

ISABELO J. ASTRAQUILLO, PETITIONER, VS. RAUL MANGLAPUS, THE BOARD OF FOREIGN SERVICE ADMINISTRATION (MANUEL T. YAN, JOSE D. INGLES, ROSALINDA V. TIRONA, ERNESTO GARRIDO, FELIPE ...

G.R. No. 88183. October 03, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

As the caption indicates, this decision deals with five cases. The cases have been consolidated and jointly considered because they all turn upon a common legal issue, i.e., the validity of the termination, by authority of the President of the Philippines, of the petitioners' appointments as "political" or "non-career" members of the country's Foreign Service. Stated otherwise, the common issue is whether or not their service as Philippine diplomats was under the circumstances, at the pleasure of the president, terminable without cause or need of investigation.

G.R. Nos. 88183 and 88781: Isabelo Astraquillo

Astraquillo was appointed by the President of the Philippines on July 22, 1986 as Ambassador Extraordinary and Plenipotentiary and Chief of Mission (II) to the United Arab Emirates (UAE).[1] After he had occupied the post for two years or so, a confidential memorandum was filed with the Home Office by Atty. Roy Seneres, the Philippine Labor Attache to the United Arab Emirates, accusing Astraquillo, his wife and cousin-in-law of improper interference with his (Seneres') functions.[2] On instructions of the Board of Foreign Service Administration (BFSA) the matter was investigated by Ambassador Pacifico Castro from March 28 to 31, 1989.[3] Thereafter, by Memorandum dated April 11, 1989, the Secretary of Foreign Affairs recommended to the President the termination of Astraquillo's services as ambassador. The recommendation was "APPROVED by authority of the President." [4] Astraquillo was then notified (on April 18, 1989) of the termination of his services effective immediately,[5] and (on May 8, 1989) of the designation of Counsellor Donato Felicio as Charges D'affaires effective May 17, 1989.[6]

Astraquillo sought and obtained from the Secretary of Foreign Affairs an extension of his services up to May 31, 1989.[7] But on the same day that the telex message extending his services was transmitted, May 12, 1989, Astraquillo filed the petition for certiorari at bar, challenging his removal from his post and the designation of Felicio as Charges D'Affaires. This was docketed as G.R. No. 88183. After Ambassador Fortunato D. Oblena was appointed to replace him as the country's Ambassador Extraordinary and Plenipotentiary to the UAR, Astraquillo filed with this Court a petition for quo warranto contesting the appointment. This second case was docketed as G.R. No. 88781.

His basic thesis is that the Foreign Affairs Secretary had no power qua department head, and without prior authorization of the President, to terminate his services, he being a presidential appointee; and under the Foreign Service Code of 1983, his removal could be predicated only upon good cause duly established at a hearing of

which he was entitled to notice and an opportunity to defend. Corollarily, the designation of a replacement for him, either in a temporary or permanent capacity, was also null and void.

G.R. No. 88467: Alunan C. Glang

Alunan Glang was appointed by President Aquino on September 11, 1986 as Ambassador Extraordinary and Plenipotentiary and Chief of Mission (Class I) to Kuwait,[8] and assumed his post on January 11, 1987.[9]

Two years afterwards, or on May 27, 1989, he received a telex message from the Secretary of Foreign Affairs informing him that his services as ambassador and chief of mission to Kuwait had been terminated and directing him to vacate his post "on or before June 30, 1989." [10] The message further advised that the termination of his services was "explicit in a Memorandum dated 18 May 1989" a copy of which would be furnished him by telefax. The memorandum referred to was one signed by Secretary Raul Manglapus recommending the "recall and subsequent termination of the services of Ambassador Alunan C. Glang as Ambassador to the State of Kuwait **," which was approved by Executive Secretary Catalino Macaraig, Jr. "BY AUTHORITY OF THE PRESIDENT." [11]

On May 30, 1989 Glang sent communications separately addressed to the Office of the President and the Secretary of Foreign Affairs stating that he considered his separation from the service as "illegal and violative of R.A. No. 704, known as the Foreign Service Act of 1952," as amended, he being entitled to security of tenure and removable only for cause and not at the pleasure of the President. [12] The Foreign Secretary's reply (sent by telex on June 2, 1989) was prompt and simple: the notice of termination of Glang's services "dated 26 May 1989, stands;" he should "accept the President's decision" and seek redress "only through the proper courts of law" if he felt he had been "unlawfully treated." [13]

Glang thereupon filed the petition for certiorari and prohibition at bar. For relief, he relies upon substantially the same arguments as those advanced by Astraquillo, supra. [14]

G.R. Nos. 88672 and 88916: Alejandro Melchor, Jr.

