yet so much of the decision of the Director of Lands as relates to a question of law is in no sense conclusive upon the courts, but is subject to review. In other words, any action of the Director of Lands which is based upon a misconstruction of the law can be corrected by the courts." (Shepley v. Cowan [1876], 91 U.S., 330; Moore v. Robbins [1878], 96 U.S. 530; Marquez vs. Frisbie [1879], 101 U.S., 473; Black v. Jackson [1900], 177 U.S., 349; Johnson v. Riddle, *supra*.)

Wherefore, the decision appealed from is reversed. The court sets aside the decision of the Secretary of Agriculture and Natural Resources dated September 15, y949 as well as his order dated January 3, 1950, reaffirming said decision. The court revives the decision of the Director of Lands dated March 18, 1948 and orders that it be given due course. No pronouncement as to costs.

Bengzon, Montemayor, Jugo, Labrador and *Concepcion, J.J.*, concur.

Mr. Justice Alex. Reyes took no part.

PARAS, *C.J.*, dissenting:

It is true that Maximo Alfafara was granted on February 1, 1923, a permit to construct and maintain a fishpond within lot No. 741 of the Carcar cadastre, but it nevertheless appears that said permit was cancelled in 1926 after said fishpond was destroyed by a typhoon. In said year, Maximo Alfafara induced the respondent Benita Campana, et al. to convert the former fishpond into a riceland, the agreement being that the crops for the first three years would be for said respondents and that thereafter the crops would be divided equally between the former and the latter. According to the findings of the Secretary of Agriculture and Natural Resources, not contradicted in any way by those of the Director of Lands, Maximo Alfafara and his successors-in-interest never worked on the land or spent, anything for the improvements thereon. The question that arises is, after the land was declared available for homestead purposes by certification of the Director of Forestry in 1949, or long after the permit of Alfafara had been cancelled, whether the Alfafaras should be preferred to those who actually worked on the land. After the cancellation of his permit, Maximo Alfafara ceased to have any right or authority to continue holding the land. Yet, he was given for several years one half of the crop harvested by the respondents who took over the land in good faith and could already occupy it in their own right. It may fairly be considered that the original holder had impliedly parted with his rights, if any, for valuable consideration. It is plainly unjust, under the circumstances, to deprive the respondents of their priority to the portion of the land actually held by them as a homestead. It appears, however, that there were occupants of other portions of the lot who did not apply for homesteads, with the result that said portions may be awarded to the Alfafaras if they are still entitled thereto under the law.

I vote for the affirmance of the appealed decision.

Concurro con esta disidencia.

(*Fdo.*) *Guillermo F. Pablo*

VIII

Luis Manalang, Petitioner, vs. Aurelio Quitoriano, Emiliano Morabe, Zosimo G. Linato, and Mohamad de Venancio, Respondents, G. R. No. L-6898, April 30, 1954, Concepcion J.

1. LAW ON PUBLIC OFFICERS; REMOVAL OF PUBLIC OFFICERS. — Where the petitioner has never been commissioner of the National Employment Service, he could not have been, and has not been, removed therefrom.

2. ID.; ID.; ABOLITION OF OFFICE. — To remove an officer is to oust him from his office before the expiration of his term. A removal implies that the office *exists* after the ouster. Such is not the case of petitioner herein, for Republic Act No. 761 expressly abolished the Placement Bureau and, by implication, the office of director thereof, which petitioner held.

3. CONSTITUTIONAL LAW; ABOLITION OF BUREAU EXTINGUISHES RIGHT OF INCUMBENT TO THE OFFICE OF DIRECTOR THEREOF; NO VIOLATION OF CONSTITUTIONAL MANDATE ON CIVIL SERVICE. — Where the law expressly abolished the Placement Bureau, by implication, the office of director thereof, which cannot exist without said Bureau, is deemed abolished. By the abolition of said Bureau and of the office of its director, the right thereto of petitioner was necessarily extinguished thereby. There being no removal or suspension of the petitioner, but abolition of his former office of Director of the Placement Bureau, which is within the power of Congress to undertake by legislation, the constitutional mandate to the effect that "no officer or employee in the civil service shall be removed or suspended except for cause as provided by law" is not violated.

