

EN BANC

[G.R. NO. 161942, October 13, 2005]

**JOSE M. CARINGAL, PETITIONER, VS. PHILIPPINE CHARITY
SWEEPSTAKES OFFICE (PCSO), RESPONDENT.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

A permanent appointment in the career service is issued to a person who has met the requirements of the position to which the appointment is made in accordance with the provisions of law, the rules and the standards promulgated pursuant thereto.^[1] It implies that the appointee is a civil service eligible.^[2] Thus, while the appointing authority has the discretion to choose whom to appoint, the choice is subject to the caveat that the appointee possesses the required qualifications.^[3]

For our resolution is the instant petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, filed by Atty. Jose M. Caringal, petitioner, assailing the January 27, 2004 Decision^[4] of the Court of Appeals in CA-G.R. SP No. 66695, entitled "*JOSE M. CARINGAL vs. PHILIPPINE CHARITY SWEEPSTAKES OFFICE, ET AL.*"

On December 9, 1998, petitioner was appointed Assistant Department Manager II in the Philippine Charity Sweepstakes Office (PCSO), respondent. On December 18, 1998, then PCSO Chairman, Justice Cecilia Munoz-Palma, instructed him to assume the duties and responsibilities of Assistant Manager in the Legal Department.

Subsequently, Chairman Ricardo Golpeo replaced Justice Munoz-Palma. On May 16, 2000, he issued Special Order No. 2000-139 re-assigning petitioner to the Assets and Investment Department.

On May 18, 2000, petitioner sent a Memorandum to Chairman Golpeo and Ms. Maripaz Magsalin, Assistant General Manager for Administration, protesting his re-assignment, the same being a *constructive dismissal*.

On May 19, 2000, Director Arnel Del Monte of the Civil Service Commission (CSC) wrote Manager Francisco Swin of the PCSO Administrative Department, stating that his office inadvertently omitted to stamp on petitioner's appointment the collatilla that "***the appointee does not have security of tenure until he obtains a CES eligibility.***"

However, Director Del Monte could not effect the necessary correction since petitioner has the original copy of his appointment.

On June 16, 2000, petitioner filed with the CSC an administrative complaint for constructive dismissal and culpable violation of the Constitution on civil service

appointments against Chairman Golpeo and Assistant General Manager Magsalin.

On June 22, 2000, the PCSO Board of Directors issued Resolution No. 793 terminating the employment of petitioner on the ground that he does not have security of tenure as he does not possess a Career Executive Service (CES) eligibility.

On June 28, 2000, Chairman Golpeo issued a Memorandum to petitioner informing him that his temporary appointment as Assistant Department Manager II of the Legal Department is terminated effective June 30, 2000, in accordance with Sections 4 and 13 of Rule 5 on Appointments under the Omnibus Rules Implementing Book 5 of Executive Order No. 292.^[5]

Meantime, on February 15, 2001, the CSC issued Resolution No. 01-0444 dismissing petitioner's administrative complaint against Chairman Golpeo and Assistant General Manager Magsalin for lack of merit. The CSC held:

"The sole issue to be resolved in the case at bar is whether or not the separation of Jose Caringal from the service as Assistant Department Manager II, Legal Department, PCSO, was unlawful.

After a careful evaluation of the records, the Commission rules in the negative.

It must be stressed that Jose Caringal's position is a third level position. As such, the qualifications for the position are as follows:

POSITION	: Assistant Department Manager II
LEVEL	: 3
EDUCATION	: Bachelor's Degree
EXPERIENCE	: 3 years of supervisory experience
TRAINING	: None
ELIGIBILITY	: Career Service Executive Eligibility (CSEE)/Career Executive Service (CES)

Records show that Caringal does not possess the required eligibility for the position. Thus, he does not have security of tenure and his employment may be terminated at any given time by the appointing authority and be replaced by a CES eligible.

The appointment of Atty. Lauro Patiag, a CES eligible, vice Atty. Jose Caringal, the herein appellant, was more in accord with the existing law and jurisprudence.

In particular, the pertinent provision that is applicable to the present case is **Rule V** specifically **Section 4 thereof of the Omnibus Rules Implementing Book V of Executive Order No. 292** which provides, that:

"Section 4. Except as otherwise provided herein, a person who meets all the requirements of the position including the appropriate civil service eligibility shall be appointed to a position in the first and second levels. However, when the immediate filing of a vacancy becomes necessary, taking into account the public interest, and a person with an appropriate civil service eligibility but who meets the other requirements of the position may be appointed. His appointments shall be temporary for a period of not more than 12 months and he may be replaced at any time with one who has an appropriate civil service eligibility."

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It must be emphasized that if an appointment to a third level position is issued to one who does not meet the eligibility requirement, the appointment shall be approved but the appointee is not entitled to the mantle of security of tenure. Hence, albeit there were variation in the wordings of the attestation of the Commission, the absence of the appropriate eligibility makes the appointment temporary in nature.

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In brief, the termination of appointment of Caringal was precipitated by the appointment of Atty. Lauro Patiag, a CES eligible, to the position temporarily held by Caringal. Such termination was valid and lawful."^[6]

On July 16, 2001, the CSC denied petitioner's motion for reconsideration.^[7]

Petitioner then filed with the Court of Appeals a petition for *certiorari*^[8] under Rule 65 of the 1997 Rules of Civil Procedure, as amended, docketed as CA-G.R. SP. No. 66695.

On January 27, 2004, the Appellate Court issued the assailed Decision dismissing the petition and affirming the Resolutions of the CSC, thus:

"Undisputably, the original appointment of Atty. Caringal to the position of Assistant Department manager II was permanent in status. On this basis, he asserts security of tenure and argues that he can only be replaced for just cause.

In this regard, the established law provides that security of tenure can only be enjoyed when a person has complied with all the requirements of the position to which he is being appointed and civil service eligibility necessary for a permanent appointment. Section 2 (a) of the Omnibus Rules On Appointments and Other Personnel Actions states:

"a. Permanent " Issued to a person who meets all the minimum qualification requirements of the position to which he is being appointed, including the appropriate eligibility required, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof."