

FRANCISCO L. MENDOZA, PETITIONER, VS. HON. LOURDES R. QUISUMBING AS SECRETARY OF EDUCATION, CULTURE AND SPORTS, RESPONDENT.*G.R. No. 78053. June 04, 1990*

Ponente: GUTIERREZ, JR., J.

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The issues raised in these consolidated cases refer to the validity of various reorganization programs in different agencies and/or departments of the government implementing the orders issued pursuant to the President's Proclamation No. 1 declaring as policy the reorganization of the government and Proclamation No. 3 "DECLARING A NATIONAL POLICY TO IMPLEMENT THE REFORMS MANDATED BY THE PEOPLE, PROTECTING THEIR BASIC RIGHTS, ADOPTING A PROVISIONAL CONSTITUTION AND PROVIDING FOR AN ORDERLY TRANSITION TO A GOVERNMENT UNDER A NEW CONSTITUTION." In addition to the pleadings filed, the parties discussed the basic issues raised in these petitions during the hearings held on January 24 and 31, 1989.

I

In G.R. No. 78053, the petitioner questions the validity of the March 19, 1987 letter-order of the then Secretary of Education, Culture and Sports (DECS) Lourdes R. Quisumbing which terminated his employment as Schools Division Superintendent of Surigao City.

Petitioner Mendoza was the Schools Division Superintendent of Surigao City who, on June 4, 1986, was reappointed by respondent Quisumbing as such with a "PERMANENT" status. He has served the Department of Education for forty-two (42) years, moving up the ranks in the public schools system. On January 30, 1987, Executive Order No. 117 was issued by the President reorganizing the DECS. In a letter dated March 19, 1987, the petitioner received the letter-order informing him that pursuant to Executive Order No. 117 which provides for a reorganization of the DECS and the implementing guidelines thereof he would be considered separated from the service effective April 15, 1987 without prejudice to availment of benefits. The letter particularly stated that consistent with the mandate of reorganization to achieve greater efficiency and effectiveness, all incumbent officials/personnel are on 'hold-over' status unless advised otherwise. In his place, Secretary Quisumbing appointed Dr. Socorro L. Sering, on a permanent status on March 2, 1988. In the meantime, the petitioner, in a letter dated April 2, 1987, wrote Secretary Quisumbing requesting reconsideration of the letter-order. The letter was forwarded to the Reorganization Appeals Board (RAB). The motion for reconsideration remained unacted upon, hence on June 24, 1987, the petitioner filed the instant petition for certiorari, prohibition and mandamus with preliminary injunction. In a resolution dated September 19, 1988, the RAB recommended that action on the petitioner's letter-reconsideration be deferred pending resolution of the instant petition.

In G.R. No. 78525, the petitioners are tourism employees who question the legality of Executive Order No. 120 and the consequent alleged illegal act of the public respondents in summarily terminating their services. The

twenty-eight (28) petitioners were all permanent employees (with services ranging from 27 years to 3 years) of the Department of Tourism (DOT). All the petitioners had no pending administrative cases and some of them have received numerous citations for meritorious services. On January 20, 1987, the President issued Executive Order No. 120 reorganizing the Ministry of Tourism "structurally and functionally." Section 26 thereof decrees the abolition of Tourism Services and Bureau of Tourism Promotions while Section 29 provides that the incumbents whose positions are not included in the new staffing pattern or who are not reappointed shall be deemed separated from the service, but they shall receive retirement benefits and separation pay. On March 19, 1987, respondent Undersecretary Sostenes Campillo, Jr., issued a Memorandum which in effect stated that pursuant to Executive Order No. 120 the implementation of the reorganization program shall be effected starting March 19, 1987; that all positions are declared vacant; and that all employees are considered in a hold-over capacity. On April 13, 1987, respondent Campillo, Jr., in his capacity as acting secretary issued a memorandum notifying all employees of the DOT that thirty (30) days from said date, or on May 13, 1987, termination orders will be effected. On May 14 and May 28, 1987, the petitioners were served their termination papers. They now seek the issuance of a writ of mandamus to compel the public respondents to reinstate them to their respective positions and a writ of prohibition to enjoin said respondents from implementing Executive Order No. 120. They state that they are career civil servants who were summarily and unceremoniously separated from employment without due process.

In G.R. No. 81197, the eighty-four (84) petitioners are personnel of the Office of the Press Secretary who question their dismissal from the government service pursuant to what they allege is an unconstitutional reorganization law (Executive Order No. 297) and the likewise alleged unconstitutional implementing order issued by respondent, then Press Secretary Teodoro Benigno.

On July 25, 1987, the President issued Executive Order No. 297 which reorganized the Office of the Press Secretary (OPS). Section 13 of the law provides for the merger of the Bureau of Broadcast and Radyo ng Bayan into the Bureau of Broadcast Services (BBS).

On August 27, 1987, the then Press Secretary issued OPS Department Order No. 1 creating the Reorganization Committee and Placement Committee to set guidelines in the implementation of the reorganization program. The Reorganization Committee was created to oversee and set the directions for the reorganization while the Placement Committee which was created in each Bureau was tasked to assist the appointing authority in the selection and placement of personnel. One of the criteria to be observed in the hiring process was the taking of oral and written examinations to be administered by OPS through the Development Academy of the Philippines (DAP) with a representative from the Civil Service Commission in attendance. It was further provided that those who will not take the examinations will automatically lose the percentage allotted to the examinations in the rating process.

In the meantime, a new position structure and staffing pattern was prepared retaining only around 333 positions of the nearly 770 regular employees of BBS. The new staffing pattern was approved on October 5, 1987 and implemented on November 1, 1987.

The affected employees whose positions were abolished appealed to the Press Secretary to withdraw the proposed staffing pattern and to create a committee from the BBS officials' rank to prepare a new staffing pattern. The request was denied and instead an order was issued that everybody must re-apply and undergo the oral and written examinations provided for in the OPS Department Order No. 1.

The original (32) petitioners who were mostly permanent and regular civil service employees of the BBS with more than ten (10) years of government service refused to take the examinations. The then Press Secretary wrote

the petitioners that their "services shall be considered only until December 31, 1987."

On January 8, 1988, the thirty-two (32) petitioners filed the instant petition for certiorari, prohibition and mandamus with preliminary injunction and/or restraining order.

A supplemental petition was filed by thirty-six (36) First Intervenors and sixteen (16) Second Intervenors. The First Intervenors group was composed of permanent civil service employees who took the examination but were uniformly informed that "due to the limited number of positions" they were considered employees only until January 31, 1988. The Second Intervenors were temporary employees with most of them being in the government service for more than fifteen (15) years whose temporary appointments were extended only until July 31, 1987 "due to the ongoing reorganization."

In G.R. No. 81495, petitioners Secretary of the Department of Science and Technology (DOST), and Director and members of the Reorganization Evaluation Committee of the Philippine Nuclear Research Institute (PNRI) ask for the annulment of the orders dated December 27, 1987 and January 15, 1988 of the Regional Trial Court, Branch 97, Quezon City which restrained the petitioners from dismissing the private respondents and from implementing the reorganization scheme of the PNRI under Executive Order No. 128 and granted the private respondent's application for a writ of preliminary injunction.

The forty-one (41) private respondents were employees of the Philippine Atomic Energy Commission (PAEC). Some of them have been in the government service for more than twenty (20) years, others for more than ten (10) years and almost all of them are college graduates, holding permanent positions and are civil service eligibles.

On January 30, 1987, the President issued Executive Order No. 128 reorganizing the DOST. Section 21 of the order provides for the reorganization of the PAEC into the PNRI.

On April 24, 1987, the DOST Secretary issued Memorandum Circular No. 001 which created the Placement Committee.

On May 5, 1987, Memorandum Circular No. 002 was issued which provided for guidelines on the evaluation and selection of officers and employees.

In the meantime in April, 1987, the DOST new position structure and staffing pattern which reduced the number of positions from 6,029 to 5,568 was approved by the DOST Secretary. On September 25, 1987, the Department of Budget and Management likewise approved the new position structure and staffing pattern.

On December 18, 1987, a list of employees to be retained under the new position structure of the PNRI was posted in the PNRI premises. Those excluded were placed in a manpower pool for possible placements in other DOST agencies. Thereafter, appointments under the new staffing pattern were issued and subsequently submitted to the Civil Service Commission.

On December 28, 1987, the private respondents whose positions were not included in the PNRI position structure and staffing pattern filed a complaint with the respondent trial court for "Injunction with Prayer for the Issuance of Writ of Preliminary Order" alleging that the termination of their services violated their right to security of tenure; that their is time limit of one (1) year from February 25, 1986 to implement the reorganization (Article III, Section 2, Freedom Constitution); and that the Freedom Constitution has been superseded by the 1987 Constitution and is no longer operative.

Acting on the complaint, the respondent court issued the questioned orders.

In G.R. No. 81928, petitioner Jose L. Guerrero assails his termination as Director of the Science Promotion Institute (SPI) a regular line agency of the Department of Science and Technology (DOST) and seeks

reinstatement and assignment to any position closest to his old position in terms of functions, duties, salary emoluments and privileges and without diminution of his rank, salary and privileges as of September 24, 1987.

Section 35 (d) of Executive Order No. 128 provides for the abolition of SPI and in lieu thereof creates the Science Education Institute (SEI) and Science and Technology Information Institute (STII). It is also provided therein that SPI's "appropriation fund, records, equipment, facilities, choses in action, rights, other assets, personnel as may be necessary and liabilities if any," shall be transferred to SEI and STII.

On September 24, 1987, the then Secretary designated Mr. Benjamin Damian as officer-in-charge of the newly created STII.

After the new position structure and staffing pattern of DOST was approved by both the DOST Secretary and the Department of Budget and Management, the petitioner received a letter dated September 25, 1987 from the DOST Secretary which notified him that since the SPI was abolished by Executive Order No. 128, his position as Director no longer exists. The Secretary advised him to file his retirement application. In another letter dated September 30, 1987 from the Secretary, the petitioner was directed to turn over all property, equipment and funds in his custody to the Officer-in-Charge of STII. The petitioner had held the position since June, 1982.

On September 25, 1987, Damian entered the SPI and since then the petitioner has been kept out of his office and denied salaries, allowances and emoluments.

On February 19, 1988, the petitioner filed the instant petition with preliminary mandatory injunction. He accuses the DOST Secretary of grave abuse of discretion in terminating his services and alleges that his termination was a violation of his right to security of tenure. He contends that the functions of the old office are identical to the functions of the two new offices into which the old one has been split and, therefore, there is no true abolition in the legal sense.

