

TEODORO B. PANGILINAN, PETITIONER, VS. GUILLERMO T. MAGLAYA, THE EXECUTIVE SECRETARY, SECRETARY OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, RESPONDENTS.

G.R. No. 104216. August 20, 1993

Ponente: CRUZ, J.

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CRUZ, J.:

The petitioner complains that he has been removed from office without due process and just cause in disregard of his constitutional security of tenure. Worse, his removal was made in bad faith, immediately after his expose of certain anomalies in which his superiors were involved.

Teodoro B. Pangilinan joined the government service on July 18, 1966, when he was appointed agent in the National Bureau of Investigation, a position for which he had the appropriate civil service eligibility. He had risen to Supervising Agent when he resigned to accept appointment as Executive Director of the Land Transportation Office on July 8, 1987. He assumed office on July 16, 1987.

The petitioner says that from February 19, 1988 to November 30, 1988, he was detailed to the Manila International Airport Authority, where he served as Assistant General Manager in charge of finance and administration and also of security and general services.

Upon his return to the LTO, he was designated as Resident Ombudsman in addition to his regular duties. As such, he discovered, among other anomalies, irregularities in the purchase of motor vehicle license plates. The license plates ordered were not reflective as required by P.D. 98 and B.P. 43. He says he brought this matter to the attention of Asst. Secretary Manuel Sabalza of the Department of Transportation and Communications and later of Secretary Pete Prado. Neither of them took any action.

On September 27, 1991, the petitioner called a press conference to expose what the media later described as "the license plate mess." He also announced his intention to file graft charges with the Ombudsman against Prado, Sabalza and Undersecretary Jose Valdecañas, also of the DOTC.

The following day, Secretary Prado relieved Pangilinan as Executive Director of the LTO and replaced him with Guillermo Maglaya as officer-in-charge. However, the petitioner continued receiving his salary (although his allowances were withheld) until December 31, 1991. When he asked why his pay had been discontinued, he was informed by Asst. Secretary Juan V. Borra, Jr. that Maglaya had already been designated as Acting Executive Director of the LTO.

In this petition, Pangilinan prays for reinstatement on the ground that no charge has been filed or proved against him to justify his removal.

Required to comment, the Solicitor General argues that Pangilinan was validly separated because he was

appointed to the disputed position in an acting capacity only. He does not possess the qualifications prescribed for the office of Executive Director of the LTO, which is a career executive service position for which only a career executive service official is eligible. The petitioner is not a career executive service official. Hence, he could not be, and was not, extended a permanent appointment.

The public respondents cite Sec. 5(1) of P.D. 807 which provides that membership in the career executive service requires:

- (i) that the official must be included in the register of career executive eligibles; and
- (ii) that the official must have been appointed to an appropriate class in the Career Executive Service.

Respondent Augusto B. Araneta, who was later designated to replace Maglaya, submitted the following certification from the Executive Director of the Career Executive Service Board:[1]

CERTIFICATION

This is to certify that the position of Executive Director in the Land Transportation Office, Department of Transportation and Communications is classified as a position belonging to the Career Executive Service (CES). This is to certify further that per records of the Career Executive Service Board (CESB), MR. TEODORO B. PANGILINAN, former Executive Director of said office is not a CES eligible, and was not appointed to a rank in the CES.

This certification is issued upon the request of Atty. Augusto B. Araneta for whatever purpose it may serve.

(Sgd.) ELMOR D. JURIDICO

Executive Director

The respondents also invoke the case of *Achacoso v. Macaraig*,[2] where this Court declared:

It is settled that a permanent appointment can be issued only "to a person who meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed." *Achacoso* did not. At best, therefore, his appointment could be regarded only as temporary. And being so, it could be withdrawn at will by the appointing authority and "at a moment's notice," conformably to established jurisprudence.

x x x

The mere fact that a position belongs to the Career Service does not automatically confer security of tenure on its occupant even if he does not possess the required qualifications. Such right will have to depend on the nature of his appointment, which in turn depends on his eligibility or lack of it. A person who does not have the requisite qualifications for the position cannot be appointed to it in the first place, or, only as an exception to the rule, may be appointed to it merely in an acting capacity in the absence of appropriate eligibles. The appointment extended to him cannot be regarded as permanent even if it may be so designated.

The purpose of an acting or temporary appointment is to prevent a hiatus in the discharge of official functions by authorizing a person to discharge the same pending the selection of a permanent or another appointee. The person named in an acting capacity accepts the position under the condition that he shall surrender the office once he is called upon to do so by the appointing authority.

