

FRANCISCO ABELLA JR., PETITIONER, VS. CIVIL SERVICE COMMISSION, RESPONDENT.

G.R. No. 152574. November 17, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Both the appointing authority and the appointee are the real parties in interest, and both have legal standing, in a suit assailing a Civil Service Commission (CSC) order disapproving an appointment. Despite having legal interest and standing, herein petitioner unsuccessfully challenges the constitutionality of the CSC circular that classifies certain positions in the career service of the government. In sum, petitioner was appointed to a Career Executive Service (CES) position, but did not have the corresponding eligibility for it; hence, the CSC correctly disapproved his appointment.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, challenging the November 16, 2001 Decision[2] and the March 8, 2002 Resolution[3] of the Court of Appeals (CA) in CA-GR SP No. 58987. The Assailed Decision disposed as follows:

“WHEREFORE, the petition for review is DENIED for lack of merit.”[4]

The challenged Resolution denied petitioner’s Motion for Reconsideration.

The Facts

The CA narrates the factual antecedents in this wise:

“Petitioner Francisco A. Abella, Jr., a lawyer, retired from the Export Processing Zone Authority (EPZA), now the Philippine Economic Zone Authority (PEZA), on July 1, 1996 as Department Manager of the Legal Services Department. He held a civil service eligibility for the position of Department Manager, having completed the training program for Executive Leadership and Management in 1982 under the Civil Service Academy, pursuant to CSC Resolution No. 850 dated April 16, 1979, which was then the required eligibility for said position.

“It appears, however, that on May 31, 1994, the Civil Service Commission issued Memorandum Circular No. 21, series of 1994, the pertinent provisions of which read:

‘1. Positions Covered by the Career Executive Service

x x x x x x x x

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

‘1.

the position is a career position;

‘2.

the position is above division chief level

‘3.

the duties and responsibilities of the position require the performance of executive or managerial functions.

‘4. 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.’

“Two years after his retirement, petitioner was hired by the Subic Bay Metropolitan Authority (SBMA) on a contractual basis. On January 1, 1999, petitioner was issued by SBMA a permanent employment as Department Manager III, Labor and Employment Center. However, when said appointment was submitted to respondent Civil Service Commission Regional Office No. III, it was disapproved on the ground that petitioner’s eligibility was not appropriate. Petitioner was advised by SBMA of the disapproval of his appointment. In view thereof, petitioner was issued a temporary appointment as Department Manager III, Labor and Employment Center, SBMA on July 9, 1999.

“Petitioner appealed the disapproval of his permanent appointment by respondent to the Civil Service Commission, which issued Resolution No. 000059, dated January 10, 2000, affirming the action taken by respondent. Petitioner’s motion for reconsideration thereof was denied by the CSC in Resolution No. 001143 dated May 11, 2000.”

“x x x x x x x x

“Undaunted, petitioner filed with [the CA] a petition for review seeking the reversal of the CSC Resolutions dated January 10, 2000 and May 11, 2000 on the ground that CSC Memorandum Circular No. 21, s. 1994 is unconstitutional as it rendered his earned civil service eligibility ineffective or inappropriate for the position of Department Manager [III]”[5]

Ruling of the Court of Appeals

The CA shunned the issue of constitutionality, arguing that a constitutional question should not be passed upon if there are other grounds upon which the case may be decided.[6] Citing CSC Memorandum Circular 40, s. 1998 and *Mathay v. Civil Service Commission*,[7] the appellate court ruled that only the appointing officer may request reconsideration of the action taken by the CSC on appointments. Thus, it held that petitioner did not have legal standing to question the disapproval of his appointment.[8]

On reconsideration, the CA added that petitioner was not the real party in interest, as his appointment was dependent on the CSC’s approval. Accordingly, he had no vested right in the office, since his appointment was disapproved.[9]

Unsatisfied, petitioner brought this recourse to this Court.[10]

The Issues

Petitioner raises the following issues for our consideration:

“A. Whether or not Respondent Court committed grave abuse of discretion amounting to lack of jurisdiction in ruling that petitioner lacks the personality to question the disapproval by respondent office of petitioner’s appointment as Department Manager III, Labor and Employment Center, SBMA.

