

FIRST DIVISION

[G.R. No. 172144, March 09, 2010]

**PEZA BOARD OF DIRECTORS AND LILIA B. DE LIMA,
PETITIONERS, VS. GLORIA J. MERCADO, RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

Being assailed is the Court of Appeals 1) Decision^[1] of December 14, 2005 which reversed^[2] that of the Regional Trial Court (RTC) of Pasay City, Branch 108, 2) Amended Decision^[3] dated March 31, 2006 by awarding back salaries to Gloria J. Mercado (respondent) computed from the time of her alleged dismissal until her reinstatement as Philippine Economic Zone Authority (PEZA) Deputy Director General for Policy and Planning, and 3) Resolution^[4] of March 31, 2006 which denied petitioners' motion for reconsideration of the December 14, 2005 Decision.

The antecedent facts of the present controversy are as follows:

Respondent was appointed as Group Manager for Policy and Planning of PEZA on September 16, 1998. Her appointment was temporary in nature.

On May 16, 1999, respondent was promoted to the position of Deputy Director General for Policy and Planning. Her appointment indicated the same as on permanent basis, but with the following annotation: NO SECURITY OF TENURE UNLESS HE/SHE OBTAINS CESO OR CSEE ELIGIBILITY. CESO is the acronym for Career Executive Service Officer, while CSEE is the acronym for Career Service Executive Eligibility.

On June 1, 2000, petitioner Lilia B. de Lima, in her capacity as PEZA Director General, by letter of even date, advised respondent of the termination of her appointment effective on the closing hours of the day. On even date, petitioner PEZA Board convened in an executive session and passed a Resolution appointing Wilhelm G. Ortaliz (Ortaliz), a CESO eligible, as Deputy Director General for Policy and Planning effective immediately.

Respondent thereupon filed on June 7, 2000 with the RTC of Pasay City a petition for prohibition, quo warranto and damages with preliminary prohibitory /mandatory injunction and/or temporary restraining order against herein petitioners and Ortaliz, docketed as Civil Case No. 00-0172, questioning the June 1, 2000 PEZA Board Resolution appointing Ortaliz as Deputy Director General for Policy and Planning.

In the main, respondent alleged in her complaint that her degree in Master in National Security Administration (MNSA) automatically conferred upon her Career Executive Service (CES) eligibility; that Republic Act No. (R.A.) 8748, which

amended R.A. 7916 or the *PEZA Charter*, did away with the CES eligibility requirement for the position of Deputy Director General; and that the termination of her appointment was actuated with bad faith to entitle her to moral and exemplary damages.

Petitioners countered that respondent's MNSA degree at best merely granted her a CESO rank, not eligibility, and since she had not acquired CES eligibility, she had no security of tenure with respect to her position and could, therefore, be replaced at any time by Ortaliz who is a CES eligible.

Respecting respondent's contention that R.A. 8748 removed the CES eligibility requirement, petitioners asserted that based on the records of the deliberations on Senate Bill No. 1136 which eventually became R.A. 8748, the lawmakers never really intended to do away with the CES eligibility requirement for the position of Deputy Director General; and that assuming *arguendo* that that was the intention, R.A. 8748 took effect only on June 20, 1999 after the appointment of respondent on May 16, 1999.

By Decision of December 4, 2001, the trial court dismissed respondent's petition. It held that the passage of R.A. 8748 notwithstanding, the CES eligibility requirement for the position of Deputy Director General remains, in light of 1) the certification from the CES Board that respondent was not a CES eligible, 2) R.A. 7916 (**An Act Providing For The Legal Framework And Mechanisms For The Creation, Operation, Administration, And Coordination Of Special Economic Zones In The Philippines, Creating For This Purpose, The Philippine Economic Zone Authority (Peza), And For Other Purposes**) which provides that appointment to the three PEZA Deputy Director General positions requires CES eligibility, and 3) the Senate deliberations on the bill which eventually became R.A. 8748.

The trial court further held that, contrary to respondent's contention, her MNSA degree did not automatically confer on her CES eligibility for, under Executive Order No. 771 (Amending Executive Order No. 696 Granting Career Executive Service Officer Rank To Graduates Of The National Defense College Of The Philippines And Other Related Purposes), the recommendation of the Ministry or Agency concerned and the evaluation of the Career Executive Service Board (CESB) were still needed; and that absent these additional requirements, what was granted to MNSA degree holders was merely the salary corresponding to the CESO rank and not the rank itself.

The trial court went on to state that per CESB Resolution No. 204 dated December 21, 1998, MNSA graduates are deemed only to have passed the Management Aptitude Test Battery which is merely the first stage in the four-stage CES eligibility conferment process.

