

**THELMA P. GAMINDE, PETITIONER, VS. COMMISSION ON AUDIT
AND/OR HON. CELSO D. GANGAN, HON. RAUL C. FLORES AND
EMMANUEL M. DALMAN, RESPONDENTS.**

G.R. No. 140335. December 13, 2000

Ponente: PARDO, J.

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PARDO, J.:

The Case

The case is a special civil action of certiorari seeking to annul and set aside two "decisions" of the Commission on Audit ruling that petitioner's term of office as Commissioner, Civil Service Commission, to which she was appointed on June 11, 1993, expired on February 02, 1999, as set forth in her appointment paper.

The Facts

On June 11, 1993, the President of the Philippines appointed petitioner Thelma P. Gaminde, ad interim, Commissioner, Civil Service Commission. She assumed office on June 22, 1993, after taking an oath of office. On September 07, 1993, the Commission on Appointment, Congress of the Philippines confirmed the appointment. We quote verbatim her appointment paper:

"11 June 1993

"Madam:

"Pursuant to the provisions of existing laws, you are hereby appointed, ad interim, COMMISSIONER, CIVIL SERVICE COMMISSION, for a term expiring February 2, 1999.

"By virtue hereof, you may qualify and enter upon the performance of the duties of the office, furnishing this Office and the Civil Service Commission with copies of your oath of office."[1]

However, on February 24, 1998, petitioner sought clarification from the Office of the President as to the expiry date of her term of office. In reply to her request, the Chief Presidential Legal Counsel, in a letter dated April 07, 1998[2] opined that petitioner's term of office would expire on February 02, 2000, not on February 02, 1999.

Relying on said advisory opinion, petitioner remained in office after February 02, 1999. On February 04, 1999, Chairman Corazon Alma G. de Leon, wrote the Commission on Audit requesting opinion on whether or not Commissioner Thelma P. Gaminde and her co-terminous staff may be paid their salaries notwithstanding the expiration of their appointments on February 02, 1999.

On February 18, 1999, the General Counsel, Commission on Audit, issued an opinion that "the term of Commissioner Gaminde has expired on February 02, 1999 as stated in her appointment conformably with the constitutional intent."[3]

Consequently, on March 24, 1999, CSC Resident Auditor Flovitas U. Felipe issued notice of disallowance No.

99-002-101 (99), disallowing in audit the salaries and emoluments pertaining to petitioner and her co-terminous staff, effective February 02, 1999.[4]

On April 5, 1999, petitioner appealed the disallowance to the Commission on Audit en banc. On June 15, 1999, the Commission on Audit issued Decision No. 99-090 dismissing petitioner's appeal. The Commission on Audit affirmed the propriety of the disallowance, holding that the issue of petitioner's term of office may be properly addressed by mere reference to her appointment paper which set the expiration date on February 02, 1999, and that the Commission is bereft of power to recognize an extension of her term, not even with the implied acquiescence of the Office of the President.[5]

In time, petitioner moved for reconsideration; however, on August 17, 1999, the Commission on Audit denied the motion in Decision No. 99-129.[6]

Hence, this petition.[7]

The Issue

The basic issue raised is whether the term of office of Atty. Thelma P. Gaminde, as Commissioner, Civil Service Commission, to which she was appointed on June 11, 1993, expired on February 02, 1999, as stated in the appointment paper, or on February 02, 2000, as claimed by her.

The Court's Ruling

The term of office of the Chairman and members of the Civil Service Commission is prescribed in the 1987 Constitution, as follows:

"Section 1 (2). The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, the Chairman shall hold office for seven years, a Commissioner for five years, and another Commissioner for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity." [8]

The 1973 Constitution introduced the first system of a regular rotation or cycle in the membership of the Civil Service Commission. The provision on the 1973 Constitution reads:

"x x x The Chairman and the Commissioners shall be appointed by the Prime Minister for a term of seven years without reappointment. Of the Commissioners first appointed, one shall hold office for seven years, another for five years, and the third for three years. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor." [9]

Actually, this was a copy of the Constitutional prescription in the amended 1935 Constitution of a rotational system for the appointment of the Chairman and members of the Commission on Elections. The Constitutional amendment creating an independent Commission on Elections provides as follows:

"Section 1. There shall be an independent Commission on Elections composed of a Chairman and two other Members to be appointed by the President with the consent of the Commission on Appointments, who shall hold office for a term of nine years and may not be reappointed. Of the Members of the Commission first appointed, one shall hold office for nine years, another for six years, and the third for three years. The Chairman and the other Members of the Commission on Elections may be removed from office only by impeachment in the manner provided in this Constitution." [10]

In *Republic vs. Imperial*, [11] we said that "the operation of the rotational plan requires two conditions, both indispensable to its workability: (1) that the terms of the first three (3) Commissioners should start on a common

date, and, (2) that any vacancy due to death, resignation or disability before the expiration of the term should only be filled only for the unexpired balance of the term." [12]

Consequently, the terms of the first Chairmen and Commissioners of the Constitutional Commissions under the 1987 Constitution must start on a common date, irrespective of the variations in the dates of appointments and qualifications of the appointees, in order that the expiration of the first terms of seven, five and three years should lead to the regular recurrence of the two-year interval between the expiration of the terms. [13]

Applying the foregoing conditions to the case at bar, we rule that the appropriate starting point of the terms of office of the first appointees to the Constitutional Commissions under the 1987 Constitution must be on February 02, 1987, the date of the adoption of the 1987 Constitution. In case of a belated appointment or qualification, the interval between the start of the term and the actual qualification of the appointee must be counted against the latter. [14]

In the law of public officers, there is a settled distinction between "term" and "tenure." "[T]he term of an office must be distinguished from the tenure of the incumbent. The term means the time during which the officer may claim to hold office as of right, and fixes the interval after which the several incumbents shall succeed one another. The tenure represents the term during which the incumbent actually holds the office. The term of office is not affected by the hold-over. The tenure may be shorter than the term for reasons within or beyond the power of the incumbent." [15]

In concluding that February 02, 1987 is the proper starting point of the terms of office of the first appointees to the Constitutional Commissions of a staggered 7-5-3 year terms, we considered the plain language of Article IX (B), Section 1 (2), Article IX (C), Section 1 (2) and Article IX (D), Section 1 (2) of the 1987 Constitution that uniformly prescribed a seven-year term of office for Members of the Constitutional Commissions, without re-appointment, and for the first appointees terms of seven, five and three years, without re-appointment. In no case shall any Member be appointed or designated in a temporary or acting capacity. There is no need to expressly state the beginning of the term of office as this is understood to coincide with the effectivity of the Constitution upon its ratification (on February 02, 1987).

On the other hand, Article XVIII, Transitory Provisions, 1987 Constitution provides:

"SEC. 15. The incumbent Members of the Civil Service Commission, the Commission on Elections, and the Commission on Audit shall continue in office for one year after the ratification of this Constitution, unless they are sooner removed for cause or become incapacitated to discharge the duties of their office or appointed to a new term thereunder. In no case shall any Member serve longer than seven years including service before the ratification of this Constitution." [16]

What the above quoted Transitory Provisions contemplate is "tenure" not "term" of the incumbent Chairmen and Members of the Civil Service Commission, the Commission on Elections and the Commission on Audit, who "shall continue in office for one year after the ratification of this Constitution, unless they are sooner removed for cause or become incapacitated to discharge the duties of their office or appointed to a new term thereunder." The term "unless" imports an exception to the general rule. [17] Clearly, the transitory provisions mean that the incumbent members of the Constitutional Commissions shall continue in office for one year after the ratification of this Constitution under their existing appointments at the discretion of the appointing power, who may cut short their tenure by: (1) their removal from office for cause; (2) their becoming incapacitated to discharge the duties of their office, or (3) their appointment to a new term thereunder, all of which events may occur before the end of the one year period after the effectivity of the Constitution.

However, the transitory provisions do not affect the term of office fixed in Article IX, providing for a

seven-five-three year rotational interval for the first appointees under this Constitution.

At the time of the adoption of the 1987 Constitution, the incumbent Chairman and members of the Civil Service Commission were the following: (1) Chairperson Celerina G. Gotladera. She was initially appointed as OIC Chairman on March 19, 1986, and appointed chairman on December 24, 1986, which she assumed on March 13, 1987. (2) Atty. Cirilo G. Montejo. On June 25, 1986, President Corazon C. Aquino appointed him Commissioner, without any term. He assumed office on July 9, 1986, and served until March 31, 1987, when he filed a certificate of candidacy for the position of Congressman, 2nd District, Leyte, thereby vacating his position as Commissioner. His tenure was automatically cut-off by the filing of his certificate of candidacy. (3) Atty. Mario D. Yango. On January 22, 1985, President Ferdinand E. Marcos appointed him Commissioner for a term expiring January 25, 1990. He served until February 2, 1988, when his term ended in virtue of the transitory provisions referred to. On May 30, 1988, President Aquino re-appointed him to a new three-year term and served until May 31, 1991, exceeding his lawful term, but not exceeding the maximum of seven years, including service before the ratification of the 1987 Constitution. Under this factual milieu, it was only Commissioner Yango who was extended a new term under the 1987 Constitution. The period consumed between the start of the term on February 02, 1987, and his actual assumption on May 30, 1988, due to his belated appointment, must be counted against him.

Given the foregoing common starting point, we compute the terms of the first appointees and their successors to the Civil Service Commission under the 1987 Constitution by their respective lines, as follows:

First line : Chairman - seven-year term. February 02, 1987 to February 01, 1994. On January 30, 1988, the President nominated Ms. Patricia A. Sto. Tomas Chairman, Civil Service Commission. On March 02, 1988, the Commission on Appointments confirmed the nomination. She assumed office on March 04, 1988. Her term ended on February 02, 1994. She served as de facto Chairman until March 04, 1995. On March 05, 1995, the President appointed then Social Welfare Secretary Corazon Alma G. de Leon, Chairman, Civil Service Commission, to a regular seven-year term. This term must be deemed to start on February 02, 1994, immediately succeeding her predecessor, whose term started on the common date of the terms of office of the first appointees under the 1987 Constitution. She assumed office on March 22, 1995, for a term expiring February 02, 2001.

