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[G.R. No. 124374/126354/126366, December 15, 1999]

ISMAEL A. MATHAY JR., IN HIS CAPACITY AS MAYOR OF QUEZON CITY, PETITIONER, VS. COURT OF APPEALS, CIVIL SERVICE COMMISSION, EDUARDO A. TAN, LOURDES M. DE GUZMAN, MANUEL CHUA, ANSELMO MATEO, CHRISTOPHER SANTOS, BUENAVENTURA PUNAY, ENRICO BANDILLA, FELINO CAMACHO, DANTE E. DEOQUINO, JAIME P. URCIA, JESUS B. REGONDOLA, ROMUALDO LIBERATO, CESAR FRANCISCO, WILLIAM PANTI, JR., MICHAEL A. JACINTO AND CESAR DACIO, RESPONDENTS.

[G.R. NO. 126354. DECEMBER 15, 1999]

CIVIL SERVICE COMMISSION, PETITIONER, VS. THE HON. COURT OF APPEALS AND ISMAEL A. MATHAY, JR., RESPONDENTS.

[G.R. NO. 126366. DECEMBER 15, 1999]

ISMAEL A. MATHAY, JR., IN HIS CAPACITY AS MAYOR OF QUEZON CITY, PETITIONER, VS. COURT OF APPEALS, CIVIL SERVICE COMMISSION AND SANDY C. MARQUEZ, RESPONDENTS.

D E C I S I O N

YNARES-SANTIAGO, J.:

Before this Court are three consolidated petitions[1] filed under Rule 45 of the Revised Rules of Court.

The facts behind the consolidated petitions are undisputed.

During his term as Mayor of Quezon City, Mr. Brigido R. Simon appointed private respondents[2] to positions in the Civil Service Unit ("CSU") of the local government of Quezon City. Civil Service Units were created pursuant to Presidential Decree No. 51 which was allegedly signed into law on November 15 or 16, 1972.

On February 23, 1990, the Secretary of Justice rendered Opinion No. 33, stating that Presidential Decree No. 51 was never published in the Official Gazette. Therefore, conformably with our ruling in *Tanada vs. Tuvera*[3] the presidential decree is deemed never "in force or effect and therefore cannot at present, be a basis for establishment of the CSUs . . . ."[4]

On June 4, 1990, the Civil Service Commission issued Memorandum Circular No. 30, directing all Civil Service Regional or Field Offices to recall, revoke and disapprove within one year from issuance of the said Memorandum, all appointments in CSUs created pursuant to Presidential Decree No. 51 on the ground that the same never became law. Among those affected by the revocation of appointments are private respondents in these three petitions.

For Quezon City CSU employees, the effects of the circular were temporarily cushioned by the enactment of City Ordinance No. NC-140, Series of 1990, which established the Department of Public Order and Safety ("DPOS").

At the heart of these petitions is Section 3 of the Ordinance which provides:

> Sec. 3. The present personnel of the Civil Security Unit, Traffic Management Unit, Anti-Squatting and Surveillance and Enforcement Team, and Disaster Coordinating Council are hereby absorbed into the department of public order and safety established under Section one hereof to be given appropriate position titles without reduction in salary, seniority rights and other benefits. Funds provided for in the 1990 Budget for the absorbed offices shall be used as the initial budgetary allocation of the Department. (*Underscoring ours*).

Despite the provision on absorption, the regular and permanent positions in the DPOS were not filled due to lack of funds for the new DPOS and the insufficiency of regular and permanent positions created.

Mayor Brigido R. Simon remedied the situation by offering private respondents contractual appointments for the period of June 5, 1991 to December 31, 1991. The appointments were renewed by Mayor Simon for the period of January 1, 1992 to June 30, 1992.

On May 11, 1992, petitioner Ismael A. Mathay, Jr. was elected Mayor of Quezon City. On July 1, 1992, Mayor Mathay again renewed the contractual appointments of all private respondents effective July 1 to July 31, 1992. Upon their expiry, these appointments, however, were no longer renewed.

The non-renewal by Quezon City Mayor Ismael A. Mathay, Jr. of private respondents' appointments became the seed of discontent from which these three consolidated petitions grew.

