

## **EN BANC**

**[ G.R. No. 203372, June 16, 2015 ]**

**ATTY. CHELOY E. VELICARIA- GARAFIL, PETITIONER, VS. OFFICE OF THE PRESIDENT AND HON. SOLICITOR GENERAL JOSE ANSELMO I. CADIZ, RESPONDENTS.**

**[G.R. No. 206290]**

**ATTY. DINDO G. VENTURANZA, PETITIONER, VS. OFFICE OF THE PRESIDENT, LEILA M. DE LIMA, IN HER CAPACITY AS THE SECRETARY OF THE DEPARTMENT OF JUSTICE, CLARO A. ARELLANO, IN HIS CAPACITY AS THE PROSECUTOR GENERAL, AND RICHARD ANTHONY D. FADULLON, IN HIS CAPACITY AS THE OFFICER-IN-CHARGE OF THE OFFICE OF THE CITY PROSECUTOR OF QUEZON CITY, RESPONDENTS.**

**[G.R. No. 209138]**

**IRMA A. VILLANUEVA AND FRANCISCA B. ROSQUITA, PETITIONERS, VS. COURT OF APPEALS AND THE OFFICE OF THE PRESIDENT, RESPONDENTS.**

**[G.R. No. 212030]**

**EDDIE U. TAMONDONG, PETITIONER, VS. EXECUTIVE SECRETARY PAQUITO N. OCHOA, JR., RESPONDENT.**

## **D E C I S I O N**

**CARPIO, J.:**

The present consolidated cases involve four petitions: G.R. No. 203372 with Atty. Cheloy E. Velicaria-Garafil (Atty. Velicaria-Garafil), who was appointed State Solicitor II at the Office of the Solicitor General (OSG), as petitioner; G.R. No. 206290 with Atty. Dindo G. Venturanza (Atty. Venturanza), who was appointed Prosecutor IV (City Prosecutor) of Quezon City, as petitioner; G.R. No. 209138 with Irma A. Villanueva (Villanueva), who was appointed Administrator for Visayas of the Board of Administrators of the Cooperative Development Authority (CDA), and Francisca B. Rosquita (Rosquita), who was appointed Commissioner of the National Commission of Indigenous Peoples (NCIP), as petitioners; and G.R. No. 212030 with Atty. Eddie U. Tamondong (Atty. Tamondong), who was appointed member of the Board of Directors of the Subic Bay Metropolitan Authority (SBMA), as petitioner. All petitions question the constitutionality of Executive Order No. 2 (EO 2) for being inconsistent with Section 15, Article VII of the 1987 Constitution.

Petitioners seek the reversal of the separate Decisions of the Court of Appeals (CA)

that dismissed their petitions and upheld the constitutionality of EO 2. G.R. No. 203372 filed by Atty. Velicaria-Garafil is a Petition for Review on Certiorari,<sup>[1]</sup> assailing the Decision<sup>[2]</sup> dated 31 August 2012 of the CA in CA-G.R. SP No. 123662. G.R. No. 206290 filed by Atty. Venturanza is a Petition for Review on Certiorari,<sup>[3]</sup> assailing the Decision<sup>[4]</sup> dated 31 August 2012 and Resolution<sup>[5]</sup> dated 12 March 2013 of the CA in CA-G.R. SP No. 123659. G.R. No. 209138 filed by Villanueva and Rosquita is a Petition for Certiorari,<sup>[6]</sup> seeking to nullify the Decision<sup>[7]</sup> dated 28 August 2013 of the CA in CA-G.R. SP Nos. 123662, 123663, and 123664.<sup>[8]</sup> Villanueva and Rosquita filed a Petition-in-Intervention in the consolidated cases before the CA. G.R. No. 212030 is a Petition for Review on Certiorari,<sup>[9]</sup> assailing the Decision<sup>[10]</sup> dated 31 August 2012 of the CA in CA-G.R. SP No. 123664 and Resolution<sup>[11]</sup> dated 7 April 2014 of the CA in CA-G.R. SP Nos. 123662, 123663, and 123664.<sup>[12]</sup>

### **Facts of the Cases**

Prior to the conduct of the May 2010 elections, then President Gloria Macapagal-Arroyo (President Macapagal-Arroyo) issued more than 800 appointments to various positions in several government offices.

