Republic of the Philippines
Supreme Court
Manila

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Third Division
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THIRD DIVISION

FRANCISCO T. BACULI,
Petitioner,

G.R. No. 188681

SUPREME COURT OF THE PHILIPPINES
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- versus -

OFFICE OF THE PRESIDENT,
Respondent.

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THE SECRETARY OF AGRARIAN REFORM, and THE REGIONAL DIRECTOR OF AGRARIAN REFORM, REGION 2,
Petitioners,

G.R. No. 201130

Present:

VELASCO, JR., *J., Chairperson*,
BERSAMIN,
REYES,
JARDELEZA, and
CAGUIOA,* *JJ.*

- versus -

Promulgated:

FRANCISCO T. BACULI,
Respondent.

March 8, 2017

x----------x

D E C I S I O N

BERSAMIN, *J.*:

The law abhors the indefinite preventive suspension of public officials and employees, whether they are presidential appointees or not. For presidential appointees, the suspension should last only within a reasonable time. For non-presidential appointees, the maximum period of preventive suspension is 90 days. Once the allowable period of preventive suspension

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* Designated as additional Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

had been served, the public officials and employees must be automatically reinstated.

The Case

Under consideration are the consolidated appeals docketed as G.R. No. 188681 and G.R. No. 201130. The appeals relate to the right of a public officer who had been invalidly dismissed from the service to recover his salaries, benefits and other emoluments corresponding to the period beyond the period of his preventive suspension pending investigation until the time of his valid dismissal from the service.

G.R. No. 188681 is the appeal of petitioner Francisco T. Baculi assailing the decision promulgated on October 29, 2008,[1] whereby the Court of Appeals (CA) upheld in CA-G.R. SP No. 82629 the decision of the Office of the President dismissing him from the service.

On the other hand, G.R. No. 201130 is the appeal of the Secretary of Agrarian Reform and the Regional Director of Agrarian Reform for Region 2 assailing the decision promulgated on June 16, 2011,[2] whereby the CA, in CA-G.R. SP No. 115934, reversed and set aside the decision of the Regional Trial Court (RTC), Branch 3, in Tuguegarao City granting Baculi's petition for *mandamus* brought to compel the payment of his salaries, benefits and other emoluments corresponding to the period following the lapse of his preventive suspension.

Antecedents

The factual and procedural antecedents relevant to G.R. No. 188681 are rendered by the CA in the assailed decision promulgated in CA-G.R. SP No. 82629, as follows:

> On July 16, 1988, the petitioner was appointed as Provincial Agrarian Reform Officer (PARO) II of the Department of Agrarian Reform (DAR) – Cagayan by then President Corazon C. Aquino. In 1991, acting in his capacity as PARO II, he entered into several contracts with various suppliers for the lease of typewriters, computers, computer printers, and other accessories. Separate reports from the DAR Commission on Audit and the DAR Regional Investigating Committee of Cagayan, however, revealed that the foregoing transactions were tainted with irregularities. Both bodies found that the petitioner entered into contracts beyond the scope of his signing or approving authority, which

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[1] *Rollo* (G.R. No. 188681), pp. 110-126; penned by Associate Justice Amelita G. Tolentino, with Associate Justice Japar B. Dimaampao and Associate Justice Sixto C. Marella, Jr. concurring.

[2] *Rollo* (G.R. No. 201130), pp. 33-51; penned by Associate Justice Romeo F. Barza, with Associate Justice Rosalinda Asuncion-Vicente and Associate Justice Edwin D. Sorongon concurring.

was up to ₱50,000.00, as provided in DAR General Memorandum Order No. 4, Series of 1990; that he executed and approved contracts of lease without the corresponding Certificate of Availability of Funds as provided in Section 86 of Presidential Decree No. 1445, otherwise known as the Auditing Code of the Philippines; and that there was no public bidding held for the purpose in violation of the Commission on Audit Circular No. 85-55-A. Based on the said reports, then DAR Secretary Ernesto D. Garilao, finding the existence of *prima facie* case, issued on September 4, 1992 a formal charge against the petitioner for gross dishonesty, abuse of authority, grave misconduct, and conduct prejudicial to the best interest of the service. Simultaneous to the charge, the petitioner was placed under preventive suspension for ninety (90) days pending the investigation of the complaint. He was also required to submit his answer in writing and to state therein whether or not he elects a formal investigation.

