

ALEX A. ABILA, PETITIONER, VS. CIVIL SERVICE COMMISSION AND FLORENTINA E. ELERIA, RESPONDENTS.*G.R. No. 92573. June 03, 1991*

Ponente: FELICIANO, J.

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On 1 September 1987, Amado Villafuerte retired from his position as Administrative Officer IV in the Health Department of the City Government of Quezon City. Then Quezon City Officer-in-Charge Brigido Simon, Jr. appointed petitioner Alex Abila as Villafuerte's successor. Petitioner Abila who had theretofore been the Acting Assistant Civil Security Officer, Civil Intelligence and Security Department of the Quezon City Government, assumed the Administrative Officer IV position on 2 December 1987.

A day earlier, private respondent Florentina Eleria, Administrative Officer III of the Health Department, Quezon City Government, filed a protest with the Merit System Protection Board ("Board") in respect of Abila's appointment. The Board indorsed the protest to the new Quezon City Officer-in-Charge, Reynaldo Bernardo, who rendered a decision dismissing the protest.

Private respondent Eleria appealed to the Board. On 27 October 1988, the Board promulgated a decision revoking petitioner Abila's appointment and directing the Quezon City Officer-in-Charge or Mayor to appoint private respondent Eleria in lieu of petitioner Abila. The Board found that both petitioner Abila and private respondent Eleria met the minimum eligibility and education requirements for Administrative Officer IV, but ruled that respondent Eleria had the edge in terms of rank and experience as an Administrative Officer. The Board also held that respondent Eleria was holding a position next in rank to that of the vacancy, which circumstance, according to the Board, under Section 4 of the Civil Service Commission Resolution No. 83-343, gave her "promotional priority" over petitioner.

Petitioner Abila appealed to the Civil Service Commission ("Commission"). The Commission affirmed in toto the Board's decision and resolution dated 21 November 1989. Petitioner moved for reconsideration, without success.

Petitioner is now before this Court on certiorari. He contends that the respondent Commission, having verified that both petitioner and private respondent were legally qualified to fill the vacancy, should not have proceeded to comparing the parties' qualifications and choosing the person that it believed to be the appropriate appointee. Those functions, petitioner urges, belong to the City Mayor as part of his appointing power and cannot be appropriated for itself by the respondent Commission.

In a Resolution dated 19 April 1990, the Court granted a temporary restraining order enjoining respondent Commission from implementing its resolutions.

The Quezon City Government, represented by its elected Mayor, Brigido Simon, Jr., filed an identical Petition with this Court, docketed as G.R. No. 92867, seeking annulment of respondent Commission's resolution and upholding the validity of the appointment of petitioner Abila on substantially the same grounds pleaded by the

latter.

In a Resolution dated 26 July 1990, the Court ordered consolidation of the two (2) cases for their more convenient disposition.

The recurring issue posed in this case is whether the respondent Commission has authority to substitute its own judgment for that of the official authorized by law to make an appointment to the government service, in the matter of weighing an appointee's qualifications and fitness for a position, after it has been shown that the appointee possesses the minimum qualifications prescribed for the position.

In a long line of cases,[1] the Court has held that respondent Commission has no such authority, the power of appointment, which is essentially discretionary, being vested by law in the head of the office concerned. The head of the office is the person on the spot. He occupies the ideal vantage point from which to identify and designate the individual who can best fill the post and discharge its functions in the government agency he heads. The choice of an appointee from among those who possess the required qualifications is a political and administrative decision calling for considerations of wisdom, convenience, utility and the interests of service which can best be made by the head of the office concerned, the person most familiar with the organizational structure and environmental circumstances within which the appointee must function.

In *Lapinid v. Civil Service Commission* (supra), the Court through Mr. Justice Cruz, stressed:

"We declare once again, and let us hope for the last time, that the Civil Service Commission has no power of appointment except over its own personnel. Neither does it have the authority to review the appointments made by other offices except only to ascertain if the appointee possesses the required qualifications. The determination of who among aspirants with the minimum statutory qualifications should be preferred belongs to the appointing authority and not the Civil Service Commission. It cannot disallow an appointment because it believes another person is better qualified and much less can it direct the appointment of its own choice.

