

MARY CONCEPCION BAUTISTA, PETITIONER, VS. SENATOR JOVITO R. SALONGA, COMMISSION ON APPOINTMENTS, COMMITTEE ON JUSTICE, JUDICIAL AND BAR COUNCIL AND HUMAN RIGHTS AND HESQUIO R. M...

G.R. No. 86439. April 13, 1989

Ponente: PADILLA, J.

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PADILLA, J.:

The Court had hoped that its decision in *Sarmiento III vs. Mison*,^[1] would have settled the question of which appointments by the President, under the 1987 Constitution, are to be made with and without the review of the Commission on Appointments. The *Mison* case was the first major case under the 1987 Constitution and in construing Sec. 16, Art. VII of the 1987 Constitution which provides:

"The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of the departments, agencies commissions or boards.

"The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress."

this Court, drawing extensively from the proceedings of the 1986 Constitutional Commission and the country's experience under the 1935 and 1973 Constitutions, held that only those appointments expressly mentioned in the first sentence of Sec. 16, Art. VII are to be reviewed by the Commission on Appointments, namely, "the heads of the executive department, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution." All other appointments by the President are to be made without the participation of the Commission on Appointments. Accordingly, in the *Mison* case, the appointment of therein respondent Salvador M. Mison as head of the Bureau of Customs, without the confirmation of the Commission on Appointments, was held valid and in accordance with the Constitution.

The *Mison* case doctrine did not foreclose contrary opinions. So with the very provisions of Sec. 16, Art. VII as designed by the framers of the 1987 Constitution. But the Constitution, as construed by this Court in appropriate cases, is the supreme law of the land. And it cannot be over-stressed that the strength of the Constitution, with all its imperfections, lies in the respect and obedience accorded to it by the people, especially the officials of government, who are the subjects of its commands.

Barely a year after *Mison*, the Court is again confronted with a similar question, this time, whether or not the appointment by the President of the Chairman of the Commission on Human Rights (CHR), an "independent office" created by the 1987 Constitution, is to be made with or without the confirmation of the Commission on Appointments (CA, for brevity). Once more as in *Mison*, the Court will resolve the issue irrespective of the parties involved in the litigation, mindful that what really matter are the principles that will guide this Administration and others in the years to come.

Since the position of Chairman of the Commission on Human Rights is not among the positions mentioned in the first sentence of Sec. 16. Art. VII of the 1987 Constitution, appointments to which are to be made with the confirmation of the Commission on Appointments, it follows that the appointment by the President of the Chairman of the CHR is to be made without the review or participation of the Commission on Appointments.

To be more precise, the appointment of the Chairman and Members of the Commission on Human Rights is not specifically provided for in the Constitution itself, unlike the Chairmen and Members of the Civil Service Commission, the Commission on Elections and the Commission on Audit, whose appointments are expressly vested by the Constitution in the President with the consent of the Commission on Appointments.[2]

The President appoints the Chairman and Members of the Commission on Human Rights pursuant to the second sentence in Section 16, Art. VII, that is, without the confirmation of the Commission on Appointments because they are among the officers of government "whom he (the President) may be authorized by law to appoint." And Section 2(c). Executive Order No. 163, 5 May 1987, authorizes the President to appoint the Chairman and Members of the Commission on Human Rights. It provides:

"(c) The Chairman and the Members of the commission on Human Rights shall be appointed by the President for a term of seven years without reappointment. Appointment to any vacancy shall be only for the unexpired term of the predecessor."

The above conclusions appear to be plainly evident and, therefore, irresistible. However, the presence in this case of certain elements - absent in the *Mison* case - makes necessary a closer scrutiny. The facts are therefore essential.

On 27 August 1987, the President of the Philippines designated herein petitioner Mary Concepcion Bautista as "Acting Chairman, Commission on Human Rights." The letter of designation reads:

"27 August 1987

M a d a m :

You are hereby designated ACTING CHAIRMAN, COMMISSION ON HUMAN RIGHTS, to succeed the late Senator Jose W. Diokno and Justice J. B. L. Reyes.

Very truly yours,

CORAZON C. AQUINO

HON. MARY CONCEPCION BAUTISTA" [3]

Realizing perhaps the need for a permanent chairman and members of the Commission on Human Rights, befitting an independent office, as mandated by the Constitution,[4] the President of the Philippines on 17 December 1988 extended to petitioner Bautista a permanent appointment as Chairman of the Commission. The appointment letter is as follows:

"17 December 1988

The Honorable

The Chairman

Commission on Human Rights

Pasig, Metro Manila

M a d a m :

Pursuant to the provisions of existing laws, the following are hereby appointed to the positions indicated opposite their respective names in the Commission on Human Rights:

MARY CONCEPCION BAUTISTA - Chairman

ABELARDO L. APORTADERA, JR. - Member

SAMUEL SORIANO - Member

HESQUIO R. MALLILLIN - Member

NARCISO C. MONTEIRO - Member

By virtue hereof, they may qualify and enter upon the performance of the duties of the office furnishing this Office and the Civil Service Commission with copies of their oath of office.

Very truly yours,

CORAZON C. AQUINO"[5]

It is to be noted that by virtue of such appointment, petitioner Bautista was advised by the President that she could qualify and enter upon the performance of the duties of the office of Chairman of the Commission on Human Rights, requiring her to furnish the office of the President and the Civil Service Commission with copies of her oath of office.

On 22 December 1988, before the Chief Justice of this Court, Hon. Marcelo B. Fernan, petitioner Bautista took her oath of office by virtue of her appointment as Chairman of the Commission on Human Rights. The full text of the oath of office is as follows:

"OATH OF OFFICE

I, MARY CONCEPCION BAUTISTA of 3026 General G. del Pilar Street, Bangkal, Makati, Metro Manila having been appointed to the Position of CHAIRMAN of the Commission on Human Rights, do solemnly swear that I will discharge to the best of my ability all the duties and responsibilities of the office to which I have been appointed; uphold the Constitution of the Republic of the Philippines, and obey all the laws of the land without mental reservation or purpose of evasion.

SO HELP ME GOD.

MARY CONCEPCION BAUTISTA

SUBSCRIBED AND SWORN TO before me this 22nd day of December in the year of Our Lord, 1988 in Manila.

MARCELO B. FERNAN

Chief Justice

Supreme Court of the Philippines"[6]

Immediately after taking her oath of office as Chairman of the Commission on Human Rights, petitioner Bautista discharged the functions and duties of the Office of Chairman of the Commission on Human Rights which, as previously stated, she had originally held merely in an acting capacity beginning 27 August 1987.

On 9 January 1989, petitioner Bautista received a letter from the Secretary of the Commission on Appointments requesting her to submit to the Commission certain information and documents as required by its rules in connection with the confirmation of her appointment as Chairman of the Commission on Human Rights.[7] On 10 January 1989, the Commission on Appointments' Secretary again wrote petitioner Bautista requesting her presence at a meeting of the Commission on Appointments Committee on Justice, Judicial and Bar Council and Human Rights set for 19 January 1989 at 9 A.M. at the Conference Room, 8th Floor, Kanlaon Tower I, Roxas Boulevard, Pasay City that would deliberate on her appointment as Chairman of the Commission on Human Rights.[8]

On 13 January 1989, petitioner Bautista wrote to the Chairman of the Commission on Appointments stating, for the reasons therein given, why she considered the Commission on Appointments as having no jurisdiction to review her appointment as Chairman of the Commission on Human Rights. The petitioner's letter to the Commission on Appointments' Chairman reads:

"January 13, 1989

SENATE PRESIDENT JOVITO R. SALONGA

Chairman

Commission on Appointments

Senate, Manila

Sir:

We acknowledge receipt of the communication from the Commission on Appointments requesting our appearance on January 19, 1989 for deliberation on our appointments.

We respectfully submit that the appointments of the Commissioners of the Human Rights Commission are not subject to confirmation by the Commission on Appointments.

The Constitution, in Article VII Section 16 which expressly vested on the President the appointing power, has expressly mentioned the government officials whose appointments are subject to the confirmation of the Commission on Appointments of Congress. The Commissioners of the Commission on Human Rights are not included among those.

Where the confirmation of the Commission on Appointments is required, as in the case of the Constitutional Commissions such as the Commission on Audit, Civil Service Commission and the Commission on Elections, it was expressly provided that the nominations will be subject to confirmation of Commission on Appointments. The exclusion again of the Commission on Human Rights, a constitutional office, from this enumeration is a clear denial of authority to the Commission on Appointments to review our appointments to the Commission on Human Rights.

Furthermore, the Constitution specifically provides that this Commission is an independent office which:

- a. must investigate all forms of human rights violations involving civil and political rights;
- b. shall monitor the government's compliance in all our treaty obligations on human rights. We submit that, the

monitoring of all agencies of government, includes even Congress itself, in the performance of its functions which may affect human rights;

c. may call on all agencies of government for the implementation of its mandate.

The powers of the Commission on Appointments is in fact a derogation of the Chief Executive' appointing power and therefore the grant of that authority to review a valid exercise of the executive power can never be presumed. It must be expressly granted.

The Commission on Appointments has no jurisdiction under the Constitution to review appointments by the President of Commissioners of the Commission on Human Rights.

In view of the foregoing considerations, as Chairman of an independent constitutional office. I cannot submit myself to the Commission on Appointments for the purpose of confirming or rejecting my appointment.

Very truly yours,

MARY CONCEPCION BAUTISTA

Chairman"[9]

In respondent Commission's comment (in this case), dated 3 February 1989, there is attached as Annex 1 a letter of the Commission on Appointments' Secretary to the Executive Secretary, Hon. Catalino Macaraig, Jr. making reference to the "ad interim appointment which Her Excellency extended to Atty. Mary Concepcion Bautista on 14 January 1989 as Chairperson of the Commission on Human Rights"[10] and informing Secretary Macaraig that, as previously conveyed to him in a letter of 25 January 1989, the Commission on Appointments disapproved petitioner Bautista's "ad interim appointment" as Chairperson of the Commission on Human Rights in view of her refusal to submit to the jurisdiction of the Commission on Appointments. The letter reads:

"1 February 1989

HON. CATALINO MACARAIG, JR.

Executive Secretary

Malacanang, Manila

S i r :

This refers to the ad interim appointment which Her Excellency extended to Atty. Mary Concepcion Bautista on 14 January 1989 as Chairperson of the Commission on Human Rights.

As we conveyed to you in our letter of 25 January 1989, the Commission on Appointments, assembled in plenary (session) on the same day, disapproved Atty. Bautista's ad interim appointment as Chairperson of the Commission on Human Rights in view of her refusal to submit to the jurisdiction of the Commission on Appointments.

This is to inform you that the Commission on Appointments, likewise assembled in plenary (session) earlier today, denied Senator Mamintal A. J. Tamano's motion for reconsideration of the disapproval of Atty. Bautista's ad interim appointment as Chairperson of the Commission on Human Rights.

Very truly yours,

RAOUL V. VICTORINO

Secretary"[11]

On the same date (1 February 1989), the Commission on Appointments' Secretary informed petitioner Bautista that the motion for reconsideration of the disapproval of her "ad interim appointment as Chairman of the Commission on Human Rights" was denied by the Commission on Appointments. The letter reads as follows:

"1 February 1989

ATTY. MARY CONCEPCION BAUTISTA

Commission on Human Rights

Integrated Bar of the Philippines Bldg.

Pasig, Metro Manila

Dear Atty. Bautista:

Pursuant to Sec. 6 (a), Chapter II of the Rules of the Commission on Appointments, the denial by the Commission on Appointments, assembled in plenary (session) earlier today, of Senator Mamintal A.J. Tamano's motion for reconsideration of the disapproval of your ad interim appointment as Chairperson of the Commission on Human Rights is respectfully conveyed.

Thank you for your attention.