On October 25, 1992, through counsel, the petitioner submitted his Answer with Prayer to Dismiss Charges and to Lift Preventive Suspension, alleging in his defense that he acted purely for the benefit of the DAR Provincial Office. In support of his prayer for dismissal of the complaint, he alleged that the formal charge issued by Secretary Garilao was null and void because it was based on the report of the DAR Regional Investigating Committee, a body bereft of authority to investigate administrative complaints against presidential appointees like him pursuant to DAR Memorandum Order No. 5, Series of 1990.

Thereafter, acting on the formal charge, the DAR Legal Affairs Office conducted a formal investigation on November 16, 17, and 18, 1992. On May 17, 1994, then DAR Assistant Secretary for Legal Affairs Hector D. Soliman issued an order dismissing the petitioner from the service. Secretary Garilao affirmed the said order on August 2, 1994.

The petitioner then appealed to the Civil Service Commission (CSC). Seeing no reversible error, CSC affirmed the dismissal of the petitioner. He filed a motion for reconsideration but the CSC refused to reconsider its previous resolution.

Unsatisfied, he found his way to this Court through a petition for review. His effort was not put to naught when this Court, in its decision promulgated on August 31, 2000, set aside the order of dismissal of Secretary Garilao and ruled that the former is bereft of disciplinary jurisdiction over presidential appointees. Hence, his order to remove the petitioner was a total nullity. In the same fashion, the resolutions of the CSC affirming such order were likewise held null and void. The DAR Secretary, however, was given the prerogative to forward his findings and recommendations to the Office of the President for a more appropriate action. The dispositive portion of the said decision reads:

> **WHEREFORE, IN VIEW OF THE FOREGOING,** this petition is hereby **GRANTED**. CSC Resolution Nos. 981412 dated June 9, 1998 and 982476 dated September 23, 1998 are **ANNULLED** and **SET ASIDE**. The Secretary of Agrarian Reform may, however, forward his findings and recommendations to the Office of the President. No pronouncement as to costs.
>
> SO ORDERED.

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On the strength of the foregoing decision, the petitioner, through a letter dated January 9, 2001, requested from then DAR Secretary Horacio Morales to issue an order of reinstatement in his favor. But, as thus appear on record, he failed to be formally reinstated. Meanwhile, in line with this Court's decision, succeeding DAR Secretary Hernani A. Braganza forwarded his findings and his recommendation to dismiss the petitioner from the service, as well as records of the case, to the Office of the President for proper disposition through a memorandum dated July 4, 2002.

Acting on the said memorandum, then Acting Deputy Executive Secretary for Legal Affairs Manuel B. Gaite, acting by authority of the President, issued the assailed order, the dispositive portion of which reads:

> **WHEREFORE,** premises considered, and as recommended by the DAR, Francisco T. Baculi is hereby dismissed from the service, with all its accessory penalties of forfeiture of financial benefits, including disqualification from entering government service. Accordingly, the request for reinstatement is hereby **DENIED**.
>
> **SO ORDERED**.[3]

The factual and procedural antecedents relevant to G.R. No. 201130 take off from where the foregoing antecedents end. The CA summed up such antecedents in its decision in CA-G.R. SP No. 115934, to wit:

Armed with the decision of the Court of Appeals [promulgated on August 31, 2000], petitioner demanded from the DAR Secretary that he be reinstated. According to the petitioner, he was not reinstated. But in the decision of the court *a quo* which the petitioner did not refute, it is stated therein that "*petitioner reported for work at the DAR Regional Office No. 2 on March 12, 2001 until December 31, 2001 during which period, his salary and other emoluments and benefits were paid in full*".

