

VIOLETA T. TEOLOGO, PETITIONER, VS. THE CIVIL SERVICE COMMISSION, DR. PRUDENCIO J. ORTIZ, DR. JOSE M. TUPAZ, JR., AND MRS. RUBY G. GELVEZON, RESPONDENTS.*G.R. No. 92103. November 08, 1990*

Ponente: CRUZ, J.

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The petitioner questions the appointment of private respondent Ruby G. Gelvezon as Chief Nurse I of the Representative Pedro Trono Memorial Hospital in Guimbal, Iloilo, as approved by the Civil Service Commission in its Resolution No. 89-321 dated May 5, 1989. She claims she has a preferential right to be appointed to the said position, which she had held in an acting capacity for more than a year. She stresses that she is next-in-rank and not disqualified; Gelvezon, on the other hand, is not eligible.

At the time of the challenged appointment, Gelvezon was no longer in the service, having retired as Senior Nurse of the said hospital on October 26, 1986, subsequently collecting the gratuity, terminal leave and other benefits due her. She was therefore being reinstated under CSC Memorandum-Circular No. 5, s-1983, which allows the reinstatement of a retiree only under certain conditions. The required request of the Regional Health Office No. 6 for authority to reinstate her was denied by Civil Service Regional Office No. 6 (CSRO No. 6) on the ground that the vacancy could be filled by promotion of qualified personnel, "attention being invited to the attached copy of the letter-protest dated September 15, 1988 of Ms. Violeta Teologo," one of two other aspirants for the same position. This denial was appealed to the Civil Service Commission by Dr. Prudencio J. Ortiz, Regional Health Director, who justified the appointment of Gelvezon on grounds of the "exigency of the service" and her superior qualifications compared to those of the other applicants.

In the assailed resolution, the CSC set aside the denial of CSRO No. 6 and directed it "to take appropriate action on the appointment of Mrs. Ruby G. Gelvezon, subject to Civil Service Laws and Rules." It declared inter alia that "in the case of Mrs. Gelvezon, who is neither a retiree nor over-age (57 or over), the head is not required to secure prior authority."

The petitioner filed a motion for reconsideration insisting that the appointment of Gelvezon was violative of law and the pertinent administrative regulations, particularly CSC Memorandum Circular No. 5, s-1982. CSRO No. 6 also reminded the CSC that "grant of authority is a condition precedent before Mrs. Gelvezon can be reinstated in the service, considering that she retired therefrom as may be duly supported" by her application for retirement dated May 23, 1988 and its approval effective October 26, 1988.

These representations were denied by the CSC in its Resolution No. 90-037, dated January 11, 1990, the dispositive portion of which read:

WHEREFORE, the foregoing premises considered, the Commission resolved to deny, as it hereby denies, the instant motion for reconsideration. The earlier decision of this Commission as embodied in CSC Resolution No. 89-321 dated May 5, 1989 is therefore affirmed. However, Mrs. Ruby G. Gelvezon, the Chief of Hospital

II of RPTMH and the Regional Health Director of Region VI, Iloilo City are hereby admonished to be more prudent and circumspect in making representations, otherwise, a repetition of a similar act in the future will be dealt with administratively.

The petitioner then came to this Court, claiming that the respondent CSC had committed grave abuse of discretion in sustaining the reinstatement of private respondent Gelvezon.

Required to comment, the Solicitor General begins with an assertion of his right and duty "to present to the Court the position that will legally uphold the best interest of the Government although it may run counter to a client's position" and his "specific mandate to act and represent the Republic and/or the people before any court, tribunal, body or commission in any matter, action or proceeding which, in his opinion, affects the welfare of the people as the ends of justice may require." He then declares that he cannot agree with the respondent CSC and proceeds to explain why he thinks it is in error.

In the recent case of *Orbos v. Civil Service Commission*,^[1] we sustained the authority invoked here by the Solicitor General. To be fair, however, we have made it clear that whenever he disagrees with the office he is supposed to represent, as in the case at bar, we shall allow such office to file its own comment in support of its position. Such comment has been submitted by public respondent CSC.

It is the contention of the Solicitor General that the above-mentioned resolutions of the CSC should be reversed as contrary to law and regulations. His view is that the CSC cannot direct the appointment of Gelvezon as this would be an encroachment on the prerogative of another department, besides the fact that there is no justification for her appointment in view of her ineligibility and the availability of other candidates. He notes especially her disqualification for the office for having misrepresented that she had merely resigned (and so needed no special authority to return) when the truth was that she had retired.

