

DOLORES T. OCAMPO, PETITIONER, VS. HON. ABELARDO SUBIDO, COMMISSIONER OF CIVIL SERVICE, HON. JOSE YULO, SECRETARY OF JUSTICE AND LEONARDO T. JOSON, RESPONDENTS.*G.R. No. L-28344. August 27, 1976*

Ponente: MARTIN, J.

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This is a case of promotional appointment assailed as having been extended by a former Secretary of Justice and approved by the then Commissioner of Civil Service in violation of Section 23 of the Civil Service Act of 1959, as amended, more particularly the principle of seniority and the next-in-rank rule.

Sometime in 1962, the position of Deputy Clerk of Court in the cadastral section of the Court of First Instance of Nueva Ecija was left vacant by the promotion of the incumbent Deputy Clerk of Court. Respondent-appellee Leonardo T. Joson, a Docket Clerk, high school graduate and second grade eligible, applied for the position. Petitioner-appellant opposed the appointment in a letter dated July 27, 1964. According to her, she is more senior, next in rank, and better qualified than the proposed appointee. She is a first grade eligible and a holder of a Bachelor's degree in Commerce, with units earned for Bachelor of Science in Education. On September 1, 1964, then Secretary of Justice Salvador L. Mariño appointed Leonardo T. Joson as "Deputy Clerk of Court of the Court of First Instance of Nueva Ecija." Because of the prior protest of petitioner-appellant, the Commissioner of Civil Service returned the appointment to the Secretary of Justice on September 8, 1964.

Thereupon, the Secretary of Justice referred the protest of petitioner-appellant to Executive Judge Salvador C. Reyes of the Court of First Instance of Nueva Ecija for comment. On September 14, 1964, Judge Reyes ob-liged and recommended the promotion of respondent Joson to the vacant position. He commented that "(w)hile it is true that Stenographer Ocampo is a first grade eligible, there are also other compelling reasons why Mr. Joson deserves this promotion. Among these are his long government service, experience, high efficiency, industry, honesty, dedication as a public servant and other personal qualities. Because of these, the undersigned has full trust and confidence in Mr. Joson." [1] The Secretary of Justice concurred fully in the recommendation of Judge Reyes, "considering that the rule on seniority has been observed," and endorsed Joson's appointment to the Commissioner of Civil Service on September 16, 1964.

On October 8, 1964, Civil Service Commissioner Abelardo Subido returned the appointment "without action," with the request that the position be filled by promotion of an employee who meets the required qualifications, while dismissing petitioner-appellant's protest. Thus,

"Records show that Mrs. Ocampo now holds the position of Stenographer in the CFI Nueva Ecija at P3720 per annum effective September 1, 1963, whereas, Mr. Joson is a Docket Clerk, same Court at P2280 per annum effective July 1, 1961. Considering their pre-sent positions, Mr. Joson and Mrs. Ocampo may not be considered as next in rank employees to the position of Deputy Clerk of Court; hence, neither of them may claim preference for appointment thereto under Sec. 23, par. 3 of Rep. Act 2260. There is therefore no merit to the protest of Mrs.

Ocampo.

However, the proposed qualifications standard for the position of Deputy Clerk of Court calls for a holder of Bachelor of Laws degree with either Bar (RA 1080), Legal Assistant or Legal Researcher eligibility. As these papers show that Mr. Joson is only a high school graduate, he does not meet the minimum qualifications requirement for appointment as Deputy Clerk of Court. Moreover, his Second Grade eligibility (R.A. 186) is not appropriate for appointment to this position."

Nonetheless, the Secretary of Justice requested reconsideration of the Commissioner's disapproval of respondent Joson's appointment for the reason that, first, the Department of Justice had not fixed the Qualification Standard for Deputy Clerk of Court, the Civil Service Commission having granted its request for extension to file its merit and promotion plan together with the Qualification Standard of positions; second, the proposed Qualification Standard should apply only to original appointments, otherwise it would be unfair to deserving employees in the court who have given the best years of their lives serving it and would be depriving them of the much awaited opportunity for promotion, after having acquired the experience and training in performing the duties in said office; and third, for every year lacking in college education, one year of service in the agency would suffice. Correspondingly, the Civil Service Commissioner considered the experience gained by respondent Joson in the court as sufficient to offset what he lacked in legal education and approved his appointment on December 24, 1964.