The DAR Secretary forwarded his findings and recommendations to the Office of the President on July 4, 2002. On **June 26, 2003**, the Office of the President in its Order in OP Case No. 03-11-488, dismissed petitioner from the service. For reference, the dismissal order of the Office of the President is being referred to by petitioner as his "second dismissal".

Petitioner appealed the order of dismissal of the Office of the President to the Court of Appeals docketed as CA-G.R. SP No. 82629. For failure of petitioner to attach a copy of CA-G.R. SP No. 82629, this Court secured a copy of the Court's decision from the Record's Division and it appears that this Court, through the 13th Division, promulgated a decision on October 29, 2008, wherein it DISMISSED the petition filed by the petitioner. According to the petitioner, the second dismissal order is now before the Supreme Court awaiting resolution.

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[3] *Rollo* (G.R. No. 188681), pp. 110-113.

> Persistent that his monetary claim be given to him, petitioner sought recourse before the court *a quo* for *Mandamus* to compel the DAR Secretary to pay his basic salaries, other emoluments and benefits with legal rate of interest, covering the periods of August 2, 1994, when the DAR Secretary dismissed him from service, to June 25, 2003, a day before the Office of the President rendered its decision declaring him dismissed from the service.
>
> Finding that petitioner is not entitled to the relief prayed for, the court *a quo* rendered its judgment on May 27, 2010, declaring that:
>
> > WHEREFORE, premises considered, the petition is dismissed. No pronouncement as to cost.[4]

Issues

Although the CA had ruled in favor of Baculi in CA-G.R. SP No. 49656 to the effect that the resolutions issued by the Civil Service Commission (CSC) affirming his dismissal were void on the ground that the DAR Secretary had been bereft of disciplinary jurisdiction over him as a presidential appointee,[5] the CA upheld his dismissal pursuant to the order of the Office of the President[6] in CA-G.R. SP No. 82629.[7]

As a consequence of the dismissal of Baculi by the Office of the President, the CA reversed the dismissal by the RTC of his petition for *mandamus* and instead decreed in its decision promulgated on June 16, 2011 in CA-G.R. SP No. 115934,[8] as follows:

> **WHEREFORE**, the *Mandamus on Appeal* is hereby **GRANTED**. The decision appealed from is **REVERSED** and **SET ASIDE**. Petitioner **FRANCISCO T. BACULI** is granted the back salaries and other benefits owing his position at the rate last received before the suspension was imposed from September 4, 1992 to June 25, 2003, except the 90-day period of suspension and the period from March 12, 2001 to December 31, 2001, wherein petitioner was briefly reinstated.
>
> **SO ORDERED**.[9]

It is significant to observe at this juncture that Baculi had not impugned his preventive suspension pending investigation upon the filing of the formal charges against him for gross dishonesty, abuse of authority, grave misconduct, and conduct prejudicial to the best interest of the service. His challenge had been focused on his first dismissal by DAR Secretary

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4 *Rollo* (G.R. No. 201130), pp. 36-37.
5 *Rollo* (G.R. No. 188681), pp. 70-81.
6 Id. at 86-88.
7 Id. at 110-126.
8 Supra note 2.
9 Id. at 49-50.

Garilao, and his non-reinstatement upon the end of his preventive suspension on December 3, 1992.

As we see it, the issue submitted in G.R. No. 188681 is whether or not the order of dismissal issued by the Acting Deputy Executive Secretary for Legal Affairs was valid; while the issues in G.R. No. 201130 are: (1) whether or not the CA erred in reversing the findings of the RTC, and in granting the petition for *mandamus*; and (2) whether or not the pendency of the case questioning the legality of the order of dismissal posed a prejudicial question.

Ruling of the Court

We deny the petitions for review on *certiorari*, and affirm the assailed decisions of the CA promulgated in CA-G.R. SP No. 82629 and CA-G.R. SP No. 115934.

