

## EN BANC

[ G.R. No. 127182, January 22, 2001 ]

**HON. ALMA G. DE LEON, CHAIRMAN, HON. THELMA P. GAMINDE, COMMISSIONER, AND HON. RAMON P. ERENETA, JR., COMMISSIONER, CIVIL SERVICE COMMISSION, AND SECRETARY RAFAEL M. ALUNAN, III, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, PETITIONERS, VS. HON. COURT OF APPEALS AND JACOB F. MONTESA, RESPONDENTS.**

### DECISION

**YNARES-SANTIAGO, J.:**

Can a person who lacks the necessary qualifications for a public position be appointed to it in a permanent capacity?

Before the Court is a Petition for Review on Certiorari assailing the April 25, 1996 Decision,<sup>[1]</sup> and November 20, 1996 Resolution<sup>[2]</sup> of the Court of Appeals in CA-G.R. SP No. 38664, which set aside Resolution Nos. 953268<sup>[3]</sup> and 955201<sup>[4]</sup> of the Civil Service Commission; and declared as null and void - (1) Department Order No. 94-370,<sup>[5]</sup> issued by the Department of Interior and Local Government, relieving private respondent of his duties as Department Legal Counsel/Director III and reassigning him as Director III (Assistant Regional Director), Region XI; and (2) Administrative Order No. 235 issued by then President Fidel V. Ramos, dropping private respondent from the rolls of public service, for serious neglect of duty and absences without official leave.

On August 28, 1986, private respondent Atty. Jacob F. Montesa, who is not a Career Executive Service Officer (CESO) or a member of the Career Executive Service, was appointed as "Ministry Legal Counsel - CESO IV in the Ministry of Local Government" (now Department of Interior and Local Government [hereafter referred to as Department]), by then Minister Aquilino Pimentel, Jr. Private respondent's appointment was approved as permanent by the Civil Service Commission.

On July 25, 1987, then President Corazon C. Aquino promulgated Executive Order No. 262, reorganizing the Department. On April 8, 1988, then Secretary Luis T. Santos, who succeeded Minister Pimentel, designated Nicanor M. Patricio as Chief, Legal Service in place of private respondent who, in turn, was directed to report to the office of the Secretary to perform special assignments.

Consequently, private respondent filed before this Court a petition for *quo warranto*, docketed as G.R. No. 83470,<sup>[6]</sup> against then Secretary Luis T. Santos and Nicanor Patricio. On September 26, 1990, we ruled in favor of private respondent Montesa and ordered his reinstatement to his former position.

Meanwhile, Republic Act No. 6758 (otherwise known as the Salary Standardization

Law) took effect on July 1, 1989. Pursuant thereto, the position of "Department Service Chiefs," which include the Department Legal Counsel, was reclassified and ranked with "Assistant Bureau Directors" under the generic position title of "Director III".<sup>[7]</sup>

Hence, in the execution of the decision of this Court in G.R. No. 83470, respondent was reinstated to the position: "Department Legal Counsel and/or Director III."<sup>[8]</sup>

On July 26, 1994, then Secretary Rafael M. Alunan III, citing as reasons the interest of public service and the smooth flow of operations in the concerned offices, issued Department Order No. 94-370, relieving private respondent of his current duties and responsibilities and reassigning him as "Director III (Assistant Regional Director), Region XI."<sup>[9]</sup> Private respondent, however, did not report to his new assigned position. Instead, he filed a 90-day sick leave, and upon the expiration thereof on December 5, 1994, he submitted a memorandum for then acting Secretary Alexander P. Aguirre, signifying his intention to re-assume his position as Department Legal Counsel/Chief, Legal Services.<sup>[10]</sup>

Thereupon, Acting Secretary Aguirre, by memorandum dated December 6, 1994,<sup>[11]</sup> reiterated to private respondent that the issuance of Department Order No. 94-370, transferring him to Region XI, was in keeping with the interest of the public service and of the Career Executive Service (CES) provision on assignment, reassignment, and transfer. Accordingly, private respondent was advised to report to Region XI immediately.

Private respondent wrote a memorandum dated December 12, 1994,<sup>[12]</sup> requesting for a reconsideration of Department Order No. 94-370, but to no avail. Private respondent appealed to the Civil Service Commission and the latter issued Resolution No. 95-3268,<sup>[13]</sup> dated May 23, 1995 which sustained his reassignment to Region XI, on the grounds that: 1) the subject reassignment was not violative of the due process clause of the Constitution or of private respondent's right to security of tenure; 2) the reassignment did not entail any reduction in rank or status; 3) private respondent could be reassigned from one station to another without his consent as the rule against unconsented transfer applies only to an officer who is appointed to a particular station, and not merely assigned thereto. Private respondent's motion for reconsideration of the aforesaid Resolution was similarly denied by the Commission in Resolution No. 955201 dated August 22, 1995.<sup>[14]</sup>

On October 10, 1995, the Department directed private respondent to report to his new assigned post in Region XI, stressing that his continued non-compliance with D.O. No. 94-370 is prejudicial to the interest of public service, particularly in Region XI. Private respondent was also warned that upon his failure to comply, the Department shall be constrained to consider him on Absence Without Leave (AWOL) and as a consequence, drop him from the rolls of public service.<sup>[15]</sup>

Instead of complying therewith, private respondent, on October 23, 1995, filed with the Court of Appeals a Petition for Review with prayer for the issuance of a temporary restraining order and/or preliminary injunction. No restraining order or preliminary injunction, however, was issued by the court.

