

EN BANC

[G. R. No. 163443, November 11, 2008]

**LIZA M. QUIROG AND RENE L. RELAMPAGOS, PETITIONERS, VS.
GOVERNOR ERICO B. AUMENTADO, RESPONDENT.**

[G. R. NO. 163568]

**CIVIL SERVICE COMMISION, PETITIONER, VS. COURT OF
APPEALS AND GOV. ERICO B. AUMENTADO, RESPONDENTS.**

DECISION

LEONARDO-DE CASTRO, J.:

Before this Court are two consolidated petitions for review under Rule 45 of the Rules of Court both assailing and seeking to set aside the Court of Appeals' (CA) **Decision^[1] dated March 31, 2003** and the **Resolution^[2] dated April 12, 2004** in CA-G.R. SP No. 70255. The Decision set aside Resolution Nos. 011812 and 020271 dated November 20, 2001 and February 22, 2002, respectively, of the Civil Service Commission in Administrative NDC No. 01-88 and reinstated the (a) June 28, 2001 Order and (b) July 23, 2001 Decision of the Civil Service Commission Regional Office No. VII.

The facts as culled from the records are as follows:

On May 28, 2001, Bohol Provincial Governor Rene L. Relampagos permanently appointed^[3] Liza M. Quirog as Provincial Government Department Head^[4] of the Office of the Bohol Provincial Agriculture (PGDH-OPA). The appointment was confirmed by the Sangguniang Panlalawigan in Resolution No. 2001-199^[5] on June 1, 2001. On even date, Quirog took her oath of office.

Before the issuance of the permanent appointment, the Personnel Selection Board (PSB) of the Human Resource Management and Development Office of Bohol issued a certification^[6] that Quirog was one of two candidates qualified for the position of PGDH-OPA.

A copy of the Monthly Report on Personnel Actions (ROPA) covering the months of May and June 2001 of the provincial government was submitted to the Civil Service Commission Regional Office No. VII (CSCROVII), Cebu City.

In the Order dated June 28, 2001^[7] , the Director of CSCROVII invalidated Quirog's appointment as PGDH-OPA upon finding that the same was part of the bulk appointments issued by then Governor Relampagos after the May 14, 2001 elections allegedly in violation of Item No. 3(d)^[8] of CSC Resolution No. 010988 dated June 4, 2001. The Order pointed out that the prohibition against the issuance of *midnight*

appointments was already laid down as early as February 29, 2000 in CSC Resolution No. 000550.^[9]

Both Relampagos and Quirog moved for reconsideration of the CSCROVII Order, alleging that when the latter took her oath of office on June 1, 2001, CSC Resolution No. 010988 was not yet effective as it took effect only on June 4, 2001. They argued that the subject appointment cannot be considered a *midnight appointment* because it was made days before the expiration of Relampagos' term, and that Quirog was already the acting Provincial Agriculturist a year prior to said appointment or since June 19, 2000.^[10] Besides, so they asserted, since Quirog had already taken her oath of office, assumed her duties and collected her salary for the month of June, 2001, she had already acquired a legal, not merely equitable, right to the position in question, which cannot be taken away from her either by revocation of the appointment or by removal except for cause and with previous notice and hearing.

In a decision^[11] dated July 23, 2001, the CSCROVII denied Quirog's and Relampagos' motion for reconsideration for lack of legal personality to file such pleading, citing Section 2, Rule VI of CSC Memorandum Circular (MC) No. 40, series of 1998. The CSCROVII explained that only the appointing officer may request reconsideration of the disapproval of an appointment by the Civil Service Commission. Even if Relampagos was the one who appointed Quirog, he could not file a motion for reconsideration because his term as governor had already expired.

Aggrieved, the petitioners in G.R. No. 163443 appealed to the Civil Service Commission (CSC) where their joint appeal was docketed as Adm. NDC No. 01-88.

On November 20, 2001, the CSC issued Resolution No. 011812,^[12] which granted the said joint appeal and set aside the order and decision of the CSCROVII. More specifically, the Resolution states:

WHEREFORE, the joint appeal of former Governor Rene L. Relampagos and Liza M. Quirog is hereby GRANTED. Accordingly, the decision dated July 23, 2001 of the Civil Service Commission-Regional Office No. VII and CSCRO No. VII Order dated June 28, 2001 are hereby set aside. Said Regional Office is enjoined to approve the appointment of Quirog to the position of Provincial Government Head, Office of the Provincial Agriculturist, Province of Bohol.

