ATTY. ELIAS OMAR A. SANA, PETITIONER, VS. CAREER EXECUTIVE SERVICE BOARD, RESPONDENT.

G.R. No. 192926. November 15, 2011

Ponente: CARPIO, J.

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CARPIO, J.:

Before the Court is a petition for certiorari and prohibition assailing Executive Order No. 883, series of 2010 (EO 883),[1] which granted Career Executive Service Officer (CESO) rank to eligible lawyers in the executive branch, and a related administrative issuance, Career Executive Service Board (CESB) Resolution No. 870,[2] for violating Section 15, Article VII of the Constitution.

The Facts

On 28 May 2010, President Gloria Macapagal-Arroyo (President Arroyo) issued EO 883 granting the rank of CESO III or higher to officers and employees "occupying legal positions in the government executive service who have obtained graduate degrees in law and successfully passed the bar examinations" (Section 1).[3] EO 883 invoked the granting of CESO "rank to government personnel who successfully complete certain graduate programs, such as Masters in Public Safety Administration (MPSA) and Masters in National Security Administration (MNSA)" as basis for the granting of CESO rank to government lawyers in the executive service.[4]

On 2 June 2010, the CESB issued Resolution No. 870 finding no legal impediment for the President to vest CESO rank to executive officials during the periods covered by the constitutional ban on midnight appointment and statutory ban on pre-election appointment.[5] CESB Resolution No. 870 reasoned:

> 1. In its legal sense, appointment to a position pertains to selection, by the authority vested with the power, of an individual who is to exercise the functions of a given office.
>
> 2. Appointment to a CES rank cannot properly be deemed synonymous to an appointment to a position in the legal sense for it is merely a completion of a previous appointment and does not entail the conferment of an authority to exercise the functions of an office.
>
> 3. In the CES concept, the word 'appoint' means a step in the bestowal of a CES rank, to which one is entitled after having complied with all the requirements prescribed by the CESB.[6]
>
> x x x x

The CESB subsequently endorsed to President Arroyo its recommendation to vest CESO rank to 13 officials from various departments and agencies, including three members of the CESB who signed CESB Resolution No. 870.[7] On 10 June 2010, President Arroyo appointed the 13 officials to varying CESO ranks.[8]

On 30 July 2010, President Benigno S. Aquino III (President Aquino) issued EO 3 expressly revoking EO 883 (Section 1) and "[a]ll x x x administrative orders, proclamations, rules and regulations" that conflict with EO 3

(Section 2). As basis for the repeal, the fifth "Whereas" clause of EO 3 provides that "EO 883 encroaches upon the power of the CESB to 'promulgate rules, standards and procedures on the selection, classification, compensation and career development of members of the Career Executive service x x x' vested by law with the [CESB] x x x."[9]

On 4 August 2010, petitioner Atty. Elias Omar A. Sana (petitioner) filed the present petition, contending that EO 883 and the subsequent appointment of the 13 executive officials to CESO rank are void for violating the constitutional ban on midnight appointment under Section 15, Article VII of the Constitution.[10] Petitioner theorizes that appointments to positions and ranks in the CES are "executive" in nature and, if made within the period provided under Section 15, Article VII, fall under its prohibition. Petitioner submits that CESB Resolution No. 870 circumvents Section 15, Article VII by distinguishing the terms "appoint" and "appointment." He contends that CESB Resolution No. 870 cannot give new meaning to presidential issuances, laws, and the Constitution.[11]

In its Comment, the CESB prays for the dismissal of the petition as the issue it raises was rendered moot by EO 3's revocation of EO 883. Alternatively, the CESB defends the vesting of CESO rank to the 13 officials based on an opinion given by Atty. Ferdinand Rafanan (Rafanan), head of the Commission on Elections (COMELEC) Law Department,[12] that "the appointment to a CES[O] rank is not equivalent to an appointment to an office since the latter entails the conferment of an authority to exercise the functions of an office whereas the former is merely a completion of a previous appointment." Rafanan further opined that such vesting of CESO rank is valid because it "does not contemplate any hiring or appointment since it involves only the conferment of a rank rather than a selection for a position."[13]

