

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
FIRST DIVISION**

**MA. ERLY P. ERASMO,
*Petitioner,***

-versus-

**G.R. No. 139251
August 29, 2002**

**HOME INSURANCE & GUARANTY
CORPORATION,**

Respondent.

X-----X

DECISION

AUSTRIA-MARTINEZ, J.:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court contesting the Decision of the Court of Appeals dated June 30, 1999 in CA-G.R. SP No. 47037 which affirmed the decision of the Civil Service Commission dismissing the appeal of petitioner Ma. Erly P. Erasmo and denying her request for reinstatement, payment of back wages and other benefits.^[1]

Petitioner started working with respondent Home Insurance & Guaranty Corporation (HIGC) in 1982 as a consultant on the Project Evaluation Department,^[2] and held various positions therein, including Manager of Project Evaluation Department (April 1, 1982 to December 31, 1985),^[3] Manager of Accounts Management (January 1,

1986 to April 1987),^[4] Assistant Vice-President of Accounts Management (May 1987 to July 1988),^[5] Manager II of Guaranty and Credit Insurance Department (August 1988 to March 15, 1992),^[6] and Officer-in-Charge of Technical Service/Guaranty and Credit Insurance Group (TS/GCIG) (March 16 to June 14, 1992),^[7] until finally, she was promoted to Vice-President of TS/GCIG on June 15, 1992.^[8] The nature of her appointment was “promotion” and her employment status was “temporary,” since the position is a Career Executive Service Office (CESO) and petitioner lacks the required CES eligibility.^[9]

On February 24, 1993 petitioner was administratively charged with: (1) neglect of duty, (2) incompetence in the performance of official duties, (3) conduct prejudicial to the best interest of the service, and (4) directly or indirectly having financial and material interest in any transaction requiring the approval of her office.^[10]

In the meantime, petitioner appealed the status of her temporary appointment to the Civil Service Commission (CSC), which on March 12, 1993, issued Resolution No. 93-990, holding that a CES eligibility is required to a CES position, and even if one possesses such eligibility, still the appointment cannot be considered permanent unless an appointment to the rank has been granted by the President of the Philippines.^[11]

On June 10, 1993, respondent, through its President, Fernando M. Miranda, Jr., wrote petitioner, informing her that “by operation of law, your appointment shall be deemed terminated and shall automatically cease to have further force and effect at the close of office hours on the expiration of your appointment.” She was also advised that the pendency of the administrative case against her precludes any renewal of her appointment.^[12]

Petitioner, through counsel, then sought the opinion of the Executive Director of the Career Executive Service Board who, on August 31, 1993, replied that a temporary appointment to a CES position can be revoked at any time by the appointing authority, without waiting for a specific period to lapse; that the filing of an administrative case does not automatically revoke the appointment nor does it affect the validity of the temporary appointment; and that for the termination

to be effective, there must be a categorical and/or positive act of termination of service.^[13]

Encouraged by said opinion, petitioner wrote respondent seeking reinstatement to her previous position with back wages, but her request was denied. She was also informed that the position that she vacated has already been filled up and approved by the CSC on a permanent basis.^[14]

When the investigating committee of the HIGC recommended the dismissal of the charges against petitioner on June 29, 1995,^[15] the latter again wrote respondent asking that she be allowed to continue to discharge her duties and responsibilities as VP for TS/GCIG, alleging that respondent furnished her with a copy of the report of the investigation committee only eight (8) months thereafter. Again, respondent denied her demands.^[16]

One (1) year after, petitioner wrote the Chairperson of the CSC, appealing her case.^[17] The CSC dismissed her appeal on February 3, 1998 per Resolution No. 980182. According to the CSC: (1) petitioner is not protected by the security of tenure clause under the Constitution because she was holding her position of Vice-President under a temporary status; (2) her appeal was filed beyond the 15-day reglementary period; and (3) the appointing authority cannot generally be compelled to issue an appointment.^[18]

On petition for review, the Court of Appeals affirmed the CSC's resolution and dismissed the petition for lack of merit.^[19]

Petitioner now comes before this Court alleging the following errors committed by the appellate court:

“I

“THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT A PERMANENT CIVIL SERVICE EMPLOYEE, LIKE THE PETITIONER WHO WORKED WITH RESPONDENT HIGC CONTINUOUSLY FOR TWELVE (12) YEARS HOLDING VARIOUS MANAGERIAL POSITIONS AND WHO ACCEPTED A PROMOTIONAL APPOINTMENT AS HIGC'S VICE

PRESIDENT OF TS/GCIG SUBJECT TO HER COMPLIANCE OF CIVIL SERVICE ELIGIBILITY WHICH PETITIONER DULY COMPLIED WITH, IS STILL TERMINABLE AT THE PLEASURE AND DISCRETION OF THE APPOINTING POWER.

