VICTOR R. REYES, SUBSTITUTED BY HIS HEIRS, CLARIBEL G. REYES, CLARISSA G. REYES, AND CZARINA G. REYES, PETITIONERS, VS. COURT OF APPEALS, CIVIL SERVICE COMMISSION, HON. JOSE L. ...

G.R. No. 167002. December 06, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review under Rule 45 of the Rules of Court filed by petitioner Victor R. Reyes (Reyes) assailing the August 28, 2003 Decision[1] of the Court of Appeals (CA), in CA-G.R. SP No. 59616, entitled "Hernando B. Garcia, petitioner, v. Senen D. Tomada, Civil Service Commission Mayor Jose L. Atienza, Jr. in his capacity as the City Mayor of Manila, respondents" and "Victor R. Reyes, Intervenor," the dispositive portion of which reads:

> WHEREFORE, the petition is GRANTED and the assailed resolution of the Civil Service Commission is ANNULLED and SET ASIDE. The appointment of petitioner Hernando B. Garcia as Assistant City Assessor of the City of Manila is UPHELD over the claims of respondent Senen D. Tomada and intervenor Victor R. Reyes to that position.
>
> SO ORDERED.[2]

Reyes filed a motion for reconsideration but it was denied by the CA in its Resolution dated February 2, 2005.

Hence, this petition.

THE FACTUAL ANTECEDENTS

The factual and procedural antecedents have been succinctly recited in the subject decision of the CA as follows:

> On March 26, 1998, or forty-six days before the May 11, 1998 elections, then Mayor Alfredo Lim (or "Lim") of the City of Manila appointed Senen Tomada (or "Tomada") as City Government Assistant Department Head III (Assistant City Assessor, or "subject position"). On the same date, Tomada's appointment, which was indicated as `Transfer with Promotion," was submitted to the Civil Service Commission Field Office (or "CSCFO") in Manila for consideration and approval.
>
> Prior to her appointment, Tomada was assigned at the Office of the City Treasurer of Manila as Local Treasury Operations Officer IV.
>
> In a letter dated March 26, 1998, Tomada sought clarification from the Commission on Elections (or "COMELEC") on whether her appointment to the subject position was prohibited under Sec. 261(g) of the Omnibus Election Code. In a reply-letter dated April 2, 1998, the COMELEC opined that her appointment was valid because promotional appointments are only prohibited under said law if issued within forty-five days prior to the May 11, 1998 elections, or between March 27, 1998 and May 11, 1998.
>
> On April 24, 1998, CSCFO head Arturo Panaligan (or "Panaligan") wrote to the Civil Service Commission (or

> "CSC") office requesting clarification on the validity of Tomada's appointment given the prohibition against certain personnel actions under Section 261(g) and (h), id., which reads:
>
> "Sec. 261. Prohibited acts.--The following shall be guilty of an election offense:
>
> x x x
>
> (g) Appointment of new employees, creation of new position, promotion, or giving salary increases.--During the period of forty-five days before a regular election and thirty days before a special election. x x x
>
> h) Transfers of officers and employees in the civil service.-- Any public official who makes or causes any transfer or detail whatever of any officer or employee in the civil service including public school teachers, within the election period except upon prior approval of the Commission."

The CSC-NCR, in turn, referred Panaligan's request to the CSC Central Office for appropriate action.

Pending action on Tomada's appointment, however, Mayor Jose L. Atienza, Jr. (or "Mayor Atienza") assumed Lim's position upon the latter's running for president in the May 11, 1998 elections. On July 1, 1998, Mayor Atienza, who ran for and was elected as mayor of the City of Manila in the same elections, appointed Hernando Garcia (or "Garcia") to the subject position.

On July 28, 1998, Panaligan cancelled Tomada's appointment without awaiting the CSC's reply to his April 24, 1998 letter, explaining that said appointment constituted a "transfer" which was allegedly a violation of Sec. 261(h), id. Nevertheless, Panaligan stated that his action was without prejudice to the CSC's resolution on the matter.

Tomada sought reconsideration of the cancellation of her appointment, per her letter dated July 29, 1998, pointing out that the CSC was yet to reply to Panaligan's request for clarification.

