

MA. CHONA M. DIMAYUGA, PETITIONER, VS. MARIANO E. BENEDICTO II, TOLL REGULATORY BOARD, GREGORIO R. VIGILAR, AND RONALDO B. ZAMORA, RESPONDENTS.

G.R. No. 144153. January 16, 2002

Ponente: DE LEON, JR., J.

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DE LEON, JR., J.:

Before us is a petition for review on certiorari seeking the reversal of the Decision[1] dated July 25, 2000 rendered by the former Seventeenth Division of the Court of Appeals in CA-G.R. SP No. 54733 dismissing the quo warranto suit filed by petitioner.

The facts are:

On October 26, 1992, then Secretary of Public Works and Highways Jose P. de Jesus issued a permanent appointment in favor of petitioner Chona M. Dimayuga as Executive Director II of the Toll Regulatory Board (“Board”).[2] As its highest-ranking working official, petitioner exercised powers of control and supervision over the Board’s three (3) divisions, namely its Finance and Administrative Division, the Technical Division and the Engineering Division. She also oversaw the Board’s build-operate-and-transfer (“BOT”) projects, such as the Metro Manila Skyway Project and the Manila-Cavite Tollway Project, and likewise participated in the negotiations for the Manila-Subic Expressway Project and the South Luzon Tollway Extension Project. At the time, the position of Executive Director II was not deemed part of the career executive service, that is, until June 4, 1993, when it was included therein.

On May 31, 1994, the Civil Service Commission issued Memorandum Circular No. 21.[3] Section 4 of the Memorandum states:

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- Status of Appointment of Incumbents of Positions Included Under the Coverage of the CES. Incumbents of positions which are declared to be Career Executive Service positions for the first time pursuant to this Resolution who hold permanent appointment thereto shall remain under permanent status in their respective positions. However, upon promotion or transfer to other Career Executive Service (CES) positions, these incumbents shall be under temporary status in said positions until they qualify.

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Petitioner alleges that during her tenure, she became the subject of several administrative and criminal complaints designed to coerce her removal. On the strength of these complaints, respondent former Department of Public Works and Highways (“DPWH”) Secretary Gregorio R. Vigilante issued a first ninety-day suspension order[4] against petitioner on November 28, 1997. Upon the expiration of the first suspension, a second ninety-day suspension order[5] dated March 26, 1998 was issued against petitioner, this time by then Executive Secretary Alexander Aguirre.[6]

On the expiration of the second suspension order, petitioner re-assumed her duties on June 25, 1998. However, respondent Vigilar issued on the following day Department Order No. 85, series of 1998,[7] by virtue of which petitioner was “temporarily detailed” at the Office of the Secretary of the DPWH. Concurrently, he addressed a Memorandum[8] dated June 26, 1998 to petitioner directing her to report to the Legal Service of the Department “to assist in the evaluation of appealed cases and preparation of corresponding decisions thereon involving the implementation of P.D. No. 1096, otherwise known as the National Building Code of the Philippines,” and other cases that may be assigned to her. As a gesture of protest, petitioner filed a leave of absence until September 30, 1998 rather than assume a position which she considered a demotion.

In the meantime, responding to a letter dated December 1, 1998[9] from petitioner requesting a clarification on her status, the Career Executive Service Board (“CESB”) replied in a letter dated December 15, 1998,[10] to wit:

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It has always been the stand of the CES Board, even before the issuance of MC 21 by the CSC, to respect or honor the appointment status of an official appointed to a position which is subsequently included in the CES, such that if the appointment was of a permanent status or nature, the inclusion of the position in the CES is not deemed to have changed the status of the appointee to the position. xxx

On September 28, 1998, while she was on leave, petitioner received a letter dated September 22, 1998 from respondent Vigilar informing her that then President Joseph E. Estrada had appointed respondent Mariano E. Benedicto II in her stead as Executive Director II of the Board. The letter cited a Memorandum dated June 30, 1998[11] issued by then Executive Secretary Ronaldo B. Zamora addressed to all heads of departments, agencies, and offices, as follows:

- Pursuant to existing laws and jurisprudence, non-career officials/personnel or those occupying political positions are deemed co-terminous with the outgoing Administration.
- Accordingly, they shall vacate their positions effective 01 July 1998 and turnover their offices to the highest ranking career officials, unless otherwise specifically retained by the Department Heads concerned or extended new appointments by the President.

