

SAMUEL B. ONG, PETITIONER, VS. OFFICE OF THE PRESIDENT, ET AL., RESPONDENTS.

G.R. No. 184219. January 30, 2012

Ponente: REYES, J.

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REYES, J.:

The Case

Before us is a petition for review[1] on certiorari under Rule 45 of the Rules of Court filed by Samuel B. Ong (Ong) to assail the Decision[2] rendered by the Court of Appeals (CA) on August 5, 2008 in CA-G.R. SP No. 88673, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, the petition for quo warranto filed in this case is hereby DENIED.

SO ORDERED.[3]

Ong died on May 22, 2009 during the pendency of the instant petition.[4] Admittedly, Ong's death rendered the prayer for reinstatement in the petition for quo warranto as moot and academic. However, substitution[5] was sought because in the event that the Court would rule that Ong was indeed entitled to the position he claimed, backwages pertaining to him can still be paid to his legal heirs. Per Resolution[6] issued on January 10, 2011, we granted the motion for substitution. The deceased petitioner is now herein substituted by his wife Elizabeth, and children, Samuel Jr., Elizabeth and Carolyn, all surnamed Ong.

Antecedents Facts

The CA aptly summarized the facts of the case before the filing of the petition for quo warranto as follows:

The petitioner [Ong] joined the National Bureau of Investigation (NBI) as a career employee in 1978. He held the position of NBI Director I from July 14, 1998 to February 23, 1999 and NBI Director II from February 24, 1998 to September 5, 2001. On September 6, 2001, petitioner was appointed Director III by the President. His appointment paper pertinently reads:

"x x x

Pursuant to the provisions of existing laws, the following are hereby appointed to the NATIONAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE co-terminus with the appointing authority:

x x x

SAMUEL B. ONG - DIRECTOR III
(vice Carlos S. Caabay) [DEPUTY DIRECTOR]

x x x"

On June 3, 2004, the petitioner received from respondent Reynaldo Wycoco Memorandum Circular No.

02-S.2004 informing him that his appointment, being co-terminus with the appointing authority's tenure, would end effectively at midnight on June 30, 2004 and, unless a new appointment would be issued in his favor by the President consistent with her new tenure effective July 1, 2004, he would be occupying his position in a de facto/hold[-]over status until his replacement would be appointed.

On December 01, 2004, the President appointed respondent Victor A. Bessat as NBI Director III as replacement of the petitioner. Consequently, respondent Wycoco notified the petitioner that, effective on December 17, 2004, the latter should cease and desist from performing his functions as NBI Director III in view of the presidential appointment of respondent Bessat as petitioner's replacement. The petitioner received the aforementioned notice only on January 27, 2005.[7] (underscoring supplied and citations omitted)

On February 22, 2005, Ong filed before the CA a petition for quo warranto. He sought for the declaration as null and void of (a) his removal from the position of NBI Director III; and (b) his replacement by respondent Victor Bessat (Bessat). Ong likewise prayed for reinstatement and backwages.

The CA denied Ong's petition on grounds:

A petition for quo warranto is a proceeding to determine the right of a person to the use or exercise of a franchise or office and to oust the holder from its enjoyment, if his claim is not well-founded, or if he has forfeited his right to enjoy the privilege.[8] Where the action is filed by a private person, in his own name, he must prove that he is entitled to the controverted position, otherwise, respondent has a right to the undisturbed possession of the office.[9]

Section 27 of the Administrative Code of 1987, as amended, classifies the appointment status of public officers and employees in the career service into permanent and temporary. A permanent appointment shall be issued to a person who meets all the requirements for the position to which he is being appointed, including appropriate eligibility prescribed, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof. In the absence of appropriate eligibles and it becomes necessary in the public interest to fill a vacancy, a temporary appointment shall be issued to a person who meets all the requirements for the position to which he is being appointed except the appropriate civil service eligibility; provided, that such temporary appointment shall not exceed twelve months, but the appointee may be replaced sooner if a qualified civil service eligible becomes available.

x x x In *Cuadra v. Cordova*,[10] temporary appointment is defined as "one made in an acting capacity, the essence of which lies in its temporary character and its terminability at pleasure by the appointing power." Thus, the temporary appointee accepts the position with the condition that he shall surrender the office when called upon to do so by the appointing authority. The termination of a temporary appointment may be with or without a cause since the appointee serves merely at the pleasure of the appointing authority.