It is true, as he maintains, that the CSC cannot usurp the appointing power from the appropriate authority and substitute its choice with another on the ground that the latter is better qualified. The discretion to determine this matter belongs to the appointing authority and not respondent CSC. The only function of the CSC in this regard is to ascertain whether the appointee possesses the prescribed qualifications and, if so, to attest to such fact. The only ground upon which the appointment may be disallowed is that the appointee is not qualified, not that he is in its opinion less qualified than others. The presumption is that the appointing authority is the best judge of this matter. As we said in *Luego v. Civil Service Commission*:^[2]

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.

The CSC denies that it has usurped the appointing power of another department and stresses that all it did was direct CSRO No. 6 to act on the appointment made by the Health authorities. It was not making the appointment itself or ordering it to be made but merely sustaining it under the applicable civil service rules and regulations. Finding that Gelvezon possessed the prescribed qualifications and satisfied the requirements of CSC Memorandum-Circular No. 5, s-1983, it had merely approved her reinstatement as proposed by the Regional Health Director.

It is not clear from the records who has appointed Gelvezon as Chief Nurse I. Dr. Jose M. Tupaz, Jr., Director of the Hospital, merely recommended her reinstatement to Dr. Prudencio M. Ortiz as Regional Health Director, who in turn requested from CSRO No. 6 authority to reinstate her. The reinstatement was presumably to be done by

him. Under the law, it is the President of the Philippines or his alter ego, the Secretary of Health, who can make appointments of key personnel in the Department of Health. Yet, in the case at bar, Dr. Ortiz was asking for authority to reinstate Gelvezon as if he himself had the power to do this.

It seems to us that Dr. Ortiz's request should at the very least have been coursed through or cleared by the Secretary of Health before being submitted to CSRO No. 6 with his approval. The reinstatement of Gelvezon would require a new appointment and it has not been shown that the Regional Health Director has the power to make such appointment. The presumption of regularity of official functions is not applicable because the power in question clearly belongs not to Dr. Ortiz but his superiors.

But even assuming that the Regional Health Director was duly empowered to make the appointment, there were still special conditions that had to be fulfilled under Memorandum-Circular No. 5, s-1983, which, significantly, was promulgated by the Civil Service Commission itself. It must be remembered that we deal here not with the appointment of a newcomer to the public service. Gelvezon is a retiree. Additional requirements are prescribed for her appointment because it involves the reinstatement of a person who, after having left the government, has a change of heart and wishes to return.

These requirements are embodied in CSC Memorandum-Circular No. 5, s-1983, reading in full as follows:

MEMORANDUM CIRCULAR

TO :

ALL HEADS OF MINISTRIES, BUREAUS, AND AGENCIES OF THE NATIONAL AND LOCAL GOVERNMENTS, INCLUDING GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS

SUBJECT :

Guidelines on Appointment of Persons who have Reached the age of 57 Years. Reinstatement of Persons who have been Previously Retired from the Service, and Retention in the Service of Persons who have Reached the Compulsory Retirement Age of 65 Years

Pursuant to Presidential Decree No. 830 dated November 27, 1975 as implemented by Letter of Implementation No. 47 dated August 18, 1976, the Civil Service Commission is empowered to reinstate in the service persons who have been previously retired from the service, and to extend the services of persons who have reached the compulsory retirement age of 65 years, except Presidential appointees.

To insure effective and facilitate action on requests of such nature, the following guidelines are prescribed:

1. All requests shall be made by the appointing authority concerned and directly addressed to the respective Civil Service Regional Office. CSC Regional Offices have been given authority to act on such requests.
2. Requests for authority for such appointment, reinstatement or retention shall meet the following conditions as certified by the appointing authority.
 - a. the exigencies of the service so require;
 - b. the officer or employee concerned possesses special qualification not possessed by other officers or employees in the agency where he is to be appointed or retained; and
 - c. the vacancy cannot be filled by promotion of qualified officers or employees in the agency concerned, or by transfer of qualified officers or employee from other government agencies, or there are no eligibles in the appropriate register of the Commission available for certification to the vacancy.

3. No person shall be reinstated if he has been separated from the service through delinquency or misconduct on his part or if he has been separated under LOI Nos. 11, 14, 14-A, and 14-B unless he has been granted executive clemency by the President.
4. Each request must be accompanied by a medical certificate issued by a government physician certifying that the person is still physically and mentally healthy to be appointed in the service.
5. Officers or employees who have been recommended for appointment, reinstatement, or retention in the service shall not be allowed to assume or continue in office pending receipt of authority from the Civil Service Regional Office concerned.

Henceforth, all requests relating to the above matters should make reference to this Memorandum Circular.

This Memorandum Circular shall take effect immediately.

(SGD.) ALBINA MANALO-DANS

Chairman

August 1, 1983 (Underscoring supplied).

