

DR. OFELIA P. TRISTE, PETITIONER, VS. LEYTE STATE COLLEGE BOARD OF TRUSTEES, NAMELY: HON. LOURDES R. QUISUMBING, SECRETARY OF THE DEPARTMENT OF EDUCATION, CULTURE AND SPORTS AND...

G.R. No. 78623. December 17, 1990

Ponente: FERNAN, C.J.

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FERNAN, C.J.:

The instant petition for certiorari focuses on the vice-presidency of the Leyte State College in Tacloban City. It seeks to annul and set aside the decision of the Board of Trustees of said College ousting and replacing herein petitioner with private respondent as Vice-President thereof, as well as the resolution of the Review Committee under Executive Order No. 17 dismissing petitioner's appeal thereto.

The Leyte State College, formerly the Leyte Normal School, one of the eight normal schools established in the Philippines as a teacher-training institution serving Eastern Visayas, Masbate and Surigao, became a chartered state college by virtue of Presidential Decree No. 944 dated June 14, 1976 (72 O.G. 7207). Section 4 of the decree provides that "the governance and administration of each College and the exercise of its corporate powers shall be vested exclusively in the Board of Trustees and in the President of the College insofar as authorized by said Board". In addition to its general powers of administration, Section 6 provides that the Board shall have the power and duty:

"(c) To appoint, on recommendation of the President of each College, a Vice-President for Academic Affairs and Development with a position next in rank to the President of the College who shall assist in the administration and supervision of the College and who shall automatically assume the presidency of the College in an acting capacity, with full powers and duties, in the absence of the President or when the office of the president is vacant." (Underscoring supplied.)

Under Section 9 of the same decree, the vice-president for academic affairs shall also be a member of the College Council which is vested with the powers to prescribe the curricula and the rules of discipline subject to the approval of the Board of Trustees; to fix the requirements for admission to the college as well as for graduation and the receiving of a degree; to recommend students or others to be the recipients of degree or honors; and, through its president or committee, to have disciplinary control over the students within the prescribed rules of discipline approved by the Board of Trustees.

Two years later or on June 10, 1978, Presidential Decree No. 1437 (74 O.G. 5733-LLLLL Supp.) was promulgated to define the composition and powers of the governing boards of chartered state universities and colleges and the term of office of the presidents thereof. Said governing boards shall be composed of the Secretary of Education and Culture as chairman, the president of the university or college as vice-chairman, and a representative of the National Economic and Development Authority (NEDA) and two (2) prominent citizens as members.

One of the governing board's specific powers as laid out in Section 3 of P.D. 1437 is the following:

"f. To confirm appointments of vice-presidents, deans, directors, registrars, heads of departments, professors, and other officials and employees of the university or college made by the president, to fix their compensation, hours of service, and such other duties and conditions as the governing boards may promulgate, in accordance with the provisions of existing laws; to remove them for cause after investigation and hearing." (Underscoring supplied.)

Under the foregoing legal milieu, on February 3, 1984, the Leyte State College Board or Trustees (hereinafter referred to as the Board) took up the matter of the designation of herein petitioner as vice-president of the college with a basic salary of P39,288 plus representation and transportation allowances. It passed Resolution No. 53 "confirming the designation of Professor Ofelia Triste as vice-president of LSC to include allowances normally extended to the office of vice-president subject to the usual auditing and accounting regulations".[1] Accordingly, the acting chairman of the Board issued the following document:

"Republic of the Philippines

MINISTRY OF EDUCATION CULTURE AND SPORTS

Metro Manila

February 3, 1984

KNOW ALL MEN BY THESE PRESENTS:

Pursuant to Section 6, paragraph "C" of PD 944 known as the LSC Charter, DR. OFELIA P. TRISTE is hereby designated/appointed Vice-President for Academic Affairs and Development of the Leyte State College, Tacloban City, Philippines.

