

VICTORINA A. CRUZ, PETITIONER, VS. COURT OF APPEALS; HON. SALVADOR M. ENRIQUEZ, JR., SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT; HON. ARMAND V. FABELLA, SECRETARY OF TH...

G.R. No. 119155. January 30, 1996

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a petition under Rule 45 of the Rules of Court to review and set aside the decision of 18 October 1994[1] and the resolution of 31 January 1995[2] of the Court of Appeals in CA-G.R. SP No. 31614. The former denied due course to and dismissed the petitioner's action for mandamus to compel the Secretary of the Department of Budget and Management (DBM) to implement the 19 June 1990 decision of the Merit System Promotion Board (MSPB) of the Civil Service Commission (CSC), on the ground that the said MSPB decision was rendered beyond its jurisdiction. The latter denied the petitioner's motion for reconsideration.

The key issue raised in this petition is whether or not the Court of Appeals committed any reversible error in its challenged decision. Concretely, we are asked to resolve whether the MSPB has jurisdiction to reclassify the petitioner's position and order payment of the corresponding salary.

The antecedents are summarized by the Office of the Solicitor General in its Comment filed on 19 July 1995 for the public respondents, in compliance with our resolution of 27 March 1995, to wit:

Petitioner Victorina A. Cruz has been a Guidance and Counselling Coordinator III of Valenzuela Memorial High School (VMHS) since 1978. Such position had a rank of secondary head teacher with annual basic salary of P26,388.00 paid by the local government.

On July 1, 1987, Executive Order No. 189 took effect placing all secondary school teachers under the administrative supervision and control of the Department of Education, Culture and Sports (DECS) and making their salaries and cost of living allowance payable by the national government. Consequently, petitioner's position was classified as Guidance Counselor, R-56 in accordance with the criteria and standards under the National Compensation and Classification Plan (NCCP) and her salary was reduced from P26,388.00 to P19,244.80 per annum.

Aggrieved by her demotion, petitioner appealed [to] the Civil Service Commission Merit Systems Protection Board (CSC-MSPB) on November 11, 1987 praying for an upgrading of her position to R-63 with a monthly salary of P1,802.00.

The appeal was referred to the Department of Budget and Management (DBM) for comment on January 23, 1989.

In a letter dated June 5, 1989, DBM informed MSPB that pursuant to E.O. 189, petitioner's item was classified as Guidance Counsellor, R-59 effective July 1, 1987. The nationalized position reduced petitioner's salary from P26,388.00 per annum or P2,199.00 a month to P18,636.00 per annum or P1,553.00 a month. Since

petitioner has an ERF approved as BSE+20 on June 7, 1978, she is entitled under the National Compensation and Position Classification Plan to an upgraded R-57 (BSE+ 20) with a corresponding salary of P20,232.00 per annum effective July 1, 1987. Because petitioner has an MA equivalent approved on November 6, 1987, she is again entitled to an upgraded R-58 at P21,264.00 per annum effective November 6, 1987, adjustable to P23,388.00 per annum effective January 1, 1988 pursuant to LOI No. 406, s. 1984 as implemented by Circular Letter No. 84-4 dated May 30, 1984. Considering that prior to the nationalization of the position, petitioner received P26,388.00 per annum, she shall be allowed to continue to receive said salary effective July 1, 1987 in her nationalized position of Guidance Counsellor, R-58 (MA-equivalent).

Exactly two years from the effectivity of the nationalization program or on July 1, 1989, Republic Act No. 6758 otherwise known as the Salary Standardization Law took effect.

On June 19, 1990, MSPB rendered a Decision the relevant portion of which reads:

"WHEREFORE, this Board renders judgment as follows:

1. The appeal of Ms. Victorina A. Cruz is granted. The reclassified position of appellant from Local to national in the VMHS, Metro Manila should be adjusted to a range with salary rate of P26,389 from October 1987 to December 31, 1987. The amount of P21,264 per annum shall be taken and paid from the national fund, and the balance of P5,125 shall be taken and paid from the Caloocan City local fund. From January 1, 1988 to October 15, 1989 the appellant shall be paid the sum of P29,029.20 per annum on an adjustment of her range under provisions of E.O. 189 and DECS-DBM Joint Circular No. 1, s. 1987. If the national fund to which shall be paid not be authorized, the position shall be paid by the Caloocan City Local fund in accordance with the letter of DBM to this Board dated June 5, 1989.

