

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), PETITIONER, VS. HON. CIVIL SERVICE COMMISSION AND MARIA ASUNCION SALAZAR, RESPONDENTS.

G.R. No. 87146. December 11, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition for certiorari assails Resolution No. 89-031 dated January 17, 1989, of the Civil Service Commission (CSC) denying the appeal of the Government Service Insurance System (GSIS) from the order of the Merit Systems Protection Board (Board) dated September 2, 1988.

As far as the service record of private respondent Salazar filed with the CSC - National Capital Region (NCR) revealed, she was employed by GSIS as a casual laborer on September 23, 1968. She became a permanent employee in the same office on February 28, 1974 with a designation of stenographer. Thereafter, she was promoted to Confidential Technical Assistant Aide also under permanent status on December 9, 1975 (p. 37, Rollo).

Salazar's GSIS Service Record however, revealed that also on December 9, 1975, she was appointed to the position of Confidential Executive Assistant in the office of then GSIS President and General Manager Roman A. Cruz, Jr. on a permanent status. On August 13, 1982, she was promoted to Technical Assistant III, (p. 58, Rollo), the position she held when on May 16, 1986, her services were terminated by the newly appointed President and General Manager of the GSIS for the reason that her position was co-terminous with the term of the appointing authority, Roman A. Cruz, Jr.

Salazar filed a petition for reconsideration with the GSIS Board of Trustees, but reconsideration was denied. Thereafter, she filed a petition for reconsideration of the denial with the Review Committee created under Executive Order No. 17. The said Review Committee referred the petition both to the Merit Systems Promotion Board and the Civil Service Commission, stating that Salazar's removal or separation from office was not by virtue of the general reorganization program of the government for which the Review Committee was created.

On July 22, 1987, the Civil Service Commission, issued Resolution No. 87-230 directing the reinstatement of Salazar, the dispositive portion of the decision reads:

"WHEREFORE, the Commission directs the immediate reinstatement of Ms. Salazar with back salaries and other benefits due her without prejudice to the final determination of the position, if any, to which she may have been subsequently appointed.

"x x x." (p. 38, Rollo)

GSIS, through the Office of the Government Corporate Counsel, filed a motion for reconsideration dated September 14, 1987 (pp. 39-42).

On the other hand, the Board, acting on the same petition of Salazar referred to it by the Review Committee, issued an Order on March 9, 1988, finding the petition of Salazar for reinstatement, without merit and affirmed her termination. The dispositive portion of the decision is quoted as follows:

"This Board agrees with the contention of the GSIS President and General Manager that the petitioner was not dismissed but that her employment ended with the termination of office of the previous GSIS President, since her position as Technical Assistant III is confidential in nature, hence, belongs to the non-career service. x x x.

"x x x.

"WHEREFORE, the Board finds the petition without merit. The termination of Ms. Ma. Asuncion S. Salazar as Technical Assistant III is hereby affirmed.

"SO ORDERED." (pp. 45-46, Rollo)

On April 20, 1988, Salazar filed a motion for reconsideration of the Board's order and manifested that the Commission already resolved her petition on July 22, 1987. On June 30, 1988, the Board set aside its previous Order affirming Salazar's dismissal in view of the Commission's prior resolution of the case. The order reads, in part:

"In a position paper dated April 20, 1988, of Ms. Salazar, addressed to the Commission and transmitted to this Board on June 6, 1988, this Board was informed that the Commission has resolved a similar petition in Resolution No. 87-230 dated July 22, 1987; and that the GSIS has filed a motion for reconsideration of the Resolution of the Commission on September 14, 1987.

"WHEREFORE, considering that the Commission has already acted on the matter, this Board hereby sets aside its Order dated March 9, 1988.

