

SULTAN MAMINTA M. RADIA, PETITIONER, VS. REVIEW COMMITTEE UNDER EXECUTIVE ORDER NO. 17, HADJI ABBAS M. BASMAN, AND ENGINEER LACSASA H. PANGADAPUN, RESPONDENTS.

G.R. No. 78973. January 29, 1988

Ponente: FELICIANO, J.

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FELICIANO, J.:

This is a Petition for Certiorari asking this Court: (a) to set aside as null and void: (1) the termination of petitioner as City Engineer of Marawi City by respondent Basman; the designation by respondent Basman of respondent Pangadapun as Officer-in-Charge (OIC) of the Office of the City Engineer of Marawi City; and (2) the Resolution of respondent Review Committee affirming the act of respondent Basman in terminating petitioner's appointment as City Engineer of Marawi City; and (b) to order respondent Basman to pay the back salary which petitioner has failed to receive because of the termination of his appointment.

Petitioner was appointed and assumed office as City Engineer of Marawi City on 1 May 1985.

On 1 April 1986, upon appointment of respondent Basman as OIC of the Office of the City Mayor of Marawi City, he issued a Memorandum addressed to all Heads of Offices and Personnel directing the immediate transfer and delivery of all office equipment from the PTA Building, Old Capitol Hill, to the New City Hall, Bangon, Marawi City and directing all personnel to hold office at the New City Hall effective 2 April 1986. On 4 April 1986, respondent Basman issued another Memorandum addressed directly to petitioner stating that he (Basman) had been reliably informed that most of the City Engineering Equipment stored in the City Motor Pool had been intentionally destroyed by some "bad elements" and directing petitioner to transfer immediately all equipment to the present City Public Works and Highway Engineer's Office with the warning that failure to comply would constitute "malfeasance and serious insubordination" and that petitioner would be held responsible for any further loss of or damage to the said City Equipment.

On 30 April 1986, respondent Basman issued a Memorandum terminating petitioner from his position as City Engineer. This Memorandum stated:

"Please be informed that due to your continuous failure to report to office since April 2, 1986 despite orders issued by this Office on April 3, 4 and 14, 1986 which constitutes serious insubordination and abandonment of office on account of your failure to protect the City Government Engineering Equipment which were deliberately destroyed and seriously damaged while in your custody and by reason further of the loss of the Road Roller (Pison) equipment of the City Engineer's Office which was also in your custody as City Engineer and which loss is up to now unexplained to this office, a conduct indicative of being notoriously undesirable, your appointment as City Engineer of Marawi City is hereby terminated.

"You are advised to clear yourself from all accountabilities and to turn over all government properties in your custody to the City Engineer's Office."

On the same date, respondent Basman designated respondent Pangadapun as OIC of the Office of the City

Engineer of Marawi City.

On 28 May 1986, petitioner wrote to the Regional Director, Regional Office No. 12, Civil Service Commission (CSC), Cotabato City, protesting his termination from the service and asking that the designation of respondent Pangadapun be withdrawn. Initially agreeing with petitioner, the CSC Regional Director withdrew his approval of the appointment or designation of respondent Pangadapun. Upon Motion for Reconsideration by respondent Basman, however, the CSC Regional Director on 9 July 1986 reconsidered his initial ruling and approved the appointment of respondent Pangadapun, subject to final resolution of petitioner's protest by the respondent Review Committee under Executive Order No. 17.

Petitioner sought reconsideration of the CSC Regional Director's last ruling. This request for reconsideration was forwarded to the Minister of Justice for appropriate action under the provisions of Executive Order No. 17.

On 10 October 1986, the Review Committee under Executive Order No. 17 headed by the Acting Minister of Justice, issued a Resolution dismissing petitioner's appeal for lack of merit. Petitioner appealed this Resolution to the Office of the President. The latter dismissed this appeal by a Resolution dated 11 June 1987 stating that decisions of the Review Committee are final and unappealable under Section 8 of Executive Order No. 17.

Hence, this Petition for Certiorari.

Article III (2) of the Provisional Constitution,[1] which was in effect at all times relevant for our present purposes, provided as follows:

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

It may be noted that the above organic provision did not require the existence of any cause for removal or termination of any of the elective and appointive officials under the 1973 Constitution. This being so, petitioner was lawfully terminated from his position as City Engineer of Marawi City upon the designation or appointment and qualification of respondent Pangadapun as petitioner's successor on 30 April 1986. The authority of respondent Basman as OIC of the Office of City Mayor of Marawi City to appoint or designate the City Engineer of Marawi City cannot be seriously questioned in view of the provisions of Section 185 (1) of B.P. Blg. 337 known as the Local Government Code[2] which amended the provisions of the City Charter of Marawi City,[3] originally lodging that authority in the President of the Philippines.

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,[4] which enumerated certain grounds for the separation or replacement of elective and appointive officials authorized under Article III (2) of the Provisional Constitution. These grounds were:

"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; [and]

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."

