

CENTRAL BANK OF THE PHILIPPINES AND ANGELA P. JORDAN, PETITIONERS, VS. CIVIL SERVICE COMMISSION AND BASILIO E. BORJA, RESPONDENTS.

G.R. Nos. 80455-56. April 10, 1989

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

May the Civil Service Commission disapprove an appointment and require the appointment of another person whom it believes is more qualified for the position? This is the primordial issue addressed in this petition for certiorari brought to this Court by the petitioners Dr. Angela O. Jordan* and the Central Bank of the Philippines under Section 7, Paragraph A, Article IX of the 1987 Constitution. They are questioning Resolution Nos. 87-156[1] and 87-375[2] of the Civil Service Commission dated May 26, 1987 and October 16, 1987, respectively. The questioned resolutions directed the immediate revocation of the appointment of Dr. Angela P. Jordan to the position of Assistant Bank Physician of the Central Bank of the Philippines and the issuance of an appointment in favor of herein private respondent, Dr. Basilio E. Borja to the said position.

On October 3, 1984, the Promotions Board of the Central Bank, with a representative of the Civil Service Commission in attendance, deliberated on the filling up of the vacant position of Assistant Bank Physician of the Central Bank of the Philippines (Salary Grade 22). It found Dr. Jordan, who then had the rank of Coordinating Assistant (Salary Grade 20) as the only next-in-rank employee. After considering further the qualifications of Dr. Jordan, said Board certified her for promotion to the position of Assistant Bank Physician and submitted the proposal to the Office of the Governor of the Central Bank.

On the other hand, it appears that as early as July, 1984, respondent Borja filed an application for the position of Medical Director in the Central Bank. His papers were acted upon by the Promotions Board and he was considered for the position of Physician (Salary Grade 16). The bank approved the Board's proposal in a Resolution dated October 5, 1984.[3] On October 9, 1984, respondent Borja reported for duty. On October 15, 1984, he was issued his appointment as Physician.

On January 2, 1985, the promotion of Dr. Jordan to Assistant Bank Physician was approved by the Senior Deputy Governor of the Central Bank under Personnel Action No. 001, Series of 1985.[4] On January 10, 1985, Dr. Jordan was designated to act as Assistant Bank Physician. On January 30, 1985, she was issued an appointment as Assistant Bank Physician to take effect January 2, 1985. On February 15, 1985, private respondent contested Dr. Jordan's appointment claiming that he was the next-in-rank employee and that he was more qualified than she. On May 16, 1985, the Bank dismissed the protest on the grounds that the protest was filed beyond the reglementary period; that protestant is not the next-in-rank employee as regards the contested position and, as such, he has no legal personality to file the protest; and, that the protestee aside from being the next-in-rank employee, met the requirements for promotion.

Private respondent appealed to the Merit Systems Board (MSB for short). In its decision dated October 28, 1986,

the MSB found the appeal meritorious and ruled that private respondent should have been the one appointed as Assistant Bank Physician. The Bank, through Mr. Sebastian V. Palanca, Jr., Special Assistant to the Governor, in an undated petition for reconsideration, prayed that the MSB decision be set aside and that the Bank's decision upholding the appointment of Dr. Jordan be left undisturbed. On January 28, 1987, the MSB set aside its decision of October 28, 1986 and confirmed the approval of the appointment of Dr. Jordan to the contested position.

On March 5, 1987, private respondent appealed to the Civil Service Commission on the grounds that he was denied due process of law inasmuch as he was not furnished a copy of the motion for reconsideration filed by the Bank, and that the decision of the MSB dated January 28, 1987 is contrary to the merit and fitness principles enshrined in the Civil Service Law and the Constitution.

