

TWENTY-THIRD DIVISION

[CA-G.R. SP NO. 05227, January 23, 2014]

**SAMAD M. UNDA, PETITIONER, VS. CIVIL SERVICE COMMISSION
AND THE MUNICIPALITY OF MASIU, LANA DEL SUR,
REPRESENTED BY MAYOR NASSER P. PANGANDAMAN, JR.,
RESPONDENTS.**

D E C I S I O N

LLOREN, J.:

This is an appeal under Rule 43 of the Rules of Court assailing the following Orders of the Civil Service Commission: 1) Decision^[1] dated 15 March 2012 partially granting the appeal of respondent Municipality of Masiu which modified the Orders dated 15 February 2010 and 2 June 2010 of the Civil Service Commission-Autonomous Region in Muslim Mindanao (CSC-ARMM); and 2) the Resolution^[2] dated 16 October 2012 denying petitioner's partial motion for reconsideration.

The relevant facts are as follows:

Before the end of his term, the former mayor of the Municipality of Masiu, Lanao del Sur, Aminullah D. Arimao, appointed petitioner Samad M. Unda as Municipal Environment and Natural Resources Officer (MENRO) on 8 March 2007.^[3] When the new mayor, respondent Nasser P. Pangandaman, assumed office on 1 July 2007, he questioned the validity of petitioner's appointment as MENRO before the Civil Service Commission - Autonomous Region in Muslim Mindanao (CSC-ARMM), on the ground that it was highly irregular being a midnight appointment and that said position was not included in the last approved 2005 annual budget of the municipality. Respondent stressed that the municipality has no annual budget for the years 2006 and 2007 operating only on the basis of the reenacted 2005 annual budget.^[4]

On 15 February 2010, CSC-ARMM issued an Order sustaining petitioner's appointment on the ground that he satisfied the regular screening of the Personnel Screening Board before the election ban.^[5] Respondent filed a motion for reconsideration which was denied on 2 June 2010.^[6]

On 20 August 2010, respondent appealed the said Order before the Civil Service Commission main office in Quezon City.

On 15 March 2012, the CSC rendered the assailed Decision^[7] disapproving the appointment of Samad Unda as MENRO. The salient points of the Decision read:

It appears that petitioner Mayor Pangandaman is correct in claiming that there was no 2006 Municipal Budget of the Municipal Government of Masiu. His claim was supported by the Affidavit dated July 19, 2008,

executed by seven (7) Sangguniang Bayan members of the Local Government of Masiu....

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In addition, the Office of the Governor, Provincial Government of Lanao del Sur, has certified that the Municipal Government of Masiu has not submitted its 2006 Annual Budget for review and approval.

The above-quoted Affidavit and the Certification of the Provincial Government of Lanao del Sur is, to the mind of the Commission, evidence enough to show that there was indeed no 2006 approved Annual Budget of the Municipal Government of Masiu. In effect, the 2005 approved Annual Budget was deemed reenacted and to be applied for the salaries of the employees in 2006 as mandated under Section 323, Title V, Book II, Local Government Code of 1991. xxx

The Commission notes that the Municipal Environment and Natural Resources Office (SG-24) was a newly created position in the purported 2006-Annual Budget of the Municipal Government of Masiu. In effect, no Municipal Environment and Natural Resources Officer position was validly created as there was no approved 2006 Municipal Budget. As such, the appointment of Samad M. Unda to the said position on March 8, 2007 is not valid and, therefore, should be disapproved.

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The appointment of Samad Unda as Municipal Environment and Natural Resources Officer is disapproved on the ground that the 2006 Municipal Budget was not approved and for lack of PSB screening. xxx

Petitioner filed a motion for reconsideration but it was denied on 16 October 2012.

