

THIRD DIVISION

[G.R. No. 119903, August 15, 2000]

**HON. RICARDO T. GLORIA, IN HIS CAPACITY AS SECRETARY,
AND DIRECTOR NILO L. ROSAS IN HIS CAPACITY AS REGIONAL
DIRECTOR, DEPARTMENT OF EDUCATION, CULTURE AND
SPORTS, PETITIONERS, VS. HON. COURT OF APPEALS AND DR.
BIENVENIDO A. ICASIANO, RESPONDENTS.**

DECISION

PURISIMA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court brought by Secretary and the Director for the National Capital Region of the Department of Education, Culture and Sports (DECS), to question the decision^[1] of the Court of Appeals in CA-G.R. SP No. 35505.

The Court of Appeals found the facts as follows:

"On June 29, 1989, petitioner [private respondent herein] was appointed Schools Division Superintendent, Division of City Schools, Quezon City, by the then President Corazon C. Aquino.

On October 10, 1994, respondent Secretary Gloria recommended to the President of the Philippines that the petitioner be reassigned as Superintendent of the MIST [Marikina Institute of Science and Technology], to fill up the vacuum created by the retirement of its Superintendent, Mr. Bannaoag F. Lauro, on June 17, 1994.

On October 12, 1994, the President approved the recommendation of Secretary Gloria.

On October 13, 1994, a copy of the recommendation for petitioner's reassignment, as approved by the President, was transmitted by Secretary Gloria to Director Rosas for implementation.

On October 14, 1994, Director Rosas, informed the petitioner of his reassignment, effective October 17, 1994.

Petitioner requested respondent Secretary Gloria to reconsider the reassignment, but the latter denied the request. The petitioner prepared a letter dated October 18, 1994 to the President of the Philippines, asking for a reconsideration of his reassignment, and furnished a copy of the same to the DECS. However, he subsequently changed his mind and refrained from filing the letter with the Office of President.

On October 19, 1994, the petitioner filed the instant petition."^[2]

On October 26, 1994, the Court of Appeals denied private respondent's prayer for the issuance of a Temporary Restraining Order (TRO).^[3]

On November 22, 1994, it set aside its earlier resolution denying the prayer for the issuance of a TRO; and thereafter, restrained the petitioners "from implementing the re-assignment of the petitioner [private respondent herein] from incumbent Schools Division Superintendent of Quezon City to Vocational Schools Superintendent of the Marikina Institute of Science and Technology."^[4]

On December 21, 1994, the Court of Appeals issued another resolution setting the hearing of the petition for the issuance of a writ of preliminary injunction and enjoining the petitioners from implementing the reassignment of the private respondent.

On March 28, 1995, it issued its assailed decision; holding as follows:

"WHEREFORE, for lack of a period or any indication that it is only temporary, the reassignment of the petitioner from Schools Division Superintendent, Division of City Schools, Quezon City, to Vocational Schools Superintendent of the Marikina Institute of Science and Technology pursuant to the Memorandum of Secretary Ricardo T. Gloria to the President of the Philippines dated 10 October 1994, is hereby declared to be violative of petitioner's right to security of tenure, and the respondents are hereby prohibited from implementing the same.

SO ORDERED."^[5]

Petitioners are now before the Court seeking relief from the decision of the appellate court, contending that:

I

RESPONDENT COURT OF APPEALS HAS ALLOWED ITSELF TO BE INSTRUMENTAL IN PRIVATE RESPONDENT'S CIRCUMVENTION OF THE PRESIDENTIAL IMMUNITY FROM SUIT BY GIVING DUE COURSE AND GRANTING RELIEFS PRAYED FOR IN A SUIT PURPORTEDLY FILED AGAINST PETITIONERS BUT ACTUALLY QUESTIONING AN ACT OF THE PRESIDENT.

II

RESPONDENT COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR APPLICABLE DECISIONS OF THE SUPREME COURT^[6]

The pivotal issue for resolution here is whether the reassignment of private respondent from School Division Superintendent of Quezon City to Vocational School Superintendent of MIST is violative of his security of tenure? Petitioners maintain that there is no violation of security of tenure involved. Private respondent maintains otherwise.

In taking favorable action on private respondent's petition for prohibition, the Court of Appeals ratiocinated: