

SOLEDAD M. EUGENIO, PETITIONER, VS. DELIA TORRIJOS, JUAN C. TUVERA, PRESIDENTIAL ASSISTANT OF THE OFFICE OF THE PRESIDENT OF THE PHILIPPINES, JOSE R. MELO, COMMISSIONER, FAUSTO ...

G.R. No. L-44042. October 09, 1978

Ponente: FERNANDO, Acting C.J.

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FERNANDO, Acting C.J.:

The inherent weakness in the appeal of petitioner to respondent Juan C. Tuvera,[1] Presidential Assistant, based on her claim that she was possessed of a preferential right to the position of Assistant Chief of the Scientific Library and Documentation Division of the National Science Development Board instead of respondent Delia Torrijos, is quite apparent. There is the insuperable obstacle posed by a number of authoritative decisions of this Court starting from *Castro v. Del Rosario*,[2] recognizing the discretion that could be exercised by the appointing authority as to who is entitled to promotion considering as the basic factor the needs of the public service, especially so where no question may plausibly be raised as to who is the employee next in rank. The latest case reiterating such a doctrine, *Government Service Insurance System v. Government Service Insurance System Supervisors' Union*,[3] was promulgated barely a month ago, to be exact, on the last day of August. This certiorari proceeding against the order of respondent Tuvera dismissing her appeal is doomed to failure. So we rule.

The petition did not disclose when respondent Torrijos was appointed to the disputed position of Scientific Documentation Officer III of the National Science Development Board.[4] It merely alleged: "That on February 13, 1975, petitioner filed a letter-protest contesting the legality of the appointment of respondent, Delia Torrijos as Assistant Chief of the Scientific Library and Documentation Division addressed to the NSDB Chairman then, Mr. Florencio Medina, * * * ."[5] It was denied.[6] Then on March 24, 1975, she appealed to the Civil Service Commission.[7] It did not prosper.[8] The decision of respondent Varela, Deputy Commissioner of the Civil Service Commission, is worded thus: "The appointment of Miss Delia Torrijos as Scientific Library and Documentation Assistant Chief in the SLDD, National Science Development Board at P11, 328 per annum, effective upon assumption of duty is protested by Mesdames Soledad Eugenio and Rogelia Cordero for alleged violation of the provision of Memorandum Circular No. 650 series of 1973 of the Office of the President. These papers show that in the Report of the NSDB Complaints Committee dated April 29, 1975, the body found the protestants not an employee next in rank, and recommended the dismissal of their protest; and that in a 2nd Indorsement dated April 30, 1975, that Office concurred in the finding of the Committee. It appears that the contested position is located in the Science Library and Documentation Division of the Education and Public Affairs Service of the NSDB proper; that the said Division as well as the position are newly created offices as a result of the implementation of the Integrated Reorganization Plan; that the appointee prior to the reorganization of the NSDB, was holding the position of Librarian Documentation in the Philippine Textile Research Institute; that protestant Eugenio was then holding the position of Education Supervisor in the Education, and Training Division of the NSDB, while protestant Cordero was holding the position of Supervising Science Abstractor in

the NIST; and that the filling of the position is a part of the reorganization of the NSDB pursuant to the Integrated Reorganization Plan. Under the above circumstances, the protestee and protestants are not employees next in rank, therefore none of them may claim preferential right to the position. Thus the filling of the position lies in the sound discretion of the appointing power. It is a well-settled rule in this jurisdiction that the appointing power should be allowed broad discretion to select men of his choice, as he is responsible for the performance of his office.* * * In view thereof, and considering that the protestants are not employees next in rank, the instant appeals are hereby dismissed for lack of merit. The bio-data of Miss Torrijos show that she holds a Bachelor of Science in Chemical Engineering degree and 24 units leading to Master of Public Administration. In addition, she has several in-service training courses including some taken abroad. She also claims to have attended meetings and/or conferences on matters related to the function of the position; and to have published several relevant articles. She has been working in that Office since 1958, and held such positions as Helper, Science Abstractor, Administrative Assistant and Documentalist Librarian. She was on several occasions designated to handle additional functions which are all relevant or akin to the functions of the contested position. She is a Chemical Engineer (RA 1080), First Grade (Unassembled) and Library Assistant eligible. As it appears that the appointee is qualified and eligible, and in the absence of a showing that her selection has been the result of grave abuse of discretion or fraud, this Office finds the appointment in order. Wherefore, the same is hereby attested as permanent under Sec. 24(b) RA 2260, as amended."[9]

