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DENIAL OF THE REQUEST FOR DECLASSIFICATION IN THE COVERAGE OF THE CAREER EXECUTIVE SERVICE OF THE POSITIONS OF CHIEF PUBLIC ATTORNEY, DEPUTY CHIEF PUBLIC ATTORNEYS, REGIONAL PUB...

CESB RESOLUTION NO. 918, January 12, 2011

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WHEREAS, paragraph 2, Article IV, Part Ill of the Integrated Reorganization Plan (IRP), as amended, mandated the Career Executive Service Board (CESB) as the governing body of the Career Executive Service (CES), to promulgate rules, standards and procedures on the selection, classification, compensation and career development of members of the Career Executive Service (CES);

WHEREAS, on 29 September 2010, the Public Attorney's Office (PAO), through Atty. Sylvestre A. Mosing, Deputy Chief Public Attorney, requested for the declassification of the third level positions of PAO as part of the CES;

WHEREAS, pursuant to its mandate to identify positions of equivalent rank as CES positions, the Secretariat revisited its previous classification as part of the CES the above positions of PAO and conducted a position classification of the above positions and arrived at the following findings:

> 1. The positions of Chief Public Attorney, Deputy Chief Public Attorneys, Regional Public Attorneys and Assistant Regional Public Attorneys who are all presidential appointees fall within the criteria set under CESB Resolution No. 799, s. 2009 namely:
>
> a. the position is a career position;
> b. the position is above division chief level; and,
> c. the duties and responsibilities of the position require the performance of executive or managerial functions.

2. While Section 3 of Republic Act 9406 which provides that:

"SEC. 3. A new Section 14-A, is hereby inserted in Chapter 5, Title III, Book IV of Executive Order No. 292, otherwise known as the "Administrative Code of 1987", to read as follows:

"SEC. 14-A Powers and Functions – The PAO shall independently discharge its mandate to render, free of charge, legal representation, assistance, and counseling to indigent persons in criminal, civil, labor, administrative and other quasi-judicial cases. In the exigency of the service, the PAO may be called upon by proper government authorities to render such service to other persons, subject to existing laws, rules and regulations." (Emphasis ours) The aforecited provision does not limit the mandate of PAO to only perform only non-executive functions. All that the aforecited provision states is that the PAO is mandated to render legal representation, assistance and counseling to indigent persons in criminal, civil, labor, administrative and other quasi-judicial cases, free of charge. Notably the positions of Chief Public Attorney, Deputy Chief Public Attorneys, Regional Public Attorneys and Assistant Regional Public Attorneys evidently require leadership and managerial competence.

WHEREAS, consequently, as ruled by the Supreme Court in the case of General v. Roco, G.R. No. 143366.

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January 29, 2001; and reiterated in the case of Amores v. CS.C, G.R. No. 170093, April 29, 2009, EN BANC, compliance with the twin requirements of (1) CES eligibility and (2) for an incumbent to be appointed to CES rank by the President is imperative to complete the official's memership in the CES and be conferred security of tenure;

WHEREAS, security of tenure only applies to a permanent appointment, as defined under Section 27 of EO 292, which provides:

> "Sec. 27. Employment Status. - Appointment in the career service shall be permanent or temporary.
>
> (1) Permanent status - A permanent appointment shall be issued to a person who meets all the requirements for the positions to which he is being appointed, including the appropriate eligibility prescribed, in accordance with the provisions of law, rules and standards promulgated in pursuant thereof."

WHEREAS, it is undisputed that the subject positions are CES in nature and as such the eligibility requirement for appointment thereto is CES eligibility.

WHEREAS, following the ruling of the Supreme Court in the case of Achacoso v. Macaraig, 195 SCRA 235, 239-240 (1991) which states that:

> "It is settled that a permanent appointment can be issued only 'to a person who meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed.' Achacoso did not. At best, therefore, his appointment could be regarded only as temporary. And being so, it could be withdrawn at will by the appointing authority and 'at a moments's notice', conformably to established jurisprudence."

