

**PROVINCE OF CAMARINES SUR THROUGH ITS GOVERNOR,
SANGGUNIANG PANLALAWIGAN AND PROVINCIAL TREASURER,
PETITIONER, VS. COURT OF APPEALS AND TITO B. DATO,
RESPONDENT.**

G.R. No. 104639. July 14, 1995

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

Petitioner Province of Camarines Sur assails the decision of the Court of Appeals which affirmed with modification the Regional Trial Court of Camarines Sur's decision ordering it to pay private respondent Tito Dato backwages and attorney's fees.

The relevant antecedents are as follows:

On January 1, 1960, private respondent Tito Dato was appointed as Private Agent by the then governor of Camarines Sur, Apolonio Maleniza.

On October 12, 1972, he was promoted and was appointed Assistant Provincial Warden by then Governor Felix Alfelor, Sr. Because he had no civil service eligibility for the position he was appointed to, private respondent Tito Dato could not be legally extended a permanent appointment. Hence, what was extended to him was only a temporary appointment. Thereafter, the temporary appointment was renewed annually.

On January 1, 1974, Governor Alfelor approved the change in Dato's employment status from temporary to permanent upon the latter's representation that he passed the civil service examination for supervising security guards. Said change of status however, was not favorably acted upon by the Civil Service Commission (CSC) reasoning that Tito Dato did not possess the necessary civil service eligibility for the office he was appointed to. His appointment therefore remained temporary.

Thereafter, no other appointment was extended to him.

On March 16, 1976, private respondent Tito Dato was indefinitely suspended by Governor Alfelor after criminal charges were filed against him and a prison guard for allegedly conniving and/or consenting to evasion of sentence of some detention prisoners who escaped from confinement.

On March 19, 1976, or two years after the request for change of status was made, Mr. Lope B. Rama, head of the Camarines Sur Unit of the Civil Service Commission, wrote the Governor of Camarines Sur a letter informing him that the status of private respondent Tito Dato has been changed from temporary to permanent, the latter having passed the examination for Supervising Security Guard. The change of status was to be made retroactive to June 11, 1974, the date of release of said examination.

In the meantime, the Sangguniang Panlalawigan suppressed the appropriation for the position of Assistant Provincial Warden and deleted private respondent's name from the petitioner's plantilla.

Private respondent Tito Dato was subsequently acquitted of the charges against him. Consequently, he requested the Governor for reinstatement and backwages.

When his request for reinstatement and backwages was not heeded, private respondent Tito Dato filed an action for mandamus before the Regional Trial Court of Pili, Camarines Sur, Branch 31.

On May 31, 1991, the trial court[1] rendered judgment, the decretal portion of which reads:

WHEREFORE, judgment is hereby rendered, ordering the respondents:

- 1) to appropriate and pay the back salaries of the petitioner Tito B. Dato equivalent to five (5) years without qualification or deduction, at the rate of P14,532.00 per annum, with all the rights and privileges that he is entitled to as a regular government employee reaching the age of 65 in the government service, as provided by law;
- 2) to pay the petitioner the sum of P5,000.00 as attorney's fees; and
- 3) to pay the costs.

SO ORDERED.[2]

In due course, petitioner, Province of Camarines Sur appealed the said decision to the Court of Appeals.

On February 20, 1992, respondent Court of Appeals rendered its decision which dispositively reads as follows:

WHEREFORE, in view of all the foregoing, judgment appealed from is hereby AFFIRMED with the following modifications: (1) respondents are ordered to pay the backwages of petitioner Tito B. Dato during the entire period of his suspension, with all the rights and privileges that he is entitled to as a regular government employee reaching the age of 65 in the government service, as provided by law; and (2) the award of the sum of P5,000 to petitioner as attorney's fees and respondents to pay the costs of suit is deleted.

IT IS SO ORDERED.[3]

Aggrieved by the foregoing ruling, petitioner Province of Camarines Sur interposed the present petition submitting that the respondent court erred in (a) affirming the trial court's finding that private respondent Tito Dato was its permanent employee at the time he was suspended on March 16, 1976; and (b) modifying the said decision so as to allow private respondent to claim backwages for the entire period of his suspension.

The primary question to be resolved in the instant case is whether or not private respondent Tito Dato was a permanent employee of petitioner Province of Camarines Sur at the time he was suspended on March 16, 1976.

Petitioner contends that when Governor Alfelore recommended to CSC the change in the employment status of private respondent from temporary to permanent, which the CSC approved as only temporary pending validation of the results of private respondent's examination for supervising security guard, private respondent's appointment in effect remained temporary. Hence, his subsequent qualification for civil service eligibility did not ipso facto convert his temporary status to that of permanent.

Private respondent, on his part, vigorously asseverates that the respondent court committed no error in confirming his appointment as permanent.

We agree with the petitioner.

Private respondent does not dispute the fact that at the time he was appointed Assistant Provincial Warden on January 1, 1974, he had not yet qualified in an appropriate examination for the aforementioned position. Such lack

of a civil service eligibility made his appointment temporary[4] and without a fixed and definite term and is dependent entirely upon the pleasure of the appointing power.[5] The fact that private respondent obtained civil service eligibility later on is of no moment as his having passed the supervising security guard examination, did not ipso facto convert his temporary appointment into a permanent one.[6] In cases such as the one at bench, what is required is a new appointment since a permanent appointment is not a continuation of the temporary appointment - these are two distinct acts of the appointing authority.[7]

It is worthy to note that private respondent rests his case entirely on the letter dated March 19, 1976 communicated by Mr. Lope Rama to the Governor of Camarines Sur. The letter, which is self-explanatory, is reproduced in full below:

XXXXXXXXXXXXXXXXXX

CAMARINES SUR UNIT

Naga City

Re: DATO, Tito
- Appointment of

March 19, 1976

The Honorable
The Provincial Governor of Camarines Sur
Naga City

S i r :

This refers to the latest approved appointment of Mr. TITO DATO as Asst. Provincial Warden, this province, at P3600, effective January 1, 1974 which was approved by this Office as temporary pending validation of his Supervising Security Guard eligibility.

