

SECRETARY OSCAR ORBOS OF THE DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, PETITIONER, VS. CIVIL SERVICE COMMISSION AND NERIO MADARANG, RESPONDENTS.

G.R. No. 92561. September 12, 1990

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

Once again the extent of the authority of the Civil Service Commission (CSC) to pass upon contested appointments is brought into focus in this petition. The appearance of the Solicitor General on behalf of the petitioner is also questioned.

In the course of the reorganization of the Department of Transportation and Communications (DOTC), Guido C. Agon and Alfonso Magnayon were appointed to the positions of Head Telecommunications Engineer, range 74.

Nerio Madarang who was also appointed to the position of Supervising Telecommunications Engineer, range 12, questioned the appointments of Agon and Magnayon by filing an appeal with the Reorganization Appeals Board of the DOTC composed of Moises S. Tolentino, Jr. of the Office of the Secretary, as Chairman and Assistant Secretary Rosauro V. Sibal and Graciano L. Sitchon of the Office of the Secretary, as members. In a resolution dated January 9, 1989 the said Reorganization Appeals Board dismissed Madarang's appeal for lack of merit. Hence, he appealed to the public respondent Civil Service Commission (CSC).

In its resolution dated August 29, 1989, respondent CSC revoked the appointments of Agon and Magnayon for the contested positions and directed the appointment of Madarang to the said position of Head Telecommunications Engineer.[1] DOTC Assistant Secretary Sibal sought a reconsideration of the said resolution of the CSC but this was denied in a resolution dated November 2, 1989.[2]

On November 21, 1989, Assistant Secretary Sibal filed a manifestation with the CSC stating:

"The Telecommunications Office through the undersigned, hereby manifests that we received the CSC resolution in CSC Case No. 393 on November 12, 1989 and in compliance thereto, we will convene our Selection and Promotion Board to deliberate on the position of Head Telecommunications Engineer (reclassified to Engineer IV pursuant to National Compensation Circular No. 58 effective July 1, 1989) with qualified candidates including appellant Nerio Madarang."[3]

In a letter dated November 27, 1989, respondent Madarang requested the CSC to take appropriate action by implementing its resolutions dated August 29, 1989 and November 2, 1989.

In an order dated December 19, 1989, the CSC directed the immediate implementation of its aforementioned resolution insofar as it concerned the appointment of Madarang.[4]

Agon and Magnayon filed their separate motions for reconsideration of the aforesaid resolutions of the CSC but these were denied by the said commission in a resolution dated January 19, 1990.

Hence, this petition for certiorari with prayer for a writ of preliminary injunction or restraining order which was filed by the Solicitor General in behalf of petitioner. On March 29, 1990, the Court required the respondents to comment on the petition within ten (10) days from notice and issued a restraining order enjoining the CSC from enforcing its questioned resolutions until further orders.

The sole issue in this case is whether or not the CSC acted in excess of its jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction when it ordered the appointment of Nerio Madarang to the contested position.

While petitioner does not question the aforesaid resolutions of the CSC insofar as it disapproved the appointments of Agon and Magnayon to the positions of Head Telecommunications Engineer, petitioner maintains that as the appointing authority, he has the right of choice and discretion to appoint the persons whom he deems fit to the position to be filled.[5] Petitioner emphasizes that when the CSC denied his motion for reconsideration in resolution dated November 2, 1989, Assistant Secretary Sibal informed the CSC through a manifestation that the DOTC Selection and Promotions Board will be convened to deliberate on the position of Head Telecommunications Engineer, taking into consideration qualified candidates including Nerio Madarang. Nevertheless, the CSC stood pat on its resolution directing the appointment of Nerio Madarang to the contested position.

On the other hand, the CSC contends that it was properly exercising a constitutional and legal duty to enforce the merit and fitness principle in the appointment of civil servants and to uphold their equally guaranteed right to be appointed to similar or comparable positions in the reorganized agency consistent with applicable law and issuances of competent authorities.[6]

Invoking the following provisions of the Constitution:

"Section 3 (Article IX [B]). - The Civil Service Commission, as the central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It shall strengthen the merit and reward system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability. It shall submit to the President and the Congress an annual report on its personnel programs." (Emphasis supplied.);

Section 19, Book V of Executive Order No. 292 (The Administrative Code of 1987) which provides:

"Section 19. Recruitment and Selection of Employees - (1) Opportunity for government employment shall be open to all qualified citizens, and positive efforts shall be exerted to attract the best qualified to enter the service. Employees shall be selected on the basis of the fitness to perform the duties and assume the responsibilities of the position.";

and Section 12 of the same Executive Order:

"Section 12. - The Commission shall administer the Civil Service and shall have the following powers and functions:

(a) Administer and enforce the constitutional and statutory provision of the said merit systems..."(Emphasis supplied.)

respondent CSC argues that the primary objective of the CSC system is to promote and establish professionalism by ensuring a high level of morale among the employees and officers in the career civil service. Pursuant to this constitutional mandate, the CSC contends it should see to it that the merit system is applied, enforced and implemented in personnel actions involving appointments affecting all levels and ranks in the civil service at all

times.[7]

The Court finds the petition to be impressed with merit.

