

## EN BANC

[ G.R. No. 194529, August 06, 2019 ]

### NATIONAL POWER CORPORATION, PETITIONER, VS. FRAULEIN CABANBAN CABANAG AND JESUS T. PANAL, RESPONDENTS.

#### DECISION

##### BERSAMIN, C.J.:

Under review is the decision promulgated on November 17, 2010,<sup>[1]</sup> whereby the Court of Appeals (CA) held the petitioner liable for illegal dismissal of the respondents, and ordered it to pay them backwages and other benefits corresponding to the period from March 1, 2003 until September 14, 2007, to wit:

WHEREFORE, the petition is **Granted**. The Decision dated March 30, 2007 of the Civil Service Commission is hereby **Modified**, in that the Petitioners were illegally dismissed as the NPB Resolutions Nos. 2002-124 and 2002-125 which were relied upon by the Respondent in their reorganization program were subsequently declared void by the Supreme Court. Petitioners are entitled to backwages and other benefits, from the date they were illegally dismissed up to September 14, 2007.

#### Antecedents

Respondents Fraulein C. Cabanag and Jesus T. Panal<sup>[2]</sup> were employed as Principal Chemists Analyst C at the petitioner's Palinpinon Geothermal Power Plant located at Puhagan, Valencia, Negros Oriental.<sup>[3]</sup>

On November 18, 2002, the National Power Board (NPB) of the petitioner passed NPB Resolution No. 2002-124<sup>[4]</sup> and NPB Resolution No. 2002-125 pursuant to the provisions of Republic Act No. 9136 (*Electric Power Industry Reform Act* or EPIRA). NPB Resolution No. 2002-124 provided for the termination from employment of all the petitioner's personnel effective January 31, 2003, as well as their entitlement to separation benefits. NPB Resolution No. 2002-125 constituted a Transition Team to manage and implement the separation program. Inasmuch as the respondents were told that they could still apply for positions under the reorganized plantilla, they respectively applied for the positions of Principal Chemist Analyst C and Principal Chemist A.<sup>[5]</sup>

Being licensed Chemists, the respondents felt confident on being rehired considering that the other applicants were Chemical Engineers not qualified for the positions under the Civil Service Commission (CSC) Qualification Standards. Yet, on March 1, 2003, they had not been appointed, and that four of the appointees were Chemical Engineers.<sup>[6]</sup>

Both respondents sent to the petitioner a letter seeking a clarification. They thereby

requested the re-evaluation of the selection and hiring processes under the New NPC Table of Organization (TO),<sup>[7]</sup> insisting that they were more qualified than those eventually appointed because the 1997 Revised Quality Standards for the position of Principal Chemist specifically required a registered chemist, not a chemical engineer.<sup>[8]</sup>

Rodolfo C. Pacaña, then the Senior Plant Manager at the Palinpinon Geothermal Power Plant, replied that the decision to hire the other applicants for the positions had been based on "behavioral traits." The letter to that effect pertinently reads:

Dear Ms. Cabanag and Mr. Panal,

This has reference to your letter dated March 6, 2003 regarding your inquiry of not being included in the Chemical Laboratory Work Schedule for March 2003. Allow us to respond to your concerns point-by-point as enumerated in your letter, to wit:

x x x x

UNEXPECTED HAVING BEEN IN THE SERVICE FOR A CONSIDERABLE LENGTH OF TIME WITH GOOD PERFORMANCE

Let it be reiterated that the position of Principal Chemist Analyst C had been reduced from eight to only four in the new T.O. With our re-hiring policy that all positions are contestable, we expect numerous applicants in all positions.

