

ERLINDA P. MERAM, PETITIONER, VS. FILIPINA V. EDRALIN, THE MINISTER OF NATURAL RESOURCES AND THE PRESIDENTIAL ASSISTANT FOR LEGAL AFFAIRS, RESPONDENTS.

G.R. No. 71228. September 24, 1987

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition for certiorari which seeks to set aside the decision of the Presidential Assistant for Legal Affairs, permanently enjoining the Minister of Natural Resources and the Director of the Bureau of Forest Development (BFD) from enforcing and implementing the decisions of the Merit Systems Board and the resolutions of the Civil Service Commission which ordered the appointment of the petitioner to the contested position of Administrative Officer V in the Bureau of Forest Development.

On July 29, 1982, the private respondent Filipina V. Edralin, who was a training officer of the Bureau of Forest Development (BFD) was proposed for appointment to the position of Administrative Officer V, R-73, Administrative Division of the BFD. Petitioner herein and Mr. Hermecio M. Agravio who hold the positions of Administrative Officer III, R-70 and Supply Officer V, R-70 respectively, filed their protest against the proposal.

On the same date, the Director of the BFD sent a memorandum to the respondent Minister stating that in the course of the deliberation of the BFD Promotion Board, the latter found out that there are four BFD Personnel in the Central Office who are considered "next-in-rank" to the position of Administrative Officer V namely:

"Erlinda P. Meram, Administrative Officer III, Range 70, assigned as Chief of the Internal Control Staff.

"Hermecio M. Agravio, Supply Officer V, Range 70, Chief of the Property Section, designated Asst. Chief of the Administrative Division from October 8, 1981 to July 20, 1982.

"Atty. Dominador Malong, Legal Officer, Range 69, assigned in the Legal Division.

"Atty. Salome T. Cansino, Trial Attorney Range 69, assigned in the Legal Division." (Rollo, pp. 30-31)

In his memorandum, the Director also pointed out that the Board found that Mrs. Filipina V. Edralin, Training Officer, Range 60, assigned in the Training Center was not next-in-rank.

On August 10, 1982, the Civil Service Commission forwarded to the respondent Minister the protests of the petitioner and Agravio for appropriate action.

On August 12, 1982, the respondent Minister forwarded the permanent appointment of respondent Edralin to take effect on August 17, 1982, as Administrative Officer V to the Commission for appropriate action.

In his letter, the Minister explained that he assessed the recommendation of the Promotions Board and considered also other aspects which are vital to the dynamism of the service; and upon seeing that respondent Edralin is eminently qualified for the position, the person on whom he can repose his trust and confidence, and who

possesses the necessary integrity, knowledgeability and sound judgment, he decided to appoint her to the said position for the best interest of the service.

In due course, the appointment was approved by the Commission "subject to the final outcome of the protests against the appointment by Erlinda Meram and H. Agravio."

On September 1, 1982, the respondent Minister rendered a decision, embodied in two separate letters, dismissing the protests. In his letter to the petitioner which was received by the latter on September 10, 1982, the Minister assured her "that when another opportunity comes, and I have had a chance to better appreciate your qualities and capabilities, then I would certainly consider you for the appointment to a more senior position."

Petitioner and Agravio appealed to the Merit Systems Board (MSB) pursuant to paragraph 2, Section 5 of Presidential Decree (P.D.) No. 1409.

On January 13, 1983, the Merit Systems Board promulgated a decision in favor of Hermecio M. Agravio, revoking the previous approval of the appointment of respondent Edralin and directing the Minister to appoint, in her stead, Agravio to the contested position. In its decision, the MSB ruled:

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"Based on the foregoing qualifications of the contestants, this Board finds that all parties meet the eligibility requirement. While Mrs. Edralin and Mrs. Meram are holders of bachelor's degree supplemented with at least 12 units in management and/or public administration, Mr. Agravio, although a third year in Commerce, has relevant in-service trainings/seminars which would sufficiently offset his one year deficiency in college work and the required 12 units in management/public administration (CSC Res. No. 682, dated July 20, 1977). Thus, all meet the education requirement for the contested position. As to the required 5 years experience, Mr. Agravio has been (an) Administrative Officer II for four years of progressively responsible experience in all phases of administrative functions. In the same manner, Meram has been a Disbursing Officer for more than one year, a Budget Examiner for six months, Cashier IV for five years, and an Administrative Officer III for more than three years or a total of about nine years and six months. On the other hand, the relevant experience of Edralin consists of three years in Training Assistant and about one year as Training Officer, which experiences as Trainor, although may be considered, are however less than the required five years of progressively responsible experience. However, Edralin's deficiency in the required experience may be offset by her relevant training and academic units earned in Master of Public Administration.