The Board of Trustees

Leyte State College

Tacloban City

By: (SGD.) VEDASTO G. SUAREZ

Acting Chairman"[2]

As petitioner was then holding an appointment of Professor 6, the president of the college sought clarification from the Minister of the Budget on the total compensation of the vice-president. The then Minister of Budget, Manuel S. Alba, in a letter dated June 22, 1984, opined that "(p)ursuant to Sections 4.1 and 4.4 of NCC No. 12-B, a Vice-President may be designated in lieu of a permanent plantilla position, provided that the designee's basic salary plus honorarium shall not exceed the salary prescribed for a permanently appointed Vice-President, as specified by NCC No. 12". Hence, the total compensation of petitioner should consist of the basic salary of P41,292 and an honorarium of P4,548 or the total amount of P45,840. In addition to that amount, the vice-president was authorized to receive commutable transportation and representation allowances of P475 per month subject to conditions stated therein.[3]

In October, 1984, the Office of Compensation and Position Classification furnished the then President of the college, Magdalena S. Ramo, with an advance copy of the personnel services itemization of the college which would be the basis for the preparation of its plantilla of personnel for calendar year 1984.[4] The position of vice-president does not appear in said itemization.[5] However, per the college's plantilla of personnel for 1984, petitioner's position was designated and classified as "Professor 6 (Vice-Pres.)" receiving an actual salary of

P54,600 as of June 30, 1984 but which salary was adjusted to P55,644 effective July 1, 1984.[6]

For more than two years, petitioner discharged her duties and functions as vice-president of the college.

In February 1986, there was a total revamp in the composition of the Board of Trustees of the Leyte State College. Among others, Dr. Purificacion M. Flores was designated officer-in-charge and later appointed as the new College President vice Magdalena S. Remo who retired as president of the college on May 1, 1986.

Anticipating moves to replace her as vice-president, on July 18, 1986, petitioner submitted to the Board of Trustees a position paper* asserting that the Board could not appoint a vice-president because the position was not vacant, the vice-president's term was not co-terminous with that of the recommending president who had retired, and the incumbent was not replaceable at the pleasure of the Board. In fact, she stated therein that she is qualified for the college presidency.[7]

Petitioner's apprehensions were proved right by later developments. She was not named to any of the committees formed by Dr. Flores when the latter became the officer-in-charge of the office of the president.[8] On August 21, 1986, petitioner received a letter from President Flores assigning her the job of director of the college's research program.[9] A week later, petitioner received another letter from President Flores. It states:

August 29, 1986

Dr. Ofelia P. Triste

Leyte State College

Tacloban City

Dear Dr. Triste:

This is to inform you that Resolution No. 42, s. 1986 was approved by the Board of Trustees of the College at its Board Meeting last August 19, 1986 at MECS, Manila and confirmed August 27, 1986, to wit:

RES. NO. 42, s. 1986

APPROVING THE DESIGNATION OF DR. CRES GONZAGA AS VICE-PRESIDENT OF THE LEYTE STATE COLLEGE EFFECTIVE AUGUST 19, 1986.

APPROVED

This information is intended to clarify actions taken by this office on designations.

Very truly yours,

(SGD.)

PURIFICACION M. FLORES

President"[10]

Alleging that the appointment of Dr. Crescencia (Cres) V. Chan-Gonzaga to the position of vice-president in effect eased her out of said position, petitioner filed before the Board a petition for reconsideration. She contended that her constitutional and legal rights to security of tenure had been violated.[11] In response thereto, the Board Secretary informed petitioner's counsel through a letter dated October 29, 1986 that her petition was "noted and discussed" by the Board but that the members present at the meeting, namely, Dr. Minda Sutaria, Dr. Flores and Director Venancio Baclagon, arrived at the consensus that the position of vice-president being "honorific", the

incumbent president of the college had the prerogative to recommend for the vice-presidency the nominee of the executive council. The letter added that the position being "considered co-terminous with that of the President of the college", pursuant to Executive Order No. 17, petitioner's services as vice-president were in effect terminated with the Board's approval of the appointment of Dr. Gonzaga to said position.[12]

From November 26, 1986 to January 7, 1987, petitioner's counsel wrote three letters to the secretary of the Board and a letter to President Flores herself, all requesting for official copies of the board resolution terminating the services of petitioner as college vice-president, the board resolution appointing Dr. Gonzaga as vice-president, and the board resolution or decision denying petitioner's petition for reconsideration, for the purpose of filing an appeal to the Minister of Justice.[13] Said letter-requests were unheeded.

