

ALFREDO B. FELIX, PETITIONER, VS. DR. BRIGIDA BUENASEDA, IN HER CAPACITY AS DIRECTOR, AND ISABELO BANEZ, JR. IN HIS CAPACITY AS ADMINISTRATOR, BOTH OF THE NATIONAL CENTER FOR ME...

G.R. No. 109704. January 17, 1995

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Taking advantage of this Court's decisions involving the removal of various civil servants pursuant to the general reorganization of the government after the EDSA Revolution, petitioner assails his dismissal as Medical Specialist I of the National Center for Mental Health (formerly the National Mental Hospital) as illegal and violative of the constitutional provision on security of tenure allegedly because his removal was made pursuant to an invalid reorganization.

In *Mendoza vs Quisumbing* [1] and the consolidated cases involving the reorganization of various government departments and agencies we held:

We are constrained to set aside the reorganizations embodied in these consolidated petitions because the heads of departments and agencies concerned have chosen to rely on their own concepts of unlimited discretion and "progressive" ideas on reorganization instead of showing that they have faithfully complied with the clear letter and spirit of the two Constitutions and the statutes affecting reorganization. [2]

In *De Guzman vs CSC* [3], we upheld the principle, laid down by Justice J.B.L. Reyes in *Cruz vs Primicias* [4] that a valid abolition of an office neither results in a separation or removal, likewise upholding the corollary principle that "if the abolition is void, the incumbent is deemed never to have ceased to hold office," in sustaining therein petitioner's right to the position she held prior to the reorganization.

The instant petition on its face turns on similar facts and issues, which is, that petitioner's removal from a permanent position in the National Center for Mental Health as a result of the reorganization of the Department of Health was void. However, a closer look at the facts surrounding the instant petition leads us to a different conclusion.

After passing the Physician's Licensure Examinations given by the Professional Regulation Commission in June of 1979, petitioner, Dr. Alfredo B. Felix, joined the National Center for Mental Health (then the National Mental Hospital) on May 26, 1980 as a Resident Physician with an annual salary of P15,264.00. [5] In August of 1983, he was promoted to the position of Senior Resident Physician [6] a position he held until the Ministry of Health reorganized the National Center for Mental Health (NCMH) in January of 1988, pursuant to Executive Order No. 119.

Under the reorganization, petitioner was appointed to the position of Senior Resident Physician in a temporary capacity immediately after he and other employees of the NCMH allegedly tendered their courtesy resignations to

the Secretary of Health. [7] In August of 1988, petitioner was promoted to the position of Medical Specialist I (Temporary Status), which position was renewed the following year. [8]

In 1988, the Department of Health issued Department Order No. 347 which required board certification as a prerequisite for renewal of specialist positions in various medical centers, hospitals and agencies of the said department. Specifically, Department Order No. 347 provided that specialists working in various hospitals and branches of the Department of Health be recognized as "Fellows" of their respective specialty societies and/or "Diplomates" of their specialty boards or both. The Order was issued for the purpose of upgrading the quality of specialists in DOH hospitals by requiring them to pass rigorous theoretical and clinical (bedside) examinations given by recognized specialty boards, in keeping up with international standards of medical practice.

Upon representation of the Chiefs of Hospitals of various government hospitals and medical centers, (then) Secretary of Health Alfredo Bengzon issued Department Order 478, series of 1991 amending Sec. 4 of Department Order No. 347 providing for an extension of appointments of Medical Specialist positions in cases where the termination of medical specialists who failed to meet the requirement for board certification might result in the disruption of hospital services. Department Order No. 478 issued the following guidelines:

- As a general policy, the provision of Department Order No. 347, Sec. 4 shall apply unless the Chief of Hospital requests for exemption, certifies that its application will result in the disruption of the delivery service together with the steps taken to implement Section 4, and submit a plan of action, lasting no more than 3-years, for the eventual phase out of non-Board certified medical specialists.
- Medical specialists recommended for extension of appointment shall meet the following minimum criteria:
 - DOH medical specialist certified
 - Has been in the service of the Department at least three (3) years prior to December 1988
 - Has applied or taken the specialty board examination.
- Each recommendation for extension of appointment must be individually justified to show not only the qualification of the recommendee, but also what steps he has taken to be board certified.
- Recommendation for extension of appointment shall be evaluated on a case to case basis.
- As amended, the other provisions of Department Order No. 34/s. 1988 stands.

Petitioner was one of the hundreds of government medical specialists who would have been adversely affected by Department Order No. 347 since he was not yet accredited by the Psychiatry Specialty Board. Under Department Order No. 478, extension of his appointment remained subject to the guidelines set by the said department order. On August 20, 1991, after reviewing petitioner's service record and performance, the Medical Credentials Committee of the National Center for Mental Health recommended non-renewal of his appointment as Medical Specialist I, informing him of its decision on August 22, 1991. He was, however, allowed to continue in the service, and receive his salary, allowances and other benefits even after being informed of the termination of his appointment.

