs.

SO ORDERED.

Castro, (Chairman), Makasiar, Muñoz Palma, and Martin, JJ., concur.

Teehankee, J., is on leave.

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