On January 12, 1987, petitioner interposed an appeal despite non-receipt of the requested documents, to the Review Committee of the Ministry of Justice which was organized to implement Executive Order No. 17 prescribing rules and regulations for the implementation of Section 2, Article III of the Freedom Constitution. She alleged therein that since her ouster as vice-president, she had been demoted to the position of Director of Research and that the 20% salary increase granted to all academic personnel of government schools was not given to her because under the plantilla approved by the Office of Budget and Management, her salary was reduced by one step since she was no longer the college vice-president. She argued that she was terminated and stripped of her rank and status without legal cause and due process; that the Board's claim that the position of vice-president is "honorific" is not supported by law; that said position is not co-terminous with the position of president not only because the charter is silent on the matter but also because the charter provides that a vice-president automatically assumes the presidency when it is vacant; and that the Board may not designate or appoint anyone to position of vice-president as the same was not vacant.

The therein respondent Board not having filed any responsive pleading to the brief filed by petitioner before the Review Committee, she filed three successive motions for judgment on the pleadings. It turned out, however, that on January 23, 1987, the Review Committee* had issued a resolution on petitioner's appeal but a copy of the same was furnished her through the mail only on March 31, 1987.[14]

In said resolution, the Review Committee dismissed petitioner's petition on the ground that it was filed beyond the 10-day period provided for in Section 6 of Executive Order No. 17.[15]

After her requests for certified copies of the designation of Dr. Gonzaga as vice-president and the board resolution denying her petition for reconsideration remained unacted upon, Dr. Ofelia P. Triste filed the instant petition for certiorari.

A preliminary point to consider is the propriety of the instant petition. Private respondent Gonzaga asserts that petitioner, not having appealed to the President, had not exhausted all administrative remedies available to her before she filed the instant judicial remedy.

As we earlier held, exhaustion of administrative remedies is not an iron-clad rule. It is not necessary when, from the facts of the case, petitioner has to look to the courts for speedy relief; when the question presented is "purely a legal one", the controverted act is "patently illegal" and "nothing of an administrative nature is to be or can be done;" and when petitioner was denied due process.[16] Each of these exceptions may exempt the petitioner from the rule on exhaustion of administrative remedies before filing a court action. Considering that all these exceptions are present in this case, petitioner may avail herself of the instant remedy.

Although the petition is captioned "petition for review on certiorari"[17] thereby creating the impression that the same was filed under Rule 45 of the Rules of Court, we shall consider it as one for certiorari under Rule 65 it

having been alleged that the respondents have abused their discretion in their questioned actions.[18]

The resolution of the issue on whether petitioner was illegally ousted from her position as vice-president of the Leyte State College hinges on the determination of her status as such official. Private respondent Dr. Gonzaga and public respondent Dr. Flores* contend that petitioner was merely "designated" and not "appointed" to the college vice-presidency. They aver, that petitioner's "designation" to said position was "purely an internal arrangement which does not require the approval or confirmation by the Civil Service Commission".[19] They maintain that petitioner's term of office being co-terminous with that of the retired college president, petitioner may not complain that she was illegally dismissed from the vice-presidency. On the other hand, petitioner asserts that she was the duly appointed vice-president of the college and hence, her right to security of tenure may not be unceremoniously abridged.

