

THE PROVINCIAL GOVERNMENT OF AURORA, PETITIONER, VS. HILARIO M. MARCO, RESPONDENT.

G.R. No. 202331. April 22, 2015

Ponente: LEONEN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-202331/>

LEONEN, J.:

The prohibition on midnight appointments only applies to presidential appointments. It does not apply to appointments made by local chief executives.

Nevertheless, the Civil Service Commission has the power to promulgate rules and regulations to professionalize the civil service. It may issue rules and regulations prohibiting local chief executives from making appointments during the last days of their tenure. Appointments of local chief executives must conform to these civil service rules and regulations in order to be valid.

This is a Petition for Review on Certiorari[1] of the Court of Appeals Decision[2] that denied the appeal of the Provincial Government of Aurora (the Province). The Province appealed the Resolution[3] of the Civil Service Commission granting the Motion for Execution filed by Hilario M. Marco (Marco). The Civil Service Commission had earlier reversed and set aside the disapproval of Marco's permanent appointment as Cooperative Development Specialist II.[4]

Governor Ramoncita P. Ong (Governor Ong) permanently appointed[5] Marco as Cooperative Development Specialist II on June 25, 2004, five (5) days before the end of her term as Governor of the Province.[6] On June 28, 2004, Marco's appointment, together with 25 other appointments, was submitted to the Civil Service Commission Field Office-Aurora (the Field Office). Annexed to Marco's appointment papers was a certification from Provincial Budget Officer Norma R. Clemente (Provincial Budget Officer Clemente) and Provincial Accountant Wilfredo C. Saturno (Provincial Accountant Saturno) stating that funds from the Province's 2004 Annual Budget were available to cover the position.[7]

On June 30, 2004, newly elected Governor Bellaflor Angara-Castillo assumed office. The next day, she called to an executive meeting all the department heads of the Province.[8]

During the executive meeting, Provincial Budget Officer Clemente allegedly manifested that the Province had no funds available to pay for the salaries of Governor Ong's 26 appointees.[9] She subsequently issued a Letter recalling the previously issued certification of the availability of funds:

In view of the result of the dialogue of the concerned offices regarding the financial status of the Provincial Government of Aurora, we hereby recall/retrieve our previously issued certification of availability of funds relative to the appointments issued by Governor Ramoncita P. Ong.[10]

Provincial Budget Officer Clemente's Letter was submitted to the Province's Human Resource Management-Office. It was then forwarded to the Field Office.[11]

Due to the recall of the certification, the Field Office disapproved Marco's appointment in the Letter[12] dated

July 5, 2004.[13]

The Province, through Human Resource Management Officer Liwayway G. Victorio, served Marco a copy of the Letter dated July 5, 2004. Marco was, thus, advised to refrain from reporting for work beginning July 8, 2004, the day he received notice of the disapproval of his appointment.[14]

Marco wrote the Civil Service Commission Regional Office No. IV (Regional Office), moving for the reconsideration of the disapproval of his appointment.[15] The Regional Office, however, denied reconsideration in its Decision[16] dated April 6, 2005 and affirmed the disapproval of Marco's appointment. It said that "[t]he lack of funds for the [26 appointments Governor Ong issued] was established during the meeting of the different department heads of Aurora Province and their new governor." [17]

Through the Letter dated May 17, 2005, Marco appealed before the Civil Service Commission.[18] The Province, through its Human Resource Management Office, received a copy of Marco's Letter on May 23, 2005.[19] However, it failed to comment on the appeal within 10 days from receipt as required by Section 73 of the Uniform Rules on Administrative Cases in the Civil Service.[20]

In the Resolution[21] dated April 14, 2008, the Civil Service Commission granted Marco's appeal and set aside the Regional Office's Decision dated April 6, 2005. It ruled that Marco's appointment was valid since it was accompanied by a certification of availability of funds.[22] As to the Letter withdrawing the certification, the Civil Service Commission ruled that it did not affect the validity of Marco's appointment because the Province "failed to submit documentary evidence to support its claim [that it had no funds to pay for the services of Governor Ong's appointees]." [23]

The Civil Service Commission added that the Province's withdrawal of the certification was "unfair to Marco":[24]

It is unfair to Marco who applied for the said position believing in good faith that funds were available, passed the screening conducted by the Personnel Selection Board (PSB) on February 12 & 13, 2004, was appointed on June 25, 2004 and was later told to stop reporting for work as his appointment was disapproved by [the Civil Service Commission Field Office-Aurora] simply because the provincial government under the new governor realized that it has no funds to pay for his services.[25]

Thus, the Civil Service Commission ordered the Regional Office to investigate whether Provincial Budget Officer Clemente and Provincial Accountant Saturno were administratively liable for certifying that funds were available to cover the positions filled by Governor Ong's appointees but subsequently withdrawing this certification.[26] It ordered the Field Office to reflect the Resolution in Marco's appointment papers and in his Service Record.[27]

The Province received a copy of the April 14, 2008 Resolution on May 21, 2008.[28]

On July 22, 2008, Provincial Administrator Alex N. Ocampo (Provincial Administrator Ocampo), on behalf of the Province, filed before the Civil Service Commission a Petition for Relief[29] on the ground of extrinsic fraud. According to him, the Civil Service Commission deprived the Province of an opportunity to be heard when it failed to implead the Province as an indispensable party.[30] He reiterated that Marco's appointment was void since the Province had no funds to pay for Marco's salaries.[31]

The Civil Service Commission denied outright the Petition for Relief in the Resolution[32] dated November 4, 2008. It ruled that Provincial Administrator Ocampo had no legal personality to file the Petition for Relief absent an authorization from the Provincial Governor. Moreover, a petition for relief was not allowed under the Uniform Rules on Administrative Cases in the Civil Service. Thus, Provincial Administrator Ocampo erred in filing a Petition for Relief.[33]

Provincial Administrator Ocampo filed a Motion for Reconsideration,[34] this time with a written authority[35] to file from Governor Bellafior Angara-Castillo annexed to the Motion.[36]

The Civil Service Commission denied the Motion for Reconsideration in the Resolution[37] dated September 8, 2009. It ruled that its April 14, 2008 Resolution had become final and executory considering that the Province did not file a motion for reconsideration of this Resolution within the reglementary period.[38]

Consequently, Marco requested the Civil Service Commission to implement the April 14, 2008 Resolution.[39] Through the Resolution[40] dated July 6, 2010, the Commission granted Marco's request.

Provincial Administrator Ocampo filed a Motion for Reconsideration with Motion to Quash "Execution,"[41] arguing that the April 14, 2008 Resolution had already been implemented. As the Civil Service Commission had ordered, the Province reflected the April 14, 2008 Resolution in Marco's appointment papers and in his Service Record.[42]

In the Resolution[43] dated January 24, 2011, the Civil Service Commission denied the Motion for Reconsideration with Motion to Quash "Execution." It noted that the Province still refused to reinstate Marco despite the April 14, 2008 Resolution and thus clarified that this Resolution necessarily resulted in the approval of Marco's appointment and his reinstatement as Cooperative Development Specialist II.[44] The January 24, 2011 Resolution states:

Ocampo, et al. nonchalantly tries to sweep away what is obvious in the ruling of the Commission in [the April 14, 2008 Resolution], i.e., the reversal of the disapproval by [the Regional Office] and [the Field Office] of Marco's appointment. The reversal of the two (2) decisions mean[s] that Marco's appointment as Cooperative Development Specialist II is in order and should be approved. Consequently, the approval of Marco's appointment is legal proof that he is entitled to perform the duties and functions of the said position and receive the salaries and benefits attached to the position.

WHEREFORE, the Motion for Reconsideration with Motion to Quash of Alex N. Ocampo, Provincial Administrator, and Manuel Joseph R. Bretana III, Legal Counsel, Provincial Government of Aurora, is DENIED. Accordingly, [the July 6, 2010 Resolution] which grants the Motion for the Implementation of [the April 14, 2008 Resolution] filed by Hilario M. Marco, STANDS.

The Provincial Governor of Aurora is directed to reinstate Marco to his Cooperative Development Specialist II position and pay his back salaries and other benefits from the time that Marco was actually prohibited from reporting for work up to his actual reinstatement.[45]

A Petition for Review[46] under Rule 43 with prayer for issuance of a temporary restraining order[47] was filed before the Court of Appeals. For the first time, the Province argued that Marco was a midnight appointee since Governor Ong appointed him during the last five (5) days of her tenure. Therefore, Marco's appointment was void.[48]

In the Decision dated March 2, 2012, the Court of Appeals denied the Petition for Review and affirmed the implementation of the Civil Service Commission's April 14, 2008 Resolution.[49]

The Court of Appeals ruled that the April 14, 2008 Resolution already became final and executory since there was no motion for reconsideration filed within the reglementary period. Although the Province filed a Petition for Relief before the Civil Service Commission, the Court of Appeals held that the remedy of a petition for relief is not allowed under the Uniform Rules on Administrative Cases in the Civil Service. Moreover, the Province failed to prove the extrinsic fraud that allegedly prevented it from filing a motion for reconsideration. Thus, the Civil Service Commission correctly denied the Petition for Relief.[50]

On the merits, the Court of Appeals affirmed Marco's appointment. The Province had earlier certified that it had funds to pay for his salary as Cooperative Development Specialist II.[51] It found that the Sangguniang Panlalawigan even passed a "Supplemental Budget for 2004 appropriating P54,014,127.01 in provincial funds." [52] Therefore, the issuance of the Letter recalling the certification "[did] not change the fact that there [were] funds available for [Marco's] appointment." [53]

On the claim that Marco was a midnight appointee, the Court of Appeals said that Marco's case fell within the exception provided under Civil Service Commission Resolution No. 030918.[54] He was fully qualified for the position and underwent a screening process on February 12 and 13, 2004, long before the election ban.[55] Therefore, he was validly appointed.

The Province filed a Motion for Reconsideration,[56] which the Court of Appeals denied in the Resolution[57] dated June 13, 2012.

The Province filed a Petition for Review on Certiorari before this court. Marco filed his Comment,[58] after which the Province filed its Reply.[59]

In the Resolution[60] dated January 30, 2013, this court ordered the parties to file their respective memoranda. The Province filed its Memorandum[61] on April 25, 2013, while Marco filed his Memorandum[62] on May 2, 2013.

The Province maintains that Marco's appointment was void on the ground that he was a midnight appointee. Marco was appointed by Governor Ong five (5) days before the end of her term, in violation of Civil Service Commission Resolution No. 030918,[63] paragraph 2.1 of which provides:

2.1.

All appointments issued by elective appointing officials after elections up to June 30 shall be disapproved, except if the appointee is fully qualified for the position and had undergone regular screening processes before the Election Ban as shown in the Promotion and Selection Board (PSB) report or minutes of meeting.