Petitioner now comes to Us ascribing the following errors:

I

WITH ALL DUE RESPECT, THE HONORABLE CIVIL SERVICE COMMISSION HAS MANIFESTLY AND GRAVELY ERRED IN ITS DECISION NO. 12-O168 DATED MARCH 15, 2012 HEREIN SOUGHT TO BE REVIEWED, GRANTING PRIVATE RESPONDENT'S APPEAL AND DISAPPROVING THE PETITIONER'S APPOINTMENT AS MUNICIPAL ENVIRONMENT AND NATURAL RESOURCES OFFICER OF THE MUNICIPALITY OF MASIU, LANA DEL SUR, IN SHORT ITS DECISION IS UNSUPPORTED BY AND/OR IS CONTRARY TO THE EVIDENCE ON RECORDS.

II

WITH ALL DUE RESPECT, THE HONORABLE CIVIL SERVICE COMMISSION HAD COMMITTED ERRORS OF FACTS AND LAW AS WELL AS JURISPRUDENTIAL TENENTS PREJUDICIAL TO THE INTEREST OF THE PETITIONER, SPECIFICALLY IN RESOLVING ISSUES NOT RAISED BY RESPONDENT (THEREIN PETITIONER) AT THE INCEPTION OF THE PETITION TO RECALL APPOINTMENTS FILED WITH THE CSC REGIONAL OFFICE-ARMM AS WELL AS IN THE APPEAL MADE BEFORE IT. IN SHORT,

THE CIVIL SERVICE COMMISSION PASSED UPON MATTERS NOT BEING RAISED AS ISSUES AT ANY STAGE OF THE PROCEEDINGS IN THE CSC REGIONAL OFFICE UP TO ITS LEVEL ON APPEAL.

III

WITH ALL DUE RESPECT, THE HONORABLE CIVIL SERVICE COMMISSION GRAVELY ERRED IN NULLIFYING THE SANGGUNIAN BAYAN RESOLUTION NO. 29 DATED OCTOBER 4, 2005, OTHERWISE KNOWN AS "A RESOLUTION APPROPRIATING THE AMOUNT OF P23, 945,446.00 AS ANNUAL BUDGET FOR CALENDAR YEAR 2006 AND THE NEWLY CREATED POSITIONS.

These assigned errors may be resolved by addressing the issue of whether petitioner's appointment as Municipal Environment and Resources Officer was valid and in accordance with law.

Petitioner argues that the position of Municipal Environment and Natural Resources Officer (MENRO) validly exists since it was created under Resolution No. 29 Series of 2005 issued by the Sangguniang Bayan of the Municipality of Masiu, Lanao del Sur, which provides for the 2006 annual budget of the municipality; and said Resolution was duly deliberated upon and passed by the members of the Sangguniang Bayan on its regular session on October 24, 2005.

On the other hand, the Office of the Solicitor General contends that there is no law creating such public office because there is no Resolution No. 29 Series of 2005, which is the 2006 Municipal Budget, which allegedly created the position of MENRO.

The Civil Service Commission ruled that the Municipal Environment and Natural Resources Office (SG-24) was a newly created position in the purported 2006-Annual Budget of the Municipal Government of Masiu. In effect, no Municipal Environment and Natural Resources Officer position was validly created as there was no approved 2006 Municipal Budget. As such, the appointment of Samad M. Unda to the said position on March 8, 2007 is not valid and, therefore, should be disapproved.

The arguments of both parties and the ruling of the Civil Service Commission are misplaced.

It is an elementary rule in administrative law and the law on public officers that a public office is either created by the Constitution (fundamental law), by law (statute duly enacted by Congress), or by authority of law.^[8]

Here, the creation and establishment of the Municipal Environment and Natural Resources Office was made by law under Sections 443 and 484 of the Local Government Code of 1991, viz.:

SEC. 443. *Officials of the Municipal Government.* - (a) There shall be in each municipality a municipal mayor, a municipal vice-mayor, sangguniang bayan members, a secretary to the sangguniang bayan, a municipal treasurer, a municipal assessor, a municipal accountant, a municipal budget officer, a municipal planning and development coordinator, a municipal engineer/building official, a municipal health officer and a municipal civil registrar.