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Since she had been effectively removed from her position, petitioner filed on September 6, 1999 a petition for quo warranto before the Court of Appeals, docketed as CA-G.R. SP No. 54733. On July 25, 2000, the appellate court rendered the assailed decision dismissing petitioner’s suit. The appellate court held that:

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In the case at bar, petitioner was appointed in a permanent capacity to the position of Executive Director II of the TRB in 1992. At that time, said position was excluded from the coverage of the CES, so petitioner was able to occupy said position although she was not a career service executive officer (CESO). The subsequent inclusion of her position under the CES, however, did not automatically qualify her for the said position as she lacked the required eligibility. At most, the permanent status accorded to her appointment would only allow her to occupy said position until the appointing authority would replace her with someone who has the required eligibility therefor.

The CSC, in issuing MC 21, could not have intended to unwittingly permit non-career service officers to hold on defiantly and in a permanent character to career service positions by virtue of their permanent appointments. Such a preposterous interpretation characterized by (1) entrance based on merit and fitness to be determined as far as practicable by competitive examinations, or based on highly technical qualifications; (2) security of tenure; and (3) opportunity for advancement to higher career positions. Moreover, such an

unthinkable interpretation would lead to an absurd situation wherein an incumbent could hold on to his post adamantly for as long as he wants by reason of his permanent appointment, and even without qualifying for said position.

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Secondly, petitioner may not claim any proprietary right to her post as Executive Director II of the TRB because this would encroach upon the executive powers of the President. Such obstinate refusal by petitioner to vacate said position run counter to the wide latitude given to the appointing authority or to the President, in this matter, in exercising his power of appointment in accordance with the provisions of the Constitution.

Moreover, if We were to espouse petitioner's depthless construction of Section 4 of MC 21, unqualified government employees would arrogate to themselves the right to decide to stay permanently in their respective posts. This would leave the appointing authority helpless in exercising his power of appointment that also includes the power of removal.

Thirdly, petitioner's claim to security of tenure must be rejected.

This Court has repeatedly held that this guaranty is available only to permanent appointees [citation omitted].

Under the Administrative Code of 1987, 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.

Petitioner is not a CESO. Without the required eligibility for a career service position, petitioner cannot be considered a permanent appointee under the law. As stated, a permanent appointment is extended to a persons possessing the requisite qualifications, including the eligibility required, for the position, and thus protected by the constitutional guaranty of security of tenure. Since petitioner does not have the prescribed CES eligibility for the position concerned, she can be removed from office anytime because she does not have security of tenure.

Likewise, she cannot complain that her removal was not "for cause provided by law." The phrase "for cause provided for law" is a guarantee of both procedural and substantive due process. This right proceeds from one's entitlement to security of tenure which herein petitioner does not have due to her ineligibility for the position concerned.

As the Supreme Court held in *Achacoso* (infra), "[I]t is settled that a permanent appointment can be issued only to a person who meets all the requirements 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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Aggrieved by the dismissal of her petition for quo warranto, petitioner comes to us via the instant petition for review on certiorari, urging the reversal of the appellate court's decision on the following grounds:

I

THE COURT OF APPEALS COMMITTED A SERIOUS AND GRAVE ERROR IN LAW WHEN IT HELD THAT PETITIONER HAS NO VESTED RIGHT TO THE POSITION IN QUESTION.

II

THE COURT OF APPEALS COMMITTED A SERIOUS AND GRAVE ERROR IN LAW WHEN IT HELD THAT PETITIONER'S REFUSAL TO VACATE HER POSITION RUNS COUNTER TO THE POWER OF

APPOINTMENT AND REMOVAL OF THE PRESIDENT.