It appears, however, that the aforementioned eligibility of Mr. Dato was released on June 11, 1974. In this connection, attention is being invited to Sec. 19, Rule III of the Rules on Personnel Action and Policies which provides that 'Eligibility resulting from civil service examination x x x shall be effective on the date on the release of the results of the examination. x x x.' (Underscoring supplied.) Mr. Dato's Supervising Security Guard eligibility, therefore, takes effect June 11, 1974, the date the results thereof was released.

In view thereof, the aforementioned appointment of Mr. Dato is hereby approved anew as follows: `APPROVED as temporary under Sec. 24(c), R.A. 2260, as amended, effective January 1, 1974 up to June 10, 1974 and as permanent under Sec. 24(b), R.A. 2260, as amended, subject to the report on his physical and medical examination as to insurability, effective June 11, 1974. The Supervising Security Guard eligibility of Mr. Dato has been validated by the Civil Service Commission, Quezon City.

The records of Mr. Dato in this Office have been amended accordingly.

Very truly yours,

By authority of the Commission

(Initialled)
LOPE B. RAMA
Unit Head[8]

The foregoing is a clear arrogation of power properly belonging to the appointing authority. Time and again, the Court has defined the parameters within which the power of approval of appointments shall be exercised by the

Civil Service Commission. In *Luego v. Civil Service Commission*,^[9] the Court ruled that CSC has the power to approve or disapprove an appointment set before it. It does not have the power to make the appointment itself or to direct the appointing authority to change the employment status of an employee. The CSC can only inquire into the eligibility of the person chosen to fill a position and if it finds the person qualified it must so attest. If not, the appointment must be disapproved. The duty of the CSC is to attest appointments^[10] and after that function is discharged, its participation in the appointment process ceases.^[11] In the case at bench, CSC should have ended its participation in the appointment of private respondent on January 1, 1974 when it confirmed the temporary status of the latter who lacked the proper civil service eligibility. When it issued the foregoing communication on March 19, 1976, it stepped on the toes of the appointing authority, thereby encroaching on the discretion vested solely upon the latter.

Moreover, the Court is not prepared to accord said letter^[12] any probative value, the same being merely a purported photocopy of the alleged letter, initialled and not even signed by the proper officer of the CSC.

Based on the foregoing, private respondent Tito Dato, being merely a temporary employee, is not entitled to the relief he seeks, including his claim for backwages for the entire period of his suspension.

WHEREFORE, premises considered, the appealed decision is hereby REVERSED and the petition for mandamus instituted by herein private respondent Tito Dato is hereby DISMISSED.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Vitug, Mendoza, and Francisco, JJ., concur.

[1] Presided by Judge Ceferino Barcinas.

[2] Decision, p. 9; Original Records, p. 150.

[3] Decision, p. 10; Rollo, p. 35.

[4] *Maturan v. Maglana*, 113 SCRA 268 [1982]; *Ramos v. Romualdez*, 32 SCRA 590 [1990] citing *Hojilia v. Marino*, 13 SCRA 293 [1965]; *Philippine Land-Air-Sea Labor Union v. Court of Industrial Relations*, 11 SCRA 723 [1964]; *Flores v. Cordova*, 3 SCRA 105 [1961]; *Taboada v. Municipality of Badian*, 2 SCRA 412 [1961]; *Montero v. Castellanes*, 108 Phil. 744 [1960]; *Quiatchon v. Villanueva*, 101 Phil. 989 [1957]; *Cayabyab v. Cayabyab*, 101 Phil. 631 [1957]; *Amora v. Bibera*, 99 Phil. 1 [1956]; *Inocente v. Ribo*, 94 Phil. 562 [1955]; *Orais v. Ribo*, 93 Phil. 985 [1953].

[5] *Delector v. Ogayan*, 123 SCRA 774 [1983]; *Abrot v. Court of Appeals*, 116 SCRA 468 [1982]; *Mendiola v. Tancinco*, 52 SCRA 66 [1973]; *Ata v. Namocatcat*, 47 SCRA 314 [1972]; *Cunada v. Gamus*, 8 SCRA 77 [1963].

[6] *Tolentino v. De Jesus*, 56 SCRA 167 [1974]; *Jimenez v. Francisco*, 100 Phil. 1025 [1957].

[7] *Torio v. Civil Service Commission*, 209 SCRA 677 [1992].

[8] Original Records, p. 31; Exhibit "A".

[9] 143 SCRA 327 [1986], later reiterated in *Patagoc v. Civil Service Commission*, 185 SCRA 411 [1990]; *Orbos v. Civil Service Commission*, 189 SCRA 459 [1990], *Lopez v. Civil Service Commission*, 228 SCRA 622 [1993].

[10] *Villanueva v. Balallo*, 9 SCRA 407 [1963].

[11] Villegas v. Subido, 30 SCRA 498 [1969].

[12] Exhibit "A", see note 8.

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