In *Borromeo v. Mariano*,[20] this Court, through Justice Malcolm, noted that "(a)ll authorities unite in saying that the term 'appoint' is well-known and whether regarded in its legal or in its ordinary acceptation, is applied to the nomination or designation of an individual." We defined "appointment" in *Aparri v. Court of Appeals*[21] as the "act of designation by the executive officer, board or body, to whom that power has been delegated, of the individual who is to exercise the functions of a given office." On the other hand, there is jurisprudence to the effect that the word "designate", when used by the appointing power in making an appointment to office, is equivalent to the word "appoint".[22]

Common usage, however, oftentimes puts a distinction between the terms "appointment" and "designation". Perhaps, the reason for this is that the word "appointment" connotes permanency while "designation" implies temporariness. Thus, to "designate" a public office to another position may mean to vest him with additional duties while he performs the functions of his permanent office. Or, in some cases, a public officer may be "designated" to a position in an acting capacity as when an Undersecretary is designated to discharge the functions of a Secretary pending the appointment of a permanent Secretary.

The provisions of Presidential Decrees Nos. 944 and 1437, specifically the aforequoted sections, contemplate of a duly appointed vice-president by the Board of Trustees, who would be a working vice-president with full powers and duties and whose compensation, hours of service and other duties and conditions of employment should be set by said Board.

Thus, P.D. 1437 specifically provides among others, the following:

"Section 3 x x x the governing board shall have the following specific powers and duties:

xxx xxx xxx

f. to confirm the appointments of vice-presidents, x x x in accordance with the provisions of existing laws; to remove them for cause after investigation and hearing."

It appears that these provisions of law notwithstanding, it was not until February 3, 1984 that a Vice-President for Leyte State College was named with the designation of herein petitioner to said position. The mode of authorization was by "designation" inasmuch as the position of Vice-President did not appear in the College's Personnel Services Itemization for the year 1984.[23] This omission was, however, corrected in the Plantilla of Personnel and Salary Adjustment Form of the Leyte State College for the same calendar year 1984, which listed as Item No. 2-1 the position of "Professor 6 (Vic-President)". Herein petitioner was listed as the incumbent with an actual salary as of June 30, 1984 of P45,600.00 per annum and an adjusted salary effective July 1, 1984 per NCC #33 of P55,644.00 per annum. It is to be noted that the College Plantilla carried other Professor 6 items, i.e. Items Nos. 2-2, 2-4 and 2-5, with an actual salary of P43,392.00 per annum as of June 30, 1984 and an adjusted

salary of P52,944.00 as of July 1, 1984." [24]

Thereafter, on December 27, 1985, herein petitioner was extended an appointment as "Professor 6" x x x "with compensation at the rate of FIFTY FIVE THOUSAND SIX HUNDRED FORTY FOUR (P55,644) ONLY pesos per annum effective July 01, 1984." The position to be filled was listed as "Old Item No. 2-1 Page 1 Approp. Act 230 Page CY 1983, New Item No. 2-1 Page 1 Approp. Act (Illegible) CY 1984", which is equivalent to the item designated as "Professor 6 (Vice-President)" in the Plantilla of Personnel for 1984. Said appointment was issued "By authority of the Board of Trustees" and approved by the Civil Service Commission as permanent. [25]

From the foregoing, it becomes clear that while initially petitioner was discharging the powers and functions of Vice-President upon a designation made on February 3, 1984, by July 1 of the same year, she was doing so by virtue of an appointment. For while her appointment paper mentioned only "Professor 6" as the position to which she was being appointed, the clear intent to appoint her "Professor 6 (Vice-President)", as distinguished from the other Professor 6 items is manifest from the rate of compensation and Item Number specifically given in the appointment paper. Moreover, there appears no reason why she should be given another appointment to the position of Professor 6 if the intention was for her to remain merely as Professor 6. The only plausible explanation is that it was an appointment to a new item of Vice-President. And as adverted to earlier, said appointment was approved by the Civil Service Commission as permanent.

Although under Section 8 of P.D. 1437, the term of a state college president is six (6) years, the same law is silent as to that of the vice-president. Such silence, however, should not be interpreted to mean that the law intends to give the vice-president the same term as that of a president. On the contrary, there are indications in the decrees themselves that the vice-president is a career official whose term of office may outlast that of the president. Thus, under Section 6(c) of P.D. 944, the vice-president is next in rank to the president. He or she shall assist the president in the administration and supervision of the college. He or she shall "assume the presidency of the College in an acting capacity, with full powers and duties in the absence or when the office of the president is vacant". Whoever is holding the position of vice-president shall remain as such until, under Section 3(f) of P.D. 1437 above-quoted, the Board finds a reason or reasons to remove him "for cause after investigation and hearing".

