

HONORABLE SIMPLICIO C. GRIÑO, SIXTO P. DEMAISIP, SANTOS B. AGUADERA, MANUEL B. TRAVIÑA AND MANUEL M. CASUMPANG, PETITIONERS, VS. CIVIL SERVICE COMMISSION, TEOTIMO ARANDELA, CIRI...

G.R. No. 91602. February 26, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

The main issue in this petition is whether or not the position of a provincial attorney and those of his legal subordinates are primarily confidential in nature so that the services of those holding the said items can be terminated upon loss of confidence.

The facts of this case are simple.

Petitioner Sixto Demaisip was the first appointed Provincial Attorney of Iloilo. He held this position from April 3, 1973 up to June 2, 1986 when he offered to resign and his resignation was accepted by the then Acting Governor. In his resignation letter, petitioner Demaisip recommended the elevation of respondent Teotimo Arandela from Senior Legal Officer to Provincial Attorney. OIC Governor Licurgo Tirador later on decided to appoint respondent Arandela as the Provincial Attorney. Respondent Cirilo Gelvezon, on the other hand, was promoted from Legal Officer II to Senior Legal Officer. Respondents Teodolfo Data-on and Nelson Geduspan were appointed to the position of Legal Officer II.

On February 2, 1988, petitioner Simplicio Griño assumed office the newly elected governor of Iloilo. One month later, he informed respondent Arandela and all the legal officers at the Provincial Attorney's Office about his decision to terminate their services. In his letter, petitioner Griño made mention of an article pertaining to the Iloilo office of the Provincial Attorney which appeared in the Panay News and which "undermined that trust and confidence" that he reposed on them. Petitioner Demaisip was reappointed by Governor Griño as the Provincial Attorney. The latter, on the other hand, arranged the placements of the other legal officers. Respondent Cirilo Gelvezon was replaced by petitioner Santos Aguadera, respondent Nelson Geduspan was replaced by petitioner Manuel Casumpang and petitioner Manuel Traviña took the place of respondent Teopoldo Dato-on.

On March 15, 1988, petitioner Governor Griño formally terminated the services of the respondents herein on the ground of loss of trust and confidence. This action taken by the governor was appealed by respondents to the Merit Systems Protection Board of the Civil Service Commission.

On March 9, 1989, the Merit Systems Board issued an Order declaring the respondents' termination illegal and ordering that they be immediately restored to their positions with back salaries and other emoluments due them. This was appealed by petitioner Griño to the Civil Service Commission.

In Resolution No. 89-736 dated October 9, 1989, the Civil Service Commission affirmed the Order of the Merit Systems Protection Board, and directed that the respondents be restored to their former legal positions and be paid

back salaries and other benefits.

Petitioners filed a Motion for Reconsideration of the above-mentioned Decision of the Civil Service Commission. The motion was denied on December 7, 1989 in Resolution No. 89-920.

Hence, this petition for review whereby petitioners seek the reversal of Resolution No. 89-736 of the Civil Service Commission and Resolution No. 89-920 which denied the Motion for Reconsideration.

We shall first discuss whether the position of a provincial attorney is primarily confidential so that the holder thereof may be terminated upon loss of confidence.

In *Cadiente vs. Santos*,^[1] this Court ruled that the position of a city legal officer is undeniably one which is primarily confidential in this manner:

"In resolving the merits of the instant case, We find as an undeniable fact that the position of a City Legal Officer is one which is 'primarily confidential.' This Court held in the case of *Claudio vs. Subido*, L-30865, August 31, 1971, 40 SCRA 481, that the position of a City Legal Officer is one requiring that utmost confidence on the part of the mayor be extended to said officer. The relationship existing between a lawyer and his client, whether a private individual or a public officer, is one that depends on the highest degree of trust that the latter entertains for the counsel selected. As stated in the case of *Pinero vs. Hechanova*, L-22562, October 22, 1966, 18 SCRA 417 (citing *De los Santos vs. Mallare*, 87 Phil. 289), the phrase 'primarily confidential' 'denotes not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which insures freedom of intercourse, without embarrassment or freedom from misgivings of betrayals of personal trust on confidential matters of state. (Italics supplied.)

