

CIVIL SERVICE COMMISSION, *Petitioner*, vs. NITA P. JAVIER, *Respondent*.

G.R. No. 173264. February 22, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking to reverse the Decision^[1] of the Court of Appeals (CA) dated September 29, 2005, as well as its Resolution of June 5, 2006, in CA-G.R. SP No. 88568, which set aside the resolutions and orders of the Civil Service Commission (CSC) invalidating the appointment of respondent as Corporate Secretary of the Board of Trustees of the Government Service and Insurance System (GSIS).

The facts are undisputed.

According to her service record,^[2] respondent was first employed as Private Secretary in the GSIS, a government owned and controlled corporation (GOCC), on February 23, 1960, on a “confidential” status. On July 1, 1962, respondent was promoted to Tabulating Equipment Operator with “permanent” status. The “permanent” status stayed with respondent throughout her career. She spent her entire career with GSIS, earning several more promotions, until on December 16, 1986, she was appointed Corporate Secretary of the Board of Trustees of the corporation.

On July 16, 2001, a month shy of her 64th birthday,^[3] respondent opted for early retirement and received the corresponding monetary benefits.^[4]

On April 3, 2002, GSIS President Winston F. Garcia, with the approval of the Board of Trustees, reappointed respondent as Corporate Secretary, the same position she left and retired from barely a year earlier. Respondent was 64 years old at the time of her reappointment.^[5] In its Resolution, the Board of Trustees classified her appointment as “confidential in nature and the tenure of office is at the pleasure of the Board.”^[6]

Petitioner alleges that respondent's reappointment on confidential status was meant to illegally extend her service and circumvent the laws on compulsory retirement.^[7] This is because under Republic Act (R.A.) No. 8291, or the Government Service Insurance System Act of 1997, the compulsory retirement age for government employees is 65 years, thus:

Sec. 13. x x x

(b) Unless the service is extended by appropriate authorities, retirement shall be compulsory for an employee at sixty-five (65) years of age with at least fifteen (15) years of service: Provided, That if he has less than fifteen (15) years of service, he may be allowed to continue in the service in accordance with existing civil service rules and regulations.

Under the civil service regulations, those who are in primarily confidential positions may serve even beyond the age of 65 years. Rule XIII of the Revised Omnibus Rules on Appointments and Other Personnel Actions, as

amended, provides that:

Sec. 12. (a) No person who has reached the compulsory retirement age of 65 years can be appointed to any position in the government, subject only to the exception provided under sub-section (b) hereof.

x x x x

b. A person who has already reached the compulsory retirement age of 65 can still be appointed to a coterminous/primarily confidential position in the government.

A person appointed to a coterminous/primarily confidential position who reaches the age of 65 is considered automatically extended in the service until the expiry date of his/her appointment or until his/her services are earlier terminated.[8]

It is for these obvious reasons that respondent's appointment was characterized as "confidential" by the GSIS.

On October 10, 2002, petitioner issued Resolution No. 021314, invalidating the reappointment of respondent as Corporate Secretary, on the ground that the position is a permanent, career position and not primarily confidential.[9]

On November 2, 2002, the CSC, in a letter of even date, through its Chairperson Karina Constantino-David, informed GSIS of CSC's invalidation of respondent's appointment, stating, thus:

Records show that Ms. Javier was formerly appointed as Corporate Secretary in a "Permanent" capacity until her retirement in July 16, 2001. The Plantilla of Positions shows that said position is a career position. However, she was re-employed as Corporate Secretary, a position now declared as confidential by the Board of Trustees pursuant to Board Resolution No. 94 dated April 3, 2002.

Since the position was not declared primarily confidential by the Civil Service Commission or by any law, the appointment of Ms. Javier as Corporate Secretary is hereby invalidated.[10]

Respondent and GSIS sought to reconsider the ruling of petitioner. CSC replied that the position of Corporate Secretary is a permanent (career) position, and not primarily confidential (non-career); thus, it was wrong to appoint respondent to this position since she no longer complies with eligibility requirements for a permanent career status. More importantly, as respondent by then has reached compulsory retirement at age 65, respondent was no longer qualified for a permanent career position.[11] With the denial of respondent's plea for reconsideration, she filed a Petition for Review with the Court of Appeals.

