

ARDELIZA MEDENILLA, PETITIONER, VS. CIVIL SERVICE COMMISSION, AMPARO DELLOSA, ROSALINDA JURIA AND MARITA BURDEOS, RESPONDENTS.

G.R. No. 93868. February 19, 1991

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

This is a petition seeking the annulment of the resolutions issued by the Civil Service Commission which disapproved the appointment of the petitioner to the position of Supervising Human Manpower Development Officer.

Petitioner Ardeliza Medenilla was a contractual employee of the Department of Public Works and Highways (DPWH) occupying the position of Public Relations Officer II.

In 1987, Medenilla was detailed as Technical Assistant in the Office of the Assistant Secretary for Administration and Manpower Management.

Pursuant to Executive Order No. 124 dated January 30, 1987, a reorganization ensued within the DPWH and all the positions therein were abolished. A revised staffing pattern together with the guidelines on the selection and placement of personnel was issued.

Included in the revised staffing pattern is the contested position of Supervising Human Resource Development Officer.

On January 2, 1989, the petitioner was appointed to the disputed position.

On January 27, 1989, respondents Amparo Delloso, Rosalinda Juria and Marita Burdeos together with Matilde Angeles, Catalina Espinas, Alicia Nercelles and Ramon Racela, all of whom are employees in the Human Resource Training and Material Development Division, Administrative and Manpower Management Service of the DPWH, jointly lodged a protest before the DPWH task force on reorganization contesting the appointment of the petitioner to the position.

The protestants alleged that since they are next-in-rank employees, one of them should have been appointed to the said position.

On August 2, 1989, the task force on reorganization dismissed the protest. The dispositive portion of its decision reads as follows:

"Premises considered, the Task Force on Reorganization Appeals finds the instant protest of Matilde Angeles, et al. without merit and hereby recommends to the Honorable Secretary that the appointment of Ardeliza Medenilla to the contested position of Supervising Human Resource Development Officer be upheld." (Rollo, p. 26)

Not satisfied, the private respondents appealed the decision to the Civil Service Commission. The Commission found:

"On the onset, it appears that protestee Medenilla does not possess the required qualifications for the position. xxx Moreover, her eligibility is PD 907, being a cum laude graduate. Let it be considered appropriate only for appointment to 'second level positions' which require the application of knowledge and skills within the appointee's field of study." (Rollo, p. 28-29)

xxx xxx xxx

"Further, it also appears that Medenilla is a contractual employee assigned or detailed with the Office of the Assistant Secretary for Administration and Manpower Management (the appointing authority) as Public Relations Officer II, while protestants are all permanent employees of the Division (Human Resource Planning) where the vacancy exists.

"Indeed, RA 6656 does not preclude the appointment of contractals to a new staffing pattern, however, in the presence and availability of qualified permanent next-in-rank employees in the organization, the latter has to be preferred, unless a contractual employee possesses superior qualifications that could justify her appointment. However, in this case, we see no superior qualifications or any special reasons for preferring Medenilla over the protestants. (Rollo, p. 29)

"We find merit in the protest. While as earlier mentioned, the appointing authority is given the wide latitude of discretion, to sustain the appointment of Medenilla may give the appointing power unnecessary opportunities to act capriciously and thus thwart the natural and reasonable expectation of the officer next-in-rank to any vacant position, to be promoted to it. As held in *Millares v. Subido*, G.R. No. L-23281, promulgated August 10, 1967, the Supreme Court held:

"We, therefore, hold that in the event of there occurring a vacancy, the officer next-in-rank must, as far as practicable and as the appointing authority sees it in his best judgment and estimation, be promoted x x x and that it is only in cases of promotion, where an employee other than the ranking one is promoted, is the appointing power under duty to give 'special reason or reasons' for his action x x x."

"Again, the special reasons advanced by the appointing authority in this case is (sic) not enough. Considering further that appointee is not meeting the minimum qualification standards set by his own office, she could not be said to possess far superior qualification than those permanent next-in-rank employees of the Department." (Rollo, pp. 30-31).

Thus, on February 28, 1990, the Commission promulgated the assailed resolution, the dispositive portion of which reads:

"WHEREFORE, foregoing premises considered, the Commission resolved to disapprove the promotional appointment of Ardeliza Medenilla to the position of Supervising Human Manpower Development Officer. Accordingly, the appointing authority may choose from among protestants Amparo Delloso, Marita Burdeos and Rosalinda Juria who to promote to the said position. The Civil Service Field Office is directed to implement this resolution accordingly." (Rollo, p. 31)

The petitioner on March 23, 1990 filed a motion for reconsideration of the resolution. On May 30, 1990 a supplement to the Motion for Reconsideration was also filed. However, prior thereto, the Commission on May 23, 1990 denied the petitioner's motion for reconsideration. The pertinent portions of the denial are:

xxx xxx xxx

"2. Experience of Medenilla

"Medenilla alleges that the Commission failed to appreciate her 3 years and 8 months of experience directly relevant to Human Resource Development. Looking more deeply into her experience as reflected in her CS Form 212, we could not distinguish her experience directly relevant to the field of Human Resource Development. The certification of a certain Elvira H. Villania stated her duties in the Guthrie-Jensen Consultants, Inc. in her one (1) year and (7) months as Research and Publication Officer of working included 'providing research assistance to our Management Consultants in drawing up performance appraisal system, merit promotion system and conducting development for our client-companies.' Notwithstanding, assuming that her 1 year and 7 months experience in the company is relevant, yet, compared to the experience of the protestants in the field of Human Resource Development, said experience is obviously outweighed. There is no dispute that Medenilla has experience as a Researcher but said experience is basically on the field of journalism and information." (Rollo, p. 35)

xxx xxx xxx

"4. Education background and eligibility of Medenilla.

"xxx Notwithstanding, we are inclined to reconsider our position that the educational background is not relevant. AB may therefore be taken as a relevant degree for purposes of qualifying to the position. As such, her PD 907 eligibility may be considered appropriate." (Rollo, p. 37)

xxx xxx xxx

"Granting for the sake of argument that the DPWH adhered to its rules relative to reorganization, is at this point, no longer material and controlling. What is now the issue is whether Medenilla indeed possesses superior qualifications over any of, the protestants. (Rollo, p. 38)

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"xxx The edge of 1.30% of Medenilla over Dellosa cannot be considered by this Commission significant enough to presume and declare that Medenilla possesses far superior qualifications over the protestant and to warrant the appointment of a contractual employee over a permanent employee of the Department." (Rollo, p. 39)

Hence, this petition.

The petitioner interposes the following grounds:

I

The resolutions were issued by the Respondent Commission, without giving notice to the petitioner of the existence of an appeal filed before the CSC, thereby denying the petitioner due process of law.

II

The Civil Service Commission committed grave abuse of discretion amounting to lack of jurisdiction in disapproving the appointment of the petitioner. Its function, is limited only to determine whether the appointee possesses the appropriate civil service eligibility and not whether another is more qualified than the petitioner.

Without giving due course to the petition, the Court on July 10, 1990, issued a temporary restraining order enjoining the Commission from implementing the assailed resolutions.

Anent the first ground, the petitioner contends that she was not notified by the Civil Service Commission of the existence of the appeal before it. The resolutions, therefore, were allegedly issued in violation of the petitioner's constitutionally guaranteed due process of law.

The public respondent, on the other hand, advances the argument that what due process abhors is not lack of

previous notice but the absolute lack of opportunity to be heard. Since the petitioner filed a motion for reconsideration, she cannot now complain that she was deprived of due process.

The petitioner's first contention is without merit.

"Due process of law implies the right of the person affected thereby to be present before the tribunal which pronounces judgment upon the question of life, liberty, and property in its most comprehensive sense; to be heard, by testimony or otherwise, and to have the right of controverting, by proof, every material fact which bears on the question of the right in the matter involved." (Black's Law Dictionary, 4th Edition, p. 590)

The essence of due process is the opportunity to be heard. The presence of a party is not always the cornerstone of due process. (*Asprec v. Itchon*, 16 SCRA 921 [1966]; *Auyong Hian v. Court of Tax Appeals*, 59 SCRA 110 [1974]; *Assistant Executive Secretary for Legal Affairs of the Office of the President of the Philippines v. Court of Appeals*, G.R. No. 76761, January 9, 1989). What the law prohibits is not the absence of previous notice but the absolute absence thereof and lack of opportunity to be heard. (*Tajonero v. Lamarosa*, 110 SCRA 438 [1981])

In the case at bar, any defect was cured by the filing of a motion for reconsideration. (see *De Leon v. Comelec*, 129 SCRA 117 [1984])

The second contention of the petitioner alleges that the Commission acted with grave abuse of discretion in disapproving her appointment.

The public respondent views it otherwise. The Civil Service Commission asserts that being the Central Personnel Agency of the Government, it is the final arbiter on civil service matters.

The Commission alleges, that, pursuant to RA 6656, the Commission is authorized to act on appeals by aggrieved employees in the course of reorganization and, therefore, it has the power to reverse or modify any decision brought before it on appeal.

The petitioner's second contention is impressed with merit.

