

THIRD DIVISION

[G.R. No. 129616, April 17, 2002]

**THE GENERAL MANAGER, PHILIPPINE PORTS AUTHORITY (PPA)
AND RAMON ANINO, PETITIONERS, VS. JULIETA MONSERATE,
RESPONDENT.**

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

This petition for review on certiorari^[1] seeks to set aside the Decision dated June 20, 1997 of the Court of Appeals in CA-G.R. No. 39670,^[2] declaring null and void the Resolution No. 952043 dated March 21, 1995 and Resolution No. 956640 dated October 24, 1995 of the Civil Service Commission (CSC), and ordering the reinstatement of Julieta G. Monserate as Division Manager II of the Resources Management Division, Ports Management Office, Philippine Ports Authority (PPA), Iloilo City.

The facts are:

Julieta Monserate, respondent, started her government service in 1977 as Bookkeeper II in the Port Management Office, PPA, Iloilo City. Barely a year later, she was promoted to the position of Cashier II and then as Finance Officer (SG-16) in 1980.^[3]

In the early part of 1988, when the PPA underwent a reorganization, respondent applied for the permanent position of Manager II (SG-19) of the Resource Management Division, same office. The Comparative Data Sheet^[4] accomplished by the PPA Reorganization Task Force shows the ranking of the six (6) aspirants to the said position, thus:

"COMPARATIVE DATA SHEET

OFFICE:	PMO ILOILO
DIVISION:	RES. MANAGEMENT DIVISION
POSITION:	DIVISION MANAGER
REQUIRED CS ELIG.:	CS PROF / RA 1080
CANDIDATES	ELIGIBILITY xxx TOTAL
1. MONSERATE, JULIETA	CS Prof. xxx 79.5
2. ANINO, RAMON	1st grade xxx 70
3. TEODOSIO, APRIL PD	907 (CPA) xxx 67
4. MORTOLA, DARIO	CS Prof. xxx 67
5. ESPINOSA, AMALIK	Bar xxx 63.5

On February 1, 1988, Maximo Dumlao, Jr., then General Manager of the PPA, appointed^[5] respondent to the position of Manager II (Resource Management Division). On even date, respondent assumed office and discharged the functions thereof. On July 8, 1988, the CSC, through Guillermo R. Silva (Assistant Director of the Civil Service Field Office-PPA) approved her appointment.

Meanwhile, on April 18, 1988, petitioner Ramon Anino, who ranked second to respondent per the Comparative Data Sheet earlier quoted, filed an appeal/petition with the PPA Appeals Board, protesting against respondent's appointment. The PPA Appeals Board, in a Resolution^[6] dated August 11, 1988, sustained the protest and rendered ineffective respondent's appointment based on "(1) CSC MC No. 5, s. 1988, Par. 3;^[7] (2) CSC MC NO. 10, s. 1986, Par. A, 1.2 and Par. B;^[8] and (3) Civil Service Eligibility." These grounds were not explained or discussed in the Resolution, the dispositive portion of which reads:

"WHEREFORE, premises considered, this Board upholds the appointment of Ramon A. Anino as Resources Management Division Manager of the Port Management Office of Iloilo."

On October 24, 1988, respondent was furnished a copy of PPA Special Order No. 479-88^[9] (entitled "Creation of the PPA Manager's Pool"), dated September 28, 1988, issued by the new PPA General Manager, Mr. Rogelio A. Dayan. That Special Order excluded the name of respondent from the pool-list and placed instead the name of petitioner as Manager II, Resource Management Division. In effect, the Special Order implemented the August 11, 1988 Resolution of the PPA Appeals Board.

Aggrieved, respondent filed with the PPA General Manager an appeal/request for clarification dated November 2, 1988.^[10] She questioned her replacement under PPA Special Order No. 479-88, claiming that the proceedings before the PPA Appeals Board were irregular because (1) she was not notified of the hearing before it; (2) she was not furnished a copy of the August 11, 1988 PPA Appeals Board Resolution or a copy of the protest filed by petitioner Anino;^[11] (3) she was not informed of the reasons behind her replacement; and (4) their Port Manager (in Iloilo City), who was then an official member of the Board, was not included in the said proceedings.

On November 8, 1988, pending resolution of her appeal/request for clarification, respondent received a copy of PPA Special Order No. 492-88^[12] dated October 21, 1988, also issued by General Manager Dayan. This PPA Order officially reassigned her to the position of Administrative Officer (SG-15) which was petitioner Anino's former position and was lower than her previous position as Finance Officer (SG 16) before she was appointed as Division Manager.

