

AQUILINO T. LARIN, PETITIONER, VS. THE EXECUTIVE SECRETARY, SECRETARY OF FINANCE, COMMISSIONER OF THE BUREAU OF INTERNAL REVENUE AND THE COMMITTEE CREATED TO INVESTIGATE THE ADM...

G.R. No. 112745. October 16, 1997

Ponente: TORRES, JR., J.

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TORRES, JR., J.:

Challenge in this petition is the validity of petitioner's removal from service as Assistant Commissioner of the Excise Tax Service of the Bureau of Internal Revenue. Incidentally, he questions Memorandum order no. 164 issued by the Office of the President, which provides for the creation of "A Committee to Investigate the Administrative Complaint Against Aquilino T. Larin, Assistant Commissioner, Bureau of Internal Revenue" as well as the investigation made in pursuance thereto and Administrative Order No. 101 dated December 2, 1993 which found him guilty of grave misconduct in the administrative charge and imposed upon him the penalty of dismissal from office.

Likewise, petitioner seeks to assail the legality of Executive Order No. 132, issued by President Ramos on October 26, 1993, which provides for the "Streamlining of the Bureau of Internal Revenue," and of its implementing rules issued by the Bureau of Internal Revenue, namely: a) Administrative Order No. 4-93, which provides for the "Organizational Structure and Statement of General Functions of Offices in the National Office" and b) Administrative Order No. 5-93, which provides for "Redefining the Areas of Jurisdiction and Renumbering of Regional And District Offices."

The antecedent facts of the instant case as succinctly related by the Solicitor General are as follows:

On September 18, 1992, [1] a decision was rendered by the Sandiganbayan convicting herein petitioner Aquilino T. Larin, Revenue Specific Tax Officer, then Assistant Commissioner of the Bureau of Internal Revenue and his co-accused (except Justino E. Galban, Jr.) of the crimes of violation of Section 268 (4) of the National Internal Revenue Code and Section 3 (e) of R.A. 3019 in Criminal Cases Nos. 14208-14209, entitled "People of the Philippines, Plaintiff vs. Aquilino T. Larin, Teodoro T. Pareno, Justino E. Galban, Jr. and Potenciana N. Evangelista, Accused, " the dispositive portion of the judgment reads:

"WHEREFORE, judgment is now rendered in Criminal Cases Nos. 14208 and 14209 convicting accused Assistant Commissioner for Specific Tax Aquilino T. Larin, Chief of the Alcohol tax Division TEODORO P. PARENO, and Chief of the Revenue accounting Division POTENCIANA M. EVANGELISTA:

xxx

SO ORDERED.”

The fact of petitioner’s conviction was reported to the President of the Philippines by the then Acting Finance Secretary Leong through a memorandum dated June 4, 1993. The memorandum states, inter alia:

‘This is a report in the case of Assistant Commissioner AQUILINO T. LARIN of the Excise tax Service, Bureau of Internal Revenue, a presidential appointee, one of those convicted in the Criminal Case Nos. 14208-14209, entitled ‘People of the Philippines vs. Aquilino T. Larin, et. al.’ Referred to the Department of Finance by the Commissioner of Internal Revenue.

The cases against Pareno and Evangelista are being acted upon by the Bureau of Internal revenue as they non-presidential appointees.

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It is clear from the foregoing that Mr. Larin has found beyond reasonable doubt to have committed acts constituting grave misconduct. Under the Civil Service Laws and Rules which require only preponderance of evidence, grave misconduct is punishable by dismissal.’

Acting by authority of the President, Sr. Deputy Executive Secretary Leonardo A. Quisumbing issued Memorandum Order No. 164 dated August 25, 1993 which provides for the creation of an Executive Committee to investigate the administrative charge against herein petitioner Aquilino T. Larin. It states thus:

“ A Committee is hereby created to investigate the administrative complaint filed against Aquilino T. Larin, Assistant Commissioner, Bureau of Internal Revenue, to be composed of:

Atty. Frumencio A. Lagustan – Chairman

Assistant Executive Secretary for Legislation

Mr. Jose B. Alejandro – Member

Presidential Assistant

Atty. Jaime M. Maza – Member

Assistant commissioner of Inspector services

Bureau of Internal Revenue

The Committee shall have the powers and prerogatives of (an) investigating committee under the administrative Code of 1987 including the power to summon witnesses, administer oath or take testimony or evidence relevant to the investigation by subpoena ad testificandum and subpoena duces tecum:

xxx

The Committee shall convene immediately, conduct the investigation in the most expeditious manner, and terminate the same as soon as practicable from its first scheduled date of hearing.

