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**SUPREME COURT
EN BANC**

**PETER JOHN D. CALDERON,
*Petitioner,***

-versus-

**G.R. No. 91636
April 23, 1992**

**BARTOLOME CARALE, in his capacity
as Chairman of the National Labor
Relations Commission; EDNA BONTO
PEREZ, LOURDES C. JAVIER,
ERNESTO G. LADRIDO III, MUSIB M.
BUAT, DOMINGO H. ZAPANTA,
VICENTE S.E. VELOSO III, IRENEO B.
BERNARDO, IRENEA E. CENIZA, LEON
G. GONZAGA, JR., ROMEO B. PUTONG,
ROGELIO I. RAYALA, RUSTICO L.
DIOKNO, BERNABE S. BATUHAN, and
OSCAR N. ABELLA, in their capacity as
Commissioners of the National Labor
Relations Commission; and
GUILLERMO CARAGUE, in his capacity
as Secretary of Budget and
Management,**

Respondents.

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DECISION

PADILLA, J.:

Controversy is focused anew on Sec. 16, Art. VII of the 1987 Constitution which provides:

“SECTION 16. The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution. He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards.

“The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress.”^[1]

The power of the Commission on Appointments (CA for brevity) to confirm appointments, contained in the aforequoted paragraph 1 Sec. 16, Art. VII, was first construed in *Sarmiento III vs. Mison*^[2] as follows:

“It is evident that the position of Commissioner of the Bureau of Customs (a bureau head) is not one of those within the first group of appointments where the consent of the Commission on Appointments is required. As a matter of fact, as already pointed out, while the 1935 Constitution includes ‘heads of bureaus’ among those officers whose appointments need the consent of the Commission on Appointments, the 1987 Constitution, on the other hand, deliberately excluded the position of ‘heads of bureaus’ from appointments that need the consent (confirmation) of the Commission on Appointments.

“Consequently, we rule that the President of the Philippines acted within her constitutional authority and power in appointing respondent Salvador Mison, Commissioner of the Bureau of Customs, without submitting his nomination to the Commission on Appointments for confirmation.”

“In the 1987 Constitution, however, as already pointed out, the clear and expressed intent of its framers was to exclude presidential appointments from confirmation by the Commission on Appointments, except appointments to offices expressly mentioned in the first sentence of Sec. 16, Art. VII. Consequently, there was no reason to use in the third sentence of Sec. 16, Article VII the word ‘alone’ after the word ‘President’ in providing that Congress may by law vest the appointment of lower-ranked officers in the President alone, or in the courts, or in the heads of the departments, because the power to appoint officers whom he (the President) may be authorized by law to appoint is already vested in the President, without need of confirmation by the Commission on Appointments, in the second sentence of the same Sec. 16, Article VII.” (emphasis supplied)

Next came *Mary Concepcion Bautista vs. Salonga*,^[3] this time involving the appointment of the Chairman of the Commission on Human Rights. Adhering to the doctrine in *Mison*, the Court explained:

“Since the position of Chairman of the Commission on Human Rights is not among the positions mentioned in the first sentence of Sec. 16, Art. VII of the 1987 Constitution, appointments to which are to be made with the confirmation of the Commission on Appointments, it follows that the appointment by the President of the Chairman of the CHR is to be made without the review or participation of the Commission on Appointments. To be more precise, the appointment of the Chairman and Members of the Commission on Human Rights is not specifically provided for in the Constitution itself, unlike the Chairmen and Members of the Civil Service Commission, the Commission on Elections and the Commission on Audit, whose appointments are expressly vested by the Constitution in

the President with the consent of the Commission on Appointments. The President appoints the Chairman and Members of the Commission on Human Rights pursuant to the second sentence in Section 16, Art. VII, that is, without the confirmation of the Commission on Appointments because they are among the officers of government ‘whom he (the President) may be authorized by law to appoint.’ And Section 2(c), Executive Order No. 163, 5 May 1987, authorizes the President to appoint the Chairman and Members of the Commission on Human Rights.”

Consistent with its rulings in *Mison and Bautista, in Teresita Quintos Deles, et al. vs. The Commission on Constitutional Commissions, et al.*,^[4] the power of confirmation of the Commission on Appointments over appointments by the President of sectoral representatives in Congress was upheld because:

“Since the seats reserved for sectoral representatives in paragraph 2, Section 5, Art. VI may be filled by appointment by the President by express provision of Section 7, Art. XVIII of the Constitution, it is indubitable that sectoral representatives to the House of Representatives are among the ‘other officers whose appointments are vested in the President in this Constitution,’ referred to in the first sentence of Section 16, Art. VII whose appointments are subject to confirmation by the Commission on Appointments.”

From the three (3) cases above-mentioned, these doctrines are deducible:

1. Confirmation by the Commission on Appointments is required only for presidential appointees mentioned in the first sentence of Section 16, Article VII, including, those officers whose appointments are expressly vested by the Constitution itself in the president (like sectoral representatives to Congress and members of the constitutional commissions of Audit, Civil Service and Election).

2. Confirmation is not required when the President appoints other government officers whose appointments are not otherwise provided for by law or those officers whom he may be authorized by law to appoint (like the Chairman and Members of the Commission on Human Rights). Also, as observed in *Mison*, when Congress creates inferior offices but omits to provide for appointment thereto, or provides in an unconstitutional manner for such appointments, the officers are considered as among those whose appointments are not otherwise provided for by law.

Sometime in March 1989, RA 6715 (Herrera-Veloso Law), amending the Labor Code (PD 442) was approved. It provides in Section 13 thereof as follows:

“ x x x

The Chairman, the Division Presiding Commissioners and other Commissioners shall all be appointed by the President, subject to confirmation by the Commission on Appointments. Appointments to any vacancy shall come from the nominees of the sector which nominated the predecessor. The Executive Labor Arbiters and Labor Arbiters shall also be appointed by the President, upon recommendation of the Secretary of Labor and Employment, and shall be subject to the Civil Service Law, rules and regulations.”^[5]

Pursuant to said law (RA 6715), President Aquino appointed the Chairman and Commissioners of the NLRC representing the public, workers and employers sectors. The appointments stated that the appointees may qualify and enter upon the performance of the duties of the office. After said appointments, then Labor Secretary Franklin Drilon issued Administrative Order No. 161, series of 1989, designating the places of assignment of the newly appointed commissioners.

This petition for prohibition questions the constitutionality and legality of the permanent appointments extended by the President of the Philippines to the respondents Chairman and Members of the National Labor Relations Commission (NLRC), without submitting

the same to the Commission on Appointments for confirmation pursuant to Art. 215 of the Labor Code as amended by said RA 6715.

Petitioner insists on a mandatory compliance with RA 6715 which has in its favor the presumption of validity. RA 6715 is not, according to petitioner, an encroachment on the appointing power of the executive contained in Section 16, Art. VII, of the Constitution, as Congress may, by law, require confirmation by the Commission on Appointments of other officers appointed by the President additional to those mentioned in the first sentence of Section 16 of Article VII of the Constitution. Petitioner claims that the Mison and Bautista rulings are not decisive of the issue in this case for in the case at bar, the President issued permanent appointments to the respondents without submitting them to the CA for confirmation despite passage of a law (RA 6715) which requires the confirmation by the Commission on Appointments of such appointments.

The Solicitor General, on the other hand, contends that RA 6715 which amended the Labor Code transgresses Section 16, Article VII by expanding the confirmation powers of the Commission on Appointments without constitutional basis. Mison and Bautista laid the issue to rest, says the Solicitor General, with the following exposition:

“As interpreted by this Honorable Court in the Mison case, confirmation by the Commission on Appointments is required exclusively for the heads of executive departments, ambassadors, public ministers, consuls, officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in the President by the Constitution, such as the members of the various Constitutional Commissions. With respect to the other officers whose appointments are not otherwise provided for by the law and to those whom the President may be authorized by law to appoint, no confirmation by the Commission on Appointments is required.

“Had it been the intention to allow Congress to expand the list of officers whose appointments must be confirmed by the Commission on Appointments, the Constitution would have

said so by adding the phrase “and other officers required by law” at the end of the first sentence, or the phrase, “with the consent of the Commission on Appointments” at the end of the second sentence. Evidently, our Constitution has significantly omitted to provide for such additions.

“The original text of Section 16 of Article VII of the present Constitution as embodied in Resolution No. 517 of the Constitutional Commission reads as follows:

‘The President shall nominate and, with the consent of the Commission on Appointments, shall appoint the heads of the executive departments and bureaus, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of captain or commander, and all other officers of the Government whose appointments are not herein otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may by law vest the appointment of inferior officers in the President alone, in the courts or in the head of the department.’

“Three points should be noted regarding subsection 3 of Section 10 of Article VII of the 1935 Constitution and in the original text of Section 16 of Article VII of the present Constitution as proposed in Resolution No. 517.

“First, in both of them, the appointments of head of bureaus were required to be confirmed by the Commission on Appointments.

“Second, in both of them, the appointments of other officers, “whose appointments are not otherwise provided for by law to appoint” are expressly made subject to confirmation by the Commission on Appointments. However, in the final version of Resolution No. 517, as embodied in Section 16 of Article VII of the present Constitution, the appointment of the above mentioned officers (heads of bureaus; other officers whose appointments are not provided for by law; and those whom he may be authorized by law to appoint) are excluded from the list

of those officers whose appointments are to be confirmed by the Commission on Appointments. This amendment, reflected in Section 16 of Article VII of the Constitution, clearly shows the intent of the framers to exclude such appointments from the requirement of confirmation by the Commission on Appointments.

“Third, under the 1935 Constitution the word “nominate” qualifies the entire Subsection 3 of Section 10 of Article VII thereof.

“Respondent reiterates that if confirmation is required, the three (3) stage process of nomination, confirmation and appointment operates. This is only true of the first group enumerated in Section 16, but the word nominate does not any more appear in the 2nd and 3rd sentences. Therefore, the president’s appointment pursuant to the 2nd and 3rd sentences need no confirmation.”^[6]

The only issue to be resolved by the Court in the present case is whether or not Congress may, by law, require confirmation by the Commission on Appointments of appointments extended by the President to government officers additional to those expressly mentioned in the first sentence of Sec. 16, Art. VII of the Constitution whose appointments require confirmation by the Commission on Appointments.

To resolve the issue, we go back to Mison where the Court stated:

“There are four (4) groups of officers whom the President shall appoint. These four (4) groups, to which we will hereafter refer from time to time, are:

‘First, the heads of the executive departments, ambassadors, other public ministers and consuls, officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are vested in him in this Constitution;

‘Second, all other officers of the Government whose appointments are not otherwise provided for by law;

‘Third, those whom the President may be authorized by law to appoint;

‘Fourth, officers lower in rank whose appointments the Congress may by law vest in the President alone.’”^[7]

Mison also opined:

“In the course of the debates on the text of Section 16, there were two (2) major changes proposed and approved by the Commission. These were (1) the exclusion of the appointments of heads of bureaus from the requirement of confirmation by the Commission on Appointments; and (2) the exclusion of appointments made under the second sentence of the section from the same requirement.”

The second sentence of Sec. 16, Art. VII refers to all other officers of the government whose appointment are not otherwise provided for by law and those whom the President may be authorized by law to appoint.

Indubitably, the NLRC Chairman and Commissioners fall within the second sentence of Section 16, Article VII of the Constitution, more specifically under the “third groups” of appointees referred to in Mison, i.e. those whom the President may be authorized by law to appoint. Undeniably, the Chairman and Members of the NLRC are not among the officers mentioned in the first sentence of Section 16, Article VII whose appointments requires confirmation by the Commission on Appointments. To the extent that RA 6715 requires confirmation by the Commission on Appointments of the appointments of respondents Chairman and Members of the National Labor Relations Commission, it is unconstitutional because:

- 1) it amends by legislation, the first sentence of Sec. 16, Art. VII of the Constitution by adding thereto appointments requiring confirmation by the Commission on Appointments; and

- 2) it amends by legislation the second sentence of Sec. 16, Art. VII of the Constitution, by imposing the confirmation of the Commission on Appointments on appointments which are otherwise entrusted only with the President.