Apparently at a loss with the turn of events, coupled by the inaction of PPA General Manager Dayan on her earlier appeal/request for clarification, respondent filed on November 25, 1988 a "precautionary appeal"^[13] with the CSC. She manifested that as of said date (November 25), she has not yet been furnished a certified copy of the PPA Appeals Board Resolution.

On January 2, 1989, respondent received a copy of her new appointment as Administrative Officer dated October 1, 1988.^[14] It was also during this time when

she learned that PPA General Manager Dayan had just issued petitioner's appointment dated October 21, 1988 as Manager II in the Resource Management Division effective February 1, 1988.

On January 16, 1989, respondent filed with the CSC an appeal formally protesting against petitioner Anino's appointment and at the same time questioning the propriety of the August 11, 1988 Resolution of the PPA Appeals Board. This appeal remained pending with the CSC for more than six (6) years despite respondent's requests for early resolution. In the meantime, she assumed the position of Administrative Officer.

Eventually, the CSC, in its Resolution No. 95-2043^[15] dated March 21, 1995, dismissed respondent's appeal, thus:

"It is well-established rule that an appointment, although approved by this Commission, does not become final until the protest filed against it is decided by the agency or by the Commission. Although Monserate had already assumed the position of RMD Manager II, the appointing authority may still withdraw the same if a protest is seasonably filed. This is covered by Section 19, Rule VI of the Omnibus Rules implementing EO 292 x x x.

"Monserate's claim that she is more qualified than Anino is not relevant to the issue before this Commission. In cases of protest filed or appealed to the Commission, the main question to be resolved is whether or not the appointee meets the qualification standard. x x x. The Commission will not disturb the choice of the appointing authority as long as the appointee meets the qualification prescribed for the position in question."

Respondent filed a motion for reconsideration but the same was denied by the CSC in its Resolution No. 95-6640 dated October 24, 1995.

In due time, respondent filed with the Court of Appeals a petition for review imploding as respondents the PPA General Manager and petitioner Anino.

On June 20, 1997, the Court of Appeals rendered a Decision^[16] nullifying the twin Resolutions of the CSC. It ruled that the August 11, 1988 Resolution of the PPA Appeals Board was not supported by evidence and that the same was irregularly issued due to lack of proper notice to respondent with respect to the Board's proceedings. It concluded that her reassignment from the position of Manager II, Resource Management Division (SG-19), to the position of Administrative Officer (SG-15) was a demotion violative of her constitutional right to security of tenure and due process. The dispositive portion of the Court of Appeals' Decision reads:

"THE FOREGOING CONSIDERED, judgment is hereby rendered declaring as null and void Resolution Nos. 952043 and 95640 (should be 956640) dated March 21 and October 21, 1988 (should be October 24, 1995), of the Civil service Commission; and directing the reinstatement of the petitioner to the position of Resource Management Division Manager II.

"SO ORDERED."

Thereupon, Ramon Anino and the PPA General Manager filed on August 14, 1997 the present petition. On November 30, 1997, petitioner Anino retired from the government service.^[17]

Petitioners ascribe to the Court of Appeals the following errors:

- I. THE COURT OF APPEALS SERIOUSLY ERRED IN FINDING THAT RESPONDENT MONSERATE WAS DEMOTED FROM RESOURCES MANAGEMENT DIVISION MANAGER TO ADMINISTRATIVE OFFICER, THUS VIOLATING HER RIGHT TO SECURITY OF TENURE.
- II. THE COURT OF APPEALS GRAVELY ERRED IN NOT ALIGNING ITSELF WITH THE WELL-KNOWN RULE THAT RESPONDENT MONSERATE'S APPOINTMENT AS RESOURCE MANAGEMENT DIVISION MANAGER, ALTHOUGH APPROVED BY CSC, DOES NOT BECOME FINAL UNTIL THE PROTEST FILED AGAINST HER IS FAVORABLY DECIDED IN HER FAVOR BY THE AGENCY OR THE CSC.
- III. THE COURT OF APPEALS COMMITTED A SERIOUS ERROR OF JUDGMENT IN IGNORING THAT IN CASES OF PROTEST FILED OR APPEALED TO THE CSC, THE MAIN QUESTION TO BE RESOLVED IS WHETHER OR NOT THE APPOINTEE MEETS THE QUALIFICATION STANDARD.^[18]

The pivotal issue in this case is whether or not there was due process when respondent was replaced by petitioner Anino from her position as Manager II, Resource Management Division, and demoted as Administrative Officer.

