

PACIFICO Y. OCAMPO, PETITIONER, VS. CIVIL SERVICE COMMISSION AND CRISANTO P. CRUZ, RESPONDENTS.

G.R. No. 93072. August 05, 1991

Ponente: MEDIALDEA, J.

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MEDIALDEA, J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court seeking the annulment of the Resolutions of the Civil Service Commission (CSC) dated February 14, 1990 and April 10, 1990, respectively revoking the appointment of petitioner and ordering the appointment of private respondent to the position of Division Manager, Rescue and Firefighting Division, Ninoy Aquino International Airport Authority (pp. 22-28, Rollo); and denying petitioner's motion for reconsideration (pp. 29-31, Rollo).

Both the herein petitioner and private respondent are employees of the Ninoy Aquino International Airport Authority (NAIAA). Petitioner started his stint in the government in 1953 while private respondent joined the government in 1954. While petitioner was already connected with the NAIAA, private respondent was employed with the Bureau of Air Transportation (BAT) but was assigned to the MIA. In 1983, when MIA became an independent corporate entity private respondent resigned from the BAT and joined the MIA as Acting Manager of the Fire and Rescue Division on a contractual basis (p. 104, Rollo). Below is a comparison of the educational background and the positions held by petitioner and private respondent prior to the controversy in this case as found by the CSC.

Qualification

Cruz

(Protestant)

(Private respondent)

Ocampo

(Protestee)

(Petitioner)

Education

: BSE with Ten (10)

: different local training and

: two (2) foreign
: special studies
:
:
: Second Year Law
: Proper with
: eight (8)
: relevant local
: and foreign
: training and
: studies
Experience
: Airport
: Firefighter CAA,
: 1/21/54
:
: Fire Crew Supvr.
: CAA- 1/22/65 to 1/19/69
:
:
: Asst. Fire Chief
: CAA 1/20/69 to
: 6/30/72
:
: Asst. Fire
: Marshall 7/1/72
: to 5/15/78
:
: Fire Marshall Bat
: MIA 5/16/78 to
: 8/31/83

:

:

: Actg. Manager-MIA*

: Fire and Rescue

: Div., 9/1/83 to

: 5/17/88

: (contractual)

:

: Fire Marshall**

: (perm)

: 5/18/88

: to date

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: Helper, MIA/

: CAA, 1/6/53 to

: 12/11/63

:

: Driver/First Aider, CAA/MIA

: 4/30/55 to

: 8/31/56

:
: Nozzleman, CAA/
: MIA 9/1/56 to
: 6/30/57
:
: Firefighter,
: 7/1/57 to
: 6/30/63
:
: Firetruck
: Operator CAA/
: MIA 7/1/63 to
: 12/31/76
:
: Fire Crew Supvr.

: CAA/MIA, 1/1/77

: to 12/31/81
:
:
:
: Asst. Fire Chief
: MIA, 1/1/82 to
: 1/15/82
:
: Fire Chief CAA/
: MIA, 1/6/82 to
: 6/30/83
:
: Superv'ing Fire
: Chief, 7/1/83

: to 12/31/83

:

: Asst. Fire

: Marshall, MIAA

: 1/1/84 to 7/31/88

:

(pp. 23-24, Rollo)

Pursuant to the reorganization of NAIAA in 1988, Pacifico Y. Ocampo was appointed on August 1, 1988, as Division Manager, Rescue and Fire Fighting Division by then General Manager Evergisto Macatulad (p. 6, Rollo). At that time, Cruz no longer held the position of Acting Manager of the Fire and Rescue Division because his employment on a contractual basis was terminated on April 30, 1988 (p. 32, Rollo). It appears though that he was issued an appointment to the position of Fire Marshall on July 16, 1986 but made effective only on May 18, 1988 by the CSC (p. 269, Rollo).

On January 17, 1989, Crisanto P. Cruz protested the appointment of Ocampo and of one Jaime L. Cruz, the latter having been appointed to the position of Manager, Emergency Services Department of the same agency (pp. 142-144, Rollo). The protest was initially dismissed by the Civil Service Commission (CSC) Field Office for failure of Cruz to identify only one position that should be the subject of the protest (p. 177, Rollo). It appears however, that upon Cruz' prayer for reconsideration of the dismissal of his protest against Ocampo (p. 178, Rollo), and upon his filing of another protest before the CSC (p. 165, Rollo) his protest was reinstated and decided on the two contested positions by the CSC.

