

ATTY. DAVID B. CORPUZ, PETITIONER, VS. COURT OF APPEALS, AND MOVIE AND TELEVISION REVIEW AND CLASSIFICATION BOARD, RESPONDENTS.

G.R. No. 123989. January 26, 1998

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Petitioner Atty. David Corpuz (hereafter CORPUZ) asks us to set aside the 13 October 1995 decision of the Court of Appeals in CA-G.R. SP-No. 37694[1] which reversed Resolution No. 93-5964 of the Civil Service Commission (CSC),[2] the latter declaring that petitioner's separation from the service as Attorney V in the Movie Television Review Board (MTRCB) was not in order and directed that he be automatically restored to his position.

The pleadings of the parties, the decision of the Court of Appeals and the Resolution of the CSC disclose the following facts:

On 18 July 1986, CORPUZ was appointed as the MTRCB's legal Counsel -- Prosecutor and Investigation Services (Supervising Legal Staff Officer).[3] The appointment was approved by Asst. Regional Director Benita Santos of the CSC-National Capital Region. Subsequently, CORPUZ' position was designated Attorney V under the Salary Standardization Law.

As MTRCB Legal Counsel, CORPUZ' duties included "attendance in Board meetings" pursuant to then Chairman Morato's memorandum of 11 September 1987.[4]

Sometime in August 1991, the MTRCB passed MTRCB Resolution No. 8-1-91[5] entitled "An Act To Declare The Appointments Of The Administrative And Subordinate Employees Of This Board As Null And Void." This undated resolution noted that the past and present Chairmen of the MTRCB had failed to submit for approval the appointments of administrative and subordinate employees to the MTRCB before forwarding them to the CSC, in violation of Section 5 of P.D. No. 876-A, and later, P.D. No. 1986.[6] It thus declared:

FOR ALL OF THE FOREGOING, this Board, in Session Assembled, hereby declare[s] that ALL the appointments of the present administrative and subordinate employees of this Board suffers [sic] from illegality and therefore [are] considered invalid and of no value and effect ab initio.

IT IS THEREFORE RESOLVED, AS IT IS HEREBY RESOLVED BY THIS BOARD, that the Chairman recommend to this Board, the appointment of all or some of the present administrative and subordinate employees of this Board, or new ones, at his initiative, discretion and preference, including the category of the position for which the appointees [are] recommended, within a period of ONE MONTH from the approval of this Resolution;

IT IS FURTHER RESOLVED, that in the interregnum, and in order not to disrupt the workings and functions of this Board while this body is awaiting for [sic] the recommendation of the appointments of the old and or

new appointees, the present administrative and subordinate employees shall hold on [to] their position[s] in an [sic] holdover capacity.

As certified by MTRCB Secretary Vicente G. Sales,[7] Resolution No. 8-1-91 was filed in his office on 1 August 1991, while Resolution No. 10-2-91, a mere reiteration of Resolution No. 8-1-91, was approved by the MTRCB en banc on 9 October 1991. No copy of Resolution No. 10-2-91, however, was found in the records.

CORPUZ was unaware of the promulgation of Resolution No. 8-1-91 as he was then on leave. The Resolution was likewise kept secret and it was only on 12 March 1993 that an announcement[8] of its contents was posted by an Ad Hoc Committee on the MTRCB bulletin board. This announcement invited the submission of any information concerning the appointments involved therein to the Committee. It appears, however, that nothing was immediately done to implement Resolution No. 8-1-91.

On 14 July 1992, Henrietta S. Mendez was appointed MTRCB Chairman. Thereafter, new members of the Board were likewise appointed with Mendez assuming office in August 1992.

At the MTRCB meeting of 19 January 1993, Mendez was informed about Resolution No. 8-1-91. An Ad Hoc Committee composed of MTRCB members was then constituted to look into the appointments extended by former Chairman Morato, as well as the qualifications of the appointees. The Committee then posted on the MTRCB bulletin board the 12 March 1993 announcement mentioned above.

Thereafter, the Committee resolved to recommend to the MTRCB the approval of the appointments, except that of CORPUZ and seven others.

