

EN BANC

[G.R. No. 170093, April 29, 2009]

JOSE PEPITO M. AMORES, M.D., PETITIONER, VS. CIVIL SERVICE COMMISSION, BOARD OF TRUSTEES OF THE LUNG CENTER OF THE PHILIPPINES, AS REPRESENTED BY HON. MANUEL M. DAYRIT, AND FERNANDO A. MELENDRES, M.D., RESPONDENTS.

DECISION

PERALTA, J.:

In this petition for review under Rule 45 of the Rules of Court, petitioner Jose Pepito M. Amores assails the Decision^[1] of the Court of Appeals in CA-G.R. SP No. 80971, dated September 23, 2004, as well as its Resolution^[2] dated September 20, 2005 which denied reconsideration. The assailed Decision affirmed the October 14, 2003 Resolution^[3] of the Civil Service Commission which, in turn, ordered petitioner's separation from service as Deputy Director for Hospital Support Services at the Lung Center of the Philippines on account of his lack of the necessary civil service eligibility.

Well established are the facts of the case.

Petitioner Jose Pepito M. Amores was the Deputy Director for Hospital Support Services at the Lung Center of the Philippines (LCP). His civil service career began in 1982 when he was initially engaged at the LCP as a resident physician.^[4] In the course of his service, he had been promoted to the position of Medical Specialist,^[5] then to Department Manager,^[6] and finally to Deputy Director. Dr. Calixto Zaldivar was then the Executive Director of the LCP and when he retired from service in 1999, petitioner was designated as officer-in-charge of the LCP by the Department of Health (DOH) Secretary Alberto Romualdez, Jr.^[7]

Petitioner had taken charge of the LCP in the interim that the DOH selection board was in the process of selecting a new executive director. In the meantime, Dr. Fernando Melendres (Melendres), one of the respondents in this case, was appointed by then President Joseph Estrada as Executive Director of the LCP. Melendres was holding the office of the Deputy Director for Medical Support Services before his appointment as Executive Director, and although petitioner claims that he was not challenging Melendres' right to the office, he nevertheless believed that he himself was the rightful person to be appointed as executive director inasmuch as he had top-billed the evaluation results of the DOH Selection Board, with Melendres tailing behind in second place.^[8]

It seems that the controversy started when petitioner and the other doctors and rank-and-file employees at the LCP drafted a manifesto^[9] which supposedly ventilated their collective dismay and demoralization at Melendres' appointment and

leadership, and at some of his "unjustified and questionable acts" as Executive Director of the LCP. In a nutshell, the said manifesto boldly exposed the alleged anomalous circumstances surrounding Melendres' appointment; the reassignment of some of the members of the LCP personnel which amounted to demotion in their rank and status; the anomalies in the procurement of property and supplies; his abusive conduct in publicly accusing some of the doctors of having caused the fire that gutted the center in May 1998; in accusing Zaldivar of having entered into anomalous contracts and negotiations with the DPWH relative to certain projects; and in practicing favoritism and nepotism. The tenor of the manifesto even went as far as to be deeply personal as it likewise questioned Melendres' fitness to act as executive director on the ground of his previous brush with substance abuse and the fact that he could no longer keep his marriage from failing.^[10]

The seriousness of these allegations led the DOH to create a Fact-finding Committee to conduct an investigation.^[11] But at the proceedings before the said Committee, Melendres filed charges of dishonesty and double compensation against petitioner alleging that the latter had been engaging in the private practice of medicine within the LCP's premises during official hours.^[12] At the close of the investigation, the Fact-finding Committee issued a report declaring Melendres guilty of the charges against him.^[13] As for petitioner, the Committee absolved him of the charge of receiving double compensation, but nevertheless found him guilty of having committed dishonesty by engaging in the private practice of his profession during the hours that he should be engaging in public service in violation of the Civil Service Law.^[14]

Petitioner was caught by surprise when, on August 27, 2002, he received a letter from the LCP Board of Trustees informing him of his separation from service as Deputy Director effective September 30, 2002.^[15] To the said letter was attached a copy of the Board's Resolution^[16] dated August 23, 2002, principally directing petitioner's termination from service after consultation with the Career Executive Service Board (CES Board).^[17] Petitioner brought an appeal from the resolution to the Civil Service Commission (CSC).^[18]

Resolving the appeal, the CSC declared that the LCP Board of Trustees had properly and validly separated petitioner from his post as Deputy Director. In its Resolution No. 031050,^[19] the CSC declined to pass upon the charge of dishonesty on the ground of pre-maturity as the issue had not yet been finally determined in a proper proceeding and the Board had not yet in fact made a definite finding of guilt from which petitioner might as a matter of course appeal.^[20] However, it pointed out that petitioner's separation from service was anchored on his lack of a CES eligibility which is required for the position of deputy director and, as such, he enjoyed no security in his tenure.^[21]

