

CIVIL SERVICE COMMISSION, PETITIONER, VS. COURT OF APPEALS AND PHILIPPINE CHARITY SWEEPSTAKES OFFICE, RESPONDENTS.

G.R. No. 185766. November 23, 2010

Ponente: MENDOZA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-185766/>

MENDOZA, J.:

These are two consolidated petitions for review on certiorari under Rule 45 of the Rules of Court filed by the Civil Service Commission (CSC) questioning two separate decisions of the Court of Appeals (CA) regarding appointments in the Philippine Charity Sweepstakes Office (PCSO).

In G.R. No. 185766, petitioner CSC seeks to set aside the August 12, 2008 Decision[1] of the CA in CA-G.R. SP No. 98800 and its November 28, 2008 Resolution denying petitioner's motion for reconsideration thereof.

In G.R. No. 185767, petitioner CSC seeks to set aside the June 26, 2008 Decision[2] of the CA in CA-G.R. SP No. 99119 and its November 17, 2008 Resolution denying petitioner's motion for reconsideration.

THE FACTS

(A) G.R. No. 185766

On March 16, 2005, the Board of Directors of PCSO resolved to appoint Josefina A. Sarsonas (Sarsonas) as Assistant Department Manager II of the Internal Audit Department (IAD) of PCSO under temporary status. Thus, on the same day, PCSO General Manager Rosario Uriarte issued a temporary appointment to Sarsonas as Assistant Department Manager II.[3]

On April 26, 2005, the Civil Service Commission Field Office - Office of the President (CSCFO-OP) disapproved the temporary appointment of Sarsonas as she failed to meet the eligibility requirement for the position.[4] CSCFO-OP certified that there were qualified individuals who signified their interest to be appointed to the position, namely, Mercedes Hinayon and Reynaldo Martin.[5]

On May 10, 2005, PCSO filed an appeal with the CSC-National Capital Region (CSC-NCR).[6] In a letter dated June 21, 2005, the CSC-NCR affirmed the disapproval by CSCFO-OP of the temporary appointment of Sarsonas on the following grounds: (a) that she failed to meet the eligibility requirement; and (b) that there were two qualified eligibles who signified their interest to be appointed to the said position, as certified by CSCFO-OP.[7]

PCSO filed an appeal with CSC on August 15, 2005.[8] On March 15, 2006, the CSC dismissed the appeal in CSC Resolution No. 06-0466, the dispositive portion of which states:

WHEREFORE, the appeal of General Manager Rosario C. Uriarte, Philippine Charity Sweepstakes Office (PCSO), is DISMISSED. Accordingly, the disapproval by the Civil Service Commission - National Capital Region (CSC-NCR), Quezon City, of the temporary appointment of Josefina A. Sarsonas as Assistant Department Manager II, Internal Audit Department (IAD), PCSO is AFFIRMED.[9]

PCSO filed a motion for reconsideration but it was denied in CSC Resolution No. 070572.[10]

Convinced of its position, PCSO elevated the case to the CA, which reversed the assailed CSC resolutions in its August 12, 2008 decision.[11] CSC's motion for reconsideration was denied in a Resolution dated November 28, 2008.[12]

(B) G.R. No. 185767

On November 25, 2004, the PCSO Board of Directors resolved to appoint Lemuel G. Ortega (Ortega) as Assistant Department Manager II of its Planning and Production Department.[13] The PCSO General Manager, thus, issued a fourth renewal of his temporary appointment.[14]

On December 7, 2004, CSCFO-OP disapproved the temporary appointment of Ortega for his failure to meet the eligibility requirement for the position.[15] CSCFO-OP further reasoned out that there were other qualified third-level eligibles working in PCSO who were willing and available to be appointed to the subject position, namely, Mercedes Hinayon and Reynaldo Martin.[16]

On March 4, 2005, CSCFO-OP returned the said appointment to PCSO.[17]

On March 18, 2005, PCSO wrote to CSC-NCR seeking reconsideration of CSCFO-OP's disapproval of Ortega's temporary appointment.[18] The letter cited Ortega's thirty nine (39) years of experience in planning and production and his competence in his assigned tasks.[19] The letter also stated that PCSO management had the utmost trust and confidence in Ortega with regard to carrying out the duties and responsibilities attached to the subject position.[20]

On June 21, 2005, CSC-NCR affirmed CSCFO-OP's disapproval of Ortega's temporary appointment[21] on the ground that he failed to acquire the required eligibility despite the four-year period within which he could have done so.[22]

