

AUGUSTO TOLEDO, PETITIONER, VS. CIVIL SERVICE COMMISSION AND COMMISSION ON ELECTIONS, RESPONDENTS.

G.R. Nos. 92646-47. October 04, 1991

Ponente: PARAS, J.

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PARAS, J.:

Petitioner Atty. Augusto Toledo was appointed by then Comelec Chairman Ramon Felipe as Manager of the Education and Information Department of the Comelec, on May 21, 1986. At the time of his appointment, petitioner, having been born on July 8, 1927 was already more than fifty-seven (57) years old. It was the first time petitioner joined the government service as he was then engaged in active private practice prior to said appointment.

Petitioner's appointment papers, particularly Civil Service Form No. 333 and his oath of office were endorsed by the Comelec to the Civil Service Commission (CSC, for brevity) on June 11, 1986, for approval and attestation. However, no prior request for exemption from the provisions of Section 22, Rule III of the Civil Service Rules on Personnel Action and Policies (CSRPA, for brevity) was secured. Said provision prohibits the appointment of persons 57 years old or above into the government service without prior approval by the Civil Service Commission (CSC Memorandum Circular No. 5, Series of 1983).

Petitioner officially reported for work and assumed the functions of his office on June 16, 1986.

On January 29, 1989, public respondent Comelec, upon discovery of the lack of authority required under Section 22, Rule III of the CSRPA, and CSC Memorandum Circular No. 5, Series of 1983 issued Resolution No. 2066, the pertinent portion of which is hereinbelow quoted, to wit:

"WHEREAS, for the validity then of the appointment of Atty. Toledo as Manager of the Education and Information Department it was necessary that not only must prior authority from the Civil Service Commission be obtained considering that he was more than fifty-seven (57) years old at the time, it must as well be shown that (a) the exigencies of the service so required, (b) Atty. Toledo possesses special qualification not possessed by other officers or employees in the Commission, and (c) the vacancy cannot be filled by promotion of qualified officers or employees in the Commission;

"WHEREAS, there is nothing in the 120 File of Atty. Toledo that indicates that such authority was even obtained from the Civil Service Commission or from the President of the Philippines; moreover, conditions (a), (b) and (c) stated in the immediately preceding clause did not then exist;

"WHEREAS, the appointment then of Atty. Toledo was made in violation of law and pursuant to Section 7, Rule III of the Civil Service Rules on Personnel Action, the appointment was void from the beginning.

"NOW, THEREFORE, be it resolved, as it is hereby resolved, to DECLARE as VOID from the beginning the appointment of Atty. Augusto Toledo as Manager of the Education and Information Department of this Commission." (pp. 49-50, Rollo)

Petitioner appealed the foregoing Comelec Resolution No. 2066 to public respondent CSC on February 4, 1989.

On July 12, 1989, public respondent CSC promulgated Resolution No. 89-468 which disposed of the appeal, thus:

"WHEREFORE, foregoing premises considered, the Commission resolved to declare, as it hereby declares the appointment of Augusto V. Toledo as Manager, Information and Education Department, Commission on Elections, there being no basis in law, merely voidable and not void ab initio. Hence, Atty. Toledo is considered a de facto officer from the time he assumed office on June 16, 1986, until and up to the promulgation of COMELEC Resolution No. 2066 on January 29, 1989." (pp. 35-36, Rollo)

Unable to obtain a reconsideration of the aforesaid Resolution, petitioner filed the present petition for certiorari.

It is first contended by petitioner that CSC Resolution No. 89-468 is without legal basis because the CSRPA is invalid and unenforceable for not having been published in the Official Gazette or in any newspaper of general circulation as required under Section 9(b) of P.D. 807. This being the case, petitioner argues that the requirement of prior CSC authority to appoint persons 57 years or older under Section 22, Rule III of the CSRPA has not "become effective" and cannot be invoked against him.

It will be recalled that the Civil Service Act of 1959 (Republic Act No. 2260) took effect on June 19, 1959. That act, among other things, established a Civil Service Commission one of the functions of which was, "with the approval by the President, to prescribe, amend, and enforce suitable rules and regulations for carrying into effect the provisions of * * * the Civil Service Law," said rules "to become effective thirty days after publication in the Official Gazette" [Sec. 16 (e)].

The Commission subsequently adopted and promulgated rules intended to carry the law into effect, known as the Revised Civil Service Rules. Those rules were published in the supplement to Vol. 58, No. 49 of the Official Gazette, dated December 3, 1962.

