

## EN BANC

[ G.R. No. 154674, May 27, 2004 ]

**THE CIVIL SERVICE COMMISSION, PETITIONER, VS. FELICISIMO O. JOSON, JR., IN HIS CAPACITY AS FORMER ADMINISTRATOR OF THE PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA), RESPONDENT.**

### DECISION

**CALLEJO, SR., J.:**

This is a petition for review on certiorari of the Decision<sup>[1]</sup> of the Court of Appeals dated August 12, 2002 reversing Resolution No. 002778 of the Civil Service Commission (CSC) which denied the respondent's request for payment of the salary of Priscilla Ong, as Executive Assistant IV in the Office of the Philippine Overseas Employment Administrator (POEA) for the period of July 1, 1995 to October 31, 1995.

The antecedents are as follows.

On July 1, 1995, Respondent Felicisimo O. Joson, Jr., then Administrator of the Philippine Overseas Employment Administration (POEA) appointed Priscilla Ong as Executive Assistant IV in his office under a contractual status. The appointment was made after the Department of Budget and Management (DBM) thru Director Miguel B. Doctor<sup>[2]</sup> approved his request for the creation of a contractual position of Executive Assistant IV at the Office of the POEA Administrator, effective not earlier than July 1, 1995.

Subsequently, respondent Joson wrote the CSC requesting exemption from the rule requiring appointees to confidential staff positions to meet the prescribed educational qualification.<sup>[3]</sup> The educational requirement for the position of Executive Assistant is a "Bachelor's degree relevant to the job"<sup>[4]</sup> and Priscilla Ong was not a college degree holder.

Acting upon this request, the petitioner CSC issued Resolution No. 956978 on November 2, 1995, approving the appointment of Ong under a *Coterminous Temporary* status:

In this case, it is clear that Ong does not meet the educational qualification for the position of Executive Assistant IV. However, considering that Ong has to her credit 65 units leading to a Bachelor's degree and that the said position is coterminous with the appointing authority and belongs to his confidential/personal staff, the proposed appointment of Ong may be allowed under Coterminous Temporary status.

WHEREFORE, the instant request of Administrator Felicisimo O. Josen, Jr. is hereby granted. Accordingly, the appointment of Priscilla E. Ong to the position of Executive Assistant IV, POEA, may be approved under Coterminous Temporary status.<sup>[5]</sup>

However, on February 6, 1996, Director Nelson Acebedo of the CSC National Capital Region (NCR) issued a post audit report on the issuance of Ong's appointment made on July 1, 1995, and invalidated the same. A motion for reconsideration was filed, stressing, among others, that the Department of Budget Management (DBM) allowed the POEA to create such a position not earlier than July 1, 1995 and that no less than the petitioner itself approved the appointment under a coterminous temporary status. Upon the instructions of Director Acebedo, the effectivity of Ong's appointment was changed from July 1, 1995 to November 2, 1995.<sup>[6]</sup>

Considering the said adjustment in the effectivity date of Ong's appointment, the respondent then requested approval for the payment of her salary for services rendered for the period of July 1, 1995 to October 31, 1995.

The petitioner denied the request for the payment of Ong's salary in Resolution No. 974094 dated October 16, 1997.<sup>[7]</sup> Citing Rep. Act No. 7430 also known as the Attrition Law which, in part, states that no appointment shall be made to fill up a vacancy unless an authority has been granted by it,<sup>[8]</sup> the petitioner posited that the authority to fill the position was granted only on November 2, 1995 when it issued CSC Resolution No. 956978. The request for the payment of salary referred to the period prior to the date of authority to fill the position; such claim cannot, therefore, be allowed. The petitioner concluded that, as the appointing authority, it is the respondent who shall be personally liable for the payment of salaries as provided in Item 5(a), Part I, CSC MC No. 38, s. 1993, which states:

#### 5. Liability of Appointing Authority and Other Officers

- a. The appointing authority shall be personally liable for the salary of appointees whose appointments have been disapproved for violation of pertinent laws such as RA 7041 and RA 7430. <sup>[9]</sup>

The respondent filed a motion for reconsideration, averring that Ong was appointed to a newly-created position which does not require any such authority from the petitioner. The respondent emphasized in his motion that the DBM approved the creation of the position for Ong. He asserted that, if at all, it is the POEA who should be liable under the principle of quantum meruit since the latter was the one benefited. Thus:

Admittedly, the herein movant requested an Authority to fill the said position which was not necessary under the premise since the position involved was a newly created position. In the first place, the Department of Budget and Management through the Director of CPCB granted the request for the creation of said position due to the dire need and necessity of said provision. POEA could not have transgressed any provision of RA 7430 and its implementing rules when POEA appointed Ms. Ong to the said newly created position on July 1, 1995....

