

URSULA C. DAJAO, PETITIONER, VS. CHAIRMAN BENEDICTO PADILLA, ET AL., RESPONDENTS.*G.R. No. 23876. February 22, 1966*

Ponente: BAUTISTA ANGELO, J.

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This is a petition filed directly before this Court to compel respondents as Members of the Reparations Commission to revoke the resolution they approved on September 26, 1964 insofar as it affects the proposed appointment of Atty. Cayetano Jacinto to the position of Trial Attorney IV with a salary of P6,000.00 per annum and to appoint instead petitioner to said position with the same salary, to prohibit the same respondents from deleting the Roman numerals affixed to the positions of Trial Attorney and Legal Officer in the Legal Department of the Reparations Commission, as well as from changing the designation of Trial Attorney II, Item 60-1 under said Department to Assistant Chief Trial Attorney in the proposed budget of said Commission for the fiscal year 1965-1966.

The Reparations Commission is a government entity created by Republic Act 1789, otherwise known as the Reparations Law, which was placed directly under the Office of the President, pursuant to Article VII, Section 10, Clause I, of the Constitution.

Petitioner was originally appointed on July 24, 1960 as Legal Officer III in the Legal Department of the Reparations Commission with a salary of P4,404.00 per annum, which was later changed to Trial Attorney IV, Item No. 59, in the General Appropriations Act for the fiscal year 1964-1965 (Republic Act No. 4164) with a salary of P5,100.00 per annum.

Sometime prior to September 26, 1964, there were two positions in the Legal Department of the Reparations Commission that were left vacant by the resignation of the occupants thereof, one being Item No. 58 of said Republic Act No. 4164 designated as Trial Attorney IV with a salary of P6,000.00 per annum vacated by Artemio Tobias, and the other Item No. 60-2 of the same Act designated as Trial Attorney II with a salary of P6,000.00 per annum vacated by Pio Guerrero. Petitioner expressed her choice to be promoted to the position vacated by Artemio Tobias which in her opinion was the position next in rank to that of Chief Trial Attorney which is the top position in the Legal Department of the Reparations Commission, but the Commission, after hearing and interviewing the candidates therefor as to their qualifications and experience, proposed instead that she be given the position vacated by Pio Guerrero which carried a salary of P6,000.00 per annum while that vacated by Tobias was offered to Cayetano Jacinto who was then occupying the same position of Trial Attorney II but with a salary of P4,800.00 per annum. On the same occasion the Commission also proposed and decided to delete the Roman numerals that were placed after the positions of Trial Attorney and Legal Officer in the Legal Department of the Reparations Commission for the budget of the next fiscal year the purpose being to consider said positions of the same category since they carried the same emolument. But petitioner refused the promotion offered to her considering it to be a demotion in spite of the intimation given to her that the Roman classification would be deleted in the next budget so as to erase any difference in category in the positions of trial attorneys or legal

officers.

Having failed to get the promotion she desired which was thwarted by the promotion to the same position of Cayetano Jacinto who in her opinion was occupying a position of lower rank than that she was holding, petitioner sought redress by filing the present petition for mandamus and prohibition with preliminary injunction seeking an order to be afforded the different remedies already stated in the early part of this decision.

This Court gave due course to the petition by requiring respondents to file their answer within 10 days from notice, but declined to grant the preliminary injunction prayed for.

Respondents, in their answer, denied the rank and classification that petitioner has given to the different positions in the Legal Department of the Reparations Commission stating that though such classification appears in the budgetary laws covering the same such laws are intended by their nature and title solely to set aside money for the support and the operation of the government and not to classify the positions reflected therein, the controlling statute in the matter of classification of positions being the Civil Service Law and the rules and regulations promulgated pursuant thereto. Respondent averred that while it may be true that under WAPCO Standardization and Classification Plan the positions therein referred to have their respective categories and salary ranges, the fact remains, however, that said categories and ranges are no longer applicable to the positions in the Reparations Commission for as of June 17, 1961 Republic Act 3079 was approved exempting said Commission from the WAPCO Standardization and Classification Plan, and, as special defense, respondents laid stress on the fact that all questions relative to appointments and promotions of those who are in the classified service of the government come under the jurisdiction of the Commissioner of Civil Service who has the power to hear and determine appeals that may be instituted by any person believing himself aggrieved by an appointing authority and as such he may affirm, review or modify any action of such authority whose decision thereon shall be final (Section 16, Republic Act 2260). Hence, respondents finally contend that petitioner failed to exhaust whatever administrative remedy said law provides for the redress of her grievance as already pointed out above, and because of that flaw this petition is deemed premature and should be dismissed.