Of this approval, petitioner-appellant moved for a reconsideration, but the Civil Service Commissioner denied her motion on March 9, 1966, ruling that "while Mrs. Ocampo may edge Mr. Joson in point of educational qualification, civil service eligibility and competence, because she is not the employee next in rank, the appointing authority has discretion to choose another employee for promotion pursuant to Section 23, par. 3 of Republic Act 2260." As a consequence, petitioner-appellant commenced a suit for mandamus and certiorari in the Court of First Instance of Manila to annul the appointment issued to Leonardo T. Joson and declare her entitled to the position as the law requires.

On June 7, 1967, upon a motion to dismiss filed by respondent Joson, the Court of First Instance of Manila dismissed petitioner-appellant's complaint for absence of cause of action. The trial court resolved:

"Under Republic Act 4814, petitioner does not possess the qualification for appointment to the position of Deputy Clerk of a branch of Courts of First Instance. According to her own complaint, she is only a stenographer, not a member of the Bar authorized to practice law in the Philippines. Not having the legal qualification for the position of deputy clerk of Courts of First Instance, her complaint states no cause of action. On the other hand, Republic Act 4814 exempts respondent Leonardo T. Joson from its operation, he having been appointed prior to its effectivity."

From this order of dismissal, petitioner Ocampo interposed the present appeal.

Does the complaint of petitioner Ocampo state a cause of action? Is she anyway entitled to the position in question?

1. We do not share the view of the court below in dismissing petitioner-appellant's complaint for lack of cause of action on the strength of Republic Act 4814. That law which amended Section 46 of the Judiciary Act on June 18, 1966, relevantly provides:

"The clerks of court, assistant clerks of court and branch clerks of court of Courts of First Instance shall be appointed by the President of the Philippines with the consent of the Commission on Appointments. No person shall be appointed to any of these positions unless he is duly authorized to practice law in the Philippines: Provided, however, That this requirement shall not affect persons who, at the date of the approval of this Act,

are holding any of the positions of clerk of court, assistant clerk of court, branch clerk of court or deputy clerk of court actually performing the work of a clerk of court assigned as such to a branch of the Court of First Instance, and who shall continue in office and be considered as clerks of court, assistant clerks of court, and branch clerks of court, respectively, in their corresponding courts or branches thereof without the need of new appointments * * *."

Proceeding from the assumption that the contested position is "branch clerk of court", as to which the requirement of membership in the Bar is imposed, the trial court held petitioner-appellant without cause of action[2] to question the appointment, she not being duly authorized to practice law. Petitioner-appellant is a mere holder of a Bachelor's degree in Commerce, not a lawyer by profession. The assumption is, of course, flawed with falsity. Notwithstanding the amendatory act, the position remained unchanged. It was not automatically converted into "branch clerk of court." After the effectivity of the amendment on June 18, 1966, respondent Joson stayed as "Deputy Clerk of Court;" he did not become a "branch clerk of court." In fact, from his appointment on September 1, 1964, respondent Joson continued to occupy the same contested position until the court below ordered the dismissal of petitioner-appellant's complaint on June 7, 1967, or even up to the present.[3] Possibly, respondent Joson did not meet the condition set forth in the amendatory act, i.e., "deputy clerk of court actually performing the work of a clerk of court assigned as such to a branch of the Court of First Instance." That merely because petitioner-appellant is not a member of the Bar is, therefore, no valid reason to bar her from questioning Joson's appointment. Membership in the Bar is required only for the position of clerk of court, assistant clerk of court, or branch clerk of court. Since the position disputed by petitioner-appellant is that of a "deputy clerk of court," the amendatory law does not apply.

2. But, the controversy does not end there. Petitioner-appellant claims that she is rightfully entitled to the position of deputy clerk of court. According to her, she is more senior, next in rank, and better qualified than the appointee, Leonardo T. Joson, vis- a- vis the latter's qualifications. She holds a Bachelor's degree in Commerce and has earned units in Education, whereas respondent Joson is a mere high school gra-duate. She is a first grade eligible, whereas respondent Joson is only a second grade.