The ban on midnight appointments in Section 15, Article VII of the 1987 Constitution reads:

Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.

Thus, for purposes of the 2010 elections, 10 March 2010 was the cut-off date for valid appointments and the next day, 11 March 2010, was the start of the ban on midnight appointments. Section 15, Article VII of the 1987 Constitution recognizes as an exception to the ban on midnight appointments only “temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.” None of the petitioners claim that their appointments fall under this exception.

### ***Appointments***

*G.R. No. 203372*

The paper evidencing Atty. Velicaria-Garafil’s appointment as State Solicitor II at the OSG was dated 5 March 2010.<sup>[13]</sup> There was a transmittal letter dated 8 March 2010 of the appointment paper from the Office of the President (OP), but this transmittal letter was received by the Malacañang Records Office (MRO) only on 13 May 2010. There was no indication as to the OSG’s date of receipt of the appointment paper. On 19 March 2010, the OSG’s Human Resources Department called up Atty. Velicaria-Garafil to schedule her oath-taking. Atty. Velicaria-Garafil took her oath of office as State Solicitor II on 22 March 2010 and assumed her position on 6 April 2010.

*G.R. No. 206290*

The paper evidencing Atty. Venturanza's appointment as Prosecutor IV (City Prosecutor) of Quezon City was dated 23 February 2010.<sup>[14]</sup> It is apparent, however, that it was only on 12 March 2010 that the OP, in a letter dated 9 March 2010, transmitted Atty. Venturanza's appointment paper to then Department of Justice (DOJ) Secretary Alberto C. Agra.<sup>[15]</sup> During the period between 23 February and 12 March 2010, Atty. Venturanza, upon verbal advice from Malacañang of his promotion but without an official copy of his appointment paper, secured clearances from the Civil Service Commission (CSC),<sup>[16]</sup> Sandiganbayan,<sup>[17]</sup> and the DOJ.<sup>[18]</sup> Atty. Venturanza took his oath of office on 15 March 2010, and assumed office on the same day.

*G.R. No. 209138*

The paper evidencing Villanueva's appointment as Administrator for Visayas of the Board of Administrators of the CDA was dated 3 March 2010.<sup>[19]</sup> There was no transmittal letter of the appointment paper from the OP. Villanueva took her oath of office on 13 April 2010.

The paper evidencing Rosquita's appointment as Commissioner, representing Region I and the Cordilleras, of the NCIP was dated 5 March 2010.<sup>[20]</sup> Like Villanueva, there was no transmittal letter of the appointment paper from the OP. Rosquita took her oath of office on 18 March 2010.

*G.R. No. 212030*

The paper evidencing Atty. Tamondong's appointment as member, representing the private sector, of the SBMA Board of Directors was dated 1 March 2010.<sup>[21]</sup> Atty. Tamondong admitted that the appointment paper was received by the Office of the SBMA Chair on 25 March 2010<sup>[22]</sup> and that he took his oath of office on the same day.<sup>[23]</sup> He took another oath of office on 6 July 2010 as "an act of extra caution because of the rising crescendo of noise from the new political mandarins against the so-called 'midnight appointments.'"<sup>[24]</sup>

To summarize, the pertinent dates for each petitioner are as follows:

<b>G.R. No.</b>	<b>Date of Appointment Letter</b>	<b>Date of Transmittal Letter</b>	<b>Date of Receipt by MRO</b>	<b>Date of Oath of Office</b>	<b>Assumption of Office</b>
203372 (Atty. Velicaria-Garafil)	5 March 2010	8 March 2010	13 May 2010	22 March 2010	6 April 2010
206290 (Atty.	23 February 2010	9 March 2010	12 March 2010	15 March 2010	15 March 2010

