

JOSE LUSTERIO, PETITIONER, VS. INTERMEDIATE APPELLATE COURT, HON. BENIGNO M. PUNO, AND SERAFIN PALOMAR, RESPONDENTS.

G.R. No. 74814. July 16, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Petitioner seeks to set aside the decision[1] of the then Intermediate Appellate Court in A.C.-G.R. SP No. 07523,[2] promulgated on 31 March 1986, which affirmed the decision of the Regional Trial Court at Lucena City in Civil Case No. 8471[3] of 12 November 1984, the dispositive portion of which reads as follows:

“WHEREFORE, premised on the foregoing, judgment is hereby rendered:

- a) declaring the appointment of plaintiff Serafin Palomar dated April 11, 1977 as Supply Officer III in the Division of Quezon, valid, effective and in accordance with law;
- b) declaring the decision dated May 8, 1977 of the Hon. Jacobo C. Clave null and void and ineffective being contrary to law;
- c) declaring the appointment as Supply Officer III in the Division of Quezon of defendant Jose Lusterio dated May 22, 1979 as null and void and without effect, the appeal having been decided in favor of Jose Lusterio with grave abuse of discretion tantamount to lack of jurisdiction.

All other claims and counterclaims are dismissed for want of evidence.

Without pronouncement as to costs.”[4]

The material operative facts in this case are summarized in the decision of the trial court which respondent Court adopts in its challenged decision, to wit:

“1. The Office of Supply Officer III (Division of Quezon) was rendered vacant on April 7, 1977 when Epifanio Pareño the incumbent, retired (Exhibit “1-B”);

2. After said office was rendered vacant, the plaintiff Serafin Palomar hereinafter referred to as PALOMAR was appointed to the position of Supply Officer III by Mr. Lorenzo G. Caesar, Director of the Ministry of Education and Culture (MEC), Region IV, on recommendation by the then Division Superintendent (sic) of Schools, Saturnino Magturo, which appointment (Exh. “A”; Exh. “1”) was issued on December 5, 1977 but made effective April 11, 1977 and which appointment was ‘permanent’ but qualified by the condition typewritten on its fact (Exh. “1-A”) that it is ‘subject to the final outcome’ of the protest filed by Jose Lusterio (Exh. “A” and “1”);

3. Apparently, this condition was prompted by a protest (Exh. “2”) filed by defendant Jose Lusterio, hereinafter referred to as LUSTERIO, with the Ministry of Education and Culture on April 12, 1977 and received by that office on April 18, 1977;

4. PALOMAR assumed office on April 11, 1977 (Exh. "1-C") at a time when Mr. Parreño (sic), the retiree was still on terminal leave, which leave extended from May 16, 1977 to June 15, 1978 (Exh. "1-B");

5. That the Ministry of Education and Culture denied LUSTERIO'S protest on September 19, 1977 on the ground of lack of merit, the dispositive portion being of the following tenor:

'Premises considered and inasmuch as Mr. Palomar meets all the requirements for appointment as Supply Officer III i.e., next in rank, competence and qualifications and appropriate civil service eligibility, this office finds the protest of Mr. Lusterio without merit and holds that the enclosed appointment of the former be not disturbed.'

the said resolution (Exh. "B") being signed by Narciso Albarracin, Acting Secretary of the Ministry of Education and Culture (Exh. "B-1");

6. On November 2, 1977, the decision (Exh. "B") dated September 19, 1977 was received by LUSTERIO who filed a motion for reconsideration (Exh. "3") dated December 9, 1977 with the Ministry of Education and Culture which motion for reconsideration was also denied;

7. On December 10, 1977, LUSTERIO filed an appeal (Exh. "4") from the decision of the Ministry of Education and Culture to the Office of the President, received by the latter office on December 12, 1977 (Exh. "4-A");

8. On January 3, 1978 the appeal of LUSTERIO was endorsed for comment to the CIVIL SERVICE COMMISSION (Exh. "3");

9. On January 16, 1978, the Civil Service Commission referred the appeal for comment and recommendation to the Secretary of Education and Culture (Exh. "6");

10. On February 3, 1978, the Ministry of Education and Culture reiterated its decision dated September 19, 1977;

11. On September 3, 1978 the Civil Service Commission thru the Merit System Board in Resolution No. 6 dated September 5, 1978 (Exh. "7") recommended the rescission of the appointment issued in favor of PALOMAR appointing (sic) him to be not a qualified next in rank employee and recommended further the appointment of LUSTERIO who according to its findings occupies a functionally related position and qualified thereto as next in rank (Exh. "7-A");

