

**JUSTINO L. DAVID, PETITIONER-APPELLANT, VS. ANGEL DANCEL,  
CHIEF TAX REGISTRATION SECTION, REAL ESTATE DIVISION, CITY  
TREASURER'S OFFICE; THE CITY TREASURER, THE CITY  
AUDITOR, THE ...**

*G. R. No. 21485. July 26, 1966*

Ponente: REGALA, J.

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**REGALA, J.:**

Petitioner filed this action for quo warranto in the Manila Court of First Instance, seeking the ouster of respondent Angel Dane el from the position of Chief, Tax Registration Section, Real Estate Division, Treasurer is Office in the City of Manila, to which petitioner claims to be lawfully entitled to appointment. From an adverse judgment dismissing his action, petitioner brings this appeal to this Court on questions of law.

The disputed position of Chief, Tax Registration Section became vacant following the death of Marcelino Cueto, Chief of the Real Estate Division in August, 1961. Prior to Cueto's death, the ranking in the Real Estate Division of the City Treasurer's Office in Manila was as follows:

- 1st - Harcelino Cueto - Chief of the Division
- 2nd - Manuel Lapid - Ass't Chief of the Division
- 3rd - Juan de Vera - Chief, Tax Registration Section
- 4th - Justino L. David - Section Chief, Tax-Sold Property (Petitioner)
- 5th - Angel Dancel - Senior Clerk (Respondent)

Upon Cueto' s death, lapid was promoted Division Chief while De Vera moved up to Assistant Chief of the Division, thereby leaving the position of Chief, Tax,Registration Section vacant. On August 3, 1961, the Office of the City Treasurer recommended to the then Mayor Arsenio R. Lacson the appointment of respondent Dancel to the vacant position, with the statement that "The provisions of paragraph 3, Sec. 23 of Republic Act 2260 have been observed in the consideration of this appointment." The appointment was subsequently signed and then sent to the Civil Service Commission. Upon learning of this appointment, petitioner protested on the ground that, as the next in rank, he was entitled to promotion to the vacant position.

Respondent Civil Service Commissioner dismissed the protest and approved the appointment of respondent Dancel on the ground that under Executive Order No. 503, series of 1934, no promotion shall be made unless the proposed appointee has obtained an efficiency rating of not less than 85 per cent and petitioner's rating was only 84 per cent. Petitioner asked for a reconsideration and when no action was forthcoming for five months, he filed this action on August 29, 1962. Answers were filed by the respondents, a stipulation of facts was entered into and after trial a decision was rendered dismissing the petition for quo warranto.

The trial court ruled that, as the disputed position carried an item of P4,500, it could be filled only by a first grade civil service eligible, pursuant to Section 9 of the Civil Service Act of 1959 (Republic Act No. 2260). Under Republic Act No. 1080, as amended by Republic Act No. 1844, petitioner could be considered a first grade eligible only if he was being appointed to a position "the duties of which involve knowledge of the respective profession," In this case, of the law profession, otherwise he could be considered only a second grade civil service eligible. Since the position of Chief of the Tax Registration Section does not require professional knowledge of the law, the court ruled that petitioner could only be considered a second grade eligible. The court stated further:

"The fact that Dancel is also a second grade eligible does not justify the petitioner's claim to the position and the ouster of the respondent for as stated in the beginning of this decision, the petitioner must show not only that the respondent Angel Dancel is not entitled to the position but that he oust establish also his own right to the position."

The trial court likewise ruled (1) that petitioner's efficiency rating of 84 per cent was short of the minimum requirement for promotion; (2) that the provisions of paragraph 3 of Section 23 of the Civil Service Act as to notice of the reasons for not appointing the next in rank were complied with when the Civil Service Commissioner ruled on petitioner's protest; and (3) that petitioner's action was not premature because five months elapsed since he filed his motion for reconsideration and still no resolution was forthcoming.

In this appeal, petitioner contends (1) that he is a first grade civil service eligible under Republic Act No. 1080, as amended, for purposes of promotion to the vacant position; (2) that Executive Order No. 503, series of 1934, which prescribes a minimum efficiency rating of 85 per cent for promotion was superseded by the Compilation of the Civil Service Laws and Rules, under which a rating of 84 per cent is considered indicative of a high degree of efficiency; (3) that at any rate, on June 30, 1962, while this case was pending in the trial court, he was given an efficiency rating of 85 per cent; and (4) that under the new Civil Service Rules which took effect on January 3, 1963, an employee whose performance rating is at least satisfactory is entitled to promotion.

The third paragraph of Section 23 of the Civil Service Act states:

"Whenever a vacancy occurs in any competitive or classified position in the government or in any government-owned or controlled corporation or entity, the officer or employee next in rank who is competent and qualified to hold the position and who possesses an appropriate civil service eligibility shall be promoted thereto; Provided, That should there be two or more persons under equal circumstances, seniority shall be given preference; and Provided, however, That should there be any special reason or seasons why such officer or employee should not be promoted, such special reason or reasons shall be stated in writing by the appointing official and the officer or employee concerned shall be informed thereof and be given an opportunity to be heard by the Commissioner of Civil Service, whose decision in such case, shall be final. If the vacancy is not filled by promotion as provided herein, then the same shall be filled by transfer of present employees in the government service, by reinstatement, by reemployment of persons separated through reduction in force, or by certification from appropriate registers of eligibles in accordance with rules promulgated in pursuance of this Act."

