

NESCITO C. HILARIO, PETITIONER, VS. CIVIL SERVICE COMMISSION AND CHARITO L. PLANAS, RESPONDENTS.

G.R. No. 116041. March 31, 1995

Ponente: ROMERO, J.

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ROMERO, J.:

This is a petition for certiorari with prayer for the issuance of a Temporary Restraining Order and Preliminary Injunction. Petitioner seeks to declare CSC Resolution No. 94-3336 dated June 23, 1994 and Resolution No. 93-4067 dated September 21, 1993 of the Civil Service Commission (CSC) null and void.

On August 18, 1986, petitioner was appointed as City Attorney by the then OIC Mayor Brigido R. Simon, Jr., at that time the Officer-In-Charge of the Office of the Mayor of Quezon City under the Freedom Constitution of 1986.

On July 24, 1992, the newly-elected mayor, Ismael Mathay, Jr. took over from Mayor Simon.

Mayor Mathay issued a letter^[1] dated July 24, 1992 to petitioner, which states:

"In the absence of a tender of resignation on your part from your present position as City Attorney (City Legal Officer), please be informed that pursuant to Sec. 481, Art. II of the Local Government Code of 1991 providing that the position of City Legal Officer is co-terminous with the appointing authority, you are considered resigned as of June 30, 1992."

On July 1, 1993, respondent Vice Mayor Charito L. Planas of Quezon City filed a complaint^[2] with the CSC against petitioner and a certain Jose L. Pecson praying that respondents be found administratively liable for usurpation, grave misconduct, being notoriously undesirable, gross insubordination, and conduct grossly prejudicial to the best interest of the service.

On September 21, 1993, the CSC issued Resolution No. 93-4067,^[3] the dispositive portion of which states:

"WHEREFORE, foregoing premises considered, the Commission resolves to hold in abeyance any administrative disciplinary action against Atty. Nescito C. Hilario. However, Atty. Hilario should not be allowed to continue holding the position of the Legal Officer (City Attorney) of Quezon City."

Petitioner filed a Motion for Reconsideration which was denied by the CSC in its Resolution No. 94-3336,^[4] the dispositive portion of which states:

"WHEREFORE, foregoing premises considered, the Commission hereby resolves to deny the motion for reconsideration of Atty. Nescito Hilario. Accordingly, CSC Resolution No. 93-4067 dated September 21, 1993 stands.

The Commission hereby orders the Cashier of the Quezon City government to stop payment of salaries to Atty. Hilario, otherwise the former shall be personally liable for its refund.

Let copies of this Resolution be furnished Mayor Ismael A. Mathay, Jr. and Vice Mayor Clarito L. Planas at

their known addresses."

Hence, this petition.

Petitioner raises the following issues:

- (1) petitioner's position as city legal officer is not confidential; and
- (2) respondent CSC has no authority to remove or terminate the services of petitioner.

Petitioner alleges that when he was appointed City Attorney, the applicable law governing his appointment was Batas Pambansa Blg. 337 and, therefore, his position should not be considered confidential. He argues that although the said position was considered confidential under Republic Act No. 5185, Batas Pambansa Blg. 337 impliedly repealed the confidential nature of the position when it expanded the duties of City Attorney.

We find petitioner's contention to be devoid of merit.

The relevant provision of Republic Act No. 5185 states:

"SEC. 19. Creation of positions of Provincial Attorney and City Legal Officer. - To enable the provincial and city governments to avail themselves of the full time and trusted services of legal officers, the positions of provincial attorney and city legal officer may be created and such officials shall be appointed in such manner as is provided for under Section four of this Act. For this purpose, the functions hitherto performed by the provincial and city fiscals in serving as legal adviser and legal officer for civil cases of the province and city shall be transferred to the provincial attorney and city legal officer, respectively. x x x" (*Italics supplied*)

Batas Pambansa Blg. 337, Section 188 enumerates the qualifications, powers and duties of the city legal officer thus:

"SEC 188. Appointment, Qualifications, Compensation, Powers and Duties. - (1) The city legal officer shall be appointed by the city mayor, subject to civil service law, rules and regulation.

(2) No person shall be appointed city legal officer unless he is a citizen of the Philippines, of good moral character, a member of the Philippine Bar, and has acquired experience in the practice of his profession for at least five years.

(3) The city legal officer shall receive such compensation, emoluments and allowances as may be determined by law or ordinance.

(4) The city legal officer shall be the chief legal adviser of the city and all offices thereof, and as such shall:

(a) Represent the city in all civil cases wherein the city or any officer thereof, in his official capacity, is a party;

(b) When required, draft ordinances, contracts, bonds, leases and other instruments involving any interest of the city, and inspect and pass upon any such instruments already drawn;

(c) Give his opinion in writing, when requested by the mayor or the sangguniang panlungsod, upon any question relating to the city or the rights or duties of any city officer;

(d) Investigate or cause to be investigated any city officer for neglect or misconduct in office, or any person, firm or corporation holding any franchise or exercising any public privilege from the city for failure to comply with any condition, or to pay any consideration mentioned in the grant of such franchise or privilege, and recommend appropriate action to the sangguniang panlungsod and the city mayor;

(e) Institute and prosecute in the city's interest when directed by the mayor, a suit on any bond, lease, or other contract upon any breach or violation thereof; and

(f) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance."

An examination of the provisions of Batas Pambansa Blg. 337 reveals no intention by the legislature to remove the confidential nature of the position of city legal officer. What it does, is to merely specify the various qualifications, powers and duties of a city legal officer which were not enumerated under Republic Act No. 5185.

