

**RAUL R. INGLES, ROALDO G. ADVIENTO, ISABEL C. CORPUS,
CONSUELO M. VILLANUEVA AND ESPERANZA M. GUTIERREZ,
PLAINTIFFS-APPELLANTS, VS. AMELITO R. MUTUC AND
BALDOMERO DAVOCOL, DEFEN...**

G.R. No. L-20390. November 29, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Direct appeal by the plaintiffs from a decision of the Court of First Instance of Manila dismissing their complaint herein, with costs against them.

Although most of the allegations in said complaint had been denied in defendants' answer, the basic facts were admitted in the memoranda filed by both parties with the lower court and seemingly in the course of their oral argument therein. Hence, the case was deemed submitted to said court and the same rendered its appealed decision, without receiving any evidence, with an opening statement to the effect that "the facts of this case are undisputed."

Indeed, it is conceded that plaintiffs herein are civil service eligibles, holding positions, in the budget for the fiscal year 1961-1962, under the Office of the President. Plaintiff Raul R. Ingles has a first-grade civil service eligibility, holding a WAPCO-classified position of Senior Executive Assistant II, with a compensation of P6,888.00 a year, and eight (8) years of service in the Government. Plaintiff Roaldo G. Adviento is, in turn, a second-grade civil service eligible, holding a WAPCO-classified position of Clerk I, with a compensation of P1,800.00 a year, and four (4) years of service in the Government, whereas plaintiff Isabel C. Corpus is a third-grade civil service eligible, holding a WAPCO-classified position of Supervising Clerk I, with a compensation of P2,544.00 a year, and eight (8) years of service in the Government. Plaintiff Consuelo M. Villanueva is another third-grade civil service eligible, holding a WAPCO-classified position of Clerk I, with a compensation of P1,800.00 a year, and ten (10) years of service in the Government. Upon the other hand, plaintiff Esperanza M. Gutierrez is a third-grade civil service eligible, holding a WAPCO classified position of Stenographer, with a compensation of P1,980.00 a year, and eight (8) years of service in the Government.

About the second week of January, 1962, plaintiffs received a communication of the then Executive Secretary, Amelito R. Mutuc, advising them that their services in the Government were terminated as of January 1, 1962. Plaintiffs appealed from this action to the President, on or about January 26, 1962. A month later, or on February 27, 1962, they received a letter of Mr. Mutuc, acting "by authority of the President, "denying the reconsideration prayed for.

Soon thereafter, or on March 24, 1962, plaintiffs commenced the present action, in the Court of First Instance of Manila, against said Executive Secretary and the Cash Disbursing Officer in the Office of the President, alleging that they (plaintiffs) had been removed from office without cause and without due process, and praying, accordingly, that judgment be rendered ordering:

“(1) Defendant Executive Secretary Amelito R. Mutuc to certify the names of the petitioners in the payrolls of the Office of the President, to be retroactive as of January 1, 1962, the effective date of petitioners' illegal termination from employment;

“(2) Defendant Baldomero Davocol to pay the emoluments and/or salaries to which plaintiffs are entitled, effective as of January 1, 1962, the date of their illegal termination from service;

“(3) Defendants to perform their duties as aforesaid and to continue paying plaintiffs their emoluments and/or salaries to which said plaintiffs are entitled to in accordance with law;

“(4) Defendants to allow plaintiffs to continue in the performance of their respective duties.”[1]

Soon thereafter, Salvador L. Marino was substituted in lieu of Amelito R. Mutuc, as one of the defendants herein, the former having meanwhile assumed the office of Executive Secretary, which the latter vacated upon his appointment as Ambassador of the Philippines to the United States.

Defendants maintained that the principal issue in this case "is whether or not the plaintiffs are occupying positions which are primarily confidential and, therefore, are subject to removal at the pleasure of the appointing power," and that this issue should be resolved in the affirmative. The trial court did so, with the result already adverted to.

Defendants-appellees thus assume that an officer holding a position which is primarily confidential in nature is "subject to removal at the pleasure of the appointing power." This assumption is inaccurate. It is evidently based upon a statement in *De los Santos vs. Mallare*[2] to the effect that "three specified cases of positions - policy-determining, primarily confidential and highly technical - are excluded from the merit system and dismissal at pleasure of officers and employees appointed therein is allowed by the Constitution." [3] This was, however, a mere obiter, because the office involved in said case - that of City Engineer of Baguio - did not belong to any of the excepted classes, and, hence, it was not necessary to determine whether its incumbents were removable or not at the pleasure of the appointing power. What is more, said obiter, if detached from the context of the decision of which it forms part, would be inconsistent with the constitutional command to the effect that "no officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law," [4] and it is conceded that one holding in the Government a primarily confidential position is "in the Civil Service." In fact, in the *De los Santos* case, this Court cited with approval the view, expressed in *Lacson vs. Romero*[5] to the effect "that officers or employees in the unclassified" - to which plaintiffs herein admittedly belong - "as well as those in the classified service are protected by the above cited provision of the organic law."