In the first indorsement dated March 19, 1987, the Commission forwarded the appeal to the Office of the Governor of the Central Bank for his comment with the request that his comment be transmitted to the Commission within ten (10) days from receipt. Likewise, Dr. Jordan was furnished a copy of the appeal for her to submit her answer/comment thereon within ten (10) days from receipt with a warning that her failure to do so shall be considered a waiver of her right to submit the same. Instead of submitting her comment, Dr. Jordan filed an Ex-Parte Motion for Extension of Time to File Comment. The Central Bank, through Mr. Sebastian Palanca, Jr. filed a similar motion alleging that the Bank received notice of the appeal on April 1, 1987. However, the Commission denied the motion of Dr. Jordan on the ground that a protest case is not strictly an adversary proceeding where protestant and protestee play active participation.[5]

On May 26, 1987, the Commission issued Resolution No. 87-156 setting aside the decision of the MSB dated January 28, 1987 and directing the appointment of private respondent to the contested position. On June 10, 1987, the petitioner Central Bank filed a petition for reconsideration that the department head enjoys wide latitude of discretion as regards the appointment of department personnel and that question as to who is more competent is of no consequence since private respondent was not yet an employee of the Central Bank at the time Dr. Jordan was considered for promotion. However, the petitioner's motion for reconsideration was denied by the Commission in Resolution No. 87-375 dated October 16, 1987 on the sole ground that its Resolution dated May 26, 1987 had become final and executory on account of the failure of Dr. Jordan to file a motion for reconsideration and that the motion for reconsideration filed by Mr. Palanca, Jr. for and in behalf of the Central Bank cannot be said to have been filed in behalf of Dr. Jordan inasmuch as the Central Bank has no personality to file a motion for reconsideration as it does not stand to be adversely affected or personally aggrieved by the decision of the Commission.

Hence, the present petition.

It is the contention of the petitioner Central Bank that the Civil Service Commission acted without or in excess of jurisdiction in revoking the appointment of Dr. Jordan and in directing the issuance of the appointment in favor of Dr. Borja when all the while the qualifications of Dr. Jordan were certified by the Promotions Board and a representative of the Civil Service Commission who was present in the deliberations of the same board. Petitioner Bank added that the power of the Commission is limited to determining whether or not the appointee has the appropriate eligibility and qualification and that once such qualification was certified, the Commission is duty bound to attest to the appointment.[6]

The Solicitor General prays for the dismissal of the instant petition on the ground that the decision of the Merit Systems Board dated October 28, 1986 had already become final and executory for failure of Dr. Jordan to appeal or seek reconsideration within fifteen (15) days from receipt of the said decision, citing Section 2, Board Resolution No. III in relation to Section 39, Presidential Decree No. 807. The Solicitor General also stressed that

the petition is devoid of merit.[7]

On the other hand, private respondent contends that the Central Bank lacks the legal personality to contest the validity of Resolution Nos. 87-375 and 87-156 as it does not stand to be adversely affected or personally aggrieved by the decision of the Commission, citing Sections 7 and 10 of Resolution No. 81-1329 of the Commission.[8]

It is well-settled principle that the appointing authority is given ample discretion in the selection and appointment of qualified persons to vacant positions. This is a management prerogative which is generally unhampered by judicial intervention.[9] Within the parameters of this principle, the right to select and appoint employees is the prerogative of the employer which may be exercised without being liable therefor provided that the exercise thereof is in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements and provided further that such prerogatives are not exercised in a malicious, harsh, oppressive, vindictive or wanton manner, or out of malice or spite.[10]

There is no question that the Central Bank of the Philippines is vested with the power of appointment under Section 14 of Republic Act No. 265, as amended, otherwise known as the Central Bank Act. At issue in this petition is the extent of the power of the Civil Service Commission to approve or disapprove a particular appointment. May the Commission revoke an appointment and direct the issuance of the appointment to somebody else whom it believes is more qualified for the position?

Under the Civil Service Act of 1959,[11] the Commissioner of Civil Service has the final authority on appointments.[12] But the situation has changed under the new law, Presidential Decree No. 807,[13] otherwise known as the Civil Service Decree, wherein the Commission is not authorized to curtail the discretion of the appointing official on the nature or kind of appointment to be extended.[14] The authority of the Commission is limited to approving or reviewing the appointment in the light of the requirements of the law governing the Civil Service.