"x x x." (p. 62, Rollo)

On August 18, 1988, GSIS filed a motion for reconsideration of the June 30, 1988 Order of the Board. On September 2, 1988, the Board denied the motion. The pertinent portion of the Order states:

"Records show that the Resolution dated April 22, 1987, of the Review Committee created under Executive Order No. 17 relative to the petition for reconsideration of the termination of the services of Ms. Salazar as Technical Assistant III in the GSIS, was forwarded to the Merit Systems Protection Board. In an Order dated March 9, 1988, this Board affirmed the termination of the services of Ms. Salazar. However, in a position paper dated April 20, 1988 of Ms. Salazar, this Board was informed that the same petition had already been resolved by the Civil Service Commission in a Resolution dated July 22, 1987, directing the GSIS to reinstate her in the service. So, this Board in an Order dated June 30, 1988, set aside its previous Order dated March 9, 1988.

"It must be noted that under Section 2 and 8 of Presidential Decree No. 1409, which created the Merit Systems Board (now Merit Systems Protection Board) state that:

‘Sec. 2. Composition. -- The Board shall be composed of a Commissioner (now Chairman) and two Associate Commissioners (now Board Members) who shall be appointed by the Civil Service Commission and who may be removed only for cause as provided by law.

‘Sec. 8. Relationship with the Civil Service Commission. -- Decisions of the Merit Systems Board (now Merit System Protection Board) involving the removal of officers and employees from the service shall be subject to automatic review by the Civil Service Commission. The Commission shall hear and decide appeals from other decisions of the Board, provided that the decisions of the Commission shall be subject to review on Certiorari only by the Supreme Court within thirty (30) days from receipt of a copy thereof by the aggrieved party.’ (as

amended by D.O. 135 dated February 27, 1987)

"Based on the aforequoted provisions, it is clear that the Civil Service Commission is a higher administrative appellate body on matters concerning the removal of officers and employees from the service. Hence, the Board cannot in any manner modify or alter the determinations and actions of the Civil Service Commission. (pp. 66-67, Rollo)

GSIS appealed (pp. 68-76, Rollo) this order of the Board to the Commission. However, before it acted on the appeal, the Commission issued Resolution No. 88-825 on November 16, 1988 denying the motion for reconsideration filed by GSIS of the Commission's Resolution No. 88-230 ordering the reinstatement of Salazar. The dispositive portion of the resolution reads:

"WHEREFORE, foregoing premises considered, and finding no cogent reason to reverse or modify the CSC Resolution No. 87-230, this Commission resolved to deny, as it hereby denies the instant motion for reconsideration. It is therefore directed that Ms. Ma. Asuncion Salazar be reinstated to her former position of Technical Assistant or Aide or to any comparable position." (p. 79, Rollo)

On January 17, 1989, the Commission issued Resolution No. 89-031 denying the appeal of GSIS from the order of the Board dated September 2, 1988. The dispositive portion of the decision states:

"WHEREFORE, foregoing premises considered, and in the interest of justice and equity, this Commission resolved to rule, as it hereby rules that its Resolution No. 88-825 dated November 16, 1988 has become final and executory upon receipt of notice thereof, by the GSIS. Accordingly, this case is considered closed." (p. 35, Rollo)

GSIS filed the instant petition for certiorari, raising the following issues for resolution:

"1. Whether or not the respondent Civil Service Commission erred in not holding that it was the Merit Systems Board, not said Commission, which had appellate jurisdiction over the subject personal action of termination of services of private respondent;

"2. Whether or not the respondent Civil Service Commission erred in not holding that Resolutions Nos. 87-230 and 88-825, dated July 22, 1987 and November 6, 1988, respectively, were issued without jurisdiction;

"3. Whether or not the respondent Civil Service Commission erred in not holding that resolutions Nos. 87-230 and 88-825 were void ab initio or legally inexistent;

"4. Whether or not the respondent Civil Service Commission erred in not holding that the Order of the Merit Systems Board dated June 30, 1988 was, likewise, void and legally inexistent, and that the Order dated March 9, 1988, which it set aside, had, accordingly, become final and executory;

