

ASELA B. MONTECILLO, MARILOU JOAN V. ORTEGA AND CHARRISHE DOSDOS, PETITIONERS, VS. CIVIL SERVICE COMMISSION, RESPONDENT.

G.R. No. 131954. June 28, 2001

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

Seeking to nullify Resolution No. 972512 for having been issued by respondent Civil Service Commission allegedly with grave abuse of discretion, petitioners assail the validity of CSC Memorandum Circular No. 22, Series of 1991, on the ground that its issuance amounted to an abuse of respondent's power to promulgate rules and regulations pursuant to the Civil Service Law.

Following our decision in *Davao City Water District vs. Civil Service Commission*,^[1] employee positions in the Metropolitan Cebu Water District (MCWD) were re-classified during the latter part of 1995 to conform with position descriptions and corresponding salary grades in the civil service. Accordingly, while the personnel structure of the MCWD was being modified, three of its employees -- petitioners Asela B. Montecillo, Marilou Joan V. Ortega and Charrishe Dosdos -- applied for promotional appointment to the position of "Secretary to the Assistant General Manager" or "Private Secretary C", as the position later came to be known. At the time of their application, petitioners had been occupying the position of "Department Secretary" and were employed in the MCWD for six to seven years.

When their appointments were forwarded to the Civil Service Commission Field Office (CSC FO) by MCWD General Manager Dulce Abanilla, the CSC FO refused to approve petitioners' appointments as "permanent" on the ground that the position applied for was a "primarily confidential" and "co-terminous" position. This ruling was upheld by the CSC Regional Office^[2] and affirmed on appeal by respondent.^[3]

In its Resolution No. 972512, respondent based its conclusions on CSC Memorandum Circular No. 22, Series of 1991, which reads:

To: ALL HEADS OF DEPARTMENTS, BUREAUS AND AGENCIES OF THE NATIONAL/LOCAL GOVERNMENTS, INCLUDING GOVERNMENT-OWNED AND/OR CONTROLLED CORPORATIONS

Subject: Classification of Private Secretary Position

The Civil Service Commission issued Memorandum Circular No. 14, s. 1987 which identified the personal and confidential positions located in the offices of elective officials, Department heads and other officials of cabinet rank whose tenure is at the pleasure of the President as well as Chairman and Members of Commissions and Boards with fixed terms of offices per approved Position Allocation List (PAL) as primarily confidential in nature. This includes the position of Private Secretary.

However, it is noted that there are also Private Secretary positions found in the Offices of officials not mentioned in Section 9, Chapter 2, Book V of Executive Order No. 292 but, whose duties likewise required

utmost confidentiality.

For consistency and uniformity, it is hereby declared, pursuant to Resolution No. 91-676, that all Private Secretary positions irrespective of their locations are primarily confidential in nature. The term of office of the appointees to said positions shall be coterminous with the official they serve.

Incumbents of positions of Private Secretary prior to this declaration whose appointments are permanent shall retain their permanent status until the positions are vacated.

Heads of agencies who may want to retain the position of Private Secretary in the career service should request the Department of Budget and Management for a change of their position titles to Secretary.

Please be guided accordingly.

Upon denial of their motion for reconsideration[4] by the CSC, petitioners brought this special civil action under Rule 65 of the Revised Rules of Court.

Before us, petitioners argue that Memorandum Circular No. 22, s. of 1991, unduly amended and expanded the scope of the non-career service under Section 6, Article IV of the Civil Service Decree,[5] P.D. 807, which appears almost identical to Section 9, Chapter 2, Book V of the 1987 Administrative Code. They contend that respondent abused its power to promulgate rules and regulations by issuing the challenged circular, because the grant of rule-making power to respondent did not authorize it to amend the law by adding to the statutory enumeration. Petitioners conclude that since said memorandum circular was issued in excess of the powers granted to respondent, it is null and void and consequently, the assailed CSC resolution has no leg to stand on.

After carefully considering petitioners' contentions as well as the manifestation of the Office of the Solicitor General, however, we find no merit in the present petition.

