

CESAR Z. DARIO, PETITIONER, VS. HON. SALVADOR M. MISON, HON. VICENTE JAYME AND HON. CATALINO MACARAIG, JR., IN THEIR RESPECTIVE CAPACITIES AS COMMISSIONER OF CUSTOMS, SECRETARY ...

G.R. No. 81954. August 08, 1989

Ponente: SARMIENTO, J.

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SARMIENTO, J.:

The Court writes finis to this controversy that has raged bitterly for the past several months. It does so out of a legitimate presentiment of more suits reaching it as a consequence of the government reorganization and the instability it has wrought on the performance and efficiency of the bureaucracy. The Court is apprehensive that unless the final word is given and the ground rules are settled, the issue will fester, and likely foment a constitutional crisis for the nation, itself beset with grave and serious problems.

The facts are not in dispute.

On March 25, 1986, President Corazon Aquino 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." Among other things, Proclamation No. 3 provided:

SECTION 1. ...

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;[1]. . .

Pursuant thereto, it was also provided:

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 or 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 office or body to which its powers, functions and responsibilities substantially pertain.[2]

Actually, the reorganization process started as early as February 25, 1986, when the President, in her first act in office, called upon "all appointive public officials to submit their courtesy resignation(s) beginning with the members of the Supreme Court." [3] Later on, she abolished the Batasang Pambansa [4] and the positions of Prime Minister and Cabinet [5] under the 1973 Constitution.

Since then, the President has issued a number of executive orders and directives reorganizing various other government offices, a number of which with respect to elected local officials, has been challenged in this Court, [6] and two of which, with respect to appointed functionaries, have likewise been questioned herein. [7]

On May 28, 1986, the President enacted Executive Order No. 17 "PRESCRIBING RULES AND REGULATIONS FOR THE IMPLEMENTATION OF SECTION 2, ARTICLE III OF THE FREEDOM CONSTITUTION." Executive Order No. 17 recognized the "unnecessary anxiety and demoralization among the deserving officials and employees" the ongoing government reorganization had generated, and prescribed as "grounds for the separation/replacement of personnel," the following:

SECTION 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. [8]

On January 30, 1987, the President promulgated Executive Order No. 127, "REORGANIZING THE MINISTRY OF FINANCE". [9] Among other offices, Executive Order No. 127 provided for the reorganization of the Bureau of Customs [10] and prescribed a new staffing pattern therefor.

Three days later, on February 2, 1987, [11] the Filipino People adopted the new Constitution.

On January 6, 1988, incumbent Commissioner of Customs Salvador Mison issued a Memorandum, in the nature of "Guidelines on the Implementation of Reorganization Executive Orders," [12] prescribing the procedure in personnel placement. It also provided:

1. By February 28, 1988, all employees covered by executive Order 627 and the grace period extended to the Bureau of Customs by the President of the Philippines on reorganization shall be:

- a) informed of their re-appointment, or
- b) offered another position in the same department or agency, or
- c) informed of their termination. [13]

On the same date, Commissioner Mison constituted a Reorganization Appeals Board charged with adjudicating

appeals from removals under the above Memorandum.[14] On January 26, 1988, Commissioner Mison addressed several notices to various Customs officials, in the tenor as follows:

Sir:

Please be informed that the, Bureau is now in the process of implementing the Reorganization Program under Executive Order No. 127.

Pursuant to Section 59 of the same Executive Order, all officers and employees of the Department of Finance, or the Bureau of Customs in particular, shall continue to perform their respective duties and responsibilities in a hold-over capacity, and that those incumbents whose positions are not carried in the new reorganization, pattern, or who are not re-appointed, shall be deemed separated from the service.

In this connection, we regret to inform you that your services are hereby terminated as of February 28, 1988. Subject to the normal clearances, you may receive the retirement benefits to which you may be entitled under existing laws, rules and regulations.

In the meantime, your name will be included in the consolidated list compiled by the Civil Service Commission so that you may be given priority for future employment with the Government as the need arises.

Sincerely yours,

(Sgd) SALVADOR M. MISON

Commissioner[15]

As far as the records will yield, the following were recipients of these notices:

1. CESAR DARIO
2. VICENTE FERIA, JR.
3. ADOLFO CASARENO
4. PACIFICO LAGLEVA
5. JULIAN C. ESPÍRITU
6. DENNIS A. AZARRAGA
7. RENATO DE JESUS
8. NICASIOC. GAMBOA
9. CORAZÓN RALLOS NIEVES
10. FELICITACIÓN R. GELUZ
11. LEODEGARIO H. FLORESCA
12. SUBAERPACASUM
13. ZENAIDA LAÑARÍA
14. JOSE B. ORTIZ
15. GLICERIO R. DOLAR
16. CORNELIONAPA
17. PABLO B.SANTOS
18. FERMÍN RODRIGUEZ
19. DALISAY BAUTISTA
20. LEONARDO JOSÉ
21. ALBERTO LONTOK
22. PORFIRIO TABINO
23. JOSEBARREDO
24. ROBERTO ARNALDO
25. ESTER TAN
26. PEDRO BAKAL

27. ROSARIO DAVID
28. RODOLFO AFUANG
29. LORENZO CATRE
30. LEONCIA CATRE
31. ROBERTO ABADA
32. ABACÁ SISINIOT.
33. ABAD, ROGELIO C.
34. ABADIANO, JOSEP.
35. ABCEDE,NEMECIOC.
36. ABIOG, ELYF.
37. ABLAZA, AURORA M.
38. AGBAYANI, NELSON I.
39. AGRES, ANICETO
40. AGUILAR, FLOR
41. AGUILUCHO, MA. TERESA R.
42. AGUSTÍN, BONIFACIO T.
43. ALANO, ALEX P.
44. ALBA, MAXIMO F. JR.
45. ALBANO ROBERT B.
46. ALCANTARA, JOSE G.
47. ALMARIO, RODOLFO F.
48. ALVEZ, ROMUALDO R.
49. AMISTAD, RUDY M.
50. AMOS, FRANCIS F.
51. ANDRES, RODRIGO V.
52. ANGELES, RICARDO S.
53. ANOLIN, MILAGROS H.
54. AQUINO, PASCASIOE.
55. ÁRABE, MELINDA M.
56. ARCÁNGEL, AGUSTÍN S., JR.
57. ARPÓN, ULPIANOU., JR.
58. ARREZA, ARTEMIOM., JR.
59. ARROJO, ANTONIO P.
60. ARVISU, ALEXANDERS.
61. ASCAÑO, ANTONIO T.
62. ASLAHON,JULAHONP.
63. ASUNCION, VICTOR R.
64. ATANGAN, LORNA S.
65. ATIENZA, ALEXANDER R.
66. BACAL, URSULINOC.
67. BAÑAGA, MARLOWE Z.
68. BANTA, ALBERTO T.
69. BARROS, VICTOR C.
70. BARTOLOMÉ, FELIPE A.
71. BAYS AC, RE YN ALDO S.
72. BELEÑO, ANTONIO B.
73. BERNARDO, ROMEO D.
74. BERNAS, MARCIANO S.
75. BOHOL, AUXILIADOR G.
76. BRAVO, VICTOR M.

77. BULEG, BALILISR.
78. CALNEA, MERCEDES M.
79. CALVO, HONESTO G.
80. CAMACHO, CARLOS V.
81. CAMPOS, RODOLFO C.
82. CAPULONG, RODRIGO G.
83. CARINGAL, GRACIA Z.
84. CARLOS, LORENZO B.
85. CARRANTO, FIDEL U.
86. CARUNGCONG, ALFREDO M.
87. CASTRO, PATRICIA J.
88. CÁTELO, ROGELIO B.
89. CATURLA, MANUEL B.
90. CENIZAL, JOSEFINA F.
91. CINCO, LUISITO
92. CONDE, JOSE C, JR.
93. CORCUERA, FIDEL S.
94. CORNETA, VICENTE S.
95. CORONADO, RICARDO S.
96. CRUZ, EDUARDO S.
97. CRUZ, EDILBERTO A.
98. CRUZ, EFIGENIA B.
99. CRUZADO, MARCIAL C.
100. CUSTUDIO, RODOLFO M.
101. DABON, NORMA M.
102. DALINDIN, EDNA MAE D.
103. DANDAL, EDEN F.
104. DATUHARON, SATA A.
105. DAZO, GODOFREDOL.
106. DE CASTRO, LEOPAPA
107. DE GUZMAN, ANTONIO A.
108. DE GUZMAN, RENATO E.
109. DÉLA CRUZ, AMANDO A., JR.
110. DÉLA CRUZ. FRANCISCO C.
111. DE LA PEÑA, LEONARDO
112. DEL CAMPO, ORLANDO
113. DEL RIO, MAMERTO P., JR.
114. DE MESA, WILHELMINAT.
115. DIMAKUTA. SALICL.
116. DIZON, FELICITAS A.
117. DOCTOR, HEIDYM.
118. DOMINGO, NICANOR J.
119. DOMINGO, PERFECTO V., JR.
120. DUAY, JUANA G.
121. DYSANGCO, RENATO F.
122. EDILLOR, ALFREDO P.
123. ELEVAZO, LEONARDO A.
124. ESCUYOS, MANUEL M., JR.
125. ESMERIA, ANTONIO E.
126. ESPALDÓN, MA. LOURDES H.

127. ESPINA, FRANCO A.
128. ESTURCO, RODOLFO C.
129. EVANGELINO, FERMÍN I.
130. FELIX, ERNESTO G.
131. FERNANDEZ, ANDREW M.
132. FERRAREN, ANTONIO C.
133. FERRERA, WENCESLAO A.
134. FRANCISCO, PELAGIO S., JR.
135. FUENTES, RUDY L.
136. GAGALANG, RENATO V.
137. GALANG, EDGARDO R.
138. GAMBOA, ANTONIO C.
139. GAN, ALBERTO R.
140. GARCIA, GILBERT M.
141. GARCIA, EDNA V.
142. GARCIA, JUAN L.
143. GAVIÓLA, LILIAN V.
144. GEMPARO, SEGUNDINA G.
145. GOBENCIONG, FLORDELIZ B.
146. GRATE, FREDERICK R.
147. GREGORIO, LAURO P.
148. GUARTICO, AMMON H.
149. GUIANG, MYRNA N.
150. GUINTO, DELFÍN C.
151. HERNANDEZ, LUCAS A.
152. HÓNRALES, LORETO N.
153. HUERTO, LEOPOLDO H.
154. HULAR, LANNYROSS E.
155. IBAÑEZ, ESTER C.
156. ILAGAN, HONORATO C.
157. INFANTE, REYNALDO C.
158. ISAIS, RAY C.
159. ISMAEL, HADJI AKRAM B.
160. JANOLO, VIRGILIO M.
161. JAVIER, AMADOR L.
162. JAVIER, ROBERTO S.
163. JAVIER. WILLIAM R.
164. JOVEN, MEMIA A.
165. JULIAN, REYNALDO V.
166. JUMAMOY, ABUNDIO A.
167. JUMAQUIAO, DOMINGO F.
168. KAINDOY, PASCUAL B., JR.
169. KOH,NANIE G.
170. LABILLES, ERNESTO S.
171. LABRADOR, WILFREDO M.
172. LAGA, BIENVENIDO M.
- 173.LAGMAN,EVANGELINEG.
- 174.LAMPONG,WILFREDOG.
- 175.LANDICHO, RESTITUTOA.
176. LAPITAN, CAMILO M.

177. LAURENTE, REYNALDO A.
178. LICARTE, EVARISTO R.
179. LIPIO, VICTOR O.
180. LITTAUA, FRANKLIN Z.
181. LOPEZ, MELENCIOL.
182. LUMBA OLÍ VIÁ R.
183. MACAISA BENITO T.
184. MACAISA ERLINDA C.
185. MAGAT, ELPIDIO
186. MAGLAYA, FERNANDO P.
187. M ALABAN AN, ALFREDO C.
188. MALIBIRAN, ROSITA D.
189. MALIJAN, LÁZARO V.
190. MALLI, JAVIER M.
191. MANAHAN, RAMON S.
192. MANUEL, ELPIDIO R.
193. MARAVILLA, GIL B.
194. MARCELO, GIL C.
195. MARINAS, RODOLFO V.
196. MAROKET, JESUS C.
197. MARTIN, NEMENCIO A.
198. MARTINEZ, ROMEO M.
199. MARTINEZ, ROSELINAM.
200. MATIBAG, ANGELINA G.
201. MATUGAS. ERNESTO T.
202. MATUGAS, FRANCISCO T.
203. MAYUGA, PORTIA E.
204. MEDINA, NESTOR M.
205. MEDINA, ROLANDO S.
206. MENDAVIA AVELINO I.
207. MENDOZA. POTENCIANO G.
208. MIL, RAY M.
209. MIRA VALLES, ANASTAQA L.
210. MONFORTE, EUGENIO, JR. G.
211. MONTANO, ERNESTO F.
212. MONTERO. JUAN M.
213. MORALDE, ESMERALDO B. JR.
214. MORALES, CONCHITA D.L.
215. MORALES, NESTOR P.
216. MORALES, SHIRLEY S.
217. MUNAR, JUANITA L.
218. MUÑOZ, VICENTE R.
219. MURILLO, MANUEL M.
220. NACIÓN, PEDRO R.
221. NAGAL, HENRY N.
222. NAVARRO, HENRY L.
223. NEJAL, FREDRICK E.
224. NICOLAS, REYNALDO S.
225. NIEVES, RUFINO A.
226. OLAIVAR, SEBASTIAN T.

