

SECOND DIVISION

[G.R. No. 202331, April 22, 2015]

**THE PROVINCIAL GOVERNMENT OF AURORA, PETITIONER, VS.
HILARIO M. MARCO, RESPONDENT.**

DECISION

LEONEN, J.:

The prohibition on midnight appointments only applies to presidential appointments. It does not apply to appointments made by local chief executives.

Nevertheless, the Civil Service Commission has the power to promulgate rules and regulations to professionalize the civil service. It may issue rules and regulations prohibiting local chief executives from making appointments during the last days of their tenure. Appointments of local chief executives must conform to these civil service rules and regulations in order to be valid.

This is a Petition for Review on Certiorari^[1] of the Court of Appeals Decision^[2] that denied the appeal of the Provincial Government of Aurora (the Province). The Province appealed the Resolution^[3] of the Civil Service Commission granting the Motion for Execution filed by Hilario M. Marco (Marco). The Civil Service Commission had earlier reversed and set aside the disapproval of Marco's permanent appointment as Cooperative Development Specialist II.^[4]

Governor Ramoncita P. Ong (Governor Ong) permanently appointed^[5] Marco as Cooperative Development Specialist II on June 25, 2004, five (5) days before the end of her term as Governor of the Province.^[6] On June 28, 2004, Marco's appointment, together with 25 other appointments, was submitted to the Civil Service Commission Field Office-Aurora (the Field Office). Annexed to Marco's appointment papers was a certification from Provincial Budget Officer Norma R. Clemente (Provincial Budget Officer Clemente) and Provincial Accountant Wilfredo C. Saturno (Provincial Accountant Saturno) stating that funds from the Province's 2004 Annual Budget were available to cover the position.^[7]

On June 30, 2004, newly elected Governor Bellaflor Angara-Castillo assumed office. The next day, she called to an executive meeting all the department heads of the Province.^[8]

During the executive meeting, Provincial Budget Officer Clemente allegedly manifested that the Province had no funds available to pay for the salaries of Governor Ong's 26 appointees.^[9] She subsequently issued a Letter recalling the previously issued certification of the availability of funds:

In view of the result of the dialogue of the concerned offices regarding the financial status of the Provincial Government of Aurora, we hereby recall/retrieve our previously issued certification of availability of funds relative to the appointments issued by Governor Ramoncita P. Ong.^[10]

Provincial Budget Officer Clemente's Letter was submitted to the Province's Human Resource Management-Office. It was then forwarded to the Field Office.^[11]

Due to the recall of the certification, the Field Office disapproved Marco's appointment in the Letter^[12] dated July 5, 2004.^[13]

The Province, through Human Resource Management Officer Liwayway G. Victorio, served Marco a copy of the Letter dated July 5, 2004. Marco was, thus, advised to refrain from reporting for work beginning July 8, 2004, the day he received notice of the disapproval of his appointment.^[14]

Marco wrote the Civil Service Commission Regional Office No. IV (Regional Office), moving for the reconsideration of the disapproval of his appointment.^[15] The Regional Office, however, denied reconsideration in its Decision^[16] dated April 6, 2005 and affirmed the disapproval of Marco's appointment. It said that "[t]he lack of funds for the [26 appointments Governor Ong issued] was established during the meeting of the different department heads of Aurora Province and their new governor."^[17]

Through the Letter dated May 17, 2005, Marco appealed before the Civil Service Commission.^[18] The Province, through its Human Resource Management Office, received a copy of Marco's Letter on May 23, 2005.^[19] However, it failed to comment on the appeal within 10 days from receipt as required by Section 73 of the Uniform Rules on Administrative Cases in the Civil Service.^[20]

In the Resolution^[21] dated April 14, 2008, the Civil Service Commission granted Marco's appeal and set aside the Regional Office's Decision dated April 6, 2005. It ruled that Marco's appointment was valid since it was accompanied by a certification of availability of funds.^[22] As to the Letter withdrawing the certification, the Civil Service Commission ruled that it did not affect the validity of Marco's appointment because the Province "failed to submit documentary evidence to support its claim [that it had no funds to pay for the services of Governor Ong's appointees]."^[23]

