

TEODORO V. JULIANO, IN HIS CAPACITY AS MAYOR OF THE CITY OF COTABATO AND NICOLAS ALIÑO, PETITIONERS, VS. ABELARDO SUBIDO, IN HIS CAPACITY AS COMMISSIONER OF CIVIL SERVICE AND JO...*G.R. No. L-30825. February 25, 1975*

Ponente: FERNANDO, J.

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This certiorari and prohibition proceeding poses the issue of the competence of the then Commissioner of Civil Service, named as one of the respondents,[1] to impose qualifications for the position of a city legal officer that go beyond the statute. It arose from the following un-controverted facts: Petitioners Teodoro V. Juliano, as City Mayor of Cotabato, on December 20, 1968, extended an appointment to petitioner Nicolas Aliño as City Legal Officer. It was referred to the Regional Director of the Civil Service Commission, who in turn sent the papers to the Personnel Inspection Chief of the Civil Service Commission in Manila. Then came the second indorsement dated January 10, 1969 of respondent Commissioner of Civil Service disapproving such appointment. It was worded thus: "Respectfully returned to the Officer-in-charge, Regional Office No. 7, Davao City, the attached appointment of Atty. Nicolas Aliño, as City Legal Officer of Cotabato City, with the information that he does not meet the specialized experience requirement of at least four years of trial work in the Courts of First Instance [or] Superior Courts. Furthermore, the filling of this position shall be in accordance with section 4 of RA 5185 (the Decentralization Law) and Memorandum Circulars 1, 5 & 21 of this Office." [2] The resolution of such issue is far from difficult. As was pointed out by petitioners, in the absence of a statute enabling respondent Commissioner of Civil Service to require as a condition for eligibility to such position at least four years of trial work at a court of first instance level, then his actuation calls for nullification. It is undoubted that respondent Commissioner of Civil Service could not locate the source of such authority in the Constitution. In its absence, he must look to an enactment of the Congress of the Philippines. There is none. It is illusory to rely on Section 4 of Republic Act No. 5185. [3] It would follow as contended by petitioners that there was on his part an assumption of competence destitute of legal foundation. No doubt it was inspired by the best of motives in line with the desirable objective to improve the service. That is not enough. The question is one of power. It has to be granted. In its absence, the Constitution, the statute and the authorities frown on a pretension of its existence. So cases have held in unbroken line of decisions with an impressive concord of opinion. [4] Moreover, at least two of them, *Villegas vs. Subido* [5] and *Claudio vs. Subido*, [6] while not compelling, are more than just persuasive as to the conclusion to be reached, especially if note be taken of the constitutional objective of fostering local autonomy. We find for petitioners.

It must be so if deference is to be accorded to the doctrines that furnish the answer to the issue raised.

1. We start with this relevant excerpt from *Villegas vs. Subido*: [7] "Nothing is better settled in the law than that a public official exercises power, not rights. The government itself is merely an agency through which the will of the state is expressed and enforced. Its officers therefore are likewise agents entrusted with the responsibility of discharging its functions. As such there is no presumption that they are empowered to act. There must be a

delegation of such authority, either express or implied. In the absence of a valid grant, they are devoid of power. What they do suffers from a fatal infirmity. That principle cannot be sufficiently stressed. In the appropriate language of Chief Justice Hughes: 'It must be conceded that departmental zeal may not be permitted to outrun the authority conferred by statute.' Neither the high dignity of the office nor the righteousness of the motive then is an acceptable substitute. Otherwise the rule of law becomes a myth. Such an eventuality, we must take all pains to avoid." [8]

2. Nor is this the first time there is an expression of judicial opinion on the matter. In another case likewise entitled *Villegas vs. Subido*, [9] an appointment of City Mayor Antonio J. Villegas of petitioner Gregorio A. Ejercito as City Legal Officer was disapproved by respondent who was then Commissioner of Civil Service. A ground for such disapproval was the finding that he lacked the four years of trial work in a court of first instance or a superior court. There was, however, a certification from the Office of the Clerk of Court of the Court of First Instance indicating that petitioner Ejercito had met such a requirement. Accordingly, no ruling was strictly necessary on the question of whether or not the Commissioner of Civil Service could validly impose such a qualifying requisite. On this point, the opinion of Justice Capistrano is illuminating. Thus: "The petitioners contend that it is only the law that may prescribe qualifications for an office and that the Civil Service Commissioner may not do so, since he has no legislative power. The Solicitor General, unable to point out the legal source of respondent Civil Service Commissioner's alleged power to prescribe the qualification standard abovementioned, argues that at any rate said qualification standard is reasonable. Section 23 of the Civil Service Act of 1959 which provides in part that '[e]mployees shall be selected on the basis of their fitness to perform the duties and assume the responsibilities of the positions whether in the competitive or classified or in the non-competitive or unclassified service,' relied upon by respondent Civil Service Commissioner as the source of his alleged power, is not clear or definite on the point. However, we find it unnecessary to rule on the question presented in view of our finding below that Ejercito has met said qualification standard." [10]