In G.R. No. 81998, the twenty-one (21) petitioners led by Rogelio Bustamante, Chief of the Legal Division of the Department of Agriculture (DAGR) filed on February 24, 1987 the instant petition for certiorari, prohibition and injunction with prayer for a restraining order and/or writ of preliminary injunction to enjoin the respondents from holding examinations for the petitioners and others similarly situated on February 26, 1988 and from proceeding with the reorganization of the Department of Agriculture.

The petitioners are mostly division and section chiefs who are among the 1,500 regular and civil service officers and employees of the DAGR. Pursuant to Executive Order No. 116 issued on January 30, 1987 which provides for the reorganization of the DAGR, the then Secretary Carlos Dominguez issued Memorandum Circular dated February 10, 1988 requiring all provincial and municipal agricultural officers, as well as division chiefs to take an examination on February 26, 1988 to be given by Sycip Gorres Velayo (SGV) under the authority of respondent Civil Service Commission (CSC). The petitioners asked for a restraining order claiming that the proposed examinations were calculated and designed to have a basis for laying off career employees and officials in order to replace them with proteges of the respondent. They stated that Division Chiefs had already been ordered to work as "coordinators" or told to go on field trips while outsiders, proteges of the respondent, became OICs of the various Divisions.

We did not issue any restraining order, hence the examinations were conducted on March 5, 11 and 30, 1988.

On March 23, 1988, the petitioners filed a supplemental petition praying for a writ of preliminary injunction enjoining the public respondents from proceeding with the reorganization of their department and to desist from committing acts of harassment or reprisals against the petitioners who were asked to explain in writing why they did not take the competitive examinations.

In G.R. No. 86504, petitioner Rainerio Reyes, the then Secretary of the Department of Transportation and Communications (DOTC) seeks the setting aside of the resolution dated November 7, 1988 issued by the Civil Service Commission (CSC) which ordered the reappointment of respondents Matias T. Austria and Arcebido M. Gervacio to the positions of Chief of the National Telegraphic Transfer Service (NTTS) and Administrative Service Chief II of the Telecommunications Office (TELOF) respectively and declared the appointment of Aureliano de Leon as Administrative Service Chief II ineffective as well as the CSC's resolution dated December 20, 1988 which denied the petitioner's motion for reconsideration.

In a letter-complaint dated January 11, 1986 filed with the Sandiganbayan, a certain Mrs. Calixta Ondevilla, an employee of NTTS, charged Austria with violation of the Anti-Graft and Corrupt Practices Act. In another letter-complaint dated March 14, 1986 filed with DOTC Minister Hernando Perez, Ondevilla charged Austria with various irregularities such as favoritism, oppression, abuse of authority and nepotism.

Pursuant to the new reorganization plan of the Bureau of Telecommunications (BUTEL) the Acting Director issued various office orders relieving Austria as NTTS Chief and giving him other designations and at the same time designating Arcebido Gervacio as Acting Chief, NTTS effective January 2, 1987. Aureliano de Leon who was holding the item of Administrative Officer III was designated Acting Chief, Human Resources and Administrative Department.

Austria was found guilty of nepotism, grave insubordination, grave misconduct and or abuse of authority, neglect of duty and or acts prejudicial to the interest of the service (falsification of documents) in a decision signed by the Assistant Secretary of the Telecommunication Office (TELOF). Petitioner DOTC Secretary, however, set aside the decision on grounds of denial of fair and impartial investigation and ordered continuation of a formal investigation upon motion for reconsideration of the Assistant Secretary of TELOF.

In the meantime, pursuant to Executive Order Nos. 125 and 125-a (Executive Order No. 125 was issued by the President on January 30, 1987) the reorganization of the DOTC was undertaken. With respect to the BUTEL, now called TELOF, the highest position in the Administrative Division was abolished and a new one was created namely Administrative Services Chief II, (Range 75). On the other hand, the item of NTTS Chief (Range 75) was retained in the staffing pattern.

The TELOF Placement and Selection Committee, which included the head of the CSC Field Office considered and evaluated four candidates, including Gervacio and Austria for the top position in the Administrative Division while three candidates, also including Gervacio and Austria were considered for the position of NTTS Chief. The committee recommended De Leon and Gervacio for the top position and NTTS Chief respectively. Petitioner DOTC Secretary then appointed the two (2) and their appointments were approved by the CSC through the head of the CSC Field Office. Austria was appointed Administrative Officer I of Region 1, Baguio City.

Gervacio and Austria were not satisfied with their appointments and filed separate protests with the DOTC Reorganization Appeal Board (RAB) against Gervacio's appointment (opposed by Austria) as well as de Leon's appointment (opposed by Gervacio). The protests were dismissed.

Gervacio and Austria then appealed the DOTC-RAB resolution to the CSC which reversed the said resolution. After their motions for reconsideration were denied, the DOTC Secretary filed the instant petition.

On July 7, 1989, the CSC issued an order directing the DOST Secretary and the Assistant Secretary of the Telecommunications to immediately implement the CSC resolutions in view of our non-issuance of any restraining order to bar the implementation of the resolution.

On September 5, 1989, we issued a temporary restraining order enjoining the CSC to cease and desist from

enforcing the July 7, 1989 order.

In G.R. No. 86547, petitioner Secretary Carlos Dominguez of the Department of Agriculture seeks the annulment of the orders of the Regional Trial Court, Branch 87 of Quezon City granting — (1) a series of temporary restraining orders and writs of preliminary injunction which enjoined the petitioner from carrying out the reorganization of the Department of Agriculture, and (2) several motions of the private respondents to admit additional petitioners.

On January 19, 1987, the President issued Executive Order No. 116 "Renaming the Ministry of Agriculture and Food as Ministry of Agriculture, Reorganizing its Units Integrating all Offices and Agencies whose Functions relate to Agriculture and Fishing into the Ministry and for other Purposes."

Pursuant to this law, the petitioner formed a Reorganization Committee to work on the new staffing pattern of the Department which was later approved by the Department of Budget and Management. The newly approved staffing pattern was posted in every affected bureau and agency of the Department for all employees to be notified.

The Department's reorganization entailed conversion of line bureaus into staff bureaus resulting in the reduction and/or abolition of positions in the Bureaus affected namely, Bureau of Fisheries and Aquatic Resources (BFAR), Bureau of Soils and Water Management (BSWM), Bureau of Plant Industry (BPI) and the Bureau of Animal Industry (BAI). Due to the aforesaid conversion, there was an increase in positions department-wide but there were significant reductions in positions of the staff bureau where most of the private respondents were employed.

To evaluate the qualification of all personnel of the Department for possible appointments, a Placement Committee was formed and the petitioner issued Memorandum Circular No. 7 dated October 7, 1987 containing the guidelines to be followed in the reorganization process.

All the private respondents were among those whose positions were affected by the reorganization. Thus, they were given the corresponding notices of termination. They were all permanent employees of the DAR, the Bureau of Plant Industry (BPI), Bureau of Animal Industry (BAI), Bureau of Fisheries and Aquatic Resources or Bureau of Soils and Water Management.

Pending appeal to the Reorganization Appeals Board (RAB) the private respondents submitted to the petitioner a manifesto requesting deferment of the implementation of the reorganization.

In view of their impending dismissal effective October 9, 1988, the first nine (9) private respondents, on October 5, 1988, filed with the respondent trial court a petition for prohibition and mandamus with prayer for a temporary restraining order.

On October 7, 1988, the respondent trial court issued a temporary restraining order enjoining the petitioner from carrying out the announced dismissal of the private respondents and from appointing third persons to the positions in the new staffing pattern.

Later, the trial court ordered the inclusion of "additional petitioners" in the persons of the other private respondents (total number of private respondents is 519) the last batch of which totalled 35 whose services were to be terminated effective November 5, 1988 upon motions by the counsel of the original nine petitioners in the trial court.

After the petitioners' motion for reconsideration of the respondent court's order regarding the "additional petitioners" and grant of the writ of preliminary injunction with respect to them was denied, the instant petition for certiorari and prohibition with prayer for a writ of preliminary injunction with urgent prayer for issuance of

temporary restraining order was filed.

In G.R. No. 88951, the Office of Muslim Affairs (OMA) seeks the review of the resolution dated January 27, 1989 of the Civil Service Commission (CSC) which ordered that the private respondents, except retirees or those who have opted to be phased out and received benefits as such, should be immediately reinstated to their positions or to positions of comparable or equivalent rank in the OMA without loss of seniority rights and with back salaries as well as the CSC's resolution dated June 2, 1989 denying a motion for reconsideration.

On January 30, 1987, the President issued Executive Order Nos. 122 as amended, and 122-A abolishing the Office of Muslim Affairs and Cultural Communities (OMACC) and the Philippine Pilgrimage Authority (PHILPA) and creating out of these offices the Office on Muslim Affairs (OMA) and the Bureau of Pilgrimage and Endowment (BPE). Later, on July 25, 1987, the President issued Executive Order No. 295 amending Executive Order No. 122.

On June 1, 1987, petitioner Executive Director Jiamil Dianalan issued Office Order No. OG-87-21 creating the OMA Personnel Screening Committee to review, evaluate and recommend employees based on performance and merit.

On August 24, 1987, Dianalan issued a memorandum to all officials and employees of OMA to inform them that under Executive Order No. 117, the President authorized extensions of sixty (60) days from the expiration of the earlier extension period within which incumbent employees of defendant OMACC may continue to hold office and receive their salaries in hold-over capacities or until September 24, 1987 and that those not reappointed are ordered to desist from further holding office.

On September 24, 1987, Acting Assistant Executive Director Atty. Panumbalin M. Membin, OMA issued a memorandum advising all those not reappointed to desist from reporting to office.

On October 2, 1987, the President issued "GUIDELINES ON THE IMPLEMENTATION OF REORGANIZATION EXECUTIVE ORDERS" requiring each agency to constitute a Reorganization Appeals Board (OMA-RAB) to hear complaints of affected employees.

On October 10, 1987, the petitioner issued Office Order No. 09-87-100 creating the OMA Reorganization Appeals Board (OMA-RAB) which was reconstituted on February 24, 1988.

On November 3, 1987, the petitioner issued Office Order No. 87-021 providing for a procedure for reviewing or reconsidering appeals or complaints.

On April 27, 1988, the OMA-RAB issued a resolution adopting Executive Orders Nos. 122 and 122-A as amended and the documents related to the reorganization of OMA as basis in deciding appeals or complaints.

On July 12, 1988, the OMA-RAB resolved to dismiss the appeal of the 206 private respondents stating that the non-appointment of the complainants who were former employees of the defunct OMA and PPA were in accordance with law.

On July 16, 1988, the private respondents filed appeals for reappointment in the OMA with the CSC, alleging that their separation from service was in violation of law and their constitutional rights to due process and equal protection of the law and security of tenure.