This is shown in her appointment paper, quoted verbatim as follows:

"March 5, 1995

"Madam:

"Pursuant to the provisions of Article VII, Section 16, paragraph 2, of the Constitution, you are hereby appointed, ad interim, CHAIRMAN, CIVIL SERVICE COMMISSION, for a term expiring February 2, 2001.

"By virtue hereof, you may qualify and enter upon the performance of the duties of the office, furnishing this Office and the Civil Service Commission with copies of your oath of office.

"(Sgd.) FIDEL V. RAMOS"

Second line : Commissioner - Five-year term. February 02, 1987 to February 02, 1992. On January 30, 1988, the President nominated Atty. Samilo N. Barlongay Commissioner, Civil Service Commission. On February 17, 1988, the Commission on Appointments, Congress of the Philippines, confirmed the nomination. He assumed office on March 04, 1988. His term ended on February 02, 1992. He served as de facto Commissioner until March 04, 1993.

On June 11, 1993, the President appointed Atty. Thelma P. Gaminde Commissioner, Civil Service Commission,

for a term expiring February 02, 1999.[18] This terminal date is specified in her appointment paper. On September 07, 1993, the Commission on Appointments confirmed the appointment. She accepted the appointment and assumed office on June 22, 1993. She is bound by the term of the appointment she accepted, expiring February 02, 1999. In this connection, the letter dated April 07, 1998, of Deputy Executive Secretary Renato C. Corona[19] clarifying that her term would expire on February 02, 2000, was in error. What was submitted to the Commission on Appointments was a nomination for a term expiring on February 02, 1999. Thus, the term of her successor[20] must be deemed to start on February 02, 1999, and expire on February 02, 2006.

Third line : Commissioner - Three-year term. February 02, 1987 to February 02, 1990. Atty. Mario D. Yango was incumbent commissioner at the time of the adoption of the 1987 Constitution. His extended tenure ended on February 02, 1988. In May, 1988, President Corazon C. Aquino appointed him Commissioner, Civil Service Commission to a new three-year term thereunder. He assumed office on May 30, 1988. His term ended on February 02, 1990, but served as de facto Commissioner until May 31, 1991. On November 26, 1991, the President nominated Atty. Ramon P. Ereñeta as Commissioner, Civil Service Commission. On December 04, 1991, the Commission on Appointments confirmed the nomination. He assumed office on December 12, 1991, for a term expiring February 02, 1997.[21]

Commendably, he voluntarily retired on February 02, 1997. On February 03, 1997, President Fidel V. Ramos appointed Atty. Jose F. Erestain, Jr. Commissioner, Civil Service Commission, for a term expiring February 02, 2004. He assumed office on February 11, 1997.

Thus, we see the regular interval of vacancy every two (2) years, namely, February 02, 1994, for the first Chairman,[22] February 02, 1992, for the first five-year term Commissioner,[23] and February 02, 1990, for the first three-year term Commissioner.[24] Their successors must also maintain the two year interval, namely: February 02, 2001, for Chairman;[25] February 02, 1999, for Commissioner Thelma P. Gaminde, and February 02, 1997, for Commissioner Ramon P. Ereñeta, Jr.

The third batch of appointees would then be having terms of office as follows:

First line : Chairman, February 02, 2001 to February 02, 2008; Second line: Commissioner, February 02, 1999 to February 02, 2006;[26] and, Third line: Commissioner, February 02, 1997 to February 02, 2004,[27] thereby consistently maintaining the two-year interval.

The line of succession, terms of office and tenure of the Chairman and members of the Civil Service Commission may be outlined as follows:[28]

Chairman

Term

Tenure

(7-year original)

Sto. Tomas - 1[st] appointee Feb. 02, 1987 to
Feb. 02, 1994 Mar. 04, 1988 to
March 08, 1995

De Leon - 2[nd] appointee

(incumbent) Feb. 02, 1994 to
Feb. 02, 2001 March 22, 1995 to
Feb. 02, 2001

_____ - 3[rd] appointee

Feb. 02, 2001 to
Feb. 02, 2008

2[nd] Member
(5-year original)

Term

Tenure

Barlongay - 1[st] appointee Feb. 02, 1987 to
Feb. 02, 1992 March 04, 1988 to
March 04, 1993

Gaminde - 2[nd] appointee Feb. 02, 1992 to
Feb. 02, 1999 June 11, 1993 to
Feb. 02, 2000

Valmores - 3[rd] appointee
(incumbent) Feb. 02, 1999 to
Feb. 02, 2006 Sept. 08, 2000 to
Feb. 02, 2006

