

**BASILIO M. PINEDA, AS DEPUTY CHIEF OF POLICE OF PASAY CITY,
PETITIONER, VS. JOVITO O. CLAUDIO, AS MAYOR OF PASAY CITY;
FRANCISCO A. VILLA AND ABELARDO SUBIDO, AS COMMISSIONER
OF...**

G.R. No. L-29661. May 13, 1969

Ponente: CASTRO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/6c6abc61b324/>

CASTRO, J.:

This is a petition for mandamus to compel the respondent Jovito O. Claudio, mayor of Pasay City, to appoint the petitioner Basilio M. Pineda chief of police of the city, on the theory that, as the incumbent deputy chief of police and therefore the officer next in rank, the petitioner is legally entitled to be promoted to the said position.

Upon the death of Col. Mariano Tumaliuan on August 28, 1968, the position of chief of police of Pasay City became vacant. To fill the vacancy, Claudio appointed the respondent Francisco Villa, a state prosecutor in the Department of Justice, but the respondent Commissioner of Civil Service Abelardo Subido held the appointment in abeyance until other persons who, in Subido's opinion, had preferential right to appointment have been considered. One of these persons is Pineda who, as deputy chief of police, "is a person next in rank entitled to promotional preference for the position of Chief of Police ... before others may be considered (for) transfer, reinstatement, reemployment, or certification."

Subido defined his stand in his letter to Mayor Claudio of September 17, 1968, the text of which reads:

"Sir:

"This refers to the proposed appointment of Mr. FRANCISCO A. VILLA, a Bar (RA 1080) and second grade eligible, as Chief of Police in the Police Department of Pasay City at P12,000 per annum effective September 1, 1968, vice Mariano Tumaliuan, deceased.

"Section 4 of Republic Act No. 5185 (De-centralization Pet of 1967) in its paragraphs 4 and 5 provides:

"In cases of vacancies in the offices of heads and assistant heads of local offices, the governor or mayor shall fill them by appointment from a list of the five next ranking eligible and qualified persons as certified by the Civil Service Commission: Provided, That these five persons shall have stated beforehand that they will assume the position, if appointed. (paragraph 4)

"The ranking shall be based on such factors as class of province, city or municipality where the vacancy occurs, seniority, efficiency rating, extraordinary qualifications, and other supplementary criteria as may be prescribed by the Civil Service Commission."

"Paragraph 3, Section 23 of Rep. Act 2260, also provides:

"Whenever a vacancy occurs in any competitive or classified position in the government or in any government-owned or controlled corporation or entity, the officer or employee next in rank who is competent and

qualified to hold the position and who possesses an appropriate civil service eligibility shall be promoted thereto: Provided, That should there be two or more persons under equal circumstances, seniority shall be given preference. And, provided, how-ever, That should there be any special rea-son or reasons why such officer or employee should not be promoted, such special reason or reasons shall be stated in writing by the appointing official and the officer or employee concerned shall be informed thereof and be given an opportunity to be heard by the Commissioner of Civil Service, whose decision in such cases shall be final. If the vacancy is not filled by promotion as provided here in, then the same shall be filled by transfer of present employees in the government ser-vice, by reinstatement, by reemployment of persons separated through reduction in force, or by certification from appropriate register of eligibles in accordance with rules promulgated in pursuance of this Act.'

"Interpreting this latter provision in the case of *Millares vs. Subido, et al.*, G.R. No. 23281, August 10, 1967, the Honorable Supreme Court ruled: 'In other words, a vacant position (be it new or created by the cessa-tion of an incumbent in office) shall be filled by pro-motion of the ranking officer or employee, who is competent and qualified to hold the same. And only, where, for special reason or reasons of which the affected officer or employee will be notified, this mode of recruitment or selection cannot be observed, that the position may be filled either by transfer, or reemployment, or by getting from the certified list of appropriate eligibles, in that order.' (Underscor-ing by the Court).

"The above-quoted provisions and Supreme Court ruling spell out categorically the priorities in the modes of filling a vacancy in the competitive service, to wit: first priority is by promotion of next in rank employees from within the agency, second is by transfer of employees in other agencies, third is by reinstatement and reemployment of for-mer employees, and last by certification from the appropriate eligible lists.

"Conformably with these provisions and ruling, this Office announced in the *Manila Times* of September 5, 1968, the mode of filling vacancies for Chief of Police for Manila and Pasay Ci-ty and the qualifications of those who may apply. A Xerox copy of the clippings of the *Manila Times* is hereto attached as Annex 'A'. The said announce-ment was also the subject of a news item published in the same issue of the *Manila Times*, a copy at-tached as Annex 'B'.

"As of this writing, the following persons, in the order of priority, are hereby certified for the said position:

"A. Promotion (next-in-rank)

1. Basilio Pineda. - formerly chief of police of the Pasay City Police Department, a chief of police eligible, and presently Deputy Chief of Police of the Pasay City Police Depart-ment.