Acting on the appeals, the CSC issued the questioned resolutions.

Hence, the instant petition.

In G.R. No. 89427 petitioner Conrado L. Villazor filed this petition for mandamus to compel respondent Secretary

of Health Alfredo R.A. Bengzon to reinstate him as Assistant Provincial Health Officer of Zambales.

On May 1, 1985, the petitioner received a permanent appointment as Assistant Provincial Health Officer, range 85 from the then Minister of Health.

By virtue of Order No. 267D dated November 7, 1986 the petitioner was assigned officer-in-charge of the San Marcelino District Hospital in San Marcelino, Zambales.

On February 2, 1988, the petitioner was informed through a letter from the Regional Director of Regional Health Office No. III San Fernando, Pampanga by authority of the Secretary of Health that after "a review of all our personnel" he shall not be appointed to any position in the new staffing pattern under Executive Order No. 119 (the reorganization law of the Department of Health).

On February 16, 1988, the DOH dismissed a protest and Dr. Arcellie Llamado was designated as officer-in-charge, San Marcelino District Hospital.

Upon appeal to the Civil Service Commission, the DOH decision was reversed. The CSC ruled in favor of the petitioner.

Despite the CSC ruling and a letter of the petitioner asking for the immediate issuance of his appointment, the DOH has not issued any appointment to the petitioner.

Hence, the instant petition.

II

After the February 1986 political upheaval, the political leadership decided to proclaim the formation of a revolutionary government headed by President Corazon C. Aquino. On February 25, 1986, immediately after the President was sworn in to office, she issued Proclamation No. 1 declaring as policy the reorganization of the government. The reorganization affected all branches of the Government as appointive public officials including the members of the Supreme Court as well as elective officials were included in its purview.

On March 25, 1986, the President promulgated Proclamation No. 3 "DECLARING A NATIONAL POLICY TO IMPLEMENT THE REFORMS MANDATED BY THE PEOPLE, PROTECTING THEIR BASIC RIGHTS, ADOPTING A PROVISIONAL CONSTITUTION AND PROVIDING FOR AN ORDERLY TRANSITION TO A GOVERNMENT UNDER A NEW CONSTITUTION." Proclamation No. 3 reiterated the new policy of the government as embodied in the law's Preamble, to wit:

"WHEREAS, the direct mandate of the people as manifested by their extraordinary action demands the complete reorganization of the government, x x x."

The implementing guidelines were spelled out in the succeeding provisions of the law, to wit:

"ARTICLE II.

"Section 1 xxx xxx xxx

"The President shall give priority to measures to achieve the mandate of the people to:

"a) Completely reorganize the government, eradicate unjust and oppressive structures, and all iniquitous vestiges of the previous regime.

"ARTICLE III.

"Section 1. In the reorganization of the government priority shall be given to measures to promote economy,

efficiency, and the eradication of graft and corruption.

"Section 2. All elective and appointive officials and employees under the 1973 Constitution shall continue in office until otherwise provided by proclamation or executive order or upon the appointment and qualification of their successors, if such is made within a period of one year from February 25, 1986.

"Section 3. Any public officer and employee separated from the service as a result of the organization effected under this Proclamation shall, if entitled under the laws then in force, receive the retirement and other benefits accruing thereunder.

"Section 4. The records, equipment, buildings, facilities and other properties of all government offices shall be carefully preserved. In case any office or body is abolished or reorganized pursuant to this proclamation, its funds and properties shall be transferred to the offices or body to which its powers, functions and responsibilities substantially pertain.

On May 28, 1986, the President issued Executive Order No. 17, "PRESCRIBING RULES AND REGULATIONS FOR THE IMPLEMENTATION OF SECTION 2, ARTICLE III OF THE FREEDOM CONSTITUTION." Among others, the law prescribed as "grounds for the separation/replacement of personnel" (SECTION 3) the following:

- "1) Existence of a case for summary dismissal pursuant to Section 40 of the Civil Service Law;
- "2) Existence of a probable cause for violation of the Anti-Graft and Corrupt Practices Act as determined by the Ministry Head concerned;
- "3) Gross incompetence or inefficiency in the discharge of functions;
- "4) Misuse of public office for partisan political purposes;
- "5) Any other analogous ground showing that the incumbent is unfit to remain in the service or his separation/replacement is in the interest of the service."

Thereafter, the President issued Executive Orders directing the reorganization of various different departments of the government which affected their employees, among them the petitioners in some of the instant cases as well as the respondents in the other cases: In G.R. No. 78053, Executive Order No. 117 reorganizing the Department of Education, Culture and Sports issued on January 30, 1987; In G.R. No. 78525, Executive Order No. 120 reorganizing the Department of Tourism issued on January 20, 1987; In G.R. No. 81197 Executive Order No. 297 reorganizing the Office of the Press Secretary issued on July 25, 1987; In G.R. No. 81495 Executive Order No. 128 reorganizing the Department of Science and Technology issued on January 30, 1987; In G.R. No. 81928 Executive Order No. 128 issued on January 30, 1987; In G.R. No. 81998 Executive Order No. 116 issued on January 30, 1987; In G.R. No. 86504 Executive Order No. 125 reorganizing the Department of Transportation and Communications issued on January 30, 1987; In G.R. No. 86547 Executive Order No. 116 reorganizing the Department of Agriculture issued on January 30, 1987; In G.R. No. 88951 Executive Order No. 122 abolishing the Office of Muslim Affairs and Cultural Communities and the Philippine Pilgrimage Authority issued on January 30, 1987; and in G.R. No. 89427 Executive Order No. 119 reorganizing the Department of Health issued on January 30, 1987.

As stated in *Dario v. Mison, et al.* (G.R. No. 81954 and related cases, August 8, 1989, p. 23) there is no dispute over the authority to carry out a valid reorganization in any branch or agency of Government. Pursuant to the Provisional Constitution and the various Executive Orders issued by the President when she was the sole law-making authority, the different Departments of Government were authorized to carry on reorganization programs.

From the very start, however, the nature and extent of the power to reorganize were circumscribed by the source of the power itself. The grant of authority was accompanied by guidelines and limitations. It was never intended that department and agency heads would be vested with untrammelled and automatic authority to dismiss the millions of government workers on the stroke of a pen and with the same sweeping power determine under their sole discretion who would be appointed or reappointed to the vacant positions.

Thus, under Proclamation No. 3, Article II, Section 1(a), reorganization was mandated by the People to "eradicate unjust and oppressive structures." Where the fabric was sound or the new agency head could not devise anything better, it must be retained. The mandate was also intended to remove "all iniquitous vestiges of the previous regime." Under this mandate, the mass of lowly employees in the bottom rungs of the governmental hierarchy, ordinarily constant and apolitical, were not intended to be summarily dismissed unless basic reasons outweighed or overcame the rights to their jobs built up so laboriously over the years.

Article III, Section 1 of the same Proclamation added another guideline — "priority shall be given to measures to promote economy, efficiency, and the eradication of graft and corruption."

The promotion of simplicity, economy, and efficiency is the usual standard which enables a delegation of powers in reorganization statutes to pass the test of validity. When the President set the standard of economy, efficiency, and the eradication of graft and corruption, she did not come up with novel standards to be followed by her alter egos in the implementation of the reorganization program.

We have ample jurisprudence on the matter, in *Urgelio, et al. v. Osmeña, Jr.*, 9 SCRA 317 [1963], this Court made it plain that the creation of new positions with increases in salaries and with the same duties as those abolished is inconsistent with the ostensible purpose of economy and efficiency. Similar rulings were made in *Abanilla, et al. v. Ticao, et al.*, 17 SCRA 652 [1966]; *Cruz, et al. v. Primicias, Jr., et al.*, 23 SCRA 998 [1968]; *Briones v. Osmeña, Jr.*, 104 Phil. 588 [1958]; and *Ocampo, et al. v. Duque, et al.*, 16 SCRA 962 [1966]. On the other hand, the bona fide rule was followed in *Arao v. Luspo*, 20 SCRA 722 [1967]; *Manalang v. Quitariano*, 94 Phil. 903 [1954]; *Llanto v. Dimaporo*, 16 SCRA 599 [1966]; *Facundo v. Pabalan*, 4 SCRA 375 [1962]; and *Maza v. Ochave*, 20 SCRA 142 [1967]. There were ample precedents to guide the respondent public officers in these cases.

No specific causes for removal were given in the Provisional Constitution. The President, therefore, felt constrained to issue particulars to guide those who would implement the policy.

We had occasion to pass upon this issue and stated:

"Although the Provisional Constitution did not require any ground or cause for removal as above pointed out, the Government, in an act of auto-limitation and 'to prevent indiscriminate dismissals of personnel in the Career Civil Service whose qualifications and performance meet the standards of public service of the New Government', issued Executive Order No. 17 dated 28 May 1986 (82 Official Gazette 2423 [2 June 1986]) which enumerated certain grounds for the separation or replacement of elective and appointive officials authorized under Article III (2) of the Provisional Constitution. x x x." (*Radia v. Review Committee Under Executive Order No. 17, et al.*, 157 SCRA 749, 753 [1988]).

Executive Order No. 17 was issued on May 28, 1986, long before the present Constitution was ratified and adopted, "in order to obviate unnecessary anxiety and demoralization among the deserving officials and employees, particularly in the career civil service x x x and to ensure that only those found corrupt, inefficient, and undeserving are separated from the government service." (82 Official Gazette 2423, June 2, 1986)

The President's concern embodied in Executive Order No. 17 was also shown by that other great department of Government, namely Congress.

The cause of those who have been reorganized out of office has been taken up by their elected representatives. On March 1, 1988, the Senate of the Philippines passed a unanimous resolution with two abstentions expressing the Senate's concern over the plight of government officials and employees who were dismissed without just cause. Significantly, Senator Santanina Rasul, chairperson of the Senate Committee on the Civil Service, divulged that reorganization has resulted in the creation of an even bigger and fatter bureaucracy. The Senate urged the suspension of the then on-going reorganization of government offices pending remedial legislation. (Manila Bulletin, March 2, 1988, p.i.)

Earlier, the House of Representatives has also introduced a bill for the setting up of clear-cut policies and guidelines on reorganization to protect the security of tenure of civil servants. (Manila Bulletin, October 5, 1987, p. 14)

These efforts led to the enactment on June 10, 1988 of Republic Act No. 6656 "AN ACT TO PROTECT THE SECURITY OF TENURE OF CIVIL SERVICE OFFICERS AND EMPLOYEES IN THE IMPLEMENTATION OF GOVERNMENT REORGANIZATION."

The law reiterated the established and valid causes for removals incident to a bona-fide reorganization and itemized some circumstances constituting evidence of bad faith in a non-bona fide reorganization.