In the case at bar, the qualifications of Dr. Jordan were never disputed. The fact that she was qualified was attested to by the Promotions Board. A representative of the Commission was present in the deliberation of the said board.

Private respondent anchors his protest on the ground that he is more qualified than the appointee. It is well-settled that when the appointee is qualified, as in this case, and all the other legal requirements are satisfied, the Commission has no alternative but to attest to the appointment in accordance with the Civil Service Laws.[15] The Commission has no authority to revoke an appointment on the ground that another person is more qualified for a particular position. It also has no authority to direct the appointment of a substitute of its choice. To do so would be an encroachment on the discretion vested upon the appointing authority. An appointment is essentially within the discretionary power of whomsoever it is vested, subject to the only condition that the appointee should possess the qualifications required by law.

Private respondent alleges, however, that the power of appointment is not absolute and that the Commission is empowered to approve or disapprove the same, citing Section 9(h) of Article V of the Civil Service Decree and Section 4 of Civil Service Commission Resolution No. 83-343. This is correct. As noted earlier, the appointment is subject to verification by the Commission as to whether or not the appointing authority complied with the requirements of the law, otherwise, it may revoke the appointment. However, to conclude that the Commissioner may also direct the appointment of individuals other than the choice of the appointing power is certainly not contemplated by the law. Section 9(h) of Article V of the Civil Service Decree provides that the Civil Service

Commission is authorized to perform the following functions with respect to appointments in the Civil Service, to wit:

"Approve all appointments, whether original or promotional, to positions in the civil service, except those of presidential appointees, members of the Armed Forces of the Philippines, police forces, firemen, and jailguards, and disapprove those where the appointees do not possess appropriate eligibility or required qualifications." xxx. (Emphasis supplied.)

From the foregoing, it is clear that the Commission has the authority to check whether or not the appointee possesses the appropriate civil service eligibility or the required qualifications. If he does, his appointment must be approved; if not it should be disapproved. No other criterion may be employed by the Commission when it acts on an appointment.

Thus, when as in this case, it is not disputed that the appointee, Dr. Jordan, is qualified for the contested position, the Commission exceeded its power in revoking her appointment on the ground that private respondent is more qualified. The Commission cannot substitute its will for that of the appointing authority.

It may be true that private respondent has an edge over Dr. Jordan in terms of educational attainment inasmuch as the former holds a post-graduate degree in Medicine from a foreign educational institution and considering that he has had experience and training in reputable institutions here and abroad. However, under the pertinent rules on promotion obtaining in the Central Bank,[16] educational attainment and training experience are just among the factors to be considered in the promotion of its employees. The other factors to be considered are performance rating, experience and outstanding accomplishments, physical characteristics and personality traits and potential.

After evaluating the qualifications of Dr. Jordan, the Central Bank arrived at the conclusion that she outranks the others in point of experience, rank, salary and service in the Bank. Dr. Jordan holds the degree of Doctor of Medicine and is a graduate of the University of the Philippines. She had been with the Central Bank since September 6, 1976. It appears that during this span of time, she had displayed a high degree of efficiency, dedication and initiative in discharging the duties and responsibilities of her position. She also attended various seminars, conferences, symposia and other special training courses that enriched her knowledge in the field of medicine.

Prior to her promotion to the contested position, she held the position of bank physician from September 6, 1976 to July 9, 1981. On July 9, 1981, Dr. Jordan was promoted to the position of coordinating assistant. On the other hand, the private respondent was appointed to the position of bank physician only on October 9, 1984. On one occasion private respondent was found guilty of dishonesty for failing to reveal in his information sheet that he has a sister-in-law employed in the Central Bank.[17]

The stand of the Commission that the appointee did not hold a special medical position prior to her appointment, unlike in the case of the private respondent who held the position of bank physician is devoid of merit. The position of coordinating assistant which was held by Dr. Jordan prior to her promotion in the Medical and Dental Unit where she belongs is filled up only by qualified and competent physicians.

On the basis of the foregoing, the appointing authority found that Dr. Jordan satisfied all the requirements set by the Central Bank on promotion the wisdom of which cannot be questioned.

