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G.R. No. 225301 ***(Department of Trade and Industry (DTI) v. Danilo B. Enriquez)***

Promulgated:

June 2, 2020

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CONCURRING AND DISSENTING OPINION

LAZARO-JAVIER, *J.*

I concur with the highly esteemed Ponente insofar as he upholds the power of Department Secretaries to investigate their subordinates for administrative offenses, but dissent insofar as he limits this power to preclude Department Secretaries from imposing penalties against presidential appointees.

True, the *ponencia* and the challenged rulings are consistent with precedents, one of which as cited is *Baculi v. Office of the President*,[1] but perhaps it is high time that the basis for their common holding be revisited.

If I may digress a bit, a bright light from the procedural history of the instant case is the trial court judge's adherence to the rule of precedent which is one of the cornerstones of the rule of law. Precedent is a doctrine that brings stability to the state of our law. But it is also the Court's function not only to ensure adherence to precedents, as the trial court judge has done, but to re-examine the continued validity and doctrinal value of precedents in the light of present day circumstances including the prevailing legal philosophies of the Court's current roster.

The bases for this opinion is twofold: (i) statutory provisions, and (ii) the doctrine of qualified political agency.

I.

The Administrative Code vests Department Secretaries with Disciplinary Jurisdiction over their Subordinates

I do **not** see any reason why we should continue to exclude the exercise of disciplinary jurisdiction over presidential appointees who are subordinates

[1] G.R. No. 188681, March 8, 2017.

of the President's alter egos from the **statutory grant** of disciplinary jurisdiction to the President's alter egos over their subordinates.

The *ponencia* refers us to Section 38 of PD 807[2] and Section 47 of EO 292[3] to prove that heads of the Executive Departments have no disciplinary jurisdiction over presidential appointees even if the latter are the department heads' respective subordinates. *The reference to these statutory provisions to support the ponencia's proposition, with due respect, may not be accurate.*

For these statutory provisions deal ***ONLY*** with the ***procedure*** to be adopted with respect to the administrative cases against non-presidential appointees. These statutory provisions ***do not define,*** by any stretch of interpretation, the disciplinary jurisdiction of the heads of the Executive Departments over their subordinates who are presidential appointees.

It is quite a leap to conclude that just because Section 38 of PD 807 and Section 47 of EO 292 provide the ***procedure*** that a Secretary ***may*** take and follow in an administrative case against a non-presidential appointee, the *provisions already limit* the Secretary's disciplinary jurisdiction to subordinates who are not presidential appointees. The language of the statutory provisions simply ***does not support*** this claim of the precedents relied upon by the *ponencia* and the trial judge. Besides the fact that Section 38 of PD 807 and Section 47 of EO 292 are couched in the **permissive sense**, as shown by the **use of the word "may,"** these provisions only talk about the **procedure** that may be followed in an administrative case against a non-presidential appointee.

Indeed, the **appropriate statutory provisions** which define the **disciplinary jurisdiction** of heads of the Executive Departments over their subordinates who are presidential appointees are Sections 6 and 7(5),[4] Chapter 2, Title III, Book IV; Section 47(2),[5] Chapter 7, Title I, Book V; and, Section

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[2] 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.

[3] Section 48. Procedure in Administrative Cases Against Non-Presidential Appointees. - (1) Administrative proceedings may be commenced against a subordinate officer or employee by the Secretary or head of office of equivalent rank, or head of local government, or chiefs of agencies, or regional directors, or upon sworn, written complaint of any other person.

[4] 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.
Section 7. Powers and Functions of the Secretary. - The Secretary shall.... (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....

[5] SECTION 47. Disciplinary Jurisdiction.— . . . . (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. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.

51,[6] Chapter 4, Book V, all of EO 292. The **headings** or **head notes** or **epigraphs** of these statutory provisions are themselves **convenient indexes to their contents** - "Authority," "Responsibility," "Powers," "Functions" and "Disciplinary Jurisdiction."

More important, the language and wordings of the foregoing statutory provisions **clearly indicate** who are **subject to the Secretary's disciplinary jurisdiction** - the **Secretary's subordinates** ***WITHOUT DISTINCTION*** as to whether the public officer is a presidential appointee or a non-presidential appointee. The **procedure** involved in the administrative case may be different from one to the other, but the **disciplinary jurisdiction of the Secretary over both of them** is very clear from the aforementioned provisions. Sections 6 and 7(5) of Book IV, Section 47(2) of Book V, and Section 51 of Book V, all of EO 292, could not have been made any clearer as to their meaning.

