Republic of the Philippines
Supreme Court
Manila

EN BANC

THE PROVINCIAL GOVERNMENT OF CAMARINES NORTE, represented by GOVERNOR JESUS O. TYPOCO, JR., Petitioner,	**G.R. No. 185740**
	Present:
	SERENO, *C.J.*, CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, BRION, PERALTA, BERSAMIN, DEL CASTILLO, ABAD, VILLARAMA, JR., PEREZ, MENDOZA, REYES, PERLAS-BERNABE, and LEONEN, *JJ.*
- versus -	
	Promulgated:
BEATRIZ O. GONZALES, Respondent.	JULY 23, 2013

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DECISION

BRION, *J.*:

We resolve the Provincial Government of Camarines Norte's (*petitioner*) petition for review on *certiorari*[1] assailing the Decision[2] dated June 25, 2008 and the Resolution[3] dated December 2, 2008 of the Court of Appeals (*CA*) in CA-G.R. SP No. 97425, reinstating respondent Beatriz O.

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1 *Rollo*, pp. 18-27; under Rule 45 of the Rules of Court.

2 Id. at 32-44; penned by Associate Justice Marlene Gonzales-Sison, and concurred in by Associate Justices Amelita G. Tolentino and Lucenito N. Tagle.

3 Id. at 50-51.

Gonzales as the Province of Camarines Norte's provincial administrator, or to an equivalent position.

Factual Antecedents

Gonzales was appointed as the provincial administrator of the Province of Camarines Norte by then Governor Roy A. Padilla, Jr. on April 1, 1991. Her appointment was on a permanent capacity. On March 8, 1999, Governor Jess B. Pimentel sent Gonzales a memorandum directing her to explain in writing why no administrative charges should be filed against her for gross insubordination/gross discourtesy in the course of official duties, and conduct grossly prejudicial to the best interest of the service; this was later on captioned as Administrative Case No. 001. After Gonzales submitted her comment, an Ad Hoc Investigation Committee found her guilty of the charges against her, and recommended to Governor Pimentel that she be held administratively liable.[4] On September 30, 1999, Governor Pimentel adopted the Ad Hoc Investigation Committee's recommendation and dismissed Gonzales.[5]

Proceedings before the Civil Service Commission

Gonzales appealed Governor Pimentel's decision to the Civil Service Commission (*CSC*). The CSC issued Resolution No. 001418[6] modifying Governor Pimentel's decision, finding Gonzales guilty of insubordination and suspending her for six months. This decision was appealed by Governor Pimentel, which the CSC denied in its Resolution No. 001952.[7]

Gonzales then filed a motion for execution and clarification of Resolution No. 001418, in which she claimed that she had already served her six-month suspension and asked to be reinstated. The CSC issued Resolution No. 002245,[8] which directed Gonzales' reinstatement.

Governor Pimentel reinstated Gonzales as provincial administrator on October 12, 2000, but terminated her services the next day for lack of confidence. He then wrote a letter[9] to the CSC reporting his compliance with its order, and Gonzales' subsequent dismissal as a confidential employee. In his letter, Governor Pimentel cited Resolution No. 0001158,[10]

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4 Id. at 32-33.
5 Id. at 59-65.
6 Id. at 66-77.
7 Id. at 33.
8 Id. at 78-81.
9 Id. at 83-84.
10 Reyes, Carmencita O., Re: Appointment; Provincial Administrator.

where the CSC ruled that the provincial administrator position is highly confidential and is coterminous in nature.

The CSC responded through Resolution No. 030008,[11] which again directed Gonzales' reinstatement as provincial administrator. It clarified that while the Local Government Code of 1991 (*Republic Act No.* [*RA*] *7160*) made the provincial administrator position coterminous and highly confidential in nature, this conversion cannot operate to prejudice officials who were already issued permanent appointments as administrators prior to the new law's effectivity. According to the CSC, Gonzales has acquired a vested right to her permanent appointment as provincial administrator and is entitled to continue holding this office despite its subsequent classification as a coterminous position. The conversion of the provincial administrator position from a career to a non-career service should not jeopardize Gonzales' security of tenure guaranteed to her by the Constitution. As a permanent appointee, Gonzales may only be removed for cause, after due notice and hearing. Loss of trust and confidence is not among the grounds for a permanent appointee's dismissal or discipline under existing laws.

