

CHAIRMAN PERCIVAL C. CHAVEZ, CHAIR AND CHIEF EXECUTIVE OFFICER, PRESIDENTIAL COMMISSION FOR THE URBAN POOR (PCUP), PETITIONER, VS. LOURDES R. RONIDEL AND HONORABLE COURT OF APPE...

G.R. No. 180941. June 11, 2009

Ponente: NACHURA, J.

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NACHURA, J.:

Before this Court is a petition for review on certiorari under Rule 45 of the Rules of Court, assailing the Court of Appeals (CA) Decision[1] dated August 8, 2007 and its Resolution[2] dated December 17, 2007 in CA-G.R. SP No. 89024.

The factual and procedural antecedents follow:

Respondent Lourdes R. Ronidel was an employee of the Presidential Commission for the Urban Poor (PCUP), occupying the position of Development Management Officer (DMO) III. On May 25, 2000, she applied for promotion to one of the two vacant positions of DMO V.

The minimum qualification standards for DMO V are:

- Education: Masteral Degree
- Experience: 4 years in position/s involving management and supervision
- Training: 24 hours of training in management and supervision
- Eligibility: Career Service (Professional)

Second level eligibility[3]

and at the time of her application, respondent possessed the following qualifications:

- Education: Master[s] in Management
- Experience: OIC-Administrative and Finance Service (January 14 to June 4, 2000; Acting Director-National Capital Region (August 1998 to March 1999; Assistant NCR Director (January 1997-1998)
- Training: First Congress of Human Resource Management Practitioners and Area Coordinator Congress[4]

After a thorough evaluation, the PCUP National Selection Board (NSB) found respondent to have met the minimum qualifications for the position of DMO V. Accordingly, she, together with another applicant, Alicia S. Diaz (Diaz), were declared fit for promotion.[5]

Thus, on June 1, 2000 and February 23, 2001, then PCUP Chairperson Atty. Donna Z. Gasgonia (Gasgonia) issued promotional appointments in favor of Diaz and respondent, respectively, to the two DMO V positions.

Respondent took her oath and assumed her new position on the date of her appointment.[6]

Meanwhile, on February 19, 2001, petitioner Percival C. Chavez was appointed as the new Chairperson and Chief Executive Officer (CEO) of PCUP, succeeding Gasgonia. However, petitioner took his oath and assumed office only on February 26, 2001.[7] On March 9, 2001, petitioner issued a Memorandum[8] to Ms. Susan Gapac (Gapac) of the PCUP Human Resources Department (HRD) instructing her to stop the processing of respondent's appointment papers until such time that an assessment thereon would be officially released by the office of petitioner. Petitioner, in effect, sought to recall and invalidate respondent's appointment on the following grounds:

- That respondent did not meet the "experience" requirement for the contested position;
- That the authority of Gasgonia as PCUP Chairman ceased when the president appointed petitioner to the post on February 19, 2001;
- That respondent's appointment as DMO V was a midnight appointment, hence, prohibited;
- That respondent's appointment was not effective since it was not in accordance with pertinent laws and rules; and
- Notwithstanding the initial approval of respondent's appointment, the same can be recalled for non-compliance with the criteria provided by PCUP's promotion plan.[9]

Aggrieved by petitioner's inaction on her appointment, respondent appealed to the Civil Service Commission (CSC), National Capital Region (NCR). On January 17, 2003, the CSC-NCR issued an Order[10] in favor of respondent, the pertinent portion of which reads:

WHEREFORE, we find the Appeal meritorious. Ronidel's appointment as Development Management Officer V of PCUP is deemed valid and she is, therefore, allowed to assume the duties of said position.

SO ORDERED.[11]

Considering that Gasgonia received her salary until February 25, 2001 and petitioner took his oath and assumed office only the following day, the CSC-NCR concluded that at the time of respondent's appointment on February 23, 2001, Gasgonia was still the appointing authority. It further held that although the appointment was issued a few days prior to the expiration of Gasgonia's tenure, the same was deliberated upon for almost a year; thus, it cannot be considered a midnight appointment. Finally, the CSC-NCR upheld respondent's appointment since it had been passed upon by the PCUP-NSB.

On November 18, 2003, petitioner's motion for reconsideration was denied.[12] He, thereafter, elevated the matter to the CSC.

On September 23, 2004, the CSC granted[13] petitioner's appeal. While upholding the authority of Gasgonia, the questioned promotional appointment was nonetheless invalidated for non-compliance with certain procedural requirements set forth in CSC Resolution No. 973685[14] dated August 28, 1997. The CSC Resolution specifically required the submission of two copies of the monthly Report on Personnel Action (ROPA), and further provided that failure to comply with such requirement shall render the appointment lapsed and inefficacious. Since no ROPA was ever submitted by PCUP to CSC, respondent's appointment was, therefore, declared invalid.

