

## SECOND DIVISION

[ G.R. No. 207422, March 18, 2015 ]

**ANGEL ABAD, PETITIONER, VS. HERMINIO DELA CRUZ,  
RESPONDENT.**

### D E C I S I O N

**LEONEN, J.:**

Appointments in the civil service are made fundamentally on the basis of merit. Both the Constitution and law ensure that those appointed are fit for the position. While those who are next in rank to a vacant position may be given some preference, no one has a vested right to a government position. Seniority and salary grades should be given their due weight but should not trump the public interest.

This resolves the Petition for Review on Certiorari<sup>[1]</sup> filed by Angel Abad assailing the Court of Appeals Decision<sup>[2]</sup> dated April 11, 2012. The Court of Appeals affirmed the Civil Service Commission Resolution<sup>[3]</sup> dated June 22, 2010. This Resolution affirmed the permanent appointment of Herminio Dela Cruz as City Government Department Head III.<sup>[4]</sup>

Mayor Jaime R. Fresnedi appointed Herminio Dela Cruz (Dela Cruz) as City Assessor<sup>[5]</sup> of the City Government of Muntinlupa in a permanent capacity on December 28, 2006.<sup>[6]</sup> The City Assessor is given the item of City Government Department Head III.<sup>[7]</sup>

In Resolution No. 06-361,<sup>[8]</sup> majority of the members of the Sangguniang Panlungsod of the City Government of Muntinlupa concurred in the appointment of Dela Cruz as City Government Department Head III.<sup>[9]</sup>

Pursuant to Civil Service Commission Resolution No. 02-1235 granting the City Government of Muntinlupa the power to take final action on its appointments, the appointment of Dela Cruz was considered attested to by the Civil Service Commission.<sup>[10]</sup>

Angel A. Abad (Abad), Local Assessment Operations Officer V in the Office of the City Assessor, wrote the Civil Service Commission and requested the disapproval of Dela Cruz's appointment as City Government Department Head III.<sup>[11]</sup> Abad alleged that the position of City Government Department Head III corresponded to Salary Grade 27, nine (9) salary grades higher than Dela Cruz's former position as Local Assessment Operations Officer III with Salary Grade 18.<sup>[12]</sup> According to Abad, Dela Cruz's appointment violated Item 15 of Civil Service Commission Memorandum Circular No. 3, Series of 2001, which prohibits the promotion of an employee to a

position more than three (3) salary grades above his or her former position:[13]

15. An employee may be promoted or transferred to a position which is not more than three (3) salary, pay or job grades higher than the employee's present position except in very meritorious cases, such as: if the vacant position is next-in-rank as identified in the System of Ranking Positions (SRP) approved by the head of agency, or the lone or entrance position indicated in the agency staffing pattern.

Abad added that being a qualified next-in-rank, he applied for the position of City Government Department Head III. However, he and three (3) other qualified applicants were allegedly excluded from the selection process, in violation of Item 10 of Civil Service Commission Memorandum Circular No. 3, series of 2001.[14] This provides:

10. For vacancies in the first and second levels, all qualified next-in-rank employees shall be automatically considered candidates for promotion to the next higher position.

According to Abad, the appointment of Dela Cruz caused "demoralization within [their] ranks." [15]

In the letter [16] dated January 26, 2007, the Civil Service Commission referred Abad's letter to the City Government of Muntinlupa's grievance machinery for proper action.

In the meantime, newly elected Mayor Aldrin San Pedro (Mayor San Pedro) assumed his office in the City Government of Muntinlupa on July 1, 2007. On August 3, 2007, the main building of Muntinlupa City Hall was gutted by fire, destroying the Office of the City Personnel. The City Government of Muntinlupa, therefore, failed to act on Abad's Letter.[17]

Thus, on September 25, 2007, Abad filed with the Mayor's Office the letter-complaint [18] reiterating his request for disapproval of Dela Cruz's permanent appointment as City Government Department Head III.