Very truly yours,

RAOUL V. VICTORINO

Secretary"[12]

In Annex 3 of respondent Commission's same comment, dated 3 February 1989, is a news item appearing in the 3 February 1989 issue of the "Manila Standard" reporting that the President had designated PCHR Commissioner Hesiquio R. Mallillin as "Acting Chairman of the Commission" pending the resolution of Bautista's case which had been elevated to the Supreme Court. The news item is here quoted in full, thus -

"Aquino names replacement for MaryCon

President Aquino has named replacement for Presidential Commission on Human Rights Chairman Mary Concepcion Bautista whose appointment was rejected anew by the Congressional commission on appointments.

The President designated PCHR commissioner Hesiquio R. Mallillin as "acting chairman" of the Commission pending the resolution of Bautista's case which had been elevated to the Supreme Court.

The president's action followed after Congressional Commission on appointments Chair-man. Senate President Jovito Salonga declared Bautista can no longer hold on to her position after her appointment was not confirmed for the second time.

"For all practical purposes," Salonga said Bautista can be accused of usurpation of authority if she insists to stay on her office.

In effect, the President had asked Bautista to vacate her office and give way to Mallillin. (Mari Villa)"[13]

On 20 January 1989, or even before the respondent Commission on Appointments had acted on her "ad interim appointment as Chairman of the Commission on Human Rights" petitioner Bautista filed with this Court the present petition for certiorari with a prayer for the immediate issuance of a restraining order, to declare "as unlawful and-unconstitutional and without any legal force and effect any action of the Commission on

Appointments as well as of the Committee on Justice, Judicial and Bar Council and Human Rights, on the lawfully extended appointment of the petitioner as Chairman of the Commission on Human Rights, on the ground that they have no lawful and constitutional authority to confirm and to review her appointment." [14]

The prayer for temporary restraining order was "to enjoin the respondent Commission on Appointments not to proceed further with their deliberation and/or proceedings on the appointment of the petitioner xxx nor to enforce, implement or act on any order resolution, etc. issued in the course of their deliberations." [15]

Respondents were required to file comment within ten (10) days.[16] On 7 February 1989, petitioner filed an amended petition, with urgent motion for restraining order, impleading Commissioner Hesiquio R. Mallillin the designated acting chairman as party respondent and praying for the nullification of his appointment. The succeeding day, a supplemental urgent ex-parte motion was filed by petitioner seeking to restrain respondent Mallillin from continuing to exercise the functions of chairman and to retrain from demanding courtesy resignations from officers or separating or dismissing employee of the Commission.

Acting on petitioner's amended petition and supplemental urgent ex-parte motion, the Court resolved to issue a temporary restraining order directing respondent Mallillin to cease and desist from effecting the dismissal, courtesy resignation, removal and reorganization and other similar personnel actions.[17] Respondents were likewise required to comment on said amended petition with allowance for petitioner to file a reply within two (2) days from receipt of a copy thereof.

Respondents Senator Salonga, the Commission on Appointments, the Committee on J & BC and Human Rights filed a comment to the amended petition on 21 February 1989.[18] Petitioner filed her reply.[19] On 24 February 1989, respondent Mallillin filed a separate comment.[20] The Court required petitioner to reply to respondent Mallillin's comment.[21] Petitioner filed her reply. [22]

In deference to the Commission on Appointments, an instrumentality of a co-ordinate and co-equal branch of government, the Court did not issue a temporary restraining order directed against it. However, this does not mean that the issues raised by the petition, as met by the respondents comments, will not be resolved in this case. The Court will not shirk from its duty as the final arbiter of constitutional issues, in the same way that it did not in *Mison*.

As disclosed by the records, and as previously adverted to, it is clear that petitioner Bautista was extended by Her Excellency, the President a permanent appointment as Chairman of the Commission on Human Rights on 17 December 1988. Before this date, she was merely the "Acting Chairman" of the Commission, Bautista's appointment on 17 December 1988 is an appointment that was for the President solely to make i.e., not an appointment to be submitted for review and confirmation (or rejection) by the Commission on Appointments. This is in accordance with Sec. 16. Art. VII of the 1987 Constitution and the doctrine in *Mison* which is here reiterated.

The threshold question that has really come to the fore is whether the President, subsequent to her act of 17 December 1988, and after petitioner Bautista had qualified for the office to which she had been appointed, by taking the oath of office and actually assuming and discharging the functions and duties thereof, could extend another appointment to the petitioner on 14 January 1989, an "ad interim appointment" as termed by the respondent Commission on Appointments or any other kind of appointment to the same office of Chairman. Commission on Human Rights that called for confirmation by the Commission on Appointments.

The Court, with all due respect to both the Executive and Legislative Departments of government, and after careful deliberation, is constrained to hold and rule in the negative. When Her Excellency, the President converted

petitioner Bautista's designation as Acting Chairman to a permanent appointment as Chairman of the Commission on Human Rights on 17 December 1988, significantly she advised Bautista (in the same appointment Letter) that, by virtue of such appointment, she could qualify and enter upon the performance of the duties or the office (of Chairman of the Commission on Human Rights). All that remained for Bautista to do was to reject or accept the appointment. Obviously, she accepted the appointment by taking her oath of office before the Chief Justice of the Supreme Court Hon. Marcelo B. Fernan and assuming immediately thereafter the functions and duties of the Chairman of the Commission on Human Rights. Bautista's appointment therefore on 17 December 1988 as Chairman of the Commission on Human Rights was a completed act on the part of the President. To paraphrase the great jurist, Mr. Chief Justice Marshall, in the celebrated case of *Marbury vs. Madison*.^[23] -

x x x

"The answer to this question seems an obvious one. The appointment being the sole act of the president, must he completely evidenced, when it is shown that he has done everything to be performed by him.

x x x

"Some point of time must be taken when the power of the executive over an officer, not removable at his will, must cease. That point of time must be when the constitutional power of appointment has been exercised. And this power has been exercised when the last act, required from the person possessing the power, has been performed. xxx

x x x

"But having once made the appointment, his (the President's) power over the office is terminated in all cases, where by law the officer is not removable by him. The right to the office is then in the person appointed, and he has the absolute, unconditional power of accepting or rejecting it.

x x x"

THE "APPOINTMENT" OF PETITIONER BAUTISTA ON 14 JANUARY 1989

It is respondent Commission's submission that the President, after the appointment of 17 December 1988 extended to petitioner Bautista, decided to extend another appointment (14 January 1989) to petitioner Bautista, this time, submitting such appointment (more accurately, nomination) to the Commission on Appointments for confirmation. And yet, it seems obvious enough, both in logic and in fact, that no new or further appointment could be made to a position already filled by a previously completed appointment which had been accepted by the appointee, through a valid qualification and assumption of its duties.

