

**CORAZON C. GONZAGA, PETITIONER, VS. THE HONORABLE  
SANDIGAN-BAYAN (FIRST DIVISION), THE PEOPLE OF THE  
PHILIPPINES, AND THE DEPARTMENT OF EDUCATION, CULTURE  
AND SPORTS, RESPONDENTS.**

*G.R. No. 96131. September 06, 1991*

Ponente: PADILLA, J.

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**PADILLA, J.:**

Assailed in this petition for review on certiorari are two (2) resolutions of the Sandiganbayan, dated 10 September 1990 and 30 October 1990, respectively, rendered in Criminal Case No. 14404, entitled "People vs. Corazon C. Gonzaga" (For: Malversation under Article 217 of the Revised Penal Code). The resolution dated 10 September 1990 granted the prosecution's motion to suspend accused-petitioner, pendente lite, from her position as school principal of Malabon Municipal High School, Malabon, Metro Manila. The resolution dated 30 October 1990 denied accused-petitioner's motion for reconsideration of the 10 September 1990 resolution.

Petitioner alleges in her present petition[1] that a complaint for malversation of public funds was filed against her, in her capacity as School Principal of the Malabon Municipal High School, Malabon, Metro Manila. The complaint was filed before the Ombudsman by the Municipal Administrator of the Municipality of Malabon, based on the audit report of the Commission on Audit, wherein petitioner as an accountable officer is alleged to have incurred a shortage of P15,188.37; that an information[2] dated 2 March 1990 was thereafter filed against petitioner before the Sandiganbayan for the crime of malversation of public funds under Article 217 of the Revised Penal Code;[3] that before she could be arraigned, accused-petitioner filed with respondent court a motion for re-investigation, which motion was denied by said court in its resolution dated 2 July 1990;[4] that on 17 August 1990, accused-petitioner pleaded not guilty to the crime charged; and that on the same date, the prosecution filed a motion seeking to suspend, pendente lite, the accused as school principal of the above-named school,[5] on the basis of Section 13, Republic Act 3019 ("Anti-Graft and Corrupt Practices Act"), as amended by Batas Pambansa Blg. 195.[6]

The resolution dated 10 September 1990 granted the prosecution's motion to suspend the accused, pendente lite, the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING, accused CORAZON GONZAGA is hereby suspended pendente lite from her position as Principal of the Malabon National High School, Malabon, Metro Manila and from such other public positions that she maybe holding, effective immediately upon notice hereof.

"Let a copy of the Resolution be furnished to the Secretary of the Department of Education, Culture and Sports, Intramuros, Manila for implementation thereof and to inform this Court of the action he has taken thereon within five (5) days from receipt hereof."[7]

Petitioner's motion for reconsideration of the above-quoted resolution was, as afore-stated, denied by the respondent court in its resolution dated 30 October 1990, dispositive part of which reads:

"Considering the mandatory character of Sec. 13 of R.A. No. 3019 and the various decisions of the Supreme Court upholding the validity of the same, accused Gonzaga's Motion for Reconsideration of the resolution of this Court dated September 10, 1990 suspending her *pendente lite* is denied." [8]

In the present petition, petitioner questions the validity of the suspension imposed on her as school principal of Malabon Municipal High School by the afore-stated resolutions of the respondent court.

We find merit in the petition.

It will be noted that in the questioned resolutions, respondent court imposed on petitioner an indefinite period of suspension, *pendente lite*, from her mentioned office, on the basis of Section 13, Rep. Act 3019, as amended, earlier quoted.

Petitioner at the outset contends that Section 13 of Rep. Act 3019, as amended, is unconstitutional as the suspension provided thereunder partakes of a penalty even before a judgment of conviction is reached, and is thus violative of her constitutional right to be presumed innocent.