... POEA should pay Ms. Ong for her services since POEA was the one benefited not the herein movant in his personal capacity. The principle of *quantum meruit* dictates that not only is the one who rendered services who should paid (sic) but equally important, is that the one benefited from such services must be the one who should pay the services. If the herein movant would be made personally liable to pay for her services, just the same, it is tantamount to unjust enrichment on the part of the government at the movant's expense...<sup>[10]</sup>

On June 8, 1998, the petitioner issued Resolution No. 981399 denying the respondent's motion for reconsideration.<sup>[11]</sup> It affirmed its ruling that the effectivity date of Ong's appointment should be reckoned from November 2, 1995 when it granted the authority to the respondent to fill the position, and not July 1, 1995 as asserted by the respondent. It also declared that Ong's appointment was not included in the POEA's Report on Personnel Action (ROPA) submitted to the petitioner for the month of July 1995:

POEA, as an accredited agency is mandated by CSC rules to submit within fifteen (15) days of each ensuing month to the Civil Service Regional office of Field Office concerned two copies of Monthly Report on Personnel Action, together with certified true copy of appointments acted upon (Item, 2.2.7, Rule V, CSC Memorandum Circular No. 27, s. 1994). In the instant case, POEA failed to comply with this rule when it did not include the appointment of Ong in its July ROPA.<sup>[12]</sup>

The petitioner also held that the POEA only submitted Ong's appointment in its ROPA for the month of November 1995. Such belated report rendered the appointment in July ineffective.<sup>[13]</sup> The petitioner concluded that there was clearly no legal basis for the payment of Ong's salary prior to November 2, 1995, and that the principle of *quantum meruit* invoked by the respondent was not applicable.

The respondent moved for a clarification of CSC Resolution No. 981399, pointing out that the petitioner did not rule on the matter of POEA's alleged violation of the Attrition Law, particularly on the failure to secure "prior authority to fill." The respondent asserted that the POEA's alleged failure to include the proposed appointment of Ong in its July 1995 ROPA was justified because Ong's appointment was still the subject of a request for exemption from the requirement of Memorandum Circular (MC) No. 38, s. 1993. The respondent received CSC Resolution No. 956978 approving Ong's appointment under a coterminous temporary status only on November 5, 1995; hence, the appointment was included only in the November ROPA. The respondent pointed out that the task and duty of preparing and submitting the monthly ROPA lies with the officials of the Personnel Department of the POEA. Finally, the respondent averred, if there was, indeed, a failure to comply with the CSC Circular No. 27, Series of 1994, it would be quite unfair and unjust for the petitioner to order the respondent to pay the salary of Ong out of his (the respondent's) personal funds.

The petitioner denied the motion of the respondent in Resolution No. 991839 dated August 17, 1999. It held that the respondent as the appointing authority, was accountable for all the appointments he issued; he cannot, thus, hide behind the mistakes of his subordinates. The petitioner also reiterated its ruling that the

appointment of Ong was made in violation of the CSC Law and its rules. As such, the respondent must assume responsibility for the payment of Ong's salary. Thus:

WHEREFORE, the CSC Resolution No. 981399 dated June 8, 1998 is hereby clarified. Accordingly, the payment of salaries, benefits and other emoluments from July 1, 1995 to October 30, 1995 of Priscilla Ong, whose appointment was in violation of R.A. 7430 (Attrition Law), shall be the personal liability of then Administrator Felicisimo O. Joson.<sup>[14]</sup>

The respondent filed a motion for reconsideration of the resolution. The petitioner treated the pleading as a second motion for reconsideration, and denied the same in Resolution No. 001956 dated August 30, 2000, in this wise:

WHEREFORE, the second Motion for Reconsideration of Felicisimo O. Joson, Jr. is hereby DENIED. Accordingly, the CSC Resolution No. 974094 dated October 16, 1997 stands.<sup>[15]</sup>

