

JOSE M. CARINGAL, PETITIONER, VS. PHILIPPINE CHARITY SWEEPSTAKES OFFICE (PCSO), RESPONDENT.

G.R. NO. 161942. October 13, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

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.[1] It implies that the appointee is a civil service eligible.[2] 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.[3]

For our resolution is the instant petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, filed by Atty. Jose M. Caringal, petitioner, assailing the January 27, 2004 Decision[4] of the Court of Appeals in CA-G.R. SP No. 66695, entitled "JOSE M. CARINGAL vs. PHILIPPINE CHARITY SWEEPSTAKES OFFICE, ET AL."

On December 9, 1998, petitioner was appointed Assistant Department Manager II in the Philippine Charity Sweepstakes Office (PCSO), respondent. On December 18, 1998, then PCSO Chairman, Justice Cecilia Munoz-Palma, instructed him to assume the duties and responsibilities of Assistant Manager in the Legal Department.

Subsequently, Chairman Ricardo Golpeo replaced Justice Munoz-Palma. On May 16, 2000, he issued Special Order No. 2000-139 re-assigning petitioner to the Assets and Investment Department.

On May 18, 2000, petitioner sent a Memorandum to Chairman Golpeo and Ms. Maripaz Magsalin, Assistant General Manager for Administration, protesting his re-assignment, the same being a constructive dismissal.

On May 19, 2000, Director Arnel Del Monte of the Civil Service Commission (CSC) wrote Manager Francisco Swin of the PCSO Administrative Department, stating that his office inadvertently omitted to stamp on petitioner's appointment the collatilla that "the appointee does not have security of tenure until he obtains a CES eligibility."

However, Director Del Monte could not effect the necessary correction since petitioner has the original copy of his appointment.

On June 16, 2000, petitioner filed with the CSC an administrative complaint for constructive dismissal and culpable violation of the Constitution on civil service appointments against Chairman Golpeo and Assistant General Manager Magsalin.

On June 22, 2000, the PCSO Board of Directors issued Resolution No. 793 terminating the employment of petitioner on the ground that he does not have security of tenure as he does not possess a Career Executive Service

(CES) eligibility.

On June 28, 2000, Chairman Golpeo issued a Memorandum to petitioner informing him that his temporary appointment as Assistant Department Manager II of the Legal Department is terminated effective June 30, 2000, in accordance with Sections 4 and 13 of Rule 5 on Appointments under the Omnibus Rules Implementing Book 5 of Executive Order No. 292.[5]

Meantime, on February 15, 2001, the CSC issued Resolution No. 01-0444 dismissing petitioner's administrative complaint against Chairman Golpeo and Assistant General Manager Magsalin for lack of merit. The CSC held:

"The sole issue to be resolved in the case at bar is whether or not the separation of Jose Caringal from the service as Assistant Department Manager II, Legal Department, PCSO, was unlawful.

After a careful evaluation of the records, the Commission rules in the negative.

It must be stressed that Jose Caringal's position is a third level position. As such, the qualifications for the position are as follows:

POSITION : Assistant Department Manager II

LEVEL : 3

EDUCATION : Bachelor's Degree

EXPERIENCE : 3 years of supervisory experience

TRAINING : None

ELIGIBILITY : Career Service Executive Eligibility

(CSEE)/Career Executive Service (CES)

Records show that Caringal does not possess the required eligibility for the position. Thus, he does not have security of tenure and his employment may be terminated at any given time by the appointing authority and be replaced by a CES eligible.

The appointment of Atty. Lauro Patiag, a CES eligible, vice Atty. Jose Caringal, the herein appellant, was more in accord with the existing law and jurisprudence.

In particular, the pertinent provision that is applicable to the present case is Rule V specifically Section 4 thereof of the Omnibus Rules Implementing Book V of Executive Order No. 292 which provides, that:

"Section 4. Except as otherwise provided herein, a person who meets all the requirements of the position including the appropriate civil service eligibility shall be appointed to a position in the first and second levels. However, when the immediate filing of a vacancy becomes necessary, taking into account the public interest, and a person with an appropriate civil service eligibility but who meets the other requirements of the position may be appointed. His appointments shall be temporary for a period of not more than 12 months and he may be replaced at any time with one who has an appropriate civil service eligibility."