227. OLEGARIO, LEO Q.
228. ORTEGA ARLENE R.
229. ORTEGA, JESUS R.
230. OSORIO, ABNER S. P
231. APIO, FLORENTINO T. II
232. PASCUA, ARNULFO A.
233. PASTOR, ROSARIO
234. PELA YO, ROSARIO L.
235. PEÑA, AÍDA C.
236. PEREZ, ESPERIDION B.
237. PEREZ, JESÚS BAYANI M.
238. PRE, ISIDRO A.
239. PRUDENCIADO, EULOGIA S.
240. PUNZALAN, LAMBERTO N.
241. PURA, ARNOLD T.
242. QUIÑONES, EDGARDO I.
243. QUINTOS, AMADEO C, JR.
244. QUIRAY, NICOLAS C.
245. RAMIREZ, ROBERTO P.
246. RANADA, RODRIGO C.
247. RARAS, ANTONIO A.
248. RAVAL, VIOLETA V.
249. RAZAL, BETTY R.
250. REGALA, PONCE F.
251. REYES, LIBERATO R.
252. REYES, MANUEL E.
253. REYES, NORMA Z.
254. REYES, TELESFORO F.
255. RIVERA, ROSITA L.
256. ROCES, ROBERTO V.
257. ROQUE, TERESITA S.
258. ROSANES, MARILOUM.
259. RÓSETE, ADÁN I.
260. RUANTO, REY CRISTO C, JR.
261. SABLADA, PASCASIO G.
262. SALAZAR, SILVER1A S.
263. SALAZAR, VICTORIA A.
264. SALIMBACOD, PERLITA C.
265. SALMINGO, LOURDES M.
266. SANTIAGO, EMELITA B.
267. SATINA, PORFIRIO C.
268. SEKITO, COSME B., JR.
269. SIMON, RAMON P.
270. SINGSON, MELECIO C.
271. SORIANO, ANGELO L.
272. SORIANO, MAGDALENA R.
273. SUMULONG, ISIDORO L, JR.
274. SUNICO, ABELARDO T.
275. TABIJE, EMMA B.
276. TAN, RUDY GOROSPE

- 277.TAN, ESTERS.
- 278.TAN,JULITAS.
279. TECSON, BEATRIZ B.
280. TOLENTINO, BENIGNO A.
- 281.TURINGAN, ENRICO T., JR.
- 282.UMPA, ALI A.
283. VALIC, LUCIO E.
284. VASQUEZ, NICANOR B.
285. VELARDE, EDGARDO C.
286. VERA, AVELINO A.
287. VERAME, OSCAR E.
288. VIADO, LILLIAN T.
289. VIERNES, NAPOLEON K.
290. VILLALON, DENNIS A.
291. VILLAR, LUZ L.
292. VILLALUZ, EMELITO V.
293. ZATA, ANGELA, JR.
294. ACHARON, CRISTETO
295. ALBA, RENATO B.
296. AMON, JULITAC.
297. AUSTRIA, ERNESTO C.
298. CALO, RAYMUNDO M.
299. CENTENO, BENJAMIN R.
300. DONATO, ESTELITA P.
301. DONATO, FELIPE S.
302. FLORES, PEDRITOS.
303. GALAROSA, RENATO
304. MALAWI, MAUYAG
305. MONTENEGRO, FRANCISCO M.
306. OMEGA, PETRONILO T.
307. SANTOS, GUILLERMO F.
308. TEMPLO, CELSO
309. VALDERAMA, JAIME B.
310. VALDEZ, NORAM.

Cesar Dario is the petitioner in G.R. No. 81954; Vicente Feria, Jr. is the petitioner in G.R. No. 81967; Messrs. Adolfo Caserano, Pacifico Lagleva, Julian C. Espiritu, Dennis A. Azarraga, Renato de Jesus, Nicasio C. Gamboa, Mesdames Corazon Rallos Nievas and Felicitacion R. Geluz, Messrs. Leodegario H. Floresca, Subaer Pacasum, Ms. Zenaida Lanaria, Mr. Jose D. Ortiz, Ms. Gliceria R. Dolar, Ms. Cornelia Mapa, Pablo D. Santos, Fermin Rodriguez, Ms. Dalisay Bautista, Messrs. Leonardo Jose, Alberto Lontok, Porfirio Tabino, Jose Barredo, Roberto Arnaldo, Ms. Ester Tan, Messrs. Pedro Bakal, Rosario David, Rodolfo Afuang, Lorenzo Catre, Ms. Leonora Catre, and Roberto Abada, are the petitioners in G.R. No. 82023; the last 279[16] individuals issued are the private respondents in G.R. No. 85310.

As far as the records will likewise counsel,[17] a total of 394 officials and employees of the Bureau of Customs were given individual notices of separation. A number supposedly sought reinstatement with the Reorganization Appeals Board while others went to the Civil Service Commission. The first thirty-one mentioned above came directly to this Court.

On June 30, 1988, the Civil Service Commission promulgated its ruling ordering the reinstatement of the 279

employees, the 279 private respondents in G.R. No. 85310, the dispositive portion of which reads as follows:

WHEREFORE, it is hereby ordered that:

- Appellants be immediately re appointed to positions of comparable or equivalent rank in the, Bureau of Customs without loss of seniority rights;
- Appellants be paid their back salaries reckoned from the dates of their illegal termination based on the rates under the approved, new staffing pattern but not lower than their former salaries.

This action of the Commission should not, however, be interpreted as an exoneration of the appellants from any accusation of wrongdoing and, therefore, their reappointments are without prejudice to:

- Proceeding with investigation of appellants with pending administrative cases, and where investigations have been finished, to promptly render the appropriate decisions;
- The filing of appropriate administrative complaints against appellants with derogatory reports or information if evidence so warrants.

SO ORDERED.[18]

On July 15, 1988, Commissioner Mison, represented by the Solicitor General, filed a motion for reconsideration. Acting on the motion, the Civil Service Commission, on September 20, 1988, denied reconsideration.[19]

On October 20, 1988, Commissioner Mison instituted certiorari proceedings with this Court, docketed, as above-stated, as G.R. No. 85310 of this Court.

On November 16, 1988, the Civil Service Commission further disposed the appeal (from the resolution of the Reorganization Appeals Board of five more employees, holding as follows:

WHEREFORE, it is hereby ordered that:

- Appellants be immediately reappointed to positions of comparable or equivalent rank in the Bureau of Customs without loss of seniority rights; and
- Appellants be paid their back salaries to be reckoned from the date of their illegal termination based on the rates under the approved new staffing pattern but not lower than their former salaries.

This action of the Commission Should not, however, be interpreted as an exoneration of the Herein appellants from any accusation of any wrongdoing and therefore, their reappointments are without prejudice to:

- Proceeding with investigation of appellants with pending administrative cases, if any, and where investigations have been finished, to promptly, render the appropriate decisions; and
- The filing of appropriate administrative complaints against appellant with derogatory reports or information, if any, and if evidence so warrants.

SO ORDERED.[20]

On January 6, 1989, Commissioner Mison challenged the Civil Service Commission's Resolution in this Court; his petition has been docketed herein as G.R. No. 86241. The employees ordered to be reinstated are Senen Dimaguila, Romeo Arabe, Bernardo Quintong, Gregorio Reyes, and Romulo Badillo.[21]

On June 10, 1986, Republic Act No. 6656, "AN ACT TO PROTECT THE SECURITY OF TENURE OF CIVIL SERVICE OFFICERS AND EMPLOYEES IN THE IMPLEMENTATION OF GOVERNMENT REORGANIZATION,"[22] was signed into law. Under Section 7, thereof:

Sec. 9. All officers and employees who are found by the Civil Service Commission to have been separated in violation of the provisions of this Act, shall be ordered reinstated or reappointed as the case may be without loss of seniority and shall be entitled to full pay for the period of separation. Unless also separated for cause, all officers and employees, including casuals and temporary employees, who have been separated pursuant to reorganization shall, if entitled thereto, be, paid the appropriate separation pay and retirement and other benefits under existing laws within ninety (90) days from the date of the effectivity of their separation or from the date of the receipt of the resolution of their appeals as the case may be: Provided, That application for clearance has been filed and no action thereon has been made by the corresponding department or agency. Those who are not entitled to said benefits shall be paid a separation gratuity in the amount equivalent to one (1) month salary for every year of service. Such separation pay and retirement benefits shall have priority of payment out of the savings of the department or agency concerned.[23]

On June 23, 1988, Benedicto Amasa and William Dionisio, customs examiners appointed by Commissioner Mison pursuant to the ostensible reorganization subject of this controversy, petitioned the Court to contest the validity of the statute. The petition is docketed as G.R. No. 83737.

On October 21, 1988, thirty-five more Customs officials whom the Civil Service Commission had ordered reinstated by its June 30, 1988 Resolution filed their own petition to compel the Commissioner of Customs to comply with the said Resolution. The petition is docketed as G.R.No. 85335.

On November 29, 1988, we resolved to consolidate all seven petitions.

On the same date, we resolved to set the matter for hearing on January 12, 1989. At the said hearing, the parties, represented by their counsels (a) retired Justice Ruperto Martin; (b) retired Justice Lino Patajo; (c) former Dean Froilan Bacungan; (d) Atty. Lester Escobar; (e) Atty. Faustino Tugade; and (f) Atty. Alexander Padilla, presented their arguments. Solicitor General Francisco Chavez argued on behalf of the Commissioner of Customs (except in G.R. 85335, in which he represented the Bureau of Customs and the Civil Service Commission). Former Senator Ambrosio Padilla also appeared and argued as *amicus curiae*. Thereafter, we resolved to require the parties to submit their respective memoranda which they did in due time.

There is no question that the administration may validly carry out a government reorganization --insofar as these cases are concerned, the reorganization of the Bureau of Customs — by mandate not only of the Provisional Constitution, *Supra*, but also of the various Executive Orders decreed by the Chief Executive in her capacity as sole lawmaking authority under the 1986-1987 revolutionary government. It should also be noted that under the present Constitution, there is a recognition, albeit implied, that a government reorganization may be legitimately undertaken, subject to certain conditions.[24]

The Court understands that the parties are agreed on the validity of a reorganization per se, the only question being, as shall be later seen: What is the nature and extent of this government reorganization?

The Court disregards the questions raised as to procedure, failure to exhaust administrative remedies, the standing of certain parties to sue,[25] and other technical objections, for two reasons, [b]ecause of the demands of public interest including the need for stability in the public service,” [26] and because of the serious implications of these cases on the administration of the Philippine civil service and the rights of public servants.

The urgings in (G.R. Nos. 85335 and 85310, that the Civil Service Commission's Resolution dated June 30, 1988 had attained a character of finality for failure of Commissioner Mison to apply for judicial review or ask for reconsideration seasonably under Presidential Decree No. 807,[27] or under Republic Act No. 6656,[28] or Under the Constitution,[29] are likewise rejected. The records show that the Bureau of Customs had until July 15, 1988 to ask for reconsideration or come to this Court pursuant to Section 39 of Presidential Decree No. 807. The

records likewise show that the Solicitor General filed a motion for reconsideration on July 15, 1988.[30] the Civil Service Commission issued its Resolution denying reconsideration on September 20, 1988; a copy of this Resolution was received by the Bureau on September 23, 1988.[31] Hence, the Bureau had until October 23, 1988 to elevate the matter on certiorari to this Court.[32] since the Bureau's petition was filed on October 20, 1988, it was filed on time.

We reject, finally, contentions that the Bureau's petition (in G.R. 85310) raises no jurisdictional questions, and is therefore bereft of any basis as a petition for certiorari under Rule 65 of the Rules of Court.[33] We find that the questions raised in Commissioner Mison's petition (in G.R. 85310) are, indeed, proper for certiorari, if by "jurisdictional questions" we mean questions having to do with "an, indifferent disregard of the law, arbitrariness and caprice, or omission to weigh pertinent considerations, a decision arrived at without rational deliberation,"[34] as distinguished from questions that require "digging into the merits and unearthing errors of judgment"[35] which is the office, on the other hand, of review under Rule 45 of the said Rules: What cannot be denied is the fact that the act of the Civil Service Commission of reinstating hundreds of Customs employees Commissioner Mison had separated, has implications not only on the entire reorganization process decreed no less than by the Provisional Constitution, but on the Philippine bureaucracy in general; these implications are of such a magnitude that it cannot be said that -- assuming that the Civil Service Commission erred --- the Commission committed a plain "error of judgment" that Aratuc says cannot be corrected by the extraordinary remedy of certiorari or any special civil action. We reaffirm the teaching of Aratuc --- as regards recourse to this Court with respect to rulings of the Civil Service Commission --- which is that judgments of the Commission may be brought to the Supreme Court through certiorari alone, under rule 65 of the Rules of Court.

In Aratuc, we declared:

It is once evident from these constitutional and statutory modifications that there is a definite tendency to enhance and invigorate the role of the Commission on Elections as the independent constitutional body charged with the safeguarding of free, peaceful and honest elections. The framers of the new Constitution must be presumed to have definite knowledge of what it means to make the decisions, orders and rulings of the Commission "subject to review by the Supreme Court". And since instead of maintaining that, provision intact, it ordained that the Commission's actuations be instead "brought to the Supreme Court on certiorari". We cannot insist that there was no intent to change the nature of the remedy, considering that the limited scope of certiorari, compared to a review," is well known in remedial law.[36]

We observe no fundamental difference between the Commission on Elections and the Civil Service Commission (or the Commission on Audit for that matter) in terms of the constitutional intent to leave the constitutional bodies alone in the enforcement of laws relative to elections, with respect to the former, and the civil service, with respect to the latter (or the audit of government accounts, with respect to the Commission on Audit, As the poll body is the "sole Judge"[37] of all election cases, so is the Civil Service Commission the single arbiter of all controversies pertaining to the civil service.

It should also be noted that under the new Constitution, as under the 1973 Charter, "any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari",[38] which, as Aratuc tells us, "technically connotes something less than saying that the same shall be subject to review by the Supreme Court,"[39] which in turn suggests an appeal by petition for review under Rule 45. Therefore, our jurisdiction over cases emanating from the Civil Service Commission is limited to complaints of lack or excess of jurisdiction or grave abuse of discretion tantamount to lack or excess of jurisdiction, complaints that justify certiorari under Rule 65.

While Republic Act No. 6656 states that judgments of the Commission are "final and executory"[40] and hence, unappealable under Rule 65, certiorari precisely lies in the absence of an appeal.[41]

Accordingly, we accept Commissioner Mison's petition (G.R. No. 85310) which clearly charges the Civil Service Commission with grave abuse of discretion, a proper subject of certiorari although it may not have so stated in terms.

As to charges that the said petition has been filed out of time, we reiterate that it has been filed seasonably. It is to be stressed that the Solicitor General had thirty days from September 23, 1988 (the date the Resolution, dated September 20, 1988, of the Civil Service Commission, denying reconsideration, was received) to commence the instant certiorari proceedings. As we stated, under the Constitution, an aggrieved party has thirty days within which to challenge "any decision, order, or ruling"[42] of the Commission. To say that the period should be counted from the Solicitor's receipt of the main Resolution, dated June 30, 1988, is to say that he should not have asked for reconsideration. But to say that is to deny him the right to contest (by a motion for reconsideration) any ruling, other than the main decision, when, precisely, the Constitution gives him such a right. That is also to place him at a "no-win" situation because if he did not move for a reconsideration, he would have been faulted for demanding certiorari too early, under the general rule that a motion for reconsideration should preface a resort to a special, civil action.[43] Hence, we must reckon the thirty-day period from receipt of the order of denial.

To come to the merits of these cases.

G.R. Nos. 81954, 81967,
82023, and 85335

The Case for the Employees

The petitioner in G.R. No. 81954, Cesar Dario, was one of the Deputy Commissioners of the Bureau of Customs until his relief on orders of Commissioner Mison on January 26, 1988. In essence, he questions the legality of his dismissal, which he alleges was upon the authority of Section 59 of Executive Order No. 127, Supra, herein below reproduced as follows:

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 the 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 deemed 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 of preliminary injunction or restraining order to enjoin the separation/replacement of any officer or employee effected under this Executive Order.[44]

a provision he claims the Commissioner could not have legally invoked. He avers that he could not have been legally deemed to be an "[incumbent] whose [position] [is] not included therein or who [is] not reappointed"[45] to justify his separation from the service. He contends that neither the Executive Order (under the second

paragraph of the section) nor the staffing pattern proposed by the Secretary of Finance[46] abolished the office of Deputy Commissioner of Customs, but, rather, increased it to three.[47] Nor can it be said, so he further maintains that he had not been "reappointed"[48] under the second paragraph of the section) because "(r)eappointment therein presupposes that the position to which it refers is a new one in lieu of that which has been abolished or although an existing one, has absorbed that which has been abolished." [49] He claims, finally, that under the Provisional Constitution, the power to dismiss public officials without cause ended on February 25, 1987,[50] and that thereafter, public officials enjoyed security of tenure under the provisions of the 1987 Constitution.[51]

Like Dario, Vicente Feria, the petitioner in G.R. No. 81967, was a Deputy Commissioner at the Bureau until his separation directed by Commissioner Mison. And like Dario, he claims that under the 1987 Constitution, he has acquired security of tenure and that he cannot be said to be covered by Section 59 of Executive Order No. 127, having been appointed on April 22, 1986 -- during the effectivity of the Provisional Constitution. He adds that under Executive Order No. 39, "ENLARGING THE POWERS AND FUNCTIONS OF THE COMMISSIONER OF CUSTOMS." [52] the Commissioner of Customs has the power "(t)o appoint all Bureau personnel, except those appointed by the President," [53] and that his position, which is that of a Presidential appointee, is beyond the control of Commissioner Mison for purposes of reorganization.

The petitioners in G.R. No. 82023, collectors and examiners in various ports of the Philippines, say, on the other hand, that the purpose of reorganization is to end corruption at the Bureau of Customs and that since there is no finding that they are guilty of corruption, they cannot be validly dismissed from the service.

The Case for Commissioner Mison

In his comments, the Commissioner relies on this Court's resolution in *Jose v. Arroyo*, [54] in which the following statement appears in the last paragraph thereof:

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 provisions 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 reorganization.[55]

For this reason, Mison posits, claims of violation of security of tenure are allegedly no defense. He further states that the deadline prescribed by the Provisional Constitution (February 25, 1987) has been superseded by the 1987 Constitution, specifically, the transitory provisions thereof, [56] which allows a reorganization thereafter (after February 25, 1987) as this very Court has so declared in *Jose v. Arroyo*. Mison submits that contrary to the employees' argument, Section 59 of Executive Order No. 127 is applicable (in particular, to Dario and Feria) in the sense that retention in the Bureau, under the Executive Order, depends on either retention of the position in the new staffing pattern or reappointment of the incumbent, and since the dismissed employees had not been reappointed, they had been considered legally separated. Moreover, Mison proffers that under Section 59 incumbents are considered on holdover status, "which means that all those positions were considered vacant." [57] The Solicitor General denies the applicability of *Palma-Fernandez v. De la Paz* [58] because that case supposedly involves a mere transfer and not a separation. He rejects, finally, the force and effect of Executive Order Nos. 17 and 39 for the reason that Executive Order No. 167, which was meant to implement the Provisional Constitution [59] had ceased to have force and effect upon the ratification of the 1987 Constitution, and that, under Executive Order No. 39, the dismissal is contemplated were "for cause" while the separations now under question

were "not for cause" and were a result of government reorganization decrees by Executive Order No. 127. Anent Republic Act No. 6656, he express doubts on the constitutionality of the grant of retroactivity therein (as regards the reinforcement of security of tenure) since the new Constitution clearly allows reorganization after its effectivity.

G.R. Nos. 85310 and
86241

The Position of Commissioner Mison

Commissioner's twin petitions are direct challenges to three rulings of the Civil Service Commission: (1) the Resolution, dated June 30, 1988, reinstating the 206 customs employees above-stated; (2) the Resolution, dated September 20, 1988, denying reconsideration; and (3) the Resolution, dated November 16, 1988, reinstating five employees. The Commissioner's arguments are as follows:

- The ongoing government reorganization is in the nature of a "progressive"[60] reorganization "impelled by the need to overhaul the entire government bureaucracy"[61] following the people power revolution of 1986;
- There was faithful compliance by the Bureau of the various guidelines issued by the President, in particular, as to deliberation, and selection of personnel for appointment under the new staffing pattern;
- The separated employees have been, under Section 59 of Executive Order No. 127, on mere holdover standing, "which means that all positions are declared vacant;"[62]
- Jose v. Arroyo has declared the validity of Executive Order No. 127 under the transitory provisions of the 1987 Constitution;
- Republic Act No. 6656 is of doubtful constitutionality.

The Ruling of the Civil Service Commission

The position of the Civil Service Commission is as follows:

- Reorganizations occur where there has been a reduction in personnel or redundancy of functions; there is no showing that the reorganization in question has been carried out for either purpose -- on the contrary, the dismissals now disputed were carried out by mere service of notices;
- The current Customs reorganization has not been made according to Malacañang guidelines; information on file with the Commission shows that Commissioner Mison has been appointing unqualified personnel;
- Jose v. Arroyo, in validating Executive Order No. 127, did not countenance illegal removals;
- Republic Act No. 6656 protects security of tenure in the course of reorganizations.

The Court's Ruling

Reorganization, Fundamental Principles of. —

I.

The core provision of law involved is Section 16 Article XVIII, of the 1987 Constitution. We quote:

Sec. 16. Career civil service employees separated from the service 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 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.[63]

The Court considered the above provision critical for two reasons: (1) it is the only provision -- insofar as it mentions removals not for cause -- that would arguably support the challenged dismissal by mere notice, and (2) it is the single existing law on reorganization after the ratification of the 1987 Charter, except Republic Act No. 6656, which came much later, on June 10, 1988. [Nota bene: Executive Orders Nos. 116 (covering the Ministry of Agriculture & Food), 117 (Ministry of Education, Culture & Sports), 119 (Health), 128 (Tourism), 123 (Social Welfare & Development), 174 (Public Works & Highways), 125 (Transportation & Communication), 126 (Labor & Employment), 127 (Finance), 128 (Science & Technology), 129 (Agrarian Reform), 131 (Natural Resources), 132 (Foreign Affairs), and 133 (Trade & Industry) were all promulgated on January 30, 1987, prior to the adoption of the Constitution on February 2, 1987.[64]

It is also to be observed that unlike the grants of power to effect reorganizations under the past Constitutions, the above provision comes as a mere recognition of the right of the Government to reorganize its offices, bureaus, and instrumentalities. Under Section 4; Article XVI, of the 1935 Constitution:

Section 4. All officers and employees in the existing Government of the Philippine Islands shall continue in office until the Congress shall provide otherwise, but all officers whose appointments are by this Constitution vested in the President shall vacate their respective office(s) upon the appointment and qualifications of their successors, if such appointment is made within a period of one year from the date of the inauguration of the Commonwealth of the Philippines.[65]

Under Section 9, Article XVII, of the 1973 Charter:

Section 9. All officials and employees in the existing Government of the Republic of the Philippines shall continue in office until otherwise provided by the law or decreed by the incumbent President of the Philippines, but all officials whose appointments are by this Constitution vested in the Prime Minister shall vacate their respective offices upon the appointment and qualification of their successors.[66]

The freedom Constitution is, as earlier seen, couched in Similar language:

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.[67]

Other than references to "reorganization following the ratification of this Constitution," there is no provision for "automatic" vacancies under the 1987 Constitution.

Invariably, transition periods are characterized by provisions for "automatic" vacancies. They are dictated by the need to hasten the passage from the old to the new Constitution free from the "fetters" of due process and security of tenure.

At this point, we must distinguish removals from separations arising from abolition of office (not by virtue of the Constitution) as a result of reorganization carried out by reason of economy or to remove redundancy of functions. In the latter case the Government is obliged to prove good faith.[68] In case of removals undertaken to comply with clear and explicit, constitutional mandates, the Government is not hard put to prove anything, plainly and simply because the Constitution allows it.

Evidently, the question is whether or not Section 16 of Article XVIII of the 1987 Constitution is a grant of a license upon the Government to remove career public officials it could have validly done under an

"automatic"-vacancy-authority and to remove them without rhyme or reason.

As we have seen, since 1935, transition periods have been characterized by provisions for "automatic" vacancies. We take the silence of the 1987 Constitution on this matter as a restraint upon the Government to dismiss public servants at a moment's notice.

What is indeed, apparent is the fact that if the present Charter envisioned an "automatic" vacancy, it should have said so in clearer terms, as its 1935, 1973, and 1986 counterparts had so stated.

