

## EN BANC

[ G.R. No. 185766, November 23, 2010 ]

**CIVIL SERVICE COMMISSION, PETITIONER, VS. COURT OF APPEALS AND PHILIPPINE CHARITY SWEEPSTAKES OFFICE, RESPONDENTS.**

[G.R. No. 185767]

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### D E C I S I O N

#### **MENDOZA, J.:**

These are two consolidated petitions for review on *certiorari* under Rule 45 of the Rules of Court filed by the Civil Service Commission (CSC) questioning two separate decisions of the Court of Appeals (CA) regarding appointments in the Philippine Charity Sweepstakes Office (PCSO).

In G.R. No. 185766, petitioner CSC seeks to set aside the August 12, 2008 Decision<sup>[1]</sup> of the CA in CA-G.R. SP No. 98800 and its November 28, 2008 Resolution denying petitioner's motion for reconsideration thereof.

In G.R. No. 185767, petitioner CSC seeks to set aside the June 26, 2008 Decision<sup>[2]</sup> of the CA in CA-G.R. SP No. 99119 and its November 17, 2008 Resolution denying petitioner's motion for reconsideration.

#### **THE FACTS**

##### **(A) G.R. No. 185766**

On March 16, 2005, the Board of Directors of PCSO resolved to appoint Josefina A. Sarsonas (*Sarsonas*) as Assistant Department Manager II of the Internal Audit Department (*IAD*) of PCSO under temporary status. Thus, on the same day, PCSO General Manager Rosario Uriarte issued a temporary appointment to Sarsonas as Assistant Department Manager II.<sup>[3]</sup>

On April 26, 2005, the Civil Service Commission Field Office - Office of the President (*CSCFO-OP*) disapproved the temporary appointment of Sarsonas as she failed to meet the eligibility requirement for the position.<sup>[4]</sup> CSCFO-OP certified that there were qualified individuals who signified their interest to be appointed to the position, namely, Mercedes Hinayon and Reynaldo Martin.<sup>[5]</sup>

On May 10, 2005, PCSO filed an appeal with the CSC-National Capital Region (CSC-NCR).<sup>[6]</sup> In a letter dated June 21, 2005, the CSC-NCR affirmed the disapproval by CSCFO-OP of the temporary appointment of Sarsonas on the following grounds: (a) that she failed to meet the eligibility requirement; and (b) that there were two qualified eligibles who signified their interest to be appointed to the said position, as certified by CSCFO-OP.<sup>[7]</sup>

PCSO filed an appeal with CSC on August 15, 2005.<sup>[8]</sup> On March 15, 2006, the CSC dismissed the appeal in CSC Resolution No. 06-0466, the dispositive portion of which states:

**WHEREFORE**, the appeal of General Manager Rosario C. Uriarte, Philippine Charity Sweepstakes Office (PCSO), is **DISMISSED**. Accordingly, the disapproval by the Civil Service Commission - National Capital Region (CSC-NCR), Quezon City, of the temporary appointment of Josefina A. Sarsonas as Assistant Department Manager II, Internal Audit Department (IAD), PCSO is **AFFIRMED**.<sup>[9]</sup>

PCSO filed a motion for reconsideration but it was denied in CSC Resolution No. 070572.<sup>[10]</sup>

Convinced of its position, PCSO elevated the case to the CA, which reversed the assailed CSC resolutions in its August 12, 2008 decision.<sup>[11]</sup> CSC's motion for reconsideration was denied in a Resolution dated November 28, 2008.<sup>[12]</sup>

**(B) G.R. No. 185767**

On November 25, 2004, the PCSO Board of Directors resolved to appoint Lemuel G. Ortega (*Ortega*) as Assistant Department Manager II of its Planning and Production Department.<sup>[13]</sup> The PCSO General Manager, thus, issued a fourth renewal of his temporary appointment.<sup>[14]</sup>

On December 7, 2004, CSCFO-OP disapproved the temporary appointment of Ortega for his failure to meet the eligibility requirement for the position.<sup>[15]</sup> CSCFO-OP further reasoned out that there were other qualified third-level eligibles working in PCSO who were willing and available to be appointed to the subject position, namely, Mercedes Hinayon and Reynaldo Martin.<sup>[16]</sup>