We do not accept the contention because: firstly, under Section 13, Rep. Act 3019, suspension of a public officer upon the filing of a valid information is mandatory. [9] What the Constitution rejects is a preventive suspension of indefinite duration as it raises, at the very least, questions of denial of due process and equal protection of the laws; in other words, preventive suspension is justifiable for as long as its continuance is for a reasonable length of time; [10] secondly, preventive suspension is not a penalty; [11] a person under preventive suspension, especially in a criminal action, remains entitled to the constitutional presumption of innocence as his culpability must still be established; [12] thirdly, the rule is that every law has in its favor the presumption of validity, and that to declare a law unconstitutional, the basis for such a declaration must be clearly established. [13]

The issue in this case, as we see it, is not whether Section 13, Rep. Act 3019 is valid or not, but rather whether the same is constitutionally applied in relation to the surrounding circumstances. [14]

It is worthy to note that even prior to the cases of *Deloso* (1988) and *Doromal* (1989), to be discussed shortly, pronouncements had already been made by the Court in the cases of *Garcia* (1962) and *Layno* (1985) [15] to the effect that a preventive suspension lasting for an unreasonable length of time violates the Constitution.

In the more recent cases of *Deloso vs. Sandiganbayan*, and *Doromal vs. Sandiganbayan*, [16] suspension under Section 13 of Rep. Act 3019 was held as limited to a maximum period of ninety (90) days, in consonance with Section 42 of Pres. Decree No. 807 (otherwise known as the "Civil Service Decree"). [17] We see no cogent reason why the same rule should not apply to herein petitioner.

In fact, the recommendation of the Solicitor General (counsel for public respondent) is that, inasmuch as the suspension mentioned under Section 13 of Rep. Act 3019 is understood as limited to a maximum duration of ninety (90) days, the order of suspension imposed on petitioner, having been rendered on 10 September 1990, should now be lifted, as suspension has already exceeded the maximum period of ninety (90) days.

All told, preventive suspension is not violative of the Constitution as it is not a penalty. In fact, suspension particularly under Section 13 of Rep. Act 3019 is mandatory once the validity of the information is determined. [18] What the Constitution abhors is an indefinite preventive suspension as it violates the due process and equal protection clauses, [19] and the right of public officers and employees to security of tenure. [20]

Henceforth, considering that the persons who can be charged under Rep. Act 3019, as amended, include elective and appointive officers and employees, and further taking into account the rulings in the *Deloso* and *Doromal* cases, the ninety (90)-day maximum period for suspension under Section 13 of the said Act shall apply to all those

who are validly charged under the said Act, whether elective or appointive officer or employee as defined in Section 2(b) of Rep. Act 3019.[21]

To the extent that there may be cases of indefinite suspension imposed either under Section 13 of Rep. Act 3019, or Section 42 of Pres. Decree 807, it is best for the guidance of all concerned that this Court set forth the rules on the period of preventive suspension under the aforementioned laws, as follows:

1. Preventive suspension under Section 13, Rep. Act 3019 as amended shall be limited to a maximum period of ninety (90) days, from issuance thereof, and this applies to all public officers, (as defined in Section 2(b) of Rep. Act 3019) who are validly charged under said Act.
2. Preventive suspension under Section 42 of Pres. Decree 807 shall apply to all officers or employees whose positions are embraced in the Civil Service, as provided under Sections 3 and 4 of said Pres. Decree 807;[22] and shall be limited to a maximum period of ninety (90) days from issuance, except where there is delay in the disposition of the case, which is due to the fault, negligence or petition of the respondent, in which case the period of delay shall not be counted in computing the period of suspension herein stated; provided that if the person suspended is a presidential appointee,[23] the continuance of his suspension shall be for a reasonable time as the circumstances of the case may warrant.

WHEREFORE, the petition is GRANTED and the questioned resolutions of the respondent Sandiganbayan, dated 10 September 1990 and 30 October 1990, are hereby SET ASIDE. Petitioner may re-assume the position of school principal of the Malabon Municipal High School, Malabon Metro Manila without prejudice to the continuation of trial on the merits of the pending case against her in the Sandiganbayan, unless there are other supervening legal grounds which would prevent such re-assumption of office.