On November 25, 1991, an emergency meeting of the Chiefs of Service was held to discuss, among other matters, the petitioner's case. In the said meeting Dr. Vismindo de Grecia, petitioner's immediate supervisor, pointed out petitioner's poor performance, frequent tardiness and inflexibility as among the factors responsible for the recommendation not to renew his appointment. [9] With one exception, other department heads present in the meeting expressed the same opinion, [10] and the overwhelming consensus was for non-renewal. The matter was thereafter referred to the Civil Service Commission, which on February 28, 1992 ruled that "the temporary

appointment (of petitioner) as Medical Specialist I can be terminated at any time..." and that "[a]ny renewal of such appointment is within the discretion of the appointing authority." [11] Consequently, in a memorandum dated March 25, 1992 petitioner was advised by hospital authorities to vacate his cottage since he was no longer entitled to accommodation. Refusing to comply with said memorandum petitioner filed a petition with the Merit System Protection Board ((MSPB)) complaining about the alleged harassment by respondents and questioning the non-renewal of his appointment. In a Decision rendered on July 29, 1992, the (MSPB) dismissed petitioner's complaint for lack of merit, finding that:

As an apparent incident of the power to appoint, the renewal of a temporary appointment upon or after its expiration is a matter largely addressed to the sound discretion of the appointing authority. In this case, there is no dispute that Complainant was a temporary employee and his appointment expired on August 22, 1991. This being the case, his re-appointment to his former position or the renewal of his temporary appointment would be determined solely by the proper appointing authority who is the Secretary, Department of Health upon the favorable recommendation of the Chief of Hospital III, NCMH. The Supreme Court in the case of *Central Bank vs. Civil Service Commission* G.R. Nos. 80455-56 dated April 10, 1989, held as follows:

The power of appointment is essentially a political question involving considerations of wisdom which only the appointing authority can decide.

In this light, Complainant therefore, has no basis in law, to assail the non-renewal of his expired temporary appointment much less invoke the aid of this board for that purpose since this Board cannot substitute its judgment to that of the appointing authority nor direct the latter to issue an appointment in the complainant's favor.

Regarding the alleged Department Order secured by the complainant from the Department of Health (DOH), the Board finds the same inconsequential. Said Department Order merely allowed the extension of tenure of Medical Specialist I for a certain period but does not mandate the renewal of the expired appointment.

The Board likewise finds as baseless complainant's allegation of harassment. It should be noted that the subsistence, quarters and laundry benefits provided to the Complainant were in connection with his employment with the NCMH. Now that his employment ties with the said agency are severed, he eventually loses his right to the said benefits. Hence, the Hospital Management has the right to take steps to prevent him from the continuous enjoyment thereof, including the occupancy of the said cottage, after his cessation from office.

In sum, the actuations of Dr. Buenaseda and Lt. Col. Balez are not shown to have been tainted with any legal infirmity, thus rendering as baseless, this instant complaint.

Said decision was appealed to the Civil Service Commission which dismissed the same in its Resolution dated December 1, 1992. Motion for Reconsideration was denied in CSC Resolution No. 93-677 dated February 3, 1993, hence this appeal, in which petitioner interposes the following assignments of errors:

I

THE PUBLIC RESPONDENT CIVIL SERVICE COMMISSION ERRED IN HOLDING THAT BY SUBMITTING HIS COURTESY RESIGNATION AND ACCEPTING HIS TEMPORARY APPOINTMENT PETITIONER HAD EFFECTIVELY DIVESTED HIMSELF OF HIS SECURITY OF TENURE, CONSIDERING THE CIRCUMSTANCES OF SUCH COURTESY RESIGNATION AND ACCEPTANCE OF APPOINTMENT.

II

THE RESPONDENT COMMISSION ERRED IN NOT DECLARING THAT THE CONVERSION OF THE PERMANENT APPOINTMENT OF PETITIONER TO TEMPORARY WAS DONE IN BAD FAITH IN THE GUISE OF REORGANIZATION AND THUS INVALID, BEING VIOLATIVE OF THE PETITIONER'S RIGHT OF SECURITY OF TENURE.

Responding to the instant petition, [12] the Solicitor General contends that 1) the petitioner's temporary appointments after the reorganization pursuant to E.O. No. 119 were valid and did not violate his constitutional right to security of tenure; [13] 2) petitioner is guilty of estoppel or laches, having acquiesced to such temporary appointments from 1988 to 1991; [14] and 3) the respondent Commission did not act with grave abuse of discretion in affirming the petitioner's non-renewal of his appointment at the National Center for Mental Health. [15]

We agree.