"B. Transfer

1. Major Jesus Dizon - a Xerox copy of his curriculum vitae is attached.

2. Albino S. Mondares - a Xerox copy of his curriculum vitae is attached.

"C. Reinstatement/Reemployment

1. Jaime Valencia formerly chief of police of Pasay City Police Depart-ment whose appointment was by-passed. His information sheet is on file in that Office.

"D. Certification

1. Roland C. Siquijor - (Chief of Police eligible.)

2. Abelardo Tesoro - (Chief of Police eligible.)

3. Francisco Villa - the proposed appointee.

"It is significant to note in this connection that Mr. Basilio Pineda, who is presently the De-puty Chief of Police of Pasay City, a Chief of Police eligible and formerly the Chief of Police of Pasay City, is a person next in rank entitled to promotional preference for the position of Chief of Police. Under the law and Supreme Court ruling above cited, Mr. Pineda should be considered for promotion before others may be considered by transfer, reinstatement, reemployment, or certification.

"As a matter of fact this Office in a letter dated August 5, 1968, and reiterated in a 1st indorsement dated August 28, 1968, has previously directed that Office to consider Mr. Pineda for designation as the Acting Chief of Police in place of Mr. Francisco Grape, who does not possess the appropriate eligibility and who is holding on to the position of Deputy Chief of Police by virtue of a preliminary writ of injunction issued by the CFI of Rizal. Information is requested as to the reason why the directive of this Office contained in the said communication has not been complied with.

"If Mr. Pineda may not be considered, the special reason or reasons therefor must be stated in writing and submitted to this Office. The same procedure should also be followed if Messrs. Dizon, Mondares and Valencia may not be considered for the said position before Messrs. Siquijor, Tesoro and Villa may be considered for appointment thereto.

"Premises considered, the processing of the proposed appointment of Mr. Francisco Villa is held in abeyance until after the persons with appointment preference have been duly considered by that Office, and for special reason or reasons, could not be appointed Chief of Police. In the mean-time, the directive of this Office contained in the letter dated August 5, 1968 should be complied with by that Office."

In reply, Claudio for the first time disclosed his reasons for not appointing Pineda to the vacant position. In his letter to Subido on September 20, he explained:

"As a native of Pasay and having been an official hereof for the past eight (8) years I am fully cognizant of the performance in office of Messrs. Basilio Pineda, Jaime Valencia, Roland C. Siquijor and Abelardo Tesoro and they cannot boast of any improvement they have introduced to lift the sagging inefficiency of the local police organization. The actual members of untrained and undisciplined men still persist."

On September 30, 1968 the Secretary of Justice, to whom the matter had earlier been referred, submitted a memorandum to the President substantially to the effect that section 23 of the Civil Service Act of 1959 does not apply in the case of the chief of a police agency whose appointment, it was contended, is governed by the Police Act of 1966. Pertinent excerpts from the said memorandum are hereunder quoted:

"3. Under the Police Act, ... it is specifically provided (in section 17) that in case of permanent vacancy caused by death, etc., in a local police agency, 'the mayor shall fill such vacancy as provided in this Act' and not in accordance with the Civil Service Act and rules and regulations. Congress is presumed to be aware of certain rules or limitations in the general civil service law which operate to restrict or curtail the discretion of the appointing power; hence, this special rule which makes it indubitable that the general rules governing appointment in the civil service, are inapplicable to appointments in a police service, except of course, where it so expressly provided therein or incorporated in the implementing rules and regulations.

"4. As regards the chief of police, there is even another provision which serves to underscore this special rule. I refer to the last paragraph of Section 10, supra, which states that in case there is no civil service eligible available for the position of chief of police, 'provisional appointment may be made in accordance with the Civil Service Law and Rules.' It is implicit in this provision that in other cases, especially those covered by section 17, the appointment shall be permanent in nature and 'as provided for in this (Police) Act.'

"5. ... [A]side from the provision (of section 11) specifically forbidding the filling of 'any position by permanent appointment unless the appointee has the appropriate eligibility, there appears to be no other statutory limitation on the City Mayor's discretion in the selection of the chief of police so long as the one

chosen possesses the minimum qualifications prescribed by the Act. The Police Manual has included the civil service rule on promotion which gives the next-in-rank, among others, preference in the filling of the vacant position. However, upon close examination of Rule VI, it is readily seen that the promotional rules therein set forth find application only to the filling of positions in the police service below that of chief of police he being the one charged with the duty and responsibility of screening and recommending for promotion the deserving members of the police agency (sections 2, 3, 4, 5 and 6). Of course, in every case the next-in-rank or deputy chief, by reason of his position, would surely be among the first to be considered by the City Mayor in the selection of the chief of Police, if qualified and competent; but he cannot claim any preferential right over others in the list of eligibles based on the aforementioned rule found in the Civil Service Act.