In a letter[12] dated February 17, 2005, Gonzales wrote the CSC alleging that Governor Jesus O. Typoco, Jr., Camarines Norte's incumbent governor, refused to reinstate her. The CSC responded with Resolution No. 061988,[13] which ordered Gonzales' reinstatement to the provincial administrator position, or to an equivalent position. Thus, the petitioner, through Governor Typoco, filed a petition for review before the CA, seeking to nullify the CSC's Resolution No. 030008 and Resolution No. 061988.

The Appellate Court's Ruling

The CA supported the CSC's ruling that reinstated Gonzales as provincial administrator or to an equivalent position.[14]

Citing *Aquino v. Civil Service Commission*,[15] the CA emphasized that an appointee acquires a legal right to his position once he assumes a position in the civil service under a completed appointment. This legal right is protected both by statute and the Constitution, and he cannot be removed from office without cause and previous notice and hearing. Appointees cannot be removed at the mere will of those vested with the power of removal, or without any cause.

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11 *Rollo*, pp. 85-88.
12 Id. at 90.
13 Id. at 90-97.
14 Id. at 32-44.
15 G.R. No. 92403, April 22, 1992, 208 SCRA 240.

The CA then enumerated the list of valid causes for a public officer's removal under Section 46,[16] Book V, Title I, Subtitle A of the Revised Administrative Code (*Administrative Code*), and noted that lack of confidence was not in the list. Thus, the CA concluded that Gonzales' dismissal on the ground of loss of confidence violated her security of tenure, and that she has the right to be reinstated with payment of backwages.

The CA further held that Gonzales' dismissal was illegal because it was done without due process. The proceedings under Administrative Case No. 001 cannot be the basis for complying with the requirements of due process because they are separate and distinct from the proceedings in the present controversy. Thus, Gonzales was illegally terminated when she was

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[16] SECTION 46. Discipline: General Provisions. — (a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process.

(b) The following shall be grounds for disciplinary action:

(1) Dishonesty;
(2) Oppression;
(3) Neglect of duty;
(4) Misconduct;
(5) Disgraceful and immoral conduct;
(6) Being notoriously undesirable;
(7) Discourtesy in the course of official duties;
(8) Inefficiency and incompetence in the performance of official duties;
(9) Receiving for personal use of a fee, gift or other valuable thing in the course of official duties or in connection therewith when such fee, gift, or other valuable thing is given by any person in the hope or expectation of receiving a favor or better treatment than that accorded other persons, or committing acts punishable under the anti-graft laws;
(10) Conviction of a crime involving moral turpitude;
(11) Improper or unauthorized solicitation of contributions from subordinate employees and by teachers or school officials from school children;
(12) Violation of existing Civil Service Law and rules or reasonable office regulations;
(13) Falsification of official document;
(14) Frequent unauthorized absences or tardiness in reporting for duty, loafing or frequent unauthorized absences from duty during regular office hours;
(15) Habitual drunkenness;
(16) Gambling prohibited by law;
(17) Refusal to perform official duty or render overtime service;
(18) Disgraceful, immoral or dishonest conduct prior to entering the service;
(19) Physical or mental incapacity or disability due to immoral or vicious habits;
(20) Borrowing money by superior officers from subordinates or lending by subordinates to superior officers;
(21) Lending money at usurious rates of interest;
(22) Willful failure to pay just debts or willful failure to pay taxes due to the government;
(23) Contracting loans of money or other property from persons with whom the office of the employee concerned has business relations;
(24) Pursuit of private business, vocation or profession without the permission required by Civil Service rules and regulations;
(25) Insubordination;
(26) Engaging directly or indirectly in partisan political activities by one holding a non-political office;
(27) Conduct prejudicial to the best interest of the service;
(28) Lobbying for personal interest or gain in legislative halls or offices without authority;
(29) Promoting the sale of tickets in behalf of private enterprises that are not intended for charitable or public welfare purposes and even in the latter cases if there is no prior authority;
(30) Nepotism as defined in Section 60 of this Title.

dismissed for lack of confidence, without any hearing, the day after she was reinstated.

Lastly, the CA noted that Resolution No. 002245, which modified Governor Pimentel's decision, has long been final and executory. The petitioner did not file any petition for reconsideration against Resolution No. 002245, and hence, it is no longer alterable.

The petitioner sought a reconsideration[17] of the CA's Decision, which the CA denied in a Resolution[18] dated December 2, 2008.

The Present Petition

In its present petition for review on *certiorari*, the petitioner argues that the provincial administrator position has been converted into a highly confidential, coterminous position by RA 7160. Hence, Gonzales no longer enjoyed security of tenure to the position she held prior to RA 7160's enactment.

In her Comment[19] and Memorandum,[20] Gonzales maintained that the provincial administrator remained a career service position. Section 7[21] of Presidential Decree No. 807, which was one of the bases of the Court in *Laurel V v. Civil Service Commission*[22] to declare the provincial administrator as a career service position, is a verbatim copy of Section 7,[23]

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17 *Rollo*, pp. 45-49.

18 *Supra* note 3.

19 Id. at 122-132.

20 Id. at 151-170.

21 Section 7. Classes of Positions in the Career Service.

(a) Classes of positions in the career service appointment to which requires examinations shall be grouped into three major level as follows:

1. The first level shall include clerical, trades, crafts, and custodial service positions which involve non-professional or subprofessional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies;

2. The second level shall include professional, technical, and scientific positions which involve professional, technical, or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief level; and

3. The third level shall cover positions in the Career Executive Service.

(b) Except as herein otherwise provided, entrance to the first two levels shall be through competitive examinations, which shall be open to those inside and outside the service who meet the minimum qualification requirements. Entrance to a higher level does not require previous qualification in the lower level. Entrance to the third level shall be prescribed by the Career Executive Service Board.

(c) Within the same level, no civil service examination shall be required for promotion to a higher position in one or more related occupational groups. A candidate for promotion should, however, have previously passed the examination for that level.

22 G.R. No. 71562, October 28, 1991, 203 SCRA 195.

23 SECTION 7. Career Service.—The Career Service shall be characterized by (1) entrance based on merit and fitness to be determined as far as practicable by competitive examination, or based on highly

Chapter 2 of the Administrative Code. This classification, established by law and jurisprudence, cannot be altered by the mere implementing rules and regulations of RA 7160. And assuming *arguendo* that the provincial administrator position has indeed become a primarily confidential position, this reclassification should not apply retroactively to Gonzales' appointment on a permanent capacity prior to RA 7160's effectivity.

Issues

The parties' arguments, properly joined, present to us the following issues:

1) Whether Congress has re-classified the provincial administrator position from a career service to a primarily confidential, non-career service position; and
2) Whether Gonzales has security of tenure over her position as provincial administrator of the Province of Camarines Norte.

The Court's Ruling

We find the petition meritorious.

Congress has reclassified the provincial administrator position as a primarily confidential, non-career position

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technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure.

The Career Service shall include:

(1) Open Career positions for appointment to which prior qualification in an appropriate examination is required;

(2) Closed Career positions which are scientific, or highly technical in nature; these include the faculty and academic staff of state colleges and universities, and scientific and technical positions in scientific or research institutions which shall establish and maintain their own merit systems;

(3) Positions in the Career Executive Service; namely, Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President;

(4) Career officers, other than those in the Career Executive Service, who are appointed by the President, such as the Foreign Service Officers in the Department of Foreign Affairs;

(5) Commissioned officers and enlisted men of the Armed Forces which shall maintain a separate merit system;

(6) Personnel of government-owned or controlled corporations, whether performing governmental or proprietary functions, who do not fall under the non-career service; and

(7) Permanent laborers, whether skilled, semi-skilled, or unskilled.

We support the CSC's conclusion that the provincial administrator position has been classified into a primarily confidential, non-career position when Congress, through RA 7160, made substantial changes to it. ***First***, prior to RA 7160, *Batas Pambansa Blg.* 337, the old Local Government Code (*LGC*), did not include a provincial administrator position among the listing of mandatory provincial officials,[24] but empowered the *Sangguniang Panlalawigan* to create such other offices as might then be necessary to carry out the purposes of the provincial government.[25] RA 7160 made the position mandatory for every province.[26] Thus, the creation of the provincial administrator position under the old LGC used to be a prerogative of the *Sangguniang Panlalawigan*.

Second, in introducing the mandatory provincial administrator position, RA 7160 also amended the qualifications for the provincial administrator position. While Section 480[27] of RA 7160 retained the requirement of civil service eligibility for a provincial administrator, together with the educational requirements, it shortened the six-year work experience requirement to five years.[28] It also mandated the additional requirements of residence in the local government concerned, and imposed a good moral character requirement.

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[24] Section 199. Officials of the Provincial Government. -

(1) There shall be in each province a governor, a vice-governor, members of the sangguniang panlalawigan, a provincial secretary, a provincial treasurer, a provincial assessor, a provincial budget officer, a provincial engineer, a provincial agriculturist and a provincial planning and development coordinator.

[25] Section 199. x x x

x x x x

(3) The sangguniang panlalawigan may maintain existing offices not mentioned in paragraph (1) of [this] section, or create such other offices as may be necessary to carry out the purposes of the provincial government, or may consolidate the functions of any one of such offices with those of another in the interest of efficiency and economy.

[26] Section 463. Officials of the Provincial Government.

(a) There shall be in each province a governor, a vice-governor, members of the sangguniang panlalawigan, a secretary to the sangguniang panlalawigan, a provincial treasurer, a provincial assessor, x x x a provincial planning and development coordinator, a provincial legal officer, ***a provincial administrator***[.] [italics and emphasis ours]

[27] Section 480. Qualifications, Terms, Powers and Duties.

(a) No person shall be appointed administrator unless he is a citizen of the Philippines, a resident of the local government unit concerned, of good moral character, a holder of a college degree preferably in public administration, law, or any other related course from a recognized college or university, and a first grade civil service eligible or its equivalent. He must have acquired experience in management and administration work for at least five (5) years in the case of the provincial or city administrator, and three (3) years in the case of the municipal administrator.

[28] Citing the Manual of Position Descriptions, the Court in *Laurel V v. Civil Service Commission*, *supra* note 22, at 204, noted that the provincial administrator position has the following requirements:

Education: Bachelor's degree preferably in Law/Public or Business Administration.

Experience: Six years of progressively responsible experience in planning, directing and administration of provincial government operations. Experience in private agencies considered are those that have been more or less familiar level of administrative proficiency.

Eligibility: RA 1080 (BAR)/Personnel Management Officer/Career Service (Professional)/First Grade/Supervisor.

Third, RA 7160 made the provincial administrator position ***coterminous with its appointing authority, reclassifying it as a non-career service position that is primarily confidential***.

Before RA 7160 took effect, *Laurel* classified the provincial administrator position as an open career position which required qualification in an appropriate examination prior to appointment. *Laurel* placed the provincial administrator position under the second major level of positions in the career service under Section 7 of Presidential Decree No. 807. This provision reads:

> Section 7. Classes of Positions in the Career Service.
>
> (a) Classes of positions in the career service appointment to which requires examinations shall be grouped into three major levels as follows:
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> x x x x
>
> 2. The second level shall include professional, technical, and scientific positions which involve professional, technical, or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief level[.]

Section 480 of RA 7160 made the provincial administrator's functions closely related to the prevailing provincial administration by identifying the incumbent with the provincial governor to ensure the alignment of the governor's direction for the province with what the provincial administrator would implement. In contrast with the general direction provided by the provincial governor under the Manual of Position Descriptions cited in *Laurel*, Section 480(b) of RA 7160 now mandates *constant interaction between the provincial administrator and the provincial governor*, to wit:

> (b) The administrator shall take charge of the office of the administrator and shall:
>
> (1) Develop plans and strategies and ***upon approval thereof by the governor*** or mayor, as the case may be, implement the same particularly those which have to do with the management and administration-related programs and projects which the governor or mayor is empowered to implement and which the sanggunian is empowered to provide for under this Code;
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> (2) In addition to the foregoing duties and functions, the administrator shall:

> (i) Assist in the coordination of the work of all the officials of the local government unit, ***under the supervision, direction, and control of the governor*** or mayor, and for this purpose, he may convene the chiefs of offices and other officials of the local government unit;
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> x x x x
>
> (4) Recommend to the sanggunian and ***advise the governor*** and mayor, as the case may be, on all other matters relative to the management and administration of the local government unit[.] [emphases and italics ours]

As the CSC correctly noted in Resolution No. 0001158,[29] the administrator position demands a close intimate relationship with the office of the governor (its appointing authority) to effectively develop, implement and administer the different programs of the province. The administrator's functions are to recommend to the *Sanggunian* and to advise the governor on all matters regarding the management and administration of the province, thus requiring that its occupant enjoy the governor's full trust and confidence.

To emphasize the close relations that the provincial administrators' functions have with the office of the governor, RA 7160 even made the *provincial administrator position coterminous with its appointing authority.*[30] This provision, along with the interrelations between the provincial administrator and governor under Section 480, renders clear the intent of Congress to make the provincial administrator position primarily confidential under the non-career service category of the civil service.

Congress' reclassification of the provincial administrator position in RA 7160 is a valid exercise of legislative power that does not violate Gonzales' security of tenure

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[29] Reyes, Carmencita O., Re: Appointment; Provincial Administrator.

[30] Section 480, RA 7160; Article 119 of the Implementing Rules and Regulations of RA 7160 provides:

ARTICLE 119. Appointment of Appointive Local Officials. — (a) Unless otherwise provided in this Rule, heads of offices and departments in the LGUs shall be appointed by the local chief executive concerned with the concurrence of a majority of all the members of the sanggunian, subject to civil service laws, rules and regulations.