In a Memorandum[9] dated 28 June 1993, Mendez informed CORPUZ that at the MTRCB regular meeting of 25 June 1993, his appointment was disapproved effective 30 June 1993. None of the parties attached to their pleadings a copy of the MTRCB Resolution disapproving the appointment.

On 27 July 1993, CORPUZ and one Larry Rigor filed a complaint with the CSC requesting a formal investigation and hearing. In her comment to the complaint, Mendez stated that she discovered that the appointments extended by Morato were not submitted to the MTRCB for approval pursuant to Section 5(c) of P.D. No. 1986; hence to cure the defect, she submitted the appointments to the MTRCB.

On 31 August 1993, the CSC promulgated Resolution No. 93-3509 granting the MTRCB authority to fill up positions vacated in the agency due to appointments which were not submitted to the MTRCB for approval.[10]

However, in Resolution No. 93-5964[11] dated 23 December 1993, the CSC ruled in favor of CORPUZ, as follows:

It must be appreciated that the appointment of Atty. Corpuz was approved by the Commission because it was signed by Mr. Manuel Morato, then Chairman of [the] MTRCB and the duly authorized signatory of MTRCB appointments. All the appointments signed by Mr. Morato in his capacity as MTRCB Chairman are presumed to have been made after complying with all the legal requirements including the Board approval, whether express or implied.

The appointment of Atty. Corpuz, if defective, could have been the subject of a direct action for revocation or recall which may be brought to the Commission within a reasonable period of time after its approval... Since no such action was filed with the Commission, we can safely state that Corpuz had already acquired security of tenure in the said position. Hence, the Commission can not allow the current Board's disapproval of the said appointment to produce any effect. Atty. Corpuz can no longer be separated from the service except for cause and after observing the requirements of due process.

WHEREFORE, foregoing premises considered, the Commission hereby resolves to rule that the separation of

Mr. David Corpuz from the service is not in order. Accordingly, he is automatically restored to his position of Atty. V with payment of back salaries.

The MTRCB's motion for reconsideration was denied by the CSC in Resolution No. 94-2551[12] dated 20 June 1994.

In the meantime, specifically on 22 August 1994, CORPUZ became a permanent employee of the Ombudsman.[13]

The MTRCB filed with us a special civil action for certiorari which we referred to the Court of Appeals in view of Republic Act No. 7902.[14] The Court of Appeals then docketed the case as CA-G.R. SP No. 37694.

In its decision, the Court of Appeals declared null and void Resolution No. 93-5964 of the CSC, ruling that since the appointment of CORPUZ was not approved by the MTRCB, the appointment was invalid and he could not invoke security of tenure. In support of its ruling, the Court of Appeals held:

Presidential Decree No. 1986, the law creating the Movie and Television Review and Classification Board, specifically provides as follows:

"Section 16. Organization Patterns; Personnel. -- The Board shall determine its organizational structure and staffing pattern. It shall have the power to suspend or dismiss for cause any employee and/or approve or disapprove the appointment, transfer or detail of employees. It shall appoint the Secretary of the Board who shall be the official custodian of the records of the meetings of the Board and who shall perform such other duties and functions as directed by the Board." (Underscoring supplied)

The record shows that the appointment of respondent Atty. David Corpuz was not approved by the Board, as mandated by Presidential Decree No. 1986, Section 16.

The Supreme Court, in a similar case has reiterated the importance of complying with legal requirements for a valid appointment. In *Tomali vs. Civil Service Commission* (238 SCRA 572), it held:

"Compliance with the legal requirements for an appointment to a civil service position is essential in order to make it fully effective (*Favis vs. Rupisan*, 17 SCRA 190, cited in *Mitra vs. Subido*, 21 SCRA 127). Without the favorable certification or approval of the Commission, in cases when such an approval is required, no title to the office can yet be deemed to be permanent; vested in favor of the appointee, and the appointment can still be recalled or withdrawn by the appointing authority (*Grospe vs. Secretary of Public Works and Communication*, 105 Phil. 129; *Villanueva vs. Balallo*, 9 SCRA 407; *Suarez vs. Commission on Elections*, 20 SCRA 797). Until an appointment has become a completed act, it would likewise be precipitate to invoke the rule of security of tenure (See *Aquino vs. Civil Service Commission*, 208 SCRA 240; *Mitra vs. Subido*, 21 SCRA 797)."

