AUGUSTO TOLEDO, PETITIONER, VS. COMMISSION ON ELECTIONS, RESURRECCION Z. BORRA IN HIS CAPACITY AS EXECUTIVE DIRECTOR, COMMISSION ON ELECTIONS AND CIVIL SERVICE COMMISSION, RESPO...

G.R. No. 135864. November 24, 1999

Ponente: PURISIMA, J.

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PURISIMA, J.:

Before the Court is a petition for certiorari and prohibition under Rule 65 of the Revised Rules of Court assailing as tainted with grave abuse of discretion amounting to lack of or excess jurisdiction Resolution No. 98-2768 issued on October 6, 1998 by respondent Commission on Elections, limiting the "extended service" of petitioner Augusto Toledo as Director IV, Education and Information Department of COMELEC to October 31, 1998.

The antecedent facts that matter are as follows:

On May 21, 1986, Atty. Augusto Toledo, the herein petitioner, was appointed Manager of the Education and Information Department by the then Chairman of the Commission on Elections, Ramon Felipe, Jr., and assumed office, as such, on June 16, 1986. At the time of his appointment, the petitioner was 59 years old.

On January 29, 1989, the Commission on Elections revoked his appointment and declared the same null and void for having been issued in violation of Civil Service Commission (CSC) Memorandum Circular No. 5, Series of 1990, which prohibits the appointment of persons, who are 57 years old or older in the government service, without the prior approval of the Civil Service Commission.

On appeal, the Civil Service Commission upheld the said Resolution of the COMELEC. Upon denial of his motion for reconsideration, petitioner elevated the matter to this Court via a petition for certiorari dated May 7, 1990, docketed as G.R. No. 92646-47.

On October 4, 1991, this Court granted the petition, upheld the validity of petitioner's appointment, and ordered the respondent COMELEC to reinstate petitioner to his position.[1]

On April 7, 1992, petitioner was reinstated to his former position. However, on the following day, April 8, 1992, he was designated Acting Provincial Election Supervisor of Basilan. Because the said position was four salary grades lower than his original position, petitioner refused the designation. Instead, on June 16, 1992 petitioner presented a motion to cite the COMELEC in contempt for its failure to comply with the October 4, 1991 decision of the Court. The said motion was initially denied, prompting petitioner to move for reconsideration.

During the pendency of his motion for reconsideration, petitioner reached the retirable age of sixty-five years. However, the COMELEC, per Minute Resolution No. 92-3198 of December 8, 1992, resolved to allow petitioner Toledo to continue in the service to complete his fifteen years of service subject to the outcome of the administrative case to be filed against him.[2] This was confirmed in the Memorandum issued by COMELEC

Personnel Director Zenaida S. Soriano on December 17, 1992.[3]

On August 3, 1993, petitioner's motion for reconsideration was granted and respondent COMELEC was ordered to comply with the October 4, 1991 decision of this Court.

On August 26, 1993, under its Minute Resolution No. 93-2052,[4] COMELEC reinstated petitioner as Director IV of the Education and Information Department. Shortly after his reinstatement, he was detailed as Acting Director IV of the Election and Barangay Affairs Department, notwithstanding the fact that he was already sixty five years old.

In 1995, petitioner Toledo went on a prolonged leave of absence, for which reason, he was given an "unsatisfactory" performance rating duly concurred in by then Chairman Christian Monsod. However, upon the assumption of Chairman Bernardo Pardo, the said rating was changed to "satisfactory".

On May 31, 1995, this Court, in the case of Rabor vs. Civil Service Commission,[5] upheld the validity of Civil Service Memorandum Circular No. 27, Series of 1990, which provides that the extension of service of compulsory retirees to complete the fifteen year service requirement for retirement shall be granted for a period not exceeding one year.

Thus, on July 13, 1995, Chairman Pardo issued a Memorandum[6] to Atty. Zenaida Soriano (Director, Personnel Department), Atty. Ernesto Herrera (Director , Finance Department), Atty. Jose Balbuena (Director, Law Department) and Atty. Resurreccion Borra (Executive Director), informing them that the COMELEC has not extended the services of petitioner Toledo beyond age sixty five, and requiring petitioner Toledo to show cause why his services should be extended.

At the same time, COMELEC sought a ruling from the Civil Service Commission on the validity of the extension of service petitioner Toledo in light of the ruling of this Court in the case of Rabor.

On June 27, 1997, the Civil Service Commission replied to COMELEC's query and issued Resolution No. 97-3167, ruling that the case of Rabor was not applicable because at the time petitioner's service was extended, the Cena ruling was in effect; and disposing thus:

> "WHEREFORE, the Commission rules that the extension of service of Augusto V. Toledo beyond his 65th birthday is at the discretion of the Chairman of the Commission on Elections."

Again, COMELEC sought a clarification of the aforesaid Resolution and in response, the Civil Service Commission in its Resolution No. 981075, dated May 15, 1998, resolved that "since the extension of services of Toledo was at the discretion of the COMELEC, it is also within the prerogative of COMELEC to decide whether or not it will now limit the period of such extension."

