

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. CIVIL SERVICE COMMISSION, RESPONDENT.

G.R. NO. 159940. February 16, 2005

Ponente: CARPIO-MORALES, J.

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CARPIO-MORALES, J.:

Before this Court is a petition for certiorari under Rule 65 of the 1997 Revised Rules of Court seeking to set aside and nullify Resolution No. 030919 of the Civil Service Commission (CSC) dated August 28, 2003.

The antecedents of the case are as follows:

By letter[1] dated March 7, 1994 addressed to then Ombudsman Conrado M. Vasquez, the CSC approved the Qualification Standards for several positions in the Office of the Ombudsman (petitioner) including that for Graft Investigation Officer III. The Qualification Standards for said position are:

EDUCATION : Bachelor of Laws

EXPERIENCE : 5 years of experience in the practice of law, counseling, investigation/ prosecution of cases, hearings of administrative/ criminal cases, legal research or other related work.

TRAINING : 24 hours of relevant training

ELIGIBILITY : RA 1080 (BAR)

The Career Executive Service Board (CESB) subsequently advised the Ombudsman, by letter of May 29, 1996,[2] that pursuant to CSC Memorandum Circular No. 21, s.1994, the position of Graft Investigation Officer III, among other positions in petitioner therein mentioned, was classified as a Career Executive Service (CES) position, hence, governed by the rules of the CES pertaining to eligibility, appointment to CES ranks, and performance evaluation, among other things.

On September 29, 1999, the members of the Constitutional Fiscal Autonomy Group (CFAG), namely: the Commission on Elections (COMELEC), CSC, Commission on Audit (COA), Commission on Human Rights (CHR), petitioner and this Court adopted Joint Resolution No. 62[3] reading:

JOINT RESOLUTION NO. 62

WHEREAS, the independence of the members of the Constitutional Fiscal Autonomy Group (CFAG) is guaranteed by the Constitution;

WHEREAS, the Constitution has several provisions that guarantee and protect such independence, among which are Sections 4 and 5 of Article IX, A thereof, which respectively grant them Fiscal Autonomy and authorize them to appoint their own officials and employees in accordance with law;

WHEREAS, Section 7(3), Title I, Book V of the Administrative Code of 1987 enumerates exclusively and restrictively the specific positions under the Career Executive Service, all the holders of which are appointed

by the President and are required to have CES eligibility;

WHEREAS, in case of Home Insurance Guaranty Corporation vs. Civil Service Commission and Daniel Cruz, G.R. No. 95450, dated 19 March 1993, the Supreme Court nullified the classification by the CSC of the position of Corporate Vice President as belonging to the third level of the Career Executive Services;

WHEREAS, the Court declared in the above cited case that said position is not among those enumerated by law as falling under the third level, nor one of those identified by the CES Board as equivalent rank to those listed by law, nor was the incumbent appointed by the President;

WHEREAS, in the case of Sixto Brillantes, Jr. vs. Haydee T. Yorac, G.R. No. 93867, dated 18 December 1990, the Supreme Court ruled that "Article IX-A, Sec. 1 of the Constitution expressly describes all Constitutional Commissions as 'Independent.' Although essentially executive in nature, they are not under the control of the President of the Philippines in the discharge of their respective functions."

WHEREAS, only the Chairmen and Commissioners of the Constitutional Commissions, the Commission on Human Rights, Justices and Judges, as well as the Ombudsman and his Deputies, are appointed by the President;

WHEREAS, the Constitutional Commissions, the Supreme Court, the Commission on Human Rights, and the Office of the Ombudsman are empowered to appoint officials and employees to positions belonging to first level up to third level of their respective agencies, and that they are not presidential appointees;

WHEREAS, Section 22 par. 1, Chapter 5, Subtitle A, Title I, Book V, of the Administrative Code of 1987, provides in part that "[t]he degree of qualifications of an officer or employee shall be determined by the appointing authority on the basis of the qualification standard for the particular positions[.]" and par. 2 thereof provides that [t]he establishment, administration and maintenance of qualification standards shall be the responsibility of the department or agency, with the assistance and approval of the Civil Service Commission...;"

NOW, THEREFORE, the CFAG jointly resolves:

- That all third level positions under each member agency are career positions;
- That, where appropriate and proper, taking into consideration the organizational set-up of the agency concerned, the overall screening and selection process for these positions shall be a collegial undertaking, provided that the appointment paper shall be signed only by the Head of the member agency;
- That all career third level positions identified and classified by each of the member agency are not embraced within the Career Executive Service (CES) and as such shall not require Career Service Executive Eligibility (CSEE) or Career Executive Service (CES) Eligibility for purposes of permanent appointment;
- That should CFAG member agencies develop their respective eligibility requirements for the third level positions, the test of fitness shall be jointly undertaken by the CFAG member agencies in coordination with the CSC;
- That in case the test of fitness shall be in written form, the CSC shall prepare the questionnaires and conduct the examinations designed to ascertain the general aptitude of the examinees while the member agency shall likewise prepare the questionnaires and conduct in conjunction with the CSC, the examinations to determine the technical capabilities and expertise of the examinees suited to its functions;

- That the resulting eligibility acquired after passing the aforementioned examination shall appropriate for permanent appointment only to third level positions in the CFAG member agencies;
- That the member agencies shall regularly coordinate with the CSC for the conferment of the desired eligibility in accordance with this Resolution; However this is without prejudice to those incumbents who wish to take the Career Service Executive Examination given by the Civil Service Commission or the Management Aptitude Test Battery given by the Career Executive Service Board. (Underscoring in the original omitted; emphasis, italics and underscoring supplied)

On July 31, 2002, Melchor Arthur H. Carandang, Paul Elmer M. Clemente and Jose Tereso U. de Jesus, Jr. were appointed Graft Investigation Officers III of petitioner by the Ombudsman. The CSC approved the appointments on the condition that for the appointees to acquire security of tenure, they must obtain CES or Civil Service Executive (CSE) eligibility which is governed by the CESB.

By January 2, 2003 letter to the CSC, the Ombudsman requested for the change of status, from temporary to permanent, of the appointments of Carandang, Clemente and De Jesus effective December 18, 2002. Invoking the Court of Appeals ruling in *Khem N. Inok v. Hon. Corazon Alma de Leon, et al.* (CA-G.R. SP No. 49699), “as affirmed by the Supreme Court,” the Ombudsman wrote:

x x x

In the Decision of the Court of Appeals dated January 28, 2001 on CA G.R. SP No. 49699 as affirmed by the Supreme Court with finality on July 2, 2002 in G.R. No. 148782 entitled ‘*Khem N. Inok vs. Civil Service Commission*,’ it stated in said Decision that the letter and intent of the law is to circumscribe the Career Executive Service (CES) to CES positions in the Executive Branch of Government, and that the Judiciary, the Constitutional Commissions, the Office of the Ombudsman and the Commission on Human Rights are not covered by the CES governed by the Career Executive Service Board. Said Decision thereby effectively granted the petition of Mr. Inok for security of tenure as Director II of the Commission on Audit despite the absence of a CES eligibility.[4] (Emphasis and italics supplied)

The relevant portions of the cited CA decision read:

Presidential Decree No. 807, otherwise known as the Civil Service Decree of the Philippines, provides the following levels of position in the career service, viz:

SEC. 7. Classes of Positions in the Career Service. –

(a) Classes of positions in the career service appointment to which requires examinations shall be grouped into three major levels as follows:

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

(2) 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

(3) The third level shall cover positions in the Career Executive Service.

(b) Except as herein otherwise provided, entrance to the first two levels shall be through competitive examinations, which shall be open to those inside and outside the service who meet the minimum qualification requirements. Entrance to a higher level does not require previous qualification in a lower level. Entrance to the third level shall be prescribed by the Career Executive Service Board.

