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[G.R. No. 176707, February 17, 2010]

ARLIN B. OBIASCA, [1] PETITIONER, VS. JEANE O. BASALLOTE, RESPONDENT.

D E C I S I O N

CORONA, J.:

When the law is clear, there is no other recourse but to apply it regardless of its perceived harshness. *Dura lex sed lex*. Nonetheless, the law should never be applied or interpreted to oppress one in order to favor another. As a court of law and of justice, this Court has the duty to adjudicate conflicting claims based not only on the cold provision of the law but also according to the higher principles of right and justice.

The facts of this case are undisputed.

On May 26, 2003, City Schools Division Superintendent Nelly B. Beloso appointed respondent Jeane O. Basallote to the position of Administrative Officer II, Item No. OSEC-DECSB-ADO2-390030-1998, of the Department of Education (DepEd), Tabaco National High School in Albay.[2]

Subsequently, in a letter dated June 4, 2003,[3] the new City Schools Division Superintendent, Ma. Amy O. Oyardo, advised School Principal Dr. Leticia B. Gonzales that the papers of the applicants for the position of Administrative Officer II of the school, including those of respondent, were being returned and that a school ranking should be

accomplished and submitted to her office for review. In addition, Gonzales was advised that only qualified applicants should be endorsed.

Respondent assumed the office of Administrative Officer II on June 19, 2003. Thereafter, however, she received a letter from Ma. Teresa U. Diaz, Human Resource Management Officer I of the City Schools Division of Tabaco City, Albay, informing her that her appointment could not be forwarded to the Civil Service Commission (CSC) because of her failure to submit the position description form (PDF) duly signed by Gonzales.

Respondent tried to obtain Gozales' signature but the latter refused despite repeated requests. When respondent informed Oyardo of the situation, she was instead advised to return to her former teaching position of Teacher I. Respondent followed the advice.

Meanwhile, on August 25, 2003, Oyardo appointed petitioner Arlin B. Obiasca to the same position of Administrative Officer II. The appointment was sent to and was

properly attested by the CSC.[4] Upon learning this, respondent filed a complaint with the Office of the Deputy Ombudsman for Luzon against Oyardo, Gonzales and Diaz.

In its decision, the Ombudsman found Oyardo and Gonzales administratively liable for withholding information from respondent on the status of her appointment, and suspended them from the service for three months. Diaz was absolved of any wrongdoing.[5]

Respondent also filed a protest with CSC Regional Office V. But the protest was dismissed on the ground that it should first be submitted to the Grievance Committee of the DepEd for appropriate action.[6]

On motion for reconsideration, the protest was reinstated but was eventually dismissed for lack of merit.[7] Respondent appealed the dismissal of her protest to the CSC Regional Office which, however, dismissed the appeal for failure to show that her appointment had been received and attested by the CSC.[8]

Respondent elevated the matter to the CSC. In its November 29, 2005 resolution, the CSC granted the appeal, approved respondent's appointment and recalled the approval of petitioner's appointment.[9]

Aggrieved, petitioner filed a petition for certiorari in the Court of Appeals (CA) claiming that the CSC acted without factual and legal bases in recalling his appointment. He also prayed for the issuance of a temporary restraining order and a writ of preliminary injunction.

In its September 26, 2006 decision,[10] the CA denied the petition and upheld respondent's appointment which was deemed effective immediately upon its issuance by the appointing authority on May 26, 2003. This was because respondent had accepted the appointment upon her assumption of the duties and responsibilities of the position.

The CA found that respondent possessed all the qualifications and none of the disqualifications for the position of Administrative Officer II; that due to the respondent's valid appointment, no other appointment to the same position could be made without the position being first vacated; that the petitioner's appointment to the position was thus void; and that, contrary to the argument of petitioner that he had been deprived of his right to due process when he was not allowed to participate in the proceedings in the CSC, it was petitioner who failed to exercise his right by failing to submit a single pleading despite being furnished with copies of the pleadings in the proceedings in the CSC.

The CA opined that Diaz unreasonably refused to affix her signature on respondent's PDF and to submit respondent's appointment to the CSC on the ground of non-submission of respondent's PDF. The CA ruled that the PDF was not even required to be submitted and forwarded to the CSC.

Petitioner filed a motion for reconsideration but his motion was denied on February 8, 2007.[11]

Hence, this petition.[12]

Petitioner maintains that respondent was not validly appointed to the position of Administrative Officer II because her appointment was never attested by the CSC. According to petitioner, without the CSC attestation, respondent's appointment as Administrative Officer II was never completed and never vested her a permanent title. As such, respondent's appointment could still be recalled or withdrawn by the appointing authority. Petitioner further argues that, under the Omnibus Rules Implementing Book V of Executive Order (EO) No. 292,[13] every appointment is required to be submitted to the CSC within 30 days from the date of issuance; otherwise, the appointment becomes ineffective.[14] Thus, respondent's appointment issued on May 23, 2003 should have been transmitted to the CSC not later than June 22, 2003 for proper attestation. However, because respondent's appointment was not sent to the CSC within the proper period, her appointment ceased to be effective and the position of Administrative Officer II was already vacant when petitioner was appointed to it.

