

ARLIN B. OBIASCA, PETITIONER, VS. JEANE O. BASALLOTE, RESPONDENT.

G.R. No. 176707. February 17, 2010

Ponente: CORONA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-176707/>

CORONA, J.:

When the law is clear, there is no other recourse but to apply it regardless of its perceived harshness. *Dura lex sed lex*. Nonetheless, the law should never be applied or interpreted to oppress one in order to favor another. As a court of law and of justice, this Court has the duty to adjudicate conflicting claims based not only on the cold provision of the law but also according to the higher principles of right and justice.

The facts of this case are undisputed.

On May 26, 2003, City Schools Division Superintendent Nelly B. Beloso appointed respondent Jeane O. Basallote to the position of Administrative Officer II, Item No. OSEC-DECSB-ADO2-390030-1998, of the Department of Education (DepEd), Tabaco National High School in Albay.[2]

Subsequently, in a letter dated June 4, 2003,[3] the new City Schools Division Superintendent, Ma. Amy O. Oyardo, advised School Principal Dr. Leticia B. Gonzales that the papers of the applicants for the position of Administrative Officer II of the school, including those of respondent, were being returned and that a school ranking should be

accomplished and submitted to her office for review. In addition, Gonzales was advised that only qualified applicants should be endorsed.

Respondent assumed the office of Administrative Officer II on June 19, 2003. Thereafter, however, she received a letter from Ma. Teresa U. Diaz, Human Resource Management Officer I of the City Schools Division of Tabaco City, Albay, informing her that her appointment could not be forwarded to the Civil Service Commission (CSC) because of her failure to submit the position description form (PDF) duly signed by Gonzales.

Respondent tried to obtain Gonzales' signature but the latter refused despite repeated requests. When respondent informed Oyardo of the situation, she was instead advised to return to her former teaching position of Teacher I. Respondent followed the advice.

Meanwhile, on August 25, 2003, Oyardo appointed petitioner Arlin B. Obiasca to the same position of Administrative Officer II. The appointment was sent to and was properly attested by the CSC.[4] Upon learning this, respondent filed a complaint with the Office of the Deputy Ombudsman for Luzon against Oyardo, Gonzales and Diaz.

In its decision, the Ombudsman found Oyardo and Gonzales administratively liable for withholding information from respondent on the status of her appointment, and suspended them from the service for three months. Diaz was absolved of any wrongdoing.[5]

Respondent also filed a protest with CSC Regional Office V. But the protest was dismissed on the ground that it should first be submitted to the Grievance Committee of the DepEd for appropriate action.[6]

On motion for reconsideration, the protest was reinstated but was eventually dismissed for lack of merit.[7] Respondent appealed the dismissal of her protest to the CSC Regional Office which, however, dismissed the appeal for failure to show that her appointment had been received and attested by the CSC.[8]

Respondent elevated the matter to the CSC. In its November 29, 2005 resolution, the CSC granted the appeal, approved respondent's appointment and recalled the approval of petitioner's appointment.[9]

Aggrieved, petitioner filed a petition for certiorari in the Court of Appeals (CA) claiming that the CSC acted without factual and legal bases in recalling his appointment. He also prayed for the issuance of a temporary restraining order and a writ of preliminary injunction.

In its September 26, 2006 decision,[10] the CA denied the petition and upheld respondent's appointment which was deemed effective immediately upon its issuance by the appointing authority on May 26, 2003. This was because respondent had accepted the appointment upon her assumption of the duties and responsibilities of the position.

The CA found that respondent possessed all the qualifications and none of the disqualifications for the position of Administrative Officer II; that due to the respondent's valid appointment, no other appointment to the same position could be made without the position being first vacated; that the petitioner's appointment to the position was thus void; and that, contrary to the argument of petitioner that he had been deprived of his right to due process when he was not allowed to participate in the proceedings in the CSC, it was petitioner who failed to exercise his right by failing to submit a single pleading despite being furnished with copies of the pleadings in the proceedings in the CSC.

The CA opined that Diaz unreasonably refused to affix her signature on respondent's PDF and to submit respondent's appointment to the CSC on the ground of non-submission of respondent's PDF. The CA ruled that the PDF was not even required to be submitted and forwarded to the CSC.

Petitioner filed a motion for reconsideration but his motion was denied on February 8, 2007.[11]

Hence, this petition.[12]

Petitioner maintains that respondent was not validly appointed to the position of Administrative Officer II because her appointment was never attested by the CSC. According to petitioner, without the CSC attestation, respondent's appointment as Administrative Officer II was never completed and never vested her a permanent title. As such, respondent's appointment could still be recalled or withdrawn by the appointing authority. Petitioner further argues that, under the Omnibus Rules Implementing Book V of Executive Order (EO) No. 292,[13] every appointment is required to be submitted to the CSC within 30 days from the date of issuance; otherwise, the appointment becomes ineffective.[14] Thus, respondent's appointment issued on May 23, 2003 should have been transmitted to the CSC not later than June 22, 2003 for proper attestation. However, because respondent's appointment was not sent to the CSC within the proper period, her appointment ceased to be effective and the position of Administrative Officer II was already vacant when petitioner was appointed to it.

In her comment,[15] respondent points out that her appointment was wrongfully not submitted by the proper persons to the CSC for attestation. The reason given by Oyardo for the non-submission of respondent's appointment papers to the CSC -- the alleged failure of respondent to have her PDF duly signed by Gonzales -- was not a valid reason because the PDF was not even required for the attestation of respondent's appointment by

the CSC.

After due consideration of the respective arguments of the parties, we deny the petition.

The law on the matter is clear. The problem is petitioner's insistence that the law be applied in a manner that is unjust and unreasonable.

Petitioner relies on an overly restrictive reading of Section 9(h) of PD 807[16] which states, in part, that an appointment must be submitted by the appointing authority to the CSC within 30 days from issuance, otherwise, the appointment becomes ineffective:

Sec. 9. Powers and Functions of the Commission. -- The [CSC] shall administer the Civil Service and shall have the following powers and functions:

xxx xxx xxx

(h) Approve all appointments, whether original or promotional, to positions in the civil service, except those of presidential appointees, members of the Armed Forces of the Philippines, police forces, firemen and jailguards, and disapprove those where the appointees do not possess the appropriate eligibility or required qualifications. An appointment shall take effect immediately upon issue by the appointing authority if the appointee assumes his duties immediately and shall remain effective until it is disapproved by the [CSC], if this should take place, without prejudice to the liability of the appointing authority for appointments issued in violation of existing laws or rules: Provided, finally, That the [CSC] shall keep a record of appointments of all officers and employees in the civil service. All appointments requiring the approval of the [CSC] as herein provided, shall be submitted to it by the appointing authority within thirty days from issuance, otherwise the appointment becomes ineffective thirty days thereafter. (Emphasis supplied)

This provision is implemented in Section 11, Rule V of the Omnibus Rules Implementing Book V of EO 292 (Omnibus Rules):

Section 11. An appointment not submitted to the [CSC] within thirty (30) days from the date of issuance which shall be the date appearing on the fact of the appointment, shall be ineffective. xxx

Based on the foregoing provisions, petitioner argues that respondent's appointment became effective on the day of her appointment but it subsequently ceased to be so when the appointing authority did not submit her appointment to the CSC for attestation within 30 days.

Petitioner is wrong.

The real issue in this case is whether the deliberate failure of the appointing authority (or other responsible officials) to submit respondent's appointment paper to the CSC within 30 days from its issuance made her appointment ineffective and incomplete. Substantial reasons dictate that it did not.

Before discussing this issue, however, it must be brought to mind that CSC resolution dated November 29, 2005 recalling petitioner's appointment and approving that of respondent has long become final and executory.

