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[G.R. No. 183337, April 23, 2010]

CIVIL SERVICE COMMISSION, PETITIONER, VS. GREGORIO MAGNAYE, JR., RESPONDENT.

D E C I S I O N

MENDOZA, J.:

The Civil Service Commission (*CSC*) assails in this petition for review on certiorari, [1] the February 20, 2008 Decision[2] and the June 11, 2008 resolution of the Court of Appeals (*CA*) in CA-G.R. SP No. 85508. The CA reversed the July 20, 2004 Decision of the Civil Service Commission Regional Office No. IV *(CSCRO-IV)* and ordered the reinstatement of respondent Gregorio Magnaye, Jr. *(Magnaye)* with payment of backwages and other monetary benefits.

THE FACTS

In March 2001, Mayor Roman H. Rosales of Lemery, Batangas, appointed Magnaye as Utility Worker I at the Office of Economic Enterprise [Operation of Market] (*OEE*). After a few days, Mayor Rosales detailed him to the Municipal Planning and Development Office.

In the May elections of that year, Mayor Rosales was defeated by Raul L. Bendaña, who assumed office on June 30, 2001. Thereafter, Magnaye was returned to his original assignment at the OEE. On July 11, 2001, Bendaña also placed him on detail at the Municipal Planning and Development Office to assist in the implementation of a Survey on the Integrated Rural Accessibility Planning Project.

On August 13, 2001, the new mayor served him a notice of termination from employment effective the following day for unsatisfactory conduct and want of capacity.

Magnaye questioned his termination before the CSC head office on the ground that Mayor Bendaña was not in a position to effectively evaluate his performance because it was made less than one and one-half months after his (Mayor Bendaña's) assumption to office. He added that his termination was without basis and was politically motivated.

The CSC head office dismissed, without prejudice, Magnaye's complaint because he failed to attach a certificate of non-forum shopping. Thereafter, Magnaye filed a complaint with the regional office of the Civil Service *(CSCRO-IV).*

The CSCRO-IV dismissed Magnaye's complaint for lack of merit. It upheld his dismissal from the service on the ground that Mayor Bendaña's own assessment, together with the evaluation made by his supervisors, constituted sufficient and

reasonable grounds for his termination.

Magnaye sought recourse through a petition for review with the Court of Appeals, citing CSCRO-IV's alleged errors of fact and of law, non-observance of due process, and grave abuse of discretion amounting to lack or excess of jurisdiction. Adopting the stance of the Office of the Solicitor General, the CA ruled in Magnaye's favor, mainly on the ground that he was denied due process since he was not informed of what constituted the alleged unsatisfactory conduct and want of capacity that led to his termination. It summarized the positions of the OSG as follows:

> On January 18, 2005, the Office of the Solicitor General (OSG) filed its manifestation and motion, in lieu of comment, praying that the assailed decision be set aside. ***The OSG argued that Petitioner's termination was illegal.*** The notice of termination did not cite the specific instances indicating Petitioner's alleged unsatisfactory conduct or want of capacity. It was only on July 29, 2003, or almost two years after Petitioner's dismissal on August 13, 2001 that his former Department Heads, Engr. Magsino and Engr. Masongsong, submitted an assessment and evaluation report to Mayor Bendaña, which the latter belatedly solicited when the Petitioner appealed to the CSC Regional Office. Hence, the circumstances behind Petitioner's dismissal became questionable.
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> The OSG also found no evidence at the CSC Regional Office level that Petitioner was informed of his alleged poor performance. There was no evidence that Petitioner was furnished copies of 1) Mayor Bendaña's letter, dated July 29, 2003, addressed to CSC Regional Office praying that Petitioner's termination be sustained; and 2) the performance evaluation report, dated July 29, 2003, prepared by Engr. Magsino and Engr. Masongsong. ***The OSG claimed that Petitioner was denied due process*** because his dismissal took effect a day after he received the notice of termination. No hearing was conducted to give Petitioner the opportunity to refute the alleged causes of his dismissal. The OSG agreed with Petitioner's claim that there was insufficient time for Mayor Bendaña to determine his fitness or unfitness for the position.[3] [Emphasis supplied]

Thus, the *fallo* of the CA Decision[4] reads:

> "WHEREFORE, the petition is **Granted**. The Civil Service Commission Regional Office No. 4's Decision, dated July 20, 2004 is hereby **Set Aside**. Accordingly, Petitioner is ORDERED REINSTATED with full payment of backwages and other monetary benefits. This case is hereby REMANDED to the Civil Service Commission for reception of such evidence necessary for purposes of determining the amount of backwages and other monetary benefits to which Petitioner is entitled.
>
> SO ORDERED."

THE ISSUES

In this petition, the Civil Service Commission submits the following for our consideration:

> "I. The dropping of respondent from the rolls of the local government unit of Lemery, Batangas was in accord with Civil Service Law, rules and jurisprudence.
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> II. The respondent resorted to a wrong mode of appeal and violated the rule on exhaustion of administrative remedies and the corollary doctrine of primary jurisdiction."

The principal issue, therefore, is whether or not the termination of Magnaye was in accordance with the pertinent laws and the rules.

The eligibility of respondent Magnaye has not been put in issue.

THE COURT'S RULING

The Court upholds the decision of the Court of Appeals.

