

MA. J. ANGELINA G. MATIBAG, PETITIONER, VS. ALFREDO L. BENIPAYO, RESURRECCION Z. BORRA, FLORENTINO A. TUASON, JR., VELMA J. CINCO, AND GIDEON C. DE GUZMAN IN HIS CAPACITY AS OFF...

G.R. No. 149036. April 02, 2002

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

Before us is an original Petition for Prohibition with prayer for the issuance of a writ of preliminary injunction and a temporary restraining order under Rule 65 of the 1997 Rules of Civil Procedure. Petitioner Ma. J. Angelina G. Matibag (“Petitioner” for brevity) questions the constitutionality of the appointment and the right to hold office of the following: (1) Alfredo L. Benipayo (“Benipayo” for brevity) as Chairman of the Commission on Elections (“COMELEC” for brevity); and (2) Resurreccion Z. Borra (“Borra” for brevity) and Florentino A. Tuason, Jr. (“Tuason” for brevity) as COMELEC Commissioners. Petitioner also questions the legality of the appointment of Velma J. Cinco^[1] (“Cinco” for brevity) as Director IV of the COMELEC’s Education and Information Department (“EID” for brevity).

The Facts

On February 2, 1999, the COMELEC en banc appointed petitioner as “Acting Director IV” of the EID. On February 15, 2000, then Chairperson Harriet O. Demetriou renewed the appointment of petitioner as Director IV of EID in a “Temporary” capacity. On February 15, 2001, Commissioner Rufino S.B. Javier renewed again the appointment of petitioner to the same position in a “Temporary” capacity.^[2]

On March 22, 2001, President Gloria Macapagal Arroyo appointed, ad interim, Benipayo as COMELEC Chairman,^[3] and Borra^[4] and Tuason^[5] as COMELEC Commissioners, each for a term of seven years and all expiring on February 2, 2008. Benipayo took his oath of office and assumed the position of COMELEC Chairman. Borra and Tuason likewise took their oaths of office and assumed their positions as COMELEC Commissioners. The Office of the President submitted to the Commission on Appointments on May 22, 2001 the ad interim appointments of Benipayo, Borra and Tuason for confirmation.^[6] However, the Commission on Appointments did not act on said appointments.

On June 1, 2001, President Arroyo renewed the ad interim appointments of Benipayo, Borra and Tuason to the same positions and for the same term of seven years, expiring on February 2, 2008.^[7] They took their oaths of office for a second time. The Office of the President transmitted on June 5, 2001 their appointments to the Commission on Appointments for confirmation.^[8]

Congress adjourned before the Commission on Appointments could act on their appointments. Thus, on June 8, 2001, President Macapagal Arroyo renewed again the ad interim appointments of Benipayo, Borra and Tuason to

the same positions.[9] The Office of the President submitted their appointments for confirmation to the Commission on Appointments.[10] They took their oaths of office anew.

In his capacity as COMELEC Chairman, Benipayo issued a Memorandum dated April 11, 2001[11] addressed to petitioner as Director IV of the EID and to Cinco as Director III also of the EID, designating Cinco Officer-in-Charge of the EID and reassigning petitioner to the Law Department. COMELEC EID Commissioner-in-Charge Mehol K. Sadain objected to petitioner's reassignment in a Memorandum dated April 14, 2001[12] addressed to the COMELEC en banc. Specifically, Commissioner Sadain questioned Benipayo's failure to consult the Commissioner-in-Charge of the EID in the reassignment of petitioner.

On April 16, 2001, petitioner requested Benipayo to reconsider her relief as Director IV of the EID and her reassignment to the Law Department.[13] Petitioner cited Civil Service Commission Memorandum Circular No. 7 dated April 10, 2001, reminding heads of government offices that "transfer and detail of employees are prohibited during the election period beginning January 2 until June 13, 2001." Benipayo denied her request for reconsideration on April 18, 2001,[14] citing COMELEC Resolution No. 3300 dated November 6, 2000, which states in part:

"NOW, THEREFORE, the Commission on Elections by virtue of the powers conferred upon it by the Constitution, the Omnibus Election Code and other election laws, as an exception to the foregoing prohibitions, has RESOLVED, as it is hereby RESOLVED, to appoint, hire new employees or fill new positions and transfer or reassign its personnel, when necessary in the effective performance of its mandated functions during the prohibited period, provided that the changes in the assignment of its field personnel within the thirty-day period before election day shall be effected after due notice and hearing."

Petitioner appealed the denial of her request for reconsideration to the COMELEC en banc in a Memorandum dated April 23, 2001.[15] Petitioner also filed an administrative and criminal complaint[16] with the Law Department[17] against Benipayo, alleging that her reassignment violated Section 261 (h) of the Omnibus Election Code, COMELEC Resolution No. 3258, Civil Service Memorandum Circular No. 07, s. 001, and other pertinent administrative and civil service laws, rules and regulations.

During the pendency of her complaint before the Law Department, petitioner filed the instant petition questioning the appointment and the right to remain in office of Benipayo, Borra and Tuason, as Chairman and Commissioners of the COMELEC, respectively. Petitioner claims that the ad interim appointments of Benipayo, Borra and Tuason violate the constitutional provisions on the independence of the COMELEC, as well as on the prohibitions on temporary appointments and reappointments of its Chairman and members. Petitioner also assails as illegal her removal as Director IV of the EID and her reassignment to the Law Department. Simultaneously, petitioner challenges the designation of Cinco as Officer-in-Charge of the EID. Petitioner, moreover, questions the legality of the disbursements made by COMELEC Finance Services Department Officer-in-Charge Gideon C. De Guzman to Benipayo, Borra and Tuason by way of salaries and other emoluments.

In the meantime, on September 6, 2001, President Macapagal Arroyo renewed once again the ad interim appointments of Benipayo as COMELEC Chairman and Borra and Tuason as Commissioners, respectively, for a term of seven years expiring on February 2, 2008.[18] They all took their oaths of office anew.

The Issues

The issues for resolution of this Court are as follows:

- Whether or not the instant petition satisfies all the requirements before this Court may exercise its power of judicial review in constitutional cases;

- Whether or not the assumption of office by Benipayo, Borra and Tuason on the basis of the ad interim appointments issued by the President amounts to a temporary appointment prohibited by Section 1 (2), Article IX-C of the Constitution;
- Assuming that the first ad interim appointments and the first assumption of office by Benipayo, Borra and Tuason are legal, whether or not the renewal of their ad interim appointments and subsequent assumption of office to the same positions violate the prohibition on reappointment under Section 1 (2), Article IX-C of the Constitution;
- Whether or not Benipayo's removal of petitioner from her position as Director IV of the EID and her reassignment to the Law Department is illegal and without authority, having been done without the approval of the COMELEC as a collegial body;
- Whether or not the Officer-in-Charge of the COMELEC's Finance Services Department, in continuing to make disbursements in favor of Benipayo, Borra, Tuason and Cinco, is acting in excess of jurisdiction.

First Issue: Propriety of Judicial Review

Respondents assert that the petition fails to satisfy all the four requisites before this Court may exercise its power of judicial review in constitutional cases. Out of respect for the acts of the Executive department, which is co-equal with this Court, respondents urge this Court to refrain from reviewing the constitutionality of the ad interim appointments issued by the President to Benipayo, Borra and Tuason unless all the four requisites are present. These are: (1) the existence of an actual and appropriate controversy; (2) a personal and substantial interest of the party raising the constitutional issue; (3) the exercise of the judicial review is pleaded at the earliest opportunity; and (4) the constitutional issue is the *lis mota* of the case.[19]

Respondents argue that the second, third and fourth requisites are absent in this case. Respondents maintain that petitioner does not have a personal and substantial interest in the case because she has not sustained a direct injury as a result of the ad interim appointments of Benipayo, Borra and Tuason and their assumption of office. Respondents point out that petitioner does not claim to be lawfully entitled to any of the positions assumed by Benipayo, Borra or Tuason. Neither does petitioner claim to be directly injured by the appointments of these three respondents.

