

SECOND DIVISION

[G.R. No. 133511, October 10, 2000]

HON. WILLIAM G. PADOLINA, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF SCIENCE & TECHNOLOGY (DOST) AND DR. LEONCIO A. AMADORE, IN HIS CAPACITY AS DIRECTOR, PHILIPPINE ATMOSPHERIC, GEOGRAPHICAL AND ASTRONOMICAL SERVICES ADMINISTRATION (PAGASA), PETITIONERS, VS. OFELIA D. FERNANDEZ, RESPONDENT.

RESOLUTION

DE LEON, JR., J.:

Petitioners William G. Padolina and Dr. Leoncio A. Amadore, as Secretary of the Department of Science and Technology (DOST) and Director of the Philippine Atmospheric, Geophysical, and Astronomical Services Administration (PAGASA) respectively, move for the reconsideration of our Resolution dated July 14, 1999,^[1] affirming the Decision of the Court of Appeals in CA-G.R. SP No. 44541^[2] which declared as *void ab initio* DOST Special Order No. 129, S. 1996 (hereinafter referred to as SO 129) insofar as it affected respondent Ofelia D. Fernandez.

The pertinent facts are as follows:

Respondent Ofelia D. Fernandez was the PAGASA Finance and Management Division Chief of the DOST. On April 2, 1996, petitioner Padolina issued SO 129 providing for the reassignment of Branch/Division/Section Chiefs and other personnel in PAGASA. Pursuant to this order, respondent was reassigned to the Finance and Management Service Director's Office in Bicutan, Taguig, Metro Manila.

Respondent requested petitioner Padolina to lift SO 129 stating that such order was tantamount to her constructive dismissal, thus, a violation of her security of tenure. However, petitioner Padolina denied the said request inasmuch as he found no compelling reason to lift SO 129. Instead, he advised the respondent to comply with the order of reassignment.

Respondent appealed to the Civil Service Commission (CSC) praying that SO 129 be declared ineffective and that she be restored to her former position, but the CSC dismissed the appeal for lack of merit.

On December 18, 1996, petitioner Padolina issued DOST Special Order No. 557, S. 1996, which directed the return of certain PAGASA officials/employees to their units as of March 30, 1996. Likewise, it ordered the retention of other PAGASA personnel, including respondent, at their current assignments in accordance with SO 129.

In the meantime, a fact-finding committee was formed to look into the reason behind her refusal to accept her reassignment. After an *ex-parte* evaluation of

pertinent documents, the committee recommended that a formal charge of insubordination be filed against the respondent.

When the committee on investigation conducted a hearing, respondent did not appear. Hence, the case was heard *in absentia*. After the hearing, a report was submitted by the committee finding the respondent guilty of insubordination. The committee recommended that a penalty of suspension of one (1) month and one (1) day without pay be imposed on the respondent. On May 13, 1997, petitioner Padolina issued a decision adopting the committee's findings and recommendation.

On June 5, 1997, CSC Director Nelson L. Acebedo wrote to respondent, and directed her to immediately report to her place of reassignment in accordance with the resolution of the CSC which denied the latter's appeal before said body.^[3]

Meanwhile, respondent moved for reconsideration of the CSC Resolution denying her appeal. Her motion for reconsideration was also denied, but the CSC ruled that respondent was entitled to Representation and Travel Allowance (RATA) during the period of her reassignment.

Not satisfied with the decision of the CSC, respondent elevated the case to the Court of Appeals (CA). The CA decided in favor of respondent declaring that SO 129 is *void ab initio*. According to the CA, such order adversely affected the position of respondent who should be restored to all the rights and privileges of her office; and that respondent's reassignment has effectively demoted her in rank, status and salary for a triple violation of the Administrative Code of 1987.

Consequently, petitioners filed a Petition for Review on *Certiorari*^[4] before this Court assailing the Decision of the CA.

On July 14, 1999, we dismissed the petition and affirmed the Decision of the CA. We held that SO 129 was indeed *void ab initio* insofar as it adversely affected the position of the respondent; and that security of tenure is a fundamental and constitutionally-guaranteed feature of our Civil Service. The mantle of protection of the Civil Service extends not only to employees removed without cause but also to cases of unconsented transfers which are tantamount to illegal removal from office.

Section 10, Rule 7 of the Omnibus Rules implementing Book 5 of the Administrative Code of 1987 (Executive Order No. 292) provides that:

(7) Reassignment - A reassignment is a movement of an employee from one organizational unit to another in the same department or agency which does not involve a reduction in rank, status or salary and does not require the issuance of an appointment.

Section 24 (g) of Presidential Decree No. 807 authorizes reassignment by providing that an employee may be reassigned from one organizational unit to another in the same agency but such reassignment shall not involve a reduction in rank, status or salary. A diminution in rank, status, or salary, is enough to invalidate such a reassignment.

We held that SO 129 violated the security of tenure of respondent and hence, invalid. An examination of SO 129 also shows that the questioned order contains no