(c) Within the same level, no civil service examination shall be required for promotion to a higher position in one or more related occupational groups. A candidate for promotion should however, have previously passed the examination for that level.

The last sentence of Section 7(b) of P.D. No. 807 is similar to the provision of P.D. No. 1, Article IV, par. IV, par. 5(a), to wit:

(a) Membership. A person who meets such managerial experience and other requirements and passes such examinations as may be prescribed by the Board shall be included in the register of career service eligibles and, upon appointment to an appropriate class in the Career Executive Service, become an active member in the Service. In exceptional cases, the Board may give unassembled examinations for eligibility. The area of recruitment shall be government-wide, with provisions to allow qualified or outstanding men from outside the government to enter the service.

Thus, it could be gleaned from P.D. No. 1 of the Career Executive Service (CES), which has been [d]rafted into Executive Order No. 292, that the letter and intent of the law is to circumscribe the Career Executive Service to CES positions in the Executive Branch of government. Verily, consistent with the principle of the ejusdem generis in legal hermeneutics, the phrase “other officers of equivalent rank” could encompass only such persons occupying positions in the Executive Department. In the contemporaneous case of the The Secretary of Justice Serafin R. Cuevas, et. al. vs. Atty. Josefina G. Bacal, the Supreme Court lent credence to this postulate, viz:

Security of tenure in the career executive service is acquired with respect to rank and not to position. The guarantee of security of tenure to members of the CES 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. x x x

Prescinding from the foregoing disquisition, We are loathe to stamp our imprimatur to the Commission’s stance that the “positions of Director III, including that of the COA, belong to the third level. Hence, appointees thereto should possess the x x x Career Executive Service (CES) Eligibility in accordance with the Qualification Standard of the said position.”

Ineluctably, the judiciary, the Constitutional Commissions, the Office of the Ombudsman, and the Commission on Human Rights are not covered by the CES governed by the CESB. The power of these constitutional offices to appoint their own officers and employees is mainly intended to safeguard their independence, which is the same power of appointment of all officials and employees of the judiciary granted to the Supreme Court. As commented by a noted constitutionalist:

The authority of the Supreme Court to appoint its own officials and employees is another measure intended to safeguard the independence of the judiciary. However, the Court’s appointing authority must be exercised in accordance with the Civil Service Law.

Irrefragably, inherent in the power to appoint is the power to administratively supervise the officials and employees in the constitutional offices – in the same manner that the express power to appoint carries with it the implied power to remove the personnel appointed in said offices. x x x

x x x

Parenthetically, the power to administratively supervise is designed to strengthen the independence of the constitutional offices. A respected authority on political law underscored the multifarious factors that are integral to the independence of the constitutional offices, scilicet:

There are several factors that preserve the independence of the three Commissions:

x x x

(3) Their appointment must be in a permanent capacity.

(4) The Commissions enjoy their own fiscal autonomy.

The independence of these constitutional offices serves to exempt their respective officials and employees from the coverage of the CES under the administrative authority of the CESB. to be sure, they are embraced by the civil service system. However, the administrative functions belong to the constitutional offices, instead of the CESB – in the same manner that the Supreme Court administers the judiciary’s civil service.

x x x[5] (Italics and emphasis in the original;
underscoring partly in the original and partly supplied;
citations omitted)

It appears that Carandang and Clemente were in the meantime conferred with CSE Eligibility pursuant to CSC Resolution No. 03-0665 dated June 6, 2003.[6]

Petitioner subsequently reclassified several positions by Resolution No. 02-03 dated August 18, 2003 including Graft Investigation Officer III which was reclassified to Graft Investigation and Prosecution Officer III. The Ombudsman thereupon requested the approval of the proposed Qualification Standards for the reclassified positions. With respect to the reclassified Graft Investigation and Prosecution Officer III position, the Qualification Standards were the same as those for Graft Investigation Officer III.