Respondents also contend that petitioner failed to question the constitutionality of the ad interim appointments at the earliest opportunity. Petitioner filed the petition only on August 3, 2001 despite the fact that the ad interim appointments of Benipayo, Borra and Tuason were issued as early as March 22, 2001. Moreover, the petition was filed after the third time that these three respondents were issued ad interim appointments.

Respondents insist that the real issue in this case is the legality of petitioner's reassignment from the EID to the Law Department. Consequently, the constitutionality of the ad interim appointments is not the *lis mota* of this case.

We are not persuaded.

Benipayo reassigned petitioner from the EID, where she was Acting Director, to the Law Department, where she was placed on detail service.[20] Respondents claim that the reassignment was "pursuant to x x x Benipayo's authority as Chairman of the Commission on Elections, and as the Commission's Chief Executive Officer." [21] Evidently, respondents anchor the legality of petitioner's reassignment on Benipayo's authority as Chairman of the COMELEC. The real issue then turns on whether or not Benipayo is the lawful Chairman of the COMELEC. Even if petitioner is only an Acting Director of the EID, her reassignment is without legal basis if Benipayo is not the lawful COMELEC Chairman, an office created by the Constitution.

On the other hand, if Benipayo is the lawful COMELEC Chairman because he assumed office in accordance with the Constitution, then petitioner's reassignment is legal and she has no cause to complain provided the reassignment is in accordance with the Civil Service Law. Clearly, petitioner has a personal and material stake in the resolution of the constitutionality of Benipayo's assumption of office. Petitioner's personal and substantial injury, if Benipayo is not the lawful COMELEC Chairman, clothes her with the requisite locus standi to raise the constitutional issue in this petition.

Respondents harp on petitioner's belated act of questioning the constitutionality of the ad interim appointments of Benipayo, Borra and Tuason. Petitioner filed the instant petition only on August 3, 2001, when the first ad interim appointments were issued as early as March 22, 2001. However, it is not the date of filing of the petition that determines whether the constitutional issue was raised at the earliest opportunity. The earliest opportunity to raise a constitutional issue is to raise it in the pleadings before a competent court that can resolve the same, such that, "if it is not raised in the pleadings, it cannot be considered at the trial, and, if not considered at the trial, it cannot be considered on appeal."^[22] Petitioner questioned the constitutionality of the ad interim appointments of Benipayo, Borra and Tuason when she filed her petition before this Court, which is the earliest opportunity for pleading the constitutional issue before a competent body. Furthermore, this Court may determine, in the exercise of sound discretion, the time when a constitutional issue may be passed upon.^[23] There is no doubt petitioner raised the constitutional issue on time.

Moreover, the legality of petitioner's reassignment hinges on the constitutionality of Benipayo's ad interim appointment and assumption of office. Unless the constitutionality of Benipayo's ad interim appointment and assumption of office is resolved, the legality of petitioner's reassignment from the EID to the Law Department cannot be determined. Clearly, the *lis mota* of this case is the very constitutional issue raised by petitioner.

In any event, the issue raised by petitioner is of paramount importance to the public. The legality of the directives and decisions made by the COMELEC in the conduct of the May 14, 2001 national elections may be put in doubt if the constitutional issue raised by petitioner is left unresolved. In keeping with this Court's duty to determine whether other agencies of government have remained within the limits of the Constitution and have not abused the discretion given them, this Court may even brush aside technicalities of procedure and resolve any constitutional issue raised.^[24] Here the petitioner has complied with all the requisite technicalities. Moreover, public interest requires the resolution of the constitutional issue raised by petitioner.

Second Issue: The Nature of an Ad Interim Appointment

Petitioner argues that an ad interim appointment to the COMELEC is a temporary appointment that is prohibited by Section 1 (2), Article IX-C of the Constitution, which provides as follows:

"The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, three Members shall hold office for seven years, two Members for five years, and the last Members for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity." (Emphasis supplied)

Petitioner posits the view that an ad interim appointment can be withdrawn or revoked by the President at her pleasure, and can even be disapproved or simply by-passed by the Commission on Appointments. For this reason, petitioner claims that an ad interim appointment is temporary in character and consequently prohibited by the last sentence of Section 1 (2), Article IX-C of the Constitution.

Based on petitioner's theory, there can be no ad interim appointment to the COMELEC or to the other two constitutional commissions, namely the Civil Service Commission and the Commission on Audit. The last

sentence of Section 1 (2), Article IX-C of the Constitution is also found in Article IX-B and Article IX-D providing for the creation of the Civil Service Commission and the Commission on Audit, respectively. Petitioner interprets the last sentence of Section 1 (2) of Article IX-C to mean that the ad interim appointee cannot assume office until his appointment is confirmed by the Commission on Appointments for only then does his appointment become permanent and no longer temporary in character.

The rationale behind petitioner's theory is that only an appointee who is confirmed by the Commission on Appointments can guarantee the independence of the COMELEC. A confirmed appointee is beyond the influence of the President or members of the Commission on Appointments since his appointment can no longer be recalled or disapproved. Prior to his confirmation, the appointee is at the mercy of both the appointing and confirming powers since his appointment can be terminated at any time for any cause. In the words of petitioner, a Sword of Damocles hangs over the head of every appointee whose confirmation is pending with the Commission on Appointments.

We find petitioner's argument without merit.

An ad interim appointment is a permanent appointment because it takes effect immediately and can no longer be withdrawn by the President once the appointee has qualified into office. The fact that it is subject to confirmation by the Commission on Appointments does not alter its permanent character. The Constitution itself makes an ad interim appointment permanent in character by making it effective until disapproved by the Commission on Appointments or until the next adjournment of Congress. The second paragraph of Section 16, Article VII of the Constitution provides as follows:

"The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress." (Emphasis supplied)

Thus, the ad interim appointment remains effective until such disapproval or next adjournment, signifying that it can no longer be withdrawn or revoked by the President. The fear that the President can withdraw or revoke at any time and for any reason an ad interim appointment is utterly without basis.

More than half a century ago, this Court had already ruled that an ad interim appointment is permanent in character. In *Summers vs. Ozaeta*,^[25] decided on October 25, 1948, we held that:

"x x x an ad interim appointment is one made in pursuance of paragraph (4), Section 10, Article VII of the Constitution, which provides that the 'President shall have the power to make appointments during the recess of the Congress, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress.' It is an appointment permanent in nature, and the circumstance that it is subject to confirmation by the Commission on Appointments does not alter its permanent character. An ad interim appointment is disapproved certainly for a reason other than that its provisional period has expired. Said appointment is of course distinguishable from an 'acting' appointment which is merely temporary, good until another permanent appointment is issued." (Emphasis supplied)

The Constitution imposes no condition on the effectivity of an ad interim appointment, and thus an ad interim appointment takes effect immediately. The appointee can at once assume office and exercise, as a de jure officer, all the powers pertaining to the office. In *Pacete vs. Secretary of the Commission on Appointments*,^[26] this Court elaborated on the nature of an ad interim appointment as follows:

"A distinction is thus made between the exercise of such presidential prerogative requiring confirmation by the Commission on Appointments when Congress is in session and when it is in recess. In the former, the President nominates, and only upon the consent of the Commission on Appointments may the person thus

named assume office. It is not so with reference to ad interim appointments. It takes effect at once. The individual chosen may thus qualify and perform his function without loss of time. His title to such office is complete. In the language of the Constitution, the appointment is effective 'until disapproval by the Commission on Appointments or until the next adjournment of the Congress.'"

