

**RUBEN A. VILLALUZ, PETITIONER, VS. CALIXTO ZALDIVAR, ET AL.,
RESPONDENTS.***G. R. No. L-22754. December 31, 1965*

Ponente: BAUTISTA ANGELO, J.

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Petitioner seeks his reinstatement as Administrator of the Motor Vehicles Office with payment of back salaries in a petition filed before this Court on April 1, 1964.

He alleged that he was nominated as chief of said office on May 20, 1958 and two days thereafter his nomination was confirmed by the Commission on Appointments; that on May 26, 1958 he took his oath of office as such after having been informed of his nomination by then Acting Assistant Executive Secretary Sofronio C. Quiamson; that in a letter dated January 28, 1960 addressed to the President of the Philippines by Congressman Joaquin R. Roces as Chairman of the Committee on Good Government of the House of Representatives, the latter informed the former of the findings made by his Committee concerning alleged gross mismanagement and inefficiency committed by petitioner in the Motor Vehicles Office which are summed up in the letter as follows: (1) malpractice in office resulting in huge losses to the government; (2) failure to correct inadequate controls or intentional toleration of the same, facilitating thereby the commission of graft and corruption; and (3) negligence to remedy unsatisfactory accounting; that as a result of said findings, Congressman Roces recommended the replacement of petitioner and of his assistant chief Aurelio de Leon as well as the complete revamp of the offices coming under the Motor Vehicles Office by the new chief who may be appointed thereafter; that having been officially informed of the content of said letter, then. Secretary of Public Works and Communications furnished petitioner with a copy thereof requiring him to explain within 72 hours why no administrative action should be taken against him relative to the charges contained in the letter; that petitioner answered the letter as required wherein he explained and refuted in detail each and everyone of the charges contained in the letter of Congressman Roces; that on February 15, 1960, the then. Executive Secretary Natalio P. Castillo suspended petitioner as Administrator of the Motor Vehicles Office, having thereupon created an investigating committee with the only purpose of investigating the charges against petitioner and his assistant Aurelio de Leon, and to undertake the investigation a prosecution panel was created headed by Special Prosecutor Emilio A. Gancayco; that after the investigation said committee submitted its report to the President of the Philippines who thereafter issued Administrative Order No. 332 decreeing the removal from office of petitioner; that as a result of petitioner's removal Apolonio Ponio was appointed to take his place as acting administrator; and that, after having been officially notified of his removal, petitioner filed a motion for reconsideration and/or reinstatement, and when this was denied, he filed the instant Petition before this Court.

Respondents in their answer denied the claim of petitioner that the charges contained in the letter of Congressman Roces were not directed against him but against his office in general for the truth is that he was specifically charged with mismanagement gross inefficiency and negligence in the performance of his duties as Chief the Motor Vehicles Office, and as a result he was required to answer the same within 72 hours to explain why no

disciplinary action should be taken against him. Respondents also denied that petitioner was investigated without being accorded due process as required by law for in fact he was given every reasonable opportunity to present his defense, to secure the attendance of witnesses, and to produce documents in his behalf in a manner consistent with administrative due process. Respondents also averred that the President of the Philippines, contrary to petitioner's claim, has jurisdiction to investigate and remove him since he is a presidential appointee who belongs to the non-competitive or unclassified service under Section 5 of Republic Act No. 2260. Respondents finally averred that the letter of Congressman Joaquin R. Roces is in effect a valid administrative complaint because it contained specific charges which constitute just causes for his suspension and removal; that said charges need not be sworn to for the Chief Executive, as administrative head of petitioner, is empowered to commence administrative proceedings *motu proprio* pursuant to Executive Order No. 370, series of 1941, without need of any previous verified complaint. And as special defense respondents averred that petitioner is guilty of laches for having allowed almost four years before instituting the present action.