(b) The sanggunian concerned shall act on the appointment within fifteen (15) days from the date of its submission; otherwise, the same shall be deemed confirmed.

(c) The term of office of the local administrator, local legal officer, and local information officer is coterminous with that of their appointing authority.

Having established that Congress has changed the nature of the provincial administrator position to a primarily confidential employee, the next question to address would be its impact on Gonzales' security of tenure. According to the petitioner, Gonzales lost her security of tenure when the provincial administrator position became a primarily confidential position. Gonzales, on the other hand, retorted that the conversion of the position should not be retroactively applied to her, as she is a permanent appointee. Both the CA and the CSC ruled in favor of the latter, and gave premium to Gonzales' original permanent appointment under the old LGC. They posit that Gonzales acquired a vested legal right over her position from the moment she assumed her duties as provincial administrator. Thus, she cannot be removed from office except for cause and after due hearing; otherwise such removal would amount to a violation of her security of tenure.

The arguments presented by the parties and ruled upon by the CA reflect a conceptual entanglement between the ***nature of the position*** and an employee's ***right to hold a position***. These two concepts are different. The nature of a position may change by law according to the dictates of Congress. The right to hold a position, on the other hand, is a right that enjoys constitutional and statutory guarantee, but may itself change according to the nature of the position.

Congress has the power and prerogative to introduce substantial changes in the provincial administrator position and to reclassify it as a primarily confidential, non-career service position. Flowing from the legislative power to create public offices is the power to abolish and modify them to meet the demands of society;[31] Congress can change the qualifications for and shorten the term of existing statutory offices. When done in good faith, these acts would not violate a public officer's security of tenure, even if they result in his removal from office or the shortening of his term.[32] Modifications in public office, such as changes in qualifications or shortening of its tenure, are made in good faith so long as they are aimed at the office and not at the incumbent.[33]

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[31] The creation and abolition of public offices are primarily legislative functions. It is acknowledged that Congress may abolish any office it creates without impairing the officer's right to continue in the position held and that such power may be exercised for various reasons, such as the lack of funds or in the interest of economy. However, in order for the abolition to be valid, it must be made in good faith, not for political or personal reasons, or in order to circumvent the constitutional security of tenure of civil service employees (*Canonizado v. Hon. Aguirre*, 380 Phil. 280, 286 [2000]). See also *The Law on Public Officers and Election Law*, Hector S. de Leon, p. 336.

[32] See *Salcedo and Ignacio v. Carpio and Carreon*, 89 Phil. 254 (1951); and *Eraña v. Vergel de Dios*, 85 Phil. 17 (1949).

[33] *The Law on Public Officers and Election Law*, Hector S. de Leon, p. 336.

In *Salcedo and Ignacio v. Carpio and Carreon*,[34] for instance, Congress enacted a law modifying the offices in the Board of Dental Examiners. The new law, RA 546, raised the qualifications for the board members, and provided for a different appointment process. Dr. Alfonso C. Salcedo and Dr. Pascual Ignacio, who were incumbent board members at the time RA 546 took effect, filed a special civil action for *quo warranto* against their replacements, arguing that their term of office under the old law had not yet expired, and neither had they abandoned or been removed from office for cause. We dismissed their petition, and held that *Congress may, by law, terminate the term of a public office at any time and even while it is occupied by the incumbent.* Thus, whether Dr. Salcedo and Dr. Ignacio were removed for cause or had abandoned their office is immaterial.

More recently, in *Dimayuga v. Benedicto II*,[35] we upheld the removal of Chona M. Dimayuga, a permanent appointee to the Executive Director II position, which was not part of the career executive service at the time of her appointment. During her incumbency, the CSC, by authority granted under Presidential Decree No. 1, classified the Executive Director II position to be within the career executive service. Since Dimayuga was not a career executive service officer, her initially permanent appointment to the position became temporary; thus, she could be removed from office at any time.

In the current case, Congress, through RA 7160, did not abolish the provincial administrator position but significantly modified many of its aspects. It is now a primarily confidential position under the non-career service tranche of the civil service. This change could not have been aimed at prejudicing Gonzales, as she was not the only provincial administrator incumbent at the time RA 7160 was enacted. Rather, this change was part of the reform measures that RA 7160 introduced to further empower local governments and decentralize the delivery of public service. Section 3(b) of RA 7160 provides as one of its operative principles that:

> (b) There shall be established in every local government unit an accountable, efficient, and dynamic organizational structure and operating mechanism that will meet the priority needs and service requirements of its communities[.]

