

LEONILA S. DEL ROSARIO, PETITIONER, VS. HON. ABELARDO SUBIDO AS COMMISSIONER OF CIVIL SERVICE AND JESUS D. MACROHON, RESPONDENTS.*G.R. No. L-30091. January 30, 1970*

Ponente: FERNANDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a0dc419384f6/>**FERNANDO, J.:**

Petitioner Leonila S. del Rosario, firm in her belief that under the relevant provision of the Civil Service Law she was the-officer next in rank, "competent and qualified to hold the position", possessed of "an appropriate civil service eligibility" and thus entitled to be promoted as Assistant Chief Accountant IV in the Bureau of Public Highways, in which there was a vacancy,[1] filed this certiorari and mandamus proceeding on January 27, 1969 against respondent Abelardo Subido, as Commissioner of Civil Service as well as the other respondent, Jesus D. Macrohon, who was appointed to such a position. She assailed the validity of the determination of respondent Commissioner of September 30, 1968, holding that respondent Macrohon was rightfully entitled to such a promotion and approving the same. It is the contention of petitioner that certiorari lies as the act of respondent Commissioner was in excess of his authority, and that mandamus lies as he refused or neglected to consider her promotion to the disputed position.

As noted in the above determination of respondent Commissioner of September 30, 1968,[2] there was a protest to the appointment of the other respondent Jesus D. Macrohon by petitioner "on the ground of alleged violation of the Civil Service Law and rules on promotion. These papers show that Mrs. del Rosario was originally proposed for appointment to the position in question but Mr. Macrohon protested the same. The Department Complaints Commission in its decision dated March 12, 1968 found the protest of Mr. Macrohon meritorious and recommended that the appointment of Mrs. del Rosario to the same position be returned to the Commissioner of Public Highways without action and that protestant Macrohon be appointed in her instead. In a letter dated April 1, 1968 the Secretary of Public Works and Communications furnished Mrs. del Rosario a copy of said decision and stated further that 'In view of the findings contained therein, which the undersigned fully concurs, the Commissioner of Public Highways is being directed to submit instead the appointment of Mr. Macrohon to the position concerned and that the residual vacancy of Chief Accountant I which will be vacated by Mr. Macrohon shall in turn be given to you, in justice and fairness to all concerned.[3]

It was there further stated: "Records show that Mr. Macrohon now holds the position of Chief Accountant I in, the BPH while Mrs. del Rosario holds the position of Accountant III in the same Office. Under the proposed Merit Promotion Plan of the BPH the position next in rank to Assistant Chief Accountant IV is Chief Accountant I." [4] Then it was noted that in a letter of August 4, 1967 the Commissioner of Public Highways, in connection with a present case of a certain Emigdio M. Fernandez against the petitioner for the position of Chief Accountant IV, the organizational chart of the division as approved by the Secretary of Public Works and Communications would show that she was only next in rank to respondent Jesus Macrohon, then Chief Accountant I, "and not to the Chief Accountant IV." From which, it was the conclusion of respondent Commissioner: "It is clear from the foregoing

that Mr. Macrohon is the employee next in rank who should be promoted to the position of Assistant Chief Accountant IV and not Mrs. del Rosario who may be considered as next in rank only to the position of Chief Accountant I, the position to be vacated by the protestee." [5]

In the same communication, respondent Commissioner likewise answered the contention that determination of the employee next in rank should be on a division-wide basis. Thus: "The allegation that the selection of the next in rank employee in the instant case should be on a division-wide basis is without merit because Sec. 3(a) of Civil Service Rule VII provides that determination of the Officer or employee next in rank should provide for as wide an area of selection as possible within the Department or Agency. Moreover, good management requires that the promotional area should not be artificially restricted by section or division lines, except when such restriction is demonstrably in the interest of the service as a whole. In the instant case it cannot be gainsaid that Mr. Macrohon who is Chief Accountant I is the employee next in rank who is competent and qualified and who possess the appropriate eligibility. Suffice it to state that the Mindanao Equipment Depot is still part of the Accounting Division, which exercises technical supervision over it." [6]

As to the respective qualifications of respondent Macrohon, respondent Commissioner had this to say: "Mr. Macrohon holds the degrees of Bachelor of Science in Commerce and Bachelor of Laws. He is an Auditor eligible and was granted CPA eligibility under RA 1080. He attended in-service training and seminars on Bookkeeping and Auditing; Personnel and Fiscal Administration (BPH-Manila) and Public Administration (Civil Service-Davao). He was first employed in the government service as Bookkeeper in the Budget Commission on September 19, 1957 and held such positions as Accountant I and Chief Accountant I to which position he was promoted sometime in 1964. His latest efficiency rating is 94%." [7] Nor did he fail to take account of the circumstances relied upon by petitioner to demonstrate her alleged right as the person next in rank. Thus: "On the other hand, Mrs. del Rosario likewise holds the degree of Bachelor of Science in Commerce and has earned 6 units leading to the degree of Master of Arts. She has had in-service training on Mechanized Accounting (Erlanger & Galenger) and Accounting Procedures and Techniques (Budget Commission). She is a Supervisor (First Grade) Promotional and Auditor eligible. She was also granted CPA eligibility under RA 1080. She was first employed in the government service as a Teacher in the City Schools on August 15, 1945. Sometime in 1959 she was appointed Bookkeeper II in the Budget Commission and on July 1, 1963 she was appointed Accountant III which position she still holds up to the present. Her latest efficiency rating is 90%." [8]

It is in the light of the above considerations that respondent Commissioner decided the matter adversely to petitioner. It is now contended that in reaching the conclusion as to who was entitled to the disputed position, the determination of respondent Commissioner is infected with the virus of a grave abuse of discretion. If it were so, then certiorari lies. Such is not the case however. There being no legal right on the part of petitioner, neither does mandamus.

