

REMEDIOS T. BLAQUERA, HERMINIO GUTIERREZ, AUGUSTO R. ORAA, VIRGINIA MALLILLIN, NENA T. AQUINO, RIZALYN DELA CRUZ, SATURNINO Y. CANMANGONAN, ALICIA S. UMEREZ, PRESENTACION C. DIE...

G.R. No. 103121. September 10, 1993

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

The petitioners and intervenors who are permanent employees in the Department of Environment and Natural Resources (DENR) filed this petition for prohibition and mandamus with a prayer for the issuance of a writ of preliminary injunction and/or restraining order, to stop the respondents from removing them from their positions in the DENR pursuant to the 1987 reorganization of that department under Executive Order No. 192 dated June 10, 1987.

To carry out said reorganization, and pursuant to Executive Order No. 165 of May 5, 1987 which abolished the Commission on Government Reorganization and transferred its remaining functions[1] to the Department of Budget and Management (DBM for brevity), DENR Secretary Fulgencio S. Factoran, Jr. submitted to the DBM a staffing pattern consisting of 28,106 positions. The DBM approved only 22,956 positions and the petitioners' positions were among those trimmed off the new plantilla. As the lean plantilla did not meet the manpower requirements of the DENR, Secretary Factoran submitted a staffing pattern consisting of 24,614 positions.

On July 4, 1988, the DBM released a revised staffing pattern containing 23,612 positions only which was 1,002 positions less than what the DENR Secretary requested and which still did not include the positions of the petitioners.

On July 29, 1988, the DENR requested the DBM to restore 839 positions which DBM had disapproved earlier. The request was approved on September 14, 1988 after long negotiations between the DENR and DBM, subject to the condition that these positions shall be coterminous with the appointees but not to exceed three (3) years. The implications of this are:

“1. If the appointee desires to retire, resign, transfer to other office or leave his employment for any reason whatsoever, the position is automatically abolished, even if the three-year period has not lapsed.

“2. By the end of the 3rd year, the employee holding a coterminous position is automatically separated.” (p. 7, Rollo.)

Meanwhile, on June 10, 1988, Republic Act No. 6656 “An Act to Protect the Security of Tenure of Civil Service Officers and Employees In the Implementation of Government Reorganization,” was passed. Section 11 thereof orders all departments and agencies to complete the 1987 reorganization of the executive branch within ninety (90) days from the approval of the law, or on or before September 8, 1988.

The directors of the affected bureaus (the Environmental Management Bureau, Forestry Management Bureau, Parks and Wildlife Bureau, Mines and Geosciences Bureau) requested the DENR and DBM Secretaries to convert the coterminous positions to permanent. The DENR Secretary favorably endorsed their request citing changes in the functions of the DENR as justification for the request (Annex B). The request was reiterated by the DENR Assistant Secretary for Services Management but it was denied on December 19, 1990 by DBM Secretary Guillermo Carague.

The DENR Secretary's motion for reconsideration was not acted upon by Secretary Carague.

Meanwhile, the General Appropriations Act of FY 1991 (R.A. No. 7078) provided for the salaries of the coterminous employees in the DENR until December 31, 1991.

On August 6, 1991, DENR Secretary Factoran submitted a memorandum to President Aquino, through Executive Secretary Franklin Drilon, requesting that the 597 coterminous positions of the DENR (which would expire on September 15, 1991) be extended up to December 31, 1991, without prejudice to DBM's action on his (Secretary Factoran's) motion for reconsideration. The Office of the President granted the request.

But as Secretary Factoran's request for reconsideration of Secretary Carague's order remained unacted upon, the petitioners filed in this Court on December 19, 1991, the present petition for prohibition^[2] and mandamus^[3] with a prayer for the issuance of a restraining order/preliminary injunction.

The grounds relied upon by the petitioners are:

1. That the impending mass dismissal of petitioners from employment on December 31, 1991 would violate their right to security of tenure and the provisions of Republic Act No. 6656;
2. That the appointment of the petitioners to the so-called coterminous positions deprived them of the right to due process;
3. The creation of positions "coterminous with the incumbent but not exceeding three years" is not in accordance with civil service laws, rules and regulations; and
4. Respondent DBM Secretary has no discretion but to grant respondent DENR Secretary's request for regularization of the coterminous positions.

Upon receipt of the petition, the Court issued a temporary restraining order directing the DENR Secretary to "cease and desist from terminating the services of the petitioners effective December 31, 1991 and from preventing them from performing their duties and functions as officials and employees of the DENR corresponding to their respective positions" (p. 51, Rollo).