According to the CSC, since Relampagos had ceased to be the appointing authority upon the expiration of his term as governor and incumbent Governor Erico B. Aumentado was not the official who made the subject appointment, equity dictates that the appointee Quirog be allowed to question the decision to obviate possible damage or injury to the delivery of public service. The CSC also declared that the appointment of Quirog was not a midnight appointment as it was not hurriedly issued nor did it subvert the policies of the incoming administration. The CSC relaxed the application of Item 3(a)^[13] in CSC Resolution 01-0988 requiring that appointments should have gone through the regular screening by the PSB before the election ban or the prohibited period from March 30, 2001 to May 14, 2001. After noting that the selection board only deliberated upon Quirog's qualifications on May 24, 2001, or after the election ban, the CSC ratiocinated that the spirit, rather than the letter of the said rule should prevail as long as the case did not involve a

midnight appointment proscribed by *Aytona v. Castillo, et al.*^[14] Lastly, the CSC justified Quirog's appointment even though such was included among 46 post-election appointments because of the need to immediately fill up in a permanent capacity the vacant position of Provincial Agriculturist and the fact that Governor Aumentado expressly declared his trust and confidence in Quirog in his Memorandum No. 1^[15] dated July 2, 2001.

On December 10, 2001, incumbent Bohol Governor Erico B. Aumentado filed an amended Motion for Reconsideration^[16] of the CSC Resolution No. 011812. He insisted that Quirog and Relampagos had no legal personality to file a motion for reconsideration of the disapproved appointment or to appeal the same. He insisted that Quirog's appointment was a midnight appointment. Aumentado added that the selection board which screened Quirog's qualifications was not validly constituted and that the subject appointment was made more than six months from the time it was published on July 23, 2000 in violation of CSC Resolution No. 010114^[17] dated January 10, 2001. Aumentado insisted that Relampagos made 97, not 46, mass appointments on the eve of his term, 95 of which were invalidated by the CSC Bohol Field Office and two, including that of Quirog, by the CSCROVII.

In Resolution No. 020271^[18] dated February 22, 2002, the CSC denied Aumentado's motion for reconsideration. Aumentado then filed a petition for review^[19] under Rule 43 of the Rules of Court with the CA where it was docketed as CA-G.R. SP No. 70255.

On March 31, 2003, the CA rendered the herein challenged Decision,^[20] granting Aumentado's petition. The CA reversed and set aside CSC Resolution No. 011812 and ruled that Quirog's appeal should have been dismissed outright for lack of legal personality:

WHEREFORE, based on the foregoing premises, the instant petition is hereby GRANTED, the assailed CSC Resolution Nos. 011812 and 020271, dated November 20, 2001 and February 22, 2002 respectively, are REVERSED and SET ASIDE. The CSCROVII's June 28, 2001 Order and its July 23, 2001 Decision are hereby REINSTATED.

SO ORDERED.

On April 12, 2004, the CA rendered the second assailed Resolution,^[21] denying Quirog and Relampagos' motion for reconsideration.

From the adverse decision of the CA, the CSC as well as Relampagos and Quirog interposed separate petitions for review on *certiorari*. Relampagos and Quirog's petition^[22] filed on June 25, 2004, was docketed as G.R. No. 163443, while the CSC's petition^[23] filed on July 8, 2004, was docketed as G.R. No. 163568.

In the Resolution^[24] dated July 13, 2004, the Court ordered the consolidation of the two petitions.

The consolidated petitions present the following issues for the Court's resolution: (1) whether or not petitioners Relampagos and Quirog have the legal standing to file a

motion for reconsideration of, or appeal from, the disapproval of the latter's appointment by the Civil Service Commission, (2) whether or not Quirog's appointment violated Item 3 of CSC Resolution No. 010988 dated June 4, 2001, and 3) whether or not the subject appointment was a *midnight appointment*.