Thus, Gonzales' permanent appointment as provincial administrator prior to the enactment of RA 7160 is immaterial to her removal as provincial administrator. For purposes of determining whether Gonzales' termination violated her right to security of tenure, the nature of the position she

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34 *Supra* note 32.

35 424 Phil. 707 (2002).

occupied at the time of her removal should be considered, and not merely the nature of her appointment at the time she entered government service.

In echoing the CSC and the CA's conclusion, the dissenting opinion posits the view that security of tenure protects the permanent appointment of a public officer, despite subsequent changes in the nature of his position.

Citing *Gabriel v. Domingo*,[36] the *dissenting opinion* quotes our categorical declaration that "a permanent employee remains a permanent employee unless he is validly terminated[,]" and from there attempts to draw an analogy between *Gabriel* and the case at hand.

The very first sentence of *Gabriel* spells out its vast difference from the present case. The sole and main issue in *Gabriel* is whether backwages and other monetary benefits could be awarded to an illegally dismissed government employee, who was later ordered reinstated. From this sentence alone can be discerned that the issues involved related to the consequences of illegal dismissal rather than to the dismissal itself. Nowhere in *Gabriel* was there any mention of a change in the nature of the position held by the public officer involved.

Further, key factual differences make *Gabriel* inapplicable to the present case, even if only by analogy: ***first***, the public officer in *Gabriel* received a Memorandum stating that he would be appointed as Transportation District Supervisor III under their office reorganization. ***Second***, the Court in Gabriel *clearly* pointed out that the reason for his eventual appointment as a casual employee, which led to his termination from service, was due to a pending protest he filed before the CSC – indicating that there was no ground for him to not receive the appointment earlier promised. In contrast, the issue of Gonzales is whether the appointing authority's lack of trust and confidence in the appointee was sufficient cause for the termination of employment of a primarily confidential employee. And ***third***, there was a change in the position held by the public officer in *Gabriel*. He was a permanent employee who was extended a different appointment, which was casual in nature, because of a protest that he earlier filed. In contrast, the current case involves a public officer who held the same position whose nature changed because of the passage of RA 7160.

The *dissent* also quotes the penultimate paragraph of *Civil Service Commission v. Javier*[37] to support its contention that permanent appointees

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[36] G.R. No. 87420, September 17, 1990, 189 SCRA 672, 676.

[37] 570 Phil. 89 (2008).

could expect protection for their tenure and appointments in the event that the Court determines that the position is actually confidential in nature:

> The Court is aware that this decision has repercussions on the tenure of other corporate secretaries in various GOCCs. The officers likely assumed their positions on permanent career status, expecting protection for their tenure and appointments, but are now re-classified as primarily confidential appointees. Such concern is unfounded, however, since the statutes themselves do not classify the position of corporate secretary as permanent and career in nature. Moreover, there is no absolute guarantee that it will not be classified as confidential when a dispute arises. As earlier stated, the Court, by legal tradition, has the power to make a final determination as to which positions in government are primarily confidential or otherwise. In the light of the instant controversy, the Court's view is that the greater public interest is served if the position of a corporate secretary is classified as primarily confidential in nature.[38]

The quoted portion, however, even bolsters our theory. Read together with its succeeding paragraph, the quoted portion in *Civil Service Commission v. Javier*[39] actually stands for the proposition that other corporate secretaries in government-owned and –controlled corporations cannot expect protection for their tenure and appointments upon the reclassification of their position to a primarily confidential position. There, the Court emphasized that these officers cannot rely on the statutes providing for their permanent appointments, if and when the Court determines these to be primarily confidential. In the succeeding paragraph after the portion quoted by the *dissent*, we even pointed out that there is no vested right to public office, nor is public service a property right. Thus:

> Moreover, it is a basic tenet in the country's constitutional system that "public office is a public trust," and that there is no vested right in public office, nor an absolute right to hold office. ***No proprietary title attaches to a public office, as public service is not a property right***. Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office. ***The rule is that offices in government, except those created by the constitution, may be abolished, altered, or created anytime by statute. And any issues on the classification for a position in government may be brought to and determined by the courts***.[40] (emphases and italics ours)

Executive Order No. 503 does not grant Gonzales security of tenure in the provincial administrator position on a permanent capacity

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38 Id. at 113.

39 *Supra* note 37.

