

## **JOSE C. LAUREL V, IN HIS OFFICIAL CAPACITY AS PROVINCIAL GOVERNOR OF BATANGAS, PETITIONER, VS. CIVIL SERVICE COMMISSION AND LORENZO SANGALANG, RESPONDENTS.**

*G.R. No. 71562. October 28, 1991*

Ponente: DAVIDE, JR., J.

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### **DAVIDE, JR., J.:**

Is the position of Provincial Administrator primarily confidential?

Does the rule on nepotism apply to designation?

May a private citizen who does not claim any better right to a position file a verified complaint with the Civil Service Commission to denounce a violation by an appointing authority of the Civil Service Law and rules?

These are the issues raised in this petition.

The antecedent facts are not disputed.

Petitioner, the duly elected Governor of the Province of Batangas, upon assuming office on 3 March 1980, appointed his brother, Benjamin Laurel, as Senior Executive Assistant in the Office of the Governor, a non-career service position which belongs to the personal and confidential staff of an elective official.[1]

On 31 December 1980, the position of Provincial Administrator of Batangas became vacant due to the resignation of Mr. Felimon C. Salcedo III. Allegedly for lack of qualified applicants and so as not to prejudice the operation of the Provincial Government, petitioner designated his brother, Benjamin Laurel, as Acting Provincial Administrator effective 2 January 1981 and to continue until the appointment of a regular Provincial Administrator, unless the designation is earlier revoked.[2]

On 28 April 1981, he issued Benjamin Laurel a promotional appointment as Civil Security Officer, a position which the Civil Service Commission classifies as "primarily confidential" pursuant to P.D. No. 868.[3]

On 10 January 1983, private respondent Sangalang wrote a letter to the Civil Service Commission[4] to bring to its attention the "appointment" of Benjamin Laurel as Provincial Administrator of Batangas by the Governor, his brother. He alleges therein that: (1) the position in question is a career position, (2) the appointment violates civil service rules, and (3) since the Governor authorized said appointee to receive representation allowance, he violated the Anti-Graft and Corrupt Practices Act. He then asks that the matter be investigated.

In his letter to the Chairman of the Civil Service Commission dated 18 January 1983,[5] Jose A. Oliveros, Acting Provincial Attorney of Batangas, for and in behalf of herein petitioner, asserts that the latter did not violate the provision prohibiting nepotism under Section 49 of P.D. No. 807 because, with respect to the positions of Senior Executive Assistant and Civil Security Officer, both are primarily confidential in nature; and, with respect to the position of Provincial Administrator:

"x x x what is prohibited under Section 49 of P.D. 807 is the appointment of a relative to a career Civil Service position, like that of a provincial administrator. Governor Laurel did not appoint his brother, Benjamin, as Provincial Administrator. He merely designated him 'Acting Provincial Administrator.' And 'appointment' and 'designation' are two entirely different things. Appointment implies original establishment of official relation. Designation is the imposition of new or additional duties upon an officer to be performed by him in a special manner. It presupposes a previous appointment of the officer in whom the new or additional duties are imposed.

Appointment is generally permanent, hence the officer appointed cannot be removed except for cause; designation is merely temporary and the new or additional powers may be withdrawn with or without cause.

Benjamin C. Laurel had already been appointed Senior Executive Assistant in the Office of the Governor when Governor Laurel designated him Acting Provincial Administrator."

It is further alleged that there was no violation of the Anti-Graft and Corrupt Practices Act because:

"As Acting Provincial Administrator, Benjamin is entitled under Office of the President Memorandum-Circular No. 437, series of 1971, to a monthly representation allowance of P350.00. And said allowance is 'strictly on reimbursement basis.'"[6]

On 12 July 1983, the Civil Service Commission handed down the aforesaid Resolution No. 83-358[7] which, inter alia, revokes the designation of Benjamin as Acting Provincial Administrator on the ground that it is "nepotic", or in violation of Section 49, P.D. No. 807 on nepotism. The relevant portion of said section reads as follows:

"SECTION 49. Nepotism. - (a) All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government-owned or controlled corporations, made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are hereby prohibited.

As used in this Section, the word 'relative' and members of the family referred to are those related within the third degree either of consanguinity or affinity.