In the career executive service, the acquisition of security of tenure presupposes a permanent appointment. As held in *General v. Roco*,[11] two requisites must concur in order that an employee in the career executive service may attain security of tenure, to wit: 1) CES eligibility[;] and 2) appointment to the appropriate CES rank.

In the present case, it is undisputed that the petitioner is a non-CESO eligible. At best, therefore, his appointment could be regarded only as temporary and, hence, he has no security of tenure. Such being the case, his appointment can be withdrawn at will by the President, who is the appointing authority in this case, and "at a moment's notice." [12]

Moreover, a perusal of the petitioner's appointment will reveal that his appointment as NBI Director III is co-terminus with the appointing authority. Correlatively, his appointment falls under Section 14 of the Omnibus Rules Implementing Book V of the Revised Administrative Code of 1987 which provides that:[13]

"Sec. 14. An appointment may also be co-terminous which shall be issued to a person whose entrance and continuity in the service is based on the trust and confidence of the appointing authority or that which is subject to his pleasure, or co-existent with his tenure, or limited by the duration of project or subject to the availability of funds. "

The co-terminous status may thus be classified as follows:

x x x x

(2) Co-terminous with the appointing authority - when appointment is co-existent with the tenure of the appointing authority or at his pleasure; x x x

x x x x

Thus, although petitioner's appointment is co-terminous with the tenure of the President, he nevertheless serves at the pleasure of the President and his appointment may be recalled anytime. The case of *Mita Pardo de Tavera v. Philippine Tuberculosis Society, Inc.*[14] delineated the nature of an appointment held "at the pleasure of the appointing power" in this wise:

An appointment held at the pleasure of the appointing power is in essence temporary in nature. It is co-extensive with the desire of the Board of Directors. Hence, when the Board opts to replace the incumbent, technically there is no removal but only an expiration of term and in an expiration of term, there is no need of prior notice, due hearing or sufficient grounds before the incumbent can be separated from office. The protection afforded by Section 7.04 of the Code of By-Laws on Removal [o]f Officers and Employees, therefore, cannot be claimed by petitioner.

All told, petitioner's appointment as well as its consequent termination falls within the ambit of the discretion bestowed on the appointing authority, the President. Simply put, his appointment can be terminated at any time for any cause and without the need of prior notice or hearing since he can be removed from his office anytime. His termination cannot be said to be violative of Section 2(3), Article IX-B of the 1987 Constitution. When a temporary appointee is required to relinquish his office, he is being separated from office because his term has expired.[15] Starkly put, upon the appointment of respondent Bessat as his replacement, his term of office had already expired.

Likewise, it is inconsequential that the petitioner was replaced by another non-CESO eligible, respondent Besat. In a quo warranto proceeding[,] the person suing must show that he has a clear right to the office allegedly held unlawfully by another. Absent that right, the lack of qualification or eligibility of the supposed usurper is immaterial.[16]

Indeed, appointment is an essentially discretionary power and must be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should possess the qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. This is a political question involving considerations of wisdom which only the appointing authority can decide.[17]

In sum, quo warranto is unavailing in the instant case, as the public office in question has not been usurped, intruded into or unlawfully held by respondent Bessat. The petitioner had no legal right over the disputed office and his cessation from office involves no removal but an expiration of his term of office.[18]

Hence, the instant petition ascribing to the CA the following errors:

I.

THE CA ERRED WHEN IT SUSTAINED THE VALIDITY OF THE PETITIONER'S REMOVAL BY RESPONDENT WYCOCO AS NBI DIRECTOR III (DEPUTY DIRECTOR).[19]

II.