PCSO appealed to the CSC alleging that Ortega possessed all the requirements necessary for the subject position except the needed eligibility.[23] PCSO also claimed that the qualified eligibles who had indicated their interest to be appointed to the position did not possess the same training for such highly technical positions.[24]

PCSO further reasoned out that Section 7(3), Title I, Book V of the Administrative Code of 1987 provides an exclusive enumeration of the

specific positions covered by the Career Executive Service (CES), all of whom are appointed by the President and are required to have Career Service Executive (CSE) eligibility.[25] PCSO argued that since the position of Assistant Department Manager II does not require presidential appointment, then it does not require CSE eligibility.[26]

On March 28, 2006, CSC issued Resolution No. 06-0528 disapproving Ortega's fourth temporary appointment.[27] PCSO's motion for reconsideration was denied in Resolution No. 07-0821 dated April 30, 2007.[28]

When PCSO appealed before the CA, the appellate court set aside the above resolutions in its June 26, 2008 Decision.[29] CSC's motion for reconsideration was denied in a Resolution dated November 17, 2008.[30]

RULING OF THE COURT OF APPEALS

In both G.R. Nos. 185766 and 185767, the CA ruled that CSC erred in finding that the position of Assistant Department Manager II requires CSE eligibility,[31] rendering improper the temporary appointments of Sarsonas and Ortega, respectively. In G.R. No. 185766, the CA held that the resolution of the PCSO Board to appoint

Sarsonas as Assistant Department Manager II was a policy decision and an exercise of management prerogative over which the CSC has no power of review.[32] Since the position of Assistant Department Manager II was not one of those enumerated under the Administrative Code, and was not identified by the Career Executive Service Board (CESB) as equivalent to those listed under the law, then "the position of Assistant Department Manager II does not fall under the category pertaining to the Career Executive Service." [33]

In G.R. No. 185767, the CA similarly ruled that the Career Executive Service does not cover the position of Assistant Department Manager II in the Planning and Production Department of the PCSO.[34] Therefore, it follows that CSE eligibility is not required for the said position, and the CSC should have affirmed Ortega's temporary appointment to the said position.[35]

In resolving both cases, the CA cited Book V, Title I, Subtitle A of Executive Order (E.O.) No. 292 or the Administrative Code of 1987, and stated that the position of Assistant Department Manager II of the PCSO was not one of those specific positions under the CES enumerated under Section 7(3), Title I, Book V, all the holders of which must be presidential appointees, thus, requiring CSE eligibility.[36] The said provision states:

SECTION 7. Career Service. - The Career Service shall be characterized by (1) entrance based on merit and fitness to be determined as far as practicable by competitive examination, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure.

The Career Service shall include:

xxx

(3) Positions in the Career Executive Service; namely, Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President;

xxx.

Citing *Office of the Ombudsman v. Civil Service Commission*, [37] the CA concluded that since the Assistant Department Manager II was appointed not by the President of the Philippines but by the PCSO General Manager, subject to approval or confirmation of the PCSO Board of Directors, as provided for under its Charter, then Sarsonas was not a presidential appointee, and her position should not have been included by the CSC in the list of positions requiring CSE eligibility.[38] In the case of Ortega, the CA cited the same case but fell short of making a similar categorical pronouncement.[39]

Moreover, in the case of Sarsonas, the CA noted and agreed with the dissenting opinion of CSC Commissioner Cesar D. Buenaflor (Commissioner Buenaflor) in Resolution No. 070572.[40] Commissioner Buenaflor opined that the position of Assistant Department Manager II and other similar positions in government financial institutions and government-owned and controlled corporations were erroneously classified by the CSC as belonging to the third level position in the civil service.[41]

Regarding the two qualified eligibles who signified their interest to be permanently appointed to any third level position, the CA stated that Mercedes J. Hinayon (Hinayon) was designated as Officer-in-Charge, Assistant Department Manager of the Draw and Races Department, and would, according to the PCSO, be eventually considered for promotion in the said department.[42] On the other hand, Reynaldo Martin (Martin), the OIC-Regional Manager of the Northern and Central Luzon Online Lottery Section, was likewise being considered by PCSO management for promotion to a position which would suit his experience and expertise.[43] The CA also stressed that there was no showing in the records that either Hinayon

or Martin ever protested Sarsonas' appointment as Assistant Department Manager II.[44]

In the case of Ortega, the CA wrote that the responsibility for the establishment, administration and maintenance of qualification standards lies with the department or agency concerned. CSC's role is limited to (1) assisting the department or agency with respect to those qualification standards, and (2) approving them.[45] Therefore, the CSC cannot substitute its own standards for those of the department or agency concerned.[46]

Lastly, the CA held that under Presidential Decree No. 807, Section 9(h), which authorized the CSC to approve appointments to positions in the civil service, except those specified therein, the CSC's authority was limited to the determination of whether the appointees possess the legal qualifications and the appropriate eligibility.[47] In this case, the CA stated, except for her lack of CSE eligibility, Sarsonas possessed the basic qualifications of an Assistant Department Manager II, as determined by the PCSO General Manager and Board of Directors. Such being the case, the CSC had the ministerial duty to approve the temporary appointment of Sarsonas to the said position.[48] The refusal to approve the appointment was a clear encroachment on the discretion vested solely in the PCSO General Manager and Board of Directors as appointing authority.[49]

CSC, in its petitions for review before this Court, raises this

ISSUE

WHETHER THE COURT OF APPEALS ERRED IN SETTING ASIDE THE CSC RESOLUTIONS DISAPPROVING THE TEMPORARY APPOINTMENTS OF SARSONAS AND ORTEGA AS ASSISTANT DEPARTMENT MANAGER II FOR LACK OF THE REQUIRED THIRD LEVEL ELIGIBILITY.

Stated otherwise, the core issue to be resolved in this case is whether or not the position of Assistant Department Manager II falls under the CES.

RULING OF THE COURT

Following the ruling in *Office of the Ombudsman v. Civil Service Commission* cases[50] and *Home Insurance Guarantee Corporation v. Civil Service Commission*,[51] the Court is of the position that the CES covers presidential appointees only. Corollarily, as the position of Assistant Department Manager II does not require appointment by the President of the Philippines, it does not fall under the CES. Therefore, the temporary appointments of Sarsonas and Ortega as Assistant Department Manager II do not require third level eligibility pursuant to the Civil Service Law, rules and regulations.

Executive Order No. 292 or the Administrative Code of 1987 provides for three (3) classes or levels in the career service. Book V, Title I, Subsection A, Chapter 2, Section 8 thereof provides:

SEC. 8. Classes of Positions in the Career Service. - (1) Classes of positions in the career service appointment to which requires examinations shall be grouped into three major levels as follows:

(a) The first level shall include clerical, trades, crafts, and custodial service positions which involve non-professional or subprofessional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies;

(b) The second level shall include professional, technical, and scientific positions which involve professional, technical or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief level; and

(c) The third level shall cover positions in the Career Executive Service.

(2) Except as herein otherwise provided, entrance to the first two levels shall be through competitive examinations, which shall be open to those inside and outside the service who shall meet the minimum qualification requirements. Entrance to a higher level does not require previous qualification in the lower level. Entrance to the third level shall be prescribed by the Career Executive Service Board.

(3) Within the same level, no civil service examination shall be required for promotion to a higher position in one or more related occupation groups. A candidate for promotion should, however, have previously passed the examination for that level. (Emphasis provided.)

Section 7 of the same code specifically delineates the coverage of the Career Executive Service, thus:

SEC. 7. Career Service. - The Career Service shall be characterized by (1) entrance based on merit and fitness to be determined as far as practicable by competitive examination, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure.

The Career Service shall include:

- (1) Open Career positions for appointment to which prior qualification in an appropriate examination is required;
- (2) Closed Career positions which are scientific, or highly technical in nature; these include the faculty and academic staff of state colleges and universities, and scientific and technical positions in scientific or research institutions which shall establish and maintain their own merit systems;
- (3) Positions in the Career Executive Service; namely, Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equal rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President;
- (4) Career officers, other than those in the Career Executive Service, who are appointed by the President, such as the Foreign Service Officers in the Department of Foreign Affairs;
- (5) Commissioned officers and enlisted men of the Armed Forces which shall maintain a separate merit system;
- (6) Personnel of government-owned or controlled corporations, whether performing governmental or proprietary functions, who do not fall under the non-career service; and
- (7) Permanent laborers, whether skilled, semi-skilled or unskilled. (Emphasis provided.)

Clearly, although the Administrative Code gives the CESB jurisdiction over entrance to the third level or the CES, the officers should be all "appointed by the President."

