

REYNOSO B. FLOREZA, PETITIONER, VS. HON. JAIME ONGPIN IN HIS CAPACITY AS SECRETARY OF FINANCE AND HON. BIENVENIDO A. TAN, JR., IN HIS CAPACITY AS COMMISSIONER OF INTERNAL REVENUE...*G.R. No. 81356. February 26, 1990*

Ponente: GUTIERREZ, JR., J.

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The Court is confronted once again with issues stemming from the reorganization of the government following the issuance on February 25, 1986 of Presidential Proclamation No. 1 calling on "all appointive public officials to submit their courtesy resignations."

Petitioner Reynoso B. Floreza joined the government service in May, 1955 as a clerk (action attorney) in the Administrative Division of the Department of Finance. In December, 1959, he transferred to the Bureau of Internal Revenue (BIR) where he was appointed Senior Revenue Examiner. In recognition of his competence and perseverance, he received regular promotions in the BIR over the years.

In September, 1980, while based in Davao City as Regional Director of Revenue Region No. 11-B, he was informed by then Acting BIR Commissioner Ruben B. Ancheta of the latter's intention to designate him to the position of Revenue Service Chief (Legal).[1] The designation was necessary to avoid "a possible conflict of interest situation" arising from the fact that the incumbent Service Chief was Atty. Imelda L. Reyes, the wife of the then newly-appointed Judge of the Court of Tax Appeals, Alex Z. Reyes,[2] who would have to appear before her husband in BIR cases.

Floreza accepted the designation and Acting Commissioner Ancheta issued Travel Assignment Order No. 213-80 dated October 2, 1980 directing Floreza to report to his new assignment as Revenue Service Chief (Legal) and naming Imelda L. Reyes as Revenue Service Chief (Planning and Policy).[3] Two years later or on October 6, 1982, Floreza was given a regular appointment as Revenue Service Chief.[4]

He was thus Revenue Service Chief (Legal) when, on April 4, 1986, pursuant to the reorganization program, BIR Commissioner Bienvenido A. Tan, Jr. issued a memorandum exhorting all Revenue Service Chiefs and their Assistants, and all Revenue Regional Directors and their Assistants to "tender their resignations to give the authorities concerned the widest latitude in effecting a reorganization of the Bureau." [5] Petitioner refused to tender his resignation.[6]

On April 28, 1986, Commissioner Tan issued Travel Assignment Order No. 11-86 assigning Floreza to the Office of the Commissioner as Consultant due to "the exigencies of the service." [7] The same order directed Jaime M. Maza to report to the Legal Office as its acting chief. Under Travel Assignment Order No. 270-86 dated November 11, 1986, Maza and Rizalina S. Magalona were respectively designated Service Chiefs for the Legal Office and the Management and Policy Service.[8]

On January 30, 1987, the President issued Executive Order No. 127 reorganizing the Ministry of Finance.[9] Three days later, or on February 2, 1987, the new Constitution was ratified. Section 3 of the transitory provisions provides that all existing executive orders and issuances not inconsistent with the constitution "shall remain operative until amended, repealed or revoked."

Thereafter, the committee constituted to effect the reorganization of the Bureau submitted a staffing pattern and structure to the Commissioner and the Secretary of Finance.[10]

Feeling that he had been placed in a "freezer"[11] and having been confidentially advised that he would be removed from the position of Revenue Service Chief (Legal) as he was not among those recommended for reappointment,[12] Floreza filed in the Court of Appeals on June 4, 1987 a petition for prohibition with prayer for a writ of preliminary injunction.