**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.

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[1] Rollo, p. 4

[2] The information reads:

"That on or about the schoolyear 1979-1980 to 22 September 1986, in the Municipality of Malabon, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being then the Principal of the Malabon, Municipal High School, Metro Manila, and as such responsible for the operation of said school and accountable for public funds received by reason of the duties of her office, did then and there willfully, unlawfully and feloniously take, misappropriate, embezzle and convert to her personal use and benefit the total amount of FIFTEEN THOUSAND ONE HUNDRED EIGHTY-EIGHT PESOS and THIRTY SEVEN CENTAVOS (P15,188.37), Philippine Currency, out of such funds, to the damage and prejudice of the Municipal government of Malabon, Metro Manila in the amount aforesaid." (Rollo, pp. 4 and 36)

[3] Chapter 4, Title 7 of Book II

[4] Rollo, pp. 4, 7 and 36

[5] Rollo, p. 7

[6] Section 5 of BP Blg. 195 (entitled "an Act amending sections eight, nine, ten, eleven, and thirteen of Republic

Act numbered thirty hundred and nineteen, otherwise known as the Anti-Graft and Corrupt Practices Act") reads:

"SEC. 5. Section 13 of Republic Act No. 3019 is hereby amended to read as follows:

"SEC. 13. Suspension and loss of benefits. — Any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him.

x x x x x x x x"

[7] Rollo, p. 28

[8] Rollo, p. 29

[9] People vs. Albano, G.R. No. L-45376-77, July 26, 1988, 163 SCRA 511

[10] Layno, Sr. vs. Sandiganbayan, G.R. No. 65848, May 24, 1985, 136 SCRA 541-542

[11] Bayot vs. Sandiganbayan (G.R. No. 61776-61861, March 23, 1984, 128 SCRA 383) ruled that Section 13, Rep. Act 3019, as amended, is not a penal provision which violates the constitutional prohibition against the enactment of ex post facto law; that paragraph 3 of Article 24 of the Revised Penal Code 11a clearly states that suspension from employment or public office during the trial or in order to institute proceedings shall not be considered as a penalty because it is not imposed as a result of judicial proceedings; that in fact, if acquitted, the official concerned shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension.

[11a] Article 24(3) of the Revised Penal Code states the following:

"Art. 24. Measures of prevention or safety which are not considered penalties. — The following shall not be considered as penalties:

x x x x x x x x

3. Suspension from the employment or public office during the trial or in order to institute proceedings.

x x x x x x x x."

[12] Layno, Sr. vs. Sandiganbayan, (supra), p. 541

[13] Abbas vs. COMELEC, G.R. No. 89651, November 10, 1989, 179 SCRA 287

[14] The doctrine on unconstitutional application states that a "law may be valid and yet susceptible to the charge of being unconstitutionally applied." (Pintacasi vs. Court of Agrarian Relations, G.R. No. L-23704, July 28, 1972, 46 SCRA 20)

[15] In Garcia vs. Executive Secretary (G.R. No. L-19748, September 13, 1962, 6 SCRA 1), petitioner was then the Chairman of the National Science Development Board (a presidential appointee). During his tenure of office, he was charged with electioneering and dishonesty. The then Executive Secretary ordered his preventive suspension which lasted for more than 60 days. This Court held therein that Section 35 of Republic Act 2260 (Civil Service Act of 1959) 15a limited the duration of preventive suspension to sixty (60) days; that some of the

justices were of the opinion that the 60-day-period rule applies also to presidential appointees; the other members of the court expressed the view that this 60-day limitation does not apply to presidential appointees, but that the suspension shall nevertheless last for a reasonable time only.

[15a] Section 34, Rep. Act 2260 speaks of suspension of certain public officers during the investigation of charges filed against them; whereas Section 35 of the same Act refers to the period until which said suspension shall last. These two (2) sections state:

"Section 34. Preventive suspension. — The President of the Philippines may suspend any chief or assistant chief of a bureau or office and in the absence of special provision, any other officer appointed by him, pending an investigation of the charges against such officer or pending an investigation of his bureau or office. With the approval of the proper Head of Department, the chief of a bureau or office may likewise preventively suspend any subordinate officer or employee in his bureau or under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression, or grave misconduct, or neglect in the performance of duty, or if there are strong reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.

