

MALACAÑANG
Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 67

**IMPOSING THE PENALTY OF FINE EQUIVALENT TO SIX MONTHS SALARY
ON ATTY. FIDEL H. BORRES, JR., PROVINCIAL AGRARIAN REFORM
ADJUDICATOR, AGUSAN DEL NORTE**

This refers to the letter-complaint dated August 3, 1995, of Silverio Marabe against Fidel H. Borres, former Provincial Agrarian Reform Adjudicator (PARAD) of Agusan del Norte, for Gross Ignorance of the Law Amounting to Inefficiency and Incompetence in the Performance of Official Duties.

The instant administrative complaint stemmed from respondent Borres' issuance of an order dated June 30, 1995, granting the motion of Florentino Magallanes directing the implementation of DARAB Case No. X-02-069 entitled "Florentino Magallanes vs. Silverio Marabe", despite the pendency of an appeal with the Department of Agrarian Reform. Subsequently, a writ of execution was issued dated July 26, 1995 to enforce the aforementioned order:

Acting on the complaint, the Department of Agrarian Reform Adjudication Board (DARAB), Quezon City, sent a series of directives dated November 22, 1995, June 18, 1996 and March 24, 1998, to respondent Borres requiring him to file an answer/comment to the complaint. Despite receipt thereof, however, respondent Borres failed to comply for an unreasonable length of time.

Incidentally, on May 8, 1998, complainant Marabe filed a motion seeking early resolution of his complaint. Attached to the motion was respondent's unsworn written answer dated December 8, 1995. Upon the other hand, the DARAB denied receipt of respondent's answer inasmuch as it was not officially transmitted to them. In his answer, respondent maintained that he could legally issue the questioned order granting an execution pending appeal based on Supreme Court decisions.

On the basis of available records, the Investigating Committee in a memorandum of July 19, 1999, addressed to then DAR Secretary Horacio Morales found respondent Borres guilty as charged and recommended his suspension for one (1) year without pay, the salient portion of which reads:

"Rule XII, Section 1 of the DARAB New Rules of Procedure which took effect on 22 June 1994 provides:

'Execution Upon Final Order or Decision. – Execution shall issue upon an order, resolution or decision that finally disposes of the action or proceeding. Such execution shall issue as a matter of course and upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.'

Further, Section 2 of the same Rule provides:

'Execution Pending Appeal. Any motion for execution of the decision of the Adjudicator pending appeal shall be filed before the Board, and the same may be granted upon showing good reasons and conditions which the Board may require.'

"Respondent Borres disregarded the above stated rules governing the adjudication of DARAB cases when he granted the Motion for Execution of Judgement Pending Appeal inspite of his awareness of Notice of Appeal. It is rather unfortunate that respondent Borres is not aware of the DARAB provisions, when Rule I, General Provisions – paragraph 1, states: The provisions of the Rules of Court shall not apply even in a suppletory character unless adopted herein or by resolution of the Board....'

"As an Adjudicator of the DAR, it is a pressing responsibility to keep abreast with the rules applicable to agrarian cases. Ignorance of the law on the part of Respondent Borres is not only most ignominious, it is also prejudicial to litigants and the administration of justice as a whole. It can only be viewed as an attempt, through misuse of judicial processes, to give a semblance of merit to a clearly unmeritorious cause and accord undeserved benefits to the party espousing and promoting said cause. Respondent judge showed gross ignorance, albeit any malice or corrupt motive. (Carpio vs. De Guzman, 262 SCRA 615) Ignorance of the law, which everyone is bound to know, excuses no one certainly not judges. (Ualat vs. Ramos, 265 SCRA 345) When the law is elementary, so elementary, not to know, constitutes gross ignorance of the law.

"In view of the foregoing, it is hereby recommended that PARAD Fidel Borres be found guilty of Gross Ignorance of the Law which is tantamount to Inefficiency and Incompetence in the Performance of Official Duties with the corresponding penalty of one year suspension without pay."

Unfazed, respondent Borres on August 13, 2002, filed a "MOTION TO DISMISS WITH PRAYER FOR EARLY RESOLUTION", insisting that the complaint against him is now moot and academic, in view of his retirement from the government service effective September 11, 2001.

Against the foregoing factual backdrop, then DAR Secretary Hernani A. Braganza in a Memorandum for the President dated January 8, 2003, recommended the suspension of respondent Borres from the service for six (6) months and one (1) day without pay.

