

MA. JESUSA C. GONZALES, PETITIONER, VS. CIVIL SERVICE COMMISSION, RESPONDENT.

Ponente: BATO, JR., J.

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BATO, JR., J.:

This is a Petition for Review[1] seeking to annul and set aside the Decision No. 140074[2] dated 3 February 2014 and Resolution No. 1400899[3] dated 17 June 2014 issued by respondent Civil Service Commission ("CSC") which rendered as invalid the permanent appointment of petitioner Ma. Jesusa C. Gonzales ("Gonzales") as MIS Analyst (SG 14) at the Light Rail Transit Authority ("LRTA").

The factual antecedents of the case are as follows:

On 1 October 2001, Gonzales started working at the LRTA as Secretary B of the Project Manager at the LRTA Line 2 Project Management Office on a contractual basis. Thereafter, also on a contractual employment status, she was appointed as Liaison Officer A on 13 September 2004, Internal Control Assistant A of the LRTA Internal Audit Department on 29 June 2005 and Computer Services Programmer B of the LRTA Management Information Systems Division ("LRTA-MIS Division") sometime in 2006.[4]

On 29 July 2010, still on a contractual employment status, Gonzales was reappointed as Management Information System Analyst of the LRTA-MIS Division.[5]

On 25 November 2010, the CSC published in their Bulletin a Notice of Vacancy for the following positions:

"NOTICE OF VACANCY

x x x

REGION: NCR; AGENCY: Light Rail Transit Authority; PLACE OF ASSIGNMENT: Aurora Boulevard, Pasay City; POSITION/TITLE: MANAGEMENT INFORMATION ANALYST; SG: 14; ITEM No.: 54;

QUALIFICATION STANDARDS :

Education : Bachelor's degree relevant to the job

Experience : One (1) year of relevant experience

Training : Four (4) hours of relevant training

Eligibility :

Career Service (Professional) /

Second Level Eligibility"[6]

Gonzales applied for the above-stated position of Management Information Analyst. Thereafter, after undergoing the selection process, the LRTA Personnel Selection Board found her to be qualified for the position and recommended her appointment.[7]

On 10 January 2011, LRTA Administrator Rafael S. Rodriguez ("Rodriguez") issued an appointment in favor of Gonzales, which explicitly reads as follows:

"Gng. Gonzales:

Kayo ay nahirang na MIS Analyst (SG-14) na may katayuang Permanent sa Light Rail Transit Authority sa pasahod na Dalawang Daan Dalawampu't Siyam na Libo Tatlong Daan Apatnapu't Apat na Piso bawat taon. Ito ay magkakabisa sa petsa ng pagganap ng tungkulin subali't di aaga sa petsa ng pagpirma ng puno ng tanggapan o appointing authority.

Ang appointment na ito ay Reappointment bilang kapalit ni N/A na N/A at ayon sa Plantilya Aytem Blg. 55 Pahina 3. x x x"[8]

However, on 22 August 2012, the CSC–National Capital Region (CSC-NCR) rendered a Decision invalidating the permanent appointment of Gonzales on 10 January 2011 as Management Information System Analyst because there are no CSC-approved qualification standards for the said position.[9]

As a consequence, on 17 September 2012, the Officer-In-Charge of LRTA, Pasay City Emerson L. Benitez ("Benitez") sent a letter to the CSC requesting for the revision/correction of the position title of Gonzales, in her appointment, from Management Information System Analyst to Management Information Analyst.[10] Hoping that his request would be approved, Benitez explained as follows:

"In this regard, please be informed that we already made representations with the Department of Budget and Management for the revision/amendment of the DBM-approved position which is Management Information/Systems Analyst (SG-14) (copy attached as Annex A) to either Management Systems Analyst (SG-14) or Management Information Analyst (SG-14), both with an approved qualification standard under the Civil Service Commission (copy attached as Annexes B & C). However, we were advised by DBM that LRTA may either use Management Systems Analyst or Management Information Analyst both with SG-14 and with the same Qualification Standards as the slash (/) in between information and systems means either or." [11]

Treating aforesaid letter as a petition for review, the CSC rendered Decision No. 140074 on 3 February 2014, the dispositive portion of which reads –