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It must be emphasized that if an appointment to a third level position is issued to one who does not meet the eligibility requirement, the appointment shall be approved but the appointee is not entitled to the mantle of security of tenure. Hence, albeit there were variation in the wordings of the attestation of the Commission, the absence of the appropriate eligibility makes the appointment temporary in nature.

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In brief, the termination of appointment of Caringal was precipitated by the appointment of Atty. Lauro Patiag, a CES eligible, to the position temporarily held by Caringal. Such termination was valid and lawful."[6]

On July 16, 2001, the CSC denied petitioner's motion for reconsideration.[7]

Petitioner then filed with the Court of Appeals a petition for certiorari[8] under Rule 65 of the 1997 Rules of Civil Procedure, as amended, docketed as CA-G.R. SP. No. 66695.

On January 27, 2004, the Appellate Court issued the assailed Decision dismissing the petition and affirming the Resolutions of the CSC, thus:

"Undisputably, the original appointment of Atty. Caringal to the position of Assistant Department manager II was permanent in status. On this basis, he asserts security of tenure and argues that he can only be replaced for just cause.

In this regard, the established law provides that security of tenure can only be enjoyed when a person has complied with all the requirements of the position to which he is being appointed and civil service eligibility necessary for a permanent appointment. Section 2 (a) of the Omnibus Rules On Appointments and Other Personnel Actions states:

"a. Permanent " Issued to a person who meets all the minimum qualification requirements of the position to which he is being appointed, including the appropriate eligibility required, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof."

In applying the provision of law cited above, it must be stressed that the position of Assistant Department Manager II requires Career Executive Service eligibility, which is conferred after passing the CES examination. Afterwards, and provided the examinee complies with the other requirements prescribed by the Board, the holder of the CES position may qualify for appointment to a CES rank, made by the President upon recommendation of the CES Board. This process completes membership in the CES and most importantly, confers on him security of tenure in the CES.

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Nevertheless, the failure to notify Atty. Caringal does not entitle him to reinstatement to his position with back salaries. On July 3, 2000, a few days after the termination of his employment, the PCSO appointed Atty. Lauro A. Patiag to the position he vacated. The status of Mr. Patiag's appointment was permanent since he possessed all the requirements of the position, including the appropriate CES eligibility. With Atty. Caringal's appointment being merely temporary, he could be replaced at any time by a more qualified appointee, who, in this case, was Atty. Patiag. In this regard, Section 2(b) of the Omnibus Rules on Appointments And Other Personnel Actions (Memorandum Circular No. 40, S. 1998) provides:

"Temporary " issued to a person who meets the education, experience and training requirements for the position to which he is being appointed except for the appropriate eligibility but only in the absence of a qualified eligible actually available, as certified to by the Civil Service Regional Director or Field Officer. The appointment shall not exceed twelve months, reckoned from the date it was issued but the appointee may be replaced sooner if a qualified eligible who is willing to accept the appointment becomes actually available."

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The fact that the correction in the appointment of Atty. Caringal was made a year and four months after its issuance cannot in any manner mean that a replacement beyond this period is barred by laches. Although lacking CES eligibility, he may continue to serve beyond a one-year period provided no one has qualified. This is obvious from the directive of the Office of the President, which holds:

"Pursuant to existing laws and jurisprudence, all non-Carrer Executive Service Officials (non CESO) occupying Career Executive Service (CES) Positions, shall continue on hold-over capacity. To perform their duties and discharge their responsibilities until their successors have been appointed and have qualified." (Memorandum Circular No. 35 dated June 30, 1999)

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WHEREFORE, the petition is DENIED (sic). Resolution No. 010444 dated Febraury 15, 2001 and Resolution No. 011268 dated July 26, 2001 of the Civil Service Commission are AFFIRMED. No costs.

SO ORDERED."

Hence, the present petition. Petitioner contends that: (1) he was denied his day in court; (2) the CSC did not follow its own rules; and (3) the Court of Appeals erred in not finding that there was discrimination on the part of the PCSO against him.

Respondent PCSO, on the other hand, maintains inter alia that petitioner was separated from the service because he does not possess the CES eligibility required by law; that his successor, Atty. Lauro Patiag, is qualified for the position because he is a CES eligible; and the CSC followed its own rules.

The issues boil down to whether petitioner's separation from the service is in accordance with the Civil Service law and rules.