xxx”

Consequently, the Committee directed the petitioner to respond to the administrative charge leveled against him through a letter dated September 17, 1993, thus:

‘Presidential Memorandum Order No. 164 dated August 25, 1993, a xerox copy of which is hereto attached for your ready reference, created an Investigation Committee to look into the charges against you which are also the subject of the Criminal Cases No. 14208 and 14209 entitled People of the Philippines vs. Aquilino T.

Larin, et. al.

The committee has its possession a certified true copy of the Decision of the Sandiganbayan in the above-mentioned cases.

Pursuant to Presidential Memorandum Order No. 164, you are hereby directed to file your position paper on the aforementioned charges within seven (7) days from receipt hereof xxx.

Failure to file the required position paper shall be considered as a waiver on your part to submit such paper or to be heard, in which case, the Committee shall deem the case submitted on the basis of the documents and records at hand.'

In compliance, petitioner submitted a letter dated September 30, 1993 which was addressed to Atty. Frumencio A. Lagustan , the Chairman of the Investigating Committee. In said latter, he asserts that,

'The case being sub-judice, I may not , therefore, comment on the merits of issues involved for fear of being cited in contempt of Court. This position paper is thus limited to furnishing the Committee pertinent documents submitted with the Supreme Court and other tribunal which took cognizance of the case in the past, as follows:

xxx

The foregoing documents readily show that I am not administratively liable or criminally culpable of the charges leveled against me, and that the aforesaid cases are mere prosecutions caused to be filed and are being orchestrated by taxpayers who were prejudiced by multi-million peso assessments I caused to be issued against them in my official capacity as Assistant Commissioner, Excise Tax office of Bureau of Internal Revenue.'

In the same letter, petitioner claims that the administrative complaint against him is already barred: a) on jurisdictional ground as the Office of the Ombudsman had already taken cognizance of the case and had caused the filing only of the criminal charges against him, b) by res judicata, c) double jeopardy, and d) because to proceed with the case would be redundant, oppressive and a plain persecution against him.

Meanwhile, the President issued the challenged Executive order No. 132 dated October 26, 1993 which mandates for the streamlining of the Bureau of Internal Revenue. Under said order, some positions and functions are either abolished, renamed, decentralized or transferred to other offices, while other offices are also created. The Excise Tax Service or the Specific Tax Service, of which petitioner was the Assistant Commissioner, was one of those offices that was abolished by said executive order.

The corresponding implementing rules of Executive Order No. 132, namely, revenue Administrative Orders Nos. 4-93 and 5-93, were subsequently issued .by the Bureau of Internal Revenue.

On October 27, 1993, or one day after the promulgation of Executive Order No.132, the President appointed the following as BIR Assistant Commissioners:

1. Bernardo A. Frianeza
2. Dominador L. Galura
3. Jaime D. Gonzales
4. Lilia C. Guillermo
5. Rizalina S. Magalona
6. Victorino C. Mamalateo

7. Jaime M. Masa
8. Antonio N. Pangilinan
9. Melchor S. Ramos
10. Joel L. Tan-Torres

Consequently, the president, in the assailed Administrative Order No. 101 dated December 2, 1993, found petitioner guilty of grave misconduct in the administrative charge and imposed upon him the penalty of dismissal with forfeiture of his leave credits and retirement benefits including disqualification for reappointment in the government service.

Aggrieved, petitioner filed directly with this Court the instant petition on December 13, 1993 to question basically his alleged unlawful removal from office.

On April 17, 1996 and while the instant petition is pending, this Court set aside the conviction of the petitioner in Criminal Case Nos. 14208 and 14209.

In his petition, petitioner challenged the authority of the President to dismiss him from office. He argued that in so far as presidential appointees who are Career Executive Service Officers are concerned, the President exercises only the power of control not the power to remove. He also averred that the administrative investigation conducted under Memorandum Order No. 164 is void as it violated his right to due process. According to him, the letter of the Committee dated September 17, 1993 and his position paper dated September 30, 1993 are not sufficient for purposes of complying with the requirements of due process. He alleged that he was not informed of the administrative charges leveled against him nor was he given official notice of his dismissal.

