

**PEDRO V. AGUILAR, PETITIONER-APPELLANT, VS. PEDRO NIEVA, JR.,
HON. PEDRO M. GIMENEZ, IN HIS CAPACITY AS AUDITOR GENERAL,
AND DEVELOPMENT BANK OF THE PHILIPPINES,
RESPONDENTS-APP...**

G.R. No. L-28422. July 29, 1971

Ponente: FERNANDO, J.

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FERNANDO, J.:

The alleged disregard of the statutory requirement under Section 23 of the Civil Service Act that in case of a vacancy occurring "in any position in the competitive service in the government or in any government-owned or controlled corporation or entity, the officer or employee next in rank preferably in the same office, who is competent and qualified to hold the position"[1] should be appointed thereto, was the basis of an action for quo warranto, prohibition and mandamus which was dismissed by the lower court. In this appeal, petitioner Pedro V. Aguilar would insist on his claim to the contested position of Auditor of the Development Bank of the Philippines on the above provision, stressing what he deemed were his superior qualifications, bolstered by seniority, ignoring that respondent Pedro Nieva, Jr., the choice of respondent Auditor General, had had experience as Assistant Auditor for almost ten years in said Bank with a consistent efficiency rating of not less than 90 percent and that he had discharged the function of Auditor in such office in an acting capacity during the absence of the incumbent. In petitioner's brief as appellant, he would impress on this Court that the appointing power, in the light of the above statutory requirement, was well-nigh bereft of discretion, this notwithstanding that respondent Auditor General is a constitutional official and the vacancy did occur in a position of responsibility, requiring the exercise of judgment in which previous experience and training were certainly helpful. Moreover, petitioner's stand is opposed to the principle hitherto followed in past decisions. Accordingly, we affirm.

The petition for quo warranto, prohibition and mandamus with preliminary injunction was filed on May 17, 1965, the prayer being for a revocation of the designation by respondent Auditor General of respondent Pedro Nieva, Jr. as acting Auditor of the Development Bank of the Philippines and the withdrawal of the appointment issued in his favor dated May 15, 1965 as well as for a declaration that petitioner was the person legally entitled to hold such office of Auditor in said bank. After hearing, a decision was rendered by the lower court on October 3, 1967 dismissing the case.

In the decision now on appeal, the facts bearing on the respective qualifications of petitioner and respondent Pedro Nieva, Jr. were set out in some detail. This is what was said of petitioner: "Petitioner was Auditor and Representative of the Auditor General in the Philippine Veterans Bank, he having been appointed on February 6, 1964, [and thereafter] qualified [as such]. He was receiving a compensation at the rate of P18,000.00 per annum and allowances and privileges allowed or authorized by Republic Act No. 2260. Lately, he was appointed Auditor of the National Waterworks & Sewerage Authority and assumed the office." [2] The antecedents of the case were set forth thus: "On April 23, 1965, he wrote a letter to the Auditor General reiterating his 'often repeated request' for him 'to favorably consider him (petitioner) for the prospective vacancy of Auditor' of respondent Development

Bank of the Philip-pines upon the retirement of then incumbent Isidro Bunag on May 14, 1965, when he would reach the compulsory retire-ment age. On May 3, 1965, petitioner wrote a letter to respondent Commissioner of Civil Service, stating, among other things, that 'there is a strong possibility that in filling this position (that of Auditor of DBP), the Auditor General may abuse the time honored principles of seniority, merit and other factors, as rumors are going around that Mr. Pedro Nieva, who is one of the assistant auditors of the DBP, is the probable appointee for the position.' He asked respondent Commissioner of Civil Service to consider his said letter as a protest against the appointment of respondent Pedro Nieva, Jr. On May 6, 1965, the Auditor General issued Office Order No. 33691, designating respondent Pedro Nieva, Jr., as Acting Auditor of respondent Development Bank of the Philip-pines, effective May 15, 1965."[3]