The contention of respondents Gonzaga and Flores that petitioner was not a permanently appointed vice-president since she was merely receiving an honorarium for the job, is likewise without merit. Under the same Section 3(f) of P.D. 1437, the Board has the power to fix the compensation of the vice-president. Accordingly, during its meeting on February 3, 1984, the Board set petitioner's basic salary as vice-president at P39,288 plus representation and transportation allowances. However, since petitioner was then holding an appointment as Professor 6, the then college president sought the aforesaid opinion of the Minister of Budget granting petitioner an honorarium of P4,548. Such inquiry, it must be noted, was done in connection with Resolution No. 5, s. 1984, or while petitioner was discharging the functions of Vice-President upon a designation. In contrast, her compensation as Professor 6 (Vice-President) was specifically stated in her appointment paper. The allegation of private respondents that petitioner was receiving only an honorarium and not a regular salary as Vice-President is therefore true only for the period February 3 to June 30, 1984. Thereafter, by virtue of her appointment, petitioner began receiving a compensation of P55,644.00 per annum as Professor 6 (Vice-President).

Mechem states that "(l)ike the requirement of an oath, the fact of the payment of a salary and/or fees may aid in determining the nature of a position, but it is not conclusive, for while a salary or fees are usually annexed to the office, it is not necessarily so. As in the case of the oath, the salary or fees are mere incidents and form no part of the office. Where a salary or fees are annexed, the office is often said to be 'coupled with an interest'; where neither is provided for it is a naked or honorary office, and is supposed to be accepted merely for the public good." [26]

In the case at bar, petitioner having been given the compensation attached to the Item Professor 6 (Vice-President) as distinguished from the other Professor 6 items which carried a lower salary, we hold that her appointment dated December 27, 1985, but retroactive to July 1, 1984 was in truth and in fact to the position of Vice-President, rather than to the position of Professor 6.

This case should be distinguished from *Laxamana v. Borlaza*[27] wherein we held that petitioner was legally removed because she was merely designated as Director of Publications and not by permanent appointment since there was no position in the college plantilla to which a permanent appointment could be made. In said case, there was no statutory basis for the inclusion of the position of Director of Publications in the plantilla of the college as it was merely created by the Board. In the instant case, the position of vice-president is based on a presidential decree which has the force and effect of law. But because said position was omitted in the personnel services itemization, the college could do no more than classify petitioner's petition as "Professor 6 (Vice-Pres.)".

The nature of petitioner's appointment having been established, we now consider the legality of her replacement as vice-president of the Leyte State College.

Executive Order No. 17 was issued by the President on May 28, 1986 "to obviate unnecessary anxiety and demoralization among the deserving officials and employees, particularly in the career civil service" (82 O.G. 2423-2424). Section 1 thereof provides that separation or replacement of officers and employees shall be made "only for justifiable reasons". For its purposes, a state college is considered a ministry. Pertinent provisions of the Order state:

"SEC. 2. The Ministry Head concerned, on the basis of such review and assessment, shall determine who shall be separated from the service. Thereafter, he shall issue to the official or employee concerned a notice of separation which shall indicate therein the reason/s or ground/s for such separation and the fact that the separated official or employee has the right to file a petition for reconsideration pursuant to this Order. Separation from the service shall be effective upon receipt of such notice, either personally by the official or employee concerned or on his behalf by a person of sufficient discretion.

"SEC. 3. The following shall be the grounds for separation/replacement of personnel:

- 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."

(Underscoring supplied).

Petitioner learned of her removal as vice-president when it was already a *fait accompli*. Hence, all she could do under the circumstances was to petition for the reconsideration of the Board resolution designating respondent Gonzaga as her replacement and at the same time asserting her constitutional right to security of tenure.