The constitutional "lapse" means either one of two things: (1) The Constitution meant to continue the reorganization under the prior Charter (of the Revolutionary Government), in the sense that the latter provides for "automatic" vacancies, or (2) It meant to put a stop to those "automatic" vacancies. By itself, however, it is ambiguous, referring as it does to two stages of reorganization — the first, to its conferment or authorization under Proclamation No. 3 (Freedom Charter) and the second, to its implementation on its effectivity date (February 2, 1987). But as we asserted, if the intent of Section 16 of Article XVIII of the 1987 Constitution were to extend the effects of reorganization under the Freedom Constitution, it should have said so in clear terms. It is illogical why it should talk of two phases of reorganization when it could have simply acknowledged the continuing effect of the first reorganization.

Second, plainly the concern of Section 16 is to ensure compensation for "victims" of constitutional revamps --whether under the Freedom or existing Constitution -- and only secondarily and impliedly, to allow reorganization. We turn to the records of the Constitutional Commission:

INQUIRY OF MR. PADILLA

On the query of Mr. Padilla whether there is a need for a specific reference to Proclamation No. 3 and not merely state "result of the reorganization following the ratification of this Constitution". Mr. Suarez, on behalf of the Committee, replied that it is necessary, inasmuch as there are two stages of reorganization covered by the Section.

Mr. Padilla pointed out that since the proposals of the Commission on Government Reorganization have not been implemented yet. It would be better to use the phrase "reorganization" before or after the ratification of the Constitution" to simplify the Section. Mr. Suarez instead suggested the phrase "as a result of the reorganization effected before or after the ratification of the Constitution" on the understanding that the provision would apply to employees terminated because of the reorganization pursuant to Proclamation No. 3 and even those affected by the reorganization during the Marcos regime. Additionally, Mr. Suarez pointed out that it is also for this reason that the Committee specified the two Constitutions – the Freedom Constitution and the 1986 (1987) Constitution.[69]

Simply, the provision benefits career civil service employees separated from the service. And the separation contemplated must be due to or the result of (1) the reorganization pursuant to Proclamation No. 3 dated March 25, 1986, (2) the reorganization from February 2, 1987, and (3) the resignations of career officers tendered in line with the existing policy and which resignations have been accepted. The phrase "not for cause" is clearly and primarily exclusionary, to exclude those career civil service employees separated for cause." In other words, in order to be entitled to the benefits granted under Section 16 of Article XVIII of the Constitution of 1987, two requisites, one negative and the other positive, must concur, to wit:

- the separation must not be for cause, and
- the separation must be due to any of the three situations mentioned above.

By its terms, the authority to remove public officials under the Provisional Constitution ended on February 25,

1987, advanced by jurisprudence to February 2, 1987.[70] It can only mean, then, that whatever reorganization is taking place is upon the authority of the present Charter, and necessarily, upon the mantle of its provisions and safeguards. Hence, it can not be legitimately stated that we are merely continuing what the revolutionary Constitution of the Revolutionary Government had started. We are through with reorganization under Freedom Constitution -- the first stage. We are on the second stage -- that inferred from the provisions of Section 16 of Article XVIII of the permanent basic document.

This is confirmed not only by the deliberations of the Constitutional Commission, *Supra*, but is apparent from the Charter's own words. It also warrants our holding in *Esguerra and Palma-Fernandez*, in which we categorically declared that after February 2, 1987, incumbent officials and employees have acquired security of tenure, which is not 'a deterrent against separation by reorganization under the quondam fundamental law.

Finally, there is the concern of the State to ensure that this reorganization is no "purge" like the execrated reorganizations under martial rule. And, of course, we also have the democratic character of the Charter itself.

Commissioner Mison would have had a point, insofar as he contends that the reorganization is open-ended ("progressive"), had it been a reorganization under the revolutionary authority, specifically of the Provisional Constitution. For then, the power to remove government employees would have been truly wide-ranging and limitless, not only because Proclamation No. 3 permitted it, but because of the nature of revolutionary authority itself, its totalitarian tendencies, and the monopoly of power in the men and women who wield it.

What must be understood, however, is that notwithstanding her immense revolutionary powers, the President was, nevertheless, magnanimous in her rule: This is apparent from Executive Order No. 17, which established safeguards against the strong arm and ruthless propensity that accompanies reorganizations --- notwithstanding the fact that removals arising therefrom were "not for cause," and in spite of the fact that such removals would have been valid and unquestionable. Despite that, the Chief Executive saw, as we said, the "unnecessary anxiety and demoralization" in the government, rank and file that reorganization was causing, and prescribed guidelines for personnel action. Specifically, she said on May 28, 1986:

WHEREAS, in order to obviate unnecessary anxiety and demoralization among the deserving officials and employees, particularly in the career civil service, it is necessary to prescribe the rules and regulations for implementing the said constitutional provision to protect career civil servants whose qualifications and performance meet the standards of service demanded by the New Government, and to ensure that only those found corrupt, inefficient and undeserving are separated from the government service;[71]

Noteworthy is the injunction embodied in the Executive Order that dismissals should be made on the basis of findings of inefficiency, graft, and unfitness to render public service.[*]

The President's Memorandum of October 14, 1987 should furthermore be considered. We quote, in part:

Further to the Memorandum dated October 2, 1987 on the same subject, I have ordered that there will be no further lay-offs this year of personnel reorganization.[72]

Assuming, then, that this reorganization allows removal "not for cause" in a manner that would have been permissible in a revolutionary setting as Commissioner Mison so purports, it would seem that the Commissioner would have been powerless, in any event, to order dismissals at the Customs Bureau left and right. Hence even we accepted his "progressive" reorganization theory, he would still have to come to terms with the Chief Executive's subsequent directives moderating the revolutionary authority's plenary power to separate government officials and employees.

Reorganization under the 1987
Constitution, Nature, Extent,
and Limitations of; Jose v.
Arroyo, clarified.-

The controversy seems to be that we have, ourselves, supposedly extended the effects of government reorganization under the Provisional Constitution to the regime of the 1987 Constitution. Jose v. Arroyo[73] is said to be the authority for this argument. Evidently, if Arroyo indeed so ruled, Arroyo would be inconsistent with the earlier pronouncement of Esguerra and the later holding of Palma-Fernandez. The question, however, is: Did Arroyo, in fact, extend the effects of reorganization under the revolutionary Charter to the era of the new Constitution?

There are a few points about Arroyo that have to be explained. First, the opinion expressed therein that "[b]y virtue of said provision the reorganization of the Bureau of Customs under Executive Order No. 127 may continue even after the ratification of this constitution and career civil service employees may be separated from the service without cause as a result of such reorganization"[74] is in the nature of an obiter dictum. We dismissed Jose's petition[75] primarily because it was "clearly premature, speculative, and purely anticipatory, based merely on newspaper reports which do not show any direct or threatened injury,"[76] it appearing that the reorganization of the Bureau of Customs had not been, then, set in motion. Jose therefore had no cause for complaint, which was enough basis to dismiss the petition. The remark on separation "without cause" was therefore not necessary for the disposition of the case. In Morales v. Paredes,[77] it was held that an obiter dictum "lacks the force of an adjudication and should not ordinarily be regarded as such."[78]

Secondly, "Arroyo is an unsigned resolution while Palma-Fernandez is a full-blown decision, although both are en banc cases. While a resolution of the Court is no less forceful than a decision the latter has a special weight.

Thirdly, Palma-Fernandez v. De la Paz comes as a later doctrine. (Jose v. Arroyo was promulgated on August 11, 1987 while Palma-Fernandez was decided on August 31, 1987.) It is well-established that a later judgment supersedes a prior one in case of an inconsistency.

As we have suggested, the transitory provisions of the 1987 Constitution allude to two stages of the reorganization, the first stage being the reorganization under 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-Fernandez (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,[79] which may possibly justify removal 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 as 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 deed 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.

When, therefore, Arroyo permitted a reorganization under Executive Order No. 127 after the ratification of the 1987 Constitution, Arroyo permitted a reorganization provided that it is done in good faith. Otherwise, security of tenure would be an insuperable impediment.[80]

Reorganizations in this jurisdiction have been regarded as valid provided they are pursued in good faith.[81] As a general rule, a reorganization is carried out in "good faith" if it is for the purpose of economy or to make bureaucracy more efficient. In that event, no dismissal (in case of a dismissal or separation actually occurs become the position itself ceases to exist. And in that case, security of tenure would not be a Chinese wall. Be that as it may, if the "abolition," which is nothing else but a separation or removal, is done for political reasons or purposely to defeat security of tenure, or otherwise not in good faith, no valid "abolition" takes place and whatever "abolition" is done, is ab initio. There is an invalid "abolition" as where there is merely a change of nomenclature of positions,[82] or where claims of economy are belied by the existence of ample funds.[83]

It is to be stresses that by predisposing a reorganization to the yardstick of good faith, we are not, as a consequence, imposing a "cause" for restructuring. Retrenchment in the course of a reorganization in good faith is still removal "not for cause," if by "cause" we refer to "grounds" or condition that call for disciplinary action.*

Good faith, as a component of a reorganization under a constitutional regime, is judged from the facts of each case. However, under Republic Act No. 6656, we are told:

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 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 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 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.[84]

It is in light hereof that we take up questions about Commissioner Mison's good faith, or lack of it.

Reorganization of the Bureau of Customs, Lack of Good Faith in. -

The Court finds that after February 2, 1987 no perceptible restructuring of the Customs hierarchy — except for the change of personnel -- has occurred, which would have justified (all things being equal) the contested dismissals. The contention that the staffing pattern at the Bureau (which would have furnished a justification for a personnel movement) is the same staffing pattern prescribed by Section 34 of Executive Order No. 127 already prevailing when Commissioner Mison took over the Customs helm, has not been successfully contradicted.[85] There is no showing that legitimate structural changes have been made --- or a reorganization actually undertaken, for that matter --- at the Bureau since Commissioner Mison assumed office, which would have validly prompted him to hire and fire employees. There can therefore be no actual reorganization to speak of, in the sense, say, of reduction of personnel consolidation of offices, or abolition thereof by reason of economy or redundancy of functions, but a revamp of personnel pure and simple.

The records indeed show that Commissioner Mison separated about 394 Customs personnel but replaced them with 522 as of August 18, 1988.[86] This betrays a clear intent to "pack" the Bureau of Customs. He did so, furthermore, in defiance of the President's directive to halt further lay-offs as a consequence of reorganization.[87] Finally, he was aware that lay-offs should observe the procedure laid down by Executive Order No. 17.

We are not, of course, striking down Executive Order No. 127 for repugnancy to the Constitution. While the act is valid, still and all the means with which it, was implemented is not.[88]

Executive Order No. 127,
Specific Case of.

With respect to Executive Order No. 127, Commissioner Mison submits that under Section 59 thereof, [t]hose incumbents whose positions are not included therein or who are not reappointed shall be deemed separated from the service." He submits that because the 394 removed personnel have not been "reappointed," they are considered terminated. To begin with, the Commissioner's appointing power is subject to the provisions of Executive Order No. 39. Under Executive Order No. 39, the Commissioner of Customs may "appoint all Bureau personnel, except those appointed by the President.[89]

Accordingly, with respect to Deputy Commissioners Cesar Dario and Vicente Feria, Jr., Commissioner Mison could not have validly terminated them, they being Presidential appointees.

Secondly, and as we have asserted, Section 59 has been rendered inoperative according to our holding in Palma-Fernandez.

That Customs employees, under Section 59 of Executive Order No. 127 had been on a mere holdover status cannot mean that the positions held by them had become vacant. In Palma-Fernandez, we said in no uncertain terms:

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 February 2, 1987 when the 1987 Constitution became effective (De Leon, et al. vs. Hon. Benjamin B. Esquerra, et al., G.R. No. 78059, 31 August 1987). After the said date the provisions of the latter on security of tenure govern.[90]

It should be seen, finally, that we are not barring Commissioner Mison from carrying out a reorganization under the transitory provisions of the 1987 Constitution. But such a reorganization should be subject to the criterion of good faith.

Resume.

In resume, we restate as follows:

- The President could have validly removed government employees, elected or appointed, without cause but only before the effectivity of the 1987 Constitution on February 2, 1987 (De Leon v. Esquerra, Supra; Palma-Fernandez v. De la Paz. Supra); in this connection, Section 59 (on non-reappointment of incumbents) of Executive Order No. 127 cannot be a basis for termination;
- In such a case, dismissed employees shall be paid separation and retirement benefits or upon their option be given reemployment opportunities (CONST. [1987], art. XVIII, sec. 16; Rep. Act No. 6656, sec. 9);
- From February 2, 1987, the State does not lose the right to reorganize the Government resulting in the

separation of career civil service employees [CONST. (1987), Supra] provided, that such a reorganization is made in good faith. (Rep. Act No. 6656. Supra.)

G.R. No. 83737

This disposition also resolves G.R. No. 83737. As we have, indicated. G.R. No. 83737 is a challenge to the validity of Republic Act No. 6656. In brief, it is argued that the Act, insofar as it strengthens security of tenured[91] and as far as it provides for a retroactive effect,[92] runs counter to the transitory provisions of the new Constitution on removals not for cause.

