

FELIMON LUEGO, PETITIONER-APPELLANT, VS. CIVIL SERVICE COMMISSION AND FELICULA TUOZO, RESPONDENTS-APPELLEES.

G.R. No. 69137. August 05, 1986

Ponente: CRUZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-69137/>

CRUZ, J.:

Stripped of irrelevant details and impertinent incidents that have cluttered the voluminous record, the facts of this case may be briefly narrated as follows:

The petitioner was appointed Administrative Officer II, Office of the City Mayor, Cebu City, by Mayor Florentino Solon on February 18, 1983.[1] The appointment was described as "permanent" but the Civil Service Commission approved it as "temporary," subject to the final action taken in the protest filed by the private respondent and another employee, and provided "there (was) no pending administrative case against the appointee, no pending protest against the appointment nor any decision by competent authority that will adversely affect the approval of the appointment." [2] On March 22, 1984, after protracted hearings the legality of which does not have to be decided here, the Civil Service Commission found the private respondent better qualified than the petitioner for the contested position and, accordingly, directed "that Felicula Tuoza be appointed to the position of Administrative Officer II in the Administrative Division, Cebu City, in place of Felimon Luego whose appointment as Administrative Officer II is hereby revoked." [3] The private respondent was so appointed on June 28, 1984, by the new mayor, Mayor Ronald Duterte. [4] The petitioner, invoking his earlier permanent appointment, is now before us to question that order and the private respondent's title.

The issue is starkly simple: Is the Civil Service Commission authorized to disapprove a permanent appointment on the ground that another person is better qualified than the appointee and, on the basis of this finding, order his replacement by the latter?

The Solicitor General, rather than face the question squarely, says the petitioner could be validly replaced in the instant case because his appointment was temporary and therefore could be withdrawn at will, with or without cause. Having accepted such an appointment, it is argued, the petitioner waived his security of tenure and consequently ran the risk of an abrupt separation from his office without violation of the Constitution. [5]

While the principle is correct, and we have applied it many times, [6] it is not correctly applied in this case. The argument begs the question. The appointment of the petitioner was not temporary but permanent and was therefore protected by Constitution. The appointing authority indicated that it was permanent, as he had the right to do so, and it was not for the respondent Civil Service Commission to reverse him and call it temporary.

The stamping of the words "APPROVED as TEMPORARY" did not change the character of the appointment, which was clearly described as "Permanent" in the space provided for in Civil Service Form No. 33, dated February 18, 1983. [7] What was temporary was the approval of the appointment, not the appointment itself. And what made the approval temporary was the fact that it was made to depend on the condition specified therein and on the verification of the qualifications of the appointee to the position.

The Civil Service Commission is not empowered to determine the kind of nature of the appointment extended by the appointing officer, its authority being limited to approving or reviewing the appointment in the light of the requirements of the Civil Service Law. When the appointee is qualified and all the other legal requirements are satisfied, the Commission has no choice but to attest to the appointment in accordance with the Civil Service Laws.

As Justice Ramon C. Fernandez declared in an earlier case:

"It is well settled that the determination of the kind of appointment to be extended lies in the official vested by law with the appointing power and not the Civil Service Commission. The Commissioner of Civil Service is not empowered to determine the kind or nature of the appointment extended by the appointing officer. When the appointee is qualified, as in this case, the Commissioner of Civil Service has no choice but to attest to the appointment. Under the Civil Service Law, Presidential Decree No. 807, the Commissioner is not authorized to curtail the discretion of the appointing official on the nature or kind of the appointment to be extended." [8]

Indeed, the approval is more appropriately called an attestation, that is, of the fact that the appointee is qualified for the position to which he has been named. As we have repeatedly held, such attestation is required of the Commissioner of Civil Service merely as a check to assure compliance with Civil Service laws. [9]

Appointment is an essentially discretionary power and must be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should possess the qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. This is a political question involving considerations of wisdom which only the appointing authority can decide.

It is different where the Constitution or the law subjects the appointment to the approval of another officer or body, like the Commission on Appointments under 1935 Constitution. [10] Appointments made by the President of the Philippines had to be confirmed by that body and could not be issued or were invalidated without such confirmation. In fact, confirmation by the Commission on Appointments was then considered part of the appointing process, which was held complete only after such confirmation. [11]

Moreover, the Commission on Appointments could review the wisdom of the appointment and had the power to refuse to concur with it even if the President's choice possessed all the qualifications prescribed by law. No similar arrangement is provided for in the Civil Service Decree. On the contrary, the Civil Service Commission is limited only to the non-discretionary authority of determining whether or not the person appointed meets all the required conditions laid down by the law.