Alejandro Melchor, Jr. was also appointed by President Aquino Ambassador Extraordinary and Plenipotentiary on June 27, 1986. [15] On July 3, 1986, Vice-President Salvador H. Laurel, then Foreign Affairs Minister, assigned him to Moscow, U.S.S.R. [16] This post Melchor assumed on September 4, 1986, [17] after which he received another appointment from the President on October 15, 1986 as Chief of Mission, Class 1. [18]

On July 25, 1988, seven (7) officers and employees of the Philippine Embassy in Moscow [19] filed a complaint with the Department of Foreign Affairs against Melchor and two others [20] for "acts inimical to the foreign Service, in violation of the Foreign Service Code (and) blatant disregard of COA rules and regulations and the Civil Service Code." [21] The complaint was investigated by Ambassador Ernesto Garrido, Director General for Financial Management Services of the Foreign Affairs Department, by direction of the Secretary. [22] Garrido's report to the Board of Foreign Service Administration (BSFA) of the Foreign Affairs Department dealt with ten of the fourteen (14) charges but failed to resolve four (4) others. [23] Said Board, after deliberating on the report, directed the filing of a charge sheet against Melchor relative to the four (4) unresolved accusations as to which the latter had filed no written answer; [24] and accordingly, the Director General for Personnel and Administrative Services formally charged Melchor, under date of January 2, 1989, with the following offenses, to wit: [25]

- 1) establishment of a private restaurant on the third floor of the Philippine Embassy Building without prior notice and approval of the Home Office;
- 2) issuance of visas to persons not qualified to travel to the Philippines;

- 3) appointment and accreditation of Hernani Jover and Donato de Guzman as Counsellors contrary to existing laws; and
- 4) leaving his post without permission from the Home Office from October to December 1987 and January 22-26, 1988.

By letter dated January 10, 1989, Melchor told the Foreign Affairs Secretary there was "no basis for me to reply under oath" (to the charges, as required) as "said complaint has not been subscribed and sworn to according to the provisions of P.D. 807," drawing attention, however, to his reply "to the complaint on 22 September 1988 Dispatch No. AM-193-88, Subject: Comments to complaint." [26] He also wrote to President Aquino on the same date regarding the "unfounded charges" against him and requesting that the matter be resolved before his return to his post. [27] He wrote another letter to President Aquino, dated January 19, 1989, this time under oath, inter alia submitting his answers to the four unresolved charges against him since, according to him, "it is only the President that can decide my case." [28] Melchor's letter was referred to the Secretary [29] who, acting thereon, issued Memorandum No. 4230 declaring his approval of the BFSA recommendation that Melchor: (a) be allowed to forthwith return to his Moscow post to prepare for the President's state visit, (b) be thereafter transferred to another post, and (c) be reprimanded on account of the four charges against him. [30]

The affair was, however, far from ended. On February 10, 1989, Melchor advised the Secretary in writing that he would indeed return to Moscow but protested the reprimand administered to him and his announced transfer to another post after the state visit, claiming that as a "presidential appointee," he was beyond the disciplinary authority of the BFSA, and that, furthermore, he had been denied due process. [31] On the same day he directed an "APPEAL" to the President praying that she "nullify, after review by an impartial body ** the illegal action of Sec. Manglapus and the Board and return ** (him to his) post in Moscow without the stigma of a reprimand **." [32]

It appears that the BFSA re-examined the evidence against Melchor and came to the conclusion that all charges against him should be dropped as there was "no basis" therefor and consequently, his appeal had been rendered moot and academic. [33] This was communicated to the Foreign Affairs Secretary on June 9, 1989 and thence to the Office of the President, with the observation that Melchor's appeal had indeed become moot and academic. On the basis thereof, Executive Secretary Macaraig "terminated" the administrative case against Melchor, by Order dated June 9, 1989. [34]

It appears, however, that about a week earlier, or on May 29, 1989, the Secretary of Foreign Affairs had submitted a Memorandum to the President recommending the termination of the services of Melchor -- described as "a political (non-career) Ambassador" -- "as Chief of Mission and as Ambassador" to the U.S.S.R, and that he "should vacate his post by 30 June 1989." [35] This was "APPROVED by authority of the President" on June 13, 1989 by Executive Secretary Macaraig. [36]

On June 28, 1989 Melchor presented the petition at bar, grounded mainly on the proposition that the termination of his services by Foreign Affairs Secretary Manglapus after he had been absolved of the charges against him, was unwarranted and illegal, and that the authority to so terminate his services was "vested exclusively on the President herself **."