1.
The first dismissal of Baculi was void

DAR Secretary Ernesto D. Garilao brought charges against Baculi for gross dishonesty, abuse of authority, grave misconduct and conduct prejudicial to the best interest of the service based on the reports issued by the Regional Investigating Committee of the DAR (DAR-RIC) and the Commission on Audit (COA) about his having violated Presidential Decree No. 1445 (*Government Auditing Code of the Philippines*) as well as relevant DAR rules and regulations. He was immediately placed under preventive suspension for 90 days (*i.e.*, from September 4 to December 3, 1992) as a consequence.

Eventually, DAR Secretary Garilao dismissed Baculi from the service based on the findings and recommendations of Assistant Secretary Hector Soliman of the DAR Legal Affairs Office.

The CSC affirmed the dismissal of Baculi with modification. It anchored its affirmance on the vesting of disciplinary jurisdiction in the Department Secretaries, among others, as provided in Section 47(2), Chapter 7, of Book V of the *Administrative Code of 1987*, *viz.*:

> Section 47. Disciplinary Jurisdiction. –
>
> x x x x
>
> (2) The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate

> and decide matters involving disciplinary action against officers and employees under their jurisdiction.
>
> x x x x

The foregoing provision seemingly vested the DAR Secretary with the authority to investigate and decide matters involving disciplinary actions because Baculi, then a Provincial Agrarian Reform Officer II, was under his administrative supervision and control. This is based on Section 6 and Section 7(5), Chapter 2, Book IV of the *Administrative Code of 1987*, to wit:

> Section 6. *Authority and Responsibility of the Secretary.* — The authority and responsibility for the exercise of the mandate of the Department and for the discharge of its powers and functions shall be vested in the Secretary, who shall have supervision and control of the Department.
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> Section 7. *Powers and Functions of the Secretary.* — The Secretary shall:
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> x x x x
>
> (5) Exercise 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.
>
> x x x x

On appeal, however, the CA set aside the dismissal, holding in its decision promulgated on August 31, 2000, that the DAR Secretary had no disciplinary authority over Baculi due to his being a presidential appointee.

Whether or not Baculi belonged to the category of officers and employees under the DAR Secretary's disciplinary jurisdiction was a question to be determined in conjunction with Section 38(a) of Presidential Decree No. 807 (*Civil Service Decree*), as follows:

> Section 38. Procedure in Administrative Cases **Against Non-Presidential Appointees**.
>
> (a) Administrative proceedings may be commenced against a subordinate officer or employee by the head of department or office of equivalent rank, or head of local government, or chiefs or agencies, regional directors, or upon sworn, written complaint of any other persons.
>
> x x x x

Section 38(a) of Presidential Decree No. 807 has drawn a definite distinction between subordinate officers or employees who were presidential appointees, on the one hand, and subordinate officers or employees who were non-presidential appointees, on the other. Without a doubt, substantial distinctions that set apart presidential appointees from non-presidential appointees truly existed.[10] For one, presidential appointees come under the direct disciplining authority of the President pursuant to 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 in whom the power to appoint is vested.[11] Having the power to remove or to discipline presidential appointees, therefore, the President has the corollary authority to investigate them and look into their conduct in office.[12]

Thus, 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."[13] As such, the DAR Secretary held no disciplinary jurisdiction over him. Verily, Presidential Decree No. 807 has expressly specified the procedure for disciplinary actions involving presidential appointees.

2.
The second dismissal of Baculi was valid

On July 4, 2002, Secretary Garilao forwarded his findings and recommendations to the Office of the President. On June 26, 2003, Acting Deputy Executive Secretary for Legal Affairs Manuel B. Gaite, acting by authority of the President, issued the order dismissing Baculi from the service. Baculi treated this as a second dismissal.