In his reply, Pangilinan submits that the *Achacoso* case is not applicable because the petitioner therein was, to begin with, not a civil service eligible. The petitioner says he is, having passed the board examination for certified public accountants. He also argues that his appointment must be likened to the provisional appointment under the old Civil Service Act before it was replaced by P.D. 807. The provisional appointment enjoyed security of tenure.

Pangilinan adds that even on the assumption that his appointment was not permanent, his separation must still be for a valid cause because Article IX-B, Section 2(3), of the Constitution applies to all officers and employees in the civil service without distinction.

Invoking the case of *Gray v. De Vera*,^[3] Pangilinan likens himself to the petitioner therein who was summarily relieved when, as the board secretary of the People's Homesite and Housing Corporation, he sent a telegram to the President of the Philippines imputing irregularities to the directors. His separation also came the following day. Although Gray was holding a primarily confidential position without any fixed term, this Court ordered his reinstatement. We held that he had been denied procedural due process and there was no valid cause for his removal.

Also cited by the petitioner are *Cariño v. ACCFA*,^[4] *Floreza v. Ongpin*^[5] and *Jocom v. Robredo* (not *Regalado*),^[6] in all of which cases the security of tenure of the dismissed employees was upheld.

The petitioner raises a new issue, to wit, that even if he were considered only an acting appointee, he nevertheless could not be replaced except by a person possessing the required qualifications, as required by PD 807. He has produced certifications,^[7] also from the Executive Director of the Career Executive Service Board, that neither Guillermo T. Maglaya nor Augusto B. Araneta is a CES eligible or a career executive service officer. He also argues, belatedly too, that as a presidential appointee, he could be replaced only by the President of the Philippines and not by only the Secretary of Transportation and Communications.

As required by the Court, the respondents have submitted a Compliance manifesting that Juan A. Magarro, Jr., the new appointee to the position of Executive Director of the LTO (replacing Guillermo Maglaya and Antonio B. Araneta) possesses the prescribed qualifications for the office.^[8]

They repeat that the applicable case is *Achacoso*, not *Gray*. *Gray* was extended a permanent appointment whereas *Achacoso*, like *Pangilinan*, could be appointed only in an acting capacity for lack of the prescribed qualifications for the office.

We must hold for the respondents.

Gray and the other cases cited by the petitioner involved permanent appointees who therefore had security of tenure. *Pangilinan* was only an acting appointee because he did not have the requisite qualifications; as such, he could not claim security of tenure. This Court has repeatedly held that this guaranty is available only to permanent appointees.^[9] The fact that *Pangilinan* was qualified for his initial appointment as agent in the NBI does not mean he was qualified for all other positions he might later occupy in the civil service. The law does not prescribe uniform qualifications for all public positions regardless of nature or degree.

Although *Gray* was holding a highly confidential position, the Court regarded his separation as a removal and so applied the constitutional prohibition against the suspension or dismissal of an officer or member of the civil service without cause as provided by law. That was a rather loose interpretation of the term "dismissal," which is defined as the ouster of the incumbent before the expiration of his term. Subsequent decisions have made it clear that where a person holds his position at the pleasure of a superior or subject to some supervening event, his separation from office is not a removal.^[10] It is effected by the will of the superior or by the happening of the contingency, resulting in another and different mode of terminating official relations known as expiration of the term.

Chief Justice Concepcion explained the distinction between removal and expiration of the term in *Alajar v. Alba*^[11] thus:

In the case at bar, the term of respondent *Alajar* as Vice Mayor of the City of Roxas is not fixed by law.

However, the latter, in effect, vests in the President the power to fix such term. When in November 1955, petitioner Alba was designated as Acting Vice-Mayor of said City, the term of respondent Alba was, hereby, fixed implicitly by the President, in the exercise of his aforementioned authority. Thus, the term of office of Alajar expired and his right to hold office was extinguished, with the same legal effect as if the term had been fixed by Congress itself. In other words, Alajar was not removed from office, for "to remove an officer is to oust him from office before the expiration of his term" (*Manalang v. Quitoriano et al.*, 50 Off. Gaz., 2515). Alajar merely lost the right to hold the office of Vice-Mayor of the City of Roxas by expiration of his term as such.

The petitioner's invocation of the provisional appointment as comparable to his position is a grasping at straws. The provisional appointment has long been abolished and has no legal application or effect in this case. There are now only two kinds of appointment under the Administrative Code of 1987, to wit:

SEC. 27. Employment Status. - Appointment in the career service shall be permanent or temporary.