Section 5, Rule VI of those Revised Civil Service Rules provided that:

"SEC. 5. No person shall be appointed or reinstated in the service if he is already 57 years old, unless the President of the Philippines, President of the Senate, Speaker of the House of Representatives, or the Chief Justice of the Supreme Court, as the case may be, determines that he possesses special qualifications and his services are needed."

It is worthy of note, however, that the statute itself (RA 2260) contained no provision prohibiting appointment or reinstatement in the Government service of any person who was already 57 years old, or otherwise requiring that some limitation as regards to age be placed on employment in the Government service. This prohibition was purely a creation of the Civil Service Commission.

On October 6, 1975, pursuant to the 1973 Constitution, Presidential Decree No. 807 was issued by President Marcos, establishing "an independent Civil Service Commission." The decree, known as the "Civil Service Decree of the Philippines," repealed or accordingly modified all laws, rules, and regulations or parts thereof inconsistent with its provisions (Sec. 59), although it declared that "the former Civil Service Commission created under Republic Act No. 2260, as amended, and as organized under the Integrated Reorganization Plan may serve as the nucleus of the Civil Service Commission" (Fourth Whereas Clause, Preamble). Like RA 2260 which it superseded, PD 807 empowered the Commission to "prescribe, amend, and enforce suitable rules and regulations for carrying into effect the provisions of the Decree," and also provided that said "rules and regulations shall become effective thirty (30) days after publication in the Official Gazette or in any newspaper of general circulation."

The new Civil Service Commission adopted "rules and regulations for carrying into effect the provisions" of the

Civil Service Decree on November 20, 1983. The rules were named, "Civil Service Rules on Personnel Actions and Policies" (CSRPAP). Section 22, Rule III of the CSRPAP is substantially the same as Section 5, Rule VI of the quondam "Revised Civil Service Rules" and it reads as follows:

"SEC. 22. No person shall be appointed, reinstated, or re-employed in the service if he is already 57 years old, unless the President, or the Chief Justice of the Supreme Court, in the case of employees in the judiciary, determines that he possesses special qualifications urgently needed by the hiring agency."

Omitted, it will be observed, was reference to the "President of the Senate" and the "Speaker of the House of Representatives," both of whom were expressly mentioned in the counterpart provision in the former rules (Section 5, Rule VI, *supra*).

Noteworthy, too, is that there is no provision at all in PD 807 dealing in any manner with the appointment, reinstatement or re-employment in the Government service of any person already 57 years or any particular age, for that matter. Again, the provision regarding persons 57 years of age was purely a creation of the Commission, having no reference to any provision in the decree intended to be implemented.

It was this provision of the CSRPAP (Sec. 22, Rule III) which was applied to Toledo. According to the CSC, since prior authority for Toledo's appointment had never been obtained — indeed, it would appear that the appointment papers were not transmitted by the COMELEC to the CSC until February, 1989 at which time Toledo's appointment was "approved as permanent" by the Executive Director of said CSC — the appointment had to be struck down.

Now, these rules and regulations (CSRPAP) were never published either in the Official Gazette or any newspaper of general circulation, at least as of the time that Section 22, Rule III thereof was applied to Toledo to the latter's prejudice. As much was admitted by the Chairman of the Commission, Hon. Patricia A. Sto. Tomas in a letter written by her to Toledo dated February 2, 1989. In that letter, the Chairman stated that (a) the Commission had "no record of the publication of said Rules ("Rules on Personnel Actions and Policies") in newspapers of general circulation" although said Rules were "published and distributed by the National Media Production Center in 1975," and that (b) only "the Rule on Promotion embodied in CSC Resolution No. 83-343 repealing Rule V of the said Rules was published on August 15, 1983 in Volume 79 No. 33 of the Official Gazette" (Annex I, petition). The lack of publication is also attested by the Director of the National Printing Office who, in a Certification issued by him on January 30, 1989, stated that "the RULES ON PERSONNEL ACTIONS AND POLICIES" promulgated on November 20, 1975 by the Civil Service Commission implementing Presidential Decree No. 807 was not submitted to this office for publication" (Annex J, petition).

The Revised Civil Service Rules implementing R.A. No. 2260 cannot be considered valid and effective after RA 2260 was repealed and superseded by PD 807. PD 807 was obviously intended to take the place of RA 2260. In all matters dealt with by both laws, the provisions of PD 807 were obviously intended to be controlling. So, also, the rules promulgated by the Civil Service Commission to carry the provisions of PD 807 into effect were meant to supersede or take the place of the rules implementing RA 2260. In other words, PD 807 and the CSRPAP were intended to make RA 2260 and its implementing rules *functus officio*, render them without force and effect except only as regards any provision, if at all, not dealt with by PD 807 or the CSRPAP.