On February 25, 2005, the CSC denied respondent's motion for reconsideration.[15]

On a petition for review, the CA reversed and set aside the CSC Resolutions and consequently affirmed the CSC-NCR's January 17, 2003 Order. The appellate court did not agree with the CSC's action invalidating

respondent's appointment solely on technical grounds. It emphasized that the submission of the monthly ROPA was the responsibility of PCUP and not the respondent's. Hence, she should not be prejudiced by PCUP's inaction.

Aggrieved, petitioner, through the Office of the Solicitor General, now assails the CA decision in this petition for review on certiorari on the lone issue of the validity of respondent's appointment as PCUP DMO V.

The petition must fail.

In resolving the issue posed by petitioner, we must decide the following sub-issues: 1) whether Gasgonia had the authority to appoint respondent to the position of DMO V notwithstanding the appointment of petitioner as the new chairperson of the PCUP; 2) whether respondent's appointment may be invalidated for failure to meet the qualification standards for said position; and 3) whether the failure of PCUP to submit two copies of the ROPA made respondent's appointment inefficacious.

The Court notes that on February 19, 2001, petitioner was appointed as the new chairperson and chief executive officer of PCUP. On February 23, 2001, Gasgonia issued a promotional appointment in

favor of respondent. On the same day, respondent took her oath and assumed office. On February 26, 2001, petitioner also took his oath and assumed office.

Petitioner insists that since he was appointed as the new PCUP Chairperson on the 19[th] of February, Gasgonia no longer had the authority to extend a promotional appointment in favor of respondent on the 23[rd] of February. Respondent, on the other hand, claims that Gasgonia was still the appointing authority prior to petitioner's assumption of office on the 26[th].

The CSC-NCR, CSC and the CA are one in saying that Gasgonia still had appointing authority at the time she issued respondent's promotional appointment.

We find no reason to depart from such conclusion.

Well-settled is the rule that an oath of office is a qualifying requirement for a public office, a prerequisite to the full investiture of the office. [16] Since petitioner took his oath and assumed office only on February 26, it was only then that his right to enter into the position became plenary and complete. [17] Prior to such oath, Gasgonia still had the right to exercise the functions of her office. It is also well to note that per certification issued by Raymond C. Santiago, Accountant of PCUP, Gasgonia received her last salary for the period covering February 1-25, 2001; and petitioner received his first salary for the period covering February 26 to March 7, 2001.[18]

Clearly, at the time of respondent's appointment on February 23, Gasgonia still was the rightful occupant of the position and was, therefore, authorized to extend a valid promotional appointment.

Petitioner further contends that respondent's appointment should be invalidated for respondent's failure to meet the "experience" requirement for the contested position.

This contention is also without merit.

The question of respondent's qualifications is a factual issue which calls for the examination of the evidence presented by the contending parties. Certainly, it is beyond the power of this Court to review. This is especially true in the instant case, as the CSC-NCR, CSC and the CA have all found that, indeed, respondent possesses the required qualifications. As repeatedly held, we accord great respect to the findings of administrative agencies because they have acquired expertise in their jurisdiction; and we refrain from questioning their findings, particularly when these are affirmed by the appellate tribunal. We are not inclined to re-examine and re-evaluate the probative value of the evidence proffered in the concerned forum, which had formed the basis of the latter's

impugned decision, resolution or order, absent a clear showing of arbitrariness and want of any rational basis therefor.[19]

An appointment to a public office is the unequivocal act of designating or selecting, by one having the authority, an individual to discharge and perform the duties and functions of an office or trust.[20] In the appointment or promotion of employees, the appointing authority considers not only their civil service eligibilities but also their performance, education, work experience, trainings and seminars attended, agency examinations and seniority. Consequently, the appointing authority has the right of choice which he may exercise freely according to his best judgment, deciding for himself who is best qualified among those who have the necessary qualifications and eligibilities. The final choice of the appointing authority should be respected and left undisturbed. Judges should not substitute their judgment for that of the appointing authority.[21] Sufficient, if not plenary, discretion should be granted to those entrusted with the responsibility of administering the offices concerned. They are in a position to determine who can best perform the functions of the office vacated. Not only is the appointing authority the officer primarily responsible for the administration of the office, he is also in the best position to determine who among the prospective appointees can effectively discharge the functions of the position.[22]