THE CA ERRED IN HOLDING THAT SINCE THE PETITIONER HELD A CO-TERMINOUS APPOINTMENT, HE IS TERMINABLE AT THE PLEASURE OF THE APPOINTING POWER.[20]

Citing *Ambas v. Buenaseda*[21] and *Decano v. Edu*,[22] the instant petition emphasizes that the power of removal is lodged in the appointing authority. Wycoco, and not the President, issued Memorandum Circular (MC) No. 02-S.2004 informing Ong that his co-terminous appointment as Director III ended effectively on June 30, 2004. The issuance of MC No. 02-S.2004 was allegedly motivated by malice and revenge since Ong led the NBI employees in holding rallies in July 2003 to publicly denounce Wycoco. Hence, Bessat's assumption of the position was null and void since it was technically still occupied by Ong at the time of the former's appointment.

It is further alleged that it was erroneous for the CA to equate "an appointment co-terminous with the tenure of the appointing authority with one that is at the pleasure of such appointing authority." [23] Citing *Alba, etc. v. Evangelista, etcl.*, [24] Ong's counsel distinguished a "term" as "the time during which the officer may claim to hold office as of right" from a "tenure" which "represents the term during which the incumbent actually holds the office". Ong's appointment, from which he cannot be removed without just cause, was co-terminous with the President's tenure which ended not on June 30, 2004, but only on June 30, 2010.

Section 2(b), Article IX-G of the 1987 Constitution and *Jocom v. Regalado*[25] are likewise cited to stress that government employees, holding both career and non-career service positions, are entitled to protection from arbitrary removal or suspension. In the case of Ong, who started his employment in 1978 and rose from the ranks, it is allegedly improper for the CA to impliedly infer that the President acted in bad faith by converting his supposed promotional appointment to one removable at the pleasure of the appointing authority.

In its Comment[26] to the petition, the Office of the Solicitor General (OSG) maintains that the replacement of Ong by Bessat was fair, just and in accord with the doctrine enunciated in *Aklan College v. Guarino*, [27] and with Sections 13[28] and 14, [29] Rule V, Civil Service Commission (CSC) Resolution No. 91-1631 issued on December 27, 1991. Section 13 substantially provides that only a temporary appointment can be issued to a person who does not have the appropriate civil service eligibility. Section 14(2), on the other hand, defines a co-terminous appointment as one co-existent with the tenure of the appointing authority or at his pleasure. The last paragraph of Section 14 states that appointments which are co-terminous with the appointing authority shall not be considered as permanent.

The OSG also points out that in issuing MC No. 02-S.2004, Wycoco did not remove Ong as Director III but merely reminded the latter that after June 30, 2004, his appointment shall lapse into a de facto/hold-over status unless he was re-appointed. Ong's colleagues applied for re-appointment. Bessat was in fact re-appointed as Director II on August 13, 2004. Subsequently, on December 1, 2004, the President appointed Bessat as Director III, effectively replacing Ong.

Further, the OSG claims that when Ong accepted promotional appointments in the Career Executive Service (CES) for which he did not have the required eligibility, he became a temporary employee and had impliedly abandoned his right to security of tenure.

Our Ruling

The petition is bereft of merit.

MC No. 02-S.2004 did not remove Ong from the position of Director III. Assuming *arguendo* that it did, the defect was cured when the President, who was the appointing authority herself, in whose hands were lodged the power to remove, appointed Bessat, effectively revoking Ong's appointment.

MC No. 02-S.2004,[30] addressed to Ong, Bessat, Deputy Director Nestor Mantaring, and Regional Director Edward Villarta, in part reads:

Records indicate your appointment status as "co-terminus" with the appointing power's tenure which ends effectively at midnight of this day, 30 June 2004.

