

EDMUNDO C. JOCOM, PETITIONER, VS. THE HON. ANDRES C. REGALADO, PRESIDING JUDGE OF THE REGIONAL COURT, 5TH JUDICIAL REGION, BRANCH XXV, NAGA CITY AND JESSIE M. ROBREDO, RESPONDENTS.

G.R. No. 77373. August 22, 1991

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for certiorari, prohibition and mandamus, with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order, to annul the temporary restraining order issued by the Regional Trial Court of Naga City, Branch XXV contained in its orders dated 3 and 9 February 1987[1] and its orders dated 11 and 18 February 1987 denying petitioner's motion for raffle of the case and motion to dismiss, respectively[2]. Petitioner also seeks to enjoin the respondent judge from further enforcing the disputed orders and from proceeding with the hearing of the case before the court a quo, and to compel private respondent Jessie M. Robredo to vacate the Office of Project Director of the Bicol River Basin Development Program (hereinafter referred to as BRBDP, for brevity), and to order him (Robredo) to turn over the said office to herein petitioner Eduardo C. Jocom. The factual background of the case is as follows:

On 7 May 1973, the Bicol River Basin Council was created under PD 412, to oversee, unify and integrate the administration and implementation of the pilot river basin development program of the country. The Council was headed by an Executive Director and four (4) Deputy Directors.

On 28 April 1978, PD 926 modified the organizational structure of BRBDP by placing it under the supervision and direction of the Cabinet Coordinating Committee on Integrated Rural Development Projects of the National Economic and Development Authority (NEDA). Under Sec. 5 of said law, the Cabinet Committee Coordinator for the Program had the power to appoint the "Program Director" as head of the program office and other heads of major organizational subdivisions of the program. The "Program Director" had the following powers and functions:

"Sec. 6. Powers and Functions of the Program Director. — The Program Director shall exercise the following powers and functions:

- a. Execute and administer the policies and decisions of the Cabinet Committee;
- b. Directly coordinate the activities of all implementing departments and agencies in the planning and implementation of the projects;
- c. Submit periodic financial and work accomplishment reports relating to project implementation to the Cabinet Committee, the Budget Commission and other Agencies concerned through the Cabinet Committee Coordinator;
- d. Consolidate, for the approval of the Cabinet Committee Coordinator, requests for budget releases of projects

of the implementing departments and agencies in accordance with consolidated plans, budgets and work programs approved by the Cabinet Committee;

e. Collect and consolidate all project accounts under the Program maintained by the implementing departments and agencies;

f. Organize and manage the Program Office and adopt administrative rules and procedures for its internal management.

g. Call upon any department, bureau, office, agency, instrumentality or any political subdivision of the Government to assist in the planning and implementation of the Program;

h. Enter into contracts with private or public entities in connection with the functions of the Program Office, subject to the approval of the Cabinet Committee Coordinator; and

i. Perform such other functions as may be assigned by the Cabinet Committee Coordinator."^[3]

On 17 May 1978, PD 1378 created the National Council on Integrated Area Development (NACIAD) in lieu of the Cabinet Coordinating Committee on Integrated Rural Development Projects, with the President of the Philippines as Chairman. Despite the abolition of the Cabinet Coordinating Committee, the "Project Directors" of the various on-going projects, such as the Mindoro, Bicol, Samar and Cagayan Projects, retained their respective powers, functions, tenures and compensation.

On 11 June 1978, PD 1553 amended certain provisions of PD 926 modifying the organizational structure of BRBDP.

On 4 July 1981, Executive Order No. 708 transferred the Chairmanship of the National Council on Integrated Area Development (NACIAD) to the Prime Minister.

On 16 September 1981, Executive Order No. 835 revised the charter of NACIAD, Sec. 7 thereof authorized the Council to establish ad hoc support staffs as may be necessary for particular integrated area development projects, which shall exist for the duration of said projects. Each project support staff shall be headed by a "Project Director". The Prime Minister as Chairman of the Council was vested with power to appoint the "Project Directors" of the various integrated area development projects.

