

VIVENCIO B. PATAGOC, PETITIONER, VS. CIVIL SERVICE COMMISSION AND LUIS VICENTE L. DESPALO, RESPONDENTS.

G.R. No. 90229. May 14, 1990

Ponente: CORTES, J.

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CORTES, J.:

Petitioner was appointed City Engineer by Zamboanga City Mayor Vitaliano Agan on December 1, 1988, to take the place of the deceased city engineer, Dionisio Esperat. The appointment was in the nature of a reinstatement. Petitioner was previously employed by the city government, assigned with the Bureau of Public Works Engineering District and with the City Engineer's Office from August 16, 1965 to January 15, 1980, when the Ministry of Public Works was reorganized and he was phased out. He rose from Civil Engineering Aide II to Supervising City Engineer II. Thereafter, for six (6) years before his appointment as City Engineer, he was a consultant with the Department of Public Works and Highways and then with a private construction firm.

On December 6, 1988, private respondent, the incumbent Assistant City Engineer, filed a protest against petitioner's appointment with the Civil Service Regional Office on the ground that he was next-in-rank. The Civil Service Regional Director, in a decision dated January 6, 1989, ruled against petitioner, to wit:

WHEREFORE, foregoing premises considered, and in the interest of the service, this Office finds the instant protest meritorious. Wherefore, the appointment of Engr. Vivencio D. Patagoc as City Engineer of Zamboanga at P102,643.20 per annum, effective December 1, 1988, is hereby revoked. Accordingly, Engr. Luis Vicente L. Despalo should instead be appointed to the said position. [Rollo, p. 31.]

Petitioner appealed to the Civil Service Commission. In Resolution No. 89-470, dated July 12, 1989, the Commission dismissed the appeal and affirmed the decision of the Regional Director. Petitioner moved for reconsideration but this was denied by the Commission in Resolution No. 89-699, dated September 7, 1989.

Hence, this petition seeking the reversal of the Commission's action on petitioner's appointment.

Private respondent filed his comment, and so did the Commission. When asked to comment, the Solicitor General manifested that he cannot, without disregarding evidence and jurisprudence, sustain the Commission's position.

An amended comment was filed by the Commission and its previously filed comment was withdrawn. Petitioner filed a reply to the amended comment. Thereafter, the issues having been joined, the Court gave due course to the petition and considered the case submitted for decision.

At issue in this case is the extent of the City Mayor's authority to appoint the City Engineer. Thus: when the appointee and the protestant are both qualified for the position, may the Civil Service Commission disapprove the appointment of the former and order the appointment of the protestant?

1. Petitioner raises as a preliminary issue the classification of the the position of city engineer. According to petitioner the City Engineer of Zamboanga belongs to the non-competitive service pursuant to the city charter (Commonwealth Act No. 39) and the old Civil Service Law (Republic Act No. 2260, as amended). Consequently,

he posits, the City Mayor's decision to appoint petitioner may not be reviewed by the Commission.

On the other hand, the Commission points out that under the Local Government Code (Batas Pambansa Blg. 337) "[t]he city engineer shall be appointed by the city mayor, subject to civil service law, rules and regulations" [Sec. 185(1)] and that except as otherwise provided in the Code, all city charters or parts thereof which are inconsistent with the Code are repealed or modified accordingly [Sec. 223(1).] Moreover, the position of city engineer belongs to the career service considering that P.D. No. 807 does not include the position in the non-career service [vide secs. 5 and 6.] Thus, concludes the Commission, it may review the appointment of petitioner.

We find the Commission's position well-taken. The pertinent provisions of the Local Government Code are very clear and need not be interpreted. Petitioner's appointment is subject to civil service law, rules and regulations. And, under the provisions of P.D. No. 807, the position belongs to the career service.

2. Section 185 of the Local Government Code provides that "[n]o person shall be appointed city engineer unless he is a citizen of the Philippines, of good moral character, a licensed civil engineer, and has been an assistant city engineer or has engaged in the practice of his profession for at least five years." It is not disputed that both petitioner and private respondent are qualified for the position. But the Commission is of the view that it can disapprove petitioner's appointment and direct the appointment of private respondent to the disputed position, considering that the latter is next-in-rank. In support of its action, the Commission cites Presidential Decree No. 807, to wit:

SEC. 19. Recruitment and Selection of Employees. - x x x.

* * *

(3) When a vacancy occurs in a position in the second level of the Career Service as defined in Section 7, the employees in the government service who occupy 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.

But then this is not an absolute rule, as aside from stating that the next-in-rank shall only be considered for promotion, without mandating a promotion, the same section of the decree also provides the appointing power with several alternatives:

* * *

(5) If the vacancy is not filled by promotion as provided herein the same shall be filled by transfer of present employees in the government service, by reinstatement, by re-employment of persons separated through reduction in force, or by appointment of persons with the civil service eligibility appropriate to the positions.

It must again be emphasized that the power of appointment is essentially discretionary and that the Commission cannot substitute its judgment for that of the appointing power. The Commission, under P.D. No. 807, may only approve or disapprove the appointment after determining whether or not the appointee possesses the appropriate civil service eligibility or the required qualifications. It cannot order or direct the appointment of a successful protestant. Thus, in the leading case of *Luego v. Civil Service Commission*, G.R. No. 69137, August 5, 1986, 143 SCRA 327, the Court said:

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 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, 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. (*italics 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. 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. [At pp. 332-333.]

No less emphatic was the Court in the recent case of *Central Bank v. Civil Service Commission*, G.R. Nos. 80455-56, April 10, 1989, where it stated:

... It is well-settled that when the appointee is qualified, as in this case, and all the other legal requirements are satisfied, the Commission has no alternative but to attest to the appointment in accordance with the Civil Service Law. The Commission has no authority to revoke an appointment on the ground that another person is more qualified for a particular position. It also has no authority to direct the appointment of a substitute of its choice. To do so would be an encroachment on the discretion vested upon the appointing authority. An appointment is essentially within the discretionary power of whomsoever it is vested, subject to the only condition that the appointee should possess the qualifications required by law.

It may be, as alleged by the Commission, that Civil Service Circular No. 5, s. 1983 provides as a condition for appointment by reinstatement that “the vacancy cannot be filled by promotion of qualified officers and employees in the agency concerned, by transfer of qualified officers or employees from other government agencies, or there are no eligibles in the appropriate register of the Commission available for certification to the vacancy.” However, this circular cannot be construed so as to effectively eliminate the appointing power’s discretion. At best, the circular can be considered as a guide for the appointing power’s exercise of discretion. Moreover, we note that the condition stated in the circular is not even imposed in P.D. No. 807. Should he choose not to fill the vacant position by promotion, the decree, as stated earlier, gives the appointing power several alternatives: i.e., the vacancy may be filled by transfer, by reinstatement, by re-employment, or by an original appointment [Sec. 19(5).]

WHEREFORE, the Civil Service Commission’s Resolution No. 89-470, dated July 12, 1989, and Resolution No. 89-699, dated September 7, 1989, are hereby REVERSED and SET ASIDE. Respondent Commission is DIRECTED to approve petitioner’s appointment as City Engineer of Zamboanga.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, and Regalado, JJ., concur.
Gancayco, J., on leave.

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