

REMEDIOS PASTOR, PETITIONER, VS. CITY OF PASIG, MAYOR VICENTE EUSEBIO, THE COURT OF APPEALS (15TH DIVISION), AND THE CIVIL SERVICE COMMISSION, RESPONDENTS.

G.R. No. 146873. May 09, 2002

Ponente: MENDOZA, J.

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MENDOZA, J.:

Petitioner Remedios Pastor is Budget Officer of the Municipality (now City) of Pasig. In 1992, she was reassigned to the Office of the Municipal Administrator pending investigation of reports against her concerning the issuance of Advice of Allotments by her. In 1995, after three years with no case filed against her, she asked for reinstatement to her former position. But she was instead reassigned to another unit of the now city government. Upon her complaint, the Civil Service Commission ordered her reinstatement as Budget Officer of the City of Pasig. However, on appeal of the city government, the Court of Appeals set aside the decision of the Civil Service Commission (CSC). Hence this petition for certiorari.

The question is whether the decision of the Court of Appeals should be set aside and that of the CSC reinstated. We answer the question in the affirmative.

The facts are as follows:

Petitioner Remedios Pastor was appointed Budget Officer of the then Municipality (now City) of Pasig on May 1, 1986. Her appointment was confirmed by the Department of Budget and Management on July 17, 1987.

On July 6, 1992, the newly-elected Mayor of Pasig, Vicente P. Eusebio, issued a memorandum relieving petitioner from her position as Municipal Budget Officer and reassigning her to the Office of the Municipal Administrator of Pasig. The Mayor's order stated:

In view of the adverse report of the Committee on Budget that you issued Advice of Allotments without sufficient cash collections and pending thorough investigation there[on], you are hereby relieved of your position as Municipal Budget Officer and temporarily detailed [sic][1] with the Office of the Municipal Administrator.

Upon receipt hereof, you are hereby directed to turn over all records, properties, and responsibilities to MR. EDENISON FAINSAN who is hereby designated as Officer-In-Charge, Municipal Budget Officer.

In this connection, you are hereby ordered to report to the Office of the Municipal Administrator for temporary assignment.

This order is issued in the interest of public service and shall take effect immediately.[2]

On March 6, 1995, Mayor Eusebio issued another memorandum (Memorandum Order No. 06-95) directing petitioner to conduct an in-depth evaluation/study of the operations of the Pasig City Hall Annex.[3]

Alleging that since her relief as Budget Officer, no investigation had been conducted regarding the charge that she

had issued Advice of Allotments without sufficient cash collections, petitioner filed on October 20, 1995 a complaint with the CSC.[4] She contended that her “protracted detail” to the Office of the City Administrator and the deletion of her name from the payroll for the City Budget Office for the period October 1-15, 1995 were in violation of Civil Service laws, rules, and regulations and that they constituted oppression and abuse of authority on the part of Mayor Eusebio. Petitioner prayed for her reinstatement as City Budget Officer of Pasig and for an order enjoining Mayor Eusebio from designating another person to that petition.

On December 6, 1995, Pasig City Administrator Atty. Reynaldo P. Dionisio issued a memorandum directing petitioner “in the exigency of the service, in addition to your present duties, to [conduct a] study on how to improve budgeting and disbursement procedures of city funds, as well as [a] study on how to enhance the revenue of the city in preparation [for] the adverse effects of the Supreme Court Ruling on Realty Tax against the City of Pasig.”[5]

In his comment[6] on petitioner’s complaint before the CSC, respondent City Mayor alleged, among other things, that petitioner had been reassigned to the Office of the Municipal (now City) Administrator in view of “her long years of experience in finance and [that she had been] tasked to conduct studies best suited to her qualifications”; that instead of being suspended for issuing Advice of Allotments without sufficient cash collections, she was reassigned “for her professional productive growth [and for the benefit] of the city”; that her reassignment was in the best interest of the service and did not involve any diminution of salary or rank as a department head; and that the deletion of petitioner’s name from the payroll for October 15, 1995 was due to a management directive that “every personnel should be in the payroll of actual office assignment” and that in fact petitioner received her salary for that period and continued to receive the salary and benefits attached to her position.