Respondent Commission vigorously contends that, granting that petitioner's, appointment as Chairman of the Commission on Human Rights is one that, under Sec. 16. Art. VII of the Constitution, as interpreted in the *Mison* case, is solely for the President to make, yet, it is within the president's, prerogative to voluntarily submit such appointment to the Commission on Appointment for confirmation. The mischief in this contention, as the Court perceives it, lies in the suggestion that the President (with Congress agreeing) may, from time to time, move power boundaries, in the Constitution differently from where they are placed by the Constitution.

The Court really finds the above contention difficult of acceptance. Constitutional Law, to begin with, is concerned with power not political convenience, wisdom, exigency, or even necessity. Neither the Executive nor the Legislative (Commission on Appointments) can create power where the Constitution confers none. The evident constitutional intent is to strike a careful and delicate balance, in the matter of appointments to public, office, between the President and Congress (the latter acting through the Commission on Appointments). To tilt

one side or the other of the scale is to disrupt or alter such balance of power. In other words, to the extent that the Constitution has blocked off certain appointments for the President to make with the participation of the Commission on Appointments, so also has the Constitution mandated that the President can confer no power of participation in the Commission on Appointments over other appointments exclusively reserved for her by the Constitution. The exercise of political options that finds no support in the Constitution cannot be sustained.

Nor can the Commission on Appointments, by the actual exercise of its constitutionally delimited power to review presidential appointments, create power to confirm appointments that the Constitution has reserved to the President alone. Stated differently, when the appointment is one that the Constitution mandates is for the President to make without the participation of the Commission on Appointments, the executive's voluntary act of submitting such appointment to the Commission on Appointments and the latter's act of confirming or rejecting the same, are done without or in excess of jurisdiction.

EVEN IF THE PRESIDENT MAY VOLUNTARILY SUBMIT TO THE COMMISSION ON APPOINTMENTS AN APPOINTMENT THAT UNDER THE CONSTITUTION SOLELY BELONGS TO HER, STILL, THERE WAS NO VACANCY TO WHICH AN APPOINTMENT COULD BE MADE ON 14 JANUARY 1989

Under this heading, we will assume, *ex gratia argumenti*, that the Executive may voluntarily allow the Commission on Appointments to exercise the power of review over an appointment otherwise solely vested by the Constitution in the President. Yet, as already noted, when the President appointed petitioner Bautista on 17 December 1988 to the position of Chairman of the Commission on Human Rights with the advice to her that by virtue of such appointment (not, until confirmed by the Commission on Appointments), she could qualify and enter upon the performance of her duties after taking her oath of office, the presidential act of appointment to the subject position which, under the Constitution, is to be made, in the first place, without the participation of the Commission on Appointments, was then and there a complete and finished act, which, upon the acceptance by Bautista, as shown by her taking of the oath of office and actual assumption of the duties of said office, installed her, indubitably and unequivocally, as the lawful Chairman of the Commission on Human Rights for a term of seven (7) years. There was thus no vacancy in the subject office on 14 January 1989 to which an appointment could be validly made. In fact, there is no vacancy in said office to this day.

Nor can respondents impressively contend that the new appointment or re-appointment on 14 January 1989 was an *ad interim* appointment, because, under the Constitutional design, *ad interim* appointments do not apply to appointments solely for the President to make i.e., without the participation of the Commission on Appointments. *Ad interim* appointments, by their very nature under the 1987 Constitution, extend only to appointments where the review of the Commission on Appointments is needed. That is why *ad interim* appointments are to remain valid until disapproval by the Commission on Appointments or until the next adjournment of Congress; but appointments that are for the President solely to make, that is, without the participation of the Commission on Appointments, can not be *ad interim* appointments.

EXECUTIVE ORDER NO. 163-A. 30 JUNE 1987 PROVIDING THAT THE TENURE OF THE CHAIRMAN AND MEMBERS OF THE COMMISSION ON HUMAN RIGHTS SHALL BE AT THE PLEASURE OF THE PRESIDENT IS UNCONSTITUTIONAL.

Respondent Mallillin contends that with or without confirmation by the Commission on Appointments, petitioner Bautista, as Chairman of the Commission on Human Rights, can be removed from said office at anytime, at the pleasure of the President; and that with the disapproval of Bautista's appointment (nomination) by the Commission on Appointments, there was greater reason for her removal by the President and her replacement with respondent Mallillin. Thus, according to respondent Mallillin, the petition at bar has become moot and

academic.

We do not agree that the petition has become moot and academic. To insist on such a posture is akin to deluding oneself that day is night just because the drapes are drawn and the lights are on. For, aside from the substantive questions of constitutional law raised by petitioner, the records clearly show that petitioner came to this Court in timely manner and has not shown any indication of abandoning her petition.

Reliance is placed by respondent Mallillin on Executive Order No. 163-A, 30 June 1987, full text of which is as follows:

"WHEREAS, the Constitution does not prescribe the term of office of the Chairman and Members of the Commission on Human Rights unlike those of other Constitutional Commissions;

NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines do hereby order:

SECTION 1. Section 2, sub-paragraph (c) of Executive Order No. 163 is hereby amended to read as follows:

The Chairman and Members of the Commission on Human Rights shall be appointed by the President. Their tenure in office shall be at the pleasure of the President.

SEC. 2. This Executive Order shall take effect immediately.

DONE in the City of Manila, this 30th day of June, in the year of Our Lord, nineteen hundred and eighty-seven.

