

EN BANC

[G.R. No. 185740, July 23, 2013]

**THE PROVINCIAL GOVERNMENT OF CAMARINES NORTE,
REPRESENTED BY GOVERNOR JESUS O. TYPOCO, JR.,
PETITIONER, VS. BEATRIZ O. GONZALES, RESPONDENT.**

DECISION

BRION, J.:

We resolve the Provincial Government of Camarines Norte's (*petitioner*) petition for review on *certiorari*^[1] assailing the Decision^[2] dated June 25, 2008 and the Resolution^[3] dated December 2, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 97425, reinstating respondent Beatriz O. Gonzales as the Province of Camarines Norte's provincial administrator, or to an equivalent position.

Factual Antecedents

Gonzales was appointed as the provincial administrator of the Province of Camarines Norte by then Governor Roy A. Padilla, Jr. on April 1, 1991. Her appointment was on a permanent capacity. On March 8, 1999, Governor Jess B. Pimentel sent Gonzales a memorandum directing her to explain in writing why no administrative charges should be filed against her for gross insubordination/gross discourtesy in the course of official duties, and conduct grossly prejudicial to the best interest of the service; this was later on captioned as Administrative Case No. 001. After Gonzales submitted her comment, an Ad Hoc Investigation Committee found her guilty of the charges against her, and recommended to Governor Pimentel that she be held administratively liable.^[4] On September 30, 1999, Governor Pimentel adopted the Ad Hoc Investigation Committee's recommendation and dismissed Gonzales.^[5]

Proceedings before the Civil Service Commission

Gonzales appealed Governor Pimentel's decision to the Civil Service Commission (CSC). The CSC issued Resolution No. 001418^[6] modifying Governor Pimentel's decision, finding Gonzales guilty of insubordination and suspending her for six months. This decision was appealed by Governor Pimentel, which the CSC denied in its Resolution No. 001952.^[7]

Gonzales then filed a motion for execution and clarification of Resolution No. 001418, in which she claimed that she had already served her six-month suspension and asked to be reinstated. The CSC issued Resolution No. 002245,^[8] which directed Gonzales' reinstatement.

Governor Pimentel reinstated Gonzales as provincial administrator on October 12, 2000, but terminated her services the next day for lack of confidence. He then wrote

a letter^[9] to the CSC reporting his compliance with its order, and Gonzales' subsequent dismissal as a confidential employee. In his letter, Governor Pimentel cited Resolution No. 0001158,^[10] where the CSC ruled that the provincial administrator position is highly confidential and is coterminous in nature.

The CSC responded through Resolution No. 030008,^[11] which again directed Gonzales' reinstatement as provincial administrator. It clarified that while the Local Government Code of 1991 (*Republic Act No. [RA] 7160*) made the provincial administrator position coterminous and highly confidential in nature, this conversion cannot operate to prejudice officials who were already issued permanent appointments as administrators prior to the new law's effectivity. According to the CSC, Gonzales has acquired a vested right to her permanent appointment as provincial administrator and is entitled to continue holding this office despite its subsequent classification as a coterminous position. The conversion of the provincial administrator position from a career to a non-career service should not jeopardize Gonzales' security of tenure guaranteed to her by the Constitution. As a permanent appointee, Gonzales may only be removed for cause, after due notice and hearing. Loss of trust and confidence is not among the grounds for a permanent appointee's dismissal or discipline under existing laws.

In a letter^[12] dated February 17, 2005, Gonzales wrote the CSC alleging that Governor Jesus O. Typoco, Jr., Camarines Norte's incumbent governor, refused to reinstate her. The CSC responded with Resolution No. 061988,^[13] which ordered Gonzales' reinstatement to the provincial administrator position, or to an equivalent position. Thus, the petitioner, through Governor Typoco, filed a petition for review before the CA, seeking to nullify the CSC's Resolution No. 030008 and Resolution No. 061988.

The Appellate Court's Ruling

The CA supported the CSC's ruling that reinstated Gonzales as provincial administrator or to an equivalent position.^[14]

Citing *Aquino v. Civil Service Commission*,^[15] the CA emphasized that an appointee acquires a legal right to his position once he assumes a position in the civil service under a completed appointment. This legal right is protected both by statute and the Constitution, and he cannot be removed from office without cause and previous notice and hearing. Appointees cannot be removed at the mere will of those vested with the power of removal, or without any cause.

The CA then enumerated the list of valid causes for a public officer's removal under Section 46,^[16] Book V, Title I, Subtitle A of the Revised Administrative Code (*Administrative Code*), and noted that lack of confidence was not in the list. Thus, the CA concluded that Gonzales' dismissal on the ground of loss of confidence violated her security of tenure, and that she has the right to be reinstated with payment of backwages.

The CA further held that Gonzales' dismissal was illegal because it was done without due process. The proceedings under Administrative Case No. 001 cannot be the basis for complying with the requirements of due process because they are separate

and distinct from the proceedings in the present controversy. Thus, Gonzales was illegally terminated when she was dismissed for lack of confidence, without any hearing, the day after she was reinstated.

Lastly, the CA noted that Resolution No. 002245, which modified Governor Pimentel's decision, has long been final and executory. The petitioner did not file any petition for reconsideration against Resolution No. 002245, and hence, it is no longer alterable.

