

SECOND DIVISION

[G.R. No. 115962, February 15, 2000]

DOMINADOR REGALADO, JR., PETITIONER, VS. COURT OF APPEALS AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This is a petition for review on *certiorari* of the decision^[1] of the Court of Appeals affirming the ruling of the Regional Trial Court, Branch 38, Negros Oriental, which found petitioner Dominador Regalado, Jr. guilty of violating §261(h) of the Batas Pambansa Blg. 881 (Omnibus Election Code), as amended.^[2]

The Information against petitioner alleged:

That on or about January 25, 1988, at Tanjay, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, said accused DOMINADOR S. REGALADO, JR., [as] OIC Mayor of the Municipality of Tanjay, Negros Oriental, did then and there unlawfully, feloniously and illegally TRANSFER one MRS. EDITHA P. BARBA, a permanent Nursing Attendant, Grade I, in the Office of the [M]ayor of Tanjay, from her permanent assignment to a very remote Barangay of Sto. Niño during the election period and without obtaining prior permission or clearance from the Commission on Elections, Manila.

The evidence for the prosecution shows that on January 15, 1987, complainant Editha Barba was appointed nursing attendant in the Rural Health Office of Tanjay, Negros Oriental by then Officer-In-Charge Mayor Rodolfo Navarro.^[3] Although she was detailed at, and received her salary from, the Office of the Mayor, she reported for work at the Puriculture Center, Poblacion, Tanjay. As Navarro decided to run for mayor of Tanjay in the January 18, 1988 elections, petitioner Dominador Regalado, Jr. was appointed substitute OIC-Mayor. His brother, Arturo S. Regalado, was also a mayoralty candidate.

Petitioner's brother won in the elections. Four days later, on January 22, 1988, petitioner, still sitting as OIC-Mayor, issued a memorandum to Barba informing her that effective January 25, 1988, she would be reassigned from Poblacion, Tanjay to Barangay Sto. Niño,^[4] about 25 kilometers from Poblacion.^[5] The transfer was made without the prior approval of the Commission on Elections (COMELEC). Barba continued to report at the Puriculture Center, Poblacion, Tanjay, however. Hence, on February 18, 1988, petitioner issued another memorandum to Barba directing her to explain, within 72 hours, why she refuses to comply with the memorandum of January 22, 1988.^[6]

In response, Barba, on February 21, 1988, sent a letter to petitioner protesting her

transfer which she contended was illegal.^[7] She then filed, on February 16, 1988, a complaint^[8] against petitioner for violation of §261(h) of the Omnibus Election Code, as amended, and after preliminary investigation, the Provincial Election Officer of Negros Oriental, Atty. Gerardo Lituanas, charged petitioner before the Regional Trial Court, Branch 38, Negros Oriental.

On September 27, 1991, the lower court rendered a decision, the dispositive portion of which states:^[9]

Finding the accused guilty beyond reasonable doubt of a violation of Section 261, paragraph (h), of the Omnibus Election Code, the accused Dominador S. Regalado, Jr., is sentenced to undergo imprisonment for an indeterminate period ranging from one (1) year minimum to three (3) years maximum without the benefit of probation and to suffer disqualification to hold public office and deprivation of the right of suffrage. He is further sentenced to indemnify the offended party, Editha P. Barba, as civil liability arising from the offense charged[,] in the sum of Five Hundred (P500.00) Pesos x x x for moral damages.

As petitioner's motion for reconsideration was denied,^[10] he elevated the matter to the Court of Appeals, which, on February 3, 1994, affirmed the lower court's decision. He moved for a reconsideration, but his motion was likewise denied, hence this appeal.

Petitioner alleges that -

I. THE PUBLIC RESPONDENT FAILED TO CONSIDER THE ORGANIZATIONAL STRUCTURE OF THE RURAL HEALTH UNIT OF THE MUNICIPALITY OF TANJAY, NEGROS ORIENTAL, VIZ-A-VIZ, THE LETTERS OF APPOINTMENT OF PRIVATE RESPONDENT.

II. THE MEMORANDUM DID NOT EFFECT A TRANSFER, BUT MERELY A "RE-ASSIGNMENT" OF PRIVATE RESPONDENT.

III. EXIGENCIES OF SERVICE WERE NOT ACCOUNTED FOR.^[11]

Petitioner's contentions have no merit.

First. The two elements of the offense prescribed under §261(h) of the Omnibus Election Code, as amended, are: (1) a public officer or employee is transferred or detailed within the election period as fixed by the COMELEC, and (2) the transfer or detail was effected without prior approval of the COMELEC in accordance with its implementing rules and regulations.^[12]

The implementing rule involved is COMELEC Resolution No. 1937,^[13] which pertinently provides:

Section 1. *Prohibited Acts.*

x x x x x x x x x

Effective November 19, 1987 up to February 17, 1988, no public official

shall make or cause any transfer or detail whatsoever of any officer or employee in the Civil Service, including public school teachers, except upon prior approval of the Commission.

Section 2. *Request for authority of the Commission.* - Any request for x x x approval to make or cause any transfer or detail must be submitted in writing to the Commission stating all the necessary data and reason for the same which must satisfy the Commission that the position is essential to the proper functioning of the office or agency concerned, and that the x x x filling thereof shall not in any manner influence the election.

Petitioner admits that he issued the January 22, 1988 memorandum within the election period set in Resolution No. 1937 without the prior approval of the COMELEC. He contends, however, that he did not violate §261(h) because he merely effected a "re-assignment" and not a "transfer" of personnel by moving Barba from one unit or place of designation (Poblacion, Tanjay) to another (Sto. Niño, Tanjay) of the same office, namely, the Rural Health Office of Tanjay, Negros Oriental.^[14] In support of his contention, he relies upon the following portions of §24 of P.D. No. 807 (Civil Service Law):^[15]

(c) Transfer - a movement from one position to another which is of equivalent rank, level, or salary without break of service involving the issuance of an appointment.

x x x x x x x x x

(g) Reassignment - an employee may be reassigned from one organizational unit to another in the same agency. *Provided*, that such reassignment shall not involve a reduction in rank, status, or salary.

Petitioner, however, ignores the rest of §24(c) which provides that:

[A transfer] shall not be considered disciplinary when made in the interest of the public service, in which case, the employee concerned shall be informed of the reasons therefor. If the employee believes that there is no justification for the transfer, he may appeal his case to the Commission.

The transfer may be from one department or agency to another or from one organizational unit to another in the same department or agency: Provided, however, That any movement from the non-career service to the career service shall not be considered a transfer. (Italics added)

Thus, contrary to petitioner's claim, a transfer under §24(c) of P.D. No. 807 in fact includes personnel movement from one organizational unit to another in the same department or agency.

Moreover, §261(h) of B.P. No. 881, as amended, provides that it is an election offense for -

Any public official who makes or causes *any transfer or detail whatever* of any officer or employee in the civil service including public school