The patent absurdity of petitioner's posture is readily obvious. A residency or resident physician position in a medical specialty is never a permanent one. Residency connotes training and temporary status. It is the step taken by a physician right after post-graduate internship (and after hurdling the Medical Licensure Examinations) prior to his recognition as a specialist or sub-specialist in a given field.

A physician who desires to specialize in Cardiology takes a required three-year accredited residency in Internal Medicine (four years in DOH hospitals) and moves on to a two or three-year fellowship or residency in Cardiology before he is allowed to take the specialty examinations given by the appropriate accrediting college. In a similar manner, the accredited Psychiatrist goes through the same stepladder process which culminates in his recognition as a fellow or diplomate (or both) of the Psychiatry Specialty Board.[16] This upward movement from residency to specialist rank, institutionalized in the residency training process, guarantees minimum standards and skills and ensures that the physician claiming to be a specialist will not be set loose on the community without the basic knowledge and skills of his specialty. Because acceptance and promotion requirements are stringent, competitive, and based on merit, acceptance to a first year residency program is no guaranty that the physician will complete the program. Attrition rates are high. Some programs are pyramidal. Promotion to the next post-graduate year is based on merit and performance determined by periodic evaluations and examinations of knowledge, skills and bedside manner. [17] Under this system, residents, specially those in university teaching hospitals [18] enjoy their right to security of tenure only to the extent that they periodically make the grade, making the situation quite unique as far as physicians undergoing post-graduate residencies and fellowships are concerned. While physicians (or consultants) of specialist rank are not subject to the same stringent evaluation procedures, [19] specialty societies require continuing education as a requirement for accreditation in good standing, in addition to peer review processes based on performance, mortality and morbidity audits, feedback from residents, interns and medical students and research output. The nature of the contracts of resident physicians meet traditional tests for determining employer-employee relationships, but because the focus of residency is training, they are neither here nor there. Moreover, stringent standards and requirements for renewal of specialist-rank positions or for promotion to the next post-graduate residency year are necessary because lives are ultimately at stake.

Petitioner's insistence on being reverted back to the status quo prior to the reorganizations made pursuant to Executive Order No. 119 would therefore be akin to a college student asking to be sent back to high school and staying there. From the position of senior resident physician, which he held at the time of the government reorganization, the next logical step in the stepladder process was obviously his promotion to the rank of Medical

Specialist I, a position which he apparently accepted not only because of the increase in salary and rank but because of the prestige and status which the promotion conferred upon him in the medical community. Such status, however, clearly carried with it certain professional responsibilities including the responsibility of keeping up with the minimum requirements of specialty rank, the responsibility of keeping abreast with current knowledge in his specialty and in Medicine in general, and the responsibility of completing board certification requirements within a reasonable period of time. The evaluation made by petitioner's peers and superiors clearly showed that he was deficient in a lot of areas, in addition to the fact that at the time of his non-renewal, he was not even board-certified.

It bears emphasis that at the time of petitioner's promotion to the position of Medical Specialist I (temporary) in August of 1988, no objection was raised by him about the change of position or the temporary nature of the designation. The pretense of objecting to the promotion to specialist rank apparently came only as an afterthought, three years later, following the non-renewal of his position by the Department of Health.

We lay stress to the fact that petitioner made no attempt to oppose earlier renewals of his temporary Specialist I contracts in 1989 and 1990, clearly demonstrating his acquiescence to - if not his unqualified acceptance of - the promotion (albeit of a temporary nature) made in 1988. Whatever objections petitioner had against the earlier change from the status of permanent senior resident physician to temporary senior resident physician were neither pursued nor mentioned at or after his designation as Medical Specialist I (Temporary). He is therefore estopped from insisting upon a right or claim which he had plainly abandoned when he, from all indications, enthusiastically accepted the promotion. His negligence to assert his claim within a reasonable time, coupled with his failure to repudiate his promotion to a temporary position, warrants a presumption, in the words of this Court in *Tijam Vs Sibonghanoy*, [20] that he "either abandoned (his claim) or declined to assert it."

There are weighty reasons of public policy and convenience which demand that any claim to any position in the civil service, permanent, temporary or otherwise, or any claim to a violation of the constitutional provision on security of tenure be made within a reasonable period of time. An assurance of some degree of stability in the civil service is necessary in order to avoid needless disruptions in the conduct of public business. Delays in the statement of a right to any position are strongly discouraged. [21] In the same token, the failure to assert a claim or the voluntary acceptance of another position in government, obviously without reservation, leads to a presumption that the civil servant has either given up his claim or has already settled into the new position. This is the essence of laches which is the failure or neglect, for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier; it is the negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. [22]

In fine, this petition, on its surface, seems to be an ordinary challenge against the validity of the conversion of petitioner's position from permanent resident physician status to that of a temporary resident physician pursuant to the government reorganization after the EDSA Revolution. What is unique to petitioner's averments is the fact that he hardly attempts to question the validity of his removal from his position of Medical Specialist I (Temporary) of the National Center for Mental Health, which is plainly the pertinent issue in the case at bench. The reason for this is at once apparent, for there is a deliberate and dishonest attempt to skirt the fundamental issue first, by falsely claiming that petitioner was forced to submit his courtesy resignation in 1987 when he actually did not; and second, by insisting on a right of claim clearly abandoned by his acceptance of the position of Medical Specialist I (temporary), which is hence barred by laches.