On Marco's claim that he underwent a regular screening process, which exempted his appointment from the prohibition on midnight appointments, the Province counters that Marco failed to present convincing evidence to prove this claim. The Minutes of the Meeting of the Promotion Selection Board showed that Marco was among the 201 applicants allegedly screened by the Board within two (2) days. According to the Province, two days is a period too short for the Personnel Selection Board to have carefully considered all the applications.[64]

As to the claim that the April 14, 2008 Resolution is final and executory and may no longer be reversed, the Province argues that nothing prevents this court from setting aside this Resolution. It argues that the promulgation of *Nazareno, et al. v. City of Dumaguete*[65] was a supervening event warranting the reversal of the final and executory decision.[66]

In *Nazareno*, this court voided 89 appointments made by a city mayor within the month that he left office, ruling that they were mass appointments prohibited under Civil Service Commission Resolution No. 010988.[67] The Province argues that Governor Ong's appointments were analogous to the *Nazareno* appointments; hence, Governor Ong's appointments should likewise be voided.[68]

Finally, the Province insists that Marco's appointment was void due to lack of funds to pay for the position.[69] In ordering the Province to uphold Marco's appointment despite the lack of funds, the Civil Service Commission allegedly "interfered with [the Province's] prerogative to draw up its own budget and to spend its ... revenues as it deems fit." [70]

For his part, Marco maintains that the Civil Service Commission's Resolution dated April 14, 2008 has long become final and executory. Therefore, the Resolution may no longer be disturbed.[71]

On the claim that he was a midnight appointee, Marco pointed out that the Province belatedly raised this claim. The Province never raised it before the Civil Service Commission but only did so before the Court of Appeals.[72] By belatedly raising this claim, the Province should be deemed to have "implicitly recognized"[73] that he was not a midnight appointee.

In any case, Marco asserts that he was qualified for the position and that he underwent a selection process as required by Resolution No. 030918. Thus, his appointment was an exception to the prohibition on midnight appointments.[74]

On the alleged interference of the Civil Service Commission with the Province's discretionary power to appoint, Marco argues that it "merely upheld the validity of an existing appointment[.]"[75] The Civil Service Commission did not "[substitute] its own appointee for the one chosen by the appointing authority." [76] Therefore, it correctly upheld his appointment.

Lastly, Marco argues that Nazareno does not apply in this case. This court in Nazareno voided the 89 appointments of the appointing authority based on the criteria set in Resolution No. 010988.[77] However, Nazareno had been promulgated even before he was appointed in office. Moreover, Resolution No. 010988 did not set any new criteria for appointments made during the last days of the appointing authority in office. Therefore, the promulgation of Nazareno is not a supervening event that can set aside the final and executory April 14, 2008 Resolution.[78]

The issues for this court's resolution are:

First, whether the Resolution dated July 6, 2010, which ordered the implementation of the April 14, 2008 Resolution, was void for varying the terms of the April 14, 2008 Resolution;

Second, whether the withdrawal of the certification of sufficiency of funds voided Marco's appointment; and

Lastly, whether Marco's appointment was void on the ground that he was a midnight appointee.

This Petition must be denied.

I

We note that the Province filed an appeal before the Court of Appeals against the Civil Service Commission's Resolution that ordered the execution of the April 14, 2008 Resolution.[79]

The Province erred in filing an appeal before the Court of Appeals, as no appeal may be taken from an order of execution.[80] Instead, it should have filed a petition for certiorari — the appropriate special civil action under Rule 65 of the Rules of Court.[81]

The Court of Appeals, therefore, should have dismissed the Province's appeal outright. Rule 50, Section 1(i) of the Rules of Court allows the Court of Appeals to dismiss an appeal where the order appealed from is not appealable.[82]

The rule prohibiting appeals from orders of execution is based on the doctrine of immutability of final judgments. Under this doctrine, a final and executory judgment "is removed from the power and jurisdiction of the court which rendered it to further alter or amend it, much less revoke it." [83] The judgment remains immutable even if it is later on discovered to be erroneous.[84] The doctrine "is grounded on fundamental considerations of public

policy and sound practice that at the risk of occasional error, the judgments of the courts must become final at some definite date fixed by law. To allow courts to amend final [and executory] judgments will result in endless litigation." [85]

The doctrine of immutability of final judgments applies to decisions rendered by the Civil Service Commission. A decision of the Civil Service Commission becomes final and executory if no motion for reconsideration is filed within the 15-day reglementary period under Rule VI, Section 80 of the Uniform Rules on Administrative Cases in the Civil Service:

Section 80. Execution of Decision. - The decisions of the Commission Proper or its Regional Offices shall be immediately executory after fifteen (15) days from receipt thereof, unless a motion for reconsideration is seasonably filed, in which case the execution of the decision shall be held in abeyance.

In *Mendiola v. Civil Service Commission*, [86] Teodorico Mendiola (Mendiola) occupied the position of Budget Examiner III when the Economic Intelligence and Investigation Bureau terminated his employment. [87] On Mendiola's appeal, the Civil Service Commission ordered his reinstatement in the resolution dated September 21, 1988. [88]

The Economic Intelligence and Investigation Bureau failed to file a motion for reconsideration within the 15-day reglementary period. Consequently, Mendiola filed a motion for execution of the September 21, 1988 resolution. [89]

Unknown to Mendiola, the Economic Intelligence and Investigation Bureau belatedly filed a motion for reconsideration, which the Civil Service Commission granted despite having been filed out of time. [90]

This court reversed the Civil Service Commission's grant of the motion for reconsideration and ordered Mendiola's reinstatement as the Commission previously ordered in the September 21, 1998 resolution. This court held that the September 21, 1998 resolution had become final and executory when the Economic Intelligence and Investigation Bureau failed to file a motion for reconsideration within the reglementary period. Thus, the Civil Service Commission may no longer reverse the resolution. [91]

In *Obiasca v. Basallote*, [92] Jeane O. Basallote (Basallote) was appointed Administrative Officer II by the Department of Education and was assigned to work in Tabaco National High School in Albay. Basallote had assumed the duties of her office as Administrative Officer II when she learned that Arlin B. Obiasca (Obiasca) was subsequently appointed to the same position. Obiasca's appointment was attested to by the Civil Service Commission, while Basallote's appointment papers were not even forwarded to the Civil Service Commission. [93]

Basallote protested Obiasca's appointment before the Civil Service Commission Regional Office V. The Regional Office dismissed the protest. On appeal, the Civil Service Commission reversed the Regional Office's Decision, thus approving Basallote's appointment and recalling that of Obiasca. [94]

Without filing a motion for reconsideration before the Civil Service Commission, Obiasca directly filed an appeal before the Court of Appeals. The Court of Appeals affirmed the Civil Service Commission's Decision. [95]