The CSC, in arguing that Magnaye's termination was in accord with the Civil Service law, cited Section 4(a), Rule II of the 1998 CSC Omnibus Rules on Appointments and Other Personnel Actions which provides that:

> Sec. 4. Nature of appointment. The nature of appointment shall be as follows:
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> a. Original - refers to the initial entry into the career service of persons who meet all the requirements of the position. xxx
>
> It is understood that the first six months of the service following an original appointment will be probationary in nature and the appointee shall undergo a thorough character investigation. A probationer may be dropped from the service for unsatisfactory conduct or want of capacity anytime before the expiration of the probationary period. Provided that such action is appealable to the Commission.
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> However, if no notice of termination for unsatisfactory conduct is given by the appointing authority to the employee before the expiration of the six-month probationary period, the appointment automatically becomes permanent.

Under Civil Service rules, the first six months of service following a permanent appointment shall be probationary in nature, and the probationer may be dropped from the service for unsatisfactory conduct or want of capacity anytime before the expiration of the probationary period. [5]

The CSC is of the position that a civil service employee does not enjoy security of

tenure during his 6-month probationary period. It submits that an employee's security of tenure starts only after the probationary period. Specifically, it argued that "an appointee under an original appointment cannot lawfully invoke right to security of tenure until after the expiration of such period and provided that the appointee has not been notified of the termination of service or found unsatisfactory conduct before the expiration of the same."[6]

The CSC position is contrary to the Constitution and the Civil Service Law itself. Section 3 (2) Article 13 of the Constitution guarantees the rights of ***all workers*** not just in terms of self-organization, collective bargaining, peaceful concerted activities, the right to strike with qualifications, humane conditions of work and a living wage but also to ***security of tenure*** , and Section 2(3), Article IX-B is emphatic in saying that, ***"no officer or employee of the civil service shall be removed or suspended except for cause as provided by law."***

Consistently, Section 46 (a) of the Civil Service Law provides that ***"no officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law after due process."***

Our Constitution, in using the expressions "all workers" and "no officer or employee," puts no distinction between a probationary and a permanent or regular employee which means that both probationary and permanent employees enjoy security of tenure. Probationary employees enjoy security of tenure in the sense that during their probationary employment, they cannot be dismissed except for cause or for failure to qualify as regular employees. This was clearly stressed in the case of *Land Bank of the Philippines v. Rowena Paden,* [7] where it was written:

> To put the case in its proper perspective, we begin with a discussion on the respondent's right to security of tenure. Article IX (B), Section 2(3) of the 1987 Constitution expressly provides that
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> "[n]o officer or employee of the civil service shall be removed or suspended except for cause provided by law." At the outset, we emphasize that the aforementioned ***constitutional provision <u>does not distinguish</u> between a <u>regular employee</u> and a <u>probationary employee</u>*** . In the recent case of *Daza v. Lugo* ***[8]*** we ruled that:
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> > The Constitution provides that "[N]o officer or employee of the civil service shall be removed or suspended except for cause provided by law." Sec. 26, par. 1, Chapter 5, Book V, Title I-A of the Revised Administrative Code of 1987 states:
> >
> > All such persons (appointees who meet all the requirements of the position) must serve a probationary period of six months following their original appointment and shall undergo a thorough character investigation in order to acquire permanent civil service status. A probationer may be dropped from the service for unsatisfactory conduct or want of capacity any time before the expiration of the probationary period; Provided, That such action is appealable to the Commission.

> Thus, the services of respondent as **a probationary employee** may only be **terminated** for **a just cause**, that is, unsatisfactory conduct or want of capacity. [Emphasis supplied]
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> x x x.
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> X x x the **only difference** between regular and probationary employees from the perspective of due process is that the latter's termination can be based on the wider ground of failure to comply with standards made known to them when they became probationary employees."

The constitutional and statutory guarantee of security of tenure is extended to both those in the career and non-career service positions, and the cause under which an employee may be removed or suspended must naturally have some relation to the character or fitness of the officer or employee, for the discharge of the functions of his office, or expiration of the project for which the employment was extended. [9] Further, well-entrenched is the rule on security of tenure that such an appointment is issued and the moment the appointee assumes a position in the civil service under a completed appointment, he acquires a legal, not merely equitable right (to the position), which is protected not only by statute, but also by the Constitution [Article IX-B, Section 2, paragraph (3)] and cannot be taken away from him either by revocation of the appointment, or by removal, except for cause, and with previous notice and hearing.[10]

While the CSC contends that a probationary employee does not enjoy security of tenure, its Omnibus Rules recognizes that such an employee cannot be terminated except for cause. Note that in the Omnibus Rules it cited,[11] a decision or order dropping a probationer from the service for unsatisfactory conduct or want of capacity anytime before the expiration of the probationary period *"is appealable to the Commission."* This can only mean that a probationary employee cannot be fired at will.

Notably, jurisprudence has it that the right to security of tenure is unavailing in certain instances. In *Orcullo Jr. v. Civil Service Commission,* [12] it was ruled that the right is not available to those employees whose appointments are contractual and co-terminous in nature. Such employment is characterized by "a tenure which is limited to a period specified by law, or that which is coterminous with the appointing authority or subject to his pleasure, or which is limited to the duration of a particular project for which purpose employment was made."[13] In *Amores M.D. v. Civil Service Commission,* [14] it was held that a civil executive service appointee who meets all the requirements for the position, except only the appropriate civil service eligibility, holds the office in a temporary capacity and is, thus, not entitled to a security of tenure enjoyed by permanent appointees.

Clearly, Magnaye's appointment is entirely different from those situations. From the records, his appointment was never classified as co-terminous or contractual. Neither was his eligibility as a Utility Worker I challenged by anyone.