4. ID.; ID.; TRANSFER OF QUALIFIED PERSONNEL FROM ONE OFFICE TO ANOTHER. — Where the law abolishing the Placement Bureau explicitly provided for the transfer, among others, of the qualified personnel of the latter to the National Employment Service, such transfer connotes that the National Employment Service is different and distinct from the Placement Bureau, for a thing may be transferred only from one place to *another*, not to the same place. Had Congress intended the National Employment Service to be a mere amplification or enlargement of the Placement Bureau, the law would have directed the *retention* of the "qualified personnel" of the latter, not their *transfer* to the former.

5. ID.; ID.; NECESSITY OF NEW APPOINTMENT; EFFECT ON RIGHT OF INCUMBENT TO THE OFFICE. — Where, as it is admitted by petitioner, there is necessity of appointing Commissioner of the National Employment Service, it follows that he does not hold or occupy the latter's item, inasmuch as the right thereto may be acquired only by appointment.

6. ID.; SCOPE OF TERM "QUALIFIED PERSONNEL". — If the Director of the Placement Bureau were included in the phrase "qualified personnel" and, as a consequence, he automatically became Commissioner of the National Employment Service, the latter would have become organized *simultaneously* with the approval of Republic Act. No. 761, and the same would not have conditioned the transfer to the Service of the "qualified personnel" of the Placement Buureau "upon the organization of the Service." which connotes that the new office would be established at some *future* time. In common parlance, the word "personnel" is used generally to refer to the subordinate officials or clerical employees of an office or enterprise, not to the managers, directors or heads thereof.

7. ID.; PUBLIC OFFICERS; POWER OF CONGRESS TO APPOINT COMMISSIONER OF NATIONAL EMPLOYMENT SERVICE; APPOINTING POWER EXCLUSIVE PREROGATIVE OF PRESIDENT; LIMITATIONS ON POWER TO APPOINT. — Congress can not, either appoint the Commissioner of the Service, or impose upon the President the duty to appoint any particular person to said office. The appointing power is the exclusive prerogative of the President, upon which no limitations may be imposed by Congress, except those resulting from the need of securing the concurrence of the Commission on Appointments and from the exercise of the limited legislative power to prescribe the qualifications to a given appointive office.

8. ID.; ID.; RECORD OF PUBLIC SERVANT DOES NOT GRANT COURT POWER TO VEST IN HIM LEGAL TITLE; DUTY OF COURT. — Petitioner's record as a public servant — no matter how impressive it may be as an argument in favor of his consideration for appointment either as Commissioner or as Deputy Commissioner of the National Employment Ser-

vice — is a matter which should be addressed to the appointing power, in the exercise of its sound judgment and discretion, and does not suffice to grant the Court, whose duty is merely to apply the law, the power to vest in him a legal title which he does not have.

Luis Manalang in his own behalf.,

Solicitor General Juan Liwag and *Assistant Solicitor General Francisco Carreon* for the Respondents.

D E C I S I O N

CONCEPCION, *J.*;

Petitioner Luis Manalang contests, by quo warranto proceedings, the title of the incumbent Commissioner of the National Employment Service, and seeks to take possession of said office as the person allegedly entitled thereto.

The original respondent was Aurelio Quitoriano, who, at the time of the filing of the petition (August 4, 1953), held said office, which he assumed on July 1, 1953, by virtue of a designation made, in his favor, as Acting Commissioner of the National Employment Service, by the Office of the President of the Philippines. Subsequently, or on October 22, 1953, petitioner included, as respondents, Emiliano Morabe, who, on September 11, 1953, was designated Acting Commissioner of National Employment Service, and Zosimo G. Linato, the Collecting Disbursing and Property Officer of said National Employment Service — hereinafter referred to, for the sake of brevity, as the Service — in order to restrain him from paying, to respondent Morabe, the salary of the Commissioner of said Service. Still later, or on January 21, 1954, Mohamad de Venancio, who was designated Acting Commissioner of said Service, and assumed said office, on January 11 and 13, respectively, of the same year, was included as respondent.

