

**FEDERICO N. TRISTE, JR., PETITIONER, VS. EXECUTIVE SECRETARY,
HON. CATALINO MACARAIG, JR., SECRETARY OF PUBLIC WORKS
& HIGHWAYS, HON. JUANITO N. FERRER, SECRETARY OF
BUDGET & MA...**

G.R. No. 84113. July 12, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

This petition involves a ranking department official who tendered his courtesy resignation upon the change of administration after the EDSA revolution, but now asks the court to annul the acceptance of his resignation, reinstate him to his position, and set aside the appointment of his successor.

The petitioner, Federico Triste, Jr., was an Assistant Regional Director in the Commission on Audit (COA), with a permanent appointment to that position (Annexes B, B-1, Amended Petition). On April 11, 1983, he was detailed in the Department of Public Works and Highways (Annexes C & D, Amended Petition), and, on March 24, 1984 was appointed as Acting Assistant Minister of Comptrollership of the Ministry of Public Works and Highways by former President Ferdinand E. Marcos (Annex E, Amended Petition). The office was later renamed the Office of the Assistant Secretary of Comptrollership and Financial Management.

On February 26, 1986, after the EDSA revolution and in compliance with President Corazon C. Aquino's Proclamation No. 1 dated February 25, 1986, requiring, as a first step in the reorganization of the government, "all appointive public officials to submit their courtesy resignation beginning with the members of the Supreme Court," petitioner submitted two (2) courtesy resignations, one coursed through then Public Works Minister Jesus Hipolito and another through the newly-appointed Minister Rogaciano M. Mercado (Annexes D & E).

On March 25, 1986, a Provisional (Freedom) Constitution was promulgated. To deal with the flood of courtesy resignations many of which had not been acted upon, resulting in the lowering of the morale and diminishing the efficiency of the civil service, Article III, Section 2, of the Provisional Constitution fixed a deadline for the President and her ministers to appoint replacements for the resignees, thus:

"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 official 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."

On May 22, 1986, Minister Mercado designated Gregorio Alvarez as Officer-in-Charge of the Office of the Assistant Minister for Comptrollership, replacing the petitioner (Annex F).

On July 23, 1986, Executive Secretary Joker P. Arroyo "By authority of the President," appointed Alvarez as

Assistant Minister for Comptrollership, Ministry of Public Works and Highways (Annex 1, Comment, p. 57, Rollo).

In a letter dated August 4, 1986, which the petitioner received on August 15, 1986, Minister Mercado accepted the petitioner's courtesy resignation (Annex H).

On August 25, 1986, the petitioner appealed Minister Mercado's action to the Review Committee which was created under E.O. No. 17, Series of 1986. He also sent a letter to the Career Executive Service Board requesting for reinstatement. The action of the Board is not disclosed in the petition for certiorari. On the other hand, on October 15, 1986, the Review Committee dismissed his appeal for lack of jurisdiction (Annex J).

On December 2, 1986, the petitioner appealed to the Office of the President (Annex K) which referred the matter to the Ministry (now Department) of Public Works and Highways for comment.

On July 21, 1987, an appointment list of six (6) Assistant Secretaries in the Department of Public Works and Highways, including Alvarez as Assistant Secretary for Comptrollership and Financial Management was signed by the President. Also in the list was respondent Proceso T. Gonzalez as Assistant Secretary for Internal Audit Service (Annex 2, Comment, p. 58, Rollo).

On December 7, 1987, DPWH Undersecretary T.G. Gener, replying to the President's referral of December 2, 1986 regarding the petitioner's appeal, informed the Office of the President that the petitioner's request for reinstatement could not be accommodated because his successor, Gregorio S. Alvarez, had been appointed by the President to the position in question on July 27, 1987 (should be July 21, 1987) and took his oath of office on August 3, 1987.

On March 24, 1988, Alvarez was promoted to the position of Undersecretary of the DPWH, and Proceso T. Gonzales, the Assistant Secretary for Internal Audit Service, was reassigned by the Department Secretary to the position vacated by Alvarez. In view of that development, petitioner contends that the position of Assistant Secretary for Comptrollership and Financial Management (to which he desires to be reinstated) is still vacant because Gonzales was merely "reassigned," not appointed, to that office.

On April 8, 1988, Deputy Executive Secretary Magdangal B. Elma, acting by authority of the President, denied the petitioner's appeal. On April 29, 1988, the petitioner received the order of denial which is quoted below:

"This refers to the petition of Federico N. Triste, Jr. for reinstatement to his former position as Assistant Minister for Comptrollership, Department of Public Works and Highways.

"Records disclose that, in a memorandum, dated August 4, 1986, of the then Minister (now Secretary) of Public Works and Highways, petitioner was advised that his tender of resignation 'is deemed accepted' and his employment terminated effective on even date. On August 21, 1986, petitioner, sought reconsideration of his separation from the service with the Review Committee created under Executive Order No. 17, series of 1986. The Committee, in its resolution, dated October 15, 1986, dismissed the petition for reconsideration for lack of jurisdiction. Hence, the instant request for reinstatement.

