

U.P. BOARD OF REGENTS, DR. JOSE V. ABUEVA, IN HIS CAPACITY AS U.P. PRESIDENT, DR. ERNESTO O. DOMINGO, IN HIS CAPACITY AS CHANCELLOR OF U.P. MANILA, AND THE NOMINATION., COMMITTEE...

G.R. No. 91551. August 16, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The principal issue in this case is whether or not respondent Dr. Felipe A. Estrella who holds the position of Director of the Philippine General Hospital (PGH) can invoke security of tenure during his term of office notwithstanding the abolition of the said position by the University of the Philippines Board of Regents.

Petitioners seek to annul and set aside the decision dated August 28, 1989 and the order dated October 23, 1989 issued and rendered by respondent Judge, Honorable Jainal D. Rasul of the Regional Trial Court, Branch 69, Pasig, Metro Manila. The dispositive portion of the decision in question reads as follows:

"WHEREFORE, in view of the foregoing and by virtue of preponderance of evidence, this Court hereby renders judgment in favor of the plaintiff and against the defendants.

1. Permanently enjoining the Defendants Dr. Jose V. Abueva, in his capacity as UP President; Dr. Ernesto Domingo, in his capacity as Chancellor of UP-Manila; the Nomination Committee for the Director of the UP-PGH Medical Center and the UP Board of Regents, from proceeding with the nomination of a Medical Director, until the expiration of the term of office of the plaintiff, Dr. Felipe A. Estrella, Jr., in his capacity as Director of the PGH or unless sooner removed, for cause provided by law;

2. Permanently enjoining the UP Board of Regents from implementing the so-called Reorganization Plan of UP-PGH, unless there is a prior legislative enactment or enabling law authorizing it and finally,

3. Ordering the defendants to pay attorney's fees and litigation expenses for P50,000.00 and the costs of this suit.

SO ORDERED".[1]

In an order dated October 23, 1989, the respondent Judge denied petitioners' motion for reconsideration of the decision above-mentioned.

Assailing the above-mentioned rulings, petitioners allege as errors the following:

"REASONS FOR THE ALLOWANCE OF THE WRIT

I

RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN HOLDING THAT RESPONDENT ESTRELLA IS ENTITLED TO THE PROTECTIVE MANTLE OF THE CONSTITUTIONAL GUARANTEE OF SECURITY OF TENURE

II

RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN HOLDING THAT THE REORGANIZATION OF U.P. MANILA, INCLUDING THE PGH, WAS DONE IN BAD FAITH

III

RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN HOLDING THAT RESPONDENT ESTRELLA NEED NOT EXHAUST ADMINISTRATIVE REMEDIES BEFORE HE CAN BRING SUIT AGAINST THE U.P. BOARD OF REGENTS, ET AL.

IV

RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN HOLDING THAT THE REORGANIZATION PLAN FOR THE U.P. PGH MEDICAL CENTER CANNOT YET BE IMPLEMENTED

V

RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN HOLDING THAT THE U.P. BOARD OF REGENTS HAS NO AUTHORITY TO REORGANIZE

VI

RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN HOLDING THAT HE CAN SUBSTITUTE HIS OWN JUDGMENT FOR THAT OF THE U.P. BOARD OF REGENTS

VII

RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN HOLDING THAT NON-IMPLEMENTATION OF THE REORGANIZATION PLAN WILL NOT CAUSE CONSIDERABLE DAMAGE TO U.P. IN GENERAL AND TO PGH IN PARTICULAR"[2]

The petition is devoid of merit.

The facts and background of the case as narrated by the trial court are as follows –

“That on June 26, 1986, plaintiff Dr. Felipe A. Estrella, Jr., was appointed by the defendant Board of Regents (B.O.R.) as Director of the Philippine General Hospital, to take effect "1 September 1986 until 30 April 1992" (Exh. "A-14); that the defendant U.P. Board of Regents speaking thru its then University Secretary Professor Martin Gregorio intended to have the plaintiff serve his full term, as Director, since any other arrangement would impede the hospital's development, not to mention the continuity of its service operations (Exh. "A");

that the duties and responsibilities, under Chapter 29, of the Revised Administrative Code, as PGH Director, inter alia, to direct and manage various activities within the hospital; formulate and implement regulations; develop institutional plans and policies; approve/recommend budget proposals of the hospital; execute contracts; represent the hospital in proper functions; approve and sign warrants, checks, vouchers and recommend or endorse appointments of personnel to higher authorities (Exh. "M").