"5. Whether or not the respondent Civil Service Commission erred in denying petitioner's appeal on the basis of said void resolutions;

"6. Whether or not the respondent Civil Service Commission erred in not holding that private respondent's position as Technical Assistant III was highly confidential and, therefore, belonged to the non-career service or co-terminous with the tenure of the previous appointing authority (the former President and General Manager of GSIS);

"7. Whether or not the respondent GSIS erred in not holding that the termination of private respondent's services entailed no removal or dismissal but an expiration term and, therefore, not violative of the constitutional prohibition against suspension or dismissal without cause of civil service officers or employees; and

"8. Whether or not the respondent Civil Service Commission erred in not affirming the subject personal action

of termination of services of private respondent." (pp. 219-220, Rollo)

The questions presented in this petition may be summarized into two: (1) which body has jurisdiction over appeals from decisions of government officers on personnel matters? ; and (2) was the position last held by private respondent primarily confidential in nature?

It is the contention of GSIS that it is the Merit Systems Protection Board, not the respondent Civil Service Commission that is vested with jurisdiction to hear and decide cases appealed to it by those aggrieved by personnel actions of appointing authorities. It is not disputed that "x x x, the Civil Service Commission, under the Constitution is the single arbiter of all contest relating to the Civil Service x x x" (Lopez vs. CSC, et al., G.R. No. 87119, April 19, 1991, citing Dario v. Miso, G.R. Nos. 81954, 81967, 82023, 88737, 85310, 85335 and 86241, August 8, 1989). There is however, a need to clarify the jurisdiction of the Commission in relation to the Merit Systems Board.

One of the relevant laws issued during the past regime is Presidential Decree No. 1409, creating the Merit Systems Board. Under Sec. 5 of P.D. 1409 the Merit Systems Board has, inter alia, the following powers and functions:

"(1) x x x

"(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.

"(3) x x x." (underlining ours)

The public respondent Civil Service Commission had long recognized and implemented said provision of P.D. 1409. In 1978, it issued Memorandum Circular No. 6 where it expressly stated:

"As provided in Presidential Decree No. 1409, which amended Presidential Decree No. 807, the heads of ministries and agencies, on the one hand, and the Merit Systems Board on the other, have concurrent original jurisdiction over disciplinary and non-disciplinary cases and, where the heads of ministries and agencies assume jurisdiction first, their decisions and determinations are appealable to the Merit Systems Board. The Civil Service Commission, however, remains the final administrative appellate body in these matters, as provided in Section 8 of Presidential Decree No. 1409 x x x".

When the law bestows upon a government body the jurisdiction to hear and decide cases involving specific matters, it is to be presumed that such jurisdiction is exclusive unless it be proved that another body is likewise vested with the same jurisdiction, in which case, both bodies have concurrent jurisdiction over the matter. Presidential Decree No. 1409 clearly provides that the Merit Systems Board shall take cognizance of appeals from parties aggrieved by decisions of appointing officers involving personnel action. The Commission therefore cannot take original cognizance of the cases specified under Section 5 of P.D. 1409, except in the case specified under Section 9 (j) of the Civil Service Decree which directly gives it such power, to wit:

SECTION 9. Powers and Functions of the Commission. The Commission shall administer the Civil Service Commission and shall have the following powers and functions:

" x x x

"j) Hear and decide administrative disciplinary cases instituted directly with it in accordance with Section 37 or brought to it on appeal;

" x x x

If the Commission were vested with the authority to take original cognizance of all matters involving government personnel, P.D. 1409 would appear to be a mere surplusage as the rationale for the existence of the Merit Systems Protection Board would be rendered meaningless and inutile. This is not the intention of the law creating the Board. In the "whereas" clauses of P.D. 1409, the need for the creation of the Board was distinctly outlined, thus:

"WHEREAS, the need for a stable and responsive Civil Service has become especially critical with the institution in the country of a Parliamentary form of government that stresses accountability to the people;

