

ATTY. RIZAL P. ECHECHE, PETITIONER, VS. THE HON. COURT OF APPEALS, OFFICE OF THE PRESIDENT MALACAÑANG PALACE, MANILA, RESPONDENTS.

G.R. No. 89865. June 27, 1991

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the decision* rendered by the Court of Appeals on April 7, 1989 in CA-G.R. SP No. 15514 entitled "Atty. Rizal P. Echeche, Petitioner vs. Office of the President of the Philippines, Malacañang, Manila, Executive Secretary Catalino Macaraig, and Secretary of the Budget and Management, Respondents," (Annex "A"; pp. 25-31, Rollo), petitioner's Motion for Reconsideration thereof having been denied by the Court of Appeals in its Resolution** dated August 24, 1989. (Annex "B"; p. 33, Rollo)

The uncontroverted facts of the case are:

Atty. Rizal P. Echeche was employed at the Bureau of Mines (now Bureau of Mines and Geo-Sciences) on June 27, 1974. He was, however, included in the lists of alleged undesirable and unfit public servants who were purged under Letter of Instruction No. 309 dated August 22, 1975.

On November 3, 1975, petitioner filed a letter-request for reinstatement with the Appeals Committee created under Executive Order No. 370, series of 1975, which was forwarded by the Office of the President to then Minister of Natural Resources in a letter-referral dated February 8, 1978. This was followed by another letter-request dated July 7, 1982 which was again forwarded to the Minister of Natural Resources and endorsed to the Bureau of Mines. The Bureau of Mines did not give any comment on the petition, neither the Minister of Natural Resources.

Three years lapsed before his letter-request was initially acted upon. The Presidential Staff Director forwarded to then Secretary Jose Leido, Jr., of the Ministry of Natural Resources pertinent papers, relative to the petitions for reinstatement of purged officials and employees of the Department, for action and disposition.

On August 26, 1985, a Memorandum for the Minister of Natural Resources was issued by Moreno B. Cruz, Assistant Secretary for Legal Affairs ordering the reinstatement of Atty. Rizal P. Echeche with payment of backwages "because he was removed from the service without cause." (Annex "F", Rollo, p. 77)

Finally, in a Resolution dated May 2, 1986, the Assistant Secretary for Legal Affairs, Alexander C. Castro, of the Ministry of Natural Resources, signing with authority from the Minister, ordered reinstatement, in the following tenor:

"Wherefore, petitioner shall be reinstated as legal officer in the Bureau of Mines and Geo-Sciences with backwages during the time of separation. However, he shall undergo a physical and psychological examination to determine his fitness as a legal officer; otherwise, petitioner shall be retired for reasons of disability or incapacity and be paid his corresponding benefits." (Comment of the Office of Solicitor General, p. 5; Rollo, p.

108).

On November 18, 1986, petitioner was reemployed as Legal Officer III by the Director of Mines and Geo-Sciences; he was not reinstated to his former position because the functions of Legal Officer II were transferred to Legal Officer III.

Petitioner sought payment of his back salaries, allowances, and bonuses, pursuant to the Resolution of the Department of Natural Resources. The Director of Mines and Geo-Sciences and Minister Carlos G. Dominguez of the Department of Natural Resources recommended payment, thereof. (Ibid., p. 6; Rollo, p. 109)

The Department of Budget and Management referred the matter to the Office of the Executive Secretary. The Office of the Executive Secretary denied request for payment because petitioner was merely reemployed, not reinstated as he was never recommended by the Appeals Committee for reinstatement. His new appointment was made pursuant to the grant of executive clemency and LOI 647 which confined such presidential clemency to reemployment not reinstatement.

Petitioner's Motion for Reconsideration was denied by Deputy Executive Secretary Magdangal B. Elma, in the following tenor:

"Based on the foregoing, the request of Echeche for payment of back salaries, allowances, and bonuses was denied as he was then 'considered under suspension without pay'." (Ibid., p. 7; Rollo, p. 110).