The tenure of officials holding primarily confidential positions ends upon loss of confidence, because their term of office lasts only as long as confidence in them endures; and thus their cessation involves no removal (*Corpus vs. Cuaderno*, L-23721, March 31, 1965, 13 SCRA 591-596). When such confidence is lost and the officer holding such position is separated from the service, such cessation entails no removal but an expiration of his term. In the case of *Hernandez vs. Villegas*, L-17287, June 30, 1965, 14 SCRA 548, it was held -

'It is to be understood of course that officials and employees holding primarily confidential positions continue only for so long as confidence in them endures. The termination of their official relation can be justified on the ground of loss of confidence because in that case their cessation from office involves no removal but merely the expiration of the term of office - two different causes for the termination of official relations recognized in the Law of Public Officers.'

In the case at bar, when the respondent City Mayor of Davao terminated the services of the petitioner, he was not removed or dismissed. There being no removal or dismissal it could not, therefore, be said that there was a violation of the constitutional provision that no officer or employee in the civil service 'shall be suspended or dismissed except for cause as provided by law' (Article XII-B, Section 1(3), 1973 Constitution).

The matter of expiration of a term of an officer holding a primarily confidential position, as distinguished from a removal or dismissal, was further explained by this Court, in the case of *Ingles vs. Mutuc*, L-20390, November 29, 1960, 26 SCRA 171, in this wise:

'When an incumbent of a primarily confidential position holds office at the pleasure of the appointing power, and the pleasure turns into a displeasure, the incumbent is not removed or dismissed from office - his term merely expires, in much the same way as an officer, whose right thereto ceases upon expiration of the fixed term for which he had been appointed or elected, is not and cannot be deemed removed or dismissed therefrom, upon expiration of said term.

'The main difference between the former - the primary confidential officer - and the latter is that the latter's term is fixed or definite, whereas that of the former is not pre-fixed, but indefinite, at the time of his

appointment or election, and becomes fixed and determined when the appointing power expresses its decision to put an end to the services of the incumbent. When this event takes place, the latter is not removed or dismissed from office - his term merely expired.'

The foregoing merely elaborates what this Court, speaking thru Justice J.B.L. Reyes, stressed in the case *Corpus vs. Cuaderno*, L-23721, March 31, 1965, 13 SCRA 591. In said case We stated that:

'The tenure of officials holding primarily confidential positions ends upon loss of confidence, because their term of office lasts only as long as confidence in them endures, and thus their cessation involves no removal.'"[2]

In *Besa vs. Philippine National Bank*,³ where petitioner, who was the Chief Legal Counsel with the rank of Vice President of the respondent Philippine National Bank, questioned his being transferred to the position of Consultant on Legal Matters in the Office of the President, this Court, considering said position to be primarily confidential held -

"It cannot be denied of course that the work of the Chief Legal Counsel of respondent Bank, as of any lawyer for that matter, is impressed with a highly technical aspect. As had been pointed out, however, it does not mean that thereby a client is precluded from substituting in his stead another practitioner. That is his right; his decision to terminate the relationship once made is impressed with the attribute of finality. The lawyer cannot be heard to complain; it is enough that his right to compensation earned be duly respected.

In that sense, it is equally clear that where the position partakes of the attributes of being both technical and confidential, there can be no insistence of a fixed or a definite term if the latter aspect predominates. To paraphrase the language of the Chief Justice in the opinion previously cited, the incumbent of a primarily confidential position, as was the case of petitioner, should realize that at any time the appointing power may decide that his services are no longer needed. As thus correctly viewed, *Corpus v. Cuaderno* cannot be read as lending support to petitioner's efforts to retain his position as Chief Legal Counsel of respondent Bank, contrary to its wishes as so explicitly declared in its Resolution No. 1053."[3]

The question now is - should the ruling in *Cadiente* be made applicable to a provincial attorney? According to the petitioners, *Cadiente* must be applied because by the nature of the functions of a provincial attorney and a city legal officer, their positions are both primarily confidential. Respondents, on the other hand, maintain that since the Civil Service Commission has already classified the position of private respondent *Arandela* as a career position and certified the same as permanent, he is removable only for cause, and therefore *Cadiente* is not applicable.