Obiasca's Petition for Review on certiorari was likewise denied by this court. [96] This court held that Obiasca's failure to file a motion for reconsideration rendered the Civil Service Commission's Decision approving Basallote's appointment final and executory. Thus, the Civil Service Commission's Decision may no longer be disturbed. [97]

[Obiasca] did not file a petition for reconsideration of the [Civil Service Commission's resolution] before filing

a petition for review in the [Court of Appeals]. Such fatal procedural lapse on [Obiasca]'s part allowed the [Civil Service Commission's resolution] to become final and executory. Hence, for all intents and purposes, the [Civil Service Commission's resolution] has become immutable and can no longer be amended or modified. A final and definitive judgment can no longer be changed, revised, amended or reversed. Thus, in praying for the reversal of the assailed Court of Appeals decision which affirmed the final and executory [Civil Service Commission resolution], [Obiasca] would want the Court to reverse a final and executory judgment and disregard the doctrine of immutability of final judgments.[98] (Emphasis in the original, citations omitted)

In this case, the Province, through its Human Resource Management Office, received a copy of the Civil Service Commission's April 14, 2008 Resolution on May 21, 2008.[99] Thus, the Province had until June 5, 2008 to file a motion for reconsideration.

However, the Province failed to file a motion for reconsideration of the April 14, 2008 Resolution within the 15-day reglementary period. With no motion for reconsideration seasonably filed, the April 14, 2008 Resolution-became final and executory on June 6, 2008.

In addition, the remedy of a petition for relief from judgment is not among those provided under the Uniform Rules on Administrative Cases in the Civil Service. This means that the remedy is not allowed under civil service rules.[100] Even assuming that a petition for relief may be filed before the Civil Service Commission, the party must show that the assailed judgment became final through fraud, accident, mistake, or excusable negligence.[101]

Here, the Province failed to refute that it received a copy of the Civil Service Commission's April 14, 2008 Resolution. It was given an opportunity to be heard, which is the essence of administrative due process.[103] It did not even justify why it failed to file a motion for reconsideration despite its receipt of the Civil Service Commission's Resolution. Contrary to the Province's claim, there was no extrinsic fraud since the Province was not prevented "from fully and fairly presenting [its] defense[.]"[104] The Civil Service Commission correctly denied the Province's Petition for Relief.

Since the April 14, 2008 Resolution already became final and executory, it may no longer be reversed. The Civil Service Commission correctly granted Marco's request for the Resolution's implementation.

II

In implementing the April 14, 2008 Resolution, the Civil Service Commission ordered the Province to reinstate Marco and to pay him back salaries and other benefits:

WHEREFORE, the request of Hilario M. Marco, Cooperative Development Specialist II, Provincial Government of Aurora, for the implementation of CSC Resolution No. 08-0656 dated April 14, 2008 is GRANTED. Accordingly, the Provincial Government of Aurora is directed to reinstate Marco to his former position and the payment of his back salaries and other benefits starting from the date he was advised to stop reporting for work on July 8, 2004 up to his actual reinstatement.[105]

According to the Province, the Civil Service Commission went beyond the order sought to be implemented and "varie[d] the term of the judgment." [106] The Province claims that nothing in the April 14, 2008 Resolution ordered the reinstatement of Marco. The dispositive portion of the resolution stated:[107]

WHEREFORE, the appeal of Hilario M. Marco is GRANTED. Accordingly, the Decision No. 05-0212 dated April 6, 2005 of the Civil Service Commission Regional Office IV, Quezon City, affirming the disapproval of the appointment of Marco for lack of certification of availability of funds is REVERSED and SET ASIDE.

The Civil Service Commission Field Office-Aurora is directed to reflect this decision in the appointment of

Marco and in his Service Record.[108]

Therefore, the Province claims that the order implementing the April 14, 2008 Resolution must be set aside.

We rule that the Civil Service Commission did not vary the terms of the April 14, 2008 Resolution.

Under Rule IV, Section 1 of Civil Service Commission Memorandum Circular No. 40-98, an appointment takes effect immediately upon issuance by the appointing authority. Once the appointee has assumed the duties of the position, he or she is entitled to receive the salaries corresponding with the position though the Civil Service Commission has not yet approved the appointment.

Should the appointment be initially disapproved, it nevertheless remains effective if a motion for reconsideration or an appeal of the disapproval is seasonably filed with the proper office.[109] Therefore, during the pendency of the motion for reconsideration, the appointee remains entitled to his or her salaries until the appointment is finally disapproved by the Civil Service Commission.[110]

Marco's appointment immediately took effect on June 25, 2004 when Governor Ong appointed him as Cooperative Development Specialist II. Although his appointment was initially disapproved by the Field Office, Marco seasonably filed a Motion for Reconsideration before the Civil Service Commission. Thus, Marco's appointment remained effective during the pendency of the Motion for Reconsideration.

Because the Civil Service Commission granted his Motion for Reconsideration and set aside the disapproval of his appointment, Marco remained entitled to his position. The necessary consequence of granting reconsideration is his reinstatement as Cooperative Development Specialist II.

The Civil Service Commission correctly implemented the April 14, 2008 Resolution by ordering Marco's reinstatement and the payment of his back salaries and other benefits.

III

The Province contends that the Civil Service Commission erred in approving Marco's appointment as Cooperative Development Specialist II. It allegedly had no funds to cover the position. Therefore, the appointment was void, having been issued in violation of Rule V, Section 1(e)(ii) of the Civil Service Commission Memorandum Circular No. 40-98. The rule states:

SECTION 1. In addition to the common requirements and procedures, the following requirements and guidelines shall also be observed and the necessary documents submitted, when applicable.

.....

e.

LGU Appointment. Appointment in local government units for submission to the Commission shall be accompanied, in addition to the common requirements, by the following

.....

ii.

Certification by the Municipal/City/Provincial Accountant/Budget Officer that funds are available.