Previously, vacancies in the competitive service in the government are filled in accordance with Section 23 of the Civil Service Act of 1959, as amended. That section provides, "whenever a vacancy occurs in any position in the competitive service in the government * * * *, the officer or employee next in rank preferably in the same office, who is competent and qualified to hold the position and who possesses an appropriate civil service eligibility shall be appointed thereto. If the vacancy is not filled by promotion as provided herein, then same shall be filled by transfer of present employees in the government service, by reinstatement, by re-employment of persons separated through reduction in force, or by appointment of persons with the Civil Service eligibility appropriate to the position * * * *"[4] In other words, a vacant position (be it new or created by the cessation of an incumbent in office) shall be filled by promotion of the ranking officer or employee, who is competent and qualified to hold the same.[5] Otherwise, the va-cancy may be filled by transfer, reinstatement, re-employment or certification, not necessarily in that order.[6]

We do not think that the principle of seniority and the next in rank rule had been transgressed by the Secretary of Justice in appointing respondent Joson, undoubtedly in the nature of a promotion, as Deputy Clerk of Court. The Secretary of Justice expressly represented that the rule on seniority had been observed by his department when the promotional appointment of respondent Joson was prepared. In like manner, the Commissioner of Civil Service dismissed petitioner-appellant's protest and denied her motion for reconsideration because her position of stenographer is not next in rank to the position of Deputy Clerk of Court. Not being next in rank, she could not claim preference under Section 23 to the vacant office, even on the assumption that she possesses, as she claims, better qualifications and education than respondent Joson.[7]

3. Respondent Joson's qualifications are attacked by petitioner Ocampo as insufficient for the position of Deputy Clerk of Court. We failed to see, however, any existing law or regulation specifically enumerating the qualifications for said position with which Joson's qualifications could be compared. On the contrary, the Secretary of Justice had expressed that the Justice Department had not yet fixed the Qualification Standard for Deputy Clerk of Court,[8] the Civil Service Commission has granted it further extension to file its merit and promotion plan together with the Qualification Standard of positions. In the absence of this Qualification Standard, the Secretary of Justice, as the department head of the Justice Department, enjoys the clear prerogative to resolve who can best discharge the functions of the vacant office after ascertaining the nature of the work to be done. This is because a department head is settled in that knowledgeable position of discerning the primary needs of the office and the answers thereto, more especially as regards the proper personnel force. In the words of Justice Fernando, speaking for the Court in *Reyes v. Abeleda*,[9] "If there be adherence to the concept that public office is a public trust, as there ought to be, the criterion should be what public welfare demands, what satisfies public interest. For it is axiomatic that public needs could best be attended to by officials, about whose competency and ability there is no question. To that overmastering requirement, personal ambition must of necessity yield. Discretion if not plenary, at least sufficient, should thus be granted to those entrusted with the responsibility of administering the officers concerned, primarily the department heads. They are in the most favorable position to determine who can best fulfill the functions of the office thus vacated." The exception lies where a law, ordinance, or regulation specifies the qualifications for a particular position, compliance with which is mandatory.

4. By and large, the appointing power of the Secretary of Justice does not appear to have been indiscriminately exercised. Respondent Joson's experience and training in the Court of First Instance of Nueva Ecija since his appointment on August 6, 1946, especially his present duties as Docket Clerk, which is allied to the position of Deputy Clerk of Court, according to the Secretary, had been viewed by the latter as enough to qualify him "very satisfactorily" for the said position. His lack of college education is offset by his years of service in the court. So did the Commissioner of Civil Service similarly hold in reconsidering the disapproval of Joson's appointment. It has decided "to consider the experience gained by Mr. Joson in the Court of First Instance as sufficient to offset what he lacks in legal education." Moreover, the Secretary of Justice has opined that the proposed Qualification Standard, if at all, should apply only to original appointments (promotional appointments excluded) in order not to prejudice those deserving employees in the court who have given the best years of their lives serving it.

We accord respect to the foregoing views of the secretary of Justice. In essence, the power to appoint is a matter of discretion.[10] The appointing power has a wide latitude of choice as to who is best qualified for the position.[11] No "rigid or mechanistic formula" is imposed by law upon it, "compliance with which is inexorable and a deviation therefrom fatal." [12] Such discretion is generally unhampered by judicial intervention. Possibility of abuse of power to appoint is not discounted though. But, this is no argument against the concession of power as there is no power not susceptible of abuse.[13]

5. Perforce, certiorari does not lie to render the promotional appointment extended to respondent Leonardo T. Joson null and void. Nor is the writ of mandamus available to compel the respondent officials to declare petitioner Dolores T. Ocampo entitled to the position in question. Mandamus never issues in doubtful cases.[14] It only issues when there is a clear legal duty imposed upon the officer sought to be compelled to perform the act, or the duty of appointing petitioner-appellant in the present case, and when the party in whose favor the appointment is to be extended has a clear legal right to such appointment.[15] Petitioner-appellant has failed to show that she has a legal right to the position of Deputy Clerk of Court which the respondent officials could be compelled to do.

