

## EN BANC

[ G.R. No. 130214, August 09, 1999 ]

### ISMAEL A. MATHAY, JR., PETITIONER, VS. CIVIL SERVICE COMMISSION, RESPONDENT.

#### DECISION

##### DAVIDE, JR., C.J.:

Petitioner Ismael A. Mathay, Jr. (hereafter MATHAY), Mayor of Quezon City, seeks the nullification of the resolutions of the Civil Service Commission (CSC) recalling his appointment of Olegario S. Tabernilla (hereafter TABERNILLA) as Electrical Engineer V in the city government; and consequently, the reversal of the Resolutions of the Court of Appeals of (1) 16 July 1997 denying due course and dismissing the petition for *certiorari* docketed as CA-G.R. No. 44431, and (2) 12 August 1997 denying the motion for reconsideration.

The antecedent facts follow:

On 26 November 1992, the Quezon City Council enacted City Ordinance No. SP-33, S. 92, creating an Electrical Division under the Engineering Department with thirty-six new plantilla positions to complement the staffing requirements. One of those newly created positions was Electrical Engineer V, which required a Professional Electrical Engineer to fill it up and which became the subject of a heated competition by two licensed professional electrical engineers, TABERNILLA and Jose I. Enriquez (hereafter ENRIQUEZ). The former was an Engineer II, and the latter was an Electrical Engineer III of the existing Electrical Division under the City Fire Department, which was previously part of the Quezon City Government but which was later transferred to the Bureau of Fire Protection, Quezon City Fire Station. Conformably to the long existing city policy of providing preferential consideration to Quezon City residents in the filling up of positions in the city office, the Personnel Selection Board of the city government recommended the appointment of TABERNILLA, who had in his favor the advantage of being a Quezon City resident.

On 22 August 1994, MATHAY extended to TABERNILLA a permanent appointment, which was approved on 15 September 1994 by the CSC Regional Field Office Acting Director II, Ligaya I. Caya.<sup>[1]</sup> TABERNILLA thereafter took his oath of office and assumed the duties of his new position.

ENRIQUEZ disputed the "promotional" appointment before the CSC, claiming it was issued in clear violation of CSC MC No. 42, s. 1991, which prescribes a Bachelor's Degree in Engineering as the educational requirement for the service-wide position of Engineer V. TABERNILLA, a mere Associate Electrical Engineer and not a holder of a Bachelor's Degree, clearly failed to meet the qualifications of the position and, therefore, could not be validly appointed thereto.

Requested to comment on the protest, MATHAY maintained that TABERNILLA's assumption of the position effective 1 October 1994 mooted the protest, adding that his appointee met the minimum requirements of the position as specified in the City Ordinance and existing hiring policies.

In its Resolution No. 95-1218 dated 10 January 1995<sup>[2]</sup> the CSC recalled and revoked the appointment of TABERNILLA; thus:

After a careful review of the records, the Commission finds the appointment issued to Tabernilla not in order.

The requirements prescribed by the qualification standard for the position of Engineer V are as follows:

EDUCATION: Bachelor's degree in Engineering relevant to the job.

EXPERIENCE: 4 years in position/s involving management and supervision.

The records clearly show that Tabernilla has not obtained any bachelor's degree in engineering. This is even reflected in the evaluation sheet for the position of Engineer V, which was submitted by Mayor Mathay. It appears in said evaluation sheet that Tabernilla is only a graduate of Associate in Electrical Engineering. Thus, he was not qualified for appointment to the position of Electrical Engineer V.

WHEREFORE, the approval of the appointment of Olegario S. Tabernilla as Engineer V dated August 22, 1994, is hereby recalled and revoked.

Ligaya Caya, Acting Field Officer is hereby directed to explain in writing within five (5) days from receipt hereof why she approved Tabernilla's appointment under permanent status although he does not meet the qualification requirements.

MATHAY moved for the reconsideration<sup>[3]</sup> of the said Resolution, alleging that the Ordinance which was the law that created the office unequivocally specified a Professional Electrical Engineer as its only requirement; hence, the appointee needed only to comply therewith. While conceding that the appointment in local government units are subject to civil service laws, rules and regulations, MATHAY averred that such truism cannot override the right of the appointing power to choose his appointee, considering that the power of appointment is essentially discretionary.<sup>[4]</sup> MATHAY further argued that TABERNILLA's title to the office became complete with the confirmation by the CSC Regional Field Office of TABERNILLA's appointment and his subsequent taking of the oath of office and assumption of duties. TABERNILLA then acquired a legal right which could not be taken away from him either by revocation of the appointment or by removal except for cause and with previous notice and hearing.<sup>[5]</sup> MATHAY then intimated that TABERNILLA was not notified of the protest, nor was a hearing conducted thereon.

MATHAY thereafter filed a supplemental motion manifesting that under Republic Act. No. 184,<sup>[6]</sup> the educational requirement for admission to the Electrical Engineering

Board Examinations is only two years of resident collegiate engineering training. Since TABERNILLA completed the two-year Associate in Electrical Engineering course and passed the board examinations, he was qualified for the contested position.

