

PERFECTO R. FRANCHE, ET AL., PETITIONERS, VS. THE HONORABLE PEDRO C. HERNAEZ, ETC., ET AL., RESPONDENTS.*G.R. No. 16006. October 24, 1960*

Ponente: LABRADOR, J.

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This is a special action of mandamus instituted in this Court to compel the Secretary of Commerce and Industry to authorize the payment of the full salaries to which petitioners are entitled under their old positions in the National Economic Council within the amounts appropriated for each and every one of them in the new positions integrated for them into the Bureau of the Census and Statistics in the Appropriation Act of 1958, known as Republic Act No. 2080, or require payment of their salary differentials between what was prescribed for them in their integrated positions and those actually paid them by order of the Secretary of Commerce and Industry.

It appears from the petition that petitioners herein were, prior to June 30, 1958, employees of what is known as the Statistical Survey Project, a joint special undertaking of some Philippine Government agencies having primary responsibility for and specific interests in various fields of statistics in cooperation with a team of United States statistical technicians. The Government agencies involved were the National Economic Council as the coordinating agency; the Bureau of the Census and Statistics as the primary operating agency; and the Department of Agriculture and Natural Resources, the Department of Labor, the Bureau of Commerce of the Department of Commerce and Industry, and the Economic Research Department of the Central Bank as the main cooperating agencies. Personnel in said projects were originally paid for from counterpart funds and Philcusa special appropriations. During the latter part of 1955, the Director of the project developed a budget covering peso financing requirements during the third and fourth quarters of 1956. The budget was processed by the National Economic Council and paid for under its special (lump sum) appropriation. Budgetary support for the Statistical Survey Project would terminate on June 30, 1958, so its Director, on August 15, 1957, requested the National Economic Council to recommend to the Budget Commission the incorporation of the sub-projects of the Statistical Survey Project into the regular budgets of the operating Government entity concerned. The entity concerned in the case at bar is the Bureau of the Census and Statistics.

On August 29, 1957, the National Economic Council approved in its meeting, the above request for integration and, thereupon, forwarded an official request for said integration, thru the Budget Commissioner to the President of the Philippines (Annex "B" to Petition). The Budget Commissioner approved this integration and the positions of the petitioners were inserted or integrated into the appropriation for the Bureau of the Census and Statistics for the fiscal year 1958-1959. This appropriation was approved and is contained in the appropriation act for that year, Republic Act No. 2080.

On June 30, 1958, the Director of the Statistical Survey Project requested information from the Commissioner of Civil Service whether there was need of issuing any appointments in favor of the incumbents of the integrated positions, calling attention to the fact that said incumbents hold appointments duly approved by all the offices concerned. The Commissioner of Civil Service replied that there was no need of new appointments since the

appointments of these employees, whose positions had been integrated, had previously been approved. The Commissioner of Civil Service suggested that submission of the appointments in plantilla form would be sufficient. The Commissioner of the Budget also agreed to such a proceeding on the ground that the incumbents, the petitioners herein whose positions were integrated into the appropriation for the Bureau of the Census and Statistics effective July 1, 1958, "had been appointed in the National Economic Council and their appointments were duly approved." The Commissioner, therefore, suggested that the transfer of the employees concerned be effected only by agreement between the Chairman of the National Economic Council and the Secretary of Commerce and Industry.

The above proceedings for integration and transfer of employees from the National Economic Council to the Bureau of the Census and Statistics had been previously approved by the Cabinet. On August 8, 1958, the Secretary of Commerce and Industry issued and gave due course to new appointments in favor of the 84 petitioners herein as incumbents of positions integrated with the Bureau of the Census and Statistics, but at reduced rates or salaries. The Commissioner of Civil Service had previously ruled on August 5, 1958 that those employees who had been issued permanent appointments in accordance with the existing Civil Service Law and rules and whose appointments had been duly approved by the authorities concerned, may not be separated from the service nor reduced in pay or rank except as provided for by law (Annex "S"). Notwithstanding this ruling of the Commissioner of Civil Service, the Secretary of Commerce and Industry, in an indorsement dated August 12, 1958, held that the appropriation act for 1958 (Republic Act No. 2080), does not provide for automatic transfer to or integration with the Bureau of the Census and Statistics, of the personnel covered by the Government Statistical Survey Project and, therefore, new appointments should be issued by him, these appointments to be made in favor only of those found qualified under existing laws. He further argued that the salaries appropriated for the positions in the Statistical Survey Project were higher than the salaries of the Director and the Assistant Director of the Bureau of the Census and Statistics, and to allow higher salaries for those in the integrated statistical projects would result in disparity of salaries and a violation of the salary law. He therefore, ruled that there should be an adjustment in the salaries of the integrated positions in accordance with WAPCO salary ranges (Annex "W").