It appears that, prior to July 1, 1953, and for some time prior thereto, petitioner Luis Manalang, was Director of the Placement Bureau, an office created by Executive Order No. 392, dated December 31, 1950 (46 Off. Gaz. No. 12, pp. 5913, 5920-5921), avowedly pursuant to the powers vested in the President by Republic Act No. 422. On June 20, 1952, Republic Act No. 761, entitled "An Act To Provide For the Organization Of A National Employment Service," was approved and became effective. Section 1 thereof partly provides:

> "x x x In order to ensure the best possible organization of the employment market as an integral part of the national program for the achievement and maintenance of maximum employment and the development and use of productive resources, there is hereby established a national system of free public employment offices to be known as the National Employment Service, hereinafter referred to as the Service. The Service shall be under the executive supervision and control of the Department of Labor, and shall have a chief who shall be known as the Commissioner of the National Employment Service hereinafter referred to as Commissioner. Said Commissioner shall be appointed by the President of the Philippines with the consent of the Commission on Appointments and shall receive compensation at the rate of nine thousand pesos *per annum*. A Deputy Commissioner shall also be appointed by the President of the Philippines with the consent of the Commission on Appointments and shall receive compensation at the rate of seven thousand two hundred pesos *per annum*."

On June 1, 1953, the then Secretary of Labor, Jose Figueueras, recommended the appointment of petitioner Luis Manalang as Commissioner of the Service. On June 29, 1953, respondent Aurelio Quitoriano, then Acting Secretary of Labor, made a similar recommendation in favor of Manalang, upon the ground that " he is best qualified" and "loyal to service and administration." Said Acting Secretary of Labor even informed Manalang that he would probably be appointed to the office in question. However, on July 1, 1953, Quitoriano was the one designated and sworn in, as Acting Commissioner of the Service. Such designation of Quitoriano — like the subsequent designation, first, of Emiliano Morabe, and, then, of Mohamad de Venancio — is now assailed by Manalang as "illegal" and "equivalent to removal of the petitioner from office without cause."

This pretense can not be sustained. To begin with, petitioner has never been Commissioner of the National Employment Service and, hence, he could not have been, and has not been, removed therefrom. Secondly, to remove an officer is to oust him from office before the expiration of his term. A removal implies that the office exists after the ouster. Such is not the case of petitioner herein, for Republic Act No. 761 *expressly abolished* the Placement Bureau, and, by implication, the office of director thereof, which, obviously, cannot exist without said Bureau. By the abolition of the latter and of said office, the right thereto of its incumbent, petitioner herein, was necessarily extinguished thereby. Accordingly, the constitutional mandate to the effect that "no officer or employee in the civil service shall be removed or suspended except for cause as provided by law" (Art XII, Sec. 4, Phil. Const.), is not in point, for there has been neither a removal nor a suspension of petitioner Manalang, but an abolition of his former office of Director of the Placement Bureau, which, admittedly, is within the power of Congress to undertake by legislation.

It is argued, however, in petitioner's memorandum, that

> "x x x there is no abolition but only fading away of the title Placement Bureau and *all* its functions are continued by the National Employment Service because the two titles cannot coexist. The seemingly additional duties were only brought about by the additional facilities like the district offices, Employment Service Advisory Councils, etc."

The question whether or not Republic Act. No. 761 abolished the Placement Bureau is one of legislative intent, about which there can be no controversy whatsoever, in view of the explicit declaration in the second paragraph of Section 1 of said Act reading:

> "Upon the organization of the service, the existing Placement Bureau and the existing Employment Office in the Commission of Social Welfare shall be abolished, and all the files, records, supplies, equipment, qualified personnel and unexpended balances of appropriations of said Bureau and Commission pertaining to said bureau or office shall thereupon be *transferred* to the Service." (Underscoring supplied.)

Incidentally, this transfer connotes that the National Employment Service is different and distinct from the Placement Bureau, for a thing may be transferred only from one place to *another*, not to the same place. Had Congress intended the National Employment Service to be a mere amplification or enlargement of the Placement Bureau, Republic Act No. 761 would have directed the *retention* of the "qualified personnel" of the latter, not their *transfer* to the former. Indeed, the Service includes, not only the functions pertaining to the former Employment Office in the Commission of Social Welfare, apart from other powers, not pertaining to either office, enumerated in Section 4 of Republic Act No. 761.

Again, if the absorption by the Service of the duties of the Placement Bureau, sufficed to justify the conclusion that the former and the latter are identical, then the Employment Office in the Commission of Social Welfare, would logically be entitled to make the same claim. At any rate, any possible doubt, on this point, is dispelled by the fact that, in his sponsorship speech, on the bill which later became Republic Act No. 761, Senator Magalona said:

> "Como ya he dicho al caballero de Rizal, *esta es una nueva oficina* que tiene su esfera de accion *distinta* de la de cualquiera de las divisiones de la Oficina de Trabajo. Ademas, como he dicho, es muy importante la creacion de esta oficina, porque con ella se trata de buscar remedio para esos dos millones de desempleados filipinos que hay ahora." (Vol. 111, Congressional Record, Senate, No. 56, April 23, 1952; underscoring supplied.)

It is next urged in petitioner's memorandum "that the item of National Employment Service Commissioner is not new and is occupied by the petitioner" and that the petitioner is entitled to said

office "automatically by operation of law," in view of the above quoted provision of Section 1 of Republic Act No. 761, relative to the transfer to the service of the "qualified personnel" of the Placement Bureau and of the Employment Office in the Commission of Social Welfare.

This contention is inconsistent with the very allegations of petitioner's pleadings. Thus, in paragraph 11 of his petition, it is alleged "that increasing the item and elaborating the title of a civil servant, although *necessitating a new appointment*, does not mean the ousting of the incumbent or declaring the item vacant." In paragraph 12 of the same pleading, petitioner averred that "on or about June 25, 1953, two days before the departure of President Quirino to Baltimore, petitioner wrote a confidential memorandum to his Excellency reminding him of the necessity of appointing anew the petitioner as head of the National Employment Service."

Having thus admitted — and correctly — that he needed a *new appointment* as Commissioner of the National Employment Service, it follows that petitioner does not hold — or, in his own words, occupy — the latter's item, inasmuch as the right thereto may be acquired only by appointment. What is more, Republic Act No. 761 requires specifically that said appointment be made by the President of the Philippines "with the consent of the Commission on Appointments." How could the President and the Commission on Appointments perform these acts if the Director of the Placement Bureau automatically became Commissioner of the National Employment Service?

Neither may petitioner profit by the provision of the second paragraph of Section 1 of Republic Act No. 761, concerning the transfer to the Service of the "qualified personnel" of the Placement Bureau and of the Employment Office in the Commission of Social Welfare, because:

1. Said transfer shall be effected only "upon the organization" of the National Employment Service, which does not take place until *after* the appointment of, at least, the commissioner thereof. If the Director of the Placement Bureau were included in the phrase "qualified personnel" and, as a consequence, he automatically became Commissioner of the Service, the latter would have become organized simultaneously with the approval of Republic Act No. 761, and the same would not have conditioned the aforementioned transfer "upon the organization of the Service," which connotes that the new office would be established at some future time. Indeed, in common parlance, the word "personnel" is used generally to refer to the subordinate officials or clerical employees of an office or enterprise, not to the managers, directors or heads thereof.