Remedy to Assail CSC Decision
or Resolution

Sections 16 and 18, Rule VI of the Omnibus Rules provide the proper remedy to assail a CSC decision or resolution:

Section 16. An employee who is still not satisfied with the decision of the [Merit System Protection Board] may appeal to the [CSC] within fifteen days from receipt of the decision.

The decision of the [CSC] is final and executory if no petition for reconsideration is filed within fifteen days from receipt thereof.

xxx xxx xxx

Section 18. Failure to file a protest, appeal, petition for reconsideration or petition for review within the prescribed period shall be deemed a waiver of such right and shall render the subject action/decision final and executory. (Emphasis supplied)

In this case, petitioner did not file a petition for reconsideration of the CSC resolution dated November 29, 2005 before filing a petition for review in the CA. Such fatal procedural lapse on petitioner's part allowed the CSC resolution dated November 29, 2005 to become final and executory.[17] Hence, for all intents and purposes, the CSC resolution dated November 29, 2005 has become immutable and can no longer be amended or modified.[18] A final and definitive judgment can no longer be changed, revised, amended or reversed.[19] Thus, in praying for the reversal of the assailed Court of Appeals decision which affirmed the final and executory CSC resolution dated November 29, 2005, petitioner would want the Court to reverse a final and executory judgment and disregard the doctrine of immutability of final judgments.

True, a dissatisfied employee of the civil service is not preempted from availing of remedies other than those provided in Section 18 of the Omnibus Rules. This is precisely the purpose of Rule 43 of the Rules of Court, which provides for the filing of a petition for review as a remedy to challenge the decisions of the CSC.

While Section 18 of the Omnibus Rules does not supplant the mode of appeal under Rule 43, we cannot disregard Section 16 of the Omnibus Rules, which requires that a petition for reconsideration should be filed, otherwise, the CSC decision will become final and executory, viz.:

The decision of the [CSC] is final and executory if no petition for reconsideration is filed within fifteen days from receipt thereof.

Note that the foregoing provision is a specific remedy as against CSC decisions involving its administrative function, that is, on matters involving "appointments, whether original or promotional, to positions in the civil service,"[20] as opposed to its quasi-judicial function where it adjudicates the rights of persons before it, in accordance with the standards laid down by the law.[21]

The doctrine of exhaustion of administrative remedies requires that, for reasons of law, comity and convenience, where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, the courts will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.[22] In *Orosa v. Roa*,[23] the Court ruled that if an appeal or remedy obtains or is available within the administrative machinery, this should be resorted to before resort can be made to the courts.[24] While the doctrine of exhaustion of administrative remedies is subject to certain exceptions,[25] these are not present in this case.

Thus, absent any definitive ruling that the second paragraph of Section 16 is not mandatory and the filing of a petition for reconsideration may be dispensed with, then the Court must adhere to the dictates of Section 16 of the Omnibus Rules.

Moreover, even in its substantive aspect, the petition is bereft of merit.

Section 9(h) of PD 807 Already
Amended by Section 12 Book V of

EO 292

It is incorrect to interpret Section 9(h) of Presidential Decree (PD) 807 as requiring that an appointment must be submitted by the appointing authority to the CSC within 30 days from issuance, otherwise, the appointment would become ineffective. Such interpretation fails to appreciate the relevant part of Section 9(h) which states that "an appointment shall take effect immediately upon issue by the appointing authority if the appointee assumes his duties immediately and shall remain effective until it is disapproved by the [CSC]." This provision is reinforced by Section 1, Rule IV of the Revised Omnibus Rules on Appointments and Other Personnel Actions, which reads:

Section 1. An appointment issued in accordance with pertinent laws and rules shall take effect immediately upon its issuance by the appointing authority, and if the appointee has assumed the duties of the position, he shall be entitled to receive his salary at once without awaiting the approval of his appointment by the Commission. The appointment shall remain effective until disapproved by the Commission. x x x (Emphasis supplied)

More importantly, Section 12, Book V of EO 292 amended Section 9(h) of PD 807 by deleting the requirement that all appointments subject to CSC approval be submitted to it within 30 days. Section 12 of EO 292 provides:

Sec. 12. Powers and Functions. - The Commission shall have the following powers and functions:

xxx xxx xxx

(14) Take appropriate action on all appointments and other personnel matters in the Civil Service, including extension of Service beyond retirement age;

(15) Inspect and audit the personnel actions and programs of the departments, agencies, bureaus, offices, local government units and other instrumentalities of the government including government -owned or controlled corporations; conduct periodic review of the decisions and actions of offices or officials to whom authority has been delegated by the Commission as well as the conduct of the officials and the employees in these offices and apply appropriate sanctions whenever necessary.

As a rule, an amendment by the deletion of certain words or phrases indicates an intention to change its meaning.[26] It is presumed that the deletion would not have been made had there been no intention to effect a change in the meaning of the law or rule.[27] The word, phrase or sentence excised should accordingly be considered inoperative.[28]

The dissent refuses to recognize the amendment of Section 9(h) of PD 807 by EO 292 but rather finds the requirement of submission of appointments within 30 days not inconsistent with the authority of the CSC to take appropriate action on all appointments and other personnel matters. However, the intention to amend by deletion is unmistakable not only in the operational meaning of EO 292 but in its legislative history as well.

PD 807 and EO 292 are not inconsistent insofar as they require CSC action on appointments to the civil service. This is evident from the recognition accorded by EO 292, specifically under Section 12 (14) and (15) thereof, to the involvement of the CSC in all personnel actions and programs of the government. However, while a restrictive period of 30 days within which appointments must be submitted to the CSC is imposed under the last sentence of Section 9(h) of PD 807, none was adopted by Section 12 (14) and (15) of EO 292. Rather, provisions subsequent to Section 12 merely state that the CSC (and its liaison staff in various departments and agencies) shall periodically monitor, inspect and audit personnel actions.[29] Moreover, under Section 9(h) of PD 807, appointments not submitted within 30 days to the CSC become ineffective, no such specific adverse effect is contemplated under Section 12 (14) and (15) of EO 292. Certainly, the two provisions are materially inconsistent with each other. And to insist on reconciling them by restoring the restrictive period and punitive effect of Section 9(h) of PD 807, which EO 292 deliberately discarded, would be to rewrite the law by mere judicial

interpretation.[30]

Not even the historical development of civil service laws can justify the retention of such restrictive provisions. Public Law No. 5,[31] the law formally establishing a civil service system, merely directed that all heads of offices notify the Philippine Civil Service Board "in writing without delay of all appointments x x x made in the classified service." [32] The Revised Administrative Code of 1917 was even less stringent as approval by the Director of the Civil Service of appointments of temporary and emergency employees was required only when practicable. Finally, Republic Act (RA) 2260[33] imposed no period within which appointments were attested to by local government treasurers to whom the CSC delegated its authority to act on personnel actions but provided that if within 180 days after receipt of said appointments, the CSC shall not have made any correction or revision, then such appointments shall be deemed to have been properly made. Consequently, it was only under PD 807 that submission of appointments for approval by the CSC was subjected to a 30-day period. That, however, has been lifted and abandoned by EO 292.

There being no requirement in EO 292 that appointments should be submitted to the CSC for attestation within 30 days from issuance, it is doubtful by what authority the CSC imposed such condition under Section 11, Rule V of the Omnibus Rules. It certainly cannot restore what EO 292 itself already and deliberately removed. At the very least, that requirement cannot be used as basis to unjustly prejudice respondent.

