

## EN BANC

[ G.R. NO. 154898, February 16, 2005 ]

### CIVIL SERVICE COMMISSION, PETITIONER, VS. PASTOR B. TINAYA, RESPONDENT.

#### DECISION

##### SANDOVAL-GUTIERREZ, J.:

For our resolution is the petition for review on certiorari<sup>[1]</sup> filed by the Civil Service Commission (CSC), petitioner, assailing the Decision<sup>[2]</sup> and Resolution<sup>[3]</sup> dated March 21, 2002 and August 21, 2002, respectively, of the Court of Appeals in CA-G.R. SP No. 63051.

On **November 16, 1993**, Pastor B. Tinaya, respondent, was issued a **permanent** appointment as municipal assessor of the Municipality of Tabontabon, Leyte by Municipal Mayor Priscilla R. Justimbaste.

On **December 1, 1993**, the CSC Regional Office No. VIII **approved** the appointment but only as **temporary**, effective for one (1) year from December 1, 1993 to November 30, 1994. The appointment was made temporary due to respondent's non-submission of his service record with respect to his three (3)-year work related experience prior to his employment as municipal assessor, as required by the CSC Revised Qualification Standards.

On the same day his appointment was approved, respondent took his oath and assumed the duties of his office.

On December 16, 1993 or fifteen (15) days after the approval of his appointment, respondent married Caridad R. Justimbaste, daughter of Mayor Priscilla Justimbaste.

Meanwhile, Mayor Priscilla Justimbaste was on leave of absence from November 23, 1994 up to December 29, 1994. Vice-Mayor Rosario C. Luban was then the Acting Mayor.

On **December 1, 1994**, after the expiration of respondent's temporary appointment, Acting Mayor Luban **appointed him anew as municipal assessor** effective that day. The appointment was permanent.

The CSC Regional Office No. VIII initially disapproved respondent's new appointment. But upon appeal by Mayor Priscilla Justimbaste, the CSC, in its Resolution dated **May 4, 1995, approved** respondent's appointment as permanent.

<sup>[4]</sup>

Sometime between 1995 and 1999, then Mayor Priscilla Justimbaste was elected vice-mayor of Tabontabon, while her political opponent, Bienvenido Balderian, was

elected mayor.<sup>[5]</sup>

On June 4, 1999, respondent requested Arturo Juanico, Officer-in-Charge of the municipality's Human Resources Management Office (HRMO), to furnish him a copy of his service record. The request was not immediately acted upon since respondent's 201 file was still to be retrieved from the Office of Mayor Bienvenido Balderian. This prompted respondent to report the matter to the CSC Regional Office No. VIII with a request to conduct an "on-the-spot physical audit" of the municipal employees' 201 files. In response, the CSC scheduled an audit on August 3, 1999.

In the meantime, on July 5, 1999, respondent's service record was released.<sup>[6]</sup>

As scheduled, the CSC's Personnel Inspection and Audit Division conducted an audit and found, among others, that the matter of the delay in the release of respondent's service records has become moot since his request was already acted upon; and that his appointment as municipal assessor on December 1, 1994 was issued in violation of the law on nepotism and, therefore, should be recalled.

On the basis of the above report, the CSC Regional Office No. VIII issued an Order dated November 9, 1999<sup>[7]</sup> recalling respondent's appointment, thus:

"WHEREFORE, in view of the foregoing, the approval of the appointment of Pastor Tinaya as Municipal Assessor, LGU – Tabontabon, Leyte, is hereby **RECALLED** for having been issued **in violation of the law on nepotism.**

The Civil Service Leyte Field Office is hereby directed to cause the necessary action on the appointment and service card of Mr. Tinaya."

Respondent then filed a motion for reconsideration of the above recall Order but the same was denied.

On appeal by respondent, the CSC Central Office, petitioner herein, rendered Resolution No. 002470 dated October 26, 2000 affirming the CSC Regional Office No. VIII Order dated November 9, 1999.

Petitioner likewise denied the motion for reconsideration<sup>[8]</sup> filed by respondent, prompting him to file with the Court of Appeals a petition for review, docketed as CA-G.R. SP No. 63051.

On March 21, 2002, the Court of Appeals rendered a Decision setting aside petitioner's questioned Resolutions, thus:

"WHEREFORE, the assailed Resolutions of the Civil Service Commission are **SET ASIDE**, and **petitioner (now respondent) is hereby entitled to his office as municipal assessor** of Tabontabon, Leyte **by virtue of his permanent appointment dated 16 November 1993.**

SO ORDERED."<sup>[9]</sup> (underscoring ours)

This ruling is based on the Appellate Court's finding that respondent's **original** appointment as municipal assessor on **November 16, 1993** was **permanent** in

nature, although approved by the CSC on December 1, 1993 as temporary. Being permanent in character, he enjoys security of tenure and cannot be removed from office without valid cause. Thus, his **reappointment** to the same post on **December 1, 1994** was **unnecessary** or "**a mere superfluity**."<sup>[10]</sup> Moreover, respondent cannot be held guilty of nepotism as he was not yet married to the daughter of former Mayor Priscilla Justimbaste at the time the latter appointed him municipal assessor.

Petitioner filed a motion for reconsideration but was denied by the Court of Appeals in its Resolution dated August 21, 2002. This prompted petitioner, through the Solicitor General, to elevate the matter to us via this petition for review on certiorari.

Petitioner contends that the Court of Appeals erred in holding that respondent's original appointment as municipal assessor on November 16, 1993 is permanent, granting him security of tenure; and in declaring that his subsequent appointment on December 1, 1994 does not violate the rule on nepotism.

In his comment, respondent prays that the instant petition be denied for lack of merit. His counter-arguments merely reiterate the findings and ruling of the Court of Appeals.

We rule in favor of petitioner.

In *Lazo vs. Civil Service Commission*,<sup>[11]</sup> we held that "under the Constitution, the Civil Service Commission is the central personnel agency of the government charged with the duty of determining questions of qualifications of merit and fitness of those appointed to the civil service."

The powers and functions of petitioner are defined in Section 9 (h) of the Civil Service Law, thus:

"SECTION. 9. *Powers and Functions of the Commission.* – The Commission shall administer the Civil Service and shall have the following powers and functions:

x x x

(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 Commission, 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 Commission shall keep a record of appointments of all officers and employees in the civil service. All appointments requiring the approval of the Commission as herein provided, shall be submitted to it by the appointing authority within thirty days from issuance, otherwise,