"WHEREFORE, the letter (treated as petition for review) of Emerson L. Benitez requesting the revision/correction of Ma. Jesusa C. Gonzales' appointment from Management Information System Analyst to Management Information Analyst is hereby DISMISSED. Accordingly, the Decision dated August 22, 2010 of the Civil Service Commission – National Capital Region (CSC-NCR), Quezon City, invalidating the January 10, 2011 permanent appointment of Ma. Jesusa C. Gonzales as Management Information System Analyst is hereby AFFIRMED. However, this is without prejudice to the reappointment of Gonzales to the position of Management Information Analyst provided that the appointment process shall be conducted prior to said reappointment and subject to the provision of pertinent civil service law, rules and regulations." [12]

The CSC ratiocinated that pursuant to the 1997 Revised Qualification Standards Manual and after verification with the Human Resource Policies and Standards Office, the qualification standards for the position of Management Information System Analyst has yet to be approved as there are no existing qualification standards submitted and approved by the CSC. The CSC emphasized that the qualification standards serve as the basis for the determination by the appointing authority of the degree of qualification of an applicant to a position. Thus, the formulation of the qualification standards should precede the issuance of an appointment.

Aggrieved, Gonzales filed a Motion for Reconsideration[13] which was likewise denied by the CSC in its Resolution No. 1400899[14] dated 17 June 2014. Hence, the present recourse of Gonzales.

The petition must fail.

At the outset, it is noteworthy that Sections 6 and 7 of Rule 43 of the 1997 Revised Rules of Civil Procedure provides for the requirements of filing a petition for review, viz.:

"Section 6. Contents of the petition. – The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein."

"Section 7. Effect of failure to comply with requirements. – The failure of the petitioner to comply with any of the foregoing requirements regarding the payment of the docket and other lawful fees, the deposit for costs, proof of service of the petition, and the contents of and the documents which should accompany the petition shall be sufficient ground for the dismissal thereof."

A perusal of the rollo of this case reveals that Gonzales violated the above-quoted rules.

First. Gonzales failed to attach the Decision dated 22 August 2012 of the CSC invalidating her permanent appointment as Management Information System Analyst. In *Justina Maniebo vs. Hon. Court of Appeals and the Civil Service Commission*,^[15] the Supreme Court ruled that the Court of Appeals correctly dismissed the petition for review on the ground of petitioner's non-compliance with Section 6, Rule 43. The Supreme Court ratiocinated, viz.:

"The rule clearly requires the petition for review to be accompanied by 'a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers.' The requirement is intended to immediately enable the CA to determine whether to give due course to the appeal or not by having all the materials necessary to make such determination before it. This is because an appeal under Rule 43 is a discretionary mode of appeal, which the CA may either dismiss if it finds the petition to be patently without merit, or prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration; or may process by requiring the respondent to file a comment on the petition, not a motion to dismiss, within 10 days from notice."

In the case at bar, it must be noted that Gonzales is not only assailing the Decision No. 140074 dated 3 February 2014 and the Resolution No. 1400899 dated 17 June 2014 of the CSC but likewise, more importantly, the pertinent and relevant Decision dated 22 August 2012. The Decision dated 22 August 2012 is the very Decision reviewed in the assailed Decision and Resolution before this Court and should be included in this petition, as it is the ultimate source of Gonzales' complaint and subject of review.^[16]

Second. The verification and certification of non-forum shopping and the affidavit of service is defective as the Notary Public before whom it was subscribed and sworn to, i.e., Atty. Gervacio B. Ortiz, failed to indicate his office address in violation of the 2004 Rules on Notarial Practice.^[17] In *Nellie Vda. De Formoso, et al. vs. Philippine National Bank, et al.*,^[18] the Supreme Court clearly mandated that non-compliance or any defect in the certification against non-forum shopping is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the rule on the ground of "substantial compliance" or presence of special circumstances or compelling reasons.

It must be emphasized that the right to appeal is neither a natural right nor a part of due process. It is merely a procedural remedy of statutory origin and may be exercised only in the manner prescribed by the provisions of

law authorizing its exercise.[19] Failure to do so often leads to the loss of the right to appeal.[20]

At any rate, even if We ignore the aforementioned procedural infirmities in the interest of substantial justice, the petition would still fail.

To make an appointment in the career service fully effective, the following requisites should be present to render the same as valid:

- the appointing authority must have the power to appoint at the time he makes the appointment;[21]
- the appointee possesses all the qualifications, including appropriate civil service eligibility, and none of the disqualifications prescribed by law for the position;[22]
- the position is vacant;[23]
- the appointment has been approved by the Civil Service Commission;[24] and
- the appointee accepts the appointment by taking the oath and entering the discharge of his office.