Petitioner cites Black's Law Dictionary which defines the term "ad interim" to mean "in the meantime" or "for the time being." Hence, petitioner argues that an ad interim appointment is undoubtedly temporary in character. This argument is not new and was answered by this Court in *Pamantasan ng Lungsod ng Maynila vs. Intermediate Appellate Court*,^[27] where we explained that:

"x x x From the arguments, it is easy to see why the petitioner should experience difficulty in understanding the situation. Private respondent had been extended several 'ad interim' appointments which petitioner mistakenly understands as appointments temporary in nature. Perhaps, it is the literal translation of the word 'ad interim' which creates such belief. The term is defined by Black to mean "in the meantime" or "for the time being". Thus, an officer ad interim is one appointed to fill a vacancy, or to discharge the duties of the office during the absence or temporary incapacity of its regular incumbent (Black's Law Dictionary, Revised Fourth Edition, 1978). But such is not the meaning nor the use intended in the context of Philippine law. In referring to Dr. Esteban's appointments, the term is not descriptive of the nature of the appointments given to him. Rather, it is used to denote the manner in which said appointments were made, that is, done by the President of the Pamantasan in the meantime, while the Board of Regents, which is originally vested by the University Charter with the power of appointment, is unable to act. x x x." (Emphasis supplied)

Thus, the term "ad interim appointment", as used in letters of appointment signed by the President, means a permanent appointment made by the President in the meantime that Congress is in recess. It does not mean a temporary appointment that can be withdrawn or revoked at any time. The term, although not found in the text of the Constitution, has acquired a definite legal meaning under Philippine jurisprudence. The Court had again occasion to explain the nature of an ad interim appointment in the more recent case of *Marohombsar vs. Court of Appeals*,^[28] where the Court stated:

"We have already mentioned that an ad interim appointment is not descriptive of the nature of the appointment, that is, it is not indicative of whether the appointment is temporary or in an acting capacity, rather it denotes the manner in which the appointment was made. In the instant case, the appointment extended to private respondent by then MSU President Alonto, Jr. was issued without condition nor limitation as to tenure. The permanent status of private respondent's appointment as Executive Assistant II was recognized and attested to by the Civil Service Commission Regional Office No. 12. Petitioner's submission that private respondent's ad interim appointment is synonymous with a temporary appointment which could be validly terminated at any time is clearly untenable. Ad interim appointments are permanent but their terms are only until the Board disapproves them." (Emphasis supplied)

An ad interim appointee who has qualified and assumed office becomes at that moment a government employee and therefore part of the civil service. He enjoys the constitutional protection that "[n]o officer or employee in the civil service shall be removed or suspended except for cause provided by law."^[29] Thus, an ad interim appointment becomes complete and irrevocable once the appointee has qualified into office. The withdrawal or revocation of an ad interim appointment is possible only if it is communicated to the appointee before the moment he qualifies, and any withdrawal or revocation thereafter is tantamount to removal from office.^[30] Once an appointee has qualified, he acquires a legal right to the office which is protected not only by statute but also by the Constitution. He can only be removed for cause, after notice and hearing, consistent with the requirements of due process.

An ad interim appointment can be terminated for two causes specified in the Constitution. The first cause is the

disapproval of his ad interim appointment by the Commission on Appointments. The second cause is the adjournment of Congress without the Commission on Appointments acting on his appointment. These two causes are resolutive conditions expressly imposed by the Constitution on all ad interim appointments. These resolutive conditions constitute, in effect, a Sword of Damocles over the heads of ad interim appointees. No one, however, can complain because it is the Constitution itself that places the Sword of Damocles over the heads of the ad interim appointees.

While an ad interim appointment is permanent and irrevocable except as provided by law, an appointment or designation in a temporary or acting capacity can be withdrawn or revoked at the pleasure of the appointing power.[31] A temporary or acting appointee does not enjoy any security of tenure, no matter how briefly. This is the kind of appointment that the Constitution prohibits the President from making to the three independent constitutional commissions, including the COMELEC. Thus, in *Brillantes vs. Yorac*,[32] this Court struck down as unconstitutional the designation by then President Corazon Aquino of Associate Commissioner Haydee Yorac as Acting Chairperson of the COMELEC. This Court ruled that:

“A designation as Acting Chairman is by its very terms essentially temporary and therefore revocable at will. No cause need be established to justify its revocation. Assuming its validity, the designation of the respondent as Acting Chairman of the Commission on Elections may be withdrawn by the President of the Philippines at any time and for whatever reason she sees fit. It is doubtful if the respondent, having accepted such designation, will not be estopped from challenging its withdrawal.

x x x

The Constitution provides for many safeguards to the independence of the Commission on Elections, foremost among which is the security of tenure of its members. That guarantee is not available to the respondent as Acting Chairman of the Commission on Elections by designation of the President of the Philippines.”

Earlier, in *Nacionalista Party vs. Bautista*,[33] a case decided under the 1935 Constitution, which did not have a provision prohibiting temporary or acting appointments to the COMELEC, this Court nevertheless declared unconstitutional the designation of the Solicitor General as acting member of the COMELEC. This Court ruled that the designation of an acting Commissioner would undermine the independence of the COMELEC and hence violate the Constitution. We declared then: “It would be more in keeping with the intent, purpose and aim of the framers of the Constitution to appoint a permanent Commissioner than to designate one to act temporarily.” (Emphasis supplied)

In the instant case, the President did in fact appoint permanent Commissioners to fill the vacancies in the COMELEC, subject only to confirmation by the Commission on Appointments. Benipayo, Borra and Tuason were extended permanent appointments during the recess of Congress. They were not appointed or designated in a temporary or acting capacity, unlike Commissioner Haydee Yorac in *Brillantes vs. Yorac*[34] and Solicitor General Felix Bautista in *Nacionalista Party vs. Bautista*. [35] The ad interim appointments of Benipayo, Borra and Tuason are expressly allowed by the Constitution which authorizes the President, during the recess of Congress, to make appointments that take effect immediately.

While the Constitution mandates that the COMELEC “shall be independent”[36], this provision should be harmonized with the President’s power to extend ad interim appointments. To hold that the independence of the COMELEC requires the Commission on Appointments to first confirm ad interim appointees before the appointees can assume office will negate the President’s power to make ad interim appointments. This is contrary to the rule on statutory construction to give meaning and effect to every provision of the law. It will also run counter to the clear intent of the framers of the Constitution.

The original draft of Section 16, Article VII of the Constitution - on the nomination of officers subject to confirmation by the Commission on Appointments - did not provide for ad interim appointments. The original intention of the framers of the Constitution was to do away with ad interim appointments because the plan was for Congress to remain in session throughout the year except for a brief 30-day compulsory recess. However, because of the need to avoid disruptions in essential government services, the framers of the Constitution thought it wise to reinstate the provisions of the 1935 Constitution on ad interim appointments. The following discussion during the deliberations of the Constitutional Commission elucidates this:

“FR. BERNAS: X x x our compulsory recess now is only 30 days. So under such circumstances, is it necessary to provide for ad interim appointments? Perhaps there should be a little discussion on that.