Subsequently, the CSC, by the challenged Resolution of August 28, 2003, changed the status of Carandang’s and Clemente’s appointments to permanent effective June 6, 2003, but not with respect to De Jesus on the ground that he “has not met the eligibility requirements.” The pertinent portion of the questioned Resolution reads:

Relevant to the matter are Sections 4 and 6, Rule III and Rule VI, respectively, of the Omnibus Rules on Appointments and Other Personnel Action, which state:

SEC. 4. Nature of Appointment. The nature of appointment shall be as follows:

x x x

i. Change of status:

1. temporary to permanent – the appointment issued to a temporary employee when he acquires the appropriate eligibility or becomes fully qualified for the position to which he is appointed.

x x x

SEC. 6. In cases where the appointee fully qualifies for the position to which he is temporarily appointed, the appointing authority shall no longer issue an appointment for change of status from temporary to permanent. Upon the appointee’s presentation of the required document/s, such change may be effected as a footnote on the temporary appointment issued, copy furnished the Commission.

It is explicitly provided therein that the change of status from temporary to permanent can be effected only once the appointee becomes fully qualified to the position to which he is appointed.

x x x

The pronouncement of the Court of Appeals in the Inok case cannot be made the basis for changing the employment status of De Jesus. Let it be stressed that nowhere in the aforesaid decision states that the Office of the Ombudsman or the other constitutional agencies mentioned therein are exempt or are not covered by the Civil Service Law and Rules. On the contrary, the same decision declares that these bodies are covered by the civil

service system. Basic is the rule that all appointments in the government service, particularly the career service, must be in accordance with the qualification requirements as laid down under existing civil service rules and regulations. Such policy is in line with the Commission's mandate to professionalize the civil service. The requirements spelled out in the Qualification Standards (QS) Manual are designed to determine the fitness of the appointee in a certain position. These requirements are indispensable in order to satisfy the Constitutional mandate that appointment in the civil service shall be made according to merit and fitness.

While it is true that constitutional agencies such as the Office of the Ombudsman has the authority to appoint its officials in accordance with law, such law does not necessarily imply that their appointment will not be subject to Civil Service Law and Rules; otherwise, these independent bodies will arrogate upon themselves a power that properly belongs to the Civil Service Commission. Had the intention of the framers of the Constitution been to isolate and grant full independence to Constitutional Commissions in the matter of appointments, it would have been so provided. But that is not the case. the Philippine Constitution provides: "The Constitutional Commissions shall appoint their officials and employees in accordance with law" (Article IX-A, Section 4). Specifically, Section 6, Article XI of the Constitution states that "The officials, shall be appointed by the Ombudsman according to the Civil Service Law." And since all matters pertaining to appointments are within the realm of expertise to the CSC, all laws, rules and regulations it issues on appointments must be complied with.

The Constitution speaks of only 'one' civil service, to encompass the first, second, and third levels. It is subject to the same set of laws, rules and regulations in the manner of observing and ensuring that the merit and fitness principle, unless otherwise exempted therefrom by the Constitution or law, is the guiding factor in issuing appointments. Hence, until and unless there is a law or rule exempting one category of public officials from the test in determining merit and fitness, all levels in the government are deemed subject to it. Simply put, the third level eligibility requirement for third level officials in all agencies is mandatory.

Further, let it be clarified that the ruling enunciated in Inok case was with regard to the authority of the Career Executive Service Board to prescribe and to administer the Career Executive Service Eligibility and it did not specifically nor particularly take away the functions of the Civil Service Commission. This is evident from the aforequoted decision in the Inok case, to wit:

The independence of these constitutional offices serves to exempt their respective officials and employees from the coverage of the CES under the administrative authority of the CESB. To be sure, they are embraced by the civil service system. However, the administrative functions belong to the constitutional offices, instead of the CESB – in the manner that the Supreme Court administers the judiciary's civil service.