It can be seen that the Act, insofar as it provides for reinstatement of employees separated without "a valid cause and after due notice and hearing"[93] is not contrary to the transitory provisions of the new Constitution. The Court reiterates that although the Charter's transitory provisions mention separations "not for cause," separations thereunder must nevertheless be on account of a valid reorganization and which do not come about automatically. Otherwise, security of tenure may be invoked. Moreover, it can be seen that the statute itself recognizes removals without cause. However, it also acknowledges the possibility of the leadership using the artifice of reorganization to frustrate security of tenure. For this reason, it has installed safeguards. There is nothing unconstitutional about the Act.

We recognize the injury Commissioner Mison's replacements would sustain. We also commiserate with, them. But our concern is the greater wrong inflicted on the dismissed employees on account of their illegal separation from the civil service.

WHEREFORE, THE RESOLUTIONS OF THE CIVIL SERVICE COMMISSION, DATED JUNE 30, 1988, SEPTEMBER 20, 1988, NOVEMBER 16, 1988, INVOLVED IN G.R. NOS. 85310, 85335, AND 86241, AND MAY 8, 1989, INVOLVED IN G.R. NO. 85310, ARE AFFIRMED.

THE PETITIONS IN G.R. NOS. 81954, 81967, 82023, AND 85335 ARE GRANTED. THE PETITIONS IN G.R. NOS. 83737, 85310 AND 86241 ARE DISMISSED.

THE COMMISSIONER OF CUSTOMS IS ORDERED TO REINSTATE THE EMPLOYEES SEPARATED AS A RESULT OF HIS NOTICES DATED JANUARY 26, 1988.

THE EMPLOYEES WHOM COMMISSIONER MISON MAY HAVE APPOINTED AS REPLACEMENTS ARE ORDERED TO VACATE THEIR POSTS SUBJECT TO THE PAYMENT OF WHATEVER BENEFITS THAT MAY BE PROVIDED BY LAW.

NO COSTS.

IT IS SO ORDERED.

Gutierrez, Jr., Paras, Gancayco, Bidin, Cortes, Griño-Aquino, and Medialdea, JJ., concur
Fernan C.J., Narvasa, and Feliciano and Regalado, JJ., joins Justice Melencio-Herrera in her dissenting opinion.
Melencio-Herrera, J., please see attached dissent.

Cruz, J., see separate concurrence.

Padilla, J., no part, related to counsel for respondent Abaca in G.R. No. 85310.

[1] Proc. No. 3; (PROVISIONAL CONST.). art. II, sec. 1 (a).

[2] Supra, art. III. secs. 1-4.

[3] Proc. No. 1 (1986).

[4] CONST. 11986), Supra, art. 1, sec. 3.

[5] Supra.

[6] The various "OIC cases", among them, Solis v. Pimentel, G.R. No. 73970, April 10, 1986; Palma v. Fortich, G.R. No. 59679, January 29, 1987; Ignacio v. Banata, G.R. No. 74720, August 31, 1987; Association of Barangay Councils of Las Pinas v. Juntilla, G.R. No. 78965, November 17, 1987; Ramos v. Lorenzana, G.R. No. 80282, November 26, 1987; Del Monte v. Ferrer, G.R. 78963, January 13, 1988; Vasay v. Flores, G.R. No. 81047, January 7, 1988; ending, with De Leon v. Esguerra, No. 78059, August 31, 1987, 153 SCRA 602.

[7] Jose v. Arroyo, G.R. No. 78435, August 11, 1987; Palma-Fernandez v. De la Paz, No. 78496, August 15, 1988, 160 SCRA 751.

[8] Exec. Ord. No. 17, sec. 3.

[9] 88 O.G. 2009-2024 (Apr., 1987).

[10] Exec. Ord. No. 127, Supra, secs, 33-38.

[11] De Leon v. Esguerra, Supra. The writer of this opinion dissented, and maintained that the new Constitution was ratified on February 11, 1987.

[12] Supra, G.R. No. 85310, 317-31.

[13] Id., 317.

[14] Id., 8.

[15] Supra, G.R. No. 81954, 24; Supra, G.R. No. 81967, 27; Supra, G.R. No. 82023, 37; see also Supra, id., G.R. No. 85310, 8.

[16] The last eighteen are the successful employees in the appeal with the Civil Service Commission (subject of G.R. No. 85310) whose reinstatement the Commission ordered pending further proceedings herein. We consider them impleaded as parties-respondents in G.R. No. 85310. Also, the Customs employees involved have been impleaded as parties in more than one petition either as petitioners or respondents.

[17] Supra, id., G.R. No. 85310, 8; according, however, to the petitioners in G.R. 86241, a total of 397 employees were terminated. Id., 260; former Sen. Anbrosio Padilla, amicus curiae, placed the figure at 493 (G.R. No. 85310, id., 993).

[18] Supra, id., G.R. No. 85310, 79; also Supra, G.R. No. 85335, 36.

[19] Supra, id., G.R. No. 85310, 424.

[20] Supra, G.R. No. 86241, 144.

[21] Senen Dimaguila and Romulo Badillo earlier instituted in this Court G.R. Nos. 81968 and 81955 but were allowed, by our Resolution of July 5, 1988, to withdraw and join the appeal subject of the Civil Service Commission's Resolution of November 11, 1988. See Supra, G.R. No. 2023, 169.

[22] 84 O.G. SUPP. 1-4 (June, 1988).

[23] Supra, 3.

[24] CONST. (1987), art, XVIII, sec. 16.

[25] This was raised by the Civil Service Commission in G.R. No. 86241. Failure to exhaust administrative remedies was raised in G.R. No. 81954 and 81917 by the Solicitor General.

[26] Sarmiento III v. Mison. No. L-79974, December 17, 1987, 153 SCRA 549, 551-552.

[27] Pres. Decree No. 807. sec. 39. The provision reads: "Appeals. - (a) Appeals, where allowable, shall be made by the party adversely affected by the decision within fifteen days from receipt of the decision unless a petition for reconsideration is seasonably filed, which petition shall be decided within fifteen days. Notice of the appeal shall be filed with the disciplining office, which shall forward the records of the case, together with the notice of appeal, to the appellate authority within fifteen days from filing of the notice of appeal, with its comment, if any. The notice of appeal shall specifically state the date of the decision appealed from and the date of receipt thereof. It shall also specifically set forth clearly the grounds relied upon for excepting from the decision; (b) A petition for reconsideration shall be based only on any of the following grounds: (1) new evidence has been discovered which materially affects the decision rendered; (2) the decision is not supported by the evidence on record; or (3) errors of law or irregularities have been committed prejudicial to the interest of the respondent: Provided, That only one petition for reconsideration shall be entertained."

[28] Rep. Act No. 6656, Supra, sec. 8. The provision reads.- "Sec. 8. An officer or employee who is still not satisfied with the decision of the appointing authority may further appeal within ten (10) days from receipt thereof to the Civil Service Commission which shall render a decision thereon within thirty (30) days and whose decision shall be final and executory."

[29] CONST., art. IX, sec. 7. The provision reads: "Sec. 7. Each Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted, for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof."

[30] Supra, id., G.R. No. 85310, 82.

[31] Id., 415.

[32] CONST. (1987), Supra.

[33] See Aratuc v. Commission on Elections, Nos. L-49705-09, 49717-21, February 8, 1979, 88 SCRA 251

[34] Supra, 271.

[35] Supra.

[36] Aratuc, Supra, 270.

[37] CONST. (1987), Supra, art. IX (c) , sec. 2(2). To be more precise, the 1987 Constitution gives the Commission "exclusive original jurisdiction over all [election] contests."

[38] Supra, art. IX, sec. 7.

[39] Aratuc, Supra 271; emphasis supplied.

[40] Rep. Act No. 6656, Supra, sec. 8.

- [41] RULES OF COURT, Rule 65, sec. 1.
- [42] CONST. (1987), art. IX, sec. 7, Supra.
- [43] Phil. American Life Ins. Co. vs. Social Security Com., No. L-20383, May 24, 1967 20 SCRA 162.
- [44] Exec. Ord. No. 127, Supra, sec. 59.
- [45] Supra.
- [46] Supra, id., G.R. No. 81954, 35.
- [47] Exec. Ord. No. 127, Supra, sec. 34; Supra, id., G.R. No. 81954.
- [48] Exec. Ord. No. 127, Supra, sec. 59.
- [49] Supra, id., G.R. Mo. 81954, 12; emphasis in the original.
- [50] CONST. (1986), Supra, art. IX, sec. 2.
- [51] CONST. (1987), Supra, art. (X(B). sec. 2(3).
- [52] August 8, 1986.
- [53] Supra, sec. 1(a).
- [54] G.R. No. 78435, August 11, 1987.
- [55] Supra, 3.
- [56] CONST. (1987), Supra, art. XVIII, sec. 16.
- [57] Supra, id., G.R. No. 81954, 216; Supra, id., G.R. No. 81967, 64; Supra, id., G.R. No. 82023, 76.
- [58] Supra.
- [59] See Exec. Ord. No. 17, Supra, sec. 1.
- [60] Supra, id., G.R. No. 85310, 18, Supra, id., G.R. No. 86241, 14.
- [61] Id., id., 13.
- [62] Id., 37; id., 33.
- [63] CONST. (1987), art. XVIII, sec. 16, Supra.
- [64] See in. 11.
- [65] CONST. (1935), art. XVI, Sec. 4.
- [66] CONST. (1973), art. XVII, sec. 9.
- [67] CONST. (1986); art. III, sec. 2, Supra
- [68] Ginson v. Municipality of Murcia, No. L-46585, February 8, 1988, 157 SCRA 1; De la Liana v. Alba, No. 57883, March 12, 1982, 112 SCRA 294; Cruz v. Primicias Jr., No. L-28573, June 13, 1968, 23 SCRA 998.
- [69] III RECORD OF THE CONSTITUTIONAL COMMISSION, 1615-1616 (1986).
- [70] De Leon v. Esguerra, Supra; Palma-Fernandez v. De la Paz, Supra.

[71] Exec. Ord. No. 17, Supra.

* Paradoxically, Executive Order No. 17 would have provided a "cause" for removal.

[72] OP Memo (October 14, 1987).

[73] Supra, see fn. 7.

[74] Arroyo, Supra, 3.

[75] The petitioner was Leonardo Jose, a Collector III at the Bureau of Customs.

[76] Supra, 2.

[77] 55 Phil. 565 (1930).

[78] Supra.

[79] Art. III. sec. 1, and art. IX(B), sec. 2(3).

[80] Supra. In Palma-Fernandez, we upheld claims of security of tenure in the absence of a bona fide reorganization. In that case, there was no valid abolition of an office but merely, a change in name of position. We did not foreclose therein the validity of a removal "not for cause," provided that there is a valid reorganization.

[81] Ginson v. Municipality of Murcia, Supra; De la Llana v. Alba, Supra; Cruz v. Primicias, Jr., Supra.

[82] Palma-Fernandez, Supra. In that case, the office of "Chief of Clinic" was purportedly abolished and in its place an office of "Assistant Director for Professional Services" was created. We held that the two positions "are basically one and the same except for there change of nomenclature." (757.)

[83] Ginson, Supra; Cruz, Supra.

* Although as we also said, Executive Order No. 17 itself imposed a "caused" for removal under the Freedom Constitution.

[84] Rep. Act No. 6156, Supra.

[85] See G.R. Nos. 81964, 81967. id., 10-11.

[86] G.R. No. 86421, id., 31.

[87] OP Memo (Oct., 14, 1987), Supra.

[88] See Free Telephone Workers Union v. Minister of Labor and Employment, No.58184, October 30, 1981, 108 SCRA 757.

[89] Supra. With respect to Vicente Feria, Jr., the records reveal that his appointment was extended on April 22, 1986. (G.R. No. 81967, id., 7.) For that reason, he cannot be said to be an "incumbent" for purposes of reorganization, to whom a reappointment may be issued. Because his appointment came after the promulgation of the Freedom Constitution, he is, to all intents and, purposes, an appointee as a result of reorganization.

[90] Supra, 757.

[91] Supra, sec. 9.

[92] Supra, sec. 13.

[93] Supra, sec. 2.

CONCURRING OPINION

CRUZ, J.:

I concur with the majority view so ably presented by Mr. Justice Abraham F. Sarmiento. While additional comments may seem superfluous in view of the exhaustiveness of his ponencia, I nevertheless offer the following brief observations for whatever they may be worth.

Emphasizing Article XVII, Section 16 of the Constitution, the dissenting opinion considers the ongoing government reorganization valid because it is merely a continuation of the reorganization begun during the transition period. The reason for this conclusion is the phrase "and the reorganization following the ratification of the Constitution," that is to say, after February 2, 1987, appearing in the said provision. The consequence (and I hope I have not misread it) is that the present reorganization may still be undertaken with the same "absoluteness" that was allowed the revolutionary reorganization although the Freedom Constitution is no longer in force.

