

LUIS MARIO M. GENERAL, PETITIONER, VS. RAMON S. ROCO, RESPONDENT.*G.R. No. 143366. January 29, 2001*

Ponente: YNARES-SANTIAGO, J.

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Respondent Ramon S. Roco was appointed by then President Fidel V. Ramos on August 26, 1996 as Regional Director of the Land Transportation Office (LTO) in Region V, a position equivalent to CES rank level V. He forthwith began to assume and discharge the duties and responsibilities of the said office. Subsequently, then President Joseph E. Estrada re-appointed him to the same position on February 8, 1999. At the time of respondent's appointment in 1996 and 1999, he was not a CES eligible. However, during his incumbency, or on August 13, 1999, he was conferred CES eligibility by the Career Executive Service Board.

On September 7, 1999, petitioner Luis Mario General, who is not a CES eligible,[1] was appointed by President Estrada as Regional Director of the LTO in Region V, the same position being occupied by respondent. Pursuant thereto, DOTC Undersecretary Herminio B. Coloma, Jr., as Officer-in-Charge of the Department, issued a Memorandum directing petitioner General to assume the said office immediately and for respondent Roco to report to the Office of the Secretary "for further instructions." Accordingly, petitioner General assumed office on September 16, 1999.

Aggrieved, respondent Roco filed before the Court of Appeals a petition for quo warranto with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order. The Court of Appeals issued a TRO enabling respondent Roco to re-assume the disputed office. After the lapse of 60 days, there being no writ of preliminary injunction issued, petitioner General again assumed the said office. On March 10, 2000, the Court of Appeals rendered a decision affirming the appointment of respondent Roco to the Office of Regional Director of the LTO, Region V, nullified the appointment of petitioner General and ordered him to vacate the subject post in favor of respondent Roco.[2] Upon motion of respondent Roco, the Court of Appeals issued a writ of execution pending appeal.[3]

From the Court of Appeals' decision, two separate petitions for review under Rule 45 were filed before this Court. The first one, which was filed by General against Roco, was docketed as G.R. No. 143366; while the second petition was filed by the Solicitor General on behalf of the Executive Secretary, the Secretary, Undersecretary and Assistant Secretary of the DOTC, also against Roco, and was docketed as G.R. No. 143524. On June 26, 2000, the Court issued a Resolution in G.R. No. 143366 directing the parties to maintain the status quo ante.[4] Both petitions were later consolidated.

The thrust of respondent's argument is that a career executive service (CES) eligibility is all that an employee needs to acquire security of tenure in the service; and that appointment to a CES rank is not necessary for the acquisition of such security of tenure. On the other hand, petitioners in G.R. No. 143524 and G.R. No. 143366, claim that CES eligibility alone will not suffice. Petitioners contended that unless and until an employee in the

career executive service is appointed to the appropriate CES rank, he acquires no security of tenure.

The petitions are impressed with merit.

Section 27 (1), of the Civil Service Law (Subtitle A, Tittle I, Book V of E.O. No. 292), provides:

(1) Permanent status. - A permanent appointment shall be issued to a person who meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof.

In the career executive service, the acquisition of security of tenure which presupposes a permanent appointment is governed by the rules and regulations promulgated by the CES Board,[5] thus:

Career Executive Service Eligibility

Passing the CES examination entitles the examinee to a conferment of a CES eligibility and the inclusion of his name in the roster of CES eligibles. Conferment of CES eligibility is done by the Board through a formal Board Resolution after an evaluation is done of the examinee's performance in the four stages of the CES eligibility examinations.

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Appointment to CES Rank

Upon conferment of a CES eligibility and compliance with the other requirements prescribed by the Board, an incumbent of a CES position may qualify for appointment to a CES rank. Appointment to a CES rank is made by the President upon the recommendation of the Board. This process completes the official's membership in the CES and most importantly, confers on him security of tenure in the CES.

There are six (6) ranks in the CES ranking structure. The highest rank is that of a Career Executive Service Officer I (CESO I), while the lowest is that of CESO VI.

The appropriate CESO rank to which a CES eligible may be appointed depends on two major qualification criteria, namely: (1) level of managerial responsibility; and, (2) performance.

Performance is determined by the official's performance rating obtained in the annual CESPES. On the other hand, managerial responsibility is based on the level of the general duties and responsibilities which an eligible is performing, as follows:

Levels of Duties and Responsibilities

Rank Equivalent

if level of managerial responsibilities are comparable to that of an Undersecretary

I

if comparable to that of an Assistant Secretary

II

if comparable to that of a Bureau Director, or a Department Regional Director

III

if comparable to that of an Assistant Bureau Director, Department Assistant Regional Director or Department Service Chief

IV

if comparable to that of Bureau Regional Director

V

if comparable to that of a Bureau Assistant Regional Director

VI

As a general rule, a CES eligible will be recommended for appointment to the rank equivalent of the level of his managerial responsibility if his performance rating is Satisfactory or higher. If the performance rating is Outstanding, he will be recommended one rank higher than his level of managerial responsibility. (Emphasis supplied)

So also, pertinent provisions of the Integrated Reorganization Plan,[6] read:

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 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.

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e.

Assignments Reassignments and Transfers. Depending upon their ranks, members of the Service shall be assigned to occupy positions of undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Board on the basis of the members' functional expertise.

