

NORBERTO A. ROMUALDEZ III, PETITIONER, VS. CIVIL SERVICE COMMISSION[] AND THE PHILIPPINE COCONUT AUTHORITY, RESPONDENTS.

G.R. Nos. 94878-81. May 15, 1991

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

By this petition the intervention of public respondent Civil Service Commission (CSC) is sought to compel public respondent Philippine Coconut Authority (PCA) to reinstate and extend a permanent appointment to petitioner as Deputy Administrator for Industrial Research and Market Development.

Petitioner was appointed and served as a Commercial Attache of the Department of Trade continuously for twelve years from September, 1975 to August 30, 1987. His civil service eligibilities are: Patrolman of the City of Manila (1963 CS Exam) and a Commercial Attache (1973 CS Exam).

On September 1, 1987, he was transferred to the respondent PCA Whereby he was extended an appointment as Deputy Administrator for Industrial Research and Market Development.[1] The nature of his appointment was "reinstatement" and his employment status was "temporary," for the period covering September 1, 1987 to August 30, 1988. His appointment was renewed for another six months from September 1, 1988 to February 28, 1989 also on a "temporary" status and subject to certain conditions to which petitioner agreed.

When his appointment expired on February 28, 1989, the Governing Board did not renew the same so he was promptly informed thereof by the Acting Chairman of the Board of the PCA Apolonio V. Bautista.[2]

On February 6, 1990, petitioner appealed to respondent CSC. He requested reinstatement to his previous position in PCA and in support of the request, he invoked the provisions of CSC Memorandum Circular No. 29 dated July 19, 1989.[3]

Respondent CSC denied petitioner's request for reinstatement on May 2, 1990 by way of its Resolution No. 90-407, holding that CSC Memorandum Circular No. 29 was not applicable to petitioner's case because it took effect on July 19, 1989 when petitioner had long been out of the government service since February 28, 1989 and that his reappointment was essentially discretionary on the part of the proper appointing authority.

On May 11, 1990, respondent PCA appointed Mr. Roman Santos to the contested position.

Petitioner moved for a reconsideration of Resolution No. 90-407 but it was denied by respondent CSC in Resolution No. 90-693 dated July 31, 1990.[4]

Hence, petitioner filed this petition for certiorari, prohibition and mandamus with a prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order, raising the following issues -

"1.

Public Respondent Civil Service Commission committed grave abuse of discretion amounting to capricious, whimsical, and despotic refusal to perform a legal/constitutional duty to enforce the Civil Service Law and/or constituting non-feasance/mis-feasance in office in issuing Resolution Nos. 90-407 and 90-693;

2.

The legal issue of the applicability of Civil Service Commission Circular No. 29, Series 1989 on the appointment of petitioner as PCA Deputy Administrator for Industrial Research and Market Development;

3.

The legal issue as to whether it is mandatory for an appointing authority to extend permanent appointments to selected appointees with corresponding civil service eligibilities;

4.

Public respondent Civil Service Commission committed grave abuse of discretion amounting to lack of jurisdiction and/or non-feasance/misfeasance of official functions in not exercising its authority to enforce/implement the Civil Service Law and in not affording petitioner who belongs to the career service in the government the protective security of tenure and due process clause of the Philippine 1987 Constitution as well as the Civil Service Law under P.D. 807;

5.

Public respondent Philippine Coconut Authority unlawfully and maliciously deliberately failed/refused to strictly comply with the provision of par. a, Section 25 of P.D. 807 in the matter of extending permanent appointment to petitioner constituting likewise grave abuse of discretion on the part of public respondent Civil Service Commission amounting to gross ignorance of the law in not correcting/rectifying such malicious and deliberate non-compliance, in view of the mandatory directive of Section 8, Rule III of the Civil Service Rules on Personnel Actions and Policies."^[5]

The petition is devoid of merit.

No doubt the appointment extended to petitioner by respondent PCA as PCA Deputy Administrator for Industrial Research and Market Development was temporary. Although petitioner was formerly holding a permanent appointment as a commercial attache, he sought and accepted this temporary appointment to respondent PCA.

His temporary appointment was for a definite period and when it lapsed and was not renewed on February 28, 1987, he complains that there was a denial of due process. This is not a case of removal from office. Indeed, when he accepted this temporary appointment he was thereby effectively divested of security of tenure.^[6] A temporary appointment does not give the appointee any definite tenure of office but makes it dependent upon the pleasure of the appointing power.^[7] Thus, the matter of converting such a temporary appointment to a permanent one is addressed to the sound discretion of the appointing authority. Respondent CSC cannot direct the appointing authority to make such an appointment if it is not so disposed.^[8]

The duty of respondent CSC is to approve or disapprove an appointment. Its attestation is limited to the determination whether the appointee possesses the required qualifications for the position as the appropriate civil

service eligibility.[9]

Petitioner invokes CSC Memorandum Circular No. 29, S. 1989, dated July 19, 1989 which provides -

(a) A permanent appointment shall be 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 (Section 25 (a), P.D. 807).

(b) While the appointing authority is given a wide latitude of discretion in the selection of personnel for his department or agency, in the exercise of this discretion he shall be guided by and subject to the Civil Service Law and Rules. "[10]

As aptly observed by respondent CSC said circular cannot be given retrospective effect as to apply to the case of petitioner who was separated from the service on February 28, 1989. And even if the said circular may apply to petitioner's situation, under said circular it is recognized that "the appointing authority is given a wide latitude of discretion in the selection of personnel of his department or agency." Respondent PCA exercised its discretion and opted not to extend the appointment of petitioner. It cannot be compelled to extend petitioner's appointment, much less can it be directed to extend a permanent appointment to petitioner. A discretionary duty cannot be compelled by mandamus.[11] More so when as in this case petitioner has not shown a lawful right to the position. If the legal rights of the petitioner are not well-defined, clear and certain, the petition must be dismissed.[12]

WHEREFORE, the petition is DISMISSED for lack of merit.

SO ORDERED.

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

[*] Originally captioned in the Petition as "Commission on Civil Service; page 2, Rollo.

[1] Annex H to the Petition.

[2] Annex J to the Petition.

[3] Annexes K and H to the Petition.

[4] Annexes D to D-2 to the Petition.

[5] Page 8, Rollo.

[6] Tolentino v. de Jesus, 56 SCRA 167 (1974); Mendiola v. Tancinco, 52 SCRA 66, 71 (1973); Festejo v. Barreras, 30 SCRA 873, 879 (1969); Esquillo v. Subido, 29 SCRA 31, (1969); Baraňgan v. Hernando, 27 SCRA 239 (1969); Santos v. Chico, 25 SCRA 343, 346 (1968); and Jimenea v. Guanzon, 22 SCRA 224, 229 (1968).

[7] Cuadra v. Cordova, 103 Phil. 391, 394 (1958).

[8] Central Bank v. Civil Service Commission, 171 SCRA 744 (1989); Orbos v. Civil Service Commission, G.R. 92561, September 12, 1990.

[9] Luego v. CSC, 143 SCRA 327 (1986).

[10] Annexes N to N-1 to the Petition.

[11] Ynchausti & Co. v. Wright, 47 Phil. 866 (1925); Marcelo Steel Corp. v. Import Control Board, 48 O.G. 117;

Caltex Filipino Managers v. CIR, 23 SCRA 492 (1968); Lim v. Sabarre, 24 SCRA 76 (1968); and Gonzales v. Serrano, 25 SCRA 64 (1968).

[12] Hipolito v. de City of Manila, 47 O.G. Supp. (12) 365; Vda. Hijos de Crispulo/Zamora v. Wright, 53 Phil. 613 (1929); Pilar v. Secretary of Public Works and Communications, 19 SCRA 358 (1967); JRS Business Corp. v. Montesa, 23 SCRA 190 (1968); and Del Rosario v. Subido, 31 SCRA 382 (1970).

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