Reorganization of the government may be required by the legislature even independently of specific constitutional authorization, as in the case, for example, of R.A. No. 51 and B.P. No. 129. Being revolutionary in nature, the reorganization decreed by Article III of the Freedom Constitution was unlimited as to its method except only as it was later restricted by President Aquino herself through various issuances, particularly E.O. No. 17. But this reorganization, for all its permitted summariness, was not indefinite. Under Section 3 of the said Article III, it was allowed only up to February 25, 1987 (which we advanced to February 2, 1987, when the new Constitution became effective).

The clear implication is that any government reorganization that may be undertaken thereafter must be authorized by the legislature only and may not be allowed the special liberties and protection enjoyed by the revolutionary reorganization. Otherwise, there would have been no necessity at all for the time limitation expressly prescribed by the Freedom Constitution.

I cannot accept the view that Section 16 is an authorization for the open-ended reorganization of the government "following the ratification of the Constitution." I read the provision as merely conferring benefits - deservedly or not - on persons separated from the government as a result of the reorganization of the government, whether undertaken during the transition period or as a result of a law passed thereafter. What the provision grants is privileges to the retirees, not power to the government. It is axiomatic that grants of power are not lightly inferred, especially if these impinge on individual rights, and I do not see why we should depart from this rule.

To hold that the present reorganization is a continuation of the one begun during the transition period is to recognize the theory of the public respondent that all officers and employees not separated earlier remain in a hold-over capacity only and so may be replaced at any time even without cause. That is a dangerous proposition that threatens the security and stability of every civil servant in the executive department. What is worse is that this situation may continue indefinitely as the claimed "progressive" reorganization has no limitation as to time.

Removal imports the forcible separation of the incumbent before the expiration of his term and can be done only for cause as provided by law. Contrary to common belief, a reorganization does not result in removal but in a different mode of terminating official relations known as abolition of the office (and the security of tenure attached thereto.) The erstwhile holder of the abolished office cannot claim he has been removed without cause in violation of his constitutional security of tenure. The reason is that the right itself has disappeared with the abolished office as an accessory following the principal. (*Ocampo v. Sec. of Justice*, 51 O.G. 147; *De la Llana v. Alba*, 112 SCRA 294; *Manalang v. Qutoriano*, 94 Phil. 903.)

This notwithstanding, the power to reorganize is not unlimited. It is essential that it be based on a valid purpose, such as the promotion of efficiency and economy in the government through a pruning of offices or the streamlining of their functions. (*Cervantes v. Auditor-General*, 91 Phil. 359.) Normally, a reorganization cannot be validly undertaken as a means of purging the undesirables for this would be a removal in disguise undertaken en masse to circumvent the constitutional requirement of legal cause. (Eradication of graft and corruption was one of the expressed purposes of the revolutionary organization, but this was authorized by the Freedom Constitution itself.) In short, a reorganization, to be valid, must be done in good faith. (*Urgelio v. Osmeña*, 9 SCRA 317; *Cuneta v. Court of Appeals*, 1 SCRA 663; *Cariño v. ACCFA*, 18 SCRA 183.)

A mere recitation - no matter how lengthy - of the directives, guidelines, memoranda, etc. issued by the government and the action purportedly taken thereunder does not by itself prove good faith. We know only too well that these instructions, for all their noble and sterile purposes, are rarely followed in their actual implementation. The reality in this case, as the majority opinion has pointed out and as clearly established in the hearing we held, is that the supposed reorganization was undertaken with an eye not to achieving the avowed objectives but to accommodating new appointees at the expense of the dislodged petitioners. That was also the finding of the Civil Service Commission, to which we must accord a becoming respect as the constitutional office charged with the protection of the civil service from the evils of the spoils system.

The present administration deserves full support in its desire to improve the civil service, but this objective must be pursued in a manner consistent with the Constitution. This praiseworthy purpose cannot be accomplished by an indiscriminate reorganization that will sweep in its wake the innocent along with the redundant and inept, for the benefit of the current favorites.

DISSENTING OPINION

MELENCIO-HERRERA, J.:

The historical underpinnings of Government efforts at reorganization hark back to the people power phenomenon of 22-24 February 1986, and Proclamation No. 1 of President Corazon C. Aquino, issued on 25 February 1986, stating in no uncertain terms that "the people expect a reorganization of government." In its wake followed Executive Order No. 5, issued on 12 March 1986, "Creating a Presidential Commission on Government Reorganization," with the following relevant provisions:

"WHEREAS, there is need to effect the necessary and proper changes in the organizational and functional structures of the national and local governments, its agencies and instrumentalities, including government-owned and controlled corporations and their subsidiaries, in order to promote economy, efficiency and effectiveness in the delivery of public services

x x x x x x x x

"Section 2. The functional jurisdiction of the PCGR shall encompass, as necessary, the reorganization of the national and local governments, its agencies and instrumentalities including government-owned or controlled corporations and their subsidiaries.

x x x x x" (underscoring supplied)

Succeeding it was Proclamation No. 3, dated 25 March 1986, also known as the Freedom Constitution, declaring, in part, in its Preamble as follows:

"WHEREAS, the direct mandate of the people as manifested by their extraordinary action demands the complete reorganization of the government, x x x" (Emphasis supplied)

and pertinently providing:

"ARTICLE II

"Section 1

"x x x

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

"(a) Completely reorganize the government and eradicate unjust and oppressive structures, and all iniquitous vestiges of the previous regime;" (Emphasis supplied)

x x x x x x

"ARTICLE III - GOVERNMENT REORGANIZATION

"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 designation or appointment and qualification of their successors, if such is made within a period of one year from February 25, 1986.

"Section 3. Any public office or employee separated from the service as a result of the reorganization effected under this Proclamation shall, if entitled under the laws then in force, receive the retirement and other benefits accruing thereunder." (Emphasis ours)

On 28 May 1986, Executive Order No. 17 was issued "Prescribing Rules and Regulations for the Implementation of Section 2, Article III of the Freedom Constitution" providing, inter alia, as follows:

"Section 1. In the course of implementing Article III, Section 2 of the Freedom Constitution, the Head of each Ministry shall see to it that the separation or replacement of officers and employees is made only for justifiable reasons, 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.

"x x x x x x

"The Ministry concerned shall adopt its own rules and procedures for the review and assessment of its own personnel, including the identification of sensitive positions which require more rigid assessment of the incumbents, and shall complete such review/assessment as expeditiously as possible but not later than February 24, 1987 to prevent undue demoralization in the public service.

"Section 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.

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

- Existence of a case for summary dismissal pursuant to Section 40 of the Civil Service Law;
- Existence of a probable cause for violation of the Anti-Graft and Corrupt Practice Act as determined by the Ministry Head concerned;

- Gross incompetence or inefficiency in the discharge of functions;
- Misuse of Public office for partisan political purposes;
- 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."

"Section 11. This Executive Order shall not apply to elective officials or those designated to replace them, presidential appointees, casual and contractual employees, or officials and employees removed pursuant to disciplinary proceedings under the Civil Service Law and rules, and to those laid off as a result of the reorganization undertaken pursuant to Executive Order No. 5." (Underscoring supplied)

On 6 August 1986, Executive Order No. 39 was issued by the President "Enlarging the Powers and Functions of the Commissioner of Customs", as follows:

"x x x x x

"SECTION 1. In addition to the powers and functions of the Commissioner of Customs, he is hereby authorized, subject to the Civil Service Law and its implementing rules and regulations:

a)

To appoint all Bureau personnel, except those appointed by the President;

b)

To discipline, suspend, dismiss or otherwise penalize erring Bureau officers and employees;

c)

To act on all matters pertaining to promotion, transfer, detail, reassignment, reinstatement, reemployment and other personnel action, involving officers and employees of the Bureau of Customs.

x x x x x"

On 30 January 1987, Executive Order No. 127 was issued "Reorganizing the Ministry of Finance." Similar Orders, approximately thirteen (13) in all,[1] were issued in respect of the other executive departments. The relevant provisions relative to the Bureau of Customs read:

"RECALLING that the reorganization of the government is mandated expressly in Article II, Section 1(a) and Article III of the Freedom Constitution;

"HAVING IN MIND that pursuant to Executive Order No. 5 (1986), it is directed that the necessary and proper changes in the organizational and functional structures of the government, its agencies and instrumentalities, be effected in order to promote efficiency and effectiveness in the delivery of public services;

"BELIEVING that it is necessary to reorganize the Ministry of Finance to make it more capable and responsive, organizationally and functionally, in its primary mandate of judiciously generating and efficiently managing the financial resources of the Government, its subdivisions and instrumentalities in order to attain the socio-economic objectives of the national development programs.

"x x x x x"

"SEC. 2. Reorganization. - The Ministry of Finance, hereinafter referred to as Ministry, is hereby reorganized,

structurally and functionally, in accordance with the provisions of this Executive Order."

"SEC. 33. Bureau of Customs.

"x x x Executive Order No. 39 dated 6 August 1986 which grants autonomy to the Commissioner of Customs in matters of appointment and discipline of Customs personnel shall remain in effect."

"SEC. 55. Abolition of Units Integral to Ministry. - All units not included in the structural organization as herein provided and all positions thereof are hereby deemed abolished. x x x Their personnel shall be entitled to the benefits provided in the second paragraph of Section 59 hereof."

"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 the 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 deemed separated from the service. Those separated from the service shall receive the retirement benefits to which they may be entitled under the 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 affected under this Executive Order."

"Section 67 - All laws, ordinances, rules, regulations and other issuances or parts thereof, which are inconsistent with this Executive order, are hereby repealed or modified accordingly.

"x x x x x" (Emphasis ours)

On 2 February 1987, the present Constitution took effect (De Leon, et al., vs. Esguerra, G.R. No. 78059, August 31, 1987, 153 SCRA 602). Reorganization in the Government service pursuant to Proclamation No. 3, supra, was provided for in its Section 16, Article XVIII entitled Transitory Provisions, reading:

"Section 16. Career civil service employees separated from the service 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 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, has been accepted."

On 24 May 1987 the then Commissioner of Customs, Alexander A. Padilla, transmitted to the Department of Finance for approval the proposed "position structure and staffing pattern" of the Bureau of Customs. Said Department gave its imprimatur. Thereafter, the staffing pattern was transmitted to and approved by the Department of Budget and Management on 7 September 1987 for implementation. Under the old staffing pattern there were 7,302 positions while under the new staffing pattern, there are 6,530 positions (CSC Resolution in CSC

Case No. 1, dated 20 September 1988, pp. 3-4).

On 22 September 1987, Salvador M. Mison assumed office as Commissioner of Customs.

On 2 October 1987 "Malacanang Memorandum Re: Guidelines on the Implementation of Reorganization Executive Orders" was issued reading, in so far as relevant to these cases, as follows:

"It is my concern that ongoing process of government reorganization be conducted in a manner that is expeditious, as well as sensitive to the dislocating consequences arising from specific personnel decisions.

"The entire process of reorganization, and in particular the process of separation from service, must be carried out in the most humane manner possible.

"For this purpose, the following guidelines shall be strictly followed:

1. By October 21, 1987, all employees covered by the Executive Orders for each agency on reorganization shall be:

a. informed of their reappointment or

b. offered another position in the same department/agency, or

c. informed of their termination

2. In the event of an offer for a lower position, there will be no reduction in the salary.

x x x x x

4. Each department/agency shall constitute a Reorganization Appeals Board at the central office, on or before October 21, 1987, to review or reconsider appeals or complaints relative to reorganization. All cases submitted to the Boards shall be resolved subject to the following guidelines:

a. publication or posting of the appeal procedure promulgated by the Department Secretary;

b. adherence to due process;

c. disposition within 30 days from submission of the case;

d. written notification of the action taken and the grounds thereof.

Action by the Appeals Review Board does not preclude appeal to the Civil Service Commission.

5. Placement in the new staffing pattern of incumbent personnel shall be completed prior to the hiring of new personnel, if any.

x x x x x" (Emphasis ours)

On 25 November 1987 Commissioner Mison wrote the President requesting a grace period until the end of February 1988 within which to completely undertake the reorganization of the Bureau of Customs pursuant to Executive Order No. 127 dated 30 January 1987. Said request was granted in a letter-reply by Executive Secretary Catalino Macaraig, Jr., dated 22 December 1987.

