

**EUSTAQUIO M. MEDALLA, JR., PETITIONER, VS. THE HONORABLE  
MARCELINO N. SAYO, JUDGE OF THE CFI OF RIZAL, BRANCH XXXIII  
AND HONORATO G. MACKAY, ACTING HOSPITAL ADMINISTRATOR  
OF THE...**

*G.R. No. L-54554. March 30, 1981*

Ponente: MELENCIO-HERRERA, J.

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**MELENCIO-HERRERA, J.:**

In this Petition for "Certiorari, Mandamus and Prohibition", seeking the dismissal of Civil Case No. C-7770 below, we have, as factual background, the following:

Petitioner, Dr. Eustaquio M. Medalla, Jr., is the Chief of Clinics of the Caloocan City General Hospital, Caloocan City. Private respondent, Dr. Honorato G. Mackay, was the Resident Physician thereat.

When the position of Assistant Hospital Administrator of the Caloocan City General Hospital became vacant upon the resignation of the incumbent, former Caloocan City Mayor Alejandro A. Fider designated and subsequently appointed, as Assistant Hospital Administrator, private respondent Dr. Mackay, a Resident Physician in said hospital. Petitioner, Dr. Medalla, Jr., protested Dr. Mackay's designation and subsequent appointment alleging among others that, as Chief of Clinics, he (Medalla) was next-in-rank. The then Acting City Mayor Virgilio P. Robles, who succeeded former Mayor, now Assemblyman Alejandro A. Fider, in his 4th Indorsement dated September 20, 1978, sustained Mackay's appointment stating:

"x x x as of April 18, 1978 when Dr. Honorato G. Mackay was promoted to Assistant Hospital Administrator from his previous position of Resident Physician, he was next in rank to the said higher position by reason of his having completed all academic requirements for the Certificate in Hospital Administration x x x contrary to the claim of Dr. Eustaquio Medalla, Jr. in his letter of May 2, 1978."

"x x x x x x"

Dissatisfied, Medalla elevated his case to the Civil Service Commission on appeal. On December 29, 1978, the Civil Service Merit Systems Board issued Resolution No. 49 sustaining Medalla's appeal and revoking Mackay's appointment as Assistant Hospital Administrator. The pertinent portion of the afore-stated Resolution reads:

"A perusal of the records shows that appellant Medalla is the Chief of Clinics of the Caloocan City General Hospital; he is a holder of the Degree of Doctor of Medicine; he has completed the requirements in Hospital Administration and is recommended for the title of Certificate in Hospital Administration; he is also a candidate of a Masters degree in Hospital Administration. He possesses the First Grade eligibility (BA 1080) and had undergone relevant training in Hospital Administration. His performance rating is 'Very Satisfactory'.

"On the other hand, appellee Mackay had been a Resident Physician, the position he held prior to his promotion to the contested position. He is a holder of the degree of Doctor of Medicine and is a First Grade eligible (BA 1080-Medical Board). He is a graduate student in Hospital Administration and as of September

18, 1978 he has completed all academic requirements for a certificate in Hospital Administration. His performance rating is 'Very Satisfactory'.

"A perusal of the organizational chart of the Hospital ng Caloocan approved by the Hospital, Administrator would show that the Chief of Clinics is the next lower position to the Assistant Hospital Administrator. The Resident Physician is not a next lower position to the Assistant Hospital Administrator. Therefore, Medalla and not Mackay is the person next in rank who may be promoted to the position involved.

"Moreover, even on the basis of competence and qualifications to perform the duties of the position, the records show that Dr. Medalla is more competent and qualified than Dr. Mackay. The qualification relied upon by the Acting City Mayor in justifying the appointment of Dr. Mackay which is his having completed the academic requirements for the Certificate in Hospital Administration does not give Dr. Mackay the advantage inasmuch as Dr. Medalla has also completed all the academic requirements for a certificate in Hospital Administration and is recommended for a title of Certificate in Hospital Administration apart from being also a candidate for a Masters degree in Hospital Administration."[1]

"x x x"1

Upon automatic review by the Office of the President, pursuant to section 19(6), PD No. 807, Presidential Executive Assistant Jacobo C. Clave rendered a Decision on April 24, 1979 declaring that:

"WHEREFORE, premises considered, and as recommended by Civil Service Commission, the appointment of Dr. Honorato G. Mackay as Assistant Hospital Administrator in the Caloocan City General Hospital is hereby revoked and the position awarded in favor of appellant Dr. Eustaquio M. Medalla."[2]

The Acting City Mayor, on behalf of Mackay, moved for reconsideration.

