

EN BANC

[G.R. No. 194994, April 16, 2013]

EMMANUEL A. DE CASTRO, PETITIONER, VS. EMERSON S. CARLOS, RESPONDENT.

DECISION

SERENO, J.:

Before us is a Petition for the issuance of a writ of *quo warranto* under Rule 66 filed by Emmanuel A. de Castro (petitioner) seeking to oust respondent Emerson S. Carlos (respondent) from the position of assistant general manager for operations (AGMO) of the Metropolitan Manila Development Authority (MMDA).

On 29 July 2009, then President Gloria Macapagal Arroyo appointed petitioner as AGMO. 1 His appointment was concurred in by the members of the Metro Manila Council in MMDA Resolution No. 09-10, Series of 2009.^[2] He took his oath on 17 August 2009 before then Chairperson Bayani F. Fernando.^[3]

Meanwhile, on 29 July 2010, Executive Secretary Paquito Ochoa issued Office of the President (OP) Memorandum Circular No. 2, Series of 2010, amending OP Memorandum Circular No. 1, Series of 2010.

OP Memorandum Circular No. 2 states:

2. 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 responsibility until October 31, 2010 or until their resignations have been accepted and/or until their respective replacements have been appointed or designated, whichever comes first, unless they are reappointed in the meantime.^[4]

On 30 July 2010, Atty. Francis N. Tolentino, chairperson of the MMDA, issued Office Order No. 106,^[5] designating Corazon B. Cruz as officer-in-charge (OIC) of the Office of the AGMO. Petitioner was then reassigned to the Legal and Legislative Affairs Office, Office of the General Manager. The service vehicle and the office space previously assigned to him were withdrawn and assigned to other employees.

Subsequently, on 2 November 2010, Chairperson Tolentino designated respondent as OIC of the Office of the AGMO by virtue of Memorandum Order No. 24,^[6] which in turn cited OP Memorandum Circular No. 2 as basis. Thereafter, the name of petitioner was stricken off the MMDA payroll, and he was no longer paid his salary beginning November 2010.

Petitioner sought a clarification^[7] from the Career Executive Service Board (CESB) as to the proper classification of the position of AGMO. In her reply,^[8] Executive Director Maria Anthonette Allones (Executive Director Allones), CESO I, stated that the position of AGMO had not yet been classified and could not be considered as belonging to the Career Executive Service (CES). She further stated that a perusal of the appointment papers of petitioner showed that he was not holding a coterminous position. In sum, she said, he was not covered by OP Memorandum Circular Nos. 1 and 2.

Petitioner was later offered the position of Director IV of MMDA Public Health and Safety Services and/or MMDA consultant. He turned down the offer, claiming that it was a demotion in rank.

Demanding payment of his salary and reinstatement in the monthly payroll,^[9] petitioner sent a letter on 5 December 2010 to Edenison Faisan, assistant general manager (AGM) for Finance and Administration; and Lydia Domingo, Director III, Administrative Services. For his failure to obtain an action or a response from MMDA, he then made a formal demand for his reinstatement as AGMO through a letter addressed to the Office of the President on 17 December 2010.^[10]

However, on 4 January 2011, President Benigno S. Aquino III (President Aquino) appointed respondent as the new AGMO of the MMDA.^[11] On 10 January 2011, the latter took his oath of office.

Hence, the instant Petition.

The Office of the Solicitor General (OSG), representing respondent, filed its Comment on 19 August 2011.^[12] However, upon motion of petitioner, it was disqualified from representing respondent. Thus, a private law firm^[13] entered an appearance as counsel for respondent and adopted the Comment filed by the OSG.^[14]

Petitioner filed his Reply on 17 November 2011.

ISSUES

Petitioner raises the following issues¹⁵ for the consideration of this Court:

- (1) Whether respondent Emerson S. Carlos was validly appointed by President Aquino to the position of AGMO of the MMDA;
- (2) Whether petitioner Emmanuel A. de Castro is entitled to the position of AGMO; and
- (3) Whether or not respondent should pay petitioner the salaries and financial benefits he received during his illegal tenure as AGMO of the MMDA.

THE COURT'S RULING

Petitioner contends that Section 2(3), Article IX(B) of the 1987 Constitution guarantees the security of tenure of employees in the civil service. He further argues that his appointment as AGMO is not covered by OP Memorandum Circular No. 2, since it is not a CES position as determined by the CESB.

On the other hand, respondent posits that the AGMO position belongs to the CES; thus, in order to have security of tenure, petitioner, must be a Career Executive Service official (CESO). Respondent maintains that the function of an AGM is executive and managerial in nature. Thus, considering that petitioner is a non-CESO occupying a CES position, he is covered by OP Memorandum Circular Nos. 1 and 2. Respondent likewise raises the issue of procedural infirmity in the direct recourse to the Supreme Court by petitioner, who thereby failed to adhere to the doctrine of hierarchy of courts.

