

HOME INSURANCE AND GUARANTY CORPORATION (HIGC), PETITIONER, VS. CIVIL SERVICE COMMISSION AND DANIEL R. CRUZ, RESPONDENTS.

G.R. No. 95450, March 19, 1993

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is a petition for certiorari[1] seeking to set aside the Resolutions[2] of respondent Civil Service Commission which directed petitioner Home Insurance and Guaranty Corporation (HIGC) to reappoint private respondent Daniel R. Cruz albeit to a position next lower in rank to Vice-President in petitioner corporation, and to pay him backwages from the date of his dismissal making as basis his old salary rate as Vice-President.

Private respondent was the Vice President, Finance and Administrative Group of the Home Financing Corporation, now known as the Home Insurance and Guaranty Corporation (HIGC), from 1 June 1986 to 8 July 1988, when he was not reappointed as a result of the reorganization of petitioner firm.

Initially, the appointment of private respondent Cruz was approved as temporary by the Civil Service Commission (COMMISSION for brevity) subject to his completion of the Executive Leadership and Management Program. On a reconsideration, the COMMISSION changed the appointment from temporary to permanent but still subject to his completion of the leadership program within three (3) years from the effectivity date of his appointment, otherwise he would be reverted to temporary status.

Sometime in 1987, Cruz was found responsible by an investigating committee for simple neglect of duty arising from his inefficient supervision over his subordinates arising from the loss of six (6) Land Bank checks.

In July 1988, HIGC underwent a reorganization which resulted among others in the reduction of the number of Vice President positions from six (6) to three (3). Respondent Cruz was one of those not reappointed as he was found to have no civil service eligibility.

On appeal, to the HIGC Reorganization Appeals Board, Cruz invoked his permanent appointment and insisted that the question of his eligibility should be left for determination by the COMMISSION.

In the meantime, Cruz sought to avail of the Early Separation Incentive Package (ESIP) granted by HIGC to those who were not reappointed and then withdrew his appeal.

On 7 December 1988, Cruz refiled his appeal after he was not granted ESIP benefits by HIGC.

On 8 December 1988, Cruz elevated his appeal for reinstatement with the COMMISSION.

On 20 February 1989, the HIGC Reorganization Appeals Board dismissed Cruz' appeal.

On 2 August 1989, however, the COMMISSION issued Resolution No. 89-543 finding Cruz to be a holder of a permanent career position at HIGC, hence, may be reappointed to a position next lower in rank to Vice President

under the Finance Group without reduction in salary, pursuant to CSC Memorandum Circular No. 10, s. 1986, and that in case Cruz could not be reappointed then his application to avail of the Early Separation Incentive Package (ESIP) should be approved. It further ruled that Cruz should be paid all the benefits and privileges due him as Vice President of HIGC in connection with his reassignment to the Office of the President and Bliss Development Corporation.

Resolving petitioner's Motion for Reconsideration of the Resolution, the COMMISSION issued on 18 December 1989 Resolution No. 89-973 holding that since Cruz had not received the early retirement benefits he applied for, he should be reappointed to the position next lower to the Vice President of the Finance Group, such as Manager of the Comptrollership Department, Treasury or other Department, and that he should be paid his back salaries from the time of his termination on the basis of his old salary rate as Vice President.

On 5 September 1990, the COMMISSION issued Resolution No. 90-823 denying petitioner's motion for reconsideration of modified Resolution No. 89-973. Hence, this petition for certiorari.

On 6 November 1990, We issued a temporary restraining order, effective immediately and to continue until further orders from the Court, enjoining respondent COMMISSION to cease and desist from enforcing its Order of 10 October 1990,[3] as well as the resolutions in question.

Petitioner now contends that respondent COMMISSION committed grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the questioned Resolutions for being contrary to established principles governing the civil service career system and of the basic constitutional mandate that appointments to the civil service shall be made only according to merit and fitness; and, that the non-reappointment of Cruz was the result of a valid reorganization.

We grant the petition.

The principal issue to be resolved is whether the COMMISSION committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that respondent Cruz was a permanent employee enjoying security of tenure and thus may be removed from office only for cause.