Paragraph H, Section 9 of Presidential Decree No. 807, otherwise known as the "Civil Service Decree of the Philippines," provides:

"Section 9. Powers and Function of the Commission. -- The Commission shall administer the Civil Service and shall have the following powers and functions:

x x x x x x x x

"(h) Approve all appointments, whether original or promotional, to positions in the civil service, except those of presidential appointees, members of the Armed Forces of the Philippines, police forces, firemen, and jailguards, and disapprove those where the appointees do not possess the appropriate eligibility or required qualifications. An appointment shall take effect immediately upon issue by the appointing authority if the appointee assumes his duties immediately and shall remain effective until it is disapproved by the Commission, if this should take place, without prejudice to the liability of the appointing authority for appointments issued in violation of existing laws or rules: Provided, finally, That the Commission shall keep a record of appointments of all officers and employees in the civil service. All appointments requiring the approval of the Commission as herein provided, shall be submitted to it by the appointing authority within thirty days from issuance, otherwise the appointment becomes ineffective thirty days thereafter." (Emphasis supplied.)

From the foregoing provision it is clear that the CSC has the power to approve or disapprove an appointment and not the power to make the appointment itself or to direct that such appointment be made by the appointing authority. The CSC can only inquire into the eligibility of the person chosen to fill a vacant position and if it finds the person qualified it must so attest. The duty of the CSC is to attest appointments.[8] That function being discharged, its participation in the appointment process ceases.[9]

By the same token, should the CSC find that the appointee is not qualified for the position, it has the duty to disapprove the appointment. Thereafter, the responsibility of appointing the qualified person in lieu of the disqualified appointee rests upon the discretion of the appointing authority. The CSC cannot encroach upon such discretion vested solely in the appointing authority.

This Court has pronounced in no uncertain terms that the CSC has no authority to revoke an appointment on the ground that another person is more qualified for a particular position. The Court likewise held that the CSC does not have the authority to direct the appointment of a substitute of its choice.[10]

Petitioner demonstrated his deference to the resolutions of the CSC disapproving the appointments of Agon and Magnayon. However, in the implementation of said resolutions he decided to convene the DOTC Selection and Promotions Board to deliberate on the person who should be appointed as Head Telecommunications Engineer among qualified candidates including respondent Nerio Madarang. Instead of acknowledging the authority of petitioner to exercise its discretion in the appointment of a replacement, the CSC, in excess of its jurisdiction and with grave abuse of discretion amounting to lack of jurisdiction, directed the appointment of Madarang as the substitute of its choice. This act of the CSC must be struck down.

Private respondent Madarang, besides his comment, filed a motion to disqualify the Office of the Solicitor General from appearing for petitioner and to cite petitioner in contempt of court for the filing of the petition.

The Solicitor General is the lawyer of the government, its agencies and instrumentalities, and its officials or agents including petitioner and public respondent. This is so provided under Presidential Decree No. 478:

"SECTION 1. Functions and Organization.- (1) The Office of the Solicitor General shall represent the

Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. xxx." (Emphasis supplied.)^{10-A}

In the discharge of this task the Solicitor General must see to it that the best interest of the government is upheld within the limits set by law. When confronted with a situation where one government office takes an adverse position against another government agency, as in this case, the Solicitor General should not refrain from performing his duty as the lawyer of the government. It is incumbent upon him to present to the court what he considers would legally uphold the best interest of the government although it may run counter to a client's position.¹¹ In such an instance the government office adversely affected by the position taken by the Solicitor General, if it still believes in the merit of its case, may appear in its own behalf through its legal personnel or representative.

In the present case, it appears that after the Solicitor General studied the issues he found merit in the cause of the petitioner based on the applicable law and jurisprudence. Thus, it is his duty to represent the petitioner as he did by filing this petition. He cannot be disqualified from appearing for the petitioner even if in so doing his representation runs against the interests of the CSC.

This is not the first time that the Office of the Solicitor General has taken a position adverse to his clients like the CSC, the National Labor Relations Commission, among others, and even the People of the Philippines. In such instances, the Solicitor General nevertheless manifests his opinion and recommendation to the Court which is an invaluable aid in the disposition of the case. On some occasions he begs leave to be excused from intervening in the case, more so, when the client had already filed its own comment different from the stand of the Solicitor General or in a situation when he finds the contention of a private party tenable as against that of the government or any of its agencies. The Solicitor General has recommended the acquittal of the accused in appealed criminal cases.

There are cases where a government agency declines the services of the Solicitor General or otherwise fails or refuses to forward the papers of the case to him for appropriate action. The Court finds and so holds that this practice should be stopped. To repeat, the Solicitor General is the lawyer of the government, any of its agents and officials in any litigation, proceeding, investigation or matter requiring the services of a lawyer. The exception is when such officials or agents are being charged criminally or are being civilly sued for damages arising from a felony.¹² His services cannot be lightly rejected, much less ignored by the office or officials concerned.

Indeed, the assistance of the Solicitor General should be welcomed by the parties. He should be given full support and cooperation by any agency or official involved in litigation. He should be enabled to faithfully discharge his duties and responsibilities as the government advocate. And he should do no less for his clients. His burden assisting in the fair and just administration of justice is clear.

This Court does not expect the Solicitor General to waver in the performance of his duty. As a matter of fact, the Court appreciates the participation of the Solicitor General in many proceedings and his continued fealty to his assigned task. He should not therefore desist from appearing before this Court even in those cases he finds his opinion inconsistent with the government or any of its agents he is expected to represent. The Court must be advised of his position just as well.

Private respondent Madarang also seeks to hold petitioner in contempt of court on the ground that the petition was filed in order to circumvent or obviate the dismissal of a similar petition in this Court filed by Guido Agon and Alfonso Magnayon. The legal personality of the petitioner to file the petition is also questioned on the ground it was Assistant Secretary Sibal and not the petitioner who issued the contested appointments.

The petitioner denies this contention. He asserts that the petition was properly brought in his name as head of the

DOTC as what is in issue is the reorganization of the said department. The petitioner does not dispute the disapproval of the appointments of Agon and Magnayon; he only disagrees with the order of the CSC directing the appointment of Madarang to the contested position. The petitioner also alleges that he was not aware of the existence of a separate petition filed in this Court by Agon and Magnayon.

The Court finds the arguments and assertions of petitioner to be well taken.

It is true that the records of this Court show that there is such a case docketed as G.R. No. 92064 entitled "Guido Agon, et al., vs. CSC, et al." which is a special civil action for certiorari with a prayer for a writ of preliminary injunction. The petition was dismissed for late filing in a resolution dated February 27, 1990.

On March 29, 1990 this Court denied with finality the motion for reconsideration filed by the said petitioners there being no compelling reason to warrant the reversal of the questioned resolution.

Apparently, the disapproval of the appointments of Agon and Magnayon was the issue in said petition. In the present petition as aforesaid, petitioner yields to the disapproval of the appointment of the two, but questions the authority of the CSC to direct the appointment of Madarang to the contested position.

WHEREFORE, the petition is GRANTED and the questioned resolutions of the respondent CSC dated August 29, 1989, November 2, 1989 and January 19, 1990 are hereby annulled insofar as they direct the appointment of Nerio Madarang to the contested position. The petitioner is hereby authorized to convene the DOTC Selection and Promotion Board to determine who shall replace Guido Agon and Alfonso Magnayon to the contested position by considering all qualified candidates including Nerio Madarang. The restraining order dated March 29, 1990 is hereby made permanent. No costs.

SO ORDERED.

Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

Fernan, C.J., on leave.

[1] Annex A, Petition.

[2] Annex B, Petition.

[3] Annex F, Petition, pages 5 to 6, Rollo.

[4] Annex G, Petition.

[5] Citing *Oliveros Torres vs. Bayot*, 58 SCRA 272 (1974) and *Pamantasan ng Lungsod ng Maynila vs. Intermediate Appellate Court*, 140 SCRA 22 (1985).

[6] Citing the Reorganization Law, Republic Act 6656, otherwise known as "An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization," various executive orders of the Office of the President and CSC memorandum circular No. 10, series of 1986, all governing the proper implementation of government reorganization and other related matters.

[7] Citing *Samson vs. Court of Appeals*, 145 SCRA 654 (1986) and *Luego vs. Civil Service Commission*, 143 SCRA 327 (1986).

[8] *Villanueva vs. Balallo*, 9 SCRA 407 (1963).

[9] Villegas vs. Subido, 30 SCRA 498 (1969).

[10] Luego vs. Civil Service Commission, *supra*; and Central Bank vs. Civil Service Commission, 171 SCRA 744 (1989).

10-A See also Section 35, Chapter 12 of Executive Order No. 292 instituting the "Administrative Code of 1987" which contains a similar provision.

11 Ramos vs. Patricia Sto. Tomas, et al., G.R. No. 83067, March 22, 1990; and Tan, Jr. vs. Gallardo, 73 SCRA 306 (1976).

12 Urbano vs. Chavez and Co vs. RTC, Pasig, G.R. Nos. 87977 and 88578, March 19, 1990.

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