



Republic of the Philippines
Supreme Court
 Manila

TRUE COPY
W. Velasco
 VOLTAIRE T. GAZMIN
 Secretary of Court
 DEC 13 2017

THIRD DIVISION

**ROBERTO EMMANUEL T.
 FELICIANO,**
 Petitioner,

G.R. No. 199232

- versus -

**DEPARTMENT OF NATIONAL
 DEFENSE, represented by
 SEC. VOLTAIRE T. GAZMIN,**
 Respondent.

x-----x
HORACIO S. GONZALEZ,
 Petitioner,

G.R. No. 201577

Present:

- versus -

VELASCO, JR., J., *Chairperson,*
 BERSAMIN,
 LEONEN,
 MARTIRES, and
 GESMUNDO, JJ.

**DEPARTMENT OF NATIONAL
 DEFENSE, represented by
 SEC. VOLTAIRE T. GAZMIN,**
 Respondent.

Promulgated:

November 8, 2017

Mis-DCBatt

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RESOLUTION

BERSAMIN, J.:

This appeal seeks to undo the termination of the petitioners' service by the Department of National Defense (DND) on the basis that they did not enjoy security of tenure for not having completed the four stages of qualification for the Career Executive Service Eligibility (CESE).

The Case

Being assailed are the decisions separately promulgated by the Court of Appeals (CA). In G.R. No. 199232, the petitioner prays for the review and reversal of the decision promulgated on October 12, 2011 by Fourteenth Division of the CA in CA-G.R. SP No. 119738.¹ In G.R. No. 201577, the petitioner assails the decision promulgated on October 3, 2011 by the Special Eleventh Division of the CA in CA-G.R. SP No. 119739.² Under the decisions, the rulings of the Civil Service Commission (CSC) setting aside the termination of the petitioners from their respective positions as Assistant Secretary and Director III of the DND for having lacked the required CESE that would have given them security of tenure were reversed.

Antecedents

At the time material to this adjudication, petitioner Roberto Emmanuel T. Feliciano possessed a CSEE³ and served as Assistant Secretary of the DND;⁴ and petitioner Horacio S. Gonzalez, who also had a CSEE⁵ held the position of Chief of the Administrative Service Office of the DND.⁶

On June 30, 2010, Executive Secretary Paquito N. Ochoa issued Memorandum Circular No. 1,⁷ providing as follows:

All non-career executive service officials (non-CESO) occupying career executive service (CES) positions in all agencies of the Executive Branch shall remain in office and continue to perform their duties and discharge their responsibilities until July 31, 2010 or until their resignations have been accepted and/or their respective replacements have been appointed or designated, whichever comes first.

Pursuant to Memorandum Circular No. 1, DND Sec. Voltaire T. Gazmin issued Department Order No. 154 to terminate 11 officials of the DND, including Gonzalez, on account of their lack of the CSEE; and to re-designate Feliciano as Assistant Secretary for Strategic Assessment of the

¹ *Rollo* (G.R. No. 199232), pp. 8-27; penned by Associate Justice Socorro B. Inting, with Associate Justice Magdangal M. De Leon and Associate Justice Mario V. Lopez concurring.

² *Rollo* (G.R. No. 201577), pp. 28-42; penned by Associate Justice Edwin D. Sorongon, with Associate Justice Ramon M. Bato, Jr. and Associate Justice Romeo F. Barza concurring.

³ *Rollo* (G.R. No. 199232), p. 37.

⁴ *Rollo* (G.R. No. 201577), p. 120, Memorandum Circular No. 1 entitled "*DECLARING ALL CO-TERMINOUS THIRD LEVEL POSITIONS VACANT AS OF JUNE 30, 2010; DIRECTING ALL NON-CAREER EXECUTIVE SERVICE OFFICIALS (NON-CESO) OCCUPYING CAREER EXECUTIVE SERVICE (CES) POSITIONS TO CONTINUE TO PERFORM THEIR DUTIES AND RESPONSIBILITIES; AND EXTENDING THE SERVICES OF CERTAIN CONTRACTUAL AND/OR CASUAL EMPLOYEES WHOSE CONTRACTS EXPIRE ON JUNE 30, 2010,*" dated June 30, 2010.

