

PENDATUN ALIM, PETITIONER, VS. CIVIL SERVICE COMMISSION, SALVADOR MISON, COMMISSIONER BUREAU OF CUSTOMS AND JESUSA TAGUINOD, RESPONDENTS.

G.R. No. 99391, December 02, 1991

Ponente: CRUZ, J.

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CRUZ, J.:

This is still another case where the petitioner invokes his security of tenure against what he claims to be an unlawful removal. His contention is that having been granted a permanent promotional appointment, he cannot thereafter be demoted to his original position by the withdrawal of his promotion. The respondents demur, claiming that his appointment was conditional and therefore revocable.

There are three employees involved in this controversy in the Bureau of Customs, namely, Pendatun Alim, the herein petitioner, who was originally holding the permanent position of Customs Examiner; Efigenia A. Cruz, who was originally holding the permanent position of Principal Customs Appraiser; and Jesusa Taguinod, the herein private respondent, who was originally holding the permanent position of Valuation and Classification Officer.

When the Bureau of Customs was reorganized pursuant to EO 127, Alim was promoted to the position of Principal Customs Examiner, effective March 1, 1988, "subject to the final outcome of the appeal of the adversely affected employees, if any." [1] The position was at that time vacant. Cruz was removed and replaced by Taguinod as Principal Customs Appraiser, effective April 15, 1988. Cruz protested her removal and was among the employees sustained by the Court in *Dario v. Mison* and the other related cases. [2]

In these cases, the Court directed inter alia as follows:

THE COMMISSIONER OF CUSTOMS IS ORDERED TO REINSTATE THE EMPLOYEES SEPARATED AS A RESULT OF HIS NOTICES DATED JANUARY 26, 1988.

THE EMPLOYEES WHOM COMMISSIONER MISON MAY HAVE APPOINTED AS REPLACEMENTS ARE ORDERED TO VACATE THEIR POSTS SUBJECT TO THE PAYMENT OF WHATEVER BENEFITS THAT MAY BE PROVIDED BY LAW. (Emphasis supplied).

Conformably, the Commission issued the following guidelines in its Order dated November 27, 1989:

If the reinstatements of some of these officials and employees as indicated in Annex "A" to their old positions are not possible in view of the changes in position title, abolition, upgrading or such other similar changes, the following guidelines shall be observed:

x x x

3. Where the position of the appellants have been filled by appointments of new recruits and/or by the promotion of employees who were retained in the service by the Commissioner of Customs:

3.1. The new recruits so appointed and/or employees who were promoted shall vacate and relinquish said positions and those who were promoted shall be restored to their former or comparable positions.

3.2. The appellants shall be reinstated to their old positions thus vacated. (Emphasis supplied).

Cruz was presumably reinstated as Principal Customs Appraiser as we have heard no further complaint from her. But Alim is before us with a grievance. On October 16, 1989, he was returned against his will to his original position of Customs Examiner, retroactive to March 1, 1988. This in effect nullified his earlier promotional appointment as Principal Customs Examiner. Taguinod was not restored to her original position as Valuation and Classification Officer. Instead, she was promoted to Principal Customs Examiner, vice Alim.

Alim protested his demotion to Customs Examiner, arguing that this constituted a separation without cause from his permanent position of Principal Customs Examiner. His appeal was dismissed for lack of merit by the respondent Civil Service Commission on June 25, 1990.[3] Reconsideration was denied on April 30, 1991,[4] the Commission holding as follows:

It was explicitly resolved in our Resolution of June 25, 1990 that the appointment of the Movant as Principal Customs Examiner was conditional and it was made subject to the final outcome of the appeal of those adversely affected employees in the BOC reorganization. Hence, as we stated in the said Resolution, Movant Alim "cannot now question much more refute the decision of the appointing authority demoting him to his former position since the outcome of the case filed by the Customs employees was for them to be reinstated to their former positions."

What is involved here is not a simple case of restoring two (2) affected employees to their former respective positions but it involves the issue as to whose promotional appointment, between Alim and Taguinod, should be upheld in the course of the implementation of the Supreme Court decision in the consolidated BOC cases. Thus, this act of Movant Alim of questioning the appointment of Taguinod to the contested position is tantamount to a protest which has to be resolved in favor of the upholding of the decision of the appointing authority, in the absence of proof that Taguinod is not qualified for the position.