On March 4, 2005, CSCFO-OP returned the said appointment to PCSO.<sup>[17]</sup>

On March 18, 2005, PCSO wrote to CSC-NCR seeking reconsideration of CSCFO-OP's disapproval of Ortega's temporary appointment.<sup>[18]</sup> The letter cited Ortega's thirty nine (39) years of experience in planning and production and his competence in his assigned tasks.<sup>[19]</sup> The letter also stated that PCSO management had the utmost trust and confidence in Ortega with regard to carrying out the duties and responsibilities attached to the subject position.<sup>[20]</sup>

On June 21, 2005, CSC-NCR affirmed CSCFO-OP's disapproval of Ortega's temporary appointment<sup>[21]</sup> on the ground that he failed to acquire the required eligibility despite the four-year period within which he could have done so.<sup>[22]</sup>

PCSO appealed to the CSC alleging that Ortega possessed all the requirements necessary for the subject position except the needed eligibility.<sup>[23]</sup> PCSO also claimed that the qualified eligibles who had indicated their interest to be appointed to the position did not possess the same training for such highly technical positions.<sup>[24]</sup>

PCSO further reasoned out that Section 7(3), Title I, Book V of the Administrative Code of 1987 provides an exclusive enumeration of the specific positions covered by the Career Executive Service (*CES*), all of whom are appointed by the President and are required to have Career Service Executive (*CSE*) eligibility.<sup>[25]</sup> PCSO argued that since the position of Assistant Department Manager II does not require presidential appointment, then it does not require *CSE* eligibility.<sup>[26]</sup>

On March 28, 2006, CSC issued Resolution No. 06-0528 disapproving Ortega's fourth temporary appointment.<sup>[27]</sup> PCSO's motion for reconsideration was denied in Resolution No. 07-0821 dated April 30, 2007.<sup>[28]</sup>

When PCSO appealed before the CA, the appellate court set aside the above resolutions in its June 26, 2008 Decision.<sup>[29]</sup> CSC's motion for reconsideration was denied in a Resolution dated November 17, 2008.<sup>[30]</sup>

### **RULING OF THE COURT OF APPEALS**

In both G.R. Nos. 185766 and 185767, the CA ruled that CSC erred in finding that the position of Assistant Department Manager II requires *CSE* eligibility,<sup>[31]</sup> rendering improper the temporary appointments of Sarsonas and Ortega, respectively. In G.R. No. 185766, the CA held that the resolution of the PCSO Board to appoint Sarsonas as Assistant Department Manager II was a policy decision and an exercise of management prerogative over which the CSC has no power of review.

<sup>[32]</sup> Since the position of Assistant Department Manager II was not one of those enumerated under the Administrative Code, and was not identified by the Career Executive Service Board (*CESB*) as equivalent to those listed under the law, then "the position of Assistant Department Manager II does not fall under the category pertaining to the Career Executive Service."<sup>[33]</sup>

In G.R. No. 185767, the CA similarly ruled that the Career Executive Service does not cover the position of Assistant Department Manager II in the Planning and Production Department of the PCSO.<sup>[34]</sup> Therefore, it follows that *CSE* eligibility is not required for the said position, and the CSC should have affirmed Ortega's temporary appointment to the said position.<sup>[35]</sup>

In resolving both cases, the CA cited Book V, Title I, Subtitle A of Executive Order

(E.O.) No. 292 or the Administrative Code of 1987, and stated that the position of Assistant Department Manager II of the PCSO was not one of those specific positions under the CES enumerated under Section 7(3), Title I, Book V, all the holders of which must be presidential appointees, thus, requiring CSE eligibility.<sup>[36]</sup> The said provision states:

**SECTION 7. Career Service.** - The Career Service shall be characterized by (1) entrance based on merit and fitness to be determined as far as practicable by competitive examination, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure.

The Career Service shall include:

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(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;

xxx.