1. In the first decision of this court where the question of who is the person next in rank competent and qualified to hold the position and who possesses an appropriate civil service eligibility, thus entitling him to promotion, [9] the need for a clear and sufficient showing that the officer seeking the promotion comes clearly within its terms was stressed by us. This, petitioner failed to do, contenting herself with the use of language intended to cast doubt on the challenged determination of respondent Commissioner whom she would accuse of merely relying on "the mere designation or nomenclature of the position." [10] This is to ignore the fact, of which respondent Commissioner took note that on the very face of the organizational chart to which no valid objection had previously been interposed, petitioner's position was lower than that of respondent Macrohon. It would follow then that having failed to meet the burden required of her by the controlling doctrine, her allegation as to the alleged abuse of discretion cannot be seriously entertained, thus precluding the issuance of a writ of certiorari. Nor would mandamus lie to respect what has been shown to be a non-existent legal right.

2. It was noted in discussing the facts that the finding of respondent Commissioner was that petitioner was of a lower rank than respondent Macrohon. Even if the situation be considered in the light most favorable to her and her claim to the position be predicated on her occupying a position whose rank was equivalent to that of respondent Macrohon, still her petition could not be considered meritorious. As shown in the answer of respondent Commissioner, it was the belief of the department head, after he had given the matter the most careful attention that the disputed position should be given to respondent Macrohon. The fact that petitioner had to dispute, first before respondent Commissioner and now with this Court, such an appointment, conclusively argues against the intimation found in the petition that, were it not for the determination of respondent Commissioner, petitioner would be the fortunate recipient of such an appointment.

It being clear that the proper department head had concluded that respondent Macrohon was entitled to the position in question and had extended the appropriate appointment, petitioner, even on the assumption that she should have been considered likewise to fill up such vacancy, had, under the settled doctrines of this Court, no other recourse but to abide by such a choice. We had occasion to so decide in *Reyes v. Abeleda*.^[11] 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 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 these 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."

This Court was even more emphatic in its recognition of such broad discretion in the appointing power in a case of later date,^[12] 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 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."

As a matter of fact, in the very petition itself, *Jimenez v. Francisco*^[13] was invoked. Petitioner ought to have been more cautious in the choice of authority cited, for while not directly in point, the opinion in this case by former Chief Justice Paras would sustain the conclusion arrived at by respondent Commissioner in deference to what was decided by Secretary Raquiza insofar as it accords explicit recognition to such broad discretionary appointing authority of the official concerned. Thus: "Petitioner's claim that after becoming a civil service eligible on September 5, 1951, he was entitled to a permanent appointment to the position from which he was removed, is not sanctioned by any law or regulation. The power to appoint is in essence discretionary on the part of the proper authority, in this case the head of the department. The appointing power has the right of choice which he may exercise freely according to his judgment, deciding for himself who is best qualified for any competitive position in the Civil Service."

The last two decisions cited, while subject to being distinguished from the present litigation as the facts are different, still stood for a principle which sustains the determination of respondent Commissioner. No grave abuse of discretion can therefore be imputed to him. Nor, as is equally clear, can it be plausibly maintained that petitioner was deprived thereby of a clear legal right.

WHEREFORE, this petition for certiorari and mandamus is denied. With costs against petitioner.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Castro, Teehankee, and Barredo, JJ., concur.

Dizon, J., concurs in the result.

Sanchez and Villamor, JJ., did not part.

[1] Sec. 23 of the Civil Service Act of 1959, insofar as pertinent, specifically provides as follows: "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, however, That should there be any special reason 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 case shall be final. If the vacancy is not filled by promotion as provided herein, then the same shall be filled by transfer of present employees in the government service, by reinstatement, by reemployment of persons separated through reduction in force, or by certification from appropriate registers of eligibles in accordance with rules promulgated in pursuance of this Act."

[2] Petition, Annex A.

[3] Ibid, p. 1.

[4] Ibid, p. 2.

[5] Ibid.

[6] Ibid, p. 3.

[7] Ibid.

[8] Ibid, pp. 3-4.

[9] *Castro v. Del Rosario*, 19 SCRA 196, L-17915 (January 31, 1967).

[10] Petition, par. 4, p. 6.

[11] 22 SCRA 825, L-25491 (February 27, 1968).

[12] *Pineda v. Claudio*, 28 SCRA 34, L-29661 (May 13, 1969).

[13] 100 Phil. 1025 (1957).

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.