In its Resolution No. 96-1190, dated February 5, 1996, the CSC ordered:

WHEREFORE, the appeal of Remedios Pastor is hereby found meritorious. She should already be returned to her former position or assigned to an office where she can perform as head of a department.[7]

The CSC held that, while petitioner’s reassignment was originally made in the exigency of the service without reduction in her rank, status, or salary, respondent City Mayor failed to advance “sufficient reason” to warrant petitioner’s continuous reassignment for more than three years which “appears too long for one to conduct the study assigned to her.”

Respondent City of Pasig did not ask for reconsideration of Resolution No. 96-1190. Instead, apparently in compliance with the same, it designated petitioner head of the Pasig City Hall Annex, Karangalan, Pasig City. But petitioner was not satisfied. She asked the CSC for a clarification of its Resolution. She alleged that there was no position of “Head of Pasig City Hall Annex” in the plantilla of the city government nor an ordinance creating the Office of Pasig City Hall Annex which, she claimed, was in fact “just a small bungalow-type building located at Karangalan Village, Barangay Manggahan, Pasig City, manned by one (1) representative each from about five (5) departments who report directly to their respective Department Heads at the Pasig City Hall. Hence, there was really nothing for her to oversee.”

In its Resolution No. 97-2845,[8] dated May 20, 1997, the CSC found petitioner’s reassignment to the Pasig City Hall Annex to be not in compliance with its decision. It held that the so-called Pasig City Hall Annex was not a department of the City Government of Pasay but a mere extension of the City Hall. The CSC also cited the fact that under Municipal Ordinance No. 01-92 of the City, it was the Vice-Mayor who was Officer-in-Charge of the extension office. The CSC ordered further reassignments of petitioner to other offices be stopped “since [she] has been out of her official station as Budget Officer for such a long time.”

Respondent Mayor Eusebio moved for a reconsideration, arguing that (1) the Pasig City Hall Annex was, for all

intents and purposes, a department of the Pasig local government and (2) Municipal Ordinance No. 01-92 had been amended and now provides that the officer-in-charge of the Pasig City Hall Annex shall be either the Vice-Mayor or a department head or official of equivalent rank.[9] His motion was denied, however, by the CSC in its Resolution No. 99-0200.[10] The CSC held that the position of Head of the Pasig City Hall Annex was not equivalent to the position of City Budget Officer because the Annex was not a line department.

Petitioner then wrote Mayor Eusebio informing him of her intention to resume her duties as City Budget Officer.[11] She was advised, however, to wait because the city government intended to appeal the decision of the CSC.[12]

Respondent City of Pasig then filed with the Court of Appeals a petition, denominated for “writ of certiorari,” under Rule 43 of the 1997 Rules of Civil Procedure, impleading only the Civil Service Commission as respondent. On January 15, 1999, the appeals court rendered a decision,[13] the dispositive portion of which reads:

WHEREFORE, the assailed Resolution (No. 99-0200) of the Civil Service Commission dated January 15, 1999 is SET ASIDE and RECALLED.

The appeals court held that petitioner’s reassignment, first to the Office of the Municipal (now City) Administrator and later as head of the Pasig City Hall Annex, was a valid exercise of the “extraordinary powers of the respondent City Government.” It pointed out that the reassignment to the Office of the Municipal Administrator was only “temporary in nature” and that, in designating petitioner as head of the City Hall Annex, the city government had substantially complied with Resolution No. 96-1190 of the CSC:

The City Hall Annex was a creation of Municipal Ordinance (No. 01-92) dated January 22, 1992 to bring the services of the government expeditiously and efficiently to the residents of Manggahan, Dela Paz, and Santolan, Pasig City. There was no reduction of [petitioner’s] rank, status, or salary. The officer-in-charge shall either be the Vice-Mayor [or] a department head or official of equivalent rank (Ordinance No. 22, Series of 1997. See: Annex “D”) It is, according to [respondents], a small version of the Pasig City Hall. [Petitioner’s] power was that of a department head exercising general supervision, direction, and control over the operations of the postal services, library, Office of the Civil Registry, Police Headquarters, Offices of the Treasurer and Assessor, Engineering and Building Office [and the] Community Relation and Information Office. She was to oversee the payment of fees/revenues and communication facilities, and provided with sufficient funds for its operation and maintenance. (Municipal Ordinance No. 01-92, Annex “E,” Petition) [Respondents] therefore had advanced sufficient reasons to warrant [petitioner’s] assignment as head of the Pasig City Hall Annex in Manggahan, Pasig City pursuant to resolution No. 96-1190.[14]

On January 29, 2001, the Court of Appeals denied the CSC’s motion for extension of time to file a motion for reconsideration on the ground that the same is not allowed under its internal rules.[15]

Petitioner filed this petition alleging that -

- THE RESPONDENT APPELLATE COURT HAS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN IT HAD TAKEN COGNIZANCE AND PASSED JUDGMENT ON THE CIVIL SERVICE COMMISSION’S ORDER PARTICULARLY CSC RES. NO. 990200, WHICH WAS A MERE CLARIFICATORY ORDER OF CSC RESOLUTION NO. 961190 WHICH HAD LONG ATTAINED FINALITY AND EXECUTORY CHARACTER AFTER THE LAPSE OF THE 15-DAY REGLEMENTARY PERIOD AND NO [MOTION FOR] RECONSIDERATION WAS EVER FILED BY THE RESPONDENT CITY OF PASIG - AND THUS FAILED TO CONSIDER THE LATTER’S OBLIGATION (COMPELLABLE BY MANDAMUS) TO COMPLY WITH THE SUBJECT CSC RESOLUTIONS.

- THE RESPONDENT APPELLATE COURT HAS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT FAILED TO CONSIDER THAT THE RESPONDENT CITY OF PASIG NOT BEING THE PERSON ADVERSELY AFFECTED [BY] THE CSC RESOLUTION NO. 961190 AND OTHER CLARIFICATORY RESOLUTIONS HAS NO RIGHT NOR PERSONALITY TO APPEAL AND/OR ASSAIL VIA CERTIORARI IN SAID CA-G.R. S.P. NO. 51098 ASSAILING THE CSC RESOLUTIONS/ORDER FOR THE REINSTATEMENT OF THE HEREIN PETITIONER TO HER PREVIOUS POSITION AS CITY BUDGET OFFICER.

- WITHOUT PREJUDICE TO GROUND NO. 2, ABOVE STATED, THE RESPONDENT COURT OF APPEALS HAS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION WHEN IT DID NOT DISMISS RESPONDENT CITY OF PASIG'S PETITION IN C.A. G.R. S.P. NO. 51098 FOR FAILURE TO IMPLEAD AND/OR EVEN JUST FURNISH A COPY TO THE HEREIN PETITION OF THEIR SAID PETITION DESPITE THE FACT THAT PETITIONER IS A NECESSARY AND INDISPENSABLE PARTY [WHICH CONSTITUTES] A GROSS VIOLATION OF DUE PROCESS.[16]

Petitioner prays that the decision of the Court of Appeals be set aside and that a writ of mandamus be issued for the enforcement of CSC Resolution Nos. 96-1190, 97-2845, and 99-0200.

The Court finds for petitioner Remedios Pastor.

Appeals from the decisions or final orders of the Civil Service Commission to the Court of Appeals should be by a petition for review pursuant to Rule 43 of the 1997 Rules of Civil Procedure. As provided by §5 thereof, a copy of the petition should be served on the adverse party and on the Civil Service Commission. Section 6(a) provides that the petition should state the full names of the parties to the case without impleading the Civil Service Commission either as petitioner or respondent. Section 7 provides that the failure of the petitioner to comply with any of the foregoing requirements regarding proof of service and the contents of the petition is a sufficient ground for the dismissal of the same. The petition for "writ of certiorari" filed by respondent city government should therefore have been dismissed for its failure to implead petitioner as the adverse party and to serve a copy of the petition on her.