“B. Whether or not Respondent Court committed grave abuse of discretion amounting to lack of jurisdiction in ruling that petitioner is not the real party in interest to question the disapproval by respondent office of petitioner’s appointment as Department Manager III, Labor and Employment Center, SBMA.

“C. Whether or not Respondent Court committed grave abuse of discretion amounting to lack of jurisdiction, in dismissing petitioner’s appeal on a mere technicality considering that petitioner is questioning the constitutionality of respondent office’ issuance of Section 4 of CSC Memorandum Circular No. 21, s. 1994, which deprived petitioner his property right without due process of law.”[11]

The Court’s Ruling

The Petition is partly meritorious.

First Issue:

Who May File Reconsideration or Appeal

Preliminary Observation

Petitioner imputes to the CA “grave abuse of discretion amounting to lack of jurisdiction” for ruling that he had no legal standing to contest the disapproval of his appointment.[12] Grave abuse of discretion is a ground for a petition for certiorari under Rule 65 of the Rules of Court. Nevertheless, this Court resolved to grant due course to the Petition and to treat it appropriately as a petition for review on certiorari under Rule 45 of the Rules of Court. The grounds shall be deemed “reversible errors,” not “grave abuse of discretion.”

Approval Required for Permanent Appointment

A permanent appointment in the career service is issued to a person who has met the requirements of the position to which the appointment is made in accordance with the provisions of law, the rules and the standards promulgated pursuant thereto.[13] It implies the civil service eligibility of the appointee.[14] Thus, while the appointing authority has the discretion to choose whom to appoint, the choice is subject to the caveat that the appointee possesses the required qualifications.[15]

To make it fully effective, an appointment to a civil service position must comply with all legal requirements.[16] Thus, the law requires the appointment to be submitted to the CSC which will ascertain, in the main, whether the proposed appointee is qualified to hold the position and whether the rules pertinent to the process of appointment were observed.[17] The applicable provision of the Civil Service Law reads:

“SECTION 9. Powers and Functions of the Commission. — The Commission shall administer the Civil Service and shall have the following powers and functions:

“x x x x x x x x

“(h) Approve all appointments, whether original or promotional, to positions in the civil service, except those of presidential appointees, members of the Armed Forces of the Philippines, police forces, firemen, and jailguards, and disapprove those where the appointees do not possess the appropriate eligibility or required qualifications. An appointment shall take effect immediately upon issue by the appointing authority if the appointee assumes his duties immediately and shall remain effective until it is disapproved by the Commission,

if this should take place, without prejudice to the liability of the appointing authority for appointments issued in violation of existing laws or rules: Provided, finally, That the Commission shall keep a record of appointments of all officers and employees in the civil service. All appointments requiring the approval of the Commission as herein provided, shall be submitted to it by the appointing authority within thirty days from issuance, otherwise, the appointment becomes ineffective thirty days thereafter.”[18]

The appointing officer and the CSC acting together, though not concurrently but consecutively, make an appointment complete.[19] In acting on the appointment, the CSC determines whether the appointee possesses the appropriate civil service eligibility or the required qualifications. If the appointee does, the appointment must be approved; if not, it should be disapproved.[20] According to the appellate court, only the appointing authority had the right to challenge the CSC’s disapproval. It relied on Section 2 of Rule VI of CSC Memorandum Circular 40, s. 1998 (Omnibus Rules on Appointment and Other Personal Actions), which provides:

“Section 2. Request for Reconsideration of, or appeal from, the disapproval of an appointment may be made by the appointing authority and submitted to the Commission within fifteen (15) calendar days from receipt of the disapproved appointment.”

Appointing Authority’s Right to Challenge CSC Disapproval

While petitioner does not challenge the legality of this provision, he now claims that it is merely a technicality, which does not prevent him from requesting reconsideration.

