

**HON. WILLIAM G. PADOLINA, IN HIS CAPACITY AS SECRETARY OF
THE DEPARTMENT OF SCIENCE & TECHNOLOGY (DOST) AND
DR. LEONCIO A. AMADORE, IN HIS CAPACITY AS DIRECTOR,
PHILIPPINE ATMOS...**

G.R. No. 133511. October 10, 2000

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Petitioners William G. Padolina and Dr. Leoncio A. Amadore, as Secretary of the Department of Science and Technology (DOST) and Director of the Philippine Atmospheric, Geophysical, and Astronomical Services Administration (PAGASA) respectively, move for the reconsideration of our Resolution dated July 14, 1999,[1] affirming the Decision of the Court of Appeals in CA-G.R. SP No. 44541[2] which declared as void ab initio DOST Special Order No. 129, S. 1996 (hereinafter referred to as SO 129) insofar as it affected respondent Ofelia D. Fernandez.

The pertinent facts are as follows:

Respondent Ofelia D. Fernandez was the PAGASA Finance and Management Division Chief of the DOST. On April 2, 1996, petitioner Padolina issued SO 129 providing for the reassignment of Branch/Division/Section Chiefs and other personnel in PAGASA. Pursuant to this order, respondent was reassigned to the Finance and Management Service Director's Office in Bicutan, Taguig, Metro Manila.

Respondent requested petitioner Padolina to lift SO 129 stating that such order was tantamount to her constructive dismissal, thus, a violation of her security of tenure. However, petitioner Padolina denied the said request inasmuch as he found no compelling reason to lift SO 129. Instead, he advised the respondent to comply with the order of reassignment.

Respondent appealed to the Civil Service Commission (CSC) praying that SO 129 be declared ineffective and that she be restored to her former position, but the CSC dismissed the appeal for lack of merit.

On December 18, 1996, petitioner Padolina issued DOST Special Order No. 557, S. 1996, which directed the return of certain PAGASA officials/employees to their units as of March 30, 1996. Likewise, it ordered the retention of other PAGASA personnel, including respondent, at their current assignments in accordance with SO 129.

In the meantime, a fact-finding committee was formed to look into the reason behind her refusal to accept her reassignment. After an ex-parte evaluation of pertinent documents, the committee recommended that a formal charge of insubordination be filed against the respondent.

When the committee on investigation conducted a hearing, respondent did not appear. Hence, the case was heard in absentia. After the hearing, a report was submitted by the committee finding the respondent guilty of

insubordination. The committee recommended that a penalty of suspension of one (1) month and one (1) day without pay be imposed on the respondent. On May 13, 1997, petitioner Padolina issued a decision adopting the committee's findings and recommendation.

On June 5, 1997, CSC Director Nelson L. Acebedo wrote to respondent, and directed her to immediately report to her place of reassignment in accordance with the resolution of the CSC which denied the latter's appeal before said body.[3]

Meanwhile, respondent moved for reconsideration of the CSC Resolution denying her appeal. Her motion for reconsideration was also denied, but the CSC ruled that respondent was entitled to Representation and Travel Allowance (RATA) during the period of her reassignment.

Not satisfied with the decision of the CSC, respondent elevated the case to the Court of Appeals (CA). The CA decided in favor of respondent declaring that SO 129 is void ab initio. According to the CA, such order adversely affected the position of respondent who should be restored to all the rights and privileges of her office; and that respondent's reassignment has effectively demoted her in rank, status and salary for a triple violation of the Administrative Code of 1987.

Consequently, petitioners filed a Petition for Review on Certiorari[4] before this Court assailing the Decision of the CA.

On July 14, 1999, we dismissed the petition and affirmed the Decision of the CA. We held that SO 129 was indeed void ab initio insofar as it adversely affected the position of the respondent; and that security of tenure is a fundamental and constitutionally-guaranteed feature of our Civil Service. The mantle of protection of the Civil Service extends not only to employees removed without cause but also to cases of unconsented transfers which are tantamount to illegal removal from office.

Section 10, Rule 7 of the Omnibus Rules implementing Book 5 of the Administrative Code of 1987 (Executive Order No. 292) provides that:

(7) Reassignment - A reassignment is a movement of an employee from one organizational unit to another in the same department or agency which does not involve a reduction in rank, status or salary and does not require the issuance of an appointment.

Section 24 (g) of Presidential Decree No. 807 authorizes reassignment by providing that an employee may be reassigned from one organizational unit to another in the same agency but such reassignment shall not involve a reduction in rank, status or salary. A diminution in rank, status, or salary, is enough to invalidate such a reassignment.

We held that SO 129 violated the security of tenure of respondent and hence, invalid. An examination of SO 129 also shows that the questioned order contains no definite date or duration of the reassignment. In fact, in No. 4 of the Implementing Guidelines of SO 129, it is stated therein that "the return of the various Branch/Division/Section Chiefs and other personnel concerned to their respective Units shall be the subject of a separate DOST Special Order," which means that the respondent's duration of service in the office of the DOST-FMS Director shall be for an indefinite date, dependent on the time when the DOST shall issue a new special order which may or may not even include respondent. As a matter of fact, she was not one of those returned to their original units per DOST Special Order No. 557. Accordingly, we held that such a situation is indeed tantamount to a floating assignment, which results in a diminution of status or rank. We also ruled that respondent was deprived of the emoluments attached to her former position like RATA and similar allowances which signified a diminution in compensation that is proscribed by the rule on re-assignment. Finally, we also held that the status of respondent has been

adversely affected inasmuch as her reassignment to the DOST-FMS Director's Office reduced her to a mere subordinate without authority to supervise anyone; in effect, she was demoted in rank and status.

In their instant motion for reconsideration, petitioners reiterate their arguments in the main petition which were already considered in our Resolution. Petitioners argue that respondent's reassignment was not indefinite. However, petitioners fail to present any evidence to prove that the reassignment of respondent was for a definite period.

A careful examination of SO 129 shows that it contains no definite date or duration of reassignment. As previously stated, this is tantamount to a floating assignment that results in a diminution in rank. Although SO No. 557 was later issued ordering the return of some of the other reassignees, subject of SO 129 eight (8) months after their reassignment, this belated act cannot cure the defect of SO 129.

Petitioners maintain that the reassignment of respondent did not reduce her to a mere subordinate. Petitioners aver that respondent's "movement" from the original organization unit (Finance and Management Division, PAGASA) to another (Financial Management Services) in the same department (DOST) meets the requirements of a valid reassignment and that the circumstances that she may have "temporarily lost" supervision of forty-one (41) employees is an incidental, albeit temporary, consequence of the reassignment and cannot be considered a demotion.

We are not impressed. Such reassignment in fact removes from respondent's power of supervision over forty-one (41) employees who are part of her staff and subordinates, thereby resulting in a diminution of her status. Petitioners, however, insist that the reassignment is just temporary. The reassignment resulting in a diminution of the status of respondent may have been temporary but it is a diminution nonetheless. Besides, there was no definite duration of the reassignment which fact added to respondent's reluctance to accept such reassignment.

Petitioners stated in their motion for reconsideration that respondent was not paid her salaries, RATA and similar allowances simply because of her continued refusal to report to her place of reassignment from the very start. On this point, we rule in favor of the petitioners. There is no evidence in the records which clearly show that respondent will be deprived of RATA and other emoluments. Such alleged diminution must be proven. In fact, the CSC clearly ordered that respondent should be given her RATA during the period of her reassignment. Hence, she was supposed to receive her RATA had she not refused to accept the order of her reassignment. However, there need not be a diminution in salary for actual demotion to be present in the instant case. Under Section 11, Rule VII of the Omnibus Rules implementing Book V of Executive Order No. 292, demotion is defined "as the movement from one position to another involving the issuance of an appointment with diminution in duties, responsibilities, status or rank which may or may not involve reduction in salary." A diminution in any one of those categories is sufficient to constitute a demotion, and hence, tantamount to a virtual dismissal.

WHEREFORE, the motion for reconsideration of the Court's Resolution dated July 14, 1999 is hereby DENIED for lack of merit.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Rollo, pp. 151-155.

[2] Rollo, pp. 25-35.

[3] Rollo, p. 65, Annex L.

[4] Rollo, pp. 7-22.

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