

## EN BANC

[ G. R. No. 140335, December 13, 2000 ]

**THELMA P. GAMINDE, PETITIONER, VS. COMMISSION ON AUDIT  
AND/OR HON. CELSO D. GANGAN, HON. RAUL C. FLORES AND  
EMMANUEL M. DALMAN, RESPONDENTS.**

### D E C I S I O N

**PARDO, J.:**

#### The Case

The case is a special civil action of certiorari seeking to annul and set aside two "decisions" of the Commission on Audit ruling that petitioner's term of office as Commissioner, Civil Service Commission, to which she was appointed on June 11, 1993, expired on February 02, 1999, as set forth in her appointment paper.

#### The Facts

On June 11, 1993, the President of the Philippines appointed petitioner Thelma P. Gaminde, *ad interim*, Commissioner, Civil Service Commission. She assumed office on June 22, 1993, after taking an oath of office. On September 07, 1993, the Commission on Appointment, Congress of the Philippines confirmed the appointment. We quote **verbatim** her appointment paper:

"11 June 1993

"Madam:

"Pursuant to the provisions of existing laws, you are hereby appointed, *ad interim*, COMMISSIONER, CIVIL SERVICE COMMISSION, **for a term expiring February 2, 1999.**

"By virtue hereof, you may qualify and enter upon the performance of the duties of the office, furnishing this Office and the Civil Service Commission with copies of your oath of office."<sup>[1]</sup>

However, on February 24, 1998, petitioner sought clarification from the Office of the President as to the expiry date of her term of office. In reply to her request, the Chief Presidential Legal Counsel, in a letter dated April 07, 1998<sup>[2]</sup> opined that petitioner's term of office would expire on February 02, 2000, not on February 02, 1999.

Relying on said advisory opinion, petitioner remained in office after February 02, 1999. On February 04, 1999, Chairman Corazon Alma G. de Leon, wrote the Commission on Audit requesting opinion on whether or not Commissioner Thelma P. Gaminde and her co-terminous staff may be paid their salaries notwithstanding the expiration of their appointments on February 02, 1999.

On February 18, 1999, the General Counsel, Commission on Audit, issued an opinion that "the term of Commissioner Gaminde has expired on February 02, 1999 as stated in her appointment conformably with the constitutional intent."<sup>[3]</sup>

Consequently, on March 24, 1999, CSC Resident Auditor Flovitas U. Felipe issued notice of disallowance No. 99-002-101 (99), disallowing in audit the salaries and emoluments pertaining to petitioner and her co-terminous staff, effective February 02, 1999.<sup>[4]</sup>

On April 5, 1999, petitioner appealed the disallowance to the Commission on Audit *en banc*. On June 15, 1999, the Commission on Audit issued Decision No. 99-090 dismissing petitioner's appeal. The Commission on Audit affirmed the propriety of the disallowance, holding that the issue of petitioner's term of office may be properly addressed by mere reference to her appointment paper which set the expiration date on February 02, 1999, and that the Commission is bereft of power to recognize an extension of her term, not even with the implied acquiescence of the Office of the President.<sup>[5]</sup>

In time, petitioner moved for reconsideration; however, on August 17, 1999, the Commission on Audit denied the motion in Decision No. 99-129.<sup>[6]</sup>

Hence, this petition.<sup>[7]</sup>

### The Issue

The basic issue raised is whether the term of office of Atty. Thelma P. Gaminde, as Commissioner, Civil Service Commission, to which she was appointed on June 11, 1993, expired on February 02, 1999, as stated in the appointment paper, or on February 02, 2000, as claimed by her.

### The Court's Ruling

The term of office of the Chairman and members of the Civil Service Commission is prescribed in the 1987 Constitution, as follows:

"Section 1 (2). The Chairman and the Commissioners shall be appointed by the President with the consent of the Commission on Appointments for a term of seven years without reappointment. Of those first appointed, the Chairman shall hold office for seven years, a Commissioner for five

years, and another Commissioner for three years, without reappointment. Appointment to any vacancy shall be only for the unexpired term of the predecessor. In no case shall any Member be appointed or designated in a temporary or acting capacity."<sup>[8]</sup>

The 1973 Constitution introduced the first system of a regular rotation or cycle in the membership of the Civil Service Commission. The provision on the 1973 Constitution reads:

"x x x The Chairman and the Commissioners shall be appointed by the Prime Minister for a term of seven years without reappointment. Of the Commissioners first appointed, one shall hold office for seven years, another for five years, and the third for three years. Appointment to any vacancy shall be only for the unexpired portion of the term of the predecessor."<sup>[9]</sup>

Actually, this was a copy of the Constitutional prescription in the amended 1935 Constitution of a rotational system for the appointment of the Chairman and members of the Commission on Elections. The Constitutional amendment creating an independent Commission on Elections provides as follows:

"Section 1. There shall be an independent Commission on Elections composed of a Chairman and two other Members to be appointed by the President with the consent of the Commission on Appointments, who shall hold office for a term of nine years and may not be reappointed. Of the Members of the Commission first appointed, one shall hold office for nine years, another for six years, and the third for three years. The Chairman and the other Members of the Commission on Elections may be removed from office only by impeachment in the manner provided in this Constitution."<sup>[10]</sup>

In *Republic vs. Imperial*,<sup>[11]</sup> we said that "the operation of the rotational plan requires two conditions, both indispensable to its workability: (1) that the terms of the first three (3) Commissioners should *start on a common date*, and, (2) that any vacancy due to death, resignation or disability before the expiration of the term should only be filled only *for the unexpired balance of the term*."<sup>[12]</sup>