He alleged in the petition that he had served the government with distinction having been credited, among other things, with authoring various innovations in the Tax Code; that he was highly rated by former Commissioners of the BIR; that he was the "rightful contender in points of experience and competence" to the position of Deputy Commissioner, and that he failed to get said position because he incurred the ire of respondents Secretary Jaime Ongpin and Commissioner Bienvenido A. Tan, Jr., after he appeared before the Tanodbayan and executed sworn statements therein regarding a multi-billion tax case involving said officials and multinational gas companies.[13]

He averred that he was not putting in issue "the wisdom of the administration's desire to reorganize the executive arm of the government" but he was challenging the constitutionality of his "removal without cause, from an office which has not been abolished nor reorganized." [14] He contended that Executive Order No. 127 violated the constitutional guaranty on security of tenure and that the Freedom Constitution having been superseded by the 1987 Constitution, he "cannot be removed or dismissed without just cause, much less, without formal charge or prior notice." [15] He prayed for the issuance of a writ of preliminary injunction to enjoin the enforcement and implementation of Executive Order No. 127 and, after hearing, for a judgment declaring his "contemplated removal" as violative of the Constitution and the civil service law.[16]

In their answer, respondents alleged that Floreza's appointment as Revenue Service Chief was authorized under then Item No. SB-1 of Batas Pambansa Blg. 80 for the Planning and Policy Service and not for the Legal Service; that Floreza was not required "but merely encouraged" to tender his resignation to give the authorities concerned the widest latitude in effecting the reorganization; that Floreza was relieved of his duties in the Legal Office on April 28, 1986 after his designation as consultant in the Office of the Commissioner, and that Jaime M. Maza, who was designated as acting chief of the Legal Office, became the "duly appointed and qualified Revenue Service Chief, Legal Office", on November 11, 1986.

Respondents asserted that the petition prohibition was improper and that it failed to state a cause of action inasmuch as petitioner had "in fact been removed effectively from the position of Revenue Service Chief, Legal Office"; that assuming Floreza's "threatened removal" referred to his position as consultant, the Court of Appeals had "no jurisdiction over the nature of the subject of the suit on the ground of prematurity and failure to satisfy the requirement of Sec. 2, Rule 65 of the Rules of Court that the petitioner must allege the facts with certainty"; that said court had no jurisdiction over the action insofar as it pertained to Floreza's removal as Revenue Service Chief since the matter fell under the provisions of Executive Order No. 17; and that the petition stated no cause of action on the ground that any removal pursuant to a bona fide reorganization under Executive Order No. 127 was valid.[17]

In reply to said answer, Floreza maintained that he had always been performing the duties and responsibilities of Revenue Service Chief (Legal) and that was shown by Travel Assignment Order No. 11-86 dated April 28, 1986

which directed him to report from said office or position to the Office of the Commissioner as consultant therein. He stated that the memorandum exhorting employees and officials to tender their resignation was not merely meant to "encourage" such resignation because it set the date for resigning and attached a suggested form for resignation. He added that in a dialogue with Commissioner Tan regarding the observance of due process in the acceptance of resignation, he acted as the spokesman of the BIR top echelon although he chose not to resign.

Floreza further averred that Jaime M. Maza was not the duly appointed and qualified Revenue Service Chief of the Legal Office because Maza's latest appointment was only that of head revenue assistant. On the other hand, Floreza still held the position of Revenue Service Chief and continued to receive the salaries and benefits appurtenant thereto and hence, his designation as a consultant did not amount to his removal from the position of Revenue Service Chief.

Floreza explained that in the BIR, it was not uncommon for an official or employee to perform the functions of a position other than the position item indicated in his appointment papers because the overriding considerations were the interests and exigencies of the service. Hence, of the nine Revenue Service Chiefs, only two were working in the specific services where their items belonged. Assuming *arguendo* that his item was that of Revenue Service Chief (Planning and Policy), still, there was no need for him to be reappointed to said position because Executive Order No. 127 retained all the nine Services and therefore, he was covered by the constitutional protection on security of tenure. No item had been abolished. There was no reduction in force.

On the jurisdictional issues raised by the respondents, Floreza insisted that he had satisfied the requirements of Sec. 2, Rule 65 because while he was still the Revenue Service Chief (Legal) even after his designation as consultant, Jaime M. Maza was merely designated as acting Revenue Service Chief (Legal). Furthermore, there was a clear indication that he was "about to be removed from the BIR" since in the list of top officials of the Bureau which was published in the August 1, 1987 Anniversary Issue of the Philippine Revenue Journal his name did not appear either as Revenue Service Chief or as Consultant.