Section 2 of the law provides:

"SEC. 2. No officer or employee in the careers service shall be removed except for a valid cause and after due notice and hearing. A valid cause for removal exists when, pursuant to a bona fide reorganization, a position has been abolished, or rendered redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service, or other lawful causes allowed by the Civil Service Law. The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party:

"(a) Where there is a significant increase in a number of positions in the new staffing pattern of the department or agency concerned;

"(b) Where an office is abolished and another performing substantially the same functions is created;

"(c) Where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit;

"(d) where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same functions as the original offices;

"(e) Where the removal violates the order of separation provided in Section 3 hereof."

Republic Act No. 6656 states the policy of the law and provides for the retroactivity of its provisions even in reorganizations already effected.

It provides:

"SECTION 1. It is hereby declared the policy of the State to protect the security of tenure of civil service officers and employees in the reorganization of the various agencies of the National Government and of local governments, state colleges and universities expressly authorized by law, including government-owned or controlled corporations with original charters, without sacrificing the need to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service pursuant to Article IX, B, Section 3 of the Constitution.

x x x x x x x x

"SECTION 11. The executive branch of the government shall implement reorganization schemes within a specified period of time authorized by law.

"In the case of the 1987 reorganization of the executive branch, all departments and agencies which are authorized by executive orders promulgated by the President to reorganize shall have ninety (90) days from the approval of this Act within which to implement their respective reorganization plans in accordance with the provisions of this Act." (Italics supplied)

Significantly, Republic Act No. 6656 also repealed all laws, rules and regulations and part thereof inconsistent with its provisions. (See Section 13)

The Solicitor General, in his consolidated memorandum, argues that traditional concepts of civil service law should not apply. He states that the government overhaul is a direct exercise by the sovereign people of police power. In what he calls "progressive reorganization," separations from the service may be effected without cause because "the mandated reorganization itself is the cause."

There is no dispute over the power to reorganize — whether traditional, progressive, or whatever adjective is appended to it. However, the essence of constitutional government is adherence to basic rules. The rule of law requires that no government official should feel free to do as he pleases using only his avowedly sincere intentions and conscience to guide him. The fundamental standards of fairness embodied in the bona fide rule cannot be disregarded. More particularly, the auto-limitations imposed by the President when she proclaimed the Provisional Constitution and issued executive orders as sole law maker and the standards and restrictions prescribed by the present Constitution and the Congress established under it, must be obeyed. Absent this compliance, we cannot say that a reorganization is bona-fide.

The public respondents (who are petitioners in some cases) argue that they have followed standards. However, the standard they present is derived from the typical grant of rule-making authority found in all the questioned Executive Orders, to wit:

"The Minister shall issue such rules, regulations, and other issuances as may be necessary to ensure the effective implementation of the provisions of this Executive Order."

The alleged standard — "ensure the effective implementation of the provisions of this Executive Order" — is no standard. Under the public respondents concept, their standard is a roving commission giving the executive officer unbridled discretion to do as he pleases as long as, in his belief, his act effectively implements the executive order. As earlier mentioned, the standards are found else where in the governing charters in sufficiently clear and ample language. The grant of quasi-legislative power to implement the reorganization is bound by these standards. Unfortunately, the public officials concerned have misread the instructions and decided to implement reorganization according to their full discretion in a manifestly invalid manner.

Article XVIII, Section 16 of the 1987 Constitution reads:

"Sec. 16. Career civil service employees separated from the service not for cause but as a result of reorganization pursuant to Proclamation No. 3 dated March 25, 1986 and the reorganization following the ratification of this Constitution shall be entitled to appropriate separation pay and to retirement and other benefits accruing to them under the laws of general application in force at the time of their separation. In lieu thereof, at the option of the employees, they may be considered for employment in the Government or in any of its subdivisions, instrumentalities, or agencies, including government-owned or controlled corporations and their subsidiaries. This provision also applies to career officers whose resignation, tendered in line with the existing policy, had been accepted.

To justify the challenged reorganization measures, the Solicitor General finds in the "not for cause" separations

from the service and the "reorganization following the ratification of this Constitution" ample powers assumed by the public respondents and petitioner officials in these cases.

The resolution in *Jose v. Arroyo*, G.R. No. 78435, (unsigned resolution dated August 11, 1987) is cited to justify the termination without cause of the services of the officers and employees involved in the instant cases. The Solicitor General argues that the usual invocation of the right to security of tenure is precluded by the constitutional provision. The Government relies on *Jose v. Arroyo* where we stated:

"The contention of petitioner that Executive Order No. 127 is violative of the provision of the 1987 Constitution guaranteeing career civil service employees security of tenure overlooks the provision of Section 16, Article XVIII (Transitory Provisions) which explicitly authorize the removal of career civil service employees not for cause but as a result of the reorganization pursuant to Proclamation No. 3 dated March 25, 1986 and the reorganization following the ratification of this Constitution. By virtue of said provision, the reorganization of the Bureau of Customs under Executive Order No. 127 may continue even after the ratification of the Constitution and career civil service employees may be separated from the service without cause as a result of such organization." (*Jose v. Arroyo*, supra)

The above arguments have been laid to rest first in the case of *Palma-Fernandez v. dela Paz*, 160 SCRA 751 (1988), where we ruled:

"The argument that, on the basis of this provision, petitioner's term of office ended on 30 January 1987 and that she continued in the performance of her duties merely in a hold-over capacity and could be transferred to another position without violating any of her legal rights, is untenable. The occupancy of a position in a hold-over capacity was conceived to facilitate reorganization and would have lapsed on 25 February 1987 (under the Provisional Constitution), but advanced to 2 February 1987 when the 1987 Constitution became effective (*De Leon, et al. v. Hon. Benjamin B. Esguerra, et al.*, G.R. No. 78059, 31 August 1987). After the said date the provisions of the latter on security of tenure govern." (at p. 757)

The Court was more emphatic in the seven (7) petitions collectively known as the *Dario v. Mison* cases (supra).

First, the *Arroyo v. Jose* ruling is obiter dictum because Leonardo Jose's petition was "clearly premature, speculative, and purely anticipatory." There was no reorganization yet.

Second, *Arroyo v. Jose* is an unsigned resolution where the nuances of the Court's pronouncements cannot possibly be ventilated as in a full-blown decision like *Palma-Fernandez*.

And third, *Palma-Fernandez* is a later ruling which, in case of an inconsistency (actually more imagined than real), supersedes the earlier dictum. (*Dario v. Mison*, supra at pp. 46-49)

We explained in these precedent-setting *Dario v. Mison* cases:

"As we have suggested, the transitory provisions of the 1987 Constitution allude to two stages of the reorganization, the first Proclamation No. 3 — which had already been consummated — the second stage being that adverted to in the transitory provisions themselves — which is underway. Hence, when we spoke, in *Arroyo* of reorganization after the effectivity of the new Constitution, we referred to the second stage of the reorganization. Accordingly, we cannot be said to have carried over reorganization under the Freedom Constitution to its 1987 counterpart.

Finally, *Arroyo* is not necessarily incompatible with *Palma-Fernandes* (or *Esguerra*).

As we have demonstrated, reorganization under the aegis of the 1987 Constitution is not as stern as reorganization under the prior Charter. Whereas the latter, sans the President's subsequently imposed constraints, envisioned a purgation, the same cannot be said of the reorganization inferred under the new Constitution because precisely, the new Constitution seeks to usher in a democratic regime. But even if we

concede ex gratia argumenti that Section 16 is an exception to due process and no-removal — 'except for cause provided by law' principles enshrined in the very same 1987 Constitution. (Article III, Sec. 1, and Art. IX (B), Sec. 2 (3) which may possibly justify removals 'not for cause,' there is no contradiction in terms here because, while the former Constitution left the axe to fall where it might, the present organic act requires that removals 'not for cause' must be a result of reorganization. As we observed, the Constitution does not provide for automatic' vacancies. It must also pass the test of good faith — a test not obviously required under the revolutionary government formerly prevailing, but a test well-established in democratic societies and in this government under a democratic charter."

And only recently, this Court promulgated the decision in *Floreza v. Hon. Jaime Ongpin, et al.*, G.R. No. 81356 and the related case of *Floreza v. Civil Service Commission, et al.*, G.R. No. 86156, February 26, 1990 where we declared the dismissal pursuant to a reorganization invalid and ordered the petitioner's reinstatement to his former position.

A typical provision in all these challenged executive orders is the "hold-over" status of every single employee of the departments as a result of the implementation of the reorganization. One such provision would be Section 24 of Executive Order No. 117 reorganizing the DECS, to wit:

"SEC. 24. New Structure and Pattern. — Upon approval of this Executive Order, the officers (the term officer as used in this Executive Order is intended to be within the meaning of the term 'official' as used in the Freedom Constitution and the succeeding Constitution) and employees of the Ministry shall, in a hold-over capacity continue to perform their respective duties and responsibilities and receive the corresponding salaries and benefits unless in the meantime they are separated from the service pursuant to Executive Order No. 17 [1986] or, Article III of the Freedom Constitution." (Italics supplied)

Pursuant to the above provision, around 400,000 school teachers, janitors, clerks, principals, supervisors, administrators, and higher officials were placed on "hold-over status." When a public officer is placed on hold-over status, it means that his term has expired or his services terminated but he should continue holding his office until his successor is appointed or chosen and has qualified. (See *Topacio Nueno v. Angeles*, 76 Phil. 12 [1946]).

The petitioner in G.R. No. 78053 argues against the "hold-over" feature of the challenged order in this manner:

X X X X X X X X

"x x x To reduce four hundred thousand officers and employees most of them permanent, to holdover status preparatory to their eventual separation from the service many of them beyond middle age and too late to start a new career, is not only tyranny but cruelty of the first magnitude. Reorganizations can be accomplished without disruption of family life, so well respected and protected by the 1986 (sic) Constitution when it says with honor and pride, 'The State recognizes sanctity of family life and shall protect and strengthen the family as a basic autonomous social institution.' Moreover, this step is not in keeping with the mandate of the Freedom Constitution which tasks the President to make effective the guarantees of human rights against violations thereof." (Rollo, G.R. No. 78053, p. 5)

We view it, however, as a graphic illustration of the non-compliance with the bona-fide rule in reorganizations. In answer to questions posed during the oral arguments in these cases, the Solicitor General stated that there were persons other than Division Superintendent Francisco L. Mendoza who were not reappointed. As far as can be gathered from the records, however, it appears that out of 400,000 dismissed employees only one has chosen to come to this Court. Any others seem to have welcomed or accepted their forced retirement as they did not join the petitioners in these consolidated and other related cases. If everybody was going to be reappointed, except Mr. Mendoza and the relatively few unknown others who did not join in these reorganization cases and who would

have retired if allowed to do so, what was the point in dismissing and then placing such a tremendous number of persons on hold-over status?

