

AGUSTINA G. GAYATAO, PETITIONER, VS. CIVIL SERVICE COMMISSION AND BAYANI I. FERNANDEZ, RESPONDENTS.*G.R. No. 93064. June 22, 1992*

Ponente: REGALADO, J.

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This special civil action for certiorari impugns the resolution promulgated on October 5, 1989 in CSC Case No. 418 of respondent Civil Service Commission revoking the appointment of petitioner as Customs Operations Chief of the Export Division at the Ninoy Aquino International Airport and directing the Commissioner of Customs to appoint private respondent in her stead, as well as its resolution of April 10, 1990 denying petitioner's motion for reconsideration.

Private respondent Bayani I Fernandez was holding the position of Customs Operations Chief I (COC) in the Bureau of Customs since March 5, 1984 in a permanent capacity.[1] He was assigned to the Aircraft Operations Division. On October 15, 1987, per Customs Personnel Order (CPO) No. C-152-87 issued by Commissioner Salvador M. Mison, he was reassigned as Acting Chief of the Export Division at the Ninoy Aquino International Airport (NAIA) Customhouse.[2]

On February 15, 1988, Commissioner Mison, purportedly acting pursuant to Executive Order No. 127 implementing the reorganization of the Department of Finance-Bureau of Customs, appointed petitioner Agustina G. Gayatao, then a Supervising Customs Trade Examiner, to the position of Customs Operations Chief at the NAIA Customhouse, effective March 1, 1988.[3] Thereafter, in CPO No. B-27-88 dated March 3, 1988, petitioner was designated as COC of the Export Division at NAIA, while private respondent was designated as Customs Operations Assistant Chief (COAC) of the Aircraft Operations Division, both designations being effective March 1, 1988.[4]

Aggrieved by the actions of said commissioner, private respondent filed a letter of protest on May 18, 1988 before the Merit System Protection Board of respondent Civil Service Commission (CSC) questioning the appointment of petitioner as COC and his demotion to the position of COAC. In assailing the action of the appointing authority, private respondent alleged in substance that (1) he was unjustifiably demoted since he had been holding the contested position prior to the reorganization; and (2) he is more qualified than herein petitioner.[5]

Commenting thereon in an undated 4th Indorsement, the Commissioner of Customs alleged that the aforestated appointment of petitioner is "non-protestable, it having been done pursuant to Executive Order No. 127, x x x." [6]

On October 5, 1989, respondent commission promulgated the challenged resolution mentioned at the start of this opinion, with the following dispositive portion:

"WHEREFORE, premises considered, the appoint-ment of appellee Atty. Gayatao as Customs Operations Chief is hereby revoked. Accordingly, the Commissioner, Bureau of Customs is hereby directed to appoint appellant Fernandez in her stead." [7]

On October 30, 1987, petitioner filed a request for reconsideration of the questioned resolution,[8] but the same was denied by the CSC in its resolution dated April 10, 1990.[9] Disagreeing with the aforementioned resolutions, petitioner filed the instant petition for certiorari with prayer for preliminary injunction.

Public respondent CSC filed its comment to the petition on August 27, 1990[10] while private respondent Fernandez did likewise on August 23, 1990.[11] After some preliminary pleadings and exchanges, on September 25, 1990 the Solicitor General filed a manifestation in lieu of comment, recommending the grant of the petition and the annulment of the questioned resolutions of public respondent.

In our resolution of November 6, 1990,[12] we required respondent CSC to comment on the manifestation in lieu of comment filed by the Solicitor General, which it did on October 15, 1991[13] and subsequently amplified on October 18, 1991 with a supplemental comment.[14]

On November 12, 1991, we resolved to give due course to the petition, with the parties filing their respective memoranda,[15] the last of which was filed by the Solicitor General on February 12, 1992.

The focal issue raised for resolution in this petition is whether respondent commission committed grave abuse of discretion in revoking the appointment of petitioner and ordering the appointment of private respondent in her place.

Petitioner takes the position that public respondent has no authority to revoke her appointment on the ground that another person is more qualified, for that would constitute an encroachment on the discretion vested solely in the appointing authority. In support of said contention, petitioner cites the case of *Central Bank of the Philippines, et al. vs. Civil Service Commission, et al.*[16] where we ruled that under the Civil Service Decree (Presidential Decree No. 807), the authority of the CSC is limited to approving or renewing an appointment in the light of the requisites of the law governing the civil service. The CSC has no authority to revoke an appointment on the ground that another person is more qualified for a particular position. It will be in excess of its power if it substitutes its will for that of the appointing authority. The CSC, not being the "appointing power" in contemplation of law, cannot direct the appointment of a substitute of its choice.