III

THE COURT OF APPEALS COMMITTED A SERIOUS AND GRAVE ERROR IN LAW WHEN IT REJECTED PETITIONER'S CLAIM TO SECURITY OF TENURE.

IV

THE COURT OF APPEALS COMMITTED A SERIOUS AND GRAVE ERROR IN LAW WHEN IT DISMISSED THE PETITION FOR QUO WARRANTO FILED BY PETITIONER.

V

THE COURT OF APPEALS COMMITTED A SERIOUS AND GRAVE ERROR IN LAW WHEN IT FAILED TO AWARD PETITIONER MORAL DAMAGES, EXEMPLARY DAMAGES, ATTORNEY'S FEES AND LITIGATION EXPENSES.

The statutory backbone of petitioner's arguments is Memorandum Circular No. 21 dated May 31, 1994 issued by the Civil Service Commission ("CSC"). The circular states:

TO:

ALL HEADS OF DEPARTMENTS, BUREAUS, AND AGENCIES OF THE NATIONAL AND LOCAL GOVERNMENT INCLUDING GOVERNMENT OWNED AND CONTROLLED CORPORATIONS AND STATE COLLEGES AND UNIVERSITIES

SUBJECT:

Coverage of the Career Executive Service

Pursuant to CSC Resolution No. 94-2925 dated May 31, 1994, the Commission adopts the following guidelines on the coverage of the Career Executive Service:

- Positions Covered by the Career Executive Service.

(a)

The Career Executive Service includes the positions of Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director (department-wide and bureau-wide), Assistant Regional Director (department-wide and bureau-wide) and Chief of Department Service.

(b)

In addition to the above identified position and other positions of the same category which had been previously classified and included in the CES, all other third level positions in all branches and instrumentalities of the national government, including government-owned or controlled corporations with original charters are embraced within the Career Executive Service provided that they meet the following criteria:

- the position is a career position;
 - the position is above division chief level;
 - the duties and responsibilities of the position require the performance of executive or managerial functions.
- Positions Excluded from the Career Executive Service.

(a) Supervisory and executive positions which have fixed terms of office as provided for in the charter of the agency or as specified by law;

(b) Supervisory and executive positions in the non-career service which include the following:

- Elective officials and their personal or confidential staff;
- Secretaries and other officials of cabinet rank who hold their positions at the pleasure of the President and their personal or confidential staff;
- Chairman and members of commission and boards with fixed terms of office and their personal or confidential staff;
- Contractual personnel or those whose employment in the government is in accordance with a special contract to undertake a specific work or job, and,
- Emergency and seasonal personnel.

(c)

Supervisory and executive positions in the national government belonging to the closed career systems which are administered by special bodies such as the Foreign Service, Philippine National Police, State Colleges and Universities unless otherwise provided in their respective charters, the Scientific Career Service and the like.

- Position of Head Executive Assistant. The position of Head Executive Assistant, whether in departments, agencies, branches or instrumentalities of the national government, including Government-Owned or Controlled Corporations with the original charters shall not be within the coverage of the Career Executive Service.

- Status of Appointment of Incumbents of Positions Included Under the Coverage of the CES. Incumbents of positions which are declared to be Career Executive Service positions for the first time pursuant to this Resolution who hold permanent appointments thereto shall remain under permanent status in their respective positions. However, upon promotion or transfer to other Career Executive Service (CES) positions, these incumbents shall be under temporary status in said other CES positions until they qualify. (*italics supplied*)

- Exemption from the Coverage in the Career Executive Service of Agencies. An agency may request the Commission that a position be declared a non-CES position if the head of the agency believes that said position does not properly belong in the Career Executive Service. A request for exemption should be filed with the Career Executive Service Office of the Civil Service commission accompanied by appropriate justifications. Upon receipt of such request, the Commission shall issue a decision on the matter within a reasonable time.

- Positions in Local Government Units. Third level positions in local government units (municipal corporations) or similar entities including those devolved from the National Government are, for the meantime, excluded from the coverage of the Career Executive Service.