After the February 1986 revolution, Vice-President Salvador H. Laurel was appointed by the President to be Prime Minister and he ipso facto became the Chairman of the National Council on Integrated Area Development (NACIAD), with the power to appoint the Project Directors of the various integrated area development projects in the country,^[4] which include the Bicol River Basin Development Program (BRBDP).^[5]

In the exercise of his powers as Chairman of NACIAD before the proclamation of the Freedom Constitution, on 25 March 1986, Vice-President Laurel appointed private respondent Jessie M. Robredo to the position of "Program Director" of BRBDP vice Carmelo Villacorta.^[6]

In the late afternoon of that same day (25 March 1986), President Aquino issued Proc. No. 3 (Freedom Constitution), Article 1 of which declared that Art. XI of the 1973 Constitution and the amendments thereto dealing with the Prime Minister and the Cabinet were deemed superseded.

However, on 27 January 1987, Vice-President Laurel appointed petitioner Jocom to the position of "Project Director" of BRBDP.^[7] Simultaneous with petitioner Jocom's appointment, private respondent Robredo was informed of his termination from office without stating the ground for his dismissal.^[8]

Armed with his appointment, petitioner attempted to assume the Office of "Project Director" of BRBDP but

private respondent, allegedly with some armed men, prevented petitioner from assuming said office by barricading the building of BRBDP, located at Pili, Camarines Sur.

To compel petitioner Jocom to desist from attempting to assume the Office of Project Director of BRBDP, private respondent Robredo filed a petition for injunction with the RTC of Naga City, Branch XXV, docketed as RTC-87-1131. On 3 February 1987, the trial court issued an order "enjoining respondent Edmundo C. Jocom, for a period of twenty (20) days from the date hereof, to desist from assuming the above-named office such as exercising the powers and performing the functions thereof," and set the hearing for issuance of preliminary injunction.[9]

Based on the amended petition filed by private respondent Robredo, alleging that the funds of BRBDP deposited with the Philippine National Bank were frozen by the bank, which could result in paralyzing the operations of BRBDP, and in order to give force and effect to the 3 February 1987 order (granting the temporary restraining order), the trial court issued another order dated 9 February 1987,[10] ordering Messrs. Vicente B. de la Vina and Ramon Encina, in their capacities as Branch Manager and Cashier of PNB, respectively, "to honor all the checks of the BRBDP under petitioner, Jessie M. Robredo, as Project Director and until further orders."

On 3 February 1987, petitioner Jocom moved for the raffle of the case, claiming that there was no raffle committee which conducted a special raffle of the case. In an order dated 11 February 1987, the court a quo denied said motion on the ground that the same should have been addressed to the Executive Judge who presided over such special raffle; and that insofar as the court a quo was concerned, the legal presumption of regularity of performance of duty in conducting the raffle holds.[11]

Petitioner then moved to dismiss the private respondent's petition, on jurisdictional ground, relying on Sec. 4 of Executive Order No. 17 which provides that no restraining order or preliminary injunction can be issued by any court to enjoin the separation/replacement of any official or employee in the government service. On 18 February 1987, the trial court denied said motion, holding that the prohibition against the issuance of an injunction and/or restraining order is not applicable to an appointee under the Freedom Constitution, who is actually a replacement to an employee appointed under the 1973 Constitution. Hence, this petition.

To support his claim as the rightful and legal appointee to the Office of Project Director of BRBDP, petitioner argues that private respondent Robredo is not qualified for the position of "Project Director" because he was below the required age of thirty (30) years provided under the law at the time of his appointment; that a "Project Director" performs an executive function and the position is without a fixed term, thus, the appointee may be removed with or without cause upon the discretion of the appointing authority; and that Sec. 4 of Executive Order No. 17 does not allow the court to enjoin or restrain the separation/replacement of government employees in the course of a reorganization process; that private respondent's recourse for his alleged removal should not have been an independent action for injunction but a petition for reconsideration before the Committee created by E.O. No. 17.

