

## EN BANC

[ G.R. No. 135805, April 29, 1999 ]

### CIVIL SERVICE COMMISSION, PETITIONER, VS. PEDRO O. DACOYCOY, RESPONDENT.

#### D E C I S I O N

##### **PARDO, J.:**

The case before us is an appeal *via certiorari* interposed by the Civil Service Commission from a decision of the Court of Appeals ruling that respondent Pedro O. Dacoycoy was not guilty of nepotism and declaring null and void the Civil Service Commission's resolution dismissing him from the service as Vocational School Administrator, Balicuatro College of Arts and Trade, Allen, Northern Samar.

The facts may be succinctly related as follows:

On November 29, 1995, George P. Suan, a Citizens Crime Watch Vice-President, Allen Chapter, Northern Samar, filed with the Civil Service Commission, Quezon City, a complaint against Pedro O. Dacoycoy, for habitual drunkenness, misconduct and nepotism.<sup>[1]</sup>

After the fact-finding investigation, the Civil Service Regional Office No. 8, Tacloban City, found a *prima facie* case against respondent, and, on March 5, 1996, issued the corresponding formal charge against him.<sup>[2]</sup> Accordingly, the Civil Service Commission conducted a formal investigation, and, on January 28, 1997, the Civil Service Commission promulgated its resolution finding no substantial evidence to support the charge of habitual drunkenness and misconduct. However, the Civil Service Commission found respondent Pedro O. Dacoycoy guilty of nepotism on two counts as a result of the appointment of his two sons, Rito and Ped Dacoycoy, as driver and utility worker, respectively, and their assignment under his immediate supervision and control as the Vocational School Administrator Balicuatro College of Arts and Trades, and imposed on him the penalty of dismissal from the service.<sup>[3]</sup>

On February 25, 1997, respondent Dacoycoy filed a motion for reconsideration;<sup>[4]</sup> however, on May 20, 1997, the Civil Service Commission denied the motion.<sup>[5]</sup>

On July 18, 1997, respondent Dacoycoy filed with the Court of Appeals a special civil action for *certiorari* with preliminary injunction<sup>[6]</sup> to set aside the Civil Service Commission's resolutions.

On July 29, 1998, the Court of Appeals promulgated its decision reversing and setting aside the decision of the Civil Service Commission, ruling that respondent did not appoint or recommend his two sons Rito and Ped, and, hence, was not guilty of nepotism. The Court further held that it is "the person who recommends or appoints

who should be sanctioned, as it is he who performs the prohibited act."<sup>[7]</sup>

Hence, this appeal.

On November 17, 1998, we required respondent to comment on the petition within ten (10) days from notice.<sup>[8]</sup> On December 11, 1998, respondent filed his comment

We give due course to the petition.

The basic issue raised is the scope of the ban on nepotism.

We agree with the Civil Service Commission that respondent Pedro O. Dacoycoy was guilty of nepotism and correctly meted out the penalty of dismissal from the service.

The law defines nepotism<sup>[9]</sup> as follows:

"Sec. 59. Nepotism. - (1) All appointments to the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government owned or controlled corporations, made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are hereby prohibited.

"As used in this Section, the word "relative" and members of the family referred to are those related within the third degree either of consanguinity or of affinity.

(2) The following are exempted from the operations of the rules on nepotism: (a) persons employed in a confidential capacity, (b) teachers, (c) physicians, and (d) members of the Armed Forces of the Philippines: Provided, however, That in each particular instance full report of such appointment shall be made to the Commission."

Under the definition of nepotism, one is guilty of nepotism if an appointment is issued in favor of a relative within the third civil degree of consanguinity or affinity of any of the following:

- a) appointing authority;
- b) recommending authority;
- c) chief of the bureau or office, and
- d) person exercising immediate supervision over the appointee.

Clearly, there are four situations covered. In the last two mentioned situations, it is immaterial who the appointing or recommending authority is. To constitute a violation of the law, it suffices that an appointment is extended or issued in favor of a relative within the third civil degree of consanguinity or affinity of the chief of the bureau or office, or the person exercising immediate supervision over the appointee.