Petitioner's performance rating for the two semesters of 1997 was "unsatisfactory". Likewise for the first semester of 1998, Chairman Pardo gave petitioner an "unsatisfactory" rating.

On October 6, 1998, respondent COMELEC issued the assailed Resolution, Resolution No. 98-2768 which provides thus:

> "Considering the circumstances of the extension of the service of Atty. Toledo beyond his 65th birthday and considering further his unsatisfactory performance rating for more than two semesters, sufficient in itself to terminate his services, and considering, finally, that he is more than seventy one (71) years old now, in the interest of the service and in line with the CSC Resolution No. 981075, dated May 15, 1998, the Commission exercising its authority to extend or limit the extension of service, RESOLVED to limit the extended service of Atty. Toledo to October 31, 1998."

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Petitioner Toledo thus filed the instant petition ascribing grave abuse of discretion amounting to lack of or excess jurisdiction to respondent COMELEC in issuing the aforementioned Resolution and posing as lone issue:

Whether the Commission on Elections and Civil Service Commission erred in limiting the extended service of the petitioner?

To buttress his position, petitioner Toledo invokes Section 11 of Presidential Decree 1146, otherwise known as the Government Service Insurance System (GSIS) Act of 1977 and the cases of Cena vs. Civil Service Commission,[7] and Gobantes vs. Civil Service Commission[8]. It is theorized that P.D. 1146 & the cases of Cena & Gobantes enjoin the government agency concerned to extend, if it favorably exercises its discretion to do so, the service of the employee to a period of not less than that which is required to complete 15 years of service in order to qualify him for retirement with full benefits, otherwise the beneficial intendment of P.D. 1146 as affirmed in Cena and Gobantes would be rendered nugatory.

Petitioner argues that the Administrative Code of 1997 and the ruling of this Court in the case of Rabor vs. Civil Service Commission,[9] are of no moment because the Code was enacted in 1997 and Rabor was decided in 1995 or after Cena and Gobantes which was the doctrine in effect at the time when the respondent COMELEC allowed petitioner to continue in the service to complete 15 years, citing Civil Service Commission Resolution No. 97-3167:

> "The ruling of the Supreme Court in the case of Dionisio Rabor vs. Civil Service Commission, 244 SCRA 614 (May 31, 1995) which overturned the Cena ruling could not yet be applied to the instant case because it is of later application. At the time Toledo's service was extended, the Cena ruling was in effect. xxx"

Petitioner also maintains that the COMELEC and/or Civil Service Commission cannot limit petitioner's "extended service" after it has so been extended without violating his "vested right"; that by allowing petitioner "to continue in the service to complete the 15 years of service" in accordance with P.D. 1146 and in line with the prevailing doctrine in Cena and Gobantes, he became vested with the right to continue in the service to complete the 15 years of service prior to retirement.

Third, it is petitioner's submission that the "unsatisfactory" performance rating of petitioner alleged by COMELEC may be a cause for the termination of his services but it cannot be a ground to "limit" petitioner's "extended service".

Petitioner's contentions are untenable.

Section 11 of the Revised Government Service Insurance Act of 1977 (P.D. 1146) provides the conditions for entitlement to old-age pension. Paragraph (b) thereof reads:

> xxx xxx xxx
>
> (b) Unless the service is extended by appropriate authorities, retirement shall be compulsory for an employee of sixty-five years of age with at least 15 years of service: Provided, that if he has less than fifteen years of service, he shall be allowed to complete the fifteen years. (emphasis ours)
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> xxx xxx xxx

In accordance therewith, the Civil Service Commission promulgated Memorandum Circular No. 27, Series of 1990, which categorically states:

> TO: ALL HEADS OF DEPARTMENTS, BUREAUS AND AGENCIES OF THE NATIONAL/LOCAL GOVERNMENTS INCLUDING GOVERNMENT-OWNED AND/OR CONTROLLED CORPORATIONS WITH ORIGINAL CHARTERS

> SUBJECT: Extension of service of compulsory retiree to complete the fifteen years service requirement for retirement purposes

Pursuant to Civil Service Commission Resolution No. 90-454 dated May 21, 1990, the Civil Service Commission hereby adopts and promulgates the following policies and guidelines in the extension of services of compulsory retirees to complete the fifteen years service requirement for retirement purposes:

> 1. Any request for extension of service of compulsory retirees to complete the fifteen (15) years service requirement for retirement shall be allowed only to permanent appointees in the career service who are regular members of the Government Service Insurance System (GSIS), and shall be granted for a period not exceeding one (1) year. (emphasis ours)

The validity of the said Memorandum Circular has already been pronounced in the case of Rabor vs. Civil Service Commission[10] where this Court ruled:

> "xxx Civil Service Memorandum Circular No. 27, Series of 1990, more specifically paragraph (1) thereof, is hereby declared valid and effective. Section 11 (b) of P.D. No. 1146, must, accordingly, be read together with Memorandum Circular No. 27. We reiterate, however, the holding in Ceña that the head of the government agency concerned is vested with discretionary authority to allow or disallow extension of the service of an official or employee who has reached sixty-five (65) years of age without completing fifteen (15) years of government service; this discretion is, nevertheless, to be exercised conformably with the provisions of Civil Service Memorandum Circular No. 27, Series of 1990."