Mayor San Pedro referred Abad's letter-complaint to the City Government of Muntinlupa's Personnel Department.[19]

Finding that Dela Cruz's promotion violated Civil Service Commission Memorandum Circular No. 3, Series of 2001 on the three-salary-grade rule,[20] the Grievance Committee recommended the invalidation of Dela Cruz's permanent appointment as City Government Department Head III.[21] This recommendation was approved by Mayor San Pedro.

Mayor San Pedro's approval was then referred to the Civil Service Commission-National Capital Region for appropriate action.[22]

In the Decision<sup>[23]</sup> dated August 17, 2009, the Civil Service Commission-National Capital Region invalidated Dela Cruz's permanent appointment as City Government Department Head III and ruled that he was appointed in violation of the three-salary-grade rule under Civil Service Commission Memorandum Circular No. 3, Series of 2001.<sup>[24]</sup>

On Dela Cruz's appeal,<sup>[25]</sup> the Civil Service Commission reversed and set aside the Civil Service Commission-National Capital Region's Decision in Resolution No. 101276 dated June 22, 2010.<sup>[26]</sup>

The Civil Service Commission found that the City Government of Muntinlupa's Personnel Selection Board ranked the applicants for City Government Department Head III based on the following criteria: performance, work history, awards, education, training, potential, and physical characteristics and personality traits. Out of nine (9) applicants, Dela Cruz ranked first with a grade of 90.67 out of 100 points. Although it conceded that Abad was not among the nine (9) applicants screened, the Commission nevertheless ruled that Dela Cruz's appointment was an exception to the three-salary-grade rule.<sup>[27]</sup> Dela Cruz underwent a deep selection process rendering his appointment "very meritorious[.]"<sup>[28]</sup>

The Commission likewise noted that contrary to the rule that whoever alleges must prove, the Grievance Committee placed on Dela Cruz the burden of proving that Abad was not considered for appointment. The Grievance Committee, therefore, erred. As for Abad, he failed to prove the allegation that he was not considered for promotion.<sup>[29]</sup>

Abad's Motion for Reconsideration was denied by the Civil Service Commission in the Resolution dated November 12, 2010.<sup>[30]</sup>

A Petition for Review was filed before the Court of Appeals.<sup>[31]</sup> The Court of Appeals, however, dismissed the Petition for Review in the Decision dated April 11, 2012.<sup>[32]</sup>

The Court of Appeals held that the three-salary-grade rule "only gives preference to the person occupying the position next in rank to a vacancy, but does not by any means give [the employee next in rank] [the] exclusive right to be appointed to the said vacancy."<sup>[33]</sup> As long as the employee appointed to the position possesses the minimum qualifications for the position, the appointment is valid.<sup>[34]</sup>

The Court of Appeals also found that Abad failed to prove that he was the employee next in rank to the position of City Government Department Head III.<sup>[35]</sup> On the other hand, Dela Cruz proved that he possessed the minimum qualifications for the position and that he underwent a deep selection process where he ranked first among nine (9) applicants.<sup>[36]</sup> The Court of Appeals, thus, affirmed Dela Cruz's appointment.<sup>[37]</sup>

Both Motion for Reconsideration<sup>[38]</sup> and Supplemental Motion for Reconsideration<sup>[39]</sup> filed by Abad were denied by the Court of Appeals in its

Resolution<sup>[40]</sup> dated June 4, 2013.

On July 25, 2013,<sup>[41]</sup> Abad filed before this court the Petition for Review on Certiorari. Dela Cruz filed his Comment,<sup>[42]</sup> after which Abad filed his Reply.<sup>[43]</sup>

Abad insists that Dela Cruz's promotion was void for violation of the three-salary-grade rule under Civil Service Commission Memorandum Circular No. 3, Series of 2001. Moreover, he and other employees who were allegedly next in rank to the position of City Government Department Head III were not considered for the position. Contrary to the finding of the Civil Service Commission and the Court of Appeals, the City Government of Muntinlupa's Personnel Selection Board did not conduct any deep selection process in appointing a new City Government Department Head III.<sup>[44]</sup>

