

EN BANC

[G.R. No. 167002, December 06, 2011]

VICTOR R. REYES, SUBSTITUTED BY HIS HEIRS, CLARIBEL G. REYES, CLARISSA G. REYES, AND CZARINA G. REYES, PETITIONERS, VS. COURT OF APPEALS, CIVIL SERVICE COMMISSION, HON. JOSE L. ATIENZA, JR., IN HIS CAPACITY AS CITY MAYOR OF MANILA, SENEN D. TOMADA, AND HERNANDO B. GARCIA, RESPONDENTS.

DECISION

MENDOZA, J.:

This is a petition for review under Rule 45 of the Rules of Court filed by petitioner Victor R. Reyes (*Reyes*) assailing the August 28, 2003 Decision^[1] of the Court of Appeals (CA), in CA-G.R. SP No. 59616, entitled "*Hernando B. Garcia, petitioner, v. Senen D. Tomada, Civil Service Commission Mayor Jose L. Atienza, Jr. in his capacity as the City Mayor of Manila, respondents*" and "*Victor R. Reyes, Intervenor*," the dispositive portion of which reads:

WHEREFORE, the petition is **GRANTED** and the assailed resolution of the Civil Service Commission is **ANNULLED** and **SET ASIDE**. The appointment of petitioner Hernando B. Garcia as Assistant City Assessor of the City of Manila is **UPHELD** over the claims of respondent Senen D. Tomada and intervenor Victor R. Reyes to that position.

SO ORDERED.^[2]

Reyes filed a motion for reconsideration but it was denied by the CA in its Resolution dated February 2, 2005.

Hence, this petition.

THE FACTUAL ANTECEDENTS

The factual and procedural antecedents have been succinctly recited in the subject decision of the CA as follows:

On March 26, 1998, or forty-six days before the May 11, 1998 elections, then Mayor Alfredo Lim (or "Lim") of the City of Manila appointed Senen Tomada (or "Tomada") as City Government Assistant Department Head III (Assistant City Assessor, or "subject position"). On the same date, Tomada's appointment, which was indicated as "Transfer with Promotion," was submitted to the Civil Service Commission Field Office

(or "CSCFO") in Manila for consideration and approval.

Prior to her appointment, Tomada was assigned at the Office of the City Treasurer of Manila as Local Treasury Operations Officer IV.

In a letter dated March 26, 1998, Tomada sought clarification from the Commission on Elections (or "COMELEC") on whether her appointment to the subject position was prohibited under Sec. 261(g) of the Omnibus Election Code. In a reply-letter dated April 2, 1998, the COMELEC opined that her appointment was valid because promotional appointments are only prohibited under said law if issued within forty-five days prior to the May 11, 1998 elections, or between March 27, 1998 and May 11, 1998.

On April 24, 1998, CSCFO head Arturo Panaligan (or "Panaligan") wrote to the Civil Service Commission (or "CSC") office requesting clarification on the validity of Tomada's appointment given the prohibition against certain personnel actions under Section 261(g) and (h), *id.*, which reads:

"Sec. 261. *Prohibited acts.*--The following shall be guilty of an election offense:

x x x

(g) *Appointment of new employees, creation of new position, promotion, or giving salary increases.*--During the period of forty-five days before a regular election and thirty days before a special election. x x x

h) *Transfers of officers and employees in the civil service.*--Any public official who makes or causes any transfer or detail whatever of any officer or employee in the civil service including public school teachers, within the election period except upon prior approval of the Commission."

The CSC-NCR, in turn, referred Panaligan's request to the CSC Central Office for appropriate action.

Pending action on Tomada's appointment, however, Mayor Jose L. Atienza, Jr. (or "Mayor Atienza") assumed Lim's position upon the latter's running for president in the May 11, 1998 elections. On July 1, 1998, Mayor Atienza, who ran for and was elected as mayor of the City of Manila in the same elections, appointed Hernando Garcia (or "Garcia") to the subject position.

On July 28, 1998, Panaligan cancelled Tomada's appointment without awaiting the CSC's reply to his April 24, 1998 letter, explaining that said appointment constituted a "transfer" which was allegedly a violation of Sec. 261(h), *id.* Nevertheless, Panaligan stated that his action was without prejudice to the CSC's resolution on the matter.

Tomada sought reconsideration of the cancellation of her appointment, per her letter dated July 29, 1998, pointing out that the CSC was yet to reply to Panaligan's request for clarification.

On September 27, 1999, the CSC issued Resolution No. 99, 2208 approving Tomada's promotional appointment. The resolution pertinently reads:

"Considering, therefore, that the promotional appointment of Tomada was issued prior to the prohibited period as provided for in the Omnibus Election Code; and considering, further, that her movement from one office to another is merely incidental to her promotion, the Commission finds such personnel action not in violation of the Omnibus Election Code and CSC Office Memorandum No. 11, s. 1998."

On November 19, 1999, Mayor Atienza filed a petition for reconsideration which was, however, dismissed by the CSC on May 22, 2000.

On June 7, 2000, Panaligan wrote to Mayor Atienza requesting immediate implementation of CSC Resolution No. 99-2208 and recalling Garcia's appointment to the subject position.

On July 11, 2000, Garcia filed the instant petition for certiorari and quo warranto, with an application for temporary restraining order and/or preliminary injunction, ascribing grave abuse of discretion on the CSC for recalling his appointment.

Garcia maintains that he was not notified of Tomada's appeal to the CSC and that he assumed the subject position by virtue of a valid appointment issued by Mayor Atienza which was approved on August 31, 1998 by Panaligan of the CSCFO. He argues that he cannot be removed from the subject position in the guise of a recall since the ground for his removal is not sanctioned by law.