We agree with the petitioners and answer the question earlier propounded in the affirmative. A city legal officer appointed by a city mayor to work for and in behalf of the city has for its counterpart in the province a provincial attorney appointed by the provincial governor. In the same vein, a municipality may have a municipal attorney who is to be named by the appointing power. The positions of city legal officer and provincial attorney were created under Republic Act No. 5185 which categorized them together as positions of "trust", to wit:

"SEC. 19. Creation of positions of Provincial Attorney and City Legal Officer.- To enable the provincial and city governments to avail themselves of the full time and trusted services of legal officers, the positions of provincial attorney and city legal officer may be created and such officials shall be appointed in such manner as is provided for under Section four of this Act. For this purpose the functions hitherto performed by the provincial and city fiscals in serving as legal adviser and legal officer for civil cases of the province and city shall be transferred to the provincial attorney and city legal officer, respectively." (Emphasis supplied.)[4]

By virtue of Republic Act No. 5185, both the provincial attorney and city legal officer serve as the legal adviser and legal officer for the civil cases of the province and the city that they work for. Their services are precisely

categorized by law to be "trusted services."

A comparison of the functions, powers and duties of a city legal officer as provided in the Local Government Code with those of the provincial attorney of Iloilo would reveal the close similarity of the two positions. Said functions clearly reflect the highly confidential nature of the two offices and the need for a relationship based on trust between the officer and the head of the local government unit he serves. The "trusted services" to be rendered by the officer would mean such trusted services of a lawyer to his client which is of the highest degree of trust.[5]

The fact that the position of respondent Arandela as provincial attorney has already been classified as one under the career service and certified as permanent by the Civil Service Commission cannot conceal or alter its highly confidential nature. As in Cadiente where the position of the city legal officer was duly attested as permanent by the Civil Service Commission before this Court declared that the same was primarily confidential, this Court holds that the position of respondent Arandela as the provincial attorney of Iloilo is also a primarily confidential position. To rule otherwise would be tantamount to classifying two positions with the same nature and functions in two incompatible categories. This being the case, and following the principle that the tenure of an official holding a primarily confidential position ends upon loss of confidence,[6] the Court finds that private respondent Arandela was not dismissed or removed from office when his services were terminated. His term merely expired.

The attorney-client relationship is strictly personal because it involves mutual trust and confidence of the highest degree, irrespective of whether the client is a private person or a government functionary.[7] The personal character of the relationship prohibits its delegation in favor of another attorney without the client's consent.[8]

However, the legal work involved, as distinguished from the relationship, can be delegated.[9] The practice of delegating work of a counsel to his subordinates is apparent in the Office of the Provincial Attorney wherein it can be gleaned from the power granted to such officer to exercise administrative supervision and control over the acts and decision of his subordinates.[10]

It is therefore possible to distinguish positions in the civil service where lawyers act as counsel in confidential and non-confidential positions by simply looking at the proximity of the position in question in relation to that of the appointing authority. Occupants of such positions would be considered confidential employees if the predominant reason they were chosen by the appointing authority is the latter's belief that he can share a close intimate relationship with the occupant which measures freedom of discussion, without fear of embarrassment or misgivings of possible betrayal of personal trust on confidential matters of state.[11]

This implies that positions in the civil service of such nature would be limited to those not separated from the position of the appointing authority by an intervening public officer, or series of public officers, in the bureaucratic hierarchy. This is an additional reason why the positions of "City Legal Officer" and "Private Secretary to the President" were considered primarily confidential by the Court.[12] On the other hand, a customs policeman serving in the Harbor Patrol, in relation to the Commissioner of Customs, and an executive assistant, stenographer, or clerk in the Office of the President, were not considered so by the Court.[13]

There is no need to extend the professional relationship to the legal staff which assists the confidential employer above described. Since the positions occupied by these subordinates are remote from that of the appointing authority, the element of trust between them is no longer predominant. The importance of these subordinates to the appointing authority now lies in the contribution of their legal skills to facilitate the work of the confidential employee. At this level of the bureaucracy, any impairment of the appointing authority's interest as a client, which may be caused through the breach of residual trust by any of these lower-ranked lawyers, can be anticipated and prevented by the confidential employee, as a reasonably competent office head, through the

exercise of his power to "review, approve, reverse, or modify" their acts and decisions.[14] At this level, the client can be protected without need of imposing upon the lower-ranked lawyers the fiduciary duties inherent in the attorney-client relationship. Hence, there is now no obstacle to giving full effect to the security of tenure principle to these members of the civil service.

