

CIVIL SERVICE COMMISSION, PETITIONER, VS. PASTOR B. TINAYA, RESPONDENT.

G.R. NO. 154898. February 16, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the petition for review on certiorari[1] filed by the Civil Service Commission (CSC), petitioner, assailing the Decision[2] and Resolution[3] dated March 21, 2002 and August 21, 2002, respectively, of the Court of Appeals in CA-G.R. SP No. 63051.

On November 16, 1993, Pastor B. Tinaya, respondent, was issued a permanent appointment as municipal assessor of the Municipality of Tabontabon, Leyte by Municipal Mayor Priscilla R. Justimbaste.

On December 1, 1993, the CSC Regional Office No. VIII approved the appointment but only as temporary, effective for one (1) year from December 1, 1993 to November 30, 1994. The appointment was made temporary due to respondent's non-submission of his service record with respect to his three (3)-year work related experience prior to his employment as municipal assessor, as required by the CSC Revised Qualification Standards.

On the same day his appointment was approved, respondent took his oath and assumed the duties of his office.

On December 16, 1993 or fifteen (15) days after the approval of his appointment, respondent married Caridad R. Justimbaste, daughter of Mayor Priscilla Justimbaste.

Meanwhile, Mayor Priscilla Justimbaste was on leave of absence from November 23, 1994 up to December 29, 1994. Vice-Mayor Rosario C. Luban was then the Acting Mayor.

On December 1, 1994, after the expiration of respondent's temporary appointment, Acting Mayor Luban appointed him anew as municipal assessor effective that day. The appointment was permanent.

The CSC Regional Office No. VIII initially disapproved respondent's new appointment. But upon appeal by Mayor Priscilla Justimbaste, the CSC, in its Resolution dated May 4, 1995, approved respondent's appointment as permanent.[4]

Sometime between 1995 and 1999, then Mayor Priscilla Justimbaste was elected vice-mayor of Tabontabon, while her political opponent, Bienvenido Balderian, was elected mayor.[5]

On June 4, 1999, respondent requested Arturo Juanico, Officer-in-Charge of the municipality's Human Resources Management Office (HRMO), to furnish him a copy of his service record. The request was not immediately acted upon since respondent's 201 file was still to be retrieved from the Office of Mayor Bienvenido Balderian. This prompted respondent to report the matter to the CSC Regional Office No. VIII with a request to conduct an "on-the-spot physical audit" of the municipal employees' 201 files. In response, the CSC scheduled an audit on August 3, 1999.

In the meantime, on July 5, 1999, respondent's service record was released.[6]

As scheduled, the CSC's Personnel Inspection and Audit Division conducted an audit and found, among others, that the matter of the delay in the release of respondent's service records has become moot since his request was already acted upon; and that his appointment as municipal assessor on December 1, 1994 was issued in violation of the law on nepotism and, therefore, should be recalled.

On the basis of the above report, the CSC Regional Office No. VIII issued an Order dated November 9, 1999[7] recalling respondent's appointment, thus:

“WHEREFORE, in view of the foregoing, the approval of the appointment of Pastor Tinaya as Municipal Assessor, LGU – Tabontabon, Leyte, is hereby RECALLED for having been issued in violation of the law on nepotism.

The Civil Service Leyte Field Office is hereby directed to cause the necessary action on the appointment and service card of Mr. Tinaya.”

Respondent then filed a motion for reconsideration of the above recall Order but the same was denied.

On appeal by respondent, the CSC Central Office, petitioner herein, rendered Resolution No. 002470 dated October 26, 2000 affirming the CSC Regional Office No. VIII Order dated November 9, 1999.

Petitioner likewise denied the motion for reconsideration[8] filed by respondent, prompting him to file with the Court of Appeals a petition for review, docketed as CA-G.R. SP No. 63051.