The CESB agrees with Rafanan's view, invoking Article IV, Part III, paragraph (c) of the Integrated Reorganization Plan (IRP), which states that "[a]ppointment to appropriate classes in the Career Executive Service shall be made by the President from a list of career executive eligibles recommended by the Board. Such appointments shall be made on the basis of rank." Nevertheless, the CESB submits that the grant of CESO rank III or higher to lawyers in the executive service under EO 883 is "not automatic" because this needs prior guidelines from the CESB. The CESB points out that President Arroyo did not confer CESO rank to any official based on EO 883.[14]

For its part, the Office of the Solicitor General (OSG), while disclaiming any authorization for the CESB to file its separate Comment, joins causes with the latter in praying for the dismissal of the petition for mootness. The OSG contends that President Aquino's issuance of EO 3 revoking EO 883 moots the issue on the latter's validity. The OSG arrives at the same conclusion on the issue of the validity of the appointment of the 13 officials to CESO rank in light of the CESB's resubmission to President Aquino of its recommendation for the vesting of CESO rank to the same officials.[15]

Alternatively, the OSG argues that EO 883 is unconstitutional for being violative of Section 15, Article VII of the Constitution. The OSG adds that even if EO 883 is valid, it does not automatically confer CESO rank to lawyers holding CES positions.16

The Court's Ruling

We dismiss the petition on the threshold ground of mootness.

The petition seeks a review of the constitutionality of EO 883 and CESB Resolution No. 870 for being repugnant to Section 15, Article VII of the Constitution. At the time this petition was filed, however, President Aquino had already issued EO 3 revoking EO 883 expressly (under Section 1) and CESB Resolution No. 870 impliedly (under

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Section 2). EO 883 and CESB Resolution No. 870 having ceased to have any force and effect, the Court finds no reason to reach the merits of the petition and pass upon these issuances' validity. To do so would transgress the requirement of case and controversy as precondition for the Court's exercise of judicial review.

True, this Court had relaxed the case and controversy requirement to resolve moot issues. In those instances, however, the issues presented were grounded on peculiar set of facts giving rise to important constitutional questions capable of repetition yet evading review[17] or indicating intent on the part of potential or actual parties to place a constitutional question beyond the ambit of judicial review by performing acts rendering moot an incipient or pending justiciable controversy.[18]

These factors do not obtain here. The question whether an appointment to a CESO rank of an executive official amounts to an "appointment" for purposes of the constitutional ban on midnight appointment, while potentially recurring, holds no certainty of evading judicial review as the question can be decided even beyond the appointments-ban period under Section 15, Article VII of the Constitution.

Indeed, petitioner does not allege to have suffered any violation of a right vested in him under EO 883. He was not among the 13 officials granted CESO ranking by President Arroyo. The CESB itself stated that "no conferment of CESO rank was ever made by President [Arroyo] in relation to EO 883."[19] Hence, for the Court to nevertheless reach the merits of this petition and determine the constitutionality of EO 883 and CESB Resolution No. 870 despite their unquestioned repeal and the absence of any resulting prejudice to petitioner's rights is to depart from its constitutional role of settling "actual controversies involving rights which are legally demandable and enforceable."[20]

WHEREFORE, we DISMISS the petition.

SO ORDERED.

Corona, C.J., Velasco, Jr., Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Sereno, Reyes, and Perlas-Bernabe, JJ., concur.

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[1] Entitled "Granting Career Service Officer Rank to Lawyers in the Government Executive Service, and Other Purposes."

[2]Entitled "Policy on the Coverage of the Election Ban on Appointments Under the 1987 Constitution and the Omnibus Election Code."