X x x

MS. AQUINO: My concern is that unless this problem is addressed, this might present problems in terms of anticipating interruption of government business, considering that we are not certain of the length of involuntary recess or adjournment of the Congress. We are certain, however, of the involuntary adjournment of the Congress which is 30 days, but we cannot leave to conjecture the matter of involuntary recess.

FR. BERNAS: That is correct, but we are trying to look for a formula. I wonder if the Commissioner has a formula x x x.

X x x

MR. BENGZON: Madam President, apropos of the matter raised by Commissioner Aquino and after conferring with the Committee, Commissioner Aquino and I propose the following amendment as the last paragraph of Section 16, the wordings of which are in the 1935 Constitution: THE PRESIDENT SHALL HAVE THE POWER TO MAKE APPOINTMENTS DURING THE RECESS OF CONGRESS WHETHER IT BE VOLUNTARY OR COMPULSORY BUT SUCH APPOINTMENTS SHALL BE EFFECTIVE ONLY UNTIL DISAPPROVAL BY THE COMMISSION ON APPOINTMENTS OR UNTIL THE NEXT ADJOURNMENT OF THE CONGRESS.

This is otherwise called the ad interim appointments.

X x x

THE PRESIDENT: Is there any objection to the proposed amendment of Commissioners Aquino and Bengzon, adding a paragraph to the last paragraph of Section 16? (Silence) The Chair hears none; the amendment is approved.”[37] (Emphasis supplied)

Clearly, the reinstatement in the present Constitution of the ad interim appointing power of the President was for the purpose of avoiding interruptions in vital government services that otherwise would result from prolonged vacancies in government offices, including the three constitutional commissions. In his concurring opinion in *Guevara vs. Inocentes*,^[38] decided under the 1935 Constitution, Justice Roberto Concepcion, Jr. explained the rationale behind ad interim appointments in this manner:

“Now, why is the lifetime of ad interim appointments so limited? Because, if they expired before the session of Congress, the evil sought to be avoided – interruption in the discharge of essential functions – may take place. Because the same evil would result if the appointments ceased to be effective during the session of Congress and before its adjournment. Upon the other hand, once Congress has adjourned, the evil aforementioned may easily be conjured by the issuance of other ad interim appointments or reappointments.” (Emphasis supplied)

Indeed, the timely application of the last sentence of Section 16, Article VII of the Constitution barely avoided the interruption of essential government services in the May 2001 national elections. Following the decision of this

Court in *Gaminde vs. Commission on Appointments*,^[39] promulgated on December 13, 2000, the terms of office of constitutional officers first appointed under the Constitution would have to be counted starting February 2, 1987, the date of ratification of the Constitution, regardless of the date of their actual appointment. By this reckoning, the terms of office of three Commissioners of the COMELEC, including the Chairman, would end on February 2, 2001.^[40]

Then COMELEC Chairperson Harriet O. Demetriou was appointed only on January 11, 2000 to serve, pursuant to her appointment papers, until February 15, 2002,^[41] the original expiry date of the term of her predecessor, Justice Bernardo P. Pardo, who was elevated to this Court. The original expiry date of the term of Commissioner Teresita Dy-Liacco Flores was also February 15, 2002, while that of Commissioner Julio F. Desamito was November 3, 2001.^[42] The original expiry dates of the terms of office of Chairperson Demetriou and Commissioners Flores and Desamito were therefore supposed to fall after the May 2001 elections. Suddenly and unexpectedly, because of the *Gaminde* ruling, there were three vacancies in the seven-person COMELEC, with national elections looming less than three and one-half months away. To their credit, Chairperson Demetriou and Commissioner Flores vacated their offices on February 2, 2001 and did not question any more before this Court the applicability of the *Gaminde* ruling to their own situation.

In a Manifestation^[43] dated December 28, 2000 filed with this Court in the *Gaminde* case, Chairperson Demetriou stated that she was vacating her office on February 2, 2001, as she believed any delay in choosing her successor might create a “constitutional crisis” in view of the proximity of the May 2001 national elections. Commissioner Desamito chose to file a petition for intervention^[44] in the *Gaminde* case but this Court denied the intervention. Thus, Commissioner Desamito also vacated his office on February 2, 2001.

During an election year, Congress normally goes on voluntary recess between February and June considering that many of the members of the House of Representatives and the Senate run for re-election. In 2001, the Eleventh Congress adjourned from January 9, 2001 to June 3, 2001.^[45] Concededly, there was no more time for Benipayo, Borra and Tuason, who were originally extended ad interim appointments only on March 22, 2001, to be confirmed by the Commission on Appointments before the May 14, 2001 elections.

If Benipayo, Borra and Tuason were not extended ad interim appointments to fill up the three vacancies in the COMELEC, there would only have been one division functioning in the COMELEC instead of two during the May 2001 elections. Considering that the Constitution requires that “all x x x election cases shall be heard and decided in division”,^[46] the remaining one division would have been swamped with election cases. Moreover, since under the Constitution motions for reconsideration “shall be decided by the Commission en banc”, the mere absence of one of the four remaining members would have prevented a quorum, a less than ideal situation considering that the Commissioners are expected to travel around the country before, during and after the elections. There was a great probability that disruptions in the conduct of the May 2001 elections could occur because of the three vacancies in the COMELEC. The successful conduct of the May 2001 national elections, right after the tumultuous EDSA II and EDSA III events, was certainly essential in safeguarding and strengthening our democracy.

Evidently, the exercise by the President in the instant case of her constitutional power to make ad interim appointments prevented the occurrence of the very evil sought to be avoided by the second paragraph of Section 16, Article VII of the Constitution. This power to make ad interim appointments is lodged in the President to be exercised by her in her sound judgment. Under the second paragraph of Section 16, Article VII of the Constitution, the President can choose either of two modes in appointing officials who are subject to confirmation by the Commission on Appointments. First, while Congress is in session, the President may nominate the prospective appointee, and pending consent of the Commission on Appointments, the nominee cannot qualify and

assume office. Second, during the recess of Congress, the President may extend an ad interim appointment which allows the appointee to immediately qualify and assume office.

Whether the President chooses to nominate the prospective appointee or extend an ad interim appointment is a matter within the prerogative of the President because the Constitution grants her that power. This Court cannot inquire into the propriety of the choice made by the President in the exercise of her constitutional power, absent grave abuse of discretion amounting to lack or excess of jurisdiction on her part, which has not been shown in the instant case.

The issuance by Presidents of ad interim appointments to the COMELEC is a long-standing practice. Former President Corazon Aquino issued an ad interim appointment to Commissioner Alfredo E. Abueg.[47] Former President Fidel V. Ramos extended ad interim appointments to Commissioners Julio F. Desamito, Japal M. Guiani, Graduacion A. Reyes-Claravall and Manolo F. Gorospe.[48] Former President Joseph Estrada also extended ad interim appointments to Commissioners Abdul Gani M. Marohombsar, Luzviminda Tancangco, Mehol K. Sadain and Ralph C. Lantion.[49]

The President's power to extend ad interim appointments may indeed briefly put the appointee at the mercy of both the appointing and confirming powers. This situation, however, is only for a short period - from the time of issuance of the ad interim appointment until the Commission on Appointments gives or withholds its consent. The Constitution itself sanctions this situation, as a trade-off against the evil of disruptions in vital government services. This is also part of the check-and-balance under the separation of powers, as a trade-off against the evil of granting the President absolute and sole power to appoint. The Constitution has wisely subjected the President's appointing power to the checking power of the legislature.