⁵ *Rollo* (G.R. No. 201577), pp. 124 and 130.

⁶ *Rollo* (G.R. No. 201577), pp. 29-30; (G.R. No. 199232), pp. 9-10.

⁷ *Rollo* (G.R. No. 201577), pp. 120-121.

DND.⁸ Subsequently, on July 13, 2010, Feliciano received Department Order No. 163 terminating his designation and services as Assistant Secretary for Strategic Assessment.⁹

Aggrieved, the petitioners filed their respective appeals by letters-complaint in the CSC on the ground of illegal termination.¹⁰

The DND, through Sec. Gazmin, countered the letters-complaint of the petitioners by citing Memorandum Circular No. 1, as amended by Memorandum Circular No. 2,¹¹ to the effect that all non-CESO officials occupying CES positions in all agencies of the Executive Branch would remain in office until their respective replacements were appointed and qualified, whichever came first; and that the petitioners, not being CESOs for having failed to complete all the necessary requisites, did not enjoy security of tenure.¹²

Ruling of the CSC

On January 18, 2011, the CSC rendered its decision in favor of Feliciano,¹³ to wit:

WHEREFORE, the illegal termination of Roberto Emmanuel T. Feliciano, former Assistant Secretary, Department of National Defense, is hereby declared **NOT VALID**. Accordingly, the Commission directs Department of National Defense (DND) Secretary Voltaire T. Gazmin to reinstate Feliciano to his previous position as Assistant Secretary with payment of back salaries and other benefits from the time he was illegally terminated until his actual reinstatement in the service.

The Civil Service Commission National Capital Region is directed to monitor the strict implementation of this Decision and submit a report thereon to the Commission.

Similarly, through its decision of January 18, 2011,¹⁴ the CSC ruled that the termination of Gonzalez was not valid, and directed his reinstatement, *viz.*:

WHEREFORE, the illegal termination of Horacio S. Gonzalez, former Director III, Department of National Defense (DND), is hereby declared **NOT VALID**. Accordingly, the Commission directs DND Secretary Voltaire T. Gazmin to reinstate Gonzalez to his previous position

⁸ Id. at 143.

⁹ *Rollo* (G.R. No. 199232), p. 10.

¹⁰ *Rollo* (G.R. No. 201577), pp. 31-32; (G.R. No. 199232), pp. 10-11.

¹¹ *Rollo* (G.R. No. 201577), p. 122.

¹² *Rollo* (G.R. No. 201577), p. 29; *rollo* (G.R. No. 199232), p. 9.

¹³ *Rollo* (G.R. No. 199232), pp. 103-110.

¹⁴ *Rollo* (G.R. No. 201577), pp. 48-54.

as Director III with payment of back salaries and other benefits from the time he was illegally terminated until his actual reinstatement in the service.

The Civil Service Commission National Capital Region (CSC-NCR) is directed to monitor the strict implementation of this Decision and submit a report thereon to the Commission.

Ruling of the CA

On appeal, the CA Fourteenth Division declared the termination of Feliciano as valid because he lacked the required CSEE to secure his CES position at the DND at the time the assailed memorandum was issued; that he could not avail himself of the benefits granted by Career Executive Service Board (CESB) Resolution No. 637 if he had not completed the four-staged process for the CSEE; that he could not evade the requirements that he was subjected to in order to acquire the CESE; that only a full-fledged CESO was entitled to security of tenure because the mere fact that his position belonged to the Career Executive Service did not automatically confer security of tenure on him as the occupant if he did not possess all the qualifications; and that his termination should be upheld.¹⁵

The CA Fourteenth Division held that the CSC had no jurisdiction over the case of Feliciano because the CESB was the governing body for the Career Executive Service pursuant to Presidential Decree No. 1¹⁶ issued by President Arroyo.¹⁷

