

EN BANC

[G.R. No. 240778, June 30, 2020]

ROLANDO S. GREGORIO, PETITIONER, V. COMMISSION ON AUDIT AND DEPARTMENT OF FOREIGN AFFAIRS, RESPONDENTS.

D E C I S I O N

CARANDANG, J.:

Challenged in this Petition for *Certiorari*^[1] under Rule 64 in relation to Rule 65 of the Rules of Court is the Decision^[2] dated February 28, 2017 and Resolution^[3] dated March 8, 2018 of the Commission on Audit (COA) *En Banc* in COA CP Case No. 2015-436 & 437.^[4] The COA denied the Petition for Money Claims filed by petitioner Rolando S. Gregorio for payment of salary and additional compensation; and Overseas Allowance and Living Quarters Allowance for the period from January 1, 2005 to June 17, 2005, in the amount of P119,487.50 and P1,921,659.70, respectively, or a total amount of P2,041,147.20.^[5]

Rolando S. Gregorio (petitioner), Chief of Mission Class II of the Department of Foreign Affairs (DFA), was the former Consul General of the Philippine Consulate General (PCG) of Honolulu, Hawaii until his retirement on April 17, 2004, at the age of 65. Upon his request, his government service was extended four times beyond his compulsory age of retirement, to wit: (1) from April 18 to June 30, 2004; (2) from July 1 to September 30, 2004; (3) from October 1 to 31, 2004; and (4) from November 1 to December 31, 2004.^[6]

The request for extension of services of petitioner for the period of November 1, 2004 to December 31, 2004 was approved on October 29, 2004. Pursuant to the said approval, DFA Secretary Alberto G. Romulo (DFA Secretary Romulo) issued Assignment Order No. 42-04 stating that:^[7]

The tour of duty of Consul General ROLANDO S. GREGORIO, at the Philippine Consulate General, Honolulu, is hereby finally extended from 01 October 2004 to 31 December 2004 with no further extension.^[8]
(Underscoring supplied)

Starting January 2005 and onwards, documents, such as payrolls, of the PCG were signed by Consul Eva G. Betita (Consul Betita). Nonetheless, petitioner claimed that after the expiration of his service on December 31, 2004, he continued to serve as Consul General starting January 1, 2005 onwards.

In a Letter^[9] dated March 22, 2005, the DFA officially designated Consul Betita as Acting Head of Post of Honolulu pursuant to the directive of then Undersecretary for Administration, Franklin M. Ebdalin (DFA Undersecretary Ebdalin). The letter was received by CORATEL on April 1, 2005. It reads:

To : Honolulu PCG
Fr : UFME/OPAS
Re : Ms. Eva G. Betita,
Acting Head of Post
Dt : 22 March 2005
Cn : HO-39-UFME-2005

Following the end of the approved extension of services of Consul Rolando Gregorio on 31 December 2004, effective 01 January 2005, Consul Eva G. Betita, FSO I, is hereby designated as Acting Head of Post.

[10]

On April 21, 2005, DFA Secretary Romulo, through a Memorandum for the President, recommended that the request of petitioner for extension of government service until June 30, 2005 be approved.^[11] On May 23, 2005, the DFA received a Memorandum dated May 19, 2005 from the Executive Secretary approving petitioner's extension of services as Consul General of the Philippine Consulate in Honolulu *"until June 30, 2005 or until the arrival of his successor, whichever is earlier."*^[12]

On June 10, 2005, DFA Secretary Romulo issued a very urgent and confidential Letter^[13] instructing petitioner to return to Home Office by June 13, 2005 and to file the appropriate leaves for the days he was absent from work from January 2005.^[14]

In a Memorandum^[15] dated October 18, 2005, Assistant Secretary Ophelia A. Gonzales, Office of the Personnel and Administrative Services of the DFA requested from the Assistant Secretary of Fiscal Affairs, the payment of unpaid salaries and allowances of petitioner for the approved extension of his services as Consul General from January 1, 2005 to June 30, 2005.^[16] The Memorandum further stated that:

In line with our request, enclosed, for your appropriate action, are copies each of the following:

1. Certificate of Last Payment x x x

x x x x

6. Approved Leave of Absence for the period from 01 April 2005 to 30 June 2005.^[17]

On July 15, 2015, after almost 10 years, petitioner filed two Petitions for Money Claim^[18] before respondent COA for payment of salary and additional compensation; and Overseas Allowance and Living Quarters Allowance, for the period of January 1, 2005 to June 17, 2005 in the amounts of P119, 487.50 and P1,921,659.70, respectively, or a total amount of P2,041,147.20. The cases were docketed as COA CP Case No. 2015-436 to 437.^[19]

In its Answer dated October 28, 2015, respondent DFA, through the Office of the Solicitor General (OSG), prayed that the money claim of petitioner be denied on the following grounds, to wit: (1) petitioner rendered actual service and reported for work, pursuant to approved extensions of service beyond his age of retirement, until December 31, 2004 only; (2) petitioner neither assumed nor continued to hold

office from January to June 17, 2005, considering that the requisite approval of the President for the extension of his service was issued only on May 19, 2005, which is beyond the allowed maximum extension of one year; and (3) the effectivity of the Memorandum informing the DFA of the approval of extension of petitioner's services until June 30, 2005 cannot be made to apply on January 1, 2005 considering that Section 3 of Executive Order No. 136,^[20] series of 1999 (E.O. No. 136) is explicit that a compulsory retired officer can neither assume nor continue in office without receipt of the requisite authority.^[21]