Also worthy of note are CSC Resolution No. 100623 dated March 29, 2010 and CSC Memorandum Circular No. 7, S. 2010, both of which provide for clarificatory guidelines on the scope of the third level in the civil service:

1. The third level or Career Executive Service (CES) shall only cover the positions of Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President;
2. Executive and managerial positions in the career service other than the foregoing shall belong to the second level; and
3. All policies and issuances of the Commission which are not in conformity with these guidelines are superceded, repealed, amended or modified accordingly.

As earlier stated, the Court interpreted Section 7(3) to mean that the CES covers presidential appointees only.

In *Home Insurance Guaranty Corporation v. Civil Service Commission*, the Court stated that the position of HIGC Vice President is not covered by the CES[52] as (1) the position is not enumerated by law as falling under the third level;[53] (2) respondent Cruz has not established that the position is one of those identified by the CESB as being of equivalent rank to those listed by law;[54] and (3) the holder thereof is not appointed by the President.[55]

In the 2005 case of *Office of the Ombudsman v. Civil Service Commission*,[56] the Court used a similar process of deduction to arrive at the conclusion that the position of Graft Investigation Officer III was not a CES position. In the said case, the Court wrote:

From the above-quoted provision of the Administrative Code,[57] persons occupying positions in the CES are presidential appointees. A person occupying the position of Graft Investigation Officer III is not, however, appointed by the President but by the Ombudsman as provided in Article IX of the Constitution, to wit:

xxx

To classify the position of Graft Investigation Officer III as belonging to the CES and require an appointee thereto to acquire CES or CSE eligibility before acquiring security of tenure would be absurd as it would result either in 1) vesting the appointing power for said position in the President, in violation of the Constitution; or 2) including in the CES a position not occupied by a presidential appointee, contrary to the Administrative Code.[Reference and emphasis provided.][58]

Two years later, the Court was again confronted with the same issue in an identically named case. It held that as the position of Director II in the Central Administrative Service or Finance and Management Office of the Office of the Ombudsman was appointed by the Ombudsman, and not by the President, "he is neither embraced in the CES nor does he need to possess CSE eligibility." [59] In the 2007 *Office of the Ombudsman v. Civil Service Commission* case, the Court, citing the 2005 case, said:

The CSC's opinion that the Director II positions in the Central Administrative Service and the Finance and Management Service of the Office of the Ombudsman are covered by the CES is wrong. Book V, Title I, Subtitle A, Chapter 2, Section 7 of EO 292, otherwise known as "The Administrative Code of 1987," provides:

xxx

Thus, the CES covers presidential appointees only. As this Court ruled in *Office of the Ombudsman v. CSC*:

"From the above-quoted provision of the Administrative Code, persons occupying positions in the CES are presidential appointees. x x x" (Underscoring supplied. Emphasis author's own.)[60]

The above 2007 case was, in turn, cited by the Court two years later in *National Transmission Corporation v. Hamoy*,[61] where again, it was categorically stated that the CES covers only presidential appointees:

Petitioner also cites *Caringal v. Philippine Charity Sweepstakes Office (PCSO)* and *Erasmio v. Home Insurance Guaranty Corporation*, to show that a presidential appointment is not required before a position in a government corporation is classified as included in the CES. We are not convinced.

x x x

Positions in the CES under the Administrative Code include those of Undersecretary, Assistant Secretary, Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President. Simply put, third-level positions in the Civil Service are only those belonging to

the Career Executive Service, or those appointed by the President of the Philippines. This was the same ruling handed down by the Court in *Office of the Ombudsman v. Civil Service Commission*, wherein the Court declared that the CES covers presidential appointees only.

x x x

Respondent was appointed Vice-President of VisMin Operations and Maintenance by Transco President and CEO Alan Ortiz, and not by the President of the Republic. On this basis alone, respondent cannot be considered as part of the CES.[62] [Underscoring and emphases supplied]

In said case, the Court clarified that the cases cited by the National Transmission Corporation case, to wit: *Caringal v. Philippine Charity Sweepstakes Office (PCSO)* and *Erasmio v. Home Insurance Guaranty Corporation*, which, incidentally, were also cited by CSC in this petition, were not in point with respect to the question of whether a position is covered by the CES:

Caringal and *Erasmio* cited by petitioner are not in point. There, the Court ruled that appointees to CES positions who do not possess the required CES eligibility do not enjoy security of tenure. More importantly, far from holding that presidential appointment is not required of a position to be included in the CES, we learn from *Caringal* that the appointment by the President completes the attainment of the CES rank, thus:

"Appointment to a CES Rank

Upon conferment of a CES eligibility and compliance with the other requirements prescribed by the Board, and incumbent of a CES position may qualify for appointment to a CES rank. Appointment to a CES rank is made by the President upon the recommendation of the Board. This process completes the official's membership in the CES, and most importantly, confers on him security of tenure in the CES.