On May 7, 1979, totally disregarding the Decision of the Office of the President, the same Acting City Mayor appointed Mackay, this time as Hospital Administrator, and designated Dr. Tantoco as his Assistant, thereby again completely by-passing Medalla. Mackay took his oath of office on May 7, 1979.

On June 27, 1979, however, the Civil Service Commission, acting on Medalla's protest, and besides calling attention to the penal provision of P.D. No. 807, disapproved Mackay's appointment as follows:

"Wherefore, premises considered and finding the protest of Dr. Medalla in order, the appointment of Dr. Mackay as Hospital Administrator at P26,388 per annum effective May 7, 1979 is hereby disapproved. It is hereby ordered that Dr. Medalla be appointed to the position of Hospital Administrator of the Caloocan City General Hospital."[3]

On July 20, 1979, Mackay moved for reconsideration asserting 1) denial of due process of law inasmuch as the contested Resolution/Decisions were issued ex-parte, and 2) that the Civil Service Commission can not ignore nor overrule an appointment made by a City Executive.

Without awaiting the resolution of his Motion for Reconsideration, Mackay filed, on July 23, 1979, before the Court of First Instance of Rizal, Caloocan City, presided by respondent Judge, a Petition for "Certiorari, Prohibition and Mandamus with Preliminary Injunction and Damages" (Civil Case No. C-7770) against Hon. Jacobo Clave, the Civil Service Commission, the Acting City Mayor, the City Treasurer, and Medalla, praying that said respondents be restrained from implementing the Decision of Hon. Jacobo Clave of April 24, 1979, the Resolution No. 49 of the Merit Systems Board dated December 29, 1978, and the Decision of the Civil Service Commission of June 27, 1979. The Court a quo issued the Restraining Order prayed for on July 25, 1979 enjoining implementation of the afore-stated Resolution/Decisions.

On August 2, 1979, Medalla moved to dissolve the Restraining Order and to dismiss the Petition alleging mainly

that Mackay had not exhausted his administrative remedies and that the latter's right to a Writ of Preliminary Injunction was not only dubious or debatable but was clearly non-existent. Hon. Jacobo Clave and the Civil Service Commission likewise filed a Motion to Dismiss on the same ground of failure to exhaust administrative remedies.

On August 13, 1979, Mackay moved to suspend proceedings pending final resolution by the Civil Service Commission of his Motion for the reconsideration of the Decision of said Commission dated June 27, 1979.

On September 24, 1979, the Trial Court denied both Motions to Dismiss filed by Medalla, on the one hand, and Hon. Clave and the Civil Service Commission, on the other, holding that Mackay's failure to await resolution of his Motions for Reconsideration pending before the Office of the President and the Civil Service Commission did not deprive him of a cause of action besides the fact that according to the respective Manifestations of the said Offices; the Motions for Reconsideration had already been resolved adversely against Mackay.

Acting on Medalla's Motion for Reconsideration thereof as well as his Motion to Lift Restraining Order, the Court a quo, in its Order of July 15, 1980, denied reconsideration but lifted the Restraining Order "there being no showing that petitioner is entitled to the issuance of a Writ of Preliminary Injunction." Respondent Judge then set the case for hearing.

At this juncture, Medalla instituted this Petition before us praying that the Court a quo be restrained from proceeding with the hearing and that judgment be rendered as follows:

- "1. Ordering the Honorable Marcelino N. Sayo, Judge of the Court of First Instance of Rizal, Branch XXXIII, Caloocan City, to dismiss respondent Mackay's petitions, on the ground of lack of jurisdiction and/or non-exhaustion of administrative remedies resulting to a lack of cause of action;
2. Declaring the decision of the Office of the President (Annex 'C') and the Merit Systems Board (Annex 'E') as valid and enforceable." [4]

We issued a Restraining Order on August 27, 1980 enjoining respondents from proceeding with the case below.