It bears emphasis that the *disciplinary jurisdiction of the Secretary over both presidential and non-presidential appointees* is **not exclusive** of the **disciplinary jurisdiction** that the President *may choose at any time to assume and exercise* over both types of appointees. Hence, **at any time**, the President **may assume and exercise disciplinary jurisdiction over an administrative case** involving either a presidential appointee or a non-presidential appointee **at any stage** of the administrative proceedings before the heads of the Executive Departments.

The **reason** for this ***reserved authority and power*** **of the President as Chief Executive** lies in the nature of our constitutional presidential system whereby all executive and administrative organizations are adjuncts of the Executive Department, and the heads of the various executive departments are mere assistants and agents of the President as Chief Executive. Except in cases where the Chief Executive is required by the *Constitution* or the law to act in person, or the exigencies of the situation demand that he or she act personally, the nature of the presidential bureaucracy involves the multifarious executive and administrative functions of the President as Chief Executive being performed by and through the executive departments, as his or her mere assistants and agents.

III.

The Doctrine of Qualified Political Agency

Assuming that Sections 6 and 7(5) of Book IV, Section 47(2) of Book V, and Section 51 of Book V, all of EO 292, are equivocal as to their meaning

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[6] 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.

(an assumption that I cannot accept given the clarity of these provisions), the **disciplinary jurisdiction** of an executive department head over **presidential appointees** can be **implied necessarily** from the **doctrine of qualified political agency.**

Under this doctrine, **department secretaries are alter egos or assistants of the President and their acts are presumed to be those of the latter unless disapproved or reprobated by him.** According to former Chief Justice Lucas Bersamin in *Manalang-Demegillo v. Trade and Investment Development Corporation of the Philippines*,[7] this doctrine of qualified political agency:

> ... also known as the alter ego doctrine, was introduced in the landmark case of Villena v. The Secretary of Interior. In said case, the Department of Justice, upon the request of the Secretary of Interior, **investigated** Makati Mayor Jose D. Villena and found him guilty of bribery, extortion, and abuse of authority. The Secretary of Interior **then recommended to the President the suspension from office** of Mayor Villena. Upon **approval by the President of the recommendation**, the **Secretary of Interior suspended Mayor Villena**. Unyielding, **Mayor Villena challenged his suspension, asserting that the Secretary of Interior had no authority to suspend him from office** because **there was no specific law granting such power to the Secretary** of Interior; and that **it was the President alone who was empowered to suspend local government officials. The Court disagreed with Mayor Villena and upheld his suspension,** holding that **the doctrine of qualified political agency warranted the suspension by the Secretary** of Interior. Justice Laurel, writing for the Court, opined:
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> After serious reflection, we have decided to sustain the contention of the government in this case on the broad proposition, albeit not suggested, that **under the presidential type of government** which we have adopted and considering the departmental organization established and continued in force by paragraph 1, section 12, Article VII, of our Constitution, **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 the law to act in person or 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.** (Runkle vs. United States [1887], 122 U. S., 543; 30 Law. ed., 1167; 7 Sup. Ct. Rep., 1141; see also U. S. vs. Eliason [1839], 16 Pet., 291; 10 Law. ed., 968; Jones vs. U. S. [1890], 137 U. S., 202; 34 Law. ed., 691; 11 Sup. Ct., Rep., 80; Wolsey vs. Chapman [1880], 101 U. S., 755; 25 Law. ed., 915; Wilcox vs. Jackson [1836], 13 Pet., 498; 10 Law. ed., 264.)
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> Fear is expressed by more than one member of this court that **the acceptance of the principle of qualified political agency in this and similar cases would result in the assumption of responsibility by the**

[7] 705 Phil. 331 (2013).