12. By virtue of the recommendation of the Merit System Board contained in Resolution No. 6, the Office of the President rendered a decision (Exh. "D" and Exh. "5") on the appeal of LUSTERIO in a decision dated May 8, 1979 which decision in its dispositive portion says:

'WHEREFORE, the instant appeal is hereby given due course and as recommended by the Merit System Board of the Civil Service Commission, the appointment of Serafin Palomar as Supply Officer III, Division of Quezon, is hereby rescinded in favor of Jose Lusterio, (Exh. "8-A");'

13. On May 8, 1979, a memorandum (Exh. "9") was sent by Atty. Melquiades T. Dela Cruz, Presidential Staff Director, Malacañang Records Office, to the Honorable Chairman, Civil Service Commission regarding the decision in O.P. Case No. 0959 dated May 8, 1979 for his information and guidance: also on May 8, 1979, the Civil Service Commission in its First indorsement (Exh. "10") forwarded to the Honorable Minister of Education and Culture for his information and/or appropriate action the decision dated May 8, 1979, of the Office of the President;

14. On May 12, 1979 the plaintiff PALOMAR submitted a petition for reconsideration of the decision dated May 8, 1979 (Exh. "D-A") with the Legal Affairs Office of the Office of the President of the Republic of the Philippines (Exh. "D-4") furnishing copies thereof to the Provincial Superintendent of Schools on May 16,

1979 (Exh. "D-1") to the Region IV of the Ministry of Education and Culture, Manila, by personal delivery as shown by the stamp marks 'Received' (Exh. "D-3") on the file copy of the petition for reconsideration;

15. On May 9, 1978 (sic) in a second indorsement (Exh. "11") by one Atty. Lucio Fernandez, the Ministry of Education and Culture referred to the Regional Director, Region IV the Decision of the Office of the President dated May 8, 1979 for immediate compliance (Exh. "11-A");

16. On May 11, 1979, in a third indorsement (Exh. "12") Asst. Regional Director Saturnino Magturo, who was also concurrent Officer-in-Charge referred the aforesaid second indorsement to the Division School Superintendent of Quezon at Lucena City for immediate compliance stating therein that the appointment of LUSTERIO as Supply Officer III effective upon assumption of duty vice PALOMAR be submitted to his office for appropriate action;

17. On May 22, 1979 the Division Superintendent of Schools, Mrs. Lourdes Veluz referred the appointment (Exh. "14"; Exh. "E") of LUSTERIO as Division Supply Officer III vice PALOMAR whose appointment was rescinded in favor of LUSTERIO by virtue of the decision dated May 8, 1979 of the Office of the President under O.P. Case No. 0959, to the Assistant Director, Officer-in-Charge, Ministry of Education And Culture, Region V (Exh. "13") and "13-A");

18. The said appointment (Exh. "E", "14") was received by the Civil Service Commission on May 28 (Exh. "14-A") and approved as 'permanent' subject to no condition (Exh. "14-B"); on June 11, 1979 this appointment was received by the Regional Office of the Ministry of Education and Culture (Exh. "14-C");

19. On June 7, 1979 defendant LUSTERIO assumed office as Division Supply Officer III (Exh. "14-D");

20. On June 26, 1979 the motion for reconsideration by plaintiff PALOMAR (Exh. "D") was dismissed for lack of merit by the Office of the President (Exh. "F", "15"), the pertinent portions of which say:

'After a careful and thorough restudy of the records, this Office finds no cogent reason to depart from the decision sought to be reconsidered. In fine, the instant motion raises the same arguments which have been considered and resolved in the subject decision.

PREMISES CONSIDERED, the instant motion is hereby dismissed for lack of merit. Accordingly, the decision of this Office dated May 8, 1979, is as it is hereby reiterated.'

21. On August, 1979, this action was initiated."[5]

In deciding in favor of private respondent, the trial court ruled that (a) pursuant to Section 19(3) of P.D. No. 807 (The Civil Service Decree) and the Rules on Personnel Actions and Policies promulgated by the Civil Service Commission on 20 November 1975 on next-in-rank positions, the position of Supervisory Fiscal Clerk previously occupied by private respondent, is immediately next to the contested position in the organizational chart of the Division of Quezon for the Administrative Staff. Upon the other hand, petitioner, prior to his appointment to the contested position, was Supply Officer I in Lucban National High School in Lucban, Quezon; consequently, he does not belong to the organizational unit where the vacancy exists. Circular No. 5, Series of 1963 of the then Ministry of Education, Culture and Sports provides that "for reasons of equity and morale, fully qualified employees within the organizational unit, all circumstances being equal, should have first call upon promotional opportunities." (b) Moreover, Palomar is a college graduate with a degree of Bachelor of Science in Commerce with three units in Master of Arts; he has participated and completed in-service training courses along supply and property management; held the positions of Clerk-Helper, Clerk-Typist, Clerk I, Fiscal Clerk III and Supervising Fiscal Clerk; performed the duties of a Supply Officer III since his appointment in April 1977 until October 1979 with a latest performance rating of very satisfactory; and a first grade civil service eligibility. He thus meets all the requirements for appointment to the contested position. (c) Finally, the appointment of petitioner, made pursuant