On January 23, 1992, petitioners filed an "Urgent Motion to Cite Respondents for Contempt" for failure to pay their salaries, allowances and such other benefits due them while they continue to perform their respective duties and responsibilities in the DENR. On March 2, 1992, petitioners filed a Supplemental Motion for Contempt on the ground that besides not paying their salaries, respondents made them sign new appointments making them "coterminous with the incumbent." These acts of the respondents allegedly violate the Restraining Order issued by this Court on December 27, 1991.

In its Comment, the Office of the Solicitor General denied that public respondents have violated the temporary restraining order. Respondent DENR Secretary complied with the TRO by not terminating the services of the petitioners. Non-payment of the petitioners' salaries was due to the lack of an appropriation of funds for their salaries. Besides, the TRO did not require the DBM to appropriate funds for their salaries. The DBM did not violate the TRO when it required petitioners to sign new appointments making their positions coterminous with

the incumbent for it (DBM) was not directed by the TRO to desist from committing any act.

On January 23, 1992, Reynaldo Alcances, Marinela Cecilia T. Pascua and Dolores T. Tolentino, through the petitioners' counsel, asked to be included as petition-ers because their names had been inadvertently omitted from the list of petitioners. Their motion may be granted for they are similarly situated as the original petitioners who have continued to work in the DENR beyond December 31, 1991.

On February 24, 1992, a Motion for Leave to Inter-vene was filed by Conrado Salvador and Miguel Caisip which was not opposed by the petitioners. Before the Court could grant them leave to intervene, they filed a complaint in Intervention on July 20, 1993.

On March 6, 1992, Alfredo S. Marchadesch, Jr. and Carolina S. Cavan withdrew as petitioners because they had accepted new appointments in the DENR.

On April 13, 1992, the public respondents, through the Solicitor General, filed their Comment on the peti-tion.

The petitioners argue that their dismissal on December 31, 1991, would violate their right to security of tenure safeguarded by paragraph (3), Section 2 of Article IX-B of the Constitution, and the 2nd paragraph, Section 3 of Article XIII thereof. They also invoke Sections 1 and 11 of Republic Act No. 6656, which pro-vide that "departments and agencies of the government have only ninety (90) days from the approval of the Act to undertake the complete implementation of their respective reorganization plan, hence, the DENR had only up to September 8, 1988, to reorganize. Their dismissal on December 31, 1991, goes beyond the period allowed by law for the reorganization of the DENR.

We find merit in the petition.

It may be recalled that upon her assumption of office as President of the Philippines after the EDSA Revolution, President Corazon Aquino invested herself under Sections 1 and 2, Article III of the Freedom Constitution (Proclamation No. 3, March 25, 1986) with power and authority to reorganize the Government "by proclamation or executive order or by designation or appointment and qualification of the successor of any elective and appointive officials under the 1973 Constitution." The reorganization was to be completed within one year from February 25, 1986, or by February 25, 1987.

"SEC. 1. In the reorganiza-tion of the government, priority shall be given to measures to promote economy, efficiency, and the eradication of graft and corruption.

"SEC. 2. All elective and appointive officials and employees under the 1973 Constitution shall continue in office until otherwise provided by proclamation or executive order or upon the designation or appointment and qualification of their successors, if such is made within a period of one year from February 25, 1986." (Underscoring ours.)

However, "in order to obviate unnecessary anxiety and demoralization among the deserving officials and employees, particularly in the Career Civil Service" arising from the reorganization of the government, the President issued E.O. No. 17 on May 28, 1986 providing guidelines for the implementation of the reorganization "to protect career civil servants whose qualifications and performance meet the standards of service demanded by the new Government, and to ensure that only those found corrupt, inefficient and undeserving are separated from the government service." The head of each Ministry (now Department) was tasked to "see to it that the separation and replacement of officers and employees is made only for justifiable reasons" which are:

"SEC. 3. The following shall be the grounds for separation/re-placement of personnel:

"1. Existence of a case for summary dismissal pursuant to Sec-tion 40 of the Civil Service Law;

“2. Existence of a probable cause for violation of the Anti-Graft and Corrupt Practices Act as determined by the Ministry Head concerned;

“3. Gross incompetence or inefficiency in the discharge of functions;

“4. Misuse of public office for partisan political purposes;

“5. Any other analogous ground showing that the incumbent is unfit to remain in the service or his separation/replacement is in the interest of the service.” (E.O. No. 17.)

Excluded from the protection of E.O. No. 17 are:

“Sec. 11. This Executive Order shall not apply to elective officials or those designated to replace them, presidential appoint-ees, casual and contractual employees, or officials and employees removed pursuant to disciplinary proceedings under the Civil Service Law and Rules, and to those laid off as a result of the reorganization undertaken pursuant to Executive Order No. 5.” (Emphasis supplied.)