As clearly set forth in the foregoing provisions, two requisites must concur in order that an employee in the career executive service may attain security of tenure, to wit:

a) CES eligibility; and

b) Appointment to the appropriate CES rank.

In addition, it must be stressed that the security of tenure of employees in the career executive service (except first and second-level employees in the civil service), pertains only to rank and not to the office or to the position to which they may be appointed. Thus, a career executive service officer may be transferred or reassigned from one position to another without losing his rank which follows him wherever he is transferred or reassigned. In fact, a CESO suffers no diminution of salary even if assigned to a CES position with lower salary grade, as he is compensated according to his CES rank and not on the basis of the position or office he occupies.[7]

In the case at bar, there is no question that respondent Ramon S. Roco, though a CES eligible, does not possess the appropriate CES rank, which is - CES rank level V, for the position of Regional Director of the LTO (Region V). Falling short of one of the qualifications that would complete his membership in the CES, respondent cannot successfully interpose violation of security of tenure. Accordingly, he could be validly reassigned to other

positions in the career executive service. Thus, in *Achacoso v. Macaraig*,^[8] the Court held that:

It is settled that a permanent appointment can be issued only "to a person who meets all the requirement for the position to which he is being appointed, including the appropriate eligibility prescribed." *Achacoso* did not. At best, therefore, his appointment could be regarded only as temporary. And being so, it could be withdrawn at will by the appointing authority and "at a moment's notice," conformably to established jurisprudence.

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The mere fact that a position belongs to the Career Service does not automatically confer security of tenure on its occupant even if he does not possess the required qualifications. Such right will have to depend on the nature of his appointment, which in turn depends on his eligibility or lack of it. A person who does not have the requisite qualifications for the position cannot be appointed to it in the first place or, as an exception to the rule, may be appointed to it merely in an acting capacity in the absence of appropriate eligibles. The appointment extended to him cannot be regarded as permanent even if it may be so designated.

Moreover, under the mobility and flexibility principles^[9] of the Integrated Reorganization Plan, CES personnel may be reassigned or transferred from one position to another, thus:

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.^[10]

One last point. Respondent capitalizes on the fact that petitioner Luis Mario M. General is not a CES eligible. The absence, however, of such CES eligibility is of no moment. As stated in Part III, Chapter I, Article IV, paragraph 5(c), of the Integrated Reorganization Plan -

"...the President may, 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 qualified in such examination."

Evidently, the law allows appointment of those who are not CES eligible, subject to the obtention of said eligibility, in the same manner that the appointment of respondent who does not possess the required CES rank (CES rank level V) for the position of Regional Director of the LTO, is permitted in a temporary capacity.

WHEREFORE, the petition is GRANTED, and the March 10, 2000 Decision and the June 9, 2000 Resolution of the Court of Appeals in CA-G.R. SP No. 55000, is SET ASIDE. The petition for quo warranto and prohibition filed by respondent is hereby DISMISSED.

SO ORDERED.

Davide, Jr., C.J., Puno, Kapunan, and Pardo, JJ., concur.

[1] Certification of the Career Executive Service Board, Annex "B"; Rollo, p. 258.

[2] The Court of Appeals Decision was promulgated March 10, 2000 and penned by Justice Demetrio G. Demetria with Justices Ramon Mabutas, Jr. and Jose L. Sabio, Jr. concurring, the dispositive portion of which reads: "WHEREFORE, premises considered, the petition is GRANTED and judgment is hereby rendered

declaring petitioner RAMON S. ROCO as the lawful occupant of the office of the Regional Director, Land Transportation Office for Region V. Respondents and their successors-in-office are hereby permanently enjoined from removing or causing the removal of petitioner from office without cause as provided by law, and are hereby ordered to immediately reinstate or cause the reinstatement of petitioner as Regional Director Land Transportation Office, Region V, with payment of full back salaries. The appointment of private respondent Luis M. General is hereby declared NULL and VOID ab initio. Accordingly, private respondent is hereby ordered to vacate the position of Regional Director, Land Transportation Commission for Region V in favor of the petitioner." (Rollo in G.R. No. 143366, p. 79; Rollo in G.R. No. 143524, p. 34).

[3] CA Resolution dated June 9, 2000; Rollo in G.R. No. 143524, pp. 39-41.

[4] Rollo, G.R. No. 143366, p. 159.

[5] CES Handbook, pp. 5-6.

[6] Part III, Chap. I, Art. IV, par. 5.

[7] Salary of Career Executive Service Officers. A CESO is compensated according to his CES rank and not on the basis of the CES position he occupies. However, if a CESO is assigned to a CES position with a higher salary grade than that of his CES rank, he is allowed to receive the salary of the CES position.

Should he be assigned or made to occupy a CES position with a lower salary grade, he shall continue to be paid the salary attached to his CES rank. (CES Handbook, p. 8)

[8] 195 SCRA 235, 239-240 (1991); citing *Cuadra v. Cordova*, 103 Phil. 391.

[9] The rank classification in the Service will allow for mobility or flexibility of assignments such that the government could utilize the services or special talents of these career executives wherever they are most needed or will likely create the greatest impact. This feature is especially relevant in a developing country which cannot afford to have its scarce executive manpower pegged to particular positions. (Summary of Justifications and Supporting Tables)

[10] Integrated Reorganization Plan, Part III, Chapter I, Article IV, par. 5(e).

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