[3] EO 883 provides in full:

> WHEREAS, Presidential Decree (PD) No. 1 provides that members of the Career Executive Service (CES) shall be classified according to rank based on broad levels of responsibility, personal qualifications and demonstrated competence;
>
> WHEREAS, Section 7, Chapter 2, Subtitle A, Title I, Book V of the Administrative Code provides that positions in the CES are characterized by entrance based on merit and fitness determined by competitive examination or based on highly technical qualifications;
>
> WHEREAS, the law profession is a specialized and highly technical field, the practice of which requires the completion of all prescribed courses in a four (4) year graduate law program at a law school or university officially approved and recognized by the Secretary of Education, as well as successfully passing the bar examinations conducted by the Supreme Court;

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> WHEREAS, Republic Act (RA) No. 1080 recognizes the bar examinations as civil service examinations for purposes of appointment in the classified service, without distinction as to whether the degree programs relative thereto are undergraduate or graduate in nature;
>
> WHEREAS, EO 400 series of 1997 and EO 696 series of 1981, as amended by EO 771 series of 1982, grant CES Officer (CESO) rank to government personnel who successfully complete certain graduate programs, such as Masters in Public Safety Administration (MPSA) and Masters in National Security Administration (MNSA);
>
> WHEREAS, government personnel who obtained graduate degrees in law and successfully passed the bar examinations, particularly those occupying legal positions in the executive service, equally deserve the grant of CESO rank or similar benefits;
>
> WHEREAS, Section 8, Chapter 2, Subtitle A, Title I, Book V of the Administrative Code provides that entrance to the CES shall be prescribed by the Career Executive Service Board (CESB), an agency created under the Integrated Reorganization Plan of the Executive Branch;
>
> WHEREAS, under Article VII of the Constitution, executive power shall be vested in the President, who shall be [in] control and supervision of all executive departments, bureaus and offices.
>
> NOW, THEREFORE, I, GLORIA MACAPAGAL-ARROYO, President of the Republic of the Philippines, by virtue of the powers vested in me by law, do hereby order:
>
> Section 1: Grant of Rank. – Offices and employees occupying legal positions in the government executive service who have obtained graduate degrees in law and successfully passed the bar examinations attendant thereto, shall initially be granted the rank of CESO III or higher, with the corresponding salary grade and other privileges in the Career Executive Service.
>
> Section 2. Determination of Rank Level. – The appropriate level of the CESO rank granted to the government officer or employee under Section 1 hereof shall be determined upon the recommendation of the Department or Agency Head concerned and the evaluation of the Career Executive Service Board (CESB). In the determination thereof, due consideration shall be given to (a) the position of the officer or employee in government, (b) academic honors and distinctions received, and (c) bar or board examination rating.
>
> Section 3. Non-Prescription; Construction. – The CESO rank granted under the provisions of this Order shall vest upon the government officer or employee's compliance with the requirements of Section 1 hereof, and shall not prescribe. Nothing in this Order shall be constructed to defeat the security of tenure and other privileges/entitlements of government officers and employees as provided under existing laws, orders, rules and regulations.
>
> Section 4. Repealing Clause. – All executive orders, administrative orders, proclamations, rules and regulations or parts thereof that are in conflict with this Executive Order are hereby repealed or modified accordingly. (Emphasis supplied)

[4] Fifth and sixth "Whereas" clauses, EO 883.

[5] Under Section 261(g), Batas Pambansa Blg. 881, as amended.

[6] Rollo, pp. 64-65.

[7] Proceso T. Domingo, Angelito M. Twaño, and Susan M. Solo.

[8] Namely:

> 1. Remedios Eugenio Ongtangco, Director II, Department of Agriculture – to CESO III;

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2. Ma. Mercedes Guerra Yacapin, Department Manager III, National Food Authority – to CESO Rank IV;

3. Teofila del Rosario Villanueva, Director IV, Department of Education – to CESO III;

4. Luisito Rosales Meaño, Chief of Medical Professional Staff II, Philippine Orthopedic Center – to CESO V;

5. Jose Vicente Buenviaje Salazar, Undersecretary, Department of Justice – to CESO I

6. Proceso T. Domingo, Undersecretary, Department of National Defense – to CESO I;

7. Angelito De Mesa Twaño, Director IV, Department of Public Works and Highways – to CESO III;

8. Graciano Perez Yumul, Undersecretary, Department of Science and Technology – to CESO I;

9. Evelyn Alinsao Trompeta, Director IV, Department of the Interior and Local Government – to CESO II;

10. Desiderio Pedregusa Belas, Director II, Department of Trade and Industry – to CESO III;

11. Ma. Irene Bello Calingo, Director IV, Presidential Management Staff – to CESO III;

12. Josephine Pilapil Raynes, Director IV, Presidential Management Staff – to CESO III;

13. Susan Montero Solo, Director IV, Presidential Management Staff – to CESO III. (Rollo, pp. 60-62)

[9] EO 3 provides in full:

WHEREAS, Section 2, Article IX-B of the 1987 Constitution states that “appointments in the civil service shall be made only according to merit and fitness to be determined, as far as practicable, and, except to positions which are policy-determining, primarily confidential, or highly technical, by competitive examination.”

WHEREAS, under Article IV, Chapter I, Part III of the Integrated Reorganizational Plan under P.D. No. 1, the exclusive power to “promulgate rules, standards and procedures on the selection, classification, compensation and career development of members of the Career Executive service (CES)” is vested with the Career Executive Service Board (CESB);

WHEREAS, under Section 8, Chapter II, book V of EO 292 or the Administrative Code of 1987, “entrance to the third level (Career Executive Service) shall be prescribed by the CESB”;

WHEREAS, Executive Order No. 883 dated 28 May 2010 automatically vests lawyers “occupying legal positions in the government executive service who have obtained graduate degrees in law and successfully passed their bar examinations” with the rank of CESO III in the CES;

WHEREAS, Executive Order No. 883 encroaches upon the power of the CESB to “promulgate rules, standards and procedures on the selection, classification, compensation and career development of members of the Career Executive service (CES)” vested by law with the Career Executive Service Board (CESB);

WHEREAS, from the foregoing, it is evident that EO 883 amounts to a repeal or amendment of the provisions of P.D. 1 and E.O. 292 which were issued when the President had legislative powers, hence illegal and void.

NOW, THEREFORE, I, BENIGNO S. AQUINO III, by virtue of the powers vested in me by the Constitution as President of the Republic of the Philippines by law, do hereby declare:

SECTION 1. Revocation – Executive Order No. 883 dated 28 May 2010 is hereby revoked.

SECTION 2. Repealing Clause – All executive orders, administrative orders, proclamations, rules and regulations or parts thereof that are in conflict with this Executive Order are hereby modified accordingly.

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SECTION 3. Effectivity– This Executive order shall take effect immediately. (Emphasis in the original)

[10] This provides: “Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety.”

[11] Rollo, pp. 21-24.

[12] In response to a query posed by Department of Justice Undersecretary Jose Vicente Salazar.

[13] Rollo, pp. 82, 89, 96-97.

[14] Id. at 87, 89-90.

[15] Id. at 279, 281, 284, 296-299.

[16] Id. at 283.

[17] See e.g. Alunan v. Mirasol, 342 Phil. 467 (1997) (reviewing a question relating to the holding of Sangguniang Kabataan (SK) elections which can potentially recur every SK elections but evade review because of the short duration of the SK election period).

[18] Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), G.R. No. 183591, 14 October 2008, 568 SCRA 402, 461 (where the Court, in reviewing the validity of a draft peace agreement between the government and an insurgent group despite the government’s manifestation pendent lite of lack of intent to sign the agreement, held: “[a]nother exclusionary circumstance that may be considered is where there is a voluntary cessation of the activity complained of by the defendant or doer. Thus, once a suit is filed and the doer voluntarily ceases the challenged conduct, it does not automatically deprive the tribunal of power to hear and determine the case and does not render the case moot x x x.” [emphasis supplied]). See also David v. Arroyo, 522 Phil. 705 (2006) (where the Court reviewed the validity of Presidential Proclamation No. 1017 (PP 1017) issued by President Arroyo even though, post-filing of petitions questioning the validity of PP 1017, the latter issued Presidential Proclamation No. 1021 expressly repealing PP 1017).

[19] Rollo, p. 90.

[20] Section 1, Article VIII, Constitution.

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