As a result of the ratification of the 1987 Constitution by the nation, the reorganization deadline in Proclamation No. 3 (February 25, 1987) was advanced to February 2, 1987.

Although the security of tenure of government employees is protected by Section 2, subpar. (3), Title B, Article IX of the 1987 Constitution, thus:

“Sec. 2. (3) No officer or employee of the civil service shall be removed or suspended except for cause provided by law.”

Section 16 of Article XVIII (Transitory Provisions) of the Constitution still allows the separation of employees “not for cause but as a result of the reorganization pursuant to Proclamation No. 3 x x x and the reorganization following the ratification of this Constitution.” Section 16 is quoted hereunder:

“SEC. 16. Career civil service employees separated from the service not for cause but as a result of the reorganization pursuant to Proclamation No. 3 dated March 25, 1986 and the reorganization following the ratification of this Constitution shall be entitled to appropriate separation pay and to retirement and other benefits accruing to them under the laws of general application in force at the time of their separation. In lieu thereof, at the option of the employees, they may be considered for employment in the Government or in any of its subdivisions, instrumentalities, or agencies, including government-owned or controlled corporations and their subsidiaries. This provision also applies to career officers whose resignation, tendered in line with the existing policy, had been accepted.” (Underscoring ours.)

E.O. No. 192 dated June 10, 1987 “PROVIDING FOR THE REORGANIZATION OF THE DEPARTMENT OF ENVIRONMENT, ENERGY AND NATURAL RESOURCES, RENAMING IT THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES, AND FOR OTHER PURPOSES” is a “reorganization following the ratification of this Constitution.” Although impliedly sanctioned under Section 16 of the Transitory Provisions of the 1987 Constitution, it must nevertheless pass the test of good faith to be valid. Good faith, we ruled in *Dario vs. Mison*[4] is a basic ingredient for the validity of any government reorganization. It is the golden thread that holds together the fabric of the reorganization. Without it, the cloth would disintegrate.

“Reorganization is a recognized valid ground for separation of civil service employees, subject only to the condition that it be done in good faith. No less than the Constitution itself in Section 16 of the Transitory Provisions, together with Sections 33 and 34 of Executive Order No. 81 and Section 9 of Republic Act No. 6656, support this conclusion with the declaration that all those not so appointed in the implementation of said reorganization shall be deemed separated from the service with the concomitant recognition of their entitlement to appropriate separation benefits and/or retirement plans of the reorganized government agency.”

(Domingo vs. Development Bank of the Phils., 207 SCRA 766.)

A reorganization in good faith is one designed to trim the fat off the bureaucracy and institute economy and greater efficiency in its operation. It is not a mere tool of the spoils system to change the face of the bureaucracy and destroy the livelihood of hordes of career employees in the civil service so that the new powers-that-be may put their own people in control of the machinery of government.

“Reorganizations in this jurisdiction have been regarded as valid provided they are pursued in good faith. As a general rule, a reorganization is carried out in ‘good faith’ if it is for the purpose of economy or to make bureaucracy more efficient. In that event, no dismissal (in case of dismissal) or separation actually occurs because the position itself ceases to exist. And in that case, security of tenure would not be a Chinese wall. Be that as it may, if the ‘abolition,’ which is nothing else but a separation or removal, is done for political reasons or purposely to defeat security of tenure, or otherwise not in good faith, no valid ‘abolition’ takes place and whatever ‘abolition’ is done, is void ab initio. There is an invalid ‘abolition’ as where there is merely a change of nomenclature of positions, or where claims of economy are belied the existence of ample funds.” (Dario vs. Mison, 176 SCRA 84, 92-93.)

“There is no dispute over the power to reorganize - whether traditional, progressive, or whatever adjective is appended to it. However, the essence of constitutional government is adherence to basic rules. The rule of law requires that no government official should feel free to do as he pleases using only his avowedly sincere intentions and conscience to guide him. The fundamental standards of fairness embodied in the bona fide rule cannot be disregarded. More particularly, the auto-limitations imposed by the President when she proclaimed the Provisional Constitution and issued executive orders as sole law maker and the standards and restrictions prescribed by the present Constitution and the Congress established under it, must be obeyed. Absent this compliance, we cannot say that a reorganization is bona fide.” (Mendoza vs. Quisumbing, 186 SCRA 108.)

“In fact, the right of the State to reorganize the Government resulting in the separation of career civil service employees under the 1987 Constitution is beyond dispute, but as emphasized in the Mison case (G.R. Nos. 81954, 81967 and 82023, August 8, 1989) and in the cases of Bondoc vs. Sec. of Science and Technology (G.R. No. 83025), Quisumbing vs. Tupas (G.R. No. 87401) and Hamed vs. Civil Service Commission (G.R. No. 89069), all of which having been promulgated on July 19, 1990, said reorganization, ouster, and appointments of successors must be made in GOOD FAITH.” (Emphasis supplied; Siete vs. Santos, 190 SCRA 50, 51-52.)

