

EN BANC

[G.R. No. 127182, December 05, 2001]

HON. ALMA G. DE LEON, CHAIRMAN, HON. THELMA P. GAMINDE, COMMISSIONER, AND HON. RAMON P. ERENETA, JR., COMMISSIONER, CIVIL SERVICE COMMISSION, AND SECRETARY RAFAEL M. ALUNAN, III, DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, PETITIONERS, VS. HON. COURT OF APPEALS AND JACOB F. MONTESA, RESPONDENTS.

R E S O L U T I O N

YNARES-SANTIAGO, J.:

For resolution is private respondent's motion for reconsideration of the January 22, 2001 Decision of the Court, which reversed and set aside the Decision of the Court of Appeals in CA-G.R. SP No. 38664 and reinstated Resolution Nos. 953268 and 955201 of the Civil Service Commission.

In the Decision sought to be reconsidered, we ruled that private respondent's appointment on August 28, 1986, as Ministry Legal Counsel - CESO IV of the Ministry of Local Government, was temporary. Applying the case of *Achacoso v. Macaraig*,^[1] we held that since private respondent was not a Career Executive Service (CES) eligible, his appointment did not attain permanency because he did not possess the required CES eligibility for the CES position to which he was appointed. Hence, he can be transferred or reassigned without violating his right to security of tenure.

It appears, however, that in *Jacob Montesa v. Santos, et al.*, decided on September 26, 1990,^[2] where the nature of private respondent's appointment as Ministry Legal Counsel - CESO IV, of the Ministry of Local Government, was first contested, this Court issued a Minute Resolution dated March 17, 1992, holding that *Achacoso v. Macaraig* is not applicable to the case of private respondent. The pertinent portion thereof reads -

... The holding of this Court in the *Achacoso* case is not applicable to petitioner Montesa. Petitioner was appointed on August 28, 1996 by virtue of Article III of the Freedom Constitution. He was extended a permanent appointment by then Minister Pimentel and subsequently confirmed as permanent by the Civil Service Commission. He is a first grade civil service eligible (RA 1080) the appropriate eligibility for the position at that time and a member of the Philippine bar.

There was no Career Executive Service Board during the Freedom Constitution or at the time of appointment of petitioner. The CESO was only reconstituted by the appointment of its Board of six (6) members sometime in August 1988. There was no CESO eligibility examination

during petitioner's incumbency in the Department, as there was no CESO board. The first CESO examination was given on August 5 and 12, 1990. The CESO eligibility was not a requirement at the time of the appointment of petitioner. The only eligibility required is that of a first grader and petitioner is a first grade eligible. Therefore, having met all the requirements for the position to which he was appointed, he cannot be removed in violation of the constitutional guarantee on security of tenure and due process.

Invoking *res judicata*, private respondent contends that the nature of his appointment can no longer be passed upon and controverted in the present case considering that said issue had already been settled in the foregoing Minute Resolution of the Court.

Concededly, if we follow the conventional procedural path, *i.e.*, the principle on conclusiveness of judgment set forth in Rule 39, Section 47, paragraph (c) of the Rules of Court,^[3] would bar a relitigation of the nature of private respondent's appointment. Indeed, once an issue has been adjudicated in a valid final judgment of a competent court, it can no longer be controverted anew and should be finally laid to rest.^[4]

Yet, the Court is not precluded from re-examining its own ruling and rectifying errors of judgment if blind and stubborn adherence to *res judicata* would involve the sacrifice of justice to technicality. It must be stressed that this is not the first time in Philippine and American jurisprudence that the principle of *res judicata* has been set aside in favor of substantial justice, which is after all the avowed purpose of all law and jurisprudence.^[5]

In the March 17, 1992 Minute Resolution, we held that private respondent who was appointed in 1986 pursuant to the Freedom Constitution, though not a CES eligible, possessed all the requirements for the position of Ministry Legal Counsel - CESO IV, of the Ministry of Local Government, since a CES eligibility was not, at that time, a requirement for the same position.

A reading, however, of the Integrated Reorganization Plan which was adopted and declared part of the law of the land by Presidential Decree No. 1, dated September 24, 1972, clearly shows that a CES eligibility is indeed a requirement for a position embraced in the CES. Thus:

c. Appointment. Appointment to appropriate classes in the Career Executive Service shall be made by the President from a list of career executive eligibles recommended by the Board. Such appointments shall be made on the basis of rank; provided that appointments to the higher ranks which qualify the incumbents to assignments as undersecretary and heads of bureaus and offices and equivalent positions shall be with the confirmation of the Commission on Appointments. The President may, however, in exceptional cases, appoint any person who is not a Career Executive Service eligible; provided that such appointee shall subsequently take the required Career Executive Service examination and that he shall not be promoted to a higher class until he qualifies in such examination.