The certification ensures that the appointee shall occupy a position adequately covered by appropriations as required by Section 325(e) of the Local Government Code:

SECTION 325. General Limitations. - The use of the provincial, city, and municipal funds shall be subject to

the following limitations:

.....

(e) Positions in the official plantilla for career positions which are occupied by incumbents holding permanent appointments shall be covered by adequate appropriations[.]

As required by Rule V, Section 1 (e)(ii) of the Civil Service Commission Memorandum Circular No. 40-98, Marco's appointment was accompanied by a certification from the Province, through the Provincial Budget Officer and the Provincial Accountant, that funds were available under the 2004 Annual Budget of the Province for the 26 positions issued by Governor Ong. Therefore, there was no violation of Rule V, Section 1(e)(ii) of the Civil Service Commission Memorandum Circular No. 40-98. There was no violation of existing Civil Service Law, rules and regulations. Marco's appointment remains effective.

That the Province suddenly had no funds to pay for Marco's salaries despite its earlier certification that funds were available under its 2004 Annual Budget does not affect his appointment.

None of the grounds for disapproval, of an appointment under Rule V, Section 7[111] of the Omnibus Rules Implementing the Civil Service Law exists in this case. The appointment remains effective, and the local government unit remains liable for the salaries of the appointee.[112]

Moreover, the earlier certification, if proven false, constitutes intentional misrepresentation of a material fact concerning a civil service matter. This is an offense punishable by fine, or imprisonment, or both as provided under Section 67 of the Civil Service Law:

SEC. 67. Penal Provision. — Whoever makes any appointment or employs any person in violation of any provision of this Title or the rules made thereunder or whoever commits fraud, deceit or intentional misrepresentation of material facts concerning other civil service matters, or whoever violates, refuses or neglects to comply with any of such provisions or rules, shall upon conviction be punished by a fine not exceeding one thousand pesos or by imprisonment not exceeding six (6) months, or both such fine and imprisonment in the discretion of the court.

We, therefore, agree with the Civil Service Commission in ordering the Regional Office to commence appropriate administrative proceedings against Provincial Budget Officer Norma R. Clemente and Provincial Accountant Wilfredo C. Saturno for issuing the certification of availability of funds:

The Commission disapproves of the conduct of the officials of the Provincial Government of Aurora in issuing a certification dated June 25, 2004 that funds are available in the 2004 Annual Budget to support the appointments issued by outgoing Governor Ong and then later [withdrawing] the same when a new governor assumes office. As such, the CSCRO No. IV is directed to conduct the appropriate administrative proceedings to determine whether Norma R. Clemente (Provincial Budget Officer) and Wilfredo C. Saturno (Provincial Accountant) violated Civil Service Law, rules and regulations.[113]

IV

The Province claims that Marco was a midnight appointee. Moreover, he was among those appointed "en masse"[114] by Governor Ong before the end of her term. Thus, the Civil Service Commission should have disapproved Marco's appointment.

A midnight appointment "refers to those appointments made within two months immediately prior to the next presidential election." [115] Midnight appointments are prohibited under Article VII, Section 15 of the Constitution:

SECTION 15. 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.

Midnight appointments are prohibited because an outgoing President is "duty bound to prepare for the orderly transfer of authority to the incoming President, and he [or she] should not do acts which he [or she] ought to know, would embarrass or obstruct the policies of his [or her] successor." [116] An outgoing President should not "deprive the new administration of an opportunity to make the corresponding appointments." [117]

However, the constitutional prohibition on midnight appointments only applies to presidential appointments. It does not apply to appointments made by local chief executives.

In *De Rama v. Court of Appeals*, [118] Mayor Conrado L. de Rama (Mayor de Rama) of Pagbilao, Quezon sought to recall 14 appointments made by former Mayor Ma. Evelyn S. Abeja on the sole ground that they were midnight appointments. [119] The Civil Service Commission denied Mayor de Rama's request, ruling that the prohibition on midnight appointments only applies to outgoing Presidents. [120] On appeal, the Court of Appeals affirmed the Civil Service Commission's decision. [121]

This court agreed with the Civil Service Commission and the Court of Appeals. In denying Mayor de Rama's petition for review on certiorari, this court said that the prohibition on midnight appointments "applies only to presidential appointments." [122] This court noted that "there is no law that prohibits local elective officials from making appointments during the last days of his or her tenure." [123]

Nonetheless, the Civil Service Commission, as the central personnel agency of the Government, [124] may "establish rules and regulations to promote efficiency and professionalism in the civil service." [125] Although it conceded that no law prohibits local elective officials from making appointments during the last days of their tenure, this court in *Nazareno* upheld Civil Service Commission Resolution No. 010988, which prohibited local elective officials from making appointments immediately before and after elections. [126] In addition, Resolution No. 010988 prohibited "mass appointments," or those "issued in bulk or in large number after the elections by an outgoing local chief executive and there is no apparent need for their immediate issuance." Resolution No. 010988 states:

WHEREAS, the May 14, 2001 national and local elections have just concluded and the Commission anticipates controversies that would arise involving appointments issued by outgoing local chief executives immediately before and after elections;

WHEREAS, the Commission observed the tendency of some outgoing local chief executives to issue appointments even after the elections, especially when their successors have already been proclaimed;

WHEREAS, this practice of some outgoing local chief executives causes animosities between the outgoing and incoming officials and the people who are immediately affected and made to suffer the consequences thereof are the ordinary civil servants and eventually, to a larger extent, their constituents themselves;

WHEREAS, one of the reasons behind the prohibition in issuing appointments or hiring of new employees during the prohibited period as provided for in CSC Memorandum Circular No. 7, series of 2001 is to prevent the occurrence of the foregoing, among others;

WHEREAS, local elective officials, whose terms of office are about to expire, are deemed as "caretaker" administrators who are duty bound to prepare for the smooth and orderly transfer of power and authority to the incoming local chief executives;