2. After October 15, 1989 Ms. Victorina A. Cruz shall be paid her salary under the recent enactment (R.A. 6758) which increased the salary per month of teacher as applied by the DECS to nationalized teachers.

3. Ms. Cruz is entitled to receive salary differential from October 1, 1987 to December 31, 1987; and from January 1, 1988 to October 15, 1989. Thereafter, she shall be entitled to the benefits of R.A. 6758 otherwise known as the Teachers Salary Standardization Law which include the teachers. The adjustment of her range to 63 is denied for being moot and academic." (Annex "C", Petition).

On July 26, 1990, the DECS sought clarification of paragraph 2 of the dispositive portion of the above Decision relative to the position and the equivalent salary grade of petitioner under R.A. 6758.

On August 31, 1990, MSPB issued an Order, the pertinent portions of which read as follows:

"Based on the adjusted range, under the provisions of EC 189 and DECS-DBM Joint Circular No. 1, s. 1987, the position of appellant Cruz has the equivalent rank of Head Teacher II at the time of the effectivity of R.A. 6758.

Pursuant to National Compensation Circular No. 57 dated September 30, 1989, the position of Guidance Services Specialist II and was assigned a salary grade 16. Such being the case, the salary of Ms. Cruz should be based on said grade.

WHEREFORE, the Board hereby directs that after October 15, 1989, Ms. Victorina A. Cruz shall be paid her salary corresponding to Grade 16. pursuant to R.A. 6758, otherwise known as the Salary Standardization Law."

SO ORDERED."

(Annex "E", Petition).

On July 10, 1991, the DECS-NCR requested from the DBM the issuance of a supplemental Position Allocation

List (PAL) of VMHS to reflect the reclassified position of petitioner from Guidance Counsellor III, SG-12 to Guidance Specialist II, SG-16.

On May 10, 1991, the DBM, through Undersecretary Salvador M. Enriquez, Jr. denied the request on the ground that the MSPB has no jurisdiction to reclassify petitioner's position from Guidance Counselor III, SG-12 to Guidance Services Specialist II, SG-16, thus:

"Evidently, the MSPB has acted outside of its assigned powers conferred by Law. Accordingly, its decision as contained in the MSPB Order dated August 31, 1980 on the reclassification of the position of Mrs. Cruz from Guidance Coordinator to Guidance Service Specialist II, SG-16 and the payment of her salary corresponding to SG-16 is unenforceable.

In view of the foregoing, this Office reiterates its stand that the position of Mrs. Cruz is appropriately classified in the PAL issued to the DECS as Guidance Counsellor SG-12 (MA) entitling her to receive only the salary of P42,480 [per] annum effective July 1, 1989. Hence, the request to issue a supplemental PAL to reflect the position of Mrs. Cruz as Guidance Services Specialist II, SG-16 cannot be given due course for lack of sufficient merit."

(Annex "E", Petition for Mandamus)

On July 3, 1991, petitioner filed a Motion for Execution of the MSPB Decision dated June 19, 1990 and Order dated August 31, 1990.

On March 18, 1992, MSPB issued an order of execution directing the DECS and the DBM to implement its Decision immediately upon notice (Annex "D", Petition for Mandamus).

In June 1992, petitioner went on sick leave for a multiple myomma operation and reported back to work in June 1993. Petitioner found that the VMHS payroll reflects her positon [sic] as Guidance Counselor III SG-12 in violation of the MSPB rulings.

On July 28, 1993, petitioner filed with the Court of Appeals a petition for mandamus praying that respondents be directed to enforce and comply with the Decision of the MSPB dated June 19, 1990 and Orders dated August 31, 1990 and March 18, 1992.

On October 18, 1994, the Court of Appeals denied the petition ruling that the "DBM has the sole power and discretion to administer the compensation and position classification system of the national government. The CSC-MSPB, in ultimately classifying the position and compensation of petitioner, encroached upon the authority of the DBM" (Annex "A").

A motion for reconsideration was filed but was denied on January 31, 1995 (Annex "B-1").[3]

The petitioner forthwith filed this petition, submitting for resolution the following issues:

I.

WHETHER OR NOT THE RESPONDENT COURT COMMITTED SERIOUS ERROR IN REFUSING TO ISSUE A WRIT OF MANDAMUS ON THE GROUND THAT IT IS THE DEPARTMENT OF BUDGET AND MANAGEMENT WHICH HAS JURISDICTION OVER THE SUBJECT MATTER OF THE CASE.

