

LEONORA B. IGNACIO, PETITIONER, VS. CIVIL SERVICE COMMISSION, UNDERSECRETARY RAMON C. BACANI, ARD-OIC DIRECTOR IV PARALUMAN G. GIRON, RESPONDENTS.

G.R. No. 163573. July 27, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Petitioner Dr. Leonora B. Ignacio was the Division Superintendent of Public Schools in Cavite City. She went on leave from May 6 to May 17, 2002. On May 2, 2002, the Secretary of the Department of Education, Culture and Sports (DECS), through former Undersecretary Ramon C. Bacani, issued an Order[1] reassigning her to the Division of Schools in Puerto Princesa City effective immediately. Regional Director Paraluman R. Giron forwarded the reassignment letter to Dr. Ignacio through a Letter[2] dated May 6, 2002. However, on May 10, 2002, Undersecretary Bacani issued a Memorandum[3] to Regional Director Giron directing her to hold Dr. Ignacio's reassignment in abeyance until further orders from his office. Dr. Giron then informed Dr. Ignacio of Undersecretary Bacani's directive via a Letter[4] dated May 13, 2002.

However, the next day, May 14, 2002, Undersecretary Bacani again wrote to Dr. Giron, reiterating Dr. Ignacio's reassignment as Superintendent of the Division of Public Schools of Puerto Princesa City with Dr. Alma Bella O. Bautista as the designated Schools Division Superintendent of Cavite City.[5] In a Letter[6] dated May 21, 2002, Dr. Giron informed Dr. Ignacio of Undersecretary Bacani's directive and enjoined her to comply therewith. Instead of complying with the directive, however, Dr. Ignacio filed a petition for its nullification with the Regional Office of the Civil Service Commission (CSC). Considering that the petitioner was a presidential appointee, the petition was transmitted to the CSC for resolution.

The petitioner alleged that her reassignment to Puerto Princesa City was arbitrary, oppressive and contrary to law. Being a presidential appointee with Career Executive Service (CES) Rank V eligibility, only the President, through the DECS Secretary, could reappoint her, and such authority could not be delegated to an Undersecretary. She further alleged that her reassignment was a demotion, and as such prejudicial to her for the following reasons: (a) Cavite is a Class A province, while Puerto Princesa City is a Class D city; (b) Puerto Princesa City is the farthest schools division in the country, while Cavite is her home province; and (c) as Cavite Schools Division Superintendent, she had 8,490 teachers, excluding non-teaching personnel, under her supervision, whereas, in Puerto Princesa City, she had only 750 teachers under her.

According to the petitioner, her reassignment violated the following rules and laws: (a) DECS Order No. 7, Series of 1994, since the National Search Committee was not consulted on her reassignment; (b) Republic Act No. 4670,[7] considering that she did not consent to her reassignment; and (c) the Rules of the Commission on Elections and of the CSC banning reassignment of personnel, in connection with the July 12, 2002 Barangay Elections. The petitioner further alleged that her reassignment was politically motivated, as shown by the letter of Governor Ireneo Maliksi to the officers and employees of Cavite City. She pointed out that her replacement was

facing administrative charges with the DECS and the Ombudsman; hence, could not be issued the necessary clearance for reassignment to Cavite.

On November 27, 2003, the CSC issued Resolution No. 031179[8] dismissing Dr. Ignacio's petition. It held that Undersecretary Bacani signed the reassignment order for and in behalf of the DECS Secretary and is, thus, presumed to have been authorized by the latter to issue such order. The Commission further stated that when Rep. Act No. 4670 took effect, the positions of Schools Division Superintendent and Assistant Schools Division Superintendent were not yet classified as CES positions; thus, the provisions of Presidential Decree No. 1, specifically on assignments, reassignments and transfers, should govern. The Commission cited Section 6(a) of CSC Memorandum Circular No. 40, Series of 1998, and ruled that the position of Schools Division Superintendent has CES classification; hence, such Career Executive Service Officer (CESO) may be reassigned or transferred from one station to another, as long as the reassignment or transfer is made in the interest of public service and involves no reduction in rank, salary or status.

The CSC also held that the petitioner's reassignment to Puerto Princesa City was not a demotion because she retained the same position and rank, as well as the same salary rate and allowances. Besides -

The said reassignment should serve as a challenge to Dr. Ignacio to impart her knowledge and skills to upgrade the so-called Class D Division of Puerto Princesa City to a Class A Division. The fact that Puerto Princesa is far from her residence does not also make the reassignment illegal nor does it constitute constructive dismissal. Her reassignment is regular and made in the interest of public service as determined by the Secretary taking into account the exigencies of the service.[9]

The CSC further held that contrary to the allegations of the petitioner, the National Search Committee and the DECS Regional Director were consulted prior to her reassignment; however, its findings and recommendation are merely recommendatory, and the DECS Secretary is not bound thereby. Moreover, the reassignment was made on May 14, 2002, prior to the effectivity of the period prohibiting the reassignment of personnel during the 2002 Barangay Election (from May 31, 2002 to July 30, 2002).