Under the facts obtaining in this case, respondent promptly assumed her duties as Administrative Officer II when her appointment was issued by the appointing authority. Thus, her appointment took effect immediately and remained effective until disapproved by the CSC.[34] Respondent's appointment was never disapproved by the CSC. In fact, the CSC was deprived of the opportunity to act promptly as it was wrongly prevented from doing so. More importantly, the CSC subsequently approved respondent's appointment and recalled that of petitioner, which recall has already become final and immutable.

Second, it is undisputed that respondent's appointment was not submitted to the CSC, not through her own fault but because of Human Resource Management Officer I Ma. Teresa U. Diaz's unjustified refusal to sign it on the feigned and fallacious ground that respondent's position description form had not been duly signed by School Principal Dr. Leticia B. Gonzales.[35] Indeed, the CSC even sanctioned Diaz for her failure to act in the required manner.[36] Similarly, the Ombudsman found both City Schools Division Superintendent Ma. Amy O. Oyardo and Gonzales administratively liable and suspended them for three months for willfully withholding information from respondent on the status of her appointment.

xxx xxx xxx

All along, [respondent] was made to believe that her appointment was in order. During the same period, respondent Gonzales, with respondent Oyardo's knowledge, indifferently allowed [respondent] to plea for the signing of her [position description form], when they could have easily apprised [respondent] about the revocation/withdrawal of her appointment. Worse, when [respondent] informed Oyardo on 25 June 2003 about her assumption of office as [Administrative Officer II], the latter directed [respondent] to go back to her post as Teacher I on the ground that [respondent] had not been issued an attested appointment as [Administrative Officer II], even when [Oyardo] knew very well that [respondent's] appointment could not be processed with the CSC because of her order to re-evaluate the applicants. This act by [Oyardo] is a mockery of the trust reposed upon her by [respondent], who, then in the state of quandary, specifically sought [Oyardo's] advice on what to do with her appointment, in the belief that her superior could enlighten her on the matter.

It was only on 02 July 2003 when [Gonzales], in her letter, first made reference to a re-ranking of the applicants when [respondent] learned about the recall by [Oyardo] of her appointment. At that time, the thirty-day period within which to submit her appointment to the CSC has lapsed. [Oyardo's] and Gonzales' act of withholding

information about the real status of [respondent's] appointment unjustly deprived her of pursuing whatever legal remedies available to her at that time to protect her interest.[37]

Considering these willful and deliberate acts of the co-conspirators Diaz, Oyardo and Gonzales that caused undue prejudice to respondent, the Court cannot look the other way and make respondent suffer the malicious consequences of Gonzales's and Oyardo's malfeasance. Otherwise, the Court would be recognizing a result that is unconscionable and unjust by effectively validating the following inequities: respondent, who was vigilantly following up her appointment paper, was left to hang and dry; to add insult to injury, not long after Oyardo advised her to return to her teaching position, she (Oyardo) appointed petitioner in respondent's stead.

The obvious misgiving that comes to mind is why Gonzales and Oyardo were able to promptly process petitioner's appointment and transmit the same to the CSC for attestation when they could not do so for respondent. There is no doubt that office politics was moving behind the scenes.

In effect, Gonzales' and Oyardo's scheming and plotting unduly deprived respondent of the professional advancement she deserved. While public office is not property to which one may acquire a vested right, it is nevertheless a protected right.[38]

It cannot be overemphasized that respondent's appointment became effective upon its issuance by the appointing authority and it remained effective until disapproved by the CSC (if at all it ever was). Disregarding this rule and putting undue importance on the provision requiring the submission of the appointment to the CSC within 30 days will reward wrongdoing in the appointment process of public officials and employees. It will open the door for scheming officials to block the completion and implementation of an appointment and render it ineffective by the simple expedient of not submitting the appointment paper to the CSC. As indubitably shown in this case, even respondent's vigilance could not guard against the malice and grave abuse of discretion of her superiors.

There is no dispute that the approval of the CSC is a legal requirement to complete the appointment. Under settled jurisprudence, the appointee acquires a vested legal right to the position or office pursuant to this completed appointment.[39] Respondent's appointment was in fact already approved by the CSC with finality.

The purpose of the requirement to submit the appointment to the CSC is for the latter to approve or disapprove such appointment depending on whether the appointee possesses the appropriate eligibility or required qualifications and whether the laws and rules pertinent to the process of appointment have been followed.[40] With this in mind, respondent's appointment should all the more be deemed valid.

Respondent's papers were in order. What was sought from her (the position description form duly signed by Gonzales) was not even a prerequisite before her appointment papers could be forwarded to the CSC. More significantly, respondent was qualified for the position. Thus, as stated by the CA:

The evidence also reveals compliance with the procedures that should be observed in the selection process for the vacant position of Administrative Officer II and the issuance of the appointment to the respondent: the vacancy for the said position was published on February 28, 2003; the Personnel Selection Board of Dep-Ed Division of Tabaco City conducted a screening of the applicants, which included the respondent and the petitioner; the respondent's qualifications met the minimum qualifications for the position of Administrative Officer II provided by the CSC. She therefore qualified for permanent appointment.[41]

There is no doubt that, had the appointing authority only submitted respondent's appointment to the CSC within the said 30 days from its issuance, the CSC would (and could) have approved it. In fact, when the CSC was later apprised of respondent's prior appointment when she protested petitioner's subsequent appointment, it was respondent's appointment which the CSC approved. Petitioner's appointment was recalled. These points were

never rebutted as petitioner gave undue emphasis to the non-attestation by the CSC of respondent's appointment, without any regard for the fact that the CSC actually approved respondent's appointment.

Third, the Court is urged to overlook the injustice done to respondent by citing *Favis v. Rupisan*[42] and *Tomali v. Civil Service Commission*.[43]

However, reliance on *Favis* is misplaced. In *Favis*, the issue pertains to the necessity of the CSC approval, not the submission of the appointment to the CSC within 30 days from issuance. Moreover, unlike *Favis* where there was an apparent lack of effort to procure the approval of the CSC, respondent in this case was resolute in following up her appointment papers. Thus, despite *Favis*' having assumed the responsibilities of PVTA Assistant General Manager for almost two years, the Court affirmed her removal, ruling that:

The tolerance, acquiescence or mistake of the proper officials, resulting in the non-observance of the pertinent rules on the matter does not render the legal requirement, on the necessity of approval by the Commissioner of Civil Service of appointments, ineffective and unenforceable.[44] (Emphasis supplied)

Taken in its entirety, this case shows that the lack of CSC approval was not due to any negligence on respondent's part. Neither was it due to the "tolerance, acquiescence or mistake of the proper officials." Rather, the underhanded machinations of Gonzales and Oyardo, as well as the gullibility of Diaz, were the major reasons why respondent's appointment was not even forwarded to the CSC.

Tomali, likewise, is not applicable. The facts are completely different. In *Tomali*, petitioner *Tomali*'s appointment was not approved by the CSC due to the belated transmittal thereof to the latter. The Court, citing *Favis*, ruled that the appointee's failure to secure the CSC's approval within the 30-day period rendered her appointment ineffective. It quoted the Merit Systems Protection Board's finding that "there is no showing that the non-submission was motivated by bad faith, spite, malice or at least attributed to the fault of the newly installed [Office of Muslim Affairs] Executive Director." The Court observed:

Petitioner herself would not appear to be all that blameless. She assumed the position four months after her appointment was issued or months after that appointment had already lapsed or had become ineffective by operation of law. Petitioner's appointment was issued on 01 July 1990, but it was only on 31 May 1991 that it was submitted to the CSC, a fact which she knew, should have known or should have at least verified considering the relatively long interval of time between the date of her appointment and the date of her assumption to office.[45]

The Court also found that "[t]here (was) nothing on record to convince us that the new OMA Director (had) unjustly favored private respondent nor (had) exercised his power of appointment in an arbitrary, whimsical or despotic manner." [46]

The peculiar circumstances in *Tomali* are definitely not present here. As a matter of fact, the situation was exactly the opposite. As we have repeatedly stressed, respondent was not remiss in zealously following up the status of her appointment. It cannot be reasonably claimed that the failure to submit respondent's appointment to the CSC was due to her own fault. The culpability lay in the manner the appointing officials exercised their power with arbitrariness, whim and despotism. The whole scheme was intended to favor another applicant.