II.

WHETHER OR NOT THE RESPONDENT COURT SERIOUSLY ERRED IN REFUSING TO COMPEL THE OTHER RESPONDENTS FROM COMPLYING WITH A FINAL AND EXECUTORY DECISION OF THE CIVIL SERVICE COMMISSION MERIT SYSTEMS AND PROTECTION [sic] BOARD.[4]

Before the Court of Appeals, the petitioner insisted that the enforcement of the final and executory decision of

the MSPB was a ministerial duty on the part of the public respondents, thus mandamus would lie to compel them to perform such duty. On the other hand, the respondents maintained that the action for mandamus had no leg to stand on as the MSPB was not authorized to reclassify the petitioner's position, the power being vested in the Department of Budget and Management (DBM) through the Compensation and Position Classification Board (CPCB). In upholding the latter's view, the Court of Appeals held:

Section 17 (a) and (f) of Presidential Decree No. 985 as amended by Section 14(a) of Republic Act No. 6758 provides:

"Sec. 17. Powers and Functions. - The Budget Commission (now Department of Budget and Management), principally through the OCPC (now CPCB, Compensation and Position Classification Board) shall, in addition to those provided under other Sections of this Decree, have the following powers and functions:

a. Administer the compensation and position classification system established herein and revise it as necessary;

xxx xxx xxx

f. Certify Classification actions and changes in class or grade of positions whenever the facts warrant, such certifications to be binding on administrative, certifying, payroll, disbursing, accounting and auditing officers of the national government and government-owned or controlled corporations and financial institutions."

Moreover, Section 14 (a) and (d) of Presidential Decree No. 985 states:

"Sec. 14. The Salary System for Teaching Position. - The salary grade of a teacher shall be determined in accordance with the following:

a. 'The Teachers' Preparation Pay Schedule' shall be prepared by the Commission in consultation with the Department of Education and Culture. Under this system, the teacher's [sic] academic or educational preparation, teaching experience in both private and public schools, and extra-curricular activities for professional growth, shall be considered in pursuance of the principle 'equal pay for equal training and experience.'

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d. The Budget Commission, in coordination and consultation with the Department of Education and Culture and the Civil Service Commission may, when future needs require, modify, change or otherwise improve on the salary system herein established for the teaching and closely related occupations. Any change that may be made as provided herein shall become part of the implementing rules of this Decree to be issued by the Budget Commission upon prior approval by the President."

A careful perusal of the above-quoted provisions clearly indicates that the Department of Budget and Management has the sole power and discretion to administer the compensation and position classification system of the national government. The CSC-MSPB, in ultimately classifying the position and compensation of the petitioner, encroached upon the authority of the DBM. Faced with the classification and compensation issues raised by the petitioner, the CSC, through the MSPB, should not have merely requested comment but should have referred the matter to the DBM for its determination.[5]

It then concluded that mandamus did not lie to compel the public respondents to enforce the challenged decision and order of the MSPB because:

In *Tangonan vs. Paño* [G.R. No. L-45 157, June 27, 1985, 137 SCRA 245, 255], the Supreme Court laid down the rule on the issuance of a writ of mandamus that "(t)he writ will not issue to compel an official to do anything which it is not his duty to do or to which it is his duty not to do, or give to the applicant anything to which he is not entitled by law. The writ neither confers powers nor imposes duties. It is simply a command to exercise a power already possessed and to perform a duty already imposed.[6]

The upshot of these statements and conclusion of the Court of Appeals is that the petitioner does not have a clear legal right which may be enforced by mandamus, because her claim of such right is based on a decision and order of an agency which had no jurisdiction over the subject thereof.

We agree. But before we elaborate, some observations on procedural matters are in order.

It is clear to us that the petitioner's 3 July 1991 motion for execution of the MSPB decision of 19 June 1990 as clarified in the MSPB order of 31 August 1990, was a reaction to the DBM's letter of 10 May 1991. The said letter denied the request for the issuance of a Supplemental PAL to reflect the MSPB's reclassification of the petitioner's position from Guidance Counselor III, SG-12, to Guidance Services Specialist II, SG-16. The DBM was of the view that the MSPB acted "outside . . . its assigned powers conferred by law"; hence, the latter's decision was "unenforceable."

