G.R. No. 225301 – THE DEPARTMENT OF TRADE AND INDUSTRY, REPRESENTED BY ITS SECRETARY, THE UNDERSECRETARY OF THE CONSUMER PROTECTION GROUP, MEMBERS OF THE SPECIAL INVESTIGATION COMMITTEE, and THE DIRECTOR OF LEGAL SERVICE, *Petitioners v.* DANILO B. ENRIQUEZ, *Respondent.*

Promulgated:
June 2, 2020

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SEPARATE CONCURRING OPINION

PERLAS-BERNABE, *J.*:

Unless otherwise delegated, a Department Secretary cannot exercise complete and full disciplinary authority over a subordinate department official who is, at the same time, a presidential appointee on the ground that he is an alter ego of the President. Barring due delegation, the Secretary's power is limited to investigation and recommendation, which findings he may forward to the President for his approval/disapproval and consequently, the imposition of the appropriate penalty.

To explain, while the Administrative Code authorizes Department Secretaries to "[e]xercise disciplinary powers over officers and employees under the Secretary in accordance with law, including their investigation and the designation of a committee or officer to conduct such investigation,"[1] and provides that they shall have "jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction,"[2] these powers are circumscribed by the rule that: "**[p]residential appointees come under the direct disciplining authority of the President.** This proceeds from the well-settled principle that, in the absence of a contrary law, the power to remove or to discipline is lodged in the same authority on which the power to appoint is vested."[3]

However, it should be clarified that **the direct disciplinary authority of the President does not divest Department Secretaries of their power to conduct investigations, and incidental thereto, preventively suspend presidential appointees within their department.** In order to harmonize the principles and provisions of law, Department Secretaries are only bereft of the power to impose penalties, but not the power to investigate. This has already

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1 Paragraph 5, Section 7, Chapter 2, Book IV of Executive Order No. (EO) 292, entitled "INSTITUTING THE 'ADMINISTRATIVE CODE OF 1987'" (July 25, 1987).

2 Paragraph 2, Section 47, Chapter 7, Book V of EO 292.

3 *Pichay, Jr. v. Office of the Deputy Executive Secretary for Legal Affairs-IAD*, 691 Phil. 624, 645 (2012). See also *Baculi v. Office of the President*, 807 Phil. 52, 73 (2017), *supra*; *Larin v. Executive Secretary*, 345 Phil. 962, 983 (1997); and *Office of the President v. Cataquiz*, 673 Phil. 318, 350 (2011).

been recognized by the Court in *Baculi v. Office of the President* (*Baculi*),[4] as well as in *Department of Health v. Camposano* (*Dept. of Health*).[5]

In *Baculi*, therein petitioner Francisco T. Baculi (Baculi), a presidential appointee under the Department of Agrarian Reform (DAR), was investigated by the DAR Secretary through the Regional Investigating Committee (RIC) for certain irregular contracts. Finding a *prima facie* case against Baculi based on the RIC reports, the DAR Secretary filed a formal charge against him before the DAR Legal Affairs Office. He was eventually found guilty and was dismissed from service. On appeal, the Court of Appeals nullified the order of dismissal for lack of authority, and instead, directed the DAR Secretary to forward his findings and recommendations to the President, who all the same ordered the dismissal of Baculi. Baculi questioned the validity of the dismissal as it was based on a void report given that the RIC had no jurisdiction to investigate a presidential appointee such as himself. However, the Court affirmed Baculi's dismissal by the President. It held that "Baculi, as a presidential appointee, came under the disciplinary jurisdiction of the President in line with the principle that the 'power to remove is inherent in the power to appoint.' As such, the DAR Secretary **held no disciplinary jurisdiction over him.**" Nevertheless, it upheld the validity of the RIC report finding that "[i]**n the absence of a law or administrative issuance barring the DAR-RIC from conducting its own investigation** of Baculi even when there was no complaint being first filed against him, **the eventual report rendered after investigation was valid.**"[6]

Meanwhile, in *Dept. of Health*, the Court held that:

> The Administrative Code of 1987 vests department secretaries with the authority to investigate and decide matters involving disciplinary actions for officers and employees under the former's jurisdiction. Thus, the health secretary had disciplinary authority over respondents.
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> Note that being a presidential appointee, Dr. Rosalinda Majarais was under the jurisdiction of the President, in line with the principle that the "power to remove is inherent in the power to appoint." While the Chief Executive directly dismissed her from the service, he nonetheless recognized the health secretary's disciplinary authority over respondents when he remanded the PCAGC's findings against them for the secretary's "appropriate action."
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> **As a matter of administrative procedure, a department secretary may utilize other officials to investigate and report the facts from which a decision may be based.** In the present case, the secretary effectively delegated the power to investigate to the PCAGC.[7] (Emphasis supplied)

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4 807 Phil. 52 (2017).
5 496 Phil. 886 (2005).
6 Supra note 4; emphases and underscoring supplied.
7 Supra note 5; emphasis supplied.