On September 29, 2005, the CA rendered a Decision setting aside the resolution of petitioner invalidating respondent's appointment.[12] The CA ruled that in determining whether a position is primarily confidential or otherwise, the nature of its functions, duties and responsibilities must be looked into, and not just its formal classification.[13] Examining the functions, duties and responsibilities of the GSIS Corporate Secretary, the CA concluded that indeed, such a position is primarily confidential in nature.

Petitioner filed a motion for reconsideration, which was denied by the CA on June 5, 2006.

Hence, herein petition.

The petition assails the CA Decision, contending that the position of Corporate Secretary is a career position and not primarily confidential in nature.[14] Further, it adds that the power to declare whether any position in government is primarily confidential, highly technical or policy determining rests solely in petitioner by virtue of its constitutional power as the central personnel agency of the government.[15]

Respondent avers otherwise, maintaining that the position of Corporate Secretary is confidential in nature and that

it is within the powers of the GSIS Board of Trustees to declare it so.[16] She argues that in determining the proper classification of a position, one should be guided by the nature of the office or position, and not by its formal designation.[17]

Thus, the Court is confronted with the following issues: whether the courts may determine the proper classification of a position in government; and whether the position of corporate secretary in a GOCC is primarily confidential in nature.

The Court's Ruling

The courts may determine the proper classification of a position in government.

Under Executive Order No. 292, or the Administrative Code of 1987, civil service positions are currently classified into either 1) career service and 2) non-career service positions.[18]

Career positions are characterized by: (1) entrance based on merit and fitness to be determined as far as practicable by competitive examinations, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure.[19]

In addition, the Administrative Code, under its Book V, sub-classifies career positions according to "appointment status," divided into: 1) permanent – which is issued to a person who meets all the requirements for the positions 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; and 2) temporary – which is issued, in the absence of appropriate eligibles and when it becomes necessary in the public interest to fill a vacancy, 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, and the appointee may be replaced sooner if a

qualified civil service eligible becomes available.[20]

Positions that do not fall under the career service are considered non-career positions, which are characterized by: (1) entrance on bases other than those of the usual tests of merit and fitness utilized for the career service; and (2) tenure which is limited to a period specified by law, or which is co-terminous with that of the appointing authority or subject to his pleasure, or which is limited to the duration of a particular project for which purpose employment was made.[21]

Examples of positions in the non-career service enumerated in the Administrative Code are:

Sec. 9. Non-Career Service. - x x x

The Non-Career Service shall include:

- (1) Elective officials and their personal or confidential staff;
- (2) Secretaries and other officials of Cabinet rank who hold their positions at the pleasure of the President and their personal or confidential staff(s);
- (3) Chairman and members of commissions and boards with fixed terms of office and their personal or confidential staff;
- (4) Contractual personnel or those whose employment in the government is in accordance with a special contract to undertake a specific work or job, requiring special or technical skills not available in the employing agency, to be accomplished within a specific period, which in no case shall exceed one year, and performs or accomplishes the specific work or job, under his own responsibility with a minimum of direction and

supervision from the hiring agency; and
(5) Emergency and seasonal personnel. (Emphasis supplied)

A strict reading of the law reveals that primarily confidential positions fall under the non-career service. It is also clear that, unlike career positions, primarily confidential and other non-career positions do not have security of tenure. The tenure of a confidential employee is co-terminous with that of the appointing authority, or is at the latter's pleasure. However, the confidential employee may be appointed or remain in the position even beyond the compulsory retirement age of 65 years.[22]

Stated differently, the instant petition raises the question of whether the position of corporate secretary in a GOCC, currently classified by the CSC as belonging to the permanent, career service, should be classified as primarily confidential, i.e., belonging to the non-career service. The current GSIS Board holds the affirmative view, which is ardently opposed by petitioner. Petitioner maintains that it alone can classify government positions, and that the determination it made earlier, classifying the position of GOCC corporate secretary as a permanent, career position, should be maintained.

At present, there is no law enacted by the legislature that defines or sets definite criteria for determining primarily confidential positions in the civil service. Neither is there a law that gives an enumeration of positions classified as primarily confidential.

What is available is only petitioner's own classification of civil service positions, as well as jurisprudence which describe or give examples of confidential positions in government.

Thus, the corollary issue arises: should the Court be bound by a classification of a position as confidential already made by an agency or branch of government?