Respondent Dacoycoy is the Vocational School Administrator, Balicuatro College of

Arts and Trades, Allen, Northern Samar. It is true that he did not appoint or recommend his two sons to the positions of driver and utility worker in the Balicuatro College of Arts and Trades. In fact, it was Mr. Jaime Daclag, Head of the Vocational Department of the BCAT, who recommended the appointment of Rito. Mr. Daclag's authority to recommend the appointment of first level positions such as watchmen, security guards, drivers, utility workers, and casuals and emergency laborers for short durations of three to six months was recommended by respondent Dacoycoy and approved by DECS Regional Director Eladio C. Dioko, with the provision that such positions shall be under Mr. Daclag's immediate supervision. On July 1, 1992, Atty. Victorino B. Tirol II, Director III, DECS Regional Office VIII, Palo, Leyte, appointed Rito Dacoycoy driver of the school. On January 3, 1993, Mr. Daclag also appointed Ped Dacoycoy casual utility worker. However, it was respondent Dacoycoy who certified that "funds are available for the proposed appointment of Rito Dacoycoy" and even rated his performance as "very satisfactory". On the other hand, his son Ped stated in his position description form that his father was "his next higher supervisor". The circumvention of the ban on nepotism is quite obvious. Unquestionably, Mr. Daclag was a subordinate of respondent Pedro O. Dacoycoy, who was the school administrator. He authorized Mr. Daclag to recommend the appointment of first level employees under his immediate supervision. Then Mr. Daclag recommended the appointment of respondent's two sons and placed them under respondent's immediate supervision serving as driver and utility worker of the school. Both positions are career positions.

To our mind, the unseen but obvious hand of respondent Dacoycoy was behind the appointing or recommending authority in the appointment of his two sons. Clearly, he is guilty of nepotism.

At this point, we have necessarily to resolve the question of the party adversely affected who may take an appeal from an adverse decision of the appellate court in an administrative civil service disciplinary case. There is no question that respondent Dacoycoy may appeal to the Court of Appeals from the decision of the Civil Service Commission adverse to him.<sup>[10]</sup> He was the respondent official meted out the penalty of dismissal from the service. On appeal to the Court of Appeals, the court required the petitioner therein, here respondent Dacoycoy, to implead the Civil Service Commission as public respondent<sup>[11]</sup> as the government agency tasked with the duty to enforce the constitutional and statutory provisions on the civil service.<sup>[12]</sup>

Subsequently, the Court of Appeals reversed the decision of the Civil Service Commission and held respondent not guilty of nepotism. Who now may appeal the decision of the Court of Appeals to the Supreme Court? Certainly not the respondent, who was declared not guilty of the charge. Nor the complainant George P. Suan, who was merely a witness for the government.<sup>[13]</sup> Consequently, the Civil Service Commission has become the party adversely affected by such ruling, which seriously prejudices the civil service system. Hence, as an aggrieved party, it may appeal the decision of the Court of Appeals to the Supreme Court.<sup>[14]</sup> By this ruling, we now expressly abandon and overrule extant jurisprudence that "the phrase 'party adversely affected by the decision' refers to the government employee against whom the administrative case is filed for the purpose of disciplinary action which may take the form of suspension, demotion in rank or salary, transfer, removal or dismissal from office"<sup>[15]</sup> and not included are "cases where the penalty

imposed is suspension for not more than thirty (30) days or fine in an amount not exceeding thirty days salary"<sup>[16]</sup> or "when the respondent is exonerated of the charges, there is no occasion for appeal."<sup>[17]</sup> In other words, we overrule prior decisions holding that the Civil Service Law "does not contemplate a review of decisions exonerating officers or employees from administrative charges" enunciated in *Paredes v. Civil Service Commission*;<sup>[18]</sup> *Mendez v. Civil Service Commission*;<sup>[19]</sup> *Magpale v. Civil Service Commission*;<sup>[20]</sup> *Navarro v. Civil Service Commission and Export Processing Zone Authority*<sup>[21]</sup> and more recently *Del Castillo v. Civil Service Commission*<sup>[22]</sup>

