

EN BANC

[G.R. No. 168766, May 22, 2008]

THE CIVIL SERVICE COMMISSION, Petitioner, vs. HENRY A. SOJOR, Respondent.

DECISION

REYES, R.T., J.:

IS the president of a state university outside the reach of the disciplinary jurisdiction constitutionally granted to the Civil Service Commission (CSC) over all civil servants and officials?

Does the assumption by the CSC of jurisdiction over a president of a state university violate academic freedom?

The twin questions, among others, are posed in this petition for review on *certiorari* of the Decision^[1] of the Court of Appeals (CA) which annulled two (2) CSC Resolutions^[2] against respondent Henry A. Sojor.

The Facts

The uncontroverted facts that led to the controversy, as found by the CSC and the CA, are as follows:

On August 1, 1991, respondent Sojor was appointed by then President Corazon Aquino as president of the Central Visayas Polytechnic College (CVPC) in Dumaguete City. In June 1997, Republic Act (R.A.) No. 8292, or the "Higher Education Modernization Act of 1997," was enacted. This law mandated that a Board of Trustees (BOT) be formed to act as the governing body in state colleges. The BOT of CVPC appointed respondent as president, with a four-year term beginning September 1998 up to September 2002.^[3] Upon the expiration of his first term of office in 2002, he was appointed president of the institution for a second four-year term, expiring on September 24, 2006.^[4]

On June 25, 2004, CVPC was converted into the Negros Oriental State University (NORSU).^[5] A Board of Regents (BOR) succeeded the BOT as its governing body.

Meanwhile, three (3) separate administrative cases against respondent were filed by CVPC faculty members before the CSC Regional Office (CSC-RO) No. VII in Cebu City, to wit:

1. ADMC DC No. 02-20(A) - Complaint for dishonesty, grave misconduct and conduct prejudicial to the best interest of the service filed on June 26, 2002 by Jose Rene A. Cepe and Narciso P. Ragay. It was alleged that respondent approved the release of

salary differentials despite the absence of the required Plantilla and Salary Adjustment Form and valid appointments.^[6]

2. ADM DC No. 02-20 - Complaint for dishonesty, misconduct and falsification of official documents filed on July 10, 2002 by Jocelyn Juanon and Carolina Fe Santos. The complaint averred that respondent maliciously allowed the antedating and falsification of the reclassification differential payroll, to the prejudice of instructors and professors who have pending request for adjustment of their academic ranks.^[7]

3. ADM DC No. 02-21 - Complaint for nepotism filed on August 15, 2002 by Rose Marie Palomar, a former part-time instructor of CVPC. It was alleged that respondent appointed his half-sister, Estrellas Sojor-Managuilas, as casual clerk, in violation of the provisions against nepotism under the Administrative Code.^[8]

Before filing his counter-affidavits, respondent moved to dismiss the first two complaints on grounds of lack of jurisdiction, bar by prior judgment and forum shopping.

He claimed that the CSC had no jurisdiction over him as a presidential appointee. Being part of the non-competitive or unclassified service of the government, he was exclusively under the disciplinary jurisdiction of the Office of the President (OP). He argued that CSC had no authority to entertain, investigate and resolve charges against him; that the Civil Service Law contained no provisions on the investigation, discipline, and removal of presidential appointees. He also pointed out that the subject matter of the complaints had already been resolved by the Office of the Ombudsman.^[9]

Finding no sufficient basis to sustain respondent's arguments, the CSC-RO denied his motion to dismiss in its Resolution dated September 4, 2002.^[10] His motion for reconsideration^[11] was likewise denied. Thus, respondent was formally charged with three administrative cases, namely: (1) Dishonesty, Misconduct, and Falsification of Official Document; (2) Dishonesty, Grave Misconduct, and Conduct Prejudicial to the Best Interest of the Service; and (3) Nepotism.^[12]

Respondent appealed the actions of the regional office to the Commission proper (CSC), raising the same arguments in his motion to dismiss.^[13] He argued that since the BOT is headed by the Committee on Higher Education Chairperson who was under the OP, the BOT was also under the OP. Since the president of CVPC was appointed by the BOT, then he was a presidential appointee. On the matter of the jurisdiction granted to

CSC by virtue of Presidential Decree (P.D.) No. 807^[14] enacted in October 1975, respondent contended that this was superseded by the provisions of R.A. No. 8292,^[15] a later law which granted to the BOT the power to remove university officials.

CSC Disposition

In a Resolution dated March 30, 2004,^[16] the CSC dismissed respondent's appeal and authorized its regional office to proceed with the investigation. He was also preventively suspended for 90 days. The *fallo* of the said resolution states:

WHEREFORE, the appeal of Henry A. Sojor, President of Central Visayas Polytechnic College, is hereby DISMISSED. The Civil Service Commission Regional Office No. VII, Cebu City, is authorized to proceed with the formal investigation of the cases against Sojor and submit the investigation reports to the Commission within one hundred five (105) days from receipt hereof. Finally, Sojor is preventively suspended for ninety (90) days.^[17]

In decreeing that it had jurisdiction over the disciplinary case against respondent, the CSC opined that his claim that he was a presidential appointee had no basis in fact or in law. CSC maintained that it had concurrent jurisdiction with the BOT of the CVPC. We quote:

His appointment dated September 23, 2002 was signed by then Commission on Higher Education (CHED) Chairman Ester A. Garcia. Moreover, the said appointment expressly stated that it was approved and adopted by the Central Visayas Polytechnic College Board of Trustees on August 13, 2002 in accordance with Section 6 of Republic Act No. 8292 (Higher education Modernization Act of 1997), which explicitly provides that, "*He (the president of a state college) shall be appointed by the Board of Regents/Trustees, upon recommendation of a duly constituted search committee.*" **Since the President of a state college is appointed by the Board of Regents/Trustees of the college concerned, it is crystal clear that he is not a presidential appointee. Therefore, it is without doubt that Sojor, being the President of a state college (Central Visayas Polytechnic College), is within the disciplinary jurisdiction of the Commission.**