Venturanza)					
209138 (Villanueva)	3 March 2010		4 May 2010	13 April 2010	
209138 (Rosquita)	5 March 2010		13 May 2010	18 March 2010	
212030 (Atty. Tamondong)	1 March 2010			25 March 2010 and 6 July 2010	

### ***Issuance of EO 2***

On 30 June 2010, President Benigno S. Aquino III (President Aquino) took his oath of office as President of the Republic of the Philippines. On 30 July 2010, President Aquino issued EO 2 recalling, withdrawing, and revoking appointments issued by President Macapagal-Arroyo which violated the constitutional ban on midnight appointments.

The entirety of EO 2 reads:

#### **EXECUTIVE ORDER NO. 2**

RECALLING, WITHDRAWING, AND REVOKING APPOINTMENTS ISSUED BY  
THE PREVIOUS ADMINISTRATION IN VIOLATION OF THE  
CONSTITUTIONAL BAN ON MIDNIGHT APPOINTMENTS, AND FOR OTHER  
PURPOSES.

WHEREAS, Sec. 15, Article VII of the 1987 Constitution provides that "Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.";

WHEREAS, in the case of *"In re: Appointments dated March 30, 1998 of Hon. Mateo Valenzuela and Hon. Vallarta as Judges of the Regional Trial Court of Branch 62 of Bago City and Branch 24 of Cabanatuan City, respectively"* (A.M. No. 98-5-01-SC Nov. 9, 1998), the Supreme Court interpreted this provision to mean that the President is neither required to make appointments nor allowed to do so during the two months immediately before the next presidential elections and up to the end of her term. The only known exceptions to this prohibition are (1) temporary appointments in the executive positions when continued vacancies will prejudice public service or endanger public safety and in the light of the recent Supreme Court decision in the case of *De Castro, et al. vs. JBC and PGMA*, G.R. No. 191002, 17 March 2010, (2) appointments to the Judiciary;

WHEREAS, Section 261 of the Omnibus Election Code provides that:

"Section 261. *Prohibited Acts.*– The following shall be guilty of an election offense:

(g) Appointments of new employees, creation of new position, promotion, or giving salary increases. – During the period of forty-five days before a regular election and thirty days before a special election.

(1) Any head, official or appointing officer of a government office, agency or instrumentality, whether national or local, including government-owned or controlled corporations, who appoints or hires any new employee, whether provisional, temporary or casual, or creates and fills any new position, except upon prior authority to the Commission. The Commission shall not grant the authority sought unless it is satisfied that the position to be filled is essential to the proper functioning of the office or agency concerned, and that the position shall not be filled in a manner that may influence the election.

As an exception to the foregoing provisions, a new employee may be appointed in the case of urgent need:

Provided, however, that notice of the appointment shall be given to the Commission within three days from the date of the appointment. Any appointment or hiring in violation of this provision shall be null and void.

(2) Any government official who promotes or gives any increase of salary or remuneration or privilege to any government official or employee, including those in government-owned or controlled corporations.”;

WHEREAS, it appears on record that a number of appointments were made on or about 10 March 2010 in complete disregard of the intent and spirit of the constitutional ban on midnight appointment and which deprives the new administration of the power to make its own appointment;

WHEREAS, based on established jurisprudence, an appointment is deemed complete only upon acceptance of the appointee;

WHEREAS, in order to strengthen the civil service system, it is necessary to uphold the principle that appointments to the civil service must be made on the basis of merit and fitness, it is imperative to recall, withdraw, and revoke all appointments made in violation of the letter and spirit of the law;

NOW, THEREFORE, I, BENIGNO S. AQUINO III, by virtue of the powers vested in me by the Constitution as President of the Philippines, do hereby order and direct that:

SECTION 1. Midnight Appointments Defined. – The following appointments made by the former President and other appointing