3[rd] Member
(3-year original)

Term

Tenure

Yango - 1[st] appointee Feb. 02, 1987 to
Feb. 02, 1990 May 30, 1988 to
May 31, 1991

Ereñeta - 2[nd] appointee Feb. 02, 1990 to
Feb. 02, 1997 Dec. 12, 1991 to
Feb. 02, 1997

Erestain, Jr. - 3[rd] appointee
(incumbent) Feb. 02, 1997 to
Feb. 02, 2004 Feb. 11, 1997 to
Feb. 02, 2004

The Fallo

WHEREFORE, we adjudge that the term of office of Ms. Thelma P. Gaminde as Commissioner, Civil Service Commission, under an appointment extended to her by President Fidel V. Ramos on June 11, 1993, expired on February 02, 1999. However, she served as de facto officer in good faith until February 02, 2000, and thus entitled to receive her salary and other emoluments for actual service rendered. Consequently, the Commission on Audit erred in disallowing in audit such salary and other emoluments, including that of her co-terminous staff.

ACCORDINGLY, we REVERSE the decisions of the Commission on Audit insofar as they disallow the salaries and emoluments of Commissioner Thelma P. Gaminde and her coterminous staff during her tenure as de facto officer from February 02, 1999, until February 02, 2000.

This decision shall be effective immediately.

No costs.

SO ORDERED.

Davide, Jr., C.J., Melo, Vitug, Kapunan, Panganiban, Quisumbing, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.

Bellosillo J., no part. Related to one of parties.

Puno J., in the result.

Mendoza, J., join De Leon's dissent.

De Leon, Jr., J., see concurring & dissenting opinion.

[1]Petition, Annex "C", Rollo, p. 32.

[2]Ibid., Annex "E", Rollo, p. 34.

[3]Ibid., Annex "F", Rollo, pp. 77-79.

[4]Rollo, pp. 42-43.

[5]Petition, Annex "A", Rollo, pp. 20-26.

[6]Petition, Annex "B", Rollo, pp. 27-31.

[7]Filed on October 27, 1999, Rollo, pp. 3-19.

[8]Article IX, Section 1(2), 1987 Constitution.

[9]Article XII, Section 1 (1), 1973 Constitution.

- [10]Article X, Section 1, 1935 Constitution, as amended.
- [11]96 Phil. 770 [1955].
- [12]Ibid., at p. 776.
- [13]Ibid., at p. 779.
- [14]Ibid.
- [15]Topacio Nueno v. Angeles, 76 Phil. 12, 21-22 [1946]; Alba v. Evangelista, 100 Phil. 683,694 [1957]; Paredes v. Abad, 155 Phil. 494 [1974]; Aparri v. Court of Appeals, 127 SCRA 240 [1984]
- [16]Article XVIII, 1987 Constitution.
- [17]Tajanlangit v. Cazenias, 115 Phil. 568 (1962).
- [18]Petition, Annex "C", Rollo, p. 32.
- [19]Petition, Annex "E", Rollo, p. 34.
- [20]Commissioner J. Waldemar Valmores.
- [21]Notice that his tenure was reduced to only five (5) years, one (1) month and twenty-one (21) days.
- [22]Ms. Patricia A. Sto. Tomas.
- [23]Atty. Samilo N. Barlongay.
- [24]Atty. Mario D. Yango.
- [25]Social Welfare Secretary Corazon Alma G. de Leon.
- [26]Dean J. Waldemar V. Valmores.
- [27]Atty. Jose F. Erestain, Jr.
- [28]Visarra v. Miraflor, 118 Phil. 1, 3 [1963].

CONCURRING AND DISSENTING OPINION

DE LEON, JR., J.:

I respectfully dissent from the ponencia of Mr. Justice Bernardo P. Pardo insofar as it maintains that the term of petitioner as Civil Service Commissioner expired on February 2, 1999 and not on February 2, 2000, and that the term of the first set of Civil Service Commissioners appointed under the 1987 Constitution commenced on the date of its ratification on February 2, 1987 instead of one year thereafter or on February 2, 1988. I concur with the ponencia insofar as it holds that the salaries and other emoluments which petitioner, as CSC Commissioner received after February 2, 1999 should not be disallowed by Commission on Audit (COA).

This case involves a petition for certiorari filed under Rule 65, seeking the reversal of Decision No. 99-090 dated June 15, 1999 and Decision No. 99-129 dated August 17, 1999 of public respondent Commission on Audit (COA for brevity) which disallowed in audit the salaries and emoluments of petitioner, as Commissioner of the Civil Service Commission (CSC), and her co-terminus staff, on the ground that petitioner's term had expired as of February 2, 1999.

