

PATRICIO E. SALES, ROGER R. SARIMOS, AL B. BUSICO, MARIMEL S. SAGARIO, CAMILA B. BAGCOR, JONAS C. SALON, LILIBETH O. OBERES, NOEL E. MAWILI, MARIO C. PAUSAL, JAMES D. TUGAHAN, M...

G.R. No. 160791. February 13, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Review on Certiorari assailing the Decision[1] of the Court of Appeals dated September 16, 2003 in CA-G.R. SP No. 75515.

During the May 2001 elections, then Mayor Joseph Cedrick O. Ruiz of Dapitan City, running for re-election, was defeated by respondent Rodolfo H. Carreon, Jr.

On June 1, 18 and 27, 2001, his last month in office, then Dapitan City Mayor Ruiz issued 83 appointments, including those of herein petitioners.

On July 1, 2001, the newly elected Mayor, Rodolfo H. Carreon, Jr., herein respondent, assumed office.

On July 2, 2001, respondent issued Memorandum Orders Nos. 1 and 2 revoking the 83 appointments signed by his predecessor on the ground that the latter violated Civil Service Commission (CSC) Resolution No. 01-988 in relation to CSC Memorandum Circular No. 7, Series of 2001, imposing a ban on issuing appointments in the civil service during the election period. Thereupon, respondent prohibited the release of the salaries and benefits of the 83 appointees.

On July 10, 2001, Patricio Sales, one of herein petitioners, in his capacity as president of the Dapitan City Government Employees Association, wrote the CSC Regional Office No. IX requesting its ruling on the matter.

On July 16 and August 3, 2001, respondent sent the said Office a position paper justifying his action, contending that the questioned appointments were not only "issued in bulk" but that there was no urgent need to fill those positions.

On August 17, 2001, the CSC Regional Office No. IX issued an Omnibus Order, the dispositive portion of which reads:

WHEREFORE, all premises considered:

- The eighty-three (83) appointments issued by then Mayor Joseph Cedrick O. Ruiz, including those issued by the herein requesting parties, are, therefore not considered "mass appointments," as defined under CSC Resolution No. 01-0988 and are thus, VALID and EFFECTIVE.
- Memorandum Orders Nos. 1 and 2, Series of 2001, issued by Mayor Rodolfo H. Carreon, Jr., are hereby declared NULL and VOID, and accordingly,

- The LGU-Dapitan is hereby directed to pay the salaries and other emoluments to which the 83 appointments are entitled to pursuant to the appointments issued to them.

On appeal by respondent, the CSC En Banc, on June 17, 2002, issued Resolution No. 020828 reversing the assailed Omnibus Order of the CSC Regional Office No. IX, thus:

WHEREFORE, premises considered, the Omnibus Order dated August 17, 2001 of the Civil Service Commission Regional Office No. IX is

REVERSED and SET ASIDE. The Commission hereby rules, as follows:

- The approval of all 83 appointments issued by then Mayor J. Cedrick O. Ruiz is revoked for being violative of Republic Act No. 7041, CSC Memorandum Circular No. 18 s. 1988, as amended, CSC Resolution No. 963332 on its accreditation and CSC Resolution No. 01-0988.
- All promoted employees are reverted to their previous position; and
- Memorandum Order No. 1 and Memorandum Order No. 2 issued by incumbent Mayor Rodolfo H. Carreon, Jr. are hereby declared null and void.

The CSC En Banc held that the positions in question were published and declared vacant prior to the existence of any vacancy.

Petitioners filed a motion for reconsideration but it was denied in Resolution No. 030049 dated January 16, 2003 by the CSC En Banc.

On February 13, 2003, petitioners filed with the Court of Appeals a petition for review. On September 16, 2003, the appellate court rendered its Decision dismissing the petition, sustaining the CSC's finding that the positions to which the petitioners were appointed were already reported and published even before they had been declared vacant, in violation of Sections 2 and 3 of Republic Act (R.A.) No. 7041;^[2] and that there was no first level representative to the Personnel Section Board who should have participated in the screening of candidates for vacancy in the first level.

Petitioners filed a motion for reconsideration, but this was denied by the Court of Appeals in its Resolution dated November 17, 2003.

Hence, the instant petition.

This case is a typical example of the practice of outgoing local chief executives to issue "midnight" appointments, especially after their successors have been proclaimed. It does not only cause animosities between the outgoing and the incoming officials, but also affects efficiency in local governance. Those appointed tend to devote their time and energy in defending their appointments instead of attending to their functions. However, not all "midnight" appointments are invalid.^[3] Each appointment must be judged on the basis of the nature, character, and merits of the individual appointment and the circumstances surrounding the same.^[4] It is only when the appointments were made en masse by the outgoing administration and shown to have been made through hurried maneuvers and under circumstances departing from good faith, morality, and propriety that this Court has struck down "midnight" appointments.^[5]

It is State policy that "opportunities for government employment shall be open to all qualified citizens" and "employees shall be selected on the basis of fitness to perform the duties and assume the responsibilities of the positions."^[6] It was precisely in order to ensure transparency and equal opportunity in the recruitment and hiring of government personnel, that Republic Act No. 7041 was enacted. Section 2 provides:

SEC. 2. Duty of Personnel Officers. - It shall be the duty of all Chief Personnel or Administrative Officers of all branches, subdivisions, instrumentalities and agencies of the Government, including government-owned or controlled corporations with original charters, and local government units, to post in three (3) conspicuous places of their offices for a period ten (10) days a complete list of all existing vacant positions in their respective offices which are authorized to be filled, and to transmit a copy of such list and the corresponding qualification standards to the Civil Service Commission not later than the tenth day of every month. Vacant positions shall not be filled until after publication: Provided, however, that vacant and unfilled positions that are:

- a) primarily confidential;
- b) policy-determining;
- c) highly technical;
- d) co-terminous with that of the appointing authority; or
- e) limited to the duration of a particular project,

shall be excluded from the list required by law.