Thus, with respect to the legal assistants or subordinates of the provincial attorney namely, Cirilo Gelvezon, Teodolfo Dato-on, and Nelson Geduspan, the Cadiente and Besa rulings cannot apply. To recall, said cases specifically dealt with the positions of city legal officer of the city and chief legal counsel of the PNB. There was no reference to their legal staff or subordinates. As head of their respective departments, the city legal officer, the provincial attorney or the PNB chief legal counsel cannot be likened to their subordinates. The latter have been employed due to their technical qualifications. Their positions are highly technical in character and not confidential, so they are permanent employees, and they belong to the category of classified employees under the Civil Service Law. Thus, the items of Senior Legal Officer and Legal Officer II remain permanent as classified by the Civil Service Commission. Consequently, the holders of the said items, being permanent employees, enjoy security of tenure as guaranteed under the Constitution.

This notwithstanding, petitioners contend that respondents are estopped from protesting the termination of their services because of their actions which, if taken together, would allegedly reveal that they have accepted their termination, such as: applying for clearances, not remaining in office and signing their payroll for March 15, 1968 acknowledging therein that their appointment "terminated/expired."

We cannot agree with petitioners in this regard. The respondents did the above-mentioned acts because their services were actually dispensed with by petitioner Governor Griño. As a consequence of their termination, they could not remain in office and as required of any government employee who is separated from the government service, they had to apply for clearances. However, this did not mean that they believed in principle that they were validly terminated. The same should not prevent them from later on questioning the validity of said termination.

The facts clearly show that respondents protested their termination with the Civil Service Commission within a month from the time of their termination. The Court holds that the said protest was filed within a reasonable period of time.

WHEREFORE, and in view of the foregoing, the petition is GRANTED with respect to the position of provincial attorney of Iloilo. Respondent Teotimo Arandela is hereby ordered to vacate said position upon the finality of this Decision. The Decision of the respondent Civil Service Commission pertaining to respondents Cirilo Gelvezon, Teodolfo Data-on end Nelson Geduspan is hereby AFFIRMED.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Cruz, Paras, Feliciano, Bidin, Medialdea, and Regalado, JJ., concur.
Gutierrez, Jr., J., in the result.
Padilla and Sarmiento, JJ., see concurring and dissenting opinion.
Griño-Aquino and Davide, Jr., JJ., no part.

[1] 142 SCRA 280, (1986).

[2] Supra, pages 284 to 286.

[3] 33 SCRA 330, 337.

[4] Section 19, Republic Act No. 5185.

[5] Cadiente vs. Santos, *supra*.

[6] Corpus vs. Cuaderno, Sr., 13 SCRA 591 (1965).

[7] In Re Sycip, 92 SCRA 10 (1979) and Claudio vs. Subido, 40 SCRA 481 (1971).

[8] Menzi & Company vs. Bastida, 63 Phil. 16 (1936).

[9] In Ke Kaeunerer, 178 S.W. 2d 481 (1944).

[10] Section 38(c), Chapter 7, Book 4, Revised Administrative Code of 1987.

[11] Cadiente vs. Santos, *supra*; Besa vs. PNB, *supra*.

[12] Cadiente vs. Santos, *supra*; Claudio, *supra*; Ingles vs. Mutuc, 26 SCRA 171 (1968).

[13] Pinero vs. Hechanova, 18 SCRA 417, 423-424 (1966); Ingles vs. Mutuc, *supra*.

[14] Revised Administrative Code.

CONCURRING AND DISSENTING OPINION**PADILLA, J.:**

I concur with the majority opinion in its classification of the positions of legal assistants or subordinates of the provincial Attorney as highly technical in character, falling under the category of permanent employees, with security of tenure under the civil service system. I dissent, however, from the majority opinion in its treatment of the position of Provincial Attorney, for the following reasons:

The position of Provincial Attorney was created under Sec. 19 of RA 5185 to enable the provincial government to avail of the legal advice and services of its own counsel in civil cases affecting the province. Although the power to appoint the Provincial Attorney is vested in the Governor, however, the said local public officer is an employee of the provincial government to which he owes his loyalty, and not to the elected Governor, for he is not part of the latter's personal or confidential staff. As a provincial public officer, the Provincial Attorney's suspension, removal or transfer is subject to the provisions of the civil service law, rules and regulations. In other words, he may not be removed or suspended except for cause provided by law. More specifically, he may be removed from office for incompetence, dishonesty, or other misconduct but not for the Governor's loss of confidence in him, which by its very nature, can be as broad as anything imaginable.