On the other hand, the MSPB's order of 18 March 1992 granting the petitioner's motion for execution, was the MSPB's reply to the DBM's rejection of the MSPB's assumption of jurisdiction over the reclassification of the petitioner's position. If the MSPB had, in fact, such jurisdiction, then the DBM was bound to comply with the MSPB's 18 March 1992 order and mandamus would lie against the DBM.[7] The pleadings, however, fail to disclose that the order of execution was actually served on the respondents. That no attempt was made to serve it, and that the petitioner likewise did not move for its service before she filed the said action, are clearly evident from paragraphs 14 to 17 of her petition for mandamus filed with the Court of Appeals. The said paragraphs read as follows:

14. Consequently, CSC-MSPB issued an Order of Execution dated March 18, 1992 [Annex "C" hereof] for respondents DECS and DBM to implement petitioner's mandated position of Guidance Specialist II, SG-16. Thus, . . .

15. Incidentally, petitioner enjoyed salary grade 12 from July 1991 to December 1991. In January 1992, petitioner enjoyed salary grade 15 for reasons known only to respondents herein.

16. In December 1992, petitioner went on sick leave as she was operated for multiple myoma (total hysterectomy) and which leave lasted until March 4, 1993.

17. At the school opening in June 1993, petitioner found that the school monthly payroll [Annex "G" hereof] reflected her position as Guidance Counselor III, with salary grade 12, in violation of the aforecited CSC-MSPB decisions.

She also found that she stopped enjoying salary grade 15 as early as February 1993. Immediately thereafter, petitioner went to IBM-Payroll Service, DECS, Vito Cruz, Manila and inquired why her salary grade reverted to salary grade 12. She was advised that her special order [return-to-work] forwarded by the Kalookan Division Office to the IBM states that her position is Guidance Counselor III, with salary grade 12.

Hence, this petition.[8]

Verily, the petitioner did not show that she had no other plain, speedy, and adequate remedy in the ordinary course of law, a requisite both under Section 1 and Section 3 of Rule 65.

Moreover, against the 10 May 1991 refusal of the DBM, handed down ten months before the order of execution was issued, the petitioner did not even file a motion for reconsideration nor take any further action to ventilate her grievance with an appropriate court or instrumentality of the Government. Her petition for mandamus filed only on 28 June 1993, or after more than two years, was, in reality, the first resort to judicial action against such refusal. Although Rule 65 does not specify any period for the filing of a petition for certiorari and mandamus, it

must,' nevertheless, be filed within a reasonable time.[9] In certiorari cases, the definitive rule now is that such reasonable time is within three months from the commission of the complained act.[10] The same rule should apply to mandamus cases.

The unreasonable delay in the filing of the petitioner's mandamus suit unerringly negates any claim that the application for the said extraordinary remedy was the most expeditious and speedy available to the petitioner.

We now consider the issue of jurisdiction over the basic claim of the petitioner.

In upholding its jurisdiction over the petitioner's claim, the MSPB, in its order of 18 March 1992, relied on paragraph (2) (b), Section 16, Chapter III, Subtitle A, Title I, Book V of E.O. No. 292, otherwise known as the Administrative Code of 1987. The said section pertinently reads as follows:

Sec. 16. Offices in the Commission. - The Commission shall have the following offices:

(1) The Office of the Executive Director headed by an Executive Director, with a Deputy Executive Director shall implement policies, standards, rules and regulations promulgated by the Commission; coordinate the programs of the offices of the Commission and render periodic reports on their operations, and perform such other functions as may be assigned by the Commission.

(2) The Merit System Promotion Board composed of a Chairman and two (2) members shall have the following functions:

(a) Hear and decide on appeal administrative cases involving officials and employees of the Civil Service. Its decision shall be final except those involving dismissal or separation from the service which may be appealed to the Commission;

(b) Hear and decide cases brought before it on appeal by officials and employees who feel aggrieved by the determination of appointing authorities involving personnel actions and violations of the merit systems. The decision of the Board shall be final except those involving division chiefs or officials of higher ranks which may be appealed to the Commission;

(c) Directly take cognizance of complaints affecting functions of the Commission, those which are unacted upon by the agencies, and such other complaints which require direct action of the Board in the interest of justice;

(d) Administer oaths, issue subpoena and subpoena duces tecum, take testimony in any investigation or inquiry, punish for contempt in accordance with the same procedures and penalties prescribed in the Rules of Court; and

(e) Promulgate rules and regulations to carry out the functions of the Board subject to the approval of the Commission. [Italics supplied]