Therefore, the lack of CSC approval in *Favis* and *Tomali* should be taken only in that light and not overly stretched to cover any and all similar cases involving the 30-day rule. Certainly, the CSC approval cannot be done away with. However, an innocent appointee like the respondent should not be penalized if her papers (which were in the custody and control of others who, it turned out, were all scheming against her) did not reach the CSC on time. After all, her appointment was subsequently approved by the CSC anyway.

Under Article 1186 of the Civil Code, "[t]he condition shall be deemed fulfilled when the obligor voluntarily prevents its fulfillment." Applying this to the appointment process in the civil service, unless the appointee himself is negligent in following up the submission of his appointment to the CSC for approval, he should not be prejudiced by any willful act done in bad faith by the appointing authority to prevent the timely submission of his appointment to the CSC. While it may be argued that the submission of respondent's appointment to the CSC within 30 days was one of the conditions for the approval of respondent's appointment, however, deliberately and with bad faith, the officials responsible for the submission of respondent's appointment to the CSC prevented the fulfillment of the said condition. Thus, the said condition should be deemed fulfilled.

The Court has already had the occasion to rule that an appointment remains valid in certain instances despite non-compliance of the proper officials with the pertinent CSC rules. In *Civil Service Commission v. Josen, Jr.*,^[47] the CSC challenged the validity of the appointment of Ong on the ground that, among others, it was not reported in the July 1995 Report of Personnel Action (ROPA), thus making such appointment ineffective. The subject rule provided that an "appointment issued within the month but not listed in the ROPA for the said month shall become ineffective thirty days from issuance." Rejecting the CSC's contention, the Court held that there was a legitimate justification for such delayed observance of the rule:

We find the respondent's justification for the failure of the POEA to include Ong's appointment in its ROPA for July 1995 as required by CSC Memorandum Circular No. 27, Series of 1994 to be in order. The records show that the [Philippine Overseas Employment Administration (POEA)] did not include the contractual appointment of Ong in its July ROPA because its request for exemption from the educational requisite for confidential staff members provided in [Memorandum Circular] No. 38 had yet been resolved by the CSC. The resolution of the petitioner granting such request was received only in November, 1995. The POEA, thereafter, reported the appointment in its November, 1995 ROPA.^[48]

The Court reached the same conclusion in the recent case of *Chavez v. Ronidel*^[49] where there was a similar inaction from the responsible officials which resulted in non-compliance with the requirement:

Lastly, we agree with the appellate court that respondent's appointment could not be invalidated solely because of [Presidential Commission for the Urban Poor's (PCUP's)] failure to submit two copies of the ROPA as required by CSC Resolution No. 97368. xxxx

xxx xxx xxx

We quote with approval the appellate court's ratiocination in this wise:

To our minds, however, the invalidation of the [respondent's] appointment based on this sole technical ground is unwarranted, if not harsh and arbitrary, considering the factual milieu of this case. For one, it is not the [respondent's] duty to comply with the requirement of the submission of the ROPA and the certified true copies of her appointment to [the Civil Service Commission Field Office or] CSCFO within the period stated in the aforequoted CSC Resolution. The said resolution categorically provides that it is the PCUP, and not the appointee as in the case of the [respondent] here, which is required to comply with the said reportorial requirements.

Moreover, it bears pointing out that only a few days after the [petitioner] assumed his new post as PCUP Chairman, he directed the PCUP to hold the processing of [respondent's] appointment papers in abeyance, until such time that an assessment thereto is officially released from his office. Unfortunately, up to this very day, the [respondent] is still defending her right to enjoy her promotional appointment as DMO V. Naturally, her appointment failed to comply with the PCUP's reportorial requirements under CSC Resolution No. 97-3685 precisely because of the [petitioner's] inaction to the same.

We believe that the factual circumstances of this case calls for the application of equity. To our minds, the

invalidation of the [respondent's] appointment due to a procedural lapse which is undoubtedly beyond her control, and certainly not of her own making but that of the [petitioner], justifies the relaxation of the provisions of CSC Board Resolution No. 97-3685, pars. 6,7 and 8. Hence, her appointment must be upheld based on equitable considerations, and that the non-submission of the ROPA and the certified true copies of her appointment to the CSCFO within the period stated in the aforementioned CSC Resolution should not work to her damage and prejudice. Besides, the [respondent] could not at all be faulted for negligence as she exerted all the necessary vigilance and efforts to reap the blessings of a work promotion. Thus, We cannot simply ignore her plight. She has fought hard enough to claim what is rightfully hers and, as a matter of simple justice, good conscience, and equity, We should not allow Ourselves to prolong her agony.

All told, We hold that the [respondent's] appointment is valid, notwithstanding the aforecited procedural lapse on the part of PCUP which obviously was the own making of herein [petitioner]. (Emphasis supplied)

Respondent deserves the same sympathy from the Court because there was also a telling reason behind the non-submission of her appointment paper within the 30-day period.

The relevance of Joson and Chavez to this case cannot be simply glossed over. While the agencies concerned in those cases were accredited agencies of the CSC which could take final action on the appointments, that is not the case here. Thus, any such differentiation is unnecessary. It did not even factor in the Court's disposition of the issue in Joson and Chavez. What is crucial is that, in those cases, the Court upheld the appointment despite the non-compliance with a CSC rule because (1) there were valid justifications for the lapse; (2) the non-compliance was beyond the control of the appointee and (3) the appointee was not negligent. All these reasons are present in this case, thus, there is no basis in saying that the afore-cited cases are not applicable here. Similar things merit similar treatment.

Fourth, in appointing petitioner, the appointing authority effectively revoked the previous appointment of respondent and usurped the power of the CSC to withdraw or revoke an appointment that had already been accepted by the appointee. It is the CSC, not the appointing authority, which has this power.[50] This is clearly provided in Section 9, Rule V of the Omnibus Rules:

Section 9. An appointment accepted by the appointee cannot be withdrawn or revoked by the appointing authority and shall remain in force and effect until disapproved by the [CSC]. xxxx (Emphasis supplied)

Thus, the Court ruled in *De Rama v. Court of Appeals*[51] that it is the CSC which is authorized to recall an appointment initially approved when such appointment and approval are proven to be in disregard of applicable provisions of the civil service law and regulations.

Petitioner seeks to inflexibly impose the condition of submission of the appointment to the CSC by the appointing authority within 30 days from issuance, that is, regardless of the negligence/diligence of the appointee and the bad faith/good faith of the appointing authority to ensure compliance with the condition. However, such stance would place the appointee at the mercy and whim of the appointing authority even after a valid appointment has been made. For although the appointing authority may not recall an appointment accepted by the appointee, he or she can still achieve the same result through underhanded machinations that impedes or prevents the transmittal of the appointment to the CSC. In other words, the insistence on a strict application of the condition regarding the submission of the appointment to the CSC within 30 days, would give the appointing authority the power to do indirectly what he or she cannot do directly. An administrative rule that is of doubtful basis will not only produce unjust consequences but also corrupt the appointment process. Obviously, such undesirable end result could not have been the intention of the law.