to the decision of then Presidential Executive Assistant, Hon. Jacobo Clave, as recommended by the Civil Service Commission, is not in accordance with law, for as noted, the Chairman of the Commission at the time of the recommendation was Honorable Clave himself. Pursuant then to *Anzaldo vs. Clave*, G.R. No. 54597, 119 SCRA 353, Palomar was denied due process.

Unable to accept that decision, petitioner herein appealed to the then Intermediate Appellate Court. The appeal was docketed as A.C.-G.R. SP No. 07523. He asks said Court to overturn the decision of the trial court because it erred in (a) declaring valid, effective, and in accordance with law the appointment of private respondent as Supply Officer III; (b) in declaring the decision of then Presidential Executive Assistant Clave as null and void, ineffective and contrary to law; (c) in not declaring his (petitioner's) appointment as Supply Officer III valid, effective, and in accordance with law; and (d) in giving due course to private respondent's petitions.[6]

In the challenged decision, the Intermediate Court rules that the appeal has no merit and sustains the findings and conclusion of the trial court that private respondent has a better right to the contested position than petitioner because the latter, unlike the former, does not belong to the organizational unit where the vacancy exists. It further holds that private respondent possesses the requisite educational competence and civil service eligibility, has completed in-service training courses on supply and property management and had performed the duties of Supply Officer III from April 1977 up to October 1979. Finally, it concurs with the lower court's observation that petitioner's appointment, pursuant to the decision of Presidential Executive Assistant Clave and the Commissioner of the Civil Service, was not in accordance with law.

Petitioner now urges Us to set aside the above decision of the Intermediate Appellate Court on the following grounds and reasons:

1. Petitioner is more qualified and entitled to the contested position than private respondent. The minimum requirements for the contested position are:

Education - Bachelor's Degree with Training in advance course Supply Management.

Experience - 2 years experience in various fields of Supply Management.

Eligibility - Supply Officer, first grade, career service (professional) Supervisor.

Private respondent, at the time of his appointment, did not have the required experience; he "simply and clearly does not possess any direct experience in the field of Supply Management to qualify to the position of Supply Officer III. x x x private respondent could only claim that he has attended and completed in-service training courses in Supply and Property Management;" the two years experience he is claiming is the exposure he obtained when he occupied the contested position.

Moreover, in determining the occupational group where the vacancy occurs, the entire division of Quezon, and not the division office alone, should be taken into account. Hence, petitioner, being a Supply Officer I at the Lucban National High School in the division of Quezon, should necessarily be considered.

2. The recommendation of the Civil Service Commission which was sustained by the Office of the President through Presidential Executive Assistant Jacobo Clave was not that of the Civil Service Commission but of the Merit Systems Board, an independent body within the Civil Service Commission; thus the rule in *Anzaldo vs. Clave*, 119 SCRA 353, is not applicable.

In Our resolution of 5 September 1986, We required respondents to comment on the instant petition.[7]

On 21 October 1986, petitioner filed a Supplemental Petition which, basically, amplifies the above grounds.

On 23 October 1986, private respondent filed his Comment.[8] We required petitioner to reply thereto, which he complied with on 21 August 1987.

On 28 October 1987, We gave due course to the petition and required the parties to submit simultaneously their respective memoranda, which they subsequently complied with.

Stripped of non-essential matters, the errors raised in this case primarily revolve upon a determination as to whether or not petitioner and private respondent meet the minimum requirements for the position of Supply Officer III. If they do, then neither the Merit Systems Board, the Civil Service Commission, or the Office of the President, nor the courts below or this Court, can substitute the judgment of the appointing authority in appointing private respondent to said position.