WHEREAS, under Section 15, Article VII of the Constitution, the President or Acting President is prohibited

from making appointments two (2) months immediately before the next presidential elections and up to the end of his term, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety;

WHEREAS, while there is no equivalent provision in the Local Government Code of 1991 (Republic Act No. 7160) or in the Civil Service Law (Book V of Executive Order No. 292) of the above-stated prohibition, the rationale against the prohibition on the issuance of "midnight appointments" by the President is applicable to appointments extended by outgoing local chief executives immediately before and/or after the elections; and

WHEREAS, the Commission also deems it fit to issue guidelines that would assist processors in their actions on appointments issued by these outgoing local chief executives immediately before and/or after the elections;

NOW THEREFORE, the Commission, pursuant to its constitutional mandate as the central personnel agency of the government, hereby issues and adopts the following guidelines:

- The validity of an appointment issued immediately before or after the elections by outgoing local chief executives is to be determined on the basis of the nature, character and merit of the individual appointment and the particular circumstances surrounding the same.

.....

- All appointments, whether original, transfer, reemployment, reappointment, promotion or demotion, except in cases of renewal and reinstatement, regardless of status, which are issued AFTER the elections, regardless of their dates of effectivity and/or date of receipt by the Commission, including its Regional or Field Offices, of said appointments or the Report of Personnel Actions (ROPA), as the case may be, shall be disapproved unless the following requisites concur relative to their issuance:

a)

The appointment has gone through the regular screening by the Personnel Selection Board (PSB) before the prohibited period on the issuance of appointments as shown by the PSB report or minutes of its meeting;

b)

That the appointee is qualified;

c)

There is a need to fill up the vacancy immediately in order not to prejudice public service and/or endanger public safety;

d)

That the appointment is not one of those mass appointments issued after the elections.

- The term "mass appointments" refers to those issued in bulk or in large number after the elections by an outgoing local chief executive and there is no apparent need for their immediate issuance.

This court said that the rationale behind Resolution No. 010988 "is not difficult to see":[127]

Appointments are banned prior to the elections to ensure that partisan loyalties will not be a factor in the appointment process, and to prevent incumbents from gaining any undue advantage during the elections. To this end, appointments within a certain period of time are proscribed by the Omnibus Election Code and related issuances. After the elections, appointments by defeated candidates are prohibited, except under the circumstances mentioned in CSC Resolution No. 010988, to avoid animosities between outgoing and incoming officials, to allow the incoming administration a free hand in implementing its policies, and to ensure that

appointments and promotions are not used as a tool for political patronage or as a reward for services rendered to the outgoing local officials.[128] (Citation omitted)

In Nazareno, this court affirmed the disapproval of 89 appointments Mayor Felipe Antonio B. Remollo (Mayor Remollo) of Dumaguete City made within the month that he left office. This court found that the appointments were issued in violation of Resolution No. 010988. Particularly, it found no evidence that the Personnel Selection Board carefully deliberated on the qualifications of Mayor Remollo's appointees.[129] Moreover, the timing and the large number of appointments "indicate that the appointments were hurriedly issued by the outgoing administration." [130]

The Province argues that the 26 appointments Governor Ong issued during the last days of her tenure were similar to those Mayor Remollo issued in Nazareno. Governor Ong allegedly issued mass appointments, the immediate issuance of which the Province had no apparent need.

We note, however, that Resolution No. 010988 — the Resolution effective when Mayor Remollo issued the appointments in Nazareno — was superseded by Resolution No. 030918 dated August 28, 2003.[131] Resolution No. 030918 on "midnight appointments" by local chief executives was effective at the time Governor Ong issued the disputed appointments. Resolution No. 030918 states, in part:

WHEREAS, under Section 3, Article IX-B of the 1987 Constitution, the Commission, as the central personnel agency of the Government, is mandated to establish a career service and adopt measures to promote efficiency, integrity, responsiveness, progressiveness and courtesy in the civil service, among others;

WHEREAS, the Constitution further mandates the Commission to issue its own rules and regulations for effective and efficient personnel administration in the Civil Service;

WHEREAS, Section 12(1) and (2), Book V of the Executive Order No. 292 (Administrative Code of 1987) mandates the Commission to administer and enforce the constitutional and statutory provisions on the merit system for all ranks and levels in the Civil Service and to prescribe, amend and enforce rules and regulations for carrying into effect the provision of the Civil Service Law and other pertinent laws;

WHEREAS, problems and controversies inevitably arise involving appointments issued by outgoing elective and appointive officials just before and after election periods;

WHEREAS, personnel morale, office operations, and delivery of public services are inevitably disrupted by such problem's and controversies;

WHEREAS, there is a need to forestall such problems by defining and making more stringent the restrictions on personnel appointments to be observed by outgoing appointing officials, elective or appointive, before they leave office;

NOW, THEREFORE, the Commission, pursuant to its constitutional and statutory mandates as the central personnel agency of the government, hereby issues and adopts the following guidelines:

.....

2. Action on Appointments issued by Elective and Appointive Officials After the Elections Up to June 30

2.1.

All appointments issued by elective appointing officials after elections up to June 30 shall be disapproved, except if the appointee is fully qualified for the position and had undergone regular screening processes before the Election Ban as shown in the Promotion and Selection Board (PSB) report or minutes of meeting.

.....

This Resolution supersedes CSC Resolution No. 010988 dated 4 June 2001 and shall take effect fifteen (15) days after its publication in a newspaper of general circulation.

Quezon City, August 28, 2003.

Since Resolution No. 030918 was effective at the time Governor Ong issued the 26 appointments, we must decide this case based on Resolution No. 030918. Nazareno is not applicable, as it was decided based on Resolution No. 0109888.