Deciding on what law to pass is a legislative prerogative. Determining their constitutionality is a judicial function. The Court respects the laudable intention of the legislature. Regrettably, however, the constitutional infirmity of Sec. 13 of RA 6715 amending Art. 215 of the Labor Code, insofar as it requires confirmation of the Commission on Appointments over appointments of the Chairman and Members of the National Labor Relations Commission (NLRC) is, as we see it, beyond redemption if we are to render fealty to the mandate of the Constitution in Sec. 16, Art. VII thereof.

Supreme Court decisions applying or interpreting the Constitution shall form part of the legal system of the Philippines.^[8] No doctrine or principle of law laid down by the Court in a decision rendered en banc or in division may be modified or reversed except by the Court sitting en banc.^[9]

“The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law was originally passed, since this Court’s construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of the legal maxim ‘*legis interpretado legis vim obtinent*’ — the interpretation placed upon the written law by a competent court has the force of law.”^[10]

The rulings in *Mison*, *Bautista* and *Quintos-Deles* have interpreted Art. VII, Sec. 16 consistently in one manner. Can legislation expand a constitutional provision after the Supreme Court has interpreted it?

In *Endencia* and *Jugo vs. David*,^[11] the Court held:

“By legislative fiat as enunciated in section 13, Republic Act No. 590, Congress says that taxing the salary of a judicial officer is

not a decrease of compensation. This is a clear example of interpretation or ascertainment of the meaning of the phrase ‘which shall not be diminished during their continuance in office,’ found in section 9, Article VIII of the Constitution, referring to the salaries of judicial officers.”

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‘The rule is recognized elsewhere that the legislature cannot pass any declaratory act, or act declaratory of what the law was before its passage, so as to give it any binding weight with the courts. A legislative definition of a word as used in a statute is not conclusive of its meaning as used elsewhere; otherwise, the legislature would be usurping a judicial function in defining a term. (11 Am. Jur., 914, emphasis supplied).

‘The legislature cannot, upon passing law which violates a constitutional provision, validate it so as to prevent an attack thereon in the courts, by a declaration that it shall be so construed as not to violate the constitutional inhibition.’ (11 Am., Jur., 919, emphasis supplied).

“We have already said that the Legislature under our form of government is assigned the task and the power to make and enact laws, but not to interpret them. This is more true with regard to the interpretation of the basic law, the Constitution, which is not within the sphere of the Legislative department. If the Legislature may declare what a law means, or what a specific portion of the Constitution means, especially after the courts have in actual case ascertained its meaning by interpretation and applied it in a decision, this would surely cause confusion and instability in judicial processes and court decision. Under such a system, a final court determination of a case based on a judicial interpretation of the law or of the Constitution may be undermined or even annulled by a subsequent and different interpretation of the law or of the Constitution by the Legislative department. That would be neither wise nor desirable, besides being clearly violative of the fundamental principles of our constitutional system of

government, particularly those governing the separation of powers.”^[12] (emphasis supplied)

Congress, of course, must interpret the Constitution, must estimate the scope of its constitutional powers when it sets out to enact legislation and it must take into account the relevant constitutional prohibitions.^[13]

“The Constitution did not change with public opinion.

“It is not only the same words, but the same in meaning and as long as it speaks not only in the same words, but with the same meaning and intent with which it spoke when it came from the hands of its framers, and was voted and adopted by the people.”^[14]

The function of the Court in passing upon an act of Congress is to “lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former” and to “announce its considered judgment upon the question.”^[15]

It can not be overlooked that Sec. 16, Art. VII of the 1987 Constitution was deliberately, not unconsciously, intended by the framers of the 1987 Constitution to be a departure from the system embodied in the 1935 Constitution where the Commission on Appointments exercised the power of confirmation over almost all presidential appointments, leading to many cases of abuse of such power of confirmation. Subsection 3, Section 10, Art. VII of the 1935 Constitution provided:

“3. The President shall nominate and with the consent of the Commission on Appointments, shall appoint the heads of the executive departments and bureau, officers of the Army from the rank of the colonel, of the Navy and Air Forces from the rank of captain or commander, and all other officers of the Government whose appointments are not herein otherwise provided for, and those whom he may be authorized by law to appoint;”

The deliberate limitation on the power of confirmation of the Commission on Appointments over presidential appointments, embodied in Sec. 16, Art. VII of the 1987 Constitution, has undoubtedly evoked the displeasure and disapproval of members of the Congress. The solution to the apparent problem, if indeed a problem, is not judicial or legislative but constitutional. A future constitutional convention or Congress sitting as a constituent (constitutional) assembly may then consider either a return to the 1935 Constitutional provisions or the adoption of a hybrid system between the 1935 and 1987 constitutional provisions. Until then, it is the duty of the Court to apply the 1987 Constitution in accordance with what it says and not in accordance with how the legislature or the executive would want it interpreted.

WHEREFORE, the petition is **DISMISSED**. Art. 215 of the Labor Code as amended by RA 6715 insofar as it requires the confirmation of the Commission on Appointments of appointments of the Chairman and Members of the National Labor Relations Commission (NLRC) is hereby declared unconstitutional and of no legal force and effect.

SO ORDERED.

Narvasa, C.J., Melencio-Herrera, Paras, Feliciano, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., Romero and Nocon, JJ., concur.

Bellosillo, J., took no part.

SEPARATE OPINIONS

GUTIERREZ, JR., J ., concurring:

When the issues in this petition were first raised in *Sarmiento III vs. Mison* (156 SCRA 549 [1987]), I joined Justice Cruz in a dissent

because I felt that the interpretation of Section 16, Article VII by the majority of the Court results in absurd or irrational consequences. The framers could not have intended what the majority ruled to be the meaning of the provision. When the question was again raised in *Bautista vs. Salonga* (172 SCRA 160 [1989]), I reiterated my dissent and urged a re-examination of the doctrine stated in *Sarmiento vs. Mison*.

The issue is again before us. Even as I continue to believe that the majority was wrong in the *Sarmiento* and *Bautista* cases, I think it is time to finally accept the majority opinion as the Court's ruling on the matter and one which everybody should respect. There will be no end to litigation if, everytime a high government official is appointed without confirmation by the Commission on Appointments, another petition is filed with this Court.

I, therefore, VOTE with the majority to DISMISS the PETITION.

CRUZ, J ., dissenting:

I dissent on the basis of my dissent in *Sarmiento vs. Mison*, which I believe should be re-examined instead of being automatically re-affirmed simply because of its original adoption. I do not believe we should persist in error on the ground merely of adherence to judicial precedent, however unsound.

[1] Sec. 16, Art. VII, 1987 Constitution.

[2] G.R. No. 79974, 17 December 1987, 156 SCRA 549.

[3] G.R. No. 86439, 13 April 1989, 172 SCRA 160.

[4] G.R. No. 83216, 4 September 1989, 177 SCRA 259, 260.

[5] Rollo, pp. 10-11.

[6] Memorandum for respondents, Rollo, p. 8.

[7] Supra at pp. 553-554.

[8] Art. 8, New Civil Code of the Philippines.

[9] Art. VIII, Sec. 4(3), 1987 Constitution.

[10] *People vs. Jabinal*, G.R. No. L-30061, 27 February 1974, 55 SCRA 607.

[11] G.R. Nos. L-6355-56, 31 August 1953, 93 Phil. 699.

[12] *Ibid.*, pp. 701-702.

[13] Swisher, Carl Brent, *The Supreme Court in Modern Role*, NYU Press, Inc., 1958, pp. 34-35.

- [14] Ibid., former Chief Justice Taney in *Dred Scott vs. Sandford*, 19 Howard 393, 407, (1857), p. 147.
- [15] Ibid., Justice Roberts in *United States vs. Butler*, 297 U.S. I, 62-63 (1936), p. 170.

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