Consequently, the terms of the first Chairmen and Commissioners of the Constitutional Commissions under the 1987 Constitution must start on a common date, irrespective of the variations in the dates of appointments and qualifications of the appointees, in order that the expiration of the first terms of seven, five and three years should lead to the regular recurrence of the two-year interval between the expiration of the terms.<sup>[13]</sup>

Applying the foregoing conditions to the case at bar, we rule that the appropriate starting point of the terms of office of the first appointees to the Constitutional Commissions under the 1987 Constitution must be on February 02, 1987, the date

of the adoption of the 1987 Constitution. In case of a belated appointment or qualification, the interval between the start of the term and the actual qualification of the appointee must be counted against the latter.<sup>[14]</sup>

In the law of public officers, there is a settled distinction between "term" and "tenure." "[T]he term of an office must be distinguished from the tenure of the incumbent. The term means the time during which the officer may claim to hold office as of right, and fixes the interval after which the several incumbents shall succeed one another. The tenure represents the term during which the incumbent actually holds the office. The term of office is not affected by the hold-over. The tenure may be shorter than the term for reasons within or beyond the power of the incumbent."<sup>[15]</sup>

In concluding that February 02, 1987 is the proper starting point of the terms of office of the first appointees to the Constitutional Commissions of a staggered 7-5-3 year terms, we considered the plain language of Article IX (B), Section 1 (2), Article IX (C), Section 1 (2) and Article IX (D), Section 1 (2) of the 1987 Constitution that uniformly prescribed a seven-year term of office for Members of the Constitutional Commissions, without re-appointment, and for the first appointees terms of seven, five and three years, without re-appointment. In no case shall any Member be appointed or designated in a temporary or acting capacity. There is no need to expressly state the beginning of the term of office as this is understood to coincide with the effectivity of the Constitution upon its ratification (on February 02, 1987).

On the other hand, Article XVIII, Transitory Provisions, 1987 Constitution provides:

"SEC. 15. The incumbent Members of the Civil Service Commission, the Commission on Elections, and the Commission on Audit shall continue in office for one year after the ratification of this Constitution, unless they are sooner removed for cause or become incapacitated to discharge the duties of their office or appointed to a new term thereunder. In no case shall any Member serve longer than seven years including service before the ratification of this Constitution."<sup>[16]</sup>

What the above quoted Transitory Provisions contemplate is "tenure" not "term" of the incumbent Chairmen and Members of the Civil Service Commission, the Commission on Elections and the Commission on Audit, who "shall continue in office for one year after the ratification of this Constitution, unless they are sooner removed for cause or become incapacitated to discharge the duties of their office or appointed to a new term thereunder." The term "*unless*" imports an exception to the general rule.<sup>[17]</sup> Clearly, the transitory provisions mean that the incumbent members of the Constitutional Commissions shall continue in office for one year after the ratification of this Constitution under their existing appointments at the discretion of the appointing power, who may cut short their tenure by: (1) their removal from office for cause; (2) their becoming incapacitated to discharge the duties of their office, or (3) their appointment to a new term thereunder, all of which events may occur before the end of the one year period after the effectivity of the Constitution.

However, the transitory provisions do not affect the term of office fixed in Article IX,

providing for a seven-five-three year rotational interval for the first appointees under this Constitution.

At the time of the adoption of the 1987 Constitution, the incumbent Chairman and members of the Civil Service Commission were the following: (1) Chairperson Celerina G. Gotladera. She was initially appointed as OIC Chairman on March 19, 1986, and appointed chairman on December 24, 1986, which she assumed on March 13, 1987. (2) Atty. Cirilo G. Montejo. On June 25, 1986, President Corazon C. Aquino appointed him Commissioner, without any term. He assumed office on July 9, 1986, and served until March 31, 1987, when he filed a certificate of candidacy for the position of Congressman, 2<sup>nd</sup> District, Leyte, thereby vacating his position as Commissioner. His tenure was automatically cut-off by the filing of his certificate of candidacy. (3) Atty. Mario D. Yango. On January 22, 1985, President Ferdinand E. Marcos appointed him Commissioner for a term expiring January 25, 1990. He served until February 2, 1988, when his term ended in virtue of the transitory provisions referred to. On May 30, 1988, President Aquino re-appointed him to a new three-year term and served until May 31, 1991, exceeding his lawful term, but not exceeding the maximum of seven years, including service before the ratification of the 1987 Constitution. Under this factual milieu, it was only Commissioner Yango who was extended a new term under the 1987 Constitution. The period consumed between the start of the term on February 02, 1987, and his actual assumption on May 30, 1988, due to his belated appointment, must be counted against him.

Given the foregoing common starting point, we compute the terms of the first appointees and their successors to the Civil Service Commission under the 1987 Constitution by their respective lines, as follows:

First line : Chairman - seven-year term. February 02, 1987 to February 01, 1994. On January 30, 1988, the President nominated Ms. Patricia A. Sto. Tomas Chairman, Civil Service Commission. On March 02, 1988, the Commission on Appointments confirmed the nomination. She assumed office on March 04, 1988. Her term ended on February 02, 1994. She served as *de facto* Chairman until March 04, 1995. On March 05, 1995, the President appointed then Social Welfare Secretary Corazon Alma G. de Leon, Chairman, Civil Service Commission, to a regular seven-year term. This term must be deemed to start on February 02, 1994, immediately succeeding her predecessor, whose term started on the common date of the terms of office of the first appointees under the 1987 Constitution. She assumed office on March 22, 1995, for a term expiring February 02, 2001.

This is shown in her appointment paper, quoted verbatim as follows:

"March 5, 1995

"Madam:

"Pursuant to the provisions of Article VII, Section 16, paragraph 2, of the Constitution, you are hereby appointed, *ad interim*, CHAIRMAN, CIVIL SERVICE COMMISSION, for a term expiring February 2, 2001.

"By virtue hereof, you may qualify and enter upon the performance of the