The allegation of appellant Sojor that the Commission is bereft of disciplinary jurisdiction over him since the same is exclusively lodged in the CVPC Board of Trustees, being the appointing authority, cannot be considered. **The Commission and the CVPC Board of Trustees have concurrent jurisdiction over cases against officials and employees of the said agency.** Since the three (3) complaints against Sojor were filed with the Commission and not with the CVPC, then the former already acquired disciplinary jurisdiction over the appellant to the exclusion of the latter agency.^[18] (Emphasis supplied)

The CSC categorized respondent as a third level official, as defined under its rules, who are under the jurisdiction of the Commission proper. Nevertheless, it adopted the formal charges issued by its regional office and ordered it to proceed with the investigation:

Pursuant to the Uniform Rules on Administrative Cases in the Civil Service, Sojor, being a third level official, is within the disciplinary jurisdiction of the Commission Proper. Thus, strictly speaking, the Commission has the sole jurisdiction to issue the formal charge against Sojor. x x x However, since the CSC RO No. VII already issued the formal charges against him and found merit in the said formal charges, the

same is adopted. **The CSC RO No. VII is authorized to proceed with the formal investigation of the case against Sojor in accordance with the procedure outlined in the aforestated Uniform Rules.**^[19]
(Emphasis supplied)

No merit was found by the CSC in respondent's motion for reconsideration and, accordingly, denied it with finality on July 6, 2004.^[20]

Respondent appealed the CSC resolutions to the CA *via* a petition for *certiorari* and prohibition. He alleged that the CSC acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the assailed resolutions; that CSC encroached upon the academic freedom of CVPC; and that the power to remove, suspend, and discipline the president of CVPC was exclusively lodged in the BOT of CVPC.

CA Disposition

On September 29, 2004, the CA issued a writ of preliminary injunction directing the CSC to cease and desist from enforcing its Resolution dated March 30, 2004 and Resolution dated July 6, 2004.^[21] Thus, the formal investigation of the administrative charges against Sojor before the CSC-RO was suspended.

On June 27, 2005, after giving both parties an opportunity to air their sides, the CA resolved in favor of respondent. It annulled the questioned CSC resolutions and permanently enjoined the CSC from proceeding with the administrative investigation. The dispositive part of the CA decision reads:

WHEREFORE, in view of all the foregoing, and finding that the respondent Civil Service Commission acted without jurisdiction in issuing the assailed Resolution Nos. 040321 and 040766 dated March 20, 2004 and July 6, 2004, respectively, the same are hereby ANNULLED and SET ASIDE. The preliminary injunction issued by this Court on September 29, 2004 is hereby made permanent.

SO ORDERED.^[22]

The CA ruled that the power to appoint carries with it the power to remove or to discipline. It declared that the enactment of R.A. No. 9299^[23] in 2004, which converted CVPC into NORSU, did not divest the BOT of the power to discipline and remove its faculty members, administrative officials, and employees. Respondent was appointed as president of CVPC by the BOT by virtue of the authority granted to it under Section 6 of R.A. No. 8292.^[24] The power of the BOT to remove and discipline erring employees, faculty members, and administrative officials as expressly provided for under Section 4 of R.A. No. 8292 is also granted to the BOR of NORSU under Section 7 of R.A. No. 9299. The said provision reads:

Power and Duties of Governing Boards. - The governing board shall have the following specific powers and duties in addition to its general powers of administration and exercise of all the powers granted to the board of directors of a corporation under Section 36 of Batas Pambansa Blg. 68, otherwise known as the Corporation Code of the Philippines:

to fix and adjust salaries of faculty members and administrative officials and employees x x x; **and to remove them for cause in accordance with the requirements of due process of law.** (Emphasis added)

The CA added that Executive Order (E.O.) No. 292,^[25] which grants disciplinary jurisdiction to the CSC over all branches, subdivisions, instrumentalities, and agencies of the government, including government-owned or controlled corporations with original charters, is a general law. According to the appellate court, E.O. No. 292 does not prevail over R.A. No. 9299,^[26] a special law.

Issues

Petitioner CSC comes to Us, seeking to reverse the decision of the CA on the ground that THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PETITIONER ACTED WITHOUT JURISDICTION IN ISSUING RESOLUTION NO. 040321 DATED MARCH 30, 2004 AND RESOLUTION NO. 04766 DATED JULY 6, 2004.^[27]

Our Ruling

The petition is meritorious.

I. Jurisdiction of the CSC

The Constitution grants to the CSC administration over the entire civil service.^[28] As defined, the civil service embraces every branch, agency, subdivision, and instrumentality of the government, including every government-owned or controlled corporation.^[29] It is further classified into career and non-career service positions. Career service positions are those where: (1) entrance is based on merit and fitness or highly technical qualifications; (2) there is opportunity for advancement to higher career positions; and (3) there is security of tenure. These include:

- (1) Open Career positions for appointment to which prior qualification in an appropriate examination is required;
- (2) Closed Career positions which are scientific, or highly technical in nature; these include the faculty and academic staff of state colleges and universities, and scientific and technical positions in scientific or research institutions which shall establish and maintain their own merit systems;
- (3) Positions in the Career Executive Service; 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, all of whom are appointed by the President;
- (4) Career officers, other than those in the Career Executive Service, who are appointed by the President, such as the Foreign Service Officers in the Department of Foreign Affairs;