This situation, however, does not compromise the independence of the COMELEC as a constitutional body. The vacancies in the COMELEC are precisely staggered to insure that the majority of its members hold confirmed appointments, and not one President will appoint all the COMELEC members.[50] In the instant case, the Commission on Appointments had long confirmed four[51] of the incumbent COMELEC members, comprising a majority, who could now be removed from office only by impeachment. The special constitutional safeguards that insure the independence of the COMELEC remain in place.[52] The COMELEC enjoys fiscal autonomy, appoints its own officials and employees, and promulgates its own rules on pleadings and practice. Moreover, the salaries of COMELEC members cannot be decreased during their tenure.

In fine, we rule that the ad interim appointments extended by the President to Benipayo, Borra and Tuason, as COMELEC Chairman and Commissioners, respectively, do not constitute temporary or acting appointments prohibited by Section 1 (2), Article IX-C of the Constitution.

Third Issue: The Constitutionality of Renewals of Appointments

Petitioner also argues that assuming the first ad interim appointments and the first assumption of office by Benipayo, Borra and Tuason are constitutional, the renewal of the their ad interim appointments and their subsequent assumption of office to the same positions violate the prohibition on reappointment under Section 1 (2), Article IX-C of the Constitution, which provides as follows:

“The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, three Members shall hold office for seven years, two Members for five years, and the last members for three years, without reappointment. X x x.” (Emphasis supplied)

Petitioner theorizes that once an ad interim appointee is by-passed by the Commission on Appointments, his ad

interim appointment can no longer be renewed because this will violate Section 1 (2), Article IX-C of the Constitution which prohibits reappointments. Petitioner asserts that this is particularly true to permanent appointees who have assumed office, which is the situation of Benipayo, Borra and Tuason if their ad interim appointments are deemed permanent in character.

There is no dispute that an ad interim appointee disapproved by the Commission on Appointments can no longer be extended a new appointment. The disapproval is a final decision of the Commission on Appointments in the exercise of its checking power on the appointing authority of the President. The disapproval is a decision on the merits, being a refusal by the Commission on Appointments to give its consent after deliberating on the qualifications of the appointee. Since the Constitution does not provide for any appeal from such decision, the disapproval is final and binding on the appointee as well as on the appointing power. In this instance, the President can no longer renew the appointment not because of the constitutional prohibition on reappointment, but because of a final decision by the Commission on Appointments to withhold its consent to the appointment.

An ad interim appointment that is by-passed because of lack of time or failure of the Commission on Appointments to organize is another matter. A by-passed appointment is one that has not been finally acted upon on the merits by the Commission on Appointments at the close of the session of Congress. There is no final decision by the Commission on Appointments to give or withhold its consent to the appointment as required by the Constitution. Absent such decision, the President is free to renew the ad interim appointment of a by-passed appointee. This is recognized in Section 17 of the Rules of the Commission on Appointments, which provides as follows:

“Section 17. Unacted Nominations or Appointments Returned to the President. Nominations or appointments submitted by the President of the Philippines which are not finally acted upon at the close of the session of Congress shall be returned to the President and, unless new nominations or appointments are made, shall not again be considered by the Commission.” (Emphasis supplied)

Hence, under the Rules of the Commission on Appointments, a by-passed appointment can be considered again if the President renews the appointment.

It is well settled in this jurisdiction that the President can renew the ad interim appointments of by-passed appointees. Justice Roberto Concepcion, Jr. lucidly explained in his concurring opinion in *Guevara vs. Inocentes*[53] why by-passed ad interim appointees could be extended new appointments, thus:

“In short, an ad interim appointment ceases to be effective upon disapproval by the Commission, because the incumbent can not continue holding office over the positive objection of the Commission. It ceases, also, upon “the next adjournment of the Congress”, simply because the President may then issue new appointments - not because of implied disapproval of the Commission deduced from its inaction during the session of Congress, for, under the Constitution, the Commission may affect adversely the interim appointments only by action, never by omission. If the adjournment of Congress were an implied disapproval of ad interim appointments made prior thereto, then the President could no longer appoint those so by-passed by the Commission. But, the fact is that the President may reappoint them, thus clearly indicating that the reason for said termination of the ad interim appointments is not the disapproval thereof allegedly inferred from said omission of the Commission, but the circumstance that upon said adjournment of the Congress, the President is free to make ad interim appointments or reappointments.” (Emphasis supplied)

Guevara was decided under the 1935 Constitution from where the second paragraph of Section 16, Article VII of the present Constitution on ad interim appointments was lifted verbatim.[54] The jurisprudence under the 1935 Constitution governing ad interim appointments by the President is doubtless applicable to the present Constitution. The established practice under the present Constitution is that the President can renew the

appointments of by-passed ad interim appointees. This is a continuation of the well-recognized practice under the 1935 Constitution, interrupted only by the 1973 Constitution which did not provide for a Commission on Appointments but vested sole appointing power in the President.

The prohibition on reappointment in Section 1 (2), Article IX-C of the Constitution applies neither to disapproved nor by-passed ad interim appointments. A disapproved ad interim appointment cannot be revived by another ad interim appointment because the disapproval is final under Section 16, Article VII of the Constitution, and not because a reappointment is prohibited under Section 1 (2), Article IX-C of the Constitution. A by-passed ad interim appointment can be revived by a new ad interim appointment because there is no final disapproval under Section 16, Article VII of the Constitution, and such new appointment will not result in the appointee serving beyond the fixed term of seven years.

Section 1 (2), Article IX-C of the Constitution provides that “[t]he Chairman and the Commissioners shall be appointed x x x for a term of seven years without reappointment.” (Emphasis supplied) There are four situations where this provision will apply. The first situation is where an ad interim appointee to the COMELEC, after confirmation by the Commission on Appointments, serves his full seven-year term. Such person cannot be reappointed to the COMELEC, whether as a member or as a chairman, because he will then be actually serving more than seven years. The second situation is where the appointee, after confirmation, serves a part of his term and then resigns before his seven-year term of office ends. Such person cannot be reappointed, whether as a member or as a chair, to a vacancy arising from retirement because a reappointment will result in the appointee also serving more than seven years. The third situation is where the appointee is confirmed to serve the unexpired term of someone who died or resigned, and the appointee completes the unexpired term. Such person cannot be reappointed, whether as a member or chair, to a vacancy arising from retirement because a reappointment will result in the appointee also serving more than seven years.

The fourth situation is where the appointee has previously served a term of less than seven years, and a vacancy arises from death or resignation. Even if it will not result in his serving more than seven years, a reappointment of such person to serve an unexpired term is also prohibited because his situation will be similar to those appointed under the second sentence of Section 1 (2), Article IX-C of the Constitution. This provision refers to the first appointees under the Constitution whose terms of office are less than seven years, but are barred from ever being reappointed under any situation. Not one of these four situations applies to the case of Benipayo, Borra or Tuason.

The framers of the Constitution made it quite clear that any person who has served any term of office as COMELEC member – whether for a full term of seven years, a truncated term of five or three years, or even for an unexpired term of any length of time – can no longer be reappointed to the COMELEC. Commissioner Foz succinctly explained this intent in this manner:

“MR. FOZ. But there is the argument made in the concurring opinion of Justice Angelo Bautista in the case of Visarra vs. Miraflor, to the effect that the prohibition on reappointment applies only when the term or tenure is for seven years. But in cases where the appointee serves only for less than seven years, he would be entitled to reappointment. Unless we put the qualifying words “without reappointment” in the case of those appointed, then it is possible that an interpretation could be made later on their case, they can still be reappointed to serve for a total of seven years.

