

ROSA LIGAYA C. DOMINGO, ROMEO M. FERNANDEZ, VICTORIA S. ESTRADA, JULIETA C. FAJARDO, ADELAIDA B. GAWIRAN, MARCIANO M. SERVO, VICTORIA S. DAOANG, FELICIANO N. TOLEDO III, JAYNELY...

G.R. No. 142283. February 06, 2003

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for certiorari and prohibition[1] with prayer for temporary restraining order seeking to nullify Executive Order No. 81 and Memoranda Nos. 01592 and 01594.[2] The assailed executive order transferred the sports development programs and activities of the Department of Education, Culture and Sports (“DECS” for brevity) to the Philippine Sports Commission (“PSC” for brevity). The questioned memoranda (“DECS Memoranda” for brevity), on the other hand, reassigned all Bureau of Physical Education and School Sports (“BPSS” for brevity) personnel named in the DECS Memoranda to various offices within the DECS.

The Facts

On March 5, 1999, former President Joseph E. Estrada issued Executive Order No. 81[3] (“EO 81” for brevity) entitled “Transferring the Sports Programs and Activities of the Department of Education, Culture and Sports to the Philippine Sports Commission and Defining the Role of DECS in School-Based Sports.”

EO 81 provided thus:

“Section 1. Transferring the Sports Program and Activities to the PSC. All the functions, programs and activities of DECS related to sports development as provided for in Sec. 16 of EO 117 (s. 1987) are hereby transferred to PSC.

Section 2. Defining the Role of DECS in School-Based Sports. The DECS shall have jurisdiction and function over the enhancement of Physical Education (P.E.) curriculum and its application in whatever form inside schools.

Section 3. The Role of PSC. As the primary agency tasked to formulate policies and oversee the national sports development program, the management and implementation of all school-based sports competitions among schools at the district, provincial, regional, national and international levels, in coordination with concerned public and private entities shall be transferred to the PSC.”

Pursuant to EO 81, former DECS Secretary Andrew B. Gonzales (“Secretary Gonzales” for brevity) issued Memorandum No. 01592 on January 10, 2000. Memorandum No. 01592 temporarily reassigned, in the exigency of the service, all remaining BPSS Staff to other divisions or bureaus of the DECS effective March 15, 2000.

On January 21, 2000, Secretary Gonzales issued Memorandum No. 01594 reassigning the BPSS staff named in

the Memorandum to various offices within the DECS effective March 15, 2000. Petitioners were among the BPESS personnel affected by Memorandum No. 01594. Dissatisfied with their reassignment, petitioners filed the instant petition.

In their Petition, petitioners argue that EO 81 is void and unconstitutional for being an undue legislation by President Estrada. Petitioners maintain that the President's issuance of EO 81 violated the principle of separation of powers. Petitioners also challenge the DECS Memoranda for violating their right to security of tenure.

Petitioners seek to nullify EO 81 and the DECS Memoranda. Petitioners pray that this Court prohibit the PSC from performing functions related to school sports development. Petitioners further pray that, upon filing of the petition, this Court issue a temporary restraining order against respondents to desist from implementing EO 81.

During the pendency of the case, Republic Act No. 9155 ("RA 9155" for brevity), otherwise known as the "Governance of Basic Education Act of 2001", was enacted on August 11, 2001. RA 9155 expressly abolished the BPESS and transferred the functions, programs and activities of the DECS relating to sports competition to the PSC. The pertinent provision thereof reads:

"SEC. 9. Abolition of BPESS. – All functions, programs and activities of the Department of Education related to sports competition shall be transferred to the Philippine Sports Commission (PSC). The Program for school sports and physical fitness shall remain part of the basic education curriculum.

The Bureau of Physical Education and School Sports (BPESS) is hereby abolished. The personnel of the BPESS, presently detailed with the PSC, are hereby transferred to the PSC without loss of rank, including the plantilla positions they occupy. All other BPESS personnel shall be retained by the Department."

The Issue

The issue to resolve is whether EO 81 and the DECS Memoranda are valid.

The Court's Ruling

We dismiss this petition for being moot and academic.

As manifested by both petitioners[4] and respondents,[5] the subsequent enactment of RA 9155 has rendered the issues in the present case moot and academic. Since RA 9155 abolished the BPESS and transferred the DECS' functions relating to sports competition to the PSC, petitioners now admit that "it is no longer plausible to raise any ultra vires assumption by the PSC of the functions of the BPESS." [6] Moreover, since RA 9155 provides that BPESS personnel not transferred to the PSC shall be retained by the DECS, petitioners now accept that "the law explicitly protects and preserves" [7] their right to security of tenure.