The matter was then elevated, after a motion for reconsideration proved futile,[10] to respondent Tuvera, who, on June 1, 1976, dismissed the appeal.[11] The challenged order explained why: "This is an appeal from the decision and resolution of that office dated June 26, 1975 and September 29, 1975, respectively, in Protest Case No. 46-69 entitled Soledad Eugenio, et al., protestant-appellant, versus Delia E. Torrijos, protestee-appellee' 'dismissing the protest against the appointment of Delia Torrijos as Assistant Chief, Scientific Library and Documentation Division (SLDD), National Science Development Board (NSDB). The protestants Soledad M. Eugenio and Ma. Rogelia L. Cordero are regular employees of the NSDB Scientific Library and Documentation Division, occupying the positions of Scientific Documentation Officer III and Scientific Documentation Officer II, respectively. The SLDD plantilla of personnel shows that the position next in rank to the protested one is that of Scientific Documentation Officer IV. For this reason, protestants, not being employees next in rank, have no legal personality to file a protest in accordance with the Civil Service Law, rules and regulations (Castro v. del Rosario, 19 SCRA 196). Civil Service Memorandum Circular No. 13, series of 1963, insofar as pertinent reads: 'Sec. 4. Who may file Protest. - Only Officers or employees next in rank who are competent and qualified to hold the position in question and possess the appropriate eligibility and who are not selected for promotion may file protest against an appointment or promotion.' On the other hand, the protestee Delia Torrijos is a holder of Bachelor of Science in Chemical Engineering degree and 24 units leading to Master of Public Administration. She is a Chemical Engineer (Rep. Act No. 1080), First Grade (Unassembled) and Library Assistant eligible. In addition, she has taken several in-service training courses and attended several meetings and/or conferences related to the function of the contested position. Thus, this Office is of the opinion and so holds that the instant appeal is devoid of merit. Whatever sympathy might be elicited for the protestants 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 (Aguilar v. Nieva, 40 SCRA 113, Reyes v. Abeleda, 22 SCRA 825). Since the protestee is competent, qualified and with appropriate civil service eligibility, her appointment to the contested position is, therefore, in order. In view of the foregoing, this Office hereby dismisses the instant appeal and affirms in toto the decision and resolution appealed from."[12]

This Court, in a resolution of July 16, 1976, required respondents to comment. Respondent public officials, through the then Acting Solicitor General, now Associate Justice of the Court of Appeals, Hugo E. Gutierrez, Jr.,

filed their comment on October 6, 1976.[13] It discussed the issues in terms of whether or not petitioner was the employee next-in-rank and whether or not respondent Torrijos was possessed of the necessary qualifications. As to the former, it was stated: "The position of Assistant Chief, Scientific Library and Documentation Division (SLDD) is a new position in a division which has been newly created pursuant to the reorganization of National Science Development Board under Presidential Decree No. 1. Consequently, no particular employee could claim that he or she is next-in-rank to any position in the NSDB Scientific Library and Documentation Division because as of the time of the appointment of respondent Torrijos as Assistant Chief, there was no established ranking of positions as yet. Such being the case, the contested position is open to all qualified NSDB personnel." [14] As to the latter issue, it was set forth: "Respondent Torrijos is a B.S. Chemical Engineering degree holder and an expert documentalist. She had extensive training and experience here and abroad. She took, under a scholarship grant from the Federal Republic of Germany, a Graduate Course for Documentation and a Post-Graduate Course for Subject Information Specialists as officially translated in the 'World Guide to Library Schools and training courses in documentation,' Paris, Unesco [c1972]. Her competence in library work is backed by her knowledge of library science acquired when she worked as a librarian, and the subjects she took under the Graduate Course for Documentation, which include, among others, Elementary Librarianship and Methodical Arrangement. Her administrative competence is backed by her having finished 24 graduate units out of the required 27 to complete the Masters in Public Administration degree at the University of the Philippines. * * * Her experience and knowledge as such documentalist is of paramount need since the division entails scientific documentation work. The petitioner's alleged knowledge and experience as librarian could well be filled up by the expertise and knowledge of the incumbent chief who is herself a librarian." [15] It was the submission of the then Acting Solicitor General Gutierrez that no grave abuse of discretion was shown. Thus: "Corollary to the foregoing discussion, the appointment of respondent Torrijos by the Chairman of the National Science Development Board affirmed twice by the Civil Service Commission and by the Office of the President is not attended by grave abuse of discretion. Instead, her appointment is a sound exercise of administrative discretion; the power of appointment being largely an executive prerogative, it is submitted that the present petition does not lie." [16]

From the above recital of relevant facts, it is quite obvious that, as set forth at the outset, the petition must fail.

