

VICTOR A. AQUINO, PETITIONER, VS. CIVIL SERVICE COMMISSION AND LEONARDA D. DE LA PAZ, RESPONDENTS.

G.R. No. 92403. April 22, 1992

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This petition for certiorari with prayer for the issuance of a restraining order seeks to nullify the resolutions issued by the respondent Civil Service Commission, namely: (1) Resolution No. 88-820 dated November 7, 1988 reversing the decision of the Merit Systems Protection Board dated February 5, 1988 which sustained the decision of the Secretary of Education, Culture and Sports dated May 4, 1987 upholding the appointment of Mr. Victor A. Aquino as Supply Officer I in the DECS, Division of San Pablo City; and (2) Resolution No. 90-224 dated February 27, 1990 denying the motion for reconsideration with prayer for issuance of temporary restraining order for lack of merit.

The antecedent facts are as follows:

Petitioner Victor A. Aquino, then holding the position of Clerk II, Division of City Schools of San Pablo City, was designated on July 20, 1984 as Officer-in-Charge of the Division Supply Office by the DECS Regional Director Saturnino R. Magturo (Annex "H", petition, p. 55, Rollo) in view of the retirement of the Supply Officer I, Mr. Jose I. Aviquivil.

Prior to such designation, or from the period February 16, 1984 to June 18, 1984, petitioner was designated as Property Inspector and In-Charge of the Supply Office performing the duties and responsibilities of the Supply Officer I (p. 55, Rollo).

Two (2) years thereafter, or on September 19, 1986, the Division Superintendent of City Schools of San Pablo City, Milagros Tagle, issued a promotional appointment to private respondent Leonarda D. de la Paz as Supply Officer I in the DECS Division of San Pablo City. She assumed and performed the duties and functions of the position and received the compensation and benefits therefor.

At the time of her appointment, private respondent was then holding the position of Clerk II, Division of City Schools of San Pablo City. From August 25, 1976 to September 1983, she was designated as Assistant to the Supply Officer (DECS decision, p. 31, Rollo). The Civil Service Regional Office IV approved her appointment as permanent "provided that there is no pending administrative case against the appointee, no pending protest against the appointment, nor any decision by competent authority that will adversely affect the approval of (the) appointment" (Annex "A" Comment of CSC, p. 164, Rollo).

One (1) month after, or on October 20, 1986 petitioner filed a protest with the DECS Secretary questioning the qualification and competence of private respondent for the position of Supply Officer I.

In a decision dated May 4, 1987, DECS Secretary Lourdes R. Quisumbing sustained the protest of petitioner and revoked the appointment of private respondent as Supply Officer I thus:

"From the foregoing comparative statement of the qualifications of Mr. Aquino and Mrs. De la Paz, apparently the former has a decided advantage over the latter in terms of education, experience and training. Further examination of the comparative statement shows that Mrs. de la Paz has had no relevant in-service training course attended and completed. Accordingly, therefore, Mr. Aquino is preferred to Mrs. de la Paz for appointment as Supply Officer I.

" x x x x x x x x

"Based on all the foregoing and as records further show that Mr. Aquino is competent and qualified to hold the subject position and possesses the eligibility requirement, this Office finds the instant protest meritorious and hereby rules and so rules that Mr. Aquino be appointed Supply Officer I in place of Mrs. de la Paz, whose appointment thereto is deemed revoked." (p. Annex "C", pp. 30-31, Rollo)

Private respondent then filed her petition for reconsideration of the aforequoted DECS decision but the same was denied by Secretary Quisumbing in a Resolution dated August 11, 1987.

On the bases of the aforementioned rulings of the DECS Secretary, petitioner Aquino was issued a permanent appointment dated August 11, 1987 as Supply Officer I by the DECS Regional Director Pedro San Vicente effective October 26, 1987. On the date of effectivity of his appointment, petitioner assumed the duties and functions of the position. The said appointment was approved by the Civil Service Regional Office IV on October 27, 1987.

For her part, private respondent de la Paz filed on October 16, 1987 a notice of appeal with motion to maintain status quo to the Merit Systems Protection Board (MSPB) which, on February 5, 1988, rendered a decision upholding the appointment of Aquino as Supply Officer I (Annex "D" petition, pp. 33-35, Rollo).

From the decision of the MSPB, private respondent appealed to public respondent Civil Service Commission (CSC).

In Resolution 88-820 dated November 7, 1988, public respondent CSC found the appeal of private respondent meritorious, thus revoking the appointment of petitioner Aquino and restoring private respondent de la Paz to her position as Supply Officer I, DECS, Division of San Pablo City under her previously approved appointment (Annex "B", petition, pp. 26-29, Rollo).