“II

“THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THE APPROVAL OF THE PERMANENT APPOINTMENT OF PETITIONER’S SUCCESSOR TO THE POSITION OF VICE PRESIDENT OF RESPONDENT’S TS/GCIG AS PER BOARD RESOLUTION NO. 55-1993 RATIFIED PETITIONER’S SEPARATION FROM THE HIGC.

“III

“THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT THE DOCTRINE ENUNCIATED IN THE CASE OF ‘ACHACOSO VS. MACARAIG,’ 195 SCRA 235 (MARCH 13, 1991) APPLIES TO PETITIONER.

“IV

“THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT PETITIONER IS NOT ENTITLED TO BE REVERTED TO THE POSITION SHE WAS OCCUPYING PRIOR TO HER APPOINTMENT AS VICE PRESIDENT FOR TS/GCIG ON THE GROUND THAT HIGC HAS EXERCISED ITS PREROGATIVE IN RESPECT OF PETITIONER’S TENURE BY NOT RENEWING HER TEMPORARY APPOINTMENT, AND HER CONTINUANCE IN HIGC SERVICE, BY NOT REAPPOINTING HER TO HER FORMER POSITION.

“V

“THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER’S APPEAL IN THE CIVIL SERVICE COMMISSION WAS FILED BEYOND THE REGLEMENTARY PERIOD.”^[20]

The principal issue to be resolved in this case is whether or not petitioner is entitled to be reinstated to the position of Vice-President of TS/GCIG of respondent HIGC.

We answer in the negative.

The facts of this case indubitably show that petitioner's promotional appointment as Vice-President of TS/GCIG is merely temporary in nature. Her appointment papers dated June 11, 1992 clearly indicate it.^[21] This is because petitioner does not possess a career executive service eligibility which is necessary for the position of Vice-President of TS/GCIG, it being a career service executive office. Her new appointment, being temporary in character, was terminable at the pleasure of the appointing power with or without a cause,^[22] and petitioner does not enjoy security of tenure.

In the recent case of *Matibag vs. Benipayo*, we reiterated the long standing ruling that a person who is issued a temporary appointment does not enjoy security of tenure, thus:

“As respondent does not have the rank appropriate for the position of Chief Public Attorney, her appointment to that position cannot be considered permanent, and she can claim no security of tenure in respect of that position. As held in *Achacoso vs. Macaraig*:

‘It is settled that a permanent appointment can be issued only “to a person who meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed.” *Achacoso* did not. At best, therefore, his appointment could be regarded only as temporary. And being so, it could be withdrawn at will by the appointing authority and “at a moment's notice,” conformably to established jurisprudence.’

‘The mere fact that a position belongs to the Career Service does not automatically confer security of tenure on its occupant even if he does not possess the required qualifications. Such right will have to depend on the

nature of his appointment, which in turn depends on his eligibility or lack of it. A person who does not have the requisite qualifications for the position cannot be appointed to it in the first place, or as an exception to the rule, may be appointed to it merely in an acting capacity in the absence of appropriate eligibles. The appointment extended to him cannot be regarded as permanent even if it may be so designated.”^[23]

Petitioner maintains that we apply the ruling in *Palmera vs. Civil Service Commission*, 235 SCRA 87 [1994], instead of *Achacoso vs. Macaraig*, 195 SCRA 235 [1991].^[24] This, however, is not possible.

The *Achacoso* case, penned by Justice Isagani Cruz in 1991, laid down the jurisprudential basis in cases involving security of tenure in career executive service positions.^[25] Simply put, it was ruled therein that a CES eligibility is required for a CES position, such that an appointment of one who does not possess such eligibility shall be temporary and may be withdrawn at will by the appointing authority and “at a moment’s notice.”^[26] Thus, it was concluded that *Achacoso*, not being CES eligible, was merely holding a temporary appointment, and may be validly removed. His separation is termed as expiration of term.