Precisely, we are foreclosing that possibility by making it clear that even in the case of those first appointed under the Constitution, no reappointment can be made.”[55] (Emphasis supplied)

In Visarra vs. Miraflor,[56] Justice Angelo Bautista, in his concurring opinion, quoted Nacionalista vs. De Vera[57] that a “[r]eappointment is not prohibited when a Commissioner has held office only for, say, three or six years, provided his term will not exceed nine years in all.” This was the interpretation despite the express

provision in the 1935 Constitution that a COMELEC member “shall hold office for a term of nine years and may not be reappointed.”

To foreclose this interpretation, the phrase “without reappointment” appears twice in Section 1 (2), Article IX-C of the present Constitution. The first phrase prohibits reappointment of any person previously appointed for a term of seven years. The second phrase prohibits reappointment of any person previously appointed for a term of five or three years pursuant to the first set of appointees under the Constitution. In either case, it does not matter if the person previously appointed completes his term of office for the intention is to prohibit any reappointment of any kind.

However, an ad interim appointment that has lapsed by inaction of the Commission on Appointments does not constitute a term of office. The period from the time the ad interim appointment is made to the time it lapses is neither a fixed term nor an unexpired term. To hold otherwise would mean that the President by his unilateral action could start and complete the running of a term of office in the COMELEC without the consent of the Commission on Appointments. This interpretation renders inutile the confirming power of the Commission on Appointments.

The phrase “without reappointment” applies only to one who has been appointed by the President and confirmed by the Commission on Appointments, whether or not such person completes his term of office. There must be a confirmation by the Commission on Appointments of the previous appointment before the prohibition on reappointment can apply. To hold otherwise will lead to absurdities and negate the President’s power to make ad interim appointments.

In the great majority of cases, the Commission on Appointments usually fails to act, for lack of time, on the ad interim appointments first issued to appointees. If such ad interim appointments can no longer be renewed, the President will certainly hesitate to make ad interim appointments because most of her appointees will effectively be disapproved by mere inaction of the Commission on Appointments. This will nullify the constitutional power of the President to make ad interim appointments, a power intended to avoid disruptions in vital government services. This Court cannot subscribe to a proposition that will wreak havoc on vital government services.

The prohibition on reappointment is common to the three constitutional commissions. The framers of the present Constitution prohibited reappointments for two reasons. The first is to prevent a second appointment for those who have been previously appointed and confirmed even if they served for less than seven years. The second is to insure that the members of the three constitutional commissions do not serve beyond the fixed term of seven years. As reported in the Journal of the Constitutional Commission, Commissioner Vicente B. Foz, who sponsored[58]the proposed articles on the three constitutional commissions, outlined the four important features of the proposed articles, to wit:

“Mr. Foz stated that the Committee had introduced basic changes in the common provision affecting the three Constitutional Commissions, and which are: 1) fiscal autonomy which provides (that) appropriations shall be automatically and regularly released to the Commission in the same manner (as) provided for the Judiciary; 2) fixed term of office without reappointment on a staggered basis to ensure continuity of functions and to minimize the opportunity of the President to appoint all the members during his incumbency; 3) prohibition to decrease salaries of the members of the Commissions during their term of office; and 4) appointments of members would not require confirmation.”[59] (Emphasis supplied)

There were two important amendments subsequently made by the Constitutional Commission to these four features. First, as discussed earlier, the framers of the Constitution decided to require confirmation by the Commission on Appointments of all appointments to the constitutional commissions. Second, the framers decided

to strengthen further the prohibition on serving beyond the fixed seven-year term, in the light of a former chair of the Commission on Audit remaining in office for 12 years despite his fixed term of seven years. The following exchange in the deliberations of the Constitutional Commission is instructive:

“MR. SUAREZ: These are only clarificatory questions, Madam President. May I call the sponsor’s attention, first of all, to Section 2 (2) on the Civil Service Commission wherein it is stated: “In no case shall any Member be appointed in a temporary or acting capacity.” I detect in the Committee’s proposed resolutions a constitutional hangover, if I may use the term, from the past administration. Am I correct in concluding that the reason the Committee introduced this particular provision is to avoid an incident similar to the case of the Honorable Francisco Tantuico who was appointed in an acting capacity as Chairman of the Commission on Audit for about 5 years from 1975 until 1980, and then in 1980, was appointed as Chairman with a tenure of another 7 years. So, if we follow that appointment to (its) logical conclusion, he occupied that position for about 12 years in violation of the Constitution?”

MR. FOZ: It is only one of the considerations. Another is really to make sure that any member who is appointed to any of the commissions does not serve beyond 7 years.”[60] (Emphasis supplied)

Commissioner Christian Monsod further clarified the prohibition on reappointment in this manner:

"MR. MONSOD. If the (Commissioner) will read the whole Article, she will notice that there is no reappointment of any kind and, therefore as a whole there is no way that somebody can serve for more than seven years. The purpose of the last sentence is to make sure that this does not happen by including in the appointment both temporary and acting capacities.”[61] (Emphasis supplied)

Plainly, the prohibition on reappointment is intended to insure that there will be no reappointment of any kind. On the other hand, the prohibition on temporary or acting appointments is intended to prevent any circumvention of the prohibition on reappointment that may result in an appointee’s total term of office exceeding seven years. The evils sought to be avoided by the twin prohibitions are very specific - reappointment of any kind and exceeding one’s term in office beyond the maximum period of seven years.

Not contented with these ironclad twin prohibitions, the framers of the Constitution tightened even further the screws on those who might wish to extend their terms of office. Thus, the word “designated” was inserted to plug any loophole that might be exploited by violators of the Constitution, as shown in the following discussion in the Constitutional Commission:

“MR. DE LOS REYES: On line 32, between the words “appointed” and “in”, I propose to insert the words OR DESIGNATED so that the whole sentence will read: “In no case shall any Member be appointed OR DESIGNATED in a temporary or acting capacity.”

THE PRESIDING OFFICER (Mr. Trenas): What does the Committee say?

MR. FOZ: But it changes the meaning of this sentence. The sentence reads: “In no case shall any Member be appointed in a temporary or acting capacity.”

MR. DE LOS REYES: Mr. Presiding Officer, the reason for this amendment is that some lawyers make a distinction between an appointment and a designation. The Gentleman will recall that in the case of Commissioner on Audit Tantuico, I think his term exceeded the constitutional limit but the Minister of Justice opined that it did not because he was only designated during the time that he acted as Commissioner on Audit. So, in order to erase that distinction between appointment and designation, we should specifically place the word so that there will be no more ambiguity. “In no case shall any Member be appointed OR DESIGNATED in a temporary or acting capacity.”

MR. FOZ: The amendment is accepted, Mr. Presiding Officer.

MR. DE LOS REYES: Thank you.

THE PRESIDING OFFICER (Mr. Trenas): Is there any objection? (Silence) The Chair hears none; the amendment is approved.”[62]

The ad interim appointments and subsequent renewals of appointments of Benipayo, Borra and Tuason do not violate the prohibition on reappointments because there were no previous appointments that were confirmed by the Commission on Appointments. A reappointment presupposes a previous confirmed appointment. The same ad interim appointments and renewals of appointments will also not breach the seven-year term limit because all the appointments and renewals of appointments of Benipayo, Borra and Tuason are for a fixed term expiring on February 2, 2008.[63] Any delay in their confirmation will not extend the expiry date of their terms of office. Consequently, there is no danger whatsoever that the renewal of the ad interim appointments of these three respondents will result in any of the evils intended to be exorcised by the twin prohibitions in the Constitution. The continuing renewal of the ad interim appointment of these three respondents, for so long as their terms of office expire on February 2, 2008, does not violate the prohibition on reappointments in Section 1 (2), Article IX-C of the Constitution.