The Civil Service Commission added that the Province's withdrawal of the certification was "unfair to Marco":^[24]

It is unfair to Marco who applied for the said position believing in good faith that funds were available, passed the screening conducted by the Personnel Selection Board (PSB) on February 12 & 13, 2004, was appointed on June 25, 2004 and was later told to stop reporting for work as his appointment was disapproved by [the Civil Service Commission Field Office-Aurora] simply because the provincial government under the new governor realized that it has no funds to pay for his services.^[25]

Thus, the Civil Service Commission ordered the Regional Office to investigate whether Provincial Budget Officer Clemente and Provincial Accountant Saturno were administratively liable for certifying that funds were available to cover the positions filled by Governor Ong's appointees but subsequently withdrawing this certification.^[26] It ordered the Field Office to reflect the Resolution in Marco's appointment papers and in his Service Record.^[27]

The Province received a copy of the April 14, 2008 Resolution on May 21, 2008.^[28]

On July 22, 2008, Provincial Administrator Alex N. Ocampo (Provincial Administrator Ocampo), on behalf of the Province, filed before the Civil Service Commission a Petition for Relief^[29] on the ground of extrinsic fraud. According to him, the Civil Service Commission deprived the Province of an opportunity to be heard when it failed to implead the Province as an indispensable party.^[30] He reiterated that Marco's appointment was void since the Province had no funds to pay for Marco's salaries.^[31]

The Civil Service Commission denied outright the Petition for Relief in the Resolution^[32] dated November 4, 2008. It ruled that Provincial Administrator Ocampo had no legal personality to file the Petition for Relief absent an authorization from the Provincial Governor. Moreover, a petition for relief was not allowed under the Uniform Rules on Administrative Cases in the Civil Service. Thus, Provincial Administrator Ocampo erred in filing a Petition for Relief.^[33]

Provincial Administrator Ocampo filed a Motion for Reconsideration,^[34] this time with a written authority^[35] to file from Governor Bellafior Angara-Castillo annexed to the Motion.^[36]

The Civil Service Commission denied the Motion for Reconsideration in the Resolution^[37] dated September 8, 2009. It ruled that its April 14, 2008 Resolution had become final and executory considering that the Province did not file a motion for reconsideration of this Resolution within the reglementary period.^[38]

Consequently, Marco requested the Civil Service Commission to implement the April 14, 2008 Resolution.^[39] Through the Resolution^[40] dated July 6, 2010, the Commission granted Marco's request.

Provincial Administrator Ocampo filed a Motion for Reconsideration with Motion to Quash "Execution,"^[41] arguing that the April 14, 2008 Resolution had already been implemented. As the Civil Service Commission had ordered, the Province reflected the April 14, 2008 Resolution in Marco's appointment papers and in his Service Record.^[42]

In the Resolution^[43] dated January 24, 2011, the Civil Service Commission denied the Motion for Reconsideration with Motion to Quash "Execution." It noted that the Province still refused to reinstate Marco despite the April 14, 2008 Resolution and thus clarified that this Resolution necessarily resulted in the approval of Marco's

appointment and his reinstatement as Cooperative Development Specialist II.^[44]
The January 24, 2011 Resolution states:

Ocampo, et al. nonchalantly tries to sweep away what is obvious in the ruling of the Commission in [the April 14, 2008 Resolution], *i.e.*, the reversal of the disapproval by [the Regional Office] and [the Field Office] of Marco's appointment. The reversal of the two (2) decisions mean[s] that Marco's appointment as Cooperative Development Specialist II is in order and should be approved. Consequently, the approval of Marco's appointment is legal proof that he is entitled to perform the duties and functions of the said position and receive the salaries and benefits attached to the position.

WHEREFORE, the Motion for Reconsideration with Motion to Quash of Alex N. Ocampo, Provincial Administrator, and Manuel Joseph R. Bretana III, Legal Counsel, Provincial Government of Aurora, is **DENIED**. Accordingly, [the July 6, 2010 Resolution] which grants the Motion for the Implementation of [the April 14, 2008 Resolution] filed by Hilario M. Marco, **STANDS**.