SEC. 3. Publication of Vacancies. - The Chairman and members of the Civil Service Commission shall publish once every quarter a complete list of all the existing vacant positions in the Government throughout the country, including the qualification standards required for each position and, thereafter, certify under oath to the completion of publication. Copies of such publication shall be sold at cost to the public and distributed free of charge to the various personnel office of the government where they shall be available for inspection by the public: Provided, That said publication shall be posted by the Chief Personnel or Administrative Officer of all local government units in at least three (3) public and conspicuous places in their respective municipalities and provinces: Provided, further, That any vacant position published therein shall be open to any qualified person who does not necessarily belong to the same office with the vacancy or who occupies a position next-in-rank to the vacancy: Provided, finally, That the Civil Service Commission shall not act on any appointment to fill up a vacant position unless the same has been reported to and published by the Commission.

The foregoing provisions are clear and need no interpretation. The CSC is required to publish the lists of vacant positions and such publication shall be posted by the chief personnel or administrative officer of all local government units in the designated places. The vacant positions may only be filled by the appointing authority after they have been reported to the CSC as vacant and only after publication.

Here, the publication of vacancies was made even before the positions involved actually became vacant. Clearly, respondent's action violated Section 2 of R.A. No. 7041 cited earlier.

Moreover, the CSC found that there was no first-level representative appointed to the Personnel Selection Board, which deliberated on the appointments to first-level positions.

CSC Memorandum Circular No. 18, series of 1988, as amended, provides that the Personnel Selection Board shall be composed of the following:

- Official of department/agency directly responsible for personnel management;
- Representative of management;
- Representative of organizational unit which may be an office, department, or division where the vacancy is;
- Representative of rank-and-file employees, one (1) for the first-level and one (1) for the second-level, who shall both be chosen by duly registered/accredited employees' association in the department or agency. The former shall sit during the screening of candidates for vacancy in the first-level, while the latter shall participate in the screening of candidates for vacancy in the second level. In case where there is no employees'

association in the department or agency, the representative shall be chosen at large by the employees through a general election to be called for the purpose.

Petitioners admitted that after the retirement on April 22, 2000 of Beltran Faconete, the first-level representative to the Personnel Selection Board, no other first-level representative to replace him was chosen by the Dapitan City Government Employees Association. Yet, the city government Personnel Selection Board proceeded to deliberate and recommend the appointments of applicants to the 43 first-level positions. Petitioners contend, however, that although there was no such representative, the action of the Board is still valid.

Petitioners' contention lacks merit.

Section 20, Rule VI of the Omnibus Rules Implementing Book V-A of the Administrative Code of 1987 (also known as the Civil Service Law), provides:

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

a)

non-compliance with the procedures/criteria provided in the agency's Merit Promotion Plan;

b)

failure to pass through the agency's Selection/Promotion Board;

c)

violation of the existing collective bargaining agreement between management and employees relative to promotion; or

d)

violation of other existing civil service laws, rules and regulations.

Verily, in deliberating and recommending to former Mayor Ruiz the appointments of herein petitioners to the vacant positions sans the required representation, the Board violated the above CSC Rules. Hence, the appointments he issued are not valid. They may be recalled. In *Mathay, Jr. v. Civil Service Commission*,^[7] this Court upheld the authority of the CSC to take appropriate action on all appointments, including its authority to recall appointments made in disregard of the applicable provisions of Civil Service Law and regulations.

In sum, for being in violation of Section 2, R.A. No. 7041, CSC Memorandum Circular No. 18, as amended, and Section 20, Rule VI of the Omnibus Rules Implementing Book V-A of the Administrative Code of 1987, the appointments of the above-named petitioners are declared void.

WHEREFORE, the Court DENIES the petition and AFFIRMS the assailed Decision of the Court of Appeals in CA-G.R. SP No. 755151.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna,

Chico-Nazario, Tinga, Garcia, and Velasco, Jr., JJ., concur.
Corona, Nachura, JJ., on leave.

[1] Rollo, pp. 37-42. Per Associate Justice Roberto A. Barrios with Associate Justice Juan O. Enriquez, Jr. and Associate Justice Hakim S. Abdulwahid, concurring.

[2] Entitled "Act Requiring Regular Publication of Existing Vacant Positions In Government Offices, Appropriating Funds Therefor, And For Other Purposes," which took effect on June 5, 1991.

[3] Quisumbing v. Tajanglangit, G.R. No. 19981, February 29, 1964, 10 SCRA 446.

[4] Davide v. Roces, G.R. No. 21754, October 13, 1975, 67 SCRA 279.

[5] Aytona v. Castillo, G.R. No. 19315, January 19, 1962, 4 SCRA 1; Rodriguez, Jr. v. Quirino, G.R. No. 19800, October 28, 1963, 9 SCRA 284.

[6] Sec. 2, Chapter 5, Subtitle A. Title I, Book V, Administrative Code of 1987.

[7] G.R. No. 130214, August 9, 1999, 312 SCRA 91.

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