First of all, it must be stressed that in this special civil action for certiorari, the Court is limited to the determination of whether or not respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing Memorandum Circular No. 22, s. of 1991. In this regard, it should also be emphasized that the burden of proving such grave abuse of discretion lies with petitioners.[6] By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction; mere abuse of discretion is not enough -- it must be grave.[7]

The special writ of certiorari is not a remedy for errors of judgment, which are correctible by appeal.[8] For as long as a court, agency or tribunal acts within its jurisdiction, any alleged errors committed in the exercise thereof will amount to nothing more than errors of judgment, which may be corrected by timely appeal but not by a special civil action of certiorari.[9]

In the present case, there is no clear and persuasive showing that respondent grossly abused its discretion or exceeded its powers when it issued the assailed circular. On the contrary, respondent was expressly empowered to declare positions in the Civil Service as may properly be classified as primarily confidential under Section 12, Chapter 3, Book V of the Administrative Code of 1987.[10] To our mind, this signifies that the enumeration found in Section 6, Article IV of the Civil Service Decree, which defines the non-career service, is not an exclusive list. Respondent could supplement the enumeration, as it did when it issued Memorandum Circular No. 22, s. of 1991, by specifying positions in the civil service, which are considered primarily confidential and therefore their occupants are co-terminous with the official they serve.

In our view, the assailed memorandum circular can not be deemed as an unauthorized amendment of the law. On the contrary, it was issued pursuant to a power expressly vested by law upon respondent. As such, it must be

respected by this Court as a valid issuance of a constitutionally independent body. Moreover, absent any showing by petitioners that respondent acted on their case in an arbitrary or whimsical manner, it could not be successfully contended that the respondent acted with grave abuse of discretion. The cited circular amply provides valid reason and justification for the Commission's resolution, which affirmed on appeal the ruling of the CSC Regional Office that earlier upheld the action taken by its field office. This three-tiered process in the CSC ensured that petitioners' plea had undergone a thorough consideration and found devoid of substantial merit. Given these circumstances, we see no sufficient ground to disturb respondent's resolution.

WHEREFORE, the instant petition is DISMISSED for lack of merit.

SO ORDERED.

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

[1] Promulgated Sept. 13, 1991, 201 SCRA 593. The Court held in this case that local water districts are government-owned or controlled corporations with original charter and were placed under the jurisdiction of the Civil Service Commission.

[2] Rollo, pp. 49-50.

[3] Id at 54-57.

[4] Id at 61-63.

[5] SECTION 6. The Non-Career Service shall be characterized by (1) entrance on bases other than those of the usual tests of merit and fitness utilized for the career service; and (2) tenure which is limited to a period specified by law, or which is coterminous with that of the appointing authority or subject to his pleasure, or which is limited to the duration of a particular project for which purpose employment was made.

The Non-Career Service shall include:

- (1) Elective officials and their personal or confidential staff;
- (2) Department Heads (now Secretaries) and other officials of Cabinet rank who hold their positions at the pleasure of the President and their personal and confidential staff (s);
- (3) Chairman and members of commissions and boards with fixed terms of office and their personal or confidential staff;
- (4) Contractual personnel or those whose employment in the government is in accordance with a special contract to undertake a specific work or job, requiring special or technical skills not available in the employing agency, to be accomplished within a specific period, which in no case shall exceed one year, and performs or accomplishes the specific work or job, under his own responsibility with a minimum of direction and supervision from the hiring agency; and
- (5) Emergency and seasonal personnel.

[6] Don Orestes Romualdez Electric Cooperative, Inc. vs. NLRC, 319 SCRA 255, 259 (1999).

[7] Tomas Claudio Memorial College, Inc. vs. Court of Appeals, 316 SCRA 502, 508 (1999) citing: Tanada vs. Angara, 272 SCRA 18, 79 (1997).

[8] Id. at 508 citing: *Medina vs. City Sheriff of Manila*, 276 SCRA 133, 138 (1997); *Jamer vs. NLRC*, 278 SCRA 632, 646 (1997).

[9] Ibid. citing: *Commissioner on Internal Revenue vs. Court of Appeals*, 257 SCRA 200, 232 (1996).

[10] SEC. 12. Powers and Functions. - The Commission shall have the following powers and functions:

x x x

(9) Declare positions in the Civil Service as may properly be primarily confidential, highly technical or policy determining;

x x x

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