The Solicitor General maintains that the appointment of Gelvezon, assuming it has been made by the appropriate authority, nevertheless does not meet the three conditions mentioned in Paragraph 2 of the memorandum-circular. Neither is the authorization to reinstate required in Paragraph 5 sustainable under the proven facts.

Like the assessment of the appointee's qualifications, the determination of whether the appointment is demanded by the exigencies of the service should be made by the appointing authorities themselves, at least in the first instance. As it is they who can best understand the needs and operations of their own offices, their findings on this matter are entitled to great respect even from this Court.

We note, however, that in meeting the requirement of Paragraph 2(a), Dr. Tupas, as Director of the RPTMH, merely said in his recommendation:[3]

1. That the exigency of the service demands that the position should be filled. Problems in the Nursing Service have cropped up, wanting of the attendance of a nursing administrator which may assume, unmanageable magnitude if left unsolved.

This same recommendation was reiterated verbatim by Dr. Ortiz in his own letter to CSRO No. 6 requesting authority to reinstate Gelvezon.[4]

Its tortuous construction aside, the above-quoted statement actually says nothing. It is no more than so many clichés strung together to satisfy the requirement, without any earnest effort to specify the problems facing the Nursing Service and why they "may assume unmanageable magnitude if left unsolved" because of the non-appointment of the recommendee. The "exigency of the service" is not explained nor is it shown why it "demands" the filling of the position. The necessity for Gelvezon sounds exaggerated. The generalization seeks more to impress than to inform and persuade. If a meaningless justification like this could suffice, the requirement might as well be discarded altogether as a useless formality.

Regarding subsection (b), the respondents stress that in the examination given by the Selection Placement and Promotion Board of the RPTMH, Gelvezon placed first with a rating of 88.25%, followed by Medalla P. Balandra with 87.5% and Violeta T. Teologo with 83.25%. This was probably the main reason for the conclusion that Gelvezon was the best candidate among the three and for the following encomium from Dr. Ortiz (again echoing Dr. Tupaz word for word):

2. Mrs. Ruby G. Gelvezon brings along with her the degree of competence, respectability and dedication to service, qualities very desirable among people in the Civil Service, especially in the Department of Health. These qualities are found wanting in the other applicants.[5]

It is not explained why applicants Balandra and Teologo are "wanting" in the qualities of "competence, respectability and dedication to service" that seem to be the exclusive virtues of the private respondent. The statement is itself wanting for not stating what other special qualifications Gelvezon possessed, besides topping the examination, that were not possessed by the other candidates. The qualifications of these aspirants were not discussed at all and were probably simply dismissed as irrelevant. But they are not, of course for the requirement is that the appointee must possess special qualifications "not possessed" by the other candidates.

As we see it, the recommendation is at best an unfair commentary on Balandra and Teologo, at worst an undeserved disparagement of their credentials. These are not so far behind those of Gelvezon, especially in the case of Balandra, or even of Teologo, who had served as acting Chief Nurse and holds the degree of Bachelor of Science in Nursing. Gelvezon finished only the Graduate Nurse course.

The discretion given the appointing authority is subject to stricter review where the person appointed is being returned to the government after voluntarily retiring and collecting all the benefits appurtenant to such retirement. The earlier approval of Gelvezon's retirement signifies that her services as Senior Nurse were dispensable in 1986. Suddenly she is needed again. It must take more than the usual explanation to justify her reinstatement now on the ground that her services are after all indispensable. A retiree cannot just resume where he left off without the special qualifications (not possessed by the other candidates) required in Paragraph 2(b).

Even assuming that Gelvezon does have these qualifications, her appointment is still not defensible under Paragraph 2(c) because there are other candidates for the office who are eligible and available. The rule expressly allows reinstatement only "if the vacancy cannot be filled by promotion of qualified officers or employees in the agency concerned." It is true that the next-in-rank rule admits of exceptions, as we have ruled in many cases.[6] But deviation from that rule requires special justification in the case at bar because a retiree should ordinarily not be allowed to pre-empt incumbent aspirants.

The treatment of Paragraph 5 is still another matter that is not easy to understand. Contrary to the original findings of the respondent CSC, there was a need for authority to reinstate Gelvezon because she had retired from the public service four years ago. The reason for the original erroneous finding was her suppression of that material fact. Confronted later with the record, she could not deny that she had indeed not merely resigned but retired. The CSC then retracted its earlier statement and conceded that as a retiree Gelvezon was directly covered by the memorandum-circular. Nevertheless, by some queer logic, it blandly declared in its Resolution No. 90-037:

x x x Moreover, the Commission, in said Resolution, directed CSRO No. 6 to act on the appointment of Mrs. Gelvezon for the reason that the Commission found that said Mrs. Gelvezon merely resigned from her position and thus, CSC MC No. 5, series of 1983 does not apply to her case. By this action of the Commission, whatever defect there may be in the questioned appointment of Mrs. Gelvezon to the contested position is thus validated or rectified."