It is understandable if one is likely to be misled by the language of Section 9(h) of Article V of the Civil Service Decree because it says the Commission has the power to "approve" and "disapprove" appointments. Thus, it is provided therein that the Commission shall have inter alia the power to:

"9(h) Approve all appointments, whether original or promotional, to positions in the civil service, the except those presidential appointees, members of the Armed Forces of the Philippines, police forces, firemen, and jailguards, and disapprove those where the appointees do not possess appropriate eligibility or required qualifications." (emphasis supplied)

However, a full reading of the provision, especially of the underscored parts, will make it clear that all the Commission is actually allowed to do is check whether or not the appointee possesses the appropriate civil service eligibility or the required qualifications. If he does, his appointment is approved; if not, it is disapproved. No other criterion is permitted by law to be employed by the Commission when it acts on - or as the Decree says, "approves" or "disapproves" - an appointment made by the proper authorities.

Significantly, the Commission on Civil Service acknowledged that both the petitioner and the private respondent were qualified for the position in controversy.[12] That recognition alone rendered it functus officio in the case and prevented it from acting further thereon except to affirm the validity of the petitioner's appointment. To be sure, it had no authority to revoke the said appointment simply because it believed that the private respondent was better qualified for that would have constituted an encroachment on the discretion vested solely in the city mayor.

In preferring the private respondent to the petitioner, the Commission was probably applying its own Rule V, Section 9, of Civil Service Rules on Personnel Actions and Policies, which provides that "whenever there are two or more employees who are next-in-rank, preference shall be given to the employee who is most competent and qualified and who has the appropriate civil service eligibility." This rule is inapplicable, however, because neither of the claimants is next in rank. Moreover, the next-in-rank rule is not absolute as the Civil Service Decree allows vacancies to be filled by transfer of present employees, reinstatement, reemployment, or appointment of outsiders who have the appropriate eligibility.[13]

There are apparently no political overtones in this case, which looks to be an honest contention between two public functionaries who each sincerely claims to be entitled to the position in dispute. This is gratifying for politics should never be permitted to interfere in the apolitical organization of the Civil Service, which is supposed to serve all the people regardless of partisan considerations. This political detachment will be impaired if the security of tenure clause in the Constitution is emasculated and appointments in the Civil Service are revoked and changed at will to suit the motivations and even the fancies of whatever party may be in power.

WHEREFORE, the resolution of the respondent Commission on Civil Service dated March 22, 1984, is set aside, and the petitioner is hereby declared to be entitled to the office in dispute by virtue of his permanent appointment thereto dated February 18, 1983. No costs.

SO ORDERED.

Teehankee, C.J., Feria, Yap, Fernan, Narvasa, Melencio-Herrera, Alampay, Gutierrez, Jr., and Paras, JJ., concur.

[1] Rollo, p. 52.

[2] Rollo, p. 52.

[3] Ibid., p. 31.

[4] Ibid., pp. 17, 178, 245, 336.

[5] Rollo, pp. 350-351.

[6] *Montero vs. Castellanes*, 108 Phil. 744; *University of the Philippines, et al. vs. CIR*, 107 Phil. 848; *Azuelo vs. Arnaldo*, 108 Phil. 293; *Atay, et al. vs. Ty Deling*, 107 Phil. 1146; *Serrano vs. NSDB*, 10 SCRA 626; *Hojilla vs. Mariño*, 13 SCRA 293; *Aguila vs. Castro*, 15 SCRA 656.

[7] Rollo, p. -1.

[8] *In Re: Elvira C. Arcega*, 89 SCRA 318, 322.

[9] *Ibid.*; *Villanueva vs. Bellalo*, 9 SCRA 407-411; *Said Benzar Ali vs. Teehankee*, 46 SCRA 728, 730-731; *Santos vs. Chico*, 25 SCRA 343; *City of Manila vs. Subido*, 17 SCRA 231.

[10] Article VII, Section 10(3) and (7), 1935 Constitution.

[11] Lacson vs. Romero, 84 SCRA 740, 745.

[12] Rollo, pp. 30-31.

[13] Section 19(5), Article VIII, P.D. No. 807.

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.