Pursuant to the QS Manual, a Graft Investigation Officer III position is a career service position requiring a Career Service Eligibility or Career Service Executive Eligibility. Considering that De Jesus has not met the eligibility requirement, the change of status of his appointment from temporary to permanent cannot be effected. As held in *Achacoso vs. Macaraig*, 195 SCRA 235:

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 appointed, including the appropriate eligibility prescribed.' *Achacoso* did not. At best, therefore, his appointment could be regarded only as temporary.

x x x (Underscoring partly in the original and partly supplied; emphasis supplied)

Hence, the present petition anchored on the following ground:

THE GENERAL POWER OF RESPONDENT CIVIL SERVICE COMMISSION (CSC) TO ADMINISTER THE CIVIL SERVICE CANNOT CONSTITUTIONALLY AND VALIDLY CURTAIL THE SPECIFIC DISCRETIONARY POWER OF APPOINTMENT, INCLUDING THE GRANT OF SECURITY OF

TENURE, BY THE OMBUDSMAN AS AN INDEPENDENT CONSTITUTIONAL BODY IN FAVOR OF THE LATTER'S OWN OFFICIALS, AND ANY SUCH CURTAILMENT BY THE RESPONDENT CSC, AS IN ITS IMPUGNED RESOLUTION NO. 030919 DATED 26 AUGUST 2003, IS CONSTITUTIONALLY AND LEGALLY INFIRM.

Petitioner contends that the CSC misreads the ratio of the appellate court decision in Inok. It contends that the Ombudsman, as an appointing authority, "is specifically tasked by the Constitution to choose his own qualified personnel, which includes the lesser power of granting security of tenure to his appointees once the basic qualification requirements are satisfied." [7]

Petitioner likewise contends that its constitutional discretion as an independent appointing authority cannot be curtailed by the CSC which "has no authority to review the appointments made by other offices except only to ascertain if the appointee possesses the required qualifications." [8]

Petitioner further contends that the CES Eligibility, as administered by the respondent CESB, cannot be validly made a requisite for the attainment of security of tenure on qualified career officials of petitioner who are not legally part of the CES.

Finally, petitioner argues that its officials which are appointed by the Ombudsman are technically classified as belonging to the Closed Career Service, the positions being unique and highly technical as they involve investigatorial, quasi-judicial and prosecutorial functions, in much the same way as judges are involved in judicial functions. Hence, petitioner concludes, appointment to such positions is likewise characterized by security of tenure.

During the pendency of the case before this Court, the CSC, by Resolution [9] No. 040738 dated July 6, 2004, approved the proposed Qualification Standards for Graft Investigation and Prosecution Officer I, II and III. As proposed, the following Qualification Standards for Graft Investigation and Prosecution Officer III were approved:

Education : Bachelor of Laws

Experience : Five (5) years of experience in the practice of law, counseling, investigation/ prosecution of cases, hearings of administrative/criminal cases, legal research or other related works

Training : 24 hours of relevant training

Eligibility : RA 1080 (BAR)

The petition is impressed with merit.

That the positions subject of the present case are unique and highly technical in nature, as are those of the Judiciary, is recognized by the constitutional offices under the earlier quoted Joint Resolution No. 62 of the CFAG of which CSC is a member. [10]

Inok cannot be invoked as precedent in arriving at the question raised in this petition. This Court dismissed the petition of the CSC in the Inok case on a technicality – therein petitioner CSC's failure to file a reply within the required period – and not on the merits.

Book V, Title I, Subtitle A of the Administrative Code of 1987 provides:

SECTION 7. Career Service. – The Career Service shall be characterized by (1) entrance based on merit and fitness to be determined as far as practicable by competitive examination, or based on highly technical

qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure.