An examination of the facts of these cases invariably shows that the bona-fide rule has been ignored or disobeyed. Except in the Office of the Press Secretary, there have been significant increases in the number of positions in affected Departments and agencies thus belying the claims of economy. Offices have been abolished but in their stead, offices performing substantially the same functions have been created. In some cases, e.g. the Science Promotions Institute in the Department of Science and Technology an office has been divided into two or more offices with a greater number of employees performing the same functions. Incumbents have been replaced by persons less qualified in terms of status, performance, and merit as in the Department of Tourism where a driver with 27 years government service, a messenger with 14 years, bookkeepers, and others with citations and honors have been replaced by appointees with lesser qualifications and seniority.

It is a paramount principle in Public Officers' Law that the power to abolish public offices vested in the legislature is not absolute. It is subject to the limitations that it be exercised in good faith, should never be for personal or political reasons, and cannot, be implemented in a manner contrary to law. (*Cruz v. Primicias*, 23 SCRA 998 [1968]; *Maza v. Ochave*, 20 SCRA 142 [1967]; *Abanilla, et al. v. Ticao, et al.*, 17 SCRA 652 [1966]; *Ocampo, et al. v. Duque, et al.*, 16 SCRA 962 [1966]; *Llanto v. Ali Dimaporo, et al.*, 16 SCRA 599 [1966]; *Arao v. Luspo*, 20 SCRA 722 [1967]; *Guillergan, et al. v. Ganzon, et al.*, 17 SCRA 257 [1966]; *Urgelio v. Osmeña, Jr.*, 9 SCRA 317 [1963]; *Alipio v. Rodriguez*, 9 SCRA 752 [1963]; *Briones, et al. v. Osmeña, Jr., et al.*, 104 Phil. 588 [1958]; and *Gacho, et al. v. Osmeña, Jr., etc., et al.*, 103 Phil. 837 [1958]).

Speaking through Mr. Justice J.B.L. Reyes, the Court was very emphatic in *Cruz v. Primicias, Jr.*, supra that an abolition which is not bona-fide but is merely a device to circumvent the constitutional security of tenure of civil service employees is null and void.

These principles were reiterated in *De la Llana v. Alba* (112 SCRA 294 [1982]) where we sustained a bona-fide reorganization, to wit:

"Nothing is better settled in our laws than that the abolition of an office within the competence of a legitimate body if done in good faith suffers from no infirmity. The ponencia of Justice J.B.L. Reyes in *Cruz v. Primicias, Jr.* (23 SCRA 998) reiterated such a doctrine. 'We find this point urged by respondents, to be without merit. No removal or separation of petitioners from the service is here involved but the validity of the abolition of their offices. This is a legal issue that is for the courts to decide. It is a well-known rule also that valid abolition of offices is neither removal nor separation of the incumbents. And of course, if the abolition is void, the incumbent is deemed never to have ceased to hold office. x x x' As well-settled as the rule that the abolition of an office does not amount to an illegal removal of its incumbent is the principle that, in order to be valid, the abolition must be made in good faith." (at pp. 321-322).

As in the *Dario v. Mison* cases, we disregard the procedural roadblocks which the parties on either side have tried to erect against each other:

"The Court disregards the questions raised as to procedure, failure to exhaust administrative remedies, the standing of certain parties to sue, (This was raised by the Civil Service Commission in G.R. No. 86241. Failure to exhaust administrative remedies was raised in G.R. Nos. 81954 and 81917 by the Solicitor General) and other technical objections, for two reasons, '[b]ecause of the demands of public interest, including the need for stability in the public service,' (*Sarmiento III v. Mison*, No. 79974, December 17, 1987, 153 SCRA 549, 551-552) and because of the serious implications of these cases on the administration of the Philippine civil service and the rights of public servants." (G.R. No. 81954 and related cases, August 8, 1989, pp. 23-24)

III

In G.R. No. 78053, it is apparent that the petitioner's termination as Schools Division Superintendent of Surigao City was pursuant to the public respondent's view that under Section 24 of Executive Order No. 117 all incumbent officials/personnel of DECS were on hold-over status unless advised otherwise.

The dismissal of all employees and their being placed on hold-over status is particularly objectionable in the DECS. There could have been no intention to get rid of hundreds of thousands of school teachers. The use of "reorganization" even under the concept advocated by the Solicitor General appears trivial if not unnecessary. Division Superintendents usually start as classroom teachers and move up to principals, district supervisors, and assistant superintendents usually over more than thirty years of service before appointment as Division heads. At each rung of the promotional ladder, there are qualifying examinations and rigid background checks. The big number of competitors insures some degree of safeguards against abuses. To use "reorganization" of the biggest Department in the government in order to avoid the hassles of bringing administrative charges against Mendoza and perhaps a few other alleged persona-non-gratas like him is precisely what this Court rejects when we apply the bona-fide rule. One does not burn down a house if his purpose is to roast alleged pests.

The petitioner was appointed in a "PERMANENT STATUS" besides having a rating of 79% for the rating period of May 1986 to April 1987, which is considered "Very Satisfactory" under the "Rating Sheet for Key MEC Officials." There was grave abuse of discretion when the petitioner's services were terminated by a mere letter-order on the justification that the petitioner, together with the entire personnel of the DECS, was only in a hold-over capacity. If the petitioner is guilty of wrongdoing, it is an easy matter to file charges against him instead of placing the entire DECS on hold-over status in order to run after him.

In G.R. No. 78525, the public respondents justify the termination of the petitioners as follows: 1) as regards seventeen of the petitioners, they were previously employed in the abolished Bureaus (Tourism Services and Bureau of Tourism Promotions). Therefore, the public respondents argue that since the positions of the seventeen petitioners were abolished, they can not claim impairment of their right to security of tenure; 2) as regards the remaining petitioners, the public respondents argue that although their positions were not abolished, their separation from the service without cause is also valid pursuant to Section 16, Article XVIII, 1987 Constitution and the case of Jose v. Arroyo, *supra*.

The public respondents maintain that due process was observed since the petitioners were evaluated in accordance with the criteria in Section 27 of the Civil Service Act giving them examinations to determine their competence and/or having them interviewed by their superiors and/or civil service commissioners or personnel specialists and/or requiring them to submit self-evaluation reports; and/or referring to their personnel records.

As we stated earlier, ritual invocation of the abolition of an office is not sufficient to justify the termination of the services of an officer or employee in such abolished office. Abolition should be exercised in good faith, should not be for personal or political reasons, and cannot be implemented in a manner contrary to law. "Good faith, as a component of a reorganization under a constitutional regime, is judged from the facts of each case." (Dario v. Mison cases, p. 50).

If an executive department is bloated with unnecessary employees, there can be no objection to a law abolishing the useless or non-essential items. In the instant case, however, all items, including the essential ones, were declared vacant. There is absolutely no showing that the positions of tourism field coordinator, bus driver, bookkeeper, accounting clerk, librarian, nurse, telephone operator, messenger in fact, any of the items occupied by the petitioners — are unnecessary and must be chopped off.

In the case of *Rama v. Court of Appeals*, (148 SCRA 496 [1987]), we ruled:

x x x It is an undeniable fact that the dismissed employees who were holding such positions as foremen, watchmen, and drivers, suffered the uncertainties of the unemployed when they were plucked out of their positions. That not all of them testified as to the extent of damages they sustained on account of their separation from their government jobs, cannot be used as a defense by the petitioner. Suffice it to state that considering the positions they were holding, the dismissed employees concerned belong to a low-salaried group, who, if deprived of wages would generally incur considerable economic hardships.

x x x x x x x x

Apropos the practice of victorious politicians to remove government employees who did not support them in their campaign for office, this Court has said: 'There are altogether too many cases of this nature, wherein local elective officials, upon assumption to office, wield their new-found power indiscriminately by replacing employees with their own proteges regardless of the laws and regulations governing the civil service. Victory at the polls should not be taken as authority for the commission of such illegal acts.' (*Nemenzo v. Sabillano*, L-20977, September 7, 1968, 25 SCRA 1)

The rule does not apply to local officials alone. It is even more true for national offices. It would be the height of naivete to presume that in the rapid filling up of several hundred vacated positions, no personal or political considerations would creep into the selection process. The civil service law was evolved as a reaction to the spoils system.

The petitioners are employees of the Department of Tourism holding permanent positions. Most of them have served the government for extended periods, from twelve (12) years to twenty-seven (27) years. No one of them has a pending administrative charge. Many of them have received numerous citations, awards, and honors for meritorious services. The public respondents have given no individual reasons for each of the affected employees as to why they are being dismissed from their employment except to emphasize in a general manner the existence of near absolute power to cut off their means of livelihood.

The lip service paid by the respondents to due process whereby supervisors who were themselves later dismissed, were ordered to give "evaluations" on the performance of the laid off personnel is no substitute for more regular procedures in getting honest to goodness results. The advice sought from "Personnel Specialists" of the Civil Service Commissioners, who should have known better than to participate in a violation of the rules their agency espouses is only window-dressing for what this Court called in *Cruz v. Primicias*, supra as a "subterfuge resorted to for disguising an illegal removal of permanent civil service employees." The employees are terminated without being given reasons for their dismissal. Only the appointing authority knows why employees are no longer reappointed.

The circumstances are different in G.R. No. 81197 filed by personnel in the Office of the Press Secretary.

As earlier stated, out of 770 regular employees of the Bureau of Broadcast and Radyo Ng Bayan, only 333 employees were retained in the new and merged office of Bureau of Broadcast Services. The intent to abolish unnecessary items and to keep them abolished has not been satisfactorily refuted by the petitioners.

Fifteen petitioners hold temporary appointments. There is no showing way these 15 employees should be exceptions to the established rule that persons holding temporary or casual appointments do not enjoy the security of tenure extended to permanent personnel.

The Solicitor General in his Consolidated Memorandum filed on March 10, 1989 manifested:

"Subsequently, or on January 19, 1988, a Supplemental Petition was filed by all the above.

"In the meantime, during the pendency of the instant case before this Honorable Court, the OPS requested the Budget Office for a supplemental or additional plaintiffs, which has been recently approved on January 25, 1989. Also, the present status of all the 84 petitioners is as follows:

"(a) 61 petitioners have already availed of separation benefits.

"(b) 3 petitioners have already availed of separation benefits.

"(c) 1 petitioner is likely to apply for separation benefits after being cleared by COA of her property accountability.

"(d) 6 petitioners are not expected to avail of separation benefits for being contractual employees.