At that time, respondent was Assistant Auditor of the Development Bank of the Philippines. Thereafter, on May 15, 1965, he was given a permanent appointment to such a position, the previous incumbent having retired the day previously. This petition came two days thereafter. The decision likewise noted the qualifications of respondent Nieva, Jr. thus: "Respondent Auditor General alleges as special and affirmative defenses, among other things, that in designating respondent Pedro Nieva, Jr., as acting Auditor the following were taken into consideration, to wit: (a) he was the Assistant Auditor next in rank to the Auditor of the respondent Bank; (b) he had been Assistant Auditor of the respondent Bank for almost ten years, with a consistent efficiency rating of not less than 90%; (c) as such Assistant Auditor of the respondent Bank for that length of time, he was familiar and well-versed with the workings of the Auditing Department; (d) for sometime before he had discharged the function of Auditor in an acting capacity in the absence of the incumbent; and (e) he had been in the service of the Govern-ment since 1933 with an unblemished record; that the Auditor of the respondent Bank, like all other Auditors of government corporations and entities, is in truth and in fact merely the representative of the Auditor General between whom fiduciary relation exists, characterized by the highest degree of mutual trust and confidence, so much so that the Auditor General himself may validly assume the duties of Auditor of the respondent Bank; that accordingly, should the answering respondent choose to appoint a representative, it is but fair and just that he be conceded a reasonable degree of latitude and discretion in selecting the man of his confidence who, for obvious reasons, may be the respondent Nieva who is the Assistant Auditor next in rank to the Auditor of the respondent Bank; * * *."[4]

It was not entirely unexpected, therefore, that petitioner would be at the losing end, although the decision appeared to have been based more on procedural deficiencies, including the failure to exhaust administrative remedies. In this appeal, petitioner is even more insistent in his claim that he ought to have been the choice for the contested position of Auditor under a mechanistic view of the aforesaid statutory provision, the decisive factors to be taken into account, according to him, being his seniority in the service which started in 1923, ten years earlier than that of respondent Nieva, Jr. as well as his having worked as auditor as far back as 1938 unlike respondent Nieva, Jr., who started performing such functions only in 1952. Even then, there is not enough to justify a reversal of the decision on appeal, especially so if account be taken, as mentioned in the opening paragraph of this opinion, of the doctrines thus far handed down by this Court. To that, we now turn.

1. The first decision where a question involving Section 23 was passed upon by this Court is the 1967 decision, *Castro v. Del Rosario*.^[5] The facts in that case were analogous to this litigation. The contested position there was that of Assistant Regional Revenue Director for Manila. Respondent Tomas Toledo was appointed upon a vacancy occurring therein with the promotion of its occupant. He was then Chief Revenue Inspector stationed in Manila. He entered the government service only on July 16, 1948. On the other hand, petitioner Teodoro M. Castro entered the government service in 1931 and as far back as July 1, 1957, was already an Assistant Revenue Regional Director of another district. In Manila, however, Toledo was the next ranking official. It was on that basis that the claim of petitioner was rejected by the Secretary of Finance. Then came the action for quo warranto,

certiorari and mandamus, reliance being had on the aforesaid Section 23 of the Civil Service Act.

The appointment of Toledo was sustained. After noting that at the time of such vacancy, he was stationed precisely in the same district, came this relevant portion of the opinion of this Court, penned by Justice Makalintal; "Obviously the position of Chief Revenue Inspector (Examiner) was considered to be of the same rank as the position of Assistant Revenue Regional Director for regions other than Manila. And Toledo, who was then Chief Revenue Inspector (Examiner), was chosen because in the opinion of the Commissioner of Internal Revenue he was already in the region where the vacancy occurred and therefore was more familiar with the work there, and both his salary range and efficiency rating were higher than Castro's aside from the fact that he was already performing the functions of the office." [6]