"From the foregoing, it cannot be said that Mr. Agravio does not qualify for the position, or that Mrs. Meram's work experience are not suitable and relevant, and her education not appropriate to the contested position. Moreover, the contested position is not confidential in nature but rather, belongs to the second level in the career service so that trust and confidence are not the decisive factors in filling the position.

"The Merit Promotion Plan established by the Bureau of Forest Development shows that the positions considered next-in-rank to the contested position of Administrative Officer V (R-73) are: Administrative Officer III (R- 70), Supply Officer IV (R-70), Senior Legal Officer (R-69). Mrs. Meram holds the position of Administrative Officer III, and Mr. Agravio, Supply Officer IV. Mrs. Edralin holds the position of Training Officer (R-60) which is not listed as next-in-rank. Such being the case, Mrs. Edralin is not, while Mrs. Meram and Mr. Agravio are next-in-rank employees to the contested position. Hence, the latter two should have been considered for the position of Administrative Officer V.

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"In terms of education, Mrs. Meram is a holder of bachelor's degree with 12 units in Master in Business Administration and has 9 years and 6 months relevant experience with 12 relevant trainings completed. Mr. Agravio, who is a third year Commerce student, however, has 13 years of relevant experience to his credit and

23 relevant trainings completed. Moreover, for a period of 9 months, Mr. Agravio was designated Officer-in-Charge, Administrative Division, pursuant to MNR Special Order No. 359, series of 1981, and there is no showing that he failed to discharge efficiently the duties and responsibilities of the position. Thus, Mr. Agravio is considered more competent and qualified than Meram." (Rollo, pp. 50-51)

Both the petitioner and respondent Edralin filed motions for reconsideration. On May 16, 1983, the MSB promulgated another decision modifying the earlier one and appointed the petitioner, after finding that Agravio's designation as Assistant Officer-in-Charge was revoked because he had been ineffective in said position.

Respondent Edralin appealed to the Civil Service Commission. On October 5, 1983, the Commission dismissed the appeal and on May 3, 1984, it denied the respondent's motion for reconsideration.

On May 18, 1984, respondent Edralin filed a letter-petition with the Office of the President invoking Section 19(6) of P.D. No. 807. In her petition, Edralin alleged that jurisdiction in promotional contests is lodged with the Ministry head and appeal by the aggrieved party from decisions of said Ministry head should be taken to the Office of the President. Therefore, the Merit Systems Board and the Civil Service Commission had no jurisdiction to act on petitioner's appeal.

Petitioner, on the other hand, filed a motion for execution of the Commission's decision.

On June 14, 1984, the Confidential Legal Assistant of the Office of the Presidential Assistant for Legal Affairs directed the Commission to forward within fifteen (15) days from receipt thereof, the entire records of the case in view of Edralin's appeal.

On July 19, 1984, the Commission rejected the order of the Office of the President, stating that under Section 8, P.D. No. 1409, decisions of the Commission are subject to review only by the courts.

On October 9, 1984, the Minister of Natural Resources issued a Memorandum to the BFD Director instructing him to enforce and implement the order of the Commission for having become final and executory.

On October 15, 1984, the BFD Director issued the appointment of Administrative Officer V to the petitioner effective as of that date.

On February 20, 1985, Confidential Legal Assistant Sabio issued an order directing the MNR to transmit all relevant records of the case.

Respondent Edralin wrote another letter to the President of the Philippines. It seems that this letter was taken cognizance of by then President Marcos because on top of such letter appeared a note in his purported handwriting which reads:

"9 March 1985

Justice Lazaro,

Tell Dir. Cortes to suspend everything pending study by the Office of the President. Prepare decision on appeal for reconsideration.

(Sgd.) Illegible"

(Rollo, p. 75)

In connection with the above note, Presidential Assistant for Legal Affairs Lazaro furnished a copy of Edralin's letter with the President's marginal note to Director Cortes of the BFD.

On March 19, 1985, the Director of the BFD issued a memorandum, informing Lazaro that the matters which the

President was directing him to suspend are already fait accompli and that, therefore, while he was willing to comply with the Presidential instructions, the implementation of his compliance had become legally untenable.