On the other hand, in the *Palmera* case, likewise penned by Justice Isagani Cruz, this time in 1994, it was inferred from the circumstances of the case that *Palmera*, who accepted a contractual appointment, had no intention of abandoning his permanent position and security of tenure. Having worked in the government for 34 years, it was held that by signing the contract, *Palmera* couldn’t be reasonably supposed to have knowingly relinquished his permanent post and all its concomitant rights and benefits. Also, the petitioner was already getting on in years and could not afford to face an uncertain future without a regular and steady income. More importantly, *Palmera* was led to believe that the contract he signed was merely a subterfuge to provide legal basis for the payment of his salary for the period of January 1 to December 31, 1987, and he was not informed of the real objective of the contract. It was also ruled that the contract was void and cannot be the basis for the claim that *Palmera* abandoned his post.^[27]

The foregoing circumstances are not present in petitioner's case. For one, it cannot be deduced that she did not understand the implications of her promotional, albeit temporary, appointment. In the first place, she was under no obligation to accept such promotion, for there is no law that compels an employee to accept a promotion, as a promotion is in the nature of a gift or reward, which a person has a right to refuse.^[28] And although she was formerly holding a permanent appointment, she accepted such temporary appointment. Having done so, petitioner had abandoned or given up her former position. When she accepted the temporary appointment, in effect, she abandoned her right to security of tenure as we have ruled in *Romualdez vs. Civil Service Commission*, to wit:

“This is not a case of removal from office. Indeed, when he accepted this temporary appointment he was thereby effectively divested of security of tenure. A temporary appointment does not give the appointee any definite tenure of office but makes it dependent upon the pleasure of the appointing power. Thus, the matter of converting such a temporary appointment to a permanent one is addressed to the sound discretion of the appointing authority. Respondent CSC cannot direct the appointing authority to make such an appointment if it is not so disposed.”^[29]

For another, the crucial fact remains — petitioner does not possess the required CES eligibility to qualify her for the position. While the law allows in exceptional cases the appointment of a non-CES eligible provided that the appointee subsequently passes the CES Examinations,^[30] petitioner is yet to completely pass and attain her CES eligibility. Clearly therefore, the *Palmera* case is not applicable, and respondent cannot be compelled to reinstate petitioner.

On the matter of whether or not petitioner may be reverted to her position previous to her appointment as VP for TS/GCIG, again, we must answer in the negative. Suffice it to say that the power of appointment is essentially discretionary and cannot be controlled, not even by the Court, as long as it is exercised properly by the appointing authority.^[31]

Finally, petitioner insists that she timely brought her case to the Civil Service Commission. According to her, her letter to the CSC was not an “appeal” but a petition seeking to implement the decision of the investigating committee. But whether her letter to the CSC was an appeal or a petition, the CSC nevertheless entertained and decided on her petition or appeal which decision we find to be without any reversible error.

WHEREFORE, the Petition for Review on *Certiorari* is hereby **DENIED** for lack of merit.

SO ORDERED.

Davide, Jr., C.J., Vitug, and Ynares-Santiago, JJ., concur.

[1] Rollo, pp. 45-51.

[2] *Id.*, p. 5.

[3] *Ibid.*

[4] *Ibid.*

[5] *Ibid.*

[6] *Ibid.*

[7] *Ibid.*

[8] *Ibid.*

[9] *Id.*, pp. 52-53.

[10] *Id.*, p. 6.

[11] *Id.*, p. 179.

[12] *Id.*, p. 57.

[13] *Id.*, p. 65.

[14] *Id.*, pp. 71-72.

[15] *Id.*, pp. 73-86.

[16] *Id.*, pp. 89-91.

[17] *Id.*, pp. 92-93.

[18] *Id.*, pp. 96-99.

[19] *Supra.*, Note No. 1.

[20] Rollo, pp. 11-12.

[21] *Supra.*, Note No. 9.

[22] *Ibid.*

[23] G.R. No. 149036, April 2, 2002, citing *Cuevas vs. Bacal*, 347 SCRA 338 (2000).

[24] Rollo, p. 17.

[25] *Dimayuga vs. Benedicto*, G.R. No. 144153. January 16, 2002.

[26] *Achacoso vs. Macaraig*, 195 SCRA 235, 239-240 [1991].

- [27] *Palmera vs. Civil Service Commission*, 235 SCRA 87, 92-93 [1994].
- [28] *Pabu-aya vs. Court of Appeals*, G.R. No. 128082. April 18, 2001, citing *Dosch vs. National Labor Relations Commission*, 123 SCRA 296, 312 (1983).
- [29] 197 SCRA 168, 171 [1991].
- [30] *Cuevas vs. Bacal*, *supra*.
- [31] *Salvador vs. De Guzman, Jr.*, 249 SCRA 126, 135 [1995].

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