It appearing that respondent Atty. Corpuz' appointment was not approved by the Board, the same cannot be considered as [a] valid appointment. As such, he cannot invoke security of tenure, even if he has rendered service for a number of years.

Neither would the silence or the failure of the Board to recall the private respondent's appointment constitute as a [sic] consent or confirmation. In the aforecited case, the Supreme Court restated the existing jurisprudence on the matter, thus:

"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 the approval of the Commissioner on Civil Service of appointments, ineffective and unenforceable. The employee, whose appointment was not approved, may only be considered as a *de facto* officer." (*Tomali vs. Civil Service Commission*, *supra* citing *Favis vs. Rupisan*, 17 SCRA 190, 191)

Thus, We find merit in petitioner's contention that respondent Atty. David Corpuz did not acquire a vested right nor does he presently enjoy a [sic] security of tenure to the subject position in the MTRCB for failure to comply with the legal requirements needed for a valid appointment. Hence, he cannot be reinstated. Not being a permanent employee of the Movie and Television Review and Classification Board, the tenure of respondent Atty. Corpuz ceased when he was not properly appointed under present law.

His motion for reconsideration having been denied in the Resolution[15] of 13 February 1996, CORPUZ filed the instant petition under Rule 45 of the Rules of Court and asked us to reverse the challenged decision of the Court of Appeals on the sole ground that:

THE COURT OF APPEALS ERRED IN RULING THAT THE APPOINTMENT OF PETITIONER ATTY. DAVID B. CORPUZ DID NOT HAVE THE APPROVAL OF THE MTRCB BOARD WHICH IF NOT CORRECTED, IS TANTAMOUNT TO A VIOLATION OF HIS CONSTITUTIONAL RIGHTS TO SECURITY OF TENURE.

In his Memorandum, however, CORPUZ explicitly declared that he "is no longer seeking reinstatement with respondent MTRCB but for the continuity of his government service from the time he was illegally dismissed on 30 June 1993 up to the time he was permanently employed with the Office of the Ombudsman on 22 August 1994 plus back salaries and other benefits due him if not for the illegal dismissal." [16]

Pursuant to Section 2 of P.D. No. 1986, the MTRCB is composed of a Chairman, a Vice-Chairman and thirty (30) members, all appointed by the President of the Philippines. Section 5 thereof enumerates the following functions, powers and duties of the Chairman as the Chief Executive Officer of the MTRCB, to wit:

(a)

Execute, implement and enforce the decisions, orders, awards, rules and regulations issued by the BOARD;

(b)

Direct and supervise the operations and the internal affairs of the BOARD;

(c)

Establish the internal organization and administrative procedures of the BOARD, and recommend to the BOARD the appointment of the necessary administrative and subordinate personnel; and

(d)

Exercise such other powers and functions and perform such duties as are not specifically lodged in the BOARD.

On the other hand, Section 16 thereof, quoted in the challenged decision of the Court of Appeals, vests upon the Board itself the power to, inter alia, approve or disapprove the appointments of its personnel.

It is thus clear that there are two stages in the process of appointing MTRCB personnel, other than its Secretary, namely: (a) recommendation by the Chairman which is accomplished by the signing of the appointment paper, which is among his powers under Section 5(d) above; and (b) approval or disapproval by the MTRCB of the appointment. As to the Secretary, it is the MTRCB itself that is empowered to appoint said official pursuant to Section 16.