From said decision, petitioner filed a motion for reconsideration with prayer for issuance of a temporary restraining order. Finding no merit to the motion for reconsideration filed by petitioner public respondent CSC issued Resolution No. 90-224 dated February 27, 1990 denying said motion (Annex "A", petition, pp. 21--24, Rollo).

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

Two (2) interrelated issues on the extent of authority of the Civil Service Commission to pass upon the contested appointments were raised by petitioner which could be simplified into whether or not public respondent Civil Service Commission committed grave abuse of discretion in revoking the appointment of petitioner Victor A. Aquino as Supply Officer I in the DECS Division of San Pablo City as it found private respondent Leonarda de la Paz better qualified.

In assailing the two (2) CSC Resolutions revoking his appointment, petitioner invokes the ruling of this Court in the case of Santiago v. Civil Service Commission, G.R. No. 81467, October 27, 1989, 178 SCRA 733 and Galura v. Civil Service Commission, G.R. 85812, June 1, 1989 (En Banc resolution) that the Civil Service Commission has no authority to revoke an appointment on the ground that another person is more qualified for a particular position for that would have constituted an encroachment on the discretion vested solely in the

appointing-authority. The Civil Service Commission cannot exceed its power by substituting its will for that of the appointing authority.

In support of petitioner's cause, the Solicitor General stresses the wide latitude of discretion given to the appointing authority in the selection and appointment of qualified persons to vacant positions in the civil service which was emphasized by the Court as rationale for the rule laid down in *Luego v. Civil Service Commission*, G.R. No. 69137, August 5, 1986, 143 SCRA 327, *Central Bank v. CSC*, G.R. No. 80455-56, April 10, 1989, 171 SCRA 744, *Patagoc v. CSC*, G.R. No. 90229, May 14, 1990, 185 SCRA 411, that public respondent CSC, not being the "appointing power" in contemplation of law, has no authority to revoke an appointment on the ground that another person is more qualified for a particular position and that the Commission has no authority to direct the appointment of a substitute of its choice.

We have consistently applied the above doctrine in many cases with similar factual circumstances, but We see no compelling reason to apply the same in the instant case. In the cases cited above, We ruled that the Civil Service Commission has no authority to revoke an appointment simply because it (CSC) believed that another person is better qualified than the appointee for it would constitute an encroachment on the discretion solely vested on the appointing authority. The situation is different, as in the instant case, where the Civil Service Commission revoked the appointment of the successful protestant, petitioner herein, principally because the right to security of tenure of the prior appointee, private respondent herein, to the contested position had already attached (see CSC decision, pp. 28-29, *Rollo*). It must be noted that public respondent CSC did not direct the appointment of a substitute of its choice. It merely restored the appointment of private respondent who was first appointed to the contested position.

The records show that private respondent was issued a permanent appointment on September 19, 1986 as Supply Officer I in the DECS Division of San Pablo City effective September 30, 1986. On the basis of the of said appointment which was approved by the Civil Service Regional Office No. IV, private respondent assumed and performed the duties and functions of the position as Supply Officer I and received the compensation and benefits of the said position in accordance with the mandate of Section 9 par. (h) of the Civil Service Law (P.D. 807, as amended). In consonance with the doctrine laid down in *Villanueva v. Balallo*, G.R. No. L-17745, October 31, 1963, 9 SCRA 407 that an appointment is complete when the last act required of the appointing power has been performed, but later qualified in *Favis v. Rupisan*, G.R. No. L-22823, May 19, 1966, 17 SCRA 190, that the acts of the head of a department or office making the appointment and the Commissioner of Civil Service acting together, though not concurrently, but consecutively, are necessary to make an appointment complete, the permanent appointment extended to private respondent, under the circumstances of the case, is deemed complete. As such, she is entitled to the protection of the law against unjust removal.

The conclusion of respondent Commission in the questioned decision that private respondent is more qualified than petitioner merely supports the validity of the restoration of private respondent to her previously approved appointment considering that she meets the prescribed qualification standards required of the position of Supply Officer I and the appropriate civil service eligibility to wit:

EDUCATION: Bachelor's degree with training in Supply Management

EXPERIENCE: None required

ELIGIBILITY: Supply Officer; Career Service (Professional)

It is well-settled that once an appointment is issued and the moment the appointee assumes a position in the civil service under a completed appointment, he acquires a legal, not merely equitable right (to the position), which is protected not only by statute, but also by the Constitution, and cannot be taken away from him either by

revocation of the appointment, or by removal, except for cause, and with previous notice and hearing (*Mitra v. Subido*, G.R. No. L-21691, September 15, 1967, 21 SCRA 127).