Moreover, promotions in the Civil Service should always be made on the basis of qualifications, including occupational competence, moral character, devotion to duty, and loyalty to the service. The last trait should be given appropriate weight, to reward the civil servant who has chosen to make his employment in the government a lifetime career in which he can expect advancement through the years for work well done. Political patronage should not be necessary. His record alone should be sufficient assurance that when a higher position becomes vacant, he shall be seriously considered for the promotion and, if warranted, preferred to less devoted aspirants.[23]

We would like to stress that once an appointment is issued and the moment the appointee assumes a position in the civil service under a completed appointment, he acquires a legal, not merely equitable, right to the position which is protected not only by statute, but also by the Constitution; and it cannot be taken away from him either by revocation of the appointment or by removal, except for cause, and with previous notice and hearing.[24]

Lastly, we agree with the appellate court that respondent's appointment could not be invalidated solely because of PCUP's failure to submit two copies of the ROPA as required by CSC Resolution No. 97368. In the said resolution, the CSC delegated to PCUP the authority to take final action on its employees' appointments. It further required the submission within the first fifteen calendar days of each month two copies of the monthly ROPA, together with certified true copies of appointments acted upon. Finally, it provided that failure to submit the ROPAs within the prescribed period shall render all appointments listed therein lapsed and ineffective.

Pursuant to the above resolution, while upholding Gasgonia's appointing power, the CSC still invalidated respondent's appointment. The CA, however, reached a different conclusion by upholding the validity of the questioned appointment. 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].[25]

In *Civil Service Commission v. Joson, Jr.*,^[26] we had the occasion to relax the rules on the reportorial requirement and put a stamp of validity on an appointment that was not included in the agency's ROPA within the time prescribed by the rules. In *Joson*, the Philippine Overseas Employment Administration (POEA) failed to include Priscilla Ong's appointment in its ROPA for July 1995. The records, however, showed that the agency failed to include her appointment because its request for exemption from the educational requisite for confidential staff members was yet to be resolved by the CSC. In view thereof, we found the non-compliance with the rules justified, and insufficient to invalidate an appointment.

In the instant case, it is obvious that respondent's appointment was not included in the ROPA because the new PCUP Chairperson and CEO had directed the Human Resources Department to stop the processing of respondent's appointment until after the assessment thereon was released from petitioner's office. In both this and the *Joson* case, the appointee could not be faulted for the non-compliance with the CSC reportorial requirement.

We, therefore, apply the same conclusion to both cases.

WHEREFORE, premises considered, the petition is DENIED for lack of merit. The CA decision and resolution dated August 8, 2007 and December 17, 2007, respectively, are AFFIRMED.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Chico-Nazario, Velasco, Jr., Leonardo-De Castro, Brion, and Bersamin, JJ., concur.

Carpio Morales, J., on official leave.

Peralta, J., no part.

[1] Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta, concurring; rollo, pp. 32-49.

[2] Id. at 50-51.

[3] Id. at 33.

- [4] Id. at . 33.
- [5] Id. at 34.
- [6] Id. at 34-35.
- [7] Id. at 35.
- [8] CA rollo, p. 52.
- [9] Rollo, pp. 35-36.
- [10] Penned by Director Agnes D. Padilla, CA rollo, pp. 14-24.
- [11] Id. at 24.
- [12] Id. at 25-38.
- [13] Embodied in CSC Resolution No. 041051, Id. at 39-46.
- [14] Granting the PCUP the authority to take final action on its appointments.
- [15] Embodied in CSC Resolution No. 050285, CA rollo, pp. 47-51.
- [16] *Mendoza v. Laxina, Sr.*, 453 Phil. 10131026-1027 (2003); *Lecaroz v. Sandiganbayan*, 364 Phil. 890, 904 (1999).
- [17] Id.
- [18] CA rollo, p. 22.
- [19] *Cabalitan v. Department of Agrarian Reform*, G.R. No. 162805, January 23, 2006, 479 SCRA 452, 458.
- [20] *Bermudez v. Executive Secretary Torres*, 370 Phil. 769, 776 (1999).
- [21] *Tapispisan v. Court of Appeals*, G.R. No. 157950, June 8, 2005, 459 SCRA 695, 709; *Civil Service Commission v. De la Cruz*, G.R. No. 158737, August 31, 2004, 437 SCRA 403, 412-413.
- [22] *Civil Service Commission v. De la Cruz*, *supra*; *Abella, Jr. v. Civil Service Commission*, G.R. No. 152574, November 17, 2004, 442 SCRA 507, 515.
- [23] *Civil Service Commission v. De la Cruz*, *supra* at 412.
- [24] *The Genral Manager, Phil. Ports Authority (PPA) v. Monserate*, 430 Phil. 832, 845.
- [25] Rollo, pp. 47-48.
- [26] G.R. No. 154674, May 27, 2004, 429 SCRA 773.

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