Baculi challenges his second dismissal on two grounds. The first ground is that the DAR-RIC lacked the authority to investigate administrative complaints against presidential appointees like him. He submits that such authority pertained to the DAR's Office of Legal Affairs pursuant to DAR General Memorandum Order No. 5, Series of 1990; and that the DAR-RIC's lack of authority rendered its adverse report null and void, and such invalidity made the formal charge against him baseless.[14] The

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[10] *Pichay, Jr. v. Office of the Deputy Executive Secretary for Legal Affairs-Investigative and Adjudicatory Division*, G.R. No. 196425, July 24, 2012, 677 SCRA 408, 429.

[11] Id., citing *Ambas v. Buenseda*, G.R. No. 95244, September 4, 1991, 201 SCRA 308, 314; and *Lacanilao v. De Leon*, No. L-76532, January 26, 1987, 147 SCRA 286, 298; see also *Umali v. Guingona, Jr.*, G.R. No. 131124, March 29, 1999, 305 SCRA 533, 541; *Larin v. Executive Secretary*, G.R. No. 112745, October 16, 1997, 280 SCRA 713, 723; *David v. Villegas*, No. L-36479, February 28, 21978, 81 SCRA 642, 648

[12] Supra, note 10, citing *Garcia v. Pajaro*, G.R. No. 141149, July 5, 2002, 384 SCRA 122, 135.

[13] See *Umali v. Guingona, Jr.*, G.R. No. 131124, March 29, 1999, 305 SCRA 533, 541; *Larin v. Executive Secretary*, G.R. No. 112745, October 16, 1997, 280 SCRA 713, 723. See also *David v. Villegas*, No. L-36479, February 28, 21978, 81 SCRA 642, 648.

[14] *Rollo* (G.R. No. 188681), p. 118.

second ground is that the order for his second dismissal should have been issued by the President who should have personally exercised the power to remove him, not by the Acting Deputy Executive Secretary for Legal Affairs.

We cannot sustain the challenges of Baculi.

First of all, DAR General Memorandum Order No. 5, Series of 1990, whose pertinent text expressly vested in the DAR's Office of Legal Affairs the authority to investigate administrative complaints against presidential appointees,[15] presupposed the *actual existence* of the administrative complaints. In respect of Baculi, however, there was yet no administrative complaint when the DAR-RIC conducted its investigation. Such administrative complaint came to exist only when Secretary Garilao brought the formal charge for gross dishonesty, abuse of authority, grave misconduct and conduct prejudicial to the best interest of the service. Such formal charge became the administrative complaint contemplated by law.[16] As a consequence, the DAR-RIC's investigation was separate and apart from the investigation that the DAR Office of Legal Affairs could have conducted once a formal charge had been initiated.

In 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.

And, secondly, it was of no moment to the validity and efficacy of the dismissal that only Acting Deputy Executive Secretary for Legal Affairs Gaite had signed and issued the order of dismissal. In so doing, Acting Deputy Executive Secretary Gaite neither exceeded his authority, nor usurped the power of the President. Although the powers and functions of the Chief Executive have been expressly reposed by the Constitution in one person, the President of the Philippines, it would be unnatural to expect the President to personally exercise and discharge all such powers and functions. Somehow, the exercise and discharge of most of these powers and functions have been delegated to others, particularly to the members of the Cabinet,

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[15] The pertinent provision of DAR General Memorandum Order No. 5, Series of 1990, follows:

O. **Administrative Complaints and Imposition of Penalties.**

1. **Administrative complaints concerning Presidential Appointees shall be investigated by the Legal Affairs Office to determine whether or not a *prima facie* case exist prior to submission to the Office of the President for proper action.** (Bold underscoring supplied for emphasis)

[16] See *Gaoiran v. Alcala*, G.R. No. 150178, November 26, 2004, 444 SCRA 428, where the Court explained that "xxx the letter-complaint of respondent xxx is not a "complaint" within the purview of the provisions mentioned above. In the fairly recent case of *Civil Service Commission v. Court of Appeals*, this Court held that the "complaint" under E.O. No. 292 and CSC rules on administrative cases "both refer to the *actual charge* to which the person complained of is required to answer and indicate whether or not he elects a formal investigation should his answer be deemed not satisfactory."

conformably to the doctrine of qualified political agency.[17] Accordingly, we have expressly recognized the extensive range of authority vested in the Executive Secretary or the Deputy Executive Secretary as an official who ordinarily acts for and in behalf of the President.[18] As such, the decisions or orders emanating from the Office of the Executive Secretary are attributable to the Executive Secretary even if they have been signed only by any of the Deputy Executive Secretaries.[19]

Given the foregoing, the dismissal of Baculi through the order of June 25, 2003, being by authority of the President, was entitled to full faith and credit as an act of the President herself.[20]

3.
The CA properly granted backwages

After the CA nullified his first dismissal through the decision promulgated in CA-G.R. SP No. 49656, Baculi commenced in the RTC the special civil action for *mandamus* to compel the DAR, represented by the DAR Secretary and its Regional Director of Agrarian Reform for Region 2, to pay his basic salaries, benefits and other emoluments corresponding to the period from August 2, 1994 – the date of the first dismissal – until June 25, 2003 – the date when the Office of the President dismissed him from the service, plus interest at the legal rate.

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[17] See *Carpio v. Executive Secretary*, G.R. No. 96409, February 14, 1992, 206 SCRA 290, 295-296, where the Court expounded on the reality of the President as the Chief Executive acting through subordinate officials like the members of the Cabinet, *viz.*:

> Equally well accepted, as a corollary rule to the control powers of the President, is the "Doctrine of Qualified Political Agency". **As the President cannot be expected to exercise his control powers all at the same time and in person, he will have to delegate some of them to his Cabinet members.**
>
> **Under this doctrine, which recognizes the establishment of a single executive, "all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments are assistants and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or law to act in person on the exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and the *acts of the Secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive presumptively the acts of the chief Executive.*"** (italics ours).
>
> **Thus, and in short, "the President's power of control is directly exercised by him over the members of the Cabinet who, in turn, and by his authority, control the bureaus and other offices under their respective jurisdictions in the executive department.** (Bold underscoring supplied for emphasis; italicized portions are part of the original text)

[18] See *Lacson-Magallanes Co., Inc. v. Paño*, No. L- 27811, November 17, 1967, 21 SCRA 895, 900, where the Court observed:

> **The President is not expected to perform in person all the multifarious executive and administrative functions. The Office of the Executive Secretary is an auxillary unit which assists the President. The rule which has thus gained recognition is that "under our constitutional set-up, the Executive Secretary who acts for and in behalf of the President and by authority of the President, has undisputed jurisdiction to affirm, modify, or even reverse any order" that the Secretary of Natural Resources and including the Director of Lands may issue.** (Bold underscoring supplied for emphasis)

[19] *Barte v. Dichoso*, No. L-28715, September 28, 1972, 47 SCRA 77, 85-86.

[20] *Echeche v. Court of Appeals*, G.R. No. 89865, June 27, 1991, 198 SCRA 577, 585.

The DAR countered in that suit that Baculi's monetary claim was unfounded because he had not been exonerated from the offenses charged against him. It reminded that the decision of the CA did not exculpate him, but even suggested that the DAR Secretary could still forward the findings against him to the Office of the President for proper action.

After the RTC dismissed the petition for *mandamus*, Baculi appealed to the CA to reverse the dismissal of his petition (CA-G.R. SP No. 115934).

Ultimately, on June 16, 2011, the CA reversed the RTC,[21] and decreed in its decision promulgated in CA-G.R. SP No. 115934 that Baculi was entitled to the back salaries and other benefits owing to his position at the rate last received before the suspension was imposed from September 4, 1992 to June 25, 2003 except the 90-day period of preventive suspension and the period from March 12, 2001 to December 31, 2001 during which he was briefly reinstated.

We affirm the CA.

By law, Baculi should have been automatically reinstated at the end of the 90-day period of his preventive suspension because his case was not finally decided within the said period.