On September 27, 1999, the CSC issued Resolution No. 99, 2208 approving Tomada's promotional appointment. The resolution pertinently reads:

> "Considering, therefore, that the promotional appointment of Tomada was issued prior to the prohibited period as provided for in the Omnibus Election Code; and considering, further, that her movement from one office to another is merely incidental to her promotion, the Commission finds such personnel action not in violation of the Omnibus Election Code and CSC Office Memorandum No. 11, s. 1998."

On November 19, 1999, Mayor Atienza filed a petition for reconsideration which was, however, dismissed by the CSC on May 22, 2000.

On June 7, 2000, Panaligan wrote to Mayor Atienza requesting immediate implementation of CSC Resolution No. 99-2208 and recalling Garcia's appointment to the subject position.

On July 11, 2000, Garcia filed the instant petition for certiorari and quo warranto, with an application for temporary restraining order and/or preliminary injunction, ascribing grave abuse of discretion on the CSC for recalling his appointment.

Garcia maintains that he was not notified of Tomada's appeal to the CSC and that he assumed the subject position by virtue of a valid appointment issued by Mayor Atienza which was approved on August 31, 1998 by Panaligan of the CSCFO. He argues that he cannot be removed from the subject position in the guise of a recall since the ground for his removal is not sanctioned by law.

Garcia also faults the CSC for acting on Tomada's motion for reconsideration even as it was not made by the proper appointing authority prescribed in CSC Memorandum Circular No. 38, Series of 1993, and Tomada did not

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pay the requisite docket fee. He adds that Tomada's right to claim the subject position is barred by prescription for failure to file an action for quo warranto within one year from his (Garcia) appointment to the subject position (on July 1, 1998).

For her part, Tomada counters that Garcia's appointment is null and void because, at that time, the subject position was not yet vacant as the CSCFO disapproved her appointment only on July 27, 1998. In support of her argument, Tomada cites Sec. 10, Rule V of the Omnibus Rules Implementing Book V of Exec. Order No. 292 which provides that "an appointment shall remain effective until disapproved by the Commission."

Tomada further claims superior right to the subject position because: (i) her appointment was issued prior to that of Garcia; and (ii) the CSCFO's disapproval of her appointment is merely conditional as shown in the notation on her appointment letter which reads, "without prejudice to whatever resolution the Commission may issue on this (appointment)."

Anent the issue of prescription, Tomada explains that she could not immediately institute a quo warranto proceeding against Garcia pending the administrative proceedings before the CSC concerning the validity of her appointment. Tomada also points out that the CSC did not violate Garcia's right to due process because a hearing is not required in CSC proceedings which are not disciplinary in nature.

As for Mayor Atienza, he merely adopted the arguments raised by Garcia in his petition before this Court.

Meantime, on October 12, 2000, Victor Reyes (or "Reyes") filed a motion for intervention in his alleged capacity as the incumbent Assistant City Assessor of Manila, which was denied per resolution dated February 14, 2001 but later granted pursuant to the resolution dated August 7, 2002. In his answer-in-intervention, Reyes averred that former Manila Mayor Gemiliano Lopez appointed him to the subject position on August 3, 1989; that when Lim assumed office in 1992 as Manila mayor, he (Reyes) was among the officials pressured to resign from office so that Lim could appoint his own people; that those who failed to tender courtesy resignations were physically harassed or subjected to trumped-up criminal and administrative charges; that he (Reyes) himself was charged with falsification and violation of the Anti-Graft and Corrupt Practices Act; and that an administrative complaint was filed against him by a certain Amador Valdeviego.

Reyes also alleged that in light of the abovementioned circumstances, he wrote Lim on October 1, 1993 requesting for his transfer to the Quezon City Hall and approval of his application for sick leave for two months, which requests were granted by Lim, and manifesting willingness to retire if his transfer could not be effected by December 31, 1993.

Reyes further alleged that the criminal and administrative charges against him were dismissed but despite this development which could have allowed him to retire from the service, Lim failed to act on his application for retirement; that on March 10, 1999, Reyes wrote Mayor Atienza advising of his desire to re-assume the subject position; and that when Mayor Atienza failed to act on his request, Reyes filed with the CSC a complaint for Assumption of Office against Mayor Atienza, Garcia and the City of Manila.

On October 18, 2000, Garcia filed a reply to Tomada's comment alleging that her appointment has not become effective for failure to assume the subject position; that his appointment being "complete, lawful and effective," he has superior right and title to the subject position vis-à-vis Tomada; and that the recall of his appointment amounted to his removal from office without cause and without due process.