Jurisprudence establishes that the Court is not bound by the classification of positions in the civil service made by the legislative or executive branches, or even by a constitutional body like the petitioner.[23] The Court is expected to make its own determination as to the nature of a particular position, such as whether it is a primarily confidential position or not, without being bound by prior classifications made by other bodies.[24] The findings of the other branches of government are merely considered initial and not conclusive to the Court.[25] Moreover, it is well-established that in case the findings of various agencies of government, such as the petitioner and the CA in the instant case, are in conflict, the Court must exercise its constitutional role as final arbiter of all justiciable controversies and disputes.[26]

Piñero v. Hechanova,[27] interpreting R.A. No. 2260, or the Civil Service Act of 1959, emphasized how the legislature refrained from declaring which positions in the bureaucracy are primarily confidential, policy determining or highly technical in nature, and declared that such a determination is better left to the judgment of the courts. The Court, with the ponencia of Justice J.B.L. Reyes, expounded, thus:

The change from the original wording of the bill (expressly declared by law x x x to be policy determining, etc.) to that finally approved and enacted ("or which are policy determining, etc. in nature") came about because of the observations of Senator Tañada, that as originally worded the proposed bill gave Congress power to declare by fiat of law a certain position as primarily confidential or policy determining, which should not be the case. The Senator urged that since the Constitution speaks of positions which are "primarily confidential, policy determining or highly technical in nature," it is not within the power of Congress to declare what positions are primarily confidential or policy determining. "It is the nature alone of the position that determines whether it is policy determining or primarily confidential." Hence, the Senator further observed, the matter should be left to the "proper implementation of the laws, depending upon the nature of the position to be filled", and if the position is "highly confidential" then the President and the Civil Service Commissioner must implement the law.

To a question of Senator Tolentino, “But in positions that involved both confidential matters and matters which are routine, x x x who is going to determine whether it is primarily confidential?” Senator Tañada replied:

“SENATOR TAÑADA: Well, at the first instance, it is the appointing power that determines that: the nature of the position. In case of conflict then it is the Court that determines whether the position is primarily confidential or not.

“I remember a case that has been decided by the Supreme Court involving the position of a district engineer in Baguio, and there, precisely, the nature of the position was in issue. It was the Supreme Court that passed upon the nature of the position, and held that the President could not transfer the district engineer in Baguio against his consent.”

Senator Tañada, therefore, proposed an amendment to section 5 of the bill, deleting the words “to be” and inserting in lieu thereof the words “Positions which are by their nature” policy determining, etc., and deleting the last words “in nature”. Subsequently, Senator Padilla presented an amendment to the Tañada amendment by adopting the very words of the Constitution, i.e., “those which are policy determining, primarily confidential and highly technical in nature”. The Padilla amendment was adopted, and it was this last wording with which section 5 was passed and was enacted (Senate Journal, May 10, 1959, Vol. 11, No. 32, pp. 679-681).

It is plain that, at least since the enactment of the 1959 Civil Service Act (R. A. 2260), it is the nature of the position which finally determines whether a position is primarily confidential, policy determining or highly technical. Executive pronouncements can be no more than initial determinations that are not conclusive in case of conflict. And it must be so, or else it would then lie within the discretion of title Chief Executive to deny to any officer, by executive fiat, the protection of section 4, Article XII, of the Constitution.[28] (Emphasis and underscoring supplied)

This doctrine in Piñero was reiterated in several succeeding cases.[29]

Presently, it is still the rule that executive and legislative identification or classification of primarily confidential, policy-determining or highly technical positions in government is no more than mere declarations, and does not foreclose judicial review, especially in the event of conflict. Far from what is merely declared by executive or legislative fiat, it is the nature of the position which finally determines whether it is primarily confidential, policy determining or highly technical, and no department in government is better qualified to make such an ultimate finding than the judicial branch.