We discuss the merits of the petitions of Mayor Ismael A. Mathay, Jr. jointly.

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After the non-renewal of their appointments, private respondents in these two petitions appealed to the Civil Service Commission. The CSC issued separate resolutions holding that the reappointment of private respondents to the DPOS was automatic, pursuant to the provision on absorption in Quezon City Ordinance No. NC-140, Series of 1990,[5] and ordering their reinstatement to their former positions in the DPOS.[6] Petitioner brought petitions for *certiorari* to this Court,[7] to annul the resolutions but, in accordance with Revised Administrative Circular No. 1-95, the petition were referred to the Court of Appeals. As stated, the Court of Appeals

dismissed the petitions for *certiorari*.

In the instant petition for review, petitioner asserts that the Court of Appeals erred when it ruled that respondent Civil Service Commission has the authority to direct him to "reinstate" private respondents in the DPOS.

We agree with petitioner.

The law applicable is B.P. 337 or the old Local Government Code and not the Local Government Code of 1992 which became effective only on January 1, 1992, when the material events in this case transpired.

Applying the said law, we find that the Civil Service Commission erred when it applied the directives of Ordinance NC-140 and in so doing ordered petitioner to "reinstate" private respondents to positions in the DPOS. Section 3 of the said Ordinance is invalid for being inconsistent with B.P. 337. We note that Section 3 of the questioned Ordinance directs the absorption of the personnel of the defunct CSU into the new DPOS. The Ordinance refers to personnel and not to positions. Hence, the city council or *sanggunian*, through the Ordinance, is in effect dictating who shall occupy the newly created DPOS positions. However, a review of the provisions of B.P. 337 shows that the power to appoint rests exclusively with the local chief executive and thus cannot be usurped by the city council or *sanggunian* through the simple expedient of enacting ordinances that provide for the "absorption" of specific persons to certain positions.

In upholding the provisions of the Ordinance on the automatic absorption of the personnel of the CSU into the DPOS without allowance for the exercise of discretion on the part of the City Mayor, the Court of Appeals makes the sweeping statement that "the doctrine of separation of powers is not applicable to local governments."[8] We are unable to agree. The powers of the city council and the city mayor are expressly enumerated separately and delineated by B.P. 337.

The provisions of B.P. 337 are clear. As stated above, the power to appoint is vested in the local chief executive.[9] The power of the city council or *sanggunian,* on the other hand, is limited to creating, consolidating and reorganizing city officers and positions supported by local funds. The city council has no power to appoint. This is clear from Section 177 of B.P. 337 which lists the powers of the *sanggunian*. The power to appoint is not one of them. *Expressio unius est exclusio alterius.*[10] Had Congress intended to grant the power to appoint to both the city council and the local chief executive, it would have said so in no uncertain terms.

By ordering petitioner to "reinstate" private respondents pursuant to Section 3 of the Ordinance, the Civil Service Commission substituted its own judgment for that of the appointing power. This cannot be done. In a long line of cases,[11] we have consistently ruled that the Civil Service Commission's power is limited to approving or disapproving an appointment. It does not have the authority to direct that an appointment of a specific individual be made. Once the Civil Service Commission attests whether the person chosen to fill a vacant position is eligible, its role in the appointment process necessarily ends. The Civil Service Commission cannot encroach upon the discretion vested in the appointing authority.

The Civil Service Commission argues that it is not substituting its judgment for that of the appointing power and that it is merely implementing Section 3 of Ordinance NC-140.

The Ordinance refers to the "personnel of the CSU", the identities of which could not be mistaken. The resolutions of the Civil Service Commission likewise call for the reinstatement of named individuals. There being no issue as to who are to sit in the newly created DPOS, there is therefore no room left for the exercise of discretion. In *Farinas vs. Barba*,[12] we held that the appointing authority is not bound to appoint anyone recommended by the *sanggunian* concerned, since the power of appointment is a discretionary power.

When the Civil Service Commission ordered the reinstatement of private respondents, it technically issued a new appointment.[13] This task, *i.e.* of appointment, is essentially discretionary and cannot be controlled even by the courts as long as it is properly and not arbitrarily exercised by the appointing authority.

In *Apurillo vs. Civil Service Commission*, we held that "appointment is essentially a discretionary power and must be performed by the officer in which it is vested."[14]

The above premises considered, we rule that the Civil Service Commission has no power to order petitioner Ismael A. Mathay, Jr. to reinstate private respondents.

Petitioner similarly assails as error the Court of Appeals' ruling that private respondents should be automatically absorbed in the DPOS pursuant to Section 3 of the Ordinance.

In its decision of March 21, 1996 the Court of Appeals held:

> "It is clear however, that Ordinance No. NC-140, absorbing the `present personnel of the Civil Security Agent Unit' in the DPOS was earlier enacted, particularly on March 27, 1990, thus, private respondents were still holders of de jure appointments as permanent regular employees at the time, and therefore, by operation of said Ordinance private respondents were automatically absorbed in the DPOS effectively as of March 27, 1990."[15] (*Underscoring ours.*)

The decision is based on the wrong premise.

Even assuming the validity of Section 3 of the Ordinance, the absorption contemplated therein is not possible. Since the CSU never legally came into existence, the private respondents never held permanent positions. Accordingly, as petitioner correctly points out,[16] the private respondents' appointments in the defunct CSU - - -

> "were invalid *ab initio*. Their seniority rights and permanent status did not arise since they have no valid appointment. For them to enter the Civil Service after the revocation and cancellation of their invalid appointment, they have to be extended an original appointment, subject again to the attesting power of the Civil Service Commission.

> "Being then not members of the Civil Service as of June 4, 1991, they cannot be automatically absorbed/reappointed/appointed/reinstated into the newly created DPOS." (Underscoring ours)

It is axiomatic that the right to hold public office is not a natural right. The right exists only by virtue of a law expressly or impliedly creating and conferring it.[17] Since Presidential Decree 51 creating the CSU never became law, it could not be a source of rights. Neither could it impose duties. It could not afford any protection. It did not create an office. It is as inoperative as though it was never passed.

In *Debulgado vs. Civil Service Commission*[18] we held that "a void appointment cannot give rise to security of tenure on the part of the holder of the appointment."

While the Court of Appeals was correct when it stated that "the abolition of an office does not mean the invalidity of appointments thereto,"[19] this cannot apply to the case at bar. In this case, the CSU was not abolished. It simply did not come into existence as the Presidential Decree creating it never became law.

At the most, private respondents held <u>temporary</u> and <u>contractual</u> appointments. The non-renewal of these appointments cannot therefore be taken against petitioner. In *Romualdez III vs. Civil Service Commission*[20] we treated temporary appointments as follows:

> "The acceptance by the petitioner of a temporary appointment resulted in the termination of official relationship with his former permanent position. When the temporary appointment was not renewed, the petitioner <u>had no cause to demand reinstatement thereto.</u>" (*Underscoring ours.*)

Another argument against the concept of automatic absorption is the physical and legal impossibility given the number of available positions in the DPOS and the number of personnel to be absorbed.[21] We note that Section 1 of Ordinance NC-140 provides:

> "There is hereby established in the Quezon City Government the Department of Public Order and Safety whose organization, structure, duties, functions and responsibilities are as provided or defined in the attached supporting documents consisting of eighteen (18) pages which are made integral parts of this Ordinance."

A review of the supporting documents shows that Ordinance No. NC-140 allowed only two slots for the position of Security Officer II with a monthly salary of P4,418.00 and four slots for the position of Security Agent with a monthly salary of P3,102.00. The limited number of slots provided in the Ordinance renders automatic absorption unattainable, considering that in the defunct CSU there are twenty Security Officers with a monthly salary of P4,418.00 and six Security Agents with a monthly salary of P3,102.00. Clearly, the positions created in the DPOS are not sufficient to accommodate the personnel of the defunct CSU, making automatic absorption impossible.

Considering that private respondents did not legally hold valid positions in the CSU, for lack of a law creating it, or the DPOS, for lack of a permanent appointment to