

FLORENCIO P. SALLES, PETITIONER, VS. NICEFORO B. FRANCISCO, CERILO FRANCISCO, HON. JOSE V. ONG AND HON. PATRICIA STO. TOMAS, RESPONDENTS.

G.R. No. 95425. February 26, 1992

Ponente: NOCON, J.

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NOCON, J.:

This is a petition for quo warranto seeking to recall, cancel and revoke the appointment of the defendant-appellee Niceforo B. Francisco as Chief Revenue Officer III.

The instant petition is a result of the Decision promulgated by the Merit System and Protection Board, Civil Service Commission on June 7, 1990 in MSPB Case No. 589, entitled "Florencio P. Salles vs. Niceforo B. Francisco", dismissing petitioner Florencio P. Salles' appeal from the decision dated September 25, 1989 of the Committee on Contested Appointments, Bureau of Internal Revenue, also dismissing his protest on the appointment of respondent Niceforo Francisco to the position of Chief Revenue Officer III, Fiscal Operations Branch, Revenue Region 5, Legaspi City.

The undisputed facts of the case are as follows:

Respondent Niceforo Francisco has been working with the Bureau of Internal Revenue since 1978 as Revenue Collector I. He was subsequently promoted to the position of Revenue Budget Examiner II effective July 31, 1981; Revenue Budget Officer effective August 1, 1985; and a year later, to the position of Revenue Fiscal Officer effective October 28, 1986.

Pursuant to Executive Order No. 127[1] (Reorganizing the Ministry of Finance), the Bureau of Internal Revenue created a Fiscal Operations branch in Revenue Region 5, BIR, Legaspi City which required the appointment of a Chief Revenue Officer.

A certain Fe D. Peralta was appointed by BIR Commissioner Bienvenido A. Tan to said position. On being informed of said appointment, petitioner, then a Revenue Enforcement Officer assigned in the BIR office in Goa, Camarines Sur protested Peralta's appointment with the BIR-Reorganization Appeals Board (BIR-RAB) on the ground that the appointee did not possess the minimum qualification requirements for the position.

While petitioner's protest was pending before the BIR-RAB, defendant Francisco was temporarily appointed to the position of Chief Revenue Officer III, Fiscal Operations Branch, Revenue Region 5, BIR, Legaspi City by the then BIR Commissioner Bienvenido A. Tan, Jr. effective November 1, 1987.

Meanwhile, in a letter dated July 1, 1988, the protest of petitioner over the appointment of Fe D. Peralta was dismissed for having been filed out of time. Petitioner moved for reconsideration of the BIR-RAB's ruling and this time included in his protest the appointment of defendant Francisco.

On July 25, 1988, the BIR-RAB thru its Chairman, informed petitioner about the Rules and Regulations embodied

in Revenue Memorandum Order No. 15-88 dated March 7, 1988 and was advised to go to the Civil Service Commission. Hence, the petitioner, in his letter dated August 29, 1988 directed his appeal only against the appointment of defendant Francisco as Chief Revenue Officer III. In his appeal, he advanced the following: (1) That defendant Francisco is holding the position in a temporary capacity; (2) That appellee is a mere college graduate while appellant is a Certified Public Accountant (CPA); (3) That he has been an Examiner III in the Commission on Audit (COA), and has attended several seminars on Government Accounting and Auditing and taught the subject. On two occasions he has been designated as Officer-in-Charge.

Meanwhile, defendant Francisco's temporary appointment to the position of Chief Revenue Officer III was renewed effective November 1, 1988.

On March 6, 1989, the Civil Service Commission dismissed[2] petitioner Salles' appeal for lack of merit. The Commission ruled that -

"After a careful review of the records, in the absence of a showing or proof to the contrary, this Commission adheres with the BIR-RAB finding that subject protest was filed beyond the reglementary period. Section 18 of the Rules on Government Reorganization provides that, 'Any officer or employee aggrieved by the appointments made may file an appeal with the appointing authority within ten (10) days from the last day of posting of the appointments by the Personnel Officer x x x'

"Assuming however, that the protest was filed within the period prescribed therefor, it cannot, just the same be given due course. Records show that protestant-appellant is not an incumbent of the subject position. Neither was he a holder of a higher level position than herein appellee. His position of Revenue Enforcement Officer (Grade 16) before the BIR reorganization is of the same level, rank and salary to the Revenue Fiscal Officer (Grade 16) held by herein appellee.

"Such being the case, in the absence of a showing that a holder of a higher level position protested subject appointment in time and/or abuse of authority or discretion was committed in issuing said appointment, the choice of the appointing authority is hereby upheld.

"WHEREFORE, the instant appeal of Mr. Florencio P. Salles is hereby dismissed for lack of merit."

Unfazed, petitioner Salles sent a letter dated August 14, 1989 to BIR Commissioner Jose U. Ong protesting defendant Francisco's new appointment as Chief Revenue Officer, Fiscal Operations Branch, BIR Legaspi City effective November 1, 1988.

While the aforesaid protest of Salles was still unresolved by the Office of the BIR Commissioner, Commissioner Ong permanently appointed defendant Francisco to the contested position of Chief Revenue Officer III effective June 27, 1989.

The Committee on Contested Appointments, Bureau of Internal Revenue, where the protest of petitioner was indorsed informed plaintiff that it found no substantial reasons to reconsider the Resolution of the Civil Service Commission in CSC Case No. 178 promulgated on March 6, 1989.

