

EDUARDO V. BENTAIN, PETITIONER, VS. THE HON. COURT OF APPEALS, JOSE V. ABUEVA, IN HIS CAPACITY AS PRESIDENT OF THE UNIVERSITY OF THE PHILIPPINES, ERNESTO G. TABUJARA, IN HIS CAP...

G.R. No. 89452. June 09, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

Up for review is the decision dated June 30, 1989 of the Court of Appeals in CA-G.R. SP No. 16931 entitled, “Eduardo V. Bertain, petitioner vs. Jose V. Abueva, in his capacity as President of the University of the Philippines, Ernesto G. Tabujara, in his capacity as Chancellor of the University of the Philippines, and the U.P. Board of Regents,” which dismissed the petition for certiorari, prohibition and mandamus against the U.P. President and the Chancellor of the University.

The petitioner holds a permanent appointment as Chief Security Officer of the U.P. Diliman Police.

On May 5, 1981, a criminal complaint for violation of the Anti-Graft and Corrupt Practices Act was filed against him in the Office of the Tanodbayan.

The case was eventually filed in the Sandiganbayan but it was dismissed by that court on June 18, 1982.

Meanwhile, on July 20, 1981, then U.P. President Edgardo J. Angara issued Administrative Order No. 46 reassigning the petitioner to the Office of the U.P. President to work on the “operationalization” and implementation of the duties and responsibilities of the University Police Force. On the same day, the U.P. President issued Administrative Order No. 46-A clarifying that petitioner would work full-time on the project and that it would be his sole concern and responsibility for the duration of that assignment.

On February 16, 1984, through verbal instructions of the University Secretary, Martin Gregorio, the petitioner was transferred to the Office of the Vice President for Administration. Later, he was assigned to the Office of the Vice Chancellor for Community Affairs where he has remained up to this time.

A series of administrative cases were filed against him in 1981 to 1986. However, all of them (except one for failure to turn over his service firearm), were dismissed for lack of merit and insufficient evidence.

Petitioner wrote several letters/petitions to then U.P. President Angara, the present U.P. President Abueva, Chancellor Tabujara, the Board of Regents, the Civil Service Commission, and the President of the Philippines, all praying for reinstatement or reassignment to his original position in the U.P. Police Force, but to no avail.

On December 21, 1988, respondent Tabujara issued Administrative Order No. 146, creating the U.P. Diliman Security and Safety Commission, and, on December 22, 1988, he issued Administrative Order No. 148 appointing the Commissioners of that Commission. The commission was supposed to be “an advisory and executory body under the direction and administrative control of the Chancellor.” (p. 57, Rollo.) Among its powers and functions

were -

“1. The Commission shall exercise immediate direction, supervision, coordination and control over the UP Diliman Police and all its members as well as civilian personnel thereof, and shall be responsible for their efficiency and general conduct.

“2. It shall supervise all other security activities, service and operations including those of the various private security agency personnel assigned in the University.

“xxx xxx xxx

“7. It shall administer and manage the affairs of the UPDP thru direct control, direction and supervision over the officers and men or each operating section or unit, through a Coordinating Officer between the Commission and the UPDP who shall have no power of control, direction and decision unless expressly delegated, but to see to it that the policies, orders and memoranda, procedures, etc. are carried out.

“8. It shall have the authority to make changes in such assignments and to effect a periodic reshuffle of heads of Sections/Units as well as support personnel whenever the exigencies of the service so require.” (pp. 56-57, Rollo.)

With the approval of respondent Tabujara, the Commission issued General Order No. 1 setting up the organizational structure of the U.P. Diliman Police and abolishing the petitioner’s position as Chief Security Officer.

As the action of the Commission in effect removed him as Chief Security Officer, petitioner filed in this Court on February 7, 1989, a petition for certiorari, prohibition and mandamus against the respondents, which was docketed as G.R. No. 86739. He alleges that Administrative Orders Nos. 146 and 148 and General Order No. 1 are unconstitutional, hence, null and void and prays that he be returned to his position as Chief Security Officer.

We referred the case to the Court of Appeals, where it was docketed as CA-G.R. SP No. 16931, for appropriate determination.

On June 30, 1989, the Court of Appeals dismissed the petition on the ground that the special civil action of certiorari, prohibition and mandamus was not the appropriate remedy. Hence, this petition for review.