The Court feels that in giving such authority, the CSC was unduly forbearing. Even if Paragraph 2 were disregarded, Gelvezon would still not qualify for the position because she had falsified her application and concealed the fact that she was a retiree. It is plain that she was less than honest. As the CSC itself later declared:

A keen restudy of the case reveals that Mrs. Gelvezon actually filed an Application for Retirement under RA 1616 on May 23, 1986 effective October 26, 1986, as shown by the said document and her signature in it. More importantly, in a letter dated July 12, 1988 to the Secretary of the Department of Health (DOH), the

Manager of the Government Service Insurance System (GSIS), Iloilo Branch, Iloilo City, approved the said application for retirement of Mrs. Gelvezon effective October 26, 1986, which approval was docketed as Retirement Gratuity No. ILO-RG-003331. Hence, it can be said that a misrepresentation or suppression of fact was made by Mrs. Gelvezon, the Chief of Hospital II of RPTMH and the Regional Health Director as to the alleged resignation of Mrs. Gelvezon x x x. (Emphasis supplied.)

One wonders why, despite this finding, the CSC still approved Gelvezon's appointment, deciding simply to rap her on the wrist with a mere admonition. To use the language of Rule 111, Section 23, of Civil Service Rules And Personnel Actions and Policies, she "had intentionally made a false statement of a material fact or had practiced or attempted to practice a deception or fraud in connection with her appointment." Yet the CSC brushed aside this offense as a minor infraction that deserved no sterner action than a mild reproof.

Her reinstatement does not square with the high standards the CSC has itself set for the members of the Civil Service. As the constitutional body charged with the improvement of the quality of the civil service, the CSC should have been the first to question Gelvezon's appointment instead of heartily endorsing it.

Parenthetically, we note the Solicitor General's observations that Gelvezon was not really being reinstated as she had never before held the position of Chief Nurse I, having retired only as Senior Nurse. He is correct, strictly speaking, but the word "reinstatement" was probably used in a generic sense to mean simply returning to the service. At any rate, the point is not really material because the memorandum-circular speaks of "appointment, reinstatement or retention" of the persons covered by its provisions.

We hold, in sum, that as a retiree, Gelvezon could not be simply reinstated like any new appointee but had to satisfy the stringent requirements laid down by CSC Memorandum-Circular No. 5, s-1983. While it is true that the appointing authority has wide discretion to determine the need to appoint and to assess the qualifications of the person to be appointed, that discretion may not be exercised *ex gratia* but "in conformity to the spirit of the law and in a manner to subserve the ends of substantial justice."^[7] That discretion may be reviewed and reversed in proper cases, especially where extraordinary care is required to attend its exercise, as in the case at bar. Apart from the fact that the Regional Health Director does not appear to be the official authorized to appoint the private respondent, we are not convinced that Gelvezon was the best choice under the particular circumstances of this case, not the least important of which was the shunting aside of the other candidates, who were eligible and available, besides being incumbent in the service. We also feel that while not the crucial consideration, the private respondent's disqualification should have been taken into serious account in comparing the over-all competence of the candidates instead of being dismissed as a light and forgivable misdeed.

It is really curious that Gelvezon was accommodated in the disputed position despite the confluence of formidable arguments against her reinstatement. For prejudicing the rights of the other qualified candidates, the grave abuse of discretion clearly shown here should be corrected and reversed.

Promotions in the Civil Service should always be made on the basis of qualifications, including occupational competence, moral character, devotion to duty, and, not least important, loyalty to the service. The last trait should always be given appropriate weight, to reward the civil servant who has chosen to make his employment in the Government a lifetime career in which he can expect advancement through the years for work well done. Political patronage should not be necessary. His record alone should be sufficient assurance that when a higher position becomes vacant, he shall be seriously considered for the promotion and, if warranted, preferred to less devoted aspirants.

WHEREFORE, certiorari is GRANTED. CSC Resolution Nos. 89-321 and 90-037 are hereby SET ASIDE as NULL AND VOID. It is so ordered.

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

[1] G.R. No. 92561, September 12, 1990.

[2] 143 SCRA 327.

[3] Rollo, p. 39.

[4] Ibid., p. 191.

[5] Id.

[6] Pineda v. Claudio, 28 SCRA 3; Taturan v. Commissioner of Civil Service, 131 SCRA 66; Luego v. Civil Service Commission, 143 SCRA 327; Santiago v. Civil Service Commission, G.R. No. 81467, October 27, 1989.

[7] Lamb v. Phipps, 22 Phil. 456.

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