The power to revoke an earlier appointment through the appointment of another may not be conceded to the

appointing authority. Such position is not only contrary to Section 9, Rule V and Section 1, Rule IV of the Omnibus Rules. It is also a dangerous reading of the law because it unduly expands the discretion given to the appointing authority and removes the checks and balances that will rein in any abuse that may take place. The Court cannot countenance such erroneous and perilous interpretation of the law.

Accordingly, petitioner's subsequent appointment was void. There can be no appointment to a non-vacant position. The incumbent must first be legally removed, or her appointment validly terminated, before another can be appointed to succeed her.[52]

In sum, the appointment of petitioner was inconsistent with the law and well-established jurisprudence. It not only disregarded the doctrine of immutability of final judgments but also unduly concentrated on a narrow portion of the provision of law, overlooking the greater part of the provision and other related rules and using a legal doctrine rigidly and out of context. Its effect was to perpetuate an injustice.

WHEREFORE, the petition is hereby DENIED.

Costs against petitioner.

SO ORDERED.

Puno, C.J., Carpio, Carpio Morales, Nachura, Leonardo-De Castro, Brion, Abad, Villarama, Jr., Perez, and Villarama, Jr., JJ., concur.

Velasco, Jr. and Peralta, JJ., joins the dissent of J. Bersamin.

Bersamin, J., please see dissent.

Del Castillo, J., no part.

[1] Based on documents submitted by petitioner himself, his full name is Arlin Balane Obiasca. However, he also refers to himself in the records as "Arlin O. Obiasca."

[2] Rollo, p. 70.

[3] Id., p. 72.

[4] Id., p. 74.

[5] Id., pp. 164-173 (Decision dated 19 July 2004 in Case No. OMB-L-A-03-0875-H).

[6] Id., pp. 85-86.

[7] Id., p. 87.

[8] Id., pp. 95-100.

[9] Id., pp. 116-128.

[10] Id., pp. 28-44. Penned by Associate Justice Mariano C. Del Castillo (now a member of this Court) and concurred in by Associate Justices Conrado M. Vasquez, Jr. (retired) and Santiago Javier Ranada (retired) of the Second Division of the Court of Appeals.

[11] Id., p. 56.

[12] Under Rule 45 of the Rules of Court.

[13] Administrative Code of 1987.

[14] Sec. 11 of the Omnibus Rules reads:

Sec. 11. An appointment not submitted to the Commission within thirty (30) days from the date of issuance which shall be the date appearing to the face of the appointment, shall be ineffective.xxx

[15] Rollo, pp. 150-160.

[16] The Civil Service Law.

[17] Ignacio v. Civil Service Commission, G.R. No. 163573, 27 July 2005, 464 SCRA 220, 226-227.

[18] Department of Education v. Cuanan, G.R. No. 169013, 16 December 2008, 574 SCRA 41, 50.

[19] Bongcac v. Sandiganbayan, G.R. Nos. 156687-88, 21 May 2009.

[20]Section 9 (h), Civil Service Law.

[21]Abella, Jr. v. Civil Service Commission, G.R. No. 152574, 17 November 2004, 442 SCRA 507, 529.

[22]Hon. Carale v. Hon. Abarintos, G.R. No. 120704, 3 March 1997, 336 Phil. 126, 135-136.

[23]G.R. No. 140423, 14 July 2006, 495 SCRA 22.

[24]Id., p. 28.

[25] The exceptions to the doctrine of exhaustion of administrative remedies are: (1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy, and (11) when there are circumstances indicating the urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant; (12) where no administrative review is provided by law; (13) where the rule of qualified political agency applies and (14) where the issue of non-exhaustion of administrative remedies has been rendered moot. (Province of Zamboanga del Norte v. Court of Appeals, G.R. No. 109853, 11 October 2000, 396 Phil. 709)

[26] Laguna Metts Corporation v. Caalam, G.R. No. 185220, 27 July 2009.

[27] Id.

[28] In Neal v. State of Delaware, 103 U.S. 370 (1880), the U.S. Supreme Court held that the omission of the word "white" in the 15th Amendment on suffrage rendered inoperative provisions in existing constitutions of states reserving the right of suffrage and to jury selection to "whites".

[29] Sections 18 and 20, in relation to Sections 15 and 26, EO 292.

[30] See Chevron Philippines, Inc. v. CIR, G.R. No. 178759, August 11, 2008, 561 SCRA 710.

[31]An Act for the Establishment and Maintenance of an Efficient and Honest Civil Service in the Philippines Islands, effective September 26, 1900.

[32] Act No. 2711, effective March 10, 1917.

[33] An Act to Amend and Revise the Laws Relative to Philippine Civil Service, June 19, 1959 .

[34] This is echoed in Section 10 of the Omnibus Rules:

Section 10. An appointment issued in accordance with pertinent laws or rules shall take effect immediately upon its issuance by the appointing authority, and if the appointee has assumed the duties of the position, he shall be entitled to receive his salary at once without awaiting the approval of his appointment by the [CSC]. The appointment shall remain effective until disapproved by the [CSC]. In no case shall an appointment take effect earlier than the date of its issuance. (Emphasis supplied)

[35] *Id.*, p. 9.

[36] CA decision, p. 8.

[37] The Ombudsman's findings as quoted in the CA decision, pp. 13-14.

[38] *Bince, Jr. v. Commission on Elections*, G.R. No. 106271, 9 February 1993, 218 SCRA 782, 792, cited in *Abella, Jr. v. Civil Service Commission*, G.R. No. 152574, 17 November 2004, 442 SCRA 507, 520.

[39] *De Rama v. Court of Appeals*, G.R. No. 131136, 28 February 2001, 353 SCRA 94, 106.

[40] *Tomali v. Civil Service Commission*, G.R. No. 110598, 1 December 1994, 238 SCRA 572, 575.

[41] CA decision, pp. 8-9.

[42] G.R. No. L-22823, 19 May 1966, 17 SCRA 190.

[43] *Supra* note 40.

[44] *Supra* note 42, p. 196.

[45] *Supra* note 40, p. 577.

[46] *Id.*, p. 578.

[47] G.R. No. 154674, 27 May 2004, 429 SCRA 773.

[48] *Id.*, p. 786.

[49] G.R. No. 180941, 11 June 2009.

[50] *Supra* note 39, p. 107.

[51] *Id.*

[52] *Aquino v. Civil Service Commission*, G.R. No. 92403, 22 April 1992, 208 SCRA 240, 250.

D I S S E N T

BERSAMIN, J.

I respectfully register my dissent to the learned and comprehensive majority opinion ably written by an esteemed colleague, Justice Renato C. Corona, dismissing the petition that would treat the appointment of the respondent as ineffective on the ground that the appointment did not carry the attestation by the Civil Service Commission (CSC).

As I write, I find myself in the same situation of Justice Joseph Story of the United States Supreme Court nearly 200 years ago, when dissenting from his colleagues on an important case became unavoidable for him. He said

then:

It is a matter of regret that in this conclusion I have the misfortune to differ from a majority of the court, for whose superior learning and ability I entertain the most entire respect. But I hold it an indispensable duty not to surrender my own judgment, because a great weight of opinion is against me - a weight which no one can feel more sensibly than myself. Had this been an ordinary case I should have contented myself with silence; but believing that no more important or interesting question ever came before a prize tribunal, and that the national rights suspended on it are of infinite moment to the maritime world, I have thought it not unfit to pronounce my own opinion.[1]

I write this dissent, therefore, in the awareness that I had taken an individual oath that imposed on me the duty that I cannot justly satisfy "by an automatic acceptance of the views of others which have neither convinced, nor created a reasonable doubt in, [my] mind." [2]

Antecedents

For purpose of this dissent, the background of this controversy is as follows.

