

EN BANC

[G.R. No. 190147, March 05, 2013]

CIVIL SERVICE COMMISSION, PETITIONER, VS. PILILLA WATER DISTRICT, RESPONDENT.

DECISION

VILLARAMA, JR., J.:

Assailed in this petition for review on certiorari under Rule 45 are the Decision^[1] dated July 28, 2009 and Resolution^[2] dated November 9, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 106031 which annulled and set aside Resolution Nos. 080942^[3] and 081846^[4] of the Civil Service Commission (CSC).

The factual background of this case is as follows:

Paulino J. Rafanan was first appointed General Manager on a coterminous status under Resolution No. 12 issued on August 7, 1998 by the Board of Directors (BOD) of respondent Pililla Water District (PWD). His appointment was signed by the BOD Acting Chairman and attested by the CSC Field Office-Rizal.^[5]

On October 4, 2001, petitioner issued Resolution No. 011624^[6] amending and clarifying Section 12, Rule XIII of CSC Memorandum Circular No. 15, s. 1999, as follows:

Section 12. a) No person who has reached the compulsory retirement age of 65 years can be appointed to any position in the government, subject only to the exception provided under sub-section (b) hereof.

However, in meritorious cases, the Commission may allow the extension of service of a person who has reached the compulsory retirement age of 65 years, for a period of six (6) months only unless otherwise stated. Provided, that, such extension may be for a maximum period of one (1) year for one who will complete the fifteen (15) years of service required under the GSIS Law.

A request for extension shall be made by the head of office and shall be filed with the Commission not later than three (3) months prior to the date of the official/employee's compulsory retirement.

Henceforth, the only basis for Heads of Offices to allow an employee to continue rendering service after his/her 65th birthday is a Resolution of the Commission granting the request for extension. Absent such Resolution, the salaries of the said employee shall be for the personal account of the responsible official.

x x x x

b) A person who has already reached the compulsory retirement age of 65 can still be appointed to a **coterminous/primarily confidential position** in the government.

A person appointed to a coterminous/primarily confidential position who reaches the age of 65 years is considered automatically extended in the service until the expiry date of his/her appointment or until his/her services are earlier terminated. (Emphasis supplied)

On April 2, 2004, Republic Act (R.A.) No. 9286^[7] was approved and signed into law, Section 2 of which provides:

Sec. 2. Section 23 of Presidential Decree No. 198, as amended is hereby amended to read as follows:

"Sec. 23. *The General Manager.*—At the first meeting of the Board, or as soon thereafter as practicable, the Board shall appoint, by a majority vote, a general manager and shall define [his] duties and fix his compensation. **Said officer shall not be removed from office, except for cause and after due process.**" (Emphasis supplied)

On June 16, 2004, the BOD approved Resolution No. 19,^[8] Series of 2004, which reads:

EXTENSION OF SERVICES OF MR. PAULINO J. RAFANAN AS GENERAL
MANAGER OF PILILLA WATER DISTRICT

WHEREAS[,] the General Manager, Mr. Paulino J. Rafanan[,] is reaching his age 65 this month of this year the Board, because of his good and honest performance in faithfully carrying out the policies of the Board resulting in the success of the District's expansion program, unanimously agreed to retain his services as General Manager at least up to December 31, 2008 co-terminus with the term of the Director last appointed after which period he may stay at the pleasure of the other Board.

THEREFORE[,] THE BOARD RESOLVED[,] AS IT HEREBY RESOLVED that the services of Mr. Paulino J. Rafanan as General Manager of Pililla Water District is extended up to December 31, 2008 as a reward for his honest and efficient services to the District.

In its Resolution No. 04-1271 dated November 23, 2004, petitioner denied the request of BOD Chairman Valentin E. Paz for the extension of service of Rafanan and considered the latter "separated from the service at the close of office hours on June

25, 2004, his 65th birthday.” Petitioner also denied the motion for reconsideration filed by Chairman Paz under its Resolution No. 05-0118 dated February 1, 2005.^[9]

On April 8, 2005, the BOD issued Resolution No. 09, Series of 2005 reappointing Rafanan as General Manager on coterminous status. Said reappointment was signed by Chairman Paz and attested by the CSC Field Office-Rizal.^[10] A year later, the BOD approved Resolution No. 20 declaring the appointment of General Manager Rafanan as permanent^[11] but this resolution was not implemented.

In a letter dated November 19, 2007, Pililla Mayor Leandro V. Masikip, Sr. questioned Rafanan’s coterminous appointment as defective and void *ab initio* considering that he was appointed to a career position despite having reached the compulsory retirement age. Said letter-complaint was treated as an appeal from the appointment made by the BOD Chairman of respondent.

On May 19, 2008, petitioner issued Resolution No. 080942 invalidating the coterminous appointment issued to Rafanan as General Manager on April 8, 2005 on the ground that it was made in violation of Section 2 of R.A. No. 9286. Petitioner further observed that the appointment was issued to circumvent the denial of the several requests for extension of service of Rafanan.

Rafanan filed a motion for reconsideration which was denied by petitioner under its Resolution No. 081846 dated September 26, 2008.

