

EN BANC

[G.R. No. 135864, November 24, 1999]

AUGUSTO TOLEDO, PETITIONER, VS. COMMISSION ON ELECTIONS, RESURRECCION Z. BORRA IN HIS CAPACITY AS EXECUTIVE DIRECTOR, COMMISSION ON ELECTIONS AND CIVIL SERVICE COMMISSION, RESPONDENTS.

DECISION

PURISIMA, J.:

Before the Court is a petition for certiorari and prohibition under Rule 65 of the Revised Rules of Court assailing as tainted with grave abuse of discretion amounting to lack of or excess jurisdiction Resolution No. 98-2768 issued on October 6, 1998 by respondent Commission on Elections, limiting the "extended service" of petitioner Augusto Toledo as Director IV, Education and Information Department of COMELEC to October 31, 1998.

The antecedent facts that matter are as follows:

On May 21, 1986, Atty. Augusto Toledo, the herein petitioner, was appointed Manager of the Education and Information Department by the then Chairman of the Commission on Elections, Ramon Felipe, Jr., and assumed office, as such, on June 16, 1986. At the time of his appointment, the petitioner was 59 years old.

On January 29, 1989, the Commission on Elections revoked his appointment and declared the same null and void for having been issued in violation of Civil Service Commission (CSC) Memorandum Circular No. 5, Series of 1990, which prohibits the appointment of persons, who are 57 years old or older in the government service, without the prior approval of the Civil Service Commission.

On appeal, the Civil Service Commission upheld the said Resolution of the COMELEC. Upon denial of his motion for reconsideration, petitioner elevated the matter to this Court via a petition for certiorari dated May 7, 1990, docketed as G.R. No. 92646-47.

On October 4, 1991, this Court granted the petition, upheld the validity of petitioner's appointment, and ordered the respondent COMELEC to reinstate petitioner to his position.^[1]

On April 7, 1992, petitioner was reinstated to his former position. However, on the following day, April 8, 1992, he was designated Acting Provincial Election Supervisor of Basilan. Because the said position was four salary grades lower than his original position, petitioner refused the designation. Instead, on June 16, 1992 petitioner presented a motion to cite the COMELEC in contempt for its failure to comply with the October 4, 1991 decision of the Court. The said motion was initially denied,

prompting petitioner to move for reconsideration.

During the pendency of his motion for reconsideration, petitioner reached the retireable age of sixty-five years. However, the COMELEC, per Minute Resolution No. 92-3198 of December 8, 1992, resolved to allow petitioner Toledo to continue in the service to complete his fifteen years of service subject to the outcome of the administrative case to be filed against him.^[2] This was confirmed in the Memorandum issued by COMELEC Personnel Director Zenaida S. Soriano on December 17, 1992.^[3]

On August 3, 1993, petitioner's motion for reconsideration was granted and respondent COMELEC was ordered to comply with the October 4, 1991 decision of this Court.

On August 26, 1993, under its Minute Resolution No. 93-2052,^[4] COMELEC reinstated petitioner as Director IV of the Education and Information Department. Shortly after his reinstatement, he was detailed as Acting Director IV of the Election and Barangay Affairs Department, notwithstanding the fact that he was already sixty five years old.

In 1995, petitioner Toledo went on a prolonged leave of absence, for which reason, he was given an "unsatisfactory" performance rating duly concurred in by then Chairman Christian Monsod. However, upon the assumption of Chairman Bernardo Pardo, the said rating was changed to "satisfactory".

On May 31, 1995, this Court, in the case of Rabor vs. Civil Service Commission,^[5] upheld the validity of Civil Service Memorandum Circular No. 27, Series of 1990, which provides that the extension of service of compulsory retirees to complete the fifteen year service requirement for retirement shall be granted for a period not exceeding one year.

Thus, on July 13, 1995, Chairman Pardo issued a Memorandum^[6] to Atty. Zenaida Soriano (Director, Personnel Department), Atty. Ernesto Herrera (Director, Finance Department), Atty. Jose Balbuena (Director, Law Department) and Atty. Resurreccion Borra (Executive Director), informing them that the COMELEC has not extended the services of petitioner Toledo beyond age sixty five, and requiring petitioner Toledo to show cause why his services should be extended.

At the same time, COMELEC sought a ruling from the Civil Service Commission on the validity of the extension of service petitioner Toledo in light of the ruling of this Court in the case of Rabor.

On June 27, 1997, the Civil Service Commission replied to COMELEC's query and issued Resolution No. 97-3167, ruling that the case of Rabor was not applicable because at the time petitioner's service was extended, the Cena ruling was in effect; and disposing thus:

"WHEREFORE, the Commission rules that the extension of service of Augusto V. Toledo beyond his 65th birthday is at the discretion of the Chairman of the Commission on Elections."

Again, COMELEC sought a clarification of the aforesaid Resolution and in response, the Civil Service Commission in its Resolution No. 981075, dated May 15, 1998, resolved that "since the extension of services of Toledo was at the discretion of the COMELEC, it is also within the prerogative of COMELEC to decide whether or not it will now limit the period of such extension."

Petitioner's performance rating for the two semesters of 1997 was "unsatisfactory". Likewise for the first semester of 1998, Chairman Pardo gave petitioner an "unsatisfactory" rating.

On October 6, 1998, respondent COMELEC issued the assailed Resolution, Resolution No. 98-2768 which provides thus:

"Considering the circumstances of the extension of the service of Atty. Toledo beyond his 65th birthday and considering further his unsatisfactory performance rating for more than two semesters, sufficient in itself to terminate his services, and considering, finally, that he is more than seventy one (71) years old now, in the interest of the service and in line with the CSC Resolution No. 981075, dated May 15, 1998, the Commission exercising its authority to extend or limit the extension of service, **RESOLVED to limit the extended service of Atty. Toledo to October 31, 1998.**"

Petitioner Toledo thus filed the instant petition ascribing grave abuse of discretion amounting to lack of or excess jurisdiction to respondent COMELEC in issuing the aforementioned Resolution and posing as lone issue:

Whether the Commission on Elections and Civil Service Commission erred in limiting the extended service of the petitioner?

To buttress his position, petitioner Toledo invokes Section 11 of Presidential Decree 1146, otherwise known as the Government Service Insurance System (GSIS) Act of 1977 and the cases of *Cena vs. Civil Service Commission*,^[7] and *Gobantes vs. Civil Service Commission*^[8]. It is theorized that P.D. 1146 & the cases of *Cena* & *Gobantes* enjoin the government agency concerned to extend, if it favorably exercises its discretion to do so, the service of the employee to a period of not less than that which is required to complete 15 years of service in order to qualify him for retirement with full benefits, otherwise the beneficial intendment of P.D. 1146 as affirmed in *Cena* and *Gobantes* would be rendered nugatory.

Petitioner argues that the Administrative Code of 1997 and the ruling of this Court in the case of *Rabor vs. Civil Service Commission*,^[9] are of no moment because the Code was enacted in 1997 and *Rabor* was decided in 1995 or after *Cena* and *Gobantes* which was the doctrine in effect at the time when the respondent COMELEC allowed petitioner to continue in the service to complete 15 years, citing Civil Service Commission Resolution No. 97- 3167:

"The ruling of the Supreme Court in the case of *Dionisio Rabor vs. Civil Service Commission*, 244 SCRA 614 (May 31, 1995) which overturned the *Cena* ruling could not yet be applied to the instant case because it is of later application. At the time Toledo's service was extended, the *Cena* ruling was in effect. xxx"