Appointment is a highly discretionary act that even this Court cannot compel. While the act of appointment may in proper cases be the subject of mandamus, the selection itself of the appointee -- taking into account the totality of his qualifications, including those abstract qualities that define his personality -- is the prerogative of the appointing authority. This is a matter addressed only to the discretion of the appointing authority. It is a political question that the Civil Service Commission has no power to review under the Constitution and the applicable laws." [2]

The Commission, the Court said in *Chang v. Civil Service Commission*, [3] "is not a co-manager or surrogate administrator of government offices and agencies."

In the case at bar, the respondent Commission itself acknowledged that both petitioner Abila and respondent Eleria are legally qualified for the position in question. [4] Having made the determination, the Commission had exhausted its powers and may not act any further except to affirm the validity of petitioner's appointment. More specifically, the Commission had no authority to revoke petitioner's appointment because the Commission believed that private respondent Eleria was better qualified for the position involved; the Commission's acts in this respect constituted an encroachment upon a discretionary authority vested by law in the Quezon City Mayor and not in the Commission.

The Court notes that a vacant position in the Civil Service may be filled by promotion, transfer of present employees, reinstatement and re-employment or appointment of outsiders who have the necessary eligibility. [5] The next-in-rank rule invoked by respondent Commission to justify its choice of respondent Eleria over petitioner Abila, applies only where a vacancy is filled by promotion, a process which denotes a scalar ascent of an officer to another position higher either in rank or salary. A promotion involves a situation quite different from the

situation in the case at bar where the appointment of petitioner Abila was effected through lateral transfer from a position in one department of the city government to a position of greater responsibility in another department of the same government.[6] In *Medenilla v. Civil Service Commission*,^[7] the Court very recently stressed that:

"x x x We have already held in cases subsequent to *Millares* that the next-in-rank rule is not absolute; it only applies in cases of promotion (see *Pineda v. Claudio*, 28 SCRA 34 [1969]). And even in promotions, it can be disregarded for sound reasons made known to the next-in-rank. The appointing authority, under the Civil Service Law, is allowed to fill vacancies by promotion, transfer of present employees, reinstatement, reemployment, and appointment of outsiders who have appropriate civil service eligibility, not necessarily in that order (see *Pineda v. Claudio*, supra; *Luego v. Civil Service Commission*, 143 SCRA 327 [1986]). There is no legal fiat that a vacancy must be filled only by promotion; the appointing authority is given wide discretion to fill a vacancy from among the several alternatives provided for by law." (Underscoring supplied)

The Court further notes that even if the vacancy here had been filled by promotion rather than by lateral transfer, the concept of "next in rank" does not import any mandatory or peremptory requirement that the person next in rank must be appointed to the vacancy. What Section 19 (3) of P.D. No. 807, the Civil Service Law, provides is that if a vacancy is filled by a promotion, the person holding the position next in rank thereto "shall be considered for promotion."^[8]

In *Taduran v. Civil Service Commission*,^[9] the Court construed that phrase to mean that the person next in rank "would be among the first to be considered for the vacancy, if qualified."^[10] In *Santiago, Jr. v. Civil Service Commission*,^[11] the Court elaborated the import of the rule in the following manner:

"One who is next-in-rank is entitled to preferential consideration for promotion to the higher vacancy but it does not necessarily follow that he and no one else can be appointed. The rule neither grants a vested right to the holder nor imposes a ministerial duty on the appointing authority to promote such person to the next higher position. x x x"^[12]

It appears to the Court that Section 4 of respondent Commission's Resolution No. 83-343 which provided that:

"Rule on Promotion

x x x x x x x x

Section 4. An employee who holds a next in rank position who is competent and qualified, possesses an appropriate civil service eligibility and meets the other conditions for promotion shall be promoted to the higher position, when it becomes vacant." (Underscoring supplied)

has been superseded by Section 2 of Rule 3 of the respondent Commission's subsequent Resolution No. 89-779 which reads as follows:

"B. Rules on Protest Cases

x x x x x x x x

Rule III. Procedure in Filling Vacancies

x x x x x x x x

Section 2. Positions in the Second Level. -- When a vacancy occurs in the second level of the career service as herein defined, the employees in the department who occupy the next lower positions in the occupational group under which the vacant position is classified, and in other functionally related occupational groups, who are competent and qualified and with appropriate civil service eligibility shall be considered for appointment to the vacancy." (Underscoring supplied)

When, in the exercise of its rule-making power, it promulgated Section 4 of its earlier Resolution No. 83-343, the Commission clearly exceeded the scope of its statutory authority since the Civil Service law itself, in Section 19 (3) of P.D. No. 807, had simply provided that persons next in rank who are qualified "shall be considered for promotion." The current regulation found in Section 2 of Rule III of the Commission's Resolution No. 89-779 is, fortunately, more consistent with the Commission's enabling statute.

Finally, respondent Commission will find no comfort in *Meram v. Edralin*[13] which it cites. In that case, the Court affirmed the appointment of the next in rank "because the original appointee's appointment was made in consideration of the political, ethnic, religious or blood ties totally against the very purpose behind the establishment of professionalism in the civil service." [14] In the case at bar, respondents have not asserted the existence of any circumstances, such as those in *Meram*, which would have warranted intervention by the Commission to correct an arbitrary and merely capricious exercise of power by the appointing authority.

ACCORDINGLY, the Court Resolved to TREAT respondents' Comments as their Answers to GRANT due course to the Petition for Certiorari and to ANNUL and SET ASIDE the Resolutions of the respondent Civil Service Commission Nos. 89-869 (21 November 1989) and 90-240 (5 March 1990), respectively. The Temporary Restraining Order dated 19 April 1990 is hereby MADE PERMANENT.

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

[1] The Court, in *Lapinid v. Civil Service Commission, et al.*, G.R. No. 96298, 14 May 1991, collected most of these cases. Additional cases include: *Cortez v. Civil Service Commission, et al.*, G.R. No. 92673, 13 March 1991; *Lopez v. Civil Service Commission*, G.R. No. 92140, 19 February 1991, p. 9; G.R. No. 94465, 27 November 1990, p. 2; *Chang v. Civil Service Commission, et al.*, G.R. No. 86791, 26 November 1990, p. 5; *Pamantasan ng Lungsod ng Maynila v. Intermediate Appellate Court, et al.*, 140 SCRA 32, 35 (1985); *Ocampo v. Subido*, 72 SCRA 443, 451 (1976); *Torres v. Borja*, 56 SCRA 47, 55 (1974); *Reyes v. Abeleda*, 22 SCRA 825, 830 (1968).

[2] Because the precipitating events in the case at bar occurred before the promulgation of *Lapinid*, the Court refrains from taking any action against respondent Commission.

[3] G.R. No. 86791, 26 November 1990, p. 5.

[4] Rollo of G.R. No. 92573, p. 26.

[5] Section 19 (5), P.D. No. 807. See also *Luego v. Civil Service Commission*, 143 SCRA 327, 333 (1986); *Patagoc v. Civil Service Commission*, G.R. No. 90229, 14 May 1990, p. 5.

[6] *Pineda v. Claudio*, 28 SCRA 34, 48 (1969).

[7] G.R. No. 93868, 19 February 1991.

[8] The applicable provision reads:

"No. 1-Article VIII.

Personnel Policies and Standards

x x x x x x x x

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

x x x x x 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." (Underscoring supplied)

[9] 131 SCRA 66 (1984).

[10] 131 SCRA at 69.

[11] 178 SCRA 733 (1989).

[12] 178 SCRA at 736.

[13] 154 SCRA 238 (1987).

[14] 154 SCRA at 248-249.

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