(Sgd.) CORAZON C. AQUINO

President of the Philippines

By the President:

(Sgd.) JOKER P. ARROYO

Executive Secretary"[24]

Previous to Executive Order No. 163-A, or on 5 May 1987, Executive Order No. 163[25] was issued by the President, Sec. 2(c) of which provides:

"Sec. 2(c) The Chairman and the Members of the Commission on Human Rights shall be appointed by the President for a term of seven years without reappointment. Appointments to any vacancy shall be only for the unexpired term of the predecessor."

It is to be noted that, while the earlier executive order (No. 163) speaks of a term of office of the Chairman and Members of the Commission on Human Rights - which is seven (7) years without reappointment - the later executive order (163-A) speaks of the tenure in office of the Chairman and Members of the Commission on Human Rights, which is "at the pleasure of the President."

Tenure in office should not be confused with term of office. As Mr. Justice (later Chief Justice) Concepcion in his concurring opinion in *Alba vs. Evangelista*[26] stated:

"The distinction between 'term' and 'tenure' is important, for, pursuant to the Constitution, 'no officer or employee in the Civil Service may be removed or suspended except for cause, as provided by law' (Art. XII, section 4), and this fundamental principle would be defeated if Congress could legally make the tenure of some officials dependent upon the pleasure of the President, by clothing the latter with blanket authority to replace a public officer before the expiration of his term."[27]

When Executive Order No. 163 was issued, the evident purpose was to comply with the constitutional provision that "the term of office and other qualifications and disabilities of the Members of the Commission (on Human Rights) shall be provided by law" (Sec. 17(2). Art. XIII, 1987 Constitution).

As the term of office of the Chairman (and Members) of the Commission on Human Rights, is seven (7) years, without re-appointment, as provided by Executive Order No. 163, and consistent with the constitutional design to give the Commission the needed independence to perform and accomplish its functions and duties, the tenure in office of said Chairman (and Members) cannot be later made dependent on the pleasure of the President.

Nor can respondent Mallillin find support in the majority opinion in the Alba case, *supra*, because the power of the President, sustained therein, to replace a previously appointed vice-mayor of Roxas City - given the express provision in Sec. 8, Rep. Act No. 603 (creating the City of Roxas) stating that the vice-mayor shall serve at the Pleasure of the President, can find no application to the Chairman of an INDEPENDENT OFFICE, created not by statute but by the Constitution itself. Besides, unlike in the Alba case, here the Constitution has decreed that the Chairman and Members of the Commission on Human Rights shall have a "term of office."

Indeed, the Court finds it extremely difficult to conceptualize how an office conceived and created by the Constitution to be independent - as the Commission on Human Rights - and vested with the delicate and vital functions of investigating violations of human rights, pinpointing responsibility and recommending sanctions as well as remedial measures therefor, can truly function with independence and effectiveness, when the tenure in office of its Chairman and Members is made dependent on the pleasure of the President. Executive Order No. 163-A, being antithetical to the constitutional mandate of independence for the Commission on Human Rights has to be declared unconstitutional.

The Court is not alone in viewing Executive Order No. 163-A as containing the seeds of its constitutional destruction. The proceedings in the 1986 Constitutional Commission clearly point to its being plainly at war with the constitutional intent of independence for the Commission. Thus -

"MR. GARCIA (sponsor). Precisely, one of the reasons why it is important for this body to be constitutionalized is the fact that regardless of who is the President or who holds the executive power, the human rights issue is of such importance that it should be safeguarded and it should be independent of political parties or powers that are actually holding the reins of government. Our experience during the martial law period made us realize how precious those rights are and, therefore, these must be safeguarded at all times.

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MR. GARCIA. I would like to state this fact: Precisely we do not want the term or the power of the Commission on Human Rights to be coterminous with the president, because the President's power is such that if he appoints a certain commissioner and that commissioner is subject to the President, therefore, any human rights violations committed under the person's administration will be subject to presidential pressure. That is what we would like to avoid to make the protection of human rights go beyond the fortunes of different political parties or administrations in power."[28]

x x x x x x x x

"MR. SARMIENTO (sponsor). Yes. Madam President. I conferred with the honorable Chief Justice Concepcion and retired Justice J.B.L. Reyes and they believe that there should be an independent Commission on Human Rights free from executive influence because many of the irregularities on human rights violations are committed by members of the armed forces and members of the executive branch of the government. So as to insulate this body from political interference, there is a need to constitutionalize it."[29]

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"MR. SARMIENTO: On the inquiry on whether there is a need for this to be constitutionalized, I would refer to a previous inquiry that there is still a need for making this a constitutional body free or insulated from interference. I conferred with former Chief Justice Concepcion and the acting chairman of the Presidential Committee on Human Rights, retired Justice J.B.L. Reyes, and they are one in saying that this body should be constitutionalized so that it will be free from executive control or interferences, since many of the abuses are committed by the members of the military or the armed forces." [30]

x x x x x x x x

"MR. SARMIENTO. Yes. Congress can create this body, but as I have said, if we leave it to Congress, this commission will be within the reach of politicians and of public officers and that to me is dangerous. We should insulate this body from political control and political interference because of the nature of its functions - to investigate all forms of human rights violations which are principally committed by members of the military, by the Armed Forces of the Philippines." [31]

x x x x x x x x

"MR. GARCIA. The critical factor here is Political control, and normally, when a body is appointed by Presidents who may change, the commission must remain above these changes in political control. Secondly, the other important factor to consider are the armed forces, the police forces which have tremendous power at their command and, therefore, we would need a commission composed of men who also are beyond the reach of these forces and the changes in political administration." [32]

x x x x x x x x

"MR. MONSOD. Yes, it is the committee's position that this proposed special body, in order to function effectively, must be invested with an independence that is necessary not only for its credibility but also for the effectiveness of its work. However, we want to make a distinction in this Constitution. Maybe what happened was that it was referred to the wrong committee. In the opinion of the committee, this need not be a commission that is similar to the three constitutional commissions like the COA, the COMELEC, and the Civil Service. It need not be in that article." [33]

x x x x x x x x

"MR. COLAYCO. The Commissioner's earlier objection was that the Office of the President is not involved in the project. How sure are we that the next President of the Philippines will be somebody we can trust? Remember, even now there is a growing concern about some of the bodies, agencies and commission created by President Aquino." [34]

x x x x x x x x

"x x x. Leaving to Congress the creation of the Commission on Human Rights is giving less importance to a truly fundamental need to set up a body that will effectively enforce the rules designed to uphold human rights." [35]

