

DR. EMILY M. MAROHOMBSAR, PETITIONER, VS. AHMAD E. ALONTO, JR., IN HIS CAPACITY AS PRESIDENT OF THE MINDANAO STATE UNIVERSITY, AND CORAZON BATARA, RESPONDENTS.

G.R. No. 93711. February 25, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

The issue in this case is whether or not petitioner Dr. Emily M. Marohombsar, who was appointed Acting Vice-Chancellor for Academic Affairs of the Mindanao State University (MSU) Marawi Campus by the respondent President may be removed from office even without cause.

On March 22, 1988, the petitioner was designated as officer-in-charge of the Office of the Vice-Chancellor for Academic Affairs (OVCAA) of MSU in a concurrent capacity with her position then as Vice-President for External Studies.

On January 2, 1989, the Office of the Vice-President for External Studies was merged with the OVCAA and, as such, the functions of the former were to be exercised by the latter. The petitioner was appointed acting Vice-Chancellor for Academic Affairs on the same day. The Board of Regents of the MSU, on May 16, 1989, approved her appointment as acting Vice-Chancellor for Academic Affairs.

On May 14, 1990, respondent Ahmad E. Alonto, MSU President, wrote the petitioner informing her that he has decided to tap the petitioner's talent for the MSU system as Vice-President for Academic Affairs which position is under the administrative staff of the respondent MSU President. The petitioner, on the same date, answered that she cannot accept the position since she has already started several projects in the OVCAA which she wants to see through.

The respondent President, on May 16, 1990, designated Professor Macacuna Moslem as Vice-Chancellor for Academic Affairs but the latter did not accept the designation. On May 28, 1990, the respondent President issued Special Order No. 158-P designating Professor Corazon Batara, the other respondent in this case, as Officer-in-Charge of the OVCAA.

The petitioner now comes to this Court assailing her removal as Vice-Chancellor by the respondent President.

On June 21, 1990, the Court issued a temporary restraining order directing the respondents to cease and desist from enforcing and/or implementing Special Order No. 159-P and from interfering and/or preventing the petitioner from performing her duties as Vice-Chancellor for Academic Affairs of the MSU, Marawi Campus.

On November 19, 1990, the petitioner filed a motion to cite respondent Alonto for contempt, alleging that said respondent, in violation of the temporary restraining order issued by this Court submitted Special Order No. 158-P to the MSU Board of Regents for approval.

The petitioner asserts that her appointment being permanent, she can be removed only after hearing and for cause.

Resolution No. 59, S. 1989, passed by the MSU Board of Regents on May 16, 1989, reads as follows:

"RESOLVED, that upon recommendation of the President of the University of the Executive Committee of the Board of Regents the following Special Orders as amended/corrected are hereby confirmed:

A. DESIGNATIONS

A.1 Major designations

X X X

X X X

X X X

9) Special Order No. 10-P, S. 1989, designating Prof. Emily M. Marohombsar as Acting Vice Chancellor for Academic Affairs, MSU Marawi Campus, with an honorarium in accordance with the approved policies of the University, subject to accounting and auditing rules and regulations, effective January 2, 1989 and shall remain in force until revoked or amended by competent authority." (Rollo, pp. 53-54; Italics supplied)

It may be noted that the special order confirmed by the Board of Regents specifically designated the petitioner as Acting Vice Chancellor for Academic Affairs. A bona fide appointment in an acting capacity is essentially temporary and revocable in character and the holder of such appointment may be removed anytime even without hearing or cause. (*Austria v. Amante*, 79 Phil. 780 [1948]; *Castro v. Solidum*, 97 Phil. 278 [1955]; *Mendez v. Ganzon*, 101 Phil. 48 [1957]; *Valer v. Briones*, 9 SCRA 596 [1963]; *Abana v. Aguipo*, 15 SCRA 604 [1965]; *Hojilla v. Marino*, 13 SCRA 293 [1965]). A person who accepts an appointment in an acting capacity extended and received without any protest or reservation and who acts thereunder for a considerable time cannot later be heard to say that the appointment was, in reality, permanent and therefore there can be no removal except for cause. (See *Cabiling v. Pabualan*, 14 SCRA 274 [1965])

There are circumstances, however, which rule against the routine or blind application of the principle which governs acting appointments to this case.

