

BIENVENIDO F. REYES, PETITIONER AND APPELLEE, V. ROMEO G. ABELEDA, SECRETARY OF EDUCATION, DIRECTOR OF PUBLIC SCHOOLS, COMMISSIONER OF CIVIL SERVICE & CASHIER OF THE BUREAU OF P...

G.R. No. L-25491. February 27, 1968

Ponente: FERNANDO, J.

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FERNANDO, J.:

This petition, filed with the Court of First Instance of Manila, for certiorari and mandamus with preliminary injunction, calls for the determination of who, under the Civil Service Law,[1] has the right to a promotion to fill a vacancy in a competitive or classified position in the government as the person "next in rank" likewise "competent and qualified to hold the position and possessed of an appropriate civil service eligibility . . ."

The facts are not in dispute, the case having been submitted before the lower court on a stipulation of facts. Thus: "That since June 15, 1939 and continuously up to the present, the petitioner has been employed in the government, particularly, in the School Finance Division, Bureau of Public Schools, since July 25, 1940, . . ., while respondent Abeleda has been in the government service since August 16, 1937, . . .; that on August 2, 1962, the petitioner was last appointed as Acting Budget Officer III at P5,376 per annum, in the School Finance Division, Bureau of Public Schools, . . ., while respondent Abeleda was last appointed as Budget Officer III in the Medical and Dental Services Division, same Bureau, at P5,376 per annum effective July 1, 1962; that in a Memorandum dated December 10, 1962, the Director of Public Schools submitted to the Secretary of Education an assignment proposal recommending the promotion of petitioner to the position of Budget Officer IV, . . .; that in a first indorsement dated December 19, 1962 of the respondent Secretary of Education to the respondent Director of Public Schools, the former requested the latter for 'appropriate ranking lists' . . .; that in a 3rd indorsement dated January 7, 1964, the Secretary of Education instructed the respondent Director of Public Schools to prepare an appointment proposal in favor of respondent Romeo G. Abeleda to the position of Budget Officer IV; that in the 4th indorsement dated January 23, 1964, the petitioner was informed of the respondent Secretary's action on the basic proposition for the promotional appointment of petitioner . . .; that on February 10, 1964, petitioner filed a formal protest with respondent Commissioner of Civil Service contesting the appointment of respondent Romeo G. Abeleda to the position of Budget Officer IV in the Bureau of Public Schools, School Finance Division, . . .; that the protest was resolved by the respondent Commissioner of Civil Service against petitioner, . . .; that respondent Romeo G. Abeleda was promoted from Budget Officer III, School Medical and Dental Services, to Budget Officer IV, School Finance Division, . . .".

After setting forth the facts and considering the law, the conclusion reached by the lower court was set forth thus: "In view, therefore, of the foregoing, it appearing that the petitioner has the necessary qualifications to the position of the Budget Officer IV, Division of School Finance, Bureau of Public Schools; that he is the officer next in rank in said division to that vacant position; respondent Abeleda is not of equal rank in said division, he, belonging to another independent, separate division, that in point of authority, responsibility and importance, the

Budget Officer III of the School Finance Division outranks and is more important than its counterpart in the Medical and Dental Services Division, the appointment and promotion, therefore, of respondent Romeo G. Abeleda, to fill the vacant position of Budget Officer IV, School Finance Division, was in error, in violation of the Civil Service Law on the point, and in excess of the exercise of legal discretion on the part of the respondent Secretary of Education and the Commissioner of Civil Service." The lower court decision was to this effect: "1. The appointment of Romeo Abeleda as Budget Officer IV, Division of School Finance, Bureau of Public Schools, is hereby declared null and void and, therefore, set aside; 2. That the respondents Secretary of Education and Commissioner of Civil Service are ordered to approve the appointment of the petitioner, Bienvenido F. Reyes, as recommended by the Director of Public Schools."

Not being satisfied with the above decision, which to his mind was an erroneous interpretation of the above legal provision and a denial of his right to said position, respondent Abeleda along with the Secretary of Education, the Director of the Bureau of Public Schools and the Commissioner of Civil Service, appealed to this Court.

If the law correctly construed be applied to the above facts, the judgment of the lower court must be reversed; the appointment made in favor of respondent Abeleda by the Secretary of Education must prevail.

As noted at the outset, a person next in rank, competent and qualified to hold the position and possessing an appropriate civil service eligibility is entitled to a vacancy occurring in any competitive or classified position in the government. There is the proviso however that should there be two or more persons under equal circumstances, seniority must be given preference.[2] As between petitioner Reyes and respondent Abeleda, who is the person next in rank? Both as admitted in the Brief of petitioner are in the ranking list, being Budget Officers III, the petitioner in the School Finance Division and respondent Abeleda in the Medical Dental Services Division of the Bureau of Public Schools. Petitioner however, as was set forth in the stipulation of facts,[3] was holding such office in an acting capacity, unlike respondent Abeleda whose tenure had permanency. Under the above circumstances it cannot be said that petitioner was the person next in rank.

Even on the assumption however that both petitioner Reyes and respondent Abeleda could be considered, in the language of the law, "as persons of equal circumstances" still respondent's appointment by the Secretary of Education could not be declared illegal as the very same proviso makes clear that seniority shall be given preference. There was no denial of the statement in the Brief of respondent Abeleda about his seniority, having been appointed in the government service on August 8, 1937 while petitioner did not join the government until June 15, 1939, having been assigned thereafter to the School Finance Division on July 25, 1940.[4]

Now as to the discharge of the functions of Budget Officer III. While petitioner was appointed in an acting capacity on August 21, 1962, respondent Abeleda assumed such position with a permanent status earlier, namely, on July 1, 1962. The right to the promotion then had been earned by respondent Abeleda. There was precisely compliance with, not deviation from, the applicable statutory provision, with the appointment extended to him by respondent Secretary of Education.

There is this further point to consider. Referring to the very same section, this Court, in *Pilar v. Secretary of Public Works and Communications*,^[5] speaking through Justice Dizon, stressed that "the appointing power enjoys sufficient discretion to select and appoint employees on the basis of their fitness to perform the duties and assume the responsibilities of the position to be filled . . .". Passing on the power of the Commission on Elections to appoint election registrars, this Court in *Amponin v. Commission on Elections*,^[6] the opinion being penned by Justice Castro, could fitly summarize the law thus: "Finally, considering that the power to appoint is in essence discretionary, and that there is here absent a showing that in the exercise of the right of choice the [Commission on Elections] abused its discretion, we will not even attempt to substitute our own discretion for that exercised by

[it]."

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 offices 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.

Wherefore, the judgment of the lower court is reversed and the petition for certiorari and mandamus denied. With costs against petitioner.

Reyes, J.B.L., Acting C.J., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro and Angeles, JJ., concur.

[1] Section 23 of Republic Act No. 2260.

[2] Section 23, Republic Act No. 2260.

[3] Paragraph 2, Stipulation of Facts.

[4] Brief for respondents-appellants, p. 26 and stipulation of facts.

[5] L-21039, February 18, 1967.

[6] L-27420, September 29, 1967.

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