This notwithstanding, on May 27, 1985, Lazaro rendered the questioned decision, the dispositive portion of which provides:

"WHEREFORE, IN VIEW OF ALL THE FOREGOING, the decision of the Minister of Natural Resources embodied in two separate letters, both dated September 1, 1982, dismissing the protests of Hermecio M. Agravio and Erlinda P. Meram, is hereby AFFIRMED and the appeals therefrom of said protestants are hereby DISMISSED FOR LACK OF MERIT. The Minister of Natural Resources and the Director of the Bureau of Forest Development are hereby ENJOINED PERMANENTLY from carrying out, complying with and/or enforcing in any manner whatsoever, (1) the decisions dated January 13, 1983, and May 16, 1983 of the Merit Systems Board in MSB Case No. 813 and (2) Resolutions Nos. 83-427 and 84-138, dated October 5, 1983, and May 3, 1984, respectively, of the Civil Service Commission in CSC Case No. 84." (Rollo, p. 106)

Hence, this petition.

The principal issue presented in this case is whether or not the Office of the President acted correctly in taking cognizance of respondent's letter-petition, and passing upon the same, and thereafter, setting aside the decisions of the Merit Systems Board and the Civil Service Commission.

P.D. No. 1409, Section 5(2) provides:

"Sec. 5. Powers and Functions of the Board. - The Board shall have the following functions, among others:

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"(2) Hear and decide cases brought before it by officers and employees who feel aggrieved by the determination of appointing authorities involving appointment, promotion, transfer, detail, reassignment and other personnel actions, as well as complaints against any officers in the government arising from abuses arising from personnel actions of these officers or from violations of the merit system."

In connection with this power of the MSB, Section 8 of this decree also provides:

"Sec. 8. Relationship with the Civil Service Commission. - Decisions of the Board involving the removal of officers and employees from the service shall be subject to automatic review by the Commission. The Commission shall likewise hear and decide appeals from other decisions of the Board, provided that the decisions of the Commission shall be subject to review only by the Courts.

The petitioner contends that by virtue of the above-quoted decree which was promulgated on June 8, 1978, the MSB and the Commission had validly acquired jurisdiction over her formal protest to the exclusion of all other officials, boards or offices and that, therefore, the respondent Presidential Assistant for Legal Affairs gravely abused his discretion when he disregarded and declared as null and void the decisions of the MSB and the resolutions of the Commission which had already become final and executory, and in fact, had already been executed, enforced and implemented.

On the other hand, the Solicitor-General contends that P.D. No. 807 vests exclusive appellate jurisdiction upon the Office of the President in cases of appeal by a qualified next-in-rank employee from decisions of ministry (department) heads arising from appointments in three (3) specific cases. One of them is when said employee is contesting the appointment of one who is not next-in-rank. Therefore, the petitioner's protest should have been elevated to the Office of the President and not to the Commission, much less to the Merit Systems Board.

P.D. No. 807 was promulgated on October 6, 1975. Section 19 (6) of this decree provides:

"Sec. 19 (6) A qualified next-in-rank employee shall have the right to appeal initially to the department head and finally to the Office of the President an appointment made (1) in favor of another next-in-rank employee who is not qualified, or (2) in favor of one who is not next-in-rank, or (3) in favor of one who is appointed by transfer and not next-in-rank, or by reinstatement, or by original appointment if the employee making the appeal is not satisfied with the written special reason or reasons given by the appointing authority for such appointment: Provided, That final appeal shall be to the department head concerned if the appointment is issued to a qualified next-in-rank employee. Before deciding a contested appointment, the Office of the President shall consult the Civil Service Commission. x x x"

There is nothing in the above-quoted provision which connotes exclusivity of jurisdiction in the Office of the President to take cognizance of the specific cases cited above. Furthermore, even if it were so, with the promulgation of P.D. No. 1409, this power of review by the Office of the President was not only divested of its exclusivity but was, in fact, repealed altogether. The petitioner, therefore, correctly filed her protest with the MSB in accordance with P.D. No. 1409. Moreover, respondent Edralin is now estopped from questioning the orders of the MSB and the Commission since she submitted to the jurisdiction of these two bodies by filing for reconsideration with the MSB and upon denial of the same, by appealing to the Commission.

