

EN BANC

[G.R. No. 173264, February 22, 2008]

**CIVIL SERVICE COMMISSION, Petitioner, vs. NITA P. JAVIER,
Respondent.**

DECISION

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, seeking to reverse the Decision^[1] of the Court of Appeals (CA) dated September 29, 2005, as well as its Resolution of June 5, 2006, in CA-G.R. SP No. 88568, which set aside the resolutions and orders of the Civil Service Commission (CSC) invalidating the appointment of respondent as Corporate Secretary of the Board of Trustees of the Government Service and Insurance System (GSIS).

The facts are undisputed.

According to her service record,^[2] respondent was first employed as Private Secretary in the GSIS, a government owned and controlled corporation (GOCC), on February 23, 1960, on a "confidential" status. On July 1, 1962, respondent was promoted to Tabulating Equipment Operator with "permanent" status. The "permanent" status stayed with respondent throughout her career. She spent her entire career with GSIS, earning several more promotions, until on December 16, 1986, she was appointed Corporate Secretary of the Board of Trustees of the corporation.

On July 16, 2001, a month shy of her 64th birthday,^[3] respondent opted for early retirement and received the corresponding monetary benefits.^[4]

On April 3, 2002, GSIS President Winston F. Garcia, with the approval of the Board of Trustees, reappointed respondent as Corporate Secretary, the same position she left and retired from barely a year earlier. Respondent was 64 years old at the time of her reappointment.^[5] In its Resolution, the Board of Trustees classified her appointment as "confidential in nature and the tenure of office is at the pleasure of the Board."^[6]

Petitioner alleges that respondent's reappointment on confidential status was meant to illegally extend her service and circumvent the laws on compulsory retirement.^[7] This is because under Republic Act (R.A.) No. 8291, or the Government Service Insurance System Act of 1997, the compulsory retirement age for government employees is 65 years, thus:

Sec. 13. x x x

(b) Unless the service is extended by appropriate authorities, retirement shall be compulsory for an employee at sixty-five (65) years of age with at least fifteen (15) years of service: Provided, That if he has less than fifteen (15) years of service, he may be allowed to continue in the service in accordance with existing civil service rules and regulations.

Under the civil service regulations, those who are in primarily confidential positions may serve even beyond the age of 65 years. Rule XIII of the Revised Omnibus Rules on Appointments and Other Personnel Actions, as amended, provides that:

Sec. 12. (a) No person who has reached the compulsory retirement age of 65 years can be appointed to any position in the government, subject only to the exception provided under sub-section (b) hereof.

x x x x

b. A person who has already reached the compulsory retirement age of 65 can still be appointed to a coterminous/primarily confidential position in the government.

A person appointed to a coterminous/primarily confidential position who reaches the age of 65 is considered automatically extended in the service until the expiry date of his/her appointment or until his/her services are earlier terminated.^[8]

It is for these obvious reasons that respondent's appointment was characterized as "confidential" by the GSIS.

On October 10, 2002, petitioner issued Resolution No. 021314, invalidating the reappointment of respondent as Corporate Secretary, on the ground that the position is a permanent, career position and not primarily confidential.^[9]

On November 2, 2002, the CSC, in a letter of even date, through its Chairperson Karina Constantino-David, informed GSIS of CSC's invalidation of respondent's appointment, stating, thus:

Records show that Ms. Javier was formerly appointed as Corporate Secretary in a "Permanent" capacity until her retirement in July 16, 2001. The Plantilla of Positions shows that said position is a career position. However, she was re-employed as Corporate Secretary, a position now declared as confidential by the Board of Trustees pursuant to Board Resolution No. 94 dated April 3, 2002.

Since the position was not declared primarily confidential by the Civil Service Commission or by any law, the appointment of Ms. Javier as Corporate Secretary is hereby invalidated.^[10]

Respondent and GSIS sought to reconsider the ruling of petitioner. CSC replied that the position of Corporate Secretary is a permanent (career) position, and not primarily confidential (non-career); thus, it was wrong to appoint respondent to this position since she no longer complies with eligibility requirements for a permanent career status. More importantly, as respondent by then has reached compulsory retirement at age 65, respondent was no longer qualified for a permanent career

position.^[11] With the denial of respondent's plea for reconsideration, she filed a Petition for Review with the Court of Appeals.

On September 29, 2005, the CA rendered a Decision setting aside the resolution of petitioner invalidating respondent's appointment.^[12] The CA ruled that in determining whether a position is primarily confidential or otherwise, the nature of its functions, duties and responsibilities must be looked into, and not just its formal classification.^[13] Examining the functions, duties and responsibilities of the GSIS Corporate Secretary, the CA concluded that indeed, such a position is primarily confidential in nature.

Petitioner filed a motion for reconsideration, which was denied by the CA on June 5, 2006.

Hence, herein petition.

The petition assails the CA Decision, contending that the position of Corporate Secretary is a career position and not primarily confidential in nature.^[14] Further, it adds that the power to declare whether any position in government is primarily confidential, highly technical or policy determining rests solely in petitioner by virtue of its constitutional power as the central personnel agency of the government.^[15]

Respondent avers otherwise, maintaining that the position of Corporate Secretary is confidential in nature and that it is within the powers of the GSIS Board of Trustees to declare it so.^[16] She argues that in determining the proper classification of a position, one should be guided by the nature of the office or position, and not by its formal designation.^[17]

Thus, the Court is confronted with the following issues: whether the courts may determine the proper classification of a position in government; and whether the position of corporate secretary in a GOCC is primarily confidential in nature.