On 26 May 2003, respondent Jeanne O. Basallote was appointed to the position of Administrative Officer II, Item No. OSEC-DECSB-ADO2-390030-1998 of the Department of Education (DepEd), Tabaco National High School in Albay Province by City Schools Division Superintendent Nelly B. Beloso.[3]

In a letter dated 4 June 2003,[4] the new City Schools Division Superintendent, Ma. Amy O. Oyardo (Oyardo), advised School Principal Dr. Leticia B. Gonzales (Gonzales) that the papers of the applicants for the position of Administrative Officer II of the school, including those of the respondent, were being returned; and that a school ranking should be accomplished and submitted to her office for review. In addition, Gonzales was advised that only qualified applicants should be indorsed.

The respondent assumed as Administrative Officer II on 19 June 2003. Thereafter, however, she received a letter from Ma. Teresa U. Diaz (Diaz), Human Resource Management Officer I, City Schools Division of Tabaco City, Albay, informing her that her appointment could not be forwarded to the CSC because of her failure to submit the position description form (PDF) duly signed by Gonzales.

The respondent sought to obtain Gonzales' signature, but the latter refused to sign despite repeated requests. When the respondent informed Oyardo of the situation, she was instead advised to return to her former teaching position of Teacher I. The respondent followed the advice.

In the meanwhile, on 25 August 2003, Oyardo appointed petitioner Arlin O. Obiasca to the position of Administrative Officer II. The appointment was sent to and was properly attested by the CSC.[5]

The respondent filed a complaint with the Office of the Deputy Ombudsman for Luzon against Oyardo, Gonzales, and Diaz.

In its decision, the Ombudsman found Oyardo and Gonzales administratively liable for withholding information from the respondent on the status of her appointment, and suspended them from the service for three months; but Diaz was absolved of any wrongdoing.[6]

The respondent also filed a protest with the CSC Regional Office V, docketed as Adm. Case No. ND-ARU 04-290. The protest was dismissed on the ground that it should first be submitted to the Grievance Committee of the DepEd for appropriate action. [7]

On motion for reconsideration, the protest was reinstated, but it was eventually dismissed for lack of merit.[8] The respondent appealed the dismissal of her protest to the CSC Regional Office, which dismissed the appeal for

failure to show that her appointment had been received and attested to by the CSC.[9]

The respondent elevated the matter to the CSC, which granted the appeal by its 29 November 2005 resolution, approving the respondent's appointment and recalling its approval of the petitioner's appointment.[10]

Aggrieved, the petitioner filed a petition for certiorari in the Court of Appeals (CA), claiming that the CSC thereby acted without factual and legal bases in recalling his appointment, and praying for the issuance of a temporary restraining order and a writ of preliminary injunction.

Ruling of the CA

In its 26 September 2006 decision,[11] the CA denied the petition for certiorari, and upheld the respondent's appointment effective immediately upon its issuance by the appointing authority on 26 May 2003, considering that the respondent had accepted the appointment upon her assumption of the duties and responsibilities of the position.

The CA found that the respondent possessed all the qualifications and none of the disqualifications for the position of Administrative Officer II; that due to the respondent's valid appointment, no other appointment to the same position could be made without the position being first vacated; that the petitioner's appointment to the position was thus void; and that contrary to the argument of the petitioner that he had been deprived of his right to due process by not having been allowed to participate in the proceedings in the CSC, it was the petitioner who had himself failed to exercise his right by failing to submit a single pleading despite being furnished with copies of the pleadings in the proceedings in the CSC.

The CA opined that Diaz had unreasonably refused to affix her signature on the respondent's PDF and to submit the respondent's appointment to the CSC on the ground of non-submission of the respondent's PDF, because the PDF had not been required to be submitted and forwarded to the CSC.

The petitioner filed a motion for reconsideration, but his motion was denied on 8 February 2007.[12]

Hence, this appeal by petition for review on certiorari.

Issues

The petitioner maintains that the respondent was not validly appointed to the position of Administrative Officer II, because her appointment was never attested by the CSC; that without the attestation, the respondent's appointment as Administrative Officer II was not completed and did not vest a permanent title upon the respondent; that for that reason, the appointment might still be recalled or withdrawn by the appointing authority; that under the Omnibus Rules Implementing Book V of Executive Order (EO) No. 292 (Administrative Code of 1987), every appointment is required to be submitted to the CSC within 30 days from the date of issuance; otherwise, the appointment becomes ineffective;[13] that the respondent's appointment issued on 23 May 2003 should have been transmitted to the CSC not later than 22 June 2003 for proper attestation; and that because the respondent's appointment had not been sent to the CSC within the proper period, her appointment ceased to be effective and the position of Administrative Officer II was already vacant when the petitioner was appointed to it.

In her comment,[14] the respondent, though admitting that her appointment was not submitted to the CSC for attestation, points out that the reason given by Oyardo for the non-submission of her appointment papers to the CSC - the failure of the respondent to have her PDF duly signed by Gonzales - was not valid because the PDF was not even a requisite for the submission of her appointment for attestation by the CSC.

Recommendation

The petition for review should be granted, because its denial tends to negate the authority of the CSC, the central personnel agency of the Government,[15] to scrutinize and approve appointments to the Civil Service.

I

The majority point out that CSC Resolution dated 29 November 2005 (recalling the petitioner's appointment and approving that of the respondent) became final and executory by virtue of the petitioner's failure to file a petition for reconsideration against said resolution before filing the petition for review in the CA, citing Section 16[16] and Section 18 of the Omnibus Rules of the CSC as basis.

I cannot agree to the majority's position.

To begin with, a dissatisfied employee may avail himself of remedies not limited to the petition for reconsideration. In fact, Section 18 of the Omnibus Rules of the CSC expressly recognizes other remedies available to the affected employee to prevent the disputed "action/decision" from becoming final and executory, thus:

Section 18. Failure to file a protest, appeal, petition for reconsideration or petition for review within the prescribed period shall be deemed a waiver of such right and shall render the subject action/decision final and executory.

Moreover, such petition for reconsideration was not a prerequisite to the filing of a petition for review under Rule 43 of the Rules of Court. It was enough that the petition for review was filed "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." [17]

In this regard, the petitioner's petition for review was timely filed. After receiving on 30 January 2006 a copy of the 29 November 2005 resolution, he filed a motion for extension of time to file petition on 14 February 2006, which the CA granted on 20 February 2006. The petition for review was eventually filed on 1 March 2006, which was within the period granted by the CA.