Assuming that incumbents are given the highest priority in re-hiring, this means that they have to be force-ranked on the basis of education, experience, performance and behavioral traits. The Personnel Selection Committee considered fairly the qualifications of all the applicants. Regrettably, as the new T.O. allowed, only four of the eight incumbents were chosen by the selection board and you are among the ones not chosen. Let it be said, as it is said many times, that in cases where all applicants met the minimum requirements, the behavioral trait of the employee played a very vital role.<sup>[9]</sup>

The respondents ultimately filed against the petitioner a complaint for illegal dismissal in the Civil Service Regional Office (CSRO) in Cebu City.

On December 8, 2003, the CSRO dismissed the complaint for illegal dismissal as premature, considering that the Certificate of Final Action on the Grievance (CFAG) was not yet the decision by the appointing authority.<sup>[10]</sup>

On January 20, 2004, Rogelio M. Murga, the petitioner's President, later sustained the decision of the Grievance Committee to which the matter was subsequently brought. In turn, the CSRO upheld Murga's action as a valid exercise of discretionary power by the appointing authority.<sup>[11]</sup>

### **Ruling of the CSC**

On appeal, the CSC rendered its decision upholding the petitioner's exercise of its

discretionary power as the appointing authority, emphasizing that the positions were deemed abolished during the reorganization, such that no employee could claim any vested right to the positions. The CSC ruled that it had no reason to interfere with the petitioner's exercise of its discretionary power, thusly:

[Consistent with the ruling of the Commission in *Jimenez, et. al.* (CSC Resolution No. 030338 dated March 12, 2003), it was held that:

"Reorganization as a general rule, is deemed a valid cause for separation. This flows from the diction that in cases of reorganization, positions are deemed abolished. In that event, no dismissal or separation actually occurs because the position itself ceases to exist."

x x x x

"Generally speaking, under the aegis of a bonafide Reorganization as what transpired in the present controversy, all existing positions are deemed abolished. All incumbents are separated from the service as a consequence thereof." x x x

In this particular case, after the implementation of the EPIRA Law NPC has a new table of organization wherein the positions are considered new and vacant. No former NPC employee can claim vested right to new positions. It is the NPC Board who has the power "to adapt and set guidelines for the employment of personnel on the basis of merit, technical competence, and moral character."

Moreover, the Commission cannot interfere in the discretionary power of the appointing authority. As held in the case of **Lapinid vs. CSC, G.R. No. 96298 (1991)**, the Supreme Court ruled as follows:

"Appointment is a highly discretionary act that even this Court cannot compel. While the act of appointment may in proper case be the subject of mandamus, the selection itself of the appointee taking into account the totality of his justifications including those abstract qualities that define his personality is the prerogative of the appointing authority."

Further, the EPIRA Act provides grounds for legal termination of services of NPC officials and employees. It is thus clear that the appellants have no preferential right over the positions they previously held.

**WHEREFORE**, the instant appeal of Fraulein C. Cabanag and Jesus T. Panal from the decision of NAPOCOR President Rogelio M. Murga upholding their non-appointment to the position of Principal Chemists Analyst C is hereby DENIED.

**SO ORDERED.**<sup>[12]</sup>

On motion for reconsideration, however, the CSC reversed itself, and declared instead that although the respondents' termination was valid under the

reorganization, they should have been preferred in the appointment of the candidates for the position of Principal Chemist C, to wit:

On the issue of whether NPC complied with the civil service rules and regulations with regard to the appointment of Jonah Carmen L. Facturan, Marietta S. Roxas, Cromwell M. Bulandres and Ana Jane Somoza, Principal Chemists C, a review of the qualification standard for the said position is in order.

The approved Revised NPC Qualification Standard (QS) provides the following qualifications for the position of Principal Chemist C:

"Education : Bachelor's Degree in Chemistry  
"Experience : 3 years relevant experience  
"Training : 16 hours of relevant training  
"Eligibility : RA1080"

The above QS specifically requires a Bachelor's Degree in Chemistry and RA 1080 (Chemistry) eligibility for appointment as Principal Chemist C since the duties of the said position constitute the practice of Chemistry which is regulated by **Republic Act No. 754**.