Floreza also claimed that his removal from the position of Revenue Service Chief (Legal) did not fall under Executive Order No. 17 on account of the rulings of the Review Committee set up under said executive order and the Supreme Court, respectively, in Appeal No. 672, "*Gimarino v. Secretary of Justice*" (May 18, 1987) and in G.R. No. 77918, "*Lecaroz v. Ferrer*" (July 27, 1987).[18] He also disputed respondents' averment that the petition stated no cause of action because the one-year period from February 25, 1986 had elapsed and as ruled in *De la Llanea v. Alba*,[19] removal pursuant to a bona fide reorganization refers to removal by reason of non-reappointment, which kind of removal must be for cause.[20]

On September 29, 1987, the Court of Appeals rendered a decision[21] dismissing the petition for prohibition for lack of merit. It ruled that Executive Order No. 127 was issued pursuant to Section 2, Article III of the Freedom Constitution mandating that "(a) 11 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 designation or appointment and qualification of their successors, if such appointment is made within a period of one year from February 25, 1986." It stated that Floreza's non-reappointment as Revenue Service Chief (Legal) did not violate his constitutional right to security of tenure for it merely confirmed his earlier separation from the post. It explained that through Section 59 of Executive Order No. 127 which took effect on January 30, 1987 or within the one-year period prescribed by the Freedom Constitution, personnel of the Ministry of Finance, including Floreza, were considered removed on said date.

The appellate court cited the resolution of this Court in *Jose v. Arroyo*[22] which states that the provisions of Section 16, Art. XVIII of the Constitution 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."

Floreza filed a motion for the reconsideration of the Court of Appeals decision. On December 23, 1987, the motion was denied for lack of merit. The Court of Appeals said:

"With respect to petitioner's arguments, and as We held in Our decision, upon the effectivity of Executive Order No. 27 (sic), all personnel of the Ministry of Finance (now Department of Finance) continued in their functions only in hold over capacities. And Executive Order No. 27 (sic) was validly issued pursuant to Section II of Article III of Proclamation No. 3 which authorized removals without cause if exercised within one (1) year from February 25, 1986.

"Further, Section 16 of Article XVIII of the 1986 Constitution explicitly authorizes the removal of career civil service employees not for cause but as a 'result of the reorganization pursuant to Proclamation No. 3', clearly recognizing the legality of the continuation of reorganization even beyond February 26, 1987. The terms of the said constitutional provision is much too clear, making it unnecessary for Us to discuss further whether it was really applied to the case of Jose v. Arroyo, et al. (G.R. No. 78485).

"Neither may it comfort petitioner that his alleged position has not been abolished. Whether his position is abolished or not is not important since removal can be effected not for cause but pursuant to a reorganization. Nor may he invoke the Civil Service Law which is merely a statute and which must give way when it collides with the Constitution. And with respect to the October 2, 1987 Guidelines, the same does not preclude removal without cause included."

Hence, Floreza filed before this Court a "petition for review ad cautelam." As capsulized by petitioner, this case focuses on the validity of the removal or separation from the civil service even without cause of an incumbent whose position has not been abolished under the government reorganization to achieve harmony, prevent duplication of functions, promote efficiency, and eradicate graft and corruption.[23]

On March 7, 1988, President Aquino issued appointments for Jaime M. Maza and Rizalina Magalona to the positions of Assistant Commissioners for Legal Service and Planning and Research Service, respectively.[24] It is not shown why Commissioner Tan had to secure Presidential appointments for these two items since persons appointed to these positions are not and have never been presidential appointees at least, not under the law. Under Executive Order No. 127, only the Commissioner and Deputy Commissioners are presidential appointees. No law indicating a change in the mode of appointment has been presented. Inasmuch as the Court of Appeals had not issued either a restraining order or a writ of preliminary injunction and, apprehensive that he might be removed without cause, Floreza appealed on March 12, 1988 to both the Department of Finance and the Civil Service Commission his non-reappointment as Revenue Service Chief and the appointment of Maza and Magalona to said position. The Department of Finance referred the letter to the Civil Service Commission.