The petitioner has come to us for relief.

It shall be granted.

Alim was appointed to a position that at the time was vacant. There was no other claimant to the position and nobody protested his promotion thereto. Alim was not a party in the Mison cases above referred to, either as petitioner or respondent. The position of Principal Customs Examiner to which he had been promoted was not involved in any way in any of the said cases.

The respondents justify Alim's return to his original position as Customs Examiner on the ground that his promotion as Principal Customs Examiner could be revoked because it was conditional. It is urged that the Customs Commissioner was competent to return Alim to his original position as this was only an implementation of the directive of the Court in the said Mison cases.

The directive of the Court and indeed the guidelines of the Civil Service Commission in implementation thereof clearly call for the reinstatement of those declared in the Mison cases to have been illegally removed. According to Webster, to reinstate means "to restore to a former condition or position." This is the ordinary and generally understood meaning that should be given to that word as used in the decision.

Following the Court directive, the Customs Commissioner should have returned Taguinod to her original position of Valuation and Classification Officer, to give way to the reinstatement of Cruz as Principal Customs Appraiser. This was not done, however. Instead, Taguinod was promoted to the position of Principal Customs Examiner,

which was already permanently held by the herein petitioner.

It bears repeating that Alim was a stranger to the conflict between Cruz, who was removed from her position as Principal Customs Appraiser, and Taguinod, who was promoted to Cruz's position. Yet he became a victim of the reshuffle made by the Customs Commissioner in the implementation of the Mison decision.

The respondent Civil Service Commission insists that what is involved in this case is the discretion of the appointing authority in deciding who among several candidates for the same position should be appointed. To be sure, we have consistently held that such discretion cannot be controlled, not even by this Court, as long as it is exercised properly.^[5] However, it must be stressed that this doctrine is applicable only when the position in question is vacant.

That is not the situation in the case before us. The plain fact is that the petitioner was permanently appointed to the disputed position. The issue facing us is not one of discretion. The issue we must resolve is whether the petitioner can be removed as Principal Customs Examiner because the Customs Commissioner now believes that another person has superior credentials.

It is noted that when Alim was promoted in 1988, he was considered eligible for and deserving of the promotion. It is immaterial that subsequent to the promotion of one employee, the appointing authority has a change of mind and decides that another employee should have been chosen.

By returning Alim against his will to his original position as Customs Examiner, Commissioner Mison demoted the petitioner from the position of Principal Customs Examiner to which he had been promoted in 1988. No objection to his promotion was raised then; to date in fact no appeal has been made against him by any protesting employee. The condition attached to the promotion not having occurred - and certainly it cannot last for ever - that promotion has as a consequence become permanent. The demotion of the petitioner was a revocation of that promotion and in effect a prohibited removal without cause.

We hold that the petitioner has gained security of tenure in his position as Principal Customs Examiner and cannot now be removed from it to give way to Taguinod's promotion. Even if Commissioner Mison now believes that she is better qualified for that position, that assessment is not reason enough to justify the petitioner's demotion to accommodate her. The injunction of the Constitution is clear and inflexible. The petitioner cannot be removed as Principal Customs Examiner except only for cause as provided by law and as established by preponderant evidence.

WHEREFORE, the petition is GRANTED. Petitioner Pendatun Alim is hereby REINSTATED to the position of Principal Customs Examiner in the Bureau of Customs, with back salaries from the date of his removal therefrom until his actual reinstatement. It is so ordered.

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

[1] Annex 1, Comment of Private Respondent.

[2] 176 SCRA 84.

[3] Rollo, p. 25.

[4] Ibid., p. 31.

[5] *Luego vs. Civil Service Commission*, 143 SCRA 327; *Central Bank vs. Civil Service Commission*, 171 SCRA

744; Santiago vs. Civil Service Commission, 178 SCRA 733; Patagoc vs. Civil Service Commission, 185 SCRA 411; Lopez vs. Civil Service Commission, 194 SCRA 269.

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