We do not agree with petitioner's contention, however, that respondent City of Pasig did not have the requisite personality to file the petition in the Court of Appeals. Petitioner cites our ruling in *University of the Philippines v. Civil Service Commission*[17] in support of her counterclaim that the phrase "party adversely affected" in P.D. No. 807, §39[18] refers only to the person or the respondent employee against whom the administrative disciplinary case is filed.

Petitioner's contention is without merit. The ruling cited, first made in *Paredes v. Civil Service Commission*,[19] does not apply since it refers to administrative disciplinary cases, which this case is not. Moreover, said ruling has already been modified in *Civil Service Commission v. Dacoycoy*,[20] so that appeal now lies from a decision exonerating a civil service employee of administrative charges.

We turn now to the merits of the case. Book V, Title I, Subtitle A, §26(7) of Executive Order No. 292, otherwise known as the Administrative Code of 1987, provides:

Reassignment. — An employee may be reassigned from one organizational unit to another in the same agency: Provided, That such reassignment shall not involve a reduction in rank, status, or salary.

It has been held that a reassignment that is indefinite and results in a reduction in rank, status, and salary is in effect a constructive removal from the service.[21] In this case, contrary to the ruling of the Court of Appeals, petitioner's reassignment to different offices in the local government of Pasig City is indefinite. Petitioner has

been on virtual floating assignments which cannot but amount to a diminution of her rank, hence impermissible under the law.[22] As already noted, her reassignment began in 1992 with her detail to the Office of the (now) City Administrator pending investigation of reports that she had issued Advice of Allotments without sufficient cash collections. However, no investigation appears to have ever been conducted on the said charge. To justify her continuing reassignment, respondent City Mayor claimed that the same was “due to petitioner’s long years of experience in finance” which especially fitted her for studies regarding the city’s revenues.

A similar justification was invoked in *Gloria v. Court of Appeals*[23] for the reassignment of Dr. Bienvenido Icasiano, Superintendent of the Division of City Schools of Quezon City as Vocational School Superintendent of the Marikina Institute of Science and Technology. It was contended that the reassignment would “best fit his qualification and experience” as “an expert in vocational and technical education.” Considering the reason given for the reassignment, it was held that the same was “more than [merely] temporary” and hence violative of Dr. Icasiano’s security of tenure.

For the same reason, petitioner’s reassignment to various offices should be considered more than merely a temporary one. For all intents and purposes, her reassignment, lasting nearly ten years now, is a removal without cause as Budget Officer of the City of Pasig. Indeed, her duties in her new assignment as head of the Pasig City Hall Annex —

- Oversee the operation of all units in the City Hall Annex and submit weekly accomplishment reports to the City Mayor;
- Institute measures to improve collections of all income-generating units and submit periodic progress reports with specific recommendations to the City Mayor through the City Administrator;
- Prepare and submit the annual budget of City Hall Annex for inclusion in the regular city budget;
- Prepare a sound personnel program to promote careerism and staff development; and
- Perform other duties that may be assigned by the City Mayor or Ordinance[24]—

show the “more than temporary” nature of her reassignment.

That she has suffered a diminution in her rank is also evident. Under §30 of the Charter of the City of Pasig,[25] her duties and functions as City Budget Officer are to:

- (c) . . . take charge of the City Budget Office, and . . .
 - (1) Prepare forms, orders, and circulars embodying instructions on budgetary and appropriation matters for the signature of the city mayor;
 - (2) Review and consolidate the budget proposals of different departments and offices of the City;
 - (3) Assist the city mayor in the preparation of the budget and during budget hearings;
 - (4) Study and evaluate budgetary implications of proposed legislation and submit comments and recommendations thereon;
 - (5) Submit periodic budgetary reports to the Department of Budget and Management;
 - (6) Coordinate with the city treasurer, the city accountant, and the city planning and development coordinator for the purpose of budgeting;
 - (7) Assist the sangguniang panlungsod in reviewing the approved budgets of component barangays of the City;

(8) Coordinate with the city planning and development coordinator in the formulation of the development plan of the City; and

(9) Perform such other duties and functions and exercise such other powers as provided for under Republic Act No. 7160, otherwise known as the Local Government Code of 1991, and those that are prescribed by law or ordinance.