On November 7, 1980, we required petitioner Medalla to implead the Mayor of Caloocan City as party-respondent, and the latter to comment on the Petition and to state whether he is ready to issue an appointment to Medalla as Hospital Administrator, Medalla's rights thereto having been upheld by the Civil Service Merit Systems Board and by the Office of the President.

In his Compliance, Medalla included an additional prayer that the City Mayor of Caloocan be ordered to immediately appoint him as Hospital Administrator and to pay him salary differentials.

In his Comment, the City Mayor of Caloocan invoked the privilege of an appointing authority to determine who can best fulfill the functions of an office citing the case of Aguilar vs. Nieva, Jr. [5] that effect. And as to the matter of his readiness to issue an appointment to Medalla, he manifested his preference to withhold action pending Mackay's un-resolved Motion for Reconsideration of the Decision of June 27, 1979 of the Civil Service Merit Systems Board.

Petitioner Medalla submits that the Trial Court erred in not dismissing Mackay's Petition before it, there being a clear showing of non-exhaustion of administrative remedies, and that said Court was devoid of jurisdiction in reviewing on Certiorari decisions of the Office of the President and of the Civil Service Commission rendered in the exercise of their quasi-judicial functions.

Private respondent Mackay takes the contrary view and prays, instead, that the contested Decisions/ Resolution be declared null and void and respondent Judge ordered to proceed with the hearing of the case below.

Although Mackay's Motions for Reconsideration were, in fact, still pending resolution by Hon. Jacobo C. Clave and the Civil Service Commission, respectively, at the time private respondent Mackay filed the Petition below, dismissal of said Petition can no longer be anchored on the ground of non-exhaustion of administrative remedies, as Medalla prays, considering that Manifestations dated August 17 and 23, 1979 filed by the said parties before the Court *a quo* show that they had resolved the incidents adversely against Mackay.[6] That issue, therefore, has become moot and academic.

In so far as jurisdiction of the Court below to review by Certiorari decisions and/or resolutions of the Civil Service Commission and of the Presidential Executive Assistant is concerned, there should be no question but that the power of judicial review should be upheld. The following rulings buttress this conclusion:

"The objection to a judicial review of a Presidential act arises from a failure to recognize the most important principle in our system of government, i.e., the separation of powers into three co-equal departments, the executive, the legislative and the judicial, each supreme within its own assigned powers and duties. When a presidential act is challenged before the courts of justice, it is not to be implied therefrom that the Executive is being made subject and subordinate to the courts. The legality of his acts are under judicial review, not because the Executive is inferior to the courts, but because the law is above the Chief Executive himself, and the courts seek only to interpret, apply or implement it (the law). A judicial review of the President's decision on a case of an employee decided by the Civil Service Board of Appeals should be viewed in this light and the bringing of the case to the Courts should be governed by the same principles as govern the judicial review of all administrative acts of all administrative officers." [7]

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"The courts may always examine into the exercise of power by a ministerial officer to the extent of determining whether the particular power has been granted to the officer, whether it is a legal power that could have been granted to him, and whether it has been exercised in a legal manner. This jurisdiction does not depend upon an act of the legislature authorizing it, but inheres in the courts of general jurisdiction as an essential function of the judicial department. (*State Racing Commission v. Latonia Agri. Asso.* 123 SW 681)." [8] (emphasis supplied).

For the speedy determination of the controversy, however, and considering that the position involved is infused with public interest, rather than remand the case to the Court below for further proceedings, we hold that grave abuse of discretion on the part of Hon. Jacobo C. Clave and the Civil Service Merit Systems Board is absent.

To start with, under the Revised Charter of the City of Caloocan (RA No. 5502), it is clear that the power of appointment by the City Mayor of heads of offices entirely paid out of city funds is subject to Civil Service law, rules and regulations (*ibid.*, section 19). The Caloocan City General Hospital is one of the city departments provided for in the said law (*ibid.*, sec. 17). The Hospital Administrator is appointed by the City Mayor (*ibid.*, section 66-B). The Hospital Administrator is the head of the City General Hospital empowered to administer, direct, and coordinate all activities of the hospital to carry out its objectives as to the care of the sick and the injured (*ibid.*).

Under section 19(3) of the Civil Service Decree (PD No. 807, effective on October 6, 1975), the recruitment or selection of employees for promotions is drawn from the next-in-rank.