(b) The following are exempted from the operation of the rules on nepotism: (1) persons employed in a confidential capacity, (2) teachers, (3) physicians, and (4) members of the Armed Forces of the Philippines: Provided, however, That in each particular instance full report of such appointment shall be made to the Commission."

x x x

Although what was extended to Benjamin was merely a designation and not an appointment, the Civil Service Commission ruled that "the prohibitive mantle on nepotism would include designation, because what cannot be done directly cannot be done indirectly." It further held that Section 24(f) of Republic Act No. 2260 provides that no person appointed to a position in the non-competitive service (now non-career) shall perform the duties properly belonging to any position in the competitive service (now career service). The petitioner, therefore, could not legally and validly designate Benjamin, who successively occupied the non-career positions of Senior Executive Assistant and Civil Security Officer, to the position of Provincial Administrator, a career position under Section 4 of R.A. No. 5185.

Petitioner's motion to reconsider said Resolution,[8] based on the claim that the questioned position is primarily confidential in nature, having been denied in Resolution No. 85-271 of 3 July 1985[9] wherein the respondent Civil Service Commission maintains that said position is not primarily-confidential in nature since it neither belongs to the personal staff of the Governor nor are the duties thereof confidential in nature considering that its principal functions involve general planning, directive and control of administrative and personnel service in the

Provincial Office, petitioner filed the instant petition invoking the following grounds:

"A. Respondent Commission has committed a (sic) grave abuse of discretion amounting to lack or excess of jurisdiction when it held that the position of provincial administrator is not a primarily-confidential position because said ruling is diametrically opposed to, and in utter disregard of rulings of this Honorable Court as to what is a primarily-confidential position under Article XII-B, Sec. 2 of the Constitution.

B. Respondent Commission gravely abused its discretion and acted without jurisdiction when it arrogated unto itself the power to review a designation made by petitioner by virtue of the powers in him vested under Section 2077 of the Revised Administrative Code.

C. Respondent Commission exceeded its jurisdiction when it gave due course to the complaint of private respondent and thereafter promulgated the resolutions under question in this petition.

D. There is no appeal, nor any other plain, speedy and adequate remedy in the ordinary course of law available to petitioner to have the questioned resolutions of respondent Commission reviewed and thereafter nullified, revoked and set aside, other than this recourse to a petition for certiorari under Rule 65 of the Rules of Court.

In the Comment filed for the respondent Commission on 7 October 1985, the Solicitor General sustains the challenged resolutions and contends that the position of Provincial Administrator is intended to be part of the career system and since it requires a specific civil service eligibility, it belongs to the career service under Section 5(1) of P.D. No. 807 and has not been declared primarily confidential by the President pursuant to Section 1 of P.D. No. 868; that the Commission has the authority to review, disapprove, and set aside even mere designations, as distinguished from appointments, for Section 2 of P.D. No. 807 vests in it the power to enforce the laws and rules governing the selection, utilization, training and discipline of civil servants; and that it can act on Sangalang's complaint pursuant to Section 37 of P.D. No. 807, for what he filed was not an action for quo warranto, but an administrative complaint to correct a violation of the Civil Service law and rules which involved public service and the public interest. Per *Benitez vs. Paredes*,<sup>[10]</sup> reiterated in *Tañada vs. Tuvera*,<sup>[11]</sup> where the question is one of public right, the people are regarded as the real parties in interest, and the relator at whose instigation the proceedings are instituted need only show that he is a citizen and as such interested in the execution of the laws.

On 11 December 1985, petitioner filed his Reply to the Comment insisting therein that the duties, functions and responsibilities of the Provincial Administrator render said position primarily confidential in nature; the requirement of a specific service eligibility and absence of a presidential declaration that the position is primarily confidential do not place the said position in the career service; the position of Provincial Administrator is in the non-career service; and that the *Benitez vs. Paredes* and *Tañada vs. Tuvera* cases are not applicable in this case. Petitioner insists that the controlling doctrines are those enunciated in *Salazar vs. Mathay*,<sup>[12]</sup> where this Court held that there are two instances when a position may be considered primarily confidential, to wit: (a) when the President, upon recommendation of the Commissioner of Civil Service (now Civil Service Commission) has declared a position to be primarily confidential; and (2) in the absence of such declaration, when by the very nature of the functions of the office, there exists close intimacy between the appointee and the appointing power which insures freedom of intercourse without embarrassment or freedom from misgiving or betrayals of personal trust or confidential matters of state and *Piñero vs. Hechanova*,<sup>[13]</sup> where this Court ruled that at least, since the enactment of the 1959 Civil Service Act (R.A. No. 2260), it is the nature of the position that finally determines whether a position is primarily confidential, policy determining, or highly technical and that executive pronouncements can be no more than initial determinations that are not conclusive in case of conflict, which must be so, or else "it would then lie within the discretion of the Chief Executive to deny to any officer, by executive fiat, the protection of section 4, Article XII of the Constitution."