Judicial review was also extended to determinations made by petitioner. In *Griño v. Civil Service Commission*,[30] the Court held:

The fact that the position of respondent Arandela as provincial attorney has already been classified as one under the career service and certified as permanent by the Civil Service Commission cannot conceal or alter its highly confidential nature. As in *Cadiente* where the position of the city legal officer was duly attested as permanent by the Civil Service Commission before this Court declared that the same was primarily confidential, this Court holds that the position of respondent Arandela as the provincial attorney of Iloilo is also a primarily confidential position. To rule otherwise would be tantamount to classifying two positions with the same nature and functions in two incompatible categories.[31]

The framers of the 1987 Constitution were of the same disposition. Section 2 (2) Article IX (B) of the Constitution provides that:

Appointments in the civil service shall be made only according to merit and fitness to be determined, as far as practicable, and, except to positions which are policy-determining, primarily confidential, or highly technical, by competitive examination.

The phrase “in nature” after the phrase “policy-determining, primarily confidential, or highly technical” was deleted from the 1987 Constitution.[32] However, the intent to lay in the courts the power to determine the nature of a position is evident in the following deliberation:

MR. FOZ. Which department of government has the power or authority to determine whether a position is policy-determining or primarily confidential or highly technical?

FR. BERNAS: The initial decision is made by the legislative body or by the executive department, but the final decision is done by the court. The Supreme Court has constantly held that whether or not a position is policy-determining, primarily confidential or highly technical, it is determined not by the title but by the nature of the task that is entrusted to it. For instance, we might have a case where a position is created requiring that the holder of that position should be a member of the Bar and the law classifies this position as highly technical. However, the Supreme Court has said before that a position which requires mere membership in the Bar is not a highly technical position. Since the term 'highly technical' means something beyond the ordinary requirements of the profession, it is always a question of fact.

MR. FOZ. Does not Commissioner Bernas agree that the general rule should be that the merit system or the competitive system should be upheld?

FR. BERNAS. I agree that that it should be the general rule; that is why we are putting this as an exception.

MR. FOZ. The declaration that certain positions are policy-determining, primarily confidential or highly technical has been the source of practices which amount to the spoils system.

FR. BERNAS. The Supreme Court has always said that, but if the law of the administrative agency says that a position is primarily confidential when in fact it is not, we can always challenge that in court. It is not enough that the law calls it primarily confidential to make it such; it is the nature of the duties which makes a position primarily confidential.

MR. FOZ. The effect of a declaration that a position is policy-determining, primarily confidential or highly technical — as an exception — is to take it away from the usual rules and provisions of the Civil Service Law and to place it in a class by itself so that it can avail itself of certain privileges not available to the ordinary run of government employees and officers.

FR. BERNAS. As I have already said, this classification does not do away with the requirement of merit and fitness. All it says is that there are certain positions which should not be determined by competitive examination.

For instance, I have just mentioned a position in the Atomic Energy Commission. Shall we require a physicist to undergo a competitive examination before appointment? Or a confidential secretary or any position in policy-determining administrative bodies, for that matter? There are other ways of determining merit and fitness than competitive examination. This is not a denial of the requirement of merit and fitness.[33] (Emphasis supplied)

This explicit intent of the framers was recognized in *Civil Service Commission v. Salas*,[34] and *Philippine Amusement and Gaming Corporation v. Rilloraza*,[35] which leave no doubt that the question of whether the position of Corporate Secretary of GSIS is confidential in nature may be determined by the Court.

The position of corporate secretary in a government owned and controlled corporation, currently classified as a permanent career position, is primarily confidential in nature.

First, there is a need to examine how the term “primarily confidential in nature” is described in jurisprudence. According to *Salas*,[36]

Prior to the passage of the x x x Civil Service Act of 1959 (R.A. No. 2260), there were two recognized instances when a position may be considered primarily confidential: Firstly, when the President, upon recommendation of the Commissioner of Civil Service, has declared the position to be primarily confidential; and, secondly in the absence of such declaration, when by the nature of the functions of the office there exists "close intimacy" between the appointee and appointing power which insures freedom of intercourse without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state.[37] (Emphasis supplied)

However, Salas declared that since the enactment of R.A. No. 2260 and Piñero,[38] it is the nature of the position which finally determines whether a position is primarily confidential or not, without regard to existing executive or legislative pronouncements either way, since the latter will not bind the courts in case of conflict.

