

CIVIL SERVICE COMMISSION, PETITIONER, VS. ENGR. ALI P. DARANGINA, RESPONDENT.

G.R. NO. 167472. January 31, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking to reverse the Resolutions of the Court of Appeals dated October 7, 2004[1] and March 18, 2005[2] in CA-G.R. SP No. 71353.

The undisputed facts are:

Engr. Ali P. Darangina, respondent, was a development management officer V in the Office of Muslim Affairs (OMA). On September 25, 2000, he was extended a temporary promotional appointment as director III, Plans and Policy Services, in the same office. On October 11, 2000, the Civil Service Commission (CSC), petitioner, approved this temporary appointment effective for one (1) year from the date of its issuance unless sooner terminated.

On October 31, 2000, newly appointed OMA Executive Director Acmad Tomawis terminated the temporary appointment of respondent on the ground that he is not a career executive service eligible. Tomawis then appointed Alongan Sani as director III. But he is not also a career executive service eligible. Thus, the CSC disapproved his appointment, stating that respondent could only be replaced by an eligible.

On appeal by respondent, the CSC issued Resolution No. 01-1543 dated September 18, 2001 sustaining the termination of his temporary appointment but ordering the payment of his salaries from the time he was appointed on September 25, 2000 until his separation on October 31, 2000.

Respondent filed a motion for reconsideration. On March 20, 2002, the CSC issued Resolution No. 02-439 granting the same with modification in the sense that respondent should be paid his backwages from the time his employment was terminated on October 11, 2000 until September 24, 2001, the expiration of his one year temporary appointment.

On April 3, 2002, respondent filed a motion for partial reconsideration, praying for his reinstatement as director III and payment of backwages up to the time he shall be reinstated.

On June 5, 2002, the CSC issued Resolution No. 02-782 denying respondent's motion for partial reconsideration being a second motion for reconsideration which is prohibited.

Respondent then filed a petition for review with the Court of Appeals, docketed as CA-G.R. SP No. 71353. But in its Resolution of February 27, 2004, the petition was dismissed for his failure to implead the OMA Executive Director and the incumbent of the disputed position.

Respondent filed a motion for reconsideration.

In a Resolution dated October 7, 2004, the Court of Appeals reconsidered its Decision of February 27, 2004, thus:

ACCORDINGLY, our Decision of February 27, 2004 is RECONSIDERED and the assailed CSC resolutions are hereby MODIFIED in that the petitioner is reinstated to his post to finish his 12-month term with backwages from the date of his removal until reinstatement.
SO ORDERED.

The CSC filed a motion for reconsideration but it was denied by the Court of Appeals in a Resolution dated March 28, 2005.

Section 27, Chapter 5, Subtitle A, Title I, Book V of the Administrative Code of 1987, as amended, classifying the appointment status of public officers and employees in the career service, reads:

SEC. 27. Employment Status. – Appointment in the career service shall be permanent or temporary.

(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 appropriate eligibility prescribed, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof.

(2) Temporary appointment. In the absence of appropriate eligibles and it becomes necessary in the public interest to fill a vacancy, a temporary appointment shall be issued to a person who meets all the requirements for the position to which he is being appointed except the appropriate civil service eligibility: Provided, That such temporary appointment shall not exceed twelve months, but the appointee may be replaced sooner if a qualified civil service eligible becomes available.

It is clear that a permanent appointment can issue only to a person who possesses all the requirements for the position to which he is being appointed, including the appropriate eligibility.[3] Differently stated, as a rule, no person may be appointed to a public office unless he or she possesses the requisite qualifications. The exception to the rule is where, in the absence of appropriate eligibles, he or she may be appointed to it merely in a temporary capacity. Such a temporary appointment is not made for the benefit of the appointee. Rather, an acting or temporary appointment seeks to prevent a hiatus in the discharge of official functions by authorizing a person to discharge the same pending the selection of a permanent appointee.[4] In *Cuadra v. Cordova*,^[5] this Court defined a temporary appointment as “one made in an acting capacity, the essence of which lies in its temporary character and its terminability at pleasure by the appointing power.” Thus, the temporary appointee accepts the position with the condition that he shall surrender the office when called upon to do so by the appointing authority. Under Section 27 (2), Chapter 5, Subtitle A, Title I, Book V of the same Code, the term of a temporary appointment shall be 12 months, unless sooner terminated by the appointing authority. Such pre-termination of a temporary appointment may be with or without cause as the appointee serves merely at the pleasure of the appointing power.[6]

Under the Revised Qualifications Standards prescribed by the CSC, career executive service eligibility is a necessary qualification for the position of director III in Plans and Policy Services, OMA. It is not disputed that on September 25, 2000, when respondent was extended an appointment, he was not eligible to the position, not being a holder of such eligibility. Hence, his appointment was properly designated as “temporary.” Then on October 31, 2000, newly-appointed OMA Executive Director Tomawis recalled respondent’s temporary appointment and replaced him by appointing Alongan Sani. It turned out, however, that Sani is not likewise qualified for the post. A game of musical chairs then followed. Sani was subsequently replaced by Tapa Umal, who in turn, was succeeded by Camad Edres, and later, was replaced by Ismael Amod. All these appointees were also disqualified for lack of the required eligibility.

The Court of Appeals ruled that such replacements are not valid as the persons who replaced respondent are not

also eligible. Also, since he was replaced without just cause, he is entitled to serve the remaining term of his 12-month term with salaries.

This Court has ruled that where a non-eligible holds a temporary appointment, his replacement by another non-eligible is not prohibited.[7]

Moreover, in *Achacoso*[8] cited earlier, this Court held that when a temporary appointee is required to relinquish his office, he is being separated precisely because his term has expired. Thus, reinstatement will not lie in favor of respondent. Starkly put, with the expiration of his term upon his replacement, there is no longer any remaining term to be served. Consequently, he can no longer be reinstated.

As to whether respondent is entitled to back salaries, it is not disputed that he was paid his salary during the entire twelve-month period in spite of the fact that he served only from September 25, 2000 to October 31, 2000, or for only one month and six days. Clearly, he was overpaid.

WHEREFORE, this Court GRANTS the petition and REVERSES the assailed Resolutions of the Court of Appeals. Considering that respondent's employment was validly terminated on October 31, 2000, he is ordered to refund the salaries he received from that date up to September 24, 2001.

No costs.

SO ORDERED.

Puno C.J., (Chairperson), Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Chico-Nazario, Tinga, Garcia, and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 27-32. Penned by Associate Justice Mario L. Guariña III (retired) and concurred in by Associate Justice Martin S. Villarama, Jr., and Associate Justice Vicente S.E. Veloso.

[2] *Id.*, pp. 33-34.

[3] *Achacoso v. Macaraig*, G.R. No. 93023, March 13, 1991, 195 SCRA 235, 239.

[4] *Id.* at p. 240, citing *Austria v. Amante*, 79 Phil.780 (1948).

[5] 103 Phil. 391 (1958).

[6] *Austria v. Amante*, *supra*, *Summers v. Ozaeta*, 81 Phil. 754 (1948), *Orais v. Ribo*, 95 Phil. 985 (1953), *Paño v. Medina*, 94 Phil. 103 (1953), *Amora v. Bibera*, 99 Phil. 1(1956), *Pineda v. Velez*, 100 Phil. 1085 (1956), *Cayabyab v. Cayabyab*, 101 Phil. 681 (1957), *Villanueva v. Alera*, 101 Phil. 1230 (1957), *Cuadra v. Cordova*, 103 Phil. 391 (1958), *Erauda v. Del Rosario*, 103 Phil. 489 (1958), *Madrid v. Auditor General*, 108 Phil. 578 (1960), *Ferrer v. de Leon*, 109 Phil. 202 (1960), *Hojilla v. Mariño*, G.R. No. 20574, February 26, 1965, 13 SCRA 293, *Aguila v. Castro*, G.R. No. 23778, December 24, 1965, 15 SCRA 565, *Santos v. Chico*, G.R. No. 24153, September 28, 1968, 25 SCRA 343, *Mendiola v. Tancinco*, G.R. No. 26950, July 13, 1973, 52 SCRA 66, *Rodriguez, Jr. v. Rodriguez, Jr.*, G.R. Nos. 41381-82, January 30, 1976, 69 SCRA 276, *Abrot v. Court of Appeals*, G.R. No. 40641, September 8, 1982, 116 SCRA 468.

[7] *Orais v. Ribo*, 93 Phil. 985 (1953), *Peña v. City Mayor of Ozamis*, 94 Phil. 103 (1954), *Quiatchon v. Villanueva and City of Bacolod*, 101 Phil. 989 (1957), *Montero v. Castellanos*, 108 Phil. 744 (1978), *Cuñado v. Gamus*, G.R. Nos. 16782-83, May 30, 1963, 8 SCRA 77.

[8] *Supra*, footnote 3.

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