This Memorandum Circular takes effect immediately.

Section 4 of CSC Memorandum Circular No. 21 upon which petitioner relies makes particular reference to incumbents of positions “which are declared to be part of the Career Executive Service for the first time pursuant to this resolution who hold permanent appointments thereto.” The position which petitioner held, however, was classified as part of the career executive service a year earlier, on June 4, 1993, the legal basis therefor being Presidential Decree No. 1 dated September 24, 1972,[12] adopting the Integrated Reorganization Plan as part of the law of the land. Upon closer scrutiny, section 4 appears to contradict the principle which we laid down in *Achacoso v. Macaraig*, [13] three (3) years prior to the issuance of the circular, to wit:

It is settled that a permanent appointment can be issued only “to a person who meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed.” Achacoso did not. At best, therefore, his appointment 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, only 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.

It is useful to note that Achacoso served as the jurisprudential basis in recent cases involving issue of security of tenure in career executive service positions. In the doctrinal case of *Cuevas v. Bacal*,^[14] the object of controversy was the title of Chief Public Attorney in the Public Attorney’s Office, which requires a CES Rank Level 1. The claimant, respondent Atty. Josefina Bacal, who possessed a CESO III rank, was appointed as such in February 1998 by then President Fidel V. Ramos. In July 1998, she was “transferred” and appointed Regional Director. Designated in her stead by former President Joseph E. Estrada as “Chief Public Defender” was Atty. Carina J. Demaisip. As Demaisip was not a CES eligible, Bacal filed a quo warranto suit before the Court of Appeals questioning the former’s appointment. The Court of Appeals rendered judgment in Bacal’s favor which, however, we reversed.

In that case of Bacal this Court emphasized two (2) salient points, to wit:

First, in order to qualify an appointment as permanent, the appointee must possess the rank appropriate to the position. Failure in this respect will render the appointment merely temporary. In Atty. Bacal’s case, it was ruled that she did not acquire tenure since she had only a CESO III rank; and that she was not appointed CESO I which was the requisite eligibility for the position of Chief Public Attorney.

Second, security of tenure in the career executive service (“CES”) is thus acquired with respect to rank, and not to position. The guaranty of security of tenure to members of the career executive service does not extend to the particular positions to which they may be appointed – a concept which is applicable only to first and second-level employees in the civil service – but to the rank to which they are appointed by the President.

We reiterate those points here if only to serve as a contradistinction to petitioner’s arguments. If a career executive officer’s security of tenure pertains only to his rank and not to his position, with greater reason then that petitioner herein, who is not even a CESO eligible, has no security of tenure with regard to the position of Executive Director II of the Toll Regulatory Board which was earlier classified on June 4, 1993 as part of the career executive service or prior to the issuance of CSC Memorandum Circular No. 21 dated May 31, 1994.

Our ruling in the fairly recent case of *De Leon v. Court of Appeals*^[15] is more appropriate and applicable to the case at bar. The private respondent therein, like herein petitioner Dimayuga, was not a career executive service officer, yet he was issued a permanent appointment as Department Legal Counsel which is a career executive service position. A dispute arose when the private respondent therein was reassigned as “Director III (Assistant Regional Director)” of Region IX. We subsequently rendered judgment in that case of *De Leon* finding that the therein private respondent’s security of tenure was not violated. In sustaining his reassignment, we held that:

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, only 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.

Evidently, private respondent's appointment did not attain permanency. Not having taken the necessary Career Executive Service Examination to obtain the requisite eligibility, he did not at the time of his appointment and up to the present, possess the needed eligibility for a position in the Career Executive Service. Consequently, his appointment as Ministry Legal Counsel – CESO IV/Department Legal Counsel and/or Director III, was merely temporary. Such being the case, he could be transferred or reassigned without violating the constitutionally guaranteed right to security of tenure.