"6. This was the legal situation at the time of the enactment of the Decentralization Law (RA 5185, approved on September 12, 1967). I am unable to see any substantial change resulting from the insertion in section 4 thereof, quoted supra, of the provision that the heads of offices and their respective assistants, whose salaries are paid out of city funds, shall be appointed by the City Mayor 'subject to the civil service law, rules and regulations.' Obviously, this clause refers to office heads whose appointments, unlike that of the chief of police, are not covered by any special law or provision and should therefore be appointed in accordance with the general civil service law and rules. ... What is more important and far-reaching in Section 4 is the provision which categorically states that the offices of the aforementioned heads and assistant heads 'shall be filled by appointment from a list of five next ranking eligible and qualified persons as certified by the Civil Service Commissioner, 'which shall be based on 'such factors as class of the city where the vacancy occurs, seniority, efficiency rating, extraordinary qualification, etc. The import of this special provision is that the filling of the positions of the office heads and assistant heads is to be governed by this special rule, unencumbered by the civil service rule on the preferential right of the next-in-rank and others seeking transfer, reinstatement or reemployment in order to give the City Mayor a wide latitude in the choice of key officials. ..."

Answering the memorandum of the Secretary of Justice, Subido contended in his own memorandum to the President of October 14, 1968 that section 23 of the Civil Service Act does not conflict with the provisions of the Police Act of 1966. "In fact, it was incorporated verbatim in the Police Manual. But what is important is that the filling of positions in the police service including that of Chief of Police in accordance with the procedure outlined in paragraph 3 of Sec. 23 of Republic Act 2260 in relation to Sec. 4 of the Decentralization Act (Rep. Act 5185) would strengthen the police service. Vice versa, leaving the matter of promotion solely to the discretion of the Mayor without regard to the order of priorities contained in the Civil Service Law, would result in its demoralization."

Nor did he think the mayor's reasons for bypassing Pineda to be valid, considering that just a few months before the mayor had appointed Pineda deputy chief of police. "If Mr. Pineda can qualify as Deputy Chief of Police in the Mayor's estimation (and thus under Sec. 17 of the Police Act, he shall automatically assume the office of Chief of Police in case a temporary vacancy occurs in said office), how can Mayor Claudio now claim in all sincerity that Mr. Pineda is not qualified to be chief of Police?"

Respondents Claudio and Villa point out, on the other hand, that Subido should be held in estoppel on the basis of his approval of the very appointment of Pineda as deputy chief of police of Pasay City, 'where no list of those with "preferential rights" and no inquiry as to the mayor's reasons for not appointing the police officer next-in-rank in the Pasay City police department was made; and that advising the mayor that "the filling of the vacancy for Deputy Chief of Police is governed by Section 4, R.A. 5185," Subido merely issued a certification, containing the names of "five ranking qualified and eligible persons" including Pineda, and evidently did not consider as applicable the provisions on preferences of Section 23 of the Civil Service Act nor the ruling in *Millares v. Subido*[1] now invoked by him.

Subido admitted in his reply that Memorandum Circular No. 1, S. 1968, dated January 12, 1968, under which he

issued the said certification without a list of "preferential rights" or "priorities," "overlooked the Millares case and relied solely on the provision of Sec. 4, Rep. Act 5185," but averred that later, after having become convinced that the Millares ruling was applicable to the filling of vacancies of heads and assistant heads of local offices under the Decentralization Law, he issued Memorandum Circular No. 21, S. 1968, dated September 5, 1968, providing for such procedure of priorities, which was the procedure in force as of the date the appointment of Villa was received in his office.

As no solution to the impasse was in sight, Pineda filed the present action, contending that, under section 23 of the Civil Service Act, as interpreted in Millares, in relation to Section 4 of the Decentralization Act, it is the duty of the mayor to promote him as the ranking employee, and that only if for some "special reasons" he cannot be promoted may others be considered for transfer, reemployment or certification, "in that order."

On the other hand, Claudio's position is that what controls is not section 23 Of the Civil Service Act but section 8 of the Police Act of 1966, which states that a chief of police may be appointed "from the list of eligibles certified by the Civil Service Commissioner." As Villa is one of those certified, Claudio concludes that his appointment as chief of police is in order.

Section 17 of the Police Act of 1966 expressly provides that "In case of vacancy caused by death, retirement, resignation, suspension or removal in a local police agency, the mayor shall fill such vacancy as provided for in this Act," obviously referring to Section 8 thereof which states that "appointment to a local police agency shall be made by a mayor from the list of eligibles certified by the Civil Service Commission." The validity of Villa's appointment, because he is one of those mentioned in the certified list of eligibles, as required by the Police Act of 1966, could be here and now sustained, without need of further discussion, were it not for the subsequent enactment in 1967 of the Decentralization Act, particularly, Section 4 thereof, which provides:

"Appointment of Heads, Assistant Heads of Local Offices and Their Subordinates. - The Provincial Assessor, Provincial Agriculturist and other heads of offices entirely paid out of provincial funds and their respective assistants shall, subject to civil service law, rules and regulations, be appointed by the Provincial Governor: Provided, however, That this section shall not apply to Judges, Auditors, Fiscals, Division Superintendents of Schools, Supervisors, Principals, Provincial Treasurers, Provincial Health Officers and District Engineers.