The well-entrenched doctrine in this jurisdiction, constantly strengthened and invigorated by pronouncements of this Court, is that the power of appointment is essentially discretionary, being vested by law in the head of office concerned.[9]

As We strongly emphasized in the *Lapinid* case:

“We declare once again, and let us hope for the last time, that the Civil Service Commission has no power of appointment except over its own personnel. Neither does it have the authority to review the appointments made by other offices except only to ascertain if the appointee possesses the required qualifications. The determination of who among the aspirants with the minimum statutory qualifications should be preferred belongs to the appointing authority and not the Civil Service Commission. It cannot disallow an appointment because it believes another person is better qualified and much less can it direct the appointment of its own choice.

“Appointment is a highly discretionary act that even this Court cannot compel. While the act of appointment may in proper cases be the subject of mandamus, the selection itself of the appointee - taking into account the totality of his qualifications, including those abstract qualities that define his personality - is the prerogative of the appointing authority. This is a matter addressed only to the discretion of the appointing authority. It is a political question that the Civil Service Commission has no power to review under the Constitution and the applicable laws.”

As We amplified further in the *Abila* case:

“The choice of an appointee from among those who possess the required qualifications is a political and administrative decision calling for considerations of wisdom, convenience, utility and the interests of service which can best be made by the head of the office concerned, the person most familiar with the organizational structure and environmental circumstances within which the appointee must function.”

As above stated, petitioner maintains that private respondent has not met the experience requirement for the position and points out that this requirement is:

“2. Experience – 2 years experience in various fields of Supply Management.”[10]

In petitioner’s Annex “D”, [11] this requirement is expanded as follows:

x x x; b) Experience requirement: - 2 years experience in the various fields of supply activities, including the determination of the fiscal requirements of supplies and materials, accounting and making inventories thereof, 1 year of which must have been in reviewing the work of lower-level supply officers; x x x.” (underscoring supplied for emphasis).

It must be stressed that, pursuant to Section 20 of the Civil Service Decree, the establishment, administration and maintenance of qualification standards are the responsibility of the department or agency, subject of course to the

approval of the Civil Service Commission and Position Classification Office.

Private respondent was a Supervising Fiscal Clerk before his appointment to the contested position. His functions then covered an aspect of supply activities, i.e., the fiscal requirements of supplies and materials for the division office. Moreover, he had completed in-service courses in supply and property management. As correctly ruled by the Secretary of Education and Culture, per Annex “D”, and held by the trial court and the respondent Intermediate Appellate Court, private respondent meets all the requirements for the position of Supply Officer III.

Even if We grant for the sake of argument that petitioner is also qualified, the appointing authority had the discretion to determine who of those qualified should be appointed to the contested position. Per the settled doctrine adverted to above, the Merit Systems Board, the Civil Service Commission and the Office of the President, through Presidential Executive Assistant Jacobo Clave, committed an error, amounting to grave abuse of discretion, when they rescinded the appointment of the private respondent and directed the appointing authority to appoint the petitioner. More specifically, the only act these bodies were authorized to do, if they were convinced otherwise, was to disapprove the appointment of private respondent. They cannot have gone any further to encroach on the discretion of the appointing authority to appoint another who is qualified. This is practically analogous to a situation where two or more aspirants are qualified to a vacant position and the Commission finds them to be so. In such a case, as We held in *Luego vs. Civil Service Commission, et al.*,^[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 private respondent was better qualified for that could have constituted an encroachment on the discretion vested solely in the city mayor.”

This renders unnecessary a discussion on the issue of infringement of due process when Honorable Jacobo Clave, in his capacity as Presidential Executive Assistant, affirmed the recommendation of the Civil Service Commission. It may, however, be stated that *Anzaldo vs. Clave, supra.*, is still good law, and the postulation of petitioner that it is not applicable in this case because what Mr. Clave acted upon was a resolution of the Merit Systems Board of the Civil Service Commission and not of the latter is a tenuous attempt to split hairs. Mr. Clave himself openly admits in his decision that the appeal which petitioner made to the Office of the President was:

“As a matter of course, x x x referred to the Civil Service Commission for its comment x x x.

The Civil Service Commission through its newly created Merit Systems Board (Board) issued Resolution No. 6 dated September 5, 1978 recommending rescission of protestee’s appointment, and in lieu thereof, the appointment of protestant.”^[13]

thereby unequivocally indicating that the Commission concurred with the recommendation of the Board.

We agree, however, with the petitioner that it was an error for both courts below to restrictively limit the concept of next-in-rank to the organizational unit where the vacancy occurs, which is, in this case, the division office of Quezon and more specifically, to the Administrative Staff therein. Section 3 of rule V on Promotions of the Civil Service Rules on Personnel Actions and Policies provides:

“SECTION 3. A next-in-rank position refers to a position which, by reason of the hierarchical arrangement of positions in the Department or agency or in the government, is determined to be in the nearest degree of relationship to a higher position taking into account the following: (1) organization structure/s as reflected in the approved organizational chart/s; (2) classification and/or functional relationships; (3) salary and/or range allocation; and (4) geographical location.”