Petitioner appealed said ruling to the Merit System Protection Board of the Civil Service Commission, which likewise dismissed his appeal on the ground of res adjudicata.[3]

Hence, the instant petition.

We find no merit in the petition.

Section 19(3) of P.D. No. 807 provides:

"that 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."

Paragraph 4 of the same section likewise provides:

"that each department or agency shall evolve its own screening process, which may include tests of fitness, in accordance with the standards and guidelines set by the Commission and that promotion boards shall be formed to formulate criteria for evaluation, conduct tests and/or interviews, and make systematic assessment of training and experience."

The position of Chief Revenue Officer III to which Francisco was appointed on June 27, 1989 falls under the second level of the career service (Sections 5 and 7, Civil Service Law). Plaintiff, however, questions defendant Francisco's appointment to the said position upon the claim that only CPAs are qualified for appointment to the said position as the functions and duties of such newly created office or position under the Reorganization Act categorically falls under Accountant positions in the Accounting Occupational Group and equivalent positions in allied occupational groups, the duties of which falls squarely within the meaning of the practice of Accountancy, as defined in the Accountancy Board Law and the Revised Accountancy Law, and petitioner being a CPA, is the one qualified and entitled to be appointed to the position in question and not respondent Francisco.

The law in point is Civil Service Memorandum Circular No. 17 S. 1987 which deals specifically on the subject "Requirements of RA 1080 (CPA) Eligibility for Appointment to Accountant and Equivalent Positions in Allied Occupational Groups in the Government" which reads as follows:

"Pursuant to CSC Resolution No. 87-388 dated October 20, 1987 and the pertinent provisions of Presidential Decree No. 692, otherwise known as the Revised Accountancy Law of 1976 which regulates the practice of Accountancy, the following policies relative to the appropriate civil service eligibility requirement for appointment/to Accountant positions and other allied second level positions the duties of which involve practice of the accountancy profession as defined under said Decree, are hereby adopted, to wit:

'1. RA 1080 (CPA) eligibility shall be required for appointment to the position of Accountant, and equivalent positions in allied occupational groups the duties of which involve the practice of Accountancy in the following government agencies:

'a). Executive Departments, including their bureaus/offices/regional offices/ attached agencies;

“- x x x -

'2. For Second Class or lower class cities, provinces, and municipalities, RA 1080 (CPA) eligibility shall only be required for permanent appointment to the position of Chief of the Accounting Division or other Chiefs of Divisions the duties of which involve the practice of the accountancy profession. For Accountant positions lower than the Chief of the Accounting Division or its equivalent. Career Service (Professional) eligibility may be considered, provided that the appointee is a graduate of Bachelor of Science in Commerce or Business Administration, major in Accounting.

'3. Incumbents of positions mentioned above who have been appointed under PERMANENT STATUS before the effectivity of this Memorandum Circular on the basis of their civil service eligibilities previously considered appropriate for those positions, shall retain their permanent status. However, they may no longer be promoted to higher positions in these occupational groups requiring RA 1080 (CPA) eligibility as mentioned above until they meet such eligibility requirement.

'4. In the absence of an RA 1080 (CPA) eligible and it becomes necessary in the public interest to fill a vacancy

of an Accountant position and/or other positions in allied occupational groups, a non-CPA may be appointed as Temporary to the position involved provided that the appointee is a graduate of Bachelor of Science in Commerce or Business Administration, major in Accounting, and provided further that such temporary appointment shall not exceed twelve (12) months and that the appointee may be replaced sooner if a qualified RA 1080 (CPA) eligible becomes actually and immediately available for employment."

It is clear that R.A. 1080 (CPA) eligibility shall only be required for permanent appointment to the position of Chief of the Accounting Division or other Chiefs of Divisions, the duties of which involve the practice of the accountancy profession and that for accountant position lower than the Chief of the Accounting Division or its equivalent, the career service (Professional) eligibility may be considered, provided that the appointee is a graduate of Bachelor of Science in Commerce or Business Administration, Major in Accounting.

In the case at bar, petitioner has not shown that the position of Chief Revenue Officer of the Fiscal Operations Branch of the BIR, Legaspi City falls within the category of Chief of the Accounting Division of the BIR. In the absence thereof, the career service (Professional) eligibility of respondent Francisco may be considered sufficient qualification for the contested position.

Moreover, in the appointment or promotion of employees, the appointing authority considers not only their civil service eligibilities but also their performance, education, work experience, trainings and seminars attended, agency examinations and seniority. Consequently, the appointing authority has the right of choice which he may exercise freely according to his best judgment, deciding for himself who is best qualified among those who have the necessary qualifications and eligibilities.[4]

The final choice of the appointing authority should be respected and left undisturbed. The court should not substitute its own judgment to that of the appointing authority.

WHEREFORE, the petition is dismissed for lack of merit. Costs against petitioner.

SO ORDERED.

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

[1] 83 O.G. 17, p. 2009, April 27, 1987.

[2] Salles vs. Niceforo Francisco, CSC Case No. 178, March 6, 1989.

[3] The pertinent portions of the decision reads, as follows:

"Upon careful evaluation of the records of the case, this Board found that the instant appeal of Mr. Salles is but a reiteration of his previous appeal with the CSC against the same appointment. Following the principle of res adjudicata this instant appeal must fail.

"WHEREFORE, for lack of merit, the appeal of Florencio P. Salles is hereby dismissed."

[4] Pamantasan ng Lunsod ng Maynila v. CA, G.R. No. L-65439, 140 SCRA 22 (1985).

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