We clarify. The power of appointment necessarily entails the exercise of judgment and discretion.[21] *Luego v. Civil Service Commission*[22] declared:

“Appointment is an essentially discretionary power and must be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should possess the qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. This is a political question involving considerations of wisdom which only the appointing authority can decide.”[23]

Significantly, “the selection of the appointee -- taking into account the totality of his qualifications, including those abstract qualities that define his personality -- is the prerogative of the appointing authority.”[24] No tribunal, not even this Court,[25] may compel the exercise of an appointment for a favored person.[26]

The CSC’s disapproval of an appointment is a challenge to the exercise of the appointing authority’s discretion. The appointing authority must have the right to contest the disapproval. Thus, Section 2 of Rule VI of CSC Memorandum Circular 40, s. 1998 is justified insofar as it allows the appointing authority to request reconsideration or appeal.

In *Central Bank v. Civil Service Commission*,[27] this Court has affirmed that the appointing authority stands to be adversely affected when the CSC disapproves an appointment. Thus, the said authority can “defend its appointment since it knows the reasons for the same.”[28] It is also the act of the appointing authority that is being questioned when an appointment is disapproved.[29]

Appointee’s Legal Standing to Challenge the CSC Disapproval

While there is justification to allow the appointing authority to challenge the CSC disapproval, there is none to preclude the appointee from taking the same course of action. Aggrieved parties, including the Civil Service

Commission, should be given the right to file motions for reconsideration or to appeal.[30] On this point, the concepts of “legal standing” and “real party in interest” become relevant.

Although commonly directed towards ensuring that only certain parties can maintain an action, “legal standing” and “real party in interest” are different concepts. *Kilosbayan v. Morato*[31] explained:

“The difference between the rule on standing and real party-in-interest has been noted by authorities thus: ‘It is important to note . . . that standing because of its constitutional and public policy underpinnings, is very different from questions relating to whether a particular plaintiff is the real party-in-interest or has capacity to sue. Although all three requirements are directed towards ensuring that only certain parties can maintain an action, standing restrictions require a partial consideration of the merits, as well as broader policy concerns relating to the proper role of the judiciary in certain areas. (FRIEDENTHAL, KANE AND MILLER, CIVIL PROCEDURE 328 [1985])

“Standing is a special concern in constitutional law because in some cases suits are brought not by parties who have been personally injured by the operation of a law or by official action taken, but by concerned citizens, taxpayers or voters who actually sue in the public interest. Hence the question in standing is whether such parties have ‘alleged such a personal stake in the outcome of the controversy to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.’ (Baker v. Carr, 369 U.S. 186, 7 L. Ed. 2d 633 (1962))

“x x x x x x x x

“On the other hand, the question as to ‘real party-in-interest’ is whether he is ‘the party who would be [benefited] or injured by the judgment, or the ‘party entitled to the avails of the suit.’ (Salonga v. Warner Barnes & Co., Ltd., 88 Phil. 125, 131 [1951])”[32]

If legal standing is granted to challenge the constitutionality or validity of a law or governmental act despite the lack of personal injury on the challenger’s part, then more so should petitioner be allowed to contest the CSC Order disapproving his appointment. Clearly, he was prejudiced by the disapproval, since he could not continue his office.

Although petitioner had no vested right to the position,[33] it was his eligibility that was being questioned. Corollary to this point, he should be granted the opportunity to prove his eligibility. He had a personal stake in the outcome of the case, which justifies his challenge to the CSC act that denied his permanent appointment.

The Appointee a Real Party in Interest

A real party in interest is one who would be benefited or injured by the judgment, or one entitled to the avails of the suit.[34] “Interest” within the meaning of the rule means material interest or an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved or a mere incidental interest.[35] Otherwise stated, the rule refers to a real or present substantial interest as distinguished from a mere expectancy; or from a future, contingent, subordinate, or consequential interest.[36] As a general rule, one who has no right or interest to protect cannot invoke the jurisdiction of the court as a party-plaintiff in an action.[37]

Although the earlier discussion demonstrates that the appointing authority is adversely affected by the CSC’s Order and is a real party in interest, the appointee is rightly a real party in interest too. He is also injured by the CSC disapproval, because he is prevented from assuming the office in a permanent capacity. Moreover, he would necessarily benefit if a favorable judgment is obtained, as an approved appointment would confer on him all the rights and privileges of a permanent appointee.

