

## EN BANC

[ G.R. No. 139821, January 30, 2002 ]

**DR. ELEANOR A. OSEA, PETITIONER, VS. DR. CORAZON E. MALAYA, RESPONDENT.**

### ***DECISION***

**YNARES-SANTIAGO, J.:**

This is a petition for review from the decision of the Court of Appeals dated August 6, 1999 in CA-G.R. SP No. 49204.<sup>[1]</sup>

On November 20, 1997, petitioner filed Protest Case No. 91120-004 with the Civil Service Commission.<sup>[2]</sup> She averred that she was appointed as Officer-in-Charge, Assistant Schools Division Superintendent of Camarines Sur, by then Secretary Ricardo T. Gloria of the Department of Education, Culture and Sports, upon the endorsement of the Provincial School Board of Camarines Sur; that despite the recommendation of Secretary Gloria, President Fidel V. Ramos appointed respondent to the position of Schools Division Superintendent of Camarines Sur; that respondent's appointment was made without prior consultation with the Provincial School Board, in violation of Section 99 of the Local Government Code of 1991. Hence, petitioner prayed that respondent's appointment be recalled and set aside for being null and void.

The pertinent portion of Section 99 of Republic Act No. 7610, also known as the Local Government Code of 1991, states:

**Sec. 99. *Functions of Local School Boards.*** --- The provincial, city or municipal school board shall:

xxx

xxx

xxx.

The Department of Education, Culture and Sports shall consult the local school boards on the appointment of division superintendents, district supervisors, school principals, and other school officials.

On March 31, 1998, the Civil Service Commission issued Resolution No. 980699, dismissing petitioner's protest-complaint.<sup>[3]</sup> The Civil Service Commission found that on September 13, 1996, President Ramos appointed respondent, who was then Officer-in-Charge Schools Division Superintendent of Iriga City, as Schools Division Superintendent without any specific division. Thus, respondent performed the functions of Schools Division Superintendent in Iriga City. Subsequently, on November 3, 1997, Secretary Gloria designated respondent as Schools Division Superintendent of Camarines Sur, and petitioner as Schools Division Superintendent of Iriga City.<sup>[4]</sup>

In dismissing petitioner's protest, the Civil Service Commission held that Section 99 of the Local Government Code of 1991 contemplates a situation where the Department of Education, Culture and Sports issues the appointments, whereas respondent's appointment was made by no less than the President, in the exercise of his appointing power. Moreover, the designation of respondent as Schools Division Superintendent of Camarines Sur and of petitioner as Schools Division Superintendent of Iriga City were in the nature of reassignments, in which case consultation with the local school board was unnecessary.

Petitioner filed a Motion for Reconsideration with the Civil Service Commission.<sup>[5]</sup> On August 3, 1998, the Civil Service Commission issued Resolution No. 982058, denying petitioner's Motion for Reconsideration.<sup>[6]</sup>

Thus, petitioner filed a petition for review of both Civil Service Commission Resolution Nos. 980699 and 982958 dated August 3, 1998, respectively, before the Court of Appeals, docketed as CA-G.R. SP No. 49204.<sup>[7]</sup> On August 6, 1999, the Court of Appeals dismissed the petition.

Hence, the instant petition for review on certiorari of the August 6, 1999 Decision on the following errors:

- I. THE HONORABLE COURT OF APPEALS ERRED IN DECIDING THAT THE RESPONDENT WAS MERELY RE-ASSIGNED TO CAMARINES SUR AND DID NOT REQUIRE THE MANDATORY PRIOR CONSULTATION WITH THE LOCAL SCHOOL BOARD UNDER SECTION 99 OF RA 7160.
- II. THE HONORABLE COURT OF APPEALS COMMITTED GRAVE REVERSIBLE ERROR WHEN IT DECIDED THAT THERE WAS NO OPPOSITION MADE WHEN THE PRESIDENT APPOINTED RESPONDENT MALAYA AS DIVISION SCHOOLS SUPERINTENDENT BACK IN 1996 AND AS STATED BY THE CIVIL SERVICE COMMISSION THE LAW DID NOT CONTEMPLATE THAT THE PRESIDENT SHOULD FIRST CONSULT THE LOCAL SCHOOL BOARD BEFORE HE MAKES ANY APPOINTMENT AND THAT SECTION 99 OF THE NEW LOCAL GOVERNMENT CODE APPLIES ONLY TO THE Department of Education, Culture and Sports SECRETARY, WHO, HOWEVER, CAN ONLY MAKE RECOMMENDATION TO THE PRESIDENT.<sup>[8]</sup>

The petition lacks merit.

Clearly, the afore-quoted portion of Section 99 of the Local Government Code of 1991 applies to appointments made by the Department of Education, Culture and Sports. This is because at the time of the enactment of the Local Government Code, schools division superintendents were appointed by the Department of Education, Culture and Sports to specific division or location. In 1994, the Career Executive Service Board issued Memorandum Circular No. 21, Series of 1994, placing the positions of schools division superintendent and assistant schools division superintendent within the career executive service. Consequently, the power to appoint persons to career executive service positions was transferred from the