We have no quarrel with the validity of the aforesaid doctrines but we cannot sustain petitioner's theory and submissions in this case premised on said doctrinal rules.

The doctrine laid down in the cited case finds no determinant application in the case at bar. A reading of the questioned resolution of respondent commission readily shows that the revocation of the appointment of petitioner was based primarily on its finding that the said appointment was null and void by reason of the fact that it resulted in the demotion of private respondent without lawful cause in violation of the latter's security of tenure. The advertence of the CSC to the fact that private respondent is better qualified than petitioner was merely to lend further support to its stand that the removal of private respondent was unlawful and tainted with bad faith and that his reinstatement to his former position is imperative and justified.

We quote the pertinent portion of said resolution:

"After - a careful perusal of the records of the case, the Commission finds the appeal meritorious. Records will show that prior to the reorganization, appellant was already holding the position of Customs Operations Chief I since March 1984. His reappointment to the position of Customs Operation Assistant Chief is therefore a clear demotion of rank and position. The Commission finds no sufficient justifiable reason for this demotion. The appointing authority cannot entirely disregard the rule on equity of the incumbent and justify demotion in the guise of reorganization, if such demotion will amount to a penalty without justifiable ground or will result in deprivation of due process on the part of the employee concerned. Although the appointing authority is afforded wide latitude in the selection and appointment of employee(s), such exercise is however not absolute.

The Supreme Court in the case of *GSIS vs. Ayroso* (96 SCRA 213), ruled:

'While it has been held that the right to select and appoint employees is the prerogative of the employer, this may be availed of without liability, provided this is exercised, in the words of Justice Juvenal K. Guerrero, in good faith for the advancement of the employer's interest, and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements, and provided further that such prerogative(s) are not exercised in a malicious, harsh, oppressive, vindictive or wanton manner, or out of malice or spite.'

"Finally, records will further show that appellant is more qualified than appellee because aside from being the incumbent Customs Operations Chief prior to the reorganization, he was an Assistant Customs Operations Chief since 1977. His experience in the area of Customs Operations are more than sufficient to qualify him for reappointment to the contested position." [17]

Clearly, therefore, in the said resolution the CSC is not actually directing the appointment of private respondent but simply ordering his reinstatement to the contested position being the first appointee thereto. Further, private respondent was already holding said position when he was unlawfully demoted. The CSC, after finding that the demotion was patently illegal, is merely restoring private respondent to his former position, just as it must restore other employees similarly affected to their positions before the reorganization. [18]

It is within the power of public respondent to order the reinstatement of government employees who have been unlawfully dismissed. The CSC, as the central personnel agency, has the obligation to implement and safeguard the constitutional provisions on security of tenure and due process. In the present case, the issuance by the CSC of the questioned resolutions, for the reasons clearly explained therein, is undubitably in the performance of its constitutional task of protecting and strengthening the civil service.

In the recent case of *Aquino vs. Civil Service Commission, et al.*, [19] wherein similar issues were raised, it was ruled that:

"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 CSC 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 CSC 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. 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."

We find no reason to disturb the findings and conclusions of the CSC that respondent Bayani I. Fernandez was illegally demoted. As earlier noted, private respondent was holding the position of Customs Operations Chief in a permanent capacity since 1984. His non-reappointment to that position amounts to a removal without cause from an office which has not been abolished nor reorganized.

As we stressed in *Dario vs. Mison, et al.*, and its companion cases, [20] removal from office as a result of reorganization must pass the test of good faith. Upon the effectivity of the 1987 Constitution, any reorganization undertaken by the Government must be guided and circumscribed by the safeguards and provisions of the said Constitution and the statutes governing reorganization. [21]

In the instant case, the guidelines and standards provided in those laws were not observed. The position of private respondent as COC of the Export Division was not abolished with the reorganization of the Bureau of Customs.

What happened was that another person, herein petitioner who is lower in rank, was appointed in his stead. Such fact is a clear indication of bad faith which would entitle herein private respondent to reinstatement pursuant to Section 9 of Republic Act No. 6656.[22]

As a civil service employee with a permanent appointment, private respondent cannot be removed, suspended or demoted except for cause provided by law. Private respondent's appointment to the lower position of COAC is a clear demotion in rank without a valid cause and without being heard thereon. A demotion in office by assigning an employee to a lower position in the same service is tantamount to removal, if no cause is shown for it, more so, if it is not part of any disciplinary action.[23] The observance of the rules on bona fide abolition of public office is essential before terminations and/or demotions from employment in the government service can be made.[24]

The argument of petitioner that the questioned resolution of respondent CSC will have the effect of her dismissal without cause from government service, since she is already an appointee to the position which private respondent claims, is devoid of legal support and logical basis.

