

SAMAD M. UNDA, PETITIONER, VS. CIVIL SERVICE COMMISSION AND THE MUNICIPALITY OF MASIU, LANA DEL SUR, REPRESENTED BY MAYOR NASSER P. PANGANDAMAN, JR., RESPONDENTS.

Ponente: LLOREN, J.

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LLOREN, J.:

This is an appeal under Rule 43 of the Rules of Court assailing the following Orders of the Civil Service Commission: 1) Decision[1] dated 15 March 2012 partially granting the appeal of respondent Municipality of Masiu which modified the Orders dated 15 February 2010 and 2 June 2010 of the Civil Service Commission-Autonomous Region in Muslim Mindanao (CSC-ARMM); and 2) the Resolution[2] dated 16 October 2012 denying petitioner's partial motion for reconsideration.

The relevant facts are as follows:

Before the end of his term, the former mayor of the Municipality of Masiu, Lanao del Sur, Aminullah D. Arimao, appointed petitioner Samad M. Unda as Municipal Environment and Natural Resources Officer (MENRO) on 8 March 2007.[3] When the new mayor, respondent Nasser P. Pangandaman, assumed office on 1 July 2007, he questioned the validity of petitioner's appointment as MENRO before the Civil Service Commission - Autonomous Region in Muslim Mindanao (CSC-ARMM), on the ground that it was highly irregular being a midnight appointment and that said position was not included in the last approved 2005 annual budget of the municipality. Respondent stressed that the municipality has no annual budget for the years 2006 and 2007 operating only on the basis of the reenacted 2005 annual budget.[4]

On 15 February 2010, CSC-ARMM issued an Order sustaining petitioner's appointment on the ground that he satisfied the regular screening of the Personnel Screening Board before the election ban.[5] Respondent filed a motion for reconsideration which was denied on 2 June 2010.[6]

On 20 August 2010, respondent appealed the said Order before the Civil Service Commission main office in Quezon City.

On 15 March 2012, the CSC rendered the assailed Decision[7] disapproving the appointment of Samad Unda as MENRO. The salient points of the Decision read:

It appears that petitioner Mayor Pangandaman is correct in claiming that there was no 2006 Municipal Budget of the Municipal Government of Masiu. His claim was supported by the Affidavit dated July 19, 2008, executed by seven (7) Sangguniang Bayan members of the Local Government of Masiu....

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In addition, the Office of the Governor, Provincial Government of Lanao del Sur, has certified that the

Municipal Government of Masiu has not submitted its 2006 Annual Budget for review and approval.

The above-quoted Affidavit and the Certification of the Provincial Government of Lanao del Sur is, to the mind of the Commission, evidence enough to show that there was indeed no 2006 approved Annual Budget of the Municipal Government of Masiu. In effect, the 2005 approved Annual Budget was deemed reenacted and to be applied for the salaries of the employees in 2006 as mandated under Section 323, Title V, Book II, Local Government Code of 1991. xxx

The Commission notes that the Municipal Environment and Natural Resources Office (SG-24) was a newly created position in the purported 2006-Annual Budget of the Municipal Government of Masiu. In effect, no Municipal Environment and Natural Resources Officer position was validly created as there was no approved 2006 Municipal Budget. As such, the appointment of Samad M. Unda to the said position on March 8, 2007 is not valid and, therefore, should be disapproved.

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The appointment of Samad Unda as Municipal Environment and Natural Resources Officer is disapproved on the ground that the 2006 Municipal Budget was not approved and for lack of PSB screening. xxx

Petitioner filed a motion for reconsideration but it was denied on 16 October 2012.

Petitioner now comes to Us ascribing the following errors:

I

WITH ALL DUE RESPECT, THE HONORABLE CIVIL SERVICE COMMISSION HAS MANIFESTLY AND GRAVELY ERRED IN ITS DECISION NO. 12-O168 DATED MARCH 15, 2012 HEREIN SOUGHT TO BE REVIEWED, GRANTING PRIVATE RESPONDENT'S APPEAL AND DISAPPROVING THE PETITIONER'S APPOINTMENT AS MUNICIPAL ENVIRONMENT AND NATURAL RESOURCES OFFICER OF THE MUNICIPALITY OF MASIU, LANA DEL SUR, IN SHORT ITS DECISION IS UNSUPPORTED BY AND/OR IS CONTRARY TO THE EVIDENCE ON RECORDS.