PETITIONER BAUTISTA MAY OF COURSE BE REMOVED BUT ONLY FOR CAUSE

To hold as the Court holds, that petitioner Bautista is the lawful incumbent of the office of Chairman of the Commission on Human Rights by virtue of her appointment, as such, by the President on 17 December 1988, and her acceptance thereof, is not to say that she cannot be removed from office before the expiration of her seven (7) year term. She certainly can be removed but her removal must be for cause and with her right to due process properly safeguarded. In the case of *NASECO vs. NLRC* [36] this Court held that before a rank-and-file employee of the NASECO, a government-owned corporation, could be dismissed, she was entitled to a hearing and due

process. How much more, in the case of the Chairman of a constitutionally mandated INDEPENDENT OFFICE, like the Commission on Human Rights.

If there are charges against Bautista for misfeasance or malfeasance in office, charges may be filed against her with the Ombudsman. If he finds a prima facie case against her, the corresponding information or informations can be filed with the Sandiganbayan which may in turn order her, suspension from office while the case or cases against her are pending before said court.[37] This is due Process in action. This is the way of a government of laws and not of men.

A FINAL WORD

It is to the credit of the President that, in deference to the rule of law, after petitioner Bautista had elevated her case to this Tribunal. Her Excellency merely designated an Acting Chairman for the Commission on Human Rights (pending decision in this case) instead of appointing another permanent Chairman. The latter course would have added only more legal difficulties to an already difficult situation.

WHEREFORE, the petition is GRANTED. Petitioner Bautista is declared to be, as she is, the duly appointed Chairman of the Commission on Human Rights and the lawful incumbent thereof, entitled to all the benefits, privileges and emoluments of said office. The temporary restraining order heretofore issued by the Court against respondent Mallillin enjoining him from dismissing or terminating personnel of the Commission on Human Rights is made permanent.

SO ORDERED.

Narvasa, Melencio-Herrera, Paras, Feliciano, Gancayco, Bidin, Cortes, and Regalado, JJ., concur.

Fernan, C.J., no part, having administered petitioner's oath of office.

Gutierrez, Jr., Cruz, and Grino-Aquino, JJ., see dissent.

Sarmiento, J., no part, respondent Mallillin is her godson.

Medialdea, J., dissents in conformity with the dissenting opinion of J. Grino-Aquino.

[1] G.R. No. 79974, 17 December 1987, 156 SCRA 549

[2] See Section 2(B), Section 2(C), and Section 2(D), Article IX, 1987 Constitution.

[3] Annex A, Petition, Rollo, p.8

[4] Sec. 17(1), Art. XIII. 1987 Constitution

[5] Annex B, Petition, Rollo, p. 9

[6] Annex C, Petition, Rollo, p. 10

[7] Annex D, Petition, Rollo, pp. 11-13

[8] Annex D-1, Petition, Rollo, p. 14.

[9] Annex E, Petition, Rollo, PP. 15-16

[10] Emphasis supplied

[11] Annex 1, Commission's comment, Rollo, p. 53

[12] Annex 2. Commissions comment, Rollo, p. 54

- [13] Annex 3, Commission's comment, Rollo, p. 55
- [14] Rollo, p. 5
- [15] Rollo, pp. 5-6
- [16] Resolution of 2 February 1989, Rollo, p. 17
- [17] Resolution of 9 February 1989, Rollo, p. 92
- [18] Rollo, pp. 145-150
- [19] Rollo, pp. 100-144
- [20] Rollo, pp. 153-183
- [21] Resolution of 28 February 1989, Rollo, p. 183-A
- [22] Rollo, pp. 189-201
- [23] 1 Cranch 60, 2 Law Ed., US. 5-8
- [24] Official Gazette, Vol. 83. July 29, 1987, p. 3307
- [25] Official Gazette, Vol. 83. May 11, 1987, p. 2270
- [26] 100 Phil. at 683
- [27] 100 Phil. at 694
- [28] Record of the 1986 Constitutional Commission, Vol. 3, August 26, 1986, p. 718
- [29] Ibid., p. 728
- [30] Ibid., p. 730
- [31] Ibid., p. 734
- [32] Ibid., p. 737
- [33] Ibid., p. 743
- [34] Ibid., p. 747
- [35] Ibid., p. 748
- [36] G.R. No. 69870, *Naseco vs. NLRC*; G.R. No. 70295, *Eugenia C. Credo vs. NLRC*, 29 November 1988
- [37] Sec. 13. Rep. Act No. 3019: *People of the Philippines vs. Hon. Rodolfo B. Albano*, G.R. No. L-45376-77, July 26, 1988; *Luciano vs. provincial Governor*, 20 SCRA 516

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DISSENTING OPINION

CRUZ, J.:

This is as good a time as any to re-examine our ruling in *Sarmiento v. Mison*, which was adopted by the Court more than a year ago over two dissents. The President of the Philippines has taken a second look at it, and so too has the Commission on Appointments representing both Houses of the Congress of the Philippines. It appears that they are not exactly certain now that the decision in that case was correct after all. I believe it will not be amiss for us too, in a spirit of humility, to read the Constitution again on the possibility that we may have misread it before.

The ponencia assumes that we were right the first time and that the *Mison* case is settled - there is no need to re-examine it. It therefore approaches the problem at hand from another perspective and would sustain the petitioner on an additional ground.

The theory is that the petitioner's first appointment on 17 December 1988 was valid even if not confirmed, conformably to *Mison*, and could not be replaced with the second appointment on 14 January 1989 because there was no vacancy to fill. By this reasoning, the opinion would deftly avoid the question squarely presented to the Court, viz., whether or not the Chairman of the Commission on Human Rights is subject to confirmation as required now by both the President of the Philippines and the Commission on Appointments. In effect, we are asked to reconsider the *Mison* ruling in the light of this supervening significant albeit decidedly not controlling circumstance.