On September 16, 1987, barely two (2) weeks after assuming the presidency of the University of the Philippines defendant Jose V. Abueva submitted a memorandum to the Board of Regents to reorganize the U.P. Manila including the Philippine General Hospital with a draft resolution for approval of the Board of Regents, recommending that certain key positions of U.P. Manila including that of plaintiff be declared vacant (Exhs. "C" to "C-3"); that on March 20, 1988, the defendant Board of Regents, upon recommendation of defendants Abueva and Domingo approved the so-called reorganization plan for the Philippine General Hospital.

On April 29, 1988, defendant Dr. Ernesto Domingo acting on instruction of defendant Dr. Jose V. Abueva, U.P. President, issued a memorandum creating the Nomination Committee for the UP-PGH Medical Center Director; that on May 10, 1988, defendant-members of the Nomination Committee thus created, are scheduled to nominate plaintiff's replacement as Director; that consequently on May 2, 1988, plaintiff filed with this Court, his complaint for Injunction with Preliminary Injunction or temporary restraining Order, seeking to enjoin defendants Abueva, Domingo, the Nomination Committee and the U.P. Board of Regents from proceeding with the nomination of UP-PGH Medical Center Director, in order to forestall the consequent removal/dismissal of the plaintiff Dr. Felipe A. Estrella, Jr., incumbent PGH Director even before the expiration of his term of office on April 30, 1992 without any cause provided by law.

On May 2, this Court issued the Restraining Order and on May 30, after due hearing this Court, thru its then Presiding Judge Hon. Julio Logarta issued the Writ of Preliminary Injunction, enjoining defendants from implementing the reorganization plan for the UP-PGH Medical Center (Exh. "A" Affidavit of plaintiff Dr. Felipe A. Estrella, Jr.; Exh. "10" Affidavit of defendant Dr. Ernesto O. Domingo; TSN pp. 1-23, June 1, 1989, TSN pp. 1-106, June 1, 1989; TSN pp. 1-52, June 1, 1989)".[3]

Respondent Judge, based on the evidence presented, concluded that the reorganization of PGH was done in bad faith. Accordingly, the lower court ruled that respondent Dr. Estrella cannot be removed from office as a result of such defective abolition of the position to which he was appointed. Significant in this regard is the following pronouncement of the lower court:

"Going over the organizational structure of present set-up of the PGH and proposed reorganizational structure, it appears that there are other minor differences aside from changes of designations and enlargement of functions and powers, namely: (1) The positions of Asistant Director for Administration and Assistant Director for Fiscal matters in the present set-up are combined into only one position of Assistant Director for Administrative and Fiscal Matters in the reorganization plan; (2) The position of Assistant Director for Health Operation in the present set-up was changed to position of Director of Health Services, directly under the UP-PGH Medical Center Director with one Assistant Director for Allied Medical Services, under it, in the reorganization plan and (3) The five (5) Departments of Oncology, Out-Patient Department, Emergency Room, Charity Ward and Pay Ward under the present set-up were converted into Institute of Oncology, Out-Patient Hospital, Emergency Hospital, Charity Hospital and Non-Charity Hospital under the reorganization plan.

In other words, these five (5) units were merely enlarged, expanded and called hospitals headed each by a Director. The Director of the PGH under the present set-up became Director of UP-PGH Medical Center. Aside from the three changes above and change of designations and transfers of duties, the structure remains substantially the same. The leadership element which the defendant Abueva wants to impress upon this Court, encourages reorganization and justifies abolition of positions. But the whole reorganization set-up under our law cannot or should not have the effect of abolishing the position of the plaintiff unless legal requirements are

complied with. (Brallo vs. Enage, 94 Phil 732) If the reorganization plan results in abolishing the position of the plaintiff and in putting in his place another one, with substantially the same duties, not to say qualifications, in the name of leadership, it will surely be considered a device to unseat the incumbent and to circumvent the constitutional and statutory prohibition of removal from office of a civil service officer even without cause provided by law. Plaintiff's position should not therefore be deemed abolished by mere implication. (Cuneta vs. CA, 1 SCRA 663, 111 Phil 249) If the abolition of office is made to circumvent the constitutional security of tenure of civil service employees, our Supreme Court, has ruled that such abolition is null and void. (Gutierrez vs. CA, 1-25972, 2/26/68, 26 SCRA 32)"[4]