(1) Permanent status. A permanent appointment shall be issued to a person who meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof.

(2) Temporary appointment. In the absence of appropriate eligibles and it becomes necessary in the public interest to fill a vacancy, a temporary appointment shall be issued to a person who meets all the requirements for the position to which he is being appointed except the appropriate civil service eligibility: Provided, That such temporary appointment shall not exceed twelve months, but the appointee may be replaced sooner if a qualified civil service eligible becomes available.

Strictly speaking, the petitioner's temporary appointment as Executive Director of the LTO should have ended twelve months after he assumed office, or on July 16, 1988. From that date, his appointment had ceased to be valid even if a qualified replacement was not yet available and consequently had to be discontinued pursuant to the above-quoted provision. Indeed, even on the assumption that his appointment could be and had been validly extended beyond the one-year limit, that extended term was nevertheless validly terminated with the appointment of his qualified replacement.

The petitioner's contention that he could not be relieved by Secretary Prado but only by the President of the Philippines is also a shot in the dark. It has long been settled, and does not require further elaboration here, that the acts of a Department Secretary, when "performed and promulgated in the regular course of business" are presumptively the acts of the President unless "disapproved or reprobated" by him. This doctrine dates back to 1939, when it was first laid down by Justice Laurel in *Villena v. Secretary of the Interior*,^[12] and has been consistently observed since then. Parenthetically, the petitioner's own appointment to the disputed position was signed not by President Corazon C. Aquino but by Executive Secretary Joker P. Arroyo.^[13]

In view of the foregoing considerations, we hold that Pangilinan has lost the right to the position of Executive Director of the LTO and so cannot be reinstated therein.

Shall the Court end here? There is more to be said.

It is not difficult to see that the petitioner was replaced because of his expose and his threat to bring charges against his superiors. His relief was clearly an act of punishment if not personal vengeance. This is not denied. The respondents, while invoking the law to justify his separation, have made no effort whatsoever to justify their motives.

In *Gray*, the Court held that the board secretary, while holding a highly confidential position, owed his loyalty not to the board but to the government. In the present case, Pangilinan was not even holding a similar position. His

continued incumbency did not depend upon his enjoyment of the confidence of his superiors who had no personal claim to his loyalty. In exposing what he considered the anomalies in the DOTC, he was, like Gray, manifesting his concern for the government whose interests he wanted to protect.

It would be a sorry day, indeed, if a civil servant could be summarily removed from his position for the "sin" of complaining about the irregularities of his superiors. This would not only impair the integrity of the civil service but also undermine the campaign to encourage the public, including those in the civil service, to expose and denounce venality in government.

Pangilinan's denunciation of the non-reflective license plates was not the act of a rabble-rouser or a publicity-seeker. The record shows that he quietly brought the matter to the attention of his superiors, giving reasons for his misgivings. They took no action. Feeling frustrated, he sought the attention of the media and told them of his objection to the non-reflective license plates. He cited the laws that he claimed had been violated. He narrated his efforts to prevent their violation. He spoke of the indifference of his superiors. In doing all these, he was exercising his right as a citizen, and especially as a civil servant, to denounce official misconduct and improve the public service.

This is not to say, of course, that Pangilinan's charges are valid. The Court is not prepared to do so at this time because the evidence on this matter is not before it. For all we know, there is a satisfactory explanation for the attitude of his superiors; it is possible that it is Pangilinan who has misinterpreted the law or misread the facts. But true or not, the charges per se, and standing alone, could not be the basis of Pangilinan's swift and summary replacement.

Pangilinan was separated the day immediately following his press conference. The Court sees the action as a retaliation. The public respondents say they were merely terminating his incumbency in accordance with existing law. The Court sees that termination as a punishment.

Under the expanded definition of judicial power in Article VIII, Section 1, of the Constitution, the Court can declare the acts of the public respondents as tainted with grave abuse of discretion and therefore invalid.

But it is not as simple as that. The obstinate fact is that, regardless of the motives of his superiors, Pangilinan no longer had any right to the disputed position when he was separated from it in 1991. He ceased to be entitled to it in 1988 upon the lapse of the maximum period for his acting appointment. Obviously, he is not entitled to it now. Even if it be supposed that the public respondents acted maliciously when they relieved him in 1991, his reinstatement is still not possible under the law as it now stands.