The Court of Appeals' reliance on *Debulgado vs. Civil Service Commission*,<sup>[23]</sup> to support its ruling is misplaced. The issues in *Debulgado* are whether a promotional appointment is covered by the prohibition against nepotism or the prohibition applies only to original appointments to the civil service, and whether the Commission had gravely abused its discretion in recalling and disapproving the promotional appointment given to petitioner after the Commission had earlier approved that appointment. *Debulgado* never even impliedly limited the coverage of the ban on nepotism to only the appointing or recommending authority for appointing a relative. Precisely, in *Debulgado*, the Court emphasized that Section 59 "means exactly what it says in plain and ordinary language: x x x The public policy embodied in Section 59 is clearly fundamental in importance, and the Court had neither authority nor inclination to dilute that important public policy by introducing a qualification here or a distinction there."<sup>[24]</sup>

Nepotism is one pernicious evil impeding the civil service and the efficiency of its personnel. In *Debulgado*, we stressed that "[T]he basic purpose or objective of the prohibition against nepotism also strongly indicates that the prohibition was intended to be a comprehensive one."<sup>[25]</sup> "The Court was unwilling to restrict and limit the scope of the prohibition which is textually very broad and comprehensive."<sup>[26]</sup> If not within the exceptions, it is a form of corruption that must be nipped in the bud or bated whenever or wherever it raises its ugly head. As we said in an earlier case "what we need now is not only to punish the wrongdoers or reward the 'outstanding' civil servants, but also to plug the hidden gaps and potholes of corruption as well as to insist on strict compliance with existing legal procedures in order to abate any occasion for graft or circumvention of the law."<sup>[27]</sup>

**WHEREFORE**, the Court hereby **GRANTS** the petition and **REVERSES** the decision of the Court of Appeals in CA-G.R. SP No. 44711.

**ACCORDINGLY**, the Court **REVIVES** and **AFFIRMS** the resolutions of the Civil Service Commission dated January 28, 1998 and September 30, 1998, dismissing respondent Pedro O. Dacoycoy from the service.

No costs.

SO ORDERED.

*Davide, Jr., C.J., Bellosillo, Kapunan, Panganiban, Purisima, Buena, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.*

*Romero, J., please see dissenting opinion.*

*Melo, J.*, concurs and dissent in separate opinion.

*Puno, J.*, please see concurring opinion.

*Vitug*, and *Quisumbing, JJ.*, join the concurring and dissenting opinion of Justice Melo.

*Mendoza, J.*, join the concurring opinion of Justice Puno.

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[1] CSC *Rollo*, pp. 261-262.

[2] Report of Investigation, CSC, *Rollo*, pp. 154-162.

[3] Resolution No. 970684, dated January 28, 1997, CSC *Rollo*, pp. 108-115.

[4] CSC *Rollo*, pp. 82-92.

[5] Resolution No. 972881, dated May 20, 1997, *Rollo*, pp. 44-46.

[6] Petition, CA-G.R. SP No. 44711.

[7] Decision CA-G.R. SP No. 44711, *Rollo*, pp. 17-22.

[8] Resolution, dated November 17, 1998, *Rollo*, p. 39.

[9] Section 59, Executive Order 292, dated July 25, 1987.

[10] Rule 43, Section 1, 1997 Rules of Civil Procedure; R.A. No. 7902.

[11] Resolution adopted on July 23, 1997, in CA-G.R. SP No. 44711.

[12] Article IX (B), Constitution; Section 12, par. 1, Book V, Executive Order No. 292, dated July 25, 1987.

[13] *Paredes vs. Civil Service Commission*, 192 SCRA 84, 99, citing *Gonzalo vs. D. Roda*, 64 SCRA 120.

[14] Rule 45, Section 1, 1997 Rules of Civil Procedure.

[15] *Mendez vs. Civil Service Commission*, 204 SCRA 965, 967.

[16] *Paredes vs. Civil Service Commission*, 192 SCRA 84, 85.

[17] *Mendez vs. Civil Service Commission*, 204 SCRA 965, 968.

[18] 192 SCRA 84.

[19] 204 SCRA 965.