> **President of the Philippines for acts of any member of his cabinet, however illegal, irregular or improper** may be these acts. The implications, it is said, are serious. Fear, however, is no valid argument against the system once adopted, established and operated. Familiarity with the essential background of the type of Government established under our Constitution, in the light of certain well-known principles and practices that go with the system, should offer the necessary explanation. With reference to the Executive Department of the government, there is one purpose which is crystal-clear and is readily visible without the projection of judicial searchlight, and that is the establishment of a single, not plural, Executive. The first section of Article VII of the Constitution, dealing with the Executive Department, begins with the enunciation of the principle that "The executive power shall be vested in a President of the Philippines." This means that the President of the Philippines is the Executive of the Government of the Philippines, and no other. **The heads of the executive departments occupy political positions and hold office in an advisory capacity, and, in the language of Thomas Jefferson, "should be of the President's bosom confidence"** (7 Writings, Ford ed., 498), and in the language of Attorney-General Cushing (7 Op., Attorney-General, 453), "are subject to the direction of the President." **Without minimizing the importance of the heads of the various departments, their personality is in reality but the projection of that of the President.** Stated otherwise, and as forcibly characterized by Chief Justice Taft of the Supreme Court of the United States, **"each head of a department is, and must be, the President's alter ego in the matters of that department where the President is required by law to exercise authority."** (Myers vs. United States, 47 Sup. Ct. Rep., 21 at 30; 272 U.S. 52 at 133; 71 Law. Ed., 160). x x x.
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> **The doctrine of qualified political agency essentially postulates that the heads of the various executive departments are the alter egos of the President**, and, thus, **the actions taken by such heads in the performance of their official duties are deemed the acts of the President unless the President himself should disapprove such acts.** This doctrine is in recognition of the fact that in our presidential form of government, **all executive organizations are adjuncts of a single Chief Executive; that the heads of the Executive Departments are assistants and agents of the Chief Executive; and that the multiple executive functions of the President as the Chief Executive are performed through the Executive Departments.** The **doctrine has been adopted here out of practical necessity, considering that the President cannot be expected to personally perform the multifarious functions of the executive office.** *(emphasis added)*

Manalang-Demegillo identifies two instances where the doctrine does not apply: (i) where the public officer is not a presidential appointee; and (ii) where the action taken by the public officer is pursuant to a specific statutory mandate. Hence, **assuming** that there is no statute that grants disciplinary jurisdiction to a head of an executive department over presidential appointees *(an assumption that I strongly dispute because of the clear provisions of Sections 6 and 7(5) of Book IV, Section 47(2) of Book V, and Section 51 of Book V, all of EO 292)*, then ***the doctrine of qualified political agency fills in that perceived void.*** The doctrine is **not ousted** by Section 38 of PD 807 and Section 47 of EO 292 because these statutory provisions **relate only to** the **procedure** involved in an administrative case against non-presidential

appointees by a head of an executive department, **but not** the scope of public officers covered by the disciplinary jurisdiction of a head of an executive department.

Thus, **applying the doctrine of qualified political agency**, when a *Secretary*, such as the Secretary of the Department of Trade and Industry in the case at bar, *exercises disciplinary jurisdiction over a subordinate presidential appointee*, **the Secretary is doing so as the President's alter ego**. In resorting to the doctrine, *assuming there is no statutory authority granting the Secretary such power, which I strongly dispute*, the Secretary **does not need** an express and categorical mandate from the President to exercise disciplinary jurisdiction over the Secretary's subordinate presidential appointees, because **impliedly, the Secretary already has such mandate** as the President's alter ego. The Secretary's action vis-à-vis the subordinate presidential appointee is **deemed** to be the President's action - this **deeming rule** is the substance of the doctrine of qualified political agency - unless reprobated by the President himself.

It **goes without saying** that the doctrine of qualified political agency if resorted to by a head of an executive department **does not vest *exclusive*** disciplinary jurisdiction upon the latter *to the exclusion* of the President as Chief Executive. This is because, *consistent with the nature of a presidential system as stated above, and also with the nature of an agency relationship*, the department heads are **the President's mere factotums** whom the President as Chief Executive can at any time *hire, fire, replace, or take over from* at any stage of the department heads' execution of their functions.

As a statement of our country's rule of law, *the doctrine of qualified political agency is well entrenched*. In practical terms, the doctrine is responsive to the multifarious concerns that the President has to attend to and the fact that there are just so many presidential appointees out there. **At the first instance**, it is *best to leave the disciplining to the President's alter ego* as **he or she knows better how the presidential appointee has been performing or conducting himself or herself** in the public service.

I do recognize that the doctrine of qualified political agency does not apply "in cases where the Chief Executive is required by Constitution or law to act in person or the exigencies of the situation demand that he act personally." But we have to ask ourselves, to what particular acts do we apply the exception?