At this juncture, while we agree with then Secretary Braganza that respondent Borres should be meted the recommended penalty of suspension for openly defying DARAB rules and regulations when he issued an "execution pending appeal" order, an act we consider to be a deliberate and wanton disregard of established rules and procedure, and which as an adjudicator he ought to uphold it at all times, with a cold neutrality of an impartial judge. Be that as it may, the major concern in the case at bar is whether or not this Office can still impose administrative sanction on respondent following his retirement from the service.

While it is generally conceded that an administrative proceeding is predicated on the holding of an office or position in the government (Dianalon vs. Quntillan, Adm. Case No. 116, August 29, 1969, 29 SCRA 347), the rule is qualified and, therefore, recognized to admit an exception, as amplified by the Supreme Court, in this wise:

"It was not the intent of the Court in the case of *Quntillan* to set down a hard and fast rule that the resignation or retirement of a respondent judge as the case may be renders moot and academic the administrative case pending against him; nor did the Court mean to divest itself of jurisdiction to impose certain penalties short of dismissal from the government service should there be a finding of guilt on the basis of the evidence. In other words, the jurisdiction that was Ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A

contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. For what remedy would the people have against a judge or against any other public official who resorts to wrongful and illegal conduct during his last days in office? What would prevent some corrupt and unscrupulous magistrate from committing abuses and other condemnable acts knowing fully well that he would soon be beyond the pale of the law and immune to all administrative penalties? If only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public. If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation." *People vs. Valenzuela*, 135 SCRA 712, citing *Perez vs. Abiera*, Adm. Case No. 223-J, June 11, 1975, 64 SCRA 302)

Stated somewhat differently, the severance of official ties with the government of a public official or employee constitutes a bar to the subsequent filing of an administrative case against him for an act or acts committed during his incumbency. A sesu contrario, once an administrative charge is initiated against such respondent, his compulsory or optional retirement, resignation or separation from the service during the pendency thereof does not nullify or moot the proceedings, which should continue to its logical conclusion. And if so closed or terminated for that reason alone, it may be reopened by the Office of the President on its own motion, if respondent is a presidential appointee, or at the instance of the department head concerned, if non-presidential appointee. This is the pith and core of the clarificatory opinion of the Secretary of Justice (Opinion No. 30 dated Feb. 17, 1978) vis-à-vis the query of whether the retirement, resignation or separation from public office of an employee would divest the department head, or the head of any concerned agency of the government, of jurisdiction to act upon an administrative case filed against the employee during his tenure of employment, to wit:

'The Department of Justice has taken the position, as early as 1962, that the attainment of the age of compulsory retirement by a respondent does not ipso facto close the pending administrative proceedings against him. Although the highest penalty in an administrative case is that of dismissal or separation from the service, which is already

accomplished by the respondent's compulsory retirement, the proceedings may still continue for purposes of determining whether or not the respondent is guilty with the end in view of imposing penalties incident to dismissal for cause. The Department has even sustained the view, in the case of Undersecretary Tambokon, that the administrative case, if already closed or terminated, may be reopened by the Office of the President motu proprio or at the instance of the Department Secretary.'

Assayed upon the foregoing legal considerations, it does not require an extended argument to show that the retirement of respondent Fidel H. Borres, Jr. as Provincial Agrarian Reform Adjudicator of Agusan del Norte during the pendency of the administrative charge against him for Gross Ignorance of the Law Amounting to Inefficiency and Incompetence in the Performance of Official Duties did not render the same moot and academic as to warrant the dismissal of the administrative charge against him. However, since the recommended penalty can no longer be served following his retirement from the service, a penalty of fine equivalent to six (6) months salary, deductible from whatever retirement benefits he may be entitled to is legally tenable.

WHEREFORE, premises considered, respondent Fidel H. Borres, Jr., Provincial Agrarian Reform Adjudicator of Agusan del Norte is hereby found guilty of Gross Ignorance of the Law and ordered to suffer the penalty of fine equivalent to six (6) months salary, deductible from whatever retirement benefits he may be entitled thereto.

Done in the City of Manila, Philippines, this 31st day of March in the year of Our Lord, Two Thousand Three.

Manila, Philippines,

By authority of the President:


ALBERTO G. ROMULO
 Executive Secretary