In upholding the validity of CSC Memorandum Circular No. 27, this Court declared that the limitation provided by the said Circular on permissible extensions of service after reaching the compulsory retirement age of sixty-five has a reasonable relationship with or is germane to the purpose of civil service laws on retirement. And as reiterated in the said case, the policy considerations behind the limitation on the maximum extension of service allowable for compulsory retirees, as summarized in the dissenting opinion of Justice Griño-Aquino in the case of Cena, were as follows:

"xxx extending the service of compulsory retirees longer than one (1) year would: (1) Give a premium to late-comers in the government service and in effect discriminate against those who enter the service at a younger age (2) Delay the promotion of the letter and of next-in-rank employees; and (3) Prejudice the chances for employment of qualified young civil service applicants who have already passed the various governmental examinations but must wait for jobs to be vacated by `extendees' who have long passed the mandatory retirement age but are enjoying extension of their government service to complete 15 years so they may qualify for old age pension."

Thus, the one-year limitation on the extension of service of a government employee who has reached the compulsory retirement age of sixty-five imposed under Memorandum Circular No. 27 was held valid and reasonable.

So too, in the case of Rabor, this Court expressed anxiety over the difficulty brought about by the Cena doctrine when considered together with the decided case of Toledo vs. CSC[11], expressing thus:

"When one combines the doctrine of Toledo with the ruling in Cena, very strange results follow. Under these combined doctrines, a person sixty four (64) years of age may be appointed to the government service and one (1) year later may demand extension of his service for the next fourteen (14) years; he would retire at age seventy-nine (79). The net effect is thus that the general statutory policy of compulsory retirement at sixty-five (65) years is heavily eroded and effectively becomes unenforceable. xxx"

This is now the problem posed by the instant case. Petitioner's appointment and entry into the government service at the age of fifty-nine years has already been upheld as valid in the case of Toledo vs. CSC[12] where the Court held that a person fifty-seven years of age may be appointed to the Civil Service.[13] Moreover, as correctly ruled by the Civil Service Commission under Resolution No. 97- 3167, the doctrine in the case of Rabor cannot yet be applied to the petitioner because at the time petitioner Toledo's service was extended, it was the Cena doctrine that was still in effect. And under such doctrine, the head of the government agency concerned is vested with discretionary authority to allow or disallow the extension of service of an official or employee who has reached sixty-five (65) years of age without completing fifteen (15) years of government service.

If these doctrines be applied to the case at bar, petitioner, who reached the compulsory retirement age of sixty-five in 1992 and has rendered only six years of government service, would need nine (9) more years to complete the fifteen-year service requirement and would finally retire at the age of seventy-five in year 2001. The problem foreseen in the case of Rabor would then become a reality.

Since the applicable doctrine is that enunciated in the case of Cena, the extension of petitioner's service beyond 1992 is at the discretion of the COMELEC Chairman. Thus, the extension of petitioner's service through COMELEC Resolution No. 93-2052 on August 26,1993 was an exercise of such discretion. And the limitation of his extended service up to October 31, 1998 was well within the discretion granted to the COMELEC Chairman under the Cena ruling. Hence, the assailed COMELEC Resolution No. 98-2768 is valid and the COMELEC did not gravely abuse its discretion when it issued the same resolution.

And, petitioner avers that his "unsatisfactory" performance rating may be a cause for the termination of his services but it cannot be a ground to "limit" his "extended service". Such contention is untenable. In the case of Cena, it was held that in resolving the question of whether or not to allow a compulsory retiree to continue his/her service to complete the 15-year service, there must be present an essential factor before an application under Sec.11 par. (b) of P.D. 1146 may be granted by the government office concerned. In the case of the judiciary, such factors as competence, integrity and dedication to the public service were considered.[14] Parenthetically, the employee's work performance is also a major factor. Since petitioner's performance rating for three consecutive semesters was all "unsatisfactory", it was proper for COMELEC not to extend his service anymore.

WHEREFORE, the petition is hereby DISMISSED for lack of merit. No pronouncement as to costs.

SO ORDERED.

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

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[1] Toledo vs. Civil Service Commission, 202 SCRA 507.

[2] Rollo, p. 29.

[3] Rollo, p. 30.

[4] Rollo, p. 34.

[5] 244 SCRA 614

[6] Rollo, pp.35-36.

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[7] 211 SCRA 179.

[8] 214 SCRA 495.

[9] Supra.

[10] Supra.

[11] Supra.

[12] Supra.

[13] Provided the following conditions concur:

(1) the exigencies of the government service so require.

(2) the appointee possesses special qualifications not possessed by other officers or employees in the civil service, and

(3) the vacancy cannot be filled by promotion of qualified officers or employees of the civil service.

[14] Cena, supra, p.188.

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