"The City Assessor, City Agriculturist, City Chief of Police and City Chief of Fire Department and other heads of offices entirely paid out of city funds and their respective assistants or deputies shall, subject to civil service law, rules and regulations, be appointed by the City Mayor: Provided, however, That this section shall not apply to Judges, Auditors, Fiscals, City Superintendents of Schools, Supervisor's, Principals, City Treasurers, City Health Officers and City Engineers.

x x x

"In case of vacancies in the offices of heads and assistant heads of local offices, the governor or mayor shall fill them by appointing from a list of the five next ranking eligible and qualified persons as certified by the Civil Service Commission: Provided, That these five persons shall have stated beforehand that they will assume the position if appointed.

"The ranking shall be based on such factors as class of province, city or municipality where the vacancy occurs, seniority, efficiency rating, extraordinary qualifications and other supplementary criteria as may be prescribed by the Civil Service Commission." (R.A. 5185)

The pertinent provisions thereof to the effect that the heads of offices entirely paid out of city funds, including the chiefs of police, and their assistants or deputies, shall, "subject to civil service law, rules and regulations, be appointed by the City Mayor" and that the mayor "shall fill them by appointment from a list of the five next

ranking eligible and qualified persons as certified by the Civil Service Commissioner," throw us right back to the basic Civil Service Act. It behooves us, specifically, to determine the scope and meaning of the provisions of Section 23 which deal with the "Recruitment and Selection of Employees."

The contending parties have thus thrust upon this Court the basic issue of the proper application and scope of Section 23 of the Civil Service Act in relation to the provisions of the Decentralization Act of 1967 and the Police Act of 1966.

The petitioner states the issues as follows:

"(1) Is it mandatory and ministerial upon the Mayor of Pasay City to promote to the vacant position of Chief of Police, a competitive position, petitioner Pineda, the incumbent Deputy Chief of Police, who is the competent and qualified next-in-rank employee with the appropriate civil service eligibility?

"(2) Is respondent Mayor's appointment of respondent Villa to the said classified position of Chief of Police null and void, considering that he is an outsider, he is not next-in-rank employee and he has not passed the Civil Service examination for Chief of Police?"

The respondents Claudio and Villa formulate the issues, thus:

"(1) Is the appointment of the Chief of Police of Pasay City to be regulated by Section 8 of the Police Act of 1966, or by Section 4 of the Decentralization Act and the third paragraph of Section 23 of the Civil Service Law?

"(2) If the appointment of the Chief of Police of Pasay City is subject to the provisions of section 4 of the Decentralization Act, is it mandatory that respondent Mayor appoint Petitioner to the position?"

The respondent Subido, in his Answer, "submits the matter to the judicious consideration of this Honorable Court," emphasizing the urgency of the resolution of the legal issues presented, "considering that the questioned appointment of respondent Francisco A. Villa would be the first appointment under the Decentralization Act and any decision thereon would guide the future action of the Civil Service Commission and other offices concerned in the application of said law."

The first two paragraphs of Section 23 of the Civil Service Act (the third paragraph we have already reproduced above, *supra*), read together with Section I of Article XII of the Philippine Constitution which directs that "[A]ppointments in the Civil Service ... shall be made only according to merit and fitness, to be determined as far as practicable by competitive examinations," provide the key for the proper application and interpretation of the "next-in-rank" rule enunciated in the third paragraph of said Sec. 23. These first two paragraphs set the guide norm that:

"Sec. 23. Recruitment and Selection of Employees. - Opportunity for government employment shall be open to all qualified citizens and positive efforts shall be exerted to attract the best qualified to enter the service.

"Employees shall be selected on the basis of their fitness to perform the duties and assume the responsibilities of the positions whether in the competitive or classified or in the non-competitive or unclassified service."
(emphasis supplied)

The granting of equal opportunity for government employment to all qualified citizens and the exertion of positive efforts to attract the best qualified to enter the service may be implemented effectively only through the judicious exercise of the best judgment and discretion of the appointing authority.

Resolving the issue squarely presented, we hold that it is neither mandatory nor ministerial for the mayor of Pasay City to promote to the vacant position of chief of police the incumbent deputy chief of police Pineda, and that

the appointment to said position of the respondent Villa, who has been certified as qualified and eligible, although an "outsider" and not the next-in-rank employee, is valid, in the same manner that the appointment of Pineda, although an "outsider" and not the next-in-rank, to the position of deputy chief of police was valid.

The Civil Service Act does not peremptorily require the mayor to promote the officer next in rank. Section 23 thereof does not require that vacancies must be filled by promotion, transfer, reinstatement, reemployment or certification, in that order. That would be to construe the provision not merely as a legislative prescription of qualifications but as a legislative appointment, repugnant to the Constitution. What it does purport to say is that as far as practicable the person next in rank should be promoted, otherwise the vacancy may be filled by transfer, reinstatement, reemployment or certification, as the appointing power sees fit, provided the appointee is certified to be qualified and eligible - which is the basic requirement of the Civil Service Act, as well as of the Police Act and the Decentralization Law.