The petitioner filed another motion seeking for the reconsideration of the CSC Resolution No. 991839 pointing out that Ong may be considered a de facto public officer who is entitled to the payment of salaries for actual services rendered. The CSC outrightly denied the motion in CSC Resolution No. 002778 dated December 13, 2000:

WHEREFORE, the instant motion for reconsideration is hereby DENIED for lack of merit. Consequently, CSC Resolution No. 991839 dated August 17, 1999 stands. This case is considered closed and terminated.<sup>[16]</sup>

Unfazed, the respondent appealed the CSC resolutions to the Court of Appeals. On August 12, 2002, the CA rendered the assailed judgment in favor of herein respondent, ruling that Ong was considered a de facto officer and is entitled to the payment of her salary. The dispositive portion of the decision reads as follows:

WHEREFORE, in view of the foregoing, the instant petition for review is hereby GRANTED. Resolution No. 002778 dated 13 December 2000 rendered by public respondent Civil Service Commission, denying payment of Miss Priscilla Ong's compensation from 1 July 1995 to 31 October 1995, is hereby SET ASIDE.<sup>[17]</sup>

Hence, this petition for review on certiorari raising the lone issue that:

THE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT PRISCILLA ONG IS ENTITLED TO PAYMENT OF HER SALARIES FROM THE GOVERNMENT FOR BEING A *DE FACTO* OFFICER.

The petitioner maintains that Ong cannot be entitled to the payment of salary prior to November 2, 1995 because of the following: (a) Ong did not possess the necessary qualification for the position; (b) her appointment was made in violation of the Civil Service Law and its rules; (c) there was no prior authority to appoint, in violation of Rep. Act No. 7430; and, (d) the appointment was not reported in the July ROPA, making such appointment ineffective.

We rule for the respondent.

The records show that the position of Executive Assistant IV in the POEA

Administrator's office was created with the approval of the DBM on July 1, 1995. This was pursuant to a request made by the respondent for a position in his office under a contractual status. It is quite apparent that the respondent intended the position for his confidential assistant, Priscilla Ong, whom he considered efficient and competent on the job, albeit without a college degree. The respondent was aware of the appointee's lack of qualification which is precisely the reason why he requested for an exemption from the requirements of the MC No. 38 s. 1993, particularly on the educational requirement of appointees to confidential staff positions.

On November 2, 1995, the petitioner granted the respondent's request and stated that the appointment of Ong *may be approved under a coterminous temporary status*.<sup>[18]</sup>

The task of the petitioner is to insure that the appointee has all the qualifications for the position; otherwise it disapproves the appointment.<sup>[19]</sup> In this case, the petitioner approved the appointment of Ong under a coterminous temporary status; coterminous, because the appointment shall only be during the tenure of the appointing power; and temporary, because the appointee did not meet all the requirements for the position. As such, the appointment could be recalled anytime. The petitioner took into account the fact that Ong was then enrolled in CAP College, Makati City and had 65 units credited to her leading to a four-year course in Bachelor of Science in Business Administration, and that she just needed 61 units more to complete the same.

Under Section 4, Rule V of the Omnibus Rules, Ong's appointment is in order, viz:

Except as otherwise provided herein, a person who meets all the requirements of the position including the appropriate civil service eligibility shall be appointed to a position in the first and second levels. *However, when the immediate filling of a vacancy becomes necessary, taking into account the public interest, and a person with an appropriate civil service eligibility is not actually and immediately available, a person without the appropriate civil service eligibility but who meets the other requirements of the position may be appointed. His appointment shall be temporary for a period of not more than twelve (12) months and he may be replaced at any time with one who has an appropriate civil service eligibility.*

In approving the appointment of Ong, the petitioner took into account the exigency and urgency of filling up the position of Executive Assistant, as embodied in the letter of the respondent for exemption from MC No. 38:

Our request for exemption from MC # 38 series of 1993 is anchored on the fact that I have no regular holder of an Executive Assistant, although it is included in the POEA budget. As earlier mentioned in our letter-request, as the administrationship of POEA keeps on changing, the Executive Assistant post remains attached to another employee who can not be asked to vacate the post because of the security of tenure of the incumbent at the time the Executive Assistant post was declared confidential in nature. We recognize and support the reason behind the promulgation of CSC MC # 38 series 1993. However, please consider the