

**EDITHA G. PABU-AYA, PETITIONER, VS. THE COURT OF APPEALS,
THE CIVIL SERVICE COMMISSION, THE PROVINCIAL GOVERNMENT
OF NEGROS OCCIDENTAL, PARTICULARLY THE SANGGUNIAN
PANLALAWIGAN...***G.R. No. 128082. April 18, 2001*

Ponente: DE LEON, JR., J.

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Before us is a petition for review on certiorari, filed under Rule 45 of the revised Rules of Court (but erroneously captioned as a petition for certiorari), by way of appeal from the Decision of the Court of Appeals in CA-G.R. SP No. 37632,[1] promulgated on January 6, 1997, which affirmed Resolution Nos. 94-3178 and 95-2145 dated June 14, 1994 and March 23, 1995, respectively, of the respondent Civil Service Commission.

The undisputed facts are as follows:

Petitioner Editha G. Pabu-aya was an employee of the Provincial Board of Negros Occidental, also called the Sanggunian Panlalawigan of the said province. She started as a casual laborer on July 1, 1973. On November 14, 1986 she was appointed as Utility Worker on a permanent status. She was later appointed as Bookbinder II, on a temporary status, on September 16, 1991. On October 16, 1992, Romeo J. Gamboa, Vice Governor of Negros Occidental, issued a Memorandum[2] informing her that her temporary appointment as Bookbinder II had already expired on September 16, 1992, and that consequently she could no longer continue in the service. On October 23, 1992, she wrote the Sanggunian Panlalawigan and acknowledged therein her failure to perform her duties satisfactorily as Bookbinder II and promised that she would improve her performance should her appointment be renewed.[3] On January 29, 1993, she wrote to the then President Fidel V. Ramos appealing for assistance regarding her dismissal allegedly without due process.[4] Her letter was indorsed to the Provincial Governor of Negros Occidental by Director Miguel V. Sison, Jr.[5] of the Presidential Action Center. Acting on this indorsement, the then Governor Rafael Coscolluela proposed the re-appointment of petitioner Pabu-aya as a Utility Worker under the following terms and conditions:

- That she execute an undertaking to the effect that she promises to perform the functions of a Utility Worker and other related works which may be assigned by her immediate supervisor.
- That her accumulated leave credits of 221.37 days must be applied for, otherwise, it shall be forfeited. She starts anew accumulating leave credits after six months continuous service. This is so because of a gap in the service.
- That her re-appointment can not be retro-acted September 16, 1992 because there was an incumbent to the position to which she is considered during said date.[6]

None of the above conditions was acceptable to nor followed by the petitioner. On October 29, 1993 the petitioner withdrew her appointment papers as Utility Worker in the General Services, effective September 16, 1992, from the Human Resource Management Services upon learning that the same was not signed by the then Governor

Coscolluela. Instead, petitioner appealed the Memorandum dated October 16, 1992 of Vice Governor Gamboa, terminating her employment as Bookbinder II, to the Civil Service Commission (hereinafter called the Commission for brevity). In Resolution No. 94-0437[7] dated January 20, 1994, respondent Commission dismissed the said appeal of the petitioner.

Subsequently, the petitioner filed with the respondent Commission a request for reinstatement to her original position as Utility Worker. In Resolution No. 94-3178[8] dated June 14, 1994, respondent Commission denied the petitioner's request for reinstatement to the position of Utility Worker for "lack of merit". According to respondent Commission, when the petitioner accepted the temporary appointment as Bookbinder II, without any objection, she accepted the fact that, as a temporary employee, she has no security of tenure and may be removed from the service without cause and due process.

Petitioner's motion for reconsideration was denied by respondent Commission[9] in its Resolution No. 95-2145, promulgated on March 23, 1995, the pertinent portion of which reads as follows:

"From the records, it is clear that Pabu-aya accepted the position of Bookbinder II under temporary status without any objection. When she accepted her temporary appointment she also accepted the conditions thereof. It is stressed that she, being a temporary employee, has no security of tenure. Her appointment may be terminated at anytime with or without cause or it may be renewed at the pleasure of the appointing authority in the exercise of his discretion. As Pabu-aya's temporary appointment was not renewed after the expiration of the twelve (12) months [sic] period, her separation from the service is valid." [10]

Petitioner on May 20, 1995 then filed a "Petition for Certiorari and/or Review" before this Court which, however, referred the same to the respondent Court of Appeals. In a Decision promulgated on January 6, 1997, respondent Court of Appeals denied due course and dismissed the said petition. The pertinent portion of said Decision of the Court of Appeals reads as follows:

"Petitioner's quest for reinstatement as utility worker is also unavailing as her prayer was also denied by the Civil Service Commission per Resolution 94-3197 dated June 14, 1994, and further upheld in the Resolution No. 95-2145 dated May 23, 1995. [11]

Moreover, the Solicitor General's Office, in representation of the Civil Service Commission, correctly maintained that petitioner having accepted the position of Bookbinder II, aware of the temporary nature of such appointment, she is deemed to have lost and/or waived whatever right or privileged [sic] insofar as her tenurial security is concerned. For, an employee is entitled only to such security of tenure as the appointment papers actually confer.

xxx xxx xxx

WHEREFORE, the petition for certiorari and prohibition is hereby DENIED DUE COURSE, and is DISMISSED, and the Resolution Nos. 94-3178, and 95-2145 dated June 14, 1994 and March 23, 1995, respectively, of the respondent Civil Service Commission are AFFIRMED." [12]

The petitioner then timely filed with this Court the present petition for review on certiorari, under Rule 45 of the revised Rules of Court, but it was erroneously captioned as "Petition for Certiorari."

The petitioner raised the following assignment of errors:

I

THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER'S ACCEPTANCE OF A TEMPORARY APPOINTMENT WAS AN INDICATION OF HER RELINQUISHMENT OF HER POSITION AS A PERMANENT EMPLOYEE AND FORECLOSED HER RIGHT TO CONTEST HER

NON-REINSTATEMENT.

II

THE COURT OF APPEALS ERRED IN ARBITRARILY DISREGARDING THE CONSTITUTIONAL RIGHT OF PETITIONER TO SECURITY OF TENURE.

III

THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER IS GUILTY OF LACHES.

With regard to the first issue as to whether or not the respondent Court of Appeals erred in ruling that petitioner's subsequent acceptance of a temporary appointment (as Bookbinder II) was an indication of her relinquishment of her position (Utility Worker) as a permanent employee and thus foreclosed her right to contest her non-reinstatement, the Court of Appeals upheld and adopted the findings of facts of respondent Commission, and correctly ruled on that issue. As a general rule, the findings of fact of the respondent Commission and the Court of Appeals are accorded great weight. In a plethora of cases, this Court has held that lower courts are in a better position to determine the truth of the matter in litigation since the pieces of evidence are presented before them and they are able to look into the credibility and the demeanor of the witnesses on the witness stand. Furthermore, quasi-judicial bodies like the Civil Service Commission are better-equipped in handling cases involving the employment status of employees as those in the Civil Service since it is within the field of their expertise. Factual findings of administrative agencies are generally held to be binding and final so long as they are supported by substantial evidence in the record of the case.[13]

It is not the function of the Supreme Court to analyze or weigh all over again the evidence and credibility of witnesses presented before the lower court, tribunal or office. The Supreme Court is not a trier of facts. Its jurisdiction is limited to reviewing and revising errors of law imputed to the lower court, its findings of fact being conclusive and not reviewable by this Court.[14] In the case at bar, respondent Court of Appeals acted properly when it gave scant consideration to petitioner Pabu-aya's claim that had she known of the demotion in status from that of a Utility Worker, on a permanent status, to that of Bookbinder II on a temporary status, she would have stuck to her old permanent position of Utility Worker rather than put to naught her long years of service in the government. It is a fact, however, that petitioner Pabu-aya freely took her oath of office as Bookbinder II on a temporary status. The said position carries an annual salary of P27,000.00 which is higher in amount than that of a Utility Worker is not disputed. The new position of Bookbinder II was in fact more beneficial to petitioner. Besides, the letter of the Vice Governor dated October 8, 1991 denying petitioner's application to the position of Clerk II explained that "the position of Bookbinder II is more beneficial on your part for the reason that you can be re-appointed on a permanent basis." [15] That letter sufficiently informed the petitioner that her appointment as Bookbinder II was in fact temporary; otherwise, there would be no more need to re-appoint her on a permanent basis.

According to the findings of the respondent Commission, which were adopted by respondent Court of Appeals, the claim of the petitioner that she was not furnished a copy of her new appointment as Bookbinder II, showing the status of her appointment as temporary in nature, cannot be relied upon. Her appointment as Bookbinder II dated September 16, 1991 [16] shows that it is "Katayuang Temporary x x x." It is a normal office procedure to furnish a copy of the appointment to the appointee, and to require the latter to take an oath of office. All these must have given petitioner the opportunity to know and realize that her new appointment as Bookbinder II was temporary and not permanent in nature. She was not forced to accept the promotion. Since the new position of Bookbinder II would be more beneficial to her in terms of remuneration, she in fact accepted the same on her own free will. As aptly stated in the case of *Dosch vs. National Labor Relations Commission*: [17]

"There is no law that compels an employee to accept a promotion, as a promotion is in the nature of a gift or reward, which a person has a right to refuse. When petitioner refused to accept his promotion as Director of International Sales, he was exercising a right and he cannot be punished for it as *qui jure suo utitur neminem laedit*. He who uses his own legal right injures no one."