The petitioner sought a reconsideration^[17] of the CA's Decision, which the CA denied in a Resolution^[18] dated December 2, 2008.

The Present Petition

In its present petition for review on *certiorari*, the petitioner argues that the provincial administrator position has been converted into a highly confidential, coterminous position by RA 7160. Hence, Gonzales no longer enjoyed security of tenure to the position she held prior to RA 7160's enactment.

In her Comment^[19] and Memorandum,^[20] Gonzales maintained that the provincial administrator remained a career service position. Section 7^[21] of Presidential Decree No. 807, which was one of the bases of the *Court in Laurel V. Civil Service Commission*^[22] to declare the provincial administrator as a career service position, is a verbatim copy of Section 7,^[23] Chapter 2 of the Administrative Code. This classification, established by law and jurisprudence, cannot be altered by the mere implementing rules and regulations of RA 7160. And assuming *arguendo* that the provincial administrator position has indeed become a primarily confidential position, this reclassification should not apply retroactively to Gonzales' appointment on a permanent capacity prior to RA 7160's effectivity.

Issues

The parties' arguments, properly joined, present to us the following issues:

- 1) Whether Congress has re-classified the provincial administrator position from a career service to a primarily confidential, non-career service position; and
- 2) Whether Gonzales has security of tenure over her position as provincial administrator of the Province of Camarines Norte.

The Court's Ruling

We find the petition meritorious.

Congress has reclassified the provincial administrator position as a primarily confidential, non-career position

We support the CSC's conclusion that the provincial administrator position has been

classified into a primarily confidential, non-career position when Congress, through RA 7160, made substantial changes to it. **First**, prior to RA 7160, *Batas Pambansa Blg. 337*, the old Local Government Code (LGC), did not include a provincial administrator position among the listing of mandatory provincial officials,^[24] but empowered the *Sangguniang Panlalawigan* to create such other offices as might then be necessary to carry out the purposes of the provincial government.^[25] RA 7160 made the position mandatory for every province.^[26] Thus, the creation of the provincial administrator position under the old LGC used to be a prerogative of the *Sangguniang Panlalawigan*.

Second, in introducing the mandatory provincial administrator position, RA 7160 also amended the qualifications for the provincial administrator position. While Section 480^[27] of RA 7160 retained the requirement of civil service eligibility for a provincial administrator, together with the educational requirements, it shortened the six-year work experience requirement to five years.^[28] It also mandated the additional requirements of residence in the local government concerned, and imposed a good moral character requirement.

Third, RA 7160 made the provincial administrator position ***coterminous with its appointing authority, reclassifying it as a non-career service position that is primarily confidential.***

Before RA 7160 took effect, Laurel classified the provincial administrator position as an open career position which required qualification in an appropriate examination prior to appointment. Laurel placed the provincial administrator position under the second major level of positions in the career service under Section 7 of Presidential Decree No. 807. This provision reads:

Section 7. Classes of Positions in the Career Service.

(a) Classes of positions in the career service appointment to which requires examinations shall be grouped into three major levels as follows:

x x x x

2. The second level shall include professional, technical, and scientific positions which involve professional, technical, or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief level[.]

Section 480 of RA 7160 made the provincial administrator's functions closely related to the prevailing provincial administration by identifying the incumbent with the provincial governor to ensure the alignment of the governor's direction for the province with what the provincial administrator would implement. In contrast with the general direction provided by the provincial governor under the Manual of Position Descriptions cited in Laurel, Section 480(b) of RA 7160 now mandates *constant interaction between the provincial administrator and the provincial*

governor, to wit:

(b) The administrator shall take charge of the office of the administrator and shall:

(1) Develop plans and strategies and ***upon approval thereof by the governor*** or mayor, as the case may be, implement the same particularly those which have to do with the management and administration-related programs and projects which the governor or mayor is empowered to implement and which the sanggunian is empowered to provide for under this Code;

(2) In addition to the foregoing duties and functions, the administrator shall:

(i) Assist in the coordination of the work of all the officials of the local government unit, ***under the supervision, direction, and control of the governor*** or mayor, and for this purpose, he may convene the chiefs of offices and other officials of the local government unit;

x x x x

(4) Recommend to the sanggunian and ***advise the governor*** and mayor, as the case may be, on all other matters relative to the management and administration of the local government unit[.] [emphases and italics ours]

As the CSC correctly noted in Resolution No. 0001158,^[29] the administrator position demands a close intimate relationship with the office of the governor (its appointing authority) to effectively develop, implement and administer the different programs of the province. The administrator's functions are to recommend to the *Sanggunian* and to advise the governor on all matters regarding the management and administration of the province, thus requiring that its occupant enjoy the governor's full trust and confidence.

To emphasize the close relations that the provincial administrators' functions have with the office of the governor, RA 7160 even made the *provincial administrator position coterminous with its appointing authority*.^[30] This provision, along with the interrelations between the provincial administrator and governor under Section 480, renders clear the intent of Congress to make the provincial administrator position primarily confidential under the non-career service category of the civil service.

Congress' reclassification of the provincial administrator position in RA 7160 is a valid exercise of legislative power that does not violate Gonzales' security of tenure

Having established that Congress has changed the nature of the provincial administrator position to a primarily confidential employee, the next question to