

EN BANC

[G.R. No. 152574, November 17, 2004]

FRANCISCO ABELLA JR., PETITIONER, VS. CIVIL SERVICE COMMISSION, RESPONDENT.

DECISION

PANGANIBAN, J.:

Both the appointing authority and the appointee are the real parties in interest, and both have legal standing, in a suit assailing a Civil Service Commission (CSC) order disapproving an appointment. Despite having legal interest and standing, herein petitioner unsuccessfully challenges the constitutionality of the CSC circular that classifies certain positions in the career service of the government. In sum, petitioner was appointed to a Career Executive Service (CES) position, but did not have the corresponding eligibility for it; hence, the CSC correctly disapproved his appointment.

The Case

Before us is a Petition for Review^[1] under Rule 45 of the Rules of Court, challenging the November 16, 2001 Decision^[2] and the March 8, 2002 Resolution^[3] of the Court of Appeals (CA) in CA-GR SP No. 58987. The Assailed Decision disposed as follows:

"WHEREFORE, the petition for review is **DENIED** for lack of merit."^[4]

The challenged Resolution denied petitioner's Motion for Reconsideration.

The Facts

The CA narrates the factual antecedents in this wise:

"Petitioner Francisco A. Abella, Jr., a lawyer, retired from the Export Processing Zone Authority (EPZA), now the Philippine Economic Zone Authority (PEZA), on July 1, 1996 as Department Manager of the Legal Services Department. He held a civil service eligibility for the position of Department Manager, having completed the training program for Executive Leadership and Management in 1982 under the Civil Service Academy, pursuant to CSC Resolution No. 850 dated April 16, 1979, which was then the required eligibility for said position.

"It appears, however, that on May 31, 1994, the Civil Service Commission issued Memorandum Circular No. 21, series of 1994, the pertinent provisions of which read:

'1. Positions Covered by the Career Executive Service

x x x

x x x

x x x

(b) In addition to the above identified positions and other positions of the same category which had been previously classified and included in the CES, all other third level positions of equivalent category in all branches and instrumentalities of the national government, including government owned and controlled corporations with original charters are embraced within the Career Executive Service provided that they meet the following criteria:

- '1.the position is a career position;
- '2.the position is above division chief level
- '3.the duties and responsibilities of the position require the performance of executive or managerial functions.

'4. Status of Appointment of Incumbents of Positions Included Under the Coverage of the CES. Incumbents of positions which are declared to be Career Executive Service positions for the first time pursuant to this Resolution who hold permanent appointments thereto shall remain under permanent status in their respective positions. However, upon promotion or transfer to other Career Executive Service (CES) positions, these incumbents shall be under temporary status in said other CES positions until they qualify.'

"Two years after his retirement, petitioner was hired by the Subic Bay Metropolitan Authority (SBMA) on a contractual basis. On January 1, 1999, petitioner was issued by SBMA a permanent employment as Department Manager III, Labor and Employment Center. However, when said appointment was submitted to respondent Civil Service Commission Regional Office No. III, it was disapproved on the ground that petitioner's eligibility was not appropriate. Petitioner was advised by SBMA of the disapproval of his appointment. In view thereof, petitioner was issued a temporary appointment as Department Manager III, Labor and Employment Center, SBMA on July 9, 1999.

"Petitioner appealed the disapproval of his permanent appointment by respondent to the Civil Service Commission, which issued Resolution No. 000059, dated January 10, 2000, affirming the action taken by respondent. Petitioner's motion for reconsideration thereof was denied by the CSC in Resolution No. 001143 dated May 11, 2000."

"x x x

x x x

x x x

"Undaunted, petitioner filed with [the CA] a petition for review seeking the reversal of the CSC Resolutions dated January 10, 2000 and May 11, 2000 on the ground that CSC Memorandum Circular No. 21, s. 1994 is unconstitutional as it rendered his earned civil service eligibility

ineffective or inappropriate for the position of Department Manager [III]"
[5]

Ruling of the Court of Appeals

The CA shunned the issue of constitutionality, arguing that a constitutional question should not be passed upon if there are other grounds upon which the case may be decided.^[6] Citing CSC Memorandum Circular 40, s. 1998 and *Mathay v. Civil Service Commission*,^[7] the appellate court ruled that only the appointing officer may request reconsideration of the action taken by the CSC on appointments. Thus, it held that petitioner did not have legal standing to question the disapproval of his appointment.^[8]

On reconsideration, the CA added that petitioner was not the real party in interest, as his appointment was dependent on the CSC's approval. Accordingly, he had no vested right in the office, since his appointment was disapproved.^[9]

Unsatisfied, petitioner brought this recourse to this Court.^[10]

The Issues

Petitioner raises the following issues for our consideration:

"A. Whether or not Respondent Court committed grave abuse of discretion amounting to lack of jurisdiction in ruling that petitioner lacks the personality to question the disapproval by respondent office of petitioner's appointment as Department Manager III, Labor and Employment Center, SBMA.