And, lastly, a rule of the CSC that might have intended to render a decision final and executory if no petition for reconsideration is first brought against the decision or resolution will not stand and prevail over the Rule 43 of the Rules of Court, which clearly authorizes appeals from the "awards, judgments, final orders or resolutions of, or authorized by any quasi-judicial

agency in the exercise of its quasi-judicial functions." [18] Rule 43, being issued by the Supreme Court under its rule-making authority in Section 5(5) of Article VIII of the Constitution, has the force and effect of law, [19] and repeals or supersedes any law or enactment on the manner and method of appealing the decisions and orders of the specific quasi-judicial bodies. [20]

II

The CSC, being the central personnel agency of the Government, is charged with the duty of determining questions on the qualifications of merit and fitness of the persons appointed to the Civil Service. An appointment to a civil service position, to be fully effective, must comply with all the legal requirements. [21]

Section 9 of Presidential Decree (P.D.) No. 807 (Civil Service Decree of the Philippines) [22] relevantly provides:

Section 9. Powers and Functions of the Commission. - The Commission shall administer the Civil Service and shall have the following powers and functions:

xxx xxx xxx

(h) Approve all appointments, whether original or promotional, to positions in the civil service, except those of presidential appointees, members of the Armed Forces of the Philippines, police forces, firemen, and jailguards, and disapprove those where the appointees do not possess the appropriate eligibility or required qualifications. An appointment shall take effect immediately upon issue by the appointing authority if the appointee assumes his duties immediately and shall remain effective until it is disapproved by the Commission, if this should take place, without prejudice to the liability of the appointing authority for appointments issued in violation of existing laws or rules: Provided, finally, That the Commission shall keep a record of appointments of all officers and employees in the civil service. All appointments requiring the approval of the Commission as herein provided, shall be submitted to it by the appointing authority within thirty days from issuance, otherwise, the appointment becomes ineffective thirty days thereafter.

xxx xxx xxx

Thus, the appointment must be submitted within the required period to the CSC, which shall then ascertain, in the main, whether the proposed appointee is qualified to hold the position and whether the rules pertinent to the process of appointment were observed.[23]

However, the majority contend that Section 12, Book V of E. O. 292 (The Revised Administrative Code) already amended Section 9 (h) of P.D. 807 by deleting the requirement that appointments subject to CSC approval be submitted to CSC within 30 days. Citing Section 12(14) and (15) of E.O. 292,[24] the majority state that the amendatory law completely deleted not just a word or two, but the entire last sentence of the provision.

I find the contention not well-taken.

The new provision in Section 12(14) of E.O. 292 - "Take appropriate action on all appointments and other personnel matters in the Civil Service including extension of Service beyond retirement age" - is a legal provision altogether different from Section 9 (h) of P.D. 807. The former is too broad in scope, for, certainly, the CSC is not to be limited to merely approving and disapproving appointments. Even with E.O. 292's repealing clause ("All laws, decrees, orders, rules and regulations, or portions thereof, inconsistent with this Code are hereby repealed or modified accordingly"), the requirement of submission of appointments within 30 days expressly stated in the latter is not inconsistent with the authority of the CSC to take appropriate action on all appointments and other personnel matters.

The Court cannot interpret E.O. 292 as having entirely dispensed with the submission requirement in order to make an appointment effective. To hold otherwise is to deprive the CSC of the opportunity to determine whether or not an appointee is qualified for the position to which he is appointed, which certainly weakens the mandate of the CSC as the central personnel agency of the Government and negates the constitutional objective of establishing a career service steeped in professionalism, integrity, and accountability.

In fact, despite the issuance of E.O. 292, the CSC itself has continued to require the submission of appointments within 30 days from the dates of their issuance. There is no better proof of this than the Omnibus Rules Implementing Book V of E.O. 292, whose Rule V provides:

Section 11. An appointment not submitted to the Commission within 30 days from the date of issuance which shall be the date appearing on the face of the appointment shall be ineffective. The appointing authority shall be liable for the salaries of the appointee whose appointment became ineffective. The appointing authority shall likewise be liable for the payment of the salary of the appointee if the appointment is disapproved because the appointing authority has issued it in violation of existing laws or rules, making the appointment unlawful.

III

The CA ruled that the respondent's appointment became effective from the moment of its issuance on 26 May 2006; that she had in effect accepted her appointment upon her assumption of the duties and responsibilities of the position; and that the appointment could no longer be withdrawn or revoked without cause and due process.

I insist that the CA thereby erred.

Its mere issuance does not render an appointment to the Civil Service complete and effective. Under the Omnibus Rules Implementing Book V of E.O. 292, an appointment not submitted to the CSC within 30 days from the date of its issuance shall be ineffective. Compliance with this statutory directive is essential in order to make an appointment to a civil service position fully effective. Without the favorable certification or approval of the CSC, where such approval is required, no title to the office can yet be deemed permanently vested in the appointee; hence, the appointment can still be recalled or withdrawn by the appointing authority.[25]

Otherwise put, the appointing officer and the CSC, acting together, though not concurrently but consecutively, make an appointment complete.[26] It is from the moment that an appointee assumes a position in the Civil Service under a completed appointment that he acquires a legal, not merely equitable, right that is protected not only by statute, but also by the Constitution. Said right cannot then be taken away from him, either by revocation of the appointment or by removal, except for cause and with previous notice and hearing.[27]

Herein, there is no dispute that the respondent's appointment as Administrative Officer II on 26 May 2006 was never attested by the CSC. Thus, her appointment was not completed, and she did not acquire any vested right to the position.

IV

The majority opine that the Court should not look the other way and allow the respondent to suffer the consequences of the willful and deliberate acts of Diaz, Oyardo and Gonzales who conspired not to submit the respondent's appointment to the CSC.

I cannot subscribe to the majority's opinion.

This dissent never intends to appear as condoning the willful and deliberate acts of Diaz, Oyardo and Gonzales vis-à-vis the respondent's appointment. All that I want to put across is that the Court should simply implement the clear and unambiguous provisions of the applicable law.

The appropriate disciplining authorities had already held Diaz, Oyardo and Gonzales to account for their misdeed, with Diaz being sanctioned by the CSC, and Oyardo and Gonzales being held liable by the Ombudsman. There the issue of their misdeed should end. Indeed, the Court has made clear in *Favis v. Rupisan*[28] that the failure of the responsible official to submit for approval an employee's appointment did not negate such requirement, thus:

xxx. The tolerance, acquiescence or mistake of the proper officials, resulting in the non-observance of the pertinent rules on the matter does not render the legal requirement, on the necessity of approval of the Commissioner of Civil Service of appointments, ineffective and unenforceable. In the circumstances, for the duration of his occupancy of the position in question, the petitioner may be considered merely as a de facto officer, and may consequently be removed from office even without cause.

Accordingly, that the respondent's appointment was not submitted to the CSC because of Diaz's unjustified refusal to sign it on the fallacious ground that the respondent's PDF had not been duly signed by Gonzales was no reason to validate the respondent's appointment, or to grant her any right to the position or to the guarantees provided by

law.

Still, the majority consider as misplaced the petitioner's reliance on *Favis* and *Tomali v. Civil Service Commission*,^[29] because, one, the issue in *Favis* related to the necessity for the CSC approval, not to the submission of the appointment within the 30-day period; and, two, the facts in *Tomali* were different from those herein.

I cannot join the majority's rejection of the applicability of *Favis* and *Tomali v. Civil Service Commission* to this case. On the contrary, I urge that the Court take such case law as authoritative.

Favis, being of 1966 vintage, does not mention the 30-day submission period because the case was decided under the old Civil Service Law, which then required merely the submission of the appointment, without any prescribed period. The 30-day submission period was introduced by P.D. 807 only in 1975. *Favis* is authoritative and instructive nonetheless, because it establishes the rule that the approval of the CSC is necessary to render an appointment effective. With the introduction by P.D. 807 of the 30-day period within which to submit an appointment for the CSC's approval, it should follow that an appointment not submitted within the period does not, and cannot, be approved.

Tomali states the prevailing rule that compliance with the legal requirement for an appointment to a civil service position is essential in order to make the appointment fully effective. *Tomali* was decided in 1994, when P.D. 807 and E.O. 202 were already in force. Although the petitioner in *Tomali* did not follow up on the status of her appointment, there was a finding that the appointing authority did not unjustly favor the respondent, thereby justifying the Court's declaration that the non-submission of the appointment rendered the appointment ineffective.

