HON. ALMA G. DE LEON, CHAIRMAN, HON. THELMA P. GAMINDE, COMMISSIONER, AND HON. RAMON P. ERENETA, JR., COMMISSIONER, CIVIL SERVICE COMMISSION, AND SECRETARY RAFAEL M. ALUNAN, III...

G.R. No. 127182. December 05, 2001

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

For resolution is private respondent's motion for reconsideration of the January 22, 2001 Decision of the Court, which reversed and set aside the Decision of the Court of Appeals in CA-G.R. SP No. 38664 and reinstated Resolution Nos. 953268 and 955201 of the Civil Service Commission.

In the Decision sought to be reconsidered, we ruled that private respondent's appointment on August 28, 1986, as Ministry Legal Counsel - CESO IV of the Ministry of Local Government, was temporary. Applying the case of Achacoso v. Macaraig,[1] we held that since private respondent was not a Career Executive Service (CES) eligible, his appointment did not attain permanency because he did not possess the required CES eligibility for the CES position to which he was appointed. Hence, he can be transferred or reassigned without violating his right to security of tenure.

It appears, however, that in Jacob Montesa v. Santos, et al., decided on September 26, 1990,[2] where the nature of private respondent's appointment as Ministry Legal Counsel - CESO IV, of the Ministry of Local Government, was first contested, this Court issued a Minute Resolution dated March 17, 1992, holding that Achacoso v. Macaraig is not applicable to the case of private respondent. The pertinent portion thereof reads -

> ... The holding of this Court in the Achacoso case is not applicable to petitioner Montesa. Petitioner was appointed on August 28, 1996 by virtue of Article III of the Freedom Constitution. He was extended a permanent appointment by then Minister Pimentel and subsequently confirmed as permanent by the Civil Service Commission. He is a first grade civil service eligible (RA 1080) the appropriate eligibility for the position at that time and a member of the Philippine bar.
>
> There was no Career Executive Service Board during the Freedom Constitution or at the time of appointment of petitioner. The CESO was only reconstituted by the appointment of its Board of six (6) members sometime in August 1988. There was no CESO eligibility examination during petitioner's incumbency in the Department, as there was no CESO board. The first CESO examination was given on August 5 and 12, 1990. The CESO eligibility was not a requirement at the time of the appointment of petitioner. The only eligibility required is that of a first grader and petitioner is a first grade eligible. Therefore, having met all the requirements for the position to which he was appointed, he cannot be removed in violation of the constitutional guarantee on security of tenure and due process.

Invoking res judicata, private respondent contends that the nature of his appointment can no longer be passed upon and controverted in the present case considering that said issue had already been settled in the foregoing

Minute Resolution of the Court.

Concededly, if we follow the conventional procedural path, i.e., the principle on conclusiveness of judgment set forth in Rule 39, Section 47, paragraph (c) of the Rules of Court,[3] would bar a relitigation of the nature of private respondent's appointment. Indeed, once an issue has been adjudicated in a valid final judgment of a competent court, it can no longer be contoverted anew and should be finally laid to rest.[4]

Yet, the Court is not precluded from re-examining its own ruling and rectifying errors of judgment if blind and stubborn adherence to res judicata would involve the sacrifice of justice to technicality. It must be stressed that this is not the first time in Philippine and American jurisprudence that the principle of res judicata has been set aside in favor of substantial justice, which is after all the avowed purpose of all law and jurisprudence.[5]

In the March 17, 1992 Minute Resolution, we held that private respondent who was appointed in 1986 pursuant to the Freedom Constitution, though not a CES eligible, possessed all the requirements for the position of Ministry Legal Counsel - CESO IV, of the Ministry of Local Government, since a CES eligibility was not, at that time, a requirement for the same position.

A reading, however, of the Integrated Reorganization Plan which was adopted and declared part of the law of the land by Presidential Decree No. 1, dated September 24, 1972, clearly shows that a CES eligibility is indeed a requirement for a position embraced in the CES. Thus:

> c. Appointment. Appointment to appropriate classes in the Career Executive Service shall be made by the President from a list of career executive eligibles recommended by the Board. Such appointments shall be made on the basis of rank; provided that appointments to the higher ranks which qualify the incumbents to assignments as undersecretary and heads of bureaus and offices and equivalent positions shall be with the confirmation of the Commission on Appointments. The President may, however, in exceptional cases, appoint any person who is not a Career Executive Service eligible; provided that such appointee shall subsequently take the required Career Executive Service examination and that he shall not be promoted to a higher class until he qualifies in such examination.