Petitioner lodged an Appeal^[22] with the Court of Appeals. However, it was dismissed and CSC Resolution No. 031050 was affirmed.^[23]

This present petition for review imputes error to the Court of Appeals. First, in missing the fact that petitioner had been denied due process when his separation from office was ordered on a ground not raised before the DOH Fact-finding

Committee^[24] and, second, in failing to appreciate the fact that his rights to equal protection had likewise been violated inasmuch as he was similarly situated with other department managers in the LCP who had no CES eligibility but who, however, had not been separated from service.^[25] He theorizes that his right to security of tenure had been breached and that he was entitled to remain as deputy director because his promotion to the said position supposedly issued by Zaldivar — which was a recognition of his competence — was permanent in character.^[26]

The LCP, the CSC and the DOH, all represented by the Office of the Solicitor General, and Melendres, are one in asserting that there can be no question as to the validity of petitioner's removal from office for the basic fact that he enjoyed no security of tenure on account of his lack of eligibility. In his Comment^[27] on the petition, Melendres capitalizes on the fact that the LCP Board of Trustees arrived at the resolution to separate petitioner from service upon consultation with the CES Board and the CSC; thus, concludes Melendres, it can only be surmised that the cause for the removal of petitioner from office is actually his lack of eligibility and not his commission of dishonesty. The LCP, for its part, is more to the point. It posits that petitioner's separation from office did not result from an administrative disciplinary action, but rather from his failure to qualify for the office of Deputy Director on account of lack of eligibility. For their part, the CSC and the DOH characterizes petitioner as a third-level appointee who, again, must be in possession of the corresponding third-level eligibility; but since petitioner has none, then he enjoys no security of tenure and may thus be removed at a moment's notice even without cause.

There is merit in the arguments of respondents.

What at the outset weighs heavily on petitioner's case is the fact that the position of Deputy Director for Hospital Support Services at the LCP belongs to the career executive service appointments to which by law require that the appointees possess the corresponding CES eligibility. Petitioner, however, does not profess that at any time he was holding the said position he was able to acquire the required eligibility therefor by taking the CES examinations and, subsequently, conferred such eligibility upon passing the said examinations. In fact, no slightest suggestion can be derived from the records of this case which would tend to show that in his entire tenure at the LCP he, at any given point, had been conferred a CES eligibility. It is thus as much surprising as it is absurd why petitioner, despite the limitations in his qualifications known to him, would insist that he had served as Deputy Director at the LCP in a permanent capacity.

We begin with the precept, firmly established by law and jurisprudence, that a permanent appointment in the civil service is issued to a person who has met the requirements of the position to which the appointment is made in accordance with law and the rules issued pursuant thereto.^[28] An appointment is permanent where the appointee meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed, and it is temporary where the appointee meets all the requirements for the position except only the appropriate civil service eligibility.^[29]

Under Section 7^[30] of the Civil Service Law,^[31] positions in the civil service are

classified into open career positions, closed career positions and positions in the career service. In turn, positions in the career service are tiered in three levels as follows:

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

(a) The first level shall include the clerical, trades, crafts and custodial service positions which involve non-professional or subprofessional 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 the Division Chief level; and

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

With particular reference to positions in the career executive service (CES), the requisite civil service eligibility is acquired upon passing the CES examinations administered by the CES Board and the subsequent conferment of such eligibility upon passing the examinations.^[32] Once a person acquires eligibility, he either earns the status of a permanent appointee to the CES position to which he has previously been appointed, or he becomes qualified for a permanent appointment to that position provided only that he also possesses all the other qualifications for the position.^[33] Verily, it is clear that the possession of the required CES eligibility is that which will make an appointment in the career executive service a permanent one. Petitioner does not possess such eligibility, however, it cannot be said that his appointment to the position was permanent.

Indeed, the law permits, on many occasions, the appointment of non-CES eligibles to CES positions in the government^[34] in the absence of appropriate eligibles and when there is necessity in the interest of public service to fill vacancies in the government.^[35] But in all such cases, the appointment is at best merely temporary^[36] as it is said to be conditioned on the subsequent obtention of the required CES eligibility.^[37] This rule, according to *De Leon v. Court of Appeals*,^[38] *Dimayuga v. Benedicto*,^[39] *Caringal v. Philippine Charity Sweepstakes Office*,^[40] and *Achacoso v. Macaraig*,^[41] is invariable even though the given appointment may have been designated as permanent by the appointing authority.

We now come to address the issue of whether petitioner's separation from service violated his right to security of tenure.

Security of tenure in the career executive service, which presupposes a permanent appointment, takes place upon passing the CES examinations administered by the CES Board. It is that which entitles the examinee to conferment of CES eligibility and the inclusion of his name in the roster of CES eligibles.^[42] Under the rules and regulations promulgated by the CES Board, conferment of the CES eligibility is done by the CES Board through a formal board resolution after an evaluation has been