II

WITH ALL DUE RESPECT, THE HONORABLE CIVIL SERVICE COMMISSION HAD COMMITTED ERRORS OF FACTS AND LAW AS WELL AS JURISPRUDENTIAL TENENTS PREJUDICIAL TO THE INTEREST OF THE PETITIONER, SPECIFICALLY IN RESOLVING ISSUES NOT RAISED BY RESPONDENT (THEREIN PETITIONER) AT THE INCEPTION OF THE PETITION TO RECALL APPOINTMENTS FILED WITH THE CSC REGIONAL OFFICE-ARMM AS WELL AS IN THE APPEAL MADE BEFORE IT. IN SHORT, THE CIVIL SERVICE COMMISSION PASSED UPON MATTERS NOT BEING RAISED AS ISSUES AT ANY STAGE OF THE PROCEEDINGS IN THE CSC REGIONAL OFFICE UP TO ITS LEVEL ON APPEAL.

III

WITH ALL DUE RESPECT, THE HONORABLE CIVIL SERVICE COMMISSION GRAVELY ERRED IN NULLIFYING THE SANGGUNANG BAYAN RESOLUTION NO. 29 DATED OCTOBER 4, 2005, OTHERWISE KNOWN AS "A RESOLUTION APPROPRIATING THE AMOUNT OF P23, 945,446.00 AS ANNUAL BUDGET FOR CALENDAR YEAR 2006 AND THE NEWLY CREATED POSITIONS.

These assigned errors may be resolved by addressing the issue of whether petitioner's appointment as Municipal Environment and Resources Officer was valid and in accordance with law.

Petitioner argues that the position of Municipal Environment and Natural Resources Officer (MENRO) validly exists since it was created under Resolution No. 29 Series of 2005 issued by the Sangguniang Bayan of the Municipality of Masiu, Lanao del Sur, which provides for the 2006 annual budget of the municipality; and said Resolution was duly deliberated upon and passed by the members of the Sangguniang Bayan on its regular session on October 24, 2005.

On the other hand, the Office of the Solicitor General contends that there is no law creating such public office because there is no Resolution No. 29 Series of 2005, which is the 2006 Municipal Budget, which allegedly created the position of MENRO.

The Civil Service Commission ruled that the Municipal Environment and Natural Resources Office (SG-24) was a newly created position in the purported 2006-Annual Budget of the Municipal Government of Masiu. In effect, no Municipal Environment and Natural Resources Officer position was validly created as there was no approved 2006 Municipal Budget. As such, the appointment of Samad M. Unda to the said position on March 8, 2007 is not valid and, therefore, should be disapproved.

The arguments of both parties and the ruling of the Civil Service Commission are misplaced.

It is an elementary rule in administrative law and the law on public officers that a public office is either created by the Constitution (fundamental law), by law (statute duly enacted by Congress), or by authority of law.[8]

Here, the creation and establishment of the Municipal Environment and Natural Resources Office was made by law under Sections 443 and 484 of the Local Government Code of 1991, viz.:

SEC. 443. Officials of the Municipal Government. - (a) There shall be in each municipality a municipal mayor, a municipal vice-mayor, sangguniang bayan members, a secretary to the sangguniang bayan, a municipal treasurer, a municipal assessor, a municipal accountant, a municipal budget officer, a municipal planning and development coordinator, a municipal engineer/building official, a municipal health officer and a municipal civil registrar.

(b) In addition thereto, the mayor may appoint a municipal administrator, a municipal legal officer, a municipal agriculturist, a municipal environment and natural resources officer, a municipal social welfare and development officer, a municipal architect, and a municipal information officer.

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SEC. 484. Qualifications, Powers and Duties. - (a) No person shall be appointed environment and natural resources officer unless he is a citizen of the Philippines, a resident of the local government unit concerned, of good moral character, a holder of a college degree preferably in environment, forestry, agriculture or any related course from a recognized college or university, and a first grade civil service eligible or its equivalent. He must have acquired experience in environmental and natural resources management, conservation, and utilization, of at least five (5) years in the case of the provincial or city environment and natural resources officer, and three (3) years in the case of the municipal environment and natural resources officer. The appointment of the environment and natural resources officer is optional for provincial, city, and municipal governments. (Emphasis Ours)

Notably, this office or position does not only exist in municipalities but also in the cities[9] and provinces.[10] Its creation does not depend on any Resolution issued by a local legislative body such as Resolution No. 29 Series of 2005,[11] but by a law duly enacted by Congress which is the Local Government Code of 1991.

This brings us to the next question of whether petitioner was validly appointed to the position. In his appeal before the CSC, respondent Mayor Pangandaman avers that petitioner was one of the midnight appointees of the former mayor whose appointment was issued on the basis of a non-existing 2006 Annual Budget.

We disagree.

