

## EN BANC

[ G.R. No. 182591, January 18, 2011 ]

### MODESTO AGYAO, JR., PETITIONER, VS. CIVIL SERVICE COMMISSION, RESPONDENT.

#### DECISION

##### MENDOZA, J.:

Assailed in this petition for review on certiorari is the September 26, 2007 Decision [1] of the Court of Appeals (CA), in CA-G.R. SP No. 92569, which affirmed Resolution No. 05-0821 dated June 16, 2005, issued by the Civil Service Commission (CSC). The CSC Resolution, in turn, affirmed the invalidation by the Civil Service Commission Field Office-Bangko Sentral Ng Pilipinas (CSCFO-BSP) of the appointment of petitioner Modesto Agyao, Jr. (*Agyao*) as Department Manager II of the Philippine Economic Zone Authority (*PEZA*).

Records show that on June 16, 2004, Agyao was re-appointed as Department Manager II of PEZA. As a matter of course, the renewal of Agyao's appointment was submitted by PEZA to the CSC.

On July 16, 2004, however, Agyao's re-appointment was invalidated by the CSCFO-BSP, through a letter of Director Mercedes P. Tabao (*Director Tabao*). The letter stated that Agyao lacked the prescribed Career Executive Service Office (CESO)/ Career Service Executive Examination (CSEE) eligibility, and there were qualified eligibles actually available for appointment. Section 2 (b), Rule III of CSC Memorandum Circular No. 40, Series of 1998, provides as follows:

b. Temporary - issued to a person who meets the education, experience and training requirements for the position to which he is being appointed except for the appropriate eligibility but only in the absence of a qualified eligible actually available, as certified to by the Civil Service Regional Director or Field Officer. xxx

On August 31, 2004, PEZA Director-General Lilia B. De Lima (*Director-General De Lima*) sent a letter-appeal to the CSC seeking a reconsideration of its action on the appointment of Agyao.

On June 16, 2005, the CSC issued Resolution No. 05-0821 [2] denying Director-General De Lima's appeal and affirming the invalidation by the CSCFO-BSP of Agyao's appointment as Department Manager II of PEZA. The CSC referred to CSC Memorandum Circular (MC) No. 9, Series of 2005 (Limitations on Renewal of Temporary Appointments), which clearly provides that only one renewal of a temporary third-level appointment is allowed provided that there are no qualified

applicants actually available and willing to assume the position. Moreover, although Agyao's temporary appointment was renewed four (4) times, he failed to acquire the appropriate third level eligibility. In addition, CSCFO-BSP Director Tabao certified that there were qualified eligibles available for appointment to the position of Department Manager II.

On July 18, 2005, Agyao was informed by PEZA Deputy Director for Finance and Administration, Justo Porfirio LL. Yusingco, about his appointment as Division Chief III, Permanent, effective July 16, 2005.

On August 21, 2005, Agyao filed with the CSC a Letter-Motion for Reconsideration of its July 16, 2005 Resolution. The motion, however, was denied in the cited CSC Resolution No. 05-1486 dated October 17, 2005.

On appeal, the CA rendered a decision dated September 26, 2007 affirming the resolution of the CSC. It ruled, among others, that Agyao could not qualify for the position of Department Manager II because he was not a Career Civil Service Eligible (CESE). He could not invoke the provisions of CSC MC No. 9, Series of 2005, issued on March 22, 2005 because the invalidation of his temporary appointment was made earlier on July 16, 2004. Moreover, CSC Office Memorandum No. 05, Series of 2005, issued on August 5, 2005 as a clarification on CSC MC No. 9, Series of 2005, expressly provides that "all renewals issued on or after July 24, 2005 can no longer be renewed after they lapse."

Aggrieved, Agyao filed this petition for review before this Court raising the following

### **ISSUES**

**WHETHER OR NOT THE COURT OF APPEALS ERRED AND ABUSED ITS DISCRETION IN UPHOLDING THE FINDINGS OF THE CIVIL SERVICE COMMISSION DECLARING THE APPOINTMENT OF THE PETITIONER AS DEPARTMENT MANAGER II OF THE PEZA AS INVALID.**

**WHETHER OR NOT THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE POSITION OF THE PETITIONER AS DEPARTMENT MANAGER II IS NOT COVERED UNDER THE CAREER EXECUTIVE SERVICE CONSIDERING THE FACT THAT HE IS NOT A PRESIDENTIAL APPOINTEE.**

Agyao argues that CSC MC No. 9, Series of 2005, is applicable to him because its provisions are favorable to him. He claims that CSC Office Memorandum No. 05, Series of 2005, which clarified CSC MC No. 9, Series of 2005, allows one renewal of temporary third level appointments issued before July 24, 2005 subject to existing rules and regulations regardless of previous renewals granted before said date. Accordingly, he insists that the renewal of his appointment was valid because it was made on June 16, 2004.