On August 20, 1988, Atty. Rizal Echeche filed a Petition for Review on Certiorari directly with the Supreme Court seeking the annulment of the decision of the Office of the President. The Supreme Court referred the case to the Court of Appeals.

The Court of Appeals dismissed the petition for lack of merit stating that "there is no legal basis for granting the petitioner his request for back salaries, allowances and bonuses" (Annex "A", Decision of Court of Appeals, p. 7; Rollo, p. 31).

Petitioner filed a Motion for Reconsideration but the Court of Appeals denied the same. Hence, this petition.

Petitioner, in his Reply to Comment, submits the following issues:

I

THE HON. COURT OF APPEALS ERRED IN HOLDING THAT THERE IS NO LEGAL BASIS FOR GRANTING PETITIONER'S REQUEST FOR (SIC) BACKSALARIES, ALLOWANCES AND BONUSES.

II

THE HON. COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENT-PUBLIC OFFICIALS DID NOT COMMIT ANY ERROR IN DENYING PETITIONER'S REQUEST FOR THE PAYMENT OF BACK SALARIES, BONUSES AND ALLOWANCES.

III

THE HON. COURT OF APPEALS ERRED IN APPLYING THE CASE OF "CLEMENTE VS. COA, G.R. No. L-47793, March 30, 1984" IN THIS CASE.

IV

THE HON. COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE NOT HERETOFORE DECIDED BY THE HON. SUPREME COURT. (p. 128, Rollo)

Under the 1973 Constitution, Article XII-B, Section 3, provides that "no officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law." This provision guarantees that the suspension or dismissal can be made only "for cause as provided by law." Dismissal for cause does not necessarily mean that the dismissed officer or employee must be charged in court or administratively and must be given his day in court or afforded due process of law. Dismissal for cause implies that there is reasonable ground provided by law to justify the dismissal of an officer or employee.

In the case at bar, petitioner was dismissed under Letter of Instruction No. 309. Petitioner contends that Letter of Instruction No. 309 is unconstitutional because it violates the above constitutional mandate. He further argues that there was no valid cause to purge him because "there was no pending administrative, civil, or criminal charges against him." (Petition, p. 5; Rollo, p. 11)

Said issue has long been settled in the case of *Clemente vs. Commission on Audit* (128 SCRA 297), which the appellate court correctly applied. In that case, the petitioner was also purged under LOI 309. There was no pending administrative charge, or any disciplinary action against him. Eventually he was reinstated, and he also sought the payment of back salaries. His request was denied by the executive department, which denial was affirmed by the Supreme Court. The Supreme Court, through Justice (later Chief Justice) Makasiar, ruled:

"As we see it, the "September 1975 Purge" is part of the process of cleaning up the government machineries, which upon the imposition of martial law, the President had taken to task. xxx Too well known fact is the evil that plagued government service. Graft and corruption among government employees and officers were too rampant in almost all offices. Numerous, public officials, using their high positions for personal gain at the expense of the public, have not lived up to the public trust. The program of reforms of the President in the New Society by instilling discipline in the people, particularly those in the government service, and by weeding out from the service employees and officials considered notoriously undesirable were envisioned as an answer to the long felt need for restoring the confidence of the people in the government."

The constitutionality of LOI 309 was settled in the same case:

"The President, of course, did not order the "September 1975 purge" by a snap of his fingers. As adverted to earlier, the September, 1975 purge was made pursuant to Letter of Instruction No. 309, series of 1975 which was issued under the authority of Section 9, Article XVII of the Constitution, which vests upon the incumbent President the power to remove officials and employees of the existing government. Pertinent portion of Section 9 reads:

"Sec. 9. All officials and employees in the existing Government of the Republic of the Philippines shall continue in office unless otherwise provided by law or decree by the incumbent President of the Philippines xxx."

There is no reason for Us to deviate from settled rules and jurisprudence. LOI 309 is constitutional.

The arguments of petitioner are premised on the unconstitutionality of LOI 309. His request for payment of back salaries, bonuses and allowances depends upon his argument that his "purge" from the public service in 1973 was in gross violation of his constitutional rights to due process and therefore patently illegal. As shown in the previous discussion, LOI 309 is constitutional, hence the dismissal of Atty. Rizal P. Echeche was not illegal.