There is merit in the claim that petitioner, being a presidential appointee, belongs to the non-competitive or unclassified service of the government and as such he can only be investigated and removed from office after due hearing by the President of the Philippines under the principle that "the power to remove is inherent in the power to appoint" as can be clearly implied from Section 5 of Republic Act No. 2260. Such is what we ruled in the recent case of *Ang-Angco* wherein on this point we said:

"There is some point in the argument that the power of control of the President may extend to the power to investigate, suspend or remove officers and employees who belong to the executive department if they are presidential appointees or do not belong to the classified service for such can be justified under' the principle that the power to remove is inherent in the power to appoint *Lacson vs. Romero*, supra) but not with regard to those officers or employees who belong to the classified service for as to them that inherent power cannot be exercised. This is in line with the provision of our Constitution which says that the Congress may by law vest the appointment of the inferior officers, in the President alone, in the courts, or in heads of department (Article VII, Section, 10 [3], Constitution)." (*Ang-Angco vs. Castillo, et al.*, L-17169, November, 30, 1963)

Consequently, as a corollary to the foregoing ruling, we may state that the Commissioner of Civil Service is without jurisdiction to hear and decide the administrative charges filed against petitioner because the authority of said Commissioner to pass upon questions of suspension, separation, or removal can only be exercised with reference to permanent officials and employees in the classified service to which classification petitioner does not belong. This is also what we said in the *Ang-Angco* case when, in interpreting Section 16 (i) of Republic Act No. 2260, we emphasized that only permanent officers and employees who belong to the classified service come under the exclusive jurisdiction of the Commissioner of Civil Service.

There is, therefore, no error of procedure committed by respondents insofar as the investigation and disciplinary action taken against petitioner is concerned, even if he is under the control and supervision of the Department of Public Works, in view of the reason we have already stated that he is a presidential appointee who comes exclusively under the jurisdiction of the President. The following rationale supports this view:

"Let us now take up the power of control given to the President by the Constitution over all officers and employees in the executive departments which is now invoked by respondents as justification to override the specific provisions of the Civil Service Act. This power of control is couched in general terms for it does not set in specific manner its extent and scope. Yes, this Court in the case of *Hebron vs. Reyes*, supra, had already occasion to interpret the extent of such power to mean the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter, to distinguish it from the power of general supervision over municipal government, but the decision does not go to the extent of including the power to remove an officer or employee

in the executive department. Apparently, the power merely applies to the exercise of control over the acts of the subordinate and not over the actor or agent himself of the act. It only means that the President may set aside the judgment or action taken by a subordinate in the performance of his duties.

"That meaning is also the meaning given to the word 'control' as used in administrative law. Thus, the Department Head pursuant to Section 79 (c) is given direct control of all bureaus and offices under his department by virtue of which he may repeal or modify decisions of the chiefs of said bureaus or offices', and under Section 74 of the same Code, the President's control over the executive department only refers to matters of general policy. The term 'policy' means a settled or definite course or method adopted and followed by a government, body or individual, and it cannot be said that the removal of an inferior officer comes within the meaning of control over a specific policy of government." (Ang-Angco vs. Castillo, et al., supra)

With regard to the claim that the administrative proceedings conducted against petitioner which led to his separation are illegal simply because the charges preferred against him by Congressman Roces were not sworn to as required by Section 72 of Republic Act No. 2260, this much we can say said proceedings having been commenced against petitioner upon the authority of the Chief Executive who was his immediate administrative head, the same may be commenced by him *motu proprio* without previous verified complaint pursuant to Executive Order No. 370, series of 1941, the pertinent provisions of which are as follows:

"(1) Administrative proceedings may be commenced against a government officer or employee by the head or chief of the bureau or office concerned *motu proprio* or upon complaint or any person which shall be subscribed under oath by the complainant: Provided, That if a complaint is not or cannot be sworn to by the complainant, the head or chief of the bureau or office concerned may, in his discretion, take action, thereon if the public interest or the special circumstances of the case so warrant." [1]

Finally, on the theory that the instant petition partakes of the nature of *quo warranto* which seeks petitioner's reinstatement to his former position as Administrator of the Motor Vehicles Office, we are of the opinion that it has now no legal *raison d'être* for having been filed more than one year after its cause of action had accrued. As I this Court has aptly said: "a delay of slightly over one (1) year was considered sufficient to bar an action for *mandamus*, by reason of laches or abandonment of office. We see no reason to depart from said view in the present case, petitioner herein having allowed about a year and a half to elapse before seeking reinstatement" (Jose vs. Lacson, et al., L-10477, May 17, 1957)

Wherefore, petition is denied. No costs.

Bengzon, C. J., Concepcion, Reyes, J. B. L., Barrera, Dizon, Regala, Makalintal and Bengzon, J. P., JJ., concur.

Petition denied.

[1] The executive order is valid and subsisting notwithstanding the enactment of Republic Act No. 2260 as interpreted by this Court in L-21008 Diaz, et al., promulgated October 29, 1965.

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