Respondent Dr. Estrella was appointed Director of PGH on June 26, 1986 by the UP Board of Regents. His appointment was to be effective September 1, 1986 until April 30, 1992 or unless sooner terminated. Appointees of the UP Board of Regents enjoy security of tenure during their term of office. In Tapales v. President of the University of the Philippines.[5] We held that Director Tapales who was appointed by the UP Board of Regents as Director of the Conservatory of Music for a term of five (5) years is entitled to security of tenure during his term of office. Likewise, in Sta. Maria v. President Salvador P. Lopez, et. al.,[6] We rejected the removal of Professor Sta. Maria as dean of the College of Education. In that case, Professor Sta. Maria was appointed by the UP Board of Regents as dean of the College of Education effective May 16, 1967 until May 17, 1972 or unless sooner terminated. Before the expiration of his term of office, President Salvador P. Lopez removed him as dean of the College of Education and transferred him to the office of the UP President. Upholding the right of Professor Sta. Maria to security of tenure, We explained out that "x x x a college dean holding an appointment with a fixed term x x x cannot, without his consent, be terminated before the end of his term. He cannot be asked to give up his post. Nor may he be appointed as dean of another college. Much less can he be transferred to another position even if it be dignified with a dean's rank."

Petitioners argue, however, that the abolition of the position of respondent Dr. Estrella Jr. negates his claim to security of tenure. The argument is devoid of merit.

It is clear from the record that the PGH itself was not abolished in the reorganization plan approved by the UP Board of Regents. The PGH was merely renamed "UP-PGH Medical Center" and some of its functions and objectives were expanded or consolidated. There is no substantial distinction, in terms of functions, between PGH and the proposed UP-PGH Medical Center.

While PGH itself was not abolished, the position of PGH Director was abolished and in its place, the position of UP-PGH Medical Center Director was created. After abolishing said position, it was proposed to be reclassified as Director, Charity Hospital, one of the five (5) hospital director positions proposed to be created in the reorganized PGH.

The UP Board of Regents acted within the scope and limitations of its charter, Act No. 1870, as amended when it approved the reorganization plan renaming the PGH and expanding and consolidating some of its functions and objectives. The UP Board of Regents did not and could not have abolished PGH. And rightly so. The PGH and one of its component units, the Cancer Institute, are creations of special laws, the old Administrative Code (Chapter 29, Secs. 706-707) and Commonwealth Act No. 398, respectively. The authority of the UP under Act No. 1870 as amended, to combine two or more colleges in the interest of economy and efficiency does not empower UP to abolish offices created by special laws. Section 6(b) of Act No. 1870, as amended, reads as follows:

"(b) To provide for the establishment of one or more Colleges of Liberal Arts; a College of Law; a College of Social and Political Science; a College of Medicine and Surgery; a College of Pharmacy; a College of Dentistry; a College of Veterinary Science; a College of Engineering; a College of Mines; a College of

Agriculture; a College of Education; a School of Fine Arts; a School of Forestry; a Conservatory of Music, and such other colleges and schools as the board of Regents may deem necessary: Provided, That the Board of Regents may establish these colleges, or any of them, in Manila or in any other place in the Archipelago, as soon as in its judgment conditions shall favor their opening and funds shall be available for their maintenance: And provided further, That the Board of Regents shall have the power to combine two or more of the colleges authorized by this Act, in the interests of economy and efficiency: And provided finally, That the Philippine Medical School, as established by Act Numbered Fourteen Hundred and Fifteen, as amended, shall become the College of Medicine and Surgery of the Philippine University as soon as two or more colleges of the University of the Philippines shall have been established and in actual operation."

It is therefore clear that the authority of the UP is limited to what is expressly provided in Act No. 1870 as amended, that is, to combine or merge colleges. That is all the law speaks of in such instance.

On the other hand, the power to create and abolish offices carries with it the power to fix the number of positions, salaries, emoluments, and to provide funds for the operation of the office created.[7] This power is inherently legislative in character. The UP Board of Regents does not have such power. Hence, the abolition of the position of respondent Dr. Estrella is not valid.

It is true that a valid and bona fide abolition of an office denies to the incumbent the right to security of tenure.[8] However, in this case, the renaming and restructuring of the PGH and its component units cannot give rise to a valid and bona fide abolition of the position of PGH Director. This is because where the abolished office and the offices created in its place have similar functions, the abolition lacks good faith.[9] We hereby apply the principle enunciated in *Cesar Z. Dario vs. Hon. Salvador M. Mison*[10] that abolition which merely changes the nomenclature of positions is invalid and does not result in the removal of the incumbent.

