



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILS.
MARIA LOURDES P. A. SERENO
CHIEF JUSTICE

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EN BANC

DENNIS A. B. FUNA,
Petitioner,

G.R. No. 191672

Present:

SERENO, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
*BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
**PERLAS-BERNABE,
LEONEN, and
JARDELEZA, JJ.

- versus -

**THE CHAIRMAN, CIVIL
SERVICE COMMISSION,
FRANCISCO T. DUQUE III,
EXECUTIVE SECRETARY
LEANDRO R. MENDOZA,
OFFICE OF THE PRESIDENT,**
Respondents.

Promulgated:

November 25, 2014 *[Signature]*

x-----x

DECISION

BERSAMIN, J.:

The independence of the Civil Service Commission (CSC) is explicitly mandated under Section 1,¹ Article IX-A of the 1987 Constitution. Additionally, Section 2,² Article IX-A of the 1987 Constitution prohibits its Members, during their tenure, from holding any other office or employment.

* On leave.

** On official leave.

¹ Section 1. The Constitutional Commissions, which shall be independent, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit.

² Section 2. No member of a Constitutional Commission shall, during his tenure, hold any other office or employment. Neither shall he engage in the practice of any profession or in the active management or control of any business which, in any way, may be affected by the functions of his office, nor shall he be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations or their subsidiaries.

[Signature]

These constitutional provisions³ are central to this special civil action for *certiorari* and prohibition brought to assail the designation of Hon. Francisco T. Duque III, Chairman of the CSC, as a member of the Board of Directors or Trustees in an *ex officio* capacity of the (a) Government Service Insurance System (GSIS); (b) Philippine Health Insurance Corporation (PHILHEALTH), (c) the Employees Compensation Commission (ECC), and (d) the Home Development Mutual Fund (HDMF).

Antecedents

On January 11, 2010, then President Gloria Macapagal-Arroyo appointed Duque as Chairman of the CSC. The Commission on Appointments confirmed Duque's appointment on February 3, 2010.

On February 22, 2010, President Arroyo issued Executive Order No. 864 (EO 864), whose complete text is quoted as follows:

EXECUTIVE ORDER NO. 864

INCLUSION OF THE CHAIRMAN OF THE CIVIL SERVICE COMMISSION IN THE BOARD OF TRUSTEES/DIRECTORS OF THE GOVERNMENT SERVICE INSURANCE SYSTEM, PHILIPPINE HEALTH INSURANCE CORPORATION, EMPLOYEES' COMPENSATION COMMISSION AND THE HOME DEVELOPMENT MUTUAL FUND

WHEREAS, Section 2 (1), Article IX-B of the 1987 Philippine Constitution provides that the civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters;

WHEREAS, Section 3, Article IX-B of the 1987 Constitution mandates, among others, that the Civil Service Commission (CSC), as the central personnel agency of the government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service, and shall strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability;

WHEREAS, Section 14, Chapter 3, Title I-A, Book V of the Administrative Code of 1987 (Executive Order No. 292) expressly states that the Chairman of the CSC shall be a member of the Board of Directors or of other governing bodies of government entities whose functions affect the career development, employment, status, rights, privileges, and welfare of government officials and employees, such as the Government Service Insurance System, Foreign Service Board, Foreign Trade Service Board, National Board for Teachers, and such other similar boards as may be created by law;

³ *Rollo*, p. 8.

WHEREAS, Presidential Decree No. 1 dated September 24, 1972, explicitly empowers the President of the Republic of the Philippines to reorganize the entire Executive Branch of the National Government, as a vital and priority measure to effect the desired changes and reforms in the social, economic and political structure of the country;

WHEREAS, Section 18 (a), Article IV of Republic Act No. 7875 (An Act Instituting a National Health Insurance Program For All Filipinos and Establishing the Philippine Health Insurance Corporation For The Purpose) or otherwise known as the “National Health Insurance Act of 1995”, Section 42 (G) of Republic Act No. 8291 (An Act Amending Presidential Decree No. 1146, as amended, Expanding and Increasing the Coverage of Benefits of the Government Service Insurance System, Instituting Reforms Therein and For Other Purposes) or otherwise known as “The Government Service Insurance System Act of 1997, Article 176, Chapter 3 of Presidential Decree No. 626 (Employees’ Compensation and State Insurance Fund), and Presidential Decree No. 1530 (Instituting a System of Voluntary Contributions for Housing Purpose[s]) or otherwise known as the “Pag-ibig Fund” reveal that while the Chairman of the CSC is not included in the list of those who could sit as a member of the Board of Directors of the Philhealth or of the Board of Trustees of the GSIS, ECC and the Pag-ibig Fund, said laws did not expressly repeal Section 14, Chapter 3, Title I-A, Book V of the Administrative Code of 1987 and Presidential Decree No. 1;

WHEREAS, it is settled that repeals by implication are not favored as laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject;

WHEREAS, a scrutiny of the mandated functions and duties of the Board of Trustees of the GSIS, ECC and HDMF and the Board of Directors of the PhilHealth shows that the same are all geared towards the advancement of the welfare of government officials and employees, which functions fall within the province of the CSC;

NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order and direct:

Section 1. The Chairman of the Civil Service Commission shall sit as an *Ex-Officio* member of the Board of Trustees of the Government Service Insurance System, Employees’ Compensation Commission and the Home Development Mutual Fund and the Board of Directors of the Philippine Health Insurance Corporation pursuant to Section 14, Chapter 3, Title I-A, Book V of Executive Order No. 292 (Administrative Code of 1987).

Section 2. This Executive Order shall take effect immediately.

Done in the City of Manila, this 22nd day of February, in the year of Our Lord, Two Thousand and Ten.⁴

Pursuant to EO 864, Duque was designated as a member of the Board of Directors or Trustees of the following government-owned or government-

⁴ Id. at 13-15.

controlled corporations (GOCCs): (a) GSIS; (b) PHILHEALTH; (c) ECC; and (d) HDMF.

On April 8, 2010, petitioner Dennis A.B. Funa, in his capacity as taxpayer, concerned citizen and lawyer, filed the instant petition challenging the constitutionality of EO 864, as well as Section 14, Chapter 3, Title I-A, Book V of Executive Order No. 292 (EO 292), otherwise known as *The Administrative Code of 1987*, and the designation of Duque as a member of the Board of Directors or Trustees of the GSIS, PHIC, ECC and HDMF for being clear violations of Section 1 and Section 2, Article IX-A of the 1987 Constitution.

The Case

The Court is confronted with the proper interpretation of Section 1 and Section 2, Article IX-A of the 1987 Constitution and Section 14, Chapter 3, Title I-A, Book V of EO 292 to ascertain the constitutionality of the designation of Duque, in an *ex officio* capacity, as Director or Trustee of the GSIS, PHIC, ECC and HDMF.

Petitioner asserts that EO 864 and Section 14, Chapter 3, Title I-A, Book V of EO 292 violate the independence of the CSC, which was constitutionally created to be protected from outside influences and political pressures due to the significance of its government functions.⁵ He further asserts that such independence is violated by the fact that the CSC is not a part of the Executive Branch of Government while the concerned GOCCs are considered instrumentalities of the Executive Branch of the Government.⁶ In this situation, the President may exercise his power of control over the CSC considering that the GOCCs in which Duque sits as Board member are attached to the Executive Department.⁷

Petitioner argues that Section 14, Chapter 3, Title I-A, Book V of EO 292 unduly and unconstitutionally expands the role of the CSC, which is primarily centered on personnel-related concerns involving government workers, to include insurance, housing and health matters of employees in the government service.⁸ He observes that the independence of the CSC will not be compromised if these matters are instead addressed by entering into a memorandum of agreement or by issuing joint circulars with the concerned agencies, rather than allowing a member of the CSC to sit as a member of the governing Boards of these agencies.⁹

⁵ Id. at 16.