In the instant case, petitioner appealed to the respondent Review Committee established under Section 5 of Executive Order No. 17 precisely to pass upon all petitions for reconsideration filed by any official or employee separated from the service in the course of implementing Article III (2) of the Provisional Constitution. The respondent Review Committee dismissed petitioner's appeal, having found that:

"Upon assumption in office, Respondent (Basman) issued a Memorandum to all heads of offices, including the Petitioner (Radia) directing the transfer of all offices from the PTA Building, Old Capitol Hill to the New City Hall, Bangon, Marawi City. This Directive was reiterated by subsequent memoranda dated April 2, 1986, April 4, 1986 and April 14, 1986. That notwithstanding these directives, Petitioner has failed to comply with the Respondent's Order to hold office and transfer all their equipment to the New City Hall at Bangon, Marawi City. Further, Respondent claims that Petitioner did not report for work for the period from April 2 to April 30, 1986. Petitioner, however, submitted proof that he was on vacation leave from March 31 to April 4, 1986 and sick leave from April 8 to April 11, 1986 and reported for work from April 14 to 30, 1986. Nevertheless, the certification submitted by the Petitioner did not state where the Petitioner reported for work whether in the Old Capitol Hills or in the New City Hall where the OIC has reportedly directed the Petitioner to transfer their office and City Engineering Equipment. Moreover, nowhere in the submissions of the Petitioner does any explanation appear why the Petitioner has persistently failed to comply with the directives of the Respondent OIC to hold office and transfer their office equipment to the New City Hall. This amounts to insubordination and disobedience to the respondent OIC Mayor.

Considering the important and highly sensitive position which the Petitioner occupied - that of City Engineer of Marawi City, any act of insubordination or act of disobedience on his part will undermine the morale and erode the respect of his subordinates for the lawful and reasonable orders of duly constituted authority. In the proper and orderly functioning of any government unit, it is imperative that the lawful and reasonable orders of the head of that unit must be followed by the subordinate officers and employees. Furthermore, this is necessary for a disciplined society.

In the absence of any reasonable and appropriate explanation from the Petitioner for his persistent refusal to comply with the repeated directives of the Respondent OIC, these acts constitute serious grounds which render Petitioner unfit to remain in the service and make his separation or replacement in the interest of the service justified under the provisions of Executive Order No. 17.

x x x x x x x x."[5]

The Review Committee thus held that petitioner's persistent failure to comply with lawful orders of respondent Basman fell within Ground No. 5 of Executive Order No. 17.

Petitioner contends that under Section 2 of Executive Order No. 17, it is the "Ministry Head concerned" who is authorized to determine who may be separated from the service, and that respondent Basman is not "Head of a Ministry" and, therefore, without power to terminate the petitioner. This argument does not persuade. The Solicitor General has pointed out that although heads of local governments like provincial governors and municipal mayors may be under the supervision of the Secretary of Local Governments, Local Governments are

not "attached to" the Department of Local Governments in the same sense that bureaus and offices under, for instance, the Department of Justice are attached to that department. Provinces and municipalities are instrumentalities or units of local government, vested with their own legislative and executive powers under the Local Government Code. Accordingly, for the limited purposes of Executive Order No. 17, Section 1 of which states that

"Any office, agency, instrumentality or government-owned or controlled corporation, which is not attached to any ministry, including any of a constitutional commissions and state, colleges and universities, shall be considered a ministry for purposes of this Order,"

heads of local governments may well be considered as Ministry (department) Heads within the meaning of Executive Order No. 17. It is in any event important to recall in this connection that petitioner's removal was reviewed and confirmed by the Review Committee, a body which is certainly of ministerial rank, being composed of "the Minister of Justice, as Chairman, and the Executive Secretary, the Minister of Budget, the Minister for Government Reorganization, the Chairman of the Civil Service Commission, and the Chairman of the Commission on Audit, or their duly authorized representatives, as Members".^[6] Thus, the requirement of Executive Order No. 17, if it is a requirement, that the removal of petitioner be effected by a "Ministry Head" may be regarded as substantially complied with.

Petitioner finally contends that Executive Order No. 17 is inapplicable to his case, considering that petitioner's services as City Engineer of Marawi City were terminated on 30 April 1986 while Executive Order No. 17 was issued on 28 May 1986, twenty (20) days after petitioner was removed from his position. Petitioner argues that Executive Order No. 17 cannot be applied retroactively to cover his case. Petitioner's argument here is self-defeating. As pointed out above, Executive Order No. 17 is a self-limiting act and its provisions are not only non-penal in nature, but also clearly more favorable to petitioner than those of Article III (2) of the Provisional Constitution. As such, there is no legal nor moral obstacle to the retrospective application of Executive Order No. 17 which expressly envisaged its application to "those already separated from the service on the issuance of this Order, including those whose resignations were accepted or whose successors have been appointed/designated" (Section 6).

ACCORDINGLY, the Court Resolved to DISMISS the Petition for Certiorari for lack of merit. No pronouncement as to costs.

SO ORDERED.

Teehankee, C.J., Yap, Fernan, Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Gancayco, Padilla, Bidin, Sarmiento, and Cortes, JJ., concur.

[1] Presidential Proclamation No. 3, dated 25 March 1986.

[2] 79 Official Gazette 897 (14 February 1983).

[3] Section 4, Commonwealth Act No. 592, as amended by Republic Act No. 1552.

[4] 82 Official Gazette 2423 (2 June 1986).

[5] Rollo, pp. 88-90.

[6] Section 5, Executive Order No. 17.

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