

TEODORO G. BARROZO, PETITIONER, VS. THE CIVIL SERVICE COMMISSION AND VALENTINO L. JULIAN, RESPONDENTS.

G.R. No. 93479. June 25, 1991

Ponente: CRUZ, J.

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CRUZ, J.:

The facts of this case are familiar. They involve the same arrogation of power by the public respondent that we have rejected in earlier cases.

On November 10, 1988, David G. Borja retired as City Engineer of Baguio. On that date, petitioner Teodoro G. Barrozo was a Senior Civil Engineer of the Department of Public Works and Highways assigned to the office of the City Engineer of Baguio. Private respondent Valentino L. Julian was the Assistant City Engineer of Baguio.

On December 27, 1988, Mayor Ramon L. Labo, Jr. extended to the petitioner a permanent appointment as City Engineer of Baguio. This appointment was approved by the Civil Service Regional Office No. 1 on January 2, 1989. On February 16, 1989, after his protest was rejected by Mayor Labo, the private respondent appealed the appointment to the Merit Systems Board of the Civil Service Commission, claiming that as a qualified next-in-rank officer, he had pre-emptive rights over the petitioner. On November 22, 1989, the Civil Service Commission Cordillera Administrative Region (CSC-CAR), to which the appeal was referred, declared the petitioner's appointment void for being violative of Civil Service promotion rules. His motion for reconsideration having been denied, the petitioner then appealed to the Civil Service Commission. On March 5, 1990, the public respondent issued the resolution now under challenge.[1] The motion for reconsideration thereof was denied on May 23, 1990.[2]

The text of the resolution carried the significant statement that "a comparative analysis of the qualifications of the contestants shows that both meet the minimum requirements for the position of City Engineer." The Commission also found, however, that -

There is no showing that Julian who is next-in-rank to the contested position is barred by law or suffers from any legal disqualification to occupy the position of City Engineer. Neither is there any showing that Barrozo possesses far superior qualifications nor special reasons cited by the appointing authority why Julian cannot be promoted to the higher position. This being so, the Commission finds the appointment of Barrozo not in accordance with Civil Service Law, rules and regulations. At this juncture, it is significant to stress that while the appointing authority enjoys a wide latitude of discretion in the selection of personnel for his agency, nevertheless such discretion must be exercised within the confines of Civil Service Law, rules and regulations.

It therefore disposed as follow:

WHEREFORE, foregoing premises considered, the Commission resolved to dismiss as it hereby dismisses the instant appeal of Teodoro Barrozo for lack of merit. Accordingly, the CSC-CAR decision dated November 22, 1989 is affirmed insofar as the revocation of the appointment of Barrozo is concerned but sets aside said decision insofar as subjecting the contestants to screening and evaluation by the Personnel Selection Board. It

is hereby directed that Valentino L. Julian be appointed to the position of City Engineer of Baguio.

We note that the Commission has once again directed the appointment of its own choice contrary to our consistent ruling on this matter. Only recently, in *Lapinid v. Civil Service Commission*,^[3] we again emphasized:

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.

In his Comment, the Solicitor General has taken a stand against the respondent Commission, relying on the above-stated doctrine as earlier enunciated in the leading case of *Luego v. Civil Service Commission*^[4] and only recently in *Gaspar v. Civil Service Commission*,^[5] *Teologo v. Civil Service Commission*^[6] and *Patagoc v. Civil Service Commission*.^[7] In fairness, however, he also moved that the Commission be given an opportunity to submit its own Comment in defense of its own decision. The public respondent has done so and insists that since the disputed vacancy was being filled by promotion, it was imperative that the next-in-rank rule be observed. Disregard of that rule called for the disapproval of the petitioner's appointment in favor of the private respondent, who was the Assistant City Engineer of Baguio at the time the controversial vacancy occurred.

This argument is not well-taken. The law does not absolutely require that the person who is next in rank shall be promoted to fill a vacancy. In fact, the vacancy may be filled not by promotion but "by transfer of present employees in the government service, by reinstatement, by re-employment of persons separated through reduction in force, or by appointment of persons with the civil service eligibility appropriate to the position."^[8] What the Civil Service Act provides in its Sec. 19(3) is that if a vacancy is filled by promotion, the person holding that position next-in-rank thereto "shall be considered for promotion."

The said provision reads in full as follows:

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)

Interpreting the next-in-rank rule, we said in *Santiago v. Civil Service Commission*:^[9]

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.

And, indeed, as we noted in the recent case of *Abila v. Civil Service Commission*,^[10] the Commission itself, in implementing the said law, provides in its Resolution No. 89-779 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)

It is presumed that, conformably to the above injunctions, Mayor Labo dutifully considered the private respondent for promotion to the position of City Engineer of Baguio City although ultimately decided in favor of the petitioner. There being no showing that the appointing authority has gravely abused his discretion, even this Court must respect his decision.

We find that, as in the many other earlier cases, the Commission has again overstepped its authority, encroached upon the discretion of the appointing authority, and officiously directed the appointment of its own choice. Hence, we must again reverse its action.

Lapinid declared that “henceforth, departure from the mandate of *Luego* by the Civil Service Commission after the date of the promulgation of this decision shall be considered contempt of this Court and shall be dealt with severely, in view especially of the status of the contemner.” No sanctions are imposed at this time as the case at bar arose before the promulgation of *Lapinid*.

WHEREFORE, the petition is GRANTED. The permanent appointment of Teodoro G. Barrozo as City Engineer of Baguio City is declared VALID. Resolution No. 90-247 dated March 5, 1990, and Resolution No. 90-462, dated May 23, 1990, of the respondent Civil Service Commission are hereby SET ASIDE, without any pronouncement as to costs.

SO ORDERED.

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

[1] Rollo, p. 29.

[2] *Ibid.*, p. 33.

[3] G.R. No. 96298, May 14, 1991.

[4] 143 SCRA 327.

[5] G.R. No. 90799, October 18, 1990.

[6] G.R. No. 92103, November 8, 1990.

[7] 185 SCRA 411.

[8] Section 19 (5), P.D. 807.

[9] 178 SCRA 733.

[10] G.R. Nos. 92573 & 92867, June 3, 1991.

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