⁶ Id. at 18-19.

⁷ Id. at 19-22; ECC is a GOCC attached to the Department of Labor and Employment, PHILHEALTH to the Department of Health, and HDMF and GSIS to the Office of the President.

⁸ Id. at 21-22.

⁹ Id. at 23.

Petitioner notes that the charters of the GSIS, PHILHEALTH, ECC and HDMF do not mention that the CSC Chairman sits as a member of their governing Boards in an *ex officio* capacity.¹⁰ Such being the case, the President may not amend the charters, which are enacted by Congress, by the mere issuance of an executive order.¹¹

Petitioner posits that EO 864 and Section 14, Chapter 3, Title I-A, Book V of EO 292 violate the prohibition imposed upon members of constitutional commissions from holding any other office or employment.¹² A conflict of interest may arise in the event that a Board decision of the GSIS, PHILHEALTH, ECC and HDMF concerning personnel-related matters is elevated to the CSC considering that such GOCCs have original charters, and their employees are governed by CSC laws, rules and regulations.¹³

In their Comment, respondents maintain that Duque's membership in the governing Boards of the GSIS, PHILHEALTH, ECC and HDMF is constitutional. They explain that EO 864 and Section 14, Chapter 3, Title I-A, Book V of EO 292 preserve the independence of the CSC considering that GOCCs with original charters such as the GSIS, PHILHEALTH, ECC and HDMF are excluded from the supervision and control that secretaries and heads exercise over the departments to which these GOCCs are attached.¹⁴ Ultimately, these GOCCs are exempted from the executive control of the President.¹⁵

As to the matter of conflict of interest, respondents point out that Duque is just one member of the CSC, or of the Boards of the GSIS, PHILHEALTH, ECC and HDMF, such that matters resolved by these bodies may be resolved with or without Duque's participation.¹⁶

Respondents submit that the prohibition against holding any other office or employment under Section 2, Article IX-A of the 1987 Constitution does not cover positions held without additional compensation in *ex officio* capacities. Relying on the pronouncement in *Civil Liberties Union v. Executive Secretary*,¹⁷ they assert that since the 1987 Constitution, which provides a stricter prohibition against the holding of multiple offices by executive officials, allows them to hold positions in *ex officio* capacities, the same rule is applicable to members of the Constitutional Commissions.¹⁸ Moreover, the mandatory tenor of Section 14, Chapter 3, Title I-A, Book V

¹⁰ Id. at 23-28.

¹¹ Id. at 27-28.

¹² Id. at 31.

¹³ Id. at 35-36.

¹⁴ Id. at 72-76.

¹⁵ Id. at 76.

¹⁶ Id. at 78.

¹⁷ G.R. Nos. 83896 and 83815, February 22, 1991, 194 SCRA 317.

¹⁸ *Rollo*, p. 80.

of EO 292 clearly indicates that the CSC Chairman's membership in the governing bodies mentioned therein merely imposes additional duties and functions as an incident and necessary consequence of his appointment as CSC Chairman.¹⁹

Respondents insist that EO 864 and Section 14, Chapter 3, Title I-A, Book V of EO 292, as well as the charters of the GSIS, PHILHEALTH, ECC and HDMF, are consistent with each other. While the charters of these GOCCs do not provide that CSC Chairman shall be a member of their respective governing Boards, there is likewise no prohibition mentioned under said charters.²⁰ EO 864, issued in conformity with Section 14, Chapter 3, Title I-A, Book V of EO 292, could not have impliedly amended the charters of the GSIS, PHILHEALTH, ECC and HDMF because the former relates to the law on the CSC while the latter involve the creation and incorporation of the respective GOCCs.²¹ As their subject matters differ from each other, the enactment of the subsequent law is not deemed to repeal or amend the charters of the GOCCs, being considered prior laws.²²

Issue

Does the designation of Duque as member of the Board of Directors or Trustees of the GSIS, PHILHEALTH, ECC and HDMF, in an *ex officio* capacity, impair the independence of the CSC and violate the constitutional prohibition against the holding of dual or multiple offices for the Members of the Constitutional Commissions?

Our Ruling

The Court partially grants the petition. The Court upholds the constitutionality of Section 14, Chapter 3, Title I-A, Book V of EO 292, but declares unconstitutional EO 864 and the designation of Duque in an *ex officio* capacity as a member of the Board of Directors or Trustees of the GSIS, PHILHEALTH, ECC and HDMF.

1.

Requisites of judicial review

Like almost all powers conferred by the Constitution, the power of judicial review is subject to limitations, to wit: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have the standing to question the validity of the

¹⁹ Id. at 81.

²⁰ Id. at 85-86.

²¹ Id. at 86.

²² Id. at 86-87.

subject act or issuance; otherwise stated, he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.²³

Here, the Office of the Solicitor General (OSG) only disputes the *locus standi* of petitioner who has filed this suit in his capacity as taxpayer, concerned citizen and lawyer.²⁴ In view of the earlier dispositions by the Court in similar public law cases initiated by petitioner, we again affirm his *locus standi* to bring a suit of this nature. In *Funa v. Agra*,²⁵ the Court has recently held:

x x x [T]he *locus standi* of the petitioner as a taxpayer, a concerned citizen and a lawyer to bring a suit of this nature has already been settled in his favor in rulings by the Court on several other public law litigations he brought. In *Funa v. Villar*, for one, the Court has held:

To have legal standing, therefore, a suitor must show that he has sustained or will sustain a “direct injury” as a result of a government action, or have a “material interest” in the issue affected by the challenged official act. However, **the Court has time and again acted liberally on the *locus standi* requirements and has accorded certain individuals, not otherwise directly injured, or with material interest affected, by a Government act, standing to sue provided a constitutional issue of critical significance is at stake. The rule on *locus standi* is after all a mere procedural technicality in relation to which the Court, in a *catena* of cases involving a subject of transcendental import, has waived, or relaxed, thus allowing non-traditional plaintiffs, such as concerned citizens, taxpayers, voters or legislators, to sue in the public interest, albeit they may not have been personally injured by the operation of a law or any other government act. In *David*, the Court laid out the bare minimum norm before the so-called “non-traditional suitors” may be extended standing to sue, thusly:**

1.) For *taxpayers*, there must be a claim of illegal disbursement of public funds or that the tax measure is unconstitutional;

2.) For *voters*, there must be a showing of obvious interest in the validity of the election law in question;

3.) For *concerned citizens*, there must be a showing that the issues raised are of transcendental importance which must be settled early; and

²³ *Lawyers Against Monopoly and Poverty (LAMP) v. The Secretary of Budget and Management*, G.R. No. 164987, April 24, 2012, 670 SCRA 373, 382.

²⁴ *Rollo*, pp. 68-72.

²⁵ G.R. No. 191644, February 19, 2013, 691 SCRA 196, 207-208.

4.) For *legislators*, there must be a claim that the official action complained of infringes their prerogatives as legislators.

