

SEC. RICARDO T. GLORIA, IN HIS CAPACITY AS SECRETARY OF EDUCATION, CULTURE & SPORTS AND CHAIRMAN OF THE BOARD OF TRUSTEES OF THE PHILIPPINE STATE COLLEGE OF AERONAUTICS (PSCA); ...*G.R. No. 116183. October 06, 1995*

Ponente: HERMOSISIMA, JR., J.

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Intransigence of private respondents in maintaining a patently indefensible position sparked this long drawn out controversy. Knowing fully well that, as temporary employees whose terms of office, whether by contract or by the tenor of their appointments, had expired one year after their respective temporary appointments, that is, on December 31, 1992, they insist on a perceived, albeit mistaken, right to reinstatement.

Before this Court is a Petition for Certiorari, filed by Hon. Ricardo T. Gloria, in his capacity as Secretary of Education, Culture and Sports (DECS) and as Chairman of the Board of Trustees of the Philippine State College of Aeronautics (PSCA); Col. Julian J. Loleng, Jr., in his capacity as Officer-in-Charge of the PSCA; and the Board of Trustees of the PSCA[1], under Rule 65 of the Revised Rules of Court, with the end in view of nullifying the Decision[2] and Order[3] of respondent Judge Salvador P. de Guzman, Jr., Presiding Judge of Branch 113, Regional Trial Court of Pasay City, dated January 31, 1994 and June 29, 1994, respectively.

Questioned in effect by the petitioners is only the portion of the judgment ordering the reinstatement of private respondent Rosario V. Cerillo to the position of "Coordinator for Extension Services".

Actually, the act of effecting the termination of the appointment of Rosario V. Cerillo was perpetrated by Col. Julian J. Loleng, Jr. while it was the Hon. Isidro Cariño who was the DECS Secretary. The case for reinstatement which was filed before respondent Judge Salvador P. de Guzman, Jr. of the Pasay City Regional Trial Court was instituted during the incumbency of the succeeding DECS Secretary, the Hon. Armand Fabella. The judgment of the lower court, as a matter of fact, involved the Hon. Armand Fabella as defendant. In view of the resignation of Secretary Fabella, the duty and obligation to question the decision aforesaid of Judge Salvador P. de Guzman, Jr. devolved on the incumbent Secretary, the Hon. Ricardo T. Gloria.

Consequently, the dramatis personae in this case include: DECS Secretary Ricardo T. Gloria; PSCA Board of Trustees Chairman Col. Julian J. Loleng, Jr.; and the PSCA Board of Trustees created under Republic Act No. 7605, as petitioners; and RTC Executive Judge Salvador P. de Guzman, Jr., as public respondent, and the named private respondents who were the petitioners in the court below.

The facts of the case are not in dispute. The question at issue is one of law: Is private respondent Rosario V. Cerillo entitled to reinstatement to the position of "Coordinator for Extension Services"?

Private respondents were employees of the Philippine Air Force College of Aeronautics (PAFCA) which was created by virtue of Presidential Decree No. 1078 on January 26, 1977. Under the said decree, the Board of

Trustees is vested with authority, among others, to appoint, as it did appoint, officials and employees of the college, except the members of the Board of Trustees themselves and the President of the college. In line with this authority, the PAFCA Board of Trustees issued Resolution No. 91-026 on April 1, 1991, which declared that "All faculty/administrative employees are also subject to the required civil service eligibilities", in accordance with pertinent civil service law, rules and regulations. Thus, herein private respondents were issued only temporary appointments because at the time of their appointment, they lacked appropriate civil service eligibilities or otherwise failed to meet the necessary qualification standards for their respective positions.

Private respondent Rosario V. Cerillo, specifically, was issued a one-year temporary appointment to the position of Board Secretary II of PAFCA (now PSCA), that is, from January 1, 1992 to December 31, 1992. This appointment went along the line enunciated by the Civil Service Commission in a letter, dated March 25, 1992.[4] The letter emphasized that temporary appointments were good and renewable only up to 1992.

On March 24, 1992, private respondent Rosario V. Cerillo was relieved as Board Secretary of the PAFCA in accordance with Board Resolution No. 92-017 by reason of loss of confidence. Subsequently, however, she was designated as "Coordinator for Extension Services".

On June 3, 1992, Republic Act No. 7605 was enacted into law. It converted PAFCA into a state college to be known as the Philippine State College of Aeronautics (PSCA). The Board of Trustees likewise was the governing body of the PSCA. The power to make appointments was retained by the Board. Petitioner Col. Julian J. Loleng, Jr. remained as Officer-in-Charge by virtue of a designation made anew by then DECS Secretary Isidro Cariño on June 8, 1992.

Only on December 7, 1992 did Col. Loleng inform private respondents that they shall be deemed separated from the service upon the expiration of their temporary appointments. Had private respondent Rosario V. Cerillo not been summarily dismissed as Board Secretary on March 24, 1992, her temporary appointment as such was supposed to have lasted until December 31, 1992.