Subsequently, Melchor filed a second petition, docketed as G.R. No. 88916, seeking invalidation of the reassignment or transfer of Ambassador Juan V. Saez from Amman, Jordan to the Philippine Embassy at Moscow. [37]

Against this factual background, the petitioners submit the following common contentions: [38]

- 1) that the removals from the service were not made by that President personally and directly;
- 2) that the removals did not state a cause explicitly prescribed by the Foreign Service Act or the Civil Service Law;
- 3) that the removals were effected without due process;
- 4) the petitioners were appointed right after the so-called "EDSA Resolution," and when Vice-President Laurel was Minister of Foreign Affairs; and
- 5) all were appointed Chief of Mission Class I (except Astraquillo, who was named Class II Chief) and came into Foreign Service "through lateral entry."

The Civil Service Law, Presidential Decree No. 807, classifies employment in Government into "career" and "non-career service." It identifies the peculiar characteristics of each category, and enumerates the positions falling under each class.

Thus, Section 5 of said PD No. 807 states that the "career service" is characterized by:

- "(1) entrance based on merit and fitness, to be determined far as practicable by competitive examinations, or based on highly technical qualifications;
- (2) opportunity for advancement to higher career positions; and
- (3) security of tenure."

Section 5 then enumerates the particular positions falling under the Career Service, including, as will be noted, those in the Foreign Service. They are the following:[39]

- "(1) Open Career positions for appointment to which prior qualification in an appropriate examination is required;
- (2) Closed Career positions which are scientific or highly technical in nature; these include the faculty and academic staff of state colleges and universities and scientific and technical positions in scientific or research institutions which shall establish and maintain their own merit systems;
- (3) Positions in the Career Executive Service, namely: Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President;
- (4) Career officers, other than those in the Career Executive Service, who are appointed by the President, such as the Foreign Service Officers in the Ministry of Foreign Affairs;
- (5) Commissioned officers and enlisted men of the Armed forces which shall maintain a separate merit system;
- (6) Personnel of government-owned or controlled corporations, whether performing governmental or proprietary functions, who do not fall under the non-career service; and
- [(7)] Permanent laborers, whether skilled, semi-skilled, or unskilled."

The "Non-Career Service," on the other hand, according to Section 6 of the same PD 807, shall be characterized by:[40]

- "(1) entrance on bases other than those of the usual test of merit and fitness utilized for the career service; and
- (2) tenure which is limited to a period specified by law, or which is coterminous with that of the appointing

authority or subject to his pleasures, or which is limited to the duration of a particular project for which purposes employment was made."

And the officials and employees listed under the Non-Career Service include:

- "(1) Elective officials and their personal or confidential staff;
- (2) Department Heads and other officials of Cabinet rank who hold positions at the pleasure of the President and their personal or confidential staff(s);
- (3) Chairman and members of commissions and boards with fixed terms of office and their personal or confidential staff;
- (4) Contractual personnel or those whose employment in the government is in accordance with a special contract to undertake a specific work or job, requiring special or technical skills not available in the employing agency, to be accomplished within a specific period, which in no case shall exceed one year, and performs or accomplishes the specific work or job, under his own responsibility with a minimum of direction and supervision from the hiring agency; and
- (5) Emergency and seasonal personnel."

By these statutory standards, it seems plain that all three (3) petitioners: Isabelo J. Astraquillo, Alunan C. Glang, and Alejandro Melchor, Jr., pertained to the Non-Career Service. Their appointments to the Foreign Service were made on "bases other than those of the usual test of merit and fitness utilized for the career service;" their entrance was not "based on merit and fitness ** determined ** by competitive examinations, or based on highly technical qualifications." This being so, their "tenure ** (was) coterminous with that of the appointing authority or subject to his pleasures, **."