Petitioner likewise claimed that he was removed as a result of the reorganization made by the Executive Department in the BIR pursuant to Executive Order No. 132. Thus, he assailed said Executive Order No. 132 and its implementing rules, namely, Revenue Administrative Orders 4-93 and 5-93 for being ultra vires. He claimed that there is yet no law enacted by Congress which authorizes the reorganization by the Executive Department of executive agencies, particularly the Bureau of Internal revenue. He said that the reorganization sought to be effected by the Executive Department on the basis of E.O. No. 132 is tainted with bad faith in apparent violation of Section 2 of R.A. 6656, otherwise known as the Act Protecting the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization.

On the other hand, respondents contended that since petitioner is the presidential appointee, he falls under the disciplining authority of the President. They also contended that E.O. No. 132 and its implementing rules were validly issued pursuant to Sections 48 and 62 of Republic Act No. 7645. Apart from this, the other legal bases of E.O. No. 132 as stated in its preamble are Section 63 of E.O. No. 127 (Reorganizing the Ministry of Finance), and Section 20, Book III of E.O. No. 292, otherwise known as the Administrative Code of 1987. In addition, it is clear that in Section 11 of R.A. No. 6656 future reorganization is expressly contemplated and nothing in said law that prohibits subsequent reorganization through an executive order. Significantly, respondents clarified that petitioner was not dismissed by virtue of EO 132. Respondents claimed that he was removed from office because he was found guilty of grave misconduct in the administrative cases filed against him.

The ultimate issue to be resolved in the instant case falls on the determination of the validity of petitioner's dismissal from office. Incidentally, in order to resolve this matter, it is imperative that We consider these questions : a) Who has the power to discipline the petitioner?, b) Were the proceedings taken pursuant to Memorandum Order No. 164 in accord with due process?, c) What is the effect of petitioner's acquittal in the

criminal case to his administrative charge? d) Does the President have the power to reorganize the BIR or to issue the questioned E.O. NO. 132?, e) Is the reorganization of BIR pursuant to E.O. No. 132 tainted with bad faith?

At the outset, it is worthy to note that the position of the Assistant Commissioner of the BIR is part of the Career Executive Service.[2] Under the law,[3] Career Executive Service officers, namely Undersecretary, Assistant Secretary, Bureau director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, are all appointed by the President. Concededly, petitioner was appointed as Assistant Commissioner in January, 1987 by then President Aquino. Thus, petitioner is a presidential appointee who belongs to career service of the Civil Service. Being a presidential appointee, he comes under the direct disciplining authority of the President. This is in line with the well settled principle that the "power to remove is inherent in the power to appoint" conferred to the President by Section 16, Article VII of the Constitution. Thus, it is ineluctably clear that Memorandum Order No. 164, which created a committee to investigate the administrative charge against petitioner, was issued pursuant to the power of removal of the President. This power of removal, however, is not an absolute one which accepts no reservation. It must be pointed out that petitioner is a career service officer. Under the Administrative Code of 1987, career service is characterized by the existence of security of tenure, as contra-distinguished from non-career service whose tenure is co-terminus with that of the appointing or subject to his pleasure, or limited to a period specified by law or to the duration of a particular project for which purpose the employment was made. As a career service officer, petitioner enjoys the right to security of tenure. No less than the 1987 Constitution guarantees the right of security of tenure of the employees of the civil service. Specifically, Section 36 of P.D. No. 807, as amended, otherwise known as Civil Service Decree of the Philippines, is emphatic that career service officers and employees who enjoy security of tenure may be removed only for any of the causes enumerated in said law. In other words, the fact that the petitioner is a presidential appointee does not give the appointing authority the license to remove him at will or at his pleasure for it is an admitted fact that he is likewise a career service officer who under the law is the recipient of tenurial protection, thus, may only be removed for a cause and in accordance with procedural due process.

Was petitioner then removed from office for a legal cause under a valid proceeding?

Although the proceedings taken complied with the requirements of procedural due process, this Court, however, considers that petitioner was not dismissed for a valid cause.

It should be noted that what precipitated the creation of the investigative committee to look into the administrative charge against petitioner is his conviction by the Sandiganbayan in criminal Case Nos. 14208 and 14209. As admitted by the respondents, the administrative case against petitioner is based on the Sandiganbayan Decision of September 18, 1992. Thus, in the Administrative Order No. 101 issued by Senior Deputy Executive Secretary Quisumbing which found petitioner guilty of grave misconduct, it clearly states that:

"This pertains to the administrative charge against Assistant Commissioner Aquilino T. Larin of the Bureau of Internal Revenue, for grave misconduct by virtue of a Memorandum signed by Acting Secretary Leong of the Department of Finance, on the basis of decision handed down by the Hon. Sandiganbayan convicting Larin, et. al. in Criminal Cases No. 14208 and 14209." [4]

In a nutshell, the criminal cases against petitioner refer to his alleged violation of Section 268 (4) of the National Internal Revenue Code and of section 3(e) of R.A. No.3019 as a consequence of his act of favorably recommending the grant of tax credit to Tanduay Distillery, Inc.. The pertinent portion of the judgment of the Sandiganbayan reads:

"As above pointed out, the accused had conspired in knowingly preparing false memoranda and certification in

order to effect a fraud upon taxes due to the government. By their separate acts which had resulted in an appropriate tax credit of P180,701,682.00 in favor of Tanduay. The government had been defrauded of a tax revenue - for the full amount, if one is to look at the availments or utilization thereof (Exhibits 'AA' to 'AA-31-a'), or for a substantial portion thereof (P73,000,000.00) if we are to rely on the letter of Deputy Commissioner Eufracio D. Santos (Exhibits '21' for all the accused).

As pointed out above, the confluence of acts and omissions committed by accused Larin, Pareno and Evangelista adequately prove conspiracy among them for no other purpose than to bring about a tax credit which Tanduay did not deserve. These misrepresentations as to how much Tanduay had paid in ad valorem taxes obviously constituted a fraud of tax revenue of the government xxx.[5]

However, it must be stressed at this juncture that the conviction of petitioner by the Sandiganbayan was set aside by this court in our decision promulgated on April 17, 1996 in G.R. Nos. 108037-38 and 107119-20. We specifically ruled in no uncertain terms that : a) petitioner cannot be held negligent in relying on the certification of a co-equal unit in the BIR, b) it is not incumbent upon Larin to go beyond the certification made by the Revenue Accounting Division that Tanduay Distillery, Inc. had paid the ad valorem taxes, c) there is nothing irregular or anything false in Larin's marginal note on the memorandum addressed to Pareno, the Chief of Alcohol Tax Division who was also one of the accused, but eventually acquitted, in the said criminal cases, and d) there is no proof of actual agreement between the accused, including petitioner, to commit the illegal acts charged. We are emphatic in our resolution in said cases that there is nothing "illegal with the acts committed by the petitioner(s)." We also declare that "there is no showing that petitioner(s) had acted irregularly, or performed acts outside of his (their) official functions." Significantly, these acts which We categorically declare to be not unlawful and improper in G.R. Nos. 108037-38 and G.R. Nos. 107119-20 are the very same acts for which petitioner is held to be administratively responsible. Any charge of malfeasance or misfeasance on the part of the petitioner is clearly belied by our conclusion in said cases. In the light of this decisive pronouncement, We see no reason for the administrative charge to continue - it must, thus, be dismissed.

We are not unaware of the rule that since administrative cases are independent from criminal actions for the same act or omission, the dismissal or acquittal of the criminal charge does not foreclose the institution of administrative action nor carry with it the relief from administrative liability.[6] However, the circumstantial setting of the instant case sets it miles apart from the foregoing rule and placed it well within the exception. Corollarily, where the very basis of the administrative case against petitioner is his conviction in the criminal action which was later on set aside by this court upon a categorical and clear findings that the acts for which he was administratively held liable are not unlawful and irregular, the acquittal of the petitioner in the criminal case necessarily entails the dismissal of the administrative action against him, because in such a case, there is no basis nor justifiable reason to maintain the administrative suit.

On the aspect of procedural due process, suffice it to say that petitioner was given every chance to present his side. The rule is well settled that the essence of due process in administrative proceedings is that a party be afforded a reasonable opportunity to be heard and to submit any evidence he may have in support of his defense.[7] The records clearly show that on October 1, 1993 petitioner submitted his letter-response dated September 30, 1993 to the administrative charged filed against him. Aside from his letter, he also submitted various documents attached as annexes to his letter, all of which are evidences supporting his defense. Prior to this, he received a letter dated September 17, 1993 from the Investigation Committee requiring him to explain his side concerning the charge. It cannot therefore be argued that petitioner was denied of due process.

