

**HON. RICARDO T. GLORIA, IN HIS CAPACITY AS SECRETARY, AND
DIRECTOR NILO L. ROSAS IN HIS CAPACITY AS REGIONAL
DIRECTOR, DEPARTMENT OF EDUCATION, CULTURE AND SPORTS,
PETITIONERS, ...**

G.R. No. 119903. August 15, 2000

Ponente: PURISIMA, J.

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PURISIMA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court brought by Secretary and the Director for the National Capital Region of the Department of Education, Culture and Sports (DECS), to question the decision[1] of the Court of Appeals in CA-G.R. SP No. 35505.

The Court of Appeals found the facts as follows:

"On June 29, 1989, petitioner [private respondent herein] was appointed Schools Division Superintendent, Division of City Schools, Quezon City, by the then President Corazon C. Aquino.

On October 10, 1994, respondent Secretary Gloria recommended to the President of the Philippines that the petitioner be reassigned as Superintendent of the MIST [Marikina Institute of Science and Technology], to fill up the vacuum created by the retirement of its Superintendent, Mr. Bannaoag F. Lauro, on June 17, 1994.

On October 12, 1994, the President approved the recommendation of Secretary Gloria.

On October 13, 1994, a copy of the recommendation for petitioner's reassignment, as approved by the President, was transmitted by Secretary Gloria to Director Rosas for implementation.

On October 14, 1994, Director Rosas, informed the petitioner of his reassignment, effective October 17, 1994.

Petitioner requested respondent Secretary Gloria to reconsider the reassignment, but the latter denied the request. The petitioner prepared a letter dated October 18, 1994 to the President of the Philippines, asking for a reconsideration of his reassignment, and furnished a copy of the same to the DECS. However, he subsequently changed his mind and refrained from filing the letter with the Office of President.

On October 19, 1994, the petitioner filed the instant petition."[2]

On October 26, 1994, the Court of Appeals denied private respondent's prayer for the issuance of a Temporary Restraining Order (TRO).[3]

On November 22, 1994, it set aside its earlier resolution denying the prayer for the issuance of a TRO; and thereafter, restrained the petitioners "from implementing the re-assignment of the petitioner [private respondent herein] from incumbent Schools Division Superintendent of Quezon City to Vocational Schools Superintendent of the Marikina Institute of Science and Technology."[4]

On December 21, 1994, the Court of Appeals issued another resolution setting the hearing of the petition for the

issuance of a writ of preliminary injunction and enjoining the petitioners from implementing the reassignment of the private respondent.

On March 28, 1995, it issued its assailed decision; holding as follows:

"WHEREFORE, for lack of a period or any indication that it is only temporary, the reassignment of the petitioner from Schools Division Superintendent, Division of City Schools, Quezon City, to Vocational Schools Superintendent of the Marikina Institute of Science and Technology pursuant to the Memorandum of Secretary Ricardo T. Gloria to the President of the Philippines dated 10 October 1994, is hereby declared to be violative of petitioner's right to security of tenure, and the respondents are hereby prohibited from implementing the same.

SO ORDERED."[5]

Petitioners are now before the Court seeking relief from the decision of the appellate court, contending that:

I

RESPONDENT COURT OF APPEALS HAS ALLOWED ITSELF TO BE INSTRUMENTAL IN PRIVATE RESPONDENT'S CIRCUMVENTION OF THE PRESIDENTIAL IMMUNITY FROM SUIT BY GIVING DUE COURSE AND GRANTING RELIEFS PRAYED FOR IN A SUIT PURPORTEDLY FILED AGAINST PETITIONERS BUT ACTUALLY QUESTIONING AN ACT OF THE PRESIDENT.

II

RESPONDENT COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR APPLICABLE DECISIONS OF THE SUPREME COURT[6]

The pivotal issue for resolution here is whether the reassignment of private respondent from School Division Superintendent of Quezon City to Vocational School Superintendent of MIST is violative of his security of tenure? Petitioners maintain that there is no violation of security of tenure involved. Private respondent maintains otherwise.

In taking favorable action on private respondent's petition for prohibition, the Court of Appeals ratiocinated:

"Notwithstanding the protestations of counsel for the respondents, the reassignment of the petitioner to MIST appears to be indefinite. No period is fixed. No objective or purpose, from which the temporariness of the assignment may be inferred, is set. In fact, the recommendation of respondent Secretary Gloria to the President that the position of superintendent of MIST 'will best fit his (petitioner's) qualifications and experience.' (Exh. 'C-2') implies that the proposed reassignment will be indefinite."[7]

Petitioners theorize that the present petition for prohibition is improper because the same attacks an act of the President, in violation of the doctrine of presidential immunity from suit.

