

SECOND DIVISION

[G.R. No. 184219, January 30, 2012]

**SAMUEL B. ONG, PETITIONER, VS. OFFICE OF THE PRESIDENT,
ET AL., RESPONDENTS.**

D E C I S I O N

REYES, J.:

The Case

Before us is a petition for review^[1] on *certiorari* under Rule 45 of the Rules of Court filed by Samuel B. Ong (Ong) to assail the Decision^[2] rendered by the Court of Appeals (CA) on August 5, 2008 in CA-G.R. SP No. 88673, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, the petition for *quo warranto* filed in this case is hereby **DENIED**.

SO ORDERED.^[3]

Ong died on May 22, 2009 during the pendency of the instant petition.^[4] Admittedly, Ong's death rendered the prayer for reinstatement in the petition for *quo warranto* as moot and academic. However, substitution^[5] was sought because in the event that the Court would rule that Ong was indeed entitled to the position he claimed, backwages pertaining to him can still be paid to his legal heirs. Per Resolution^[6] issued on January 10, 2011, we granted the motion for substitution. The deceased petitioner is now herein substituted by his wife Elizabeth, and children, Samuel Jr., Elizabeth and Carolyn, all surnamed Ong.

Antecedents Facts

The CA aptly summarized the facts of the case before the filing of the petition for *quo warranto* as follows:

The petitioner [Ong] joined the National Bureau of Investigation (NBI) as a career employee in 1978. He held the position of NBI Director I from July 14, 1998 to February 23, 1999 and NBI Director II from February 24, 1998 to September 5, 2001. On September 6, 2001, petitioner was appointed Director III by the President. His appointment paper pertinently reads:

"x x x

Pursuant to the provisions of existing laws, the following are hereby appointed to the **NATIONAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE** co-terminus with the appointing authority:

x x x

SAMUEL B. ONG - DIRECTOR III
(vice Carlos S. Caabay) [DEPUTY DIRECTOR]

x x x"

On June 3, 2004, the petitioner received from respondent Reynaldo Wycoco Memorandum Circular No. 02-S.2004 informing him that his appointment, being co-terminus with the appointing authority's tenure, would end effectively at midnight on June 30, 2004 and, unless a new appointment would be issued in his favor by the President consistent with her new tenure effective July 1, 2004, he would be occupying his position in a *de facto*/hold[-]over status until his replacement would be appointed.

On December 01, 2004, the President appointed respondent Victor A. Bessat as NBI Director III as replacement of the petitioner. Consequently, respondent Wycoco notified the petitioner that, effective on December 17, 2004, the latter should cease and desist from performing his functions as NBI Director III in view of the presidential appointment of respondent Bessat as petitioner's replacement. The petitioner received the aforementioned notice only on January 27, 2005.^[7] (underscoring supplied and citations omitted)

On February 22, 2005, Ong filed before the CA a petition for *quo warranto*. He sought for the declaration as null and void of (a) his removal from the position of NBI Director III; and (b) his replacement by respondent Victor Bessat (Bessat). Ong likewise prayed for reinstatement and backwages.

The CA denied Ong's petition on grounds:

A petition for *quo warranto* is a proceeding to determine the right of a person to the use or exercise of a franchise or office and to oust the holder from its enjoyment, if his claim is not well-founded, or if he has forfeited his right to enjoy the privilege.^[8] Where the action is filed by a private person, in his own name, he must prove that he is entitled to the controverted position, otherwise, respondent has a right to the undisturbed possession of the office.^[9]

Section 27 of the Administrative Code of 1987, as amended, classifies the appointment status of public officers and employees in the career service into permanent and temporary. A permanent appointment shall be issued to a person who meets all the requirements for the position to which he is being appointed, including appropriate eligibility prescribed, in

accordance with the provisions of law, rules and standards promulgated in pursuance thereof. In the absence of appropriate eligibles and it becomes necessary in the public interest to fill a vacancy, a temporary appointment shall be issued to a person who meets all the requirements for the position to which he is being appointed except the appropriate civil service eligibility; provided, that such temporary appointment shall not exceed twelve months, but the appointee may be replaced sooner if a qualified civil service eligible becomes available.

x x x In *Cuadra v. Cordova*,^[10] temporary appointment is defined as "one made in an acting capacity, the essence of which lies in its temporary character and its terminability at pleasure by the appointing power." Thus, the temporary appointee accepts the position with the condition that he shall surrender the office when called upon to do so by the appointing authority. The termination of a temporary appointment may be with or without a cause since the appointee serves merely at the pleasure of the appointing authority.

In the career executive service, the acquisition of security of tenure presupposes a permanent appointment. As held in *General v. Roco*,^[11] two requisites must concur in order that an employee in the career executive service may attain security of tenure, to wit: 1) CES eligibility[;] and 2) appointment to the appropriate CES rank.

