

EN BANC

[G.R. No. 189041, July 31, 2012]

CIVIL SERVICE COMMISSION, PETITIONER VS. DR. AGNES OUIDA P. YU, RESPONDENT.

D E C I S I O N

PERLAS-BERNABE, J.:

In this Petition for Review on Certiorari under Rule 45 of the Rules of Court, the Civil Service Commission (CSC) assails the Decision^[1] dated March 30, 2009 and the Resolution^[2] dated July 9, 2009 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 00327-MIN declaring Dr. Agnes Ouida P. Yu to have a vested right in the position of Chief of Hospital II until her retirement on August 24, 2004.

The Facts

In 1992, the national government implemented a devolution program pursuant to Republic Act (R.A.) No. 7160, otherwise known as the "*The Local Government Code of 1991*," which affected the Department of Health (DOH) along with other government agencies.

Prior to the devolution, Dr. Fortunata Castillo (hereinafter Dr. Castillo) held the position of Provincial Health Officer II (PHO II) of the Department of Health (DOH) Regional Office No. IX in Zamboanga City and was the head of both the Basilan Provincial Health Hospital and Public Health Services. Respondent Dr. Agnes Ouida P. Yu (Dr. Yu), on the other hand, held the position of Provincial Health Officer I (PHO I). She was assigned, however, at the Integrated Provincial Health Office in Isabela, Basilan.

Upon the implementation of the devolution program, then Basilan Governor Gerry Salapuddin (Governor Salapuddin) refused to accept Dr. Castillo as the incumbent of the PHO II position that was to be devolved to the local government unit of Basilan, prompting the DOH to retain Dr. Castillo at the Regional Office No. IX in Zamboanga City where she would serve the remaining four years of her public service. She retired in 1996.

Meanwhile, in 1994, or two years after the implementation of the devolution program, Governor Salapuddin appointed Dr. Yu to the PHO II position.

On February 23, 1998, Republic Act No. 8543, otherwise known as "*An Act Converting the Basilan Provincial Hospital in the Municipality of Isabela, Province of Basilan, into a Tertiary Hospital Under the Full Administrative and Technical Supervision of the Department of Health, Increasing the Capacity to One Hundred Beds and Appropriating Funds Therefor*," was passed into law whereby the hospital positions previously devolved to the local government unit of Basilan were re-

nationalized and reverted to the DOH. The Basilan Provincial Health Hospital was later renamed the Basilan General Hospital, and the position of PHO II was then re-classified to Chief of Hospital II.

While Dr. Yu was among the personnel reverted to the DOH with the re-nationalization of the Basilan General Hospital, she was made to retain her original item of PHO II instead of being given the re-classified position of Chief of Hospital II. Subsequently, on August 1, 2003, then DOH Secretary Manuel M. Dayrit (Secretary Dayrit) appointed Dr. Domingo Remus A. Dayrit (Dr. Dayrit) to the position of Chief of Hospital II.

Aggrieved, Dr. Yu filed a letter of protest dated September 30, 2003^[3] before the CSC claiming that she has a vested right to the position of Chief of Hospital II. The pertinent portions of said letter read:

I come before your good office protesting the appointment issued by ... DOH Secretary Manuel M. Dayrit in favor of Dr. Domingo Remus A. Dayrit as Chief of Hospital ... of the Basilan General Hospital ...

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... the position of Chief of Hospital II to which Dr. Dayrit has been appointed is a mere conversion from the item of Provincial Health Officer II previously occupied by the herein protestant.

When what used to be called the Basilan Provincial Hospital was re-nationalized, now called the Basilan General Hospital, the position of Provincial Health Officer II, then occupied by the undersigned, was refused re-nationalized (sic) by DOH alleging the same position to be an LGU-created position, that is, that the Local Government of Basilan created the position. Thus, instead of the undersigned being automatically re-appointed Provincial Health Officer II of the Hospital, later to be renamed Chief of Hospital II, pursuant to the Re-Nationalization Law, she was instead given an appointment still as Provincial Health Officer II but under a co-terminous status at the Center for Health and Development, DOH ... which position the undersigned refused to accept...

On June 7, 2004, the CSC issued Resolution^[4] No. 040655 granting Dr. Yu's protest and revoking the appointment of Dr. Dayrit as Chief of Hospital II of Basilan General Hospital. Further, Secretary Dayrit was directed to appoint Dr. Yu to said position. Upon motion for reconsideration, however, the CSC reversed itself and issued Resolution^[5] No. 040967 dated September 1, 2004 declaring that the position of PHO II was never devolved to the Provincial Government of Basilan but was retained by the DOH; that the PHO II position held by Dr. Yu was a newly-created position; and that, therefore, she did not have a vested right to the Chief of Hospital II position that was created by virtue of R.A No. 8543.

Dr. Yu then filed a motion for reconsideration which was denied by the CSC in its Resolution^[6] No. 050287 dated February 28, 2005. She then elevated her case to

the CA on petition for review raising the sole issue of whether the item of PHO II she previously occupied was a devolved position or a locally created one.