We disagree with the MSPB that subparagraph (b) of paragraph (2) of the section confers upon it the authority to decide the petitioner's complaint in that the complaint involves a violation of the merit system. The flaw in the MSPB's view is but a result of its misconception that the petitioner's basic complaint dated 9 November 1987 exclusively involved a demotion. Indeed, while it was carefully captioned COMPLAINT FOR DEMOTION,[11] the "demotion" referred to was not the "personnel action" nor the "violation of the merit system" contemplated in the above-quoted provision of law. The latter refers to personnel action or violations of the merit system done by or as a consequence of an act or omission on the part of the appointing authority. Personnel action denotes the movement of personnel in the civil service and includes appointment through certification, promotion, transfer, reinstatement, re-employment, detail, reassignment, demotion, and separation. All personnel actions shall be in accordance with such rules, standards, and regulations as may be promulgated by the CSC.[12]

A demotion is the movement from one position to another involving the issuance of an appointment with diminution in duties, responsibilities, status, or rank which may or not involve reduction in salary.[13]

In the case at bench, the appointing authority had absolutely nothing to do with what the petitioner perceived to be a demotion in her salary - such was done by operation of law.

We agree with the public respondents that the petitioner's grievance concerning her position classification or reclassification and compensation falls within the primary jurisdiction of the DBM, principally through the CPCB. Section 17 of P.D. No. 985, as amended by Section 14 of R.A. No. 6758, provides as follows:

Sec. 17. Powers and Functions. - The Budget Commission (now DBM), principally through OCPC (now CPCB), shall, in addition to those provided under other sections of this Decree, have the following powers and functions:

a. Administer the compensation and position classification system established herein and revise it as necessary;

xxx xxx xxx

f. Certify classification actions and changes in class or grade of positions whenever the facts warrant, such certification to be binding on administrative, certifying, payroll, disbursing, accounting and auditing officers of the national government and government-owned or controlled corporations and financial institutions.

And insofar as the salary system for teaching positions is concerned, Section 14 thereof provides:

Sec. 14. The Salary System for Teaching Position. - The salary grade of a teacher shall be determined in accordance with the following:

a. The Teachers' Preparation Pay Schedule shall be prepared by the Commission in consultation with the Department of Education and Culture. Under this system, the teacher's academic or educational preparation, teaching experience in both private and public schools, and extra-curricular activities for professional growth, shall be considered in pursuance of the principle of 'equal pay for equal training and experience.'

xxx xxx xxx

d. The Budget Commission, in coordination and consultation with the Department of Education and Culture and the Civil Service Commission may, when future needs require, modify, change or otherwise improve on the salary system herein established for the teaching and closely related occupations, any change that may be made as provided herein shall become part of the implementing rules of this Decree to be issued by the Budget Commission upon prior approval by the President.

In thus reclassifying the position of the petitioner to Guidance Services Specialist II, SG-16, the MSPB clearly acted without jurisdiction.

WHEREFORE, for want of merit, the instant petition is DISMISSED without prejudice on the part of the petitioner to pursue her grievance with the Department of Budget and Management through the Compensation and Position Classification Board.

No pronouncement as to costs.

SO ORDERED.

Narvasa, C.J. (Chairman), Melo, Francisco, and Panganiban, JJ., concur.

[1] Annex "A" of Petition; Rollo, 25-33. Per Sandoval-Gutierrez, A., J., with the concurrence of Herrera, O., and Reyes, R., JJ.

[2] Annex "B-1", Id.; id., 35-36.

[3] Rollo, 88-94.

[4] Id., 95.

[5] Rollo, 31-32.

[6] Rollo, 32-33.

[7] See *University of the Philippines vs. Regino*, 221 SCRA 598 [1993].

[8] Original Records (OR), CA-G.R. No. 31614, 7-9.

[9] *Contreras vs. Villaraza*, 99 SCRA 329, 331 [1980].

[10] *Paderanga vs. Court of Appeals*, G.R. No. 115407, 28 August 1995, at 21, citations omitted

[11] Annex "D" of Petition for Mandamus in CA-G.R. SP No. 31614; CA-G.R. SP No. 31612, 29-31.

[12] Section 26, Chapter 5, Subtitle A, Title I, Book V, E.O. No. 292.

[13] Section 11, Rule VII, Civil Service Commission Rules Implementing Book V of Executive Order No. 292 And Other Pertinent Civil Service Laws. *Fernando vs. Sto. Tomas*, 234 SCRA 546 [1994].

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