A position that is primarily confidential in nature is defined as early as 1950 in *De los Santos v. Mallare*,[39] through the ponencia of Justice Pedro Tuason, to wit:

x x x These positions (policy-determining, primarily confidential and highly technical positions), involve the highest degree of confidence, or are closely bound up with and dependent on other positions to which they are subordinate, or are temporary in nature. It may truly be said that the good of the service itself demands that appointments coming under this category be terminable at the will of the officer that makes them.

x x x x

Every appointment implies confidence, but much more than ordinary confidence is reposed in the occupant of a position that is primarily confidential. The latter phrase denotes not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which insures freedom of [discussion, delegation and reporting] without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state. x x x[40] (Emphasis supplied)

Since the definition in *De los Santos* came out, it has guided numerous other cases.[41] Thus, it still stands that a position is primarily confidential when by the nature of the functions of the office there exists "close intimacy" between the appointee and appointing power which insures freedom of intercourse without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state.

In classifying a position as primarily confidential, its functions must not be routinary, ordinary and day to day in character.[42] A position is not necessarily confidential though the one in office may sometimes handle confidential matters or documents.[43] Only ordinary confidence is required for all positions in the bureaucracy. But, as held in *De los Santos*,[44] for someone holding a primarily confidential position, more than ordinary confidence is required.

In *Ingles v. Mutuc*,[45] the Court, through Chief Justice Roberto Concepcion as ponente, stated:

Indeed, physicians handle confidential matters. Judges, fiscals and court stenographers generally handle matters of similar nature. The Presiding and Associate Justices of the Court of Appeals sometimes investigate, by designation of the Supreme Court, administrative complaints against judges of first instance, which are confidential in nature. Officers of the Department of Justice, likewise, investigate charges against municipal judges. Assistant Solicitors in the Office of the Solicitor General often investigate malpractice charges against members of the Bar. All of these are "confidential" matters, but such fact does not warrant the conclusion that the office or position of all government physicians and all Judges, as well as the aforementioned assistant solicitors and officers of the Department of Justice are primarily confidential in character.[46] (Emphasis supplied)

It is from *De los Santos* that the so-called "proximity rule" was derived. A position is considered to be primarily

confidential when there is a primarily close intimacy between the appointing authority and the appointee, which ensures the highest degree of trust and unfettered communication and discussion on the most confidential of matters.[47] This means that where the position occupied is already remote from that of the appointing authority, the element of trust between them is no longer predominant.[48] On further interpretation in *Griño*, this was clarified to mean that a confidential nature would be limited to those positions not separated from the position of the appointing authority by an intervening public officer, or series of public officers, in the bureaucratic hierarchy.[49]

Consequently, brought upon by their remoteness to the position of the appointing authority, the following were declared by the Court to be not primarily confidential positions: City Engineer;[50] Assistant Secretary to the Mayor;[51] members of the Customs Police Force or Port Patrol;[52] Special Assistant of the Governor of the Central Bank, Export Department;[53] Senior Executive Assistant, Clerk I and Supervising Clerk I and Stenographer in the Office of the President;[54] Management and Audit Analyst I of the Finance Ministry Intelligence Bureau;[55] Provincial Administrator;[56] Internal Security Staff of the Philippine Amusement and Gaming Corporation (PAGCOR);[57] Casino Operations Manager;[58] and Slot Machine Attendant.[59] All positions were declared to be not primarily confidential despite having been previously declared such either by their respective appointing authorities or the legislature.

The following were declared in jurisprudence to be primarily confidential positions: Chief Legal Counsel of the Philippine National Bank;[60] Confidential Agent of the Office of the Auditor, GSIS;[61] Secretary of the Sangguniang Bayan;[62] Secretary to the City Mayor;[63] Senior Security and Security Guard in the Office of the Vice Mayor;[64] Secretary to the Board of a government corporation;[65] City Legal Counsel, City Legal Officer or City Attorney;[66] Provincial Attorney;[67] Private Secretary;[68] and Board Secretary II of the Philippine State College of Aeronautics.[69]

In fine, a primarily confidential position is characterized by the close proximity of the positions of the appointer and appointee as well as the high degree of trust and confidence inherent in their relationship.

Ineluctably therefore, the position of Corporate Secretary of GSIS, or any GOCC, for that matter, is a primarily confidential position. The position is clearly in close proximity and intimacy with the appointing power. It also calls for the highest degree of confidence between the appointer and appointee.

