

CESAR R. DE LEON, PETITIONER, VS. J. ANTONIO M. CARPIO, DIRECTOR, NATIONAL BUREAU OF INVESTIGATION, RESPONDENT.

G.R. No. 85243. October 12, 1989

Ponente: CRUZ, J.

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CRUZ, J.:

These two cases have been consolidated because they involve the same issue against the respondent Director of the National Bureau of Investigation, who has refused to reinstate the petitioners in defiance of the orders of the Civil Service Commission as referred to him by the Secretary of Justice for implementation.

The services of Francisco R. Estavillo as Agent III and of Cesar R. de Leon as Head Agent in the National Bureau of Investigation were terminated by then Minister of Justice Neptali A. Gonzales in separate Orders both dated January 27, 1987.[1] Estavillo was notified of his dismissal on March 6, 1987, and De Leon on February 6, 1987.[2] Both appealed to the Review Committee created under Executive Order No. 17, but this body declined to act on their petitions for reconsideration on the ground that it had lost jurisdiction with the ratification of the new Constitution on February 2, 1987. They were advised instead to seek relief from the Civil Service Commission.[3] They did. In substantially similar Orders,[4] they were sustained by the Merit Systems Protection Board of the said Commission. It was held that their dismissals were invalid and unconstitutional, having been done in violation of their security of tenure under the 1987 Constitution, which had already become effective. Accordingly, the Board ordered their reinstatement with back salaries but without prejudice to the filing of appropriate administrative charges against them.

On September 29, 1987, Undersecretary of Justice Eduardo G. Montenegro referred the order reinstating Estavillo to the respondent as Director of the National Bureau of Investigation "for his information and appropriate action." [5] On March 14, 1988, Undersecretary of Justice Silvestre H. Bello III referred the order reinstating De Leon to the respondent "for appropriate action" and "immediate implementation." [6]

The reaction of the respondent was to return the said orders to the Civil Service Commission "without action," claiming that they were null and void for having been rendered without jurisdiction.[7] This prompted the Board to issue another Order dated June 20, 1988, in which it rejected the respondent's contention and concluded that "it appearing that the reglementary period to appeal has long expired, the orders dated August 27, 1987 and March 4, 1988, of this Board have become final and executory and, therefore, should now be implemented." [8]

On June 29, 1988, the Secretary of Justice sent the following memorandum[9] to the respondent:

June 29, 1988

MEMORANDUM

TO: NBI Director J. Antonio Carpio

RE: Order of the Merit Systems Protection Board of the Civil Service Commission, reiterating the reinstatement of Messrs. Cesario de Leon and Francisco Estabillo to their former positions.

Your attention is invited to the enclosed Order of the Merit Systems Protection Board, dated June 20, 1988, particularly the last paragraph thereof which reads as follows:

In view of the foregoing, and it appearing that the reglementary period to appeal has long expired, the orders dated August 27, 1987 and March 4, 1988 of this Board have become final and executory and, therefore, should now be implemented.

You are therefore directed to implement immediately the aforecited Order of the Merit Systems Protection Board reiterating the reinstatement of Messrs. Cesario de Leon and Francisco Estabillo to their former positions.

SEDFREY A. ORDONEZ

Secretary of Justice

Instead of complying, the respondent issued the following memorandum:[10]

1 July 1988

MEMORANDUM TO: NBI Assistant Director

NBI Deputy Directors

Chief, Legal Division

Unit Chiefs of Agents Concerned

OIC Personnel Division

Cashier

1. This refers to the attached letter dated 21 June 1988 from the Merit Systems Protection Board of the Civil Service Commission, Quezon City, received by this Office on 28 June 1988, transmitting an unauthenticated duplicate of an alleged order of the said Board dated 20 June 1988 reiterating its orders of 27 August 1987 and March 4, 1988 requiring reinstatement of NBI Agents Francisco R. ESTABILLO and Cesar R. DE LEON.
2. As explicitly stated in detail in the 2nd Indorsements by the undersigned to the transmittal letters of the aforementioned orders of 27 August 1987 and 4 March 1988, the same are null and void ab initio for having been issued with want of jurisdiction by said Board;

WHEREFORE, you are hereby directed TO DISREGARD and NOT to give any faith and credence, or otherwise honor or give due course to said illegal and void orders of the Merit Systems Protection Board, Civil Service Commission, dated 20 June 1988, 27 August 1987 and 4 March 1988 ordering the reinstatement, with payment of back salaries, of Agents Francisco R. ESTABILLO and Cesar R. DE LEON.

J. ANTONIO CARPIO

Director

Unable to return to their respective positions, Estavillo and De Leon came to this Court in separate petitions for mandamus. The respondent was required to comment. He again questioned the jurisdiction of the Board, contending inter alia that it had no authority to review dismissals made under the Freedom Constitution and that the petitioners' dismissals were already final, not having been seasonably appealed. The Solicitor General also filed a Consolidated Comment to these and other cases involving the validity of the various ongoing government reorganizations. However, he did not touch on the vital issue which we feel is controlling in the two petitions before us.