The validity of the government reorganization of the Ministry of Health pursuant to E.O. 119 not being the real issue in the case at bench, we decline to make any further pronouncements relating to petitioner's contentions

relating to the effect on him of the reorganization except to say that in the specific case of the change in designation from permanent resident physician to temporary resident physician, a change was necessary, overall, to rectify a ludicrous situation whereby some government resident physicians were erroneously being classified as permanent resident physicians in spite of the inherently temporary nature of the designation. The attempts by the Department of Health not only to streamline these positions but to make them conform to current standards of specialty practice is a step in a positive direction. The patient who consults with a physician of specialist rank should at least be safe in the assumption that the government physician of specialist rank: 1.) has completed all necessary requirements of specialist training in his field; and 2.) has been board certified. These fundamental requirements at least assure the public at large that those in government centers who claim to be specialists in specific areas of Medicine possess the minimum knowledge and skills required to fulfill that first and foremost maxim, embodied in the Hippocratic Oath, that they do their patients no harm. *Primum non nocere*.

Finally, it is crystal clear, from the facts of the case at bench, that the petitioner accepted a temporary appointment (Medical Specialist I). As respondent Civil Service Commission has correctly pointed out [23], the appointment was for a definite and renewable period which, when it was not renewed, did not involve a dismissal but an expiration of the petitioner's term.

ACCORDINGLY, the petition is hereby DISMISSED, for lack of merit. SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, and Mendoza, JJ., concur.

[1] 186 SCRA 108(1990). In these consolidated cases various civil servants adversely affected by the government wide reorganization challenged the validity of reorganizations of various government departments and agencies pursuant to the mandate granted by President Corazon Aquino's proclamation No. 1. See also *Manalo v CSC*, *infra*.

[2] *Id.*, at 152-153.

[3] G.R. No. 106692, March 11, 1994.

[4] Also cited in *Mendoza*, *supra* at 138.

[5] *Rollo*, p.42; Annex "F".

[6] *Id.*, at p. 43; Annex "G".

[7] *Id.*, at p. 5.

[8] *Id.*

[9] *Id.*, at p. 100, Annex "2".

[10] *Id.*, at 100-104.

[11] CSC Resolution No. 92-347, February 28, 1992.

[12] See, COMMENT, p. 77, *Rollo*.

[13] *Id.*, at 85.

[14] *Id.*, at 87.

[15] *Id.*, at 91.

[16] In most government teaching hospitals, the old and virtually permanent resident-physician/senior--resident physician classification or staffing system has given way to a stepladder program (patterned after residency programs in the United States) where resident physicians move on from one postgraduate residency year to the next.

[17] In fact, some specialties like the Philippine College of Physicians (through its Specialty Board of Internal Medicine) have begun to require residents to take accreditation examinations conducted by the college every year as a requirement for promotion. Program accreditation of residency programs is based on passing/attrition rates in these examinations, providing a steady impetus for maintaining standards set by the college.

[18] The principal university teaching hospitals in Metro Manila include the UP-PGH, The UST Medical Center, the UERMMMC Hospital and the FEUNRMF. Government hospitals with a reputation for exacting residency programs include the Philippine Heart Center for Asia, the National Kidney Institute, and the National Orthopedic Hospital. Their reputations in this area are based on the consistent performance of their residents in various specialty board examinations, the quality of training specialists and consultants, and research output.

[19] With the exception of the Department of Health, which has both permanent and temporary specialists on either a part-time or full-time basis, consultants in most of the large hospitals and medical centers are not really employees of these hospitals. Large medical centers like the MCM, Makati Medical Center etc., require purchase of a minimum number of stocks (usually exceeding P100,000.00) as a pre-requisite for attaining attending physician status. Acceptance is, moreover, highly selective, based on the quality of the applicant's residency training program and school graduated from. Board certification is a universal requirement. In 1988, the DOH made board certification a requirement for renewal of specialist positions.

[20] 23 SCRA 35 (1968).

[21] *Unabia v. City Mayor*, 99 Phil 253, 257 (1956).

[22] *Cristobal v. Melchor* 78 SCRA 174, 182 (1977), citing *Tijam*, *supra*, note 19.

[23] *Rollo*, p. 22; Annex "A".

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