Unless, therefore, a new appointment is extended to you by Her Excellency GLORIA MACAPAGAL-ARROYO, consistent with her new tenure effective 01 July 2004, your services shall lapse into a *de facto*/hold[-]over status, to ensure continuity of service, until your replacements are appointed in your stead.[31]

On December 1, 2004, the President appointed Bessat as Ong's replacement.[32] Bessat was notified on December 17, 2004. Wycoco furnished Ong with a Notice,[33] dated December 20, 2004, informing the latter that he should cease from performing the functions of Director III, effective December 17, 2004.

It is argued that in the hands of the appointing authority are lodged the power to remove. Hence, Wycoco allegedly acted beyond the scope of his authority when he issued MC No. 02-S.2004.

This Court notes that MC No. 02-S.2004 did not in effect remove Ong from his post. It merely informed Ong that records of the NBI showed that his co-terminous appointment had lapsed into a *de facto*/hold-over status. It likewise apprised him of the consequences of the said status.

Be that as it may, if we were to assume for argument's sake that Wycoco removed Ong from his position as Director III by virtue of the former's issuance of MC No. 02-S.2004, still, the defect was cured when the President herself issued Bessat's appointment on December 1, 2004. The appointing authority, who in this case was the President, had effectively revoked Ong's appointment.

Ong lacked the CES eligibility required for the position of Director III and his appointment was "co-terminus with the appointing authority." His appointment being both temporary and co-terminous in nature, it can be revoked by the President even without cause and at a short notice.

This Court likewise finds no error in the CA's ruling that since Ong held a co-terminous appointment, he was removable at the pleasure of the appointing authority.

It is established that no officer or employee in the Civil Service shall be removed or suspended except for cause provided by law.[34] However, this admits of exceptions for it is likewise settled that the right to security of tenure is not available to those employees whose appointments are contractual and co-terminous in nature.[35]

In the case at bar, Ong's appointment as Director III falls under the classifications provided in (a) Section 14(2) of the Omnibus Rules Implementing Book V of the Administrative Code, to wit, that which is "co-existent with the tenure of the appointing authority or at his pleasure"; and (b) Sections 13(b)[36] and 14(2)[37] of Rule V, CSC Resolution No. 91-1631, or that which is both a temporary and a co-terminous appointment. The appointment is temporary as Ong did not have the required CES eligibility.

The case of *Amores v. Civil Service Commission, et al.*[38] is instructive anent the nature of temporary appointments in the CES to which the position of Director III held by Ong belonged. The Court declared:

An appointment is permanent where the appointee meets all the requirements for the position to which he is

being appointed, including the appropriate eligibility prescribed, and it is temporary where the appointee meets all the requirements for the position except only the appropriate civil service eligibility.

x x x x

x x x Verily, it is clear that the possession of the required CES eligibility is that which will make an appointment in the career executive service a permanent one. x x x

Indeed, the law permits, on many occasions, the appointment of non-CES eligibles to CES positions in the government in the absence of appropriate eligibles and when there is necessity in the interest of public service to fill vacancies in the government. But in all such cases, the appointment is at best merely temporary as it is said to be conditioned on the subsequent obtention of the required CES eligibility. x x x

x x x

Security of tenure in the career executive service, which presupposes a permanent appointment, takes place upon passing the CES examinations administered by the CES Board. x x x

At this juncture, what comes unmistakably clear is the fact that because petitioner lacked the proper CES eligibility and therefore had not held the subject office in a permanent capacity, there could not have been any violation of petitioner's supposed right to security of tenure inasmuch as he had never been in possession of the said right at least during his tenure as Deputy Director for Hospital Support Services. Hence, no challenge may be offered against his separation from office even if it be for no cause and at a moment's notice. Not even his own self-serving claim that he was competent to continue serving as Deputy Director may actually and legally give even the slightest semblance of authority to his thesis that he should remain in office. Be that as it may, it bears emphasis that, in any case, the mere fact that an employee is a CES eligible does not automatically operate to vest security of tenure on the appointee inasmuch as the security of tenure of employees in the career executive service, except first and second-level employees, pertains only to rank and not to the office or position to which they may be appointed.[39] (underscoring supplied and citations omitted)

The Court is categorical in the Amores case that an appointee without the requisite CES eligibility cannot hold the position in a permanent capacity. Temporary appointments are made if only to prevent hiatus in the government's rendition of public service. However, a temporary appointee can be removed even without cause and at a moment's notice. As to those with eligibilities, their rights to security of tenure pertain to ranks but not to the positions to which they were appointed.