On its part, the CA Special Eleventh Division pronounced that the CSC did not err in taking cognizance of the case of Gonzalez considering that the CSC, by express provision of Executive Order No. 292, had the power to hear and decide administrative cases instituted before or brought to it directly or on appeal and to render opinions and rulings on all personnel and other Civil Service matters; and that as the sole central personnel agency of the Government vested with adjudicatory powers, the CSC had the power and function to render opinions and rulings on all personnel and other Civil Service matters.¹⁸

However, CA Special Eleventh Division reversed the CSC relative to Gonzales, observing that although he had already been conferred the CSEE by the CSC and could be recommended by the CESB for appointment to the CESO ranks by the President, the fact that he still had to accomplish or complete the remaining two stages (i.e., the assessment center and the performance validation stage) to qualify him for appointment to the CESO

¹⁵ *Rollo* (G.R. No. 199232), pp. 16-19; (G.R. No. 201577), pp. 39-40.

¹⁶ Entitled *Reorganizing the Executive Branch of the National Government*, dated September 24, 1972.

¹⁷ *Rollo* (G.R. No. 199232), pp. 23-25.

¹⁸ *Rollo* (G.R. No. 201577), pp. 32-33.

rank despite his being already the holder of the CSEE militated against his argument of entitlement to security of tenure. Accordingly, the termination of Gonzalez was valid.

The petitioners separately appealed by petitions for review on *certiorari*.

Issue

The issues are, one, whether or not the CSC had jurisdiction over the appeals of the petitioners; and, two, whether or not the CA gravely erred in finding the petitioners' termination valid.

Ruling of the Court

The appeals are bereft of merit.

1.

The CSC has jurisdiction over the cases of the petitioners

The CSC is one of the three independent Constitutional Commissions invested with adjudicative powers to render final arbitration on disputes and personnel actions involving matters relating to the Civil Service. Section 3 of Article IX-B specifies the mandate of the CSC as an independent constitutional commission, to wit:

Section 3. The Civil Service Commission, as the central personnel agency of the Government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It shall strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability. It shall submit to the President and the Congress an annual report on its personnel programs. (Bold emphases supplied)

Executive Order No 292 (*The Administrative Code of 1987*)¹⁹ enumerates the following powers and functions of the CSC, the ones relevant to the pending case of the petitioners being the following:

¹⁹ Book V, Title I, Subtitle A, Chapter 3, Sec. 12, Par. 5 and 11 (effective July 25, 1987).

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- 1) **Render opinion and rulings on all personnel and other Civil Service matters** which shall be binding on all head of departments, offices, and agencies which may be brought to the Supreme Court on *certiorari*; and
- 2) **Hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and agencies attached to it.** Officials and employees who fail to comply with such decisions, orders or rulings shall be liable for contempt of the Commission. Its decisions, orders, or rulings shall be final and executory. Such decisions, orders or rulings may be brought to Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from receipt of the copy thereof. (bold underscoring for emphasis)

On the other hand, the CESB was established pursuant to the Integrated Reorganization Plan (IRP) to serve as the governing body of the CES. It was tasked to perform the following functions, namely: (a) to promulgate rules, standards and procedures for the selection, classification, compensation and career development of members of the CES; (b) to set up the organization and operation of the CES in accordance with the guidelines provided in the plan; (c) to prepare a program of training and career development for members of the CES; (d) to investigate and adjudicate administrative complaints against members of the CES.²⁰

In *Career Executive Service Board v. Civil Service Commission*,²¹ the Court has explained that the powers granted to the CESB, being specific and limited, must be narrowly interpreted as exceptions to the comprehensive authority granted to the CSC by the Constitution and relevant statutes, *viz.*:

It is a basic principle in statutory construction that statutes must be interpreted in harmony with the Constitution and other laws. In this case, the specific powers of the CESB over members of the CES must be interpreted in a manner that takes into account the comprehensive mandate of the CSC under the Constitution and other statutes.