As to the allegation that the reassignment was politically motivated (referring to Governor Maliksi's letter to the provincial government personnel), the CSC ruled as follows:

Such statement by Governor Maliksi asking somebody to support the administration of the newly-assigned Schools Division Superintendent in the City of Cavite under the circumstances above described cannot be considered political interference. At most, Governor Maliksi's statement is merely an expression of approval to the DepEd's program of regularly reshuffling its managerial personnel especially those assigned in their respective station for a considerable period of time, such as Ignacio.[10]

The petitioner received a copy of the CSC Resolution on December 5, 2003, and had until December 20, 2003 within which to file a petition for review thereof in the Court of Appeals (CA). She failed to file her petition. Instead, on February 2, 2004, the petitioner filed before the appellate court a motion for extension of time of fifteen days to file a petition for certiorari, which the latter granted, conditioned on the timeliness of the petition.

On February 10, 2004, the petitioner filed a petition for certiorari under Rule 65 of the Rules of Court, assailing the CSC resolution and reiterating therein the same grounds and arguments she raised in her appeal to the CSC.

In a Resolution issued on March 15, 2004, the appellate court dismissed the petition, on its finding that the petitioner's remedy was to file a petition for review under Rule 43, and not a petition for certiorari under Rule 65 of the Rules of Court; in any event, the petition cannot be considered as a petition for review, having been filed beyond the 15-day period therefor.

The petitioner filed a motion for reconsideration of the CA Resolution, contending that the CSC committed a grave abuse of its discretion amounting to excess or lack of jurisdiction, since the proper remedy in the instant case was a petition for certiorari and not merely a petition for review. The CA denied her motion.

This prompted the petitioner to file the present petition for review on certiorari under Rule 45, raising the same issues and restating her complaint before the CSC, as well as in her petition with the appellate court.

In its comment on the petition, the CSC, through the OSG, asserts that the assailed Resolution was in accord with law, and that under Rule 43 of the Rules of Court, the said resolution had become final and executory. The OSG maintains that since the petitioner had been dropped from the rolls for having been absent without leave effective February 1, 2003 and that the President had appointed Veranda S. Atienza as the petitioner's replacement, the instant petition had been rendered moot and academic.

The petition is denied for lack of merit.

First. The assailed Resolution of the CA is correct. The remedy of an aggrieved party from a resolution issued by the CSC is to file a petition for review thereof under Rule 43 of the Rules of Court within fifteen days from notice of the resolution.[11] Such failure to appeal in accordance with the Rules of Court rendered the assailed CSC resolution final and executory.

Second. Section 12, Rule 43 of the Rules of Court, provides that an appeal to the CA does not stay the assailed resolution.[12]

Third. The petition has become moot and academic, since the petitioner was dropped from the rolls, and her replacement already appointed.

Fourth. In any event, even an examination of the merits of the petition constrains the Court to conclude that it is destined to fail.

The petitioner was a member of the CES with a rank of CESO V; as such, her security of tenure pertains only to her rank and not to her office or her position. The security of tenure of employees in the career executive service (except first and second-level employees in the civil service), pertains only to rank and not to the office or to the position to which they may be appointed. Thus, a CESO may be transferred or reassigned from one position to another without losing his rank which follows him wherever he is transferred or reassigned. In fact, a CESO suffers no diminution of salary even if assigned to a CES position with lower salary grade, as the compensation is according to CES rank and not on the basis of the position or office occupied.[13]

In the leading case of *Cuevas v. Bacal*,[14] the Court ruled that a CESO may be reassigned or transferred from one position to another, in the interest of the service; such an assignment, however, shall not result in reduction in rank or compensation. In that case, the controversy centered on the title of Chief Public Attorney in the Public Attorney's Office, which requires a CES Rank Level 1. The claimant, respondent Atty. Josefina Bacal, who possessed a CESO III rank, was appointed as such in February 1998 by then President Fidel V. Ramos. In July 1998, she was transferred and appointed Regional Director. President Joseph E. Estrada designated in her stead Atty. Carina J.

Demaisip as Chief Public Defender. Since Demaisip was not CES eligible, Bacal filed a quo warranto suit before the CA, questioning the appointment. The CA rendered judgment in Bacal's favor which, however, this Court reversed.

While the instant case is not on all fours with *Cuevas*, the rationale behind the said decision is applicable, thus:

. . . Within the Career Executive Service, personnel can be shifted from one office or position to another

without violation of their right to security of tenure because their status and salaries are based on their ranks and not on their jobs. To understand this, it is necessary to consider the reason for the creation of the Career Executive Service.

