

RE: APPOINTMENT OF ELVIRA C. ARCEGA AS DEPUTY CLERK OF COURT, COURT OF FIRST INSTANCE OF BULACAN, BRANCH VIII.*A.M. No. 2993-CFI. April 10, 1979*

Ponente: FERNANDEZ, J.

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In her letter-petition dated November 11, 1978,[1] Elvira C. Arcega seeks the conversion of her temporary appointment as Deputy Clerk of the Court of First Instance of Bulacan, Branch VIII, into a permanent one. Said temporary appointment, dated October 9, 1978 and effective November 16, 1978,[2] is a renewal of her previous "permanent" appointments to the same position which were attested as "temporary" by the Civil Service Commissioner.

The personal record of Elvira C. Arcega[3] shows that she was promoted from Court Interpreter II to the position of Deputy Clerk of Court under a "permanent" appointment dated August 12, 1976 and effective November 16, 1976 pursuant to the Resolution of this Court dated July 27, 1976 the pertinent portion of which reads:

"... the Court Resolved: (a) to ADOPT, in view of the manifest difficulty of filling up the many vacant positions of deputy clerk of court in the various branches of the Court of First Instance and the adverse effects suffered through the disruption of public service, the following alternative qualifications: (a) a member of the Bar; or (b) LI. B. graduate and a first grade civil service eligible; or (c) have at least five (5) years of service in the court, obtained a bachelor's degree, and a first grade civil service eligible; or (d) have at least ten (10) years service in the court, finished at least two (2) years of college and a second grade civil service eligible; and (b) to APPROVE the appointment of Roberto V. Tabio and Elvira C. Arcega, who qualify under the aforesaid alternative qualifications, to the position of Deputy Clerks of Branch I of the Court of First Instance of Quezon and of Branch VIII of the Court of First Instance of Bulacan, respectively; x x x." (italics supplied)[4]

Upon submission to the Civil Service Commission of her "permanent" appointment dated August 12, 1976, however, it was "approved as temporary," with the Commission's notation that her "eligibility (is) not appropriate for said position." A year after, she was issued another "permanent" appointment to the same position, dated September 22, 1977 and effective November 16, 1977, which the Civil Service Commission again attested as "temporary" because her "eligibility is not appropriate for the position involved." Her present renewal appointment was consequently made "temporary."

Now seeking the reinstatement of her permanent appointment to said position, Elvira C. Arcega contends that the Civil Service Commission had taken unwarranted action on her "permanent" appointment, in disregard of the aforequoted Resolution of this Court En Banc dated July 27, 1976. The Presiding Judge of the court to which she was appointed, Hon. Eduardo P. Caguioa, supports her contention and recommends that "the permanent appointment given to Mrs. Arcega should be reinstated . . ."[5]

Elvira C. Arcega is qualified and eligible for the position as had been determined in the Resolution of this Court

dated July 27, 1976. She is entitled to the permanent appointment issued to her pursuant to the said Resolution. The adoption of the alternative qualifications standard and this Court's approval of her appointment upon finding her qualified and eligible comes within the broad discretion that the law[6] vests in the hands of the appointing power consonance with the decisions of this Court. In *Aguilar vs. Nieva, Jr.*[7] case this Court, stressing the discretion that is vested in the appointing official, said:

"... '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, persona! 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.' The later case of *Del Rosario V. Subido* quoted with approval the above excerpt.

3. The *Del Rosario* opinion even went further. Thus: This court was even more emphatic in its recognition of such broad discretion in the appointing power in a case of later date, where in the opinion penned by Justice Castro, it was stated: 'For it is not enough that an aspirant is qualified and eligible or that he is next in rank or in 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, knowledgeability, energy and judgment. After all, it is the local executive, more than anyone 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.'"[8]

This ruling was reiterated in the recent case of *Eugenia vs. Torrijos, et al.*[9]

It is well settled that the determination of the kind of appointment to be extended lies in the official vested by law with the appointing power and not the Civil Service Commission. The Commissioner of Civil Service is not empowered to determine the kind or nature of the appointment extended by the appointing officer.[10] When the appointee is qualified, as in this case, the Commissioner of Civil Service has no choice but to attest to the appointment.[11] Under the Civil Service Law, Presidential Decree No. 807, the Commissioner is not authorized to curtail the discretion of the appointing official on the nature or kind of the appointment to be extended.

WHEREFORE, the letter-petition of Elvira C. Arcega is granted and her permanent appointment dated August 12, 1976 to the position of Deputy Clerk of Court of the Court of First Instance of Bulacan, Branch VIII, is hereby reinstated and considered valid and effective in all respects.

SO ORDERED.

Fernando, Antonio, Concepcion Jr., Santos, Guerrero, De Castro, and Melencio Herrera, JJ., concur.

Castro, C.J., concurs in the result.

Barredo and Aquino JJ., reserve their votes.

Makasiar, J., took no part.

Santos, .J., abstains.

[1] Rollo. pp. 3-4.

[2] Rollo, p. 12.

[3] The 20! File of Elvira C. Arcega.

[4] Rollo. p. 5.

[5] Letter dated November 13. 1978. Rollo. p. 2.

[6] Section 20 of the Civil Service Law, Presidential Decree No. 807, which provides that "the degree of qualifications of an officer or employee shall be determined by the appointing authority on the basis of the qualification standard for the position."

[7] L-28422, July 29, 1971, 40 SCRA] 13.

[8] Ibid., pp. 120-121.

[9] L-44042, October 9, 1978.

[10] Said Benzar Ali vs. Teehankee, L-29505, August 30. 1972, 46 SCRA 728. 730.

[11] L-30865. August 31, 1971. 40 SCRA 481, 484.

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