Appointee Allowed Procedural Relief

Section 2 of Rule VI of CSC Memorandum Circular 40, s. 1998 should not be interpreted to restrict solely to the appointing authority the right to move for a reconsideration of, or to appeal, the disapproval of an appointment. PD 807 and EO 292, from which the CSC derives the authority to promulgate its rules and regulations, are silent on whether appointees have a similar right to file motions for reconsideration of, or appeals from, unfavorable decisions involving appointments. Indeed, there is no legislative intent to bar appointees from challenging the CSC's disapproval.

The view that only the appointing authority may request reconsideration or appeal is too narrow. The appointee should have the same right. Parenthetically, CSC Resolution 99-1936[38] recognizes the right of the adversely affected party to appeal to the CSC Regional Offices prior to elevating a matter to the CSC Central Office.[39] The adversely affected party necessarily includes the appointee.

This judicial pronouncement does not override *Mathay v. Civil Service Commission*,[40] which the CA relied on. The Court merely noted in passing -- by way of obiter -- that based on a similar provision,[41] only the appointing officer could request reconsideration of actions taken by the CSC on appointments.

In that case, Quezon City Mayor Ismael A. Mathay Jr. sought the nullification of CSC Resolutions that recalled his appointment of a city government officer. He filed a Petition assailing the CA Decision, which had previously denied his Petition for Certiorari for being the wrong remedy and for being filed out of time. We observed then that the CSC Resolutions were already final and could no longer be elevated to the CA.[42] Furthermore, Mathay's Petition for Certiorari filed with the CA was improper, because there was an available remedy of appeal. And the CSC could not have acted without jurisdiction, considering that it was empowered to recall an appointment initially approved.[43]

The right of the appointee to seek reconsideration or appeal was not the main issue in *Mathay*. At any rate, the present case is being decided en banc, and the ruling may reverse previous doctrines laid down by this Court.[44]

Second Issue: Constitutionality of Section 4, CSC Memorandum Circular 21, Series of 1994

Alleging that his civil service eligibility was rendered ineffective and that he was consequently deprived of a property right without due process,[45] petitioner challenges the constitutionality of CSC Memorandum Circular 21, s. 1994.[46] The pertinent part of this Circular reads:

"1. 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 positions 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:

“1.

the position is a career position;

“2.

the position is above division chief level;

“3.

the duties and responsibilities of the position require the performance of executive or managerial functions.”

x x x x x x x x

“4. Status of Appointment of Incumbents of Positions 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.”

Petitioner argues that his eligibility, through the Executive Leadership and Management (ELM) training program, could no longer be affected by a new eligibility requirement. He claims that he was eligible for his previous position as department manager of the Legal Services Department, PEZA; hence, he should retain his eligibility for the position of department manager III, Labor and Employment Center, SBMA, notwithstanding the classification of the latter as a CES position.

CSC Authorized to Issue

Rules and Regulations

The Constitution mandates that, as “the central personnel agency of the government,”[47] the CSC should “establish a career service and adopt measures to promote the morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the Civil Service.”[48] It further requires that appointments in the civil service be made only through merit and fitness to be determined by competitive examination.[49] Civil Service laws have expressly empowered the CSC to issue and enforce rules and regulations to carry out its mandate.

In the exercise of its authority, the CSC deemed it appropriate to clearly define and identify positions covered by the Career Executive Service.[50] Logically, the CSC had to issue guidelines to meet this objective, specifically through the issuance of the challenged Circular.

Career Service

Classified by Levels

Positions in the career service, for which appointments require examinations, are grouped into three major levels:

“(a) The first level shall include clerical, trades, crafts, and custodial service positions which involve non-professional or sub[-]professional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies;

“(b) The second level shall include professional, technical, and scientific positions which involve professional, technical, or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief level; and

“(c) The third level shall cover positions in the Career Executive Service.”[51]

Entrance to the different levels requires the corresponding civil service eligibility. Those in the third level (CES positions) require Career Service Executive Eligibility (CSEE) as a requirement for permanent appointment.[52]

The challenged Circular did not revoke petitioner’s ELM eligibility. He was appointed to a CES position; however, his eligibility was inadequate. Eligibility must necessarily conform to the requirements of the position, which in petitioner’s case was a CSEE.