This case before Us is of transcendental importance, since it obviously has "far-reaching implications," and there is a need to promulgate rules that will guide the bench, bar, and the public in future analogous cases. We, thus, assume a liberal stance and allow petitioner to institute the instant petition.²⁰ (Bold emphasis supplied)

In *Funa v. Ermita*, the Court recognized the *locus standi* of the petitioner as a taxpayer, a concerned citizen and a lawyer because the issue raised therein involved a subject of transcendental importance whose resolution was necessary to promulgate rules to guide the Bench, Bar, and the public in similar cases.

The Court notes, however, that during the pendency of this petition, Duque's designation as Director or Trustee of the GSIS, PHILHEALTH, ECC and PHIC could have terminated or been rendered invalid by the enactment of Republic Act No. 10149,²⁶ thus causing this petition and the main issue tendered herein moot and academic. Pertinent provisions of Republic Act No. 10149, which took effect on June 6, 2011, state:

SEC. 13. *Number of Directors/Trustees.*—The present number of Directors/Trustees provided in the charter of the GOCCs shall be maintained.

SEC. 14. *Ex Officio Alternates.*—The *ex officio* members of the GOCC may designate their respective alternates who shall be the officials next-in-rank to them and whose acts shall be considered the acts of their principals.

SEC. 15. *Appointment of the Board of Directors/Trustees of GOCCs.*—An Appointive Director shall be appointed by the President of the Philippines from a shortlist prepared by the GCG.

The GCG shall formulate its rules and criteria in the selection and nomination of prospective appointees and shall cause the creation of search committees to achieve the same. All nominees included in the list submitted by the GCG to the President shall meet the Fit and Proper Rule as defined in this Act and such other qualifications which the GCG may determine taking into consideration the unique requirements of each GOCC. The GCG shall ensure that the shortlist shall exceed by at least fifty percent (50%) of the number of directors /trustees to be appointed. In the event that the President does not see fit to appoint any of the nominees included in the shortlist, the President shall ask the GCG to submit additional nominees.

X X X X

²⁶ An Act to Promote Financial Viability and Fiscal Discipline in Government-Owned or Controlled Corporations and to Strengthen the Role of the State in its Governance and Management to Make Them More Responsive to the Needs of Public Interest and for Other Purposes.

SEC. 17. *Term of Office.*—Any provision in the charters of each GOCC to the contrary notwithstanding, the term of office of each Appointive Director shall be for one (1) year, unless sooner removed for cause: *Provided, however,* That the Appointive Director shall continue to hold office until the successor is appointed. An Appointive Director may be nominated by the GCG for reappointment by the President only if one obtains a performance score of above average or its equivalent or higher in the immediately preceding year of tenure as Appointive Director based on the performance criteria for Appointive Directors for the GOCC.

Appointed to any vacancy shall be only for the unexpired term of the predecessor. The appointment of a director to fill such vacancy shall be in accordance with the manner provided in Section 15 of this Act.

Any provision of law to the contrary notwithstanding, all incumbent CEOs and appointive members of the Board of GOCCs shall, upon approval of this Act, have a term of office until June 30, 2011, unless sooner replaced by the President: *Provided, however,* That the incumbent CEOs and appointive members of the Board shall continue in office until the successor have been appointed by the President.

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value.²⁷

2.

Unconstitutionality of Duque's designation as member of the governing boards of the GSIS, PHIC, ECC and HDMF

Nonetheless, this Court has exercised its power of judicial review in cases otherwise rendered moot and academic by supervening events on the basis of certain recognized exceptions, namely: (1) there is a grave violation of the Constitution; (2) the case involves a situation of exceptional character and is of paramount public interest; (3) the constitutional issue raised requires the formulation of controlling principles to guide the Bench, the Bar and the public; and (4) the case is capable of repetition yet evading review.²⁸

The situation now obtaining definitely falls under the requirements for the review of a moot and academic case. For the guidance of and as a restraint upon the future,²⁹ the Court will not abstain from exercising its power of judicial review, the cessation of the controversy notwithstanding. We proceed to resolve the substantive issue concerning the constitutionality

²⁷ *Funa v. Ermita*, G.R. No. 184740, February 11, 2010, 612 SCRA 308, 319.

²⁸ *Funa v. Villar*, G.R. No. 192791, April 24, 2012, 670 SCRA 579, 592, citing *David v. Macapagal-Arroyo*, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489 & 171424, May 3, 2006, 489 SCRA 160, 214-215.

²⁹ *Javier v. Commission on Elections*, Nos. L-68379-81, September 22, 1986, 144 SCRA 194, 198.

of Duque's *ex officio* designation as member of the Board of Directors or Trustees of the GSIS, PHILHEALTH, ECC and HDMF.

The underlying principle for the resolution of the present controversy rests on the correct application of Section 1 and Section 2, Article IX-A of the 1987 Constitution, which provide:

Section 1. The Constitutional Commissions, which shall be independent, are the Civil Service Commission, the Commission on Elections, and the Commission on Audit.

Section 2. No Member of a Constitutional Commission shall, during his tenure, hold any other office or employment. Neither shall he engage in the practice of any profession or in the active management or control of any business which in any way may be affected by the functions of his office, nor shall he be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations or their subsidiaries.

Section 1, Article IX-A of the 1987 Constitution expressly describes all the Constitutional Commissions as "independent." Although their respective functions are essentially executive in nature, they are not under the control of the President of the Philippines in the discharge of such functions. Each of the Constitutional Commissions conducts its own proceedings under the applicable laws and its own rules and in the exercise of its own discretion. Its decisions, orders and rulings are subject only to review on *certiorari* by the Court as provided by Section 7, Article IX-A of the 1987 Constitution.³⁰ To safeguard the independence of these Commissions, the 1987 Constitution, among others,³¹ imposes under Section 2, Article IX-A of the Constitution certain inhibitions and disqualifications upon the Chairmen and members to strengthen their integrity, to wit:

³⁰ *Brillantes, Jr. v. Yorac*, G.R. No. 93867, December 18, 1990, 192 SCRA 358, 360.

³¹ The Constitution further vests the Commissions with the following characteristics to insure their independence:

- (a) They are constitutionally created, and may not be abolished by statute.
- (b) Each is expressly described as independent.
- (c) Each is conferred certain powers and functions which cannot be reduced by statute.
- (d) The Chairmen and members cannot be removed except by impeachment.
- (e) The Chairmen and members are given a fairly long term of office of seven years.
- (f) The Chairmen and members may not be reappointed or appointed in an acting capacity.
x x x x
- (g) The salaries of the chairman and members are relatively high and may not be decreased during continuance in office.
- (h) The Commissions enjoy fiscal autonomy.
x x x x
- (i) Each Commission may promulgate its own procedural rules, provided they do not diminish, increase or modify substantive rights [though subject to disapproval by the Supreme Court].
- (j) The Chairmen and members are subject to certain disqualifications calculated to strengthen their integrity.
- (k) The Commissions may appoint their own officials and employees in accordance with Civil Service Law. (per Nachura, *Outline Reviewer in Political Law*, 2009 ed., pp. 325-326).