The Career Service shall include:

- (1) Open Career positions for appointment to which prior qualification in an appropriate examination is required;
- (2) Closed Career positions which are scientific, or highly technical in nature; these include the faculty and academic staff of state colleges and universities, and scientific and technical positions in scientific or research institutions which shall establish and maintain their own merit systems;
- (3) Positions in the Career Executive Service; namely, Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President;

x x x (Emphasis and underscoring supplied)

From the above-quoted provision of the Administrative Code, persons occupying positions in the CES are presidential appointees. A person occupying the position of Graft Investigation Officer III is not, however, appointed by the President but by the Ombudsman as provided in Article IX of the Constitution, to wit:

SECTION 6. THE OFFICIALS AND EMPLOYEES OF THE OMBUDSMAN, OTHER THAN THE DEPUTIES, SHALL BE APPOINTED BY THE OMBUDSMAN ACCORDING TO THE CIVIL SERVICE LAW.

To classify the position of Graft Investigation Officer III as belonging to the CES and require an appointee thereto to acquire CES or CSE eligibility before acquiring security of tenure would be absurd as it would result either in 1) vesting the appointing power for said position in the President, in violation of the Constitution; or 2) including in the CES a position not occupied by a presidential appointee, contrary to the Administrative Code.

It bears emphasis that that under P.D. No 807, Sec. 9(h) which authorizes the CSC to approve appointments to positions in the civil service, except those specified therein, its authority is limited “only to [determine] whether or not the appointees possess the legal qualifications and the appropriate eligibility, nothing else.”[11]

It is not disputed that, except for his lack of CES or CSE eligibility, De Jesus possesses the basic qualifications of a Graft Investigation Officer III, as provided in the earlier quoted Qualification Standards. Such being the case, the CSC has the ministerial duty to grant the request of the Ombudsman that appointment be made permanent effective December 18, 2002. To refuse to heed the request is a clear encroachment on the discretion vested solely on the Ombudsman as appointing authority.[12] It goes without saying that the status of the appointments of Carandang and Clemente, who were conferred CSE eligibility pursuant to CSC Resolution No. 03-0665 dated June 6, 2003, should be changed to permanent effective December 18, 2002 too.

In a Supplemental Memorandum[13] received by this Court on January 5, 2005, the CSC alleged that, inter alia:

. . . the reclassified G[raft] I[nvestigation and] P[rosecution] O[fficer] III position is the same position which is the subject of the herein case. Suffice it to state that the eligibility requirement under the new QS is no longer third level eligibility but RA 1080 (BAR) instead. However, notwithstanding the said approval of the new QS for GIPO III, CSC prays that the issues raised by the Office of Ombudsman relative to the authority of the CSC to administer the Civil Service Executive Examination for third level positions and to prescribe third level eligibility to third level positions in the Office of the Ombudsman be resolved.

As the Court takes note of the information of the CSC in its Supplemental Memorandum, it holds that third level

eligibility is not required for third level officials of petitioner appointed by the Ombudsman in light of the provisions of the Constitution vis a vis the Administrative Code of 1987 as discussed above.

WHEREFORE, the petition is hereby GRANTED. Resolution No. 030919 of the Civil Service Commission dated August 28, 2003 is hereby SET ASIDE. The appointment of Jose Tereso U. de Jesus, Jr., as well as those of Melchor Arthur H. Carandang, Paul Elmer M. Clemente, is hereby ordered made permanent effective December 18, 2002.

SO ORDERED.

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

[1] Rollo at 115-118.

[2] Id. at 123.

[3] Id. at 52-53.

[4] Id. at 31.

[5] Id. at 42-44.

[6] CSC Resolution No. 030919; Rollo at 31, 35.

[7] Rollo at 14.

[8] Id. at 16.

[9] Id. at 201-203.

[10] Id. at 22.

[11] *Lopez v. Civil Service Commission*, 194 SCRA 269, 275 (1991).

[12] *Province of Camarines Sur v. Court of Appeals*, 246 SCRA 281, 288 (1985).

[13] CSC Supplemental Memorandum at 2.

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