

**G.R. No. 185740** -- *The Provincial Government of Camarines Norte, represented by Governor Jesus C. Typoco, Jr. v. Beatriz C. Gonzales*

Promulgated: JULY 23, 2013

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## **CONCURRING AND DISSENTING OPINION**

The questions raised in this petition are (1) whether the Local Government Code (LGC) of 1991 reclassified the position of Provincial Administrator into primarily confidential, a Non-Career service position; and (2) if in the affirmative, whether such reclassification affects the tenure of respondent Beatriz C. Gonzales (Gonzales) who was appointed Provincial Administrator in a permanent capacity prior to the LGC's effectivity.

*The LGC has classified the Provincial Administrator position to primarily confidential, a Non-Career position.*

Positions in the Civil Service are classified into Career and Non-Career Service. Career Service is characterized by (1) entrance based on merit and fitness to be determined as far as practicable by competitive examination, or based on highly technical qualifications; (2) opportunity for advancement to higher Career Service positions; and (3) security of tenure.<sup>1</sup> Positions under this classification are also sub-classified according to appointment status which may be either permanent or temporary. On the other hand, the Non-Career Service is characterized by (1) entrance on bases other than those of the usual tests of merit and fitness utilized for the career service; and (2) tenure which is limited to a period specified by law, or which is co-terminus with that of the appointing authority or subject to his pleasure, or which is limited to the duration of a particular project for which purpose employment was made.<sup>2</sup>

Prior to the LGC and by virtue of *Laurel V v. Civil Service Commission*,<sup>3</sup> the Provincial Administrator position was declared by this Court as not primarily confidential but classified under Career Service, particularly as an open career position which requires qualification in an appropriate examination prior to appointment. However, upon the advent of the LGC, this classification was altered pursuant to Section 480, Article X, Title V, Book 3 thereof which provides:

<sup>1</sup> Section 7, Subtitle A, Title I, Book V, Administrative Code of 1987.

<sup>2</sup> Section 9, Subtitle A, Title I, Book V, Administrative Code of 1987.

<sup>3</sup> G.R. No. 71562, October 28, 1991. 203 SCRA 195.

**ARTICLE X**  
**THE ADMINISTRATOR**

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 municipal administrator.

The term of administrator is co[-]terminous with that of his appointing authority.

The appointment of an administrator shall be mandatory for the provincial and city governments, and optional for the municipal government.

(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;
- (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;
  - (ii) Establish and maintain a sound personnel program for the local government unit designed to promote career development and uphold the merit principle in the local government service;
  - (iii) Conduct a continuing organizational development of the local government unit with the end in view of instituting effective administrative reforms;
- (3) Be in the frontline of the delivery of administrative support services, particularly those related to the situations during and in the aftermath of man-made and natural disasters and calamities;
- (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; and

- (5) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

The above-quoted duties and functions of a Provincial Administrator clearly reflect the confidential nature of the position. As the one in charge of the development and implementation of management and administration-related programs and projects of the provincial government, the Provincial Administrator enjoys the Governor's highest degree of trust in his ability, integrity and loyalty. Complete trust and confidence must exist between the two since essential management and administration programs of the province are on the line. The need for a relationship based on trust and confidence is vital to preserving between them the freedom of intimate communication without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of the province. This was affirmed by former Senator Aquilino Q. Pimentel, Jr. in his commentary in his book, *The Local Government Code Revisited*,<sup>4</sup> where he stated:

A good administrator can handle a large part of the day to day work of the x x x governor. If he is competent and enjoys the full trust and confidence of the x x x governor, he can accelerate the pace and expand the scope of the work of any local government administration.

Also, a Provincial Administrator's duties and functions can hardly be typified as ordinary and routinary in character. He develops plans and strategies relating to the management, administration-related programs and projects of the provincial government and, with the approval of the Governor, implements them. He coordinates the work of all officials under the Governor, establishes and maintains a sound personnel program and conducts a continuing organizational development of the provincial government. He is in the frontline of the delivery of administrative support services and even recommends to the *Sanggunian Panlalawigan* and advises the Governor on all other matters about the management and administration of the local government unit concerned. Clearly, a Provincial Administrator enjoys wide latitude of discretion and authority in the discharge of his/her duties and functions and this negates their ordinary and routinary character.

Moreover, the Provincial Administrator submits directly to the Governor his plans and strategies for the latter's approval and also reports to him all matters relative to the management and administration of the provincial government. There is no intervening officer between them. Stated otherwise, there is close proximity between the Governor and the Provincial Administrator.

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<sup>4</sup> 2011 Edition, p. 688.

In view of the above and pursuant to the following guidelines laid down by the Court in various cases with respect to the proper determination of whether a position is primarily confidential, to wit: (1) that a primarily confidential position is one which requires upon its occupant confidence that is much more than the ordinary;<sup>5</sup> (2) that it is the nature of the functions attached to the position which ultimately determines whether a position is primarily confidential<sup>6</sup> which must not be routinary, ordinary and day to day in character<sup>7</sup> or mainly clerical;<sup>8</sup> and, (3) that positions of a confidential nature would be limited to those positions not separated from the position of the appointing authority by an intervening public officer, or series of public officers, in the bureaucratic hierarchy<sup>9</sup> (proximity rule); I agree with the *ponencia* that the LGC categorized the Provincial Administrator position as primarily confidential, hence reclassified it from Career to Non-Career Service position.

*Article 480 of the LGC did not affect the tenure of Gonzales.*

The more crucial question now is whether the co-terminous status that attaches to a primarily confidential position, alongside the express declaration in Article 480 of the LGC that the term of a Provincial Administrator is co-terminous with that of his appointing authority, affects the tenure of Gonzales who was appointed to the said position in a permanent status prior to the effectivity of the LGC. The answer to this question will determine if Gonzales was validly dismissed due to lack of confidence.

The *ponencia* points out that Congress has the power to create, abolish or modify public offices and that pursuant to this power, it can change the qualifications for and shorten the term of, existing statutory offices. It concludes that although Gonzales was appointed in a permanent status, the fact that Congress, through the LGC, categorized the term of a Provincial Administrator as co-terminous it in effect converted such permanent status into co-terminous. The *ponencia* thus declares that Gonzales can be validly dismissed due to lack of confidence.

The power of Congress to create, abolish or modify public offices is not doubted. Indeed, the “creation x x x abolition [and reorganization] of public offices is primarily a legislative function. It is acknowledged that Congress may abolish [or reorganize] any office it creates without impairing the officer’s right to continue in the position held x x x [provided that] same is made in good faith.”<sup>10</sup> However, I submit that the reclassification made by Congress under Article 480 of

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<sup>5</sup> *De los Santos v. Mallare*, 87 Phil. 289, 298 (1950).

<sup>6</sup> *Piñero v. Hechanova*, 124 Phil. 1022, 1026 (1966).

<sup>7</sup> *Civil Service Commission v. Javier*, 570 Phil. 89, 108 (2008).

<sup>8</sup> *Ingles v. Mutuc*, 135 Phil. 177, 184 (1968).

<sup>9</sup> *Civil Service Commission v. Javier*, supra at 109.

<sup>10</sup> *Canonizado v. Hon. Aguirre*, 380 Phil. 280, 286, (2000).

the LGC cannot be made to apply to this case. Otherwise stated, Article 480 of the LGC did not affect the tenure of Gonzales based on the following considerations: (1) Gonzales was appointed to the said position prior to the LGC's effectivity; (2) Gonzales had already acquired a legal right to her permanent position, she having been issued, and having assumed, a completed appointment. Hence, enjoys security of tenure as a permanent appointee to the position of Provincial Administrator; and (3) The Court had already ruled in *Laurel* that the position of Provincial Administrator is under the Career Service; and finally, Executive Order (EO) No. 503<sup>11</sup> specifically and expressly provides that [Provincial] Administrators who hold permanent appointments but whose terms were declared by the LGC as co-terminous shall continue to enjoy their permanent status until they vacate their positions.

*Gonzales enjoys security of tenure as a permanent employee, hence, she cannot be removed for a cause not provided by law for removing a permanent appointee and without due process of law.*

Security of tenure is a right of paramount value and this is precisely why it is given specific recognition and guarantee by no less than the Constitution.<sup>12</sup> Hence, the Court will not hesitate to uphold an employee's right to security of tenure.<sup>13</sup>

Here, there can be no doubt that Gonzales deserves to be extended the protection of the constitutionally enshrined right to security of tenure. As may be recalled, Gonzales was appointed Provincial Administrator on April 1, 1991 in a permanent capacity or prior to the effectivity of the LGC. This appointment was approved by the Civil Service Commission (CSC) Field Office in Camarines Norte. The approval could only mean that the CSC then classified the position of Provincial Administrator as embraced within the Career Service since only positions under it are sub-classified as permanent. This classification made by the CSC was later affirmed by the Court through *Laurel* promulgated on October 28, 1991. Under these circumstances, Gonzales already became entitled to enjoy one of the characteristics of a Career Service position – security of tenure.<sup>14</sup> However, after more than eight years of serving as a Provincial Administrator, Gonzales was dismissed from her position under the guise that the then sitting Governor had lost his trust and confidence on her considering that at that time the LGC was already in effect.

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<sup>11</sup> 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.

<sup>12</sup> *City Service Corporation Workers Union v. City Service Corporation*, 220 Phil. 239, 242 (1985).

<sup>13</sup> *St. Mary's Academy of Dipolog City v. Palacio*, G.R. No. 164913, September 8, 2010, 630 SCRA 263, 265.

<sup>14</sup> See Section 7, Subtitle A, Title 1, Book V of the Administrative Code of 1987.

*“[A] permanent employee remains a permanent employee unless he is validly terminated.”*<sup>15</sup>

In *Gabriel v. Domingo*,<sup>16</sup> therein petitioner Maximo Gabriel (Gabriel) was originally issued a permanent appointment as Motor Vehicle Registrar I at the Land Transportation Office. Thereafter, a reorganization took place by virtue of EO 546.<sup>17</sup> Pursuant thereto, *plantilla* positions were renamed and the position of Gabriel was changed to Transportation District Supervisor. But after having filed a protest against appointees to a higher position to which he applied and believed was more qualified, Gabriel was served a casual appointment. Three days later, he was dismissed from the service. The Court thus said:

Under the Constitution, it is provided that the security of tenure of civil servants shall be afforded protection. By this constitutional mandate, government employees are protected against unjustified dismissals.

Petitioner[,] who started working for the government way back in 1961[,] was already a holder of a permanent position at the time the reorganization caused by Executive Order No. 546 took effect. This is evident from his service record.

As observed by the Merit Systems Board, the casual appointment extended to petitioner later on, which led to his sudden and unexpected termination from the service, was made as a consequence of the protest he filed against the appointment of the eleven appointees to the position of Transportation District Supervisor III, and as such, it is illegal. This being the case, petitioner remained a permanent employee in spite of the casual appointment belatedly extended to him following the rule that a permanent employee remains a permanent employee unless he is validly terminated. The principle of non-dismissal except for cause applies to him.<sup>18</sup>

Similarly, in the instant case, Gonzales was originally issued a permanent appointment. Subsequently, she was administratively charged and found guilty of gross insubordination for which she was meted the penalty of six months suspension. After serving her suspension, the CSC directed the Provincial Government to reinstate her. Eventually, on October 10, 2000, the Provincial Government informed the CSC that it will reinstate Gonzales effective the following day, October 11, 2000, but would dismiss her for lack of confidence the next day, October 12, 2000, on the premise that her position had already become primarily confidential by virtue of the LGC. Gonzales' dismissal, however, as aptly found by the CA in its assailed Decision, was without cause and effected without due process of law, hence, illegal. This being the case, the

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<sup>15</sup> *Gabriel v. Domingo*, G.R. No. 87420, September 17, 1990, 189 SCRA 672.

<sup>16</sup> *Id.*

<sup>17</sup> Entitled “CREATING A MINISTRY OF PUBLIC WORKS AND A MINISTRY OF TRANSPORTATION AND COMMUNICATIONS.”

<sup>18</sup> *Gabriel v. Domingo*, *supra* at 676.

pronouncement made in *Gabriel* that a permanent employee remains a permanent employee unless he is validly terminated finds application in this case.

Another case worth considering is *Civil Service Commission v. Javier*.<sup>19</sup> The Court therein concluded that the position of a Corporate Secretary in a Government Owned and Controlled Corporation (GOCC) which at that time was classified as a permanent career position, is primarily confidential in nature. In recognizing the effect of such declaration on the tenure of corporate secretaries appointed under a permanent status, the Court elucidated:

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.** x x x<sup>20</sup> (Emphasis supplied)

It can thus be inferred from the above-quoted that had there been a prior classification by statute or determination by the Court of the position of Corporate Secretary as a permanent career position, permanent appointees thereto could expect protection for their tenure and appointments. In the instant case, a prior determination by the Court that the Provincial Administrator position is a permanent career position exists by virtue of *Laurel*. This was made at the time Gonzales had already assumed a completed appointment as a Provincial Administrator under a permanent status. Clearly, said judicial determination afforded Gonzales the protection for her tenure and appointment. The security of tenure of a permanent employee already attached to her, hence, she cannot be removed from office for a cause not provided by law for removing a permanent appointee and without due process of law.

*EO 503 specifically and expressly provides for the tenure of a Provincial Administrator who holds a permanent appointment prior to the effectivity of the LGC.*

On January 22, 1992, President Corazon C. Aquino issued EO 503. Wary that the advent of the LGC would impinge on the security of tenure of not only the

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<sup>19</sup> Supra note 7.

<sup>20</sup> Id. at 113.

personnel of the national government agencies and local government units involved in the devolution brought about by the LGC, but also of such other personnel otherwise affected, Section 2(a) of EO 503 provided certain safeguards against termination,<sup>21</sup> particularly paragraphs 5, 6, 8, 12,<sup>22</sup> – an obvious indication that the executive department likewise sought to protect and uphold the security of tenure of the personnel concerned. Section 2(a), paragraph 8, specifically and expressly provides for the tenure of an administrator, viz:

8. Incumbents of positions, namely **administrator**, legal officer and information officer **declared by the Code as co[-]terminous, who hold permanent appointments, shall continue to enjoy their permanent status until they vacate their positions.** (Emphasis supplied)

It is crystal clear from the above provision that notwithstanding the express declaration in Section 480 of the LGC that the term of an administrator is co-terminous with that of his appointing authority, deference is accorded to the right to security of tenure of those holding the said position in a permanent status prior to the LGC’s effectivity.

The *ponencia* opines that EO 503 applies only to employees of the national government whose functions are to be devolved to local government. I disagree. EO 503 is entitled “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.” The phrase “AND FOR OTHER RELATED PURPOSES” 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. The LGC declared their term to be co-terminous with their appointing authority;<sup>23</sup> thus, it is not farfetched to conclude that they are the officers referred to in Section 2(a), paragraph 8 of EO 503. This is even more so, considering that Section 480 of the LGC does not provide whether the term of an incumbent Provincial Administrator

<sup>21</sup> *Atty. Aguirre, Jr. v. De Castro*, 378 Phil. 714, 725 (1999).

<sup>22</sup> 5. There shall be no involuntary separation, termination, or lay-off of permanent personnel of the NGAs [National Government Agencies] affected by devolution.

6. Devolved permanent personnel shall enjoy security of tenure.

x x x x

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

x x x x

12. Except as herein otherwise provided, devolved permanent personnel shall be automatically reappointed by the local chief executive concerned immediately upon their transfer which shall not go beyond June 30, 1992.

<sup>23</sup> See Section 480, Article Ten; Section 481, Article Eleven; Section 486, Article Sixteen; all of Title Five, Book III, of the Local Government Code.



automatically becomes co-terminous with the appointing authority upon the effectivity of the LGC. Section 2(a), paragraph 8, of EO 503 is considered to have filled such crucial gap. The said provision enjoys the legal presumption of validity. “Unless the law or rule is annulled in a direct proceeding, the legal presumption of its validity stands.”<sup>24</sup> As such, there can be no other logical conclusion than that Gonzales is entitled to continue to hold her position as Provincial Administrator under a permanent status.

Finally, the *ponencia* declares that “[a]ll permanent officers and employees in the civil service, regardless of whether they belong to the career or non-career service category” have the right to security of tenure; as such, they can only be removed for cause and with due process.

In the instant case, the CA correctly held that Gonzales’ dismissal was without cause and effected without due process of law, hence illegal. Records show that Gonzales was administratively charged with, and found guilty of, insubordination. She was meted the penalty of six months suspension which she served. Thereafter, she was dismissed from the service based on the same set of factual circumstances for which she was charged and eventually suspended. Notably, she was informed of her “reinstatement” on the same day she was notified of her dismissal supposedly for lack of confidence. Otherwise stated, by virtue of the letter dated October 10, 2000, Gonzales was informed of her reinstatement effective October 11, 2000. But even before she could expel a sigh of relief, the next paragraph of the same letter already notified her of her termination effective the following day, October 12, 2000. For better appreciation, the said letter is quoted below:

October 10, 2000

Ms. Beatriz O. Gonzales  
Provincial Administrator  
Provincial Capitol  
Daet, Camarines Norte

Dear Mrs. Gonzales:

We received today your letter of even date, quoting the dispositive portion of the CSC Resolution No. 002245, in relation to CSC Administrative Case No. 1171-91.

In compliance with the said CSC Resolution, you are considered reinstated as Provincial Administrator effective October 11, 2000.

Be that as it may, considering that the position of Administrator whether Provincial, Municipal or City, has been reclassified from Career position to Non

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<sup>24</sup> *Dasmariñas Water District v. Monterey Foods Corporation*, G.R. No. 175550, September 17, 2008, 565 SCRA 624, 637.

career position in line with the ruling in the case of Reyes, Carmencita O., under Resolution No. 0001158, dated May 12, 2000, the nature of which is highly confidential and co-terminous in nature, please be informed that effective October 12, 2000, your services as Provincial Administrator is terminated for LOSS OF CONFIDENCE.

As you may be aware of since we assumed as the duly elected Governor of Camarines Norte on September 23, 1998; no new appointment has been issued to you as Provincial Administrator.

Even in an Opinion of the CSC dated June 1, 1995, it has been opined that appointment of a local administrator is co[-]terminous with the appointing authority and needs to be renewed upon expiration of the term of office of whoever appointed you, prior to our assumption as Governor.

Accordingly, you are advised not to report for work effective October 12, 2000.

Very truly yours,

(Signed)  
EMMANUEL B. PIMENTEL<sup>25</sup>

In view of these, I submit that Gonzales has the right to security of tenure and that she is entitled to continue to hold the position of Provincial Administrator in a permanent status. Thus, her reinstatement thereto is called for.

However, mindful of the fact that the present times and the exigencies of the service would necessarily require Gonzales to discharge the duties and functions of a Provincial Administrator laid down in Section 480 of the LGC once she gets reinstated, a critical question thus arises: *How can she effectively discharge these duties and functions which as earlier discussed necessitate the full trust and confidence of the incumbent governor when she does not, in the first place, enjoy such trust and confidence?* Under this peculiar situation, the CSC's disquisition in its Resolution No. 061988 ordering the immediate reinstatement of Gonzales as Provincial Administrator *or to a comparable position* of a permanent status, should the former become untenable under the present situation, is appropriate. In which case, neither the interest of service nor Gonzales' security of tenure is compromised. This is also in keeping with the Court's duty, as a dispenser of justice, to find a solution that is both legal and realistic.<sup>26</sup>

All told, I find no error on the part of the CA in affirming the Orders of the Civil Service Commission.

**ACCORDINGLY**, I vote to **DENY** the Petition.

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<sup>25</sup> CA rollo, pp. 37-38.

<sup>26</sup> Concurring Opinion of Chief Justice Moran in *Araneta v. Dinglasan*, 84 Phil. 368, 387 (1949).

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*