- (a) Holding any other office or employment during their tenure;
- (b) Engaging in the practice of any profession;
- (c) Engaging in the active management or control of any business which in any way may be affected by the functions of his office; and
- (d) Being financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the Government, any of its subdivisions, agencies or instrumentalities, including government-owned or – controlled corporations or their subsidiaries.³²

The issue herein involves the first disqualification abovementioned, which is the disqualification from holding any other office or employment during Duque's tenure as Chairman of the CSC. The Court finds it imperative to interpret this disqualification in relation to Section 7, paragraph (2), Article IX-B of the Constitution and the Court's pronouncement in *Civil Liberties Union v. Executive Secretary*.

Section 7, paragraph (2), Article IX-B reads:

Section 7. x x x

Unless otherwise allowed by law or the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

In *Funa v. Ermita*,³³ where petitioner challenged the concurrent appointment of Elena H. Bautista as Undersecretary of the Department of Transportation and Communication and as Officer-in-Charge of the Maritime Industry Authority, the Court reiterated the pronouncement in *Civil Liberties Union v. The Executive Secretary* on the intent of the Framers on the foregoing provision of the 1987 Constitution, to wit:

Thus, while all other appointive officials in the civil service are allowed to hold other office or employment in the government during their tenure when such is allowed by law or by the primary functions of their positions, members of the Cabinet, their deputies and assistants may do so only when expressly authorized by the Constitution itself. In other words, Section 7, Article IX-B is meant to lay down the general rule applicable to all elective and appointive public officials and employees, while Section 13, Article VII is meant to be the exception applicable only to the

³² Nachura, *Outline Reviewer in Political Law*, 2009 ed., p. 326.

³³ G.R. No. 184740, February 11, 2010, 612 SCRA 308.

President, the Vice-President, Members of the Cabinet, their deputies and assistants.

X X X X

Since the evident purpose of the framers of the 1987 Constitution is to impose a stricter prohibition on the President, Vice-President, members of the Cabinet, their deputies and assistants with respect to holding multiple offices or employment in the government during their tenure, the exception to this prohibition must be read with equal severity. On its face, the language of Section 13, Article VII is prohibitory so that it must be understood as intended to be a positive and unequivocal negation of the privilege of holding multiple government offices or employment. Verily, wherever the language used in the constitution is prohibitory, it is to be understood as intended to be a positive and unequivocal negation. The phrase "unless otherwise provided in this Constitution" must be given a literal interpretation to refer only to those particular instances cited in the Constitution itself, to wit: the Vice-President being appointed as a member of the Cabinet under Section 3, par. (2), Article VII; or acting as President in those instances provided under Section 7, pars. (2) and (3), Article VII; and, the Secretary of Justice being ex-officio member of the Judicial and Bar Council by virtue of Section 8 (1), Article VIII.³⁴

Being an appointive public official who does not occupy a Cabinet position (*i.e.*, President, the Vice-President, Members of the Cabinet, their deputies and assistants), Duque was thus covered by the general rule enunciated under Section 7, paragraph (2), Article IX-B. He can hold any other office or employment in the Government during his tenure if such holding is allowed by law or by the primary functions of his position.

Respondents insist that Duque's *ex officio* designation as member of the governing Boards of the GSIS, PHILHEALTH, ECC and HDMF is allowed by the primary functions of his position as the CSC Chairman. To support this claim, they cite Section 14, Chapter 3, Title I-A, Book V of EO 292, to wit:

Section 14. Membership of the Chairman in Boards.—The Chairman shall be a member of the Board of Directors or of other governing bodies of government entities whose functions affect the career development, employment status, rights, privileges, and welfare of government officials and employees, such as the Government Service Insurance System, Foreign Service Board, Foreign Trade Service Board, National Board for Teachers, and such other similar boards as may be created by law.

As to the meaning of *ex officio*, the Court has decreed in *Civil Liberties Union v. Executive Secretary* that –

X X X X The term *ex officio* means “from office; by virtue of office.” It refers to an “authority derived from official character merely, not

³⁴ G.R. No. 83896, February 22, 1991, 194 SCRA 317, 329-331.

expressly conferred upon the individual character, but rather annexed to the official position.” *Ex officio* likewise denotes an “act done in an official character, or as a consequence of office, and without any other appointment or authority other than that conferred by the office.” An *ex officio* member of a board is one who is a member by virtue of his title to a certain office, and without further warrant or appointment. x x x

x x x x

The *ex officio* position being actually and in legal contemplation part of the principal office, it follows that the official concerned has no right to receive additional compensation for his services in the said position. The reason is that these services are already paid for and covered by the compensation attached to his principal office. x x x³⁵

Section 3, Article IX-B of the 1987 Constitution describes the CSC as the central personnel agency of the government and is principally mandated to establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service; to strengthen the merit and rewards system; to integrate all human resources development programs for all levels and ranks; and to institutionalize a management climate conducive to public accountability. Its specific powers and functions are as follows:

(1) Administer and enforce the constitutional and statutory provisions on the merit system for all levels and ranks in the Civil Service;

(2) Prescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws;

(3) Promulgate policies, standards and guidelines for the Civil Service and adopt plans and programs to promote economical, efficient and effective personnel administration in the government;

(4) Formulate policies and regulations for the administration, maintenance and implementation of position classification and compensation and set standards for the establishment, allocation and reallocation of pay scales, classes and positions;

(5) Render opinion and rulings on all personnel and other Civil Service matters which shall be binding on all heads of departments, offices and agencies and which may be brought to the Supreme Court on certiorari;

(6) Appoint and discipline its officials and employees in accordance with law and exercise control and supervision over the activities of the Commission;

(7) Control, supervise and coordinate Civil Service examinations. Any entity or official in government may be called upon by the Commission to assist in the preparation and conduct of said examinations

³⁵ Id. at 333-335.

including security, use of buildings and facilities as well as personnel and transportation of examination materials which shall be exempt from inspection regulations;

(8) Prescribe all forms for Civil Service examinations, appointments, reports and such other forms as may be required by law, rules and regulations;

(9) Declare positions in the Civil Service as may properly be primarily confidential, highly technical or policy determining;

(10) Formulate, administer and evaluate programs relative to the development and retention of qualified and competent work force in the public service;

(11) Hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and of the agencies attached to it. Officials and employees who fail to comply with such decisions, orders, or rulings shall be liable for contempt of the Commission. Its decisions, orders, or rulings shall be final and executory. Such decisions, orders, or rulings may be brought to the Supreme Court on certiorari by the aggrieved party within thirty (30) days from receipt of a copy thereof;

(12) Issue subpoena and subpoena duces tecum for the production of documents and records pertinent to investigation and inquiries conducted by it in accordance with its authority conferred by the Constitution and pertinent laws;

(13) Advise the President on all matters involving personnel management in the government service and submit to the President an annual report on the personnel programs;

(14) Take appropriate action on all appointments and other personnel matters in the Civil Service including extension of Service beyond retirement age;

(15) Inspect and audit the personnel actions and programs of the departments, agencies, bureaus, offices, local government units and other instrumentalities of the government including government-owned or controlled corporations; conduct periodic review of the decisions and actions of offices or officials to whom authority has been delegated by the Commission as well as the conduct of the officials and the employees in these offices and apply appropriate sanctions when necessary;

(16) Delegate authority for the performance of any functions to departments, agencies and offices where such functions may be effectively performed;

(17) Administer the retirement program for government officials and employees, and accredit government services and evaluate qualifications for retirement;

(18) Keep and maintain personnel records of all officials and employees in the Civil Service; and

(19) Perform all functions properly belonging to a central personnel agency and such other functions as may be provided by law.³⁶