That issue, simply, is whether or not the Director of the National Bureau of Investigation can disobey an explicit and direct order issued to him by the Secretary of Justice.

To ascertain the present attitude of the Secretary of Justice on this question, and on the possibility that he might have had a change of heart in regard to his orders, the Court issued on July 4, 1989, the following resolution:

In G.R. No. 85442 (FRANCISCO R. ESTAVILLO v. J. ANTONIO CARPIO), the Department of Justice issued the following directives to the respondent requiring him to reinstate the herein petitioner:

1. First Indorsement dated September 29, 1987 from the Undersecretary of Justice Eduardo G. Montenegro (Annex "D"; p. 13 of Rollo).
2. Memorandum dated June 29, 1988 from Secretary of Justice Sedfrey A. Ordoñez (Annex "G"; p. 22 of Rollo).

In G.R. No. 85243 (CESAR DE LEON v. J. ANTONIO M. CARPIO), the Department of Justice issued the following directives to the respondent requiring him to reinstate the herein petitioner:

1. First Indorsement dated March 14, 1988 from the Undersecretary of Justice Silvestre Bello III (Annex "D", p. 14 of Rollo).
2. Memorandum dated June 29, 1988 from Secretary of Justice Sedfrey Ordoñez (Annex "G"; p. 24 of Rollo).

It appearing that the respondent NBI Director has not complied with the said orders in both cases, the Court Resolved to REQUIRE the Secretary of Justice to file a Consolidated Comment stating his position on the disregard of the said orders.

On August 9, 1989, Secretary Sedfrey A. Ordoñez filed his Consolidated Comment through Undersecretary Eduardo G. Montenegro and declared:

It is submitted that the Orders of the Merit Systems Protection Board reinstating Messrs. Estavillo and de Leon are valid and should be respected by the agency head concerned. Dismissals pursuant to E.O. No. 17 are summary and contemplate non-adversary proceedings. They are not dismissals for cause within the meaning of the security of tenure provisions of the Civil Service Law and of the Constitution. The dismissal from the service of Messrs. Estavillo and de Leon was made pursuant to E.O. No. 17; but as the Review Committee observed, the dismissal was effective upon receipt by the petitioners of their respective notices of termination on March 6, 1987 for Mr. Estavillo, and on February 6, 1987, for Mr. de Leon, or several days after the ratification of the 1987 Constitution. Their dismissal was, therefore, virtually a dismissal under the 1987 Constitution then already in place; and because it was a summary dismissal as the intention really was to dismiss them pursuant to E.O. No. 17, it did not conform with the requirements of due process consistent with the security of tenure clause embodied in the 1987 Constitution. The separate Orders of the Merit Systems Protection Board directing their reinstatement in office "but without prejudice to the filing of appropriate

administrative charges against (them) as evidence warrants, in accordance with the Civil Service Law and Rules" (see Annexes "2" and "5") are, therefore consistent with the Constitutional mandate that "(n)o officer or employee of the civil service shall be removed or suspended except for cause provided by law" (Sec. 2[3], Art. IX-B, 1987 Constitution).

His conclusion read as follows:

The Secretary of Justice reiterates the directives of the Department of Justice, namely, his Memorandum dated June 29, 1988, 1st Indorsement dated September 29, 1987 of Undersecretary of Justice Eduardo G. Montenegro, and 1st Indorsement dated March 14, 1988 of Undersecretary of Justice Silvestre Bello III, all addressed to NBI Director J. Antonio Carpio, to reinstate Messrs. Francisco Estavillo and Cesar de Leon to their former positions in compliance with the Orders dated August 27, 1987, March 4, 1988 and June 20, 1988 of the Merit Systems Protection Board.

The Secretary of Justice finds no valid reasons why the aforesaid Orders of the Merit Systems Protection Board regarding the reinstatement of Messrs. Francisco Estavillo and Cesar de Leon, should not be implemented.

On August 15, 1989, the respondent filed a Reply without having previously been allowed or required by the Court to do so. He began by insinuating that as the above consolidated cases had already been submitted for decision, we should not have required additional pleadings. We can disregard this temerity as an unintentional insolence. But it cannot be as easily dismissed that in this Reply Director Carpio has again manifested his defiance of Secretary Ordoñez. More direct this time, the respondent insists "that the Secretary of Justice had no power to declare invalid or unconstitutional any Presidential proclamation, order, instruction or rule and regulation." "Neither could he ignore the final decision of the former Minister of Justice" "nor (could he) compel compliance to (sic) said order of the Civil Service Commission issued with want of jurisdiction."

