

**HON. MITA PARDO DE TAVERA, IN HER CAPACITY AS CHAIRMAN,
BOARD OF COMMISSIONERS, POPULATION COMMISSION OF THE
PHILIPPINES, PETITIONER, VS. CIVIL SERVICE COMMISSION AND
FELIX SEVI...***G.R. No. 92595. May 28, 1992*

Ponente: NARVASA, J.

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Assailed in this petition for certiorari is the resolution dated October 20, 1989 of the respondent Civil Service Commission (CSC) ordering petitioner to reinstate private respondent Felix Sevidal to the renamed position of Regional Director in the Population Commission (POPCOM) without loss of seniority rights and without prejudice to the recovery of back salary from the time of unlawful separation until reinstatement; reconsideration of which was denied in a subsequent resolution dated February 28, 1990.

Section 21 of Executive Order No. 123 promulgated on January 30, 1987 authorized the reorganization of the governing body and secretariat of the POPCOM as an agency attached to the Department of Social Welfare and Development (DSWD). Pursuant thereto, a new plantilla and staffing pattern was drawn up and an "Organization, Staffing and Classification Action Summary" (OSCAS) based thereon was prepared. The position of Population Programs Coordinator was upgraded to Regional Director for which, among others, an educational attainment of Bachelor's Degree in Health, Social/Behavioral Sciences or other relevant courses was prescribed.

After a review of the qualifications and performance of the incumbent POPCOM staff, petitioner as Chairman of the POPCOM Board of Commissioners notified private respondent Felix Sevidal, then Population Programs Coordinator, in a Memorandum dated December 28, 1987, that he "was not being considered for reappointment under the approved Organization, Staffing and Classification Action Summary (OSCAS) by the Board of Commissioners." [1] Appointed in his stead was Placido N. Triste who holds a Bachelor's degree in Philosophy and a Master's degree in Public Management.

Private respondent forthwith resorted to the CSC by joining the appeal of Gualberto R. Amable, Jr., another Population Programs Coordinator who was not re-appointed as Regional Director.

In a resolution dated February 24, 1989, the CSC directed the POPCOM Placement Committee to "evaluate the candidates for said position on the basis of standards for retention/termination enumerated under MC #10, s. 1986, within fifteen (15) days from date of receipt of this resolution." [2] Sevidal moved for a reconsideration of said resolution. The POPCOM complied therewith and submitted a report finding that the appointees [3] had a decided advantage over therein appellants Sevidal and Amable in terms of education, training, experience and outstanding accomplishments as well as perceived moral fitness to hold public office. [4]

On October 20, 1989, the CSC ruled favorably on private respondent's motion for reconsideration.

Finding that he had never been found guilty of any offense, the CSC concluded that Sevidal's separation from the

service was without legal basis. Thus, the directive, subject of this petition.[5]

Her motion for reconsideration having been denied by the CSC, as already stated, in its resolution dated February 28, 1990, petitioner took the present recourse setting forth the following justifications for the allowance of the writ:[6]

The CSC gravely abused its discretion when it required the appointment of petitioner who was not qualified for the position. The CSC also acted contrary to the Constitution, pertinent laws, and decisions of this Honorable Court by refusing to consider uncontroverted facts showing that private respondent is not fit to continue in the service.

The petition is meritorious and will be granted. The respondent Civil Service Commission did act with grave abuse of discretion in directing the appointment of private respondent to the position of Regional Director notwithstanding the fact that he clearly lacked the requisite educational qualification and that record of his public service raises serious questions about his moral fitness to remain in office.

Consistent with the elevation of the position of Population Programs Coordinator to Regional Director in the new plantilla and staffing pattern of the POPCOM, the educational qualification standard for the upgraded position was changed so as to require the holder or appointee to have a Bachelor's Degree in Health, Social or Behavioral Sciences or other courses relevant to the position. Private respondent being only a third year college student, it is plain to see that he does not meet the minimum academic qualification for the position of Regional Director. For the respondent Civil Service Commission then to direct that private respondent be appointed to a position for which he does not possess the required educational qualifications is grave abuse of discretion amounting to lack of jurisdiction, being at cross-purposes with its (CSC's) bounden duty to ensure that only the qualified are admitted to the public service, hence to "disapprove those (appointments) whose appointees do not possess the appropriate eligibility or required qualifications." [7]

Such grave abuse of discretion is compounded by the public respondent's equally indefensible dismissal of private respondent's derogatory record as of little moment, simply because he had not been convicted of any of the charges detailed in said record, as follows:[8]

1. In September 1975, private respondent was among the thirty (30) employees of POPCOM who were considered misfits, undesirable and were thus dismissed from the service. Private respondent was then senior executive assistant II in the Office of the POPCOM Executive Director. He was dismissed for forging the signature of the POPCOM Executive Director. For unknown reasons, private respondent was reinstated ahead of the others.

2. On May 28, 1987, charges for dishonesty were filed against private respondent on the basis of the findings of the National Bureau of Investigation (NBI) which recommended the criminal and administrative prosecution of private respondent. The NBI conducted investigation on the non-completion and non-existence of projects and loss of construction materials.

It was found by NBI agents that private respondent allowed the use of eleven (11) bags of cement by a private person, when said construction material was intended for construction and completion of the authorized driveway and guardhouse of the POPCOM regional office in Cebu. The NBI recommended the filing of (a) charges for technical malversation with the Tanodbayan; (b) administrative charges against private respondent. The administrative case had to be dismissed not on the merits but due to the repeated failure of the complainant Salvador P. Malto, who subsequently resigned from the POPCOM, and the NBI agents to appear in the proceedings.

3. In another administrative charge, private respondent was charged with conduct prejudicial to the service by charging against official funds his private telephone calls from the POPCOM Cebu Regional Office to his

residence. He was directed to reimburse POPCOM the total amount of P1,575.25 for the telephone bills, which private respondent has refused to do up to the present.

It further appears that:[9]

3.1 In his capacity as the head of a regional office, Mr. Sevidal was directly involved in pernicious exchanges of formal charges and counter-charges with his administrative Officer I, causing dissension and general demoralization among the staff in said office. Many of them were dragged into the cases and had somehow to take sides, thereby fomenting antagonism even among themselves. The situation has escalated to such an extent that management had to reassign Mr. Sevidal to RPO XI and the other to the Central Office. It is not difficult to approximate the damage this has caused the Program in that region and also to the image of the Commission itself. It is enough to state that up to now, long after both protagonists left the region, negative effects are still being perceived.

As aptly contended by petitioner:

x x x It is true that Mr. Sevidal had never been convicted of a grave offense (the penalty for the first infraction of which has even been raised to that of dismissal under CSC Memorandum Circular No. 30, s. 1989). Just the same, what we are maintaining most respectfully is that non-conviction any charge, alone, does not absolutely exempt anybody from being morally unfit or notoriously undesirable, especially through other perceived actions over a period of time but for which they were not formally called upon to answer. Not if one's official actuations have consistently been found to be wanting and dysfunctional aside from serving to foment an organizational atmosphere that only stifles the morale and performance of his subordinates. This was precisely what happened to the case of Mr. Sevidal. His numerous administrative cases merely serve to confirm it -- not on the innate merit of each part but the collective impact of the whole.[10]

Parenthetically, Executive Order No. 17 effective May 28, 1986 cites as a valid cause for separation or replacement of a public officer or employee "the existence of a probable cause for violation of the Anti-Graft and Corrupt Practices Act as determined by the Ministry Head concerned[11] or "any analogous ground showing that the incumbent is unfit to remain in the service or his separation/replacement is in the interest of the service." [12]

WHEREFORE, the petition is GRANTED. The assailed resolutions of respondent Civil Service Commission dated October 20, 1989 and February 28, 1990 are annulled and set aside. Costs against private respondent.

SO ORDERED.

Gutierrez, Jr., Cruz, Paras, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., Romero, Nocon, and Bellosillo, JJ., concur.

Melencio-Herrera, J., (Retired, May 11, 1992)

[1] Annex "D", Petition, p. 44, Rollo

[2] Annex "A", Petition, p. 77, Rollo

[3] Placido N. Triste vice herein private respondent. Felix Sevidal and Ignacio Ll. Arat vice Gualberto Amable, Jr.

[4] Annex "1", Comment of Private Respondent, pp. 107-110, Rollo

[5] Similar dispositions were made by the Commission as regards Amables, which on appeal by the Population Commission Chairman (G.R. No. 95915) were reversed by this Court in a Decision promulgated on Aug. 16, 1991 (reconsideration denied by RES, Oct. 24, 1991)

[6] p. 6, Petition, p.17, Rollo

[7] Section 9 (h), P.D. No. 807

[8] pp. 19-22, Petition, pp. 30-33, Rollo

[9] Communication of petitioner Secretary Mita Pardo de Tavera dated April 6, 1989 addressed to CSC Chairman Sto. Tomas, Annex "1", Comment of Private Respondent, p. 109, Rollo

[10] Communication dated November 10, 1989 of public respondent to CSC Commissioner Patricia A. Sto. Tomas, Rollo, p. 116

[11] Section 3, par. 2, E.O. No. 17, underscoring supply

[12] Section 3, par. 5, Ibid

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