2. If "qualified personnel" included the heads of the offices affected by the establishment of the Service, then it would, also, include the chief of the Employment Office in the Commission of Social Welfare, who, following petitioner's line of argument, would, like petitioner herein, be, also, a Commissioner of the National Employment Service. The result would be that we would have either two commissioners of said Service or a Commission thereof consisting of two persons — instead of a Commissioner — and neither alternative is countenanced by Republic Act No. 761.

3. Congress can not, either appoint the Commissioner of the Service, or impose upon the President the duty to appoint any particular person to said office. The appointing power is the exclusive prerogative of the President, upon which no limitations may be imposed by Congress, except those resulting from the need of securing the concurrence of the Commission on Appointments and from the exercise of the limited legislative power to prescribe the qualifications to a given appointive office.

Petitioner alleges in paragraph 2 of his petition, which has been admitted by the respondents:

> "That he started as clerk in 1918 in the Bureau of Labor by reason of his civil service second grade eligibility; that he was appointed public defender, Incharge of the Pampanga Agency, in 1937 likewise, as a result of his civil service public defender eligibility and has successively held the positions of Chief of Social Improvement Division, Senior Assistant in the Office of the Secretary of Labor, Chief of the Wage Claims Division, Attorney of Labor (Incharge of Civil Cases), Chief of the Administrative Division, Chief of the Labor Inspection Division and Director of the Placement Bureau, also under the Department of Labor."

The many years spent by petitioner in the service of the Government have not escaped the attention of the Court. For this reason, we have even considered whether or not he should be held entitled to the position of Deputy Commissioner of the National Employment Service, which carries a compensation of ₱7,200.00 *per annum*, identical to that of Director of the Placement Bureau. However, it is our considered opinion that we can not make said finding, not only because the office of Deputy Commissioner of the National Employment Service is beyond the pale of the issues raised in this proceedings, which are limited to the position of Commissioner of said Service, but, also, because the reason militating against petitioner's claim to the latter position, apply equally to that of Deputy Commissioner. At any rate, petitioner's record as a public servant — no matter how impressive it may be as an argument in favor of his consideration for appointment either as Commissioner or as Deputy Commissioner of the Service — is a matter which should be addressed to the appointing power, in the exercise of its sound judgment and discretion, and does not suffice to grant the Court, whose duty is merely to apply the law, the power to vest in him a legal title which he does not have.

WHEREFORE, the petition is hereby dismissed and the writ prayed for denied, without costs.

Pablo, Bengzon, Reyes, Jugo, Bautista Angelo and *Labrador, J.J., concur.*

Mr. Justice Padilla did not take part.

MONTEMAYOR, J. concurring:

I fully concur in the learned opinion of Mr. Justice Concepcion. Its legal considerations and conclusions are based on and supported by the law which sometimes is harsh (dura lex), as it now has turned out to be with respect to petitioner.

Considering all the circumstances surrounding this case, I am convinced, and from what I could gather from the discussion during our deliberations, even my respected colleagues or many of them, agree with me that all the equities are with the petitioner. He fully and truly deserved a high and important office in the National Employment Service. Not only did he, for many years, prepare himself for the special and technical service to direct or assist direct the functions and activities of the National Employment Service, by his previous training and experience, but the Government itself prepared him for said service by sending him abroad to study and observe social legislation and employment, and later on his return even had him assist in the drafting of the very legislation that abolished his office of Director of Placement Bureau and created the National Employment Service. There is every reason to believe that at the time, petitioner was intended to head the new office or at least, be one of its chief officials, and he was given that understanding and expectation. Unfortunately, however, thru a quirk of Fate and at the last hour, he was not appointed. Result — he lost his chance; and what is worse, he lost his civil service post which was abolished, all thru no fault on his part.

This short concurring opinion is never intended to embarrass or serve as a reflection on the appointing power, particularly the present administration, which is not to blame. If a suitable post, preferably in his line, could be found for Petitioner, a wrong would be righted, the harshness of the law softened and tempered, and the interests of justice and equity served.

Chief Justice Paras and *Justice Bautista Angelo*, concur.