It is clear that without the appropriate eligibility, any appointment issued to an official can only considered as temporary and as such, such can be withdrawn anytime by the appointing authority;

WHEREAS, although, in exceptional cases, the President may, appoint any person who is not a CES eligible to a CES position, this goes with a condition that such appointee shall subsequently take the required CES examination11. Considering that the appointments of the Chief Public Attorney, Deputy Chief Public Attorneys, Regional Public Attorneys and Assistant Regional PubIic Attorneys are temporary, they are required to subsequently take the CES examination. In the absence of any evidence that would show compliance with the said condition would render the appointment of the incumbent as temporary and thus they may be removed from office by the appointing authority without violating his/her constitutional right to security of tenure;

WHEREAS, on 10 January 2011, Atty. Mosing requested that "for now, no further opinions/statements, oral or written, be issued relative to the qualifications of the aforementioned officials of the PAO", in view of the pending letter-request by the said office to the Civil Service Commission (CSC), through Commissioner Cesar D. Buenaflor, for an issuance of a legal opinion relative to issue of qualifications concerning the afore- mentioned positions;

WHEREAS, Atty. Mosing raised that all questions pertaining to personnel and other civil service matters are within the powers and functions of the CSC citing Section 12(5), Chapter 3 Title I, Book V of Executive Order No. 292 (Administrative Code of 1987);

WHEREAS, under Section 8, Chapter 2, Book V of EO 292, it is the Board which has the mandate over Third Level positions in the Career Service and not the CSC. Section 8, Chapter 2, Book V of EO 292 provides:

> "Section 8. Classes of Positions in the Civil Service. - (1) Classes of positions in the career service, appointment to which requires examinations shall be grouped into three major levels as follows:
>
> xxx xxx xxx xxx

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(c) The third level shall cover positions in the Career Executive Service.

(2) x x x. Entrance to the third level shall be prescribed by the Career Executive Service Board." (Emphasis ours)

WHEREAS, in the case of De Jesus v. People, G.R. No. 61998, February 22, 1983, 120 SCRA 760, the Supreme Court ruled that "where there are two acts, one of which is special and particular and the other general which, if standing alone, would include the same matter and thus conflict with the special act, the special must prevail since it evinces that legislative intent more clearly than that of a general statute and must be taken as intended to constitute an exception to the general act.";

WHEREAS, following the above-cited rule, it is clear that Section 8, Chapter 2, Book V of EO 292 is the exception to general act pertaining to the authority of the CSC;

WHEREAS, in Eugenio vs. CSC, G.R. No. 115863, March 31, 1995, the Supreme Court recognized the existence, mandate and authority of the CESB over third level positions and its autonomy from the CSC;

WHEREAS, under the same case, the Supreme Court also enunciated that the CESB is attached only to the CSC for purposes of attaining policy and program coordination;

WHEREAS, it is clear that the mandate of the Board is in accordance with existing laws and pertinent jurisprudence on matters pertaining to the CES;

NOW THEREFORE, foregoing premise's considered, the Board hereby RESOLVES, as it hereby RESOLVED, pursuant to its mandate and authority over third level positions, to deny the request for declassification of the following positions in the Public Attorney's Office as part of the Career Executive Service, to wit:

1. Chief Public Attorney;
2. Deputy Chief Public Attorneys;.
3. Regional Public Attorneys; and
4. Assistant Regional Public Attorneys

RESOLVED FURTHER, that for purposes of security of tenure in the CES, compliance with the twin requirements of (1) CES eligibility and (2) for an incumbent to be appointed to CES rank by the President is imperative.

Adopted: 12 January 2011

(SGD.) BERNARDO P. ABESAMIS

Chairperson

(SGD.) FRANCISCO T. DUQUE III

Vice-Chairperson

(SGD.) PROCESO T. DOMINGO

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(SGD.) SUSAN M. SOLO

(SGD.) ANGELITO M. TWANO

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Member

(SGD.) SUSANA D. VARGAS

(SGD.) JAIRUS D. PAGUNTALAN

Member

Member

Attested by:

(SGD.) GLENN NINO M. SARTILLO

Board Secretary

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