

**THE PROVINCIAL BOARD OF CEBU, GOVERNOR OSMUNDO G. RAMA,
VICE GOVERNORS S.J. FERNANDEZ, BOARD MEMBERS DR.
LEONARDO ENAD, ATTY. G.S. LEGASPI AND MRS. RIZALINA A.
MIGALLOS, PETITIO...**

G.R. No. L-34695. March 07, 1989

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FERNAN, C.J.:

This is a petition for review on certiorari, seeking to reverse and set aside that portion of the decision of the Court of First Instance of Cebu, dated May 5, 1971, in Civil Case No. R-t 1132, entitled "Santiago Abella, et al, v. The Provincial Board of Cebu, et al, for Mandamus with Damages," ordering the reinstatement of respondents-appellees Antonio Munoz, Benito Roble and Lorenzo Taboada to their respective positions as prison guards of the Province of Cebu, with back salaries from the time of their dismissal.

The antecedent facts are as follows:

Sometime in June and July of 1965, respondents-appellees along with eight other provincial guards were issued appointments as prison guards in the Province of Cebu by then Governor Rene Espina. As noted by the trial court, said appointees were then already occupying their positions prior thereto, and by virtue of the said appointments their salaries were increased in accordance with the Minimum Wage Law as amended by Rep. Act No. 4180.[1] While the eight others had no civil service eligibility, respondents-appellees had the following eligibilities: Antonio Muñoz — "third-grade (conversion)"; Benito Roble — "Patrolman (Entrance) (VP)"; and Lorenzo Taboada — "Second Grade Regular." These appointments were attested and approved by the Commissioner of Civil Service as "provisional" under Section 24(c) of the Civil Service Law of 1950.[2]

On March 17, 1967, the Commissioner of Civil Service sent a directive entitled "4th Indorsement" to the Civil Service Regional Director of Cebu City returning certain appointments under the category of temporary and provisional appointments for lack of approval by the Provincial Board which in his opinion was required in view of the opinion of the Secretary of Justice[3] to that effect.

Pursuant thereto, Governor Espina issued Administrative Order No. 22, dated February 7, 1968, recalling all appointments of provisional employees made under Section 2081 of the Revised Administrative Code for approval by the Provincial Board.

Subsequently, the Provincial Board of Cebu passed several resolutions disapproving the appointments made by the Governor, including those of respondents-appellees. Accordingly, Governor Espina advised the Provincial Warden to inform the affected employees to stop reporting for duty.

Aggrieved by the dismissal, the eleven provincial guards instituted the action below asking for their reinstatement, back salaries and damages. They contended that their appointments were not subject to the approval of the Provincial Board: that even granting that they were, the disapproval was illegal and void, that even if such approval were valid, it is not a ground for their dismissal from the service because they have been occupying said

positions even before said appointments.

The Provincial Board's answer interposed the following defenses: (a) lack of cause of action as the Provincial Board's disapproval of petitioner-employees' appointment is lawful and valid, the status of their positions being temporary; and (b) failure on the part of said employees exhaust the required administrative remedies at the filing of said petition in the lower court.[4]

On February 23, 1971, respondent Presiding Judge rendered a decision dismissing the action with regard to the eight other petitioners who had no civil service eligibility, reasoning that the certification of their appointments as "provisional" was contrary to law, but granting it in so far as respondents-appellees were concerned and ordering their reinstatement with back salaries.

The dispositive portion of said decision reads:

"WHEREFORE, judgment is hereby rendered:

"1) Ordering the respondents to reinstate petitioners Antonio E. Muñoz, Benito Roble and Lorenzo Taboada to their previous position as prison guards with back salaries from the time of their dismissal until their reinstatement.

"2) Dismissing the petition with respect to the claim of petitioners Santiago Abella, Perfecto Costanilla, Edilberto Rosal, Florentino Taboada, Valeriano Tenebre, Vitaliano Mega, Hilario Almario and Paterno Yares; and

"3) Dismissing the claim of the petitioners for damages for lack of merit.

"No pronouncement as to costs.

"SO ORDERED." [5]

Both petitioners and respondents appealed therefrom and were required by this Court in the resolution of December 7, 1971 to file a petition for review on certiorari, it appearing that only questions of law were involved.[6] But in the resolution of February 2, 1972, this Court denied: (a) the motion of petitioners- appellants employees for extension of time to pay docketing and legal research funds fees; and (b) the petition of respondents- appellants Provincial Board of Cebu, et al, for review for certiorari for non-payment of docket and legal research fund fees.[7]

However, in the resolution of this Court of February 18, 1972, the resolution of February 2, 1972, dismissing the petition for review on certiorari of the Provincial Board, was reconsidered.[8]

Hence, the present petition of the Provincial Board is the only one left for consideration.