In the herein challenged decision, the CA held that only the appointing authority could challenge the CSC's disapproval of an appointment. In arriving at such a conclusion, the CA relied solely on Section 2 of Rule VI of CSC Memorandum Circular (MC) No. 40, series of 1998^[25] which provides:

Sec. 2. Requests for reconsideration of, or appeal from, the disapproval of an appointment may be made by the appointing authority and submitted to the Commission within fifteen (15) days from receipt of the disapproved appointment.

The petitioners share the view that the word *may* in the afore-quoted provision simply means that a request for reconsideration or appeal from a disapproved appointment is not vested exclusively in the appointing authority and that Quirog's appeal should have been given due course because she was the real party-in-interest, being the one aggrieved by the disapproval of the appointment.

Petitioners Quirog and Relampagos contend that their appeal before the CA should not have been dismissed on a mere technicality such as lack of legal personality. They argued that litigants must be afforded full opportunity for the adjudication of their case on the merits.

The CSC for its part, pointed out that in previously decided cases, the CSC allowed the appointees to take relief from the disapproval of their appointments as an exception to the rule on legal standing.

Upon the other hand, respondent Aumentado maintains that the controlling rule on the matter of legal standing is the afore-cited Section 2, Rule VI, CSC MC No. 40, series of 1998. He anchors his argument in *Mathay, Jr. v. Civil Service Commission*,^[26] where the Court laid down the ruling that only the appointing authority can request for reconsideration of a CSC-disapproved appointment.

The Court rules for the petitioners.

In the recent case of *Abella, Jr. v. Civil Service Commission*,^[27] the Court declared that both the appointing authority and the appointee are equally real parties in interest who have the requisite legal standing to bring an action challenging a CSC disapproval of an appointment. In said case, we held that:

The CSC's disapproval of an appointment is a challenge to the exercise of the appointing authority's discretion. The appointing authority must have the right to contest the disapproval. Thus, Section 2 of Rule VI of CSC Memorandum Circular 40, s. 1998 is justified insofar as it allows the appointing authority to request reconsideration or appeal.

x x x

Although the earlier discussion demonstrates that the appointing

authority is adversely affected by the CSC's Order and is a real party in interest, the appointee is rightly a real party in interest too. He is also injured by the CSC disapproval, because he is prevented from assuming the office in a permanent capacity. Moreover, he would necessarily benefit if a favorable judgment is obtained, as an approved appointment would confer on him all the rights and privileges of a permanent appointee.

x x x

Section 2 of Rule VI of CSC Memorandum Circular 40, s. 1998 should not be interpreted to restrict solely to the appointing authority the right to move for a reconsideration of, or to appeal, the disapproval of an appointment. PD 807 and EO 292, from which the CSC derives the authority to promulgate its rules and regulations, are silent on whether appointees have a similar right to file motions for reconsideration of, or appeals from, unfavorable decisions involving appointments. Indeed, there is no legislative intent to bar appointees from challenging the CSC's disapproval.

The view that only the appointing authority may request reconsideration or appeal is too narrow. The appointee should have the same right. Parenthetically, CSC Resolution 99-1936 recognizes the right of the adversely affected party to appeal to the CSC Regional Offices prior to elevating a matter to the CSC Central Office. The adversely affected party necessarily includes the appointee.^[28]

Also, in *Abella, Jr.*, we held that the right of the appointee to seek reconsideration or appeal was not the main issue in *Mathay*:

This judicial pronouncement does not override *Mathay v. Civil Service Commission* xxx. The Court merely noted in passing -- by way of obiter -- that based on a similar provision, only the appointing officer could request reconsideration of actions taken by the CSC on appointments.

In that case, Quezon City Mayor Ismael A. Mathay Jr. sought the nullification of CSC Resolutions that recalled his appointment of a city government officer. He filed a Petition assailing the CA Decision, which had previously denied his Petition for Certiorari for being the wrong remedy and for being filed out of time. We observed then that the CSC Resolutions were already final and could no longer be elevated to the CA. Furthermore, Mathay's Petition for Certiorari filed with the CA was improper, because there was an available remedy of appeal. And the CSC could not have acted without jurisdiction, considering that it was empowered to recall an appointment initially approved.

The right of the appointee to seek reconsideration or appeal was not the main issue in *Mathay*. At any rate, the present case is being decided *en banc*, and the ruling may reverse previous doctrines laid down by this Court.^[29]