We have to point out that preventive suspension is of two kinds. The first is the preventive suspension pending investigation, and the second is the preventive suspension pending appeal where the penalty imposed by the disciplining authority is either suspension or dismissal but after review the respondent official or employee is exonerated.[22] The nature of preventive suspension pending investigation has been explained in the following manner:

> x x x Preventive suspension pending investigation is not a penalty. It is a measure intended to enable the disciplining authority to investigate charges against respondent by preventing the latter from intimidating or in any way influencing witnesses against him. If the investigation is not finished and a decision is not rendered within that period, the suspension will be lifted and the respondent will automatically be reinstated. If after investigation, respondent is found innocent of the charges and is exonerated, he should be reinstated.[23]

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21 Supra note 2.

22 *Civil Service Commission v. Alfonso*, G.R. No. 179452, June, 11, 2009, 589 SCRA 89.

23 Id. at 100.

Preventive suspension pending investigation is not violative of the Constitution because it is not a penalty.[24] It is authorized by law whenever the charge involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or whenever there are reasons to believe that the respondent is guilty of charges that would warrant removal from the service.[25] If the *proper disciplinary authority* does not finally decide the administrative case within a period of 90 days from the start of preventive suspension pending investigation, *and the respondent is not a presidential appointee*, the preventive suspension is lifted and the respondent is "automatically reinstated in the service."[26] In the case of presidential appointees, the preventive suspension pending investigation shall be "for a reasonable time as the circumstances of the case may warrant."[27]

Nonetheless, there shall be no indefinite suspension pending investigation, *whether the respondent officials are presidential or non-presidential appointees*. The law abhors indefinite preventive suspension because the indefiniteness violates the constitutional guarantees under the due process and equal protection clauses,[28] as well as the right of public officers and employees to security of tenure. The abhorrence of indefinite suspensions impelled the Court in *Gonzaga v. Sandiganbayan*[29] to delineate rules on preventive suspensions pending investigation, *viz.*:

> To the extent that there may be cases of indefinite suspension imposed either under Section 13 of Rep. Act 3019, or Section 42 of Pres. Decree 807, it is best for the guidance of all concerned that this Court set forth the rules on the period of preventive suspension under the aforementioned laws, as follows:

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24 *Gonzaga v. Sandiganbayan*, G.R. No. 96131, September 6, 1991, 201 SCRA 417, 426.

25 Section 51 of Executive Order No. 292 (*Administrative Code of 1987*) states:

Section 51. *Preventive Suspension.* – The proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.

26 Section 52 of Executive Order No. 292 declares:

Section 52. *Lifting of Preventive Suspension Pending Administrative Investigation.* – When the administrative case against the officer or employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of suspension of the respondent who is not a presidential appointee, the respondent shall be automatically reinstated in the service: *Provided*, That when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay shall not be counted in computing the period of suspension herein provided.

To the same effect is Section 42 of P.D. No. 807, to wit:

Section 42. Lifting of Preventive Suspension Pending Administrative Investigation. — When the administrative case against the officer or employee under preventive suspension is not finally decided by the disciplining authority within the period of ninety (90) days after the date of suspension of the respondent who is not a presidential appointee, the respondent shall be automatically reinstated in the service: Provided, That when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay shall not be counted in computing the period of suspension herein provided.

27 Supra, note 24, at 428.

28 Section 1, Article III of the Constitution provides that "no person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."

29 Supra note 24.

> 1. Preventive suspension under Section 13, Rep. Act 3019 as amended shall be limited to a maximum period of ninety (90) days, from issuance thereof, and this applies to all public officers, (as defined in Section 2(b) of Rep. Act 3019) who are validly charged under said Act.
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> 2. Preventive suspension under Section 42 of Pres. Decree 807 shall apply to all officers or employees whose positions are embraced in the Civil Service, as provided under Sections 3 and 4 of said Pres. Decree 807; and shall be limited to a maximum period of ninety (90) days from issuance, except where there is delay in the disposition of the case, which is due to the fault, negligence or petition of the respondent, in which case the period of delay shall not be counted in computing the period of suspension herein stated; provided that if the person suspended is a presidential appointee, the continuance of his suspension shall be for a reasonable time as the circumstances of the case may warrant.[30]