On the other hand, enumerated below are the specific duties and responsibilities of the CSC Chairman, namely:

- (1) Direct all operations of the Commission;
- (2) Establish procedures for the effective operations of the Commission;
- (3) Transmit to the President rules and regulations, and other guidelines adopted by the Chairman which require Presidential attention including annual and other periodic reports;
- (4) Issue appointments to, and enforce decisions on administrative discipline involving officials and employees of the Commission;
- (5) Delegate authority for the performance of any function to officials and employees of the Commission;
- (6) Approve and submit the annual and supplemental budget of the Commission; and
- (7) Perform such other functions as may be provided by law.³⁷

Section 14, Chapter 3, Title I-A, Book V of EO 292 is clear that the CSC Chairman's membership in a governing body is dependent on the condition that the functions of the government entity where he will sit as its Board member must affect the career development, employment status, rights, privileges, and welfare of government officials and employees. Based on this, the Court finds no irregularity in Section 14, Chapter 3, Title I-A, Book V of EO 292 because matters affecting the career development, rights and welfare of government employees are among the primary functions of the CSC and are consequently exercised through its Chairman. The CSC Chairman's membership therein must, therefore, be considered to be derived from his position as such. Accordingly, the constitutionality of Section 14, Chapter 3, Title I-A, Book V of EO 292 is upheld.

However, there is a need to determine further whether Duque's designation as Board member of the GSIS, PHILHEALTH, ECC and HDMF is in accordance with the 1987 Constitution and the condition laid down in Section 14, Chapter 3, Title I-A, Book V of EO 292. It is necessary for this purpose to examine the functions of these government entities under their respective charters, to wit:

³⁶ Section 12, Chapter 3, Title I-A, Book V of EO 292.

³⁷ Section 13, Chapter 3, Title I-A, Book V of EO 292.

The GSIS Charter, Republic Act No. 8291

SECTION 41. *Powers and Functions of the GSIS.* — The GSIS shall exercise the following powers and functions:

(a) to formulate, adopt, amend and/or rescind such rules and regulations as may be necessary to carry out the provisions and purposes of this Act, as well as the effective exercise of the powers and functions, and the discharge of duties and responsibilities of the GSIS, its officers and employees;

(b) to adopt or approve the annual and supplemental budget of receipts and expenditures including salaries and allowances of the GSIS personnel; to authorize such capital and operating expenditures and disbursements of the GSIS as may be necessary and proper for the effective management and operation of the GSIS;

(c) to invest the funds of the GSIS, directly or indirectly, in accordance with the provisions of this Act;

(d) to acquire, utilize or dispose of, in any manner recognized by law, real or personal property in the Philippines or elsewhere necessary to carry out the purposes of this Act;

(e) to conduct continuing actuarial and statistical studies and valuations to determine the financial condition of the GSIS and taking into consideration such studies and valuations and the limitations herein provided, re-adjust the benefits, contributions, premium rates, interest rates or the allocation or re-allocation of the funds to the contingencies covered;

(f) to have the power of succession;

(g) to sue and be sued;

(h) to enter into, make, perform and carry out contracts of every kind and description with any person, firm or association or corporation, domestic or foreign;

(i) to carry on any other lawful business whatsoever in pursuance of, or in connection with the provisions of this Act;

(j) to have one or more offices in and outside of the Philippines, and to conduct its business and exercise its powers throughout and in any part of the Republic of the Philippines and/or in any or all foreign countries, states and territories: Provided, That the GSIS shall maintain a branch office in every province where there exists a minimum of fifteen thousand (15,000) membership;

(k) to borrow funds from any source, private or government, foreign or domestic, only as an incident in the securitization of housing mortgages of the GSIS and on account of its receivables from any government or private entity;

(l) to invest, own or otherwise participate in equity in any establishment, firm or entity;

(m) to approve appointments in the GSIS except appointments to positions which are policy determining, primarily confidential or highly technical in nature according to the Civil Service rules and regulations: Provided, That all positions in the GSIS shall be governed by a compensation and position classification system and qualifications standards approved by the GSIS Board of Trustees based on a comprehensive job analysis and audit of actual duties and responsibilities: Provided, further, That the compensation plan shall be comparable with the prevailing compensation plans in the private sector and shall be subject to the periodic review by the Board no more than once every four (4) years without prejudice to yearly merit reviews or increases based on productivity and profitability;

(n) to design and adopt an Early Retirement Incentive Plan (ERIP) and/or financial assistance for the purpose of retirement for its own personnel;

(o) to fix and periodically review and adjust the rates of interest and other terms and conditions for loans and credits extended to members or other persons, whether natural or juridical;

(p) to enter into agreement with the Social Security System or any other entity, enterprise, corporation or partnership for the benefit of members transferring from one system to another subject to the provision of Republic Act No. 7699, otherwise known as the Portability Law;

(q) to be able to float proper instrument to liquefy long-term maturity by pooling funds for short-term secondary market;

(r) to submit annually, not later than June 30, a public report to the President of the Philippines and the Congress of the Philippines regarding its activities in the administration and enforcement of this Act during the preceding year including information and recommendations on broad policies for the development and perfection of the programs of the GSIS;

(s) to maintain a provident fund, which consists of contributions made by both the GSIS and its officials and employees and their earnings, for the payment of benefits to such officials and employees or their heirs under such terms and conditions as it may prescribe;

(t) to approve and adopt guidelines affecting investments, insurance coverage of government properties, settlement of claims, disposition of acquired assets, privatization or expansion of subsidiaries, development of housing projects, increased benefit and loan packages to members, and the enforcement of the provisions of this Act;

(u) any provision of law to the contrary notwithstanding, to authorize the payment of extra remuneration to the officials and employees directly involved in the collection and/or remittance of contributions, loan repayments, and other monies due to the GSIS at such rates and under such conditions as it may adopt. Provided, That the best interest of the GSIS shall be observed thereby;

(v) to determine, fix and impose interest upon unpaid premiums due from employers and employees;

(w) to ensure the collection or recovery of all indebtedness, liabilities and/or accountabilities, including unpaid premiums or contributions in favor of the GSIS arising from any cause or source whatsoever, due from all obligors, whether public or private. The Board shall demand payment or settlement of the obligations referred to herein within thirty (30) days from the date the obligation becomes due, and in the event of failure or refusal of the obligor or debtor to comply with the demand, to initiate or institute the necessary or proper actions or suits, criminal, civil or administrative or otherwise, before the courts, tribunals, commissions, boards, or bodies of proper jurisdiction within thirty (30) days reckoned from the expiry date of the period fixed in the demand within which to pay or settle the account;

(x) to design and implement programs that will promote and mobilize savings and provide additional resources for social security expansion and at the same time afford individual members appropriate returns on their savings/investments. The programs shall be so designed as to spur socio-economic take-off and maintain continued growth; and

(y) to exercise such powers and perform such other acts as may be necessary, useful, incidental or auxiliary to carry out the provisions of this Act, or to attain the purposes and objectives of this Act.