The Court's Ruling

The courts may determine the proper classification of a position in government.

Under Executive Order No. 292, or the Administrative Code of 1987, civil service positions are currently classified into either 1) career service and 2) non-career service positions.^[18]

Career positions are characterized by: (1) entrance based on **merit and fitness to be determined as far as practicable by competitive examinations**, or based on **highly technical qualifications**; (2) **opportunity for advancement** to higher career positions; and (3) **security of tenure**.^[19]

In addition, the Administrative Code, under its Book V, sub-classifies career positions according to "appointment status," divided into: 1) **permanent** – which is issued to a person who meets all the requirements for the positions 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; and 2) **temporary** – which is issued, in the absence of appropriate eligibles and when it becomes necessary in the public interest to fill a vacancy, to a person who meets all the requirements for the position to which he is being appointed except the appropriate civil service eligibility; provided, that such temporary appointment shall not exceed twelve months, and the appointee may be replaced sooner if a

qualified civil service eligible becomes available.^[20]

Positions that do not fall under the career service are considered non-career positions, which are characterized by: (1) **entrance on bases other than those of the usual tests of merit and fitness** utilized for the career service; and (2) **tenure which is limited to a period** specified by law, or which is **co-terminous** with that of 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.^[21]

Examples of positions in the non-career service enumerated in the Administrative Code are:

Sec. 9. Non-Career Service. - x x x

The Non-Career Service shall include:

- (1) Elective officials and their personal or confidential staff;
- (2) Secretaries and other officials of Cabinet rank who hold their positions at the pleasure of the President and their personal or confidential staff(s);
- (3) Chairman and members of commissions and boards with fixed terms of office and **their personal or confidential staff;**
- (4) Contractual personnel or those whose employment in the government is in accordance with a special contract to undertake a specific work or job, requiring special or technical skills not available in the employing agency, to be accomplished within a specific period, which in no case shall exceed one year, and performs or accomplishes the specific work or job, under his own responsibility with a minimum of direction and supervision from the hiring agency; and
- (5) Emergency and seasonal personnel. (Emphasis supplied)

A strict reading of the law reveals that primarily confidential positions fall under the non-career service. It is also clear that, unlike career positions, primarily confidential and other non-career positions do not have security of tenure. The tenure of a confidential employee is co-terminous with that of the appointing authority, or is at the latter's pleasure. However, the confidential employee may be appointed or remain in the position even beyond the compulsory retirement age of 65 years.^[22]

Stated differently, the instant petition raises the question of whether the position of corporate secretary in a GOCC, currently classified by the CSC as belonging to the permanent, career service, should be classified as primarily confidential, i.e., belonging to the non-career service. The current GSIS Board holds the affirmative view, which is ardently opposed by petitioner. Petitioner maintains that it alone can

classify government positions, and that the determination it made earlier, classifying the position of GOCC corporate secretary as a permanent, career position, should be maintained.

At present, there is no law enacted by the legislature that defines or sets definite criteria for determining primarily confidential positions in the civil service. Neither is there a law that gives an enumeration of positions classified as primarily confidential.

What is available is only petitioner's own classification of civil service positions, as well as jurisprudence which describe or give examples of confidential positions in government.

Thus, the corollary issue arises: should the Court be bound by a classification of a position as confidential already made by an agency or branch of government?

Jurisprudence establishes that the Court is not bound by the classification of positions in the civil service made by the legislative or executive branches, or even by a constitutional body like the petitioner.^[23] The Court is expected to make its own determination as to the nature of a particular position, such as whether it is a primarily confidential position or not, without being bound by prior classifications made by other bodies.^[24] The findings of the other branches of government are merely considered initial and not conclusive to the Court.^[25] Moreover, it is well-established that in case the findings of various agencies of government, such as the petitioner and the CA in the instant case, are in conflict, the Court must exercise its constitutional role as final arbiter of all justiciable controversies and disputes.^[26]

Piñero v. Hechanova,^[27] interpreting R.A. No. 2260, or the Civil Service Act of 1959, emphasized how the legislature refrained from declaring which positions in the bureaucracy are primarily confidential, policy determining or highly technical in nature, and declared that such a determination is better left to the judgment of the courts. The Court, with the *ponencia* of Justice J.B.L. Reyes, expounded, thus:

The change from the original wording of the bill (expressly declared by law x x x to be policy determining, etc.) to that finally approved and enacted ("or which are policy determining, etc. in nature") came about **because of the observations of Senator Tañada, that as originally worded the proposed bill gave Congress power to declare by fiat of law a certain position as primarily confidential or policy determining, which should not be the case.** The Senator urged that since the Constitution speaks of positions which are "primarily confidential, policy determining or highly technical in nature," **it is not within the power of Congress to declare what positions are primarily confidential or policy determining. "It is the nature alone of the position that determines whether it is policy determining or primarily confidential."** Hence, the Senator further observed, the matter should be left to the "proper implementation of the laws, depending upon the nature of the position to be filled", and if the position is "highly confidential" then the President and the Civil Service Commissioner must implement the law.