The records show that the former mayor of the Municipality of Masiu, Lanao del Sur, appointed petitioner on 8 March 2007 or 22 days before the election ban which started on 30 March 2007 up to 14 May 2007. Clearly, it was not a midnight appointment.

Besides, the constitutional prohibition on so-called "midnight appointments," specifically those made within two (2) months immediately prior to the next presidential elections, applies only to the President or Acting President. There is no law that prohibits local elective officials from making appointments during the last days of his or her tenure.[12]

Likewise, the approval of the Personnel Screening Board as mandated under CSC Resolution No. 010988 dated June 4, 2001 is not applicable in this case because petitioner is not a midnight appointee. The regular screening process is required only for those appointments made AFTER elections or during the prohibited period, viz.:

Item No. 3 refers to the disapproval of appointments unless certain requisites are complied with. Item No. 3 reads:

- All appointments, whether original, transfer, reemployment, reappointment, promotion or demotion, . . . which are issued AFTER the elections, regardless of their dates of effectivity and/or date of receipt by the Commission, . . . shall be disapproved unless the following requisites concur relative to their issuance:

a) The appointment has gone through the regular screening by the Personnel Selection Board (PSB) before the prohibited period on the issuance of appointments as shown by the PSB report or minutes of its meeting;

b) That the appointee is qualified;

c) There is a need to fill up the vacancy immediately in order not to prejudice public service and/or endanger public safety;

d) That the appointment is not one of those mass appointments issued after the elections.

In this case, petitioner was appointed before the election ban or on 8 March 2007. Thus, petitioner is not subject to these requirements.

Even granting *arguendo* that petitioner is covered by this CSC Resolution, he was already screened and evaluated by the Personnel Selection Board as shown by the Certification[13] in his appointment paper signed by no less than the Chairman of the Personnel Selection Board in compliance with CSC Memorandum Circular No. 40, otherwise known as the Revised Rules on Appointments and Other Personnel Actions, which provides:

Section 1. Appointments submitted to the CSC office concerned should meet the requirements listed hereunder. Non-compliance with such requirements shall be grounds for disapproval of said appointments:

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(h) Personnel Selection Board (PSB) Evaluation/Screening. Appointees should be screened and evaluated by the PSB, if applicable. As proof thereof, a certification signed by the Chairman of the Board at the back of the appointment or alternatively, a copy of the proceedings/minutes of the Board's deliberation shall be submitted together with the appointment. The issuance of the appointment shall not be earlier than the date of the final screening/deliberation of the PSB. (Emphasis Ours)

Anyway, the discussion of this issue is superfluous considering that respondent never raised this matter either in the original proceedings or on appeal. The only grounds raised by respondent were as follows: a) midnight appointees; or b) appointed to positions which were not vacant; or c) whose appointments were rendered ineffective for failure of attestation within 30 days from issuance; or d) whose appointments were issued on the basis on the non-existing 2006 Annual Budget.

It must be stressed that questions raised on appeal must be within the issues framed by the parties and, consequently, issues not raised in the original proceedings cannot be raised for the first time on appeal.[14]

Surprisingly in this case, CSC casually addressed this issue despite that it was not included in the original proceedings or on appeal. Worse, CSC erred in ruling that petitioner's appointment lack the necessary screening and evaluation by the PSB which is contrary to the evidence on record.

WHEREFORE, premises considered, the assailed Decision dated 15 March 2012 and the Resolution dated 16 October 2012 are REVERSED and SET ASIDE. The Orders dated 15 February 2010 and 2 June 2010 of the Civil Service Commission-Autonomous Region in Muslim Mindanao (CSC-ARMM) are hereby AFFIRMED. Petitioner Samad M. Unda's appointment as Municipal Environment and Natural Resources Officer is valid and in accordance with law.

SO ORDERED.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

Azcarraga-Jacob and Contreras, JJ., concur.

[1] Rollo, p. 44. Penned by Hon. Francisco T. Duque, III

[2] Id., p.80

[3] Id., p.95

[4] Rollo, p.100

[5] Id., pp.100-110

[6] Id., pp.97-99

[7] Supra

[8] See DOTC Secretary vs. Mabalot, G.R. No. 138200. February 27, 2002.

[9] Paragraph b, Section 454 of the Local Government Code of 1991

[10] Paragraph b, Section 463 of the Local Government Code of 1991

[11] Issued by the Sangguniang Bayan of the Municipality of Masiu, Lanao del Sur

[12] See Quirog vs. Aumentado, G.R. No. 163443. November 11, 2008.

[13] Rollo, dorsal portion, p.95

[14] See Lim vs. Queensland Tokyo Commodities, Inc., G.R. No. 136031. January 4, 2002.

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