Garcia also faults the CSC for acting on Tomada's motion for reconsideration even as it was not made by the proper appointing authority prescribed in CSC Memorandum Circular No. 38, Series of 1993, and Tomada did not pay the requisite docket fee. He adds that Tomada's right to claim the subject position is barred by prescription for failure to file an action for quo warranto within one year from his (Garcia) appointment to the subject position (on July 1, 1998).

For her part, Tomada counters that Garcia's appointment is null and void because, at that time, the subject position was not yet vacant as the CSCFO disapproved her appointment only on July 27, 1998. In support of her argument, Tomada cites Sec. 10, Rule V of the Omnibus Rules Implementing Book V of Exec. Order No. 292 which provides that "an appointment shall remain effective until disapproved by the Commission."

Tomada further claims superior right to the subject position because: (i) her appointment was issued prior to that of Garcia; and (ii) the CSCFO's disapproval of her appointment is merely conditional as shown in the notation on her appointment letter which reads, "without prejudice to whatever resolution the Commission may issue on this (appointment)."

Anent the issue of prescription, Tomada explains that she could not immediately institute a quo warranto proceeding against Garcia pending the administrative proceedings before the CSC concerning the validity of her appointment. Tomada also points out that the CSC did not violate Garcia's right to due process because a hearing is not required in CSC proceedings which are not disciplinary in nature.

As for Mayor Atienza, he merely adopted the arguments raised by Garcia in his petition before this Court.

Meantime, on October 12, 2000, Victor Reyes (or "Reyes") filed a motion for intervention in his alleged capacity as the incumbent Assistant City Assessor of Manila, which was denied per resolution dated February 14, 2001 but later granted pursuant to the resolution dated August 7, 2002. In his answer-in-intervention, Reyes averred that former Manila Mayor Gemiliano Lopez appointed him to the subject position on August 3, 1989; that when Lim assumed office in 1992 as Manila mayor, he (Reyes) was among the officials pressured to resign from office so that Lim could appoint his own people; that those who failed to tender courtesy resignations were physically harassed or subjected to trumped-up criminal and administrative charges; that he (Reyes) himself was charged with falsification and violation of the Anti-Graft and Corrupt Practices Act; and that an administrative complaint was filed against him by a certain Amador Valdeviego.

Reyes also alleged that in light of the abovementioned circumstances, he wrote Lim on October 1, 1993 requesting for his transfer to the Quezon City Hall and approval of his application for sick leave for two months, which requests were granted by Lim, and manifesting willingness to retire if his transfer could not be effected by December 31, 1993.

Reyes further alleged that the criminal and administrative charges against him were dismissed but despite this development which could have allowed him to retire from the service, Lim failed to act on his application for retirement; that on March 10, 1999, Reyes wrote Mayor Atienza advising of his desire to re-assume the subject position; and that when Mayor Atienza failed to act on his request, Reyes filed with the CSC a complaint for Assumption of Office against Mayor Atienza, Garcia and the City of Manila.

On October 18, 2000, Garcia filed a reply to Tomada's comment alleging that her appointment has not become effective for failure to assume the subject position; that his appointment being "complete, lawful and effective," he has superior right and title to the subject position *vis-à-vis* Tomada; and that the recall of his appointment amounted to his removal from office without cause and without due process.

For its part, the Office of the Solicitor General (or "OSG") maintains that the CSC correctly upheld the promotional appointment of Tomada. The OSG points out that CSC Resolution No. 99-2208 does not involve the imposition of an administrative disciplinary measure and, therefore, "the appointee need not be previously heard thereon;" and that the CSC merely recalled Garcia's appointment inasmuch as the earlier appointment of Tomada is valid.

On August 28, 2003, the CA rendered the assailed decision^[3] granting the petition of Garcia and upholding his appointment over the claims of Tomada and Reyes to the position. In justifying its ruling, the CA wrote:

At the outset, it should be observed that Tomada's appointment actually involved two kinds of personnel action, *i.e.*, promotion and transfer. This is clear from the phrase "transfer with promotion" used in her appointment paper by way of describing the nature of her appointment.

Tomada's promotion did not fall within the 45-day period prior to the May 11, 1998 elections (Sec. 261[g], Omnibus Election Code). However, her transfer from the Office of the City Treasurer to the Office of the City Assessor is a different matter.

Sec. 261(h) of the Omnibus Election Code prohibits "any transfer or detail whatever of any officer or employee in the civil service including public school teachers, within the election period except upon prior approval of the Commission." Pursuant to this provision, the CSC, through Office Memorandum (OM) No. 11, Series of 1998, issued the following guideline:

"The transfer or detail of officers and employees in the civil service, including public school teachers pursuant to Section 261(h) of the Omnibus Election Code for the period beginning January 11, 1998 (Sunday) to June 10, 1998 (Wednesday), or 120 days before election and 30 days after election, is hereby prohibited. The phrase transfer or detail shall be construed in general terms. Thus any movement of officer or employee in the civil service, including public school teachers, from one agency is prohibited and is considered an election offense."
(Underscoring supplied)

From the foregoing, it is clear that Tomada's transfer from the Office of the City Treasurer to the Office of the City Assessor on March 26, 1998, which was during the election period, contravened the express provisions of the Omnibus Election Code and its implementing rules and regulations. Consequently, there is no legal basis for the CSC's stance that "the movement of Tomada from one office to another in the City Government of Manila cannot be considered as 'transfer' as contemplated in Sec. 261(h) of the Omnibus Election Code and CSC Office Memorandum No.