It must be stressed that the law does not impose a rigid or mechanical standard on the appointing power. The appointing person enjoys sufficient discretion to select and appoint employees on the basis of their fitness to perform the duties and to assume the responsibilities of the position to be filled.[18] As earlier ruled in *Reyes vs. Abeleda*,[19] at least sufficient discretion, if not plenary, should be granted to those entrusted with the

responsibility of administering the offices concerned, primarily the department heads. They are in the position to determine who can best fulfill the functions of the office thus vacated. Unless the law speaks in mandatory and peremptory tone, there should be full recognition of the wide scope of such discretionary authority. The power of appointment is essentially a political question involving considerations of wisdom which only the appointing authority can decide.^{19-a}

The Commission disregarded the performance ratings of Dr. Jordan submitted by the Central Bank on the ground that the same were not signed by Dr. Jordan's immediate superior. It ruled that the absence of performance ratings in the case of private respondent, considering his point of service, places the protestee and the protestant on equal footing.

We disagree. As pointed out by the Central Bank, it was not possible to require Dr. Ricarte Reyes, Dr. Jordan's immediate superior to sign her performance ratings since the former had already retired as early as March 23, 1984, which was before the end of the first semester of 1984. Thus, at the time the contested position was filled up it was Mr. Sebastian Palanca, Jr. who served as the immediate supervisor of Dr. Jordan in the unit where she belongs and hence her performance ratings were signed by the latter.

The relation of the position of Dr. Jordan and private respondent is as follows:

"Physician -

(Salary Grade 16)

Position to which private respondent was appointed on October 5, 1984

"Coordinating -

Assistant

(Salary Grade 22)

position of Dr. Jordan as of 1984 and before her appointment as Assistant Bank Physician

"Assistant Bank -

Physician

(Salary Grade 22)

positions to which Dr. Jordan was considered on October 3, 1984 and to which she was appointed on January 2, 1985.^[20]

Dr. Jordan holds the position of coordinating assistant (Salary Grade 20) which is next in rank to the contested position of Assistant Bank Physician (Salary Grade 22). Private respondent holds the position of Physician (Salary Grade 16) which without doubt is not next in rank to the contested position. As the position of private respondent is not next-in-rank, the Commission should have dismissed his appeal as he had no legal personality to contest the appointment of Dr. Jordan. Only employees who are next-in-rank may protest an appointment.^[21] In implementing Section 19 of P.D. No. 807 the Civil Service Commission promulgated Resolution No. 83-343^[22] which provides as follows:

"Within fifteen (15) days from notice of issuance of an appointment, a next-in-rank employee who is competent and qualified and who feels aggrieved by the promotion of another may file a protest to the ministry or agency head xxx." (Emphasis supplied)

The Court takes note that at the time Dr. Jordan was considered and recommended for promotion to the contested

position on October 3, 1984, private respondent was not yet an employee of the Central Bank. It was only on October 5, 1984 that he was appointed as physician and he assumed the position only on October 9, 1984. It was, therefore, impossible to consider him for appointment to the contested position before that time.

Anent the argument of the respondents that the Central Bank lacks the legal personality to contest the decision of the Commission and hence the decision became final and executory for failure of Dr. Jordan to file a motion for reconsideration, the Court finds the argument untenable. In an earlier case,[23] this Court held that it is the appointing authority who stands adversely affected where the Civil Service Commission disapproves the appointment made. This rule is acknowledged by the Solicitor General. However, the Solicitor General contradicted himself by insisting that the decision of the MSB dated October 28, 1981 became final and executory for failure of Dr. Jordan to file a motion for reconsideration when all the while the Central Bank filed a timely motion for reconsideration thereof.

Petitioner Central Bank, as the appointing authority is the one which can defend its appointment since it knows the reasons for the same. Any final determination of the issue can only be enforced through it. Moreover, it is the act of the appointing authority that is being questioned. Indeed, when the Commission directed the Central Bank to submit its Comment on the appeal filed by private respondent the Commission must have been aware that the participation of the Central Bank is indispensable. Although the Commission also directed Dr. Jordan to file a separate Comment, it denied the latter's request for an extension of time within which to file the same on the ground that a protest case is not strictly an adversary proceedings where the protestant and the protestee play active roles. The Commission pointed out that a protest case is an action of the protestant against a determination made by the appointing authority, a determination which only the appointing authority could defend inasmuch as it is the latter who knows the reasons for such determination.[24] Thus, for the Commission to say thereafter that the decision became final and executory for failure of Dr. Jordan to appeal is obviously erroneous. As a matter of fact the Commission is now in estoppel. After making the parties believe that the Central Bank may participate in the controversy, the Commission cannot later make a total turn about by alleging that the participation of the Central Bank is inconsequential as it lacks the requisite legal personality.

IN VIEW OF THE FOREGOING, the questioned Resolutions of the Civil Service Commission dated May 26, 1987 and October 16, 1987, respectively, are hereby declared null and void and the Commission is directed to attest the appointment of Dr. Angela Jordan as Assistant Bank Physician. No costs.

This Decision is immediately executory.

SO ORDERED.

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

Narvasa, J., no part, private respondent was adverse party in prior proceedings before my appointment to the court.

* Dr. Angela Jordan filed a Supplemental Petition for Certiorari on December 21, 1987, pages 173 to 205, Rollo.

[1] Pages 30 to 34, Rollo.

[2] Pages 26 to 29, Rollo.

[3] Resolution No. 1259.

[4] Page 40, Rollo.

- [5] Page 52, Rollo.
- [6] Pages 12 and 13, Rollo.
- [7] Pages 435 to 437, Rollo.
- [8] Pages 136 to 137, Rollo.
- [9] Ocampo vs. Subido, 72 SCRA 443 (1976).
- [10] Government Service Insurance System vs. Ayroso, 96 SCRA 213 (1980).
- [11] Republic Act No. 2260.
- [12] Salcedo vs. Court of Appeals, 81 SCRA 408 (1978).
- [13] Providing for the Organization of the Civil Service Commission in Accordance with the Provisions of the Constitution, Prescribing Its Power and Functions and for other Purposes.
- [14] In Re: Elvira C. Arcega, 89 SCRA 318 (1979).
- [15] Luego vs. Civil Service Commission, 143 SCRA 327, 331 (1986).
- [16] Section 5. Rule on Promotions. - The comparative degree of competence and qualifications of employees shall be determined by the extent to which they meet the following requirements:
- (1) Performance - this shall be based on last two performance rating of the employee. However, no employee shall be considered for promotion unless his/her last two performance rating is at least satisfactory.
 - (2) Education and Training - these shall include educational background and successful completion of training courses, scholarships, training grants, and others. Such education and training must be relevant to the duties of the position to be filled.
 - (3) Experience and Outstanding Accomplishments - these shall include occupational history, work experience, and accomplishments worthy of commendations.
 - (4) Physical Characteristics and Personality Traits - these refer to the physical fitness, attitudes and personality traits of the individual which must have a bearing on the positions to be filled.
 - (5) Potential - this takes into account the employee's capability not only to perform the duties and to assume the responsibilities of the position to be filled but also those of higher and more responsible positions.
- [17] Pages 233 to 236, Rollo.
- [18] Pilar vs. Secretary of Public Works and Communications, 19 SCRA 258 (1967).
- [19] 19 22 SCRA 825 (1968). See also Eugenio vs. Torrejos, 85 SCRA 512 (1978).
- 19-a Tito R. Pintor vs. Hon. Bienvenido A. Tan, et al., G.R. Nos. 84022 and 85804, March 7, 1984 En Banc Resolution, Luego vs. CSC, 143 SCRA 327 (1986); Torres vs. Borja, 56 SCRA (1982).
- [20] Central Bank Memorandum; pages 525, Rollo.
- [21] Section 19, P.D. No. 807.
- [22] Rule on Promotions.
- [23] Quezon vs. Borromeo, 149 SCRA 205 (1987).

[24] Resolution No. 87-156; page 32, Rollo.

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