In a 1st indorsement, dated January 6, 1987, this Office referred petitioner's request to the Ministry (now Department) of Public Works and Highways for comment. In a letter dated December 7, 1987, DPWH Undersecretary T.G. Gener advised this Office that it cannot accommodate petitioner's request for reappointment into the service of the DPWH, considering that his successor, Gregorio S. Alvarez, had been appointed by the President to the position in question on July 21, 1987, and had taken his oath of office on August 3, 1987.

"The instant petition for reinstatement is without merit. Petitioner lost sight of the fact that his separation from

the government service was as a consequence of the reorganization undertaken by the government pursuant to the provisions of Article III, Section 2 of Proclamation No. 3, issued by the President on March 25, 1986, which reads:

"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.'

"WHEREFORE, premises considered, the instant petition for reinstatement of Federico N. Triste, Jr. is hereby DENIED." (pp. 37-38, Rollo.)

On May 9, 1988, petitioner filed a motion for reconsideration, but did not wait for its resolution before filing on July 25, 1988 this petition for certiorari and mandamus (later amended to include the Commission on Audit as additional respondent), alleging that:

1. His courtesy resignation was not a complete and effective act of resignation;
2. His courtesy resignation was not accepted by competent authority;
3. The appointment of Alvarez and the designation of Gonzales as his successors were not legal; and
4. He may be deemed to have continued in office because his termination and replacement were not effected within one year from February 25, 1986, the deadline fixed in Article III, Section 2 of the Provisional Constitution.

The petition is without merit.

There is no doubt that the petitioner's resignation as Assistant Secretary for Comptrollership and Financial Management of the DPWH, submitted in obedience to President Aquino's Proclamation No. 1, was involuntary, and a derogation of his right to security of tenure under Section 3, Article XII of the 1973 Constitution which provided that "No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law."

However, as that protective mantle of the 1973 Constitution was removed upon the partial dismantling of the said Constitution and its replacement by the revolutionary or provisional Constitution of March 25, 1986, Section 2, Article III of which provided that "all elective and appointive officials and employees under the 1973 Constitution (whose courtesy resignations had not yet been submitted and/or accepted) 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," the petitioner's tenure was effectively terminated when:

1. His successor, Alvarez, was designated on May 22, 1986 by Secretary Mercado; formally appointed on July 23, 1986 by Executive Secretary Joker P. Arroyo "by authority of the President;" and reappointed by the President herself on July 21, 1987;
2. His courtesy resignation was accepted by Secretary Mercado on August 4, 1986; and
3. He applied for, and received, retirement and other benefits under Republic Act No. 1616 (p. 166, Rollo) as provided in Section 3, Article III of the Provisional Constitution. His application for retirement benefits validated his otherwise vitiated consent to his resignation. He could not thereafter reclaim the position from which he had resigned. He could not eat his cake and have it too.

There is no merit in the petitioner's argument that his courtesy resignation was not accepted by competent

authority because the acceptance was done by Secretary Mercado, not by the appointing authority, the President. The Department secretaries are representatives of the President and their official acts are presumptively the acts of the Chief Executive unless disapproved or reprobated by the latter (*Villena vs. Sec. of Interior*, 67 Phil. 463; *Roque vs. Dir. of Lands*, 72 SCRA 1; *Angangco vs. Castillo*, 9 SCRA 619; *Noblejas vs. Salas*, 67 SCRA 47; *Federation of Free Workers & Allied Sugar Centrals Employees and Workers Union - FFW vs. Hon. Amado Inciong, et al.*, G.R. No. L-48848, May 11, 1988). Hence, Minister Mercado's acceptance of the petitioner's courtesy resignation is deemed to be the act of the President.

Petitioner's contention that he was illegally terminated because his replacement by Alvarez came after the lapse of "one year from February 25, 1986" is not correct. His tenure ended on August 4, 1986, upon Minister Mercado's acceptance of his courtesy resignation, not upon the appointment of his successor. In any event, his replacement came before February 25, 1987 by the appointment of Alvarez on July 23, 1986 by the President through her Executive Secretary. Alvarez' appointment was ratified by President Aquino on July 21, 1987 (Annex 2, Comment).

Seizing upon the public respondent's argument that he could be removed from his position as Assistant Secretary for Comptrollership and Financial Management Services at any time because his appointment to that office was in an acting capacity only (*Abano vs. Guipo*, 15 SCRA 604), the petitioner, in his amended petition, pleads for reversion to his former permanent position as Assistant Regional Director of the COA. That plea is untenable because by applying for and receiving the retirement benefits due him under Republic Act No. 1616, he may be deemed to have irrevocably resigned from the government service. Moreover, there is no showing that his former job in the COA is in fact vacant.

WHEREFORE, the petition for certiorari is denied for lack of merit, with costs against the petitioner.

SO ORDERED.

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

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