Petitioners vehemently aver that respondent was never demoted since demotion, being in the nature of administrative penalty, presupposes a conviction in an administrative case. Here, respondent was not charged of any administrative case. Rather, she was displaced from her position as an "aftermath of the PPA reorganization, authorized by law, the implementation of which having been carried out with utmost good faith."

Furthermore, the said displacement was just the necessary effect of the August 11, 1988 Resolution of the PPA Appeals Board which sustained petitioner Anino's timely protest against respondent's appointment. Petitioners theorize that the appointment of respondent as Resource Management Division Manager did not become final until the protest filed against her was favorably decided in her favor by the CSC. In support of this contention, they cited Section 19, Rule VI of the Omnibus Rules Implementing Book V of Executive Order No. 292 (otherwise known as the Administrative Code of 1987), which provides *inter alia*:

"SEC 19. An appointment, though contested, shall take effect immediately upon its issuance if the appointee assumes the duties of the position and the appointee is entitled to receive the salary attached to the position. However, the appointment, together with the decision of the department head, shall be submitted to the Commission for appropriate action within 30 days from the date of its issuance, otherwise the appointment becomes ineffective thereafter. **Likewise, such appointment shall become ineffective in case the protest is finally resolved against the protestee, in which case, he shall be reverted to his former position.**"

Petitioners also contend that the head of an agency, being the appointing authority, is the one most knowledgeable to decide who can best perform the functions of the office. The appointing authority has a wide latitude of choice subject only to the

condition that the appointee should possess the qualifications required by law. Consequently, "the CSC acted rightly when it did not interfere in the exercise of discretion by the PPA appointing authority, there being no evidence of grave abuse of discretion thereof or violation of the Civil Service Law and Rules."

The petition is unmeritorious.

In the first place, the PPA reorganization in 1988 has nothing to do with respondent's **demotion** from the contested position of Manager II, Resource Management Office (SG-19), to the lower position of Administrative Officer (SG-15). Antithetically, it was precisely because of the said reorganization that respondent applied to the **higher position** of Division Manager II. In fact, the Comparative Data Sheet accomplished by the PPA Reorganization Task Force itself shows that respondent ranked No. 1, while petitioner Anino ranked No. 2, from among the six (6) contenders to the said post. Respondent was eventually issued a permanent appointment as such Division Manager on February 1, 1988 by then PPA General Maximo Dumlao, Jr., during which time she actually assumed office and discharged its functions. This appointment was later approved on July 8, 1988 by the CSC, through Assistant Director Guillermo R. Silva of the Civil Service Field Office-PPA.

Clearly, it was only **after** the reorganization and upon the issuance of the August 11, 1988 Resolution of the PPA Appeals Board when respondent was demoted to the lower position of Administrative Officer. This is further shown by the following orders and appointments subsequently issued by then PPA General Manager Rogelio Dayan:

1. PPA Special Order No. 479-88 dated September 28, 1988 which excluded respondent Monserate from the PPA Managers' pool-list;
2. Appointment of respondent, dated October 1, 1988, to the position of Administrative Officer;
3. PPA Special Order No. 492-88 dated October 21, 1988 which officially reassigned respondent to the position of Administrative Officer; and
4. Appointment of petitioner Anino, dated October 21, 1988, to the position of Manager II, Resource Management Division, effective February 1, 1988.

Therefore, contrary to petitioners' claim, respondent was demoted, not by reason of the PPA reorganization in 1988, but due to the PPA Appeals Board Resolution dated August 11, 1988 sustaining petitioner Anino's protest against respondent's appointment.

Unfortunately for petitioners, this Court cannot accord validity to the August 11, 1988 Resolution of the PPA Appeals Board which "**upholds the appointment of Ramon A. Anino as Resource Management Division Manager.**" But how can it uphold his appointment when he was not yet appointed then? It bears stressing that he was appointed on a **much later date - October 21, 1988, or more than two (2) months after August 11, 1988 when the PPA Appeals Board Resolution was issued.** Stated differently, the PPA Appeals Board could not uphold an appointment which was not yet existing.

Equally questionable are the grounds for respondent's demotion stated in the August 11, 1988 Resolution: "(1) CSC MC No. 5, s. 1988, Par. 3; (2) CSC MC NO. 10, s. 1986,