It must have been the realization that Section 23 of the Civil Service Act [11] does not lend itself as a source of authority that led respondent Commissioner of Civil Service to rely on Section 4, paragraph 5 of Republic Act 5185 which provides: "The ranking shall be based on such factors as class of province, city or municipality where the vacancy occurs, seniority, efficiency rating, extraordinary qualifications and other supplementary criteria as may be prescribed by the Civil Service Commission." [12] It is the claim of respondent Commissioner that thereby he could prescribe not only special but extraordinary qualifications. The weakness of such a contention was exposed in the memorandum of petitioners. Thus: "At the outset, it bears emphasis that Paragraph 5 of Section 4, Republic Act 5185, refers to the ranking of already eligible and qualified persons for vacancies in the offices of heads and assistant heads of local offices as provided for in paragraph 4 of the same Section 4, Republic Act 5185. In other words, the provision relied upon by the respondent Commissioner does not empower him to prescribe any qualifications for the offices mentioned in the law for such power belongs to the legislature; what said provision grants him is only the authority to rank those who are already eligible and qualified, which function could be delegated to an administrative official like the Commissioner of Civil Service. Since the afore-quoted Paragraph 5 is corollary to the next preceding paragraph 4, the two paragraphs need to be quoted together: 'In cases of vacancies in the offices of heads and assistant heads of local offices, the governor or mayor shall fill them by appointment from a list of the five next ranking eligible and qualified persons as certified by the Civil Service Commissioner: Provided, That these five persons shall have stated beforehand that they will assume the position, if appointed. The ranking shall be based on such factors as class of province, city or municipality where the vacancy occurs, seniority, efficiency rating, extraordinary qualifications and other supplementary criteria as may be prescribed by the Civil Service Commission.' . . . Even a cursory reading of the aforecited provisions reveals that the authority granted to the respondent Commissioner merely consists of: (1) making a certification of the

'five next ranking eligible and qualified persons', which ranking shall be based, among others, on 'such factors' provided for in Paragraph 5; and (2) prescribing supplementary criteria on additional factors as bases for the ranking of the aforesaid already eligible and qualified persons. But nowhere is the respondent Commissioner empowered to prescribe any additional indispensable qualification like the controverted 'specialized experience requirement.' "[13]

3. The other case worth noting is *Claudio vs. Subido*,^[14] decided in 1971. While not directly in point, it indicates that the basic constitutional intentment to foster local autonomy, much more marked under the present Constitution; negates the existence of the challenged power of respondent Commissioner. The opinion of the Court starts in this wise: "The specific question in this suit for mandamus is whether or not respondent Commissioner of Civil Service could render nugatory the choice by the Mayor of Pasay City of the principal petitioner, Segundo C. Mastrili, as the City Legal Officer, unless it could be shown that such appointment was from a list of five ranking eligible and qualified persons as certified to by respondent official. For reasons to be set forth, we hold that he could not. Accordingly, mandamus lies."^[15] As in this case petitioner Mastrili was duly appointed to such office by petitioner Claudio, the City Mayor. Again, the Commissioner of Civil Service was of a different mind, invoking the aforesaid Section 4 of Republic Act No. 5185. He would insist that the person so chosen should come from a list of the five next ranking eligible and qualified persons. Why the Court decided adversely against such a pretension is made clear in the opinion in this wise: "No legal justification exists for the obstacle thus interposed by respondent Commissioner. Section 4 of Republic Act No. 5185 cannot be relied upon by him. That provision of law clearly does not call for application. The position in question, that of City Legal Officer, is one that requires the utmost confidence on the part of the Mayor. The relationship existing between a lawyer and his client, whether a private individual or a public officer, is one that depends on the highest degree of trust that the latter entertains for the counsel selected. So we have declared in no uncertain terms in *Besa vs. Philippine National Bank*. The choice of whom to appoint then is his, and not that of the respondent. Once exercised, and there being no dispute about the qualifications of the person appointed, the duty of respondent Commissioner is clear. In emphatic language of this Court, through the present Chief Justice: 'When the appointee is qualified, as petitioner herein admittedly is, then Commissioner of Civil Service has no choice but to attest to the appointment.' "[16]