In classifying the position of Corporate Secretary of GSIS as primarily

confidential, the Court took into consideration the proximity rule together with the duties of the corporate secretary, enumerated as follows:[70]

- Performs all duties, and exercises the power, as defined and enumerated in Section 4, Title IX, P.D. No. 1146;
- Undertakes research into past Board resolutions, policies, decisions, directives and other Board action, and relate these to present matters under Board consideration;
- Analyzes and evaluates the impact, effects and relevance of matters under Board consideration on existing Board policies and provide the individual Board members with these information so as to guide or enlighten them in their Board decision;
- Records, documents and reproduces in sufficient number all proceedings of Board meetings and disseminate relevant Board decisions/information to those units concerned;
- Coordinates with all functional areas and units concerned and monitors the manner of implementation of approved Board resolutions, policies and directives;

- Maintains a permanent, complete, systematic and secure compilation of all previous minutes of Board meetings, together with all their supporting documents;
- Attends, testifies and produces in Court or in administrative bodies duly certified copies of Board resolutions, whenever required;
- Undertakes the necessary physical preparations for scheduled Board meetings;
- Pays honoraria of the members of the Board who attend Board meetings;
- Takes custody of the corporate seal and safeguards against unauthorized use; and
- Performs such other functions as the Board may direct and/or require.

The nature of the duties and functions attached to the position points to its highly confidential character.[71] The secretary reports directly to the board of directors, without an intervening officer in between them.[72] In such an arrangement, the board expects from the secretary nothing less than the highest degree of honesty, integrity and loyalty, which is crucial to maintaining between them “freedom of intercourse without embarrassment or freedom from misgivings or betrayals of personal trust or confidential matters of state.”[73]

The responsibilities of the corporate secretary are not merely clerical or

routinary in nature. The work involves constant exposure to sensitive policy matters and confidential deliberations that are not always open to the public, as unscrupulous persons may use them to harm the corporation. Board members must have the highest confidence in the secretary to ensure that their honest sentiments are always and fully expressed, in the interest of the corporation. In this respect, the nature of the corporate secretary's work is akin to that of a personal secretary of a public official, a position long recognized to be primarily confidential in nature.[74] The only distinction is that the corporate secretary is secretary to the entire board, composed of a number of persons, but who essentially act as one body, while the private secretary works for only one person. However, the degree of confidence involved is essentially the same.

Not only do the tasks listed point to sensitive and confidential acts that the corporate secretary must perform, they also include “such other functions as the Board may direct and/or require,” a clear indication of a closely intimate relationship that exists between the secretary and the board. In such a highly acquainted relation, great trust and confidence between appointer and appointee is required.

The loss of such trust or confidence could easily result in the board's termination of the secretary's services and ending of his term. This is understandably justified, as the board could not be expected to function freely with a suspicious officer in its midst. It is for these same reasons that jurisprudence, as earlier cited, has consistently characterized personal or private secretaries, and board secretaries, as positions of a primarily confidential nature.[75]

The CA did not err in declaring that the position of Corporate Secretary of GSIS is primarily confidential in nature and does not belong to the career service.

The Court is aware that this decision has repercussions on the tenure of other corporate secretaries in various GOCCs. The officers likely assumed their positions on permanent career status, expecting protection for their tenure and appointments, but are now re-classified as primarily confidential appointees. Such concern is unfounded, however, since the statutes themselves do not classify the position of corporate secretary as permanent and career in nature. Moreover, there is no absolute guarantee that it will not be classified as confidential when a dispute arises. As earlier stated, the Court, by legal tradition, has the power to make a final determination as to which positions in government are primarily confidential or otherwise. In the light of the instant controversy, the

Court's view is that the greater public interest is served if the position of a corporate secretary is classified as primarily confidential in nature.

Moreover, it is a basic tenet in the country's constitutional system that "public office is a public trust,"[76] and that there is no vested right in public office, nor an absolute right to hold office.[77] No proprietary title attaches to a public office, as public service is not a property right.[78] Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office.[79] The rule is that offices in government, except those created by the constitution, may be abolished, altered, or created anytime by statute.[80] And any issues on the classification for a position in government may be brought to and determined by the courts.[81]

WHEREFORE, premises considered, the Petition is DENIED. The Decision of the Court of Appeals dated September 29, 2005, in CA-G.R. SP No. 88568, as well as its Resolution of June 5, 2006 are hereby AFFIRMED in toto.