To classify other positions not included in the above enumeration as covered by the CES and require appointees thereto to acquire CES or CSE eligibility before acquiring security of tenure will lead to unconstitutional and unlawful consequences. It will result either in (1) vesting the appointing power for non-CES positions in the President, in violation of the Constitution; or (2) including in the CES a position not held by a presidential appointee, contrary to the Administrative Code."[63] [Italics author's own]

Thus, from the long line of cases cited above, in order for a position to be covered by the CES, two elements must concur. First, the position must either be (1) a position enumerated under Book V, Title I, Subsection A, Chapter 2, Section 7(3) of the Administrative Code of 1987, i.e. Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service, or (2) a position of equal rank as those enumerated, and

identified by the Career Executive Service Board to be such position of equal rank. Second, the holder of the position must be a presidential appointee. Failing in any of these requirements, a position cannot be considered as one covered by the third-level or CES.

In the case at bench, it is undisputed that the position of Assistant Department Manager II is not one of those enumerated under the Administrative Code of 1987. There is also no question that the CESB has not identified the position to be of equal rank to those enumerated. Lastly, without a doubt, the holder of the position of Assistant Department Manager II is appointed by the PCSO General Manager, and not by the President of the Philippines. Accordingly, the position of Assistant Department Manager II in the PCSO is not covered by the third-level or CES, and does not require CSE eligibility.

WHEREFORE, the petitions are DENIED.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Abad, Villarama, Jr., Perez, and Sereno, JJ., concur.

Del Castillo, J., on official leave.

[1] Rollo (G.R. No. 185766), pp. 37-45. Penned by Associate Justice Isaias Dicdican with Associate Justice Juan Q. Enriquez, Jr. and Associate Justice Marlen Gonzales-Sison, concurring.

[2] Rollo (G.R. No. 185767), pp. 34-44. Penned by Associate Justice Rodrigo V. Cosico with Associate Hakim S. Abdulwahid and Associate Justice Mariflor Punzalan-Castillo, concurring.

[3] Rollo (G.R. No. 185766), p. 38.

[4] Id.

[5] Id.

[6] Id.

[7] Id.

[8] Id.

[9] Id. at 38-39.

[10] Id. at 39.

[11] Supra note 1.

[12] Rollo (G.R. No. 185766), pp. 34-35.

[13] Rollo (G.R. No. 185767), p. 35.

[14] Id.

[15] Id.

[16] Id.

[17] Id.

[18] Id.

[19] Id.

[20] Id.

[21] Id.

[22] Id.

[23] Id.

[24] Id. at 35-36.

[25] Id. at 36.

- [26] Id.
- [27] Id.
- [28] Id. at 37-38.
- [29] Supra note 2.
- [30] Id. at 46-47.
- [31] Rollo (G.R. No. 185767), p. 40.
- [32] Id. at 44.
- [33] Id. at 40.
- [34] Rollo (G.R. No. 185767), p. 40.
- [35] Id.
- [36] Id. at 40-41; Rollo (G.R. No. 185766), p. 40.
- [37] 491 Phil. 739 (2005).
- [38] Rollo (G.R. No. 185766), p. 42.
- [39] Id.
- [40] Id.
- [41] Id.
- [42] Id. at 43.
- [43] Id.
- [44] Id.
- [45] Rollo (G.R. No. 185767), p. 42.
- [46] Id. at 42-43.
- [47] Rollo (G.R. No. 185766), p. 44.
- [48] Id.
- [49] Id.
- [50] G.R. No. 162215, July 30, 2007, 528 SCRA 535, 542.
- [51] G.R. No. 95450, March 19, 1993 220 SCRA 148, 154.
- [52] Id. at 154-155.
- [53] Id. at 154.
- [54] Id.
- [55] Id.
- [56] 491 Phil. 739 (2005).

[57] Id. at 753-755.

[58] Executive Order No. 329 (1987), Book V, Title I, Subtitle A, Chapter 2, Section 7.

[59] Supra note 50.

[60] Id. at 541-542.

[61] G.R. No. 179255, April 2, 2009, 583 SCRA 410.

[62] Id. at 418-420.

[63] Id. at 420.

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.