To construe section 23 the way the petitioner urges it should be, would be to unduly interfere with the power and prerogatives of the local executive as reinforced by the Decentralization Act at the same time that it would frustrate the policy of the Police Act "to achieve and attain a higher degree of efficiency the organization, administration, and operation of local police agencies"[2] and that of the Civil Service Act "to attract the best qualified to enter the service." For it is not enough that an aspirant is qualified and eligible or that he is next in rank or 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, knowledge ability, energy and judgment. After all, it is the local executive, more than any-one 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. Nowhere is this more true than in the sensitive area of police administration.

True it is that in Millares,[3] this Court, referring to section 23 of the Civil Service Act, made the following statement:

"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. And only where, for special reason or reasons of which the affected officer or employee will be notified, this mode of recruitment or selection cannot be observed, that the position may be filled either by transfer, or reemployment, or by getting from the certified list of appropriate eligibles, in that order."

But that statement was not necessary, considering that, in the language of the decision itself, "no evidence was presented that there were ranking employees in the office of the City Mayor affected by the appointment of appellee to the position involved herein." There was therefore no occasion for the application of section 23 to that case.

Here, the question is squarely presented,[4] and we now rule that the principle of seniority and the next-in-rank rule embodied in section 23, with its corollary requirement to set forth the "special reason or reasons" in case the officer next in rank is not appointed to the vacant position, applies only to cases of promotion. Hence, where the appointing power chooses to fill the vacancy not by promotion but by transfer, reinstatement, reemployment or certification (not necessarily in that order, as we have already said) he is under no duty whatsoever to explain his action, for the law does not so require him. The reason for this distinction is simple. When a person who is a junior jumps over his senior, the ranking is disturbed and the person next in rank is actually bypassed, and so it is reasonable to require the appointing power to give his "special reason or reasons" for preferring his appointee to the officer next-in-rank. But where the vacancy is filled not by promotion but by transfer, the person next-in-rank

is not really bypassed, because the person appointed is one who holds a position of equivalent rank as the vacant position. To the appointee, the new position is hardly a higher one. As this Court correctly observed in *Millares*, in distinguishing promotion from transfer, "whereas the first denotes a scalar ascent of a senior officer or employee to another position, higher either in rank or salary, the second refers to a lateral movement from one position to another of equivalent rank level or salary." [5]

The same reasoning applies when the person chosen to fill the vacancy is merely being reinstated to, or reemployed in, the position which he formerly held. For it is obvious that in this case such person is the senior of the one who at the moment is next in rank. As for the person chosen by certification, it may be said that he has never been rated before and so he can be said neither to be below nor above the ranking employee in the hierarchy.

It may be added that there is no valid or cogent reason to consider it mandatory and ministerial that the filling of vacancies be by promotion, transfer, reinstatement or reemployment, and certification, in that order. There is no legal fiat that those next in rank for promotion are more fit and meritorious for appointment than those moved by transfer from another unit or department, and that those applying for transfer should have "preference" to those seeking reinstatement, and the latter in turn to those who are duly certified eligibles. From the perspective of practical experience, it cannot be doubted that some next-in-rank officers or employees have risen to their seniority slots through mere passivity. And as a matter of policy, those who have previously resigned to avoid investigation of involvement in irregularities in office should certainly not be allowed to invoke "preference" when they subsequently seek reinstatement or reemployment. The only way to determine such fitness would be to hold competitive examination among all applicants every time a vacancy occurs, which would be completely disruptive of the public service. Our Constitution recognized this and hence provided that appointments be made according to merit and fitness, to be determined only as far as practicable by competitive examination. Hence, our system of qualification through periodic appropriate examinations. Among those qualified and eligible, the appointing authority is granted the discretion and prerogative of choice of the one he deems most fit for appointment.

This is not to say that seniority and rank are of no consequence. The Civil Service Act does direct, as we construe it, that as far as practicable the next in rank should be among the first considered for the vacancy, if qualified and eligible, and requires that when the vacancy is filled by promotion, the appointing authority must give the "special reason or reasons" for by passing the next-in-rank. But such official cannot claim any preferential right to appointment to the vacancy over others equally certified to be qualified and eligible for appointment by transfer, reinstatement or reemployment, or by appropriate certification, just as those applying for transfer cannot claim preference over those seeking reinstatement, etc., nor subject the appointing authority's reasons for his choice to final review and decision by the Civil Service Commissioner. To so hold as the petitioner and the respondent Commissioner contend, would be to invalidly substitute the judgment of the Commissioner of Civil Service for that of the appointing authority, in whom the prerogative of free choice resides. More, in the present case, Subido's action of questioning respondent Claudio's sincerity in not appointing petitioner to the vacant position of chief of police when he had appointed him (Pineda) as deputy chief of police just a few months before, projects the pitfalls of such a theory which would in some cases permit unauthorized interference by the Commissioner of Civil Service with the appointing authority's free exercise of his judgment and prerogative of free choice.