On June 25, 1993, barely five months after the lapse of the terms of their temporary appointments as determined by the PSCA administration, the herein private respondents filed before the Regional Trial Court of Pasay City, presided over by respondent Judge Salvador P. de Guzman, Jr., a "Petition for Mandamus and Reinstatement, with Back Wages and Damages", docketed as Civil Case No. 10049. The complaint in effect prayed that then DECS Secretary Armand Fabella complete the filling up of positions for Board of Trustees and order the Board of Trustees to reinstate the respondents in the case at bench to their respective positions.

In their Answer[5], the herein petitioners opposed the petition upon the ground that mandamus will not lie to compel reinstatement because the reappointment prayed for is discretionary on the part of the appointing power. Besides, it was the claim of Secretary Fabella that a writ of mandamus should be unavailing to private respondents because of their failure to exhaust administrative remedies.

We find the petition to be impressed with merit.

I

The judgment of respondent Judge Salvador P. de Guzman, Jr. which orders the reinstatement of Ms. Rosario V. Cerillo to the position of "Coordinator for Extension Services" is patently improper because it finds no support as to facts and the law. Respondent Cerillo, although temporarily extended an appointment as Board Secretary II, was dismissed therefrom because of loss of confidence. This dismissal was neither contested nor appealed from by Ms. Cerillo. There is no question, therefore, that her dismissal as Board Secretary II could not have been the subject of the petition for mandamus and reinstatement filed before respondent Judge. The fact is that private

respondent's assignment as "Coordinator for Extension Services" was a mere designation. Not being a permanent appointment, the designation to the position cannot be the subject of a case for reinstatement.

Furthermore, even granting that Ms. Cerillo could be validly reinstated as "Coordinator for Extension Services", her reinstatement thereto would not be possible because the position is not provided for in the PSCA plantilla. The PSCA could not have made any valid appointment for this inexistent position. This could very well be the reason why she was merely designated as Coordinator. As a mere designee, she could not have acquired any right to the position even if the position existed.

At any rate, a mere "designation" does not confer upon the designee security of tenure in the position or office which he occupies in an acting capacity only[6].

II

Should the object of private respondent Cerillo in prosecuting the case in the court below be her reinstatement to the position of Board Secretary II, the reinstatement prayed for appears to be impermissible. In the first place, Ms. Cerillo had already been dismissed from this position for loss of confidence. She did not contest this dismissal possibly because the position of Board Secretary II is primarily confidential and the Board of Trustees, when finding her, the incumbent to the position, to be wanting in faithfulness and integrity dismissed her for that reason alone. She accepted the dismissal without any ripple and when designated as Coordinator for Extension Services, she indicated acceptance by performing the acts called for by the designation.

The quarrel between the private respondents, on the one hand, and the PSCA administration, on the other, came about in this manner:

The Civil Service Commission, mandating a policy, wrote petitioner Col. Julian J. Loleng, Jr. a letter[7] mandating that temporary appointments of officers/employees of the PSCA were to last only up to December 31, 1992. For a better perspective, We quote a pertinent portion of the letter:

"xxx xxx xxx

Please note that temporary appointments last only for a maximum of one (1) year and all personnel appointed in a temporary capacity can be replaced any time by a civil service eligible. Since you have just been recently covered by the Civil Service Law and rules, this Field Office approved all your temporary appointments subject to yearly renewal up to 1992 only. Subsequent appointments should strictly conform with civil service policies. You may, therefore, advise all your temporary personnel to take civil service examinations in order to be eligible for appointment."

This letter was implemented by Col. Julian J. Loleng, Jr. Objecting thereto, private respondents pointed out to the PSCA administration that, in Resolution No. 91-026, dated April 1, 1991, the Board of Trustees declared that all faculty/administrative employees of the college, while required to acquire civil service eligibilities under pertinent civil service law, rules and regulations, must exert effort to acquire civil service eligibilities within a period of three years from their temporary appointments. This, the private respondents believe should be taken to mean that, should they acquire civil service eligibilities within that period of three years, they cannot be terminated from the service.

The fact that private respondent Cerillo passed the requisite Civil Service Examination after the termination of her temporary appointment is no reason to compel petitioners to reappoint her. Acquisition of civil service eligibility is not the sole factor for reappointment. Still to be considered by the appointing authority are: performance, degree of education, work experience, training, seniority, and, more importantly, as in this case, whether or not the applicant enjoys the confidence and trust of the appointing power. As We said earlier, the position of Board

Secretary II, by its nature, is primarily confidential, requiring as it does "not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which ensures freedom from misgivings of betrayals of personal trust or confidential matters of state." [8] In other words, the choice of an appointee from among those who possessed the required qualifications is a political and administrative decision calling for considerations of wisdom, convenience, utility and the interests of the service which can best be made by the Head of the office concerned. [9]

It cannot be overemphasized that the PSCA Board Resolution No. 91-026 must yield to the Civil Service Commission policies on the issuance of temporary appointments. When the Civil Service Commission directed that temporary appointments were to be effective only up to 1992, it did so in pursuance of the general purpose of the civil service law, as stated under Section 2 of Republic Act No. 2260, as amended, which is "to ensure and promote the constitutional mandate regarding appointments only according to merit and fitness and to provide within the public service a progressive system of personal administration to ensure the maintenance of an honest and efficient progressive and courteous civil service in the Philippines. [10] For that matter, it is vested with the function, among others, to promulgate policies, standards and guidelines for the civil service and adopt plans and programs to promote economical, efficient and effective personnel administration in the government. [11]

We hold that reappointment to the position of Board Secretary II is an act which is discretionary on the part of the appointing power. Consequently, it cannot be the subject of an application for a writ of mandamus.