The PHILHEALTH Charter, Republic Act No. 7875

SEC. 16. Powers and Functions – The Corporation shall have the following powers and functions:

(a) to administer the National Health Insurance Program;

(b) to formulate and promulgate policies for the sound administration of the Program;

(c) to set standards, rules, and regulations necessary to ensure quality of care, appropriate utilization of services, fund viability, member satisfaction, and overall accomplishment of Program objectives;

(d) to formulate and implement guidelines on contributions and benefits; portability of benefits, cost containment and quality assurance; and health care provider arrangements, payment, methods, and referral systems;

(e) to establish branch offices as mandated in Article V of this Act;

(f) to receive and manage grants, donations, and other forms of assistance;

(g) to sue and be sued in court;

(h) to acquire property, real and personal, which may be necessary or expedient for the attainment of the purposes of this Act;

(i) to collect, deposit, invest, administer, and disburse the National Health Insurance Fund in accordance with the provisions of this Act;

(j) to negotiate and enter into contracts with health care institutions, professionals, and other persons, juridical or natural, regarding the pricing, payment mechanisms, design and implementation of administrative and operating systems and procedures, financing, and delivery of health services;

(k) to authorize Local Health Insurance Offices to negotiate and enter into contracts in the name and on behalf of the Corporation with any accredited government or private sector health provider organization, including but not limited to health maintenance organizations, cooperatives and medical foundations, for the provision of at least the minimum package of personal health services prescribed by the Corporation;

(l) to determine requirements and issue guidelines for the accreditation of health care providers for the Program in accordance with this Act;

(m) to supervise the provision of health benefits with the power to inspect medical and financial records of health care providers and patients who are participants in or members of the Program, and the power to enter and inspect accredited health care institutions, subject to the rules and regulations to be promulgated by the Corporation;

(n) to organize its office, fix the compensation of and appoint personnel as may be deemed necessary and upon the recommendation of the president of the Corporation;

(o) to submit to the President of the Philippines and to both Houses of Congress its Annual Report which shall contain the status of the National Health Insurance Fund, its total disbursements, reserves, average costing to beneficiaries, any request for additional appropriation, and other data pertinent to the implementation of the Program and publish a synopsis of such report in two (2) newspapers of general circulation;

(p) to keep records of the operations of the Corporation and investments of the National Health Insurance Fund; and

(q) to perform such other acts as it may deem appropriate for the attainment of the objectives of the Corporation and for the proper enforcement of the provisions of this Act

The HDMF Charter, Republic Act No. 9679

SEC. 13. *Powers and Functions of the Fund.* – The Fund shall have the powers and functions specified in this Act and the usual corporate powers:

(a) To formulate, adopt, amend and/or rescind such rules and regulations as may be necessary to carry out the provisions and purposes of this Act, as well as the effective exercise of the powers and functions, and the discharge of duties and responsibilities of the Fund, its officers and employees;

(b) To adopt or approve the annual and supplemental budget of receipts and expenditures including salaries and allowances of the Fund personnel, to authorize such capital and operating expenditures and disbursements of the Fund as may be necessary and proper for the effective management and operation of the Fund;

(c) To submit annually to the President of the Philippines not later than March 15, a report of its activities and the state of the Fund during the preceding year, including information and recommendations for the development and improvement thereof;

(d) To invest not less than seventy percent (70%) of its investible funds to housing, in accordance with this Act;

(e) To acquire, utilize, or dispose of, in any manner recognized by law, real or personal properties to carry out the purposes of this Act;

(f) To set up its own accounting and computer systems; to conduct continuing actuarial and statistical studies and valuations to determine the financial viability of the Fund and its project; to require reports, compilations and analysis of statistical and economic data, as well as make such other studies and surveys as may be needed for the proper administration and development of the Fund;

(g) To have the power of succession; to sue and be sued; to adopt and use a corporate seal;

(h) To enter into and carry out contracts of every kind and description with any person, firm or association or corporation, domestic or foreign;

(i) To borrow funds from any source, private or government, foreign or domestic;

(j) To invest, own or otherwise participate in equity in any establishment, or entity; to form, organize, invest in or establish and maintain a subsidiary or subsidiaries in relation to any of its purposes;

(k) To approve appointments in the Fund except appointments to positions which are policy determining, primarily confidential or highly technical in nature according to the civil service rules and regulations: *Provided*, That all positions in the Fund shall be governed by a compensation and position classification system and qualification standards approved by the Fund's Board of Trustees based on a comprehensive job analysis, wage compensation study and audit of actual duties and responsibilities: *Provided, further*, That the compensation plan shall be comparable with prevailing compensation plans in the private sector and shall be subject to the periodic review of the Board no more than once every four (4) years without prejudice to yearly merit reviews or increases based on productivity and profitability. The Fund shall, therefore, be exempt from any laws, rules and regulations on salaries and compensations;

(l) To maintain a provident fund, which shall consist of contributions made by both the Fund and its officers and employees and their earnings, for the payment of benefits to such officials and

employees or their heirs under such terms and conditions as it may prescribe;

(m) To design and adopt an early retirement incentive plan (ERIP) for its own personnel;

(n) To establish field offices and to conduct its business and exercise its powers in these places;

(o) To approve restructuring proposal for the payment of due but unremitted contributions and unpaid loan amortizations under such terms and conditions as the Board of Trustees may prescribe;

(p) To determine, fix and impose interest and penalties upon unpaid contributions due from employers and employees;

(q) To ensure the collection and recovery of all indebtedness, liabilities and/or accountabilities, including unpaid contributions in favor of the Fund arising from any cause or source or whatsoever, due from all obligors, whether public or private; to demand payment of the obligations referred to herein, and in the event of failure or refusal of the obligor or debtor to comply with the demand, to initiate or institute the necessary or proper actions or suits, criminal, civil, administrative, or otherwise, before the courts, tribunals, commissions, boards or bodies of proper jurisdiction: *Provided, however,* That the Fund may compromise or release, in whole or in part, any interest, penalty or civil liability to the Fund in connection with the collection of contributions and the lending operations of the Fund, under such terms and conditions as prescribed by the Board of Trustees: *Provided, further,* That the Board may, upon recommendation of the Chief Executive Officer, deputize any member of the Fund's legal staff to act as special sheriff in foreclosure cases, in the sale or attachment of the debtor's properties, and in the enforcement of court writs and processes in cases involving the Fund. The special sheriff of the Fund shall make a report to the proper court after any action taken by him, which shall treat such action as if it were an act of its own sheriffs in all respects;

(r) To design and implement other programs that will further promote and mobilize savings and provide additional resources for the mutual benefit of the members with appropriate returns on the savings/investments. The program shall be so designed as to spur socioeconomic take-off and maintain continued growth;

(s) To conduct continuing actuarial and statistical studies and valuations to determine the financial condition of the Fund and taking into consideration such studies and valuations and the limitations herein provided, readjust the benefits, contributions, interest rates of the allocation or reallocation of the funds to the contingencies covered; and

(t) To exercise such powers and perform such acts as may be necessary, useful, incidental or auxiliary to carry out the provisions of this Act.

The ECC Charter, Presidential Decree No. 626

ART. 177. Powers and duties. - The Commission shall have the following powers and duties:

(a) To assess and fix a rate of contribution from all employers;

(b) To determine the rate of contribution payable by an employer whose records show a high frequency of work accidents or occupational disease due to failure by the said employer to observe adequate safety measures;

(c) To approve rules and regulations governing the processing of claims and the settlement of disputes arising therefrom as prescribed by the System;

(d) To initiate policies and programs toward adequate occupational health and safety and accident prevention in the working environment, rehabilitation other than those provided for under Art. 190 hereof, and other related programs and activities, and to appropriate funds therefor. (As amended by Sec. 3, P.D. 1368).