Rights Protected

The challenged Circular protects the rights of incumbents as long as they remain in the positions to which they were previously appointed. They are allowed to retain their positions in a permanent capacity, notwithstanding the lack of CSEE. Clearly, the Circular recognizes the rule of prospectivity of regulations;[53] hence, there is no basis to argue that it is an ex post facto law[54] or a bill of attainder.[55] These terms, which have settled meanings in criminal jurisprudence, are clearly inapplicable here.

The government service of petitioner ended when he retired in 1996; thus, his right to remain in a CES position, notwithstanding his lack of eligibility, also ceased. Upon his reemployment[56] years later as department manager III at SBMA in 2001, it was necessary for him to comply with the eligibility prescribed at the time for that position.

Security of Tenure

Not Impaired

The argument of petitioner that his security of tenure is impaired is unconvincing. First, security of tenure in the Career Executive Service -- except in the case of first and second level employees in the civil service -- pertains only to rank, not to the position to which the employee may be appointed.[57] Second, petitioner had neither rank nor position prior to his reemployment. One cannot claim security of tenure if one held no tenure prior to appointment.

Due Process

Not Violated

Petitioner contends that his due process rights, as enunciated in *Ang Tibay v. Court of Appeals*,^[58] were violated.^[59] We are not convinced. He points in particular to the CSC’s alleged failure to notify him of a hearing relating to the issuance of the challenged Circular.

The classification of positions in career service was a quasi-legislative, not a quasi-judicial, issuance. This distinction determines whether prior notice and hearing are necessary.

In exercising its quasi-judicial function, an administrative body adjudicates the rights of persons before it, in accordance with the standards laid down by the law.^[60] The determination of facts and the applicable law, as basis for official action and the exercise of judicial discretion, are essential for the performance of this function.^[61] On these considerations, it is elementary that due process requirements, as enumerated in *Ang Tibay*, must be observed. These requirements include prior notice and hearing.^[62]

On the other hand, quasi-legislative power is exercised by administrative agencies through the promulgation of rules and regulations within the confines of the granting statute and the doctrine of non-delegation of certain powers flowing from the separation of the great branches of the government.^[63] Prior notice to and hearing of every affected party, as elements of due process, are not required since there is no determination of past events or facts that have to be established or ascertained. As a general rule, prior notice and hearing are not essential to the

validity of rules or regulations promulgated to govern future conduct.[64]

Significantly, the challenged Circular was an internal matter addressed to heads of departments, bureaus and agencies. It needed no prior publication, since it had been issued as an incident of the administrative body's power to issue guidelines for government officials to follow in performing their duties.[65]

Final Issue:

Disapproval of Appointment

Since petitioner had no CES eligibility, the CSC correctly denied his permanent appointment. The appointee need not have been previously heard, because the nature of the action did not involve the imposition of an administrative disciplinary measure.[66] The CSC, in approving or disapproving an appointment, merely examines the conformity of the appointment with the law and the appointee's possession of all the minimum qualifications and none of the disqualification.[67]

In sum, while petitioner was able to demonstrate his standing to appeal the CSC Resolutions to the courts, he failed to prove his eligibility to the position he was appointed to.

WHEREFORE, the Petition is GRANTED insofar as it seeks legal standing for petitioner, but DENIED insofar as it prays for the reversal of the CSC Resolutions disapproving his appointment as department manager III of the Labor and Employment Center, Subic Bay Metropolitan Authority. Costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.
Corona, J., on leave.

[1] Rollo, pp. 18-39.

[2] Id., pp. 7-13. Third Division. Penned by Justice Marina L. Buzon, with the concurrence of Justices Buenaventura J. Guerrero (Division chair) and Alicia L. Santos (member).

[3] Id., pp. 14-15.

[4] Assailed Decision, p. 6; rollo, p. 12.

[5] Id., pp. 1-5 & 7-11.

[6] Id., pp. 5-6 & 11-12 (citing *People v. Pinca*, 376 Phil. 377, November 17, 1999).