Petitioners' contention is untenable for the simple reason that the petition is directed against petitioners and not against the President. The questioned acts are those of petitioners and not of the President. Furthermore, presidential decisions may be questioned before the courts where there is grave abuse of discretion or that the President acted without or in excess of jurisdiction.[8]

Petitioners' submission that the petition of private respondent with the Court of Appeals is improper for failing to show that petitioners constituted themselves into a "court" conducting a "proceeding" and for failing to show that any of the petitioners acted beyond their jurisdiction in the exercise of their judicial or ministerial functions, is barren of merit. Private respondent has clearly averred that the petitioners acted with grave abuse of discretion

amounting to lack of jurisdiction and/or excess of jurisdiction in reassigning the private respondent in a way that infringed upon his security of tenure. And petitioners themselves admitted that their questioned act constituted a ministerial duty, such that they could be subject to charges of insubordination if they did not comply with the presidential order. What is more, where an administrative department acts with grave abuse of discretion, which is equivalent to a capricious and whimsical exercise of judgment, or where the power is exercised in an arbitrary or despotic manner, there is a justification for the courts to set aside the administrative determination thus reached.[9]

Petitioners contend that the doctrine enunciated in *Bentain vs. Court of Appeals*[10] -- that "a reassignment that is indefinite and results in a reduction in rank, status and salary, is in effect, a constructive removal from the service" -- does not apply in the present case for the reassignment in question was merely temporary, lasting only until the appointment of a new Vocational School Superintendent of MIST.

After a careful study, the Court upholds the finding of the respondent court that the reassignment of petitioner to MIST "appears to be indefinite". The same can be inferred from the Memorandum[11] of Secretary Gloria for President Fidel V. Ramos to the effect that the reassignment of private respondent will "best fit his qualifications and experience" being "an expert in vocational and technical education." It can thus be gleaned that subject reassignment is more than temporary as the private respondent has been described as fit for the (reassigned) job, being an expert in the field. Besides, there is nothing in the said Memorandum to show that the reassignment of private respondent is temporary or would only last until a permanent replacement is found as no period is specified or fixed; which fact evinces an intention on the part of petitioners to reassign private respondent with no definite period or duration. Such feature of the reassignment in question is definitely violative of the security of tenure of the private respondent. As held in *Bentain*:

"Security of tenure is a fundamental and constitutionally guaranteed feature of our civil service. The mantle of its protection extends not only to employees removed without cause but also to cases of unconsented transfers which are tantamount to illegal removals (*Department of Education, Culture and Sports vs. Court of Appeals*, 183 SCRA 555; *Ibanez vs. COMELEC*, 19 SCRA 1002; *Brillantes vs. Guevarra*, 27 SCRA 138).

While a temporary transfer or assignment of personnel is permissible even without the employee's prior consent, it cannot be done when the transfer is a preliminary step toward his removal, or is a scheme to lure him away from his permanent position, or designed to indirectly terminate his service, or force his resignation. Such a transfer would in effect circumvent the provision which safeguards the tenure of office of those who are in the Civil Service (*Sta. Maria vs. Lopez*, 31 SCRA 651; *Garcia vs. Lejano*, 109 Phil. 116)."[12]

Having found the reassignment of private respondent to the MIST to be violative of his security of tenure, the order for his reassignment to the MIST cannot be countenanced.

WHEREFORE, the petition is hereby DENIED, and the Decision of the Court of Appeals in CA-G.R. SP No. 35505 AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Melo, (Chairman), Vitug, Panganiban, and Gonzaga-Reyes, JJ., concur.

[1] Penned by Associate Justice Hector L. Hofilena and concurred by Associate Justices Nathanael P. De Pano, Jr. (Chairman) and Godardo A. Jacinto.

[2] Rollo, pp. 43-44.

[3] Resolution; Rollo, pp. 61-62.

[4] Resolution; Rollo, p. 70.

[5] Rollo, p. 49.

[6] Rollo, p. 20.

[7] Rollo, p. 49.

[8] Medrana vs. Office of the President, 188 SCRA 818, 824.

[9] Banco Filipino Savings & Mortgage Bank vs. Monetary Board, Central Bank of the Philippines, 204 SCRA 767, 790-791 citing: Lim, Sr. vs. Secretary of Agriculture and Natural Resources, 34 SCRA 751.

[10] 209 SCRA 644, 649.

[11] Rollo, p. 51.

[12] Bertain vs. Court of Appeals, supra pp. 648-649.

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