(e) To make the necessary actuarial studies and calculations concerning the grant of constant help and income benefits for permanent disability or death, and the rationalization of the benefits for permanent disability and death under the Title with benefits payable by the System for similar contingencies; **Provided**; That the Commission may upgrade benefits and add new ones subject to approval of the President; and **Provided, Further**, That the actuarial stability of the State Insurance Fund shall be guaranteed; **Provided, Finally**, that such increases in benefits shall not require any increases in contribution, except as provided for in paragraph (b) hereof. (As amended by Sec. 3, P.D. 1641).

(f) To appoint the personnel of its staff, subject to civil service law and rules, but exempt from WAPCO law and regulations;

(g) To adopt annually a budget of expenditures of the Commission and its staff chargeable against the State Insurance Fund: Provided, that the SSS and GSIS shall advance on a quarterly basis the remittances of allotment of the loading fund for this Commission's operational expenses based on its annual budget as duly approved by the Ministry of Budget and Management. (As amended by Sec. 3, P.D. 1921).

(h) To have the power to administer oath and affirmation, and to issue subpoena and subpoena duces tecum in connection with any question or issue arising from appealed cases under this Title.

(i) To sue and be sued in court;

(j) To acquire property, real or personal, which may be necessary or expedient for the attainment of the purposes of this Title;

(k) To enter into agreements or contracts for such services or aid as may be needed for the proper, efficient and stable administration of the program;

(l) To perform such other acts as it may deem appropriate for the attainment of the purposes of the Commission and proper enforcement of the provisions of this Title. (As amended by Sec. 18, P.D.850). (Emphasis supplied.)

The GSIS, PHILHEALTH, ECC and HDMF are vested by their respective charters with various powers and functions to carry out the purposes for which they were created. While powers and functions associated with appointments, compensation and benefits affect the career development, employment status, rights, privileges, and welfare of government officials and employees, the GSIS, PHILHEALTH, ECC and HDMF are also tasked to perform other corporate powers and functions that are not personnel-related. All of these powers and functions, whether personnel-related or not, are carried out and exercised by the respective Boards of the GSIS, PHILHEALTH, ECC and HDMF. Hence, when the CSC Chairman sits as a member of the governing Boards of the GSIS, PHILHEALTH, ECC and HDMF, he may exercise these powers and functions, which are not anymore derived from his position as CSC Chairman, such as imposing interest on unpaid or unremitted contributions,³⁸ issuing guidelines for the accreditation of health care providers,³⁹ or approving restructuring proposals in the payment of unpaid loan amortizations.⁴⁰ The Court also notes that Duque's designation as member of the governing Boards of the GSIS, PHILHEALTH, ECC and HDMF entitles him to receive *per diem*,⁴¹ a form of additional compensation that is disallowed by the concept of an *ex officio* position by virtue of its clear contravention of the proscription set by Section 2, Article IX-A of the 1987 Constitution. This situation goes against the principle behind an *ex officio* position, and must, therefore, be held unconstitutional.

Apart from violating the prohibition against holding multiple offices, Duque's designation as member of the governing Boards of the GSIS, PHILHEALTH, ECC and HDMF impairs the independence of the CSC. Under Section 17,⁴² Article VII of the Constitution, the President exercises control over all government offices in the Executive Branch. An office that is legally not under the control of the President is not part of the Executive Branch.⁴³ The Court has aptly explained in *Rufino v. Endriga*:⁴⁴

Every government office, entity, or agency must fall under the Executive, Legislative, or Judicial branches, or must belong to one of the independent constitutional bodies, or must be a quasi-judicial body or local government unit. Otherwise, such government office, entity, or agency has no legal and constitutional basis for its existence.

The CCP does not fall under the Legislative or Judicial branches of government. The CCP is also not one of the independent constitutional bodies. Neither is the CCP a quasi-judicial body nor a local government unit. Thus, the CCP must fall under the Executive branch. Under the Revised Administrative Code of 1987, any agency "not placed by law or

³⁸ RA 8291, Section 43(h).

³⁹ RA 7875, Section 16(l).

⁴⁰ RA 9679, Section 13(o).

⁴¹ See RA 8291, Section 42; RA 7875, Section 18(d); PD 626, Article 176(b); RA 9679, Section 14.

⁴² Section 17. The President shall have control of all the executive departments, bureaus and offices. He shall ensure that the laws be faithfully executed.

⁴³ *Liban v. Gordon*, G.R. No. 175352, July 15, 2009, 593 SCRA 68, 85.

⁴⁴ G.R. No. 139554 & 139565, July 21, 2006, 496 SCRA 13, 63-65.

order creating them under any specific department” falls “under the Office of the President.”

Since the President exercises control over “all the executive departments, bureaus, and offices,” the President necessarily exercises control over the CCP which is an office in the Executive branch. In mandating that the President “shall have control of all executive . . . offices,” x x x Section 17, Article VII of the 1987 Constitution does not exempt any executive office — one performing executive functions outside of the independent constitutional bodies — from the President’s power of control. There is no dispute that the CCP performs executive, and not legislative, judicial, or quasi-judicial functions.

The President’s power of control applies to the acts or decisions of all officers in the Executive branch. This is true whether such officers are appointed by the President or by heads of departments, agencies, commissions, or boards. The power of control means the power to revise or reverse the acts or decisions of a subordinate officer involving the exercise of discretion.

In short, the President sits at the apex of the Executive branch, and exercises “control of all the executive departments, bureaus, and offices.” There can be no instance under the Constitution where an officer of the Executive branch is outside the control of the President. The Executive branch is unitary since there is only one President vested with executive power exercising control over the entire Executive branch. Any office in the Executive branch that is not under the control of the President is a lost command whose existence is without any legal or constitutional basis. (Emphasis supplied)

As provided in their respective charters, PHILHEALTH and ECC have the status of a government corporation and are deemed attached to the Department of Health⁴⁵ and the Department of Labor,⁴⁶ respectively. On the other hand, the GSIS and HDMF fall under the Office of the President.⁴⁷ The corporate powers of the GSIS, PHILHEALTH, ECC and HDMF are exercised through their governing Boards, members of which are all appointed by the President of the Philippines. Undoubtedly, the GSIS, PHILHEALTH, ECC and HDMF and the members of their respective governing Boards are under the control of the President. As such, the CSC Chairman cannot be a member of a government entity that is under the control of the President without impairing the independence vested in the CSC by the 1987 Constitution.

⁴⁵ Section 14, RA 7875.

⁴⁶ Article 176, PD 626.

⁴⁷ Section 23, Chapter 8, Title II, Book III of EO 292. The Agencies under the Office of the President. — The agencies under the Office of the President refer to those offices placed under the chairmanship of the President, those under the supervision and control of the President, those under the administrative supervision of the Office of the President, those attached to it for policy and program coordination, and those that are not placed by law or order creating them under any special department.