It appears that in the budgetary law for the fiscal year 1964-1965 the following positions were authorized in the Legal Department of the Reparations Commission as classified and recommended by the Office of the President for enactment by Congress and that as thus recommended the following allocation of positions was made in said Department in the order of their category and rank as follows:

Position

Salary

Occupant

Chief Trial Attorney

P7,800

Pacunayen, Placido

Trial Attorney; IV

6,000

(Vacated by Atty. Artemio Tobias)

Trial Attorney IV

5,100

Dajao, Ursula (Petitioner)

Trial Attorney II

6,000

Tongco, Felipe

Trial Attorney II

6,000

(Vacated by Atty. Pio Guerrero)

Trial Attorney II

4,500

Gabuling, Salustiano

Trial Attorney II

3,900

Pineda, Benjamin

Trial Attorney II

3,900

Reyes La Rosa, Jose

Trial Attorney II

5,100

Jacinto, Cayetano

In other words, in the opinion of petitioner the classification of the positions in the Legal Department of the Reparations Commission as recommended by the Office of the President and as itemized above represents the

order of their category and rank and under this theory she claims that the position that has the highest category and rank in the Legal Department set up is that of Chief Trial Attorney carrying a salary of P7,800.00 per annum, marked as Item 57, the one next in category and rank is that of Trial Attorney IV carrying a salary of P6,000.00 per annum, marked as Item 58, and the third highest in category and rank is that of Trial Attorney IV, carrying a salary of P5,100.00 per annum and marked as Item 59, etc., following the order appearing in the above setup. It is for this reason, petitioner contends, why she declined the offer made to her of the position vacated by Pio Guerrero tagged as Trial Attorney II, Item 60-2, carrying a salary of P6,000.00 per annum, even if the salary is higher than what she is receiving because she considered such appointment as a demotion not only in category but in rank as can clearly be seen from the setup above set forth. And the unfairness and injustice that she believes the Reparations Commission had caused her by offering her such proposal has been compounded when the Reparations Commission approved a resolution appointing Cayetano Jacinto who was occupying the last position in the setup to fill the vacant position left by Artemio Tobias which in her opinion is the one next in rank to that of Chief Trial Attorney, notwithstanding her appeal and justified protestations. This unfairness constitutes the sole reason why she interposed the present petition for mandamus.

Contrary, however, to petitioner's averments, respondents give us a different story. They aver that the alleged classification of the positions in the Legal Department of the Reparations Commission made by the Office of the President wherein the order of their category and rank appears as reflected in the budgetary law for the year 1964-1965 cannot be taken in its literal sense for the truth of the matter is that budgetary laws are solely intended by their nature and title to set aside money for the support and operation of the government and not to classify the positions reflected therein. The applicable and controlling statute, they aver, in the matter of classification of positions in the government service is the Civil Service Law, as implemented by the rules and regulations promulgated pursuant thereto by the Civil Service Commissioner. And in support of this contention, the following authorities are cited:

"An appropriation is per se nothing more than the legislative authorization prescribed by the Constitution that money may be paid out of the treasury." (U.S.C.A. Const. Part I, p. 474, citing *Compagna vs. U.S.* 26 CT)

"Appropriation is an authority from the legislature given at the proper time and in legal form to the proper officers to apply sums of money out of that which may be in the treasury in a given year to specified objects or demands against the State." (*Nebraska vs. Moore*, 50 Neb. 88).