More to the point is this paragraph from the opinion of the Court: "Another consideration equally decisive lends reinforcement to the conclusion reached by us. This Court, in the interpretation of statutes has adhered, as is but right, to the basic principle that the legislative objective must be fostered. It is in that light that Republic Act No. 5185, intended to assure further decentralization, is to be construed. There is no question, of course, that where any of its provisions specifically covers the situation, it must be enforced with undeviating rigidity. It would be to frustrate its purpose, however, if a condition therein set forth is to be seized upon to nullify the exercise of the appointing prerogative of a city executive entrusted with purely local affairs. Unless the statute then speaks in no uncertain terms, respondent Commissioner, a national official, certainly cannot be held to be vested with the power to ignore, much less overrule, a decision reached by the city or provincial dignitary in whom the competence to appoint resides. So to rule would be to emasculate local autonomy. We should guard against it, as was categorically announced in the excerpt above-noted from *Claudio vs. Pineda*. Nor should the approach this Court followed in *Villegas vs. Subido*, where the choice of the Mayor of the City of Manila as to who its legal officer should be was sustained by us, be overlooked. The right of petitioner Mastrili to the position of the City Legal Officer of Pasay City must be upheld."^[17]

WHEREFORE, the second indorsement of respondent Commissioner dated January 10, 1969 refusing to attest to the appointment of petitioner Nicolas Aliño as City Legal Officer of Cotabato is nullified, revoked and set aside and the Civil Service Commissioner acting in his place is restrained and prohibited from enforcing Memorandum

Circular Nos. 1, 5 and 21 against petitioner Aliño, whose appointment is considered valid and effective in all respects. No costs.

Barredo, Antonio, Fernandez, and Aquino, JJ., concur.

[1] The other respondent is Jose P. Barcelona, in his capacity as Regional Director of the Civil Service Commission, Regional Office No. 7, City of Davao.

[2] Annex A to Petition.

[3] The Decentralization Act (1967).

[4] Cf. Villanueva vs. Balallo, L-17745, Oct. 31, 1963, 9 SCRA 407; Villegas vs. Subido, L-24012, Aug. 9, 1965, 14 SCRA 872; City of Manila vs. Subido, L-25835, May 20, 1966, 17 SCRA 231; Millares vs. Subido, L-23281, Aug. 10, 1967, 20 SCRA 954; Mitra vs. Subido, L-21691, Sept. 15, 1967, 21 SCRA 127; Perez vs. Subido, L-26791, June 22, 1968, 23 SCRA 1074; Santos vs. Chico, L-24155, Sept. 28, 1968, 25 SCRA 343; Villegas vs. Subido, L-29588, Dec. 27, 1968, 26 SCRA 531; Villegas vs. Subido, L-26534, Nov. 28, 1969, 30 SCRA 498; Claudio vs. Subido, L-30865, Aug. 31, 1971, 40 SCRA 481; Mendoza vs. Social Security Commission, L-29189, April 11, 1972, 44 SCRA 373; Macasiano vs. Pangramuyen, L-35078, Oct. 23, 1973, 53 SCRA 352; Oliveros-Torre vs. Bayot, L-34433, July 31, 1974, 58 SCRA 272.

[5] L-29588, Dec. 27, 1968, 26 SCRA 531.

[6] L-30865, Aug. 31, 1971, 40 SCRA 481.

[7] L-26534, Nov. 28, 1969, 30 SCRA 498.

[8] Ibid, 510-511.

[9] L-29588, December 27, 1968, 26 SCRA 531.

[10] Ibid, 537-538.

[11] Republic Act 2260 (1959).

[12] The Decentralization Act (1967).

[13] Memorandum for the Petitioners, 9-10.

[14] L-30865, August 31, 1971, 40 SCRA 481.

[15] Ibid, 483.

[16] Ibid, 484. Besa vs. Philippine National Bank, L-26838, May 29, 1970 is reported in 33 SCRA 330. The citation from the opinion of the then Chief Justice Concepcion comes from Villanueva vs. Balallo, L-17745, October 31, 1963, 9 SCRA 407, 410.

[17] Ibid, 485-486. Pineda vs. Claudio, L-29661, May 13, 1969 is reported in 28 SCRA 34.

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