For its part, the Office of the Solicitor General (or "OSG") maintains that the CSC correctly upheld the promotional appointment of Tomada. The OSG points out that CSC Resolution No. 99-2208 does not involve the imposition of an administrative disciplinary measure and, therefore, "the appointee need not be previously heard

thereon;" and that the CSC merely recalled Garcia's appointment inasmuch as the earlier appointment of Tomada is valid.

On August 28, 2003, the CA rendered the assailed decision[3] granting the petition of Garcia and upholding his appointment over the claims of Tomada and Reyes to the position. In justifying its ruling, the CA wrote:

> At the outset, it should be observed that Tomada's appointment actually involved two kinds of personnel action, i.e., promotion and transfer. This is clear from the phrase "transfer with promotion" used in her appointment paper by way of describing the nature of her appointment.
>
> Tomada's promotion did not fall within the 45-day period prior to the May 11, 1998 elections (Sec. 261[g], Omnibus Election Code). However, her transfer from the Office of the City Treasurer to the Office of the City Assessor is a different matter.
>
> Sec. 261(h) of the Omnibus Election Code prohibits "any transfer or detail whatever of any officer or employee in the civil service including public school teachers, within the election period except upon prior approval of the Commission." Pursuant to this provision, the CSC, through Office Memorandum (OM) No. 11, Series of 1998, issued the following guideline:
>
> "The transfer or detail of officers and employees in the civil service, including public school teachers pursuant to Section 261(h) of the Omnibus Election Code for the period beginning January 11, 1998 (Sunday) to June 10, 1998 (Wednesday), or 120 days before election and 30 days after election, is hereby prohibited. The phrase transfer or detail shall be construed in general terms. Thus any movement of officer or employee in the civil service, including public school teachers, from one agency is prohibited and is considered an election offense." (Underscoring supplied)

From the foregoing, it is clear that Tomada's transfer from the Office of the City Treasurer to the Office of the City Assessor on March 26,1998, which was during the election period, contravened the express provisions of the Omnibus Election Code and its implementing rules and regulations. Consequently, there is no legal basis for the CSC's stance that "the movement of Tomada from one office to another in the City Government of Manila cannot be considered as `transfer' as contemplated in Sec. 261(h) of the Omnibus Election Code and CSC Office Memorandum No. 11, s. 1998."

To recall, CSC OM No. 11, Series of 1998, explicitly provides that the phrase "transfer or detail" shall be construed in general terms. Hence, a transfer incidental to a promotion, as in Tomada's case, is within the purview of the prohibition against transfers during the election period. This is as it should be in keeping with the well-entrenched rule that where the law does not distinguish, the courts should not distinguish (Guerrero vs. Commission on Elections, 336 SCRA 458). Ubi lex not distinguit nec nos distinguere debemus.

In a long line of cases, it has been held that when a statute is clear and explicit, there is no need for any extended court ratiocination thereon - there is no room for interpretation, vacillation or equivocation, only for application (Caguioa vs. Lavina, 345 SCRA 49). Only when the law is ambiguous or of doubtful meaning may the court interpret or construe its true intent (Rizal Commercial Banking Corporation vs. Intermediate Appellate Court, 320 SCRA 279).

Another reason why the instant petition should be granted is Tomada's lack of standing to appeal the disapproval of her appointment to the CSC. In Mathay, Jr. vs. Civil Service Commission (312 SCRA 91), the Supreme Court ruled that only the appointing officer may ask for reconsideration of actions taken by the CSC on appointments. Thus, the CSC should have refrained from acting on Tomada's request for reconsideration, the same not having been endorsed by Mayor Atienza, the incumbent mayor of Manila and the appointing authority at the time of disapproval of her appointment.

Consequently, CSC Resolution No. 99-2208 is contrary to law and jurisprudence.

On the other hand, Reyes' answer-in-intervention deserves scant consideration. The CSC found that Reyes had effectively vacated the position of Assistant City Assessor of Manila when his application for retirement effective January 1, 1994 was approved by Lim. Having voluntarily caused his separation from the service, he may not make a turnabout and lay claim to said office just because his retirement benefits were not released to him in due course. His failure to obtain said benefits does not affect the validity of his voluntary retirement. He may avail of remedies available under the law to compel the release of his retirement benefits, but not his reinstatement to the subject position.

