

**DRS. ELLEN AMBAS; JOANNE DE LEON; MARIE ESTELLA GUNABE;
NERISSA BERNAL; RICARDO TOLENTINO; AND RAUL CHRI-ZALDO E.
MORENA, PETITIONERS, VS. DRS. BRIGIDA BUENASEDA; AND EFREN
REYE...**

G.R. No. 95244. September 04, 1991

Ponente: PADILLA, J.

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PADILLA, J.:

Prior to their termination from employment, which is the subject of the petition at bar, petitioners were employed and retained as resident trainee physicians by the Department of Health, assigned to the National Center for Mental Health (NCMH, for purposes of brevity), under the Residency Program of the government. By authority of the Secretary of Health, petitioners were issued temporary appointments as resident trainees on the following dates:

“1. Ambas, Ellen C. —

October 14, 1988

2. Bernal, Nerissa C. —

April 28, 1989
(Renewal)

3. De Leon, Joanne —

October 13, 1988

4. Gunabe, Marie Stella —

October 20, 1988

5. Morena, Raul Chrisaldo —

December 29, 1988

6. Tolentino, Ricardo U. —

February 24, 1989
(Renewal)

x x x x x x x x"[1]

Individual contracts of residency training were entered into by and between petitioners and the NCMH, wherein it was stipulated, among others, that NCMH would temporarily employ petitioners as resident trainees for one (1) year, renewable every year but not to exceed four (4) years; that the resident trainee would not engage in private practice of his profession even outside his regular office hours; and that NCMH reserves the right to terminate the training of a resident trainee for poor performance or failure to meet the standards of medical ethics, performance and behavior, as evaluated by the Teaching/Training Staff of NCMH.[2]

In an undated confidential report,[3] the NCMH Medical Training Officer, Dr. Efren Reyes, recommended the termination of petitioners' services because of poor academic performance and low ranking. In addition to the foregoing grounds cited, petitioner Dr. Raul Chrizaldo Morena was also found to have violated the Code of Conduct of Resident Physicians. The recommendation of the Training Officer for the termination of petitioners' services was based on the result of an evaluation conducted by the Residency Evaluation Committee on 16 June 1989 of all NCMH resident trainees.

In letters[4] dated 16 June 1989, petitioners were individually informed of the termination by the Residency Evaluation Committee of their services effective 1 July 1989, with the approval of the NCMH Chief. Twice, petitioners wrote to the Secretary of Health questioning their termination. When they received no reply, they wrote a letter-complaint to the Chairman of the Civil Service Commission. The Civil Service Commission (CSC) also failed to act on their letter-complaint, thus prompting them to assail their termination before the Merit Systems Protection Board (referred to hereinafter as the Board), docketed as MSPB Case No. 299. They alleged that the termination of their services by NCMH was arbitrary and violative of the existing civil service laws, regulations and the provisions of PD 1424 governing the residency training program in government hospitals.

In an indorsement dated 17 August 1989, the letter-complaint filed by petitioners with the Secretary of Health was referred by the latter to the CSC for appropriate action. In the same indorsement, the Secretary of Health confirmed the action of NCMH in terminating petitioners' services as resident trainees. [5]

On 28 August 1989, the Board rendered a decision[6] declaring petitioners' termination as not valid and ordered their reinstatement to their former positions. It was the opinion of the Board that the power to remove petitioners belongs to the appointing authority, namely, the Secretary of Health, and that, therefore, the NCMH through its representative has no power to remove the petitioners.

After receipt of the decision of the Board, petitioners on 4 September 1989 filed a motion for execution of said decision.[7] Before said motion could be acted upon by the Board, an ex-parte manifestation[8] was filed by petitioners in connection with the 3[rd] Indorsement of the Secretary of Health dated 17 August 1989.

On 14 September 1989, another ex-parte motion was filed by petitioners, with the Board seeking clarification of

the decision on the issue of seniority, as well as salaries and benefits accrued prior to their termination.[9] On the same date, the NCMH through its Chief moved for reconsideration of the 28 August 1989 decision of the Board, alleging that the Board failed to appreciate the fact that the termination of petitioners' services was done in good faith and with the approval and/or confirmation of the Secretary of Health; and that as "temporary" appointees, petitioners could be terminated from employment at any time with or without cause.