The facts of the case are:

By virtue of the transitory provisions of the 1987 Constitution, more specifically Section 15 of Article XVIII, the then incumbent commissioners of the Civil Service Commission (CSC), namely, Chairman Celerina G. Gotladera, Commissioner Cirilo Montejo and Commissioner Mario D. Yango, were allowed to continue in office for one year from the ratification of the charter on February 2, 1987. When the said one-year extension period ended, the first set of CSC Commissioners under the 1987 Constitution was appointed. Thus, Gotladera was replaced as Chairman by Patricia Sto. Tomas who was appointed on March 4, 1988 for a term of seven years. Commissioner Montejo was replaced by Samilo N. Barlongay who was appointed on March 4, 1988 for a term of five years or up to February 2, 1993. The then incumbent Commissioner Yango who was allowed to hold office beyond the said one-year extension was appointed on May 30, 1988 for a fresh term of three years and he served until May 31, 1991.

After Commissioner Barlongay's term expired on February 2, 1993 and actually left office on March 4, 1993, petitioner THELMA P. GAMINDE was appointed ad interim Commissioner of the Civil Service Commission on June 11, 1993 by the then President Fidel V. Ramos. Her appointment paper[1] states:

11 June 1993

Madam:

Pursuant to the provisions of existing laws, you are hereby appointed, ad interim, COMMISSIONER, CIVIL SERVICE COMMISSION, for a term expiring February 2, 1999.

By virtue hereof, you may qualify and enter upon the performance of the duties of the office, furnishing this Office and the Civil Service Commission with copies of your oath of office. *[italics supplied]*

(Signed)

FIDEL V. RAMOS

She assumed office on June 22, 1993 and the Commission on Appointments confirmed her appointment on September 7, 1993.[2]

Petitioner's appointment later became the subject of a clarificatory ruling[3] dated April 7, 1998 issued by the Office of the President through the then Deputy Executive Secretary and Chief Presidential Legal Counsel Renato C. Corona. The said ruling reads, to wit:

This refers to your letter of February 24, 1998, seeking clarification as to your term of office as Commissioner of the Civil Service Commission.

Section (2)B, Article IX of the 1987 Constitution provides:

"(2) THE CHAIRMAN AND THE COMMISSIONERS SHALL BE APPOINTED BY THE PRESIDENT WITH THE CONSENT OF THE COMMISSION ON APPOINTMENTS FOR A TERM OF SEVEN YEARS WITHOUT REAPPOINTMENT. OF THOSE FIRST APPOINTED, THE CHAIRMAN SHALL HOLD OFFICE FOR SEVEN YEARS, A COMMISSIONER FOR FIVE YEARS, AND ANOTHER COMMISSIONER FOR THREE YEARS, WITHOUT REAPPOINTMENT. APPOINTMENT TO ANY VACANCY SHALL BE ONLY FOR THE UNEXPIRED TERM OF THE PREDECESSOR. IN NO CASE SHALL ANY MEMBER BE APPOINTED OR DESIGNATED IN A TEMPORARY OR ACTING CAPACITY."

The term of Commissioners is set at seven years without reappointment. Of the Commissioners first appointed, however, the Chairman shall have a term of seven years, another of five years, and the third of three years. Every

two years, the term of one Commissioner expires leaving always two (2) veteran Commissioners behind. Given the foregoing provision of law, it follows that your appointment made on June 11, 1993, replacing Commissioner Samilo N. Borlongay (1988-1993), is set to expire on February 2, 2000 and not on February 2, 1999.

Please be guided accordingly. *[italics supplied]*

Following an inquiry dated February 4, 1999 made by CSC Chairman Corazon Alma de Leon, the General Counsel of the respondent COMMISSION ON AUDIT rendered an opinion^[4] on February 18, 1999 stating that petitioner's term expired on February 2, 1999 contrary to the clarificatory ruling of the Office of the President.

Consequently, CSC Resident Auditor Flovitas U. Felipe issued a Notice of Disallowance No. 99-002-101 (99)^[5] dated March 24, 1999, disallowing in audit the salaries and emoluments pertaining to the petitioner and her co-terminus staff effective February 2, 1999.

Petitioner appealed the disallowance to the COA on April 5, 1999. On June 15, 1999, the COA issued Decision No. 99-090^[6] dismissing petitioner's appeal. The respondent COA explained its action in this wise:

Coming now to the series of events that brought about the present set up in the CSC, then Chairperson Celerina G. Gotladera served as such from 1986 to 1988. She was replaced by Patricia Sto. Tomas, the first appointee, who served a full term of seven years starting February 1988. On March 8, 1995, Chairperson Corazon Alma G. De Leon was appointed, succeeding Chairperson Sto. Tomas whose term expired on February 2, 1995.

On the other hand, then incumbent Commissioner Cirilo Montejo was allowed to serve until February 1988. He was replaced by then Commissioner Samilo N. Borlongay, the so-called first appointee, with a term of five years. The latter retired in 1993 and was succeeded by Commissioner Gaminde whose term is being claimed to expire only on February 2, 2000.

