

JAIME T. PANIS, PETITIONER, VS. CIVIL SERVICE COMMISSION AND BELLA V. VELOSO, RESPONDENTS.

G.R. No. 102948. February 02, 1994

Ponente: QUIASON, J.

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QUIASON, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court in relation to Section 7 of Article IX(A) of the Constitution, to nullify Resolution No. 90-1047 dated November 22, 1990 and Resolution No. 91-1100 dated September 24, 1991, of the Civil Service Commission. The first Resolution dismissed petitioner's appeal from the decision of the Regional Office of the Civil Service Commission, and at the same time, upheld the appointment of respondent Bella V. Veloso to the position of Assistant Chief of Hospital for Administration of the Cebu City Medical Center (CCMC). The second Resolution denied the motion for reconsideration of the decision.

I

The CCMC, formerly known as the Cebu City Hospital, is operated and maintained by the local government of Cebu City. Petitioner was employed as Administrative Officer of the hospital, while private respondent was Administrative Officer of the City Health Department detailed at the said hospital.

On November 9, 1987, the Mayor of Cebu City appointed private respondent to the position of Assistant Chief of Hospital for Administration of CCMC. Petitioner, a candidate for the said position, promptly protested the appointment before the Regional Office of the Civil Service Commission (CSC). The CSC Regional Office, however, indorsed the matter to the Office of the City Mayor, which in turn referred it to the Office of the City Attorney.

In a decision dated July 26, 1988, the City Attorney, with the approval of the City Mayor, dismissed petitioner's protest and upheld the appointment of private respondent. This dismissal was affirmed by the CSC Regional Office and later on appeal, by respondent CSC. Hence, the present petition.

II

Petitioner contends that the appointment of private respondent was made in violation of law, existing civil service rules and established jurisprudence because (1) the position of Assistant Chief of Hospital for Administration was not legally created; (2) assuming that it was, there was no qualification standard nor valid screening procedure; and (3) the seniority and next-in-rank rules were disregarded.

III

The petition is not impressed with merit.

Ordinance No. 1216, passed by the Cebu City Sangguniang Panglunsod on June 17, 1986, amended the charter of

the Cebu City Hospital for the purpose of correcting the deficiencies and improving the performance of said institution. The hospital's name was changed to CCMC, and the departments and offices therein were reorganized. The Office of Hospital Administrator was created and granted such powers as were deemed in line with the objectives of the Ordinance.

On March 6, 1987, the City Mayor appointed private respondent to the position of Hospital Administrator. This appointment was, however, not acted upon by the CSC but returned to the appointing authority on October 21, 1987 for lack of the screening requirement. On even date, the City Mayor withdrew private respondent's appointment. The title of Hospital Administrator was later found to be a misnomer and thus was properly classified by the Joint Commission on local Government Personnel Administration as one of Assistant Chief of Hospital for Administration. This classification was subsequently approved by the Department of Budget Management.

The position of Assistant Chief of Hospital for Administration is the very same position of Hospital Administrator created by Ordinance No. 1216. The Office of Hospital Administrator was not extinguished, but the designation thereof merely corrected to reflect the proper classification of the position under existing rules (Rollo, pp. 78-80). The Office of Assistant Chief of Hospital for Administration therefore was created and existed in accordance with law.

As a result of the reclassification, candidates to the position, among whom were petitioner and private respondent, were notified by the Personnel Selection Board (Board) of a screening scheduled on October 22, 1987. The notice sent petitioner at 9:30 A.M. may have been "too close for comfort to the 10:00 schedule," but the screening was actually reset to the following day, October 23, 1987. Petitioner however never appeared before the Board. Neither did he appear, despite due notice, at the final selection process on November 5, 1987.

The fact that private respondent was actually screened and interviewed by the Board does not mean that her appointment was a *fait accompli*. The screening was just a stage in the appointment process.

Private respondent and petitioner are college degree holders with three units in Public Administration and three years experience in Hospital Administration or Health Administration. Indeed, both candidates possess the minimum qualifications for the position. The determination, however, of who among the qualified candidates should be preferred belongs to the appointing authority. The Mayor of Cebu City, in the instant case, chose to appoint private respondent.

