

EN BANC

[G.R. No. 145401, May 07, 2001]

MANUEL L. ONTIVEROS, PETITIONER, VS. COURT OF APPEALS, CIVIL SERVICE COMMISSION, AND THE DEPARTMENT OF TOURISM, RESPONDENTS.

DECISION

MENDOZA, J.:

This is a petition seeking review on *certiorari* of the decision,^[1] dated June 30, 2000, and the resolution,^[2] dated October 11, 2000, of the Court of Appeals which affirmed the dismissal of petitioner Manuel L. Ontiveros from the then Ministry of Tourism.

Petitioner was Security Officer I in the Investigation and Security Division of the Ministry of tourism, having been appointed to that position on July 27, 1976. On May 26, 1986, he was dismissed from the service for inefficiency, incompetence, and unauthorized absences. The Memorandum of then Minister of Tourism Jose Antonio U. Gonzales, dismissing petitioner, read:

Pursuant to the provisions of Section 2, Article III of Proclamation 3, your services as Security Officer I is hereby terminated effective as of the close of office hours on May 26, 1986, based on the following grounds:

1. Inefficiency and incompetence in the performance of official duties.
2. Frequent unauthorized absences or tardiness in reporting for duty, loafing, or frequent unauthorized absences from duty during regular office hours.

You are instructed to secure your money and property accountabilities for your last salary payment.^[3]

On June 10, 1986, petitioner appealed to the CSC, invoking his status as a civil service eligible and a permanent employee.^[4]

Petitioner reiterated his appeal in a letter, dated August 11, 1997, to the CSC.^[5] In response, CSC Director IV Angelito G. Grande informed petitioner that jurisdiction over his appeal was vested in the Review Committee created under Executive Order No. 17 of then President Corazon C. Aquino and for that reason his (petitioner's) appeal could not be given due course by the CSC.^[6]

Petitioner filed a motion for reconsideration, but his motion was denied by the CSC

through Chairman Corazon Alma G. de Leon and Commissioners Thelma P. Gaminde and Jose F. Erestain, Jr. In Resolution No. 982464,^[7] the CSC stated:

Pursuant to the Provisional Constitution and the various Executive Orders issued by then President Aquino when she was the sole law-making authority, the different Departments of Government were authorized to carry on reorganization programs. No specific causes for removal were given in the Provisional Constitution because at that time, there was no setting up of clear-cut policies and guidelines on reorganization to protect the security of tenure of civil servants. This was the prevailing situation following the issuance on February 25, 1986 of Proclamation No.1 calling "all appointive public officials to submit their courtesy resignations." This calling was echoed under Section 16, Art. XVIII of the [1987] Constitution which explicitly authorizes the removal of career civil service employees not for cause but as a result of the reorganization pursuant to Proclamation No.3 dated March 25, 1986.

Despite the foregoing circumstances, Ontiveros was removed from the service on the bases of two administrative offenses. Therefore, it is with more reason that his separation from the service under the [Provisional] Constitution was justified, especially considering that the same is for cause.^[8]

Petitioner filed a petition for review to the Court of Appeals. But his petition, as well as his motion for reconsideration, was denied. The Court of Appeals ruled that the CSC had no jurisdiction over petitioner's appeal, the proper appellate body being the Review Committee established under E.O. No.17. In addition, the appeals court held that review of petitioner's dismissal was barred by laches. Hence this petition.

First. Petitioner argues that his case does not fall under the Review Committee's jurisdiction because his separation from the service was not in consequence of the reorganization of the government, as provided in the Provisional Constitution (also known as the Freedom Constitution), but was for cause; hence, appeal lies with the CSC.

The contention has no merit. Art. III, §2 of *the* Provisional Constitution provided that "All elective and appointive officials and employees under the 1973 Constitution shall continue in office until otherwise provided by proclamation or executive order or upon the designation or appointment and qualification of their successors, if such is made within a period of one year from February 25, 1986" (emphasis added). To be sure, petitioner was not dismissed by virtue of a proclamation or executive order of the President of the Philippines nor by reason of the designation or appointment and qualification of his successor. It must also be noted that E.O. No.120, which reorganized the then Ministry of Tourism, was issued by then President Corazon C. Aquino only on January 20, 1987, whereas petitioner was dismissed on May 26, 1986.

However, the memorandum of then Tourism Minister Jose Antonio U. Gonzales, dismissing petitioner from the service, clearly stated that it was being issued pursuant to Art. III, §2 of the Provisional Constitution. And indeed, just two days

after petitioner had been dismissed, E.O. No.17 was issued on May 28, 1986, providing in pertinent part as follows:

SECTION. 1. In the course of implementing Article III, Section 2 of the Freedom Constitution, the Head of each Ministry shall see to it that the separation or replacement of officers and employees is made only for justifiable reasons, to prevent indiscriminate dismissals of personnel in the career civil service whose qualifications and performance meet the standards of public service of the New Government.

Any office, agency, instrumentality, or government-owned or controlled corporation, which is not attached to any ministry, including any of the constitutional commissions and state colleges and universities, shall be considered a ministry for purposes of this Order.

The Ministry concerned shall adopt its own rules and procedures for the review and assessment of its personnel, including the identification of sensitive positions which require more rigid assessment of the incumbents, and shall complete such review/assessment as expeditiously as possible but not later than February 24, 1987 to prevent undue demoralization in the public service.

SEC. 2. The Ministry Head concerned, on the basis of such review and assessment, shall determine who shall be separated from the service. Thereafter, he shall issue to the official or employee concerned a notice of separation which shall indicate therein the reason/s or ground/s for such separation and the fact that the separated official or employee has the right to file a petition for reconsideration pursuant to this Order. Separation from the service shall be effective upon receipt of such notice, either personally by the official or employee concerned or on his behalf by a person of sufficient discretion.

SEC. 3. The following shall be the grounds for separation/replacement of personnel:

- 1) Existence of a case for summary dismissal pursuant to Section 40 of the Civil Service Law;
- 2) Existence of a probable cause for violation of the Anti-Graft and Corrupt Practices Act as determined by the Ministry Head concerned;
- 3) Gross incompetence or inefficiency in the discharge of functions;
- 4) Misuse of public office for partisan political purposes;
- 5) Any other analogous ground showing that the incumbent is unfit to remain in the service or his separation/replacement is in the interest of the service.

In *Radia v. Review Committee under Executive Order No. 17*,^[9] the retroactive application of E.O. No.17 to past dismissals was affirmed. It was held:

[E.O. No.17] is a self-limiting act and its provisions are not only non-penal in nature, but also clearly more favorable than those of Art. III (2)