With regard to the second issue as to whether or not respondent Court of Appeals erred in arbitrarily disregarding the constitutional right of petitioner to security of tenure, it appears that the temporary employment of petitioner as Bookbinder II was validly terminated. Petitioner's contention that she should be reinstated to her former position as Utility Worker is untenable. Petitioner Pabu-aya, by having accepted the temporary appointment of Bookbinder II, means that she had abandoned or given up her former position of Utility Worker. Her appointment as Bookbinder II on September 16, 1991, being temporary in character, was terminable at the pleasure of the appointing power with or without a cause. The letter of petitioner, dated October 23, 1992,[18] expressing regret over her own less than satisfactory performance and promising to improve her work should her appointment be renewed, also implies that there were valid reason for the proper authorities not to renew her temporary appointment as Bookbinder II which expired on September 16, 1992. Besides, pursuant to Section 13 (b) Omnibus Rules Implementing Book V of the Administrative Code of 1987, a temporary appointment shall not exceed twelve (12) months.

As regards the third issue of whether or not respondent Court of Appeals erred in holding that petitioner was guilty of laches, the record shows that petitioner Pabu-aya did not appeal from respondent Commission's Resolution No. 94-0437 dated January 20, 1994 dismissing her appeal from Vice-Governor Romeo J. Gamboa's Memorandum dated October 16, 1992 terminating her temporary employment as Bookbinder II. Quoted below is the pertinent portion of the Decision of the Court of Appeals, to wit:

And the Commission, per Resolution No. 94-0437 dated January 20, 1994 dismissed her appeal, by stating:

"Ms. Editha Pabu-aya, former Bookbinder, Sangguniang Panlalawigan Office, Bacolod City, appeals from the Memorandum dated October 16, 1992 of the Vice Governor, Bacolod City, terminating her temporary appointment.

"It appears from the records that Pabu-aya was appointed in a temporary capacity as Bookbinder II on September 16, 1991. Pursuant to Section 13 (b) Omnibus Rules Implementing Book V of Administrative Code of 1987, temporary appointment shall not exceed twelve (12) months. Thus, Editha Pabu-aya, being a temporary appointee, has no security of tenure. Non-renewal of a temporary appointment after the expiration of the twelve (12) month period is a valid mode of termination.

"WHEREFORE, foregoing premises considered, the Commission hereby resolves to dismiss the appeal of Ms. Editha Pabu-aya for lack of merit."

And petitioner did not appeal from the Civil Service Commission's Resolution No. 94-0437, leaving the resolution to become final and executory. [19]

In sum, we find no reversible error in the challenged Decision of respondent Court of Appeals.

WHEREFORE, the petition is hereby DENIED for lack of merit.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Buena, Gonzaga-Reyes, Ynares-Santiago, and Sandoval-Gutierrez, JJ., concur.

- [1] Rollo, pp. 23-31.
- [2] Rollo, p. 85.
- [3] Rollo, p. 86.
- [4] Rollo, p. 87.
- [5] Rollo, p. 88.
- [6] Rollo, p. 90.
- [7] Rollo, p. 91.
- [8] Rollo, pp. 45-46. Rendered by Chairman Patricia A. Sto. Tomas and Commissioners Ramon P. Ereneta, Jr. and Thelma P. Gaminde.
- [9] Rollo, pp. 43-44. Rendered by Chairman Corazon Alma G. De Leon and Commissioners Ramon P. Ereneta, Jr. and Thelma P. Gaminde.
- [10] Rollo, p. 43.
- [11] Rollo, pp. 43-44. Resolution No. 95-2145 was erroneously stated as being promulgated on May 23, 1995. The exact date of promulgation is March 23, 1995.
- [12] Rollo, pp. 29-30.
- [13] *Philtranco Service Enterprises, Inc. v. NLRC*, 288 SCRA 585 (1998).
- [14] *Manzano v. Court of Appeals*, 278 SCRA 688 (1997).
- [15] Rollo, p. 80.
- [16] Rollo, p. 77.
- [17] 123 SCRA 296, 312 (1983).**
- [18] Rollo, p. 86.
- [19] Rollo, p. 28.

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