Thus, Abad prays that this court invalidate Dela Cruz's appointment and order the City Government of Muntinlupa to conduct a new selection process for the position of City Government Department Head III.<sup>[45]</sup>

Dela Cruz refutes Abad's claim of lack of deep selection process. As the Civil Service Commission and the Court of Appeals found, the City Government of Muntinlupa's Personnel Selection Board conducted a deep selection process for the position of City Government Department Head III where he ranked first out of nine (9) applicants.<sup>[46]</sup> Dela Cruz emphasizes that the factual findings of the Civil Service Commission, which was sustained by the Court of Appeals, must be accorded great respect since these have been made by the "administrative agency which [has] acquired expertise [in the field of civil service law.]"<sup>[47]</sup>

The issues for this court's resolution are:

First, whether respondent Dela Cruz's promotion to the position of City Government Department Head III is void because it violated the next-in-rank rule; and

Second, whether respondent Dela Cruz's promotion to the position of City Government Department Head III is void for lack of a deep selection process.

This Petition must be denied.

## I

The Civil Service Commission is the "central personnel agency of the Government[.]"<sup>[48]</sup> Its mandate is to ensure that appointments in the civil service are generally made on the basis of merit and fitness.<sup>[49]</sup> The Commission is tasked to strengthen the merit and rewards system in the civil service<sup>[50]</sup> by administering and enforcing the "constitutional and statutory provisions on the merit system for all levels and ranks in the Civil Service[.]"<sup>[51]</sup>

The Constitution adopts the merit system to ensure that those appointed in the civil service are competent.<sup>[52]</sup> This is to "eradicate the system of appointment to public office based on political considerations and to eliminate . . . the element of

partisanship and personal favoritism in making appointments."<sup>[53]</sup>

"The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters."<sup>[54]</sup> Thus, all appointive local government employees are covered by civil service laws and rules.<sup>[55]</sup> Appointive local government employees must possess the qualifications provided by law for the positions they hold.<sup>[56]</sup>

The qualifications the appointee must satisfy depend on whether the position belongs to the career service or the non-career service. Entrance in the career service is based on "merit and fitness to be determined as far as practicable by competitive examination, or based on highly technical qualifications[.]"<sup>[57]</sup> On the other hand, entrance in the non-career service is based on criteria other than the "usual tests of merit and fitness[.]"<sup>[58]</sup>

Positions in the career service are further grouped into three (3) levels. The first level includes positions requiring less than four (4) years of collegiate studies.<sup>[59]</sup> The second level includes positions with duties requiring at least four (4) years of college work up to the Division Chief level.<sup>[60]</sup> The third level includes positions in the Career Executive Service.<sup>[61]</sup>

Candidates for appointment to first and second level positions are generally screened by the Personnel Selection Board.<sup>[62]</sup> In local government units, the Personnel Selection Board is headed by the local chief executive and is composed of members appointed by the sanggunian concerned.<sup>[63]</sup> The Personnel Selection Board of each local government unit "assist[s] the local chief executive in the judicious and objective selection of personnel for employment as well as . . . promotion[.]"<sup>[64]</sup>

The appointing authority in local government units, therefore, is the local chief executive who must assess the merits of the Personnel Selection Board's recommendation.<sup>[65]</sup> If heads of offices or departments in a local government unit are appointed, majority of the members of the sanggunian concerned must concur in the appointment.<sup>[66]</sup> Finally, the appointment must be submitted to the Civil Service Commission for attestation within 30 days from the appointment's issuance date.<sup>[67]</sup>

For local government units, the appointment of an assessor is mandatory.<sup>[68]</sup> In the City Government of Muntinlupa, the City Assessor is given the item of City Government Department Head III under the City's 2007 Personnel Schedule.<sup>[69]</sup> As provided in Section 472(a) of the Local Government Code of 1991, the assessor, must possess the following qualifications:

SECTION 472. Qualifications, Powers and Duties. - (a) No person shall be appointed assessor unless he is a citizen of the Philippines, a resident of the local government unit concerned, of good moral character, a holder of a college degree preferably in civil or mechanical engineering, commerce, or any other related course from a recognized college or university, and a