The Commissioner of the Budget for his part stated that the integration affected not only the personnel but also the positions, and further declared that the reduction in their pay could not be effected. The matter was thereupon submitted to the Cabinet which, at its meeting on December 3, 1958, decided "as a temporary measure, to detail these employees with the National Economic Council at the rates of salaries they were receiving before their integration with the Bureau of Census and Statistics, to undertake projects thereat, until Congress shall have made the necessary adjustment in the next budget on this matter" (Annex "X"). Pursuant to the said resolution the Chairman of the National Economic Council suggested to the Secretary of Commerce and Industry that the decision of the Cabinet be carried out and the salaries of the personnel concerned be paid at the rates duly approved at the time of the integration (Annex "Y"). Notwithstanding all these, the Secretary of Commerce and Industry adhered to his decision. On June 10, 1959, the same subject of the salaries of the integrated positions under Republic Act No. 2080 having been submitted to the President, the latter directed that the salaries of officials and employees be paid them on the basis of their approved appointments under the National Economic Council without the need of issuing new appointments. (Annexes "BB", "CC" and "DD".) Notwithstanding this ruling the Secretary of Commerce and Industry persisted in his opinion and refused to make payments as authorized in the budget and approved by the Cabinet and by the President.

The above facts indicate that petitioners herein were employees of the National Economic Council prior to July 1, 1958, holding positions by virtue of regular appointments. This fact is attested to not only by the indorsements of the Commissioner of the Civil Service but also by that of the Commissioner of the Budget. The plantilla annexed to the petition indicating the positions that were integrated into the appropriation act for 1958-1959

shows that the petitioners have civil service qualifications (see Annex "H-2"), with the exception of Florence B. Ritualo, who was not reappointed because she is not eligible; Wilhelmina O. Caldito, not a qualified civil service eligible; Inocencio Sedukis, also not a qualified civil service eligible and whose services were refused; Domingo Velasquez, not reappointed because not a civil service eligible; and Vicente Mariano, who rendered service from July 1 to 15 but was suspended by the Civil Service and was never reinstated.

The National Economic Council is an office in the Executive Branch of the Government of the Philippines (Commonwealth Act No. 2). Employees thereof are embraced within the Philippine Civil Service. So are those paid from counterpart funds as these were appointed with the concurrence of the Commissioner of the Civil Service and the Commissioner of the Budget. The opinion of the Secretary of Commerce and Industry that the incorporation of the positions of the petitioners in the budget for the fiscal year 1958-1959 is not an automatic integration and that, consequently, new appointments must be made for them, is without merit. The petitioners were already employees in the Civil Service at the time of the approval of the appropriation act for 1958-1959. The various steps culminating in the approval of the integration in the appropriation act were made with a view to actual integration, without any further need of new appointments by the Secretary of Commerce and Industry. The integration or transfer of the positions from the National Economic Council to the Bureau of the Census and Statistics did not have the effect of depriving petitioners of their status as employees in the Philippine Civil Service, or make their salaries subject to reduction at the will and by action of the Secretary of Commerce and Industry. Since the appropriation act carried the same salaries that they used to receive in the National Economic Council, the legislative intent is clear that it intended to grant them the same salaries. The Cabinet and the President had authorized the payment of the salaries in the meanwhile. Their action can not be countermanded by the Secretary of Commerce and Industry who is a mere subordinate of the President.

Hence, the position of the Secretary of Commerce and Industry cannot be sustained. It follows as a consequence that as the petitioners herein, with the exception of the five who were not reappointed because of lack of civil service qualifications and other valid reasons, hold civil service positions with salaries therefor appropriated in the appropriation act for 1958-1959, which salaries were the same as what they used to receive while the Statistical Survey Project to which they belonged was still under the National Economic Council, they are entitled to the salaries provided in the said appropriation act, and the refusal by the Secretary of Commerce and Industry to authorize payment of said salaries is a violation of their rights and privileges as civil service employees.

Wherefore, it is hereby declared that the petitioners, with the exception of the five above-mentioned, are entitled to receive the salaries for the positions they hold as provided in the appropriation act for 1958-1959, and so the writ of mandamus prayed for is granted and the respondents are hereby ordered to pay petitioners their salary differentials as indicated in the plantilla of personnel attached to the petition as Annex "H-2". The petitions of Florence B. Ritualo, Wilhelmina O. Caldito, Inocencio Sedukis, Domingo Velasquez and Vicente Mariano are hereby dismissed. Without costs.

Paras, C. J., Bengzon, Padilla, Bautista Angelo, Reyes, J.B.L., Barrera, Gutierrez David and Paredes, JJ., concur.

Writ granted in part and denied in part.

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