

TOMAS D. ACHACOSO, PETITIONER, VS. CATALINO MACARAIG AND RUBEN D. TORRES, IN THEIR CAPACITIES AS EXECUTIVE SECRETARY AND SECRETARY OF THE DEPARTMENT OF LABOR AND EMPLOYMENT (DOL...*G.R. No. 93023. March 13, 1991*

Ponente: CRUZ, J.

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The petitioner invokes security of tenure against his claimed removal without legal cause. The respondents assert he is not entitled to the guaranty because he is not a career official. These are the legal issues. The facts are as follows:

Tomas D. Achacoso was appointed Administrator of the Philippine Overseas Employment Administration on October 16, 1987, and assumed office on October 27, 1987. On January 2, 1990, in compliance with a request addressed by the President of the Philippines to "all Department Heads, Undersecretaries, Assistant Secretaries, Bureau Heads," and other government officials, he filed a courtesy resignation. This was accepted by the President on April 3, 1990, "with deep regrets." On April 10, 1990, the Secretary of Labor requested him to turn over his office to the Deputy Administrator as officer-in-charge. In a letter dated April 19, 1990, he protested his replacement and declared he was not surrendering his office because his resignation was not voluntary but filed only in obedience to the President's directive. On the same date, respondent Jose N. Sarmiento was appointed Administrator of the POEA, vice the petitioner. Achacoso was informed thereof the following day and was again asked to vacate his office. He filed a motion for reconsideration on April 23, 1990, but this was denied on April 30, 1990. He then came to this Court for relief.

In this petition for prohibition and mandamus, this Court is asked to annul the appointment of Sarmiento and to prohibit the respondents from preventing the petitioner from discharging his duties as Administrator of the POEA.

Achacoso contends that he is a member of the Career Service of the Civil Service and so enjoys security of tenure, which is one of the characteristics of the Career Service as distinguished from the Non-Career Service.[1] Claiming to have the rank of undersecretary, he says he comes under Article IV, Section 5 of P.D. 807, otherwise known as the Civil Service Decree, which includes in the Career Service:

3. Positions in the Career Executive Service; namely, Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President.

His argument is that in view of the security of tenure enjoyed by the above-named officials, it was "beyond the prerogatives of the President" to require them to submit courtesy resignations. Such courtesy resignations, even if filed, should be disregarded for having been submitted "under duress," as otherwise the President would have the power to remove career officials at pleasure, even for capricious reasons. In support of this contention, he invokes

Ortiz v. Commission on Elections,[2] where we observed that "to constitute a complete and operative act of resignation, the officer or employee must show a clear intention to relinquish" and that "a courtesy resignation cannot properly be interpreted, as a resignation in the legal sense for it is not necessarily a reflection of a public official's intention to surrender his position." He concludes that as his removal was illegal, there was no vacancy in the disputed office to which respondent Sarmiento could have been validly appointed.

In his Comment, the Solicitor General concedes that the office of POEA Administrator is a career executive service position but submits that the petitioner himself is not a career executive service official entitled to security of tenure. He offers the following certification from the Civil Service Commission to show that the petitioner did not possess the necessary qualifications when he was, appointed Administrator of the POEA in 1987:

CERTIFICATION

This is to certify that per records of the Career Executive Service Board (CESB), Mr. Tomas D. Achacoso III has not participated in a Career Executive Service Development Program (CESDP) and is not a CES eligible. This is to certify further that Mr. Achacoso was not appointed to a rank in the CES and is not therefore a member of the Career Executive Service.

x x x

(Sgd.) ELMOR D. JURIDICO
Executive Director

Reference is also made to the following rules embodied in Part III, Article IV, Integrated Reorganization Plan as approved by P.D. 1 and amended by P.D. 336 and P.D. 337, on the career executive service:

c. Appointment. Appointment to appropriate classes in the Career Service shall be made by the President from a list of career executive eligibles recommended by the Board. Such appointments shall be made on the basis of rank; provided that appointments to the higher ranks which qualify the incumbents to assignments as undersecretary and heads of the bureaus and offices and equivalent positions shall be with the confirmation of the Commission on Appointments. The President may, however, in exceptional cases, appoint any person who is not a Career Executive Service eligible, provided that such appointee shall subsequently take the required Career Executive Service examination and that he shall not be promoted to a higher class until he qualifies in such examination. (Emphasis supplied.)