Respondent Cruz contends that he was extended a permanent appointment as indicated in his appointment papers.[4] He asserts that it is not necessary for him to pass any competitive civil service examination to become eligible for he belongs to the third level in the career service, which covers positions in the Career Executive Service, and which does not require passing a competitive civil service examination.

But law and jurisprudence do not support the contention of private respondent. Presidential Decree No. 807, otherwise known as the "Civil Service Decree of the Philippines," provides the following levels of positions in the career service: (a) the first level, which includes clerical, trades, crafts and custodial service positions involving non-professional or sub-professional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies; (b) the second level, which includes professional, technical and scientific positions involving professional, technical, or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief level; and, (c) the third level, which includes positions in the Career Executive Service.[5]

Positions in the Career Executive Service consist of Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President.[6]

Entrance to the first two levels shall be through competitive examinations, while entrance to the third level shall be prescribed by the Career Executive Service Board.[7]

The Constitution clearly mandates that appointments in the civil service shall be made only according to merit and fitness to be determined as far as practicable, and except to positions which are policy-determining, primarily confidential or highly technical, by competitive examination.[8]

Respondent Cruz has not satisfactorily shown that his former position as Vice President in the HIGC belongs to the third level in the career service as prescribed by law. His former position as Vice President is not among those enumerated by law as falling under the third level, nor has he established that it is one of those identified by the Career Executive Service Board as of equivalent rank to those listed by law. Neither is it claimed that he was appointed by the President.

We agree then with petitioner HIGC that the position of Vice President to which Cruz was formerly appointed belongs to the second level position which under the law includes professional, technical and scientific positions involving professional, technical or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief level.

Entrance to this second level is through competitive examinations. In other words, a person occupying a position in this level must possess a civil service eligibility, i.e., he must have obtained a passing grade in a civil service examination, or has been granted a civil service eligibility and whose name is accordingly entered in the register of eligibles.[9] Clearly, eligibility then is a sine qua non to acquiring a permanent appointment, except those positions which are not required by law to be filled with civil service eligibles. A permanent appointment is defined as one issued to a person who meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed in accordance with the provisions of law, rules and standards promulgated in pursuance thereof.[10]

In the case before Us, it is not disputed that respondent Cruz is without any civil service eligibility as shown by his appointment papers.[11] As such, respondent Cruz cannot be legally conferred a permanent appointment for the law is clear that career positions, particularly the first and second level positions in the service, require civil service eligibility. Thus the attestation by respondent COMMISSION that respondent Cruz' appointment is permanent must be struck down for being contrary to law. As correctly observed by the Solicitor General: "The permanent appointment of a non-civil service eligible to a career position is, from a legal viewpoint, a nullity. Not even the CSC can validate the error, as it cannot rise higher than the law that created it -- the same law that requires civil service eligibility for a permanent appointment to any of the two positions subject of the present petition." [12] Consequently, respondent Cruz' appointment being merely temporary in the context of the Civil Service Law, it follows that Cruz' appointment can be terminated at the pleasure of the appointing power.[13]

There can therefore be no question that petitioner HIGC acted legally when, after effecting a reorganization, it no longer reappointed respondent Cruz. We agree with petitioner HIGC that the qualifications of respondent Cruz are definitely inferior to those of the incumbents of the next-lower-in-rank positions who have civil service eligibilities and are at the same time certified public accountants. As we have noted earlier, respondent Cruz is not a civil service eligible; neither is he a certified public accountant who can be vested with civil service eligibility upon examination under R.A. 1080.[14] After all, a non-eligible shall not be appointed to any position in the civil service whenever there is a civil service eligible actually available for and ready to accept appointment.[15]

It is certainly erroneous for respondent COMMISSION to direct HIGC to reappoint respondent Cruz, a non-civil service eligible, to a position which requires a first grade civil service eligibility. As We have repeatedly held, appointment is an essentially discretionary power and must be exercised by the officer in whom it is vested

according to his best lights, the fundamental requisite being that the appointee must possess the qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been appointed. This is a political question involving considerations of wisdom which only the appointing authority can decide.[16]