One may well wonder how Secretary Ordoñez would react to this new challenge to his authority. Perhaps the forbearing Secretary would prefer to be tactful again as when he opted not to make a categorical statement in his Consolidated Comment on Director Carpio's obvious intransigence. At any rate, for all his restrained and courteous language, the Secretary's position is clear enough. There is not the slightest indication that he has relented on his memorandum of June 29, 1988, or that he now supports the Director's belligerent stand.

It is an elementary principle of our republican government, enshrined in the Constitution and honored not in the breach but in the observance, that all executive departments, bureaus and offices are under the control of the President of the Philippines. This precept, first embodied in the Commonwealth Constitution and¹¹ reiterated in the 1973 Constitution¹², has been retained in Article VII, Section 17 of the present Constitution.

The President's power of control is directly exercised by him over the members of the Cabinet who, in turn and by his authority, control the bureaus and other offices under their respective jurisdictions in the executive department. The constitutional vesture of this power in the President is self-executing and does not require statutory implementation, nor may its exercise be limited, much less withdrawn, by the legislature.

Thus, in *Lacson-Magallanes v. Paño*,¹³ the Court held that a statute making decisions of the department secretaries final and unappealable would nevertheless not prevent the President from reviewing and if necessary reversing such decisions by virtue of his constitutional power of control over the members of his Cabinet.

Theoretically, the President has full control of all the members of his Cabinet and may appoint them as he sees fit or shuffle them at pleasure, subject only to confirmation by the Commission on Appointments, and replace them in his discretion. Once in place, they are at all times under the disposition the President as their immediate superior. Justice Laurel put it aptly in *Villena v. Secretary of the Interior*,¹⁴ when he said that "without

minimizing the importance of the heads of the various departments, their personality is in reality but the projection of that of the President." Hence, "their acts, performed and promulgated in the regular course of business are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive."

It is recalled that in *Noblejas v. Salas*,¹⁵ the fiscal who conducted the preliminary investigation recommended that no criminal action be taken against the petitioner in view of the insufficiency of evidence against him and the finding that he had acted in good faith. This recommendation was expressly approved by the Secretary of Justice. Subsequently, the new fiscal who had taken over the prosecution disregarded these acts and included the petitioner among the accused in the same criminal case covered by the Secretary's directive. The Court granted certiorari and set aside the resolution of the trial court denying the petitioner's motion to quash. We held that the fiscal was bound to obey the order of the Secretary of Justice, who was exercising over him the President's constitutional power of control.

In the case at bar, there is no question that when he directed the respondent to reinstate the petitioners, Secretary Ordoñez was acting in the regular discharge of his functions as an alter ego of the President. His acts should therefore have been respected by the respondent Director of the National Bureau of Investigation, which is in the Department of Justice under the direct control of its Secretary. As a subordinate in this department, the respondent was (and is) bound to obey the Secretary's directives, which are presumptively the acts of the President of the Philippines.

It remains to observe that what the petitioners should have done in the first place was to complain to Secretary Ordoñez that his directives for their reinstatement had been disregarded by Director Carpio. Thus informed, the Secretary would have reiterated his orders and required immediate compliance therewith by the respondent. This is not to say that the doctrine of exhaustion of administrative remedies was strictly required in this case for the petitioners were raising a pure question of law. That is one of the exceptions to the rule. Even so, compliance with the usual procedure could have easily obtained for the petitioners the relief they now seek from this Court.

Our conclusion is that this regrettable controversy would not have arisen at all if the respondent had had the humility to recognize the limits of his authority and acted accordingly. Plainly put, Director Carpio should have dutifully obeyed the orders of Secretary Ordoñez as his immediate superior in the Department of Justice. That is what we must now order the respondent to do.

WHEREFORE, the petitions are GRANTED. The respondent is hereby ORDERED to immediately reinstate the petitioners as directed by the Secretary of Justice in implementation of the challenged orders of the Merit Systems Protection Board of the Civil Service Commission. No costs.

SO ORDERED.

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

[1] Rollo, p. 9, G.R. No. 85442; p. 9, G.R. No. 85243.

[2] *Ibid.*, pp. 2 and 232; p. 2.

[3] *Id.*, pp. 3, 10 and 233; pp. 3 and 10.

[4] *Id.*, p. 12; pp. 12-13.

[5] Rollo, p. 13, G.R. No. 85442.

[6] Rollo, p. 14, G.R. No. 85243.

[7] Rollo, pp. 14-18, G.R. No. 85442; pp. 15-19, G.R. No. 85243.

[8] Ibid., pp. 19-21; pp. 21-23.

[9] Id., P. 22; P. 24.

[10] Id., p. 23; P. 25.

11 Article VII, Section 10, (1).

12 Article VII, Section 8.

13 21 SCRA 895.

14 67 Phil. 451.

15 67 SCRA 47.

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