The Board's "noting" of her petition is not a valid exercise of its power.[28] Although the Board Secretary's letter stating that the petition for reconsideration was noted and discussed by the Board, the latter's reason for replacing petitioner, to wit, the position of vice-president is "honorific" and co-terminous with that of the college president is not within the purview of Section 3 aforequoted.

Furthermore, respondent Flores and the Board had not complied with the procedure set forth in Section 2 of Executive Order No. 17. They did not serve the notice of separation specified therein. In fact, the cavalier manner by which petitioner was dislodged from the vice-presidency was matched by the college officials' refusal to furnish petitioner with copies of the documents pertinent to her appeal. Even if respondent Gonzaga's unsubstantial allegations on petitioner's association with the Romualdezes of Leyte[29] were true, certainly, it is not within the spirit of Executive Order No. 17 to brush aside its due process requirements just to implement its ultimate purpose which is to rid the government of misfits.

On top of these, the review committee seems to have been too technical in treating petitioner's appeal. Its denial of petitioner's plea for reconsideration on the ground that the 10-day period specified in Section 6 of said order had lapsed is tantamount to abuse of discretion it appearing that said period had not commenced to run. We agree with the Solicitor General that the letters embodying the resolutions replacing petitioner as vice-president, do not, in legal contemplation, constitute the notice of separation from which an appeal could be made.[30] The existence of said resolutions should have been established by official or certified true copies but unfortunately, respondent Flores herself and the Board secretary failed to heed petitioner's requests for them.

WHEREFORE, the petition for certiorari is GRANTED and the IMMEDIATE REINSTATEMENT of petitioner with backwages to the position of vice-president of the Leyte State College is hereby ordered. No costs.

SO ORDERED.

Gutierrez, Jr. and Bidin, JJ., concur.

Feliciano, J., on leave.

[1] Rollo, p. 38.

[2] Rollo, p. 39.

[3] Rollo, pp. 212 and 232.

[4] Rollo, pp. 208 and 229.

[5] Rollo, pp. 209 and 228.

[6] Rollo, p. 40.

* Aside from the members of the Board of Trustees, Education Assistant Minister Tomas Santos, Consultant Vedasto Suarez and Education Regional Director Servillano de la Cruz were also served by petitioner with copies of her position paper (Rollo, pp. 132-138).

[7] Rollo, pp. 123-131.

[8] Rollo, pp. 139-142.

[9] Rollo, p. 143.

[10] Rollo, p. 41.

[11] Rollo, pp. 42-43.

[12] Rollo, p. 44.

[13] Rollo, pp. 45-48.

* Minister of Justice Neptali A. Gonzales, Chairman, and Manuel B. Gaité, Edcel C. Lagman, Eufemio C. Domingo, Alfredo B. Deza and Honesto V. Bonnevie, Members.

[14] Petition, p. 16; Rollo, p. 21.

[15] Rollo, pp. 63-64.

[16] Reyes v. Subido, L-27916, August 21, 1975, 66 SCRA 203 citing Abaya v. Villegas, L-25641, December 17, 1966, 18 SCRA 1034.

[17] Rollo, p. 6.

[18] Rollo, p. 23.

* Dr. Flores filed her own memorandum through the counsel of Dr. Gonzaga after the Solicitor General, in his comment-memorandum, adopted the view that petitioner's replacement was illegal.

[19] Rollo, p. 81.

[20] 41 Phil. 322, 326.

[21] L-30057, January 31, 1984, 127 SCRA 231, 238 citing Mechem, A Treatise on the Law of Public Offices and Officers, p. 42.

[22] 12 Words and Phrases 414 citing People v. Fitzsimmons, 68 N.Y.S. 514, 519.

[23] Rollo, p. 207.

[24] Rollo, p. 40.

[25] Rollo, p. 211.

[26] *supra*, p. 6.

[27] L-26965, September 20, 1972, 47 SCRA 29.

[28] See: Sichangco vs. Board of Commissioners of Immigration, L-23545, November 7, 1979, 94 SCRA 61.

[29] Rollo, p. 81.

[30] Rollo, p. 178.

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