In the case at bar, Gonzales' appointment to the position of Management Information Systems Analyst is invalid because requisites numbers 2, 3 and 4 are wanting in the case primarily because the position to which she was appointed to is inexistent. While she applied for the vacant position of Management Information Analyst, she was unfortunately appointed to the non-existent position of Management Information System Analyst. Consequently, there can be no qualification standards to which the CSC may refer her credentials to determine whether she is qualified for the position and the CSC may not give its approval to an inexistent position.

As such, the CSC did not err in invalidating Gonzales' appointment as Management Information System Analyst as it was merely exercising its power to review appointments on the basis of the Civil Service Law.[25] In *Civil Service Commission vs. Pastor B. Tinaya*,[26] the Supreme Court explained that the power of the CSC to approve and disapprove all appointments, whether original or promotional, involves the determination of whether the appointee possesses the appropriate eligibility or required qualification. Being the central personnel agency of the government, the Supreme Court ruled that, to make it fully effective, an appointment to a civil service position must comply with all the legal requirements. Thus, the law requires the appointment to be submitted to the CSC, which will ascertain in the main, whether the proposed appointee is qualified to hold the position and whether the rules pertinent to the process of appointment were observed.[27]

Furthermore, it is noteworthy that Gonzales did not refute the findings of facts of the CSC and, instead, admitted in her petition that there was an error in her appointment. Thus, the findings of fact of the CSC are binding upon this Court as it is well supported by the evidence on record, namely, Notice of Vacancy[28] dated 25 November 2010, Recommendation[29] dated 5 January 2011, Appointment[30] dated 10 January 2011, Qualification Standards,[31] and the Staffing Pattern for Permanent Positions.[32] The CSC aptly ruled –

"In view of the constitutional mandate that appointments in the Civil Service shall be made only according to merit and fitness, qualifications standards to positions in the government are prescribed. The qualification standards shall serve as the basis for the determination by the appointing authority of the degree of qualification of an applicant to a position. Therefore, it is only but logical that the formulation of the qualification standards precedes the issuance of an appointment.

The CSC rule which was made as basis in invalidating Gonzales' appointment finds legal basis in Section 12(3), Book V of the Administrative Code of 1987 which conferred on the Commission the authority to promulgate policies, standards and guidelines for efficient and effective personnel administration in the government. Pursuant to said authority, the Commission promulgated the Revised Policies on Qualification Standards. Section 2, Part I thereof provides, as follows:

'2. Qualification Standards shall be established for all positions in the Index of Occupational Services (IOS) or positions subsequently created and approved in accordance with existing laws, policies, rules and regulations. Qualification Standards, which have been established and approved by the Commission for positions in a particular sector, may be adopted for the same position titles in other government sectors.

'Appointments to positions in government without qualification standards approved by the Civil Service Commission (CSC) shall be disapproved or invalidated. x x x.' (Underscoring and emphasis supplied found in the original)

It is clear from the above rule that appointments to positions without qualification standards approved by the CSC suffer the fate of being disapproved or invalidated.

Verily, it is clear that all appointments to positions without approved qualification standards should be disapproved or invalidated. The position of Management Information System Analyst was likewise not included/existing in the Department of Budget and Management's (DBM) Index of Occupational Services (IOS).

Further, the request of Benitez for correction or revision of Gonzales' appointment to the extent of replacing her position title from Management Information System Analyst to Management Information Analyst should be denied.

It is well settled that the CSC is not a co-manager, or surrogate administrator of government offices and agencies. Its functions and authority are limited to approving or reviewing appointments to determine their concordance with the requirements of the Civil Service Law. Consequently, the Commission does not have the power to correct or revise the position title of Gonzales in order to circumvent the well-established rule that positions without an approved qualification standards should be disapproved or invalidated.

It is incumbent upon the LRTA to effect any changes in the appointment of Gonzales. This is in consonance with Section 65, Chapter 10, Subtitle A, Title I, Book V of the Administrative Code of 1987, which states that the appointing authority shall be accountable for all the appointments he/she issues. In case an appointment is found to have been issued in violation of the Civil Service Law and Rules, the appointing authority shall be personally liable for the pay that would have accrued had the employment been lawful."^[33]

In fine, under the circumstances prevailing in this case, this Court opts not to exercise its discretionary appellate jurisdiction to entertain the petition as there is no prima facie^[34] error of facts or law on the part of the CSC that would warrant the reversal or modification of Decision No. 140074 dated 3 February 2014 and Resolution No. 1400899 dated 17 June 2014.^[35]

WHEREFORE, for being procedurally infirmed and patently without merit, the instant petition for certiorari is hereby DENIED DUE COURSE and DISMISSED outright.