It cannot be validly argued that in the case of presidential appointees the preventive suspension pending investigation can be indefinite. The Court discredited such argument in *Garcia v. The Executive Secretary*,[31] and directed the immediate reinstatement of a presidential appointee whose preventive suspension had lasted for nearly seven months, declaring:

> **To adopt the theory of respondents that an officer appointed by the President, facing administrative charges, can be preventively suspended indefinitely, would be to countenance a situation where the preventive suspension can, in effect, be the penalty itself without a finding of guilt after due hearing, contrary to the express mandate of the Constitution and the Civil Service law. This, it is believed, is not conducive to the maintenance of a robust, effective and efficient civil service, the integrity of which has, in this jurisdiction, received constitutional guarantee, as it places in the hands of the Chief Executive a weapon that could be wielded to undermine the security of tenure of public officers.** Of course, this is not so in the case of those officers holding office at the pleasure of the President. But where the tenure of office is fixed, as in the case of herein petitioner, which according to the law he could hold "for 6 years and shall not be removed therefrom except for cause", to sanction the stand of respondents would be to nullify and render useless such specific condition imposed by the law itself. If he could be preventively suspended indefinitely, until the final determination of the administrative charges against him (and under the circumstances, it would be the President himself who would decide the same at a time only he can determine) then the provisions of the law both as to the fixity of his tenure and the limitation of his removal to only for cause would be meaningless. In the guise of a preventive suspension, his term of office could be shortened and he could, in effect, be removed without a finding of a cause duly established after due hearing, in violation of the Constitution. This would set at naught the laudible (*sic*) purpose of Congress to surround the tenure of office of the Chairman of the National Science Development Board, which is longer than that of the President himself, with all the safeguards compatible with the purpose of

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[30] Id. at 427-428.

[31] G.R. No. L-19748, September 13, 1962, 6 SCRA 1.

> maintaining the office of such officer, considering its highly scientific and technological nature, beyond extraneous influences, and of insuring continuity of research and development activities in an atmosphere of stability and detachment so necessary for the fulfillment of its mission, uninterrupted by factors other than removal for cause.[32] (Bold underscoring supplied for emphasis)

In *Layno, Sr. v. Sandiganbayan*,[33] the Court has further reminded that preventive suspension pending investigation for an indefinite period of time, like one that would last until the case against the incumbent official would have been finally terminated, would "outrun the bounds of reason and result in sheer oppression," and would be a denial of due process.

Conformably with the foregoing disquisitions, we hold that the CA correctly decreed that Baculi should be paid his back salaries and other benefits *for the entire time that he should have been automatically reinstated* at the rate owing to his position that he last received prior to his preventive suspension on September 4, 1992. Such time corresponded to the period from December 4, 1992 until June 25, 2003, but excluding the interval from March 12, 2001 until December 31, 2001 when he was briefly reinstated.

We no longer find the need to dwell on and resolve whether or not G.R. No. 188681 posed a prejudicial question in relation to G.R. No. 201130. Such issue was rendered moot by the consolidation of the appeals.

WHEREFORE, the Court:

1. **DENIES** the petition for review on *certiorari* in G.R. No. 188681, and **AFFIRMS** the decision promulgated in CA-G.R. SP No. 82629; and

2. **DENIES** the petition for review on *certiorari* in G.R. No. 201130, and **AFFIRMS** the decision promulgated in CA-G.R. SP No. 115934.

No pronouncement on cost of suit.

SO ORDERED.

LUCAS P. BERSAMIN
Associate Justice

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[32] Id. at 8-9.
[33] G.R. No. 65848, May 24, 1985, 136 SCRA 541-542.

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

BIENVENIDO L. REYES
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ATTESTATION

I attest 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's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

CERTIFIED TRUE COPY
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUN 07 2017