On 6 January 1988, within the extended period requested, Bureau of Customs Memorandum "Re: Guidelines on the Implementation of Reorganization Executive Orders" was issued in the same tenor as the Malacanang Memorandum of 2 October 1987, providing inter alia:

"To effectively implement the reorganization at the Bureau of Customs, particularly in the selection and placement of personnel, and insure that the best qualified and most competent personnel in the career service are retained, the following guidelines are hereby prescribed for the guidance of all concerned

1. By February 28, 1988 all employees covered by Executive Order No. 127 and the grace period extended to the Bureau of Customs by the President of the Philippines on reorganization shall be:

a. informed of their reappointment, or

b. offered another position in the same department or agency, or

c. informed of their termination.

2. In the event of termination, the employee shall:

a. be included in a consolidated list compiled by the Civil Service Commission. All departments who are recruiting shall give preference to the employees in the list; and

b. continue to receive salary and benefits until February 28, 1988, and

c. be guaranteed the release of separation benefits within 45 days from termination and in no case later than June 15, 1988.

x x x" (Underlining supplied)

It is to be noted that paragraph 1 above and its sub-sections reproduced verbatim the Malacanang Guidelines of 2 October 1987 in that the employees concerned were merely to be informed of their termination.

On 28 January 1988 Commissioner Mison addressed identical letters of termination to Bureau of Customs officers

and employees effective on 28 February 1988.

As of 18 August 1988, Commissioner Mison appointed five hundred twenty-two (522) officials and employees of the Bureau of Customs (CSC Resolution in CSC Case No. 1, dated 20 September 1988, p. 6). In fact, in a letter dated 27 January 1988, Commissioner Mison recommended Jose M. Balde for appointment to President Aquino as one of three (3) Deputy Commissioners under Executive Order No. 127.

In the interim, during the pendency of these Petitions, Republic Act No. 6656, entitled "An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization" was passed by Congress on 9 June 1988. The President signed it into law on 10 June 1988 and the statute took effect on 29 June 1988.

On 20 June 1988 Motions were filed, in these cases pending before this Court, invoking the provisions of Republic Act No. 6656. The relevant provisions thereof read:

"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 x x x .

"SECTION 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 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 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 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.

x x x x x

"SECTION. 9. All officers and employees who are found by the Civil Service Commission to have been separated in violation of the provisions of this Act, shall be ordered reinstated or reappointed as the case may be without loss of seniority and shall be entitled to full pay for the period of separation. Unless also separated for cause, all officers and employees, including casuals and temporary employees, who have been separated pursuant to reorganization shall, if entitled thereto, be paid the appropriate separation pay and retirement and other benefits under existing laws within ninety (90) days from the date of the effectivity of their separation or from the date of the receipt of the resolution of their appeals as the case may be: Provided, That application for clearance has been filed and no action thereon has been made by the corresponding department or agency. Those who are not entitled to said benefits shall be paid a separation gratuity in the amount equivalent to one (1) month salary for every year of service. Such separation pay and retirement benefits shall have priority of payment out of the savings of the department or agency concerned.

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.

x x x x x

"SECTION 13. All laws, rules and regulations or parts thereof, inconsistent with the provisions of this Act are hereby repealed or modified accordingly. The rights and benefits under this Act shall be retroactive as of June 30, 1987.

x x x " (Underlining ours)

Given the foregoing statutory backdrop, the issues can now be addressed.

Scope of Section 16, Art. XVIII, 1987 Constitution

Crucial to the present controversy is the construction to be given to the abovementioned Constitutional provision (SECTION 16, for brevity), which speaks of:

"Career civil service employees separated from the service 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 x x x" (paragraphing supplied).

To our minds, SECTION 16 clearly recognizes (1) the reorganization authorized by Proclamation No. 3; (2) that such separation is NOT FOR CAUSE but as a result of the reorganization pursuant to said Proclamation; and (3) that the reorganization pursuant to Proclamation No. 3 may be continued even after the ratification of the 1987 Constitution during the transition period.

Separation NOT FOR CAUSE

The canon for the removal or suspension of a civil service officer or employee is that it must be FOR CAUSE. That means "a guarantee of both procedural and substantive due process. Basically, procedural due process would require that suspension or dismissal come only after notice and hearing. Substantive due process would require that suspension or dismissal be 'for cause'." (Bernas, *The Constitution of the Republic of the Philippines: A Commentary*, Vol. II, First Edition, 1988, p. 334).

The guarantee of removal FOR CAUSE is enshrined in Article IX-B, Section 2(3) of the 1987 Constitution, which states that "No officer or employee of the civil service shall be removed or suspended except FOR CAUSE provided by law."

There can be no question then as to the meaning of the phrase FOR CAUSE. It simply means the observance of both procedural and substantive due process in cases of removal of officers or employees of the civil service. When SECTION 16 speaks, therefore, of separation from the service NOT FOR CAUSE, it can only mean the diametrical opposite. The constitutional intent to exempt the separation of civil service employees pursuant to Proclamation No. 3 from the operation of Article IX-B, Section 2(3), becomes readily apparent. A distinction is explicitly made between removal FOR CAUSE, which as aforesaid, requires due process, and dismissal NOT FOR CAUSE, which implies that the latter is not bound by the "fetters" of due process.

It is obviously for that reason that Section 16 grants separation pay and retirement benefits to those separated

NOT FOR CAUSE but as a result of the reorganization precisely to soften the impact of the non-observance of due process. "What is envisioned in Section 16 is not a remedy for arbitrary removal of civil servants enjoying security of tenure but some form of relief for members of the career civil service who may have been or may be legally but involuntarily 'reorganized out' of the service or may have voluntarily resigned pursuant to the reorganization policy" (ibid., p. 615).

Reorganization Pursuant
to Proclamation No. 3 to Continue
Transitorily Even After Ratification

By its very context, SECTION 16 envisages the continuance of the reorganization pursuant to Proclamation No. 3 even after ratification of the Constitution and during the transition period. The two [2] stages contemplated, namely, (1) the stage before and (2) after ratification, refer to the same nature of separation "NOT FOR CAUSE but as a result of Proclamation No. 3." No valid reason has been advanced for a different treatment after ratification as the majority opines, i.e., that separation NOT FOR CAUSE is allowed before ratification but that, thereafter, separation can only be FOR CAUSE.

A fundamental principle of Constitutional construction is to assure the realization of the purpose of the framers of the organic law and of the people who adopted it.

That the reorganization commenced pursuant to Proclamation No. 3 was envisioned to continue even after the ratification of the 1987 Constitution, at least transitorily, is evident from the intent of its authors discoverable from their deliberations held on 3 October 1986 and evincing their awareness that such reorganization had not as yet been fully implemented. Thus:

"Mr. PADILLA. Mr. Presiding Officer, on lines 2 to 5 is the clause 'pursuant to the provisions of Article III of Proclamation No. 3, issued on March 25, 1986, and the reorganization.' Are those words necessary? Can we not just say 'result of the reorganization following the ratification of this Constitution'? In other words, must we make specific reference to Proclamation No. 3?"

"Mr. SUAREZ. Yes. I think the committee feels that is necessary, because in truth there has been a reorganization by virtue of Proclamation No. 3. In other words, there are two stages of reorganization covered by this section.

"Mr. PADILLA. I understand there is a reorganization committee headed by a minister?"

"Mr. SUAREZ. Philippine Commission on Government Reorganization.

"Mr. PADILLA. But whether that has already been implemented or not, I do not believe in it. There has been a plan, but I do not think it has been implemented. If we want to include any previous reorganization after or before the ratification, why do we not just say 'reorganization before or after the ratification' to simplify the provision and eliminate two-and-a-half sentences that may not be necessary? And as a result of the reorganization, if the committee feels there has been reorganization before ratification and there be reorganization after, we just say 'before or after the ratification of this Constitution.'

Mr. SUAREZ. Something like this: 'as a result of the reorganization effected before or after the ratification of the Constitution' on the understanding, with the statement into the records, that this would be applicable to those reorganized out pursuant to the Freedom Constitution also.

"Mr. PADILLA. That is understood if there has been a reorganization before the ratification or a reorganization after the ratification." (RECORDS of the Constitutional Commission, Vol. 5, p. 416) (Underlining provided)

It should also be recalled that the deadline for the reorganization under Proclamation No. 3 was "one year from

February 25, 1986" (Article III, Section 2), or up to February 24, 1987. Executive Order No. 17 itself provided that the review/assessment of personnel be completed "not later than February 24, 1987." But, confronted with the reality of the ratification of the Constitution before that deadline without reorganization having been completed, there was need for a provision allowing for its continuance even after ratification and until completed. It was also to beat that deadline that EO 127 and similar issuances, providing for the reorganization of departments of government, were all dated 30 January 1987 or prior to the plebiscite held on 2 February 1987. The intent to continue and complete the reorganizations started is self-evident in SECTION 16.

In *Jose vs. Arroyo, et al.* (G.R. No. 78435, August 11, 1987), which was a Petition for Certiorari and Prohibition to enjoin the implementation of Executive Order No. 127, we recognized that the reorganization pursuant to Proclamation No. 3 as mandated by SECTION 16, was to continue even after ratification when we stated:

"The contention of petitioner that EO 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, Art. XVIII (Transitory Provisions) which explicitly authorizes 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 the 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 this Constitution and career civil service employees may be separated from the service without cause as a result of such reorganization." (Underlining ours)

With due respect to the majority, we disagree with its conclusion that the foregoing pronouncement is mere "obiter dictum."

"An obiter dictum or dictum has been defined as a remark or opinion uttered, by the way. It is a statement of the court concerning a question which was not directly before it (*In re Hess*, 23 A. 2d. 298, 301, 20 N.J. Misc. 12). It is language unnecessary to a decision, (a) ruling on an issue not raised, or (an) opinion of a judge which does not embody the resolution or determination of the court, and is made without argument or full consideration of the point (*Lawson v. US*, 176 F2d 49, 51, 85 U.S. App. D.C. 167). It is an expression of opinion by the court or judge on a collateral question not directly involved, (*Crescent Ring Co. v. Traveler's Indemnity Co.* 132 A. 106, 107, 102 N.J. Law 85) or not necessary for the decision (*Du Bell v. Union Central Life Ins. Co.*, 29, So. 2d 709, 712; 211 La. 167)."

In the case at bar, however, directly involved and squarely before the Court was the issue of whether "EO 127 violates Section 2(3) of Article IX-B of the 1987 Constitution against removal of civil service employees except for cause." Petitioner battled for the affirmative of the proposition, while respondents contended that "removal of civil service employees without cause is allowed not only under the Provisional Constitution but also under the 1987 Constitution if the same is made pursuant to a reorganization after the ratification of the Constitution."

It may be that the Court dismissed that Petition for being "premature, speculative and purely anticipatory" inasmuch as petitioner therein had "not received any communication terminating or threatening to terminate his services." But that was only one consideration. The Court still proceeded to decide all the issues adversatively contested by the parties, namely "1) that the expiration date of February 25, 1987 fixed by Section 2 of Proclamation No. 3 on which said Executive order is based had already lapsed; 2) that the Executive Order has not been published in the Official Gazette as required by Article 2 of the Civil Code and Section 11 of the Revised Administrative Code; and 3) that its enforcement violates Section 2(3) of Article IX-B of the 1987 Constitution against removal of civil service employees except for cause."

The ruling of the Court, therefore, on the Constitutional issues presented, particularly, the lapse of the period mandated by Proclamation No. 3, and the validity of EO 127, cannot be said to be mere "obiter." They were

ultimate issues directly before the Court, expressly decided in the course of the consideration of the case, so that any resolution thereon must be considered as authoritative precedent, and not a mere dictum (See *Valli v. US*, 94 F. 2d 687 certiorari granted 58 S. Ct. 760, 303 U.S. 82 L. Ed. 1092; See also *Weedin v. Tayokichi Yamada* 4 F. (2d) 455). Such resolution would not lose its value as a precedent just because the disposition of the case was also made on some other ground.

x x x And this rule applies as to all pertinent questions although only incidentally involved, which are presented and decided in the regular course of the consideration of the case, and lead up to the final conclusion (*Northern Pac. Ry. Co. v. Baker*, D.C. Wash., 3 F. Suppl. 1; See also *Wisconsin Power and Light Co. v. City of Beloit*, 254 NW 119; *Chase v. American Cartage Co.* 186 N. W. 598; *City of Detroit, et al. v. Public Utilities Comm.* 286 N.W. 368). Accordingly, a point expressly decided does not lose its value as a precedent because the disposition of the case is made on some other ground. (*Wagner v. Corn Products Refining Co.* D.C. N. J. 28 F 2d 617.) Where a case presents two or more points, any one of which is sufficient to determine the ultimate issue, but the court actually decides all such points, the case is an authoritative precedent as to every point decided, and none of such points can be regarded as having merely the status of a dictum (See *U.S. v. Title Insurance and Trust Co., Cal.*, 44 S. Ct. 621, 265 U.S. 472, 68 L. Ed. 1110; *Van Dyke v. Parker* 83 F. (2d) 35) and one point should not be denied authority merely because another point was more dwelt on and more fully argued and considered. (*Richmond Screw Anchor Co. v. U.S.* 48 S. Ct. 194, 275 U.S. 331, 72 L. Ed. 303)”

It is true that in *Palma-Fernandez vs. de la Paz* (G.R. No. 78946, April 15, 1986, 160 SCRA 751), we had stated:

“The argument that, on the basis of this provision (Section 26 of Executive order No. 119, or the ‘Reorganization Act of the Ministry of Health’), 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., vs. Hon. Esguerra, et al.*, G.R. No. 78059, 31 August 1987, 153 SCRA 602). After the said date the provisions of the latter on security of tenure govern.”