Opposing the NCMH's motion for reconsideration, petitioners contended that the renewal of appointment of a resident trainee is discretionary upon the Secretary of Health; that the designation in their appointment as "temporary" does not remove the permanency of petitioners' appointment during the period of their training; and that the motion for reconsideration filed by NCMH was a "mere scrap of paper" because petitioners were not furnished with a copy of said motion.[10]

Taking cognizance of the affirmation and/or confirmation by the Secretary of Health of petitioners' termination, the Board set aside its 28 August 1989 decision in a resolution dated 25 October 1989, declaring that —

"The affirmation or concurrence of the appointing authority in their termination is tantamount to a curative act relative to the previous act effected by the Medical Training Officer and approved by the Medical Center Chief, NCMH. In effect, it was the appointing authority that terminated their services.

xxx xxx xxx

It bears stressing that under the laws (R.A. 1243 as amended by R.A. 2251; further amended by P.D. 1424) governing the Residency Training provide that 'they shall be appointed for a period of one year renewable every year in the discretion of the Secretary of Health or the Secretary of National Defense as the case may be x x x.' These laws did not mention the permanency of their appointments during the duration of the training. It merely states renewable every year subject to the sound discretion of the appointing authorities. Non-renewal is merely an expiration of the term of the appointment. Even the petitioners (now oppositors), through counsel admitted that the renewal of the appointment of a resident is discretionary. The renewal extended to some trainees cannot also automatically acquire permanency since it mentioned TEMPORARY on the face of the appointments.

The execution of the contract by the resident trainees necessarily follows the acceptance of the terms and conditions of the contract. In the same manner that the acceptance of a temporary appointments is also tantamount to the submission to the legal consequences, that is that he can be terminated at anytime with or without cause.

For clarification, it must be stated that petitioners are entitled to back salaries from the time they were illegally terminated up to the time their termination was affirmed and concurred in by the appointing authority — Secretary of Health.

x x x x x x x x"[11]

Upon receipt of said resolution, an appeal was filed by petitioners with the CSC, assailing the finding of the Board that they are only entitled to back salaries from the time of their termination on 1 July 1989 to the time of the confirmation of their termination by the Secretary of Health on 17 August 1989.

On 5 September 1990, the CSC affirmed the 25 October 1989 resolution of the Board, holding that since the nature of their appointment was temporary, their services could be terminated with or without cause. The CSC declared that the contract signed by petitioners with NCMH bound them to the condition stated therein that their training may be terminated on the ground of poor performance, or in case of failure on their part to meet the standards of medical ethics and behavior; and that as authorities in their own field of specialization, the evaluation conducted by the Committee as to petitioners' performance during their training is presumed regular.[12]

Under the Hospital Residency Law governing the residency program in government service, the appointment of resident trainees is limited to a period of one (1) year, renewable every year not exceeding the duration of the training program in a particular field of medicine, at the discretion of the Secretary of Health or National Defense, as the case may be.[13] The supervision and control of the government training program are under either the Secretary of Health or Secretary of National Defense.[14] Inasmuch as the NCMH is under the Department of Health, it is the Secretary of Health who has the authority to appoint as well as remove the resident trainees. The power to remove is deemed lodged in the same body or person in which the power to appoint is vested.[15]

Petitioners' appointment pursuant to the Hospital Residency Law was for a fixed period of one (1) year. Prior to the expiration of the term, petitioners could be removed only for just cause. The fact that petitioners' appointments were classified as "temporary" did not grant a blanket authority to the Secretary of Health to remove them at anytime without cause, for the term fixed by law protects the right of the resident trainees from being removed from office without cause. A "term" of office fixed by law allows the appointee to hold office, perform its functions, and enjoy its privileges and emoluments until the expiration of said period.[16] It is the definite period of time prescribed by law by which an officer may hold office.[17]

The separate appointments extended to petitioners were for a definite period of one (1) year. Applying the provisions of the Hospital Residency Law to the expiration of the term of one (1) year, petitioners' appointments could be renewed only at the discretion of the Secretary of Health. The non-renewal of their appointments with or without cause at the end of their term, is a valid mode of termination.

Records show that the termination of petitioners' services by NCMH on 1 July 1989 which was thereafter affirmed by the Secretary of Health on 17 August 1989, was made before the expiration of their respective terms. Inasmuch as their term had not expired at the time of their termination or dismissal, it is necessary that such removal be for cause.