The Provincial Governor of Aurora is directed to reinstate Marco to his Cooperative Development Specialist II position and pay his back salaries and other benefits from the time that Marco was actually prohibited from reporting for work up to his actual reinstatement.^[45]

A Petition for Review^[46] under Rule 43 with prayer for issuance of a temporary restraining order^[47] was filed before the Court of Appeals. For the first time, the Province argued that Marco was a midnight appointee since Governor Ong appointed him during the last five (5) days of her tenure. Therefore, Marco's appointment was void.^[48]

In the Decision dated March 2, 2012, the Court of Appeals denied the Petition for Review and affirmed the implementation of the Civil Service Commission's April 14, 2008 Resolution.^[49]

The Court of Appeals ruled that the April 14, 2008 Resolution already became final and executory since there was no motion for reconsideration filed within the reglementary period. Although the Province filed a Petition for Relief before the Civil Service Commission, the Court of Appeals held that the remedy of a petition for relief is not allowed under the Uniform Rules on Administrative Cases in the Civil Service. Moreover, the Province failed to prove the extrinsic fraud that allegedly prevented it from filing a motion for reconsideration. Thus, the Civil Service Commission correctly denied the Petition for Relief.^[50]

On the merits, the Court of Appeals affirmed Marco's appointment. The Province had earlier certified that it had funds to pay for his salary as Cooperative Development Specialist II.^[51] It found that the Sangguniang Panlalawigan even passed a "Supplemental Budget for 2004 appropriating P54,014,127.01 in provincial funds."^[52] Therefore, the issuance of the Letter recalling the certification "[did] not change the fact that there [were] funds available for [Marco's] appointment."^[53]

On the claim that Marco was a midnight appointee, the Court of Appeals said that Marco's case fell within the exception provided under Civil Service Commission Resolution No. 030918.^[54] He was fully qualified for the position and underwent a screening process on February 12 and 13, 2004, long before the election ban.^[55] Therefore, he was validly appointed.

The Province filed a Motion for Reconsideration,^[56] which the Court of Appeals denied in the Resolution^[57] dated June 13, 2012.

The Province filed a Petition for Review on Certiorari before this court. Marco filed his Comment,^[58] after which the Province filed its Reply.^[59]

In the Resolution^[60] dated January 30, 2013, this court ordered the parties to file their respective memoranda. The Province filed its Memorandum^[61] on April 25, 2013, while Marco filed his Memorandum^[62] on May 2, 2013.

The Province maintains that Marco's appointment was void on the ground that he was a midnight appointee. Marco was appointed by Governor Ong five (5) days before the end of her term, in violation of Civil Service Commission Resolution No. 030918,^[63] paragraph 2.1 of which provides:

2.1.All appointments issued by elective appointing officials after elections up to June 30 shall be disapproved, except if the appointee is fully qualified for the position and had undergone regular screening processes before the Election Ban as shown in the Promotion and Selection Board (PSB) report or minutes of meeting.

On Marco's claim that he underwent a regular screening process, which exempted his appointment from the prohibition on midnight appointments, the Province counters that Marco failed to present convincing evidence to prove this claim. The Minutes of the Meeting of the Promotion Selection Board showed that Marco was among the 201 applicants allegedly screened by the Board within two (2) days. According to the Province, two days is a period too short for the Personnel Selection Board to have carefully considered all the applications.^[64]

As to the claim that the April 14, 2008 Resolution is final and executory and may no longer be reversed, the Province argues that nothing prevents this court from setting aside this Resolution. It argues that the promulgation of *Nazareno, et al. v. City of Dumaguete*^[65] was a supervening event warranting the reversal of the final and executory decision.^[66]

In *Nazareno*, this court voided 89 appointments made by a city mayor within the month that he left office, ruling that they were mass appointments prohibited under Civil Service Commission Resolution No. 010988.^[67] The Province argues that Governor Ong's appointments were analogous to the *Nazareno* appointments; hence, Governor Ong's appointments should likewise be voided.^[68]

Finally, the Province insists that Marco's appointment was void due to lack of funds