In his Rejoinder filed on 16 December 1986, the Solicitor General states that the rulings in the Salazar and Piñero cases have been modified and superseded by Section 6 of P.D. No. 807, and by the third paragraph of Section 1 of P.D. No. 868, which provides:

"Any provision of law authorizing any official, other than the President, to declare positions policy-determining, primarily confidential or highly technical which are exempt from the Civil Service Law and rules is hereby repealed, and only the President may declare a position policy-determining, highly technical or primarily confidential, upon recommendation of the Civil Service Commission, the Budget Commission and the Presidential Reorganization Commission."

The Solicitor General further asseverates that the Commission's giving due course to the complaint of Sangalang is manifestly valid and legal for it is also in accordance with the declared policies of the State provided for in Section 2 of P.D. No. 807.

In the Resolution of 9 February 1987, this Court gave due course to the petition and required the parties to submit simultaneous memoranda.

We shall take up the issues in the order they are presented above.

1. The first issue becomes important because if the questioned position is primarily confidential, Section 49 of P.D. No. 807 on nepotism would not apply in the instant case. Interestingly, however, petitioner did not raise it in the letter to the Chairman of the Civil Service Commission dated 18 January 1983.[14]

On the contrary, he submits, or otherwise admits therein, that said position is not primarily confidential for it belongs to the career service. He even emphasized this fact with an air of absolute certainty, thus:

"At this juncture, may I emphasize that what is prohibited under Sec. 49 of P.D. 807 is the appointment of a relative to a career Civil Service position, LIKE THAT OF PROVINCIAL ADMINISTRATOR x x x."

(capitalization supplied for emphasis).

The sole ground invoked by him for exemption from the rule on nepotism is, as above indicated: the rule does not apply to designation -- only to appointment. He changed his mind only after the public respondent, in its Resolution No. 83-358, ruled that the "prohibitive mantle on nepotism would include designation, because what cannot be done directly cannot be done indirectly" and, more specifically, only when he filed his motion to reconsider said resolution. Strictly speaking, estoppel has bound petitioner to his prior admission. Per Article 1431 of the Civil Code, through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.[15]

But even if estoppel were not to operate against him, or regardless thereof, his claim that the position of Provincial Administrator is primarily confidential, is without merit.

As correctly maintained by the public respondent and the Solicitor General, the position of Provincial Administrator is embraced within the Career Service under Section 5 of P.D. No. 807 as evidenced by the qualifications prescribed for it in the Manual of Position Descriptions,[16] to wit:

"Education : Bachelor's degree preferably in Law/Public or Business Administration.

Experience : Six years of progressively responsible experience in planning, directing and administration of provincial government operations. Experience in private agencies considered are those that have been more or less similar level of administrative proficiency.

Eligibility : RA 1080 (BAR)/Personnel Management Officer/Career Service (Professional)/First

Grade/Supervisor."

It may be added that the definition of its functions and its distinguishing characteristics as laid down in the Manual, thus:

x x x

"2. DEFINITION:

Under the direction of the Provincial Governor, responsible for the overall coordination of the activities of the various national and local agencies in the province; and general planning, direction and control of the personnel functions and the administrative services of the Governor's Office.

3. DISTINGUISHING CHARACTERISTICS:

This is the class for top professional level management, administrative and organizational work in the operation of provincial government with highly complex, involved relationships with considerable delegation of authority and responsibility and a high degree of public contact."

render indisputable the above conclusion that the subject position is in the career service which, per Section 5 of P.D. No. 807, is characterized by (a) entrance based on merit and fitness to be determined as far as practicable by competitive examinations, or based on highly technical qualifications, (b) opportunity for advancement to higher career positions, and (c) security of tenure. More specifically, it is an open career position, for appointment to it requires prior qualification in an appropriate examination.[17] It falls within the second major level of positions in the career service, per Section 7 of P.D. No. 807, which reads:

"SECTION 7. Classes of Positions in the Career Service. - (a) Classes of positions in the career service appointment to which requires examinations shall be grouped into three major levels as follows:

x x x

(2) The second level shall include professional, technical, and scientific positions which involve professional, technical, or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief level; x x x."