Of course, where there is unequivocally demonstrated an arbitrary and improvident exercise of the power of the appointing authority, as will constitute a denial of due process of law, to paraphrase the Court's ruling in *Morrero v. Bocar*, [6] such as where the qualifications, merit, experience and competence of an official next in rank for promotion are widely disparate over those of the actual appointee, proper remedy through judicial review would

be available. For due process recognizes the free exercise by the executive of his prerogatives under the Constitution and the laws but rules out arbitrariness and oppression.[7]

We do not of course lose sight of the fact that Section 4 of the Decentralization Act of 1967 does provide that

"In cases of vacancies in the offices of heads and assistant heads of local offices, the governor or mayor shall fill them by appointment from a list of the five next ranking eligible and qualified persons as certified by the Civil Service Commission. ..."

Reading this provision in the light of the Civil Service Act, the meaning emerges that in each class the Commissioner must certify, whenever there are available, five ranking, qualified and eligible persons. Thus, the Commissioner whenever practicable and possible, must certify five qualified and eligible persons for each area, i.e., five such persons for promotion, five such persons for transfer, and so on. And this has been properly implemented by the respondent Commissioner in his last Memorandum Circular No. 21, S. of 1968, dated September 5, 1968, where he announced that his office would certify not more than five eligibles and qualified persons in each list as follows: "(a) promotion list; (b) transfer list; (c) reinstatement/reemployment list; and (d) list of appropriate eligibles,[8] although he erroneously assigned priority thereto in that order, whereas we have above ruled that there is no such order of priority amongst the four said areas.

We, therefore, hold that in the event of there occurring, a vacancy, the officer next in rank must, as far as practicable and as the appointing authority sees fit in his best judgment and estimation, be promoted, otherwise the vacancy may be filled either by transfer, reinstatement, reemployment or certification, not necessary in that order - and that it is only in cases of promotion, where an employee other than the ranking one is appointed, is the appointing power under duty to give "special reason or reasons" for his action to the Civil Service Commissioner, as provided in Section 23, third paragraph, of the Civil Service Act.

As there is no question that the respondent Villa has been certified to be qualified and eligible, it is well within the ambit of the power of the respondent Claudio to appoint him chief of police of Pasay City. Consequently, the respondent Claudio owes the petitioner no duty to extend to him a promotional appointment, the performance of which may be compelled by mandamus.

ACCORDINGLY, the petition for mandamus is denied, without pronouncement as to costs.

Reyes, J.B.L., Makalintal, and Capistrano, JJ., concur.

Fernando, J., concurs in a separate opinion.

Dizon and Zaldivar, JJ., dissent in separate opinions.

Sanchez, J., concurs in the result.

Concepcion, C.J., was on official leave.

Teehankee and Barredo, JJ., did not take part.

[1] L-23281, August 10, 1967, 20 SCRA 954.

[2] Sec. 2.

[3] Supra, note 1.

[4] The respondent Claudio likewise contends that the petitioner cannot be considered ranking because the removal of previous incumbents of the position of deputy chief of police in Pasay City is the subject of pending litigations in the lower court, but for the purpose of this case, we can regard the petitioner Basilio M. Pineda as the duly appointed deputy chief of police as long as his appointment is not set aside.

[5] Compare the following provisions of the Revised Civil Service Rules:

"As used in this Rule, promotion means advance-ment from one position to another with an increase in du-ties and responsibilities as authorized by law, and usually accompanied by an increase in salary." Rule VII, Sec. 1.

"For purposes of this Rule, a transfer is a move-ment from one position to another which is of equivalent rank, level or salary, without break of service, and in-volving the issuance of an appointment. The transfer may be between Departments or agencies, or from one orga-nizational unit to another in the same Department or agen-cy." Rule IV, Sec. 21.

[6] 66 Phil. 429, 431 (1938).

[7] Cf. Morfe v. Mutuc, G.R. L-20387, Jan. 31, 1968, 22 SCRA 424.

[8] Annex XIII of respondent Commissioner Subido's Memorandum, Rollo, p. 251.

6 pt 6 pt 0 3

DISSENTING OPINION

DIZON, J.:

As recently as August 10, 1967, in Millares vs. Subido et al., G. R. No. L-23281, We ruled as follows:

"In other words, a vacant position (be it new or created by the cessation of an incumbent in office) shall be filled by pro-motion of the ranking officer or employee, who is competent and qualified to hold the same. And only where, for special reason or reasons of which the affected officer or em-ployee will be notified, this mode of re-cruitment or selection cannot be observed, that the position may be filled either by transfer, or reemployment, or by getting from the certified list of appropriate eli-gibles, in that order."

The majority opinion in this case, penned by Mr. Justice Fred Ruiz Castro, deciding the same issue We resolved in Millares, says the following:

"We, therefore, hold that in the event of there occurring a vacancy, the officer next in rank must, as far as practicable and as the appointing authority sees fit in his best judgment and estimation, be pro-moted, otherwise the vacancy may be filled either by transfer, reinstatement, reemployment or certification - not necessary in that order - and that it is only in cases of promotion, where an employee other than the ranking one is appoint-ed, is the appointing power under duty to give especial reason or reasons for his action to the Civil Service Commissioner, as provided in Section 23, third paragraph, of the Civil Service Act."

