

RAMON P. BINAMIRA, PETITIONER, VS. PETER D. GARRUCHO, JR., RESPONDENT.

G.R. No. 92008. July 30, 1990

Ponente: CRUZ, J.

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CRUZ, J.:

In this petition for quo warranto, Ramon P. Binamira seeks reinstatement to the office of General Manager of the Philippine Tourism Authority from which he claims to have been removed without just cause in violation of his security of tenure.

The petitioner bases his claim on the following communication addressed to him by the Minister of Tourism on April 7, 1986:

MEMORANDUM TO: MR. RAMON P. BINAMIRA

You are hereby designated General Manager of the Philippine Tourism Authority, effective immediately.

By virtue hereof, you may qualify and enter upon the performance of the duties of the office.

(Sgd.) JOSE ANTONIO GONZALES

Minister of Tourism and

Chairman, P.T.A. Board

Pursuant thereto, the petitioner assumed office on the same date.

On April 10, 1986, Minister Gonzales sought approval from President Aquino of the composition of the Board of Directors of the PTA, which included Binamira as Vice-Chairman in his capacity as General Manager. This approval was given by the President on the same date. [1]

Binamira claims that since assuming office, he had discharged the duties of PTA General Manager and Vice-Chairman of its Board of Directors and had been acknowledged as such by various government offices, including the Office of the President.

He complains, though, that on January 2, 1990, his resignation was demanded by respondent Garrucho as the new Secretary of Tourism. Binamira's demurrer led to an unpleasant exchange that led to his filing of a complaint against the Secretary with the Commission on Human Rights. But that is another matter that does not concern us here.

What does is that on January 4, 1990, President Aquino sent respondent Garrucho the following memorandum,[2] copy furnished Binamira:

4 January 1990

MEMORANDUM

TO: Hon. Peter D. Garrucho, Jr.

Secretary of Tourism

It appearing from the records you have submitted to this Office that the present General Manager of the Philippine Tourism Authority was designated not by the President, as required by P.D. No. 564, as amended, but only by the Secretary of Tourism, such designation is invalid. Accordingly, you are hereby designated concurrently as General Manager, effective immediately, until I can appoint a person to serve in the said office in a permanent capacity.

Please be guided accordingly.

(Sgd.) CORAZON C. AQUINO

cc: Mr. Ramon P. Binamira

Philippine Tourism Authority

Manila

Garrucho having taken over as General Manager of the PTA in accordance with this memorandum, the petitioner filed this action against him to question his title. Subsequently, while his original petition was pending, Binamira filed a supplemental petition alleging that on April 6, 1990, the President of the Philippines appointed Jose A. Capistrano as General Manager of the Philippine Tourism Authority. Capistrano was impleaded as additional respondent.

The issue presented in this case is starkly simple.

Section 23-A of P.D. 564, which created the Philippine Tourism Authority, provides as follows:

SECTION 23-A. General Manager - Appointment and Tenure. - The General Manager shall be appointed by the President of the Philippines and shall serve for a term of six (6) years unless sooner removed for cause; Provided, That upon the expiration of his term, he shall serve as such until his successor shall have been appointed and qualified. (As amended by P.D. 1400)

It is not disputed that the petitioner was not appointed by the President of the Philippines but only designated by the Minister of Tourism. There is a clear distinction between appointment and designation that the petitioner has failed to consider.

Appointment may be defined as the selection, by the authority vested with the power, of an individual who is to exercise the functions of a given office.[3] When completed, usually with its confirmation, the appointment results in security of tenure for the person chosen unless he is replaceable at pleasure because of the nature of his office. Designation, on the other hand, connotes merely the imposition by law of additional duties on an incumbent official,[4] as where, in the case before us, the Secretary of Tourism is designated Chairman of the Board of Directors of the Philippine Tourism Authority, or where, under the Constitution, three Justices of the Supreme Court are designated by the Chief Justice to sit in the Electoral Tribunal of the Senate or the House of Representatives. [5] It is said that appointment is essentially executive while designation is legislative in nature.

Designation may also be loosely defined as an appointment because it likewise involves the naming of a particular person to a specified public office. That is the common understanding of the term. However, where the person is merely designated and not appointed, the implication is that he shall hold the office only in a temporary capacity and may be replaced at will by the appointing authority. In this sense, the designation is considered only an acting or temporary appointment, which does not confer security of tenure on the person named.