It is worthy of note that among the officers categorized in the Career Service by the Civil Service Law, PD No. 807, are "Career officers, other than those in the Career Executive Service, who are appointed by the President, such as the Foreign Service Officers in the Ministry of Foreign Affairs." Implicit in this reference to "career officers" in the Ministry (now Department) of Foreign Affairs is the acknowledgment of non-career officers in that ministry (department).

The same distinction between career and non-career officers may be derived by implication from the provisions of the Foreign Service Act of 1952, R.A. No. 708, as amended.

Part B, Title III of said Foreign Service Act deals with the "Career Service Corps ** composed of Foreign Service Officers appointed by the President upon the recommendation of the Secretary," and declares that "(n)o person shall be eligible for appointment (in such corps) unless he has passed such competitive examinations as the Board of Foreign Service examination may prescribe to determine his fitness and aptitude for the work of the service and has demonstrated his loyalty to the Government of the Republic of the Philippines and his attachment to the principles of the Constitution." [41] Those who thus qualify are "certified by the Secretary of Foreign Affairs as eligible for appointment as Foreign Service Officer(s)," and it is exclusively from these officers so certified that the President "shall appoint Foreign Service Officers **." [42]

Now, there are those, like the petitioners, who are appointed to the Foreign Service, without having qualified in the manner just indicated and consequently without having been certified by the Foreign Affairs Secretary as eligible for appointment as Foreign Service Officers. [43] In view of the provisions of law just cited, they certainly do not and cannot be deemed embraced in the Career Service Corps. They can only be regarded then as "non-career officers" or "political appointees" who, as already pointed out, have a "tenure ** coterminous with that of the appointing authority or subject to his pleasures, **."

Melchor discusses at length what he feels to be the distinction between an ambassador and a chief of mission, and argues that whatever might be said about his serving at the pleasure of the President as ambassador, his appointment as chief of mission had undoubtedly given him security of tenure as regards this latter position. He opines that the term, "chief of mission," has two meanings in the Foreign Service Act.

He states that Section 3 (i), Title I of the Act defines the term as "a principal officer appointed by the President of the Philippines, with the consent of the Commission on Appointments, to be in charge of the embassy and legation and other diplomatic mission of the Philippines or any other person assigned under the terms of this act to be minister resident, charge d'affaires, commissioner or diplomatic agent." [44] On the other hand, he says that in other parts of the law ("Title II, Part B, Section I, Part C, Section 1, and Title I, Part B, Section 1") "the use of the term Chief of Mission is in a different context for it refers to the rank and class of the Foreign Service Officer in the enumeration of categories of officers and employees of the foreign service as well as the salary scale." [45]

The discussion fails to demonstrate that, with regard to the petitioners, a chief of mission is indeed significantly different from an ambassador. Petitioners Astraquillo, Glang and Melchor were appointed as ambassadors, respectively, in the United Arab Emirates (UAE), Kuwait, and Moscow. Their appointments as chief of missions in their respective posts simply meant that, as ambassadors extraordinary and plenipotentiary, they were being placed in charge of the embassy or legation therein. Indeed, it seems evident that even without being named chief of mission, the fact that they were the highest ranking official in their respective embassies would operate to place them in charge thereof as a matter of course.

Obviously, however, this aspect of their appointments has no effect on the essential character of their positions as pertaining to the non-career service. Consequently the termination of their connection with the Foreign Service was not dependent on proof of some legally recognized cause therefor, after due notice and hearing -- as in the case of career officers and employees -- but lay entirely within the will of the President, in the exercise of her discretion, and her determination of the wisdom, necessity or convenience of such a step in the national interest, actually a political decision. In making this determination, the President may take account of the recommendation of the Secretary of Foreign Affairs who, as the President's alter ego, heads and controls the Department of Foreign Affairs and supervises and directs all officials and employees assigned abroad. [46]

The petitioners' other argument that their separation from the service is illegal because not effected by the President of the Philippines who alone has the power to do so, is specious. The fact is that it was in truth the President who ordered their removal. The record shows that the President approved the recommendation of the Secretary of Foreign Affairs for the termination of their services. This is shown by the pertinent documents in which the Executive Secretary officially certified that the recommendation for their separation from the service had been "APPROVED by Authority of the President."