ACCORDINGLY , the appealed order of the lower court, dated June 7, 1967, dismissing petitioner-appellant's

complaint for certiorari and mandamus is hereby sustained. The appointment of respondent Leonardo T. Joson to the position of Deputy Clerk of Court is declared to be in accordance with law. No costs.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Muñoz Palma, and Concepcion, Jr.,[*] JJ., concur.

[1] Joson was appointed as clerk on August 8, 1946; while Mrs. Ocampo was first appointed as stenographer on July 1, 1955.

[2] A "cause of action" is an action or omission of one party in violation of the legal right or rights of the other. Its essential elements are legal right of the plain-tiff, correlative obligation of the defendant, and an act or omission of the defendant in violation of said legal right. (*Mathay v. Consolidated Bank and Trust Co.*, L-23136, Aug. 26, 1974, Second Division, per Zaldivar, J., 58 SCRA 559; *Vda. de Enriquez v. De la Rosa*, L-29764, November 29, 1973, per Fernando, J., 54 SCRA 140.

[3] See service record of respondent Joson and plan-tilla for 1976, CFI Nueva Ecija, on file with Administrative Office, Supreme Court.

[4] The new Civil Service Decree (PD 807, October 6, 1975) now provides a scheme for promotional appointments: (1) First level, clerical, trades, crafts, and custodial service positions which involve non-professional or sub-professional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies, the employees in the department who occupy the next lower positions in the occupational group under which the vacant position is classified, and in other functionally related occupational groups and who are competent, qua-lyfied and with the appropriate civil service eligibility shall be considered for promotion; (2) Second level, professional, technical, and scientific positions which involve professional, technical, or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief level, the employees in the government service who occupy the next lower positions in the occupational group under which the vacant position is classified and in other functionally related occupational groups and who are competent, qualified and with the appropriate civil ser-vice eligibility shall be considered for promotion. If the vacancy is not filled by promotion, the same shall be filled by transfer of present employees in the government service, by reinstatement, by re-employment of persons separated through reduction in force, or by appointment of persons with the civil service eligibility appropriate to the positions. (Sec. 19, Art. VIII).

[5] *Millares v. Subido*, L-23281, August 10, 1967, 20 SCRA 962-63.

[6] *Pineda v. Claudio*, L-29661, May 13, 1969, 28 SCRA 46.

[7] *Castro v. Del Rosario*, L-17915, January 31, 1967, 19 SCRA 203.

[8] A "qualification Standard" expresses the minimum requirements for a class of positions in terms of education, training and experience, civil service eligibility, physical fitness, and other qualities required for successful per-formance. The degree of qualifications of an officer or employee shall be determined by the appointing authority on the basis of the qualification standard for the particular position. (Sec. 20, Art. VIII, Civil Service Decree, ante).

[9] L-25491, February 27, 1968, 22 SCRA 830.

[10] *Jimenez v. Francisco*, 100 Phil. 1032 (1957).

[11] *David v. Dancel*, L-21485, July 26, 1966, 17 SCRA 702; *Aguilar v. Nieva, Jr.*, L-28422, July 29, 1971, 40

SCRA 121; *Torres v. Borja*, L-31947, March 21, 1974, 56 SCRA 53; *Oliveros-Torre v. Bayot*, L-34433, July 31, 1974, First Division, per Makasiar, J., 58 SCRA 292.

[12] *Reyes v. Abeleda*, see fn. 9, ante.

[13] *Garcia v. Lejano*, 109 Phil. 132 (1960); see also *Angara v. Electoral Commission*, 63 Phil. 139 (1936).

[14] *Orencia v. Enrile*, L-28997, February 22, 1974, Second Division, per Fernando, J., 55 SCRA 584-85 and cases cited.

[15] *Isada vs. Bocar*, L-33535, January 17, 1975, Second Division, per Barredo, J., 62 SCRA 46.

[*] Designated to sit in the First Division.

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