In resolving the case of respondents-appellees, the trial court phrased the issue thus: "The question is whether these appointments (certified as 'provisional') are also subject to the approval of the Provincial Board under Sec. 2081 of the Revised Administrative Code which provides that all appointments of temporary employees in the classified civil service for competitive service shall be approved by the Provincial Board." [9]

In resolving the issue against petitioners-appellants (respondents therein), the lower court, among others, stated:

"In creating the new category of appointment known as provisional appointment, Republic Act 2260 undoubtedly intended to distinguish this kind of appointment from that of temporary. In fact, a provisional appointee must have a civil service eligibility although not appropriate to the classified position to which he is appointed. Provisional appointee is also given more rights and privileges than temporary employee. While the latter can be removed at the pleasure of the appointing power, provisional appointee cannot be removed from

office unless the availability of eligibles to the position is duly certified by the Civil Service Commissioner. It may be stated here that Republic Act No. 2260 has been amended by Republic Act No. 6040 (approved August 4, 1969) abolishing the provisional appointment and classifying appointment in the civil service only into either permanent or temporary. Section 18 of Republic Act 6040 provides "that all provisional appointments made or appointments approved by the Civil Service Commissioner under Section twenty-four (c) of Republic Act Numbered Two Thousand Two Hundred Sixty prior to the approval of this Act shall automatically be permanent under the provisions of Section twenty-four (b) thereof as amended by this Act, subject to the provisions of Section 16 (h) of said Act as herein amended." This strengthens the view that under Republic Act 2260 provisional appointments cannot be considered temporary employees within the meaning of Section 2081 of the Revised Administrative Code."^[10]

Petitioners assail this conclusion as erroneous. They contend that the appointments of respondents-appellees having been correctly attested by the Civil Service Commissioner as provisional under Sec. 24(c) of RA 2260 are in their nature or essence only temporary appointments to the classified positions made in the absence of civil service eligibles and are, therefore, within the scope and operation of Sec. 2081 of the Revised Administrative Code as last amended by RA 528.^[11]

Respondents-appellees, on the other hand, argue that provisional appointments are distinct and separate categories and cannot be confused with temporary appointments under the Civil Service Law considering that provisional appointees must have civil service eligibility albeit inappropriate to their positions, whereas temporary employees do not need any eligibility at all. They further contend that (he questioned appointments, having been duly certified by the Civil Service Commissioner and having been in effect for more than two years, having become final and could no longer be revoked by the Provincial Board. Finally, they argue that even if said appointments could be revoked and the disapproval was valid, the disapproval should not cause their separation from the service but they should be deemed to have reverted to their prior positions under the doctrine of reversion enunciated in the case of *De la Rea v. Subido*.^[12]

Properly phrased, the pivotal issue in this case is whether or not the appointments of respondents-appellees, duly certified as "provisional" by the Civil Service Commissioner, are within the scope and contemplation of the category of "temporary employees in the classified service made in the absence of eligibles" which require the approval of the Provincial Board under Section 2081 of the Revised Administrative Code. Briefly, the issue is whether or not provisional appointees may be considered as temporary employees made in the absence of eligibles.

As correctly assessed at the outset, the only issue in this case is one of the law; that is the proper interpretation of Section 2081 of the Administrative Code. Thus, it will be noted that the lower court's erroneous conclusion flows mainly from the inaccurate delineation of the issue. As formulated by the court a quo, the issue appeared simply to be a matter of interpreting the term "temporary employees" and whether it embraces provisional appointments. Verily, this question can be resolved by a mere distinction between the two categories. However, the pertinent law does not merely say "temporary employees." This provision reads as follows:

"x x x Provided, that appointments to all positions in the provincial service which under existing laws are in the unclassified service and temporary employees in classified civil service made in the absence of eligibles, shall be submitted to the Provincial Board for approval."^[13]

The law clearly speaks of temporary employees in the classified service made in the absence of eligibles whose appointments require approval by the Provincial Board.

On the other hand, the law defining a provisional appointment contemplates that such appointments are made because of the absence of appropriate eligibles to the positions to which they are appointed.

Section 24(c) of the Civil Service Act of 1959 [14] provides:

"(c) Provisional appointments — A provisional appointment may be issued upon the prior authorization of the Commissioner x x x, to a person who has not qualified in an appropriate examination but who otherwise meets the requirements for appointment to a regular position in the competitive service and there is no appropriate register of eligibles at the time of appointment, x x x." (Italics supplied.)

In the case of *Ata v. Namocatcat*, [15] we said, "What the law considers a provisional appointment refers to an appointee with a civil service eligibility but other than an appropriate one for the position to which he was appointed." And in the case of *Festejos v. Barreras* [16] we further ruled that, "a provisional appointment is terminable only upon the certification of an appropriate eligible since such an appointment takes into account that the appointee should necessarily be an eligible who is supposed to have a permanent appointment and the nature of the work is such that only eligibles may perform the same." (Italics supplied.) In other words, a provisional appointee does not have the appropriate eligibility to the position but the law gives him the privilege of occupying the position in the absence of an eligible and until the availability of an appropriate eligible is certified. There is no question therefore, that the appointments in question are covered by Section 2081 of the Administrative Code requiring the approval of the Provincial Board.