The trial court, concluding that since respondent did not have the required eligibility for the position, held that her appointment was merely temporary and had no security of tenure thereto, and that, therefore, it was deemed to have expired upon the appointment of Ortaliz.

The trial court denied respondent's claim for damages, it finding that she failed to substantiate the same and, in any event, petitioners acted in accordance with law.

Respondent appealed to the Court of Appeals, raising substantially the same arguments she raised before the trial court.

As stated early on, the appellate court, by the assailed Decision of December 14, 2005, *reversed* the trial court's decision. It held that since respondent was promoted to the position of Deputy Director General for Policy and Planning on a permanent status, she cannot be summarily removed; and that respondent's MNSA degree obtained on July 12, 1993 automatically conferred on her a CES eligibility pursuant to Executive Order No. 696, as amended by Executive Order No. 771.

The appellate court went on to hold that even if respondent was not a CES eligible, she is still qualified for the position as the requirement under Sec. 11 of Republic Act No. 7916 that appointees to Deputy Director General positions must "have career executive service eligibility" is no longer found under Sec. 11 of Republic Act No. 8748. It ratiocinated that the deletion of such requirement indicated that the legislature intended to do away with the eligibility requirement.

At all events, the appellate court held that respondent subsequently qualified to the position as she was conferred a CES eligibility by the Civil Service Commission in December 2000.

Albeit the appellate court held that respondent was illegally removed from and ordered her reinstatement to her position, it did not find her entitled to damages as there was no proof that the termination of her services was tainted with bad faith on the part of petitioners. Thus, the appellate court disposed:

WHEREFORE, premises considered, the appeal is **GRANTED**. The Decision dated 04 December 2001 of the Regional Trial Court of Pasay City, Branch 108 in Civil Case No. 00-172 is **REVERSED** and **SET ASIDE**. PEZA Board Resolution No. 00-187 is declared **NULL** and **VOID**; appellee **WILHELM G. ORTALIZ** is **OUSTED** and altogether **EXCLUDED** from exercising, holding or occupying the position of PEZA Deputy Director General for Policy and Planning; and appellant **GLORIA J. MERCADO** is hereby **REINSTATED** to her position as PEZA Deputy Director General for Policy and Planning. Costs against appellees.

SO ORDERED.^[5] (emphasis in the original)

Petitioners moved for reconsideration of the appellate court's decision. Respondent too moved for a partial motion for reconsideration of the decision.

The appellate court, by the Amended Decision of March 31, 2006, acting on respondent's motion for reconsideration, denied her claim for damages and attorney's fees but granted her claim for back salaries, computed from the time of her removal until her reinstatement to the position as PEZA Deputy Director General for Policy and Planning.

By Resolution also dated March 31, 2006, the appellate court denied petitioners' motion for reconsideration, hence, their present recourse, they raising the same

defenses and arguments proffered during the proceedings before the trial and appellate courts.

The petition is impressed with merit.

Section 27 (1), of the Civil Service Law provides:

(1)Permanent status. - **A permanent appointment shall be issued to a person who meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed**, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof. (emphasis and underscoring supplied)

In the CES under which the position of PEZA Deputy Director General for Policy and Planning is classified, the acquisition of security of tenure which presupposes a permanent appointment is governed by the Rules and Regulations promulgated by the CES Board. As the recent case of *Amores vs. Civil Service Commission* explains:

[6]

Security of tenure in the career executive service, which presupposes a permanent appointment, takes place upon **passing the CES examinations** administered by the CES Board. It is that which entitles the examinee to conferment of CES eligibility and the inclusion of his name in the roster of CES eligibles. Under the rules and regulations promulgated by the CES Board, **conferment of the CES eligibility is done by the CES Board through a formal board resolution after an evaluation has been done of the examinee's performance in the four stages of the CES eligibility examinations. Upon conferment of CES eligibility and compliance with the other requirements prescribed by the Board, an incumbent of a CES position may qualify for appointment to a CES rank. Appointment to a CES rank is made by the President upon the Board's recommendation. It is this process which completes the official's membership in the CES and confers on him security of tenure in the CES.** Petitioner does not seem to have gone through this definitive process. (emphasis, italics and underscoring supplied)

Clearly, for an examinee or an incumbent to be a member of the CES and be entitled to security of tenure, she/he must pass the CES examinations, be conferred CES eligibility, comply with the other requirements prescribed by the CES Board, and be appointed to a CES rank by the President.

Admittedly, before and up to the time of the termination of her appointment, respondent did not go through the four stages of CES eligibility examinations.

The appellate court's ruling that respondent became CES eligible upon earning the MNSA degree, purportedly in accordance with Executive Order No. 696, as amended by Executive Order No. 771, does not lie.