"(e) 1 petitioner (Romulo Salcedo) has already been reinstated out of deference to a Resolution of the Civil Service Commission, whose jurisdiction OPS had doubted. At any rate, Salcedo passed the OPS exams/interviews, but could not previously be accommodated due to limited number of positions under new staffing pattern.

"(f) 1 petitioner is presently serving as volunteer in anticipation of a position under the requested supplemental plantilla (now approved).

"(g) 10 petitioners are performing duties in hold-over capacity likewise in anticipation of a position under the supplemental plantilla (5 of these 10 petitioners disclaim having authorized their inclusion as petitioners in the instant case).

"(h) 1 petitioner (Corazon Carluen) had accepted a position lower than the position of radio production announcer which she applied for but for which she was shown not to be qualified.

"On January 24 and 31, 1989 when the instant petition was scheduled for oral arguments before this Honorable Court, neither petitioners nor their counsel appeared, the case for all intents and purposes having become moot and academic.

"Thus, on the bases alone of aforesaid developments during the pendency of the instant petition, dismissal of the instant petition is warranted.

"In any event, the instant petition is without merit in the light of the progressive reorganization undertaken by the sovereign people in the aftermath of the EDSA Revolution." (Rollo of G.R. No. 81197, pp. 71-73).

On February 13, 1990, we issued a resolution, to wit:

"For failure of Atty. Alfredo V. Zerrudo, Jr., counsel for petitioners in G.R. No. 81197 to comply with the resolutions of (a) April 12, 1988 which required among other things, the parties to file their respective memoranda, (b) September 6, 1988, requiring aforesaid counsel to show cause why no disciplinary action should be taken against him for failure to file memorandum and to comply with the resolution of April 12, 1984 and (c) November 8, 1988 which imposed on Atty. Zerrudo, Jr., a fine and required him to comply with the resolution of September 6, 1988, the Court Resolved to (d) ORDER THE ARREST of aforesaid Atty. Alfredo V. Zerrudo, x x x."

Not only did the petitioners fail to appear during the hearings and fail to file the required memorandum but up to this time, we have not heard anything from them. Apparently, the petitioners have lost interest in prosecuting the instant case in view of the supervening events stated by the Solicitor General.

In G.R. No. 81495, the petitioners raise the following arguments: (1) The 1987 Constitution, in its Section 16, Article XVIII justifies the dismissal of career civil servants not for cause; (2) Executive Order No. 128 does not violate security of tenure but merely allows employees to continue on a "hold-over" capacity, (3) The ruling in

Jose v. Arroyo *supra* states that a reorganization may continue even after the ratification of the Constitution and dismissal without cause as a result of such reorganization are valid.

We have discussed earlier why these arguments are not well-taken. In the Mison cases, we categorically stated that Section 16, Article XVIII of the 1987 Constitution does not sanction indiscriminate dismissals without cause.

We have also discussed why the "hold-over" status of all employees/officers provided for in the executive orders reorganizing the various departments in government cannot be ordered and implemented during the effectivity of the 1987 Constitution (which was on February 2, 1987). Civil service eligibles can no longer be removed without cause as they already enjoy the constitutional right to security of tenure. This was the ruling in the Palma-Fernandez v. de la Paz decision and the Dario v. Mison cases which clarified and tempered the abbreviated language of the Jose v. Arroyo decision cited by the petitioners.

In G.R. No. 81928, the issue involves the validity of the abolition of the office of the petitioner. The petitioner maintains that the abolition of the Science Promotion Institute (SPI) and the consequent creation of two offices namely the Science Education Institute (SEI) and the Science and Technology Information Institute (STII) pursuant to Executive Order No. 128 was not effected in good faith. The petitioner contends that the SPI has not been abolished but merely split into two (2) offices whose combined functions are substantially identical with the functions of the SPI. Moreover, the petitioner contends that the two newly created offices provide for thirteen (13) management positions which is more than the number of said position in the SPI.

Section 4, Republic Act No. 770 which enumerates the functions of SPI reads:

"SEC. 4. The purposes of this Corporation (SFP, subsequently renamed and converted to SPI) shall be:

"a) To initiate, promote, stimulate, solicit, encourage and support basic and applied scientific research in the mathematical, physical, medical, biological, engineering and other sciences, by means of grants, loans and other forms of assistance to qualified persons and institutions applying for the same;

"b) To award scholarships and graduate fellowships in the mathematical, physical, medical, biological, engineering and other sciences;

"c) To foster interchange of scientific information among scientists here and abroad;

"d) To aid in the establishment of adequate scientific laboratories; and,

"e) To encourage, protect and aid in the organization of science clubs and societies in the schools and colleges of the Philippines. (Sec. 4, RA No. 770).

Sections 26 and 27 of Executive Order No. 128 which enumerate the functions of the SEI and STII respectively read:

"SEC. 26. Science Education Institute. — There is hereby created the Science Education Institute, which shall have the following functions:

"a) Undertake science education and training;

"b) Administer scholarships, awards and grants;

"c) Undertake science and technology manpower development;

"d) Formulate plans and establish programs and projects for the promotion and development of science and technology education and training in coordination with the Ministry of Education, Culture and Sports, and other institutions of learning in the field of science and technology x x x." (Sec. 26, EO No. 128)

"SEC. 27. Science and Technology Information Institute. — There is hereby created the Science and Technology Information Institute which shall have the following functions:

"a) Establish a science and technology databank and library;

"b) Disseminate science and technology information; and

"c) Undertake training on science and technology information x x x." (Sec. 27, EO 128).

We find no substantial differences between the functions of the two newly created offices and those of SPI. Indeed, their functions are similar in the promotion, encouragement, and support of the development of science and technology. The public respondents' contention that the functions of two newly created offices are not substantially similar to those of SPI is untenable.

Pursuant to Section 2, Republic Act No. 6656 this circumstance x x x where an office is abolished and another performing substantially the same functions is created x x x" is considered as "evidence of bad faith in the removal made as a result of reorganization giving rise to a claim for reinstatement x x x."

Moreover, there is merit to the petitioner's contention that there is an increase in the number of management positions from nine (9) of SPI to the thirteen (13) of the STII and SEI.

This increase violates RA 6656 in that "x x x where there is a significant increase in the number of positions in the new staffing pattern x x x," these circumstances "x x x may be considered as evidence of bad faith x x x."

The respondent contends that the petitioner was terminated as a result of the reorganization. The petitioner alleges that he was separated in view of his refusal to comply with the alleged anomalous demand of the respondent to turn over SPI funds to the DOST proper. Since vestiges of bad faith as defined by statute and this Court surrounded the abolition of his office, the petitioner should be reinstated and be given an equivalent position in either the STII or SPI.

In G.R. No. 81998, the Solicitor General in this consolidated Memorandum manifests:

"In the case, there is actually no reorganization involved. Petitioner Rogelio Bustamante, who appeared in his own behalf and for his co-petitioners ADMITTED in open court during the oral argument on February 1, 1989 that not one of the petitioners was removed from his or her position. Otherwise stated as of the dates the original and supplemental positions were filed no employee has as yet been removed, replaced or reorganized out.

"It is respondents' submission that even if it is assumed that petitioners would eventually be removed from their positions as a result of the reorganization of the Department of Agriculture pursuant to Executive Order No. 116, still petitioners' grievance has no legal or constitutional mooring in the light of the pronouncement of this Honorable Court in *Leonardo A. Jose v. Joker P. Arroyo, et al.* x x x."

We apply the principle earlier stated that the case of *Jose v. Arroyo*, supra has been superseded by the *Palma-Fernandez v. de la Paz* (supra) and the *Dario v. Mison* (supra) cases to the effect that after February 2, 1987 civil service eligibles in the government service enjoy the constitutional right to security of tenure. The petitioners, therefore, can not be removed by mere notices of termination, without due notice and hearing and not knowing the valid grounds for the termination of their services.

In G.R. No. 86504, the petitioner who was then the Secretary of the Department of Transportation and Communications (DOTC) considered the respondents to be holding their positions in a hold-over capacity pursuant to Section 20 of Executive Order No. 125. Under this premise, the petitioner declared all positions of the department vacant including those of the respondents and thereafter extended new appointments as part of the

reorganization of the department.

This is, therefore, another case where the hold-over procedure is used as a justification.

The record shows that before reorganization, the respondents and Aureliano de Leon were officers of the Bureau of Telecommunications (BUTEL) holding the following items: (1) Respondent Austria was the Chief of the National Telegraphic Transfer Service (NTTS) (Range 75) since March 16, 1984; (2) Respondent Gervacio was Administrative Officer V (Chief of the Administrative Division) (Range 73) since September 1982; and (3) Aureliano de Leon was Administrative Officer III (Range 70). He was under Gervacio's supervision as Chief of the Supply Unit.

BUTEL was retained under the reorganizational scheme of the department. The name of the agency was only changed to Telecommunications Officer (TELOF). The item of NTTS Chief was retained. As regards the position of Chief of the Administrative Division, the petitioner claims that the Administrative Officer V (Range 73) position was abolished and in its stead there was created the position of Administrative Chief II (Range 75). Evaluations to the new positions started after the effectivity of the 1987 Constitution.

Parenthetically, the petitioner was incorrect in holding the position of Austria as NTTS Chief vacant. At the time Austria was transferred to another position, Austria already enjoyed the constitutional right to security of tenure under the new Constitution. Austria has been in the government service for forty-three (43) years and was nearing retirement (he was 63 years old) at the time he was transferred to another position lower in rank (Administrative Officer I Range 64) which the petitioner admits to be a demotion. Certainly, this is contrary to the resolution of the DOTC-RAB to the effect that "the Board resolves to direct the Telecommunications Office and the Department's Selection and Placement Committee to consider Mr. Austria in the evaluation of the candidates for the other Division Chief positions in the Telecommunications Office x x x" (p. 104, Rollo). Hence, we find no plausible reason why he should be removed from his position or transferred to a position lower in rank (Administrative Officer I) which the petitioner admits to be a demotion.

As regards the position of Chief of the Administrative Division, Gervacio was already chief of the Division when it was abolished and then re-created with a salary range two points higher. We affirm the respondent Civil Service Commission's (CSC) ruling that Gervacio should be appointed as such and not Aureliano de Leon, to wit:

"Gervacio, on the other hand, should be appointed Administrative Service Chief II. Although Aureliano de Leon meets the qualifications of the position, he was merely an Administrative Officer III before the reorganization very much lower than the position held by Austria and Gervacio. Gervacio not only meets the qualification standards for the position but also has retention score higher than de Leon who was merely his supervisee before the reorganization of TELECOM. Moreover, his legal profession/expertise which is not possessed by de Leon is a great asset of Gervacio in the performance of the functions and duties of, as well as in meeting the challenges attendant to the Administrative Service Chief II. Gervacio, therefore, has more advantages than de Leon in point of service, qualification, competence, training and years of government experience in the job." (Rollo of G.R. No. 86504, p. 109)

Section 2, Republic Act No. 6656 provides that among the circumstances which may be considered as evidence of bad faith in the removals made as a result of reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party is x x x (c) where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit x x x." (Italics supplied).