[7] 371 Phil. 17, August 9, 1999.

[8] Assailed Decision, p. 5; rollo, p. 11.

[9] Assailed Resolution, p. 2; rollo, p. 15.

[10] This case was deemed submitted for decision on July 23, 2003, upon this Court's receipt of the Office of the Solicitor General's Memorandum, signed by Assistant Solicitor General Renan E. Ramos and Associate Solicitor Tomas D. Tagra Jr. Respondent CSC's Memorandum, signed by Director Engelbert Anthony D. Unite and Atty. Bonifacio O. Tarenio Jr., was filed on June 30, 2003. Petitioner's Memorandum, signed by Attys. A.B.F. Gaviola Jr. and Marie Josephine C. Suarez, was filed on July 3, 2003.

[11] Petitioner's Memorandum, pp. 8-9; rollo, pp. 185-186. Original in upper case.

[12] Petitioner's Memorandum, p. 9; rollo, p. 186.

[13] §27, Title I, Book V, EO 292, "The Administrative Code of 1987"; Chua v. Civil Service Commission, February 7, 1992, 206 SCRA 65; Achacoso v. Macaraig, 195 SCRA 235, 239, March 31, 1991. In contrast, a temporary appointment is one made to fill a vacancy in the absence of appropriate eligibles (ibid.).

[14] Ferrer v. Hechanova, 125 Phil. 524, 528, January 25, 1967.

[15] Umoso v. Civil Service Commission, 234 SCRA 617, 623, July 29, 1994; Español v. Civil Service Commission, 206 SCRA 715, 721, March 3, 1992.

[16] Tomali v. Civil Service Commission, 238 SCRA 572, 576, December 1, 1994.

[17] Tomali v. Civil Service Commission, Id., p. 575; Mitra v. Subido, 128 Phil. 128, 143, September 15, 1967. See also Cortez v. Civil Service Commission, 195 SCRA 216; 222, March 13, 1991.

[18] PD 807, "The Civil Service Law," promulgated October 6, 1975. Title I, Book V, EO 292, also provides:

"Section 12 Powers and Functions. — The Commission shall have the following powers and functions:

"x x x x x x x x

"(2) Prescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws"

[19] Aquino v. Civil Service Commission, 208 SCRA 240, 247, April 22, 1992; Mitra v. Subido, supra.

[20] Guieb v. Civil Service Commission, 229 SCRA 779, February 9, 1994; Lapinid v. Civil Service Commission, supra, p. 388; Central Bank of the Philippines v. Civil Service Commission, 171 SCRA 744, 752, April 10, 1989; Luego v. Civil Service Commission, supra, p. 333.

[21] Sevilla v. Parina, 128 Phil. 639, 643, October 30, 1967; Manalang v. Quitoriano, 94 Phil. 903, 911, April 30, 1954.

[22] 227 Phil. 303, August 5, 1986.

[23] Id., p. 307. See also Rimonte v. Civil Service Commission, 314 Phil. 421, 430, May 29, 1995.

[24] Lapinid v. Civil Service Commission, 274 Phil. 381, 387, May 14, 1991, per Cruz J. See also Jimenez v. Francisco, 100 Phil. 1025, 1032, February 28, 1957; Branganza v. Commission on Elections, 127 Phil. 442, 447, August 15, 1967.

[25] Lapinid v. Civil Service Commission, supra; Amponin v. Commission on Elections, 128 Phil. 412, 415, September 29, 1967.

[26] Sevilla v. Parina, supra; Manalang v. Quitoriano, supra. See also Torio v. Civil Service Commission, 209 SCRA 677, 691, June 9, 1992; Medalla v. Sto. Tomas, 208 SCRA 351, 357, May 5, 1992.

[27] 171 SCRA 744, 756, April 10, 1989.

[28] Id., p. 757, per Gancayco, J.

[29] Ibid.

[30] See Civil Service Commission v. Dacoycoy, 366 Phil. 86, 104, April 29, 1999.