On March 21, 2002, the Court of Appeals rendered a Decision setting aside petitioner's questioned Resolutions, thus:

“WHEREFORE, the assailed Resolutions of the Civil Service Commission are SET ASIDE, and petitioner (now respondent) is hereby entitled to his office as municipal assessor of Tabontabon, Leyte by virtue of his permanent appointment dated 16 November 1993.

SO ORDERED.”[9] (underscoring ours)

This ruling is based on the Appellate Court's finding that respondent's original appointment as municipal assessor on November 16, 1993 was permanent in nature, although approved by the CSC on December 1, 1993 as temporary. Being permanent in character, he enjoys security of tenure and cannot be removed from office without valid cause. Thus, his reappointment to the same post on December 1, 1994 was unnecessary or “a mere superfluity.”[10] Moreover, respondent cannot be held guilty of nepotism as he was not yet married to the daughter of former Mayor Priscilla Justimbaste at the time the latter appointed him municipal assessor.

Petitioner filed a motion for reconsideration but was denied by the Court of Appeals in its Resolution dated August 21, 2002. This prompted petitioner, through the Solicitor General, to elevate the matter to us via this petition for review on certiorari.

Petitioner contends that the Court of Appeals erred in holding that respondent's original appointment as municipal assessor on November 16, 1993 is permanent, granting him security of tenure; and in declaring that his subsequent appointment on December 1, 1994 does not violate the rule on nepotism.

In his comment, respondent prays that the instant petition be denied for lack of merit. His counter-arguments merely reiterate the findings and ruling of the Court of Appeals.

We rule in favor of petitioner.

In *Lazo vs. Civil Service Commission*,^[11] we held that “under the Constitution, the Civil Service Commission is the central personnel agency of the government charged with the duty of determining questions of qualifications of merit and fitness of those appointed to the civil service.”

The powers and functions of petitioner are defined in Section 9 (h) of the Civil Service Law, thus:

“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

(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;

x x x.”^[12] (underscoring ours)

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.^[13]

To make it fully effective, an appointment to a civil service position must comply with all legal requirements.^[14] 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.^[15]

The appointing officer and the CSC acting together, though not concurrently but consecutively, make an appointment complete.^[16] In acting on the appointment, the CSC determines whether the appointee possesses the appropriate civil service eligibility or the required qualifications. If the appointee is qualified, the appointment must be approved; if not, it should be disapproved.^[17]

Here, respondent’s original permanent appointment as municipal assessor was approved as temporary by petitioner CSC pending his submission of the required service record of his three (3)-year work experience in real property assessment or in any related field prior to his appointment, as required by the CSC Revised Qualification Standards. As found by petitioner, it was only on December 1, 1994, after his temporary appointment expired on that day, that he was able to submit the required paper.^[18] Thus, upon its submission, respondent’s new appointment was made permanent.

Significantly, respondent does not dispute such lack of proof of his work related experience when he was extended his original appointment as municipal assessor. In fact, he did not raise any objection to the approval of said original appointment as temporary.

Thus, petitioner merely complied with the Constitutional and statutory mandate to determine whether respondent was qualified. And due to his failure to submit the required service record as proof of his qualification, petitioner did not err in approving his original appointment as temporary.

With respect to petitioner's recall of respondent's new permanent appointment dated December 1, 1994 by reason of nepotism, we find the same in order.

Records show that before respondent married Caridad Justimbaste, daughter of then Mayor Priscilla Justimbaste, on December 16, 1993, the latter appointed him municipal assessor. The appointment was permanent. As stated earlier, petitioner approved it as temporary. On December 1, 1994, Acting Mayor Luban extended to respondent (already the son-in-law of Mayor Justimbaste) a permanent appointment after his original temporary appointment expired. This new appointment was initially disapproved by petitioner. But respondent's mother-in-law, Mayor Justimbaste, appealed to the CSC Regional Office No. VIII. Being then the incumbent mayor, she was the chief of respondent and deemed to have recommended him to Vice-Mayor Luban to be appointed as municipal assessor. Verily, such appointment is in violation of Section 59, Chapter 8 of the Civil Service Law, which provides:

“SEC. 59. Nepotism. – (1) All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government-owned or controlled corporations, made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are hereby prohibited.