The majority makes its ratiocination sound so simple, but I find I am unable to agree. I think we must address the legal question frontally instead of falling back on a legal sleight-of-hand of now-you-see-it-now-you-don't.

As one who never agreed with the *Mison* ruling in the first place, I suspect that the seeming diffidence in applying it categorically to the case at bar is due to a degree of uneasiness over its correctness. I think this is the reason another justification had to be offered to bolster *Mison*.

In my dissent in *Mison*, I specifically mentioned the Chairman of the Commission on Human Rights as among the important officers who would not have to be confirmed if the majority view were to be followed. By contrast, and inexplicably, the colonel in the armed forces would need confirmation although he is not a constitutional officer with the serious responsibilities of the former. Also not to be confirmed are the Governor of the Central Bank unlike the relatively minor multisectoral representative of the regional consultative commission, and the Undersecretary of Foreign Affairs although the consul, who is his subordinate, would need confirmation. When I pointed to these incongruous situations, I was told it was not our place to question the wisdom of the Constitution. What I was questioning was not the wisdom of the Constitution but the wisdom of our interpretation which I said would lead to absurd consequences. But only Justice Gutierrez agreed with me.

Now the chickens have come home to roost. The petitioner asks us to unequivocally apply our own ruling in *Mison*, but we are equivocating. The ponencia would sustain the petitioner by a circumlocution, such as it is, as if it does not think *Mison* will suffice for its conclusion.

As I see it, the submission of the petitioner's appointment to the Commission on Appointments is a clear indication that the President of the Philippines no longer agrees with the *Mison* ruling, at least insofar as it applies to the present case. Significantly, the Commission on Appointments, which was also aware of *Mison*, has as clearly rejected it by acting on the appointment. These meaningful developments must give us pause. We may have committed an error in *Mison*, which is bad enough, and may be persisting in it now, which is worse.

Coming now to the theory of the majority, I regret I am also unable to accept it. Consistent with my view in

Mison, I submit that what President Aquino extended to the petitioner on 17 December 1988 was an ad interim appointment that although immediately effective upon acceptance was still subject to confirmation. I cannot agree that when the President said the petitioner could qualify and enter into the performance of her duties, "all that remained for Bautista to do was to reject or accept the appointment." In fact, on the very day it was extended, the ad interim appointment was submitted by the President of the Philippines to the Commission on Appointments "for confirmation."

The ponencia says that the appointment did not need any confirmation, being the sole act of the President under the Mison ruling. That would have settled the question quite conclusively, but the opinion goes on to argue another justification that I for one find unnecessary, not to say untenable. I sense here a palpable effort to bolster Mison because of the apprehension that it is falling apart.

Of course, there was no vacancy when the nomination was made on 14 January 1989. There is no question that the petitioner was still validly holding the office by virtue of her ad interim appointment thereto on 17 December 1988. The nomination made later was unnecessary because the ad interim appointment was still effective. When the Commission on Appointments sent the petitioner the letters dated 9 January 1989 and 10 January 1989 requiring her to submit certain data and inviting her to appear before it, it was acting not on the nomination but on the ad interim appointment. What was disapproved was the ad interim appointment, not the nomination. The nomination of 14 January 1989 is not in issue in this case. It is entirely immaterial. At best, it is important only as an affirmation of the President's acknowledgment that the Chairman of the Commission on Human Rights must be confirmed under Article VII, Section 16 of the Constitution.

It does not follow, of course, that simply because the President of the Philippines has changed her mind, and with the expressed support of the Commission on Appointments, we should docilely submit and reverse Mison. That is not how democracy works. The Court is independent. I do suggest, however, that the majority could have erred in that case and that the least we can do now is to take a more careful look at the decision. Let us check our bearings to make sure we have not gone astray. That is all I ask.

I repeat my view that the Chairman of the Commission on Human Rights is subject to confirmation by the Commission on Appointments, for the reasons stated in my dissent in Mison. Accordingly, I vote to DENY the petition.

Bautista vs Salonga : 86439 : April 13, 1989 : J. Gutierrez, Jr : En Banc : Dissenting Opinion Clean Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 st1:#{behavior:url(#ieooui) } /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt; mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

DISSENTING OPINION

GUTIERREZ JR., J.:

With all due respect for the contrary view of the majority in the Court, I maintain that it is asking too much to expect a constitutional ruling which results in absurd or irrational consequences to ever become settled.

The President and Congress, the appointees concerned, and the general public may in time accept the Sarmiento III v. Mison ruling because this Court has the final word on what constitutional provisions are supposed to mean but the incongruity will remain sticking out like a sore thumb. Serious students of the Constitution will continue

to be disturbed until the meaning of the consent power of the Commission on Appointments is straightened out either through a re-examination of this Court's decision or an amendment to the Constitution.

Section 16, Article VII of the Constitution consists of only three sentences. The officers specified in the first sentence clearly require confirmation by the Commission on Appointments. The officers mentioned in the third sentence just as clearly do not require confirmation. The problem area lies with those in the second sentence.

I submit that we should re-examine the three groups of presidential appointees under the three sentences of Section 16.

The first group are the heads of executive departments, ambassadors, other public ministers and consuls, officers of the armed forces from colonel or naval captain, and other officers whose appointments are vested in the President by the Constitution. The first sentence of Section 16 state they must be confirmed by the Commission on Appointments.

The third group are officers lower in rank whose appointments Congress has by law vested in the President alone. They need no confirmation.

The second group of presidential appointees are "all other officers of the Government whose appointments are not otherwise provided for by law and those whom he may be authorized by law to appoint." To which group do they belong? - Group 1 requiring confirmation or Group 3 where confirmation is not needed?

No matter how often and how long I read the second sentence of Section 16, I simply cannot associate the officers mentioned therein as forming part of those referred to in the third sentence.

Why am I constrained to hold this view?

(1) If the officers in the first group are the only appointees who need confirmation, there would be no need for the second and third sentences of Section 16. They become superfluous. Any one not falling under an express listing would need no confirmation. I think the Court is wrong in treating two carefully crafted and significant provisions of the fundamental law as superfluities. Except for the most compelling reasons, which do not exist here, no constitutional provision should be considered a useless surplusage.