The argument that petitioner should have been the one appointed because he was next in rank to the contested position and that he had been with CCMC since 1961 as compared to private respondent, who joined the hospital in 1986 and only on detail, cannot be upheld.

It is ironic that petitioner is personally interested in the subject position, the creation and validity of which he himself originally questioned. Be that as it may, the "next in rank" rule specifically applies only in cases of promotion (*Medenilla v. Civil Service Commission*, 194 SCRA 278 [1991]; *Pineda v. Claudio*, 28 SCRA 34 [1969]). The instant controversy, however, involves a new office and a position created in the course of a valid reorganization. Under the law, a vacancy not filled by promotion may be filled by transfer of present employees in the government service, by reinstatement, by reemployment of those separated from the service, and appointment of outsiders who have appropriate civil service eligibility, but not necessarily in this order (P.D. 807 Art. VIII, Sec. 19 (5); E.O. 292, Bk. V, Sec. 21 (5); *Español v. Civil Service Commission*, 206 SCRA 715 [1992]; *Medenilla v. Civil Service Commission*, *supra.*, at 289-290).

It cannot be said that private respondent was an outsider. Although directly employed by the City Health

Department, she actually worked at the CCMC prior to her appointment to the subject position. Besides, even if she was an outsider, the law does not prohibit the employment of persons from the private sector so long as they have the appropriate civil service eligibility.

Assuming nonetheless that a vacancy actually occurred that can be filled up only by promotion, the concept of "next in rank" does not impose any mandatory or peremptory requirement to appoint the person occupying the next lower position in the occupational group of the office. What the Civil Service Law and the Administrative Code of 1987 provide is that if a vacancy is filled up by promotion, the person holding the position next in rank thereto "shall be considered for promotion" (P.D. 807, Sec. 19 (3); E.O. 292, Bk. V, Sec. 20 (3); *Español v. Civil Service Commission*, supra; *Barrozo v. Civil Service Commission*, 198 SCRA 487 [1991]). In other words, one who is "next in rank" to a vacancy is given preferential consideration for promotion to the vacant position, but it does not necessarily follow that he alone and no one else can be appointed. There is no vested right granted the next in rank nor a ministerial duty imposed on the appointing authority to promote the holder to the vacant position (*Barrozo v. Civil Service Commission*, supra; *Santiago, Jr. v. Civil Service Commission*, 178 SCRA 733 [1989]).

An appointment, whether to a vacancy or to a newly created position, is essentially within the discretionary power of whomsoever it is vested. Once a candidate possesses the minimum qualities required by law, sufficient discretion, if not plenary, is granted to the appointing authority (*Medenilla v. Civil Service Commission*, supra, at 291; *Central Bank v. Civil Service Commission*, 171 SCRA 744 [1989]). After all, the appointing authority is the officer primarily responsible for the administration of the office, and is likewise in the best position to determine who among the qualified candidates can efficiently discharge the functions of the position (*Villegas v. Subido*, 30 SCRA 498 [1969]; *Reyes v. Abeleda*, 22 SCRA 825 [1968]). Indeed, whom to appoint among those qualified is an administrative question involving considerations of wisdom for the best interest of the service which only the appointing authority can decide (*Simpao v. Civil Service Commission*, 191 SCRA 396 [1990]; *Luego v. Civil Service Commission*, 143 SCRA 327 [1986]).

It is markworthy that private respondent was detailed at the CCMC primarily to help in upgrading the level of performance of the said hospital. She accomplished this mission by institutionalizing changes in the management and financial reporting system of the hospital such that its income doubled in less than two years since her detail. Private respondent's competence and her remarkable achievement are things the appointing authority took notice of and which served as basis for her appointment to the contested position.

Finally, the moral character and honesty of private respondent are issues that should be threshed out in an appropriate action before the proper forum. As it stands, private respondent is presumed innocent and her acts done in good faith, until proven otherwise.

WHEREFORE, finding no grave abuse of discretion on the part of the public respondent, the Court resolved to DISMISS the petition for lack of merit.

SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, and Vitug, JJ., concur.

Nocon, J., on leave.

Kapunan, J., no part.

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