In the leading case of *Tijam v. Sibonghanoy* (23 SCRA 29), we ruled:

"While petitioners could have prevented the trial court from exercising jurisdiction over the case by seasonably taking exception thereto, they instead invoked the very same jurisdiction by filing an answer and seeking affirmative relief from it. What is more, they participated in the trial of the case by cross-examining respondent Planas. Upon this premise, petitioners cannot now be allowed belatedly to adopt an inconsistent posture by attacking the jurisdiction of the court to which they had submitted themselves voluntarily.

This ruling was reiterated in *Philippine National Bank v. Intermediate Appellate Court* (143 SCRA 299).

As stated earlier, both the MSB and the Commission had jurisdiction to pass upon the petitioner's protest with or without the application of the principle of estoppel. But more important, however, is the fact that in the decision of the MSB on January 13, 1983, the said board found that respondent Edralin is not an employee who is "next-in-rank" to the vacated position, and although there is no mandatory nor peremptory requirement that persons next-in-rank are entitled to preference in appointments (see *Taduran v. Commissioner of Civil Service*, 131 SCRA 66), the very purpose of the civil service law dictates that persons who are qualified and next-in-rank should be given preferential consideration when filling up a vacated position through promotion.

In *Samson v. Court of Appeals* (145 SCRA 654, 658-659) we ruled:

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"x x x As may be noted, the general purpose of the Civil Service Law (Republic Act No. 2260) is 'to insure and promote the general mandate requiring appointments only according to merit and fitness, and to provide within the public service a progressive system of personal administration to insure the maintenance of an honest and efficient progressive and courteous civil service in the Philippines.' (Section 2, R.A. 2260)."

The principles governing the integrity of the civil service are of universal validity. As stated in the case of *Hanley v. Murphy* (255 P.2d. 1, 4):

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"x x x The civil service system rests on the principle of application of the merit system instead of the spoils system in the matter of appointment and tenure of office. (*Barry v. Jackson*, 30 Cal. App. 165, 169, 157 P. 828) To that end the charter establishes a classified civil service system, with exclusive power in the civil service commission to provide qualified personnel, for the various municipal departments and to classify or reclassify

positions according to prescribed duties. x x x."

Furthermore, civil service laws are not enacted to penalize anyone. They are designed to eradicate the system of appointment to public office based on political considerations and to eliminate as far as practicable the element of partisanship and personal favoritism in making appointments. These laws intend to establish a merit system of fitness and efficiency as the basis of appointment; to secure more competent employees, and thereby promote better government. (See *Gervais v. New Orleans Police Department*, 77 So 2d. 393; *Civil Service Board of City of Phoenix v. Warren*, 244 P 2d. 1157 citing *State ex rel. Kos v. Adamson*, 226 Minn. 177, 32 N. W. 2d 281, 284)

In the case at bar, the BFD personnel who are considered next-in-rank to the vacated position were identified. Respondent Edralin was not one of them. In fact, she was nine or ten salary ranges below the next-in-rank personnel. Subsequently, the MSB made the same finding in its decision. Evidently, therefore, the foremost consideration why respondent's appointment was ordered by the Office of the President notwithstanding the fact that petitioner was more qualified and that she was next-in-rank was because of her petition to the President in the form of a letter rather than an appeal and which started by introducing herself as "Filipina Villeses-Edralin, wife of Efren E. Edralin of Sarrat, Ilocos Norte." The clear intent of her letter-petition was not to appeal in accordance with P.D. No. 807 but to elicit some kind of favorable response from the President based on considerations of blood ties, influence, or ethnic and regional affiliations. To a certain extent she succeeded but this Court must strike down the practice of political, ethnic, religious, or blood ties being used to get choice appointments for it goes against the very purpose behind the establishment of the civil service in our country. As earlier stated, appointments under the civil service law should be based on merit and fitness and should never depend on how intimate a friend or how closely related an appointee is to the powers that be. And granting that the respondent possesses the qualifications required for the contested position, it cannot be denied that the petitioner equally possesses the same qualifications, if not in greater degree, and more important, she is next-in-rank to the vacated position. Therefore, she deserves to be appointed to the disputed item.

WHEREFORE, the petition is hereby GRANTED. The decision of the Presidential Assistant for Legal Affairs dated May 27, 1985 is ANNULLED and SET ASIDE. The decision of the Merit Systems Board dated May 16, 1983 and the resolutions of the Civil Service Commission which dismissed respondent's appeal and motion for reconsideration are hereby REINSTATED and made immediately EXECUTORY. No extension to file a motion for reconsideration will be granted.

SO ORDERED.

Fernan, (Chairman), Feliciano, Bidin, and Cortes, JJ., concur.

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