No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Corona, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Reyes, and Leonardo-De Castro, JJ., concur.

Nachura, J., no part.

[1] Penned by Justice Vicente S.E. Veloso with the concurrence of Justices Amelita G. Tolentino and Danilo B. Pine, rollo, pp. 33-49.

[2] Rollo, p. 50.

[3] Id. at 51.

[4] Id. at 15.

[5] Supra note 3.

[6] Supra note 4.

[7] Rollo, p. 21.

[8] As cited in petitioner's Memorandum, id. at 184-185.

[9] Rollo, pp. 37-39. In addition, petitioner also ruled that the position of Corporate Secretary was then being occupied by an incumbent, and therefore, was not vacant. It was deemed occupied because the incumbent's earlier "shifting" to another position, that of Senior Vice President and Chief Legal Counsel, was declared void by petitioner as he was past retirement age. He was on extended service only for the post of Corporate Secretary.

[10] Id. at 16, 81.

[11] Id. at 43.

[12] Id. at 32-49.

[13] Rollo, p. 45.

[14] Id. at 17.

[15] Id. at 20.

[16] Id. at 84.

[17] Id. at 88.

[18] ADMINISTRATIVE CODE, BOOK V, Title I, Subtitle A, Chapter 2, Sec. 6(2);

Formerly, under Republic Act (R.A.) No. 2260, or the Civil Service Act of 1959, positions were classified into: 1) the competitive or classified, 2) non-competitive or unclassified, and 3) exempt services. Thereafter, R.A. No. 6040 amended R.A. No. 2260, and removed the terms “classified” and “unclassified” and grouped civil service positions into: 1) the competitive 2) non-competitive, and 3) exempt classes. (R.A. No. 2260 [1959], Sec. 3; *Favis v. Rupisan*, 123 Phil. 1047, 1050 [1966]; R.A. No. 6040 [1969], Secs. 1 and 17).

Afterwards, Presidential Decree No. 807, or the Civil Service Decree of 1975, changed the classifications further into 1) career service and 2) non-career service positions. (Presidential Decree No. 807 [1975], Sec. 4; *Cortez v. Bartolome*, G.R. No. L-46629, September 11, 1980, 100 SCRA 1, 9).

[19] ADMINISTRATIVE CODE, BOOK V, Title I, Subtitle A, Chapter 2, Sec. 7.

[20] ADMINISTRATIVE CODE, BOOK V, Title I, Subtitle A, Chapter 5, Sec. 27.

[21] Id. at Sec. 9.

[22] Section 12, Rule XIII of the CSC's Revised Omnibus Rules on Appointments and Other Personnel Actions.

[23] *Civil Service Commission v. Salas*, G.R. No. 123708, June 19, 1997, 274 SCRA 414; *Griño v. Civil Service Commission*, G.R. No. 91602, February 26, 1991, 194 SCRA 458.

[24] *Piñero v. Hechanova*, 124 Phil. 1022, 1026 (1966).

[25] *Laurel V v. Civil Service Commission*, G.R. No. 71562, October 28, 1991, 203 SCRA 195.

[26] *Firestone Ceramics v. Court of Appeals*, 372 Phil. 401, 424 (1999).

[27] *Supra* note 24.

[28] Id. at 1027-1029.

[29] *Tria v. Sto. Tomas*, G.R. No. 85670, July 31, 1991, 199 SCRA 833; *Laurel v. Civil Service Commission*, *supra* note 25; *Civil Service Commission v. Salas*, *supra* note 23; *Philippine Amusement and Gaming Corporation v. Rilloraza*, 412 Phil. 114 (2001).

[30] *Supra* note 23.

[31] Id. at 467.

[32] The phrase “in nature” was previously found in both the 1935 and 1973 Constitutions.

[33] I RECORD OF THE CONSTITUTIONAL COMMISSION: Proceedings and Debates, Vol. 1, 571-572.

[34] *Supra* note 23.

[35] *Supra* note 29.

[36] *Civil Service Commission v. Salas*, *supra* note 23.

[37] Id. at 421-422.

[38] Piñero v. Hechanova, supra note 24.

[39] 87 Phil. 289 (1950).

[40] Id. at 297-298.