The third seat in the Commission was then occupied by Commissioner Mario D. Yango. He appears to have served from 1985 to 1991, becoming the first appointee in the third line of succession when he was given a fresh term of three years starting February 2, 1988, after he was allowed to hold-over for one year pursuant to Section 15, Article XVIII of the Constitution. He was replaced by Commissioner Ramon P. Ereñeta, Jr., who served from 1991 to February 2, 1997. The position is now occupied by Commissioner Jose F. Erestain, Jr. whose term expires on February 2, 2004.

Noticeably, all the incumbent Commissioners before the ratification of the 1987 Constitution were allowed to hold-over for one year. The term of their successors in office were also uniformly reckoned from 1988, the year of their actual appointment. In that case, the two-year retirement interval was maintained only because all the incumbents were allowed to holdover until February 1988. Had any one of the Commissioners been immediately replaced, as may be warranted under Section 15, *supra*, after the ratification of the Constitution leaving the two others to holdover, the two-year interval would have been obliterated because his three-year or five-year term, as the case may be, would have been reckoned in 1987 while the others would be counted from 1988. As has been earlier emphasized, the operation of the rotational plan requires, as an indispensable condition to its workability, the requirement that the term of the first three (3) Commissioners should start on a common date. So that if one is appointed for a three-year term in 1987, his appointment should expire in 1990. And if the appointee for the five-year term was only named in 1988 because his predecessor was allowed to holdover until that date, his appointment, following Commissioner Gaminde's thesis, should expire in 1993. The two-year interval is already defeated rendering one of the declared intentions of the framers of the Constitution a useless appendage. This situation can only be avoided by considering that notwithstanding the holding-over of all the incumbents prior to the ratification of the Constitution up to February, 1988, as maybe warranted by Section 15, Article XVIII, the term of office of all the Commissioners simultaneously commenced in 1987 or upon the ratification of the Constitution, so that regardless of whether the appointment of the first-batch Commissioners were made in 1987 or 1988, the term of office respectively expired in 1994

for the Chairperson, 1992 for the 5-year-term-Commissioner and 1990 for the 3-year-term-Commissioner. Again, emphasis is given on the fact that the provision fixing the term of office of the Civil Service Commission refers to the office itself and not to the tenure of the appointee or occupant, so that the absence of a duly appointed Commissioner to fill a vacancy does not bar the running of the term. This is precisely because it is the term as fixed in the Constitution, and not the incumbency of duly appointed occupant, which determines the interval after which the several incumbents shall succeed one another. Hence, notwithstanding the fact that until Commissioner Cirilo Montejo was allowed to hold-over until February, 1988, still the term of office for the five-year term Commissioner commenced in 1987 and should have expired in 1992. That he was allowed to retire only in 1993 is apparently a mistake.

However, such mistake cannot be corrected by allowing Commissioner Gaminde to hold over until February, 2000. While it appears that Commissioner Gaminde's term was shortened to six years because of error in reckoning the term of the first appointees, we cannot allow ourselves to be instruments in the perpetuation of a previous mistake. As already stated, the appointment of Commissioner Gaminde has already expired on February 2, 1999. This Commission is bereft of power to recognize an extension of her term, not even with the implied acquiescence of the Office of the President. *[italics supplied]*

Petitioner's motion for reconsideration was denied by respondent COA in its Decision No. 99-129[7] dated August 17, 1999.

It is significant to note that, required to file a comment to the petition, the Solicitor General demurred and filed instead a Manifestation praying that the petition be granted. The Solicitor General averred that petitioner's term of office was a settled issue in view of the clarification made by the Office of the President. Considering the undisputed official capacity of Deputy Executive Secretary Renato C. Corona to act for and in behalf of the Chief Executive, the Solicitor General argued that the respondent commission has no power and authority to disregard the said clarification or pronouncement, the function of COA being limited to auditing. Moreover, citing equity and justice, it stated that the COA had no right to disallow petitioner's salary and other emoluments actually received after February 2, 1999 since she had in fact rendered services for the position which she held in good faith.

Regarding the Civil Service Commission, Article IX-B, Section 1(2) of the 1987 Constitution provides that:

(2) The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, the Chairman shall hold office for seven years, one Commissioner for five years, and the other Commissioner for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor. In no case shall any member be appointed or designated in a temporary or acting capacity. *[italics supplied]*

The staggering of terms mandated by the aforequoted provision is one of several measures devised to ensure the independence and integrity of the constitutional commissions. Thus, the Civil Service Commission, like the Commission on Elections and the COA, has fiscal autonomy[8] as well as the power to appoint its officials and employees[9] and the power to promulgate its own rules concerning pleadings and practice before it.[10] Its commissioners have a fixed term[11] and are removable only by impeachment.[12] Further, their salaries are fixed by law and may not be decreased during their tenure.[13] A recognized commentator on Constitutional Law, Father Joaquin Bernas, S.J., explains in his book how the creation of staggered terms achieves its intended purpose:

The uneven terms given to the first appointees to the Commission was designed to achieve a staggering of the terms of subsequent members. The reasons for the staggering were twofold: first, to avoid as much as possible a situation where the members would be appointees of the same President; and two, to ensure the continuity

within the body.[14]