"The term (appropriation) means the act of the legislature setting apart or assigning to a particular use a certain sum of money to be used in the payment of debt or dues from the state to its creditors." (*Clayton vs. Barry*, 27 Ark. 129)

We are inclined to agree to respondents' contention for as a matter of practice and experience we can take judicial notice that the statement of positions in the budget proposal that is submitted to Congress for approval is not controlling for such is merely done for the purpose of asking for the necessary appropriation of money for the payment of the expenses of the government during a particular fiscal year. What is controlling is what the officials of a particular office called upon to classify the category and rank of every position created therein may decide having in view the needs of the service. As a matter of fact, before a budgetary draft is submitted to the Budget Office in preparation of the overall budget for submission to Congress each office makes the necessary changes therein not only in salary but in rank and category. In fact, this is what was done by the Reparations Commission

insofar as its budget proposal for the fiscal year 1964-1965 is concerned. Thus, in order to do away with the classification of the positions in the legal Department as reflected in the previous budgetary laws which may cause friction and misunderstanding among their occupants even if they carry the same salary, the Commission resolved to delete the Roman numerals attached to the positions effective the ensuing fiscal year, but petitioner could not see eye to eye with this purpose of the Commission. She got the impression that such an innovation was being undertaken merely to thwart her desire to be promoted to the position vacated by Artemio Tobias which in her opinion is the next in rank to that of Chief Trial Attorney. In other words, petitioner had her misgivings against the Commission for she felt that she was the subject of an injustice, and as she could no-be assuaged notwithstanding the hearing given her by the Com-mission, she took the matter to court.

We have thus before us a civil service case where an employee feels aggrieved because of her belief that she has been the subject of unfairness, if not injustice, because of an attempt on the part of her chief officials to deprive her of the promotion she rightfully deserves. And considering the setup of the positions in the Legal Department of the Reparations Commission as stated in the budgetary law for the fiscal year 1964H965 one may be led to believe that she is right for indeed in that setup the position she is occupying is the third in rank, but the Members of the Reparations Commission entertained a different interpretation and gave her another position instead. The question then may be asked: What is the proper step petitioner should have taken for the redress of her grievance under the circumstances?

The answer is simple. Her remedy was to appeal her case to the Civil Service Commissioner as prescribed by the Civil Service Law, particularly Section 16 of Republic Act 2260, which is the specific provision that governs all questions relative to appointments and promotions pertaining to the civil service. Thus, we quote the pertinent provisions of Section 16:

"Sec. 16. Powers and Duties of the Commissioner of Civil Service. * * *

"(h) To have exclusive jurisdiction over the approval under the Civil Service Law and rules of all appointments including promotions to positions in the competitive service;

"(j) To hear and determine appeals instituted by any person believing himself aggrieved by an action or determination of any appointing authority contrary to the provisions of the Civil Service Law and rules, and to provide rules and regulations governing such appeals, and he may make such investigations or inquiries into the facts relating to the action or determination appealed from as may be deemed advisable and may affirm, review, or modify such action or determination, and the decision of the Commissioner shall be final;"

From the foregoing it is evident that the Civil Service Commissioner is the one called upon to hear and determine appeals instituted by any person who believes himself aggrieved by any action of any appointing authority in violation of the provisions of the Civil Service Law with the particularity that his decision once given is considered final. The record shows that petitioner has failed to pursue this remedy, and so we may say that she has failed to take this prerequisite as a condition sine qua non before she could take the matter to court. This flaw seriously impairs the validity of her petition for mandamus.

We take note that in a motion petitioner filed before this Court dated April 28, 1965 she attempted to explain the reason why she has not pursued that remedy or has not taken an appeal to the Civil Service Commissioner as prescribed in Section 16 of Republic Act 2260 by stating that her failure is due to the refusal of respondents to

inform her notwithstanding her request of the reason or reasons why she could not be promoted to the position vacated by Artemio Tobias, as well as the failure of said Commission to act on the several memoranda she submitted protesting against the promotion extended to Cayetano Jacinto to the position to which she aspired thereby giving her the impression that her appeal would be of no avail. But we find such pretense untenable, for the alleged failure or refusal could not deter her from complying with the procedure prescribed by law to seek redress to her grievance. The delay that she envisioned if she were to take an appeal is merely a conjecture for, as a rule, an administrative remedy is speedier than a judicial one because of its summary character. At any rate, this cannot be considered as a valid excuse for her failure to comply with the procedure laid down by law.

Wherefore, petition is denied. No costs.

Bengzon, C.J., Regala, Makalintal, Bengzon, J. P. and Sanchez, JJ., concur.

Barrera, J.: In the result.

Petition denied.

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