The essence of an acting appointment is its temporary nature. It is a stop gap measure intended to fill an office for a limited time until a permanent appointment is extended or a new appointee is chosen. (*Austria v. Amante*, supra; *Castro v. Solidum*, supra; and *Valer v. Briones*, supra)

The nature of an acting appointment limits not only the claims of the appointee to a lengthy tenure but also defines the authority of the appointing power. A public officer appointed in an acting capacity cannot claim that the appointment shall in time ripen into a permanent one. However, neither can the appointing power use the principle of temporary appointments to evade or avoid the security of tenure principle in the Constitution and the Civil Service Law. This is similar to the rule that the head of an office cannot arbitrarily convert permanent positions to primarily confidential items so that he can more freely fire and hire or rehire subordinates at his personal discretion. It is the nature of the functions attached to a position, not the nomenclature or title given by the appointing authority which determines its primarily confidential nature. (*Piñero v. Hechanova*, 18 SCRA 417 [1966]) For the same reason, the Court may inquire into the true nature of an "acting" appointment to determine whether or not it is used as a device to circumvent the security of tenure principle.

In this case, the intent to make the petitioner serve at the pleasure of the respondent MSU President is obvious. The petitioner is a career official of MSU for over 27 years. She was Vice-President for External Studies since 1982. On March 22, 1988, she was given an additional assignment as Officer-in-Charge of the Office of the

Vice-Chancellor for Academic Affairs concurrently with the permanent position as Vice-President for External Studies.

About nine months later, the Vice-Presidency for External Studies was "merged" with the Vice-Chancellorship for Academic Affairs. At the same time, the petitioner was appointed acting Vice-Chancellor for Academic Affairs.

The effect, therefore, was to abolish the petitioner's permanent office and give her a temporary appointment in the supposedly new office which replaced or absorbed the former office. Another result was the loss by the petitioner of her permanent status.

There are reasons which indicate that these maneuverings by the respondent President cannot be characterized as bona fide.

Section 40.5 (paragraph 22) Article 4 of the Code of Governance of the MSU provides:

Personnel Matters. In accordance with the policies and rules prescribed by the Board, the specific powers of the President include the following (delegated powers)

x x x

x x x

x x x

- Designation of any Dean, Director, or Department Chairman in acting capacity or any Officer-in-Charge for any of these positions, for a period of less than one year, such designation being made without additional compensation for the position designated except the honorarium attached to said position; PROVIDED, That the President shall report the designation in the next regular meeting after which the designation shall be null and void unless otherwise renewed.

The power to designate is vested in the MSU President. The designation must be less than one year. It must be reported to the Board of Regents at the next regular meeting. After the meeting, another designation must be issued if no permanent appointment was made. The earlier designation becomes void as the Board is expected to fill the item permanently, not merely leaving it temporarily occupied.

On the other hand, the power to appoint is vested in the Board of Regents as follows:

"Sec. 6. The Board of Regents shall have the following powers and duties, in addition to its general powers of administration and the exercise of the power of the corporation;

x x x

x x x

x x x

(e) To appoint, on the recommendation of the President of the University, professor, instructors, lecturers and other employees of the University, xxx"—MSU Charter, RA 1387.

If the President merely designates, the Board of Regents does not confirm the designation. Since it is only for the

information of the Board, the President's action should be merely "noted."

When the Board of Regents confirmed the appointment of the petitioner on May 16, 1989, it was acting on an ad interim appointment effected by the President. No other interpretation can be validly made. If it was a mere designation, it needs no confirmation. The fact that confirmation was needed shows that it is an ad interim one. An ad interim appointment is one made during the time when the appointing or confirming body is not in session and there is an existing clear and present urgency caused by an impending obstruction or paralyzation of the functions assigned to the office if no immediate appointment is made. (Rodriguez, Jr. v. Quirino, 9 SCRA 284 [1963]) When the Vice-Presidency for External Studies was abolished and its functions were merged with the Vice-Chancellorship for Academic Affairs, both the security of tenure of the occupant and the needs of the new office called for the ad interim appointment.

The respondent cannot use the device of an ambiguous designation to go around the security of tenure principle. Under the MSU Code, a designation requires a fixed period of not less than one year. The appointment given to the petitioner was indefinite. She would serve at the pleasure of the MSU President who is not even the head of the institution because the head is the Board of Regents.

The intent to convert permanent items into temporary ones is apparent. The petitioner states that the purpose "is to hold the sword of Damocles hanging over the head of all MSU employees and officers." (Rollo, p. 75) The Board of Regents cooperated in the plan. Practically, all top officers below the President were converted into positions where the occupants serve at the pleasure of the President and presumably, the Board of Regents. Thus, at the May 16, 1989 Board of Regents' meeting at the Army and Navy Club alongside the Luneta in Manila, the following acting appointments were submitted for approval or confirmation:

- "1. Special Order No. 03-P, S. 1989, designating Atty. Tocod D. Macaraya, Sr. as Acting Executive Vice-President x x x;
2. Special Order No. 04-P, S. 1989, designating Dr. Macaurog B. Derogongan as Acting Vice President for Academic Affairs x x x;
3. Special Order No. 05-P, S. 1989, designating D. Corazon Batara as Acting Assistant Vice-President for Academic Affairs x x x;
4. Special Order No. 113-P, S. 1989, designating D. Milandre S. Rusgal as Acting Vice President for Planning and Development x x x;
5. Special Order No. 109-P, S. 1989, designating Prof. Guimba Poingan as Acting Assistant Vice President for Planning and Development x x x;
6. Special Order No. 60-P, S. 1989, designating Atty. Concordio Baguio as Officer-in-Charge of the Office of the Vice-President for Administration and Finance x x x;
7. Special Order No. 07-P, S. 1989, designating Prof Talib R. Muti as Acting Assistant Vice President for Administration and Finance x x x;
8. Special Order No. 134-P, S. 1989, designating Prof. Emily M. Marohombsar as Acting Vice-Chancellor for Academic Affairs, MSU Marawi Campus x x x;
10. Special Order No. 01-P, S. 1989, designating Atty. Abdul S. Aguam as Acting Vice Chancellor for Administration and Finance xxx;
11. Special Order No. 11-P, S. 1989, designating Dr. CosainDerico as Acting Vice Chancellor for Research and Extension x x x;" (Rollo, pp. 117-118)

The respondents argue that the permanent item of the petitioner is Professor VI. They state:

X X X

X X X

X X X

Finally, petitioner has not refuted the fact that the position she actually occupies is that of Professor VI. This is precisely the reason why petitioner's designation as Acting VCAA can not be deemed a regular or permanent appointment because, if it were so, the anomalous situation of one permanently appointed to two public positions simultaneously would arise." (Rollo, p. 130)

This argument has no merit.

As early as 1963, this Court ruled in *Tapales v. President and Board of Regents of the University of the Philippines* (7 SCRA553 [1963]) that UP Deans and Directors enjoy security of tenure and any attempt to remove them by limiting their terms of office from permanent to a five (5) year term is unconstitutional. Deans and Directors are selected from faculty members. An appointment as Professor is also needed for salary rating purposes but does not detract from the permanent nature of the administrative position (*id.*, at pp. 554 and 556). The fact that Professor Tapales was given another appointment as Director of the U.P. Conservatory of Music does not mean that the second appointment is only temporary in nature. In the present case, the fact that Professor Marohombsar has a permanent appointment as Professor does not detract from the permanent nature of her present appointment as Vice-Chancellor, especially since the same was duly confirmed by the MSU Board of Regents. The only difference is that her position as Vice-Chancellor has a fixed term while that of Professor Tapales was until he retired or resigned.

The attempt of the respondent to solve the problem by placing the petitioner in his own administrative staff as Vice-President for Academic Affairs cannot be countenanced. The petitioner served in this capacity from 1975 to 1978 after which she became Vice-President for External Studies in 1982. The proffered position is not only less desirable to the petitioner but she expressly rejected it, preferring to stay in her present position. She thanked the respondent but stated she would not be effective in the new position while in the OVCAA she could complete a number of projects and programs. (Rollo, p. 21) The correctness of the petitioner's stand is explained by this Court in *Sta. Maria v. Lopez* (31 SCRA 673 [1970]). There are transfers which appear to be promotions or lateral movements but are in truth demotions. There is no showing that the interest of the service would be served if the proffered appointment would be forced on her.

No less than the Secretary of Education, Culture and Sports, Secretary Isidro D. Carino, opined, and the Court agrees with him, that the petitioner may not be removed from the disputed office by the MSU President without the authority of the Board. And, as correctly stated by the Secretary, Special Order No. 158-P issued by the respondent president designating respondent Batara as officer in-charge of the same office was unapproved by the Board, hence, the special order cannot revoke, or could not have revoked the designation of the petitioner as acting Vice-Chancellor. (Annex A, Petitioner's Memorandum, Rollo, pp. 119-120)

The respondent MSU President, perhaps realizing the vulnerability of his action, submitted Special Order No. 158-P to the Board of Regents for approval. But such submission was made after the Court already issued its temporary restraining order and consequently, his action constituted contempt of Court. Considering, however, that the respondent appears to have acted in the honest albeit mistaken belief that MSU would progress faster if the executive officers serve at his pleasure and discretion, the Court rules that declaring him in contempt would be

too harsh a remedy. The respondent President is, nevertheless, admonished for his action. When this Court issues a restraining order, it must be obeyed.

WHEREFORE, the petition is GRANTED. The petitioner shall remain as the lawful occupant in a permanent capacity of the position of Vice-Chancellor for Academic Affairs of MSU, Marawi until the end of her three-year term or her tenure is otherwise lawfully terminated. The motion to cite respondent Alonto for contempt is DENIED but the respondent is admonished to faithfully heed court orders in the future. The Temporary Restraining Order issued by this Court on June 21, 1990 is made PERMANENT.

SO ORDERED.

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

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