In Resolution 95-1743<sup>[7]</sup> dated 9 March 1995, the CSC denied the motion for reconsideration. It elucidated that under Sections 76, 77 and 78 of R.A. No. 7160, otherwise known as the Local Government Code of 1991, the CSC has the power to determine the qualification standards for the various positions in the local government and review whether the appointments meet these standards. The qualification standards for new offices, which local governments have the authority to create, must not be lower than those prescribed by the CSC. Under existing civil service laws and rules, an appointee to Engineer V must possess a Bachelor's Degree in Engineering. TABERNILLA certainly failed to qualify for the position. The fact that he met all the requirements for admission to Electrical Engineering Board Examination as provided for under R.A. No. 184, and passed the said examination does not mean compliance with the prescribed qualification standards.

On 7 September 1995, TABERNILLA filed his own "petition" praying for the review of, and "second hard look" on, Resolutions Nos. 95-0218 and 95-1743.

On 13 June 1996, the CSC issued Resolution No. 963779<sup>[8]</sup> denying the "petition," which it treated as a motion for reconsideration. It ratiocinated that TABERNILLA had no legal personality to file such a pleading because under MC 38, s. 93, Part I(3), a "[r]equest for reconsideration of action taken by the CSC Office on appointments shall always be made by the appointing officer." Besides, the allegations in the said "petition" were not meritorious.

On 25 July 1996, MATHAY filed a "petition" with the CSC praying for the "review and reconsideration" of the three adverse Resolutions thus far issued, and reiterating therein the arguments adduced in the first motion for reconsideration.

The "petition" obtained a similar unpropitious fate with the CSC's denial of the same per Resolution No. 972545<sup>[9]</sup> dated 14 April 1997 on the grounds that (1) the "petition" was in the nature of a second motion for reconsideration, which was not allowed pursuant to Section 9 of the Uniform Rules of Procedures in the Conduct of Administrative Investigations, as "only one motion for reconsideration [could] be entertained"; and (2) it was filed late.

Undaunted, MATHAY filed before the Court of Appeals on 17 June 1997 a petition for *certiorari* under Rule 65 of the Revised Rules of Court contending that the CSC acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing Resolution Nos. 95-0218, 95-1743, 96-3779, and 97-2545.

The Court of Appeals, however, dismissed the petition in a Resolution<sup>[10]</sup> promulgated on 16 July 1997 "for being the wrong remedy and for being time-barred." It ruled that the petition for *certiorari* filed nineteen days after receipt of Resolution No. 97-2545 could not be a substitute for a lost appeal.

In his motion for reconsideration, MATHAY argued that "what was brought to fore" in his petition for *certiorari* was an error of jurisdiction in that the CSC had no

jurisdiction or authority to revoke or cancel an approved and completed appointment to a civil service position. Hence, Rule 65 of the Rules of Court, not Supreme Court Administrative Circular No. I-95, applied.

Unimpressed, the Court of Appeals denied the motion for reconsideration in a Resolution<sup>[11]</sup> promulgated on 12 August 1997, advertent to the same reasons relied upon in dismissing the petition. Furthermore, it held that MATHAY was precluded from raising the question of jurisdiction, since he failed to submit the same as an issue in the proceedings before the CSC.

MATHAY now posits in this petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure that the Court of Appeals committed gross errors of law in holding that (1) his petition for *certiorari* was not the proper remedy and could not be a substitute for appeal; (2) said petition was time-barred; (3) the CSC had jurisdiction to recall and revoke a completed appointment; and (4) petitioner did not raise the question of jurisdiction in the proceedings before the CSC such that he was guilty of laches and estoppel.

The CSC, through the Office of the Solicitor General, remains steadfast in its view that it committed no error of jurisdiction, as it was merely enforcing its revisory power over a subordinate when it reversed the erroneous determination by the Regional Field Office of TABERNILLA's qualification. The CSC now proposes that the Quezon City ordinance was an *ultra vires* act, considering that the same prescribed a qualification standard lower than that set for the position, and, hence, fell short of the injunction of Section 78 of R.A. No. 7160 that all matters pertinent to human resources and development in local government units should be governed by civil service laws.

The instant petition must fail.

It must be recalled that in its Resolution of 9 March 1995 the CSC denied petitioner's motion for the reconsideration of its Resolution of 10 January 1995 revoking the appointment of TABERNILLA. Petitioner received a copy of the former Resolution on 4 April 1995. At the time, judgments or final orders of the CSC were unappealable.<sup>[12]</sup> It was only on 1 June 1995 that Revised Administrative Circular No. 1-95 took effect. That Circular provides that judgments or final orders of quasi-judicial agencies, like the CSC, may be appealed to the Court of Appeals within fifteen days from notice thereof. Hence, before that date, judgments or final orders of the CSC were subject only to the *certiorari* jurisdiction of this Court.<sup>[13]</sup> Section 7, Subdivision A, Article IX of the Constitution provides:

Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court by *certiorari* by the aggrieved party within thirty days from receipt of a copy thereof.

The remedy, therefore, of petitioner was to file with this Court a special civil action for *certiorari* within thirty days from 4 April 1995. But he failed to do so; thus, the challenged resolutions became final.

Notwithstanding the finality of the aforementioned resolutions, TABERNILLA filed on 7 September 1995 a petition before the CSC for the review of said resolutions. As