Finally, since none of the petitioners has shown any right to be returned to the office from which they had been separated by authority of the President, none of them is entitled to the writ of quo warranto to oust the officials who have since replaced them in their respective posts.

WHEREFORE, the petitions in the cases embraced in this opinion, i.e., G.R. Nos. 88183, 88781, 88467, 88672, 888916, are all DENIED, with costs against petitioners.

Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Fernan, C.J., and Paras J., on leave.

* Hon. Jose D. Ingles, First Undersecretary of Foreign Affairs, has been dropped from the case in view of his retirement from the public service on September 15, 1989.

** Dr. Quisumbing has also been dropped as party respondent, it appearing that she is not a member of the Board of Foreign Service Administration (BFSA).

[1] Annex A, petitions in both cases

[2] Annex B

[3] Annexes C, D and E

[4] Rollo, pp.

[5] Annex F, petition in G.R. No. 88183

[6] Annex H, id.

[7] Annex J, id.

[8] Petition, Annex A

[9] Id., Annexes G and G-1

[10] Id., Annex I

[11] Supplemental Petition, Annex B

[12] Petition, Annexes J and J-1

[13] Id., Annex K

[14] Glang, Astraquillo, and Melchor are represented by the same counsel.

[15] Petition, G.R. No. 88672, Annex A

[16] Id., Annex D

[17] Id., Annex G

[18] Id., Annex B

[19] Namely: Rico Reyes, Emmanuel L. Saluta, Romulo D. Abu, Pantaleon B. Lucas, Raul T. Tejada, Rolex d. Martinez and Carlos S. Cruz

[20] Namely: Counsellor Corazon Belmonte and Mr. Alejandro Liwanag

[21] Id., Annex D-1

[22] The investigation was conducted from October 15 to 25, 1988.

[23] Ibidem

[24] SEE petition, Annexes Q, Q-1 and Q-2

[25] Id., Annex R.

[26] Id., Annex R-1

[27] Id., Annex S

[28] Id., Annex S-2

[29] Id., Annex S-3

[30] Id., Annex T

[31] Id., Annex U

[32] Id., Annex U-1. The appeal, entitled "In Re: Administrative Case against Ambassador Alejandro Melchor, Jr.," was docketed as O.P. No. 4013

[33] Id., Annex O

[34] Id., Annex N-1

[35] Id., Annex N

[36] Ibidem

[37] Comment, G.R. No. 88916, Annex I

[38] Rollo, G.R. Nos. 88183 & 88781, pp. 162, 166

[39] Italics supplied

[40] Italics supplied

[41] Sec. 1

[42] Sec. 3

[43] SEE Opinion No. 82, S. 1954 of the Department of Justice, cited in the Reply dated Nov. 6, 1989, Rollo, pp. 258-260, sustaining the proposition that "the President may also appoint Foreign Affairs Officers without complying with the eligibility requirements under Republic Act No. 708," and pointing out that it is with regard to the Foreign Affairs Officers composing the so-called "career service" that "the law meticulously prescribes the manner and qualifications" for their appointment as such, but no provision "limits or restricts the power of the President to appoint ambassadors, public ministers and consuls in accordance with the Constitution, even without complying with the "manner and qualifications" for appointment of officers in the "career service."

[44] Rollo, G.R. No. 88672, p. 263, reference being made, too, to the definition of the term in Sec. 2, Part A of the Foreign Service Regulations of the Philippines, 1962, to wit: "Chiefs of Mission are diplomatic officers in charge of embassies, legations and other diplomatic missions, and are classified in accordance with their ranks as:

- a) Ambassadors Extraordinary and Plenipotentiary
- b) Envoys extraordinary and Ministers Plenipotentiary
- c) Charge d'Affaires de missi
- d) Charge d'Affaires ad interim"

[45] Id., p. 264, reference being made additionally to Executive Order No. 292, "Instituting the Administrative Code of 1987" (83 O.G. No. 38, Sept. 21, 1987) which in Sec. 35, Chapter 9 of its Title I provides that the "career service composed of Foreign Service Officers * * shall consist of six classes * * including Chief of Mission; and Counsellors," and that a chief of mission "may be assigned as Ambassador Extraordinary and Plenipotentiary, Head of Office in the Department or Deputy Chief of Mission"

[46] Secs. 1, 6 and 7, RA 708, as amended

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