We agree with the Civil Service Commission and the Court of Appeals that Governor Ong issued Marco's appointment in accordance with Resolution No. 030918. Although his appointment was made five (5) days before the end of Governor Ong's term, Marco was fully qualified for the position and had undergone regular screening processes before the election ban. As the Civil Service Commission found, Marco "applied for the [position of Cooperative Development Specialist II] [and] passed the screening conducted by the Personnel Selection Board (PSB) on February 12 & 13, 2004[.]"[132] The Court of Appeals reiterated this finding in its Decision dated March 2, 2012.[133] Absent a showing of grave abuse of discretion, this court will not disturb the findings of fact of the Civil Service Commission,[134] especially since it has acquired "specialized knowledge and expertise"[135] in the field of civil service law.

Assuming without conceding that Governor Ong's 26 appointments were issued in bulk, this per se does not invalidate the appointments. Unlike Resolution No. 010988, Resolution No. 030918 does not prohibit appointments that are large in number. Moreover, 26 appointments can hardly be classified as "mass appointments," compared with the 89 appointments this court invalidated in Nazareno.

Marco's appointment was valid. The Civil Service Commission correctly approved his appointment.

Considering that Marco had already accepted his appointment by the time the Province prevented him from assuming his office, his appointment remains effective up to the present.[136] Consequently, the Civil Service Commission correctly ordered the Province to reinstate Marco as Cooperative Development Specialist II and to pay him his back salaries from July 8, 2004 when the Province prevented him from reporting for work up to his actual reinstatement.

WHEREFORE, the Petition for Review on Certiorari is DENIED. The Court of Appeals Decision dated March 2, 2012 is affirmed.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Perez,[*] and Mendoza, JJ., concur.

[*] Designated acting member per S.O. No. 1977 dated April 15, 2015.

[1] Rollo, pp. 13-53.

[2] Id. at 56-86. The Decision dated March 2, 2012 and docketed as CA-G.R. SP No. 118227 was penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Franchito N. Diamante and Angelita A. Gacutan of the Seventeenth Division.

[3] Id. at 325-330. The Resolution dated July 6, 2010 is identified as Resolution No. 101361.

[4] Id. at 124-129.

[5] Id. at 112.

[6] Id. at 57.

[7] Id.

[8] Id. at 57-58.

[9] Id. at 58.

[10] Id. at 126.

[11] Id. at 58.

[12] Id. at 114.

[13] Id. at 58.

[14] Id. at 126.

[15] Id.

[16] Id. at 130-134. The Regional Office's Decision dated April 6, 2005 is identified as Decision No. 050212.

[17] Id. at 133.

[18] Id. at 59.

[19] Id. at 76.

[20] Uniform Rules on Administrative Cases in the Civil Service, rule V, sec. 73 provides:

Section 73. Requirement of Filing. - The appellant shall furnish a copy of his appeal to the head of department or agency concerned who shall submit his comment, together with the records, to the Commission within ten (10) days from receipt thereof. Proof of service of the appeal on the head of department or agency shall be submitted with the Commission.

[21] Rollo, pp. 124-129. The Resolution dated April 14, 2008 is identified as Resolution No. 080656.

[22] Id. at 125-126 and 128.

[23] Id. at 128.

[24] Id.

[25] Id.

[26] Id.

[27] Id. at 129.

[28] Id. at 473.

[29] Id. at 137-154.

[30] Id. at 143-146.

[31] Id. at 147-148.

[32] Id. at 320. The Resolution dated November 4, 2008 is identified as Resolution No. 082040.

[33] Id.

[34] Id. at 157-177.

[35] Id. at 178.

[36] Id. at 60.

[37] Id. at 322-323. The Resolution dated September 8, 2009 is identified as Resolution No. 091314.

[38] Id. at 322.

[39] Id. at 61.

[40] Id. at 325-330. The Resolution dated July 6, 2010 is identified as Resolution No. 101361.

[41] Id. at 189-200.

[42] Id. at 190.

[43] Id. at 202-206. The Resolution dated January 24, 2011 is identified as Resolution No. 1100127.

[44] Id. at 206.

[45] Id.

[46] Id. at 207-239.

[47] Id. at 236.

[48] Id. at 232-233.

[49] Id. at 86.

[50] Id. at 72-78.

[51] Id. at 81.

[52] Id.

[53] Id. at 82.

[54] CSC Resolution No. 030918, paragraph 2.1 provides:

2.1.

All appointments issued by elective appointing officials after elections up to June 30 shall be disapproved, except if the appointee is fully qualified for the position and had undergone regular screening processes before the Election Ban as shown in the Promotion and Selection Board (PSB) report or minutes of meeting.

[55] Rollo, p. 84.

[56] Id. at 93-110.

[57] Id. at 88-92. The Resolution was penned by Associate Justice Mariflor P. Punzalan Castillo and concurred in by Associate Justices Franchito N. Diamante and Angelita A. Gacutan of the Former Seventeenth Division.

[58] Id. at 344-351.

[59] Id. at 353-379.

[60] Id. at 417-419.

[61] Id. at 420-467.

[62] Id. at 469-481.

[63] Id. at 426-428. The Resolution is identified as Resolution No. 030918, dated August 28, 2003.

[64] Id. at 430-431.

[65] 617 Phil. 795 (2009) [Per J. Del Castillo, En Banc].

[66] Rollo, pp. 433-436.

[67] 617 Phil. 795, 808 (2009) [Per J. Del Castillo, En Banc]. CSC Resolution No. 010988, pars. 3 and 4 provide:
3.

All appointments, whether original, transfer, reemployment, reappointment, promotion or demotion, except in cases of renewal and reinstatement, regardless of status, which are issued AFTER the elections, regardless of their dates of effectivity and/or date of receipt by the Commission, including its Regional or Field Offices, of said appointments or the Report of Personnel Actions (ROPA), as the case may be, shall be disapproved unless the following requisites concur relative to their issuance:

a)

The appointment has gone through the regular screening by the Personnel Selection Board (PSB) before the prohibited period on the issuance of appointments as shown by the PSB report or minutes of its meeting;

b)

That the appointee is qualified;

c)

There is a need to fill up the vacancy immediately in order not to prejudice public service and/or endanger public safety;

d)

That the appointment is not one of those mass appointments issued after the elections.

4.

The term "mass appointments" refers to those issued in bulk or in large number after the elections by an outgoing local chief executive and there is no apparent need for their immediate issuance.

[68] Rollo, pp. 431-432.

[69] Id. at 454.

[70] Id. at 455.

[71] Id. at 473-474.

[72] Id. at 474-476.

[73] Id. at 474.

[74] Id. at 476-477.

[75] Id. at 480.

[76] Id.

[77] Id. at 477-478.

[78] Id. at 478.

[79] Id. at 207.

[80] RULES OF COURT, Rule 41, sec. 1(f).

[81] RULES OF COURT, Rule 41, sec. 1,

[82] RULES OF COURT, Rule 50, sec. 1(i) provides:

Section 1. Grounds for dismissal of appeal. — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

.....

(i) The fact that the order or judgment appealed from is not appealable.

[83] *Mendiola v. Civil Service Commission*, G.R. No. 100671, April 7, 1993, 221 SCRA 295, 305 [Per J. Campos, Jr., En Banc], citing *Young v. Court of Appeals*, G.R. No. 81239, December 4, 1991, 204 SCRA 584, 599 [Per J. Davide, Jr., Third Division].

[84] Id.

[85] Id., citing *Young v. Court of Appeals*, G.R. No. 81239, December 4, 1991, 204 SCRA 584, 599 [Per J. Davide, Jr., Third Division].

[86] G.R. No. 100671, April 7, 1993, 221 SCRA 295 [Per J. Campos, Jr., En Banc].

[87] Id. at 297-298.

[88] Id. at 298-299.

[89] Id. at 299.

[90] Id.

[91] Id. at 304-306.

[92] 626 Phil. 775 (2010) [Per J. Corona, En Banc].

[93] Id. at 785-786.

[94] Id. at 786-787.

[95] Id. at 787.

[96] Id. at 807.

[97] Id. at 791.

[98] Id.

[99] Rollo, p. 473.

[100] *National Tobacco Administration v. Castillo*, 641 Phil. 64, 67 (2010) [Per J. Bersamin, Third Division].

[101] RULES OF COURT, Rule 38, secs. 1 and 2 provide:

Section 1. Petition for relief from judgment, order, or other proceedings. — When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.

Sec. 2. Petition for relief from denial of appeal. — When a judgment or final order is rendered by any court in a case, and a party thereto, by fraud, accident, mistake, or excusable negligence, has been prevented from taking an appeal, he may file a petition in such court and in the same case praying that the appeal be given due course.

[103] *Vivo v. Philippine Amusement and Gaming Corporation*, G.R. No. 187854, November 12, 2013, 709 SCRA 276; 281 [Per J. Bersamin, En Banc].

[104] *City of Dagupan v. Maramba*, G.R. No. 174411, July 2, 2014 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/july2014/174411.pdf>> 13 [Per J. Leonen, Third Division].

[105] Rollo, p. 330.

[106] *Id.* at 445.

[107] *Id.* at 445-446.

[108] *Id.* at 129.

[109] CSC Memorandum Circular No. 40-98, rule VI, sec. 3 provides:

SECTION 3. ...

.....

If the appointment was disapproved on grounds which do not constitute a violation of civil service law, such as failure of the appointee to meet the Qualification Standards (QS) prescribed for the position, the same is considered effective until disapproved by the Commission or any of its regional or field offices. The appointee is meanwhile entitled to payment of salaries from the government.

If a motion for reconsideration or an appeal from the disapproval is seasonably filed with the proper office, the appointment is still considered to be effective. The disapproval becomes final only after the same is affirmed by the Commission.

[110] *Id.*

[111] Omnibus Rules Implementing the Civil Service Law, rule V, sec. 7 provides:

SEC. 7. The Commission shall disapprove the appointment of a person who:

(a)

does not meet the qualifications for the position; or

(b)

has been found guilty of a crime involving moral turpitude, or of infamous, disgraceful conduct or addiction to narcotics, or dishonesty; or

(c)

has been dismissed from the service for cause, unless an executive clemency has been granted; or

(d)

has intentionally made a false statement of any material fact or has practiced or attempted to practice any deception or fraud in connection with his appointment; or

(e)

has been issued such appointment in violation of existing Civil Service Law, rules and regulations.

[112] CSC Memorandum Circular No. 40-98, rule VI, sec. 3.

[113] Rollo, p. 128.

[114] Id. at 427.

[115] Nazareno, et al. v. City of Dumaguete, 617 Phil. 795, 810 (2009) [Per J. Del Castillo, En Banc].

[116] Aytona v. Castillo, G.R. No. L-19313, January 19, 1962, 4 SCRA 1, 9-10 [Per C.J. Bengzon, En Banc].

[117] Id. at 10.

[118] 405 Phil. 531 (2001) [Per J. Ynares-Santiago, En Banc].

[119] Id. at 539.

[120] Id. at 539.

[121] Id. at 542-543.

[122] Id. at 545.

[123] Id.

[124] CONST., art. IX-B, sec. 3.

[125] Nazareno, et al. v. City of Dumaguete, 617 Phil. 795, 808-809 (2009) [Per J. Del Castillo, En Banc].

[126] Id. at 808-813.

[127] Id. at 812.

[128] Id. at 812-813.

[129] Id. at 814-815.

[130] Id. at 815.

[131] CSC Resolution No. 030918 (2003), penultimate paragraph.

[132] Rollo, p. 128.

[133] Id. at 83.

[134] Japson v. Civil Service Commission, 663 Phil. 665, 675 (2011) [Per J. Nachura, En Banc].

[135] Id.

[136] CSC Memorandum Circular No. 40-98, rule VI, sec. 3.

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.