

ELIZABETH MARCOS-BOTE, MARIVIC BUSOG-BOTE, MELANIE QUITUA-TADEO, PETITIONERS, VS. THE CIVIL SERVICE COMMISSION, RESPONDENT.

Ponente: MAAMBONG, J.

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MAAMBONG, J.:

THE CASE

This Petition for Review under Rule 43 of the Rules of Court impugns the resolution of the Civil Service Commission (CSC) dated January 2, 2002,[1] which disapproved the appointments of Elizabeth M. Bote, Marivic B. Bote and Melanie Q. Tadeo as Municipal Assessor, Municipal Budget Officer and Sangguniang Bayan Secretary, respectively, for the Municipality of General Tinio, Province of Nueva Ecija.

THE FACTS

The facts as summarized by the CSC[2] and culled from the records of the case are:

“On July 2000, a reorganization of personnel of the Local Government of General Tinio, Nueva Ecija was effected.

On August 18, 2000, Mayor Virgilio Bote filed his leave of absence covering the period from August 23, 2000 up to October 6, 2000 due to medical reasons. Consequently, Mayor Bote issued a Memorandum dated August 21, 2000, stating that in lieu of his absence, Vice Mayor Gaudencio G. Rivera and SB Demetrio R. Gonzales will be the Acting Municipal Mayor and Vice Mayor, respectively, until his re-assumption to office on October 7, 2000.

On October 4, 2000, Acting Mayor Rivera, appointed Elizabeth M. Bote, as Municipal Government Department Head I (Municipal Assessor), Marivic B. Bote, as Municipal Government Department Head I (Municipal Budget Officer and Melanie P. Tadeo, as Board Secretary V (Sangguniang Bayan Secretary). Said appointments were submitted to the Office of the Civil Service Commission Field Office (CSFO), Cabanatuan City on even date.

Meanwhile, on October 7, 2000, Mayor Virgilio Bote reported back to work.

On October 18, 2000, the appointments of Elizabeth M. Bote and Marivic B. Bote were disapproved on the ground that they were covered by the prohibition on nepotism. It appears that the husband of Elizabeth Bote, Atty. Mariano A. Bote, is the first cousin of Mayor Bote. Also, the husband of Marivic Bote, Libertino A. Bote, is a first cousin of Mayor Bote. Hence, both appointees are relatives (by affinity) of the head of office within the 4th degree. As a consequence of the disapproval, Elizabeth M. Bote was reverted to her former position as Secretary to the Sangguniang Bayan, the position to which Tadeo was appointed. Thus, following the chain of appointments, Tadeo’s appointment was also disapproved.”

On October 26, 2000, Vice-Mayor Rivera through a letter requested the Civil Service Commission Regional Office (CSCRO) No. III to reconsider the disapproved appointments of petitioners. The said request for

reconsideration was denied on January 8, 2001. Thereafter, Vice-Mayor Rivera appealed the said resolution to the CSC.

On January 2, 2002, the CSC rendered the first assailed order ruling that the appointments of Elizabeth M. Bote and Marivic Bote cannot be considered nepotic since Vice Mayor Rivera who is the appointing authority is neither related by consanguinity nor affinity to the appointees. However, despite said findings, the CSC still affirmed the decision of the CSCRO No. III by disapproving the appointment of petitioners on the ground that the appointments were incomplete. It ruled that the appointments of Elizabeth M. Bote and Marivic B. Bote were not accompanied by a Sanggunian Resolution showing the concurrence of the majority of its members which is required under Section 443 (d), RA 7160. As to petitioner Melanie Q. Tadeo the CSC ruled that “since the appointment of Elizabeth M. Bote was disapproved, she necessarily reverts to her former position as Secretary to the Sangguniang Bayan, the position to which Melanie Q. Tadeo was appointed. There being no vacancy to speak of in the latter case, the disapproval of Tadeo’s appointment is, likewise in order.”

On February 5, 2002, petitioners filed a motion for reconsideration attaching Resolution No. 006 (Kapasyahan Blg. 006, T-2002), dated February 4, 2002 of the Sangguniang Bayan, General Tinio, Nueva Ecija showing the concurrence of the majority of its members. Petitioners likewise attached the affidavit executed by Ms. Gina B. Maducdoc, Human Resource Management Office of the Municipal Government of General Tinio, Nueva Ecija stating and admitting that she failed to include the required concurrence by the Sanggunian Bayan when the questioned appointments were forwarded to the CSCRO in Cabanatuan City.