Petitioner's right to back salaries, allowances and bonuses is without legal basis. The Director of the Bureau of Mines in dismissing petitioner pursuant to LOI 309, cannot be said to have acted in bad faith and with grave abuse

of discretion. There was no ill will or personal malice in dismissing petitioner. In the absence of proof that the Director acted in bad faith and with grave abuse of discretion, petitioner is not entitled to back salaries, bonuses and allowances. (*Octot vs. Ibanez, et al.*, 111 SCRA 79).

Letter of Instruction 647 gave an opportunity for the petitioner to be employed back. Section 1 of LOI 647 states:

"1. All officials and employees who were not recommended for reinstatement by the Appeals Committee but are qualified to reenter the government service are hereby granted executive clemency for purpose of reemployment subject to Civil Service Law and Rules if recommended by their respective department heads."

The grant of executive clemency under LOI 647 was for the purpose of reemployment, not reinstatement. Reemployment implies that one is hired anew, which does not carry with it payment of backwages.

To bolster his position in his last assignment of errors, petitioner argues that the Court of Appeals ruled on an order which has already become final and executory. He reasoned that the order of the Minister of Natural Resources, reinstating the petitioner and ordering the payment of his backwages, has attained finality. The Secretary of Budget and Management failed to file any motion for reconsideration from the approval of payment. The arguments of petitioner are not supported by facts. The order of the Minister of Natural Resources did not attain finality, in the sense that it may no longer be reviewed. The acts of Ministers (now Cabinet Secretaries) are reviewable by the President in the exercise of his power of control.

"The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed." (1987 Constitution, Art. VII, Sec. 17)

"Sec. 10. The President shall have control of the ministries." (1973 Constitution, Art. VII)

Control means "the power of an officer to alter or modify or nullify, or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter." (*Hebron vs. Reyes*, 104 Phil. 175) The President can, by virtue of his power of control, review, modify, alter or nullify any action, or decision of his subordinate in the executive departments, bureaus or offices under him. (*Oliveros-Torre vs. Bayot*, 58 SCRA 272; *Ang-Angco vs. Castillo, et al.*, 118 Phil. 1468). He can exercise this power *motu proprio* without need of any appeal from any party. (*Oliveros-Torre vs. Bayot*, *supra*).

The President is not expected to perform in person all the multifarious executive and administrative functions. The Office of the Executive Secretary is an auxiliary unit which assists the President. Under our constitutional set-up, the Executive Secretary acts for and in behalf of the President: and by authority of the President, he has undisputed jurisdiction to affirm, modify, or even reverse any order of the Secretary of Natural Resources and other Cabinet Secretaries. Where the Executive Secretary acts "by authority of the President" his decision is that of the President. (*Lacson-Magallanes Co., Inc. vs. Pano*, 21 SCRA 895).

In the case at bar, the Deputy Executive Secretary denied the request of the petitioner for payment of back salaries, allowances and bonuses. The decision of the Office of the Executive Secretary must be given full faith and credit by our courts as an act of the Chief Executive. It does not matter, though, that considering the extensive range of authority of the Executive Secretary, the decisions of such office which are attributable to the Executive Secretary have been performed by the Assistant or Deputy Executive Secretaries. (*Barte vs. Dichoso*, 47 SCRA 77).

Hence, the questionable order of the Minister of Natural Resources did not attain finality, and the Court of Appeals, therefore, did not commit any error in ruling thereon.

WHEREFORE, PREMISES CONSIDERED, the petition is hereby DENIED and the decision of the Court of

Appeals is hereby AFFIRMED, without costs.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Sarmiento, Grino-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

Gancayco, J., on leave.

* Penned by Associate Justice Nathanael P. de Pano, Jr. and concurred in by Associate Justices Celso L. Magsino and Abelardo M. Dayrit.

** Resolved by Associate Justice Nathanael P. de Pano, Jr., and concurred in by Associate Justices Celso L. Magsino and Abelardo M. Dayrit.

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