(2) As strongly stressed by Justice Isagani Cruz here and in our earlier dissent, the majority view results in the absurd consequence where one of several hundred colonels and naval captains must be confirmed but such important officers as the Governor of the Central Bank with broad powers over the nation's economy and future stability or the Chairman of the Commission on Human Rights whose office calls for no less than a constitutional mandate do not have to be scrutinized by the Commission on Appointments. Why should a minor consul to Timbuktu, Mali need the thorough scrutiny during the confirmation process while the Undersecretary of Foreign Affairs who sends him there and who exercises control over his acts can be appointed by the President alone? Why should we interpret Section 16 in such a strange and irrational manner when no strained construction is needed to give it a logical and more traditional and understandable meaning?

(3) The second sentence of Section 16 starts with, "He shall also appoint x x x." Whenever we see the word "also" in a sentence, we associate it with preceding sentences, never with the different sentence that follows. On the other hand, the third sentence specifies "other officers lower in rank" who are appointed pursuant to law by the President "alone." This can only mean that the higher ranking officers in the second sentence must also be appointed with the concurrence of the Commission on Appointments. When the Constitution requires Congress to specify who may be appointed by the President alone, we should not add other and higher ranking officers as also appointed by her alone. The strained interpretation by the Court's majority makes the word "alone" meaningless if

the officers to whom "alone" is not appended are also included in the third group.

(4) The third sentence of Section 16 requires a positive act of Congress which vests an appointment in the President alone before such an appointment is freed from the scrutiny of the Commission on Appointments. By express constitutional mandate, it is Congress which determines who do not need confirmation. Under the majority ruling of the Court, if Congress creates an important office and requires the consent of the Commission before a presidential appointment to that office is perfected, such a requirement would be unconstitutional. I believe that the Constitution was never intended to so restrict the lawmaking power. The Court has no jurisdiction to limit the plenary lawmaking power of the people's elected representatives through an implied and, I must again add, a strained reading of the plain text of Section 16. Any restriction of legislative power must be categorical, express, and specific -- never implied or forced.

(5) The Constitution specifies clearly the presidential appointees who do not need confirmation by the Commission. The reason for non-confirmation is obvious. The members of the Supreme Court and all lower courts and the Ombudsman and his deputies are not confirmed because the Judicial and Bar Council screens nominees before their names are forwarded to the President. The Vice-President as a cabinet member needs no confirmation because the Constitution says so. He or she is chosen by the nation's entire electorate and is only a breath away from the Presidency. Those falling under the third sentence of Section 16, Article VII do not have to be confirmed because the Constitution gives Congress the authority to free lower ranking officials whose positions are created by law from that requirement. I believe that we in the Court have no power to add by implication to the list of presidential appointees whom the Constitution in clear and categorical words declares as not needing confirmation.

(6) As stated in my dissent in *Sarmiento III v. Mison*, the Commission on Appointments is an important constitutional body which helps give fuller expression to the democratic principles inherent in our presidential form of government.

There are those who would render innocuous the Commission's power or perhaps even move for its abolition as a protest against what they believe is too much horsetrading or sectarian politics in the exercise of its functions. Since the President is a genuinely liked and popular leader, personally untouched by scandal, who appears to be motivated only by the sincerest of intentions, these people would want the Commission to routinely rubberstamp those whom she appoints to high office.

Unfortunately, we cannot have one reading of Section 16 for popular Presidents and another interpretation for more mediocre, disliked, and even abusive or dictatorial ones. Precisely, Section 16 was intended to check abuse or ill-considered appointments by a President who belongs to the latter class.

It is not the judiciary and certainly not the appointed bureaucracy but Congress which truly represents the people. We should not expect Congress to act only as the selfless idealists, the well-meaning technocrats, the philosophers, and the coffee-shop pundits would have it move. The masses of our people are poor and underprivileged, without the resources or the time to get publicly involved in the intricate workings of Government, and often ill-informed or functionally illiterate. These masses together with the propertied gentry and the elite class can express their divergent views only through their Senators and Congressmen. Even the buffoons and retardates deserve to have their interests considered and aired by the people's representatives. In the democracy we have and which we try to improve upon, the Commission on Appointments cannot be expected to function like a mindless machine without any debates or even imperfections. The discussions and wranglings, the delays and posturing are part of the democratic process. They should never be used as arguments to restrict legislative power where the Constitution does not expressly provide for such a limitation.

The Commission on Human Rights is a very important office. Our country is beset by widespread insurgency, marked inequity in the ownership and enjoyment of wealth and political power, and dangerous conflicts arising from ideological, ethnic and religious differences. The tendency to use force and violent means against those who hold opposite views appears irresistible to the holders of both governmental and rebel firepower.

The President is doubly careful in the choice of the Chairman and members of the Commission on Human Rights. Fully aware of the ruling in *Sarmiento III v. Mison*, she wants the appointments to be a joint responsibility of the Presidency and Congress, through the Commission on Appointments. She wants a more thorough screening process for these sensitive positions. She wants only the best to survive the process.

Why should we tell both the President and Congress that they are wrong?

Again, I fail to see why the captain of a naval boat ordered to fire broadsides against rebel concentrations should receive greater scrutiny in his appointment than the Chairman of the Human Rights Commission who has infinitely more power and opportunity to bring the rebellion to a just and satisfactory end.

But even if I were to agree with the *Sarmiento III v. Mison* ruling, I would still include the Chairman of the Human Rights Commission as one of the "other officers whose appointments are vested in him in this Constitution" under the first sentence of Section 16, Article VII. Certainly, the chairman cannot be appointed by Congress or the Supreme Court. Neither should we read Article XIII of the Constitution as classifying the chairman among the lower ranking officers who by law may be appointed by the head of an executive department, agency, commission, or board. The Constitution created the independent office. The President was intended to appoint its chairman.

I, therefore, regretfully reiterate my dissent from the *Sarmiento III v. Mison* ruling and join in the call for a re-examination of its doctrine.

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