In Piñero, et al. vs. Hechanova, et. al.,[18] this Court had the occasion to rule that:

"It is plain that, at least since the enactment of the 1959 Civil Service Act (R.A. 2260), it is the nature of the position which finally determines whether a position is primarily confidential, policy determining or highly technical. Executive pronouncements can be no more than initial determinations that are not conclusive in case of conflict. And it must be so or else it would then lie within the discretion of the Chief Executive to deny to any officer, by executive fiat, the protection of Section 4, Article XII[19] of the Constitution."

This rule stands despite the third paragraph of Section 1 of P.D. No. 868 which pertinently reads:

"x x x and only the President may declare a position policy-determining, highly technical or primarily confidential, upon recommendation of the Civil Service Commission, the Budget Commission and the Presidential Reorganization Commission."

for the reason that the latter may be considered merely as the initial determination of the Executive, which in no case forecloses judicial review. A rule that exclusively vests upon the Executive the power to declare what position may be considered policy-determining, primarily confidential, or highly technical would subvert the provision on the civil service under the 1973 Constitution which was then in force at the time the decree was promulgated. Specifically, Section 2 of Article XII of said Constitution makes reference to positions which are

policy-determining, primarily confidential, or highly technical in nature," thereby leaving no room for doubt that, indeed, it is the nature of the position which finally determines whether it falls within the above mentioned classification. The 1987 Constitution retains this rule when in Section 2 of Article IX-C, it clearly makes reference to "positions which are policy-determining, primarily confidential, or highly technical."

In the light of the foregoing, We cannot accept the view of the Solicitor General in his Rejoinder[20] that Salazar vs. Mathay[21] and Piñero, et al. vs. Hechanova, et al.[22] have already been modified by Section 6 of P.D. No. 807 and the third paragraph of Section 1 of P.D. No. 868.

Not being primarily confidential, appointment thereto must, inter alia, be subject to the rule on nepotism.

We likewise agree with the public respondent that there is one further obstacle to the occupation by Benjamin Laurel of the position of Provincial Administrator. At the time he was designated as Acting Provincial Administrator, he was holding the position of Senior Executive Assistant in the Office of the Governor, a primarily confidential position. He was thereafter promoted as Civil Security Officer, also a primarily confidential position. Both positions belong to the non-career service under Section 6 of P.D. No. 807. As correctly ruled by the public respondent, petitioner cannot legally and validly designate Benjamin Laurel as Acting Provincial Administrator, a career position, because Section 24(f) of R.A. No. 2260 provides that no person appointed to a position in the non-competitive service (now non-career) shall perform the duties properly belonging to any position in the competitive service (now career service).

2. Being embraced in the career service, the position of Provincial Administrator must, as mandated by Section 25 of P.D. No. 807, be filled up by permanent or temporary appointment. The first shall be issued to a person who meets all the requirements for the position to which he is appointed, including the appropriate eligibility prescribed. 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 except the appropriate civil service eligibility, provided, however, that such temporary appointment shall not exceed twelve months, but the appointee may be replaced sooner if a qualified civil service eligible becomes available.[23]

Petitioner could not legally and validly appoint his brother Benjamin Laurel to said position because of the prohibition on nepotism under Section 49 of P.D. No. 807. They are related within the third degree of consanguinity and the case does not fall within any of the exemptions provided therein.

Petitioner, however, contends that since what he extended to his brother is not an appointment, but a DESIGNATION, he is not covered by the prohibition. Public respondent disagrees, for:

"By legal contemplation, the prohibitive mantle on nepotism would include designation, because what cannot be done directly cannot be done indirectly." [24]

We cannot accept petitioner's view. His specious and tenuous distinction between appointment and designation is nothing more than either a ploy ingeniously conceived to circumvent the rigid rule on nepotism or a last-ditch maneuver to cushion the impact of its violation. The rule admits of no distinction between appointment and designation. Designation is also defined as "an appointment or assignment to a particular office"; and "to designate" means "to indicate, select, appoint or set apart for a purpose or duty." [25]

In *Borromeo vs. Mariano*, [26] this Court said:

"x x x All the authorities unite in saying that the term 'appoint' is well-known in law and whether regarded in its legal or in its ordinary acceptance, is applied to the nomination or designation of an individual x x x." (emphasis supplied).