Agyao further points out that there are no qualified applicants actually available and willing to assume his position as Director Manager II at the PEZA. Director Tabao's

"qualified eligibles" in her list are from different agencies of the government and that none of them has applied for the position. It is the reason why the position is still vacant.

Finally, Agyao contends that the position of Department Manager II of PEZA is not among those covered by the Career Executive Service (CES) also known as presidential appointees. The appointment to the position is made by the PEZA Director-General. Accordingly, he does not need to possess the required CESO/CSEE to continue acting as Department Manager II.

The CSC, on the other hand, argues that Agyao's temporary appointment on June 16, 2004 was properly invalidated because he lacked the eligibility to qualify as Department Manager II. Although he was re-appointed several times to the position, he still failed to acquire third level eligibility considering that he failed in the November 2004 CSEE.

Moreover, CSC MC No. 9, Series of 2005, and CSC Office Memorandum No. 05, Series of 2005, cannot apply in Agyao's favor because they were issued after the invalidation of his fifth temporary appointment and did not provide for a retroactive application.

The CSC also regards Agyao's contention that there are no qualified applicants who are actually willing to assume the position of Department Manager II as speculative and hearsay. Actually, Director Tabao certified and furnished PEZA a list of qualified eligibles for possible appointment as Department Manager II.

Finally, the CSC argues that although the position of Department Manager II does not require a presidential appointment, it is a third level position which requires either a CESO or CSEE eligibility. The list of third level positions in the Career Executive Service enumerated in the Administrative Code of 1987, namely: Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, is not strictly limited. Citing jurisprudence, [3] the CSC avers that the classification of a particular position in the bureaucracy is determined by the nature of the functions of the office. The third level embraces positions of a managerial character involving the exercise of management functions such as planning, organizing, directing, coordinating, controlling, and overseeing the activities of an organization or of a unit thereof. It also requires some degree of professional, technical or scientific knowledge and experience, and application of managerial or supervisory skills necessary to carry out duties and responsibilities involving functional guidance, leadership and supervision.

The rank of Department Manager II falls under the coverage of CES under the aforementioned CSC issuances as the same is a third level career position above the division chief level and performing executive or managerial functions. Pursuant to the merit-and-fitness rule in the Constitution, the consistent policy is to the effect that non-presidential appointees to positions with managerial and executive functions must possess third level eligibility.

In sum, the core issue to be resolved in this case is whether or not the position of

Department Manager II of PEZA requires CESO or CSEE eligibility.

### **RULING OF THE COURT**

The issue is not novel. In *Office of the Ombudsman v. Civil Service Commission* cases, [4] *Home Insurance Guarantee Corporation v. Civil Service Commission* [5] and *National Transmission Corporation v. Hamoy*, [6] the Court has consistently ruled that the CES covers presidential appointees only. Corollarily, as the position of Department Manager II of the PEZA does not require appointment by the President of the Philippines, it does not fall under the CES.

Section 8, Chapter 2, Book V, Title 1 (Subtitle A) of Executive Order No. 292, otherwise known as The Revised Administrative Code of 1987, classifies the positions in the Civil Service as follows:

**Section 8. Classes of positions in the Career Service.**--( 1) Classes of positions in the career service appointment to which requires examinations shall be grouped into three major levels as follows:

(a) The first level shall include clerical, trades, crafts and custodial service positions which involve non-professional or sub-professional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies;

(b) The second level shall include 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 levels; and

(c) The third level shall cover positions in the Career Executive Service.

In the *Home Insurance* case, the Court ruled that "the position of Vice-President of HIGC does not belong to the 3<sup>rd</sup> level of the career service. Respondent Cruz has not satisfactorily shown that his former position as Vice-President in the HIGC belongs to the third level in the career service as prescribed by law. His former position as Vice President is not among those enumerated by law as falling under the third level, nor has he established that it is one of those identified by the Career Executive Service Board as of equivalent rank to those listed by law. Neither is it claimed that he was appointed by the President."

In the *Office of the Ombudsman* case, the Court wrote:

The CSC's opinion that the Director II positions in the Central Administrative Service and the Finance and Management Service of the Office of the Ombudsman are covered by the CES is wrong. Book V, Title I, Subtitle A, Chapter 2, Section 7 of EO [7] 292, otherwise known as