We also find reasonable, fair and valid the reorganization carried out by petitioner HIGC which led to the separation from the service of respondent Cruz. Significantly, respondent COMMISSION does not question --but appears in fact to concede -- the validity of the reorganization effected by petitioner HIGC as reflected in the questioned CSC Resolution No. 89-543 -

"It is admitted that this reorganization of the HIGC resulted in the reduction in the number of positions of Vice President from six (6) to three (3) only. And, after due assessment and evaluation, Cruz was found to be one of the least competent and qualified to be reinstated to the same or comparable position as shown by the comparative analysis of the qualifications of the appellant and the re-appointed Vice-Presidents, Carlo P. Doble, Fernando M. Miranda and Wilfredo F. Hernandez x x x"[17]

As We ruled in *Dario v. Mison*[18], "[R]eorganizations in this jurisdiction have been regarded as valid provided they are pursued in good faith. As a general rule, a reorganization is carried out in 'good faith' if it is for the purpose of economy or to make bureaucracy more efficient. In that event, no dismissal (in case of dismissal) or separation actually occurs because the position itself ceases to exist. And in that case, security of tenure would not be a Chinese wall."

In sum, We find that respondent COMMISSION committed grave abuse of discretion amounting to lack or excess of jurisdiction when it insisted in holding respondent Cruz eligible for reappointment to a permanent position in a government owned and controlled corporation in derogation of the provision of law categorically proscribing such a conclusion.

WHEREFORE, the petition is GRANTED. The questioned CSC Resolutions Nos. 89-543, 89-973 and 90-823 are REVERSED and SET ASIDE. Accordingly, respondent Daniel R. Cruz is declared ineligible for reappointment in petitioner Home Insurance and Guaranty Corporation for lack of civil service eligibility as required by law. SO ORDERED.

Narvasa, C.J., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Melo, Campos, Jr., and Quiason, JJ., concur.

[1] Under Rule 65, Rules of Court, and Sec. 28, Chap. 5, Bk. II, Administrative Code of 1987 (E.O. No. 292).

[2] Resolution No. 89-543, dated 2 August 1989, pp. 55-60, Rollo; Resolution No. 89-973, dated 18 December 1989, pp. 62-65, Rollo; Resolution No. 90-823, dated 5 September 1990, pp. 67-74, Rollo.

[3] The order directed the President and General Manager of HIGC to reappoint private respondent Daniel R. Cruz as Manager either of the Comptrollership Department, Treasury or other Department, and to pay him his back salaries reckoned from the date of illegal termination based on the old rate for the position of Vice-President. It arose from private respondent's request for implementation of CSC Resolution No. 90-823 dated 5 September 1990 reiterating CSC Resolutions Nos. 89-973 and 89-543 dated 18 December 1989 and 2 August 1989, respectively.

[4] Comment, Annex "1", p. 127, Rollo.

[5] Sec. 7, Art. IV, P.D. 807.

[6] Sec. 5 (3), Id.

[7] Sec. 7 (b), Id.

[8] Sec. 2 (2), Art. IX-B, 1987 Constitution.

[9] Sec. 3 (h), Art. III, P.D. 807.

[10] Sec. 25 (a), Art. VIII, Id.

[11] Comment of the Solicitor General, p. 156, Rollo.

[12] Ibid.

[13] Carillo v. Court of Appeals, No. L-24554, 31 May 1967, 77 SCRA 170; Cuadra v. Cordova, No. L--11602, 21 April 1958, 54 O.G. 8063.

[14] "An Act Declaring the Bar and Board Examinations as Civil Service Examinations," promulgated 15 June 1954.

[15] Sec. 26, Chap. 5, Subtitle A, Title I, Bk. V, Administrative Code of 1987 (E.O. No. 292).

[16] Español v. Civil Service Commission, G.R. No. 85479, 3 March 1992, 206 SCRA 715, 721, citing Luego v. Civil Service Commission, No. 69137, 5 August 1986, 143 SCRA 327; Patagoc v. Civil Service Commission, G.R. No. 90229, 14 May 1990, 185 SCRA 411; Lapinid v. Civil Service Commission, G.R. No. 96298, 14 May 1991, 197 SCRA 106.

[17] See Petition, Annex "J", p. 57, Rollo.

[18] G.R. No. 81954, 8 August 1989, 176 SCRA 84.

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