3.**Effect of declaration of unconstitutionality
of Duque's designation as member of the
governing Boards of the GSIS, PHILHEALTH,
ECC and HDMF - The *De Facto* Officer Doctrine**

In view of the application of the prohibition under Section 2, Article IX-A of the 1987 Constitution, Duque did not validly hold office as Director or Trustee of the GSIS, PHILHEALTH, ECC and HDMF concurrently with his position of CSC Chairman. Accordingly, he was not to be considered as a *de jure* officer while he served his term as Director or Trustee of these GOCCs. A *de jure* officer is one who is deemed, in all respects, legally appointed and qualified and whose term of office has not expired.⁴⁸

That notwithstanding, Duque was a *de facto* officer during his tenure as a Director or Trustee of the GSIS, PHILHEALTH, ECC and HDMF. In *Civil Liberties Union v. Executive Secretary*,⁴⁹ the Court has said:

During their tenure in the questioned positions, respondents may be considered *de facto* officers and as such entitled to emoluments for actual services rendered. It has been held that “in cases where there is no *de jure*, officer, a *de facto* officer, who, in good faith has had possession of the office and has discharged the duties pertaining thereto, is legally entitled to the emoluments of the office, and may in an appropriate action recover the salary, fees and other compensations attached to the office. This doctrine is, undoubtedly, supported on equitable grounds since it seems unjust that the public should benefit by the services of an officer *de facto* and then be freed from all liability to pay any one for such services. Any per diem, allowances or other emoluments received by the respondents by virtue of actual services rendered in the questioned positions may therefore be retained by them.

A *de facto* officer is one who derives his appointment from one having colorable authority to appoint, if the office is an appointive office, and whose appointment is valid on its face.⁵⁰ He may also be one who is in possession of an office, and is discharging its duties under color of authority, by which is meant authority derived from an appointment, however irregular or informal, so that the incumbent is not a mere volunteer.⁵¹ Consequently, the acts of the *de facto* officer are just as valid for all purposes as those of a *de jure* officer, in so far as the public or third persons who are interested therein are concerned.⁵²

⁴⁸ *Topacio v. Ong*, G.R. No. 179895, December 18, 2008, 574 SCRA 817, 830.

⁴⁹ *Supra* note 17 at 339-340.

⁵⁰ *Dimaandal v. Commission on Audit*, G.R. No. 122197, June 26, 1998, 291 SCRA 322, 330.

⁵¹ *Id*; see also *The Civil Service Commission v. Josen, Jr.*, G.R. No. 154674, May 27, 2004, 429 SCRA 773, 786.

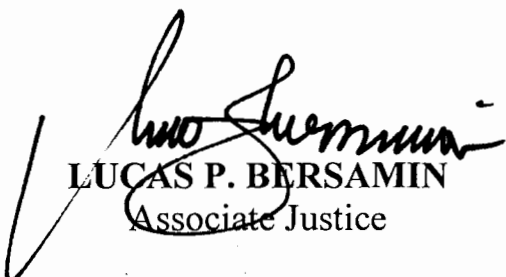
⁵² *Supra* note 48 at 829-830.

In order to be clear, therefore, the Court holds that all official actions of Duque as a Director or Trustee of the GSIS, PHILHEALTH, ECC and HDMF, were presumed valid, binding and effective as if he was the officer legally appointed and qualified for the office.⁵³ This clarification is necessary in order to protect the sanctity and integrity of the dealings by the public with persons whose ostensible authority emanates from the State. Duque's official actions covered by this clarification extend but are not limited to the issuance of Board resolutions and memoranda approving appointments to positions in the concerned GOCCs, promulgation of policies and guidelines on compensation and employee benefits, and adoption of programs to carry out the corporate powers of the GSIS, PHILHEALTH, ECC and HDMF.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Court **UPHOLDS THE CONSTITUTIONALITY** of Section 14, Chapter 3, Title I-A, Book V of Executive Order No. 292; **ANNULS AND VOIDS** Executive Order No. 864 dated February 22, 2010 and the designation of Hon. Francisco T. Duque III as a Member of the Board of Directors/Trustees of the Government Service Insurance System; Philippine Health Insurance Corporation; Employees Compensation Commission; and Home Development Mutual Fund in an *ex officio* capacity in relation to his appointment as Chairman of the Civil Service Commission for being **UNCONSTITUTIONAL AND VIOLATIVE** of Sections 1 and 2, Article IX-A of the 1987 Constitution; and **DECLARES** that Hon. Francisco T. Duque III was a *de facto* officer during his tenure as Director/Trustee of the Government Service Insurance System; Philippine Health Insurance Corporation; Employees Compensation Commission; and Home Development Mutual Fund.

No pronouncement on costs of suit.

SO ORDERED.



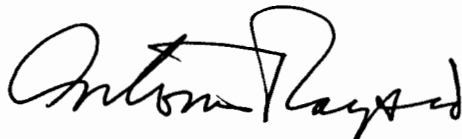
LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:




MARIA LOURDES P. A. SERENO
Chief Justice

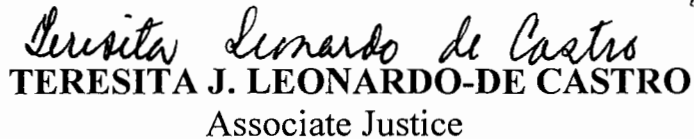
⁵³ See *Señeres v. Commission on Elections*, G.R. No. 178678, April 16, 2009, 585 SCRA 557, 575.



ANTONIO T. CARPIO
Associate Justice

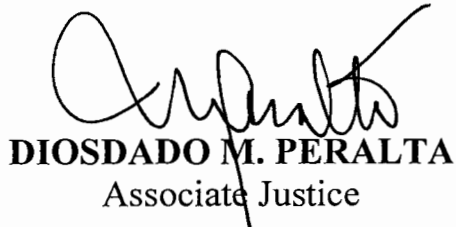


PRESBITERO J. VELASCO, JR.
Associate Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice

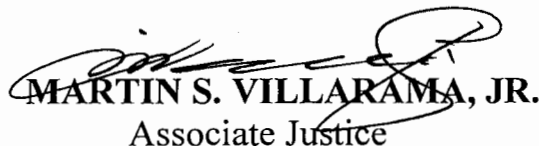
(On Leave)
ARTURO D. BRION
Associate Justice



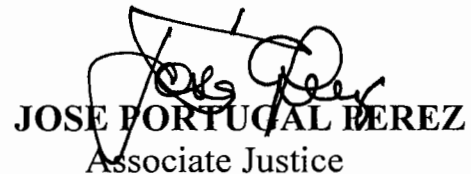
DIOSDADO M. PERALTA
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice




MARTIN S. VILLARAMA, JR.
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice

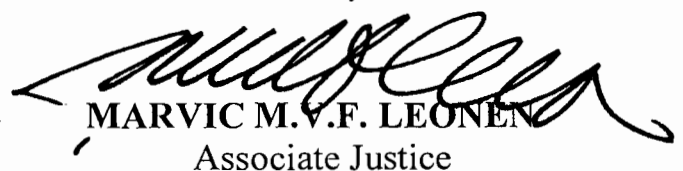


JOSE CATRAL MENDOZA
Associate Justice

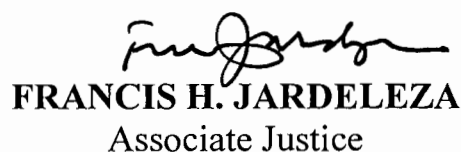


BIENVENIDO L. REYES
Associate Justice

(On Official Leave)
ESTELA M. PERLAS-BERNABE
Associate Justice



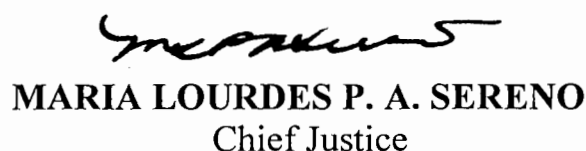
MARVIC M.V.F. LEONEN
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

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