There appears to be no sufficient justification for the reorganization of the DENR, as revised by the DBM. The fact that Section 25 of E.O. No. 192 changed the status of all the officers and employees of the DENR from permanent or regular to mere “hold-overs,” flagrantly violating the employees’ right to due process, taints the reorganization process. Section 25 provides:

“SEC. 25. New Structure and Pattern. - Upon approval of this Executive Order, the officers and employees of the Department shall in a hold-over capacity, continue to perform their respective duties and responsibilities and receive the corresponding salaries and benefits unless in the meantime they are separated from government service.

“x x x Those incumbents whose positions are not included therein, or, who are not reappointed, shall be deemed separated from the service. x x x.”

In Domingo vs. DBP, 207 SCRA 766, the Court emphasized that a reorganization “does not justify a detraction from the mandatory requirement of notice and hearing” (underlining ours) to the affected officials and employees.

“Section 2 of Republic Act No. 6656 provides that ‘no officer or employee in the career service shall be removed except for a valid cause and after due notice and hearing,’ thus, there is no question that while dismissal due to a bona fide reorganization is recognized as a valid cause, this does not justify a detraction

from the mandatory requirement of notice and hearing. x x x.” (Emphasis supplied; *Domingo vs. Development Bank of the Philippines*, 207 SCRA 766.)

In *Mendoza vs. Quisumbing*, 186 SCRA 108, the Court noted the pernicious effect of the “hold-over” provision (Sec. 24) in Executive Order No. 117 reorganizing the Department of Education and Culture which uprooted thousands of school teachers and employees, thus:

“x x x Pursuant to the above provision [Sec. 24, E.O. No. 117], around 400,000 school teachers, janitors, clerks, principals, supervisors, administrators, and higher officials were placed on ‘hold-over status.’ When a public officer is placed on hold-over status, it means that his term has expired or his services terminated but he should continue holding his office until his successor is appointed or chosen and has qualified. (See *Topacio Nueno vs. Angeles*, 76 Phil. 12 [1946]).” (*Mendoza vs. Quisumbing*, 186 SCRA 108, 110-111.)

That the reorganization of the DENR was not intended to achieve economy and efficiency, is revealed by the admission in page 16 of the public respondents’ Comment that the new staffing pattern of the department contains “991 positions more than the total number of permanent positions in the DENR before the reorganization.” In fact, DENR Secretary Fulgencio Factoran (who is presumed to know better than anyone else the needs of his department) had urged the DBM to restore the positions of the petitioners because they are “vital to the functions, mandates and objectives of the DENR” (p. 30, Comment). Since the abolition of their positions will not conduce to either “efficiency” or “economy” in the Service, which are the principal justifications for any government overhaul, then, obviously, the reorganization of the DENR is not justified.

The conversion of the petitioners from permanent to “coterminous” employees is a wholesale demotion of personnel which is tantamount to removal without cause and without due process.” (*Floreza vs. Ongpin*, 182 SCRA 692, 693.) It is therefore null and void.

WHEREFORE, the petition for certiorari is GRANTED. The removal of the petitioners and intervenors from office is declared null and void. The respondent Secretary of the Department of Environment and Natural Resources (DENR), or his successor in office, is ordered to reinstate the petitioners to their former or equivalent positions in the DENR without loss of seniority and other benefits, and to issue regular and permanent appointments to them for the positions in the new organization and staffing pattern corresponding to their positions in the 1986 plantilla. The respondent Secretary of the Department of Budget and Management, or his successor in office, is ordered to reinstate the appropriation for the salaries of the petitioners and intervenors. The temporary restraining order which the Court issued in this case is made permanent.

The petitioners’ motion to cite the public respondents for contempt of court is DENIED for having become moot after the latter’s resignation from office upon the change of administration on June 30, 1992. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Cruz, Bidin, Regalado, Davide, Jr., Romero, Nocon, Bellosillo, Melo, Quiason, Puno, and Vitug, JJ., concur.

Feliciano, J., I did not take part in the deliberations on this case.

Padilla, J., No part, related to petitioners counsel.

[1] “WHEREAS, the Department of Budget and Management is mandated to promote economy and efficiency in government operations, including the development of agency organizational structure and staffing pattern, and the design and review of systems and procedures for methods improvement and optimum resource utilization.”

[2] To stop the DENR Secretary from terminating the services of the petitioners effective on December 31, 1991.

[3] Ordering the DENR Secretary to issue regular appointments to the petitioners for the positions in the new position structure and staffing pattern of the DENR.

[4] 176 SCRA 84, 92-93

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