The petitioner warns that the dismissal of his petition would open the door to the summary separation of civil servants to the prejudice of the integrity and independence of the civil service. He claims that "there are about 2,067 CESO positions in the entire Philippine civil service. Of this number only 372 or about 18% are occupied by Career Executive Service eligibles." [14] The rest may be summarily separated as acting appointees and are therefore subject to the whims of their superiors. He suggests that "a ruling by this Honorable Court that would sustain the position of petitioner would go a long way toward the upliftment of the morale of the 'ineligibles.'"

Assuming that the petitioner's statistics are correct, the Court can only share his trepidation. We can do no more. As judges, we can only interpret and apply the law and, despite our doubts about its wisdom, cannot repeal or amend it. In the case at bar, we have no power to give the petitioner the qualifications he does not possess. Qualifications for public officers are prescribed by the Constitution or the law, or even by implementing regulations, but not by the decisions of courts.

The problem posed by the petitioner is a serious threat to the integrity and independence of the civil service. As

demonstrated in this case, the doctrine announced in *Achacoso* may be used to muzzle and punish legitimate complaint and even to persecute "difficult" subordinates. That doctrine, let it be stressed, is only an interpretation and application by the Court of the law as enacted by the legislative and implemented by the executive. That doctrine can change only if the laws and regulations on which it was based are also changed, not by this Court but by the political departments.

In *Javier v. Commission on Elections*,^[15] we said:

The Supreme Court is not only the highest arbiter of legal questions but also the conscience of the government. The citizen comes to us in quest of law but we must also give him justice. The two are not always the same.

Indeed they are not, and sadly so for the petitioner. For ironically, the law he invokes for the protection of his right has instead denied him the justice he seeks and deserves. This emphasizes, no less sadly, the fallacy that for every legal wrong there is a judicial remedy. Untrue, unfortunately. The Court is not a panacea. There are times, regrettably, when justice is shackled by the law, and even this Court cannot break the chains.

WHEREFORE, the petition is DISMISSED. No costs.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Nocon, Bellosillo, Melo, Quiason, and Vitug, JJ., concur.

Romero, J., join the dissenting opinion of J. Puno.

Puno, J., please see dissenting opinion.

[1] Rollo, p. 89.

[2] 195 SCRA 235.

[3] 28 SCRA 268 (1969).

[4] 18 SCRA 183.

[5] 182 SCRA 692.

[6] 201 SCRA 72.

[7] Rollo, pp. 116, 117.

[8] *Ibid.*, p. 164.

[9] *Gabriel vs. Domingo*, 189 SCRA 674; *Pari-An vs. Civil Service Commission*, 202 SCRA 772; *Pamantasan ng Lungsod ng Maynila v. Intermediate Appellate Court*, 140 SCRA 22; *Perez v. Subido*, 23 SCRA 1074.

[10] *Pacete v. Acting Chairman of Commission on Audit*, 185 SCRA 1, *Griño v. Civil Service Commission*, 194 SCRA 458; *Achacoso v. Macaraig*, 195 SCRA 235.

[11] 100 Phil. 683.

[12] 67 Phil. 451.

[13] Rollo, p. 24.

[14] Rollo, p. 118.

[15] 144 SCRA 194.

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DISSENTING OPINION

PUNO, J.:

The ponencia lucidly states the facts. Petitioner joined the government service in 1966 as an agent of the National Bureau of Investigation. He served the NBI for about twenty (20) years and slowly rose to the position of Supervising Agent. After the EDSA revolution, he was appointed as Executive Director of the Land Transportation Office on July 8, 1987, by then Executive Secretary Joker Arroyo. In addition, he was designated as its Resident Ombudsman.

It was when petitioner seriously took his job as Resident Ombudsman that he got into problems. He unearthed corruptions in his office, including the notorious purchase of motor vehicle non-reflective license plates. Feeling he will get the attentive ear of his superiors, he called their attention to the stinking mess. He was given the sphinx treatment. Petitioner, however, was the crusading kind. He did not give up and on September 27, 1991, he called a press conference and blew the whistle on what the press denounced as the license plate mess. He threatened to file graft charges against his own superiors: Secretary Pete Nicomedes Prado, Undersecretary Jose Valdecanas and Asst. Secretary Manuel Sabalza of the Department of Transportation and Communications. The retaliation against petitioner was, however, swift and severe. The day after his expose, he was unceremoniously relieved by Secretary Prado who designated Atty. Guillermo Maglaya as officer-in-charge of the office. Petitioner was merely allowed to receive his salary but minus allowances but even that privilege was to last only until December 31, 1991. Thereafter, even his salary was stopped and he was informed that Atty. Maglaya has already been designated as Acting Executive Director of the LTO.