The Audit Team Leader of the DFA, Pasay City agreed with respondent DFA. On the other hand, the Cluster Director, Cluster 1 - Executive Offices, National Government Sector (NGS) of the COA recommended that the Petition for Money Claim of petitioner be given due course on the ground that the approval of Executive Secretary Eduardo R. Ermita (Executive Secretary Ermita) of the extension of service of petitioner as an exemption from Executive Order (EO) No. 136 renders the DFA's opposition to the claim based on Sections 1, 3 and 4 of EO No. 136 ineffective. She ruled that the designation of Consul Betita as Acting Head of Post of Honolulu effective January 1, 2005 by then DFA Undersecretary Ebdalin is void since the latter had no authority to designate Consul Betita.^[22]

In a Decision^[23] dated February 28, 2017, COA denied the petition for money claims filed by petitioner. The dispositive portion of the decision states, to wit:

WHEREFORE, premises considered, the Petitions for Money Claim of Mr. Rolando S. Gregorio, former Consul General, Philippine Consulate General, Honolulu, Hawaii, for payment of salary and additional compensation; and Overseas Allowance and Living Quarters Allowance, for the period of January 1, 2005 to June 17, 2005 in the amounts of P119,487.50 and P1,921,659.70, respectively, or a total amount of P2,041,147.20, are hereby **DENIED** for lack of merit.^[24] (Emphasis in the original)

In denying the petition, the COA ruled that the money claim of petitioner is devoid of merit based on the following grounds. *First*, Section 3 of E.O. No. 136 provides that any officer or employee requesting retention in the service shall not be allowed to assume or continue in office pending receipt of authority from the Office of the President. The COA noted that the approved extension until June 30, 2005 pertains to the recommendation of DFA Secretary Romulo that the request of petitioner for extension until June 30, 2005 be granted. However, said request was made only on April 21, 2005 and its approval was communicated in a Memorandum dated May 19, 2005 of the Executive Secretary, which was received by the DFA only on May 23, 2005. The COA ruled that petitioner cannot assume or continue in office pending receipt of authority from the Office of the President and absent such authority, petitioner cannot claim benefit for the period from January 1, 2005 to June 30, 2005.^[25]

Second, Section 4 of E.O. No. 136 allows extension of government service beyond the mandatory age of retirement for a maximum of one (1) year only. The COA noted that at the time the request for extension of service was made on April 21, 2005, it was already beyond the maximum period of one (1) year from April 17, 2004. In the Memorandum of then Executive Secretary Ermita approving the extension of service of petitioner, it was expressly stated that petitioner's extension

was until June 30, 2005, or until the arrival of his successor, whichever is earlier. It specifically states, to wit:

Please be advised that upon your recommendation, as an exemption to Executive Order No. 136 (series of 1999), the President has **APPROVED** the extension of service of Consul General **ROLANDO S. GREGORIO**, Chief of Mission Class II, of the Philippine Consulate General in Honolulu, Hawaii, Department of Foreign Affairs, beyond the compulsory retirement age, until June 30, 2005, or until the arrival of his successor, whichever is earlier.^[26] (Emphasis and underscoring in the original)

Third, Section 2 of the same provision states that officials or employees who have reached the compulsory retirement age of 65 years shall not be retained in the service, except for exemplary meritorious reasons. Here, the COA noted that no documents were presented to show that petitioner's service was retained due to exemplary meritorious reasons. The COA found that petitioner's money claim is not supported with proof of actual services rendered.^[27]

Petitioner moved for reconsideration but was denied by the COA in a Resolution^[28] dated March 8, 2018.

Hence, petitioner filed the present petition asserting that:

THE COMMISSION ON AUDIT ERRED ON A QUESTION OF LAW IN DENYING THE PETITION FOR MONEY CLAIM ON THE BASIS THAT PETITIONER DID NOT RENDER ACTUAL SERVICES FOR THE PERIOD OF JANUARY 1, 2005 UP TO JUNE 17, 2005 CONSIDERING THAT CONSUL EVA G. BETITA WAS DESIGNATED TO THE POST.^[29]

Petitioner maintains that, contrary to the findings of the COA, he actually rendered service as the Consul General of the Philippine Consulate in Honolulu from January 1, 2005 until June 10, 2005 in a hold-over capacity.^[30] Petitioner further contends that the designation of Consul Betita is void because it was issued by DFA Undersecretary Ebdalin, who had no authority to designate her. He asserts that the extension of a Foreign Service Officer must be approved by the President. It necessarily follows that the designation of a Foreign Service Officer must emanate from the President or, at the very least, must carry with it the *imprimatur* of the Secretary of the DFA, being an alter ego of the President. Moreover, petitioner points out that the designation of Consul Betita is dated March 22, 2005 and was officially received only on April 1, 2005. Therefore, it cannot retroact to January 1, 2005, hence, the DFA's insistence that Consul Betita assumed office as Acting Head of Post of PCG, Honolulu on January 1, 2005 is incorrect.^[31] Petitioner also claims that he is entitled to extension pursuant to Section 2 of EO No. 136 considering his exemplary services as evidenced by his commendations and citations.^[32] Lastly, petitioner asserts that under the doctrine of *quantum meruit*, he is entitled to his money claims.^[33]

In the Comment^[34] filed by respondents COA and DFA, through the OSG, they maintain that petitioner did not discharge the function of a Consul General from January 1, 2005 in a hold-over capacity since respondent DFA designated Consul Betita as Acting Head of Post of Honolulu effective January 1, 2005; and that petitioner is not entitled to any salary, allowance and other compensation as Consul