The first inquiry is whether petitioner possesses an "appropriate civil service eligibility" for the vacant position, which. In this case, requires first grade civil service eligibility. Petitioner claims that, as early as 1956, he was granted first grade civil service eligibility after having passed the Bar examinations. Petitioner, it is true, is considered a first grade eligible, but he is so only with respect to positions "the duties of which involve knowledge of the respective profession." Thus, Section 1 of Republic Act No. 1080, as amended by Republic Act No. 1844, provides:

"The bar examinations and the examinations given-by the various boards of examiners of the Government are

declared as civil service examinations, and shall, for purposes of appointment to positions in the classified service the duties of which involve knowledge of the respective professions, except positions requiring highly specialized knowledge not covered by the ordinary board examinations, be considered as equivalent to the first grade regular examinations given by the Bureau of Civil Service if the profession requires at least four years of study in college and as equivalent to the second grade regular examinations if the profession requires less than four years of college study; Provided, however, That such bar or board examination shall be equivalent to the next lower grade of civil service examination when the person is to be employed in a position other than one requiring his professional knowledge....." (Italics supplied)

Here it is not disputed that the position of Chief, Tax Registration Section does not require professional knowledge of the law. Therefore, petitioner must be considered only a second grade civil service eligible.

It is true that Republic Act No. 1079 declares that "civil service eligibility shall be permanent and shall have no time limit," but aside from the fact that this law applies only to civil service eligibility in general, civil service eligibility under Republic Act No. 1080 must be understood as permanent in relation to the position to be filled. Thus, petitioner's first grade eligibility is permanent with respect to any position calling for professional knowledge of the law.

It is claimed, however, that unless petitioner is considered a first grade eligible, he would be barred from promotion to a higher position which does not require knowledge of the law profession. Such an argument overlooks the fact that under Republic Act No. 1080, the eligibility granted is subject to the condition precedent that the position involved requires professional knowledge of the applicant. As the Solicitor General correctly observed, "eligibility under Republic Act No. 1080, as amended, does not lapse. There may not be an opportunity to apply the first grade equivalent, but it could certainly be availed of any time the right position comes along, irrespective of the period of 'non-user.'"

Still it is argued that respondent Dancel, like petitioner, is only a second grade eligible and should not have been appointed to the vacant position. For him to be able to question Dancel's qualification, David must first show that he himself has a right to the office. Does petitioner have such a right? Is he qualified for promotion?

To begin with, at the time of his appointment, Dancel had an efficiency rating of 90 per cent as against petitioner's 84 per cent. Under Executive Order No. 503, series of 1934, the minimum requirement is 85 per cent. This is the reason why the respondent Commissioner of the Civil Service upheld the appointment of Dancel. Petitioner now claims that Executive Order No. 503 was repealed by the Compilation of the Civil Service Laws and Rules of 1956. He bases this claim on the statement in the preface of this compilation that "provisions which are obsolete have naturally been eliminated." Therefore, since Executive Order No. 503, series of 1934, is not included in the compilation, it must be because it is "obsolete." As correctly pointed out by respondents, however, the Compilation of Civil Service Laws and Rules was prepared merely by the Bureau of Civil Service and could not possibly have repealed Executive Order No. 503, series of 1934 since under Article 7 of the Civil Code, "laws are repealed only by subsequent ones and their violation or non-observance shall not be excused by disuse, or custom or practice to the contrary."

It is finally contended that at any rate petitioner should not have been held disqualified for promotion, first, because on June 30, 1962, he obtained the required 85 per cent and, second, because beginning January 3, 1963, the new Rules promulgated pursuant to the Civil Service Act of 1959 allow the promotion of those whose performance rating is at least satisfactory and a rating of 84 per cent under the Compilation of Civil Service Laws and Rules indicates a high degree of efficiency.

It should be enough to say that the efficiency rating of an employee at the time promotion is made and not his subsequent rating (which may be higher) is the one that determines his competence.

For all these reasons, petitioner has not shown a right to the disputed position and consequently he can not maintain an action for quo warranto. (Rule 66, sec. 6, Rules of Court. *Acosta vs. Flor*, 5 Phil. 18 [1905]; *Lino Luna vs. Rodriguez*, 36 Phil. 401 [1917]; *Austria vs. Amante*, 79 Phil. 780 [1948]; *Adante vs. Dagpin*, 51 Off. Gaz. 2371 [1955]) It may also be added that the making of an appointment involves the exercise of discretion as to who is best qualified for any competitive position in the Civil Service. (*Jimenez vs. Francisco*, 53 Off. Gaz. 4808 [1957])

IN VIEW OF THE FOREGOING, the decision appealed from is hereby affirmed, with costs against the appellant.

Concepcion, C. J., Reyes, J.B.L., Barrera, Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

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