We have consistently held in previous cases^[5] that the position of City Legal Officer is a confidential one. In the recent case of *Griño v. Civil Service Commission*,^[6] respondent was appointed provincial attorney at a time when Batas Pambansa Blg. 337 was in effect. We held that the position of City Legal Officer has its counterpart in the position of provincial attorney appointed by the provincial governor, both being positions involving the rendering of trusted services. We said:

"By virtue of Republic Act No. 5185, both the provincial attorney and city legal officer serve as the legal adviser and legal officer for the civil cases of the province and the city that they work for. Their services are precisely categorized by law to be 'trusted services.'

A comparison of the functions, powers and duties of a city legal officer as provided in the Local Government Code with those of the provincial attorney of Iloilo would reveal the close similarity of the two positions. Said functions clearly reflect the highly confidential nature of the two offices and the need for a relationship based on trust between the officer and the head of the local government unit he serves. The 'trusted services' to be rendered by the officer would mean such trusted services of a lawyer to his client which is of the highest degree of trust."

Petitioner next questions the validity of CSC Resolution Nos. 93-4067 and 94-3336 for having been issued without authority. He argues that the CSC "usurped the power, functions, and prerogatives of Mayor Mathay to exclusively discipline and decide on matters affecting the conduct and employment of Quezon City employees and officials who are under his control and supervision."^[7] CSC Resolution 94-3336 states that: "It appears that Atty. Hilario was issued an appointment effective August 18, 1986 by then Mayor Simon. Hence, his term of office is deemed to have automatically expired when now Quezon City Mayor Mathay was elected in office and subsequently assumed his position."

Petitioner maintains that the Mayor is the only one who may remove him from office directly and not the CSC, which only has appellate powers to review the decision of the Mayor.

We find this argument untenable.

Nothing in the Administrative Code precludes the CSC from deciding a disciplinary case before it. Precisely, Section 47 thereof, states:

"SEC. 47. Disciplinary Jurisdiction. - (1) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office. A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken."

Although respondent Planas is a public official, there is nothing under the law to prevent her from filing a complaint directly with the CSC against petitioner. Thus, when the CSC determined that petitioner was no longer entitled to hold the position of City Legal Officer, it was acting within its authority under the Administrative Code to hear and decide complaints filed before it.

Petitioner further claims that he is not covered by Republic Act No. 7160, otherwise known as The Local Government Code of 1991, which explicitly states that the term of the legal officers shall be co-terminous with the office appointing authority.[8] He argues that the co-terminous provision applies only to future appointments of the legal officer but does not apply to incumbents.

This provision is but a reiteration of the principle that since the position of City Legal Officer is a confidential one, it is perforce deemed to be co-terminous with that of the appointing authority.

Lastly, petitioner alleges that although Mayor Mathay in his letter dated July 24, 1992 considered him resigned as of June 30, 1992, the latter still continued to give him legal assignments, a cogent indication that Mayor Mathay still reposes trust and confidence in him; thus, there is no reason for him to vacate his office.

If Mayor Mathay really intended to retain the services of petitioner as City Legal Officer, he could easily have done so by issuing a formal appointment to this effect. This he did not do. In fact, at no time during the proceedings before the Civil Service Commission did Mayor Mathay ever indicate a desire to rescind his letter dated July 24, 1992. Nor did the Mayor raise any objection when the CSC ordered petitioner to vacate the position of City Legal Officer in Quezon City.

We can only draw the irresistible conclusion that Mayor Mathay's silence is eloquent proof that he does not intend petitioner to continue in the said position.

WHEREFORE, the instant petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Feliciano, Bidin, Regalado, Davide, Jr., Bellosillo, Melo, Quiason, Puno, Vitug, Kapunan, Mendoza, and Francisco, JJ., concur.

Padilla, J., see separate concurring opinion.

Narvasa, C.J., no part.

[1] Rollo, p. 8.

[2] Annex "U," Petition; Rollo, p. 90.

[3] Annex "X," Petition; Rollo, p. 105.

[4] Annex "A," Petition; Rollo, p. 36.

[5] *Besa v. Philippine National Bank*, 33 SCRA 330 (1970); *Claudio v. Subido*, 40 SCRA 481 (1971); *Villegas v. Subido*, 41 SCRA 190 (1971).

[6] 194 SCRA 458, 467 (1991).

[7] Rollo, p. 214, Reply of Petitioner.

[8] Sec. 481, Art. II, R.A. 7160.

SEPARATE CONCURRING OPINION

PADILLA, J.:

In *Grino v. Civil Service Commission* (194 SCRA 458), I stated in my dissenting opinion that the position of provincial attorney (and, by analogy, the city attorney) is not primarily confidential but a career position, and, as such, the holder of the office owes his loyalty not to the appointing authority (the provincial governor or city mayor) but to the provincial or city government for which he acts as counsel or attorney.

The attorney-client relationship existed really between the local government unit concerned and the lawyer appointed to the position of provincial or city attorney. It was clear that it should be the local government unit concerned which should decide whether or not to terminate said relationship and not the governor or mayor alone. In other words, governors and mayors could go but the provincial attorney and city attorney would remain as a career officer, subject to removal only for cause as provided by law and the civil service rules.

It is unfortunate, however, that the Local Government Code of 1991 (Rep. Act No. 7160) in Sec. 481 made the position of legal officer coterminous with that of the appointing authority. This, in my opinion, certainly adds to the demoralization within the ranks of career government employees since appointments to the position of legal officer can now be based on considerations other than performance, efficiency, dedication and public service. The “spoils system” is now given free reign at least in the position of provincial attorney and city attorney.

Given the above provision of the Local Government Code, I am left with no choice but to concur with the Court's decision.

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