"WHEREAS, while the present civil service system, by reason of its new structure, has shown itself to have dynamic flexibility and adaptiveness, there remains the need to further promote a more positive approach to personnel growth and development;

"WHEREAS, the two major functions of the Commission are the strengthening of the merit system and the development of viable careers among civil service employees;

"WHEREAS, these two goals can be better achieved through a redefinition of the functions of the Civil Service Commission so that its career development concerns may be separated from the protective character of its responsibilities;

"x x x." (underlining ours)

The Commission, however, is not without power. As the final arbiter on any matter concerning personnel action in the government, the Commission is empowered by P.D. 1409, to review the decisions of the Board, as follows:

"Section 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.

In the case at bar, We note that the appeal of Salazar was endorsed by the Review Committee created under Executive Order No. 17 to both the Merit Systems Board and the Civil Service Commission. In the absence of a decision from the Merit Systems Board, the Commission cannot legally assume jurisdiction over the appeal. Hence, its decision (Resolution No. 87-230) in favor of Salazar dated July 22, 1987 and all subsequent resolutions of the Commission in this case are void. Likewise, the Order of the Board dated June 30, 1988, setting aside its previous order upholding the termination of Salazar in deference to the Commission's final appellate jurisdiction over the matter, is null and void. Jurisdiction is vested by law and is not lost nor be legally transferred by voluntary surrender in favor of a body not vested by law with such jurisdiction.

There is a disparity between the service record of private respondent on file with the GSIS and that on file with the CSC. In the latter, her last two promotional appointments in the GSIS were not reflected. The fact remains however, and this is admitted by both the petitioner and private respondent Salazar, that before her termination in May 1986, she was occupying the last higher position of Technical Assistant 111 and not of Technical Assistant Aide as appears in the Commission's records.

The petitioner contends that the position of Technical Assistant 111 belongs to the non-career service category and remains co-terminous. However, it also contends that even if the said position belongs to the career service, the appointment of Salazar as Technical Assistant 111 is still not valid because it requires a first grade civil service eligible of which Salazar was not at the time of her appointment.

The resolution of the nature of the appointment of Salazar as Technical Assistant 111, i.e., whether or not the

position is primarily confidential is necessary in the resolution of the legality of her termination. Whether the position of Technical Assistant 111 belongs to the career service where the incumbent enjoys a security of tenure or primarily confidential where her tenure is co-terminous with that of the appointing authority or endures only as long as confidence in her exists (See *Pacete v. Acting Chairman of COA, et al.*, G. R. No. 39456, 7 May 1990) depends upon the nature of the functions of the office (*Borres v. Court of Appeals*, L-36845, August 21, 1987). Not even the fact that the position had already been classified as one under the career service and certified as permanent by the Civil Service Commission, can conceal or alter a positions' being confidential in nature (See *Hon. Simplicio Grino, et al. v. CSC, et al.*, G.R. No. 91602, February 26, 1991).

However, the records with the court are not sufficient for a substantial determination of the matter. There is no copy of the job description of the position nor any showing by the parties as regards the nature of the position. The Board initially ruled that the position is primarily confidential and upheld the legality of Salazar's termination. Its decision however, is only a conclusion not supported by evidence. The respondent Civil Service Commission, on the other hand, did not make any finding on this matter after concluding that based on its records, Salazar's last position is only that of a Technical Aide, a permanent position and very much lower than that of Technical Assistant 111. For his part, the Solicitor General admits that the position is confidential in nature but did not bother to explain why. The GSIS, the other hand states that the position is confidential but inconsistently contends also that Salazar had no first grade civil service eligibility required of the position.

ACCORDINGLY, the petition is granted. The questioned Resolution of the Civil Service Commission is annulled. The Order of the Merit Systems Board dated March 9, 1988 is reinstated subject to the right of Salazar to appeal to the Civil Service Commission.

SO ORDERED.

Narvasa, C.J., Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., and Romero, JJ., concur.

Nocon, J., no part.

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