A three-tiered system of succession thereby occurs: (1) that of the chairman; (2) that of the second commissioner; and (3) that of the third commissioner.[15] This echoes the arrangement prescribed by the 1973 Constitution for the Civil Service Commission,[16] which was a substantial change from the 1935 Charter wherein only the general principles governing the civil service were enunciated; the establishment of the commission itself was to be provided by law.[17] Of historical interest is the fact that staggered terms were initially applicable only to the Commission on Elections. An amendment introduced in 1940 resulted in the insertion of Article X in the 1935 Constitution, creating an independent Commission on Elections. In turn, this was a direct and deliberate transposition of the provisions of Commonwealth Act No. 607.[18]

In order to preserve the periodic succession mandated by the Charter, we held in *Republic of the Philippines v. Imperial*,[19] to wit:

Now, the operation of the rotational plan requires two conditions, both indispensable to its workability: (1) that the terms of the first three commissioners should start on a common date; and (2) that any vacancy due to death, resignation or disability before the expiration of the term should only be filled only for the unexpired balance of the term. Without satisfying these conditions, the regularity of the intervals between appointments would be destroyed, and the evident purpose of the rotation (to prevent that a four-year administration should appoint more than one permanent and regular commissioner) would be frustrated.

xxx xxx xxx xxx

For the same reasons it must be admitted that the terms of the first three Commissioners should be held to have started at the same moment, irrespective of the variations in their dates of appointment and qualification, in order that the expiration of the first terms of nine, six, and three years should lead to the regular recurrence of the three-year intervals between the expiration of the terms. Otherwise, the fulfillment and success of the carefully devised constitutional scheme would be made to depend upon the willingness of the appointing power to conform thereto.

In the case at bench, I submit that Article IX-B, Section 1(2) of the 1987 Constitution, *supra*, should be read in conjunction with Section 15, Article XVIII, of the said Charter, which provides:

Sec. 15. The incumbent Members of the Civil Service Commission, the Commission on Elections, and the Commission on Audit shall continue in office for one year after the ratification of this Constitution, unless they are sooner removed for cause or become incapacitated to discharge the duties of their office or appointed to a new term thereunder. In no case shall any Member serve longer than seven years including service before the ratification of this Constitution.

That the framers of the 1987 Constitution intended the one-year extension or holdover period to form part of the tenure of the then incumbent commissioners so as not to circumvent the seven-year maximum term is clear from the record of their deliberations.[20]

Section 15 of Article XVIII of the 1987 Constitution was enacted precisely to prevent a hiatus in the constitutional commissions. Public service abhors a vacuum, and it would be to the detriment of the people in general that such important positions be left unfilled. It is not repugnant to the letter and spirit of the Constitution that the respective terms of the holdover CSC Commissioners are deemed separate from that of the first set of appointed CSC Commissioners under the 1987 Constitution who were given seven, five, and three-year terms as the case may be. It should be noted that during the one-year holdover period, or up to February 2, 1988, the then incumbent commissioners enjoyed security of tenure.[21]

Although petitioner's original appointment paper stated that her term of office would expire on February 2, 1999,

the Office of the President subsequently clarified and corrected that point in its clarificatory ruling dated April 7, 1998, *supra*, wherein it stated that her term would expire on February 2, 2000. The respondent COA should have respected the said clarificatory ruling.

The interpretation given by the appointing power, represented by Deputy Executive Secretary and Chief Presidential Legal Counsel Renato C. Corona, to Article IX-B, Section 1(2) (which as aforesaid must be read together with Section 15 of Article XVIII) of the 1987 Constitution is correct in the sense that the terms or tenure of office of the so-called "holdover" CSC Commissioners ended on February 2, 1988; and that the respective terms of the first set of Commissioners of the Civil Service Commission who were appointed under the 1987 Constitution, commenced on February 2, 1988, regardless of the date of their appointments. Thus, Samilo N. Barlongay was nominated for the position of CSC Commissioner on January 30, 1988 for a 5-year term, confirmed on February 17, 1988 and assumed office on March 4, 1988. The 5-year term of Barlongay expired on February 2, 1993. He served as *de facto* Commissioner until March 4, 1993. It follows, therefore, that petitioner Gaminde's *ad interim* appointment as CSC Commissioner made on June 11, 1993 replacing Commissioner Barlongay (1988-1993) and confirmed by the Commission on Appointments on September 7, 1993, was set to expire on February 2, 2000 and not on February 2, 1999 as erroneously stated in her original appointment paper and contrary to the ponencia of Mr. Justice Pardo. In other words, the clarificatory ruling dated April 7, 1998 of the Office of the President, *supra*, is correct; and respondent COA has no power and authority to disregard the said clarification or pronouncement, the function of COA being limited to auditing.

Moreover, as pointed out by the Solicitor General, citing equity and justice, COA has no right to disallow petitioner's salary and other emoluments actually received after February 2, 1999 since she had in fact rendered services for the position she held in good faith.