Respondent filed in the CA a petition for review with application for temporary restraining order and/or writ of preliminary injunction under Rule 43 of the 1997 Rules of Civil Procedure, as amended. Insisting that Rafanan’s coterminous appointment was based on CSC Resolution No. 011624, respondent contended that petitioner cannot usurp the power of appointment and removal of the appointing authority, and that petitioner failed to observe due process.

In the assailed Decision, the CA reversed the CSC and ruled that the position of General Manager in water districts remains primarily confidential in nature and hence respondent’s BOD may validly appoint Rafanan to the said position even beyond the compulsory retirement age.

Petitioner filed a motion for reconsideration which the CA denied.

Hence, this petition submitting the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT RULED THAT THE POSITION OF GENERAL MANAGER OF A LOCAL WATER DISTRICT IS PRIMARILY CONFIDENTIAL IN NATURE.

II

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT RULED

THAT THE APRIL 8, 2005 APPOINTMENT OF RAFANAN IN A CO-TERMINOUS CAPACITY WAS VALID.^[12]

Under Section 13, Rule V of the Omnibus Rules Implementing Book V of Executive Order No. 292 and other Pertinent Civil Service Laws and CSC Resolution No. 91-1631 issued on December 27, 1991, appointments in the civil service may either be of permanent or temporary status. A permanent appointment is issued to a person who meets all the requirements for the position to which he is being appointed/promoted, including the appropriate eligibility prescribed, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof, while a temporary appointment may be extended to a person who possesses all the requirements for the position except the appropriate civil service eligibility and for a limited period not exceeding twelve months or until a qualified civil service eligible becomes available.

Section 14 of the same resolution provides for a coterminous appointment:

Sec. 14. An appointment may also be co-terminous which shall be issued to a person whose entrance and continuity in the service is based on the trust and confidence of the appointing authority or that which is **subject to his pleasure**, or co-existent with his tenure, or limited by the duration of project or subject to the availability of funds.

The co-terminous status may be further classified into the following:

(1) co-terminous with the project - when the appointment is co-existent with the duration of a particular project for which purpose employment was made or subject to the availability of funds for the same;

(2) co-terminous with the appointing authority - when appointment is co-existent with the tenure of the appointing authority **or at his pleasure**;

(3) co-terminous with the incumbent - when the appointment is co-existent with the appointee, in that after the resignation, separation or termination of the services of the incumbent the position shall be deemed automatically abolished; and

(4) co-terminous with a specific period - appointment is for a specific period and upon expiration thereof, the position is deemed abolished.

For the purpose of coverage or membership with the GSIS, or their right to security of tenure, co-terminous appointees, except those who are co-terminous with the appointing authority, shall be considered permanent. (Emphasis supplied)

Section 23 of Presidential Decree (P.D.) No. 198, otherwise known as "The Provincial Water Utilities Act of 1973" reads:

Sec. 23. *Additional Officers.*—At the first meeting of the board, or as soon thereafter as practicable, the board shall appoint, by a majority vote, a general manager, an auditor, and an attorney, and shall define their duties and fix their compensation. **Said officers shall serve at the pleasure of the board.** (Emphasis supplied)

The provision was subsequently amended by P.D. No. 768^[13]:

SEC. 23. *The General Manager.*—At the first meeting of the board, or as soon thereafter as practicable, the board shall appoint, by a majority vote, a general manager and shall define his duties and fix his compensation. **Said officer shall serve at the pleasure of the board.** (Emphasis supplied)

In the case of *Paloma v. Mora*,^[14] we held that the nature of appointment of General Managers of Water Districts under Section 23 of P.D. No. 198 falls under Section 14 of the Omnibus Rules Implementing Book V of Executive Order No. 292, otherwise known as the “Administrative Code of 1987”, that is, the General Manager serves at the pleasure of the BOD.

As mentioned, Section 23 of P.D. No. 198 was already amended by R.A. No. 9286 which now provides that the General Manager of a water district shall not be removed from office except for cause and after due process. Said law, however, cannot be retroactively applied as to preclude the BOD from terminating its General Manager at the time the governing law was still P.D. No. 198, thus:

Unfortunately for petitioner, Rep. Act No. 9286 is silent as to the retroactivity of the law to pending cases and must, therefore, be taken to be of prospective application. The general rule is that in an amendatory act, every case of doubt must be resolved against its retroactive effect. Since the retroactive application of a law usually divests rights that have already become vested, the rule in statutory construction is that all statutes are to be construed as having only a prospective operation unless the purpose and intention of the legislature to give them a retrospective effect is **expressly** declared or is necessarily implied from the language used.

First, there is nothing in Rep. Act No. 9286 which provides that it should retroact to the date of effectivity of P.D. No. 198, the original law. *Next*, neither is it necessarily implied from Rep. Act No. 9286 that it or any of its provisions should apply retroactively. *Third*, Rep. Act No. 9286 is a substantive amendment of P.D. No. 198 inasmuch as it has changed the grounds for termination of the General Manager of Water Districts who, under the then Section 23 of P.D. No. 198, “shall serve at the pleasure of the Board.” Under the new law, however, said General Manager *shall not be removed from office, except for cause and after due process*. To apply Rep. Act No. 9286 retroactively to pending cases, such as the case at bar, will rob the respondents as members of the Board of the Palompon, Leyte Water District of the right vested to them by P.D. No. 198 to terminate