On May 14, 2002[3], the CSC denied the motion for reconsideration to the January 2, 2002 decision, hence, the instant petition based on the following grounds:

- Whether or not the submission by the petitioners of the certification of lack of action for concurrence and the concurrence of the majority of the Sangguniang-Bayan embodied in a resolution cure the defect of its non-inclusion when the appointments were forwarded to the office of respondent.
- Whether or not the submission by the petitioners of the certification of lack of action for concurrence and the concurrence of the Sangguniang-Bayan embodied in a resolution retroact to the date of submission of the appointments for attestation?
- Whether or not the appointments of petitioners can now be approved/attested by the office of the respondent in view of the submission/completion of the lacking requirements necessary for its approval?

THE ISSUE

Whether or not the subsequent submission of the required concurrence of the Sangguniang Bayan cured the defect of petitioner’s appointment.

THE RULING

Petitioners argue that there is no more reason for the CSC not to approve their appointments considering that they already submitted to the CSC the required Resolution of the Sangguniang Bayan of General Tinio, Nueva Ecija showing the concurrence of the majority of its members to their appointment and in view of the CSC’s ruling that their appointment was not nepotic.

We fail to see any merit in the petition.

Republic Act No. 7160 otherwise known as the Local Government Code of 1991, Section 443 (d) thereof provides:

(d) Unless otherwise provided herein, heads of departments and offices shall be appointed by the municipal mayor with the concurrence of the majority of all the sangguniang bayan members, subject to civil service law, rules and regulations. The sangguniang bayan shall act on the appointment within fifteen (15) days from the date of its submission; otherwise, the same shall be deemed confirmed.

The CSC citing the above provision of law disapproved the appointment of petitioners because at the time their appointment was submitted to the CSC for approval it was not accompanied with a Resolution of the Sangguniang Bayan showing its concurrence. Thus, in resolving the Motion for Reconsideration filed by petitioners the CSC ruled:[4]

x x Of significance is Section 1 (e), Rule V of the Revised Omnibus Rules on Appointments and other Personnel Actions, which read, as follows:

“e. LGU Appointment. Appointment in local government units for submission to the Commission shall be accompanied, in addition to the common requirements, by the following:

xxx

“iii. For appointment to department head, Sanggunian Resolution embodying the concurrence of the majority of its members as provided for under Section 443 (d) RA 7160; provided, that if said appointment is not concurred in by the Sanggunian within fifteen (15) days, certification to that effect by the HRMO shall be issued in lieu of the required resolution.”

Records show that the appointments of Elizabeth M. Bote, Marivic B. Bote and Melanie Q. Tadeo were issued on October 4, 2000 and disapproved on October 18, 2000. Meanwhile Kapasyahan Blg. 006, T-2002 of the Sangguniang Bayan of General Tinio, Nueva Ecija, showing concurrence of the majority of its members as provided for in Section 443 (d), R.A. 7160 was made only on February 4, 2001. Therefore, it is clear that at the time the said appointments were submitted to the CSC Field Office (CSCFO) for approval, there was indeed no Resolution manifesting the concurrence of the Sangguniang Bayan. Pointedly, the submission of the said Kapasyahan did not cure the defect earlier discovered by the Commission. (Emphasis and Underscoring Supplied)

To make an appointment to a civil service position effective, it must comply with all legal requirements.[5] The CSC, in approving or disapproving an appointment, merely examines the conformity of the appointment with the law and the appointee’s possession of all the minimum qualifications and none of the disqualification.[6] Stated otherwise, the CSC will ascertain, in the main, whether the proposed appointee is qualified to hold the position and whether the rules pertinent to the process of appointment were observed.[7]

In the instant case, the CSC ruled that the law particularly R.A. No. 7160, Section 443 (d) in relation to Section 1 (e), Rule V of the Revised Omnibus Rules on Appointments and other Personnel Actions requires the submission of the concurrence of the Sangguniang Bayan and if said appointment is not concurred in by the Sanggunian within fifteen (15) days, a certification to that effect by the Human Resource Management Office (HRMO) shall be issued in lieu of the required resolution. Hence, We see no error on the part of the CSC when it disapproved the appointment of the petitioners for failure to observe the process of appointment and the subsequent submission of the lacking requirements did not cure the defect in their appointment.