"SEC. 19. Recruitment and Selection of Employees. -

x x x

(3) When a vacancy occurs in a position in the second level of the Career Service as defined in Section 7, the employees in the government service who occupy the next lower positions in the occupational group under

which the vacant position is classified and in, other functionally related occupational groups and who are competent, qualified and with the appropriate civil service, eligibility shall be considered for promotion."

Section 19(6) of the same Decree provides for the administrative procedure by an aggrieved employee in case of non-observance by the appointing authority of the next-in-rank rule, thus:

"Sec. 19(6) A qualified next-in-rank employee shall have the right to appeal initially to the department head and finally to the Office of the President an appointment made x x x x (2) in favor of one who is not next-in-rank, x x x x if the employee making the appeal is not satisfied with the written special reason or reasons given by the appointing authority for such appointment: x x x x x. Before deciding a contested appointment, the Office of the President shall consult the Civil Service Commission. For purposes of this Section, 'qualified next-in-rank' refers to an employee appointed on a permanent basis to a position previously determined to be next-in-rank to the vacancy proposed to be filled and who meets the requisites for appointment thereto as previously determined by the appointing authority and approved by the Commission."

The prescribed procedure has been followed by petitioner Medalla. He had appealed to the department head and from thence, in view of the latter's unfavorable action, to the Civil Service Commission and thereafter to the Office of the President. Resolution No. 49 of the Civil Service Merit Systems Board, its Decision of June 27, 1979, and the Decision of the Presidential Executive Assistant dated April 24, 1979, were all rendered in Medalla's favor. The special reason given by the Acting City Mayor for Mackay's appointment, which is, that he had completed all academic requirements for the Certificate of Hospital Administration, is not tenable, since Medalla himself was found to be in possession of the same qualification. But while the qualifications of both petitioner Medalla and private respondent Mackay are at par, yet, it is clear that the position of Chief of Clinics is the next lower position to Hospital Administrator under the organizational line-up of the hospital. Consequently, at the time of Mackay's appointment as Assistant Hospital Administrator and subsequently Hospital Administrator, Medalla outranked Mackay who was only a Resident Physician and, therefore, as the next-in-rank, Medalla is entitled to appointment as Hospital Administrator.

Respondent Mackay's urging that he was denied due process deserves scant consideration considering that subsequent developments in the case establish that he was heard on his Motions for Reconsideration by both the Civil Service Commission and the Office of the President.

It is true that, as respondent City Mayor alleges, a local executive should 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.[9] However, as reproduced heretofore, the Decision of the Civil Service Merit Systems Board, upheld by the Office of the President, contains a judicious assessment of the qualifications of both petitioner Medalla and private respondent Mackay for the contested position, revealing a careful study of the controversy between the parties, which cannot be ignored. The revocation of Mackay's appointment reveals no arbitrariness nor grave abuse of discretion.

WHEREFORE, 1) the appointment extended to private respondent, Dr. Honorato C. Mackay, as Hospital Administrator is hereby declared null and void; 2) respondent City Mayor of Caloocan City is hereby ordered to extend an appointment to petitioner, Dr. Eustaquio M. Medalla, as Hospital Administrator of the Caloocan City General Hospital immediately upon notice of this Decision; 3) petitioner, Dr. Eustaquio M. Medalla, shall receive all compensation and emoluments appertaining to said position thenceforth, but without entitlement to salary differentials; and 4) respondent Judge is hereby permanently enjoined from further proceeding with Civil Case No. 7770.

This Decision is immediately executory. No costs.

**SO ORDERED.**

Teehankee, (Chairman), Makasiar, Fernandez, and Guerrero, JJ., concur.

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[1] pp. 12-13, Rollo.

[2] Annex "C", p. 16, *ibid.*

[3] p. 20, *ibid.*

[4] p. 9, *ibid.*

**[5] 40 SCRA 113.**

[6] see Order, September 24, 1979, p. 41, Rollo.

[7] *Montes vs. Civil Service Board of Appeals, et al.*, 101 Phil. 490, 492-493 (1957).

[8] 2 Am. Jur. 2d, Administrative Law S 566 p. 379.

[9] *Claudio vs. Subido*, 40 SCRA 381, (1971).

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