The qualification standards for the contested position are as follows:

EDUCATION
REQUIREMENT

EXPERIENCE
REQUIREMENT

CIVIL SERVICE
ELIGIBILITY

Bachelor's degree relevant to the job with at least 9 units in post

2 years of experience in human resource development

Manpower-Youth

Development Officer

Manpower

Development Officer

Relevant RA

1080

Relevant

Second Level

Eligibility

Career Service

(Professional)

First Grade

Supervisor

It is not disputed that the petitioner possesses the appropriate civil service eligibility and requisite educational background. The public respondent itself, in its resolution dated May 23, 1990, considered the petitioner's PD No. 907 eligibility appropriate for the position. (Rollo, p. 37)

The controversy then centers on the experience of the petitioner.

The Commission contends that the experience of Medenilla is basically in the field of journalism and not in Human Resource Development. The Commission also alleges that since the petitioner is merely a contractual employee, in the absence of superior qualifications, the private respondents must be preferred not only for the reason that they are permanent career service employees but most especially because they are next-in-rank to the disputed position.

In support of its argument, the Commission cited in the disputed resolution, the case of *Millares v. Subido*, 20 SCRA 954 where this Court held:

"xxx A vacant position shall be filled by promotion of the ranking officer or employee. And only where, for special reason or reasons of which the affected officer or employee will be notified, this mode of recruitment on selection cannot be observed, that the position may be filled by transfer, or re-employment, or by getting from the certified list of appropriate eligibles, in that order."

Finally, the public respondent advances the view that, since the Revised Administrative Code of 1987 now provides that the Commission shall "take appropriate action on all appointment" its authority, therefore, is no longer limited to the mere approval or disapproval of appointments submitted to it.

A careful review of the records of the case, will reveal that the petitioner possesses the requisite experience for the contested position.

The petitioner, not only was a cum laude graduate from the University of the Philippines, she has also acquired plenty of experience in the field of Human Resource Development, to wit:

"She was rated and ranked number one in the Trainor's Training Program (120 hours) conducted for the DPWH by the Phil-Tao, Inc., a private firm. Ms. Dellosa was ranked number 7, Mrs. Juria was ranked number 10; Mrs. Burdeos did not attend the seminar. This training program was undertaken to strengthen the capabilities of HRD personnel, and to make them more effective in the discharge of their functions.

"She is a recipient of a special commendation, given by Executive Director Remedios I. Rikken of the National Commission in the Role of Filipino Woman, for her efficiency and exemplary performance as a facilitator in the conduct of the workshops during the Second Congress of Women in Government. (Letter of Ms. Rikken addressed to Sec. Estuar attached as ANNEX "B").

"She obtained in her on-going MBA studies at the De La Salle University, which she pursued as an entrance scholar, the highest grade of 4.0, equivalent to 'Excellent' in 2 HRD related subjects - Organizational Management – which call for the integration of concepts with concrete experience.

"She participated in the preparation and dissemination of the corporate planning processes installed and institutionalized in the DPWH. Corporate Planning was introduced by Secretary Fiorello R. Estuar and is now being implemented in all government offices as instructed by the President.

"She conducted orientation/reorientation courses in DPWH Regional Offices on (a) Management By Objectives and Results Evaluation, the Performance Appraisal System, and (b) a specifically designed Performance Appraisal System for DPWH District Engineers and Division Chiefs, being officially used by the DPWH.

"She participated in the conceptualizing and drafting of the Department Order on the DPWH Incentives and Awards System, set up in compliance with RA No. 6713." (Rollo, p. 63)

The public respondent failed to consider that the petitioner, in her one year and seven months experience with Guthrie-Jensen, was engaged in research relating to performance appraisal systems and merit promotion systems which duties are all related to Human Resource Development.

Precisely, it was because of her experience with Guthrie-Jensen, that the petitioner was detailed from January 1987 until December 1988 in the Office of the Assistant Secretary for Administration and Manpower Management, where she was asked to assist in human resource planning.

The rejoinder filed during the proceedings before the Commission, by the Assistant Secretary for Administrative and Manpower Management, Carolina Mangawang, is very revealing. The disputed position requires of the holder of the office skills in human resource developmental planning, research and statistics. The petitioner possesses these skills in more than appropriate quantities.

The argument of the public respondent that the petitioner must possess superior qualifications in order to be preferred over the private respondents deserves no credit.

It can be readily seen that the petitioner possesses superior qualifications. As earlier stated, she is a cum laude graduate of the University of the Philippines. She was ranked No. 1 in the department wide training program handled by a private firm. Two of the respondents were ranked way below while a third did not even participate. She was commended for exemplary performance as facilitator during the Second Congress of Women in Government. She received the highest grades from De La Salle University in her MBA studies. She helped draft the human resource program for the entire DPWH. In spite of her being a new employee, she was assigned to conduct seminars on Performance Appraisal Systems and on Management by Objectives and Results for the DPWH. She was precisely drafted from a private firm to assist in human resource planning for the DPWH. Her work is apparently highly satisfactory as the top administrators of the DPWH not only appointed her but have asked the respondent Commission to validate the appointment.