On December 13, 1995, then President Fidel V. Ramos, upon the recommendation of the Department, issued Administrative Order No. 235, dropping private respondent Atty. Jacob F. Montesa, Director III, Legal Service, from the roster of public servants for serious neglect of duty and absences without leave (AWOL).<sup>[16]</sup>

On April 25, 1996, the Court of Appeals rendered its decision in favor of private respondent, holding as follows:

*WHEREFORE, the petition is GRANTED. Department Order No. 94-370 in so far as it affects petitioner, Jacob F. Montesa, is hereby declared null and void. Petitioner is hereby ordered retained in his position as "Chief, Legal Service" or "Department Legal Counsel" in the DILG, without loss of seniority, rank, emolument and privileges. The DILG Secretary is hereby ordered to release to petitioner his withheld salaries corresponding to the period July 15-21, 1995 and his back salaries, if also withheld, corresponding to the period July 22, 1995 to September 27, 1995.*

*Finding that petitioner has not paid the amount of P500.00 as deposit for costs (page 1, Rollo), he is hereby ordered to pay the same to the Clerk of this Court within five (5) days from receipt of this decision.*

*SO ORDERED.*<sup>[17]</sup>

Both petitioners and private respondent moved for reconsideration. In his Motion for Clarification and/or Partial Motion for Reconsideration, private respondent prayed for "backwages to cover the period from October 5, 1995 up to his actual reinstatement to office, the period from August 1, 1994 to July 14, 1995 having been covered by approved leave of absences with pay, while the period July 15-21, 1995 is the period where his name was included in the payroll but release of his salary was illegally withheld by private respondent Alunan on July 21, 1995, and the period of July 22 to October 4, 1995 is the period where respondent Alunan withheld his salary even before CSC Resolution No. 95-9201 (should be No. 95-3268) became executory."<sup>[18]</sup> Respondent likewise prayed for the award of RATA during the period of his illegal dismissal.

Petitioners, on the other hand, posited that the decision of the Court of Appeals is not confluent with Administrative Order No. 235, issued on December 13, 1995 by then President Ramos which dropped petitioner from the roster of public servants. They further argued that until and unless the said Order is declared illegal and/or invalid, the presumption is in favor of its validity and it is incumbent upon private respondent to comply therewith so as not to prejudice the public service.

On November 20, 1996, the Court of Appeals issued the assailed resolution modifying its April 25, 1996 decision, thus:

*WHEREFORE, premises considered, the Motion for Reconsideration filed by public respondents is hereby DENIED for lack of merit. Petitioner's Motion for Clarification and/or Partial Motion for Reconsideration is hereby GRANTED. The dispositive portion of the decision is hereby modified to read as follows:*

*WHEREFORE, the petition is GRANTED. Department Order No. 94-370 in so far as it affects petitioner, Jacob Montesa, and Administrative Order No. 235 are hereby declared null and void. Petitioner is hereby ordered reinstated to his position as "Chief Legal Service" or "Department Legal Counsel" in the DILG, without loss of seniority, rank, emolument and privileges. The DILG Secretary is hereby ordered to release to petitioner his withheld salaries and backwages, including allowances (RATA) and other benefits, to which petitioner would have been entitled had he not been illegally removed, corresponding to the period July 15, 1995 up to his actual reinstatement to office.*

*SO ORDERED.*<sup>[19]</sup>

Dissatisfied, petitioners filed the instant petition with this Court, contending that:

I

RESPONDENT COURT GRAVELY ERRED IN RULING THAT RESPONDENT MONTESA'S REASSIGNMENT IS ACTUALLY AN UNCONSENTED TRANSFER.

II

RESPONDENT COURT GRAVELY ERRED IN RULING THAT RESPONDENT MONTESA'S "TRANSFER" CHANGES HIS APPOINTMENT FROM PERMANENT TO TEMPORARY AND VIOLATES HIS CONSTITUTIONAL RIGHT TO SECURITY OF TENURE.

III

RESPONDENT COURT GRAVELY ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN ORDERING THE REINSTATEMENT OF RESPONDENT MONTESA IN OPEN DISREGARD OF ADMINISTRATIVE ORDER NO. 235 ISSUED BY THE PRESIDENT OF THE PHILIPPINES DROPPING HIM FROM THE ROSTER OF PUBLIC SERVANTS.

IV

RESPONDENT COURT GRAVELY ERRED IN RULING THAT RESPONDENT MONTESA IS ENTITLED TO BACKWAGES, INCLUDING RATA AND OTHER BENEFITS, CORRESPONDING TO THE PERIOD FROM JULY 15, 1995 UP TO HIS ACTUAL REINSTATEMENT.<sup>[20]</sup>

Succinctly put, the pivot of inquiry here boils down to the nature of the appointment of private respondent Atty. Jacob F. Montesa.

At the outset, it must be stressed that the position of Ministry Legal Counsel - CESO IV is embraced in the Career Executive Service. Under the Integrated Reorganization Plan, appointment thereto shall be made as follows:

- c. Appointment. Appointment to appropriate classes in the Career Executive Service shall be made by the President*