On December 1, 1988, a new General Manager, in the person of the incumbent, Eduardo Carrascoso, was appointed. In CSC Resolution No. 115 dated January 17, 1989, the protest filed by Cruz was remanded to the new NAIAA General Manager (p. 22, Rollo). However, on April 5, 1989, NAIAA appointments under the new staffing pattern were submitted to the CSC without any action on the protest. The CSC then decided to assume jurisdiction over the protest of Cruz and rendered its decision on February 14, 1990, the dispositive portion of which states:

"WHEREFORE, in view of the foregoing premises and considering the string of pending and decided administrative and/or criminal cases involving protestee Pacifico Y. Ocampo, the Commission finds protestant Crisanto Cruz to be more qualified and fit to occupy the contested position. Hence, the Commission Resolved to order the appointment of protestant Crisanto Cruz to the position of Division Manager, Rescue and Fire Fighting Division, NAIAA. Further, the Commission resolved to order the CSC Field Office (NAIAA/MIAA/CB/PADC/EPZA/DFA), in coordination with the NAIAA, to investigate and take appropriate action on the questioned and dubious appointment papers of Ocampo, without prejudice to the filing of appropriate administrative and/or criminal charges against those concerned. Finally, the protest of Crisanto Cruz against Jaime L. Cruz over the position of Department Manager, Emergency Services Department is hereby dismissed for lack of merit." (p. 28, Rollo)

The motion for reconsideration filed by Ocampo was denied on April 10, 1990 (pp. 29-31, Rollo).

Hence, this petition.

On May 10, 1990, We required the respondents to file their respective comments. Private respondent Cruz complied with the order and filed his Comment on June 13, 1990 (pp. 50-68, Rollo). The Solicitor General, after

asking for an extension of time to file comment, filed a Manifestation and Motion dated July 9, 1990, praying that it be excused from filing the required comment in view of the response it received from the CSC that the latter will take charge of the case and submit its own comment (p. 91, Rollo).

The CSC filed its Comment (pp. 102-113, Rollo) on September 19, 1990, after several motions for extension of time to file comment. On October 2, 1990, We issued a resolution requiring the Office of the Solicitor General to file its own comment (p. 114, Rollo). Reacting to said resolution, the private respondent filed a motion to inhibit the Solicitor General from submitting his Comment (pp. 183-197, Rollo), which We denied on December 6, 1990 (p. 205-A, Rollo).

On December 12, 1990, the Solicitor General filed his Comment (pp. 210-247, Rollo).

We gave due course to the petition in Our resolution of January 17, 1991 (p. 299, Rollo). In this petition, the petitioner alleged that public respondent CSC gravely abused its discretion and acted in excess of jurisdiction in revoking his appointment and in finding private respondent to be more qualified and fit to occupy the contested position. It further alleged that public respondent CSC brushed aside applicable Civil Service Rules, regulations and policies in deciding the case against him.

The reasons stated by respondent CSC in revoking the appointment of petitioner to the contested position may be summarized as follows:

1. Private respondent Cruz was the incumbent to the position having been appointed Fire Marshall on July 1, 1986 or under the old plantilla which is now the equivalent of Division Manager, Rescue and Firefighting Division in the new staffing pattern.
2. The appointment papers of Ocampo are spurious. The NBI examined the authenticity of the signature of the appointing authority, then NAIAA General Manager Evergisto C. Macatulad and it was found that the signature in the appointment paper and the standards/sample signatures were not written by one and the same person.
3. At the time of his appointment as Division Manager, Ocampo was serving a penalty of suspension from service for six (6) months for insubordination, frequent absences and tardiness. The decision became final and executory on September 27, 1988. Under Section 2 of MC No. 32, s. of 1963, the penalty of six (6) months suspension to less than seven (7) months carries with it that of disqualification for promotion for a period of nine (9) months reckoned from the date the decision in the administrative case became final and executory.
4. Section 7, par. 5 of the Rules on Government Reorganization (Implementing R.A. No. 6656) provides that "those with pending administrative cases who meet the qualification requirements and will be retained shall not be placed in or appointed to positions higher than the positions held by them x x x" (Resolution, CSC Case No. 554, pp. 22-31, Rollo).