In her comment,[15] respondent points out that her appointment was wrongfully not submitted by the proper persons to the CSC for attestation. The reason given by Oyardo for the non-submission of respondent's appointment papers to the CSC -- the alleged failure of respondent to have her PDF duly signed by Gonzales -- was not a valid reason because the PDF was not even required for the attestation of respondent's appointment by the CSC.

After due consideration of the respective arguments of the parties, we deny the petition.

The law on the matter is clear. The problem is petitioner's insistence that the law be applied in a manner that is unjust and unreasonable.

Petitioner relies on an overly restrictive reading of Section 9(h) of PD 807[16] which states, in part, that an appointment must be submitted by the appointing authority to the CSC within 30 days from issuance, otherwise, the appointment becomes ineffective:

> Sec. 9. Powers and Functions of the Commission. -- The [CSC] shall administer the Civil Service and shall have the following powers and functions:
>
> xxx xxx xxx
>
> (h) Approve all appointments, whether original or promotional, to positions in the civil service, except those of presidential appointees, members of the Armed Forces of the Philippines, police forces, firemen and jailguards, and disapprove those where the appointees do not possess the appropriate eligibility or required qualifications. An appointment shall take effect immediately upon issue by the appointing authority if the appointee assumes his duties immediately and shall remain effective until it is disapproved by the [CSC], if this should take

> place, without prejudice to the liability of the appointing authority for appointments issued in violation of existing laws or rules: Provided, finally, That the [CSC] shall keep a record of appointments of all officers and employees in the civil service. **All appointments requiring the approval of the [CSC] as herein provided, shall be submitted to it by the appointing authority within thirty days from issuance, otherwise the appointment becomes ineffective thirty days thereafter.** (Emphasis supplied)

This provision is implemented in Section 11, Rule V of the Omnibus Rules Implementing Book V of EO 292 (Omnibus Rules):

> Section 11. An appointment not submitted to the [CSC] within thirty (30) days from the date of issuance which shall be the date appearing on the fact of the appointment, shall be ineffective. xxx

Based on the foregoing provisions, petitioner argues that respondent's appointment became effective on the day of her appointment but it subsequently ceased to be so when the appointing authority did not submit her appointment to the CSC for attestation within 30 days.

Petitioner is wrong.

The real issue in this case is whether the deliberate failure of the appointing authority (or other responsible officials) to submit respondent's appointment paper to the CSC within 30 days from its issuance made her appointment ineffective and incomplete. Substantial reasons dictate that it did not.

Before discussing this issue, however, it must be brought to mind that CSC resolution dated November 29, 2005 recalling petitioner's appointment and approving that of respondent has long become final and executory.

Remedy to Assail CSC Decision or Resolution

Sections 16 and 18, Rule VI of the Omnibus Rules provide the proper remedy to assail a CSC decision or resolution:

> Section 16. An employee who is still not satisfied with the decision of the [Merit System Protection Board] may appeal to the [CSC] within fifteen days from receipt of the decision.
>
> **The decision of the [CSC] is final and executory if no petition for reconsideration is filed within fifteen days from receipt thereof**.
>
> xxx xxx xxx
>
> Section 18. **Failure to file a** protest, appeal, **petition for reconsideration or petition for review within the prescribed**

> **period shall be deemed a waiver of such right and shall render the subject action/decision final and executory**. (Emphasis supplied)

In this case, petitioner did not file a petition for reconsideration of the CSC resolution dated November 29, 2005 before filing a petition for review in the CA. Such fatal procedural lapse on petitioner's part allowed the CSC resolution dated November 29, 2005 to become final and executory.[17] Hence, for all intents and purposes, the CSC resolution dated November 29, 2005 has become immutable and can no longer be amended or modified.[18] **A final and definitive judgment can no longer be changed, revised, amended or reversed**.[19] Thus, in praying for the reversal of the assailed Court of Appeals decision which affirmed the final and executory CSC resolution dated November 29, 2005, petitioner would want the Court to reverse a final and executory judgment and disregard the doctrine of immutability of final judgments.

True, a dissatisfied employee of the civil service is not preempted from availing of remedies other than those provided in Section 18 of the Omnibus Rules. This is precisely the purpose of Rule 43 of the Rules of Court, which provides for the filing of a petition for review as a remedy to challenge the decisions of the CSC.

While Section 18 of the Omnibus Rules does not supplant the mode of appeal under Rule 43, we cannot disregard Section 16 of the Omnibus Rules, which requires that a petition for reconsideration should be filed, otherwise, the CSC decision will become final and executory, *viz.*:

> **The decision of the [CSC] is final and executory if no petition for reconsideration is filed within fifteen days from receipt thereof.**

Note that the foregoing provision is a specific remedy as against CSC decisions involving its **administrative** function, that is, on matters involving "appointments, whether original or promotional, to positions in the civil service,"[20] as opposed to its quasi-judicial function where it adjudicates the rights of persons before it, in accordance with the standards laid down by the law.[21]

The doctrine of exhaustion of administrative remedies requires that, for reasons of law, comity and convenience, where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, the courts will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.[22] In *Orosa v. Roa*,[23] the Court ruled that if an appeal or remedy obtains or is available within the administrative machinery, this should be resorted to before resort can be made to the courts.[24] While the doctrine of exhaustion of administrative remedies is subject to certain exceptions,[25] these are not present in this case.

Thus, absent any definitive ruling that the second paragraph of Section 16 is not mandatory and the filing of a petition for reconsideration may be dispensed with,