1. No abuse of discretion on the part of public respondents, much less one of a grave character, was shown by petitioner. Not much reflection is needed to conclude that she had failed to make out a case of a demonstrably palpable capricious or whimsical exercise of judgment. It appears indisputable that the choice was dictated by what appeared to be the exigent demand of efficient and satisfactory public service. That is not to be condemned but commended. There is this relevant excerpt from *Reyes v. Abeleda*: [17] "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 offices 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." [18] That policy of the law found acceptance in later decisions. [19]

2. A procedural due process question was raised by petitioner with her allegation that she was not "given the

opportunity to substantiate her protest in a formal hearing," respondent Medina merely denying it "allegedly after consultation only with the Chief of the Administrative Services and Personnel Division." [20] Even on the assumption that the conduct of respondent Medina was vitiated by such failure, still the extensive consideration given her claim thereafter not only by the Chief of the Administrative Services and Personnel Division but likewise by the Commission of Civil Service and thereafter Presidential Assistant Tuvera, would cure such deficiency.

That has been the constant holding of this Court. [21]

WHEREFORE, the petition is dismissed for lack of merit.

Antonio and Concepcion, Jr., JJ., concur.

Barredo, J., (Acting Chairman), in the result because he believe that judicial remedy for petitioner should have been initiated within one year from the time respondent Torrijos was appointed consistently with existing jurisprudence.

Aquino, J., concurring and dissenting opinion.

Santos, J., did not take part.

[1] Commissioner Jose R. Melo and Deputy Commissioner Fausto Varela of the Civil Service Commission, Vice-Chairman and Executive Director of the National Science Development Board, Pedro Afable, as well as the then Chairman Florencio Medina, were included as respondents in this certiorari proceeding.

[2] L-17195, January 31, 1967, 19 SCRA 196.

[3] L-39575, August 31, 1978.

[4] Petition, par. 2.

[5] Ibid, par. 3.

[6] Ibid, pars. 4 and 5.

[7] Ibid, par. 6.

[8] Ibid, par. 7.

[9] Ibid, Annex E.

[10] Ibid, par. 7.

[11] Ibid, par. 14.

[12] Ibid, Annex L.

[13] He was assisted by Assistant Solicitor General Eulogio Raquel-Santos, Solicitor Demetrio G. Demetria and NSDB-Legal Officer III Mipantao A. Sarip.

[14] Comment, 9.

[15] Ibid, 15-16.

[16] Ibid, 17-18.

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

[18] Ibid, 830. The opinion cited *Pilar v. Secretary of Public Works and Communications*, L-21039, February 18, 1967, 19 SCRA 358 and *Amponin v. Commission on Elections*, L-27420, September 29, 1967, 21 SCRA 389.

[19] Cf. *Pineda v. Claudio*, L-29661, May 13, 1969, 28 SCRA 34; *Del Rosario v. Subido*, L-30091, Jan. 30, 1970, 31 SCRA 382; *Aguilar v. Nieva Jr.*, L-28422, July 29, 1971, 40 SCRA 113; *Torres v. Borja*, L-31947, March 21, 1974, 56 SCRA 47; *Oliveros-Torre v. Bayor*, L-34433, July 31, 1974, 58 SCRA 272; *Ocampo v. Subido*, L-28344, Aug. 27, 1976, 72 SCRA 443.

[20] Petition, par. 4 and Annex B.

[21] Cf. *De Borja v. Flores*, 62 Phil. 106 (1935); *De Borja v. Tan*, 93 Phil. 167 (1953); *Flash Taxicab-Co. v. Cruz*, 117 Phil. 524 (1963); *Caltex (Phil.) Inc. v. Castillo*, L-24657, Nov. 27, 1967, 21 SCRA 1071; *Batangas Laguna Tayabas Bus Co. v. Cadiao*, L-28125, March 12, 1968, 22 SCRA 987; *Demaronsing v. Tandayag*, L-27057, Aug. 21, 1974, 64 SCRA 274; *Maglasang v. Ople*, L-36813, April 29, 1975, 63 SCRA 508; *Nation Multi Service Labor Union v. Agcaoili*, L-39741, May 30, 1975, 64 SCRA 274; *Dormitorio v. Fernandez*, L-25897, Aug. 21, 1976, 72 SCRA 388; *Baldoz v. Office of the President*, L-44622, August 26, 1977, 78 SCRA 354.

CONCURRING AND DISSENTING OPINION

AQUINO, J.:

I concur in the result or in the dismissal of the petition which has become moot. As the petitioner had already reached the age of sixty-five years or the compulsory retirement age, she is no longer entitled to the relief sought by her.

As to the merits of her petition, I am of the opinion that the Chairman of the National Science and Development Board (NSDB) committed a grave abuse of discretion in appointing Delia E. Torrijos on February 18, 1975 to the position of assistant chief of the scientific library and documentation division of the NSDB with compensation at P11,328 per annum (Range 60), effective upon assumption to duty.