40 Id. at 113-114; citations omitted.

In extending security of tenure to Gonzales' permanent appointment as provincial administrator, the *dissenting opinion* cites as authority Executive Order No. (*EO*) 503 which provided certain safeguards against the termination of government employees affected by the implementation of RA 7160. According to the *dissenting opinion*, EO 503 is an obvious indication of the executive department's intent to protect and uphold both the national government and the local government employees' security of tenure. It cites Section 2(a), paragraph 8 (providing for the tenure of an administrator) to prove its point:

> 8. Incumbents of positions, namely administrator, legal officer, and information officer declared by the Code as coterminous, who hold permanent appointments, shall continue to enjoy their permanent status until they vacate their positions.

At first glance, EO 503 does seem to extend the provincial administrators' security of tenure in their permanent appointments even beyond the effectivity of RA 7160. ***EO 503, however, does not apply to employees of the local government affected by RA 7160's enactment.*** The title of EO 503 clearly provides for its scope of application, to wit:

> Executive Order No. 503. Providing for the Rules and Regulations Implementing the ***Transfer of Personnel*** and Assets, Liabilities and Records ***of National Government Agencies whose Functions are to be Devolved*** to the Local Government Units and for other Related Purposes. [underscore, italics and emphases ours]

A reading of EO 503's whereas clauses confirms that it applies only to national government employees whose functions are to be devolved to local governments:

> WHEREAS, Republic Act No. 7160, otherwise known as the Local Government Code of 1991, hereinafter referred to as the Code, ***transfers the responsibility for the delivery of basic services and facilities from the national government agencies (NGAs) concerned to the local government units (LGUs)***;
>
> WHEREAS, the Code stipulated that the transfer of basic services and facilities shall be accompanied by the transfer of the national personnel concerned and assets to ensure continuity in the delivery of such services and facilities;
>
> WHEREAS, ***responsive rules and regulations are needed to affect the required transfer of national personnel concerned*** and assets to the LGUs[.] [underscores, italics and emphases ours]

Thus, paragraph 8, section 2(a) of EO 503 cannot apply to Gonzales, a provincial administrator. As explained earlier, the existence of the provincial administrator position was a prerogative of the *Sanggunian Panlalawigan*, and was not even a mandatory public office under the old LGC. It is clearly not a national government position whose functions are to be devolved to the local governments.

The *dissenting opinion*, on the other hand, argues that EO 503 does not apply to national government employees only. According to the *dissent*, the phrase "and for related purposes" in EO 503's title could encompass personnel not necessarily employed by national government agencies but by local government units such as the administrator, the legal officer and the information officer, as enumerated in Section 2(a), paragraph 8 thereof. This provision, according to the *dissent*, fills the crucial gap left by RA 7160 which did not provide whether the term of an incumbent provincial administrator would automatically become coterminous with that of the appointing authority upon RA 7160's effectivity.

This kind of construction effectively adds to EO 503's object matters that it did not explicitly provide for. ***The phrase "and for other related purposes" can only add to EO 503 matters related to the devolution of personnel, basic services and facilities to local government units.*** The impact of the change in a local government position's nature is clearly different from the implementation of devolution and its ancillary effects: the former involves a change in a local government position's functions and concept of tenure, while the latter involves (among other things) the transfer of national government employees to local government units. This difference is highlighted by the fact that EO 503, as reflected by its whereas clauses, was issued to implement Section 17 of RA 7160. In contrast, the change in the nature of the provincial administrator position may be gleaned from Section 480 of RA 7160. Hence, by no stretch of reasonable construction can the phrase "and for other related purposes" in EO 503's title be understood to encompass the consequences of the change in the local government position's nature.

Furthermore, construing that the administrator position in Section 2(a), paragraph 8 pertains to city, municipal and/or provincial administrators would result in a legal infirmity. EO 503 was issued pursuant to the President's ordinance powers to provide for rules that are general or permanent in character for the purpose of implementing the President's constitutional or statutory powers.[41] Exercising her constitutional duty to

[41] Section 2, Chapter 2, Title I of the Administrative Code.

ensure that all laws are faithfully executed, then President Corazon Aquino issued EO 503 to ensure the executive's compliance with paragraph (i), Section 17 of RA 7160, which requires local government units to absorb the personnel of national agencies whose functions shall be devolved to them.[42] This is reflected in EO 503's title and whereas clauses, and its limited application as discussed earlier.