Nothing in *Tomali* even remotely implies that the bad faith on the part of the appointing authority, causing the delay or the non-submission of the appointment paper to the CSC, is sufficient excuse to do away with the 30-day period for the submission. The Court's statement in *Tomali* that "(t)here is nothing on record to convince us that the new OMA Director has unjustly favored private respondent nor has exercised his power of appointment in an arbitrary, whimsical or despotic manner"^[30] is merely part of the finding that there was no grave abuse of discretion committed by the public respondents. *Tomali* was, after all, a special civil action for certiorari, which necessarily called for a determination of whether the respondent had committed grave abuse of discretion.

Verily, in declaring an appointment as ineffective for failure to submit it to the CSC for approval within the prescribed period, the Court need not distinguish between deliberate or malicious acts and mere tolerance, acquiescence or mistake of the officials that lead to the non-submission of the appointment to the CSC. The mere failure to submit the appointment, regardless of the reason for non-submission, renders the appointment ineffective.

The majority argue that the submission of the appointment beyond the prescribed period is not an impediment to its validity. They cite *Civil Service Commission v. Joson*^[31] and *Chavez v. Ronidel*,^[32] in which the Court has ruled that an appointment remains valid despite the non-compliance of the proper officials with the pertinent CSC rules.

In *Civil Service Commission v. Joson* and *Chavez v. Ronidel*, the inaction of certain officials led to the non-compliance with the CSC requirement that appointments should be included in the monthly report of personnel action (ROPA), which must be submitted in turn to the CSC. The Court held that legitimate justifications excused the delayed observance of or the non-compliance with the requirement. It should be noted, however, that the agencies concerned^[33] were accredited agencies of the CSC; that is, they could take final

action on the appointments without first submitting the appointments to the CSC for approval.[34] Accredited agencies are required only to submit a report on appointments issued (RAI), together with the photocopies of appointments issued during the month, within 15 days of the succeeding month. The accredited agencies involved in *Civil Service Commission v. Joson* and *Chavez v. Ronidel* could take, and, in fact, took, final action on the appointments. The submission of the ROPA was a mere ministerial duty, because the CSC's approval was no longer needed for such appointments. Hence, the leniency extended by the Court to the appointees whose names were not timely included in the ROPA should not be applied to instances where the submission of the appointment is necessary to complete an appointment, like herein.

V

When the petitioner was appointed as Administrative Officer II on 25 August 2003, the respondent's incomplete appointment was effectively revoked.

The majority's argument, that it is the CSC, not the appointing authority, that can revoke the respondent's appointment, because the respondent had meanwhile accepted her appointment, citing Section 9, Rule V of the Omnibus Rules[35] and *De Rama v. Court of Appeals*,[36] is unacceptable to me.

In my view, *De Rama v. Court of Appeals* actually bolsters the conclusion that the petitioner's appointment effectively revoked that of the respondent. Indeed, *De Rama* states:

Rule V, Section 9 of the Omnibus Implementing Regulations of the Revised Administrative Code specifically provides that "an appointment accepted by the appointee cannot be withdrawn or revoked by the appointing authority and shall remain in force and in effect until disapproved by the Commission." Thus, it is the CSC that is authorized to recall an appointment initially approved, but only when such appointment and approval are proven to be in disregard of applicable provisions of the civil service law and regulations.[37]

As interpreted in *De Rama*, the prohibition against the revocation of an appointment under Section 9 presupposes that the appointment was already initially approved by the CSC itself. It is not disputed that the respondent's appointment was never submitted to the CSC; hence, there was never any chance for the CSC to initially approve her appointment, prior to the petitioner's appointment.

The rule has always been that an appointment is essentially a discretionary act, performed by an officer in whom it is vested according to his best judgment, the only condition being that the appointee should possess all the qualifications required therefor. In the absence of any showing that the respondent is not qualified for the position of Administrative Officer II, the Court will not interfere with the prerogative of the appointing officer in this case.

ACCORDINGLY, I vote to grant the petition for review on certiorari.

The decision and resolution of the Court of Appeals dated 26 September 2006 and 8 February 2007, respectively, should be reversed and set aside. The protest against the petitioner, Adm. Case No. ND-ARU 290, should be dismissed.

[1] *The Nereide*, 9 Cranch 388, 455 (1815)

[2] Justice Sutherland, in *West Coast Hotel Co. v. Parrish*, 300 US 379, 401-402 (1937).

[3] *Rollo*, p. 70

[4] *Id.*, p. 72.

[5] Id., at 74.

[6] Id. at pp. 164- 173 (Decision dated 19 July 2004 in Case No. OMB-L-A-03-0875-H).

[7] Id., at pp. 85-86.

[8] Id., at 87.

[9] Id., at pp. 95-100.

[10] Id., at pp. 116-128.

[11] Id., at pp. 28-44.

[12] Id., at 56.

[13] Sec. 11. of the Omnibus Rules reads:

Sec. 11. An appointment not submitted to the Commission within thirty (30) days from the date of issuance which shall be the date appearing to the face of the appointment, shall be ineffective.xxx

[14] Rollo, pp. 150-160.

[15] Article IX, B, Section 3, Constitution.

[16] Section 16. An employee who is still not satisfied with the decision of the Board may appeal to the Commission within 15 days from receipt of the decision.

The decision of the Commission is final and executory if no petition for reconsideration is filed within 15 days from receipt thereof.

[17] 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. (n)

[18] 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. (n)

[19] Inciong v. de Guia, AM R-249-RTJ, 17 September 1984, 154 SCRA 93; Sare v. Aseron, L-22380, April 15, 1967, 20 SCRA 1027; Pascual v. Commissioner of Customs, L-11219, 25 April 1962, 4 SCRA 1020.

[20] First Lepanto Ceramics, Inc. v. Court of Appeals, G.R. No. 110571, 10 March 1994, 231 SCRA 30, 38-40.

[21] Civil Service Commission v. Tinaya G.R. No. 154898, 16 February 2005, 451 SCRA 560, 566

[22] Promulgated on 6 October 1975.

[23] Abella, Jr. v. Civil Service Commission, G.R. No. 152574, 17 November 2004, 442 SCRA 507, 515.

[24] Section 12. Powers and Functions. - The Commission shall have the following powers and functions:

xxx xxx xxx

(14) Take appropriate action on all appointments and other personnel matters in the Civil Service including extension of Service beyond retirement age.

(15) Inspect and audit the personnel actions and programs of the departments, agencies, bureaus, offices, local government including government-owned or controlled corporations; conduct periodic review of the decisions and actions of offices or officials to whom authority has been delegated by the Commission as well as the conduct of the officials and the employees in these offices and apply appropriate sanctions whenever necessary.

[25] Tomali v. Civil Service Commission, G.R. No. 110598, 1 December 1994, 238 SCRA 572, 576.

[26] Abella, Jr. Civil Service Commission, supra, at note 20, p. 516, citing Aquino v. Civil Service Commission, 208 SCRA 240.

[27] Mitra v. Subido, No. L-21691, 15 September 1967, 21 SCRA 127, 142.

[28] No. L-22823, 19 May 1966, 17 SCRA 190, 196.

[29] Supra, at note 22.

[30] Supra, at note 25.

[31] G.R. No. 154674, 27 May 2004, 429 SCRA 773.

[32] G.R. No. 180941, 11 June 2009.

[33] Philippine Overseas Employment Administration (POEA) in Civil Service Commission v. Joson, and the Presidential Commission for the Urban Poor (PCUP) in Chavez v. Ronidel.

[34] http://www.csc.gov.ph/cscweb/acc_prog.html, last visited 9 November 2009.

[35] Section 9. An appointment accepted by the appointee cannot be withdrawn or revoked by the appointing authority and shall remain in force and effect until disapproved by the Commission.xxx

[36] G.R. No. 131136, 28 February 2001, 353 SCRA 94.

[37] Supra, at page 107.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.