The facts of the case were not adequately recited in the decision of the NSDB complaints committee headed by Pedro G. Afable, the decision of the Deputy Commissioner of Civil Service, the decision of the Presidential Assistant and the comment of the Acting Solicitor General.

Miss Torrijos, who was born in 1938 and who is a native of Bacoor, Cavite, is a chemical engineer. Her civil service eligibilities are those of library assistant and first grade unassembled. She is a diplomate in scientific documentation, having been trained in that line of work in Frankfurt, Germany in 1964 when she was granted a scholarship by the Federal Republic of West Germany.

At the time Miss Torrijos was appointed to the disputed position, she was a librarian documentalst, with an annual compensation of P6,615, in the Philippine Textile Research Institute, an agency under the NSDB.

On the other hand, Soledad Mandac-Eugenio, the petitioner protestant, a native of Laoag City (born either in 1910 or 1912), started her career in the government as a junior librarian in the University of the Philippines in 1936 or before Miss Torrijos was born.

Mrs. Eugenio finished the course in library science in the University of the Philippines in 1935. Her civil service eligibilities are those of junior librarian, supervising librarian, first grade, and supervisor unassembled.

She held the following positions: College librarian of the University of the Philippines branch in Iloilo City; assistant librarian in the chemistry library, Case Institute of Technology at Cleveland, Ohio; cataloger in the medical library of the University of California at Los Angeles, California, and assistant chief of the central registry of the International Atomic Energy Agency at Vienna, Austria.

She joined the NSDB as a librarian-researcher in 1963. Then, she was appointed assistant librarian in the Philippine Atomic Energy Commission. Later, she was appointed education supervisor in the education and training division of the NSDB with an annual compensation of P8,556.

The scientific library and documentation division was organized on June 24, 1974. On that date, Mrs. Eugenio was appointed scientific documentation officer III in that division with an annual compensation of P9,288.

One salient fact, which should be stressed because it was suppressed in the decisions of the administrative officials already named, is that on June 22, 1974, or when the scientific library and documentation division was organized pursuant to the reorganization plan, Mrs. Eugenio was the fourth ranking employee in the division as shown below:

- FLORENCIO SANGALANG, division chief, R-66, P15,264 per annum.
- ANGELITA R. KALALO, assistant division chief, R-600 P11,328 per annum.
- IRENE D. AMORES, scientific documentation officer IV, R-60, P11,328 per annum.
- SOLEDAD M. EUGENIO, scientific documentation officer III, R-56, P9,288 per annum.

It should likewise be stressed that on that date, Miss Torrijos was not an employee in that division. If these facts are borne in mind, it becomes apparent that Mrs. Eugenio is correct in contending that she was an insider and Miss Torrijos was an outsider. It also becomes obvious that the administrative officials already named are wrong in contending that Mrs. Eugenio is not the employee next in rank to the position of assistant chief.

Angelita Kalalo, the assistant division chief, and Sangalang, the division chief, retired on November 1 and December 31, 1974, respectively. Irene Amores, the scientific documentation officer IV, a position in the same range 60 as that of the assistant division chief, was promoted in February, 1975 to the position of division chief. Consequently, the position of assistant chief became vacant.

Who should have been appointed to that vacancy? Mrs. Eugenio, as the competent and qualified employee next in rank to Mrs. Amores, should have been promoted to that position. But, instead of promoting her to that position, the NSDB Chairman, upon the recommendation of Pedro G. Afable, the NSDB Vice-Chairman and Executive Director, appointed Miss Torrijos to that vacancy on February 18, 1975.

As already stated, Miss Torrijos was an outsider. Her appointment was a flagrant violation of section 23 of the Civil Service Law. She was not the employee next in rank to the vacant position of assistant division chief.

Mrs. Eugenio and her co-protestant, Ma. Rogelia L. Cordero, in their appeal to the Office of the President dated November 6, 1975, alleged that the appointment of Miss Torrijos "disrupted and shattered" the cooperation and harmony which existed in the scientific library and documentation division because Mrs. Eugenio was "deliberately and willfully" left out and "maliciously" deprived of her promotion and that Miss Torrijos was appointed because she was a "close friend and kababayan" of one of the recommending authorities, Dominador O. Reyes, the chief of the education and public affairs service division.

Lieutenant Colonel Balbino Diego, chief of investigation and legal panel of the Presidential Security Command, in a memorandum for the President of the Philippines, characterized the appointment of Miss Torrijos as a

"brazen act of favoritism".

Mrs. Eugenio, a sexagenarian who was due to retire in two years, should have been promoted to assistant division chief so that she could enjoy higher retirement benefits. Miss Torrijos, who is relatively new in the government service, has a bright future before her and will have other opportunities for advancement and promotion.

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