It is long settled in the law of public offices and officers that where the power of appointment is absolute, and the appointee has been determined upon, no further consent or approval is necessary, and the formal evidence of the appointment, the commission, may issue at once. Where, however, the assent or confirmation of some other

officer or body is required, the commission can issue or the appointment may be complete only when such assent or confirmation is obtained. In either case, the appointment becomes complete when the last act required of the appointing power is performed.[17] Until the process is completed, the appointee can claim no vested right in the office nor invoke security of tenure. Hence, in the case of CORPUZ, since the last act required for the completion of his appointment, viz., approval by the MTRCB itself, was not obtained, as a matter of fact, the MTRCB ultimately disapproved it, his appointment ceased to have effect, if at all, and his services were properly terminated. This Court so declared in *Favis v. Rupisan*[18] where the appointment involved was not approved by the Civil Service Commission pursuant to Section 16(h) of R.A. No. 2260 and Section 2(a) of Rule VI of the Civil Service Rules implementing said law; *Taboy v. Court of Appeals*[19] and *Provincial Board of Cebu v. Presiding Judge of Cebu Court of First Instance*[20] where the appointments of subject employees were disapproved by the Provincial Boards pursuant to the powers granted them; in *Carillo v. Court of Appeals*[21] where the required consent of the municipal council in the appointment of the chief of police was not obtained; and in *Tomali v. Civil Service Commission*,[22] which the Court of Appeals relied upon, where the required submission to and approval by the Civil Service Commission were not made as required by Section 9(h) of P.D. No. 807 and Section 11, Rule V of the Omnibus Rules Implementing Book V of Executive Order No. 292, otherwise known as the Administrative Code of 1987. In the latter, this Court held that compliance with the legal requirements for an appointment to a civil service position is essential to make it fully effective. That the employee involved had, in fact, assumed office and performed the functions and duties thereof is of no moment, for it matters not that the appointee had served for several years. Those years of service cannot substitute for the want of consent of another body required by law to complete the appointment. The tolerance, acquiescence or mistake of the proper officials resulting in non-observance of the requirements of law or rules to complete the appointment does not render the requirements ineffective and unenforceable.[23]

A public official or employee who assumed office under an incomplete appointment is merely a *de facto* officer for the duration of his occupancy of the office for the reason that he assumed office under color of a known appointment which is void by reason of some defect or irregularity in its exercise.[24] Undeniably, under the facts here, CORPUZ was such a *de facto* officer.

WHEREFORE, the instant petition is DENIED and the assailed decision of 13 October 1995 of the Court of Appeals in CA-G.R. SP-No.37694 is AFFIRMED.

Costs against petitioner.

SO ORDERED.

Bellosillo, Vitug and Kapunan, JJ., concur.

[1] Per Ynares-Santiago C., J.; with Paras, G.C. and Reyes, R.T., JJ., concurring. Annex “A” of Petition, Rollo, 23-28.

[2] Per Sto. Tomas, P.A., Chairman; with Ereñeta, R.P. and Gaminde, T.P., Commissioners, concurring. Annex “K” of Petition, Rollo, 42-44.

[3] Annex “C” of Petition, Rollo, 31.

[4] Annex “E” of Petition, Id., 33.

[5] Annex “G” of Petition, Id., 36-38.

[6] Entitled “Creating the Movie and Television Review and Classification Board.”

[7] Annex “G” of Petition, Rollo, 35.

[8] Annex “H” of Petition, Rollo, 39.

[9] Annex “I” of Petition, Id., 40.

[10] Memorandum for Respondent, 7; Rollo, 132.

[11] Supra note 2.

[12] Petition, 6; Rollo, 12.

[13] Page 17 of Memorandum for CORPUZ, Rollo, 94.

[14] An Act Expanding the Jurisdiction of the Court of Appeals, Amending for the Purpose Section Nine of Batas Pambansa Blg. 129, as Amended Known as the Judiciary Reorganization Act of 1980.

[15] Annex “B” of Petition, Rollo, 29-30.

[16] Rollo, 94.

[17] Mechem, Law of Public Office and Officers, §112, at 46. See *Mitra v. Subido*, 21 SCRA 127, 140 [1967].

[18] 17 SCRA 190 [1966].

[19] 105 SCRA 758 [1981].

[20] 171 SCRA 1 [1989].

[21] 77 SCRA 170 [1967].

[22] 238 SCRA 572 [1994].

[23] *Favis v. Rupisan*, supra note 18, at 196.

[24] Id., See also *Ibañez v. COMELEC*, 19 SCRA 1002, 1014 [1967]; *Aparri v. Court of Appeals*, 127 SCRA 231, 239 [1984].

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