The only issue in this case is: whether or not petitioner’s indefinite detail or reassignment in the Office of the U.P. Vice-President for Administration, constitutes a violation of his right to security of tenure.

The petition is impressed with merit.

It should be noted that Administrative Order No. 46 which ordered the petitioner’s detail or reassignment in the Office of the U.P. President clearly specified its purpose: to work on the operationalization and implementation of the University Police Force’s duties and responsibilities. That statement of the specific purpose of his detail proves that it was meant to be temporary, or until he would have completed and submitted his report.

Petitioner’s reassignment was not permanent. It was not a transfer for he was not removed from his position as Chief Security Officer. He was not given a new appointment to a new position with a new title (*Sta. Maria vs. Lopez*, 31 SCRA 637).

Since his position as U.P. Chief Security Officer is a permanent one, he is entitled to security of tenure under the Civil Service Law and the Constitution (*Pamantasan ng Lunsod ng Maynila vs. Court of Appeals*, 140 SCRA 22).

Security of tenure is a fundamental and constitutionally guaranteed feature of our civil service. The mantle of its protection extends not only to employees removed without cause but also to cases of unconsented transfers which

are tantamount to illegal removals (Department of Education, Culture and Sports vs. Court of Appeals, 183 SCRA 555; Ibañez vs. COMELEC, 19 SCRA 1002; Brillantes vs. Guevarra, 27 SCRA 138).

While a temporary transfer or assignment of personnel is permissible even without the employee's prior consent, it cannot be done when the transfer is a preliminary step toward his removal, or is a scheme to lure him away from his permanent position, or designed to indirectly terminate his service, or force his resignation. Such a transfer would in effect circumvent the provision which safeguards the tenure of office of those who are in the Civil Service (Sta. Maria vs. Lopez, 31 SCRA 651; Garcia vs. Lejano, 109 Phil. 116).

Petitioner alleged that as early as 1982, he had completed his report on the operationalization and implementation of the University Police Force's duties and responsibilities, a fact confirmed by the University General Counsel in his memorandum for U.P. President Abueva (pp. 112-121, Rollo). Considering the long duration of petitioner's "reassignment," (approximately ten years) and that its purpose had long been accomplished, there is no more reason to deny his request to be returned to his former position as Chief of the U.P. Diliman Police.

While it is true that under Section 24, paragraph (g) of P.D. No. 807, an employee may be reassigned from one organizational unit to another in the same agency, such reassignment shall not involve a reduction in rank, status or salary.

As Chief Security Officer of the University, the petitioner supervised the operations of the entire police force. His reassignment reduced him to a mere subordinate without authority to supervise anyone, in effect, demoting him in rank and status. As a result of his reassignment, petitioner was excluded from the merit increases given to the employees of the University. Similarly, when the salary standardization law was implemented in the University, he was classified only as SSO III, Grade 18 with a salary of P68,040 per annum, instead of SSO IV, Grade 22 with a salary of P99,000 per annum based on the certification of the Director of the University Human Resources and Development Office. The lower classification was due to the fact that he has not been performing the duties and responsibilities of the Chief Security Officer of the U.P. Diliman Police Force, although he wanted to very much. His detail in the Office of the U.P. President, which he did not seek nor desire, should not prejudice him professionally and financially.

A reassignment that is indefinite and results in a reduction in rank, status and salary, is, in effect, a constructive removal from the service.

Administrative Order No. 146, creating the U.P. Diliman Security and Safety Commission: Administrative Order No. 148, appointing the Commissioners thereof, and General Order No. 1, providing the implementing orders and guidelines, collectively reorganized the U.P. Diliman Police Force and in the process, abolished petitioner's position as Chief Security Officer. Those orders came out only a few months after the University's legal counsel had recommended the restoration of the petitioner to his former position. It appears that said orders were issued to prevent the petitioner from returning to his former position. The petitioner is clearly entitled to the relief he seeks.

WHEREFORE, the petition for certiorari, prohibition and mandamus is GRANTED and the questioned decision of the Court of Appeals is annulled and SET ASIDE. The respondents are ordered to cease and desist from implementing Administrative Orders Nos. 146 and 148 and General Order No. 1 insofar as their implementation would result in the abolition of petitioner's position as Chief Security Officer, and they are further ordered to reinstate the petitioner to his former position as Chief Security Officer of the University of the Philippines in Diliman, Quezon City.

SO ORDERED.

Cruz, (Chairman), Medialdea, and Bellosillo, JJ., concur.

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