The above-entitled case is now considered CLOSED and TERMINATED.

SO ORDERED.

Zalameda, and Diy, JJ., concur.

[1] Rollo, pp. 3-15.

[2] Rollo, pp. 23-26.

[3] Rollo, pp. 28-32.

[4] Petition for Review, p. 3; Rollo, p. 5.

[5] Ibid.

[6] Notice of Vacancy dated 25 November; Rollo, p. 44.

[7] Recommendation dated 5 January 2011, attached as Annex "E" of the Petition for Review, Rollo, p. 45; Letter dated 22 February 2010 attached as Annex "G" of the Petition for Review, Rollo, pp. 48-49; Staffing Pattern for Permanent Position attached as Annex "H" of the Petition for Review; Rollo, p. 51; Qualification Standards attached as Annex "I" of the Petition for Review, Rollo, p. 61.

[8] Appointment dated 10 January 2011 attached as Annex "F" of Petition for Review; Rollo, p. 46.

[9] As stated in Decision No. 140074 dated 3 February 2014, attached as Annex "A" of the Petition for Review; Rollo, p. 23.

[10] Letter dated 17 September 2012 attached as Annex "K" of the Petition for Review; Rollo, p. 63.

[11] Ibid.

[12] Decision No. 140074 dated 3 February 2014, attached as Annex "A" of the Petition for Review, p. 4; Rollo, p. 26.

[13] Rollo, pp. 33-43.

[14] Rollo, pp. 28-32.

[15] G.R. No. 158708, 10 August 2010.

[16] Ibid.

[17] Section 2, Rule VIII, A.M. No. 02-8-13-SC, otherwise known as the 2004 Rules on Notarial Practice.

"SEC. 2. Contents of the Concluding Part of the Notarial Certificate.— The notarial certificate shall include the following:

(a)

the name of the notary public as exactly indicated in the commission;

(b)

the serial number of the commission of the notary public;

(c)

the words "Notary Public" and the province or city where the notary public is commissioned, the expiration date of the commission, the office address of the notary public; and

(d)

the roll of attorney's number, the professional tax receipt number and the place and date of issuance thereof, and the IBP membership number."

[18] G.R. No. 154704, 1 June 2011.

[19] *Neplum vs. Orbeso*, G.R. No. 141986, 11 July 2002.

[20] *Neypes vs. Court of Appeals*, 506 Phil. 613, 621 (2005).

[21] *Niere vs. CFI of Negros Occidental*, 54 SCRA 165 (1973).

[22] *Home Insurance and Guaranty Corp. vs. Civil Service Commission*, 220 SCRA 148 (1993).

[23] *Menzon vs. Petilla*, 197 SCRA 251 (1991).

[24] Section 9 (h), Presidential Decree No. 807, otherwise known as the Civil Service Law.

[25] *Nenita E. dela Cruz vs. The Honorable Civil Service Commission and Cynthia C. Cruz*, G.R. No. 88333, 2 December 1991.

[26] G.R. No. 154898, 16 February 2005.

[27] *Ibid.*

[28] Attached as Annex "D" of the Petition for Review; Rollo, p. 44.

[29] Attached as Annex "E" of the Petition for Review; Rollo, p. 45.

[30] Attached as Annex "F" of Petition for Review; Rollo, p. 46.

[31] Attached as Annex "I" of the Petition for Review; Rollo, p. 61.

[32] Attached as Annex "H" of the Petition for Review; Rollo, pp. 50-60.

[33] Decision No. 140074 dated 3 February 2014, pp. 2-4; Rollo pp. 24-26.

[34] Prima facie evidence is defined as: Evidence good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense, and which if not rebutted or contradicted, will remain sufficient. Evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue it supports, but which may be contradicted by other evidence. (as defined in *Robert P. Wa-Acon vs. People of the Philippines*, G.R. No. 164575, 6 December 2006)

[35] Section 10, Rule 43 of the Rules of Court –

"SEC. 10. Due course. – If upon the filing of the comment or such other pleadings or documents as may be

required or allowed by the Court of Appeals or upon the expiration of the period for the filing thereof, and on the basis of the petition or the records the Court of Appeals finds prima facie that the court or agency concerned has committed errors of fact or law that would warrant reversal or modification of the award, judgment, final order or resolution sought to be reviewed, it may give due course to the petition; otherwise, it shall dismiss the same. The findings of fact of the court or agency concerned, when supported by substantial evidence, shall be binding on the Court of Appeals."

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