Moreover, contrary to the findings of the CSC, this Court finds the appointment of petitioners as nepotism which is another compelling reason to disapprove the appointments of petitioners.

The CSC did not consider the appointments of Elizabeth M. Bote and Marivic B. Bote who are relatives by affinity of Mayor Virgilio A. Bote because Vice Mayor Gaudencio G. Rivera (as acting mayor), who is the appointing authority, is neither related by consanguinity nor affinity to the appointees. The CSC applying the

provisions of the Local Government Code and citing its previous Resolutions[8] dispensed with the issue in this wise:

“Clearly then, the prohibition under Section 79 of RA 7160 specifically applied to appointments in the career service of local government units. Between the Local Government Code and the Administrative Code, the former should prevail, being a special legislation and a later act. Moreover, it must be mentioned that the Local Government Code, unlike the Administrative Code, did not include in the prohibition against nepotism the phrase ‘chief of bureau or office’ and the ‘persons exercising immediate supervision’ over the appointee. The Local Government Code likewise expanded the degree of relationship up to the fourth degree, compared with the Administrative Code which provides only up to the third degree. Thus, the clear intent of the Local Government Code is to extend the scope of the relationship up to the fourth degree of consanguinity or affinity but to limit it between the appointing or recommending authority only, and the appointee. This conclusion is in accord with the rule of statutory construction that: ‘As a rule, the amendment by deletion of certain words or phrases in a statute indicates that the legislature intended to change the meaning of the statute, for the presumption is that the legislature would not have made the deletion had the intention been not to effect a change in its meaning. The amended statute should accordingly be given a construction different from that previous to its amendment’ (Gloria vs. Court of Appeals, 306 SCRA 287)”.

The Supreme Court however in the recent case of Civil Service Commission vs. Tinaya[9] which has a similar factual backdrop of the instant case, applied the Civil Service Law and declared the appointment in violation of the prohibition against nepotism.

In said case, the respondent Pastor B. Tinaya married Caridad Justimbaste, daughter of Mayor Priscilla Justimbaste. On December 16, 1993, the latter appointed him municipal assessor. The appointment was permanent but the CSC approved the appointment as temporary. On December 1, 1994, Acting Mayor Luban extended to Tinaya (who was already at that time the son-in-law of Mayor Justimbaste) a permanent appointment after his original temporary appointment expired. This new appointment was initially disapproved by the CSC. Tinaya’s mother-in-law, Mayor Justimbaste, appealed to the CSC Regional Office No. VIII.

By reason of nepotism, the Supreme Court affirmed the recall of Tinaya’s permanent appointment ruling that Mayor Justimbaste being then the incumbent mayor was the chief of respondent and is deemed to have recommended to Vice Mayor Luban to be appointed as municipal assessor. The Supreme Court declared the appointment in violation of Section 59, Chapter 8 of the Civil Service Law, which provides:

SEC. 59. Nepotism.- (1) All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government-owned or controlled corporations, made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are hereby prohibited.

WHEREFORE, finding that there are legal grounds to disapprove the appointments of petitioners, the instant petition is DENIED for lack of merit. The assailed resolution of the Civil Service Commission ((CSC) dated January 2, 2002 affirming the decision of the Civil Service Commission Regional Office (CSCRO) No. III dated January 8, 2001 which disapproved the appointments of petitioners, ELIZABETH MARCOS-BOTE, MARIVIC BUSOG-BOTE, MELANIE QUITUA-TADEO is hereby AFFIRMED.

SO ORDERED.

Buzon, (Chairman) and Tagle, JJ., concur.

[1] Rollo, pp. 23-29.

[2] Rollo., at pp. 25-26.

[3] Rollo, pp. 37-39.

[4] Rollo, p. 38.

[5] See *Abella, Jr. vs. Civil Service Commission* citing *Tomali vs. Civil Service Commission*, 238 SCRA 572 (1994).

[6] *Debulgado v. Civil Service Commission*, 237 SCRA 184 (1994).

[7] *Ibid.*

[8] Rollo, p. 28, CSC Resolution No. 011219 dated July 18, 2001, re: Farma, Edalaine Sering, citing CSC Resolution No. 002475 dated October 27, 2000, re: Diputado, Mike Y.

[9] 451 SCRA 560 (February 16, 2005).

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