Reinstatement is technically issuance of a new appointment which is essentially discretionary, to be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should possess the qualifications required by law. [12] Such exercise of the discretionary power of appointment cannot be controlled, not even by the Court as long as it is exercised properly by the appointing authority. [13]

It is Our holding that the questioned order of reinstatement amounts to an undue interference by the Court in the exercise of the discretionary power of appointment vested in the PSCA Board of Trustees.

Surprisingly, the Court a quo, while upholding the right of private respondent Cerillo to a reappointment, adhered to this pontification by stating that:

"The appointment of the petitioners to their former positions is not a matter of right; rather, it is a matter of discretion on the part of the respondents. Mandamus cannot be availed of to compel anyone to exercise his discretion absent any showing of grave abuse of discretion."

III

The termination of the services of private respondents was proper and legal, it being the consequence of the Board of Trustees' power to appoint. The view of respondent Judge, however, is that there was no termination ordered. Either the employees' contracts lapsed or their temporary appointments were abrogated by circulars from the Civil Service Commission. This, as a necessary consequence of the transition from the Philippine Air Force College of Aeronautics (PAFCA) to the Philippine State College of Aeronautics (PSCA).

We agree with respondent Judge's disquisition on this point:

"To the question was the termination of the services of the petitioners legal or not?, the only answer is there was not termination to speak of. Termination presupposes an overt act committed by a superior officer. There was none whatsoever in the case at bar. At most, Col. Julian (Loleng) gave notice to the petitioners of the expiration of their respective contracts. Petitioners appointment or employment simply expired either by its very own terms, or because it may not exceed one year, but most importantly because the PAFCA was dissolved and replaced by the PSCA. The notice given by Col. Loleng to the petitioners seem to have been

misunderstood by them as an act of dismissal which as they correctly state, belongs to the Board of Trustees alone."

IV

Considering Our finding that there is merit to the petition, the issue as to whether attorney's fees and costs of litigation should be awarded to private respondent Rosario V. Cerillo as adjudged in the questioned decision of respondent Judge has become moot and academic. At any rate, the Court holds that the said award could not have been imposed because, while it was directly ordered in the dispositive portion of the decision, it was neither discussed nor justified in the body of the questioned decision. Clear on this point is Our decision in Policarpio vs. Court of Appeals, 194 SCRA 129, 742, [1991]: "The Court had occasion to state that the reason for the award of attorney's fees must be stated in the text of the decision, otherwise, if it is stated only in the dispositive portion of the decision, the same shall be disallowed." This ruling We reiterated in the case of Koa vs. Court of Appeals, 219 SCRA 541, 549, [1991], citing Central Azucarera de Bais vs. Court of Appeals, 188 SCRA 328, 340, where it was stated that "The award of attorney's fees must be disallowed for want of factual and legal premise in the text of the decision rendered by the court of origin and the appellate court as well."

WHEREFORE, the petition is GRANTED. The challenged decision, dated January 31, 1994, insofar as it ordered the reinstatement of Ms. Rosario V. Cerillo and the payment to the latter of back wages and attorney's fees, and the Order, dated June 29, 1994, of respondent Judge Salvador P. de Guzman, Jr. are hereby declared null and void and ordered set aside. The temporary restraining order/preliminary injunction heretofore issued is hereby made permanent.

SO ORDERED.

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

[1] Specific names of Members not mentioned

[2] Rollo, page 91

[3] Rollo, page 105

[4] Annex "C"

[5] Annex "F"

[6] Sevilla vs. C.A., 209 SCRA 637, 642 (1992)

[7] Letter dated March 25, 1992

[8] Delos Santos vs. Mallari, 87 Phils. 289, 298 (1950)

[9] Avila vs. Civil Service Commission, 198 SCRA 102, 106 (1991)

[10] Samson vs. Court of Appeals, 145 SCRA 654, 658-659 (1986)

[11] Sec. 12(3), Chapter 3, sub-title A, Book V, Executive Order No. 292

[12] Apurillo vs. Civil Service Commission, 227 SCRA 230; Tomali vs. Civil Service Commission, 238 SCRA

572; Lusterio vs. IAC, 199 SCRA 125.

[13] Alim vs. Civil Service Commission, 204 SCRA 510; Sevilla vs. Court of Appeals, 209 SCRA 637.

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