Private respondent capitalizes on his lack of CES eligibility by adamantly contending that the mobility and flexibility concepts in the assignment of personnel under the Career Executive Service do not apply to him because he is not a Career Executive Service Officer. Obviously, the contention is without merit. As correctly pointed out by the Solicitor General, non-eligibles holding permanent appointments to CES positions were never meant to remain immobile in their status. Otherwise, their lack of eligibility would be a premium vesting them with permanency in the CES positions, a privilege even their eligible counterparts do not enjoy.

Then too, the cases on unconsented transfer invoked by private respondent find no application in the present case. To reiterate, private respondent's appointment is merely temporary; hence, he could be transferred or reassigned to other positions without violating his right to security of tenure.

In the light of the foregoing premises, the Civil Service Commission's opinion as embodied in its reply letter to petitioner dated December 15, 1998 sustaining petitioner's alleged permanent appointment as Executive Director of the Toll Regulatory Board on the basis of section 4 of Memorandum Circular No. 21 loses persuasion and applicability to the case at bar. Petitioner is not a CESO eligible. In other words, her instant petition is devoid of merit.

WHEREFORE, the instant petition is hereby DENIED for lack of merit. The Decision dated July 25, 2000 rendered by the former Seventeenth Division of the Court of Appeals in CA-G.R. SP No. 54733 is AFFIRMED. Costs against petitioner.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1] Penned by Associate Justice Bernardo Ll. Salas and concurred in by Associate Justices Edgardo P. Cruz and Presbitero J. Velasco, Jr., Seventeenth Division; Rollo, pp. 41-54.

[2] Annex "B" of the Petition, Rollo, p. 55.

[3] Annex "F" of the Petition, Rollo, pp. 88-90.

[4] Annex "G" of the Petition, Rollo, p. 91.

[5] Annex "H" of the Petition, Rollo, p. 92.

[6] Petitioner contested the second suspension order before the Office of the President.

[7] Annex "I" of the Petition, Rollo, p. 93.

[8] Annex "J" of the Petition, Rollo, p. 94.

[9] Annex “K” of the Petition, Rollo, pp. 95-96.

[10] Annex “L” of the Petition, Rollo, p. 97.

[11] Annex “M” of the Petition, Rollo, p. 98.

[12] The decree provides:

REORGANIZING THE EXECUTIVE BRANCH OF THE NATIONAL GOVERNMENT

WHEREAS, there were pending before Congress prior to the promulgation of Proclamation No. 1081, dated September 21, 1972, certain priority measures vital to the national development program of the Government, and which were duly certified by the President as urgent measures;

WHEREAS, one of the priority measures is the Integrated Reorganization Plan reorganizing the entire Executive Branch of the National Government, prepared by the Commission on Reorganization;

WHEREAS, the Integrated Reorganization Plan is necessary to the realization of the Government’s program to effect administrative reforms in the government machinery;

NOW, THEREFORE, I, FERDINAND E. MARCOS, Commander-in-Chief of all the Armed Forces of the Philippines and pursuant to Proclamation No. 1081, dated September 22, 1972, as amended, in order to effect the desired changes and reforms in the social, economic and political structure of the country, do hereby order and decree that the Integrated reorganization Plan as prepared, completed, and submitted by the Commission on Reorganization shall be, as it is hereby adopted, approved, and made as part of the law of the land: Provided, That there shall be created and organized, in lieu of the Public Information Office within the Office of the President as recommended in the Integrated Reorganization Plan, a Department of Public Information, the composition of which shall be indicated in future implementing orders.

Changes and modifications in the Integrated Reorganization Plan shall be made from time to time, as necessity requires, to be correspondingly announced by me or by my duly authorized representative.

All concerned, especially heads of departments, chiefs of bureaus, and offices, agencies and instrumentalities of the Government, including government-owned or controlled Corporations, shall act accordingly, pursuant to the contents of this Decree.

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[13] 195 SCRA 235, 239-240 (1991).

[14] G.R. No. 139382 promulgated December 6, 2000.

[15] G.R. No. 127182, January 22, 2001, Associate Justice Consuelo Ynares-Santiago, ponente.

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