[31] 316 Phil. 652, July 17, 1995

[32] Id., pp. 695-696, per Mendoza, J. See also *Agan v. Philippine International Air Terminals Co., Inc.*, GR No. 155001, January 21, 2004.

[33] This Court has recognized that while public office is not property to which one may acquire a vested right, it is nevertheless a protected right. *Bince Jr. v. Commission on Elections*, 218 SCRA 782, 792, February 9, 1993 (citing *Cruz, I.A., Constitutional Law* [1991], 101; and *Bernas, J., The Constitution of the Republic of the Philippines* [1987], Vol. 1, 40).

According to existing jurisprudence, protection begins upon the favorable action of the CSC. Thus, no title to the office may be permanently vested in favor of the appointee without the favorable approval of the CSC. Until it has become a completed act through the CSC's approval, an appointment can still be recalled or withdrawn by the appointing authority (*Grospe v. Secretary of Public Works & Communications*, 105 Phil. 129, 133, January 31, 1959). It would likewise be precipitate to invoke the rule on security of tenure or to claim a vested right over the position (*Tomali v. Civil Service Commission*, supra, p. 576. See also *Corpuz v. Court of Appeals*, 348 Phil. 801, 812, January 26, 1998).

[34] §2, Rule 3, Rules of Court; *Agan v. Philippine International Air Terminals Co., Inc.*, GR No. 155001, January 21, 2004; *Kilosbayan v. Morato*, 316 Phil. 652, 697, July 17, 1995; *Salonga v. Warner Barnes & Co., Ltd.*, 88 Phil. 125, 131, January 31, 1951.

[35] *Mathay v. Court of Appeals*, 378 Phil. 466, 482, December 15, 1999; *Ralla v. Ralla*, 199 SCRA 495, 499, July 23, 1991; *Guinobatan Historical and Cultural Association v. CFI*, 182 SCRA 256, 262, February 15, 1990.

[36] *De Leon v. Court of Appeals*, 343 Phil. 254, 265, August 15, 1997 (citing *Manuel V. Moran*, 1 Commentaries on the Rules of Court 154 [1979]).

[37] *Mathay v. Court of Appeals*, supra; *Ralla v. Ralla*, supra.

[38] Issued August 31, 1999. This Resolution governs disciplinary and non-disciplinary proceedings in administrative cases.

[39] Pertinent portions of the Resolution reads:

“Section 6. Jurisdiction of Civil Service Regional Offices. -The Civil Service Commission Regional Offices shall have jurisdiction over the following cases:

“x x x

“B. Non-Disciplinary

“1. Disapproval of appointments brought before it on appeal;

“x x x”

“Section 5. Jurisdiction of the Civil Service Commission Proper. -The Civil Service Commission Proper shall have jurisdiction over the following cases:

“B. Non-Disciplinary

“1. Decisions of Civil Service Commission Regional Offices brought before it;

x x x”

“Section 71. Complaint or Appeal to the Commission. -Other personnel actions, such as, but not limited to, x x x action on appointments (disapproval, invalidation, recall, and revocation) x x x, may be brought to the Commission, by way of an appeal.”

“Section 72. When and Where to File. -A decision or ruling of a department or agency may be appealed within

fifteen (15) days from receipt thereof by the party adversely affected to the Civil Service Regional Office and finally, to the Commission Proper within the same period. x x x”

[40] *Supra*.

[41] Then Item I (3) of Memorandum Circular 38, s. 1993. *Id.*, pp. 26-27.

[42] *Id.*, pp. 26-28.

[43] *Ibid.* §1, Rule 65 of the Rules of Court, states that a petition for certiorari may be availed of when a tribunal, a board or an officer has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction; and there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.

[44] §4, paragraph (3), Article VIII of the Constitution, states: “No doctrine or principle of law laid down by the Court in a decision rendered en banc or in division may be modified or reversed except by the Court sitting en banc.”

[45] Petitioner’s Memorandum, p. 14; rollo, p. 191.

[46] The Memorandum Circular, addressed 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,” was issued pursuant to CSC Resolution 94-2925, dated May 31, 1994.

[47] §3, Article IX-B.