"Section 35. Lifting of preventive suspension pending administrative investigation. — When the administrative case against the officer or employee under preventive suspension is not finally decided by the Commissioner of Civil Service within the period of sixty (60) days after the date of suspension of the respondent, the respondent shall be reinstated in the service. If the respondent officer or employee is exonerated, he shall be restored to his position with full pay for the period of suspension."

In *Layno vs. Sandiganbayan* (supra), petitioner Layno, the elected municipal mayor of Lianga, Surigao del Sur was charged with violation of Section 3(e) of Rep. Act 3019 in an information filed with the Sandiganbayan on 17 May 1983. In August 1983, a motion to suspend accused pendente lite was filed with the Sandiganbayan, which suspended him on 26 October 1983. It was ruled in said case that Section 13 of Rep. Act 3019 (mandatory provision on suspension) was unconstitutionally applied; that a preventive suspension may be justified so long as its continuance is not for an unreasonable length of time, otherwise, an indefinite suspension raises questions of due process and equal protection.

[16] In the *Deloso* case, (G.R. Nos. 86899-903, May 15, 1989, 173 SCRA 409) *Deloso* was elected governor of the Province of Zambales in the 1988 local elections. Charges for violation of the Anti-Graft Law were filed against him and imposed on him by the Sandiganbayan was a preventive suspension from his office without a definite duration.

In the *Doromal* case (G.R. No. 85468, September 7, 1989, 177 SCRA 354), *Doromal* was then a Commissioner of the Presidential Commission on Good Government (a presidential appointee) who was charged with violation of Rep. Act 3019. The Sandiganbayan ordered his indefinite suspension pendente lite from said office.

[17] Section 42 of P.D. 807 reads;

"Section 42. Lifting of Preventive Suspension Pending Administrative Investigation. — When the administrative case against the officer or employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of suspension of the respondent who is not a presidential appointee, the respondent shall be automatically reinstated in the service: Provided, That when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay shall not be counted in computing the period of suspension herein provided."

[18] *People vs. CA*, G.R. Nos. 57425-27, March 18, 1985, 135 SCRA 372.

[19] Section 1, Article III of the Constitution provides that "no person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."

[20] The Garcia case (supra, p. 6) ruled that the evils of indefinite suspension during investigation arise when the "respondent employee is deprived in the meantime of his means of livelihood, without an opportunity to find work elsewhere, lest he be considered to have abandoned his office"; that prolonged suspension is worse than removal.

In Morfe vs. Mutuc, (G.R. No. L-20387, January 31, 1968, 22 SCRA 424) it was held that while a public office is not a property, but a public trust, the right to office is nevertheless a protected right as the security of tenure guaranteed by the Constitution is protected by the due process clause.

[21] Section 2(b) of Rep. Act 3019 reads: "Sec. 2. Definition of terms — As used in this Act, the term — x x x. 'Public officers' includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government as defined in the preceding subparagraph."

[22] Sections 3 and 4 of Pres. Decree 807 give the coverage of the Civil Service, to wit:

"SEC. 3. As used in this Decree, the following shall be construed thus:

(a) Agency means any bureau, office commission, administration, board, committee, institute, corporation, whether performing governmental or proprietary function, or any other unit of the National Government, as well as provincial, city or municipal government, except as hereinafter otherwise provided.

x x x x x x x x"

"SEC. 4. Position embraced in the Civil Service. - The Civil Service embraces every branch, agency, subdivision, and instrumentality of the government, including every government-owned or controlled corporation whether performing governmental or proprietary function.

Positions in the Civil Service shall be classified into career service and non-career service."

x x x x x x x x"

[23] Section 42, P.D. 807

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