Evidently, the organizational unit is not the sole criterion. And even if We have to further concede that petitioner

then occupied a next-in-rank position, that fact alone did not make it mandatory for the appointing power to appoint him to the contested position.

Section 19(3) of Presidential Decree No. 807 (Civil Service Decree) merely provides that when a vacancy occurs in a position in the second level of the Career Service, the employee in the government service who occupies the next lower positions in the occupational group under which the vacant position is classified and in other functionally related occupational groups and who are competent, qualified and with the appropriate civil service eligibility, “shall be considered for promotion.” It does not say “shall be promoted.” In *Medenilla vs. Civil Service Commission*,^[14] We held that this section simply means that the next-in-rank shall be among the first to be considered for the vacancy. We are of course not unaware of Section 4 of Rule V of the aforestated Civil Service Rules which provides that:

“An employee who holds a next-in-rank position who is competent and qualified, possesses an appropriate civil service eligibility and meets the other conditions for promotion shall be promoted to the higher positions when it becomes vacant.” (emphasis supplied).

But in the *Abila* case, *supra.*, We ruled that said Section 4 was promulgated by the Commission beyond its statutory authority since the Civil Service Decree itself (Section 19(3)) merely provides that they “shall be considered for promotion.” Moreover, the former has been superseded by Section 2 of Rule 3 of Resolution No. 89-779 of the Civil Service Commission, which reads:

“SECTION 2. Positions in the Second Level. - When a vacancy occurs in the second level of the career service as herein defined, the employees in the department who occupy the next lower positions in the occupational group under which the vacant position is classified, and in other functionally related occupational groups, who are competent and qualified and with appropriate civil service eligibility shall be considered for appointment to the vacancy.” (Emphasis supplied).

which is clearly consistent with the Commission’s enabling statute.

The instant petition then is not impressed with merit.

WHEREFORE, judgment is hereby rendered DISMISSING the petition, with costs against petitioner.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[1] Annex “A” of Petition; per then Associate Justice, now Associate Justice of this Court, Carolina C. Griño-Aquino, with the concurrence of Associate Justices Jose P. Racela, Jr., Fidel P. Purisima and Jorge S. Imperial.

[2] Entitled *Serafin Palomar, plaintiff-appellee, vs. Jose Lusterio, et al., defendants-appellants*.

[3] Annex “B” of Petition; Rollo, 37-45.

[4] Rollo, 29-36.

[5] Rollo, 59-62.

[6] Rollo, 63.

[7] Rollo, 68.

[8] Id., 78-88.

[9] *Abila vs. Civil Service Commission, et al.*, G.R. No. 92573 and G.R. No. 92867, 3 June 1991, citing *Lapinid vs. Civil Service Commission, et al.*, G.R. No. 96298, 14 May 1991; *Lopez vs. Civil Service Commission*, G.R. No. 92140, 19 Feb. 1991; *Martin vs. Civil Service Commission, et al.*, G.R. No. 94465, 27 Nov. 1990; *Chang vs. Civil Service Commission, et al.*, G.R. No. 86791, 26 Nov. 1990; *Pamantasan ng Lungsod ng Maynila vs. IAC, et al.*, 140 SCRA 35; *Ocampo vs. Subido*, 72 SCRA 451; *Torres vs. Borja*, 56 SCRA 55; *Reyes vs. Abeleda*, 22 SCRA 830.

[10] Rollo, 10.

[11] This is the letter dated 19 September 1977 of then Acting Secretary of Education and Culture, Hon. Narciso Albarracin, addressed to the Chairman of the Civil Service Commission reiterating the position of the then Department of Education and Culture that herein private respondent “meets all the requirements for appointment as Supply Officer III, i.e., next-in-rank, competence and qualifications and appropriate civil service eligibility;” Rollo, 49-51.

[12] 143 SCRA 327 (1986).

[13] Annex “C” of Petition; Rollo, 46.

[14] G.R. No. 93868, 19 Feb. 1991. See also *Pataqoc vs. Civil Service Commission, et al.*, 185 SCRA 411, wherein the Court explicitly held that the rule on next-in-rank set forth in said Section 19(3) is not absolute, as aside from stating that the next-in-rank shall only be considered for promotion, without mandating a promotion, the same section also provides the appointing power with several alternatives.

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