The respondents rely on Section 4 of R.A. 6656, which reads:

xxx xxx xxx

"SEC. 4. Officers and employees holding permanent appointments shall be given preference for appointment to new positions in the approved staffing pattern comparable to their former positions or if there are not enough comparable positions, to position next lower in rank."

Undoubtedly, old employees should be considered first. But it does not necessarily follow that they should then automatically be appointed.

The preference given to permanent employees assumes that employees working in a Department for longer periods have gained not only superior skills but also greater dedication to the public service. This is not always true and the law, moreover, does not preclude the infusion of new blood, younger dynamism, or necessary talents into the government service. If, after considering all the current employees, the Department Secretary cannot find among them the person he needs to revive a moribund office or to upgrade second rate performance, there is nothing in the Civil Service Law to prevent him from reaching out to other Departments or to the private sector provided all his acts are bona fide for the best interest of the public service and the person chosen has the needed qualifications. In the present case, there is no indication that the petitioner was chosen for any other reason except to bring in talented person with the necessary eligibilities and qualifications for important assignments in the Department.

The reason behind P.D. No. 907 (which grants civil service eligibility to college graduates with at least cum laude honors) of attracting honor graduates into the public service would be negated if they always have to start as Clerk I and wait for hundreds of deadwood above them to first go into retirement before they can hope for significant and fulfilling assignments.

The Commission's reliance on the dictum in *Millares v. Subido*, 20 SCRA 954 [1967] is misplaced. The ruling in *Millares* has already been superseded by later decisions. 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.

In this case, the contested position was created in the course of reorganization. The position appears to be a new one. The applicability, therefore, of the next-in-rank rule does not come in clearly. Besides, as earlier stated, said rule is not absolute. There are valid exceptions.

Granting for the sake of argument that the case involves a promotional appointment, the next-in-rank rule must give way to the exigencies of the public service. The intent of the Civil Service Law is not merely to bestow upon permanent employees the advantage arising from their long employment but most specially, it is to foster a more efficient public service. Any other factor must, therefore, yield to the demand for an effective government, which necessarily entails the appointment of competent, qualified and proficient personnel.

The deliberation of this Court in the case of *Aguilar v. Nieva, Jr.*, 40 SCRA 113 [1971] is illuminating, to wit:

xxx xxx xxx

"x x x It is not enough that an aspirant is qualified and eligible or that he is next--in-rank or in line for promotion, albeit by passive prescription. It is just necessary, in order for public administration to be dynamic and responsive to the needs of the times, that the local executive be allowed the choice of men of its confidence, provided they are qualified and eligible, who in his best estimation are possessed of the requisite reputation, integrity, knowledgeability, energy and judgment." (Emphasis Supplied, p. 121)

The point raised by the public respondent that, pursuant to the Revised Administrative Code of 1987, it is authorized to revoke appointments, must necessarily fail.

We have already ruled on several occasions that when the appointee is qualified, the Civil Service Commission

has no choice but to attest to the appointment. It is not within its prerogative to revoke an appointee on the ground that substituting its judgment for that of the appointing power, another person has better qualifications for the job.

Once the function is discharged, the participation of the Civil Service Commission in the appointment process ceases. The only purpose of attestation is to determine whether the appointee possesses the requisite civil service eligibility, no more than that is left for the Civil Service Commission to do. (see *Luego v. CSC*, 143 SCRA 327 [1986]; *Central Bank of the Philippines v. CSC*, 171 SCRA 744 [1989]; *Secretary Oscar Orbos v. CSC*, G. R. No. 92561, September 12, 1990; *Gaspar v. CSC*, G.R. No. 90799, October 18, 1990).

The rationale of this doctrine is that the power of appointment is essentially discretionary. The discretion to be granted to the appointing authority, if not plenary, must at least be sufficient.

After all, not only is the appointing authority the officer primarily responsible for the administration of the office but he is also in the best position to determine who among the prospective appointees can efficiently discharge the functions of the position. (see *Villegas v. Subido*, 30 SCRA 498 [1969]). As between the Commission which only looks into paper qualifications and the appointing authority who views not only the listed qualifications but also the prospective appointees themselves, the work to be accomplished, the objectives of the Department, etc., the Court sustains the Department Head.

WHEREFORE, the petition is hereby GRANTED. The resolutions issued by the Civil Service commission dated February 28, 1990 and May 23, 1990 are SET ASIDE. The restraining order issued by this Court on July 10, 1990 is made permanent.

SO ORDERED.

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

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