There is also authority for the rule that when the appointing power has once acted and the appointee has accepted the office and done what is required of him upon its acceptance, his title to the office becomes complete, and he can then be removed only in the regular way (*Mechem*, Law of Public Offices and Officers, Sec. 461, p. 294, citing *Marbury v. Madison*, 1 Cranch (U.S.) 137). The appointing power cannot effect his removal indirectly by rescinding or revoking his appointment after it is complete.

There is thus reasonable ground for the rule that the moment the discretionary power of appointment has been exercised and the appointee assumed the duties and functions of the position, the said appointment cannot be revoked by the appointing authority on the ground merely that the protestant is more qualified than the first appointee, subject however to the condition that the first appointee should possess the minimum qualifications required by law. Otherwise, the security of tenure guaranteed by Article IX-B, Section 2 par. (3) of the 1987 Constitution would be rendered meaningless if the appointing authority is allowed to flip-flop in exercising its discretionary power of appointment.

While a protest is a mode of action that may be availed of by the aggrieved party to contest the appointment made, the protest must be "for cause" or predicated on those grounds provided for under Section 19 par. (6) of the Civil Service Law (P.D. 807), namely: (1) that the appointee is not qualified; (2) that the appointee is not the next-in-rank; (3) and in case of appointment by transfer, reinstatement, or by original appointment, that the protestant is not satisfied with the written special reason or reasons given by the appointing authority.

We have defined the concept of "for cause" in connection with removal of public officers in the case of *De los Santos v. Mallare*, G.R. No. L-3881, August 31, 1950, 87 Phil. 289, as follows: "It means for reasons which the law and sound public policy recognized as sufficient warrant for removal, that is, legal cause, and not merely causes which the appointing power in the exercise of discretion may deem sufficient. It is implied that officers may not be removed at the mere will of those vested with the power of removal, or without any cause. Moreover, the cause must relate to and affect the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interests of the public."

The ground relied upon by petitioner in his protest that he is more qualified than private respondent in terms of education, experience and training does not fall within the meaning of "for cause" contemplated by Article IX-B, Section 2 par. (3) of the 1987 Constitution which would warrant the revocation, if not removal, of the appointment of private respondent. Neither does it fall under the grounds of appeal contemplated under Section 19 par. (6) of the Civil Service Law (P.D. 807). Therefore, the protest of petitioner did not adversely affect the approval of the appointment of private respondent.

Even on the assumption that the revocation of private respondent's appointment was validly exercised by DECS Secretary Quisumbing, still the appointment extended to petitioner was tainted with irregularity as it was issued before the finality of the decision on the protest in violation of CSC Resolution No. 83-343 which prohibits the issuance of an appointment to protestant (petitioner) if the protest case is not yet finally resolved, since there is no vacancy in the position pending resolution of the protest case. There can be no appointment to a non-vacant position. The incumbent must first be legally removed or his appointment validly terminated (*Costin v. Quimbo*, G.R. No. L-32271, January 27, 1983 120 SCRA 159. An appointment to an office which is not vacant is null and void ab initio (*Morata Court of Appeals*, G.R. No. L-18975, May 25, 1964, 11 SCRA 42).

CSC Resolution No. 83-343 provides thus:

"An appointment though contested shall take effect immediately upon issuance if the appointee assumes the

duties of the position and (the) appointee is entitled to receive the salary attached to the position. Likewise such appointment shall become ineffective in case the protest is finally resolved in favor of the protestant, in which case the protestee shall be reverted to his former position." (p. 223, Rollo)

Records reveal that the decision of the DECS Secretary revoking the appointment of private respondent was rendered on May 4, 1987 and the motion for reconsideration filed by private respondent was denied on August 11, 1987. The appointment issued to petitioner as Supply Officer I was dated August 11, 1987 and he assumed the position on October 26, 1987 (date of effectivity of his appointment) as reported by the Schools Division Superintendent of San Pablo City (pp. 77-78, Rollo). From all indications, the appointment of petitioner dated August 11, 1987 was issued with undue haste before the finality of the denial of the motion for reconsideration.

While it is true that the appointing authority has a wide latitude of discretion in making his choice in the selection and appointment of qualified persons to vacant positions in the civil service, We cannot, however, give a stamp of approval to such a procedural irregularity in extending appointments, as in the instant case, to the prejudice of the right to security of tenure of the incumbent to the position.