Thus, the *dissenting opinion's* interpretation would result in the judicial recognition of an act of the Executive usurping a legislative power. The grant of permanent status to incumbent provincial administrators, despite the clear language and intent of RA 7160 to make the position coterminous, is an act outside the President's legitimate powers. The power to create, abolish and modify public offices is lodged with Congress.[43] The President cannot, through an Executive Order, grant permanent status to incumbents, when Congress by law has declared that the positions they occupy are now confidential. Such act would amount to the President's amendment of an act of Congress – an act that the Constitution prohibits. Allowing this kind of interpretation violates the separation of powers, a constitutionally enshrined principle that the Court has the duty to uphold.[44]

The *dissent* counters this argument by pointing out that Section 2(a), paragraph 8 of EO 503 enjoys the legal presumption of validity. Unless the law or rule is annulled in a direct proceeding, the legal presumption of its validity stands. The EO's validity, however, is not in question in the present case. What is at issue is a proper interpretation of its application giving due respect to the principle of separation of powers, and the *dissenting opinion*'s interpretation does violence to this principle.

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[42] (i) The devolution contemplated in this Code shall include the transfer to local government units of the records, equipment, and other assets and personnel of national agencies and offices corresponding to the devolved powers, functions, and responsibilities.
Personnel of said national agencies or offices shall be absorbed by the local government units to which they belong or in whose areas they are assigned to the extent that it is administratively viable as determined by the said oversight committee: Provided, That the rights accorded to such personnel pursuant to civil service law, rules and regulations shall not be impaired: Provided, further, That regional directors who are career executive service officers and other officers of similar rank in the said regional offices who cannot be absorbed by the local government unit shall be retained by the national government, without any diminution of rank, salary or tenure.

[43] *Canonizado v. Hon. Aguirre, supra* note 31.

[44] But in the main, the Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government. The overlapping and interlacing of functions and duties between the several departments, however, sometimes makes it hard to say just where the one leaves off and the other begins. x x x In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof. (*Angara v. Electoral Commission*, 63 Phil. 139, 157 [1936].)

Gonzales has security of tenure, but only as a primarily confidential employee

To be sure, ***both career and non-career service employees have a right to security of tenure***. All permanent officers and employees in the civil service, regardless of whether they belong to the career or non-career service category, are entitled to this guaranty; *they cannot be removed from office except for cause provided by law and after procedural due process*.[45] The concept of security of tenure, however, labors under a variation for primarily confidential employees due to the basic concept of a "primarily confidential" position. Serving at the confidence of the appointing authority, the primarily confidential employee's term of office expires when the appointing authority loses trust in the employee. When this happens, the confidential employee is not "removed" or "dismissed" from office; his term merely "expires"[46] and the loss of trust and confidence is the "just cause" provided by law that results in the termination of employment. In the present case where the trust and confidence has been irretrievably eroded, we cannot fault Governor Pimentel's exercise of discretion when he decided that he could no longer entrust his confidence in Gonzales.

Security of tenure in public office simply means that a public officer or employee *shall not be suspended or dismissed except for cause, as provided by law and after due process. It cannot be expanded to grant a right to public office despite a change in the nature of the office held*. In other words, the CSC might have been legally correct when it ruled that the petitioner violated Gonzales' right to security of tenure when she was removed without sufficient just cause from her position, but the situation had since then been changed. In fact, Gonzales was reinstated as ordered, but her services were subsequently terminated under the law prevailing at the time of the termination of her service; *i.e.*, she was then already occupying a position that was primarily confidential and had to be dismissed because she no longer enjoyed the trust and confidence of the appointing authority. Thus, Gonzales' termination for lack of confidence was lawful. She could no longer be reinstated as provincial administrator of Camarines Norte or to any other comparable position. This conclusion, however, is without prejudice to Gonzales' entitlement to retirement benefits, leave credits, and future employment in government service.

WHEREFORE, all premises considered, we hereby **GRANT** the petition, and **REVERSE** and **SET ASIDE** the Decision dated June 25, 2008

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[45] *Jocom v. Judge Regalado*, 278 Phil. 83, 94 (1991), citing *Tapales v. President and Board of Regents of the University of the Philippines*, 117 Phil. 561 (1963).

[46] *Ingles v. Mutuc*, 135 Phil. 177, 182 (1968).

and the Resolution dated December 2, 2008 of the Court of Appeals in CA-G.R. SP No. 97425.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

I join J. Del Castillo.

MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

I join the opinion of J. M. Del Castillo

PRESBITERO J. VELASCO, JR.
Associate Justice

Teresita Leonardo de Castro

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

Please see concurring and dissenting opinion.

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

I join the concurring and dissenting opinion of J. Del Castillo

ROBERTO A. ABAD
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.

MARIA LOURDES P. A. SERENO
Chief Justice