Although the issue is already academic, its significance constrains the Court to point out that Executive Order No. 292 ("EO 292" for brevity), otherwise known as the Administrative Code of 1987, expressly grants the President continuing authority to reorganize the Office of the President. Section 31 of EO 292 provides:

"SEC. 31. Continuing Authority of the President to Reorganize his Office. – The President, subject to the policy in the Executive Office and in order to achieve simplicity, economy and efficiency, shall have continuing authority to reorganize the administrative structure of the Office of the President. For this purpose, he may take any of the following actions:

(1) Restructure the internal organization of the Office of the President Proper, including the immediate Offices, the Presidential Special Assistants/Advisers System and the Common Support System, by abolishing, consolidating or merging units thereof or transferring functions from one unit to another;

(2) Transfer any function under the Office of the President to any other Department or Agency as well as

transfer functions to the Office of the President from other Departments and Agencies; and

(3) Transfer any agency under the Office of the President to any other department or agency as well as transfer agencies to the Office of the President from other Departments or Agencies.” (Emphasis supplied.)

Since EO 81 is based on the President’s continuing authority under Section 31 (2) and (3) of EO 292,[8] EO 81 is a valid exercise of the President’s delegated power to reorganize the Office of the President. The law grants the President this power in recognition of the recurring need of every President to reorganize his office “to achieve simplicity, economy and efficiency.” The Office of the President is the nerve center of the Executive Branch. To remain effective and efficient, the Office of the President must be capable of being shaped and reshaped by the President in the manner he deems fit to carry out his directives and policies. After all, the Office of the President is the command post of the President. This is the rationale behind the President’s continuing authority to reorganize the administrative structure of the Office of the President.

Petitioners’ contention that the DECS is not part of the Office of the President is immaterial. Under EO 292, the DECS is indisputably a Department of the Executive Branch. Even if the DECS is not part of the Office of the President, Section 31 (2) and (3) of EO 292 clearly authorizes the President to transfer any function or agency of the DECS to the Office of the President. Under its charter, the PSC is attached to the Office of the President.[9] Therefore, the President has the authority to transfer the “functions, programs and activities of DECS related to sports development”[10] to the PSC, making EO 81 a valid presidential issuance.

However, the President’s power to reorganize the Office of the President under Section 31 (2) and (3) of EO 292 should be distinguished from his power to reorganize the Office of the President Proper. Under Section 31 (1) of EO 292, the President can reorganize the Office of the President Proper by abolishing, consolidating or merging units, or by transferring functions from one unit to another. In contrast, under Section 31 (2) and (3) of EO 292, the President’s power to reorganize offices outside the Office of the President Proper but still within the Office of the President is limited to merely transferring functions or agencies from the Office of the President to Departments or Agencies, and vice versa.

This distinction is crucial as it affects the security of tenure of employees. The abolition of an office in good faith necessarily results in the employee’s cessation in office, but in such event there is no dismissal or separation because the office itself ceases to exist.[11] On the other hand, the transfer of functions or agencies does not result in the employee’s cessation in office because his office continues to exist although in another department, agency or office. In the instant case, the BPSS employees who were not transferred to PSC were at first temporarily, then later permanently reassigned to other offices of the DECS, ensuring their continued employment. At any rate, RA 9155 now mandates that these employees “shall be retained by the Department.”

WHEREFORE, the instant petition is DISMISSED. No pronouncement as to costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Vitug, and Azcuna, JJ., concur.
Ynares-Santiago, J., no part.

[1] Under Rule 65 of the Rules of Court.

[2] Issued by then Department of Education Secretary Andrew B. Gonzales.

[3] Co-signed by former Executive Secretary Ronaldo D. Zamora.

[4] Rollo, p. 106, Petitioners' Reply to Comments, p. 12.

[5] Ibid., p. 137, Memorandum for Respondents, p. 7.

[6] Supra, see note 4.

[7] Supra, see note 4.

[8] The preamble of EO 81 provides:

“ xxx

WHEREAS, paragraph 2, Section 31, Chapter 10, Title III, Book III of the Administrative Code of 1987 grants the President the continuing authority to reorganize the Office of the President by, among others, transferring any function, to include certain programs, from other Departments and/or Agencies to the Office of the President.”

[9] Section 4 of RA 6847 provides:

“Status of the Commission. — The Commission shall have the same status as that of a governmental regulatory national agency attached to the Office of the President with the Chairman thereof being of the same level as a department undersecretary and the Commissioners that of department assistant secretaries.”

[10] Section 1, EO 81.

[11] Dario v. Mison, 176 SCRA 84 (1989).

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