"B. Whether or not Respondent Court committed grave abuse of discretion amounting to lack of jurisdiction in ruling that petitioner is not the real party in interest to question the disapproval by respondent office of petitioner's appointment as Department Manager III, Labor and Employment Center, SBMA.

"C. Whether or not Respondent Court committed grave abuse of discretion amounting to lack of jurisdiction, in dismissing petitioner's appeal on a mere technicality considering that petitioner is questioning the constitutionality of respondent office' issuance of Section 4 of CSC Memorandum Circular No. 21, s. 1994, which deprived petitioner his property right without due process of law."^[11]

The Court's Ruling

The Petition is partly meritorious.

First Issue:

Who May File Reconsideration or Appeal

Preliminary Observation

Petitioner imputes to the CA "grave abuse of discretion amounting to lack of jurisdiction" for ruling that he had no legal standing to contest the disapproval of his appointment.^[12] Grave abuse of discretion is a ground for a petition for certiorari under Rule 65 of the Rules of Court. Nevertheless, this Court resolved to grant due course to the Petition and to treat it appropriately as a petition for review on certiorari under Rule 45 of the Rules of Court. The grounds shall be deemed "reversible errors," not "grave abuse of discretion."

Approval Required for Permanent Appointment

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.^[13] It implies the civil service eligibility of the appointee.^[14] 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.^[15]

To make it fully effective, an appointment to a civil service position must comply with all legal requirements.^[16] Thus, the law requires the appointment to be submitted to the CSC which will ascertain, in the main, whether the proposed appointee is qualified to hold the position and whether the rules pertinent to the process of appointment were observed.^[17] The applicable provision of the Civil Service Law reads:

"SECTION 9. *Powers and Functions of the Commission.* — The Commission shall administer the Civil Service and shall have the following powers and functions:

"x x x x x x x x x

"(h) Approve all appointments, whether original or promotional, to positions in the civil service, except those of presidential appointees, members of the Armed Forces of the Philippines, police forces, firemen, and jailguards, and disapprove those where the appointees do not possess the appropriate eligibility or required qualifications. An appointment shall take effect immediately upon issue by the appointing authority if the appointee assumes his duties immediately and shall remain effective until it is disapproved by the Commission, if this should take place, without prejudice to the liability of the appointing authority for appointments issued in violation of existing laws or rules: Provided, finally, That the Commission shall keep a record of appointments of all officers and employees in the civil service. All appointments requiring the approval of the Commission as herein provided, shall be submitted to it by the appointing authority within thirty days from issuance, otherwise, the appointment becomes ineffective thirty days thereafter."^[18]

The appointing officer and the CSC acting together, though not concurrently but consecutively, make an appointment complete.^[19] In acting on the appointment, the CSC determines whether the appointee possesses the appropriate civil service eligibility or the required qualifications. If the appointee does, the appointment

must be approved; if not, it should be disapproved.^[20] According to the appellate court, only the appointing authority had the right to challenge the CSC's disapproval. It relied on Section 2 of Rule VI of CSC Memorandum Circular 40, s. 1998 (Omnibus Rules on Appointment and Other Personal Actions), which provides:

"Section 2. Request 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) calendar days from receipt of the disapproved appointment."

Appointing Authority's Right to Challenge CSC Disapproval

While petitioner does not challenge the legality of this provision, he now claims that it is merely a technicality, which does not prevent him from requesting reconsideration.

We clarify. The power of appointment necessarily entails the exercise of judgment and discretion.^[21] *Luego v. Civil Service Commission*^[22] declared:

"Appointment is an essentially discretionary power and must be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should possess the qualifications required by law. If he does, then the appointment cannot be faulted on the ground that there are others better qualified who should have been preferred. This is a political question involving considerations of wisdom which only the appointing authority can decide."^[23]

Significantly, "the selection of the appointee -- taking into account the totality of his qualifications, including those abstract qualities that define his personality -- is the prerogative of the appointing authority."^[24] No tribunal, not even this Court,^[25] may compel the exercise of an appointment for a favored person.^[26]

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.

In *Central Bank v. Civil Service Commission*,^[27] this Court has affirmed that the appointing authority stands to be adversely affected when the CSC disapproves an appointment. Thus, the said authority can "defend its appointment since it knows the reasons for the same."^[28] It is also the act of the appointing authority that is being questioned when an appointment is disapproved.^[29]

Appointee's Legal Standing to Challenge the CSC Disapproval

While there is justification to allow the appointing authority to challenge the CSC disapproval, there is none to preclude the appointee from taking the same course of