Villena v. Secretary of Interior[8] has already intimated that not every power vested in the President falls within the exception. Thus:

> In the deliberation of this case it has also been suggested that, admitting that the President of the Philippines is invested with the authority to suspend the petitioner, and it appearing that he had verbally approved or at least acquiesced in the action taken by the Secretary of the Interior, **the**

[8] 67 Phil. 451 (1939).

> **suspension of the petitioner should be sustained on the principle of approval or ratification of the act of the Secretary of the Interior by the President of the Philippines. There is, to be sure, more weight in this argument** than in the suggested generalization of section 37 of Act No. 4007. **Withal, at first blush, the argument of ratification may seem plausible under the circumstances, it should be observed that there are certain prerogative acts which, by their very nature, cannot be validated by subsequent approval or ratification by the President. There are certain constitutional powers and prerogatives of the Chief Executive of the Nation which must be exercised by him in person and no amount of approval or ratification will validate the exercise of any of those powers by any other person. Such, for instance, is his power to suspend the writ of habeas corpus and proclaim martial law (par. 3, sec. 11, Art. VII) and the exercise by him of the benign prerogative of mercy (par. 6, sec. 11, idem).** Upon the other hand, doubt is entertained by some members of the court whether the statement made by the Secretary to the President in the latter's behalf and by his authority that the President had no objection to the suspension of the petitioner could be accepted as an affirmative exercise of the power of suspension in this case, or that the verbal approval by the President of the suspension alleged in a pleading presented in this case by the Solicitor-General could be considered as a sufficient ratification in law.
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> After serious reflection, **we have decided to sustain the contention of the government in this case on the broad proposition,** albeit not suggested, **that under the presidential type of government which we have adopted and considering the departmental organization established and continued in force by paragraph 1, section 12, Article VII, of our Constitution, 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 the law to act in person or 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.** (Runkle vs. United States [1887], 122 U. S., 543; 30 Law. ed., 1167; 7 Sup. Ct. Rep., 1141; see also U. S. vs. Eliason [1839], 16 Pet., 291; 10 Law. ed., 968; Jones vs. U. S. [1890], 137 U. S., 202; 34 Law. ed., 691; 11 Sup. Ct., Rep., 80; Wolsey vs. Chapman [1880], 101 U. S., 755; 25 Law. ed., 915; Wilcox vs. Jackson [1836], 13 Pet., 498; 10 Law. ed., 264.)

We have thus long recognized that the President has powers that may or may not be delegated. This precept presupposes that the President *possesses those powers* as vested in him or her by the *Constitution* or by statute but may be exercised by his or her Cabinet members. Hence, it *cannot* be proposed that *simply because* the President has been vested a power *means* that this power *can no longer* be exercised by his or her alter egos under the doctrine of qualified political agency. Otherwise, the doctrine would become a useless rule since the President is the single Chief Executive upon whom the faithful execution of the laws has been explicitly vested by the *Constitution*. As to which power falls within the exception really depends *not* on the fact that the

power has been given to the President, *but* on the nature of the power thus accorded to the President and the gravity of the consequences of the use of such power.

Spouses Constantino v. Cuisia,[9] discussed the type of presidential powers that may be delegated – (i) those that may be considered to be within the expertise of the Cabinet member concerned, (ii) those that require focus on a welter of time-consuming detailed activities, which would unduly hamper the President's effectivity in running the government, those involving the formulation and execution of schemes pursuant to the policy publicly expressed by the President himself or herself, or (iii) though of vital public interest, those only akin to any contractual obligation undertaken by the sovereign arising not from any extraordinary incident but from the established functions of governance.

On the other hand, the exception includes "certain presidential powers which arise out of exceptional circumstances, and if exercised, would involve the suspension of fundamental freedoms, or at least call for the supersedence of executive prerogatives over those exercised by co-equal branches of government. The declaration of martial law, the suspension of the writ of habeas corpus, and the exercise of the pardoning power notwithstanding the judicial determination of guilt of the accused all fall within this special class that demands the exclusive exercise by the President of the constitutionally vested power. The list is by no means exclusive, but there must be a showing that the executive power in question is of similar gravitas and exceptional import." Thus:

> Second Issue: Delegation of Power
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> **Petitioners stress that unlike other powers which may be validly delegated by the President, the power to incur foreign debts is expressly reserved by the Constitution in the person of the President. They argue that the gravity by which the exercise of the power will affect the Filipino nation requires that the President alone must exercise this power.** They submit that the requirement of prior concurrence of an entity specifically named by the Constitution — the Monetary Board — reinforces the submission that not respondents but the President "alone and personally" can validly bind the country.
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> Petitioners' position is negated both by explicit constitutional and legal imprimaturs, as well as the doctrine of qualified political agency.
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> **The evident exigency of having the Secretary of Finance implement the decision of the President** to execute the debt-relief contracts is made manifest by the fact that the process of establishing and executing a strategy for managing the government's debt **is deep within the realm of the expertise of the Department of Finance, primed as it is to raise the required amount of funding, achieve its risk and cost objectives, and meet any other sovereign debt management goals.**

[9] 509 Phil. 486 (2005).

If, as petitioners would have it, the President were to personally exercise every aspect of the foreign borrowing power, he/she would have to pause from running the country long enough to focus on a welter of time-consuming detailed activities — the propriety of incurring/guaranteeing loans, studying and choosing among the many methods that may be taken toward this end, meeting countless times with creditor representatives to negotiate, obtaining the concurrence of the Monetary Board, explaining and defending the negotiated deal to the public, and more often than not, flying to the agreed place of execution to sign the documents. **This sort of constitutional interpretation would negate the very existence of cabinet positions and the respective expertise which the holders thereof are accorded and would unduly hamper the President's effectivity in running the government.**

Necessity thus gave birth to the doctrine of qualified political agency, later adopted in Villena v. Secretary of the Interior from American jurisprudence, viz:

> With reference to the Executive Department of the government, there is one purpose which is crystal-clear and is readily visible without the projection of judicial searchlight, and that is the establishment of a single, not plural, Executive. The first section of Article VII of the Constitution, dealing with the Executive Department, begins with the enunciation of the principle that "The executive power shall be vested in a President of the Philippines." This means that the President of the Philippines is the Executive of the Government of the Philippines, and no other. The heads of the executive departments occupy political positions and hold office in an advisory capacity, and, in the language of Thomas Jefferson, "should be of the President's bosom confidence" (7 Writings, Ford ed., 498), and, in the language of Attorney-General Cushing (7 Op., Attorney-General, 453), "are subject to the direction of the President." Without minimizing the importance of the heads of the various departments, their personality is in reality but the projection of that of the President. Stated otherwise, and as forcibly characterized by Chief Justice Taft of the Supreme Court of the United States, "each head of a department is, and must be, the President's alter ego in the matters of that department where the President is required by law to exercise authority" (Myers vs. United States, 47 Sup. Ct. Rep., 21 at 30; 272 U. S., 52 at 133; 71 Law. ed., 160).

As it was, the backdrop consisted of a major policy determination made by then President Aquino that sovereign debts have to be respected and the concomitant reality that the Philippines did not have enough funds to pay the debts. Inevitably, it fell upon the Secretary of Finance, as the alter ego of the President regarding "the sound and efficient management of the financial resources of the Government," **to formulate a scheme for the implementation of the policy publicly expressed by the President herself.**

Nevertheless, there are powers vested in the President by the Constitution which may not be delegated to or exercised by an agent or alter ego of the President. Justice Laurel, in his ponencia in Villena, makes this clear:

> Withal, at first blush, the argument of ratification may seem plausible under the circumstances, it should be observed that there are certain acts which, by their very nature, cannot be validated by subsequent approval or ratification by the President. There are certain constitutional powers and prerogatives of the Chief Executive of the Nation which must be exercised by him in person and no amount of approval or ratification will