The above notwithstanding, and assuming that the abolition of the position of PGH Director and the creation of a UP-PGH Medical Center Director are valid, the removal of the incumbent is still not justified for the reason that the duties and functions of the two positions are basically the same. The UP-PGH Medical Center is essentially the same PGH hence, the Medical Center Director will be performing duties very similar to the present PGH Director. It cannot be invoked to sustain the argument that respondent is not entitled to security of tenure. In *Palma-Fernandez v. de la Paz*,[11] the abolition of the position of "Chief of Clinic" and the creation of the position of "Assistant Director, Professional Services" were set aside for the reason that the two positions are basically one and the same except for the change of nomenclature.

The proposal to establish five hospitals within the UP-PGH Medical Center, and with it, the proposal to create five hospital director positions militate against the propriety of giving due course to this petition. As presently organized, there is only one hospital director position in the plantilla of positions of the PGH, the PGH-Director. In the proposed reorganization, such number will be increased to six, one UP-PGH Medical Center Director and five directors for each of the five hospitals proposed to be established namely, the Out-Patient Hospital, Emergency Hospital, Charity Hospital, Non-Charity Hospital and Institute of Oncology. In *Guerrero vs. Arizabal*,[12] We held that the creation of additional management positions in a proposed reorganization is evidence of bad faith and is in violation of Republic Act No. 6656. We hold that the same applies to the PGH reorganization.

Finally, the admission by petitioner Dr. Jose V. Abueva that the staffing pattern for the reorganized PGH has not been prepared is fatal to petitioners' cause. In *Dario v. Mison*,[13] We made the observation no reorganization of the Bureau of Customs actually took place since a staffing pattern which could have been the basis for hiring and firing was lacking. In this case, petitioners were poised to nominate and appoint a UP-PGH Medical Center Director in spite of the absence of a staffing pattern. The absence of such an important element in the

reorganization plan contradicts the petitioners' claim of good faith and only proves that petitioners were unreasonably in a hurry to remove respondent Estrella from his office.

Anent the issue regarding respondent Estrella's failure to exhaust all administrative remedies, We hold that this case has special circumstances that made it fall under the jurisprudentially accepted exceptions to the rule. As the facts show, respondent Dr. Estrella was about to be replaced by the Nomination Committee. He must have believed that airing his protest with the Board of Regents would only be fruitless and that unless he goes to the courts, irreparable damage or injury on his part will be caused by the implementation of the proposed reorganization.

Respondent Judge did not commit any reversible error much less grave abuse of discretion. The facts as supported by evidence established may no longer be disturbed.

WHEREFORE, the petition is DENIED for lack of merit. The Decision dated August 28, 1989 and Order dated October 23, 1989 of the respondent Judge are hereby AFFIRMED in toto. No costs.

SO ORDERED.

Narvasa, Gutierrez, Jr., Cruz, Paras, Padilla, Bidin, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Melencio-Herrera, J., see separate opinion.

Fernan, C.J., and Feliciano, J., joins J. Melencio-Herrera in her separate opinion.

Sarmiento, J., on leave.

Davide, Jr., J., in the result.

[1] p. 320, Rollo.

[2] pp. 16-17, Rollo.

[3] pp. 310-311, Rollo.

[4] p. 318, Rollo.

[5] 7 SCRA 553 (1963).

[6] 31 SCRA 637 (1970).

[7] Castillo v. Pajo, 103 Phil. 515 (1958); Llanto v. Dimaporo et. al., 16 SCRA, 599 (1966).

[8] De la Llana v. Alba, 112 SCRA 294 (1982).

[9] Jose L. Guerrero v. Hon. Antonio V. Arizabal, G.R. No. 81928, June 4, 1990, 186 SCRA 108 (1990).

[10] 176 SCRA 84 (1989).

[11] 160 SCRA 751 (1988).

[12] Supra, note 9.

[13] Supra, note 10.

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Separate Opinion

MELENCIO-HERRERA, J.:

I concur in so far as the security of tenure issue is concerned. However, in line with my dissent in *Dario v. Mison* (176 SCRA 84), I disagree with the sweeping conclusion that the reorganization of U.P. Manila, including the PGH, was done in bad faith.

There was a genuine reorganization involved with the end in view of improving and streamlining the U.P.-PGH system and to bring about a medical center worthy of the name. A novel organizational set-up was contemplated.

It is just unfortunate that the declaration of vacancy of the position of the PGH Director, and the call for the nomination of a new Medical Center Director to replace the incumbent Director, clashed with the security of tenure enjoyed by the latter.

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