Hierarchy of Courts

As to the procedural issue, petitioner submits that a direct recourse to this Court is warranted by the urgent demands of public interest, particularly the veritable need for stability in the civil service and the protection of the rights of civil servants. Moreover, considering that no other than the President of the Philippines is the appointing authority, petitioner doubts if a trial court judge or an appellate court justice, with a prospect of promotion in the judiciary would be willing to go against a presidential appointment.

Although Section 5(1) of Article VIII of the 1987 Constitution explicitly provides that the Supreme Court has original jurisdiction over petitions for *certiorari*, prohibition, mandamus, *quo warranto*, and *habeas corpus*, the jurisdiction of this Court is not exclusive but is concurrent with that of the Court of Appeals and regional trial court and does not give petitioner unrestricted freedom of choice of court forum.¹⁶ The hierarchy of courts must be strictly observed.

Settled is the rule that "the Supreme Court is a court of last resort and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition."^[17] A disregard of the doctrine of hierarchy of courts warrants, as a rule, the outright dismissal of a petition.^[18]

A direct invocation of this Court's jurisdiction is allowed only when there are special and important reasons that are clearly and specifically set forth in a petition.^[19] The rationale behind this policy arises from the necessity of preventing (1) inordinate demands upon the time and attention of the Court, which is better devoted to those matters within its exclusive jurisdiction; and (2) further overcrowding of the Court's docket.^[20]

In this case, petitioner justified his act of directly filing with this Court only when he filed his Reply and after respondent had already raised the procedural infirmity that may cause the outright dismissal of the present Petition. Petitioner likewise cites stability in the civil service and protection of the rights of civil servants as rationale for disregarding the hierarchy of courts.

Petitioner's excuses are not special and important circumstances that would allow a direct recourse to this Court. More so, mere speculation and doubt to the exercise of judicial discretion of the lower courts are not and cannot be valid justifications to hurdle the hierarchy of courts. Thus, the Petition must be dismissed.

Nature of the AGMO Position

Even assuming that petitioner's direct resort to this Court is permissible, the Petition must still be dismissed for lack of merit.

"A petition for *quo warranto* is a proceeding to determine the right of a person to use or exercise a franchise or an office and to oust the holder from the enjoyment, thereof, if the claim is not well-founded, or if his right to enjoy the privilege has been forfeited."^[21] Where the action is filed by a private person, in his own name, he must prove that he is entitled to the controverted position, otherwise, respondent has a right to the undisturbed possession of the office.^[22]

The controversy arose from the issuance of OP Memorandum Circular Nos. 1 and 2, which applies to all non-CESO's occupying CES positions in all agencies of the executive branch. Petitioner, being a non-CESO, avers that he is not covered by these OP memoranda considering that the AGMO of the MMDA is a non-CES position.

In order to settle the controversy, there is a need to determine the nature of the contentious position of AGMO of the MMDA.

Career vs. non-career

Section 4 of Republic Act No. (R.A.) 7924,^[23] otherwise known as the MMDA Charter, specifically created the position of AGMO. It reads as follows:

Sec. 4 Metro Manila Council. x x x.

x x x x

The Council shall be headed by a Chairman, who shall be appointed by the President and who shall continue to hold office at the discretion of the appointing authority. He shall be vested with the rank, rights, privileges, disqualifications, and prohibitions of a Cabinet member.

The Chairman shall be assisted by a General Manager, an Assistant General Manager for Finance and Administration, an Assistant General Manager for Planning and an **Assistant General Manager for Operations, all of whom shall be appointed by the President with the consent and concurrence of the majority of the Council, subject to civil service laws and regulations. They shall enjoy security of tenure and may be removed for cause in accordance with law.** (Emphasis supplied)

Executive Order No. (E.O.) 292, otherwise known as The Revised Administrative

Code of 1987, provides for two classifications of positions in the civil service: career and non-career.^[24]

Career service is characterized by the existence of security of tenure,^[25] as contradistinguished from non-career service whose tenure is coterminous with that of the appointing authority; or subject to the latter's pleasure; or limited to a period specified by law or to the duration of a particular project for which purpose the appointment was made.^[26]

Applying the foregoing distinction to the instant case, this Court finds that an AGMO holds a career position, considering that the MMDA Charter specifically provides that AGMs enjoy security of tenure – the core characteristic of a career service, as distinguished from a non-career service position.

CES vs. non-CES

Career service includes the following:

- (1) Open Career positions for appointment to which prior qualification in an appropriate examination is required;
- (2) Closed Career positions which are scientific, or highly technical in nature; these include the faculty and academic staff of state colleges and universities, and scientific and technical positions in scientific or research institutions which shall establish and maintain their own merit systems;
- (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) Career officers, other than those in the Career Executive Service, who are appointed by the President, such as the Foreign Service Officers in the Department of Foreign Affairs;
- (5) Commissioned officers and enlisted men of the Armed Forces which shall maintain a separate merit system;
- (6) Personnel of government-owned or controlled corporations, whether performing governmental or proprietary functions, who do not fall under the non-career service; and
- (7) Permanent laborers, whether skilled, semi-skilled, or unskilled.^[27]
(Emphasis supplied)

In *Civil Service Commission v. Court of Appeals and PCSO*,^[28] the Court clarified