Ong never alleged that at any time during which he held the Director III position, he had acquired the requisite eligibility. Thus, the right to security of tenure did not pertain to him at least relative to the Director III position.

The next logical query to be resolved then is whether or not Ong, as an appointee holding a position "co-terminus with the appointing authority," was entitled to remain as Director III until the end of the President's tenure on June 30, 2010.

We likewise rule in the negative.

Both Section 14 of the Omnibus Rules Implementing Book V of the Administrative Code and Section 14 (2) of Rule V, CSC Resolution No. 91-1631 define a co-terminous appointment as one co-existent with the tenure of the appointing authority or at his pleasure.

In *Mita Pardo de Tavera v. Philippine Tuberculosis Society, Inc.*[40] cited by the CA in its decision, we sustained the replacement of an incumbent, who held an appointment at the pleasure of the appointing authority. Such appointment was in essence temporary in nature. We categorized the incumbent's replacement not as removal but rather as an expiration of term and no prior notice, due hearing or cause were necessary to effect the same. In

Decano v. Edu,[41] we ruled that the acceptance of a temporary appointment divests an appointee of the right to security of tenure against removal without cause. Further, in Carillo vs. CA,[42] we stated that "one who holds a temporary appointment has no fixed tenure of office; his employment can be terminated at the pleasure of the appointing authority, there being no need to show that the termination is for cause."

In Ong's case, his appointment was temporary and co-terminous. The doctrines enunciated in the cases of Mita Pardo de Tavera, Decano, and Carillo apply. Hence, no legal challenge can be properly posed against the President's appointment of Bessat as Ong's replacement. The CA correctly ruled that in quo warranto proceedings, the petitioner must show that he has a clear right to the office allegedly held unlawfully by another and in the absence of the said right, the lack of qualification or eligibility of the supposed usurper is immaterial. Stated differently, where a non-eligible holds a temporary appointment, his replacement by another non-eligible is not prohibited.[43]

We note that Ong's counsel had painstakingly drawn distinctions between a term and a tenure. It is argued that since Ong's appointment was co-terminous with the appointing authority, it should not have lapsed into a de facto status but continued until the end of the President's tenure on June 30, 2010.

Under the Omnibus Rules Implementing the Revised Administrative Code and CSC Resolution No. 91-1631, a co-terminous appointment is defined as one "co-existing with the tenure of the appointing authority or at his pleasure." Neither law nor jurisprudence draws distinctions between appointments "co-existing with the term of the appointing authority" on one hand, and one "co-existing with the appointing authority's tenure" on the other. In the contrary, under the aforecited rules, tenure and term are used rather loosely and interchangeably.

In Ong's case, the issues needed to be disposed of revolve around the concepts of temporary and co-terminous appointments. The distinctions between term and tenure find no materiality in the instant petition. Besides, whether or not the President's term ended on June 30, 2004 or her tenure ceased on June 30, 2010, the fact remains that she appointed Bessat as Director III, in effect revoking Ong's temporary and co-terminous appointment.

This Court recognizes Ong's lengthy service rendered to the government and deeply commiserates with his earlier plight. However, we cannot grant Ong the reliefs he sought as law and jurisprudence clearly dictate that being a temporary and co-terminous appointee, he had no vested rights over the position of Director III.

IN VIEW OF THE FOREGOING, the petition is DENIED. The Decision rendered by the Court of Appeals on August 5, 2008 in CA-G.R. SP No. 88673 is AFFIRMED.

SO ORDERED.

Carpio, (Chairperson), Perez, Sereno, and Perlas-Bernabe, JJ.[*]concur.

[*] Additional Member in lieu of Associate Justice Arturo D. Brion per Special Order No. 1174 dated January 9, 2012

[1] Rollo, pp. 8-22.

[2] Penned by Associate Justice Isaias Dicdican, with Associate Justice Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison, concurring; id. at 24-32.

[3] Id. at 31.

[4] Id. at 107-108.

- [5] Id. at 99-102.
- [6] Id. at 114.
- [7] Id. at 25-26
- [8] *Mendoza v. Allas*, 362 Phil 238, 244 (1999).
- [9] Id.
- [10] 103 Phil 391 (1958).
- [11] 403 Phil 455, 462 (2001).
- [12] *Caringal v. PCSO*, 509 Phil 557 (2005).
- [13] Cited in *Paloma v. Mora*, 507 Phil 697, 708 (2005).
- [14] 197 Phil 919, 931 (1982).
- [15] *Achacoso v. Macaraig*, G.R. No. 93023, March 13, 1991, 195 SCRA 235, 240.
- [16] *Carillo v. Court of Appeals*, No. L-24554, May 31, 1967, 77 SCRA 170, 177. (citations omitted)
- [17] *Rimonte v. Civil Service Commission*, 314 Phil 421, 430 (1995).
- [18] *Supra* note 2 at 27-31
- [19] *Rollo*, p. 11.
- [20] Id. at 13.
- [21] G.R. No. 95244, September 4, 1991, 201 SCRA 308.
- [22] 187 Phil 754 (1980)
- [23] *Rollo*, p. 14.
- [24] 100 Phil 683 (1957).
- [25] G.R. No. 77373, August 22, 1991, 201 SCRA 73.
- [26] *Rollo*, pp. 53-68
- [27] G.R. No. 152949, August 14, 2007, 530 SCRA 40.
- [28] Section 13. Appointment in the career service shall be permanent or temporary.

(a) Permanent Status. A permanent appointment shall be issued to a person who meets all the requirements for the position to which he is being appointed/promoted, including the appropriate eligibility prescribed, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof.

x x x

(b) Temporary Status. In the absence of appropriate eligibles in the area willing and able to assume the position, as certified by the CSRO Regional Director concerned, and it becomes necessary in the public interest to fill a vacancy, a temporary appointment shall be issued to a person who meets all the requirements for the position to which he is being appointed except the appropriate civil service eligibility: provided, That such temporary appointment shall not exceed twelve months, but the appointee may be replaced sooner if a qualified civil service

eligible becomes available.

x x x

[29] Section 14. An appointment may also be co-terminous which shall be issued to a person whose entrance and continuity in the service is based on the trust and confidence of the appointing authority or that which is subject to his pleasure, or co-existent with his tenure, or limited by the duration of project or subject to the availability of funds.

The co-terminous status may be further classified into the following:

x x x

(2) Co-terminous with the appointing authority - when appointment is co-existent with the tenure of the appointing authority or at his pleasure;

x x x

For purposes of coverage or membership with the GSIS, or their right to security of tenure, co-terminous appointees, except those who are co-terminous with the appointing authority, shall be considered permanent. (underscoring supplied)

[30] Rollo, p. 36.

[31] Id.

[32] Id. at 37.

[33] Id. at 38.

[34] Supra note 14.

[35] Civil Service Commission v. Magnaye, Jr., G.R. No. 183337, April 23, 2010, 619 SCRA 347, 357.

[36] Supra note 28.

[37] Supra note 29.

[38] G.R. No. 170093, April 29, 2009, 587 SCRA 160.

[39] Id. at 167-170.

[40] Supra note 14.

[41] Supra note 22.

[42] Supra note 16.

[43] Civil Service Commission v. Engineer Ali Darangina, G.R. No. 167472, January 31, 2007, 513 SCRA 654.

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