

MONA A. TOMALI, PETITIONER, VS. CIVIL SERVICE COMMISSION, OFFICE ON MUSLIM AFFAIRS (OMA) AND ROCAINA M. LUCMAN, RESPONDENTS.*G.R. No. 110598. December 01, 1994*

Ponente: VITUG, J.

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In this special civil action for certiorari, petitioner questions her “replacement” by private respondent in a contested position in the Office on Muslim Affairs.

On 01 July 1990, petitioner Mona A. Tomali was appointed Development Management Officer II (“DMO II”) in the Office on Muslim Affairs (“OMA”). The appointment was extended by then OMA Executive Director Dimasangcay A. Pundato. She assumed the duties and functions of the office four months later, or on 01 November 1990, at which time, the appointment had not yet been transmitted to the Civil Service Commission (“CSC”) for approval.

Prior to her assumption to the new position, petitioner had worked in different capacities with the Mindanao State University starting as Records Clerk (01 June 1983 to 31 December 1986), Clerk Typist (02 January 1987 to 30 June 1989), and, finally, as “Budget Assistant” (01 July 1989 to 31 October 1990).[1]

On 16 July 1991, the new Director of the OMA, Dr. Ali Basir Lucman, revoking the previous incomplete appointment of petitioner, appointed private respondent Rocaina M. Lucman to the position in question (DMO II). Petitioner, on 29 July 1991, sent public respondent OMA a letter protesting her replacement. On 01 August 1991, the Chief of the Human Resources Management Division of the OMA communicated to petitioner the disapproval/expiration of her appointment.[2] Forthwith, private respondent took her oath of office and assumed the duties and functions of DMO II.

On 12 August 1991, petitioner reiterated her protest.[3] The Merit Systems Protection Board (“MSPB”), acting thereon, rendered a decision, dated 23 July 1992, dismissing the protest/complaint for lack of merit. MSPB held:

“Glaring is the fact that protestant’s appointment to the contested position was not approved by the Civil Service Commission, hence, incomplete. In this regard, Section 11, Rule V, of the Omnibus Rules Implementing Book V of Executive Order No. 292, Administrative Code of 1987 is clear and explicit. Said provision reads, thus:

“Section 11. An appointment not submitted to the Commission, within thirty (30) days from the date of issuance, which shall be the date appearing on the face of the instrument, shall be ineffective.”

“As applied to the case of the herein protestant, it appears that the latter has no basis in law to cling to the contested position. Her prior continuous stay in office was at most by mere tolerance of the appointing authority. As her appointment is incomplete for lack of the requisite approval of the Civil Service Commission or its proper Regional or Field Office, no right to security of tenure as guaranteed by law and the Constitution

attaches thereto or for incumbent to invoke. x x x.

“x x x x x x x x x.

“That being so, the proper appointing authority, in this case, the OMA Executive Director may, in the exercise of sound discretion, cancel or revoke the said incomplete appointment and appoint another person.

“The circumstance showing that the non-approval of protestant’s appointment was due to the belated transmittal thereof to this Commission is of no consequence nor improve her lot as a holder of an incomplete appointment. There is no showing that the non-submission was motivated by bad faith, spite or malice or at least attributable to the fault of the newly-installed OMA Executive Director.”[4]

Her request for reconsideration having been denied on 27 November 1992, petitioner appealed to the CSC. In its Resolution No. 93-945, dated 12 March 1993, the Commission dismissed the appeal for lack of merit.[5]

Hence, the instant recourse to this Court.

We fail to see any merit in the petition.

An appointment to a position in the civil service is required to be submitted to the CSC for approval in order to determine, in main, whether the proposed appointee is qualified to hold the position and whether or not the rules pertinent to the process of appointment are followed; thus:

“Sec. 9. Powers and Functions of the Commission. - The Commission shall administer the Civil Service and shall have the following powers and functions:

“x x x x x x x x x

“(h) Approve all appointments, whether original or promotional, to positions in the civil service, except those of presidential appointees, members of the Armed Forces of the Philippines, police forces, firemen, and jailguards, and disapprove those where the appointees do not possess the appropriate eligibility or required qualifications. An appointment shall take effect immediately upon issue by the appointing authority if the appointee assumes his duties immediately and shall remain effective until it is disapproved by the Commission, if this should take place, without prejudice to the liability of the appointing authority for appointments issued in violation of existing laws or rules: Provided, finally, That the Commission shall keep a record of appointments of all officers and employees in the civil service. All appointments requiring the approval of the Commission as herein provided, shall be submitted to it by the appointing authority within thirty days from issuance, otherwise, the appointment becomes ineffective thirty days thereafter.”[6]

The Omnibus Rules Implementing Book V of Executive Order No. 292, also known as the Administrative Code of 1987, among other things, provides:

“Sec. 11. An appointment not submitted to the Commission within thirty (30) days from the date of issuance which shall be the date appearing on the face of the appointment, shall be ineffective. x x x.”[7]

Compliance with the legal requirements for an appointment to a civil service position is essential in order to make it fully effective.[8] Without the favorable certification or approval of the Commission, in cases when such approval is required, no title to the office can yet be deemed to be permanently vested in favor of the appointee, and the appointment can still be recalled or withdrawn by the appointing authority.[9] Until an appointment has become a completed act, it would likewise be precipitate to invoke the rule on security of tenure.[10]

Petitioner faults public respondents for their failure to have her appointment properly attended to and timely acted upon and for, in effect, allowing her in the meanwhile to assume the office in question. In *Favis vs. Rupisan*,[11] this Court has said:

“The tolerance, acquiescence or mistake of the proper officials, resulting in the non-observance of the pertinent rules on the matter does not render the legal requirement, on the necessity of approval of the Commissioner of Civil Service of appointments, ineffective and unenforceable. The employee, whose appointment was not approved, may only be considered as a de facto officer.”

Petitioner herself would not appear to be all that blameless. She assumed the position four months after her appointment was issued or months after that appointment had already lapsed or had become ineffective by operation of law. Petitioner’s appointment was issued on 01 July 1990, but it was only on 31 May 1991 that it was submitted to the CSC, a fact which she knew, should have known or should have at least verified considering the relatively long interval of time between the date of her appointment and the date of her assumption to office. The CSC, such as to be expected, disapproved the appointment[12] in consonance with Presidential Decree No. 807.

When private respondent Lucman was thus appointed DMO II on 16 July 1991, petitioner could not be said to have theretofore earned a valid tenure to the same position. In its resolution of 12 March 1993, the CSC, which dismissed petitioner’s appeal, said:

“The instant case is about the recall of Tomali’s appointment as Development Management Officer II, Office on Muslim Affairs in favor of Rocaina Lucman prior to the approval by the Commission. Subsequently, Tomali filed a protest against the appointment of Rocaina Lucman.

“It may be noted that the issue on the said recall of Tomali’s appointment had already been the subject matter in CSC Resolution No. 91-1237, wherein the Commission ruled as follows:

““WHEREFORE, foregoing premises considered, this Commission upholds the power of the appointing authority to recall an appointment. Accordingly, the separation of Mona Tomali is declared to be in order. (Emphasis supplied.)”

“Further, a motion for reconsideration was denied in CSC Resolution No. 91-1463, dated December 3, 1991.

“Considering that Tomali had already been separated from the service upon recall of her appointment, her protest against the appointment of Rocaina Lucman has no merit. She has no more personality to file a protest.”[13]

It was well within the authority and discretion of the new OMA Director, therefore, to appoint private respondent, and such prerogative could not be questioned even on a showing that petitioner might have been better qualified for the position.

The rule has always been that an appointment is essentially a discretionary act, performed by an officer in whom it is vested according to his best judgment, the only condition being that the appointee should possess all the qualifications required therefor.[14] There is nothing on record to convince us that the new OMA Director has unjustly favored private respondent nor has exercised his power of appointment in an arbitrary, whimsical or despotic manner.

In sum, we see no grave abuse of discretion on the part of public respondents in their questioned dismissal of petitioner’s protest.

WHEREFORE, the petition for certiorari is DISMISSED. No special pronouncement on costs.

SO ORDERED.

Narvasa, C.J., Padilla, Bidin, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Quiason, Puno, Kapunan, and Mendoza, JJ., concur.

Feliciano, J., on leave.

[1] Rollo p. 27.

[2] Rollo, p. 32.

[3] Rollo, p. 33.

[4] Rollo pp. 52-53.

[5] Rollo, p. 44.

[6] Presidential Decree No. 807, Sec. 9(h).

[7] Rule V, Sec. 11, Omnibus Civil Service Rules and Regulations.

[8] Favis vs. Rupisan, 17 SCRA 190, cited in Mitra vs. Subido, 21 SCRA 127.

[9] Grospe vs. Secretary of Public Works and Communications, 105 Phil 129; Villanueva vs. Balallo, 9 SCRA 407; Suarez vs. Commission on Elections, 20 SCRA 797.

[10] See Aquino vs. Civil Service Commission, 208 SCRA 240; Mitra vs. Subido, 21 SCRA 127.

[11] 17 SCRA 190, 191.

[12] Petitioner's incomplete appointment was already expressly revoked on 16 July 1991, upon issuance of private respondent's appointment.

[13] Rollo, pp. 43-44.

[14] Español vs. Civil Service Commission, 206 SCRA 715; Luego vs. Civil Service Commission, 143 SCRA 327; Patagoc vs. Civil Service Commission, 185 SCRA 411; Lapinid vs. Civil Service Commission, 197 SCRA 106.

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