On September 5, 1988, the Civil Service Commission rendered a decision directing the BIR to appoint Floreza "to a position in the new staffing pattern equivalent or comparable to the rank of Revenue Service Chief with a salary correspondingly adjusted to the levels which comparable positions have been adjusted to after the reorganization." The Commission ruled:

"The issue to resolve is whether the appointment of Mr. Maza and Mrs. Magalona as Assistant Commissioners for Legal and Planning and Research, respectively, violated Floreza's security of tenure and whether he was deprived of due process during the reorganization.

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"On the basis of the above findings, the Civil Service Commission finds no violation of Floreza's right to

security of tenure nor was there an infringement of his right to due process.

"Where a position is abolished, contenders for a similar or equivalent position must be ranked and rated according to their merits. There is no showing that the post of Assistant Commissioner is equivalent to the post of Revenue Service Chief. Assuming however that such is the case, there is no showing either that Floreza is more qualified than either Maza or Magalona to move up to the contested Assistant Commissioner post. In the absence of such a showing, the Commission assumes regularity and the exercise of prudence and good judgment relative to the appointments of Maza and Magalona by the President.

"As to due process, the presidential guidelines of October 2, 1987 directed that employees affected by reorganization must either be informed of their reappointment, offered another position in the same department/agency or informed of their termination. In Floreza's case, he was not terminated but offered another position in which he subsequently declined. His salaries/emoluments were not stopped. He did not avail of his right to appeal said decision to the BIR-RAB and instead went to the DOF and the CSC. From this, it would appear that substantial due process has been accorded him.

"It is also the finding of this Commission however that the BIR did not controvert that Floreza's 32 years of service to the government have been unblemished by any administrative or disciplinary complaint. There was no showing either that his competence or integrity was ever in question. While, in the eyes of the present Commissioner of BIR, he may not have met the qualifications for the post of Assistant Commissioner as to be recommended for presidential appointment, there is no showing either that he deserved to be demoted in rank even if he is allowed to retain his former pay."

In compliance with the directive of the Civil Service Commission, BIR Commissioner Tan requested authority from the Department of Budget and Management to allow the BIR to assign to Floreza the position of Assistant to the Commissioner, the only "equivalent or comparable position" to Floreza's previous position of Revenue Service Chief, in view of the fact that for lack of funds, the position of Assistant to the Commissioner had been proposed for abolition under the "OP pay plan".[25] Commissioner Tan also informed the Civil Service Commission of the proposal to appoint Floreza to the position of Assistant to the Commissioner.[26]

On December 28, 1988, Floreza filed with this Court a petition for review on certiorari of the decision of the Civil Service Commission which was docketed as G.R. No. 86156. He prays therein that said decision be modified by "restoring" him to the position of Revenue Service Chief (Legal) "retitled Assistant Commissioner (Legal)."

On January 2, 1989, the Department of Budget and Management approved the "creation" of the position of Assistant to the Commissioner "effective upon implementation of Executive Order No. 127," and ordered the abolition of three positions in the BIR to provide the necessary funding for the "created" position.[27] Thereafter, Floreza received his permanent appointment as Assistant to the Commissioner with compensation at the rate of P120,000 per annum effective November 1, 1987.[28] Floreza accepted the position subject to the decision of this Court in these two petitions.

G.R. No. 81356 is a petition for review on certiorari of the decision of the Court of Appeals dismissing Floreza's petition for prohibition. G.R. No. 86156 is also labelled a petition for review on certiorari but, for purposes of resolving the issues raised therein, the petition shall be considered a special civil action of certiorari inasmuch as judgments of the Civil Service Commission may be brought to this Court only through certiorari under Rule 65 of the Rules of Court.[29]

The petition in G.R. No. 81356 revolves around the issue of whether or not by virtue of Section 59 of Executive Order No. 127, Floreza was removed from the service as of the issuance of said executive order on January 30, 1987. Section 59 states:

"SEC. 59. New Structure and Pattern. — Upon approval of this Executive Order, the officers and employees of the Ministry shall, in a holdover capacity, continue to perform their respective duties and responsibilities and receive the corresponding salaries and benefits unless in the meantime they are separated from government service pursuant to Executive Order No. 17 (1986) or Article III of Freedom Constitution.