The rule is that "the appointing person enjoys sufficient discretion to select and appoint employees on the basis of their fitness to perform the duties and assume the responsibilities of the position to be filled x x x Unless the law speaks in mandatory and peremptory tone, there should be full recognition of the wide scope of such discretionary

authority." (Central Bank of the Philippines, et al. v. Civil Service Commission, et al., G.R. Nos. 80455-56, April 10, 1989). In this case, an incumbent was dismissed and his subordinate was appointed to his former office, in the course of the reorganization program. Congress has stated the rule. We apply it.

G.R. No. 86547 is similar to G.R. No. 78525 in that: (1) the petitioner in G.R. No. 86547 (Secretary of Agriculture) and the respondent in G.R. No. 78525 (the Secretary of Tourism) terminated the services of the employees in their respective departments (respondents in G.R. No. 86547 and petitioners in G.R. No. 78525) for either of the two reasons: (a) Abolition of the employees' positions or offices, and (b) As regards the employees whose positions were not abolished, their non-appointment is sanctioned by the Executive Order reorganizing the department and which was recognized in the *Jose v. Arroyo* case; (2) The affected employees were mostly from the low salaried groups like clerks, fishery aide, secretary, liaison officer, carpenter, driver, security guard, bookkeeper, information writer, and accounting clerks; (3) Some of the affected employees perform necessary jobs, in the instant case like Soil Technologist, Fishery Agent, Agronomist and Fishery Biologist; and (4) The affected employees were terminated in their employment by mere notices of termination.

Under the circumstances, we find no need to discuss the various arguments in the petition. We apply our findings and conclusions in G.R. No. 78525 to the instant case.

In G.R. No. 88951, the petitioner assails the resolutions of the Civil Service Commission (CSC) on the following grounds: 1) The termination of services of the private respondents was brought about by the abolition of the offices of OMACC and PHILPA where they were employed pursuant to Executive Order No. 122; 2) The private respondents cannot claim security of tenure pursuant to Section 16, Article XVIII of the 1987 Constitution which is considered a "progressive" type of reorganization and to the ruling in the case of *Jose v. Arroyo* (supra); and 3) The petitioner acted in good faith by observing all presidential issuances, orders and memoranda on reorganization.

There is no need to discuss the merits of the first two grounds. They have been sufficiently discussed earlier.

But, was the reorganization of the Department done in bad faith?

After conducting hearings, the CSC stated the following:

"Memorandum Circular No. 10 dated September 2, 1986 of the CSC was issued to 'effectively implement the reorganization in government offices particularly on the selection and placement of personnel and in order that the best qualified and most competent personnel in the career service are retained, x x x.' This Circular prescribes that 'the officials and employees shall be compared on the basis of the status of their appointment, competence to perform their duties and moral fitness to discharge their responsibilities and, those who squarely meet the qualification requirements for the position in terms of education, training and experience shall be preferred x x x.' The records do not show that appellants were evaluated for retention purposes in accordance with the guidelines on reorganization.

"Moreover, the Unnumbered Memorandum of the President dated October 2, 1987 containing guidelines on the implementation of the Reorganization Executive Orders provides that the ongoing process of government reorganization should be conducted 'in a manner x x x that is sensitive to the dislocating consequences arising from specific organization x x x and that the entire process of reorganization must be carried out in the most humane manner possible.'

"Appellants were unceremoniously terminated by a memorandum order of a mere Acting Assistant Executive Director even before the position structure and staffing pattern of the OMA were approved and prescribed by the authorities as required by EO 122-A. Even in reorganization of government agencies, career service employees are entitled to security of tenure. The instant case involves government reorganization by way of

abolishing one agency and replacing it with another. Such being the case, the guidelines on placement of personnel in reorganizing agencies must be complied with.

"Regarding those who have retired or were phased out and have already received their separation benefits, they are now estopped or deemed to have lost their right, if any, to re-appointment. On the claim of the respondent that some appellants are already employed in other government offices, the records are bereft of evidence to support the said allegation.

"Likewise, from the records, the following findings have been established:

"1. The acting Assistant Executive Director of the OMA has no power to terminate the services of the former OMACC/PHILPA personnel;

"2. New employees who are not civil service eligibles have been appointed to positions in the new staffing pattern of OMA; CSC approval of these appointments is subject to the result of reorganization appeals;

"3. The positions involved are not confidential positions and hence, not subject to the trust and confidence of the appointing authority;

"4. There is no substantial change in the mandate of the new office, which is the OMA. Executive Order Nos. 6 and 122-A clearly delineates the functions and responsibilities of OMA as envisioned by Executive Order No. 6 and 122-A of President Corazon C. Aquino;

"5. The incumbents of OMACC and PHILPA are entitled to security of tenure and therefore to reappointment in the newly created agencies such as Office on Muslim Affairs, Office of Northern Cultural Communities and Office of Southern Cultural Communities; and

"6. OMA did not observe the transparency requirement by treating the OMA Plantilla of Personnel and staffing pattern confidential." (Rollo, G.R. No. 88951, pp. 58-60)

These findings show that contrary to the petitioner's allegation, the termination of the services of the private respondents was not done in good faith.

In G.R. No. 89427, the Solicitor General, instead of filing a Comment to the Petition, filed a Manifestation on December 23, 1989 stating therein that he was informed by respondent Secretary of Health Alfredo R.A. Bengzon "that the papers for the reinstatement of Dr. Villazor are now undergoing process in the Department and said petitioner will be reinstated to his position as Assistant Provincial Health Officer." The Solicitor General, therefore, manifests that the instant petition should be dismissed for being academic.

This manifestation was opposed by the petitioner who claims that the processing of his papers for reinstatement is not a reinstatement but simply a process and until the petitioner is actually reinstated the instant case cannot be purely academic.

Considering the manifestation and the opposition thereto, we rule that the petition has indeed become academic. No useful purpose can be served by discussing the issues as to whether or not the petitioner should be reinstated when the public respondent by assuring this Court that the petitioner shall be restored to his former position has recognized the petitioner's right to be given back the position earlier taken away from him.

IV

One of the causes of instability constituting a clear deterrent to efficiency and honesty in Government is the widespread and incessant reorganization of executive departments and offices, the abolition of all positions from the highest to the lowest and the subsequent restoration and filling up of all the abolished items and new ones that

have been created.

Security of tenure, together with the merit and fitness rule, is a basic feature of the civil service scheme we have adopted in the Philippines. If established principles protecting security of tenure are to be disregarded or waived, this can be done only on the basis of clear constitutional grounds.

It is significant that in the charters or legislative authority for the exercise of power — the Provisional Constitution of 1986, Executive Order No. 17, and Republic Act No. 6656 — any reorganization in Government must follow the bona-fide rule. There is no basis in the above laws for indiscriminate dismissals. The executive implementors of policy are required to abide by the intent and purpose stated in the grant of power, to follow the guidelines set out for them and, in the words of the President "ensure that only those found corrupt, inefficient, and undeserving are separated from the government service."

We are constrained to set aside the reorganizations embodied in these consolidated petitions because the heads of departments and agencies concerned have chosen to rely on their own concepts of unlimited discretion and "progressive" ideas on reorganization instead of showing that they have faithfully complied with the clear letter and spirit of the two Constitutions and the statutes governing reorganization.

The auto-limitations imposed by the President on herself have not been followed by the alter egos. The members of Congress have spoken out on how any valid reorganization should be conducted. Their voice should be heeded.

The Damocles sword of reorganization hanging over the heads of public servants with every change of administration and sometimes with the change of agency heads does not serve in any way the restoration of democracy, the eradication of graft and corruption, and the rebuilding of confidence in the government if the bona-fide rule and the basic guidelines are not followed.

The justification implicit in all these purges, which is to rid the government of the iniquitous vestiges of the past regime or of any regime for that matter is conceded. If the purges were limited to policy making officials, administrators, commissioners, special assistants, directors and other high-ranking personnel there may be some legal basis for their dismissal on a more or less summary inquiry into their shortcomings. However, we fail to see how drivers, messengers, clerks and lower-level employees like most of the petitioners who have been working at ordinary jobs for decades could in any way be iniquitous vestiges of any regime. These low ranking employees, who had nothing to do with martial law or hidden wealth, suffer the most from indiscriminate firings.

The issues are not limited to the employees or the departments and/or agencies of the government now before us. For any one who is affected, a termination notice is the equivalent of capital punishment. A driver who has worked 27 years in the government, a budget examiner for 25 years, a messenger for 14 years and many of the other petitioners would find it difficult to find new employment after giving the best years of their humble lives to the government service. And even for those who are re-appointed, the damage to the civil service has been done. Instead of amassing credits based on merit or fitness, these employees will be thinking in terms of patronage, as to who might be of help come the next reorganization. We stressed in the case of *Meram v. Edralin* (154 SCRA 238 [1987]):

"The principles governing the integrity of the civil service are of universal validity. As stated in the case of *Hanley v. Murphy* (255 P. 2d. 1, 4):

'x x x The civil service system rests on the principle of application of the merit system instead of the spoils system in the matter of appointment and tenure of office. (*Barry v. Jackson*, 30 Cal. App. 165, 169, 157 P. 828) To that end the charter establishes a classified civil service system, with exclusive power in the civil service commission to provide qualified personnel, for the various municipal departments and to classify or reclassify positions according to prescribed duties. x x x.'

Furthermore, civil service laws are not enacted to penalize anyone. They are designated to eradicate the system of appointment to public office based on political considerations and to eliminate as far as practicable the element of partisanship and personal favoritism in making appointments. These laws intend to establish a merit system of fitness and efficiency as the basis of appointment; to secure more competent employees, and thereby promote better government. (See *Gervais v. New Orleans Police Department*, 77 So 2d, 393; *Civil Service Board of City of Phoenix v. Warren*, 244 P 2d 1157 citing *State ex rel. Kos v. Adamson*, 226 Minn. 177, 32 N. W. 2d 281, 284)."