On the other hand, private respondent Robredo alleges that petitioner's appointment is void, because all the executive powers and functions devolving upon Vice-President Laurel as Prime Minister, including his power as Chairman of NACIAD to appoint the Project Director of BRBDP had reverted to the President after the promulgation of the Freedom Constitution, which abolished the position of Prime Minister.

In a recent Executive Order (No. 374) promulgated on 30 May 1989, the BRBDP was abolished and its functions were transferred to the Regional Development Council and to the Governors of Camarines Sur and Albay.[12] All qualified personnel affected by such abolition are entitled to receive retirement benefits.[13] The abolition of BRBDP notwithstanding, we find it necessary to settle the issue as to who was the proper appointee to the

position of Program/Project Director of BRBDP, entitled to hold said office prior to said abolition, to determine the party entitled to receive the separation benefits provided by law.

We find insufficient merit in the petition.

After a careful study of the various laws affecting the creation of BRBDP, it appears that the position of "Program Director" under PD 926 (creating BRBDP) and the position of "Project Director" under PD 1378 and Executive Order Nos. 731 and 835 (charter of NACIAD), are one and the same position, with the main function of heading the BRBDP. The power to appoint the Program/Project Director to head the BRBDP originally belonged to the Cabinet Committee Coordination, but with the subsequent amendments to the organizational structure of BRBDP and that of NACIAD, the power was delegated to the Chairman of NACIAD.

During Vice-President Laurel's short tenure as Prime Minister, he became the Chairman of NACIAD, with the power to appoint the Program/Project Directors of the various integrated area development projects, including the BRBDP. However, after the promulgation of the Freedom Constitution, all provisions regarding the Office of the Prime Minister were deleted, which indicated the abolition of said office. The control over all ministries and other functions and powers pertaining to the Prime Minister reverted to the President. In view of the abolition of the Office of Prime Minister, the functions of Vice-President Laurel as Chairman of NACIAD also ceased, and the Chairmanship became part of the executive functions of the President.

As Chairman of NACIAD, the President thru her Deputy Executive Secretary, exercised the functions and powers of said office and informed the Congressmen of the different provinces of the Bicol Region of the development projects of NACIAD in their provinces thru BRBDP, as contained in her letters dated 8 July 1987.[14]

At the time of petitioner's appointment, Vice-President Laurel had already ceased to be Chairman of NACIAD. His appointment of herein petitioner to the position of Program/Project Director and the removal of private respondent from said position, were in the exercise of power that already belonged to the President. Hence, such appointment and removal were null and void, and petitioner cannot claim to have had a valid right to the position of Program/Project Director of BRBDP.

But, even assuming that Vice-President Laurel still had the power to appoint herein petitioner as Program/Project Director of BRBDP, private respondent could not be removed from said position, without just cause. There was thus no vacancy in the office justifying the appointment thereto of petitioner Jocom.

All branches, subdivisions, instrumentalities and agencies of the government, including government owned and controlled corporations with original charters are covered by the civil service and its rules and regulations. Appointments to the civil service are based on merit and fitness determined by competitive examinations, except appointments to positions which are policy determining, primarily confidential or highly technical.[15] The Civil Service Law classifies the positions in the civil service into career and non-career service positions. The career service is characterized by (1) entrance based on merit and fitness to be determined as far as practicable by competitive examinations, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure;[16] while a non-career position is characterized by (1) entrance on bases other than those of the usual tests of merit and fitness utilized for the career service; and (2) tenure which is limited to a period specified by law, or which is co-terminous with that of the appointing authority or subject to his pleasure, or limited to the duration of a particular project for which purpose employment was extended.[17]

Regardless of the classification of the position held by a government employee covered by civil service rules, be it a career or non-career position, such employee may not be removed without just cause. An employee who belongs to the non-career service is protected from removal or suspension without just cause and non-observance of due

process.