At this juncture, I find it apt to address respondent's argument that the case had already been rendered moot and academic by his cessation from office. The rule is that "jurisdiction at the time of the filing of the administrative complaint is not lost by the mere fact that the respondent had ceased in office during the pendency of the case."[8] The rationale is that cessation from office "is not a way out to evade administrative liability when facing administrative sanction. [It] does not preclude the finding of any administrative liability to which he or she shall still be answerable."[9]

Here, the DTI Secretary, through the Special Investigation Committee (SIC), had already commenced investigation proceedings against respondent as early as April 2016. In fact, respondent was already served with a "***Formal Charge with Preventive Suspension***" on May 20, 2016,[10] through which he was officially notified of the charges against him, placed in preventive suspension, and directed to file an answer, which he later did. [11] These incidents all occurred before June 30, 2016, or the date when he ceased from office. In the Supreme Court, the rule is that the administrative complaint must first be docketed prior to the respondent's cessation from office; otherwise, jurisdiction is lost.[12] However, in this instance, a Formal Charge filed by the investigating committee signifies the institution of the complaint. In *Baculi*, the Court observed that the formal charge filed by the Department of Agrarian Reform – Regional Investigating Committee, which is similar to the SIC in this case, "became the administrative complaint contemplated by law."[13] Hence, based on the foregoing, the case has not been rendered moot and academic.

In fine, considering the limited power of a Department Secretary over a subordinate official within his department who is, at the same time, a presidential appointee as herein discussed, I vote to grant the petition but only in part, the reasons for which shall be discussed below.

To recount, records show that the Regional Trial Court (RTC), in a Decision[14] dated June 27, 2016: (*a*) nullified the formal charges against respondent; (*b*) enjoined the SIC from hearing and adjudicating the charges against respondent; and (*c*) ordered petitioners to restore respondent to his post. In so ruling, the RTC held that petitioner DTI Secretary Cristobal had no disciplinary authority over respondent, considering that, as a presidential appointee, the latter fell under the direct disciplinary authority of the President, who, at that time, had delegated the authority to investigate, hear,

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8 *Office of the Court Administrator v. Hamoy*, 489 Phil. 296 (2005).

9 *Office of the Ombudsman v. Andutan, Jr.*, 670 Phil. 169 (2011).

10 See Formal Charge with Preventive Suspension dated May 19, 2016 (*rollo*, pp. 234-237) which was tendered to respondent in his office on 2:53 p.m. of May 20, 2016 (see id. at 252).

11 "[A]n administrative proceeding may be commenced in one of two ways: (1) **upon a charge by the Department or Agency head**; or (2) upon a complaint filed by any other person." *Bueno v. Cordoba, Jr.*, G.R. No. L-23932, April 27, 1967, 126 Phil. 281, 285. (emphasis supplied).

12 See *Office of the Court Administrator v. Andaya*, 712 Phil. 33 (2013).

13 *Baculi*, supra note 4.

14 *Rollo*, pp. 175-201. Penned by Acting Presiding Judge Cleto R. Villacorta III.

and decide administrative cases against all presidential appointees in the Executive Branch with at least a Salary Grade of "26" to the ODESLA-IAD.[15] Petitioners assailed the aforesaid RTC Decision, arguing that "[t]he exercise of administrative disciplinary authority throughout the Executive Branch is among the multifarious functions of the Chief Executive that may be performed by the Secretaries over their respective Departments in the regular course of business, which may be presumed as acts of the Chief Executive, unless disapproved or reprobated by him."[16] Further, the petition states that "Department Secretaries must have the power, as an alter ego of the President, to act upon erring officers and employees under them."[17] **In their petition, petitioners did not qualify or distinguish between the Department Secretary's power to investigate and recommend vis-à-vis the power to impose a penalty**. In fact, it appears that petitioners argue for full and complete disciplinary authority of a Department Secretary over a subordinate department official albeit appointed by the President based on the alter ego doctrine. As explained in this Opinion, there is a crucial distinction between the power to investigate and recommend vis-a-vis the power to impose a penalty. This was not accounted for in the petition; hence, it should only be partly granted. Accordingly, the ultimate conclusion is that the RTC Decision must be reversed and set aside insofar as it failed to recognize the limited power of the Department Secretary to investigate and recommend. In this limited respect, the investigation against respondent is valid and hence, allowed to proceed. The resulting findings and recommendations may then be forwarded to the President, through the Office of the President, who has the power to impose penalties against his appointees.

ESTELA M. PERLAS-BERNABE
Associate Justice

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15 Id. at 177-198.
16 Id. at 143.
17 Id. at 144.

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court