In its resolution, the Civil Service Commission has classified the position of Provincial Attorney as a career service position and a permanent one. It is but proper that a career position be developed for the Provincial Attorney to minimize the "spoils system", whereby everytime a new Governor is elected, he can appoint his own man by terminating the services of the one holding the position, regardless of his competence and performance, on the basis (in reality, pretext) of an alleged "loss of confidence", leaving the appointees to said position at the mercy of the Governor's whims and caprices. To cloth the Governor with an unlimited or blanket authority to dismiss the Provincial Attorney on the ground of such generality as "loss of confidence" only aggravates the problem which has for too long plagued this country and that is the undue dominance of partisan politics in the appointment and retention of government officers, and/or employees. Such practice only hinders the growth of

trained-career personnel in the government service resulting in the demoralization of those officers and/or employees who would prefer to stake their fate in the government service on the basis of merit.

The Office of Provincial Attorney is composed of a Provincial Attorney, one (1) Senior Legal Officer, five (5) Legal Officers and its administrative staff. Private respondent Teotimo Arandela rose from the ranks, wherein he started as Legal Officer III, to Senior Legal Officer and finally to Provincial Attorney, under the terms of three (3) Governors, before Gov. Grino was elected to office.[1] To unceremoniously terminate private respondent Arandela, who has risen from the ranks and who has been in government service for many years, at the pleasure or fancy of an incumbent Governor, is, to my mind, contrary to the constitutional provision that "no officer or employee of the civil service shall be removed or suspended except for cause provided by law."

Abuse of power in the termination and/or suspension of an appointee to the position of Provincial Attorney or of a similar position on the basis of "loss of confidence" which is not duly substantiated should not be allowed. The reason stated by the Governor for his alleged loss of trust and confidence in private respondent was that "x x x an article pertaining to your office which appeared yesterday in Panay News undermined that trust and confidence which should otherwise prevail." Whatever the content of said article which allegedly triggered the loss of confidence on the part of the Governor in the private respondent was not specifically stated in his letter dated 1 March 1988 dispensing with the services of the private respondent.[2] The reason given by the Governor in terminating private respondent's services does not only appear unsubstantiated but is vague and uncertain.

The presence of *Cadiente vs. Santos*, 142 SCRA 280 (1980), upon which the majority opinion relies in support of its thesis that the Provincial Attorney may be terminated at any time by the Provincial Governor upon loss of confidence, should be the last thing to bother one in attempting to establish a wholesome doctrine in the law of public officers.

ACCORDINGLY, I vote to DISMISS the Petition and to AFFIRM the questioned Civil Service Commission rulings favor of private respondents.

[1] Rollo, p. 103

[2] Rollo, p. 13

CONCURRING AND DISSENTING OPINION

SARMIENTO, J.:

I concur with the first part of the ponencia holding that the position of a provincial attorney appointed by the provincial governor being akin to that of a city legal officer appointed by the city mayor, is primarily confidential and hence, the termination from office of the provincial attorney follows as a consequence of the loss of confidence upon him by the provincial governor.

However, I can not agree with the second part of the decision when it refused to apply the same aforementioned ruling to the case of legal assistants or subordinate lawyers on the justification that the earlier cases of *Cadiente* and *Besa* only specifically dealt with the positions of city legal officer and PNB chief legal counsel, respectively, and that the positions of legal assistants or subordinate lawyers are highly technical in character and not confidential.

While it is true that *Cadiente* and *Besa* only involved a city legal officer and the PNB chief legal counsel, the

same cases do not by any means preclude the applications of the said precedents to legal assistants or subordinate lawyers in appropriate cases when such issue is squarely raised as presently.

Anent the claim that the positions of assistant legal officers or subordinate lawyers is highly technical and not confidential, this contention is not supported by any evidence on record or any basis in law. On the contrary, the function of an assistant or a subordinate legal officer, as can be gleaned from the Local Government Code, is to "assist the chief officer and perform such duties as the latter may assign him." I can not see how such a function can be any less confidential than that of the chief legal officer.

Absent any showing of substantial distinctions between the nature of the work or function of the provincial attorney and that of the legal assistants or subordinate lawyers, it is logical to presume that both public officers handle confidential matters relating to the legal aspect of provincial administration and that their relationship with their appointing power is that of a lawyer and his client requiring utmost confidence and the highest degree of trust. Hence, both positions being primarily confidential, the termination from office of the legal assistants or subordinate lawyers must likewise follow as a consequence of the loss of confidence upon them by the provincial governor.

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