In the first place, petitioner cannot claim any right to the contested position. No vacancy having legally been created by the illegal dismissal, no appointment may be validly made to that position and the new appointee has no right whatsoever to that office. She should be returned to where she came from or be given another equivalent item.[25] No person, no matter how qualified and eligible for a certain position, may be appointed to an office which is not yet vacant. The incumbent must have been lawfully removed or his appointment validly terminated,[26] since an appointment to an office which is not vacant is null and void ab initio.[27]

The present Constitution does not provide for automatic vacancies; removals "not for cause" contemplated in Section 16, Article XVIII thereof must be those resulting from reorganization and which, to repeat, must pass the test of good faith.[28]

We reiterate what we said in the above-cited case of Floreza:

"We apply the ruling in *Dario vs. Mison* and Section 2 of Republic Act 6656 to this position. We hold that Floreza was deprived of his right to security of tenure by his non-appointment to the position of Revenue Service Chief or its new title under the reorganized Bureau of Internal Revenue. It should be remembered that after February 2, 1987, any reorganization undertaken by the government is circumscribed by the provisions and safeguards of the New Constitution. Hence, when Floreza was not reappointed as Revenue Service Chief or as Assistant Commissioner either in the Legal Service or in the Planning and Research Service, and other persons were reappointed to the positions, he was, in effect dismissed from the service in violation not only of his right to security of tenure but to due process as well."

x x x

"Section 2 of Republic Act No. 6656 entitles a victim of removal in violation of the bona fide rule to a reinstatement or reappointment to the position from which he was removed. The fact that there is now an appointee to the position he claims, holding an appointment signed by the President, is of no moment. There was no vacancy in the office to which Jaime M. Masa was appointed and, therefore, his promotion was not valid."

The argument of the Solicitor General that private respondent's assignment as COC of the Export Division at NAIA was only in an acting capacity is unavailing. While it is true that an acting appointment is merely temporary and revocable at the pleasure of the appointing power,[29] this temporary appointment cannot be used by the appointing authority as an argument or justification in order to evade or avoid the security of tenure principle in the Constitution and the Civil Service Law.[30]

Although it is true that the appointment of private respondent Fernandez as COC is without any particular or fixed

station and, generally he may be assigned anywhere as the exigencies of the service may require,[31] nonetheless his reassignment as Acting Chief of the Export Division at NAIA does not make his appointment as Customs Operation Chief I temporary and revocable at the pleasure of the appointing power. He cannot be arbitrarily removed from a particular division without reassigning him to another division nor can he be appointed to a lower position without cause and without notice and hearing. The appointing power cannot use the device of an ambiguous designation to go around the security of tenure of a permanent employee.[32]

On the foregoing considerations, private respondent must be restored to his former position as Chief of the Export Division at NAIA without prejudice to the power of the Commissioner of Customs to reassign him to any other division as the exigencies of the service may require, provided this is done in good faith for the best interests of the service or for valid cause.

It is also worthy of note that the order for the reinstatement of private respondent is in consonance with our ruling in *Dario vs. Mison*, ante, that there was lack of good faith in the reorganization of the Bureau of Customs. Apropos to the present case is this trenchant observation therein: "There is no showing that legitimate structural changes have been made - or a reorganization actually undertaken, for that matter - at the Bureau since Commissioner Mison assumed office, which would have validly prompted him to hire and fire employees. There can therefore be no actual reorganization to speak of, in the sense, say, of reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions, but a revamp of personnel pure and simple." [33]

WHEREFORE, the petition at bar is DISMISSED and the questioned resolutions of respondent Civil Service Commission are hereby AFFIRMED.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Paras, Padilla, Bidin, Griño-Aquino, Medialdea, Davide, Jr., Romero, and Bellosillo, JJ., concur.

Feliciano, J., in the result.

Nocon, J., on leave.

[1] Rollo, 84.

[2] Ibid., 47.

[3] Ibid., 13.

[4] Ibid., 41.

[5] Ibid., 25-26.

[6] Ibid., 27.

[7] Ibid., 16.

[8] Ibid., 17-20.

[9] Ibid., 23-24.

[10] Ibid., 72-81.

[11] Ibid., 82-83.

[12] Ibid., 107.

[13] Ibid., 113-121.

[14] Ibid., 129-143.

[15] Ibid., 145.

[16] 171 SCRA 744 (1989).

[17] Rollo, 15-16.

[18] In its Supplemental Comment, respondent CSC calls attention to this supervening fact:

"In an En Banc Resolution dated February 26, 1991 in Dario vs. Mison and six (6) accompanying cases x x x, the Honorable Court, in upholding the Resolutions of the Civil Service Commission nullifying the reorganization effected by Customs Commissioner Mison and directing the reappointment of the Bureau of Customs personnel therein involved, ordered the restoration of illegally dismissed or separated employees in the Bureau of Customs to their former positions or their equivalent. Of particular significance to the herein Petition is the pertinent portion of the said Resolution which reads:

7. In the case of Abelardo Sunico, Commissioner Mison should be ordered:

x x x

7.2. To order Bayani I. Fernandez, to vacate the post of Customs Operations Assistant Chief, Collection District No. III, NAIA Customs Aircraft Operation Division (Item No. 729-10) which is the proper post of Sunico;" (Rollo, 136-137).

[19] G.R. No. 92403, April 22, 1992.

[20] 176 SCRA 84 (1989).

[21] Sec. 2 (3), Article IX-B of the 1987 Constitution provides that "(n)o officer or employee of the civil service shall be removed or suspended except for cause provided by law."

Sec. 3 of Executive Order No. 17, dated May 28, 1986 enumerates the grounds for the separation/replacement of personnel, to wit:

"1. Existence of a case for summary dis-missal pursuant to Section 40 of the Civil Service Law;

"2. Existence of a probable cause for violation of the Anti-Graft and Corrupt Practices Act as determined by the Ministry Head concerned;

"3. Gross incompetence or inefficiency in the discharge of functions;

"4. Misuse of public office for partisan political purposes;

"5. Any other analogous ground showing that the incumbent is unfit to remain in the service or his separation/replacement is in the interest of the service."

Republic Act No. 6656 sets clear-cut policies and guidelines on government reorganization to protect the security of tenure of civil service employees and officers. Sec. 2 thereof provides:

"Sec. 2. No officer or employee in the career service shall be removed except for a valid cause and after due

notice and hearing. A valid cause for removal exists when, pursuant to a bona fide reorganization, a position has been abolished or rendered redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service, or other lawful causes allowed by the Civil Service Law. The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of reorga-nization, giving rise to a claim for reinstatement or reappointment by an aggrieved party:

- (a) When there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned;
- (b) Where an office is abolished and another performing substantially the same functions is created;
- (c) Where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit;
- (d) Where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same functions as the original offices;
- (e) Where the removal violates the order of separation provided in Section 3 hereof."

[22] "Section 9. All officers and employees who are found by the Civil Service Commission to have been separated in violation of the provisions of this Act, shall be ordered reinstated or reappointed as the case may be without loss of seniority and shall be entitled to full pay for the period of separation."

[23] *Floreza v. Ongpin, etc., et al.*, 182 SCRA 692 (1990).

[24] *Mendoza vs. Quisumbing, etc. and companion cases*, 186 SCRA 108 (1990).

[25] *Floreza vs. Ongpin, et al.*, G.R. No. 81356 and *Floreza vs. Civil Service Commission*, G.R. No. 86156, En Banc Resolution, Sept. 6, 1990.

[26] *Costin, et al. vs. Quimbo, etc., et al.*, 120 SCRA 159 (1983); *Saet vs. Alvarez*, G.R. No. 82862, Minute Resolution, Third Division, Sept. 26, 1988.

[27] *Morata vs. Court of Appeals*, 11 SCRA 42 (1964).

[28] *Dario vs. Mison*, *supra*.

[29] *Castro vs. Solidum*, 97 Phil. 278 (1955); *Valencia vs. Peralta, Jr.*, 8 SCRA 692 (1963); *Valer vs. Briones*, 9 SCRA 596 (1963).

[30] *Marohombsar vs. Alonto*, 194 SCRA 692 (1963).

[31] *Tecson vs. Salas, et al.*, 34 SCRA 275 (1970); *Quisumbing, etc., et al. vs. Gumban, etc., et al.*, 193 SCRA 520 (1991).

[32] *Piñero, et al. vs. Hechanova, etc., et al.*, 18 SCRA 417 (1966).

[33] Fn. 20, at 129.

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