As used in this Section, the word ‘relative’ and members of the family referred to are those related within the third degree either of consanguinity or of affinity.

x x x.”

Petitioner has the power to recall an appointment in violation of civil service law, rules and regulations. Section 20, Rule VI of the Omnibus Rules Implementing Book V (Civil Service) of the Administrative Code of 1987, provides:

“SEC. 20. – Notwithstanding the initial approval of an appointment, the same may be recalled on any of the following grounds:

x x x

(d) violation of other existing civil service law, rules and regulations.”

In *Mathay, Jr. vs. Civil Service Commission*,^[19] we held that the Civil Service Commission is empowered to take appropriate action on all appointments and other personnel actions and that such power “includes the authority to recall an appointment initially approved in disregard of applicable provisions of the Civil Service law and regulations.”

WHEREFORE, the instant petition is GRANTED. The challenged Decision of the Court of Appeals dated March 21, 2002 and its Resolution dated August 21, 2002 in CA-G.R. SP No. 63051 are REVERSED. The Resolution No. 002470 dated October 26, 2000 and Resolution No. 010126 dated January 12, 2001 of petitioner CSC are AFFIRMED.

SO ORDERED.

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

[1] Filed under Rule 45 of the 1997 Rules of Civil Procedure, as amended.

[2] Penned by Justice Perlita J. Tria Tirona and concurred in by Justice Eubolo G. Versola (deceased) and Justice Bernardo P. Abesamis (retired); Rollo at 32-40.

[3] Rollo at 41.

[4] Petition, Rollo at 12; see also CA Decision, Rollo at 33, 35.

[5] Id. at 13, 33.

[6] CA Decision, Rollo at 34.

[7] In Administrative Case No. 99-151.

[8] See Resolution No. 010126 dated January 12, 2001.

[9] Rollo at 39-40.

[10] Id. at 38.

[11] G.R. No. 108824, September 14, 1994, 236 SCRA 469.

[12] PD 807 (The Civil Service Law), promulgated October 6, 1975 (See *Francisco Abella, Jr. vs. Civil Service Commission*, G.R. No. 152574, November 17, 2004). Section 12, Subtitle A, 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

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

[13] *Francisco Abella, Jr. vs. Civil Service Commission*, supra, citing *Umoso vs. Civil Service Commission*, 234 SCRA 617, 623 (1994); *Español vs. Civil Service Commission*, 206 SCRA 715, 721 (1992).

[14] *Francisco Abella, Jr. vs. Civil Service Commission*, id., citing *Tomali vs. Civil Service Commission*, 238 SCRA 572, 576 (1994).

[15] Id., citing *Cortez vs. Civil Service Commission*, 195 SCRA 216, 222 (1991).

[16] *Francisco Abella, Jr. vs. Civil Service Commission*, id., citing *Aquino vs. Civil Service Commission*, 208 SCRA 240, 247 (1992); *Mitra vs. Subido*, 128 Phil. 128, 143, (1967); *Favis vs. Rupisan, et al.*, G.R. No. 22823, May 19, 1966, 17 SCRA 190.

[17] *Francisco Abella, Jr. vs. Civil Service Commission*, id., citing *Luego vs. Civil Service Commission*, No. L-69137, August 5, 1986, 143 SCRA 327; *Guieb vs. Civil Service Commission*, 229 SCRA 779 (1994); *Lapinid vs. Civil Service Commission*, 197 SCRA 106 (1991); *Central Bank of the Philippines vs. Civil Service Commission*, 171 SCRA 744, 752 (1989).

[18] Petition, Rollo at 19-20.

[19] G.R. No. 130214, August 9, 1999, 312 SCRA 91, citing *Debulgado vs. Civil Service Commission*, 237 SCRA 184, 200 (1994).

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