The only way Reyes can re-assume the subject position is by re-appointment. Having lost his standing to claim the position he previously held, the prayer in his answer-in-intervention must necessarily be denied.

Dissatisfied, Reyes seeks relief via this petition for review praying that the Court

> 1. set aside the assailed Decision of the Court of Appeals, dated 28 August 2003, the Resolution dated 02 February 2005 and Civil Service Commission Resolution No. 99-2208 dated September 27, 1999;
>
> 2. declare the appointments of Senen Tomada and Hernando Garcia null and void and;
>
> 3. declare petitioner Victor [R.] Reyes as the duly constituted Assistant City Assessor for Operation of the City of Manila;
>
> 4. order the reinstatement of Victor [R.] Reyes to the said position of Assistant City Assessor for Operation of the City of Manila;
>
> 5. order the payment of backwages of Victor [R.] Reyes from the time he sought assumption of his office until he is restored to his position.

Other reliefs just and equitable under the premises are also prayed for.[4]

To sway the Court to his position, Reyes posits that the case be decided by resolving the following

I S S U E S

> I. WHETHER OR NOT THE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE, NOT THERETOFORE DETERMINED BY THE SUPREME COURT, OR HAS DECIDED IT IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT.
>
> II. WHETHER OR NOT THE COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, OR SO FAR COMMITTED SUCH DEPARTURE SO AS TO CALL FOR AN EXERCISE OF THE POWER OF SUPERVISION. [5]

Garcia and the CSC filed their respective comments on the petition. Later, the City of Manila and its City Mayor also filed their Comment.[6]

Tomada, despite notice through counsel, did not file any comment.

On September 20, 2006, Reyes passed away, leaving his heirs - Claribel G. Reyes, Clarissa G. Reyes and Czarina G. Reyes - as substitute petitioners. Reyes, through his heirs, filed his reply to the comments of the respondents. Thereafter, the Court directed the parties to file their respective memoranda. In compliance, petitioner Reyes, substituted by his heirs; and respondents Garcia, the CSC, the City of Manila and the City Mayor of Manila, filed their respective memoranda.

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THE COURT'S RULING

The CA committed no reversible error in granting the petition of Garcia and upholding the appointment of Garcia as Assistant City Assessor of the City of Manila over the claims of Tomada and Reyes to that position. For said reason, Reyes could not be reinstated to the position of Assistant City Assessor for Operation and, therefore, was not entitled to backwages.

Petitioner Victor R. Reyes
effectively vacated his post
as of January 1, 1994

Records bear out that petitioner Reyes was the Assistant City Assessor for Operation of the City of Manila when Mayor Lim assumed office in 1992. He claimed to be one of those pressured to tender a courtesy resignation so that Mayor Lim could appoint his own people. Initially, he did not oblige but later, in a letter dated October 1, 1993, he manifested his desire to be transferred to Quezon City Hall and, if it (transfer) would not be possible, to apply for retirement. In the meantime, he requested that his sick leave be approved. The said letter reads:

> HON. ALFREDO S. LIM
> City Mayor
> City of Manila
> Sir:
>
> I would like to request for a transfer in Quezon City Hall. In order to facilitate all the necessary documents and clearances, I would like to request for an allowance of three months to process. If ever I could not transfer until December 31, 1993, then eventually, I would be applying for a retirement effective January 1, 1994.
>
> Requesting, His Honor, that the sick leave I filed for two months (August & September) be approved on the basis of the medical certificate I had submitted.
>
> Hoping for your kind consideration. Thank you very much.
>
> Very truly yours,
>
> (Signed)
>
> VICTOR R. REYES
> Assistant City Assessor[7]

Mayor Lim approved his request by placing a notation on the latter itself.

Following his manifestation in his October 1, 1993 letter, he never reported for work from January 1, 1994, never resumed working and never sought reinstatement. Instead, as averred in his petition, when Mayor Lim resigned, he worked for his retirement benefits. He was informed, however, by City Hall officials that he had not retired because he had not filed his formal application for retirement.[8]

Failing to receive his retirement benefits, he filed a petition for mandamus with the Regional Trial Court of Manila to compel the City Government of Manila to approve his claim for said benefits.[9]

In his April 8, 1994 letter addressed to Atty. Carlos C. Antonio, City Assessor of Manila, Reyes stated, among others, that:

> I would like to request for Clearances as needed for my retirement. Be informed that last October 1993, upon my request to his Honor Mayor Alfredo S. Lim approved my retirement effective January 1, 1994, including my clearances, but to my surprise the legal department of Manila filed a case which was dismissed by the

> Ombudsman.[10]

On March 16, 1999, Reyes also wrote to then Presidential Assistant for Appointment and Legislative Affairs, Hon. Rolando C. Ramirez, requesting, among others, assistance for the supposed grave injustice that the City of Manila (under Mayor Lim and Mayor Atienza) had committed against him since 1994, depriving him of benefits due him and his family.[11]

In a letter dated April 12, 1999 addressed to then Executive Secretary Ronaldo Zamora, Reyes averred:

> "x x x eventually I applied for (optional) retirement effective Jan. 1, 1994 with the necessary clearance. My letter bears the Mayor's marginal notation `approved' on October 22, 1993."[12]

All the foregoing actions and inactions clearly manifest that Reyes voluntarily and effectively separated himself from the service effective January 1, 1994. As of said date, his position was deemed vacant. In the earlier case of Reyes v. Hon. Atienza,[13] it was written:

> Still, the vitality of Reyes's claim of incumbency, crucial to the cause of action in his complaint, is severely undercut by his prior statements, which are not disputed and even at times averred under oath, that indicate that starting 1994, he had considered himself as having been separated from service as Assistant City Assessor.To recapitulate, Reyes had informed the City Assessor of Manila as early as 8 April 1994 that Mayor Lim "approved my retirement effective January 1, 1994." Reyes also averred under oath in his petition for mandamus filed in 1995 that he "retired from the service as City Assessor of Manila." Reyes had even spent considerable energy since 1994 following up on his clearances for retirement. There is no showing that he has attempted to perform the functions of Assistant City Assessor since 1994. It is extremely disingenuous on the part of Reyes to suddenly claim that all this time, he actually still was the Assistant City Assessor, a position whose functions has since been assumed by three other persons, the appointments of the first two never having been challenged by him. [Emphases supplied]

As he had vacated his position, the appointing power could, and did, appoint his successors

Considering that his position was deemed vacant, the appointing power could, and did, appoint his successors. Thus, Mayor Lim made two (2) subsequent appointments to the position of Assistant City Assessor – Angel R. Purisima (Purisima) and Tomada. Purisima was appointed to the position on July 26, 1995, and his appointment was approved by the CSC on September 18, 1995. He resigned on October 31, 1996 and, in his stead, Mayor Lim appointed Tomada on March 26, 1998.

As Tomada's appointment or transfer appeared to have been made during a prohibitive period, it was questioned on the ground that it was violative of Section 261(g) of the Omnibus Election Code.

As there was an unresolved controversy on Tomada's appointment, on July 1, 1998, Mayor Atienza, who ran for and was elected as mayor of the City of Manila, appointed Garcia to the subject position.

On July 28, 1998, Civil Service Commission Field Office (CSCFO) head, Arturo Panaligan (Panaligan) cancelled Tomada's appointment stating, however, that his action was without prejudice to the CSC's resolution on the matter. On September 27, 1999, the CSC issued Resolution No. 99-2208 approving Tomada's promotional appointment. On November 19, 1999, Mayor Atienza filed a petition for reconsideration which was, however, dismissed by the CSC on May 22, 2000. On June 7, 2000, Panaligan wrote Mayor Atienza requesting the immediate implementation of CSC Resolution No. 99-2208 and recalling Garcia's appointment to the subject position.

On July 11, 2000, Garcia filed the petition for certiorari and quo warranto before the CA ascribing grave abuse of discretion on the CSC for recalling his appointment.

Notably, on October 19, 2000, the CSC-NCR issued an order dismissing the complaint of Reyes for assumption of office, which he subsequently appealed to the CSC. The CSC then issued Resolution No. 02-0310[14] dated February 28, 2002, wherein it stated that he was "separated from the service through the mode of retirement effective January 1, 1994, and the position which he formerly occupied, Assistant City Assessor of Manila, [was] deemed vacant on said date."[15]

Due to the unfavorable action of the CSC-NCR, he intervened in the certiorari proceedings instituted by Garcia against Tomada in the CA.

As earlier recited, the CA upheld the appointment of Garcia as Assistant City Assessor of the City of Manila over the claims of Tomada and Reyes to that position. In this petition, Reyes questioned such ruling but, interestingly, Tomada never filed her comment on his petition.