Now, it may reasonably be assumed that the law-making authority at the time, the President, was aware of the provision on 57-year old persons in the Revised Civil Service Rules promulgated under RA 2260. Yet when he promulgated PD 807 the President did not see fit to incorporate therein any provision regarding 57-year old persons or for that matter, to prescribe any age beyond which persons could become ineligible for appointment, reinstatement or re-employment. This surely is an indication of an intention not to continue the provision in effect.

In any event, the provision on 57-year old persons in the Revised Civil Service Rules (under said RA 2260) cannot be accorded validity. As already pointed out, it is entirely a creation of the Civil Service Commission, having no basis in the law itself which it was meant to implement. It cannot be related to or connected with any specific provision of the law which it is meant to carry into effect, such as a requirement, for instance, that age should be reckoned as a factor in the employment or reinstatement of an individual, or a direction that there be a determination of some point in a person's life at which he becomes unemployable, or employable only under specific conditions. It was therefore an unauthorized act of legislation on the part of the Civil Service Commission. It cannot be justified as a valid exercise of its function of promulgating rules and regulations for that function, to repeat, may legitimately be exercised only for the purpose of carrying the provisions of the law into effect; and since there is no prohibition or restriction on the employment of 57-year old persons in the statute — or any provision respecting age as a factor in employment — there was nothing to carry into effect through an implementing rule on the matter.

The power vested in the Civil Service Commission was to implement the law or put it into effect, not to add to it; to carry the law into effect or execution, not to supply perceived omissions in it. "By its administrative regulations, of course, the law itself can not be extended; said regulations 'cannot amend an act of Congress.'" (Teoxon v. Members of the Board of Administrators, Philippine Veterans Administration, 33 SCRA 585, 589 [1970], citing Santos v. Estenzo, 109 Phil. 419 [1960]; see also, Animos v. Philippine Veterans Affairs Office, 174 SCRA 214, 223-224 [1989] in turn citing Teoxon).

The considerations just expounded also conduce to the conclusion of the invalidity of Section 22, Rule III of the CSRPA. The enactment of said section, relative to 57-year old persons, was also an act of supererogation on the part of the Civil Service Commission since the rule has no relation to or connection with any provision of the law supposed to be carried into effect. The section was an addition to or extension of the law, not merely a mode of carrying it into effect.

Apart from this, the CSRPA cannot be considered effective as of the time of the application to Toledo of a provision thereof, for the reason that said rules were never published, as is admitted on all sides. The argument that the CSRPA need not be published, because they were "a mere reiteration of existing law" and had been "circularized," flies in the teeth of the explicit and categorical requirement of PD 807 that rules and regulations for carrying into effect the provisions of the Decree shall become effective thirty (30) days after publication in the Official Gazette or in any newspaper of general circulation." Moreover, the CSRPA cannot properly be considered a mere reiteration of existing law, for as already discussed, the implementing rule governing 57-year old persons is invalid and cannot in any sense be considered "existing law."

Assuming without conceding that the rule regarding employment of 57-year old persons is valid and enforceable, it can only apply, according to its express terms, to employees under the supervision of the Chief Justice of the Supreme Court, or of the President of the Philippines, these two being the only officials mentioned as having to give consent to the employment of said persons. It cannot be construed as applying to employees over whom neither the President nor the Chief Justice exercises supervision, such as the Senate or the House of Representatives, or the COMELEC or other Constitutional Commissions.

One last word. There is absolutely no question about the fact that the only reason for Toledo's separation from the service was the fact that he was already more than 57 years old when he was invited to work in the COMELEC by its former Chairman, but through no fault of his own, not all the conditions for his employment appear to have been satisfied. There is no question that it was not Toledo's fault that his papers were tardily submitted to the Civil Service Commission and approval of his appointment was made only by the Executive Director of the Commission and not by the Chairman thereof (to whom the function of the President of approving appointments

like those of Toledo had been delegated under LOI 47, CSC Memo Circular No. 5, Series of 1983). There is no question, too, that he was actively engaged in law practice when taken into the COMELEC. There is absolutely no question about the fact that he was otherwise a competent and efficient officer of the COMELEC and had not given the remotest cause for dismissal. These are equitable considerations proscribing application to him of the provision in question, assuming its validity, or impelling at least a restrictive application thereof so that it may not work to his prejudice.

PREMISES CONSIDERED, the petition is hereby GRANTED.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Feliciano, Padilla, Bidin, Sarmiento, Grino-Aquino, Medialdea, and Regalado, JJ., concur.

Cruz, J., concurs in the result.

Davide, Jr., J., no part; I was Chairman of the COMELEC when the issue cropped up.

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