R.A. No. 5435, as amended by R.A. Nos. 6076, 6172, and 6175, created a commission charged with the specific function of reorganizing the government "to promote simplicity, economy, and efficiency" in its operations. The result was the preparation of the Integrated Reorganization Plan which was adopted and declared part of the law of the land by P.D. No. 1 on September 24, 1972. A major feature of the Integrated Reorganization Plan was the creation of the Career Executive Service whose justification was explained by the Commission on Reorganization, thus:

The present Civil Service system is not geared to meet the executive manpower needs of the government. The filling of higher administrative positions is often based on considerations other than merit and demonstrated competence. The area of promotion is currently confined to the person or persons "next-in-rank" in the agency. Moreover, personnel classification and compensation are uniformly based on concepts and procedures which are suited to positions in the lower levels but not to managerial posts in the higher levels. To fill this crucial gap, it is recommended that a Career Executive Service be established. This group of senior administrators shall be carefully selected on the basis of high qualifications and competence. Skilled in both techniques and processes of management, these career executives will act as catalysts for administrative efficiency and as agents of administrative innovation.

The status and salary of the career executives will be based on their rank, and not on the job that they occupy at any given time . . . In this sense, the rank status of the Career Executive Service is similar to that of the commissioned officers in the Armed Forces or members of the Foreign Service. Unlike these latter organizations, however, entrance to the Career Executive Service will not be generally at an early age in a relatively junior level but at a senior management level.

. . .

The rank classification in the Service will allow for mobility or flexibility of assignments such that the government could utilize the services or special talents of these career executives wherever they are most needed or will likely create the greatest impact. This feature is especially relevant in a developing country which cannot afford to have its scarce executive manpower pegged to particular positions.

Mobility and flexibility in the assignment of personnel, the better to cope with the exigencies of public service, is thus the distinguishing feature of the Career Executive Service. To attain this objective, the Integrated Reorganization Plan provides:

e. Assignments, Reassignments and Transferees ...

Any provision of law to the contrary notwithstanding, members of the Career Executive Service may be reassigned or transferred from one position to another and from one department, bureau or office to another; provided that such reassignment or transfer is made in the interest of public service and involves no reduction in rank or salary; provided, further, that no member shall be reassigned or transferred oftener than every two years; and provided, furthermore, that if the officer concerned believes that his reassignment or transfer is not justified, he may appeal his case to the President.

The implementing rules and regulations of the CES Board provide:

Salary of Career Executive Service Officers. - A CESO is compensated according to his CES rank and not on the basis of the CES position he occupies. However, if a CESO is assigned to a CES position with a higher salary grade than that of his CES rank, he is allowed to receive the salary of the CES position.

Should he be assigned or made to occupy a CES position with a lower salary grade, he shall continue to be

paid the salary attached to his CES rank.

Petitioners are, therefore, right in arguing that respondent, "as a CESO, can be reassigned from one CES position to another and from one department, bureau or office to another. Further, respondent, as a CESO, can even be assigned or made to occupy a CES position with a lower salary grade. In the instant case, respondent, who holds a CES Rank III, was correctly and properly appointed by the appointing authority to the position of Regional Director, a position which has a corresponding CES Rank Level III.[15]

This doctrine was re-echoed in *General v. Roco*,[16] where this Court ruled as follows:

Moreover, under the mobility and flexibility principles of the Integrated Reorganization Plan, CES personnel may be reassigned or transferred from one position to another, thus:

6. Assignments, Reassignments and Transferees ...

Any provision of law to the contrary notwithstanding, members of the Career Executive Service may be reassigned or transferred from one position to another and from one department, bureau or office to another; provided that such reassignment or transfer is made in the interest of public service and involves no reduction in rank or salary; provided, further, that no member shall be reassigned or transferred oftener than every two years; and provided, furthermore, that if the officer concerned believes that his reassignment or transfer is not justified he may appeal his case to the President.

WHEREFORE, the instant petition is DENIED for lack of merit. The Resolutions of the Court of Appeals in CA-G.R. SP No. 81957, dated March 15, 2004 and May 14, 2004, are AFFIRMED.

SO ORDERED.

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

[1] CA Rollo, p. 39.

[2] Id. at 40.

[3] Id. at 41.

[4] Id. at 42.

[5] Id. at 43.

[6] Id. at 38.

[7] Otherwise known as the "Magna Carta for Public School Teachers," which provides that "no teacher shall be transferred without his consent from one station to another."

[8] Rollo, pp. 42-52.

[9] CA Rollo, p. 35.

[10] CA Rollo, p. 33.

[11] SECTION 1. Scope. - This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration

Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

SECTION 4. Period of appeal. - The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency a quo. Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

[12] SECTION 12. Effect of Appeal. - The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just.

[13] General v. Roco, G.R. Nos. 143366 and 143524, 29 January 2001, 350 SCRA 528.

[14] G.R. No. 139382, December 6, 2000, 347 SCRA 338.

[15] Emphasis supplied.

[16] Supra.

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