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[G.R. No. 176278, June 25, 2010]

ALAN F. PAGUIA, PETITIONER, VS. OFFICE OF THE PRESIDENT, SECRETARY OF FOREIGN AFFAIRS, AND HON. HILARIO DAVIDE, JR., IN HIS CAPACITY AS PERMANENT REPRESENTATIVE OF THE PHILIPPINES TO THE PROMULGATED: UNITED NATIONS, RESPONDENTS.

R E S O L U T I O N

CARPIO, J.:

At issue is the power of Congress to limit the President's prerogative to *nominate* ambassadors by legislating age qualifications despite the constitutional rule limiting Congress' role in the appointment of ambassadors to the Commission on Appointments' *confirmation* of nominees.[1] However, for lack of a case or controversy grounded on petitioner's lack of capacity to sue and mootness,[2] we dismiss the petition without reaching the merits, deferring for another day the resolution of the question raised, novel and fundamental it may be.

Petitioner Alan F. Paguia (petitioner), as citizen and taxpayer, filed this original action for the writ of certiorari to invalidate President Gloria Macapagal-Arroyo's nomination of respondent former Chief Justice Hilario G. Davide, Jr. (respondent Davide) as Permanent Representative to the United Nations (UN) for violation of Section 23 of Republic Act No. 7157 (RA 7157), the Philippine Foreign Service Act of 1991. Petitioner argues that respondent Davide's age at that time of his nomination in March 2006, 70, disqualifies him from holding his post. Petitioner grounds his argument on Section 23 of RA 7157 pegging the mandatory retirement age of all officers and employees of the Department of Foreign Affairs (DFA) at 65.[3] Petitioner theorizes that Section 23 imposes an absolute rule for all DFA employees, career or non-career; thus, respondent Davide's entry into the DFA ranks discriminates against the rest of the DFA officials and employees.

In their separate Comments, respondent Davide, the Office of the President, and the Secretary of Foreign Affairs (respondents) raise threshold issues against the petition. First, they question petitioner's standing to bring this suit because of his indefinite suspension from the practice of law.[4] Second, the Office of the President and the Secretary of Foreign Affairs (public respondents) argue that neither petitioner's citizenship nor his taxpayer status vests him with standing to question respondent Davide's appointment because petitioner remains without personal and substantial interest in the outcome of a suit which does not involve the taxing power of the state or the illegal disbursement of public funds. Third, public respondents question the propriety of this petition, contending that this suit is in truth a petition for *quo warranto* which can only be filed by a contender for the office in question.

On the eligibility of respondent Davide, respondents counter that Section 23's

mandated retirement age applies only to career diplomats, excluding from its ambit non-career appointees such as respondent Davide.

The petition presents no case or controversy for petitioner's lack of capacity to sue and mootness.

First. Petitioner's citizenship and taxpayer status do not clothe him with standing to bring this suit. We have granted access to citizen's suits on the narrowest of ground: when they raise issues of "transcendental" importance calling for urgent resolution.[5] Three factors are relevant in our determination to allow third party suits so we can reach and resolve the merits of the crucial issues raised - the character of funds or assets involved in the controversy, a clear disregard of constitutional or statutory prohibition, and the lack of any other party with a more direct and specific interest to bring the suit.[6] None of petitioner's allegations comes close to any of these parameters. Indeed, implicit in a petition seeking a judicial interpretation of a statutory provision on the retirement of government personnel occasioned by its seemingly ambiguous crafting is the admission that a "*clear disregard* of constitutional or statutory prohibition" is absent. Further, the DFA is not devoid of personnel with "more direct and specific interest to bring the suit." Career ambassadors forced to leave the service at the mandated retirement age unquestionably hold interest far more substantial and personal than petitioner's generalized interest as a citizen in ensuring enforcement of the law.

The same conclusion holds true for petitioner's invocation of his taxpayer status. Taxpayers' contributions to the state's coffers entitle them to question appropriations for expenditures which are claimed to be unconstitutional or illegal.[7] However, the salaries and benefits respondent Davide received commensurate to his diplomatic rank are fixed by law and other executive issuances, the funding for which was included in the appropriations for the DFA's total expenditures contained in the annual budgets Congress passed since respondent Davide's nomination. Having assumed office under color of authority (appointment), respondent Davide is at least a *de facto* officer entitled to draw salary,[8] negating petitioner's claim of "illegal expenditure of scarce public funds."[9]

Second. An incapacity to bring legal actions peculiar to petitioner also obtains. Petitioner's suspension from the practice of law bars him from performing "any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience."[10] Certainly, preparing a petition raising carefully crafted arguments on equal protection grounds and employing highly legalistic rules of statutory construction to parse Section 23 of RA 7157 falls within the proscribed conduct.

Third. A supervening event has rendered this case academic and the relief prayed for moot. Respondent Davide resigned his post at the UN on 1 April 2010.

WHEREFORE, we **DISMISS** the petition.

SO ORDERED.

Corona, C.J., Carpio Morales, Velasco, Jr., Nachura, Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ*., concur.