Applicable is Item No. 5, Part V of the Revised Policies on Qualification Standards which provides as follows:

"5. Eligibilities resulting from passing the bar/board examinations shall be required for appointment to positions the duties of which constitute the practice of profession(s) regulated by the Philippine BAR/Board Laws."

Applying the above QS in relation to **Item No. 5, Part V of the Revised Policies on Qualification Standards**, it is necessary that the appointee to Principal Chemist C position at NPC should be a licensed chemist.

Movants alleged that they are licensed chemists and meet the prescribed qualifications for Principal Chemist C. They further alleged that of the four (4) appointees to the position of Principal Chemist C at the PGPP, only Somoza is a licensed chemist and the rest (Jonah Carmen L. Facturan, Marietta S. Roxas, and Cromwell M. Bulandres) are chemical engineers. These allegations are not disputed by NPC. Hence, they are presumed to be correct. Consequently, of the four (4) above-mentioned appointments to Principal Chemist C position at Palinpinon Geothermal Power Plant, only the appointment of Somoza was in accord with Civil Service law and rules.

Pursuant to **Section 5, Rule 33 of the Implementing Rules of the EPIRA Law**, where there are two or more qualified former NPC personnel applying for the same position, they enjoy the same preference and the appointing authority is given wide latitude of discretion in choosing who among them shall be appointed. Fundamental is the rule that appointment is an essentially discretionary power and must be performed by the officer in whom it is vested according to his best lights, the only condition being that the appointee shall possess the

qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. This is a political question involving considerations of wisdom which only the appointing authority can decide.

x x x

However, where the appointee lacks any of the qualifications required by law as when he does not possess the appropriate civil service eligibility, the appointing authority abused the exercise of his discretion in issuing the appointment, and the same is reviewable by the Commission or any of its regional/field offices, making the abuse subject to correction.

Hence, in the instance case, Cabanag and Panal who applied for the position of Principal Chemist C and to which they qualified, enjoy preference in appointment to said position.

**WHEREFORE**, this Office hereby sets aside its Decision dated October 3, 2005 and finds Fraulein C. Cabanag and Jesus T. Panal, former Principal Chemists Analyst C (SG-13), Palinpinon Geothermal Power Plant, qualified for appointment to the position of Principal Chemist C at Palinpinon Geothermal Power Plant. Hence, they should be given preference in appointment to said position pursuant to Section 5, Rule 33 of the Implementing Rules and Regulations of Republic Act No. 9136.<sup>[13]</sup>

Not satisfied, the respondents still appealed to the CA, to plead that the CSC should have further ordered their reinstatement in view of the illegality of their termination.<sup>[14]</sup>

### **Ruling of the CA**

In the assailed decision,<sup>[15]</sup> the CA found that the CSC had erroneously upheld the termination of the respondents pursuant to the reorganization. It opined that because the Supreme Court had declared NPB Resolution No. 2002-124 and NPB Resolution No. 2002-125 void in *NPC Drivers and Mechanics Association (NPC-DAMA) v. National Power Corporation (NPC)*<sup>[16]</sup> the respondents' termination became illegal for being devoid of any legal foundation; and that they should be reinstated to their former positions; and that based on the pronouncement in *NPC-DAMA* and the subsequent adoption of NPB Resolution No. 2007-55, the respondents were entitled to backwages and other benefits computed from March 1, 2003 until September 14, 2007.<sup>[17]</sup>

### **Issue**

The petitioner has appealed on the sole ground that:

THE COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENTS' TERMINATION FROM EMPLOYMENT WAS ILLEGAL ON THE BASIS OF THE RULING IN *NPC DAMA, ET. AL. v. NPC*

The petitioner claims that the implementation of the nullified NPB Resolution No. 2002-124 and NPB Resolution No. 2002-125 had only resulted in the separation from the service of 16 top level executives; that on January 22, 2003, its NBP