The factual situation in the two cases, however, radically differ. In the cited case, *Dra. Palma-Fernandez*, the petitioner, had already been extended a permanent appointment as Assistant Director for Professional Services of the East Avenue Medical Center but was still being transferred by the Medical Center Chief to the Research Office against her consent. Separation from the service as a result of reorganization was not involved. The question then arose as to whether the latter official had the authority to transfer or whether the power to appoint and remove subordinate officers and employees was lodged in the Secretary of Health. Related to that issue was the vital one of whether or not her transfer, effected on 29 May 1987, was tantamount to a removal without cause. Significant, too, is the fact that the transfer was basically made "in the interest of the service" pursuant to Section 24(c) of PD No. 807, or the Civil Service Decree, and not because she was being reorganized out by virtue of EO 119 or the "Reorganization Act of the Ministry of Health," although the said Act was invoked after the fact. And so it was that SECTION 16 was never mentioned, much less invoked in the *Palma-Fernandez* case.

Finally, on this point, it is inaccurate for the majority to state that there were no reorganization orders after ratification. There were, namely, EO 181 (Reorganization Act of the Civil Service Commission), June 1, 1987; EO 193 (Reorganization Act of the Office of Energy Affairs), June 10, 1987; EO 230 (Reorganization Act of NEDA), July 22, 1987; EO 262 (Reorganization Act of the Department of Local Government), July 25, 1987; EO 297 (Reorganization Act of the Office of the Press Secretary), July 25, 1987.

The Element of Good Faith

The majority concedes that reorganization can be undertaken provided it be in good faith but concludes that Commissioner Mison was not in good faith.

The aforesaid conclusion is contradicted by the records.

Executive Order No. 127, dated 30 January 1987, specifically authorized the reorganization of the Bureau of Customs "structurally and functionally" and provided for the abolition of all units and positions thereof not included in the structural organization (Section 55).

As stated heretofore, it was the former Commissioner of Customs, Alexander A. Padilla who, on 24 May 1987, transmitted to the Department of Finance for approval the proposed "position structure and staffing pattern" of the Bureau of Customs. This was approved by the Department of Finance. Thereafter, it was transmitted to and approved by the Department of Budget and Management on 7 September 1987 for implementation. Under the old staffing pattern, there were 7,302 positions while under the new staffing pattern, there are 6,530 positions.

On 2 October 1987 "Malacanang Memorandum Re: Guidelines on the Implementation of Reorganization Executive Orders" provided:

"By October 21, 1987, all employees covered by the Executive orders for each agency on reorganization shall be:

- a. informed of their reappointment, or
- b. offered another position in the same department or agency, or
- c. informed of their termination." (Underlining supplied)

On 25 November 1987 Commissioner Mison asked for and was granted by the President an extension up to February 1988 within which to completely undertake the reorganization of the Bureau of Customs.

On 6 January 1988, he issued Bureau of Customs Memorandum "Re Guidelines on the Implementation of Reorganization Executive Orders" reiterating the above-quoted portion of the Malacanang Memorandum of 2 October 1987. Pursuant thereto, on 28 January 1988, Commissioner Mison addressed uniform letters of termination to the employees listed on pages 15, 16 and 17 of the majority opinion, effective on 28 February 1988, within the extended period granted.

The records further show that upon Commissioner Mison's official inquiry, Secretary of Justice Sedfrey A. Ordonez, rendered the following Opinion:

"x x x It is believed that customs employees who are reorganized out in the course of the implementation of E.O. No. 127 (reorganizing the Department of Finance) need not be informed of the nature and cause of their separation from the service. It is enough that they be 'informed of their termination' pursuant to section 1(c) of the Memorandum dated October 2, 1987 of President Aquino, which reads:

"1. By October 21, 1987, all employees covered by the Executive orders for each agency on reorganization shall be:

x x x x x

"c) Informed of their terminations.

"The constitutional mandate that 'no officer or employee of the civil service shall be removed or suspended except for cause as provided by law' (Sec. 2(4) (sic), Article IX-B of the 1987 Constitution) does not apply to employees who are separated from office as a result of the reorganization of that Bureau as directed in Executive Order No. 127.

x x x x x

"Regarding your (third) query, the issue as to the constitutionality of Executive Order No. 127 is set at rest, after the Supreme Court resolved to dismiss the petition for certiorari questioning its enforceability, for lack of merit (see Jose vs. Arroyo, et al., supra)." (Opinion No. 41, s. 1988, March 3, 1988) (Emphasis supplied)

The former Chairman of the Civil Service Commission, Celerina G. Gotladera, likewise periodically consulted by Commissioner Mison, also expressed the opinion that "it is not a pre-requisite prior to the separation of an employee pursuant to reorganization that he be administratively charged." (Annex 16, p. 411, Rollo, G.R. No. 85310)

Moreover, the records show that the final selection and placement of personnel was done by a Placement Committee, one of whose members is the Head of the Civil Service Commission Field Office, namely, Mrs. Purificacion Cuervo. The appointment of employees made by Commissioner Mison was based on the list approved by said Placement Committee.

But the majority further faults Mison for defying the President's directive to halt further lay-offs as a consequence of reorganization, citing OP Memo of 14 October 1987, reading:

"Further to the Memorandum dated October 2, 1987 on the same subject, I have ordered that there will be no further lay-offs this year of personnel as a result of the government reorganization." (p. 45, Decision)

The foregoing, however, must be deemed superseded by later developments, namely, the grant to Commissioner Mison by the President on 22 December 1987 of a grace period until the end of February 1988 within which to completely undertake the reorganization of the Bureau of Customs, which was, in fact, accomplished by 28 February 1988.

To further show lack of good faith, the majority states that Commissioner Mison failed to observe the procedure laid down by EO 17, supra, directing inter alia that a notice of separation be issued to an employee to be terminated indicating therein the reason/s or ground/s for such separation. That requirement, however, does not appear in Section 59 of EO 127, which provides on the contrary "that those incumbents whose positions are not included in the new position structure and staffing pattern of the Ministry or who are not reappointed shall be deemed separated from the service." The right granted by EO 17 to an employee to be informed of the ground for his separation must be deemed to have been revoked by the repealing clause of EO 127 (Section 67) providing that "all laws, ordinances or parts thereof, which are inconsistent with this Executive Order, are hereby repealed and modified accordingly."

Moreover, Section 11 of EO 17 explicitly excepts from its coverage a reorganization pursuant to EO 5. Thus

"The Executive Order shall not apply to elective officials or those designated to replace them, presidential appointees, casual and contractual employees, or officials and employees removed pursuant to disciplinary proceedings under the Civil Service law and rules, and to those laid off as a result of reorganization undertaken pursuant to Executive Order No. 5." (Emphasis ours)

That EO 127 was issued pursuant to or in implementation of EO 5, is shown by its introductory portion reading:

"Recalling that the reorganization of the government is mandated expressly by Article II, Section 1 (a) and Article III of the Freedom Constitution;

"Having in mind that pursuant to Executive Order No. 5 (1986), it is directed that the necessary and proper changes in the organizational and functional structures of the government, its agencies and instrumentalities, be effected in order to promote efficiency and effectiveness in the delivery of public service;" (Underscoring supplied)

Constitutionality of Republic
Act No. 6656

The majority also relies on Republic Act No. 6656 entitled an "Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization," particularly Section 2 thereof, to test the good faith of Commissioner Mison.

We are of the view, however, that in providing for retroactivity in its Section 13, RA 6656 clashes frontally with SECTION 16.

1) SECTION 16 clearly recognizes that career service employees separated from the service by reason of the "complete reorganization of the government" pursuant to Proclamation No. 3 may be separated NOT FOR CAUSE. And yet, RA 6656 requires the exact opposite - separation FOR CAUSE. It would not be remiss to quote the provision again:

"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 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 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 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. 6156)

The standards laid down are the "traditional" criteria for removal of employees from the career service, e.g. valid cause, due notice and hearing, abolition of, or redundancy of offices. Proclamation No. 3, on the other hand, effectuates the "progressive" type of reorganization dictated by the exigencies of the historical and political upheaval at the time. The "traditional" type is limited in scope. It is concerned with the individual approach where the particular employee involved is charged administratively and where the requisites of notice and hearing have to be observed. The "progressive" kind of reorganization, on the other hand, is the collective way. It is wider in scope, and is the reorganization contemplated under SECTION 16.

2) By providing for reinstatement in its Section 9, RA 6656 adds a benefit not included in SECTION 16. The benefits granted by the latter provision to employees separated NOT FOR CAUSE but as a consequence of reorganization are "separation pay, retirement, and other benefits accruing to them under the laws of general application in force at the time of their separation." The benefit of reinstatement is not included. RA 6656, however, allows reinstatement. That it cannot do because under SECTION 16, it is not one of the laws "in force at the time of their separation."

The Constitution is the paramount law to which all laws must conform. It is from the Constitution that all statutes must derive their bearings. The legislative authority of the State must yield to the expression of the sovereign will. No statutory enactment can disregard the Charter from which it draws its own existence (*Phil. Long Distance Telephone Co. v. Collector of Internal Revenue*, 90 Phil. 674 [1952]). But, that is exactly what RA 6656 does in providing for retroactivity – it disregards and contravenes a Constitutional imperative. To save it, it should be applied and construed prospectively and not retroactively notwithstanding its explicit provision. Then, and only then, would it make good law.

Effects of Reorganization

To be sure, the reorganization could affect the tenure of members of the career service as defined in Section 5, Article IV of Presidential Decree No. 807, and may even result in the separation from the office of some meritorious employees. But even then, the greater good of the greatest number and the right of the citizenry to a good government, and as they themselves have mandated through the vehicle of Proclamation No. 3, provide the justification for the said injury to the individual. In terms of values, the interest of an employee to security of tenure must yield to the interest of the entire populace and to an efficient and honest government.

But a reorganized employee is not without rights. His right lies in his past services, the entitlement to which must be provided for by law. EO 127 provides for the same in its Section 59, and so does SECTION 16 when the latter specified that career civil service employees separated from the service not for cause:

"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, has been accepted."

This is a reward for the employee's past service to the Government. But this is all. There is no vested property right to be re-employed in a reorganized office.

"The right to an office or to employment with government or any of its agencies is not a vested property right, and removal therefrom will not support the question of due process" (*Yantsin v. Aberdeen*, 54 Wash 2d 787, 345 P 2d 178). A civil service employee does not have a constitutionally protected right to his position, which position is in the nature of a public office, political in character and held by way of grant or privilege extended by government; generally he has been held to have no property right or vested interest to which due process guaranties extend (See *Taylor v. Beckham* 178 U.S. 548, 44 L Ed. 1187; *Angilly v. US* (CA2 NY) 199 F 2d 642; *People ex. rel. Baker v. Wilson*, 39 111 App 2d 443, 189 NE 2d 1; *Kelliheller v. NY State Civil Service Com.*, 21 Misc 2d 1034, 194 NYS 2d 89).

To ensure, however, that no meritorious employee has been separated from the service, there would be no harm, in fact, it could do a lot of good, if the Commissioner of Customs reviews the evaluation and placements he has so far made and sees to it that those terminated are included in a consolidated list to be given preference by departments who are recruiting (Section 2(a), BOC Memorandum, January 6, 1988).

Conclusion

Premises considered, and subject to the observation hereinabove made, 'it is our considered view that the separation from the service "NOT FOR CAUSE but as a result of the reorganization pursuant to Proclamation No. 3 dated March 25, 1986" of the affected officers and employees of the Bureau of Customs should be UPHELD, and the Resolutions of the Civil Service Commission, dated 30 June 1988, 20 September 1988, and 16 November 1988 should be SET ASIDE for having been issued in grave abuse of discretion.

Republic Act No. 6656, in so far as it provides for retroactivity, should be declared UNCONSTITUTIONAL for being repugnant to the letter and spirit of Section 16, Article XVIII of the 1987 Constitution.

[1] Executive Orders Nos. 116 (Agriculture and Food); 117 (Education, Culture and Sports); 119 (Health); 120 (Tourism); 123 (Social Welfare and Development); 124 (Public Works and Highways); 125 (Transportation and

Communication); 126 (Labor and Employment); 128 (Science and Technology; 129 (Agrarian Reform); 131 (Natural Resources); 132 (Foreign Affairs); and 133 (Trade and Industry).

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