Even if so understood, that is, as an appointment, the designation of the petitioner cannot sustain his claim that he has been illegally removed. The reason is that the decree clearly provides that the appointment of the General Manager of the Philippine Tourism Authority shall be made by the President of the Philippines, not by any other officer. Appointment involves the exercise of discretion, which because of its nature cannot be delegated. Legally speaking, it was not possible for Minister Gonzales to assume the exercise of that discretion as an alter ego of the President. The appointment (or designation) of the petitioner was not a merely mechanical or ministerial act that could be validly performed by a subordinate even if he happened as in this case to be a member of the Cabinet.

An officer to whom a discretion is entrusted cannot delegate it to another, the presumption being that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and unless the power to substitute another in his place has been given to him, he cannot delegate his duties to another.[6]

In those cases in which the proper execution of the office requires, on the part of the officer, the exercise of judgment or discretion, the presumption is that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and, unless power to substitute another in his place has been given to him, he cannot delegate his duties to another. [7]

Indeed, even on the assumption that the power conferred on the President could be validly exercised by the Secretary, we still cannot accept that the act of the latter, as an extension or "projection" of the personality of the President, made irreversible the petitioner's title to the position in question. The petitioner's conclusion that Minister Gonzales's act was in effect the act of President Aquino is based only on half the doctrine he vigorously invokes. Justice Laurel stated that doctrine clearly in the landmark case of *Villena v. Secretary of the Interior*,[8] where he described the relationship of the President of the Philippines and the members of the Cabinet as follows:

x x x all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or the law to act in person or the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive.

The doctrine presumes the acts of the Department Head to be the acts of the President of the Philippines when "performed and promulgated in the regular course of business," which was true of the designation made by Minister Gonzales in favor of the petitioner. But it also adds that such acts shall be considered valid only if not "disapproved or reprobated by the Chief Executive," as also happened in the case at bar.

The argument that the designation made by Minister Gonzales was approved by President Aquino through her approval of the composition of the Board of Directors of the PTA is not persuasive. It must be remembered that Binamira was included therein as Vice-Chairman only because of his designation as PTA General Manager by Minister Gonzales. Such designation being merely provisional, it could be recalled at will, as in fact it was recalled by the President herself, through the memorandum she addressed to Secretary Garrucho on January 4, 1990.

With these rulings, the petitioner's claim of security of tenure must perforce fall to the ground. His designation being an unlawful encroachment on a presidential prerogative, he did not acquire valid title thereunder to the position in question. Even if it be assumed that it could be and was authorized, the designation signified merely a temporary or acting appointment that could be legally withdrawn at pleasure, as in fact it was (albeit for a different reason). In either case, the petitioner's claim of security of tenure must be rejected.

The Court sympathizes with the petitioner, who apparently believed in good faith that he was being extended a permanent appointment by the Minister of Tourism. After all, Minister Gonzales had the ostensible authority to do so at the time the designation was made. This belief seemed strengthened when President Aquino later approved the composition of the PTA Board of Directors where the petitioner was designated Vice-Chairman because of his position as General Manager of the PTA. However, such circumstances fall short of the categorical appointment required to be made by the President herself, and not the Minister of Tourism, under Sec. 23 of P.D No. 564. We must rule therefore that the petitioner never acquired valid title to the disputed position and so has no right to be reinstated as General Manager of the Philippine Tourism Authority.

WHEREFORE, the petition is DISMISSED, with costs against the petitioner. It is so ordered.

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

Fernan, C.J., No part due to close relationship with one of the parties.

[1] Annex C, Rollo, p. 28.

[2] Annex I, Ibid., p. 62.

[3] Cruz, Phil. Political Law, 1989 ed., p. 178; Gonzales, Neptali A., Administrative Law, Law on Public Officers and Election Law, 1961 ed., p. 146.

[4] Ibid., Gonzales, p. 153.

[5] Sec. 14, P.D. 564, Sec. 17, Article VI, 1987 Constitution.

[6] State v. Patterson, 34 N. 567; 46 Corpus Juris, 1033; Mechem, Law of Public Officers, p. 567.

[7] State v. Patterson, 34 N. 163.

[8] 67 Phil. 451.

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