ACCORDINGLY, the petition is DENIED. The decision dated May 4, 1987 and the resolution dated August 11, 1987 of the respondent Civil Service Commission are hereby AFFIRMED. The Secretary of the Department of Education, Culture and Sports is hereby directed to restore private respondent Leonarda de la Paz to her previously approved appointment as Supply Officer I, DECS, Division of San Pablo City.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Paras, Padilla, Bidin, Grino-Aquino, Regalado, Davide, Jr., Romero and Nocon, JJ., concur.

J. Melencio-Herrera, J., please see dissent.

Feliciano, J., I join Herrera, J. in her dissent.

Bellosillo, J., no part. Did not take part in deliberations.

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DISSENTING OPINION

MELENCIO-HERRERA, J.:

I am constrained to take exception to the conclusion of the majority that the right to security of tenure of private respondent to the contested position had already attached.

It should be noted that private respondent's appointment on 19 September 1986 was approved as permanent by the Civil Service Regional Office IV subject to certain conditions, namely, "(1) that there is no pending administrative case against the appointee; (2) no pending protest against the appointment, (3) nor any decision by competent authority that will adversely affect the approval of (the) appointment" (numbering supplied).

In this case, a protest against the appointment was timely filed by petitioner on 20 October 1986 questioning the qualification and competence of private respondent. The protest was sustained by the Secretary of the Department

of Education, Culture and Sports (DECS) on 4 May 1987 on the ground that petitioner had a "decided advantage over private respondent in terms of education, experience and training." Petitioner was thus appointed in place of private respondent whose appointment was deemed revoked. That was a decision by competent authority adversely affecting the approval of private respondent's appointment. Conditions Nos. 2 and 3 having supervened, private respondent could not have assumed the contested position under a completed appointment. Consequently, private respondent had acquired no legal right to security of tenure that would have entitled her to removal only "for cause."

On the contrary, it was petitioner who was issued a permanent appointment by the DECS Regional Director on 11 August 1987, effective on 26 October 1987 when petitioner assumed the duties and functions of the position. That appointment was approved by the Civil Service Regional Office IV on 27 October 1987, without any qualifications or conditions.

Private respondent's Motion for Reconsideration of the DECS decision on petitioner's protest was denied by that department on 11 August 1987. A notice of appeal was filed by private respondent to the Merit Systems Protection Board (MSPB) on 18 October 1987. On 5 February 1988, the MSPB upheld petitioner's appointment.

On appeal, however, by private respondent to the Civil Service Commission, the latter body on 7 November 1988, found the appeal meritorious, revoked petitioner's appointment, and "restored" private respondent to her position "under the previously approved appointment," on the ground that private respondent was "better qualified" (Decision, p. 5). The CSC denied the reconsideration sought by petitioner on 27 February 1990.

Under the, circumstances, it can not be denied that, in, resolving private respondent's appeal to it, the CSC had substituted its own choice for that of the appointing authority. The general rule, therefore, must apply: the discretion exercised by the appointing power, in extending an appointment to a given position to one of two employees possessing the requisite minimum qualifications for the position, will not generally be interfered with and must be sustained. The Civil Service Commission has no authority to revoke the said appointment simply because it believes that another employee is better qualified for that would constitute an encroachment on the discretion vested solely in the appointing authority (*Dr. Mariquita Mantala v. Hon. Ignacio Salvador*, GR No. 101646, February 13, 1992, citing, *Luego v. Civil Service Commission*, 143 SCRA 327; *Central Bank v. Civil Service Commission*, 171 SCRA 744; and *Santiago, Jr. v. Civil Service Commission*, 178 SCRA 733).

To state that respondent CSC "did not direct the appointment of a substitute of its choice but merely restored the appointment of private respondent who was first appointed to the contested position" (p. 7. Decision) is misleading and inaccurate. There could have been no "restoration" as private respondent's appointment never attained permanency by reason of the conditions that effectively hindered, it from acquiring that status, namely, the timely protest and the decision by competent authority adversely affecting it. By reason thereof, there was no completed appointment much less any security of tenure to speak of that would have entitled private respondent to the protection of the law against unjust removal (pp. 7-8, Decision).

Upon the foregoing considerations, I vote to grant the Petition. It is petitioner Aquino who should be appointed to the contested position, not private respondent De la Paz, following our consistent pronouncements on the matter, espoused in the strongest terms in some instances, that the CSC exceeds its power when it substitutes its will for that of the appointing authority.

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