Hernando B. Garcia
acquired a legal right to
the subject position

At this juncture, the Court resolves the issue of whether or not the CA was correct in upholding the validity of the appointment of Garcia over the claims of Tomada and Reyes.

In this regard, the Court agrees with the CA that Tomada's transfer from the Office of the City Treasurer to the Office of the City Assessor was violative of Section 261(h) of the Omnibus Election Code. Said section prohibits "any transfer or detail whatever of any officer or employee in the civil service including public school teachers, within the election period except upon prior approval of the Commission." In this regard, the CSC, through Office Memorandum (OM) No. 11, Series of 1998, issued the following guideline:

> The transfer or detail of officers and employees in the civil service, including public school teachers pursuant to Section 261(h) of the Omnibus Election Code for the period beginning January 11, 1998 (Sunday) to June 10, 1998 (Wednesday), or 120 days before election and 30 days after election, is hereby prohibited. The phrase transfer or detail shall be construed in general terms. Thus any movement of officer or employee in the civil service, including public school teachers, from one agency is prohibited and is considered an election offense. [Emphasis supplied]

Another reason why the CA granted Garcia's petition was Tomada's lack of standing to appeal the disapproval of her appointment to the CSC. It cited the case of Mathay, Jr. v. Civil Service Commission[16] where it was ruled that only the appointing officer may ask for reconsideration of actions taken by the CSC on appointments. Thus, the CA stated that CSC should have refrained from acting on Tomada's request for reconsideration, the same not having been endorsed by Mayor Atienza, the incumbent mayor of Manila and the appointing authority at the time of the disapproval of her appointment.

Moreover, as Garcia qualified, assumed office and became at that moment a government employee or part of the civil service, he then began to enjoy the constitutional protection that "No officer or employee in the civil service shall be removed or suspended except for cause provided by law."[17] He acquired a legal right to the office which is protected not only by statute but also by the Constitution. Therefore, he could only be removed for cause, after notice and hearing, consistent with the requirements of due process.

Here, Garcia was not accorded due process. It was only by a letter to Garcia dated June 7, 2000[18] from the CSC-GSIS Field Office that the CSC officially communicated, through Manila City Personnel Officer Josefino Reoma, that his appointment as City Government Assistant Department Head III (Assistant City Assessor) was recalled and that Mayor Atienza was requested to implement CSC Resolution Nos. 992208 and 001214 approving

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the appointment of Tomada. He was never given an opportunity to be heard.

As Garcia's appointment was valid, there was no vacancy and Reyes could not ask for reinstatement or even reappointment. A fortiori, he (or his heirs) could not demand backwages.

Reyes never formally retired either

Retirement has been defined as a withdrawal from office, public station, business, occupation, or public duty. It involves bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age, agrees and/or consents to sever his employment with the former.[19] Retirement plans create a contractual obligation in which the promise to pay benefits is made in consideration of the continued faithful service of the employee for the requisite period. Before a right to retirement benefits vests in an employee, he must have met the stated conditions of eligibility with respect to the nature of employment, age, and length of service. This is a condition precedent to his acquisition of rights thereunder.[20]

In his October 1, 1993 letter to Mayor Lim, Reyes manifested his desire to be transferred to Quezon City Hall and, if it would not be possible, to apply for retirement.

> If ever I could not transfer until December 31, 1993, then eventually, I would be applying for a retirement effective January 1, 1994.

Despite pronouncements of the CSC and the CA to the contrary, there is no evidence that Reyes properly took the required legal steps to effect his intention of retiring.

Reyes might have intended to retire but it is clear that he did not follow the normal process of retirement. As stated in the letter of Mayor Lim, his intended retirement required further action on his part to complete. Elaborating, Mayor Lim wrote that he was required to submit a "formal application and in a prescribed form."[21] Thus, he could not be considered retired for all intents and purposes and reap the benefits that flow from it. The July 23, 2001 clarificatory letter of Mayor Lim reads:

> Dear Mr. Reyes,
>
> In respon[se] to your letter-query dated July 17, 2001 and based n your letter dated October 1, 1993 with my marginal note therein, and other related communications shown to me, I recall to have approved your signified intentions to take a vacation leave, transfer to Quezon City and/or to retire.
>
> The approval of your vacation leave took effect immediately. However, the same marginal note of approval to my understanding did not automatically result to transfer or retirement. The intended transfer and/or retirement were termed in future tense and requires further action on your part to complete. x x x.
>
> Both instance requires formal application and in a prescribed form. Transfer to Quezon City requires formal endorsement to the Mayor of Quezon City, to which I do not recall having made any. On the other hand, your application for retirement you claim to have filed did not reach my office. I do not recall having signed your formal retirement application.
>
> I hope that this clarification will help all concerned in resolving whatever petition you filed with the Civil Service Commission.
>
> (Signed)
> ALFREDO S. LIM
> Former City Mayor of Manila[22]

Thus, when he tried to work for his retirement benefits, he was advised by City Hall officials that he was not entitled to them because he had not filed his formal application for retirement.[23] Despite the same, he did not

file any application. Instead, he filed a petition for mandamus with the RTC to compel the City Government of Manila to grant his application for retirement.[24] As earlier stated, on March 16, 1999, he also wrote then Presidential Assistant for Appointment and Legislative Affairs, Hon. Rolando C. Ramirez, requesting assistance. [25]

Interestingly, in the earlier case, Reyes v. Hon. Atienza,[26] the Court refrained from concluding that the legal processes pertaining to his retirement were observed since there was uncertainty as to whether Reyes indeed retired. Indeed the record is bereft of any proof that Reyes had indeed retired. Hence, the Court holds that he was not retired but was considered separated from service effective January 1, 1994 and that the legal processes pertaining to his retirement were not complied with. Pertinently, in the earlier Reyes case,[27] it was written:

> x x x. Yet it is clear from the letter that the option of retirement was not actually exercised then, but merely mentioned as a possibility, requiring further action on the part of Reyes. What Reyes had sought approval in the said letter was his application for sick leave and it was only such sick leave, and not retirement, which was approved by then Mayor Lim in October of 1993.
>
> In essence, if indeed Reyes had applied for retirement or submitted his resignation following the normal processes, it would have been easy for respondents to present the countervailing documents which would have conclusively refuted Reyes's claims that he still was the incumbent Assistant City Assessor. The fact that no such documents were presented makes us refrain from concluding that the legal processes pertaining to resignation or retirement were observed in this case. [Emphases supplied]

In fine, Reyes had already vacated his post as of January 1, 1994, not by way of retirement for failure to show compliance with the existing retirement requirements and procedures, but by voluntary separation from the service. His intended retirement was not duly processed because he failed to comply with the formal requirements of retirement. Having voluntarily initiated his separation from the service, he could not be allowed to make a turnabout and press claim to the subject office just because the supposed benefits due him were not released to him in due time due to his own neglect.

As he had already passed away, the only remedy left for his heirs is to properly apply for separation or retirement and claim the benefits from the proper office, if warranted.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Corona, C.J., Carpio, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Sereno, Reyes, and Perlas-Bernabe, JJ., cocnur.
Velasco, Jr., J., on official leave.

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[1] Rollo, pp. 40-49. Penned by Associate Justice Edgardo P. Cruz with Associate Justice Conrado M. Vasquez, Jr. and Justice Noel G. Tijam, concurring.

[2] Id. at 46-48.

[3] Id. at 40-49.

[4] Id. at 36.

[5] Id. at 23-24.

[6] Id. at 536-553.

[7] Id. at 27, 245.

[8] Id. at 15.

[9] See Memorandum of respondents CSC and City of Manila and City Mayor.

[10] See Memorandum of respondents CSC and City of Manila and City Mayor.

[11] Rollo, pp. 255-256.

[12] See Memorandum of respondents CSC and City of Manila and City Mayor.

[13] 507 Phil. 653, 665 (2005).

[14] Rollo, pp. 356-366.

[15] Id.

[16] 371 Phil. 17 (1999).

[17] Sec. 2(3), Article IX-B of the Constitution.

[18] Rollo, pp. 144, 145-146.

[19] Brion v. South Phil. Union Mission of the 7[th] Day Adventist Church, 366 Phil. 967, 974 (1999).

[20] Id.

[21] Rollo, p. 59.

[22] Id., Emphases supplied.

[23] Id. at 15.

[24] See Memorandum of respondents CSC and City of Manila and City Mayor.

[25] Rollo, pp. 255-256.

[26] Supra note 13at 653.

[27] Id. at 664-665.

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