Fourth Issue: Respondent Benipayo’s Authority to Reassign Petitioner

Petitioner claims that Benipayo has no authority to remove her as Director IV of the EID and reassign her to the Law Department. Petitioner further argues that only the COMELEC, acting as a collegial body, can authorize such reassignment. Moreover, petitioner maintains that a reassignment without her consent amounts to removal from office without due process and therefore illegal.

Petitioner’s posturing will hold water if Benipayo does not possess any color of title to the office of Chairman of the COMELEC. We have ruled, however, that Benipayo is the de jure COMELEC Chairman, and consequently he has full authority to exercise all the powers of that office for so long as his ad interim appointment remains effective. Under Section 7 (4), Chapter 2, Subtitle C, Book V of the Revised Administrative Code, the Chairman of the COMELEC is vested with the following power:

“Section 7. Chairman as Executive Officer; Powers and Duties. The Chairman, who shall be the Chief Executive Officer of the Commission, shall:

x x x

(4) Make temporary assignments, rotate and transfer personnel in accordance with the provisions of the Civil Service Law.” (Emphasis supplied)

The Chairman, as the Chief Executive of the COMELEC, is expressly empowered on his own authority to transfer or reassign COMELEC personnel in accordance with the Civil Service Law. In the exercise of this power, the Chairman is not required by law to secure the approval of the COMELEC en banc.

Petitioner’s appointment papers dated February 2, 1999, February 15, 2000 and February 15, 2001, attached as Annexes “X”, “Y” and “Z” to her Petition, indisputably show that she held her Director IV position in the EID only in an acting or temporary capacity.[64] Petitioner is not a Career Executive Service (CES) officer, and neither does she hold Career Executive Service Eligibility, which are necessary qualifications for holding the position of Director IV as prescribed in the Qualifications Standards (Revised 1987) issued by the Civil Service Commission.[65] Obviously, petitioner does not enjoy security of tenure as Director IV. In *Secretary of Justice Serafin Cuevas vs. Atty. Josefina G. Bacal*, [66] this Court held that:

“As respondent does not have the rank appropriate for the position of Chief Public Attorney, her appointment to that position cannot be considered permanent, and she can claim no security of tenure in respect of that

position. As held in *Achacoso v. Macaraig*:

‘It is settled that a permanent appointment can be issued only ‘to a person who meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed.’ *Achacoso* did not. At best, therefore, his appointment could be regarded only as temporary. And being so, it could be withdrawn at will by the appointing authority and ‘at a moment’s notice’, conformably to established jurisprudence x x x.

The mere fact that a position belongs to the Career Service does not automatically confer security of tenure on its occupant even if he does not possess the required qualifications. Such right will have to depend on the nature of his appointment, which in turn depends on his eligibility or lack of it. A person who does not have the requisite qualifications for the position cannot be appointed to it in the first place, or as an exception to the rule, may be appointed to it merely in an acting capacity in the absence of appropriate eligibles. The appointment extended to him cannot be regarded as permanent even if it may be so designated x x x.”

Having been appointed merely in a temporary or acting capacity, and not possessed of the necessary qualifications to hold the position of Director IV, petitioner has no legal basis in claiming that her reassignment was contrary to the Civil Service Law. This time, the vigorous argument of petitioner that a temporary or acting appointment can be withdrawn or revoked at the pleasure of the appointing power happens to apply squarely to her situation.

Still, petitioner assails her reassignment, carried out during the election period, as a prohibited act under Section 261 (h) of the Omnibus Election Code, which provides as follows:

“Section 261. Prohibited Acts. The following shall be guilty of an election offense:

x x x

(h) Transfer of officers and employees in the civil service - Any public official who makes or causes any transfer or detail whatever of any officer or employee in the civil service including public school teachers, within the election period except upon prior approval of the Commission.”

Petitioner claims that Benipayo failed to secure the approval of the COMELEC en banc to effect transfers or reassignments of COMELEC personnel during the election period.[67] Moreover, petitioner insists that the COMELEC en banc must concur to every transfer or reassignment of COMELEC personnel during the election period.

Contrary to petitioner’s allegation, the COMELEC did in fact issue COMELEC Resolution No. 3300 dated November 6, 2000,[68] exempting the COMELEC from Section 261 (h) of the Omnibus Election Code. The resolution states in part:

“WHEREAS, Sec. 56 and Sec. 261, paragraphs (g) and (h), of the Omnibus Election Code provides as follows:

x x x

Sec. 261. Prohibited Acts. The following shall be guilty of an election offense:

x x x

(h) Transfer of officers and employees in the civil service – Any public official who makes or causes any transfer or detail whatever of any officer or employee in the civil service including public school teachers, within the election period except upon approval of the Commission.

WHEREAS, the aforequoted provisions are applicable to the national and local elections on May 14, 2001;

WHEREAS, there is an urgent need to appoint, transfer or reassign personnel of the Commission on Elections during the prohibited period in order that it can carry out its constitutional duty to conduct free, orderly, honest,

peaceful and credible elections;

“NOW, THEREFORE, the Commission on Elections by virtue of the powers conferred upon it by the Constitution, the Omnibus Election Code and other election laws, as an exception to the foregoing prohibitions, has RESOLVED, as it is hereby RESOLVED, to appoint, hire new employees or fill new positions and transfer or reassign its personnel, when necessary in the effective performance of its mandated functions during the prohibited period, provided that the changes in the assignment of its field personnel within the thirty-day period before election day shall be effected after due notice and hearing.” (Emphasis supplied)

The proviso in COMELEC Resolution No. 3300, requiring due notice and hearing before any transfer or reassignment can be made within thirty days prior to election day, refers only to COMELEC field personnel and not to head office personnel like the petitioner. Under the Revised Administrative Code,[69] the COMELEC Chairman is the sole officer specifically vested with the power to transfer or reassign COMELEC personnel. The COMELEC Chairman will logically exercise the authority to transfer or reassign COMELEC personnel pursuant to COMELEC Resolution No. 3300. The COMELEC en banc cannot arrogate unto itself this power because that will mean amending the Revised Administrative Code, an act the COMELEC en banc cannot legally do.

COMELEC Resolution No. 3300 does not require that every transfer or reassignment of COMELEC personnel should carry the concurrence of the COMELEC as a collegial body. Interpreting Resolution No. 3300 to require such concurrence will render the resolution meaningless since the COMELEC en banc will have to approve every personnel transfer or reassignment, making the resolution utterly useless. Resolution No. 3300 should be interpreted for what it is, an approval to effect transfers and reassignments of personnel, without need of securing a second approval from the COMELEC en banc to actually implement such transfer or reassignment.

The COMELEC Chairman is the official expressly authorized by law to transfer or reassign COMELEC personnel. The person holding that office, in a de jure capacity, is Benipayo. The COMELEC en banc, in COMELEC Resolution No. 3300, approved the transfer or reassignment of COMELEC personnel during the election period. Thus, Benipayo’s order reassigning petitioner from the EID to the Law Department does not violate Section 261 (h) of the Omnibus Election Code. For the same reason, Benipayo’s order designating Cinco Officer-in-Charge of the EID is legally unassailable.

Fifth Issue: Legality of Disbursements to Respondents

Based on the foregoing discussion, respondent Gideon C. De Guzman, Officer-in-Charge of the Finance Services Department of the Commission on Elections, did not act in excess of jurisdiction in paying the salaries and other emoluments of Benipayo, Borra, Tuason and Cinco.