Citing *Office of the Ombudsman v. Civil Service Commission*,<sup>[37]</sup> the CA concluded that since the Assistant Department Manager II was appointed not by the President of the Philippines but by the PCSO General Manager, subject to approval or confirmation of the PCSO Board of Directors, as provided for under its Charter, then Sarsonas was not a presidential appointee, and her position should not have been included by the CSC in the list of positions requiring CSE eligibility.<sup>[38]</sup> In the case of Ortega, the CA cited the same case but fell short of making a similar categorical pronouncement.<sup>[39]</sup>

Moreover, in the case of Sarsonas, the CA noted and agreed with the dissenting opinion of CSC Commissioner Cesar D. Buenaflor (*Commissioner Buenaflor*) in Resolution No. 070572.<sup>[40]</sup> Commissioner Buenaflor opined that the position of Assistant Department Manager II and other similar positions in government financial institutions and government-owned and controlled corporations were erroneously classified by the CSC as belonging to the third level position in the civil service.<sup>[41]</sup>

Regarding the two qualified eligibles who signified their interest to be permanently appointed to any third level position, the CA stated that Mercedes J. Hinayon (*Hinayon*) was designated as Officer-in-Charge, Assistant Department Manager of the Draw and Races Department, and would, according to the PCSO, be eventually considered for promotion in the said department.<sup>[42]</sup> On the other hand, Reynaldo Martin (*Martin*), the OIC-Regional Manager of the Northern and Central Luzon Online Lottery Section, was likewise being considered by PCSO management for promotion to a position which would suit his experience and expertise.<sup>[43]</sup> The CA also stressed that there was no showing in

the records that either Hinayon or Martin ever protested Sarsonas' appointment as Assistant Department Manager II.<sup>[44]</sup>

In the case of Ortega, the CA wrote that the responsibility for the establishment, administration and maintenance of qualification standards lies with the department or agency concerned. CSC's role is limited to (1) assisting the department or agency with respect to those qualification standards, and (2) approving them.<sup>[45]</sup> Therefore, the CSC cannot substitute its own standards for those of the department or agency concerned.<sup>[46]</sup>

Lastly, the CA held that under Presidential Decree No. 807, Section 9(h), which authorized the CSC to approve appointments to positions in the civil service, except those specified therein, the CSC's authority was limited to the determination of whether the appointees possess the legal qualifications and the appropriate eligibility.<sup>[47]</sup> In this case, the CA stated, except for her lack of CSE eligibility, Sarsonas possessed the basic qualifications of an Assistant Department Manager II, as determined by the PCSO General Manager and Board of Directors. Such being the case, the CSC had the ministerial duty to approve the temporary appointment of Sarsonas to the said position.<sup>[48]</sup> The refusal to approve the appointment was a clear encroachment on the discretion vested solely in the PCSO General Manager and Board of Directors as appointing authority.<sup>[49]</sup>

CSC, in its petitions for review before this Court, raises this

### **ISSUE**

**WHETHER THE COURT OF APPEALS ERRED IN SETTING ASIDE THE CSC RESOLUTIONS DISAPPROVING THE TEMPORARY APPOINTMENTS OF SARSONAS AND ORTEGA AS ASSISTANT DEPARTMENT MANAGER II FOR LACK OF THE REQUIRED THIRD LEVEL ELIGIBILITY.**

Stated otherwise, the core issue to be resolved in this case is whether or not the position of Assistant Department Manager II falls under the CES.

### **RULING OF THE COURT**

Following the ruling in *Office of the Ombudsman v. Civil Service Commission* cases<sup>[50]</sup> and *Home Insurance Guarantee Corporation v. Civil Service Commission*,<sup>[51]</sup> the Court is of the position that the CES covers presidential appointees only. Corollarily, as the position of Assistant Department Manager II does not require appointment by the President of the Philippines, it does not fall under the CES. Therefore, the temporary appointments of Sarsonas and Ortega as Assistant Department Manager II do not require third level eligibility pursuant to the Civil Service Law, rules and regulations.

Executive Order No. 292 or the Administrative Code of 1987 provides for three (3) classes or levels in the career service. Book V, Title I, Subsection A, Chapter 2,