[41] Civil Service Commission v. Salas, supra note 23; Piñero v. Hechanova, supra note 24; Salazar v. Mathay, Sr., 165 Phil. 256 (1976); Borres v. Court of Appeals, G.R. No. L-36845, August 21, 1987, 153 SCRA 120; Griño v. Civil Service Commission, supra note 23; Tria v. Sto. Tomas, supra note 29.

[42] Tria v. Sto. Tomas, supra note 29; Ingles v. Mutuc, 135 Phil. 177 (1968).

[43] Tria v. Sto. Tomas, supra note 29.

[44] De los Santos v. Mallare, supra note 39, at 297.

[45] Supra note 42.

[46] Id. at 184.

[47] De los Santos v. Mallare, supra note 39, at 298.

[48] Civil Service Commission v. Salas, supra note 23.

[49] Griño v. Civil Service Commission, supra note 23, at 468.

[50] De los Santos v. Mallare, supra note 39, at 298.

[51] Samson v. Court of Appeals, 230 Phil. 59, 65 (1986).

[52] Piñero v. Hechanova, supra note 24, at 1029.

[53] Corpus v. Cuaderno, Sr., 121 Phil. 568, 569 (1965).

[54] Ingles v. Mutuc, supra note 42.

[55] Tria v. Sto. Tomas, supra note 29.

[56] Laurel v. Civil Service Commission, supra note 25.

[57] Civil Service Commission v. Salas, supra note 23.

[58] Philippine Amusement and Gaming Corporation v. Rilloraza, supra note 29.

[59] Philippine Amusement and Gaming Corporation v. Angara, G.R. No. 142937, November 15, 2005, 475 SCRA 41.

[60] Besa v. Philippine National Bank, 144 Phil. 282 (1970).

[61] Salazar v. Mathay, supra note 41.

[62] Cortez v. Bartolome, supra note 18.

[63] Samson v. Court of Appeals, supra note 51.

[64] Borres v. Court of Appeals, supra note 41.

[65] Gray v. De Vera, 138 Phil. 279 (1969).

[66] Pacete v. Acting Chairman of Commission on Audit, G.R. No. 39456, May 7, 1990, 185 SCRA 1; Cadiente

v. Santos, 226 Phil. 211 (1986).

[67] Hilario v. Civil Service Commission, 312 Phil. 1157 (1995); Griño v. Civil Service Commission, supra note 23.

[68] Ingles v. Mutuc, supra note 42 at 177.

[69] Gloria v. De Guzman, Jr., 319 Phil. 217 (1995).

[70] Rollo, pp. 16-17, 89. Quoted from both the Petition and respondent's Comment.

[71] Borres v. Court of Appeals, supra note 41, at 131.

[72] See Griño v. Civil Service Commission, supra note 23, at 468.

[73] De los Santos v. Mallare, supra note 39, at 298.

[74] Samson v. Court of Appeals, supra note 51, at 64; Ingles v. Mutuc, supra note 42, at 183.

[75] Cortez v. Bartolome, supra note 18, at 8; Samson v. Court of Appeals, supra note 51, at 63; Gray v. De Vera, supra note 65, at 284; Ingles v. Mutuc, supra note 42, at 183; Gloria v. De Guzman, supra note 69 at 227.

[76] Constitution, Art. XI, Sec. 1.

[77] Mendenilla v. Onandia, 115 Phil. 534, 541 (1962); De la Llana v. Alba, 198 Phil. 1, 86 (1982), Concurring Opinion of J. Guerrero; Aparri v. Court of Appeals, 212 Phil. 215, 222 (1984); Dario v. Mison, G.R. No. 81954, August 8, 1989, 176 SCRA 84, Dissenting Opinion of J. Melencio-Herrera; Siete v. Santos, G.R. No. 82421, September 26, 1990, 190 SCRA 50, 60; In the Matter to Declare in Contempt of Court Hon. Datumanong, Secretary of DPWH, G.R. No. 150274, August 4, 2006, 497 SCRA 626, 637; Engaño v. Court of Appeals, G.R. No. 156959, June 27, 2006, 493 SCRA 323, 330.

[78] Montesclaros v. Comelec, 433 Phil. 620, 637 (2002).

[79] Aparri v. Court of Appeals, supra note 77.

[80] Mendenilla v. Onandia, supra note 77, at 221-222; De la Llana v. Alba, supra note 77, at 86.

[81] See notes 23 to 26.

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