Again, the law alluded to in the Constitution, namely Section 32 of Republic Act No. 2260, provides:

"SEC. 32. Disciplinary Action. - No officer or employee in the civil service shall be removed or suspended except for cause as provided by law and after due process; Provided, That a transfer from one position to another without reduction in rank or salary shall not be considered disciplinary when made in the interest of public service; Provided, further, That no complaint against a civil service official or employee shall be given due course unless the same is in writing and subscribed and sworn to by the complainant; And provided, finally, That the respondent shall be entitled to a formal investigation if he so elects, in which case he shall have the right to appear and defend himself at said investigation in person or by counsel, to confront and cross-examine the witnesses against him, and to have the attendance of witnesses and production of documents in his favor by compulsory process of subpoena or subpoena duces tecum."

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 incumbent. When this event takes place, the latter is not "removed" or "dismissed" from office - his term has merely "expired".

As we had occasion to point out in *Manalang vs. Quitoriano*,^[6] "to remove an officer is to oust him from office before the expiration of his term." Accordingly, we held therein that the abolition of Manalang's office as Director of the Placement Bureau by a legislation drafted by him, creating the "National Employment Service," was not a "removal" from office and did not violate the Constitution. His right to hold said office of Director of the Placement Bureau had merely been extinguished in consequence of its abolition, in the same manner that it could have come to an end, without removal, through abandonment of office, retirement of the incumbent, or his reaching the statutory age limit, if any. Thus, after making the statement relied upon by respondents herein, regarding the power to dismiss at pleasure officers holding policy-determining, primarily confidential and highly technical positions, this Court added, in the aforementioned case of *De los Santos vs. Mallare*,^[7] that "it may truly be said that the good of the service itself demands that appointments coming under this category be terminable at the will of the officer that makes them."

As regards the nature of the positions held by plaintiffs herein, the lower, court would seem to have been impressed by the fact that their items form part of the budget for 1961-1962 for "The President's Private Office," under subdivision (a) thereof entitled "Private Secretaries"; that they handled "confidential matters"; and that, "while plaintiffs perform purely clerical work, the papers handled by them are highly confidential in nature."

In this connection, it appears that the aforementioned sub-division (a) consisted of the following items:

"The President's Private Office

(a) Private Secretaries

"2. One private secretary to the President -----

P9,000.00

"3. One senior executive assistant II -----

6,888.00

"4. One social secretary -----

6,240.00

"5. One senior executive assistant I -----

5,112.00

"6. One senior executive assistant I -----

4,860.00

"7. One executive assistant -----

3,984.00

"8. One executive assistant -----

3,984.00

"9. One private secretary I -----

4,188.00

"10. One translator II -----

2,808.00

"11. One secretary -----

2,676.00

"12. One secretary -----

2,544.00

"13. Two stenographers at P1, 980 -----

3,960.00

"14. One stenographer -----

1,980.00

"15. One supervising clerk I -----

2,544.00

"16. One clerk II -----

2,196.00

"17. One clerk II -----

2,424.00

"18. Three clerks I at P1, 800 -----

5,400.00

"19. Two clerks I at P1, 800 -----

3,600.00

"20. Two clerical aides at P1, 440 -----

2,880.00"[8]

and that, presumably, Ingles held item No. 3, Gutierrez either No. 13 or No. 14, Corpus No. 15 and Adviento and Villanueva either No. 18 or No. 19. With the exception of item No. 2, designated therein as private secretary, there is nothing in the other items above-quoted, particularly those held by plaintiffs herein, to indicate that their respective positions are "primarily confidential" in nature. On the contrary, the compensation attached and the designation given thereto suggest the purely, or, at least, mainly clerical nature of their work. The fact that they, at times, handle "confidential matters," does not suffice to characterize their "positions" as primarily confidential." Indeed, it is admitted that plaintiffs, likewise, handle "other routine matters," and it has not even been shown that their work is, at least, principally confidential.

Indeed, physicians handle confidential matters. Judges, fiscals and court stenographers generally handle matters of similar nature. The Presiding and Associate Justices of the Court of Appeals sometimes investigate, by designation of the Supreme Court, administrative complaints against judges of first instance, which are confidential in nature. Officers of the Department of Justice, likewise, investigate charges against municipal judges. Assistant Solicitors in the Office of the Solicitor General often investigate malpractice charges against members of the Bar. All of these are "confidential" matters, but such fact does not warrant the conclusion that the office or position of all government physicians and all Judges, as well as the aforementioned assistant solicitors and officers of the Department of Justice are primarily confidential in character.

Considering that plaintiffs herein are admittedly civil service eligibles, with several years of service in the Government, and that positions which are policy determining, primarily confidential and highly technical in nature are exceptions to the general rule governing Civil Service officers and employees, it was up to defendants-appellees to establish that plaintiffs belong to one of these excepted classes. This, defendants-appellees have failed to accomplish.

WHEREFORE, the decision appealed from should be, as it is hereby reversed, and another one shall be entered declaring that plaintiffs' removal from office was illegal and contrary to law, and that they are, accordingly, entitled to reinstatement to their respective offices and to the payment of their corresponding emoluments, from January 1, 1962, up to their actual reinstatement.

SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Fernando and Capistrano, JJ., concur.

[1] Record on Appeal, pp. 6-7.

[2] 87 Phil. 289.

[3] Underscoring ours.

[4] Section 4 of Article XII of the Constitution.

[5] 84 Phil. 740.

[6] 94 Phil. 903.

[7] Supra.

[8] At p. 43 of the budget.

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