In contrast, as head of the Pasig City Hall Annex, petitioner's budget proposals for the same will be subject to review by the City Budget Officer. Moreover, the position of City Budget Officer is created by statute, while that of the head of the Pasig City Hall Annex is created by mere ordinance.

We agree with the CSC that petitioner should now be returned to her original position for her indefinite detail to other positions would amount to her removal without cause from the position to which she has been permanently appointed. As we said in *Cruz v. Navarro*:^[26]

There is no question that we recognize the validity and indispensable necessity of the well established rule that for the good of public service and whenever public interest demands, [a] public official may be temporarily assigned or detailed to other duties even over his objection without necessarily violating his fundamental and legal rights to security of tenure in the civil service. But as we have already stated, "such cannot be undertaken when the transfer of the employee is with a view to his removal" and "if the transfer is resorted to as a scheme to lure the employee away from his permanent position" because "such attitude is improper as it would in effect result in a circumvention of the prohibition which safeguards the tenure of office of those who are in the civil service."

WHEREFORE, the petition is GRANTED and the questioned decision of the Court of Appeals is SET ASIDE. Respondent City of Pasig is ordered to forthwith REINSTATE petitioner Remedios Pastor to her original position as Budget Officer of the City of Pasig.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Kapunan, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and Corona, JJ., concur.

Melo, J., maintain his dissent in the *Dacoycoy* case.

Vitug, J., join Justice Melo in his dissent.

De Leon, Jr., J., abroad on official business.

[1] A detail is different from reassignment in that the former involves movement from one agency to another, while the latter involves movement from one organizational unit to another in the same agency. See Book V, Title I, Subtitle A, Chapter 5, §26(6) and (7) of E.O. No. 292.

[2] Petition, Annex C; Rollo, p. 35.

[3] Per Petitioner's complaint to the Civil Service Commission, dated October 20, 1995, p. 2; Rollo, p. 37. The said memorandum order gave rise to the filing of an election offense case by petitioner against respondent Eusebio which was later on dismissed by the Commission on Elections.

[4] Petition, Annex D; Rollo, pp. 36-38.

[5] *Id.*, Annex F; *id.*, p. 40.

[6] As quoted in Resolution No. 96-1190, pp. 3-5; *id.*, pp. 52-54.

[7] Petition, Annex C, p. 7; id., p. 56.

[8] Id., Annex Q; id., pp. 73-75.

[9] Id., Annex S; id., pp. 74-81.

[10] Id., Annex V; id., pp. 84-85.

[11] Id., Annex V; id., p. 86.

[12] Id., Annex W; id., p. 87.

[13] Per Associate Justice Mariano M. Umali and concurred in by Associate Justices Ruben T. Reyes and Rebecca de Guia-Salvador. Petition, Annex A; Rollo, pp. 21-32.

[14] Petition, Annex A, p. 11; Rollo, p. 31.

[15] Id., Annex B; id., p. 34.

[16] Petition, p. 6; id., pp. 8-9.

[17] 228 SCRA 207 (1993).

[18] Reiterated in Book V, Chapter 3, Subtitle A, §49(1) of E.O. No. 292. This provision states that “Appeals, where allowable, shall be made by the party adversely affected by the decision within fifteen days from receipt of the decision unless a petition for reconsideration is seasonably filed, which petition shall be decided within fifteen days . . .”

[19] 192 SCRA 84 (1990).

[20] 306 SCRA 425 (1999).

[21] *Bentain v. Court of Appeals*, 209 SCRA 644 (1992).

[22] Cf. *Padolina v. Fernandez*, 342 SCRA 442 (2000).

[23] 338 SCRA 5 (2000).

[24] Petition, Annex L; Rollo, p. 57.

[25] R.A. No. 7829 (1994), “An Act Converting the Municipality of Pasig into a Highly Urbanized City to be known as the City of Pasig.”

[26] 66 SCRA 79, 90 (1975).

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