On March 30, 2009, the CA rendered the assailed Decision in favor of Dr. Yu, disposing as follows:

FOR REASONS STATED, the Petition for Review is GRANTED and CSC Resolutions Nos. 040967 and 050287 are REVERSED and SET ASIDE. Petitioner is declared to have a vested right in the Chief of Hospital II position up to her retirement in August 24, 2004 and should receive her corresponding salaries and benefits.

SO ORDERED.^[7]

In ruling that the PHO II position was devolved to the Basilan Provincial Government, the appellate court ratiocinated in this wise:

xxx The CSC's ruling that there are two PHO II positions is not implausible but contrary to the evidence on hand. A perusal of the pleadings and attachments reveal that the PHO II position was devolved to the Basilan Provincial Government. In a letter dated May 19, 1994, Ms. Vivian L. Young, Officer-in-Charge of the Department of Health, Local Government Assistance & Monitoring Service informed former Governor Salapuddin that the PHO II position was devolved to the local government, *viz*:

Dear Gov. Salapuddin,

This will refer to your letter relative to the item position of Dr. Fortunata C. Castillo which has been devolved to the provincial government of BASILAN.

Please be informed that only the devolved health personnel who were not accepted by their Local Chief Executive have been retained by DOH, the item positions per se remained in the respective LGU's. xxx The LGU's have the option to retain the items vacated or to collapse the same for financial reasons.

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Based on the foregoing letter, Dr. Milagros L. Fernandez, Director IV of the DOH – Regional Field Office No. IX, Zamboanga City, wrote a letter to petitioner, to wit:

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Madam:

The letter dated May 19, 1994 of Ms. Vivian L. Young, Officein- Charge (*sic*), LGAMS, Department of Health, clarifies the issue raised by the Provincial Governor, in his letter dated April 14, 1994, insofar as the retention of the Provincial Health Officer II of the province, in the person of Dr. Fortunata Castillo by the DOH in view of the non-acceptance by the Governor consistent with the provisions of law on devolution.

1. Dr. Fortunata A. Castillo, who was holding the position of Provincial Health Officer II of the province, and a devolved health personnel, was retained by the DOH for reason abovementioned.
2. While she, the occupant, was retained, the item position remained as among those items in the Plantilla of Personnel of the Integrated Provincial Health Office devolved to the Office of the Provincial Governor.
3. The Governor, in such a case, may or may not retain her item in his Plantilla, or abolish it for reason therein stated. The position herewith (*sic*) was left vacant with the retention of Dr. Castillo in this office.
4. The funds for salary and other benefits of the devolved item position of Provincial Health Officer II remained devolved with the Office of the Governor.

In other words, with the retention of Dr. Castillo hereto, she never carried with her the item position and the funds appropriated for salary and other benefits accruing to the position of Provincial Health Officer II.

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In a letter dated October 26, 2001, Director Macybel Alfaro-Sashi of the Civil Service Commission Regional Office IX informed the petitioner that:

At the outset, it is apparent that the position you presently occupy is one which should be included in the list of renationalized positions notwithstanding the fact that the said position carries a position item number different from that carried by the previous holder thereof. Hence, the contention of the DOH Regional Office that your position is not the same as that of the previous holder simply because they bear different position item numbers deserves very scant consideration. The position item numbers are immaterial in case of renationalization as such a system is merely adopted for purposes of proper and systematic coding of all positions in

the government, particularly in the budgeting process. Thus, the position you are presently holding should be considered as one belonging to the national government prior to its devolution, regardless of the position item number attached to the position of the previous holder thereof.

Thus, it is apparent that the PHO II position occupied by petitioner is one and the same position which was previously occupied by Dr. Castillo before the devolution. When the latter was not accepted by Gov. Salapuddin, Dr. Castillo was retained by the DOH but the PHO II item was devolved to the Provincial Government of Basilan. Consequently, the position of PHO II became vacant. This is obvious by the fact that the salaries of Dr. Castillo were taken from a special fund and not from the appropriation for the PHO II position.

The motion for reconsideration of the foregoing Decision filed by the CSC was denied by the CA in its Resolution^[8] dated July 9, 2009. Hence, in this petition for review on certiorari, the CSC alleged that -

The Issue

THE COURT OF APPEALS ERRED IN HOLDING THAT THE PHO II POSITION PREVIOUSLY OCCUPIED BY RESPONDENT YU IS A DEVOLVED POSITION.^[9]

The Ruling of the Court

In pursuance of the declared policy under *The Local Government Code of 1991* (R.A. No. 7160) to provide for a more responsive and accountable local government structure through a system of decentralization,^[10] national agencies or offices, including the DOH, were mandated to devolve to the local government units the responsibility for the provision of basic services and facilities.^[11]

As defined, "devolution" is the act by which the national government confers power and authority upon the various local government units to perform specific functions and responsibilities.^[12] Specifically, Section 17(i) of the same *Code* prescribes the manner of devolution, as follows:

(i) The devolution contemplated in this Code shall include the transfer to local government units of the records, equipment, and other assets and personnel of national agencies and offices corresponding to the devolved powers, functions and responsibilities.

Personnel of said national agencies or offices shall be absorbed by the local government units to which they belong or in whose areas they are assigned to the extent that it is administratively viable as determined by the said oversight committee: *Provided, further*, That regional directors