To the extent, that the majority opinion in this case reverses or modifies our ruling in the Millares case, I dissent. It is my view that what We said in Millares, quoted above, whether the same constitutes the doctrine of the case or is mere obiter, the correct rule. The one sustained by the majority in the present case may give the appointing power an unnecessary opportunity to act capriciously and thus thwart the natural and reasonable expectation of the officer next in rank to any vacant position, to be promoted to it. It is only where said officer is not qualified and eligible that he may be disregarded for purposes of promotion, but even in such case his disqualification or non-eligibility should be stated as a special reason for his being so ignored and he must have notice thereof.

Clean 6 pt 6 pt 0 3 MicrosoftInternetExplorer4 /* Style Definitions */ table.MsoNormalTable {mso-style-name:"Table Normal"; mso-tstyle-rowband-size:0; mso-tstyle-colband-size:0; mso-style-noshow:yes; mso-style-parent:""; mso-padding-alt:0in 5.4pt 0in 5.4pt; mso-para-margin:0in; mso-para-margin-bottom:.0001pt;

mso-pagination:widow-orphan; font-size:10.0pt; font-family:"Times New Roman";}

CONCURRING OPINION

FERNANDO, J.:

The opinion of the Court penned by Justice Castro, distinguished by the meticulous and painstaking care with which the controlling statutory provisions are considered and examined, merits full approval. That I give. I wish to avail myself of this opportunity, however, to explore the implications of what to me is yielded by constitutional principles, certainly not lost sight of but not explicitly avowed in the opinion, which need, for me at least, greater stress and emphasis.

1. The constitutional purpose that animates the pro-vision on the Civil Service appears to be deserving of further reflection. This is so, especially in view of the fact that this Court by a long, unbroken, unquestioned course of impressive adjudication has correctly buttressed the constitutional protection afforded the civil service career officials from the many and diverse ways by which removal in fact could result, though ostensibly based on non-objectionable grounds, contrary to the security of tenure safeguarded by the fundamental law.[1]

That is as it should be. Fidelity to such a constitutional mandate leaves this Court no other alternative but to give it vitality and to translate such a concept to a living reality. It cannot be said then that there was in every appropriate case a failure on our part to manifest full deference to such a constitutional mandate.

At the same time, and perhaps unavoidably so, in view of such unmistakable deference accorded to security of tenure, the impression may have been created that such a provision was embodied in the Constitution primarily for the interest of the civil service employees or officials alone. On its face, such an assumption is not per se unreasonable. An officeholder's right to permanency guaranteed against arbitrary suspension or dismissal is indeed a claim constitutionally recognized for his welfare and benefit.

With all due recognition of the truth of the above observation, however, we must keep in mind that the Article on the Civil Service,[2] like other provisions of the Constitution, was inserted primarily to assure a government, both efficient and adequate to fulfill the ends for which it has been established. That is a truism. It is not subject to dispute. It is in that sense that a public office is considered a public trust.

Everyone in the public service cannot and must not lose sight of that fact. While his right as an individual although employed by the government is not to be arbitrarily disregarded, he cannot and should not remain unaware that the only justification for his continuance in such service is his ability to contribute to the public welfare.

There may be occasion then where the needs of the collectivity that is the government may collide with his private interest as an individual. Here, as in most public law questions, adjustment or balancing is required. It is true that there should be no needless sacrifice of individual right. At the same time, considering that everyone who is in the employ of the state is rightfully assumed to bear in mind that he is there to advance public ends, he cannot in the process of such balancing or adjustment assert undue preference for his private claims. So it must be if the ideal of a public office being a public trust were to attain realization.

To be more precise, it is my view that under the Constitution, except in the indisputable case of security of tenure specifically safeguarded, the construction of whatever statute may be passed or an executive action taken should be in favor of according preference to the demands of public service. Only thus to my mind can we manifest fealty to what is implicit in the constitutional provision in the Civil Service. Since the opinion of the Court is distinguished by its conformity to such a constitutional purpose, I am, as announced at the beginning, in

full agreement.

Nor is this to announce a novel proposition. In a 1968 decision,[3] we emphatically gave expression to such a view. 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."

2. It seems appropriate for me that the norm applicable to a department head should equally be considered fitting when the power to appoint is given to the city mayor of a chartered city. Only thus may local autonomy be further bolstered and fortified.

It was Justice Laurel, who, in an epochal decision,[4] pointed to "the recognition however limited in our Constitution of the right of self-government * * *." The scope of such recognition then, whenever appropriate, must be broadened not restricted. Where the legislative body in the enactment of Decentralization Law,[5] had made manifest its purpose to enlarge the powers of municipal officials vis a vis the President, there should be no hesitancy on our part to accord to such statute a construction that would unequivocally demonstrate our assent to such legislative expression of will.