> validate the exercise of any of those powers by any other person. Such, for instance, in his power to suspend the writ of habeas corpus and proclaim martial law (PAR. 3, SEC. 11, Art. VII) and the exercise by him of the benign prerogative of mercy (par. 6, sec. 11, idem).
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> These distinctions hold true to this day. **There are certain presidential powers which arise out of exceptional circumstances, and if exercised, would involve the suspension of fundamental freedoms, or at least call for the supersedence of executive prerogatives over those exercised by co-equal branches of government.** The declaration of martial law, the suspension of the writ of habeas corpus, and the exercise of the pardoning power notwithstanding the judicial determination of guilt of the accused, all fall within this special class that demands the exclusive exercise by the President of the constitutionally vested power. The list is by no means exclusive, but **there must be a showing that the executive power in question is of similar gravitas and exceptional import.**
>
> We cannot conclude that the power of the President to contract or guarantee foreign debts falls within the same exceptional class. Indubitably, the decision to contract or guarantee foreign debts is **of vital public interest, but only akin to any contractual obligation undertaken by the sovereign, which arises not from any extraordinary incident, but from the established functions of governance.**
>
> Another important qualification must be made. The Secretary of Finance or **any designated alter ego of the President is bound to secure the latter's prior consent to or subsequent ratification of his acts.** In the matter of contracting or guaranteeing foreign loans, the repudiation by the President of the very acts performed in this regard by the alter ego will definitely have binding effect. Had petitioners herein succeeded in demonstrating that **the President actually withheld approval and/or repudiated** the Financing Program, there could be a cause of action to nullify the acts of respondents. Notably though, petitioners do not assert that respondents pursued the Program without prior authorization of the President or that the terms of the contract were agreed upon without the President's authorization. Congruent with the avowed preference of then President Aquino to honor and restructure existing foreign debts, **the lack of showing that she countermanded the acts of respondents leads us to conclude that said acts carried presidential approval.** *(my emphasis)*

An example of a presidential power that falls outside the ambit of the doctrine of qualified political agency is found in *Resident Marine Mammals of the Protected Seascape of Tañon Strait v. Reyes*,[10] – the execution of a service contract for the exploration of petroleum under paragraph 4, Section 2, Article XII of the *Constitution*, which requires that the President himself or herself to enter into such contract.

Here, the power to remove a presidential appointee of respondent's rank and responsibilities is *not* of the type that engages the exception to the doctrine. It is *not* one that the Court has previously declared must be exercised personally by the President. It is *not* one that arises out of exceptional circumstances, or if exercised, would involve the suspension of fundamental

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[10] 758 Phil. 724 (2015).

freedoms, or at least call for the supersedence of executive prerogatives over those exercised by co-equal branches of government.

On the contrary, it is *one of those* falling within any of the enumerated exceptions to the exception. The removal of a presidential appointee of the rank and responsibilities of respondent is within the expertise of the Cabinet member concerned; it requires focus on a welter of time-consuming detailed activities, which would unduly hamper the President's effectivity in running the government; it involves the execution of the President's publicly stated policy against misfits in government; and, it is an ordinary incident that is part and parcel of the established functions of governance. As a result, it *cannot be seriously argued* that the power involved falls within the exception to the application of the doctrine of qualified political agency.

I *also have to caution* that just because the removal is decided and implemented by the Cabinet member in the ordinary course of law does not mean that the President is by-passed and his or her power to discipline his or her appointees is diluted. This is far from it.

As mentioned, the designated alter ego of the President is bound to secure the latter's prior consent to or subsequent ratification of his or her acts. For the President's repudiation of the very acts performed by the alter ego in this regard will definitely have a binding effect. If it is demonstrated that the President actually withheld approval or repudiated the alter ego's action, which in this day and age is easy to accomplish, there could be a cause of action to nullify the latter's acts. It is only when there is utter lack of showing that the President countermanded the acts of his or her Cabinet member can we conclude that these acts carried presidential approval.

Recognizing the application of the doctrine of qualified political agency in the instant case is especially convincing during emergency times. It gives department secretaries the latitude in helping the President in his tasks without unnecessarily burdening him. This is because the department secretaries know the capacities and actual performance of their subordinates, be they presidential or non-presidential appointees, as it is often the case that these subordinates, even those appointed by the President, are so appointed only upon the respective recommendations of the department secretaries. More, these Presidential appointees are mostly career people who are recommended and appointed on the basis of fitness and merit: not because they enjoy the trust and confidence of the President. They enjoy security of tenure and may be removed only upon valid or just cause. They do not serve at the pleasure of the President. Hence, unless disapproved by the President, it behooves us in the Court to recognize the dynamics within each department which the secretary concerned has foremost knowledge of. In any event, these presidential appointees are not removed whimsically and immediately but must be based on cause as they were appointed on the basis of merit and fitness. This is the necessary check that what the department secretaries are doing as personnel movements within their respective turfs are easily monitored and principled.

ACCORDINGLY, I vote to grant the petition and to reverse the assailed Order dated June 27, 2016 of the learned trial judge. I vote to declare as **VALID** the entire administrative proceedings conducted by the Department of Trade and Industry against Respondent Danilo B. Enriquez pursuant to Department Order No. 16-34 dated April 22, 2016.

AMY C. LAZARO-JAVIER
Associate Justice

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court