

G.R. NO. 189041 CIVIL SERVICE COMMISSION, *Petitioner*,
versus DR. AGNES OUIDA P. YU, *Respondent*.

Promulgated: July 31, 2012

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CONCURRING OPINION

LEONARDO DE CASTRO, J.:

I fully concur with the factual and legal basis of the conclusion reached by the *ponencia* of the Honorable Justice Estrella M. Perlas-Bernabe, save with respect to her opinion that Dr. Fortunata A. Castillo (Dr. Castillo) **did not abandon** the devolved position of Public Health Officer II (PHO II). With due respect, I maintain the contrary view that **Dr. Castillo did indeed abandon her statutory right to the said position by acquiescence**. Otherwise, there would have been no vacancy in the said devolved position to which Dr. Agnes Ouida P. Yu (Dr. Yu) could be validly appointed.

In *Canonizado v. Aguirre*,¹ this Court expounded on what constitutes abandonment of an office in this wise:

Abandonment of an office is the voluntary relinquishment of an office by the holder with the intention of terminating his possession and control thereof. In order to constitute abandonment of office, it must be total and under such circumstance as clearly to indicate an absolute relinquishment. There must be a complete abandonment of duties of such continuance that the law will infer a relinquishment. Abandonment of duties is a voluntary act; it springs from and is accompanied by deliberation and freedom of choice. There are,

¹ G.R. No. 133132, February 15, 2001, 351 SCRA 659.

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therefore, two essential elements of abandonment; *first*, an intention to abandon and, *second*, an overt or ‘external’ act by which the intention is carried into effect.

Generally speaking, a person holding a public office may abandon such office by nonuser or **acquiescence**. Non-user refers to a neglect to use a right or privilege or to exercise an office. However, non-performance of the duties of an office does not constitute abandonment where such non-performance results from temporary disability or from involuntary failure to perform. **Abandonment may also result from an acquiescence by the officer in his wrongful removal or discharge**, for instance, after a summary removal, an unreasonable delay by an officer illegally removed in taking steps to vindicate his right may constitute an abandonment of the office. Where while desiring and intending to hold the office, and with no wilful desire or intention to abandon it, the public officer vacates it in deference to the requirements of a statute which is afterwards declared unconstitutional, such a surrender will not be deemed an abandonment and the officer may recover the office.² (Emphases supplied & citations omitted.)

In the above-stated case, the Court declared, among others, that, in general, a person holding public office may abandon such office by non-user or **acquiescence**.³ Non-user refers to a neglect to use a right or privilege or to exercise an office⁴ while acquiescence is a silent appearance of consent by failure to make any objection or by submission to an act of which one had knowledge. It exists where a person knows or ought to know that he is entitled to enforce his right or to impeach a transaction, and neglects to do so for such a length of time as would imply that he intended to waive or abandon his right.⁵

The *ponencia* insists that Dr. Castillo did not abandon the devolved PHO II position by ratiocinating in this wise:

By no stretch of the imagination can Dr. Castillo’s seeming lackadaisical attitude towards protecting her rights be construed as an

² Id.

³ Id.

⁴ *Sangguniang Bayan of San Andres, Catanduanes v. Court of Appeals*, G.R. No. 118883, January 16, 1998, 284 SCRA 276.

⁵ Blacks’s Law Dictionary (6th ed.), citing *Yench v. Stockmar, C.A. Colo.*, 483 F.2d 820, 834.

abandonment of her position resulting in her having intentionally and voluntarily vacated the same. Governor Salapuddin's tenacious refusal to accept Dr. Castillo negates any and all voluntariness on the part of the latter to let go of her position. The risk of incurring the ire of a powerful politician effectively tied Dr. Castillo's hands, and it was quite understandable that she could not don her gloves and fight, even if she wanted to. Considering, however, that Governor Salapuddin's clear infraction of the law is not in issue before us, we need not make any pronouncement on this matter.

The *ponencia's* reasoning, although plausible, is speculative at best. In fact, we can also surmise that Dr. Castillo's failure to object or assert her right could also be an indication that she preferred to stay in her original station at the Department of Health Regional Office No. IX in Zamboanga City and where she in fact continued to serve from the time she was re-absorbed until she retired four (4) years hence.

The conduct of Dr. Castillo after Governor Salapuddin's expressed preference to appoint another person in her stead is consistent with her abandonment or relinquishment by acquiescence of the position to which by law she should be automatically appointed.

Pursuant to her own letter dated May 14, 1993⁶ to Governor Salapuddin, Dr. Castillo requested to draw her salary from the Provincial Government until she could be absorbed by her mother unit, the DOH. Governor Salapuddin and the DOH acceded to her request. Hence, Dr. Castillo was allowed to assume the devolved PHO II position from the start of the devolution until her acceptance of assignment in the DOH Regional Health Field Office No. IX in Zamboanga City. If Dr. Castillo wished to keep her position, in the face of her non-acceptance by the Provincial Governor and of the subsequent pronouncements made by DOH officials in support of the position of the Provincial Governor, then

⁶ *Rollo*, p. 77.

she should have instituted a proper judicial or administrative proceeding to question Dr. Yu's appointment to the devolved PHO II position or, at the very least, formally made known her objection at the earliest opportunity. Instead, Dr. Castillo did not object to the appointment of Dr. Yu to her position. Moreover, it was by her own request and with her consent that she was re-absorbed by her mother unit in the DOH where she served until her retirement. Consequently, Dr. Castillo effectively vacated the devolved PHO II position. Hence, her salary was paid from the Project: Miscellaneous Personnel Benefits Funds, set aside for salaries and benefits of officials and employees not absorbed by the local government units. As the *ponencia* of Justice Bernabe states:

With Dr. Castillo's re-absorption by the DOH which appears to bear the former's **approval**, her devolved position with the LGU of Basilan was left **vacant**. (Emphases supplied.)

To summarize, Dr. Castillo's manifest inaction to assert a legal right from 1992 up to her retirement from government service in 1996 constituted abandonment by acquiescence, of whatever legal right she had over the devolved position of PHO II. Coupled with her acceptance or consent to her re-absorption by the DOH in the DOH Regional Health Field Office No. IX in Zamboanga City, she effectively abandoned any legal right she had to the PHO II position devolved to the Province, which resulted in a vacancy in the said position. This paved the way for the valid appointment in 1994 of Dr. Yu who then was a *de jure*, not a *de facto* officer. Having been validly appointed to a vacant position that was mandatorily and automatically devolved to the Province by operation of law, Dr. Yu, as correctly pointed out by the assailed ruling of the Court of Appeals, had a vested right to the position of PHO II that was later re-nationalized and reclassified as Chief of Hospital II by operation of a subsequent law. As such, she is entitled to all the corresponding salaries

and benefits pertaining to the said office which she had not received for the period not exceeding the day of her retirement which was on August 24, 2004.

In light of the foregoing, I reiterate my concurrence to the affirmance of the assailed Decision of the Court of Appeals dated March 30, 2009 in CA-G.R. SP No. 00327-MIN.

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice