

## **SEVENTEENTH DIVISION**

**[ CA-G.R. SP No. 134891, February 21, 2015 ]**

**DIVINA FLORA A. PITPIT, PETITIONER, VS. CIVIL SERVICE COMMISSION, RESPONDENT.**

### **D E C I S I O N**

**GARCIA, R. R. J.:**

Before Us is a Petition for Review<sup>[1]</sup> under Rule 43 of the 1997 Rules of Civil Procedure assailing the Decision<sup>[2]</sup> dated November 15, 2013 of respondent Civil Service Commission (CSC) which affirmed the Decision<sup>[3]</sup> dated December 5, 2012 of the Civil Service Commission - National Capital Region (CSC-NCR) invalidating the appointment of petitioner Divina Flora A. Pitpit; and the Resolution<sup>[4]</sup> dated March 17, 2014 denying the motion for reconsideration thereof.

### **THE FACTS**

On March 26, 1997, petitioner Divina Flora A. Pitpit was issued a permanent appointment as Presidential Staff Assistant of the Presidential Management Staff, Office of the President, with salary grade 9<sup>[5]</sup>. At the time of her appointment, petitioner possessed Data Encoder Eligibility<sup>[6]</sup>. Petitioner remained to hold the position of Presidential Staff Assistant for three (3) years until her resignation in the year 2000.<sup>[7]</sup> Thereafter, she worked as Secretary III at the Home Guaranty Corporation; and, as Researcher at the Federation of Filipino-Chinese Chamber of Commerce and Industry, Inc. From January 2006 to September 2010, she was employed on a contractual basis as an Administrative Assistant at the Bases Conversion and Development Authority (BCDA).

On September 17, 2010, petitioner with the same Data Encoder Eligibility, was issued a permanent appointment as Secretary II at BCDA with salary grade 9.<sup>[8]</sup> On October 14, 2010, petitioner's appointment was submitted to the CSC Field Office – Development Bank of the Philippines (CSCFO-DBP) for validation. CSCFO-DBP, however, recommended to the Civil Service Commission – National Capital Region (CSC-NCR) that petitioner's appointment should be invalidated due to lack of eligibility requirement.<sup>[9]</sup>

In a Decision<sup>[10]</sup> dated December 5, 2012, the CSC-NCR invalidated petitioner's appointment as Secretary II at the BCDA. It was ratiocinated that while petitioner meets the education, experience and training requirements of the position of Secretary II, she lacks the appropriate eligibility which is Career Service (Subprofessional) First Level Eligibility. Pursuant to CSC Memorandum Circular No. 21, Series of 1999 (Appropriateness of Data Encoder Eligibility), the Data Encoder Eligibility is considered appropriate only for data encoder positions and shall no

longer be considered appropriate for clerical and other first level positions requiring a Subprofessional Eligibility. The pertinent portions of the decision of the CSC-NCR are quoted:

Records on hand show that Pitpit was issued a permanent appointment as Secretary II (SG-09) at the Bases Conversion and Development Authority on September 17, 2010. The same was submitted to the CSCFO-DBP on October 14, 2010 which recommended its invalidation to this Office due to lack of the eligibility requirement.

The minimum qualification requirements for appointment to the position of Secretary II (SG-09) *vis-a-vis* the qualifications of Pitpit in her submitted Personal Data (PDS) accomplished on September 20, 2010 are as follows:

Qualification Standards	Qualifications of Pitpit
Education: Completion of two years studies in college	Bachelor of Arts in Economics (1986-1989)
Experience : None required	–
Training : None required	–
Eligibility : Career Service (Subprofessional) First Level Eligibility	Data Encoder Eligibility

The above qualifications of Pitpit show that while she meets the education, experience and training requirement, she lacks the appropriate eligibility. This, therefore, does not qualify her for the issuance of a permanent appointment.

Of pertinent application on the matter is Section 2(a), Rule III of MC No. 40, s. 1998 as amended, provides that:

“a. Permanent – issued to a person who meets all the minimum qualification 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.” (underscoring supplied)

The position Secretary II requires Career Service (Subprofessional) First Level eligibility. Pursuant to CSC Memorandum Circular No. 21, s. 1999 (Appropriateness of Data Encoder Eligibility), the Data Encoder Eligibility shall be considered appropriate only for Data Encoder Positions in the career service and shall no longer be considered appropriate for clerical and other first level positions requiring a CS Subprofessional eligibility or its equivalent. Nonetheless, the said eligibility shall continue to be appropriate for various IT positions pursuant to CSC Memorandum No. 6, s. 2010 dated March 26, 2010.

In the instant case, it was established that Pitpit meets the required education, experience and training requirement for the position, however, she lacked the required eligibility.

WHEREFORE, the permanent (reemployment) appointment of Divina Flora A. Pitpit as Secretary II (SG-09) at the Bases Conversion and Development Authority effective September 17, 2010 is hereby INVALIDATED.<sup>[11]</sup>

On January 11, 2013, petitioner moved for a reconsideration of the decision of the CSC-NCR. The motion was forwarded to public respondent Civil Service Commission pursuant to Rule 16 of the Revised Rules on Administrative Cases in the Civil Service. The motion for reconsideration was treated as a petition for review.<sup>[12]</sup>

In the assailed Decision<sup>[13]</sup> dated November 15, 2013, public respondent CSC affirmed the invalidation of petitioner's appointment. The dispositive portion of the assailed decision reads:

WHEREFORE, the petition for review of Divina Flora A. Pitpit, Secretary II (SG 9), Bases Conversion and Development Authority (BCDA), Taguig City, is hereby DISMISSED. Accordingly, the Civil Service Commission-National Capital Region (CSC-NCR) Decision No. AR-10-12096 dated December 5, 2012, invalidating the appointment of Divina Flora A. Pitpit, is AFFIRMED.

Pitpit is considered a de facto officer from September 17, 2010 up to the finality of the invalidation of her appointment as Secretary II. As such, she is entitled to the payment of salaries and benefits during said period.

The CSC-NCR is directed to reflect this Decision in the appointment, service card and other employment documents of Pitpit.<sup>[14]</sup>

Petitioners' motion for reconsideration<sup>[15]</sup> thereof was denied in a Resolution<sup>[16]</sup> dated March 17, 2014.

Hence, the instant petition for review which raised the lone assignment of error<sup>[17]</sup>, to wit:

RESPONDENT CSC COMMITTED GRAVE ERROR WHEN IT INVALIDATED THE APPOINTMENT OF PETITIONER AS SECRETARY II FOR LACK OF ELIGIBILITY .

### **THE ISSUE**

The only issue to be resolved in the instant case is whether or not respondent CSC committed a reversible error in affirming the decision of the CSC-NCR invalidating the appointment of petitioner as Secretary II at the Bases Conversion and Development Authority.

### **THE RULING**

The petition is bereft of merit.

Petitioner essentially argues that she possessess all the qualification requirements for the position of Secretary II. It was incorrect to invalidate her appointment on the basis of the memorandum cricular issued by respondent CSC declaring that the Data

Encoder Eligibility is no longer considered appropriate for clerical and other first level positions requiring Subprofessional Eligibility. This amendatory policy was applied retroactively in her case thereby prejudicing her right to use her certificate of eligibility issued way back in 1997 which stated that the same was appropriate for first level positions. She likewise argued that she is entitled to security of tenure.

We are not persuaded.

In *Abella vs. Civil Service Commission*<sup>[18]</sup>, the Supreme Court explained that a permanent appointment in the career service is issued to a person who has met the requirements of the position to which the appointment is made in accordance with the provisions of law, the rules, and the standards promulgated pursuant thereto. It implies the civil service eligibility of the appointee. To make it fully effective, an appointment to a civil service position must comply with all legal requirements. Thus, the law requires the appointment to be submitted to respondent Civil Service Commission which will ascertain, in the main, whether the proposed appointee is qualified to hold the position and whether the rules pertinent to the process of appointment were observed.

Under Presidential Decree No. 807, otherwise known as *Civil Service Decree of the Philippines*, there are three (3) classes of positions in the career service, as follows: a) the first level which includes clerical, trades, crafts, and custodial service positions which involve non-professional or subprofessional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies; b) the second level which includes professional, technical, and scientific positions which involve professional; technical, or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief level; and c) the third level which shall cover positions in the Career Executive Service.<sup>[19]</sup> Entrance to the different levels requires the corresponding civil service eligibility. Specifically, entrance to the first two levels shall be through competitive examinations, while entrance to the third level shall be prescribed by the Career Executive Service Board.<sup>[20]</sup>

In the case at bench, the questioned appointment of petitioner pertained to that of Secretary II in the Bases Conversion Development Authority, a position which undisputably belongs to the first level of career service positions. As such, a permanent appointment thereto requires the appointee to possess the requisite career service eligibility obtained through a competitive examination administered by respondent CSC. Pertinently, under the Revised Qualification Standards Manual issued by respondent CSC in its Memorandum Circular No. 1, Series of 1997, it is required that an appointee to the said position should possess the following qualifications: a) completion of two (2) years studies in college; b) one (1) year relevant experience; c) four (4) hours of relevant training; and d) Career Service (Subprofessional) First level Eligibility.

Juxtaposed with the foregoing requirements, petitioner's qualifications as stated in her personal data sheet (PDS)<sup>[21]</sup> flounder to qualify her to the questioned appointment. As correctly pointed out by the administrative agencies *a quo*, while petitioner more than satisfied the requirements of the position as to education, training and experience, she lacks the required eligibility. Particularly, petitioner's PDS states that she finished her degree in Bachelor of Arts in Economics; she has