Haste breeds errors. In their desire to eliminate petitioner at once, respondents filled up his position with ineligible. Atty. Maglaya turned out to be not a "CES eligible" nor a "Career Service Executive Officer." He was changed by Augusto B. Araneta, Jr., who was no better. Araneta was also neither a "CES eligible" nor a "Career Service Executive Officer." The search for a qualified person ended with the appointment of Juan A. Magano to the same position. Rightfully, the ponencia branded the termination of petitioner as a "punishment". Regrettably, however, it dismissed the petitioner on the ground that as an acting official with no eligibility, petitioner has no right to security of tenure.

With due deference, it is my submittal that the ponencia has unduly focused on the lack of security of tenure of the petitioner. To my mind, however, the issue is whether the petitioner has been the subject of intentional, malicious and wrongful acts which ought to be proscribed. If the petitioner is such a victim, it is not material that he does not enjoy security of tenure. The end-result of the ponencia is unfortunate for it offers no succor to a public official who was wantonly terminated from office not for doing bad but ironically for doing good to the government. Here is petitioner who could well be a role model for other government officials. He faithfully discharged his duties as Acting Executive Director of the LTO. As its resident ombudsman, he displayed rare courage by exposing in public and in print the license plate mess allegedly involving no less than his top superior, former Secretary Prado. While promoting honesty and integrity in the public service, petitioner was stopped, divested of his office using as convenient cover his status as a temporary official. The result is undoubtedly

inequitous, yet the ponencia posits the disquieting proposition that this is a case "when justice is shackled by the law and even this Court cannot break the chains."

It is my humble submission that these shackles are more of straws which this Court can break off. For even granting that petitioner is merely an acting Executive Officer of the LTO, he enjoys certain rights which cannot be violated because they are protected by the laws of the land. For instance, even as an acting official he cannot be denied his constitutional right to due process and equal protection of the laws and his statutory right to be treated with justice, honesty and good faith by his superior officials. These protected rights were in no way waived or diminished by his acceptance of a government job in an acting or temporary capacity. There is no law that gives a license to abuse a government official just because he has no security of tenure. When such injustices and abuses are perpetrated, said official has a right to their immediate abatement and it is the unavoidable duty of this Court to check-off their continuance. In taking this suggested stance, this Court will not be ruling that petitioner has security of tenure to his office for it is conceded that the law grants him none. The ruling merely recognizes the right of petitioner to be protected from certain illegal acts even if he is an acting official; it will go no further than to hold that the temporary nature of one's employment cannot be misused to frustrate good government. If the annulment of the illegal acts will lead to petitioner's reinstatement for a short while, the benefit is incidental and ought to be allowed. Again, his reinstatement is not a recognition of his irremovability for he may later be terminated in accordance with law.

With due respect, I shudder at the mischiefs that may flow from the ponencia. Appointments in acting capacity may be preferred to be extended by the unscrupulous for they know that they possess the sword of Damocles over these kind of appointees as they can be removed under the pretext that they have no security of tenure. The making of this mischief could not have been intended by our civil service laws, rules and regulations. It is self-evident that these civil service laws, rules and regulations that classify government officials into permanent and temporary have one objective and that is, the promotion of good government. To interpret them in a manner that will not enhance our efforts to establish good government is to ignore this noble intent.

In order to vindicate the right of the petitioner, I do not consider the later appointment of Juan Magano as an insuperable obstacle. It is evident that this appointment is part of the malicious machination to remove petitioner by fair and foul method. The malice of respondents exhibited itself when they relieved petitioner on the pretense he has no eligibility and yet recklessly appointed to the same position, Messrs. Maglaya and Araneta, who were equally ineligible. It is plain that they removed petitioner not to strengthen the civil service with better qualified officials but to perpetrate an act of vendetta. When they realized their recklessness, they appointed Magano to legalize the illegal. I submit that Magano cannot profit from the fruits of this crude cover-up.

In sum, I vote to grant the petition and to annul the dismissal of petitioner because it will enhance the State policy "to maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption (Art. II, sec. 221 the Constitution); it will give more life to the postulate that a "public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice" (Art XI, sec. 1 of the Constitution); and hopefully, it will frustrate the misuse of our civil service rule on security of tenure to promote bad government.

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