In the present case, it is undisputed that the petitioner is a non-CESO eligible. At best, therefore, his appointment could be regarded only as temporary and, hence, he has no security of tenure. Such being the case, his appointment can be withdrawn at will by the President, who is the appointing authority in this case, and "at a moment's notice."^[12]

Moreover, a perusal of the petitioner's appointment will reveal that his appointment as NBI Director III is co-terminous with the appointing authority. Correlatively, his appointment falls under Section 14 of the Omnibus Rules Implementing Book V of the Revised Administrative Code of 1987 which provides that:^[13]

"Sec. 14. An appointment may also be co-terminous which shall be issued to a person whose entrance and continuity in the service is based on the trust and confidence of the appointing authority or that which is subject to his pleasure, or co-existent with his tenure, or limited by the duration of project or subject to the availability of funds. "

The co-terminous status may thus be classified as follows:

x x x x

(2) Co-terminous with the appointing authority - when appointment is co-existent with the tenure of the appointing authority or at his pleasure; x x x

Thus, although petitioner's appointment is co-terminous with the tenure of the President, he nevertheless serves at the pleasure of the President and his appointment may be recalled anytime. The case of *Mita Pardo de Tavera v. Philippine Tuberculosis Society, Inc.*^[14] delineated the nature of an appointment held "at the pleasure of the appointing power" in this wise:

An appointment held at the pleasure of the appointing power is in essence temporary in nature. It is co-extensive with the desire of the Board of Directors. Hence, when the Board opts to replace the incumbent, technically there is no removal but only an expiration of term and in an expiration of term, there is no need of prior notice, due hearing or sufficient grounds before the incumbent can be separated from office. The protection afforded by Section 7.04 of the Code of By-Laws on Removal [o]f Officers and Employees, therefore, cannot be claimed by petitioner.

All told, petitioner's appointment as well as its consequent termination falls within the ambit of the discretion bestowed on the appointing authority, the President. Simply put, his appointment can be terminated at any time for any cause and without the need of prior notice or hearing since he can be removed from his office anytime. His termination cannot be said to be violative of Section 2(3), Article IX-B of the 1987 Constitution. When a temporary appointee is required to relinquish his office, he is being separated from office because his term has expired.^[15] Starkly put, upon the appointment of respondent Bessat as his replacement, his term of office had already expired.

Likewise, it is inconsequential that the petitioner was replaced by another non-CESO eligible, respondent Besat. In a *quo warranto* proceeding[,], the person suing must show that he has a clear right to the office allegedly held unlawfully by another. Absent that right, the lack of qualification or eligibility of the supposed usurper is immaterial.^[16]

Indeed, appointment is an essentially discretionary power and must be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should possess the qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. This is a political question involving considerations of wisdom which only the appointing authority can decide.

^[17]

In sum, *quo warranto* is unavailing in the instant case, as the public office in question has not been usurped, intruded into or unlawfully held

by respondent Bessat. The petitioner had no legal right over the disputed office and his cessation from office involves no removal but an expiration of his term of office.^[18]

Hence, the instant petition ascribing to the CA the following errors:

I.

THE CA ERRED WHEN IT SUSTAINED THE VALIDITY OF THE PETITIONER'S REMOVAL BY RESPONDENT WYCOCO AS NBI DIRECTOR III (DEPUTY DIRECTOR).^[19]

II.

THE CA ERRED IN HOLDING THAT SINCE THE PETITIONER HELD A CO-TERMINOUS APPOINTMENT, HE IS TERMINABLE AT THE PLEASURE OF THE APPOINTING POWER.^[20]

Citing *Ambas v. Buenaseda*^[21] and *Decano v. Edu*,^[22] the instant petition emphasizes that the power of removal is lodged in the appointing authority. Wycoco, and not the President, issued Memorandum Circular (MC) No. 02-S.2004 informing Ong that his co-terminous appointment as Director III ended effectively on June 30, 2004. The issuance of MC No. 02-S.2004 was allegedly motivated by malice and revenge since Ong led the NBI employees in holding rallies in July 2003 to publicly denounce Wycoco. Hence, Bessat's assumption of the position was null and void since it was technically still occupied by Ong at the time of the former's appointment.

It is further alleged that it was erroneous for the CA to equate "an appointment co-terminous with the tenure of the appointing authority with one that is at the pleasure of such appointing authority."^[23] Citing *Alba, etc.. v. Evangelista, etcl.*,^[24] Ong's counsel distinguished a "term" as "the time during which the officer may claim to hold office as of right" from a "tenure" which "represents the term during which the incumbent actually holds the office". Ong's appointment, from which he cannot be removed without just cause, was co-terminous with the President's tenure which ended not on June 30, 2004, but only on June 30, 2010.

Section 2(b), Article IX-G of the 1987 Constitution and *Jocom v. Regalado*^[25] are likewise cited to stress that government employees, holding both career and non-career service positions, are entitled to protection from arbitrary removal or suspension. In the case of Ong, who started his employment in 1978 and rose from the ranks, it is allegedly improper for the CA to impliedly infer that the President acted in bad faith by converting his supposed promotional appointment to one removable at the pleasure of the appointing authority.

In its Comment^[26] to the petition, the Office of the Solicitor General (OSG) maintains that the replacement of Ong by Bessat was fair, just and in accord with