Based on the result of evaluation conducted by the Residency Evaluation Committee on 16 June 1989, petitioners obtained a poor rating in academic performance and a low ranking in said evaluation.[18] The Board recommended their termination for the following reasons:

"1.

DR. ELLEN AMBAS — First Year Resident Physician Poor academic performance in the past two quarter evaluation. Board's decision was unanimous.

2.

DR. JOANNE DE LEON — First Year Resident Physician Low ranking in the overall performance evaluation. Case observational report made by her continuing supervisor points to poor academic performance as expected of her year level (Dr. Galvez), and her hysterical personality trait does not augur well as a Psychiatrist in training. (Dr. Laraya).

3.

DR. MARIE STELLA GUNABE — First Year Resident Phys. Low academic performance. Dr. Galvez described her as a scatterbrain in her work.

4.

DR. RICARDO TOLENTINO — Second Year Resident Phys. Poor academic performance. This rating have been (sic) noted as early as his first year of training but was given a ‘chance’ to change but to no avail.

5.

DR. NERISSA BERNAL — Second Year Resident Physician Poor academic performance. She ranked second to the last among her peers. Marked defect in attitudinal and interpersonal behavior was consistently noted in her two major areas of rotation.

6.

DR. RAUL MORENA — Second Year Resident Physician Poor academic performance. Violation of the Code of Conduct of Resident Physicians. He received several warnings and advises from clinical supervisors and chief of services about this problem.”[19]

The training of petitioners under the Psychiatric Residency Program with NCMH involved a special field of medicine. Because of the nature of their training in psychiatry, the NCMH had the right to set a standard to be met by the resident trainees, to produce graduates who are qualified and skilled in the said field. To attain this purpose, the NCMH recommended to the Secretary of Health the termination of resident trainees who failed to come up to the standard set for such program.

However, the NCMH had no power to terminate the trainees. Only the Secretary of Health, as the appointing authority, had the power to remove them from the service. Thus, the removal of petitioners by NCMH effective 1 July 1989 was not valid. But, the confirmation on 17 August 1989 made by the Secretary of Health of petitioners’ termination had the force and effect of a valid removal, effective on the date such confirmation was made.

The Secretary of Health did not commit grave abuse of discretion in terminating petitioners from the service because the same was done with just cause, i.e., the petitioners’ poor academic performance and low ranking in the evaluation conducted by the Residency Evaluation Committee of NCMH. Under the circumstances, the valid removal of petitioners took effect only on 17 August 1989, and, therefore, they are entitled to backwages from 1 July 1989 to 17 August 1989.

There is no merit to petitioners’ claim that they were deprived of due process because they were not given notice of the motion for reconsideration filed by respondent Dr. Buenaseda, on behalf of NCMH. Although petitioners were not duly furnished any notice of said motion, they were nonetheless able to file their arguments or opposition to the allegations raised therein, before the said motion for reconsideration was resolved by the Board, reversing its original decision.

ACCORDINGLY, the petition is DISMISSED.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Bidin, Griño-Aquino, Medialdea, Regalado, and Davide, Jr., JJ., concur.

Feliciano and Sarmiento, JJ., on leave.

Gancayco, J., retired.

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- [1] Rollo, p. 48
- [2] Ibid., pp. 117-118
- [3] Ibid., p. 56
- [4] Ibid., pp. 184-187
- [5] Third Indorsement by the Secretary of Health, Rollo, p. 50
- [6] Rollo, pp. 46-49
- [7] Ibid., pp. 79-83
- [8] Ibid., pp. 88-91
- [9] Ibid., p. 92
- [10] Ibid., pp. 96-100
- [11] Rollo, pp. 30-31
- [12] Rollo, pp. 23-26
- [13] Sec. 1, RA 2251, as amended by PD 1424
- [14] Sec. 4, PD 1424
- [15] *Lacanilao vs. de Leon*, G.R. No. 76532, 25 January 1987, 147 SCRA 286
- [16] *Casibang vs. Aquino*, G.R. No. L-38025, 20 August 1979, 92 SCRA 642
- [17] *Aparri vs. CA*, G.R. No. L-30057, 31 January 1984, 127 SCRA 231
- [18] Rollo, pp. 191-192
- [19] Ibid, p. 194

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