WHEREFORE, the petition is dismissed for lack of merit. Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Kapunan, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.
Puno, and Vitug, JJ., on official leave.

[1] Respondent Cinco, 62 years old, died on November 20, 2001 of multiple gunshot wounds when she was ambushed at the corner of Eden and Pedro Gil Streets, Sta. Ana, Manila while riding a car driven by her son.

[2] Rollo, Annexes “X”, “Y” and “Z”, pp. 62-64, Petition dated August 1, 2001.

[3] Ibid., Annex “A”, p. 39.

[4] Ibid., Annex “B”, p. 40.

[5] Ibid., Annex “C”, p. 41.

[6] Ibid., Annex “D”, p. 42; Annex “E”, p. 43; Annex “F”, p. 44.

[7] Ibid., Annex “J”, p. 48; Annex “K”, p. 49; Annex “L”, p. 50.

[8] Ibid., Annex “M”, p. 51; Annex “N”, p. 52; Annex “O”, p. 53.

[9] Ibid., Annex “P”, p. 54; Annex “Q”, p. 55; Annex “R”, p. 56.

[10] Ibid., Annex “S”, p. 57; Annex “T”, p. 58; Annex “U”, p. 59.

[11] Ibid., Annex “V”, p. 60.

[12] Ibid., Annex “W”, p. 61.

[13] Ibid., Annex “19”, pp. 125-126.

[14] Ibid., Annex “20”, pp. 127-128.

[15] Ibid., Annex “23”, pp. 131-138.

[16] Ibid., Annex “25”, pp. 142-145.

[17] Section 265 of the Omnibus Election Code provides as follows: “The Commission shall, through its duly authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the government: Provided, however, that in the event that the Commission fails to act on any complaint within four months from his filing, the complainant may file his complaint with the office of the fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted.

[18] Ibid., Annex “26”, p. 146; Annex “27”, p. 147; Annex “28”, p. 148.

[19] Integrated Bar of the Philippines vs. Hon. Ronaldo B. Zamora, 338 SCRA 81 (2000); Philippine Constitutional Association vs. Enriquez, 235 SCRA 506 (1994); Luz Farms vs. Secretary of the Department of Agrarian Reform, 192 SCRA 51 (1990).

[20] Rollo, Annex “V”, p. 60, Petition dated August 1, 2001.

[21] Rollo, p. 99, Respondents’ Comment dated October 29, 2001.

[22] Joaquin G. Bernas, The 1987 Constitution of the Republic of the Philippines: A Commentary, p. 858 (1996), citing People vs. Vera, 65 Phil. 56 (1937).

[23] Ibid., citing Sotto vs. Commission on Elections, 76 Phil. 516 (1946).

[24] Ople vs. Torres, 293 SCRA 141 (1998); Telecommunications and Broadcast Attorneys of the Philippines, Inc. vs. Commission on Elections, 289 SCRA 337 (1998); Osmeña vs. Commission on Elections, 199 SCRA 750 (1991).

[25] 81 Phil. 754 (1948).

[26] 40 SCRA 58 (1971).

[27] 140 SCRA 22 (1985).

[28] 326 SCRA 62 (2000).

[29] Section 2 (3), Article IX-B of the Constitution.

[30] See concurring opinion of Justice Cesar Bengzon in *Erana vs. Vergel de Dios*, 85 Phil. 17 (1949).

[31] *Binamira vs. Garrucho*, 188 SCRA 154 (1990); *Santiago vs. Commission on Audit*, 199 SCRA 125 (1991); *Sevilla vs. Court of Appeals*, 209 SCRA 637 (1992).

[32] 192 SCRA 358 (1990).

[33] 85 Phil. 101 (1949).

[34] *Supra.*, note 30.

[35] *Supra.*, note 31.

[36] Section 1, Article IX-A of the Constitution.

[37] Record of the Constitutional Commission, pp. 521-524, Volume II (1986).

[38] 16 SCRA 379 (1966).

[39] 347 SCRA 655 (2000).

[40] See Section 1(2), Article IX-C of the Constitution.

[41] Rollo, p.189, G.R. No. 140335, Intervenor's Motion for Reconsideration dated December 27, 2000 in *Gaminde vs. Commission on Audit*, decided on December 13, 2000, 347 SCRA 655.

[42] *Ibid.*

[43] Rollo, p. 202 , G.R. No. 140335, Manifestation dated December 28, 2000 in *Gaminde vs. Commission on Audit*, decided on December 13, 2000, 347 SCRA 655.

[44] *Supra.*, note 37.

[45] Concurrent Resolution No. 23 of the Eleventh Congress, providing for the Legislative Calendar for the Third Regular Session, adopted by the House of Representatives on July 25, 2000 and by the Senate on August 7, 2000.

[46] Section 3, Article IX-C of the Constitution provides as follows: "The Commission on Elections may sit en banc or in two divisions, and shall promulgate its rules of procedure in order to expedite disposition of election cases, including pre-proclamation controversies. All such election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the Commission en banc.

[47] Annex "1-Memorandum", Memorandum of Respondents dated March 15, 2002.

[48] Annexes "2-Memorandum, 3-Memorandum, 4-Memorandum, and 5-Memorandum", Memorandum of Respondents dated March 15, 2002.

[49] Annexes "6-Memorandum, 7-Memorandum, 7-A-Memorandum, 7-B-Memorandum, 7-C-Memorandum,

7-D-Memorandum, 7-E-Memorandum, 7-F-Memorandum, 8-Memorandum, 8-A-Memorandum, 8-B-Memorandum, 8-C-Memorandum, and 9-Memorandum”, Memorandum of Respondents dated March 15, 2002.

[50] An exception arises if because of succession, a President serves for more than six years, in which case such a President may be able to appoint all the seven COMELEC members.

[51] Commissioners Rufino S.B. Javier, Luzviminda Tancangco, Mehol K. Sadain, and Ralph C. Lantion.

[52] See Sections 3, 4, 5 and 6, Article IX-A of the Constitution.

[53] *Supra.*, note 34.

[54] See Section 10 (4), Article VII of the 1935 Constitution.

[55] Record of the Constitutional Commission, p. 591, Volume I (1986).

[56] 8 SCRA 1 (1963).

[57] 85 Phil. 126 (1949).

[58] On behalf of the Committee on Constitutional Commissions and Agencies.

[59] Journal of the Constitutional Commission, p. 244, Volume I (1986).

[60] *Ibid.*, p. 546.

[61] *Ibid.*, p. 586.

[62] Record of the Constitutional Commission, pp. 586-587, Volume I (1986).

[63] Rollo, pp. 39-44, Petition dated August 1, 2001; pp. 107-109 and pp. 146-148, Respondents’ Comment dated October 29, 2001.

[64] Rollo, pp. 62-64, Petition dated August 1, 2001.

[65] Rollo, p. 102, Respondents’ Comment dated October 29, 2001.

[66] 347 SCRA 338 (2000).

[67] Under COMELEC Resolution No. 3322 dated March 15, 2001, the election period for the May 14, 2001 elections was fixed from January 2, 2001 to June 13, 2001. This amended COMELEC Resolution No. 3258 dated September 28, 2000.

[68] COMELEC Resolution No. 3300 was issued during the time petitioner was Acting Director of EID - the department tasked with educating and informing the public on the various directives and resolutions of the COMELEC en banc.

[69] See Section 7 (4), Chapter 2, Subtitle C, Book V of the Revised Administrative Code.

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