There is no question that petitioner possessed the prescribed minimum qualification requirement set for the contested position. This was admitted by the CSC. Given that fact, CSC had no authority to revoke his appointment on the ground that private respondent is more qualified for the particular position and direct the latter's appointment (*Central Bank v. CSC*, 171 SCRA 744) for that would have constituted an encroachment of the discretion vested solely in the appointing authority (*Lopez v. CSC*, G.R. 92140, February 19, 1991). It had been emphasized by this Court in several cases that the power of the CSC is limited to the determination only of whether the appointee possesses the required qualification for the position. (*Central Bank v. CSC*, 171 SCRA 744; *Orbos v. CSC*, G.R. No. 92561, September 12, 1990) and the appropriate civil service eligibility, nothing else. (*Lopez v. CSC* and *Romeo Luz, Jr.*, G.R. No. 92140, February 19, 1991). When it finds the appointee to be qualified and all other legal requirements have been satisfied, it has no choice but to attest to the appointment

(Gaspar v. CA and CSC, G.R. No. 90799, October 18, 1990).

The public respondent CSC justified its decision to revoke petitioner's appointment and to order the appointment of private respondent, among others, that:

"x x x pursuant to Section 13, Rule V of the Rules on Personnel Actions and Policies, it is the protestant who should have been appointed to the said position. The law provides that 'the incumbent of a position that has been reclassified or upgraded due to increase in duties and responsibilities shall be promoted thereto if he is qualified and he possess the appropriate eligibility for the position.' Protestee Ocampo (should be Protestant Cruz) was an incumbent of and he is qualified for the position. Further, be it noted that before the promotional appointment of protestee Ocampo, he was a subordinate of protestant Cruz, the former being an Assistant Fire Marshall." (p. 4, Resolution of February 14, 1990, p. 25, Rollo).

There is no merit in this submission of the CSC. It is not clear from the records of this case whether private respondent was the incumbent at the time of petitioner's appointment to the contested position. The CSC's finding was that the private respondent was the Acting Manager of the Fire and Rescue Division from June 1, 1983 to May 15, 1988 (should be April 30, 1988) on a contractual status.

The CSC asserted that Cruz was holding the position of Fire Marshall, on a permanent basis when the same position was upgraded during the NAIAA reorganization (see CSC Comment on p. 107, Rollo). However, his service record shows that he was separated from the service because his contractual appointment was terminated on April 30, 1988 (p. 41, Rollo). There was an alleged appointment of respondent to the position of Fire Marshall dated July 16, 1986 but the records show that the appointment was submitted to the CSC at a much later date and the CSC approved said appointment only on September 30, 1988, although effective May 18, 1988.

It is also noted that then General Manager Evergisto Macalutad vehemently objected to private respondent's appointment as Fire Marshall (p. 236, Rollo) for still another reason - that private respondent was already fifty seven (57) years old at the time of his reappointment and such reappointment violates Memo Circular No. 163, s. 1968, Office of the President.

It can therefore be safely concluded that private respondent Crisanto Cruz had no permanent appointment in the NAIAA at the time of petitioner's appointment as Division Manager of the Rescue and Fire Fighting Division. Hence, he cannot claim that he was the incumbent to the contested position. Moreover, the contested position appears to be a new position created during the reorganization of the NAIAA and not that of a Fire Marshall which position was retained in the new staffing pattern.

Another objection by respondent CSC to the appointment of petitioner was his existing disqualification for such promotion in view of the decision in an administrative case finding him guilty of insubordination, frequent tardiness and absences. Under Section 2, of MC 32, series of 1963, the penalty of six (6) months suspension carries with it the disqualification for promotion for a period of nine (9) months reckoned from the date the decision became final and executory (p. 26, Rollo).

The decision finding petitioner guilty of dishonesty - falsification of daily time record[1] was dated November 28, 1985 (pp. 78-80, Rollo). For this, he was meted the penalty of dismissal from service. In still another case[2] for inefficiency and serious neglect of duty, he was penalized with suspension for one (1) year without pay (pp. 81-82, Rollo). Petitioner appealed both decisions to the Merit Systems Protection Board (MSPB). In a consolidated decision dated February 25, 1987, the MSPB found him guilty of insubordination, frequent absences and tardiness and irregularities in the accomplishment and keeping of his time records. However, the penalty was reduced to six (6) months suspension. Ocampo appealed the MSPB decision to the CSC. Likewise, the complainants in the administrative charges, Crisanto F. Cruz and Ricardo F. Cortez, appealed the decision of the

Merit Systems Protection Board (MSPB) lowering the penalty imposed to the CSC. But their appeal was dismissed.

Petitioner Ocampo filed a motion to withdraw his appeal dated August 15, 1988 alleging as reasons therefor the occurrence of developments which rendered the issues raised in the appeal like payment of backwages, appropriateness of the penalty imposed, among others, moot and academic allegedly because upon receipt of the decision of the MSPB, the MIA authority immediately lifted his preventive suspension for over a year and allowed the payment to him of backwages for the period he was illegally suspended minus the 6-month period referred to in the above-quoted decision. The motion to withdraw was granted on September 27, 1988 (pp. 85-86, Rollo).

In answer to the contention of the CSC, the Solicitor General is of the opinion that "x x x since the decision of the MSPB imposing the six months suspension (from service) was dated February 23, 1987, obviously, the six-month suspension meted out (to) petitioner must be anterior to that date. x x x Necessarily, the six months penalty imposed on the petitioner had become final and executory, before February 23, 1987, as he had been placed under preventive suspension for over a year prior to that date. Thus, for purposes of applying the nine (9) month disqualification for promotion under Section 2 of MC 32, series of 1963, x x x, the period of reckoning should be before or on February 23, 1987. x x x" (pp. 245-246, Rollo). It is thus clear that the prohibition for promotion cannot be applied to petitioner who was promoted on August 1, 1988.

The ruling of the CSC that the petitioner is covered by the prohibition against promotion is not consistent with the reasons given in its resolution granting petitioner's motion to withdraw appeal. The CSC ruled in the latter that the appeal had become academic in view of the fact that the MSPB decision had already become final by virtue of its complete execution even prior to the release of the said MSPB decision. Thus,

"As a rule, a decision becomes final and executory after the lapse of the period for appeal, or when the decision or judgment has been fully or partially executed. The lifting of the preventive suspension imposed upon respondent-appellant Ocampo and the payment to him of his backwages by the disciplining authority (NAIAA) although subsequently disallowed by the Commission on Audit, is an execution or implementation of the decision of the MSPB, subject of the instant appeal. This execution rendered the decision of the MSPB final and an appeal therefrom moot and academic." (p. 86, Rollo, emphasis ours)

That the decision of the MSPB in the administrative charges against petitioner had already been completely executed even before his appeal from the said decision dated February 23, 1987 lowering the penalty imposed on him from dismissal to six (6) months suspension is indubitable. Although there was an appeal filed with the CSC, the same was withdrawn on August 15, 1988. Applying Section 4 in relation to Section 2 of the Revised Rules of Court, when an appeal is withdrawn, the case shall stand as though no appeal had been taken therefrom. Hence, the decision of the MSPB became final on February 23, 1987 and not on September 27, 1988 and the validity of petitioner's promotional appointment on August 1, 1988, was not affected thereby.

On the allegations of protestant-private respondent Crisanto P. Cruz that the alleged appointment papers of petitioner to the contested position are spurious, suffice it to state that the appointing authority himself, then General Manager Evergisto C. Macatulad did not categorically deny his signature in the appointment. He, in fact left to the discretion of his successor, Eduardo Carrascoso, to determine the validity of petitioner's appointment. Carrascoso, for his part confirmed petitioner's appointment and re-submitted to respondent CSC the appointment of petitioner in a letter dated August 10, 1989, which stated:

"Patricia Sto. Tomas

The Chairman

Civil Service Commission

"Attn: GUILLERMO SILVA

Assistant Director

Civil Service Field Office

Port Area, Manila

"Dear Chairman Sto. Tomas:

"Respectfully forwarded herewith are the appointment papers of Mr. Pacifico Ocampo as Manager B of the Fire and Rescue Division.

"Mr. Ocampo's appointment, signed and transmitted to the Civil Service Commission (CSC) by erstwhile MIAA General Manager Evergisto C. Macatulad, was protested by Mr. Crisanto Cruz on two grounds: (1) that the signature of Mr. Macatulad on Mr. Ocampo's appointment papers were forged; and (2) that based on qualifications he is more deserving of the position than Mr. Ocampo.

"The CSC referred the matter to us for resolution. In response, we created a Fact Finding Committee to look into the case, composed of the head of our Legal Department, the manager of our Administrative Department and a representative of the CSC.

"Queries were sent to Mr. Macatulad and Mr. Teodoro Pangilinan, erstwhile Assistant General Manager for Finance and Administration and Chairman of the Placement Committee. Mr. Macatulad replied that he could not recall whether or not he affixed his signature on Mr. Ocampo's appointment papers because of the voluminous papers he had to sign at that time. Mr. Pangilinan, on the other hand, relayed to us that the Placement Committee did appoint Mr. Pacifico Ocampo shortly before the present MIAA General Manager assumed office on December 1, 1988.

"In the light of these information, and in line with the legal presumption of regularity of performance of official functions (Rule 131, Section 5, letter M, Rules of Court), we hereby presume that Mr. Ocampo's appointment papers as signed by Mr. Macatulad are in order.

"Should a further case arise out of this matter, we are of the view that the best arbiter would be the CSC, by whose decision we shall abide.

Thank you.

Very truly yours,

SGD.

Eduardo O. Carrascoso

General Manager" (pp. 173-174, Rollo)

This Court is cognizant of the criminal cases brought against the petitioner. However, the records show that these cases were brought by the herein private respondent after the appointment of petitioner to the contested position. Hence, at the time of the appointment, these criminal cases cannot be taken against petitioner. The transaction subject of one of these cases is the alleged falsification by Ocampo of his appointment papers. Likewise, We note that the information in these cases had been recommended for withdrawal by the Ombudsman and was ordered withdrawn by the Sandiganbayan on April 30, 1990 (p. 149, Rollo). Cruz filed a motion for reconsideration with the Offices of the Ombudsman and the Special Prosecutor. (pp. 286-298, Rollo). In the absence however, of a conviction, Ocampo is still presumed to be innocent.

Finally, after ruling that the administrative cases against petitioner had become final as of February 23, 1987, it is safe to conclude that there was no pending administrative case against him at the time of his promotion. And even if there was, there is nothing in Republic Act No. 6656 which provides for the prohibition against the appointment of a civil service employee with pending administrative charges to a position higher than that occupied by him before the reorganization. This prohibition was provided for only in the rules promulgated by the respondent CSC.

ACCORDINGLY, the petition is GRANTED. The questioned resolution dated February 14, 1990 of respondent CSC insofar as it resolved the protest of private respondent Crisanto P. Cruz against petitioner Pacifico Y. Ocampo is REVERSED and SET ASIDE. The aforesaid protest is dismissed and petitioner's appointment to the contested position is hereby reinstated.

SO ORDERED.

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

* Last day of service as Acting Manager - MIA Fire and Rescue Division should be April 30, 1988, the date when all contractual, temporary and casual employees were terminated by virtue of a memorandum dated April 28, 1988 signed by General Manager Evergisto Macatulad.

** Cruz' appointment as Fire Marshall as approved by the CSC was made effective May 18, 1988 but he assumed the duties of the position on December 23, 1989 (p. 141, Rollo).

[1] Administrative Case No. 6. The charge was for falsification of Daily Time Record committed as follows: That on or about July 2, 1984, Mr. Ocampo stated in his daily time record (Civil Service Form 48) under oath, for the month of July 1984, that he reported for work/duty on July 2, 1984 from 7:40 a.m. to 6:00 p.m. When in truth and in fact he did not report for duty or was absent from office on the hours and date indicated (Decision dated November 28, 1985, pp. 78-80, Rollo).

[2] Administrative Case No. 5. Petitioner was found guilty of the charge of preparing and submitting an unsatisfactory training program and for failure to perform and fulfill his other duties and responsibilities as the designated Training Officer. (Decision dated December 4, 1985, pp. 81-82, Rollo).

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