Only a scrupulous adherence to the bona-fide rule will prevent the erosion of the fragile foundations of the Philippine civil service. The development of a truly career and non-partisan civil service is a must in sound developmental planning. Its achievement will not be helped in any way by the kind of reorganization challenged in these petitions. The wounds inflicted by indiscriminate dismissals of all employees, even on those later reappointed to their former positions, will take a long time to heal. If a person is dismissed from his job, he should be informed of the reason. The reason should be in the Civil Service Law or, at least, in the law authorizing the removal. The reason must have a reasonable relationship to the employee's merit and fitness for the job. He must be given, before he is fired, an opportunity to show that the cause for removal does not apply to him. Elementary principles of fairness and compassion are essential. Only then can the reconciliation and unity so earnestly sought today be achieved.

WHEREFORE, PREMISES CONSIDERED, the Court hereby renders judgment as follows:

- 1) In G.R. No. 78053, the petition is GRANTED. The LETTER-ORDER dated MARCH 19, 1987 issued by the public respondent which terminated the services of the petitioner is SET ASIDE. The successor of the public respondent, the former Lourdes R. Quisumbing as Secretary of Education, Culture and Sports, is ordered to restore the petitioner to his position as Schools Division Superintendent of Surigao City without loss of seniority rights and with back salaries reckoned from the date of his termination.
- 2) In G.R. No. 78525, the petition is GRANTED. All office orders and memoranda issued pursuant to Executive Order No. 20 are declared null and void. The public respondents or their successors are ordered to immediately restore the petitioners to their positions without loss of seniority rights and with back salaries computed under the new staffing pattern from the dates of their invalid terminations at rates not lower than their former salaries.
- 3) In G.R. No. 81197 the petition is DISMISSED for being MOOT and ACADEMIC and for the failure of petitioners to prosecute their case.
- 4) In G.R. No. 81495, the petition is DISMISSED. Except in the cases of those who have retired or opted to be phased out and who have received their separation and retirement benefits, the petitioners are ordered to retain the private respondents-employees in the reorganized department under the new staffing pattern with positions and salaries comparable or equivalent to their former positions but not lower than their former ranks and salaries.
- 5) In G.R. No. 81928, the petition is GRANTED. The order dated September 25, 1981 issued by the public respondent which terminated the petitioner's employment is SET ASIDE. The public respondent or his successor is ordered to reinstate and assign the petitioner to any position closest to his old position in either the STII or SEI in terms of functions, duties, salary emoluments and privileges, and without demotion in his rank, salary and privileges as of September 24, 1987 when the invalid termination of services was effected.
- 6) In G.R. No. 81998, the petition is GRANTED. The public respondents or their successors are ordered to return the private respondents to their positions with compensation based on comparable or equivalent rates under the new staffing pattern but not lower than their former salaries.
- 7) In G.R. No. 86504, the petition is DISMISSED. The questioned resolutions of the Civil Service Commission

are AFFIRMED. The temporary restraining order issued on September 5, 1989 is lifted.

8) In G.R. No. 86547, the petition is DISMISSED. Except for those who retired or opted to be phased out and who have received their separation and retirement benefits, the petitioner or his successor is ordered to return the private respondents to their former positions or to positions of comparable rank in the reorganized department without loss of seniority rights.

9) In G.R. No. 88951, the petition is DISMISSED. The questioned resolutions of the Civil Service Commission are AFFIRMED.

10) In G.R. No. 89427 the petition is DISMISSED for being MOOT and ACADEMIC.

SO ORDERED.

Cruz, Paras, Gancayco, Bidin, Sarmiento, Cortes, Medialdea, and Regalado, JJ., concur.

Fernan, C.J., see separate concurring and dissenting opinion.

Melencio-Herrera, J., I reiterate the grounds of my dissent in the Mison and companion cases.

Narvasa, J., I dissent on the grounds set forth in Mme. Justice Herrera's separate opinion in Mison.

Feliciano, J., I dissent for the reasons set out in Mme. Justice Herrera's dissenting opinion in Dario v. Mison.

Padilla, J., took no part; related to counsel for private respondents in G.R. No. 86547.

Griño-Aquino, J., on leave.

CONCURRING AND DISSENTING OPINION

FERNAN, C.J.:

I write this separate opinion upon the sad realization that in the final analysis, we may have unwittingly frustrated our people's unmistakable clamor for a complete reorganization of the government.[1] For in ruling as it did in these consolidated cases (As in the Dario cases, G.R. No. 81954, August 8, 1989), the majority has in no uncertain terms set to naught the reorganization efforts not only in the various departments, agencies and offices involved herein, but in the entire bureaucracy.

The majority would insist on distinguishing the reorganization process effected under the Freedom Constitution from that which may be undertaken under the 1987 Constitution, with the self-defeating proviso that in the latter case, "civil service eligibles can no longer be removed without cause as they already enjoy the constitutional right to security of tenure.[2] Such fragmented view does not sit well with the law. It does not take into account the various reorganization executive orders issued by the President prior to the ratification of the 1987 Constitution precisely to ensure the continuity of the reorganization process commenced under the Freedom Constitution and carried over to the 1987 Constitution, or the recognition by the latter constitution itself of the "reorganization following the ratification of this Constitution,[3] which, to my mind, cannot but mean the same reorganization contemplated under the Freedom Constitution. Otherwise, the 1987 Constitution would have provided for an automatic hold-over clause as did the 1935 and 1973 Constitutions. Such clause was, however, deemed no longer necessary for the same has been provided under the Freedom Constitution and the various reorganization executive orders.

Nor does the interpretation insisted upon by the majority jibe with reality. The reorganization of a department

with its numerous bureaus, offices and sections is a major undertaking. It entails intensive management study and audit, personnel evaluation, formulation of new position structures and staffing patterns, budget allocation, etc., which steps necessarily take time to accomplish. With the Court's pronouncement in these cases and the Dario cases, *supra*, cutting short the reorganization process mandated by the people in the Freedom Constitution to February 2, 1987, it is indeed doubtful whether any government department had fully implemented its reorganization program, that is, if it had at all formulated one, considering time constraints.

But by herein maintaining the basis of my dissent in the said Dario Cases, *supra*, that the reorganization pursuant to Proclamation No. 3 continues even after the ratification of the 1987 Constitution, I find myself concurring in the result obtained in G.R. No. 78053.

Therein petitioner Francisco L. Mendoza was Schools Division Superintendent in the then Ministry (now Department) of Education, Culture and Sports, with official station at Surigao City. Pursuant to the government reorganization decreed under Art. III of the Freedom Constitution, he was appointed to the same position with the same place of assignment effective June 4, 1986. Sometime during the last week of March, 1987, he received, through the Regional Director, Region X, a letter-order dated March 19, 1987 signed by respondent Secretary of Education, Culture and Sports Lourdes R. Quisumbing, informing him of his separation from the service effective April 15, 1987.[4] Cited as basis for said personnel action was Executive Order No. 117 approved by President Aquino on January 30, 1987.

The arbitrariness in this case is obvious. Even before Executive Order No. 117, the law relied upon by respondent, was enacted on January 30, 1987, the government reorganization mandated under the Freedom Constitution was already being implemented. In fact, as aforesaid, said executive order as well as the other reorganization executive orders were intended to prolong or extend the period of implementing the reorganization program. Simply put, Executive Order No. 117 was a mere continuation of the government reorganization being implemented at the time of its enactment. Upon these considerations, there can be no plausible explanation why in June, 1986, when the government reorganization was already being implemented, petitioner was deemed qualified to remain in the service, as evidenced by the issuance of an appointment (actually a re-appointment) to him on a permanent status as Schools Division Superintendent, yet barely ten (10) months after, he was suddenly found unfit to continue in office. The questioned personnel action becomes even more perplexing when taken in conjunction with the performance rating of "Very Satisfactory" given to petitioner during the period May, 1986 to April 1987, the very month he was considered separated from the service.[5]

I cannot, however, reconcile myself with the alacrity by which the majority would attribute bad faith to the reorganization undertaken by some respondents (particularly the Department of Tourism in G.R. No. 78525) based on standards established by a subsequent law of doubtful constitutionality.[6] The principle is that good faith is presumed while bad faith must be proved. The majority would reverse the rule despite a showing, un rebutted by petitioners in G.R. No. 78525, that all personnel actions were taken on the basis of interviews, evaluation of supervisors, performance and self-appraisal of the employees, as well as recommendations of Civil Service Commissioners, who were chided for not knowing any better "than to participate in a violation of the rules of their agency." [7] Indeed, one is compelled to ask: if you can't rely on the advice of experts, whom can you depend on?

The security-of-tenure argument accorded merit by the majority would hold water under ordinary circumstances, but not under the exceptional factual milieu obtaining in the cases at bar. The removal from office of petitioners, respondents in some cases, was the result of the reorganization of the various executive departments undertaken immediately after the installation of the Aquino government, at which time, the people's clamor to promote efficiency and effectiveness in the delivery of public service, rebuild confidence in the entire governmental

system and eradicate graft and corruption therein was at its highest. The need was so grave and serious, so basic and urgent, that nothing less than extra-ordinary measures were called for. In the balancing of interests, as between the very essence of a government as a machinery for the common good and the security of tenure guaranteed by the Constitution to those in government service, one must prevail. Since in our form of government, public offices are public trusts, and the officers are servants of the people and not their rulers, the choice is evident.

There is no gainsaying the initial difficulty facing those who were displaced by reason of the sweeping governmental reorganization. The government itself however, has adopted such measures as to "soften the impact" by providing, among others, in its Guidelines on the Implementation of Reorganization Executive Orders that in the event of termination, the employees shall:

- "a) be included in a consolidated list compiled by the Department of Budget and Management. All departments who are recruiting shall give preference to the employees in the list; and
- b) continue to receive salary and benefits until December 31, 1987; and
- c) be guaranteed the release of separation benefits, within 45 days from termination and in no case later than February 15, 1988."

We have also seen in these cases instances where the separated employees were re-hired when items suited to their qualifications were available.^[9]

The traditional misconception on the role of the government as a haven of refuge for the unemployed, the unqualified and the unskilled must cease. If the value reorientation of our people could be effected only through drastic and harsh measures, as the recent government reorganization and streamlining appear to be, so be it. The present government cannot and should not be burdened with excess personnel without special talents whose indiscriminate recruitment into the government service was done under the whim and caprice of a one-man ruler.

[1] Preamble and Article II, Section 1(a), Proclamation No. 3, March 25, 1986.

[2] p. 50, Decision.

[3] Section 16, Art. XVIII.

[4] Exh. "B", Petition, p. 12, Rollo in G.R. No. 78053.

[5] Exh. "C", Reply, p. 85, Rollo in G.R. No. 78053.

[6] R.A. 6656.

[7] p. 47, Decision.

[8] par. 3.

[9] e.g. G.R. No. 81197, Dolores Garcia, et al. vs. Hon. Teodoro C. Benigno, et al. and G.R. No. 89427, Conrado Villasor vs. Hon. Alfredo R.A. Bengzon.

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