

SAID BENZAR ALI, PETITIONER, VS. CLAUDIO TEEHANKEE, IN HIS CAPACITY AS SECRETARY OF JUSTICE, ABELARDO SUBIDO, IN HIS CAPACITY AS CIVIL SERVICE COMMISSIONER AND INDAH HAJA TEO, R...*G.R. No. L-29505. August 30, 1972*

Ponente: MAKALINTAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/27302d09c1b9/>**MAKALINTAL, J.:**

The petitioner, Said Benzar Ali, brought this petition for mandamus and quo warranto to question the order of the respondent Secretary of Justice, now Associate Justice of the Supreme Court, Claudio Teehankee, terminating the petitioner's services as clerk in the Court of First Instance of Sulu. The other respondent, Abelardo Subido, has been impleaded in his capacity as Civil Service Commissioner.

The petitioner was first appointed as clerk by then Undersecretary of Justice Melanio T. Singzon on September 8, 1965. His appointment was temporary, vice a certain Yusup Mansur, was on leave without pay. The attestation of the Civil Service Commission was to the effect that the appointment was "to continue not beyond six (6) months from effective date" thereof. The position was in the classified civil service, referred to as Item 3203 in the Appropriations Act for the Fiscal Year 1965-1966. The petitioner assumed office on October 15, 1965. Six months later, or on April 15, 1966, his services were terminated.

On July 19, 1967 he was again appointed to the same position by then Undersecretary of Justice Teehankee. This second appointment was simply as "clerk" and did not say whether it was temporary, provisional or permanent. It was, however, attested by the Commissioner of Civil Service as "provisional". A little over a month after the petitioner assumed office, or on September 26, 1967, the respondent who was then already Secretary of Justice, gave notice terminating the petitioner's services effective October 1, 1967, and on October 4 following filled the vacancy thus created with another appointee.

The question here is whether the petitioner's appointment on July 19, 1967 was temporary or provisional.[1] If temporary, then the same was terminable at anytime. If provisional, the appointee could be removed only for just cause, or if he was to be replaced by another appointee taken from a list of eligibles certified by the Commissioner of Civil Service.

The attestation made by the Commissioner of Civil Service wherein the petitioner's disputed appointment was characterized as provisional did not necessarily make it so, for the Commissioner of Civil Service is not empowered to determine the kind or nature of the appointment extended by the appointing officer,[2] his authority being limited to approving or reviewing the appointment in the light of the requirements of the Civil Service Law.[3] What appears to Us decisive in this case is that the petitioner had no civil service eligibility either for the position to which he had been appointed or for any other position in the classified services; that there was no reason why his second appointment should be any different in character from the first, which was to the same position and admittedly temporary, considering that he had not acquired any eligibility or additional qualifications

in the interim to warrant a provisional appointment. Under Section 24(c) of the Civil Service Act (Act No. 2260, as amended) a person who has not qualified in an appropriate examination may nevertheless be given a provisional appointment provided he "otherwise meets the requirements for appointment to a regular position in the competitive service," and provided that "there is no appropriate register of eligibles at the time of appointment." The "competitive service," according to Section 4 of the same Act, includes "positions for appointment to which prior qualification or successful passing in an appropriate examination is required." In other words, in order that a person may be extended a provisional appointment, he must have passed an examination which would qualify him for appointment "to a regular position in the competitive service," although such examination is not the one appropriate for the position to which he is appointed. (*Ferrer vs. Hechanova*, Jan. 25, 1967, 19 SCRA 106; *Del Rosario vs. Subido*, July 25, 1968, 24 SCRA 117).

It is therefore a fair presumption that the respondent, then Undersecretary of Justice Teehankee, intended that the appointment he extended to the petitioner was likewise temporary; and this intention was demonstrated by the fact that a little over a month thereafter he gave notice of termination to the petitioner.

The petitioner, who is a member of the cultural minorities, adverts to the following provision of RA 2260:

"SEC. 23 * * * * *

"* * * And provided, finally, That for the period of ten years from the approval of this Act and in line with the policy of Congress to accelerate the integration of the cultural minorities, whenever the appointment of persons belonging to said cultural minorities is called for in the interest of the service as determined by the appointing authority, with the concurrence of the commissioner of civil service, the examination requirements provided in this Act, when not practicable, may be dispensed with in appointments within their respective provinces if such persons meet the educational and other qualifications required for the office or employment. * * *."

He, however, has not alleged, much less shown, that the examination required for the position he held has been dispensed with by the appointing power for being impractical. There is nothing in the record, particularly in his appointment, which would give this impression. Indeed, in his separate letters to the Secretary of Justice and to the Commissioner of Civil Service, both dated Sept. 30, 1967, he stated that his appointment had acquired the status of permanence not because the examination requirement had been dispensed with, but that, apart from his being a member of the cultural minorities, "there is no available civil service eligible applicant" and "there is no civil service eligible available for said post." In either statement, the clear implication is that the examination requirement was still present, only that there was no eligible available for the post.

The writs prayed for are denied and the petition is dismissed, without costs.

Concepcion, C.J., Zaldivar, Castro, Fernando, Antonio, and Esguerra, JJ., concur.

Barredo, Makasiar, and Teehankee, JJ., took no part.

[1] Sec. 24, RA No. 2260, as it existed in 1967, provides:

* * * * *

(c) Provisional Appointment. - A provisional appointment may be issued upon the prior authorization of the Commissioner in accordance with the provisions of this Act and the rules and standards promulgated in pursuance thereto to a person who has not qualified in an appropriate examination but who otherwise meets the requirements for appointment to a regular position in the competitive service, whenever a vacancy occurs and the filling thereof is necessary in the interest of the service and there is no appropriate register of eligibles at the time of appointment.

(d) Temporary Appointment. - A person may receive a temporary appointment to a position needed only for a limited period not exceeding six months, provided that preference in filling such position be given to persons on appropriate eligible lists.

[2] Santos vs. Chico, L-24155, Sept. 28, 1968.

[3] Villanueva vs. Balallo, L-17745, Oct. 31, 1963.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.