The petition must fail.

Section 27 (1), of the Civil Service Law[9] provides:

(1) Permanent status. - A permanent appointment shall be issued to a person who meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof.

In the career executive service, the acquisition of security of tenure which presupposes a permanent appointment is governed by the Rules and Regulations promulgated by the CES Board,[10] thus:

Career Executive Service Eligibility

Passing the CES examination entitles the examinee to a conferment of a CES eligibility and the inclusion of his name in the roster of CES eligibles. Conferment of CES eligibility is done by the Board through a formal Board Resolution after an evaluation is done of the examinee's performance in the four stages of the CES eligibility examinations.

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Appointment to CES Rank

Upon conferment of a CES eligibility and compliance with the other requirements prescribed by the Board, an incumbent of a CES position may qualify for appointment to a CES rank. Appointment to a CES rank is made by the President upon the recommendation of the Board. This process completes the official's membership in the CES and most importantly, confers on him security of tenure in the CES.

As clearly set forth in the foregoing provisions, what entitles an examinee to a conferment of a CES eligibility is his passing the CES examination. Upon conferment of a CES eligibility, an incumbent of a CES position may qualify for appointment to a CES rank. After such appointment, the appointee is entitled to a security of tenure.

There is no question that petitioner does not possess the required CES eligibility. Hence, he has no security of

tenure as his appointment is merely temporary. To be sure, his appointment did not attain permanency. Such being the case, it can be withdrawn from him anytime without violating the constitutionally guaranteed right to security of tenure.[11]

In *Achacoso v. Macaraig*,[12] we held:

"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 being appointed, including the appropriate eligibility prescribed." *Achacoso* did not. At best, therefore, his appointment could be regarded only as temporary. And being so, it could be withdrawn at will by the appointing authority and "at a moment"s notice," conformably to established jurisprudence.

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The mere fact that a position belongs to the Career Service does not automatically confer security of tenure on its occupant even if he does not possess the required qualifications. Such right will have to depend on the nature of his appointment, which in turn depends on his eligibility or lack of it. A person who does not have the requisite qualifications for the position cannot be appointed to it in the first place or, as an exception to the rule, may be appointed to it merely in an acting capacity in the absence of appropriate eligibles. The appointment extended to him cannot be regarded as permanent even if it may be so designated."

Considering that petitioner is not a CES eligible, he has no security of tenure. Consequently, the PCSO could terminate his employment at any time and could be replaced by a CES eligible. In approving or disapproving an appointment, the CSC merely examines the conformity of the appointment with the law and the appointee's possession of the required qualification and none of the disqualification.[13]

WHEREFORE, the petition is DENIED. The assailed Decision of the Court of Appeals is AFFIRMED. Costs against petitioner.

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] *Francisco Abella, Jr. v. Civil Service Commission*, G. R. No. 152574, November 17, 2004, citing § 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*, March 31, 1991, 195 SCRA 235, 239. In contrast, a temporary appointment is one made to fill a vacancy in the absence of appropriate eligibles.

[2] *Id.*, citing *Ferrer v. Hechanova*, 125 Phil. 524 (1967).

[3] *Id.*, citing *Umoso v. Civil Service Commission*, July 29, 1994, 234 SCRA 617, 623; *Espanol v. Civil Service Commission*, March 3, 1992, 206 SCRA 715, 721.

[4] Penned by Associate Justice Mariano C. Del Castillo and concurred in by Associate Justices Rodrigo V. Cosico and Rosalinda Asuncion - Vicente.

[5] The Administrative Code of 1987.

[6] Rollo at 69 - 71.

[7] *Id.* at 73 - 77.

[8] What petitioner should have filed was a petition for review under Rule 43 of the 1997 Rules of Civil

Procedure, as amended.

[9] Subtitle A, Title I, Book V of E.O. No. 292, Administrative Code of 1987.

[10] CES Handbook, at. 5 - 6.

[11] Francisco Abella, Jr. v. Civil Service Commission, G.R. No. 152574, November 17, 2004, citing General v. Roco, 350 SCRA 528, 533 (2001); Cuevas v. Bacal, December 6, 2000, 347 SCRA 338, 351.

[12] 195 SCRA 235, 239 - 240 (1991), citing Cuadra v. Cordova, 103 Phil. 391.

[13] Ibid.

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