In sum, petitioner Gaminde has no legal obligation to return the salaries and other emoluments which she received for the period from February 2, 1999 up to February 2, 2000 in view of the following reasons:

- She, in good faith, actually rendered services, as Civil Service Commissioner, during the said period; and
- Her term, as Civil Service Commissioner, which is mandated by operation of the 1987 Constitution, is seven (7) years starting from February 2, 1993 and hence, expired on February 2, 2000.

Pursuant to Section 15 of Article XVIII of the 1987 Constitution, the then incumbent members of the Civil Service Commission "shall continue in office for one year after the ratification of this Constitution xxx" on February 2, 1987. The then incumbent CSC Commissioners were Celerina G. Gotladera (who was designated Officer-in-Charge of the Commission on March 19, 1986 until December 24, 1986 when she was appointed Chairman, CSC, by President Corazon C. Aquino); Cirilo G. Montejó who was appointed on June 25, 1986 but resigned on April 1, 1987 to run for Congressman for Leyte, 2nd District), and Mario D. Yango. Commissioners Gotladera and Yango served during the said one-year hold-over period (February 2, 1987 to February 2, 1988). On the other hand, the first CSC Commissioners who were appointed pursuant to Article IX-B in relation to Section 15 of Article XVIII of the 1987 Constitution, are the following:

a)

Patricia A. Sto. Tomas who was appointed Chairman on March 2, 1988 and assumed the said position on March 4, 1988, for a term of seven (7) years expiring on February 2, 1995. She served as *de facto* Chairman until March 5, 1995;

b)

Samilo N. Barlongay was the first Commissioner appointed to a five (5) year term expiring February 2, 1993. He was nominated for that position on January 30, 1988, confirmed by the Commission on Appointments on February 17, 1988 and assumed office on March 4, 1988. He served as de facto Commissioner until March 4, 1993; and

c)

Mario D. Yango who was appointed in May 1988 for a fresh three (3) year term expiring on February 2, 1991. He served as de facto Commissioner until May 31, 1991.

Commissioner Barlongay was replaced by petitioner Thelma P. Gaminde who was appointed on June 11, 1993 for a term of seven (7) years which expired, by operation of the Constitution, on February 2, 2000. In the light of this factual and constitutional background, therefore, and contrary to the majority opinion, the start of the term of the first CSC Commissioners appointed under the 1987 Constitution cannot be made retroactive to the date of the ratification of the Constitution on February 2, 1987.

[1] Annex "C" of the Petition, Rollo, p. 32.

[2] Annex "D" of the Petition, Rollo, p. 33.

[3] Annnex "E" of the Petition, Rollo, p. 34.

[4] Annex "F" of the Petition, Rollo, pp. 35-37.

[5] See Rollo, pp. 42-43.

[6] Annex "A" of the Petition, Rollo, pp. 20-26.

[7] Annex "B" of the Petition, Rollo, pp. 27-31.

[8] Article IX-A, Section 5, 1987 Constitution.

[9] Id., Section 4.

[10] Id., Section 6.

[11] Article IX-B, Section 1(2), 1987 Constitution.

[12] Article XI, Section 2, 1987 Constitution.

[13] Article IX-A, Section 3.

[14] J. BERNAS, THE INTENT OF THE 1986 CONSTITUTION WRITERS 590 (1995 ed.).

[15] See *Visarra v. Miraflor*, 8 SCRA 1, 10 (1963).

[16] "(1) The civil service embraces every branch, agency, subdivision, and instrumentality of the government, including every government-owned or controlled corporation. It shall be administered by an independent civil service commission composed of a chairman and two commissioners, who shall be natural-born citizens of the Philippines, and at a time of their appointment, are at least thirty-five years of age and holders of a college degree, and must not have been candidates for any elective position in the election immediately preceding their appointment. The chairman and the commissioners shall be appointed by the president for a term of seven years without reappointment. Of the commissioners first appointed, one shall hold office for seven years, another for

five years, and the third for three years. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor." (Article XII-B, section 1, 1973 Constitution).

[17] Article XII of the 1935 Constitution provides:

"SECTION 1. A Civil service embracing all branches and subdivisions of the Government shall be provided by law. Appointments in the Civil Service, except as to those which are policy-determining, primarily confidential or highly technical in nature, shall be made only according to merit and fitness, to be determined, as far as practicable by competitive examination.

"SECTION 2. Officers and employees in the Civil Service, including members of the armed forces, shall not engage directly or indirectly in partisan political activities or take part in any election except to vote.

"SECTION 3. No officer or employee of the Government shall receive additional or double compensation unless specifically authorized by law.

"SECTION 4. No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law."

[18] "An Act Providing for the Organization of the Commission on Elections."

[19] 96 Phil. 770, 776 (1955).

[20] V Records of the 1987 Constitutional Commission, pp. 438-442.

[21] BERNAS, THE 1987 PHILIPPINE CONSTITUTION: A REVIEWER-PRIMER, 498 (3rd ed., 1997).

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