"The new position structure and staffing pattern of the Ministry shall be approved and prescribed by the Minister within one hundred twenty (120) days from the approval of this Executive Order and the authorized positions created hereunder shall be filled with regular appointments by him or by the President, as the case may be. Those incumbents whose positions are not included therein or who are not reappointed shall be separated from the service. Those separated from the service shall receive the retirement benefits to which they may be entitled under existing laws, rules and regulations. Otherwise, they shall be paid the equivalent of one month basic salary for every year of service, or the equivalent nearest fraction thereof favorable to them on the basis of highest salary received, but in no case shall such payment exceed the equivalent of 12 months salary.

"No court or administrative body shall issue any writ or preliminary injunction or restraining order to enjoin the separation/replacement of any officer or employee effected under this Executive Order." [30]

A careful reading of Section 59 of Executive Order No. 127 shows that it is a device intended to overcome the lapse of the power to reorganize under the interim or "Freedom Constitution" with the effectivity of the 1987 Constitution.[31] Thus, an incumbent retained in a hold-over capacity is not yet formally terminated in his government employment. At the same time, he has lost his right to security of tenure because if he is not reappointed when his former item is filled, then he is deemed separated.

The same paragraph, however, mandates that separation under Executive Order No. 127 should follow the provisions of Article III of the interim Constitution and the procedure under Executive Order No. 17. This means that the separation or replacement of officers or employees should be "only for justifiable reasons"[32] or for any of the grounds enumerated in Section 3[33] of the latter executive order.

None of these justifiable reasons or grounds exists in this case of Floreza. As stated in the decision of the Civil Service Commission, there is no controversion of the fact that Floreza's 32 (now 34) years of service are unblemished by any administrative or disciplinary complaint. There is no showing that his competence or integrity was ever in question. He went up gradually in the ladder of promotions at the BIR under different Commissioners throughout those 32 years. The only reasons he can find for his non-reappointment are the sworn statements he filed as Chief of the BIR Legal Office with the Tanodbayan regarding a multi-billion peso tax case involving multinational gas companies with which the Secretary and Commissioner were earlier connected before their appointments to top government positions.

The number of the item to which Floreza was appointed belongs to the Policy and Planning Service. However, from the time he was appointed Revenue Service Chief, he served as head of the Legal Service. Under the authority given to the Commissioner, he switches the Service Chiefs from one service to another in the best interests of their agency especially in order to maximize BIR collections. Moreover, the appointments extended to heads of services at the time were as "Revenue Service Chiefs" with no indication of what particular service they were going to administer.

Moreover, Floreza's assignment as consultant in the Office of the Commissioner was undertaken through the usual issuance of a travel assignment order as dictated by the "exigencies of the service." Floreza's movement may not be considered as a transfer within the contemplation of Section 27(c) of Presidential Decree No. 807 (Civil Service Decree) for it was more of the detail under Section 24(f) than a transfer. Had it been a transfer, Floreza would have been issued an appointment as consultant.[34]

Floreza continued holding the position of Revenue Service Chief until Commissioner Tan went to the President for the appointments of Jaime M. Masa as Assistant Commissioner for the Legal Service and Rizalina S. Magalona as Assistant Commissioner for the Planning and Research Service on March 7, 1988.[35] Since both the Planning and Policy (or Research) Service and the Legal Service were given new Chiefs, Floreza was in effect terminated in his employment even as he was offered a demotion in rank to replace it. It should be emphasized that by that time, the 1987 Constitution had long been in full force and effect.