The present case involves the classification of positions belonging to the CES and the qualifications for these posts. **These are matters clearly within the scope of the powers granted to the CESB under the Administrative Code and the Integrated Reorganization Plan. However, this fact alone does not push the matter beyond the reach of the CSC.**

As previously discussed, the CSC, as the central personnel agency of the government, is given the comprehensive mandate to administer the civil service under Article IX-B, Section 3 of the 1987 Constitution; and Section 12, Items (4), (5), and (14) of the Administrative Code. It has also

²⁰ *Career Executive Service Board v. Civil Service Commission*, G.R. No. 197762, March 7, 2017.

²¹ *Id.*

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been expressly granted the power to promulgate policies, standards, and guidelines for the civil service; and to render opinions and rulings on all personnel and other civil service matters.

xxx xxx xxx

It must likewise be emphasized that the CSC has been granted the authority to review the decisions of agencies attached to it under Section 12 (11), Chapter 3, Subtitle A, Title I, Book V of the Administrative Code:

SECTION 12. Powers and Functions. — The Commission shall have the following powers and functions:

xxxx xxxx xxxx

(11) Hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and of the agencies attached to it. Officials and employees who fail to comply with such decisions, orders, or rulings shall be liable for contempt of the Commission. Its decisions, orders, or rulings shall be final and executory. Such decisions, orders, or rulings may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty (30) days from receipt of a copy thereof;

Since the CESB is an attached agency of the CSC, the former's decisions are expressly subject to the CSC's review on appeal.

In fine, although the CESB is expressly empowered to promulgate rules, standards and procedures on the selection, classification, compensation and career development of the members of the CES,²² the power and function to hear and decide administrative cases on all personnel and civil service matters remained to be duty and function of the CSC as the central personnel agency of the Government. The mere fact that the positions involved in these cases were CES positions does not divest the CSC of its constitutional power to hear and decide the cases.

2.

Termination of petitioners was valid

Nonetheless, we conclude that the termination of the petitioners upon the stated ground was valid.

The petitioners did not possess the required CSEE despite their insistence on having such eligibility. It is noteworthy that the positions of Assistant Secretary for Strategic Assessment and Chief of the Administrative

²² Article IV, Part III, Presidential Decree No. 1, *Adopting the Integrated Reorganization Plan* (September 24, 1972).

Service Office were classified as third level positions requiring the CSEE;²³ consequently, the rules and regulations of the CESB in acquiring the eligibility should be observed and complied with.

CESB Resolution No. 791-09 (*Revised Integrated Rules on the Grant of Career Executive Service Eligibility*)²⁴ required that for an individual to attain his CSEE he must undergo and hurdle the four-staged CESE examination process, namely: (1) the CES written examination; (2) the assessment center; (3) the performance validation; and (4) the board interview. Only upon the completion of the four stages of the examination process could he deserve the CSEE. Needless to emphasize, the CSEE was necessary to qualify and hold the CES positions.

The petitioners contend that although they did not have the CSEE they were still eligible and qualified to hold their respective third level positions at the DND.

The contention is unwarranted.

While Gonzalez possessed the CSEE, and assuming that Feliciano also possessed the CSEE, they still failed to justify their non-compliance with CESB Resolution No. 811 (*Amendatory Guidelines on the Appointment to Career Executive Service (CES) Ranks of Career Service Executive Eligibles (CSEEs)*),²⁵ which the CESB had issued in order to harmonize the existence of the rules and regulations previously issued by the CSC and the CESB, and in order to give to the eligibles the opportunity for equal treatment with respect to their qualifications.

²³ Section 7(3), Article IV, Presidential Decree No. 807 (*Civil Service Decree of the Philippines*), as amended by Executive Order No. 292 (*Administrative Code of 1987*) dated July 25, 1987, which states thus:

SECTION 7. Career Service. — The Career Service shall be characterized by (1) entrance based on merit and fitness to be determined as far as practicable by competitive examination, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure.

The Career Service shall include:

(1) xxx xxx xxx;

(2) xxx xxx xxx;

(3) **Positions in the Career Executive Service; namely, Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President;**

(4) xxx xxx xxx; (bold emphasis supplied)

²⁴ Dated February 10, 2009.

²⁵ Dated August 17, 2009.