In *Binamira vs. Garrucho*,<sup>[27]</sup> this Court, per Mr. Justice Isagani M. Cruz, stated:

"Designation may also be loosely defined as an appointment because it likewise involves the naming of a particular person to a specified public office. That is the common understanding of the term. However, where the person is merely designated and not appointed, the implication is that he shall hold the office only in a temporary capacity and may be replaced at will by the appointing authority. In this sense, the designation is considered only an acting or temporary appointment, which does not confer security of tenure on the person named."

It seems clear to Us that Section 49 of P.D. No. 807 does not suggest that designation should be differentiated from appointment. Reading this section with Section 25 of said decree, career service positions may be filled up only by appointment, either permanent or temporary; hence a designation of a person to fill it up because it is vacant, is necessarily included in the term appointment, for it precisely accomplishes the same purpose. Moreover, if a designation is not to be deemed included in the term appointment under Section 49 of P.D. No. 807, then the prohibition on nepotism would be meaningless and toothless. Any appointing authority may circumvent it by merely designating, and not appointing, a relative within the prohibited degree to a vacant position in the career service. Indeed, as correctly stated by public respondent, "what cannot be done directly cannot be done indirectly."<sup>[28]</sup>

3. As regards the last issue, We rule that the letter-complaint of Sangalang was validly given due course by public respondent. Undoubtedly, as shown above, there was a violation of law committed by petitioner in designating his brother as Acting Provincial Administrator. Any citizen of the Philippines may bring that matter to the attention of the Civil Service Commission for appropriate action conformably with its role as the central personnel agency to set standards and to enforce the laws and rules governing the selection, utilization, training and discipline of civil servants,<sup>[29]</sup> with the power and function to administer and enforce the constitutional and statutory provisions on the merit system.<sup>[30]</sup> Moreover, Section 37 of the decree expressly allows a private citizen to directly file with the Civil Service Commission a complaint against a government official or employee, in which case it may hear and decide the case or may deputize any department or agency or official or group of officials to conduct an investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken. This provision gives teeth to the constitutional exhortation that a public office is a public trust and public officers and employees must at all times be, inter alia, accountable to the people.<sup>[31]</sup> An ordinary citizen who brings to the attention of the appropriate office any act or conduct of a government official or employee which betrays the public interest deserves nothing less than the praises, support and encouragement of society. The vigilance of the citizenry is vital in a democracy.

WHEREFORE, this petition is DENIED for lack of merit, and the challenged Resolutions of the Civil Service Commission are AFFIRMED.

Costs against petitioner.

**SO ORDERED.**

Fernan, C.J., Gutierrez, Jr., Bidin, and Romero, JJ., concur.

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[1] Section 6 of P.D. No. 807.

[2] Annex "C" of Petition.

[3] Annex "B" and "B-1" of Petition.

[4] Loc cit.

[5] Annex "D" of Petition.

[6] Annex "D" of Petition, 3.

[7] Annex "B" of Petition.

[8] Annex "E" of Petition.

[9] Annex "A" of Petition.

[10] 52 Phil. 1.

[11] 136 SCRA 27. G.R. No. 63915, 24 April 1985.

**[12] 73 SCRA 275.**

**[13] 18 SCRA 417.**

[14] Annex "D" of Petition.

[15] See *Llacer vs. Muñoz, et al.*, 12 Phil. 328.

[16] Annex "G" of Petition; Rollo, 55. This was prepared in 1976 and revised in 1977 under a Joint Program of the Civil Service Commission, the Provincial Management Project and the USAID Philippine Mission.

[17] No. (1) Second paragrah, Section 5, P.D. No. 807.

[18] *supra*.

[19] This is Section 4 of Article XII of the 1935 Constitution which provides:

"No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law."

[20] Rollo, 101.

[21] *supra*.

[22] *supra*.

[23] Section 25, P.D. No. 807.

[24] Annex "B" of Petition.

[25] *Black's Law Dictionary*, Fifth ed., 402.

[26] 41 Phil. 322, 326-327.

**[27] 188 SCRA 154, 159.**

[28] Annex "D" of Petition .

[29] Section 2 (Declaration of Policy), P.D. No. 807.

[30] Section 9 (a), P.D. No. 807.

[31] Sec. 1, Article XI, 1987 Constitution. SEE also Sec. 1 Article XIII, 1973 Constitution.

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