2. Then came *Reyes v. Abeleda*, [7] decided in 1968. The question in that case was who between petitioner Reyes and respondent Abeleda was entitled to be promoted as the officer next in rank to the position of Budget Officer IV of the Bureau of Public Schools. Petitioner Reyes had been employed in the government, particularly in the School Finance Division of the Bureau of Public Schools, since July 25, 1940, while respondent Abeleda began his career in the government service on August 16, 1937 and was already the Acting Budget Officer III of such School Finance Division. He was thus the officer next in rank in such division and was therefore, in the opinion of respondent Secretary of Education, entitled to the promotion. Petitioner filed an action with the Court of First Instance for certiorari and mandamus. It was dismissed, and he appealed. On appeal, the decision was sustained, the opinion of the Court stressing the discretion that is vested in the appointing official. Thus: "It would seem fairly obvious then that the law does not impose a rigid or mechanistic formula on the appointing power, compliance with which is inexorable and a deviation therefrom fatal. Far from it. 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. Unless, therefore, the law speaks in the most mandatory and peremptory tone, considering all the circumstances, there should be, as there has been, full recognition of the wide scope of such discretionary authority. Happily, there is nothing in the Civil Service Act, which is fittingly concerned with protecting the rights of those in the career service, that, rightly construed, calls for a different conclusion. It is well worth repeating that the broad authority of a department head appears indisputable. Such is the policy of the law, a policy reflected with fidelity in the decisions of this Court." [8] The later case of *Del Rosario v. Subido* [9] quoted with approval the above excerpt.

3. The *Del Rosario* opinion even went further. Thus: "This Court was even more emphatic in its recognition of such broad discretion in the appointing power in a case of later date, where, in the opinion penned by Justice Castro, it was stated: 'For it is not enough that an aspirant is qualified and eligible or that he is next in rank or in line for promotion, albeit by passive prescription. It is just as necessary, in order for public administration to be dynamic and responsive to the needs of the times, that the local executive be allowed the choice of men of his confidence, provided they are qualified and eligible, who in his best estimation are possessed of the requisite reputation, integrity, knowledgeability, energy and judgment. After all, it is the local executive, more than anyone else, who is primarily responsible for efficient governmental administration in the locality and the effective maintenance of peace and order therein, and is directly answerable to the people who elected him.'" [10]

4. Nothing can be clearer, therefore, than that the dismissal of this petition was in accordance with law. Whatever sympathy might be elicited for public officials who had stayed long in the public service and who, for some

reason or another, did not receive the promotion to which they felt they should be entitled, cannot obscure the discretion that the law leaves in the hands of the appointing official. The statutory requirement under Section 23 of the Civil Service Act does not lend itself to any other interpretation. The basic intent of the law itself is to foster a more efficient public service. It is ever timely to keep in mind the public trust character of any governmental office. Its creation is justifiable only if it serves to assure that the functions of government, whether through the traditional public offices or government-owned or controlled corporations, be attended to with dispatch and competence. Necessarily then, the appointing official, especially so where his position is a constitutional creation, as in this case, must be left that necessary latitude of choice as to who can best discharge the responsibilities of the office where the vacancy occurs. This is what happened here, and no legal infirmity can validly be said to have vitiated such an appointment. The impassioned plea of counsel for petitioner, while not without its plausibility, if the individual welfare of those in the ranks of government personnel were considered, certainly cannot merit our approval in the light of the greater and more exigent public interest which has to be served.

WHEREFORE, the lower court decision of October 3, 1967 is affirmed. With costs against petitioner-appellant.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Ruiz Castro, and Teehankee, JJ., concur.

Barredo, Villamor, and Makasiar, JJ., no part.

Dizon, J., on official leave.

[1] Section 23 of Republic Act No. 2260, the Civil Service Act of 1959, insofar as pertinent, reads as follows: "Whenever a vacancy occurs in any position in the competitive service in the government or in any government-owned or controlled corporation or entity, 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: Provided, That should there be two or more persons under equal circumstances, seniority shall be given preference; * * *."

[2] Decision, Appendix to the Brief for the Petitioner-Appellant, p. 38.

[3] Ibid, p. 39.

[4] Ibid, pp. 44-45.

[5] L-17915, January 31, 1967, 19 SCRA 196.

[6] Ibid, pp. 202-203.

[7] L-25491, February 27, 1968, 22 SCRA 825.

[8] Ibid, pp. 830-831.

[9] L-30091, Jan. 30, 1970, 31 SCRA 382.

[10] Ibid, p. 389, citing Pineda v. Claudio, L-29661, May 13, 1969, 28 SCRA 34.

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