[48] *Ibid.*

[49] §2, paragraph 2, Article IX-B. Recognized in §5, PD 807 and §7, Title I, Book V, EO 292.

[50] Whereas Clause, CSC Resolution 94-2925, dated May 31, 1994.

[51] §8, Title I, Book V, EO 292; §7, PD 807. See also CSC Resolution 94-2925.

[52] Memorandum Circular 37, s. 1998, dated October 20, 1998; Memorandum Circular 1, s. 1997, dated January 24, 1997.

[53] Article 4 of the Civil Code states: “Laws shall have no retroactive effect, unless the contrary is provided.”

[54] An ex post facto law is one (1) which criminalizes an action that was done before the passing of the law and that was innocent when done, and punishes such action; (2) which aggravates a crime or makes it greater than when it was committed; (3) which changes the punishment and inflicts a greater punishment than that imposed by the law annexed to the crime when it was committed; or (4) which alters the legal rules of evidence and receives less or different testimony than that which the law required at the time of the commission of the offense in order to convict the defendant. *Núñez v. Sandiganbayan*, 111 SCRA 433, 447-448, January 30, 1982. See also *People v. Sandiganbayan*, 211 SCRA 241, 249, July 3, 1992.

[55] A bill of attainder is a legislative act that inflicts punishment on individuals without judicial trial. *Misolas v. Panga*, 181 SCRA 648, 659, January 30, 1990.

[56] Reemployment is defined as “the reappointment of a person who has been previously appointed to a position in the career or non-career service and was separated therefrom as a result of reduction in force, reorganization, retirement, voluntary resignation, non-disciplinary actions such as dropping from the rolls and other modes of separation. Reemployment presupposes a gap in the service.” Memorandum Circular 15, s. 1999, dated August

27, 1999, amending Memorandum Circular 40, s. 1998.

[57] *General v. Roco*, 350 SCRA 528, 533, January 29, 2001; *Cuevas v. Bacal*, 347 SCRA 338, 351, December 6, 2000.

[58] 69 Phil. 635, 624-644, February 27, 1940. The cardinal primary requirements that must be respected in administrative proceedings are as follows: (1) there must be a right to a hearing, including the right to present one's case and submit evidence in support thereof; (2) the tribunal must consider the evidence presented; (3) the decision must have something to support itself; (4) the evidence must be substantial; (5) the decision must be rendered on the evidence presented at the hearing or at least contained in the record and disclosed to the parties affected; (6) the tribunal must act on its own consideration of the law and the facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision; and (7) the tribunal should render its decision in such a manner that one can know the various issues involved and the reasons for the decision rendered.

[59] Petitioner's Memorandum, p. 15; rollo, p. 192.

[60] *Commissioner of Internal Revenue v. Court of Appeals*, 329 Phil. 987, 1018, August 29, 1996.

[61] *Villarosa v. Commission on Elections*, 377 Phil. 497, 506, November 29, 1999.

[62] See *Vigan Electric Light Co., Inc. v. Public Service Commission*, 119 Phil. 304, 313, January 30, 1964.

[63] *Commissioner of Internal Revenue v. Court of Appeals*; *supra*, p. 1019.

[64] *Corona v. United Harbor Pilots Association of the Philippines*, 347 Phil. 333, 342, December 12, 1997; *Philippine Consumers Foundation, Inc. v. Secretary of Education, Culture and Sports*, 153 SCRA 622, 628, August 31, 1987. *Taxicab Operators of Metro Manila, Inc. v. Board of Transportation*, 202 Phil. 925, 934, September 30, 1982; *Central Bank of the Philippines v. Cloribel*, 150-A Phil. 86, 101, April 11, 1972.

[65] *Tañada v. Tuvera*, 230 Phil. 528, 535, December 29, 1986. See also *Commissioner of Internal Revenue v. Court of Appeals*, *supra*, p. 1018. At any rate, Memorandum Circular 21, s. 1994, was allegedly published in the *Manila Standard* on June 14, 1994. CSC's Memorandum, p. 21; rollo, p. 165.

[66] *Debulgado v. Civil Service Commission*, 237 SCRA 184, 199, September 26, 1994.

[67] *Ibid.*

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