"x x x x x x x x

"As an employee in the civil service and as civil service eligible, respondent is entitled to the benefits, rights and privileges extended to those belonging to the service. He cannot be removed or dismissed without just cause, much less, without formal charge or prior notice. The fact that his position falls under the unclassified service or the noncareer service does not remove him from the protective mantle of the Civil Service Law. Persons in the unclassified service are merely so designated because the nature of their work and qualifications are not subject to classification unlike those in the classified service. x x x"[18]

The constitutional and statutory guarantee of security of tenure is extended to both those in the career and non-career service positions, and the cause under which an employee may be removed or suspended must naturally have some relation to the character or fitness of the officer or employee, for the discharge of the functions of his office[19], or expiration of the project for which employment was extended.

The law[20] modifying the organizational structure of BRBDP enumerated the following qualifications of the appointee to the position of "Project Director," namely: (a) a natural-born citizen of the Philippines; (b) at least thirty (30) years of age; and (c) of proven record of executive competence in the field of public administration and/or infrastructure projects and/or in the management of agricultural, industrial or commercial enterprises. Although petitioner claims that private respondent was below the age of 30 years at the time of his appointment to qualify to the position of Program/Project Director, no sufficient proof was presented to substantiate such claim.

With regard to the tenure of the appointee to the position of Program/Project Director, PD 926 is silent on the matter. However, in the Revised Charter of NACIAD,[21] the Council is given the authority to establish ad hoc support staffs as may be necessary for particular integrated area development projects to be headed by a "Project Director", which shall exist only for the duration of said projects. The Council is likewise given the power to re-organize or abolish project support staffs under its supervision and control.

From the foregoing provisions of law, it would appear that the position of Program/Project Director falls under the classification of a non-career position where the tenure of the appointee is subject to the duration of the project, while entrance to the position is based on the fact that the appointee possess all the qualifications required by law for the position. However, despite the classification of the position of Program/Project Director as a non-career position, the appointee was nonetheless protected by the rules on security of tenure, and could not be removed from office at the whim and caprice of the appointing authorities without just cause and without observing the rules on due process. The termination of private respondent from the office of Program/Project Director failed to state the ground for such removal from office, thus, his removal from office was without just cause.

Sec. 4 of Exec. Order No. 17,[22] which prohibits the issuance of any restraining order or writ of preliminary injunction to enjoin the separation/replacement of any official or employee in the government service, is intended to prevent delay in the government reorganization process provided under the Freedom Constitution. However, such ban cannot apply in the case at bar because petitioner Jocom's appointment was not made pursuant to a valid reorganization. At the time of his appointment, Vice-President Laurel was no longer the Chairman of NACIAD and had lost the power to appoint the Program/Project Director, or even reorganize the BRBDP.

ACCORDINGLY, petition is hereby DISMISSED.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Regalado, JJ., concur.
Sarmiento, J., on leave.

[1] Rollo, pp. 22-23

[2] Ibid., pp. 24-26

[3] PD 926, Section 6

[4] Exec. Order No. 835 which provides for a Revised Charter of NACIAD, promulgated on 14 October 1982

[5] Exec. Order No. 412, modified by PD 926

[6] Rollo, p. 27

[7] Ibid., p. 28

[8] Ibid., p. 29

[9] Ibid., p. 22

[10] Ibid., p. 23

[11] Rollo, p. 24

[12] Section 1, EO 374

[13] Section 2, Ibid.

[14] Rollo, pp. 107-114

[15] Sec. 4, PD 807

[16] Sec. 5, Ibid.

[17] Sec. 6, Ibid.

[18] Cortez v. Bartolome, G.R. No. L-46629, September 11, 1980, 100 SCRA 10

[19] Tapales v. President and Board of Regents of the University of the Philippines, G.R. No. L-17523, March 30, 1963, 7 SCRA 553

[20] Section 5 of PD 926, promulgated 18 April 1976

[21] Section 7 of EO 835, promulgated 15 October 1982

[22] Prescribing rules and regulations for the implementation of the reorganization of all government offices, agencies, instrumentalities or government owned or controlled corporations, promulgated on 28 May 1986.

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