Let us now examine Executive Order No. 132.

As stated earlier, with the issuance of Executive Order No. 132, some of the positions and offices, including the

office of Excise Tax Services of which petitioner was the Assistant Commissioner, were abolished or otherwise decentralized. Consequently, the President released the list of appointed Assistant Commissioners of the BIR. Apparently, petitioner was not included.

Initially, it is argued that there is no law yet which empowers the President to issue E.O. No. 132 or to reorganize the BIR.

We do not agree.

Under its Preamble, E.O. No. 132 lays down the legal basis of its issuance, namely: a) Section 48 and 62 of R.A. No. 7645, b) Section 63 of E.O. No. 127, and c) Section 20, Book III of E.O. No. 292.

Section 48 of R.A. 7645 provides that:

"Sec. 48. Scaling Down and Phase Out of Activities of Agencies Within the Executive Branch. -- The heads of departments, bureaus and offices and agencies are hereby directed to identify their respective activities which are no longer essential in the delivery of public services and which may be scaled down, phased out or abolished, subject to civil rules and regulations. xxx. Actual scaling down, phasing out or abolition of the activities shall be effective pursuant to Circulars or Orders issued for the purpose by the Office of the President." (italics ours)

Said provision clearly mentions the acts of "scaling down, phasing out and abolition" of offices only and does not cover the creation of offices or transfer of functions. Nevertheless, the act of creating and decentralizing is included in the subsequent provision of Section 62, which provides that:

"Sec. 62, Unauthorized Organizational Charges. -- Unless otherwise created by law or directed by the President of the Philippines, no organizational unit or changes in key positions in any department or agency shall be authorized in their respective organization structures and be funded from appropriations by this Act." (italics ours)

The foregoing provision evidently shows that the President is authorized to effect organizational changes including the creation of offices in the department or agency concerned.

The contention of petitioner that the two provisions are riders deserves scant consideration. Well settled is the rule that every law has in its favor the presumption of constitutionality.[8] Unless and until a specific provision of the law is declared invalid and unconstitutional, the same is valid and binding for all intents and purposes.

Another legal basis of E.O. No. 132 is Section 20, Book III of E.O. No. 292 which states:

"Sec.20. Residual Powers. -- Unless Congress provides otherwise, the President shall exercise such other powers and functions vested in the President which are provided for under the laws and which are not specifically enumerated above or which are not delegated by the President in accordance with law." (italics ours)

This provision speaks of such other powers vested in the President under the law. What law then which gives him the power to reorganize? It is Presidential Decree No. 1772[9] which amended Presidential Decree No. 1416. These decrees expressly grant the President of the Philippines the continuing authority to reorganize the national government, which includes the power to group, consolidate bureaus and agencies, to abolish offices, to transfer functions, to create and classify functions, services and activities and to standardize salaries and materials. The validity of these two decrees are unquestionable. The 1987 Constitution clearly provides that "all laws, decrees, executive orders, proclamations, letters of instructions and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed or revoked." [10] So far, there is yet no law amending or repealing said decrees. Significantly, the Constitution itself recognizes future reorganizations in the

government as what is revealed in Section 16 of Article XVIII, thus:

"Sec. 16. Career civil service employees separated from service not for cause but as a result of the xxx reorganization following the ratification of this Constitution shall be entitled to appropriate separation pay xxx."

However, We can not consider E.O. No. 127 signed on January 30, 1987 as a legal basis for the reorganization of the BIR. E.O. No. 127 should be related to the second paragraph of Section 11 of Republic Act No. 6656.

Section 11 provides *inter alia*:

"xxx

In the case of the 1987 reorganization of the executive branch, all departments and agencies which are authorized by executive orders promulgated by the President to reorganize shall have ninety days from the approval of this act within which to implement their respective reorganization plans in accordance with the provisions of this Act." (*italics ours*)

Executive Order No. 127 was part of the 1987 reorganization contemplated under said provision. Obviously, it had become stale by virtue of the expiration of the ninety day deadline period. It can not thus be used as a proper basis for the reorganization of the BIR. Nevertheless, as shown earlier, there are other legal bases to sustain the authority of the President to issue the questioned E.O. No. 132.