It is a cardinal principle of statutory construction that where the words and phrases of a statute are not obscure or ambiguous, its meaning and the intention of the legislature must be determined from the language employed, and where there is no ambiguity in the words, there is no room for construction.[17]

The lower court cited Section 18 of Republic Act 6040, providing that provisional appointments shall automatically be permanent. More specifically, the law states:

"Sec. 18. The provisions of Section fourteen of Republic Act Numbered Two thousand two hundred sixty are hereby repealed, and all provisions of Republic Act Numbered Two thousand two hundred sixty and any other Act, rule or regulation inconsistent with this amendatory Act are hereby repealed or accordingly modified: Provided, That all provisional appointments made or appointments approved by the Civil Service Commission under Section twenty-four (c) of Republic Act Numbered Two thousand two hundred sixty prior to the approval of this Act shall automatically be permanent under the provisions of Section twenty-four (b) thereof as amended by this Act, subject to the provisions of Section 16(h) of said Act as herein amended."

Clearly, the above provision of law refers to provisional appointments which are complete. Appointment becomes complete when the last act required of the appointing power is performed.[18] Such situation is however, not obtaining in the case at bar. the requisite approval by the Provincial Board not having been complied with. On the contrary the contested appointments were recalled by the appointing power, the then Governor Espina for approval by the Provincial Board, but were subsequently disapproved by the latter. Stated otherwise, there are no appointments to speak of, much less ones to be converted to permanent status under Republic Act No. 6040. It is likewise noteworthy, that the recall was made on February 7, 1968, while Republic Act No. 6040 was made effective on August 4, 1969.

The argument of respondents-appellees that the appointments have become final and irrevocable by virtue of the approval and certification of the Civil Service Commissioner which have not been contested or corrected for more than two years is not tenable.

This issue has already been settled by this Court in the case of *Taboy v. Court of Appeals*, [19] involving separated employees of the Province of Cebu, under similar circumstances. In overruling the aforesaid argument, the then Justice Abad Santos, stated, "x x x the fact is that the Provincial Board of Cebu disapproved their appointments pursuant to the power granted to it by law. Hence, their appointments ceased to have effect, if at all, and their

services were properly terminated. It matters not that the appointments of petitioners have been attested by the Commissioner of Civil Service and that they have served for several years because the appointments having been made without the approval of the Provincial Board of Cebu, the same were not valid appointments." [20]

Finally, respondents-appellees contend that even if the, questioned appointments were validly disapproved the same being promotional in nature, the disapproval ought not to have caused their separation from the service but they should have been deemed reverted to their old appointments, citing the case of *De la Rea*. [21]

That the rule in the cited case is not applicable to the case at bar is at once apparent considering that the *De la Rea* case involves an employee who was promoted to another position entirely different from his former appointment, and we ruled that when the promotional appointment was invalidated he was deemed not to have abandoned his prior office. In the herein case, although two of respondents-appellees appear to have occupied their positions even before the questioned appointments, their employment nevertheless commenced sometime in 1955 and 1958 when the requirement of Sec. 2081 of the Revised Administrative Code requiring the approval of the Provincial Board for such appointments, was in full force and effect. If the 1965 appointments attested to as provisional were promotional, their status prior to said appointments, if any, must have been merely casual or temporary. It will be recalled that before RA 6040 was enacted, abolishing provisional appointments, there were three categories of employees under the Civil Service Act: [22] temporary, provisional and permanent. Consequently, assuming that they were casual or temporary employees at the time of their 1965 appointments, there is more reason for their appointments to be subject to the approval of the Provincial Board; and having disapproved their appointments, the Board validly terminated their precarious tenure. There are obviously no original positions to which respondents-appellees could be reverted, considering that there is only one position for each of them which are in question. It would be absurd to say that respondents-appellees should be reinstated to their position as provincial prison guards when their very appointments as such have been validly disapproved and therefore terminated.

WHEREFORE, the instant petition is hereby GRANTED. The appealed decision ordering the reinstatement of respondents-appellees is set aside. No cost.

SO ORDERED.

Gutierrez, Jr., Feliciano, Bidin, and Cortes, JJ., concur.

[1] pp. 1-2. Annex "C". Petition: Rollo. pp. 50-51

[2] Republic Act. No. 2260

[3] Opinion No. 167. Series of 1960: Rollo. p. 52.

[4] Appellants' Brief, p. 3.

[5] Rollo. p. 62.

[6] Rollo, p. 9.

[7] Rollo, p. 68.

[8] Rollo. p. 71.

[9] p. 10, Annex "C" of Petition: Rollo, p. 59.

[10] pp. 10-12 Annex "C" of Petition: Rollo, pp. 61-62.

[11] p. 4. Petitioners' Brief: Rollo. p. 1 12.

[12] G.R. No. L-26082, July 31, 1968. 24 SCRA 496.

[13] Section 2081. Revised Administrative Code.

[14] R.A. 2260.

[15] G.R. No. 1,-35703. October 30. 1972. 47 SCRA 314.

[16] G.R. No. 1.-25074. December 27. 1969. 30 SCRA 873.

[17] Aparri v. C.A., 127 SCRA 233 (1984).

[18] Lira v. Civil Service Commissioner, 144 SCRA 552 (1986).

[19] G.R. No. L-47472. July 24. 1981: 105 SCRA 759.

[20] At p. 761.

[21] Supra.

[22] R.A. 2260.

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