Under CESB Resolution No. 811, the petitioners, as the means to have their CSEE, had to take and complete the last two stages of the examination process, namely: the assessment center and the performance validation. Upon the completion of the last two stages, they would be granted the CSEE and qualify for the CES positions.

The petitioners did not yet completely comply with CESB Resolution No. 811 because they did not complete the processes to obtain their CSEE. Without the CSEE, they were not entitled to security of tenure. In the CES, the attainment of security of tenure presupposes a permanent appointment. In that regard, and as opined in *General v. Roco*,²⁶ two requisites must concur in order that an employee in the CES could attain security of tenure, namely: (1) the CSEE; and (2) the appointment to the appropriate CES rank.²⁷

The petitioners were undisputedly *not yet* holders of CSEE. The effect is that their appointments remained temporary, a status that denied them security of tenure.²⁸ According to *Amores v. Civil Service Commission*:²⁹

x x x An appointment is permanent where the appointee meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed, and it is temporary where the appointee meets all the requirements for the position except only the appropriate civil service eligibility.

x x x x

x x x verily, it is clear that **the possession of the required CES eligibility is that which will make an appointment in the career executive service a permanent one. . . .**

Indeed, the law permits, on many occasions, the appointment of non-CES eligibles to CES positions in the government in the absence of appropriate eligibles and when there is necessity in the interest of public service to fill vacancies in the government. But in all such cases, the appointment is at best merely temporary as it is said to be conditioned on the subsequent obtention of the required CES eligibility x x x

Clearly, the petitioners' termination from their respective positions at the DND was effective and valid.

WHEREFORE, the Court **AFFIRMS** the decision promulgated in CA-G.R. S.P. No. 119739 on October 3, 2011, and the decision promulgated

²⁶ G.R. Nos. 143366 & 143524, January 27, 2001, 350 SCRA 528.

²⁷ Id. at 533.

²⁸ *Ong v. Office of the President*, G.R. No. 184219, January 30, 2012, 664 SCRA 413, 418.

²⁹ G.R. No. 170093, April 29, 2009, 587 SCRA 160, 167-169.

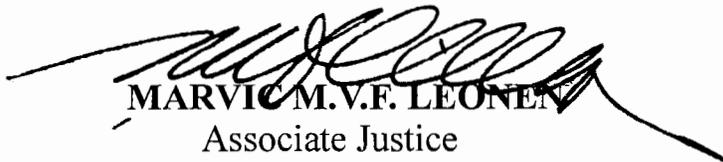
in CA-G.R. SP No. 119738 on October 12, 2011 in so far as the validity of the petitioners' termination was concerned; and **ORDERS** the petitioners to pay the respective costs of suit.

SO ORDERED.

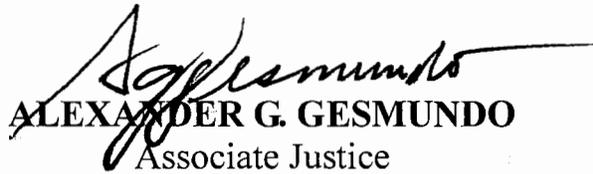

LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice

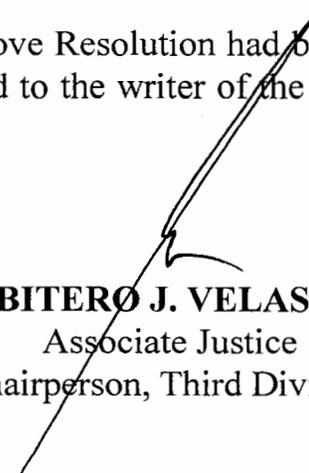

MARVIC M.V.F. LEONEN
Associate Justice


SAMUEL R. MARTIRES
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

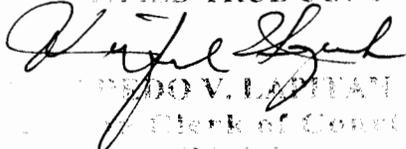
ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

VERIFIED TRUE COPY

PEDRO V. LATTIAN
Clerk of Court
1st Division
DEC 13 2017


MARIA LOURDES P. A. SERENO
Chief Justice