In the much-awaited decision in *Dario v. Mison* and its companion cases,[36] this Court ruled that government reorganization may still continue under the 1987 Constitution provided that the bona fide rule is followed. The same decision upheld the application of Republic Act No. 6656, Section 13 of which gives retroactive effect as of June 30, 1987 to the rights and benefits provided therein. Section 2 thereof provides:

"SEC. 2. No officer or employee in the career 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 bonafide 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 the 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 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,"

We apply the ruling in *Dario v. Mison* and Section 2 of Republic Act 6656 to this petition. We hold that Floreza was deprived of his right to security of tenure by his non-reappointment to the position of Revenue Service Chief or its new title under the reorganized Bureau of Internal Revenue. It should be remembered that after February 2, 1987, any reorganization undertaken by the government is circumscribed by the provisions and safeguards of the new Constitution. Hence, when Floreza was not reappointed as Revenue Service Chief or as Assistant Commissioner either in the Legal Service or in the Planning and Research Service, and other persons were appointed to the positions, he was, in effect, dismissed from the service in violation not only of his right to security of tenure but to due process as well.

Floreza has in his favor recent jurisprudence and the provisions of Section 2, Republic Act 6656, specially paragraph (d). However, there has been a reclassification of the various services in the BIR. Executive Order No. 127 particularly states that the Legal Service of the BIR shall be headed by a Service Chief. The same provision is embodied in Section 20 of Executive Order No. 292 otherwise known as the "Administrative Code of 1987." [37]

The BIR, however, after its reorganization adopted the realignment of position classes prescribed by Executive Order No. 1042[38] which was issued by former President Marcos on July 30, 1985. The position of Revenue Service Chief has been renamed Assistant Commissioner. Accordingly, the position of Assistant Commissioner has become part of the Career Executive Service. These acts of the BIR form the basis for presidential appointments to positions which, under the law, do not require the President's own attention.

We shall not delve further into Floreza's allegations about the respondent Commissioner's bias against him and the

circumstances which led Floreza to conclude that inasmuch as he could not be eased out of government service without doing violence to his legal rights as a public official, respondent Commissioner was actually effecting his dismissal behind the cloak of reorganization. Floreza's allegations are, strictly speaking, factual matters although they are un rebutted. We see no need to rule upon these matters.

One factual circumstance, however, cannot escape the Court's notice. On March 14, 1988, the respondent Commissioner informed Floreza through a letter that in the reorganization of the BIR, Floreza had been "allocated to the item of Chief Revenue Officer III authorized in the Legal Branch, Revenue Region No. 5, Legazpi City", that there would be no reduction of his present salary and that he would be temporarily assigned to the Advisory Council under the Office of the Commissioner.[39] The records also show that up to April, 1988, Floreza was being paid the salary of an Assistant Commissioner. However, from May, 1988, he received the same salary under the item of Chief Revenue Officer III notwithstanding the fact that he had manifested that he was not accepting said position.[40] He was, therefore, demoted.

Demotion in office by assigning an employee to a lower position in the same service which has a lower rate of compensation is tantamount to removal,[41] if no cause is shown for it. More so, if it is not part of any disciplinary action. While Floreza was allowed to receive the salary of Revenue Service Chief, his demotion to a position without justifiable cause smacks of arbitrariness which has no place in a government that nurtures the constitutional mandates of security of tenure and due process. Moreover, the position of Chief Revenue Officer III being three grades lower than that of Revenue Service Chief, the respondent Commissioner violated Section 4 of Republic Act No. 6656 which provides that "officers and employees holding permanent appointments shall be given preference for appointment to the new positions or in case there are not enough comparable positions, to positions next lower in rank." Under Executive Order No. 1042, the position next in rank to that of Assistant Commissioner is Head' Revenue Executive Assistant after which follow Chief Revenue Officer IV and Chief Revenue officer III in that order.

Section 2 of Republic Act No. 6656 entitles a victim of a removal in violation of the bona fide rule to a reinstatement or reappointment to the position from which he was removed. The fact that there is now an appointee to the position he claims, holding an appointment signed by the President, is of no moment. There was no vacancy in the office to which Jaime M. Maza was appointed and, therefore, his promotion was not valid.

We again apply the rule in *Dario v. Mison* where we stated:

"The Commissioner is admonished, specifically, for failure to reinstate promptly the separated employees to their former positions or equivalent ones, if the former had been abolished, and to pay backwages arising from their long lay-off.

"The Court indeed has reliable information — (1) that not a few reinstated personnel have been detailed, without their consent, to far-flung offices of the Bureau; (2) actual demotions thereof; and (3) that their backpays have been withheld by reason of nebulous queries as to who foots the bill, the Government or the Commissioner in his personal capacity. The Court strongly reiterates its order decreeing the separation of replacements and the restoration of the dismissed employees in question. We have spoken and we can not anymore be clearer." (G.R. No. 81954 and other companion cases, December 19, 1989, p. 2; Italics supplied)

WHEREFORE, in G.R. No. 81356, the decision of the Court of Appeals is hereby SET ASIDE. In G. R. No. 86156, the decision of the Civil Service Commission is MODIFIED. The Bureau of Internal Revenue is ORDERED to REAPPOINT petitioner REYNOSO B. FLOREZA to his former item of REVENUE SERVICE CHIEF assigned to the Legal Service or ASSISTANT COMMISSIONER, Legal Service as the position is now called.

SO ORDERED.

Cruz, Paras, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur. Narvasa, J., joins Mme. Justice Herrera's dissent.

Melencio-Herrera, J., reiterates the grounds of her dissent in the Mison and companion cases.

Feliciano, J., dissents on the grounds set out in Mme. Justice Herrera's dissent in *Dario v. Mison* in which he had joined.

Fernan, C.J., no part; close relationship to one of the parties.

[1] G. R. No. 81356 Rollo, p. 276.

[2] CA Rollo, p. 67.

[3] *Ibid.*, p. 62.

[4] *Ibid.*, p. 66.

[5] *Ibid.*, p. 17.

[6] G. R. No. 81356 Rollo, p. 10.

[7] CA Rollo, p. 63.

[8] *Ibid.*, p. 173.

[9] 83 O. G. No. 17, p. 2009.

[10] CA Rollo, p. 7.

[11] G. R. No. 81356, Rollo, p. 288.

[12] CA Rollo, p. 7.

[13] *Ibid.*, p. 10.

[14] *Ibid.*, p. 9.

[15] *Ibid.*, p. 9.

[16] *Ibid.*, pp. 14-15.

[17] *Ibid.*, pp. 39-42.

[18] In the former case, it was ruled that the Review Committee had lost jurisdiction over the petition for reconsideration of a termination notice in view of the ratification of the 1987 Constitution. In the latter case, this Court held that the one-year period from February 25, 1986 having elapsed, the petitioner cannot be considered removed from office by the mere designation and qualification of a successor. Petitioner, however, was an elected official.

[19] 112 SCRA 294.

[20] *Ibid.*, pp. 52-60.

[21] Penned by Justice Felipe B. Kalalo and concurred in by Justices Rodolfo A. Nocon and Ricardo P. Tensuan.

[22] G.R. No. 78435, August 11, 1987.

[23] Petition in G. R. No. 81356, p. 2.

[24] G. R. No. 81356, Rollo, p. 57.

[25] G. R. No. 86156, Rollo, p. 61.

[26] G. R. No. 81356, Rollo, p. 359.

[27] Ibid., p. 361.

[28] Ibid., p. 360.

[29] Mison v. Civil Service Commission, G. R. No. 85310 August 8, 1989.

[30] 83 O.G. No. 17, pp. 2009, 2023.

[31] Palma-Fernandez v. De la Paz, G. R. No. 78946, April 15, 1988, 160 SCRA 751.

[32] Sec. 1, Executive Order No. 17.

[33] 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.

[34] Palma-Fernandez v. De la Paz, supra at p. 756.

[35] G. R. No. 81356, Rollo, p. 111.

[36] G.R. No. 81954 and other companion cases, August 8, 1989.

[37] 83 O. G. No. 38, p. 1.

[38] 81 O. G. No. 33, p. 3606.

[39] G. R. No. 81356 Rollo, p. 203.

[40] Ibid., pp. 131-132.

[41] 67 C.J.S. 241.

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