

YUSOPH C. TAMANO, PETITIONER, VS. RAUL S. MANGLAPUS AND FRANKLIN S. DRILON, RESPONDENTS.*G.R. No. 102787. October 13, 1992*

Ponente: GRINO-AQUINO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-102787/>**GRINO-AQUINO, J.:**

By this petition for mandamus, the petitioner seeks to compel the Secretary of Foreign Affairs and the Executive Secretary, Office of the President of the Philippines, to reinstate him as Foreign Service Officer II and to order the payment of all the back salaries and benefits accruing to him from March 1, 1987 to date.

On September 10, 1986, the petitioner, Yusoph C. Tamano, was appointed Foreign Service Officer II and Consul by then President Corazon C. Aquino, with a salary of P47,856 per annum. Upon receipt of the appointment, Tamano took his oath of office before Honorable Mamintal A.J. Tamano, Deputy Minister of Foreign Affairs. A month later, he completed the Consular Officer Course conducted by the Foreign Service Institute and began receiving his salary as FSO II on September 12, 1986. Identification Card No. TYC007 certifying Tamano's employment in the Ministry of Foreign Affairs as Foreign Service Officer was issued to him on November 24, 1986. He thereafter caused calling cards to be printed which read: (1) Yusoph C. Tamano, Chief Islamic Division, Office of the Middle East and African Affairs; (2) Consul and President, Filipino-Muslim Foreign Service Personnel Association and holding office at Rm. 532 PICC Bldg., Pasay City; (3) Yusoph Tamano, Second Secretary of Consul, Philippine Embassy, 5 Ibn el Walid Street, Dokki, Cairo; and (4) Yusoph C. Tamano, Director, Office of Middle East and African States, Department of Foreign Affairs, PICC Bldg., CCP Complex, Manila.

On or about March 1, 1987, before Tamano's appointment was submitted to the Commission on Appointments for confirmation, President Corazon C. Aquino, in a communication addressed to Secretary of Foreign Affairs Salvador H. Laurel, revoked Tamano's appointment "effective ab initio owing to the absence of appropriate items" (p. 21, Rollo). Tamano sought reconsideration of the President's decision, but to no avail.

On November 21, 1988, Tamano filed a request for rectification and reconsideration of his revoked FSO II appointment by granting him an FSO IV appointment, the beginning level, which Tamano alleged was given to two other appointees similarly situated, namely Francisco Sales and Pendsina Lomondot. That request was likewise denied by the Board of Foreign Service Administration.

Later, Ambassador Rosalinda Tirona recommended in a memorandum addressed to the new Foreign Affairs Secretary Raul Manglapus, that the revocation of Tamano's appointment be lifted and that he be appointed instead to the beginning level of Foreign Service Officer IV. After a review of the case and others similarly situated, Secretary Raul Manglapus concurred with the view that "the appointees [including Tamano] appear to have all the qualifications and none of the disqualifications to become competent officers of the Philippine foreign service. Taking into account the pertinent provisions of Executive Order No. 523, Section 3 (lateral entry)," Secretary Manglapus "recommended that the revocation of their appointments be lifted and that the President's decision to

appoint the above-mentioned individuals to their respective positions be given due course.” (Memorandum of Secretary Manglapus dated September 7, 1988, p. 26, Rollo.)

On November 26, 1991, Tamano filed this suit for mandamus, praying that the Court issue an order directing respondents Foreign Affairs Secretary and the Executive Secretary to reinstate him to his position and pay all his back salaries plus other benefits accruing to him from March 1, 1987 to date.

Is the petitioner entitled to the writ of mandamus which he prays for? Does he have a clear legal right to be reinstated as Foreign Service Officer II?

Republic Act 708, as amended, prescribes the manner and qualifications for the appointment of Foreign Service Officers composing the “career service” (Astraquillo vs. Manglapus, 190 SCRA 280, citing the Opinion No. 82, S. 1954 of the Department of Justice). Title III, Part B, Section 1 of the law provides:

“Section 1 Career Service Corps -

“(a) There shall be a career service corps for the Department and the Foreign Service to be composed of Foreign Affairs [now Service] Officers appointed by the President upon the recommendation of the Secretary and with the consent of the Commission on Appointments.

“(b) No person may be a Foreign Affairs [Service] Officer unless he is a Filipino citizen and is at least twenty-five years old at the time of his appointment.

“(c) No person shall be eligible for appointment as a Foreign Affairs [Service] Officer unless he has passed such competitive examinations as the Board of Foreign Service Examiners may prescribe to determine his fitness and aptitude for the work of the service and has demonstrated his loyalty to the Government of the Republic of the Philippines and his attachment to the principles of the Constitution. x x x.” (Underscoring ours.)

The record shows that the petitioner was appointed FSO II and Consul without having taken - therefore, without having passed - the foreign service examination. Neither was his appointment confirmed by the Commission on Appointments. These are indispensable requirements for a Foreign Service Officer to be embraced in the Career Service Corps. He, therefore, belonged to the non-career service composed of those who have been appointed, not on the basis of the usual test of merit and fitness, but subject to the appointing power's pleasure, limited to the duration of a particular period or project for which the employment was made. Section 6, PD 807 provides:

“SECTION 6. The non-Career Service shall be characterized by (1) entrance on bases other than those of the usual tests of merit and fitness utilized for the career service; and (2) tenure which is limited to a period specified by law, or which is coterminous with that of the appointing authority or subject to his pleasure, or which is limited to the duration of a particular project for which purpose employment was made.”

As a political appointee or non-career officer, he served at the pleasure of the President of the Philippines (Astraquillo vs. Manglapus, 190 SCRA 280, 293). He has no clear right to the office to which he seeks to be reinstated nor does the appointing authority have a clear duty to appoint or reinstate him thereto.

“Mandamus is the proper remedy if it could be shown that there was neglect on the part of a tribunal in the performance of an act, which specifically the law enjoins as a duty or an unlawful exclusion of a party from the use and enjoyment of a right to which he is entitled. According to former Chief Justice Moran, ‘only specific legal rights may be enforced if they are clear and certain. If the legal rights of the petitioner are not well-defined, clear, and certain, the petition must be dismissed.’” (Orencia vs. Enrile, 55 SCRA 580.)

The writ of mandamus is not available to control discretion. It may issue to compel the exercise of discretion but not to control it. Mandamus can require action only but not specific action where the act sought to be performed

involves the exercise of discretion (*Association of Small Landowners in the Philippines vs. Secretary of Agrarian Reform*, 175 SCRA 343, citing *Lamb vs. Phipps*, 22 Phil. 456).

The present action for mandamus is ill-advised for the act sought to be performed (the lifting of the President's revocation of petitioner's appointment as FSO II and his reinstatement to that position) is not ministerial but involves a high degree of discretion the exercise of which this Court may not interfere with in view of the system of separation of powers under which the three (3) great departments of our Republic operate.

WHEREFORE, the petition is DENIED for lack of merit. Costs against the petitioner.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Medialdea, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, and Melo, JJ., concur.

Campos, Jr., J., no part.

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