In fact, in March 1974, the CES Board issued CESB Circular No. 1 which laid down the requirements for membership in the CES, to wit:

> a) Successful completion of CESDP shall constitute one of the requirements for membership in the CES. Except as otherwise provided by law, no person shall be admitted into the CES without having satisfactorily completed the program;
>
> b) Admission into CESDP shall be limited to incumbents of positions falling within the CES duly nominated by their Department Heads;
>
> c) Upon satisfactory completion of the program, the incumbent-participant shall be enrolled in the roster of CES eligibles and shall be qualified for appointment by the President to the appropriate rank in the CES upon recommendation of the Board. He may then be assigned to any position in the CES by the President.

The foregoing law and circular were never amended nor repealed by the Freedom Constitution. A CES eligibility was an existing and operative requirement at the time of private respondent's appointment as Ministry Legal Counsel - CESO IV. Neither were the said law and circular inconsistent with the Freedom Constitution as to render them modified or superseded. In fact, the Integrated Reorganization Plan allows the appointment of non-CES eligibles, like private respondent, provided they subsequently acquire the needed eligibility.

It bears stressing that in Achacoso v. Macaraig, the questioned appointment was made on October 16, 1987, before the CES Board was reconstituted in 1988, and before the first CESO examination was given in 1990, as in

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the present case. Nevertheless, the Court, in Achacoso, ruled that a CES eligibility is required for a CES position, such that an appointment of one who does not possess such eligibility shall be temporary. Evidently, a CES eligibility has always been one of the requirements for a position embraced in the CES. The Court finds no reason to make an exception in the instant controversy.

Moreover, in the recent case of Secretary of Justice v. Josefina Bacal,[6] we ruled that security of tenure in the CES is acquired with respect to rank and not to position. Hence, assuming ex gratia argumenti that a CES eligibility is not a requirement in the case of private respondent, the mobility and flexibility concepts in the assignment of personnel in the CES, which allow transfer or reassignment of CES personnel to other positions of the same rank or salary,[7] justify his transfer to other CES position without violating his right to security of tenure.

WHEREFORE, in view of all the foregoing, the instant motion for reconsideration is DENIED with FINALITY.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, De Leon, Jr., Sandoval-Gutierrez, and Carpio, JJ., concur.
Buena, J., on official leave.

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[1] 195 SCRA 235 [1991].

[2] 190 SCRA 50 [1990].

[3]Ocho v. Calos, et al., G.R. No. 137908, November 22, 2000.

[4] Rizal Surety Insurance Company v. Court of Appeals, et al., 336 SCRA 12, 21-22 [2000]; citing Smith Bell and Company (Phils.) v. Court of Appeals, 197 SCRA 201 [1991].

[5] Teodoro v. Carague, 206 SCRA 429, 434 [1992]; citing 46 Am. Jur., pp. 402-403; Republic v. De los Angeles, 159 SCRA 264 [1988]; Suarez v. Court of Appeals, 193 SCRA 183 [1991]; Vergara v. Rugue, 78 SCRA 312 [1977]; Philippine Coal Miner's Union v. CEPOC, 10 SCRA 784 [1964]; Alvarez, Jr. v. Court of Appeals, 158 SCRA 407 [1988]; Ronquillo v. Marasigan, 5 SCRA 304 [1962]; Santiago v. Ramirez, 8 SCRA 157 [1963]; Pulido v. Pulido, 117 SCRA 16 [1982]; and Alvarez, Jr. v. Court of Appeals, 158 SCRA 401 [1988].

[6] G.R. No. 139382, December 6, 2000.

[7] e. Assignments, Reassignments and Transferees . . .

Any provision of law to the contrary notwithstanding, members of the Career Executive Service may be reassigned or transferred from one position to another and from one department, bureau or office to another; provided that such reassignment or transfer is made in the interest of public service and involves no reduction in rank or salary; provided, further, that no member shall be reassigned or transferred oftener than every two years; and provided, furthermore, that if the officer concerned believes that his reassignment or transfer is not justified, he may appeal his case to the President. (Integrated Reorganization Plan, Part III, Chap. I, Art. IV, par. 5 [e]).

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