The respondents contend that as the petitioner was not a career executive service eligible at the time of his appointment, he came under the exception to the above rule and so was subject to the provision that he "shall subsequently take the required Career Executive Service examination and that he shall not be promoted to a higher rank until he qualifies in such examination." Not having taken that examination, he could not claim that his appointment was permanent and guaranteed him security of tenure in his position.

It is settled that a permanent appointment can be issued only "to a person who meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed." Achacoso did not. At best, therefore, his appointment could be regarded only as temporary. And being so, it could be withdrawn at will by the appointing authority and "at a moment's notice," conformably to established jurisprudence.

The Court, having considered these submissions and the additional arguments of the parties in the petitioner's Reply and the Solicitor-General's Rejoinder, must find for the respondents.

The mere fact that a position belongs to the Career Service does not automatically confer security of tenure on its occupant even if he does not possess the required qualifications. Such right will have to depend on the nature of his appointment, which in turn depends on his eligibility or lack of it. A person who does not have the requisite

qualifications for the position cannot be appointed to it in the first place or, only as an exception to the rule, may be appointed to it merely in an acting capacity in the absence of appropriate eligibles.[3] The appointment extended to him cannot be regarded as permanent even if it may be so designated.

The purpose of an acting or temporary appointment is to prevent a hiatus in the discharge of official functions by authorizing a person to discharge the same pending the selection of a permanent or another appointee.[4] The person named in an acting capacity accepts the position under the condition that he shall surrender the office once he is called upon to do so by the appointing authority.

In these circumstances, the acting appointee is separated by a method of terminating official relations known in the law of public officers as expiration of the term. His term is understood at the outset as without any fixity and enduring at the pleasure of the appointing authority. When required to relinquish his office, he cannot complain that he is being removed in violation of his security of tenure because removal imports the separation of the incumbent before the expiration of his term.[5] This is allowed by the Constitution only when it is for cause as provided by law. The acting appointee is separated precisely because his term has expired. Expiration of the term is not covered by the constitutional provision on security of tenure.

There is a long line of cases affirming the rule that:

x x x One who holds a temporary appointment has no fixed tenure of office; his employment can be terminated at the pleasure of the appointing power, there being no need to show that the termination is for cause.[6]

The petitioner contends that his appointment was really intended to be permanent because temporary appointments are not supposed to exceed twelve months and he was allowed to serve in his position for more than three years. This is unacceptable. Even if that intention were assumed, it would not by itself alone make his appointment permanent. Such an appointment did not confer on the petitioner the appropriate civil service eligibility he did not possess at the time he was appointed, nor did it vest him with the right to security of tenure that is available only to permanent appointees.

The case of *Luego v. Civil Service Commission*[7] is not applicable because the facts of that case are different. The petitioner in *Luego* was qualified and was extended a permanent appointment that could not be withdrawn on the ground that it was merely temporary. In the case at bar, the petitioner was not eligible and therefore could be appointed at best only in a temporary capacity. The other cases he cites, viz. *Pamantasan ng Lungsod ng Maynila v. Intermediate Appellate Court*,[8] *Palma-Fernandez v. De la Paz*,[9] and *Dario v. Mison*,[10] are also not pertinent because they also involved permanent appointees who could not be removed because of their security of tenure.

It should be obvious from all the above observations that the petitioner could have been validly replaced even if he had not filed his courtesy resignation. We therefore do not have to rule on its legality. Suffice it to say that it could have been a graceful way of withdrawing him from his office with all the formal amenities and no asperity or discord if only he had not chosen to contest it. But it was his right to do so, of course, although his challenge has not succeeded.

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

Fernan, C.J., Melencio-Herrera, Gutierrez, Jr., Paras, Feliciano, Gancayco, Bidin, Sarmiento, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.
Narvasa and Padilla, JJ., no part.

[1] Article IV, Section 5, P.D. 807.

[2] 162 SCRA 812.

[3] Cuadra v. Cordova, 103 Phil. 391.

[4] Austria v. Amante, 79 Phil. 780.

[5] Manalang v. Quitoriano, 50 O.G. 2515; Alba v. Evangelista, 100 Phil. 683.

[6] Mendez v. Ganzon, 101 Phil. 48; Cuadra v. Cordova, 103 Phil. 391; U.P., et al. v. CIR, 107 848; Quitiquit v. Villacorta, 107 Phil. 1060; De la Torre v. Trinidad, et al., 108 Phil. 365; Madrid v. Auditor General, 108 Phil. 578; Montero v. Castellanes, 108 Phil. 744.

[7] 143 SCRA 327.

[8] 140 SCRA 22.

[9] 160 SCRA 751.

[10] 176 SCRA 84.

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