While the President's power to reorganize can not be denied, this does not mean however that the reorganization itself is properly made in accordance with law. Well-settled is the rule that reorganization is regarded as valid provided it is pursued in good faith. Thus, in *Dario vs. Mison*, this court has had the occasion to clarify that:

"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 or separation actually occurs because the position itself ceases to exist. And in that case the 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 by the existence of ample funds." [11]

In this regard, it is worth mentioning that Section 2 of R.A. No. 6656 lists down the circumstances evidencing bad faith in the removal of employees as a result of the reorganization, thus:

Sec. 2. No officer or employee in the career service shall be removed except for a valid cause and after due notice and hearing. A valid cause for removal exist when, pursuant to a bona fide reorganization, a position has been abolished or rendered redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service, or other lawful causes allowed by the Civil Service Law. The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of the reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party:

- a) Where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned;
- b) Where an office is abolished and another performing substantially the same functions is created;
- c) Where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit;

d) Where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same functions as the original offices;

e) Where the removal violates the order of separation provided in Section 3 hereof."

A reading of some of the provisions of the questioned E.O. No. 132 clearly leads us to an inescapable conclusion that there are circumstances considered as evidences of bad faith in the reorganization of the BIR.

Section 1.1.2 of said executive order provides that:

"1.1.2 The Intelligence and Investigation Office and the Inspection Service are abolished. An Intelligence and Investigation Service is hereby created to absorb the same functions of the abolished office and service. xxx"
(italics ours)

This provision is a clear illustration of the circumstance mentioned in Section 2 (b) of R.A. No. 6656 that an office is abolished and another one performing substantially the same function is created.

Another circumstance is the creation of services and divisions in the BIR resulting to a significant increase in the number of positions in the said bureau as contemplated in paragraph (a) of section 2 of R.A. No. 6656. Under Section 1.3 of E.O. No. 132, the Information Systems Group has two newly created Systems Services. Aside from this, six new divisions are also created. Under Section 1.2.1, three more divisions of the Assessment Service are formed. With this newly created offices, there is no doubt that a significant increase of positions will correspondingly follow.

Furthermore, it is perceivable that the non-reappointment of the petitioner as Assistant Commissioner violates Section 4 of R.A. No. 6656. Under said provision, officers holding permanent appointments are given preference for appointment to the new positions in the approved staffing pattern comparable to their former position or in case there are not enough comparable positions to positions next lower in rank. It is undeniable that petitioner is a career executive officer who is holding a permanent position. Hence, he should have given preference for appointment in the position of Assistant Commissioner. As claimed by petitioner, Antonio Pangilinan who was one of those appointed as Assistant Commissioner, "is an outsider of sorts to the bureau, not having been an incumbent officer of the bureau at the time of the reorganization." We should not lose sight of the second paragraph of Section 4 of R.A. No. 6656 which explicitly states that no new employees shall be taken in until all permanent officers shall have been appointed for permanent position.

IN VIEW OF THE FOREGOING, the petition is granted, and petitioner is hereby reinstated to his position as Assistant Commissioner without loss of seniority rights and shall be entitled to full backwages from the time of his separation from service until actual reinstatement unless, in the meanwhile, he would have reached the compulsory retirement age of sixty-five years in which case, he shall be deemed to have retired at such age and entitled thereafter to the corresponding retirement benefits.

SO ORDERED.

Narvasa, C.J., Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Hermosisima, Jr., and Panganiban, JJ., concur.

Regalado, J., on leave.

[1] The Office of the Solicitor General inadvertently dated it as December 1, 1992.

[2] See *Floreza vs. Ongpin*, G.R. Nos. 81356 and 86156, February 26, 1990, 182 SCRA 692, 707.

[3] P.D No. 807, as amended, otherwise known as the Civil Service Decree of the Philippines; E.O No. 292,

otherwise known as the Administrative Code of 1987.

[4] Rollo p. 94.

[5] Rollo p. 113.

[6] Police Commission vs. Lood, no. 1-34230, March 31, 1980, 96 SCRA 819 ; Office of the Court Administrator vs. Enriquez , A.M. No. P-89-290 , January 29, 1993 , 218 SCRA 1.

[7] Midas Touch Food Corp. vs. NLRC, G.R. No. 111639 , July 29, 1996 , 259 SCRA 652.

[8] Abbas vs. COMELEC , 179 SCRA 287.

[9] Official Gazette Vol. 78, No. 40, pp. 5486-2,3.

[10] Section 3 of Article XVIII.

[11] 176 SCRA 84.

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