To my mind, the judicial interpretation adopted by us is thus in conformity with the limitation on the powers of the President, where local government is concerned, to that of general supervision as distinguished from the control he may exercise over all the executive departments, bureaus or offices of the national government.[6] If the decision were otherwise, then a choice in effect coming from the Commissioner of Civil Service, himself one of the officials under the control of the President, would be considered binding and the will of the local official primarily chargeable with the responsibility over local peace and order conditions disregarded and set at naught. I cannot view any such possibility as other than a failure to abide by the grant of local autonomy however limited found in the Constitution.

Happily, the opinion of the Court, as pointed out at the outset, while not explicitly avowing such a view, appears to be informed by such a spirit. There is thus no bar to my yielding unconditional assent to it, the only purpose of this concurrence being to bring out to the surface certain constitutional implications that may not, at first glance and without sufficient scrutiny, be readily apparent.

[1] Cf. *Lacson v. Romero* 84 Phil. 740 (1949); *De los Santos v. Mallare* 87 Phil. 289 (1950); *Lacson v. Roque*, 92 Phil. 456 (1953); *Batungbakal v. National Dev. Co.*, 93 Phil. 182 (1953); *Rodriguez v. del Rosario*, 93 Phil. 1070 (1953); *Mission v. del Rosario*, 94 Phil. 483 (1954); *Palamine v. Zagado*, 94 Phil. 494 (1954); *Inocente v. Ribo*, 94 Phil. 652 (1954); *Abella v. Rodriguez*, 95 Phil. 289 (1954); *Uy v. Rodriguez*, 95 Phil. 493 (1954); *Gorospe v.*

De Veyra, 96 Phil. 545 (1955); Olegario v. Lacson, 97 Phil 75 (1955); Quintos v. Lacson, 97 Phil. 290 (1955); Meneses and Litao v. Lacson 97 Phil. 857 (1955); Tavora v. Montelibano 98 Phil. 800 (1956); Pulutan v. Dizon, 99 Phil. 168 (1956); Unabia v. City Mayor, 99 Phil. 253 (1956); Faunillar v. del Rosario, 99 Phil. 758 (1956); Claravall v. Paraan, 100 Phil 476 (1956); Senarillos v. Hermosisima, 100 Phil. 501 (1956); Jose v. Lacson, L-10477, May 12, 1957; Cuyo v. City Mayor, 101 Phil. 558 (1957); Cammayo v. Viña 101 Phil. 1149 (1957); Cabo Kho v. Rodriguez, L-9032, Sept. 28, 1957; Briones v. Osmeña, 104 Phil. 588 (1958); Diaz v. Amante, 104 Phil. 968 (1958); Mangubat v. Osmeña, Jr., L-12837, April 30, 1959; Baguio v. Rodriguez, L-11078, May 27, 1959; Tan v. Gimenez, 107 Phil. 17 (1960); Subido v. Sarmiento, L-14981, May 23, 1960; Fernandez v. Cuneta, L-14392, May 30, 1960; Board of Directors v. Alandy, L-15391, Oct. 31, 1960; Vito v. Lacson, L-16137, Dec. 23 1961; Gonzales v. Osmeña L-15901, Dec. 30, 1961; Dichoso v. Valdepeñas, L-17448, Aug. 31, 1962; Corpus v. Cuaderno, L-17860, Mar. 30 1962; Garcia v. Salcedo L-19748, Sept. 13 1962; Fernandez v. Ledesma, L-18878, Mar. 30, 1963; Libarnes v. Executive Secretary, L-21505 Oct. 24, 1963; Jorge v. Mayor, L-21776, Feb. 28, 1964; Diaz v. Raquid, L-19158, Feb. 27, 1965; Tañala v. Legaspi, L-22537, Mar. 31, 1965; Corpus v. Cuaderno, L-23721, Mar. 31, 1965; City of Manila v. Subido, 17 SCRA 231 (1966); Cariño v. ACCFA, 18 SCRA 183 (1966); Piñero v. Hechanova, 18 SCRA 417 (1966); Abaya v. Villegas, 18 SCRA (1966); Ferrer v. Hechanova, 19 SCRA 105 (1967); Abellera v. City of Baguio, 19 SCRA 600 (1967); Cruz v. Primicias, 23 SCRA 998 (1968); Perez v. Subido, 23 SCRA 1074 (1968).

[2] Article XII.

[3] Reyes v. Abeleda, 22 SCRA 825.

[4] Villena v. Secretary of Interior, 67 Phil. 451 (1939).

[5] Republic Act No. 5185.

[6] Sec. 10, Art. VII, par. 1, Constitution of the Philippines.

6 pt 6 pt 0 3

DISSENTING OPINION

ZALDIVAR, J.:

I concur in the dissenting opinion of Mr. Justice Arsenio P. Dizon. I believe that the ruling of this Court in the Millares case, in construing the third paragraph of Section 23 of Republic Act 2260 (Civil Service Act of 1959), should be maintained. That ruling is more conducive to the maintenance of the high morale of the officers and employees in the civil service of our Republic, than the ruling on the same paragraph now embodied in the majority opinion.

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.