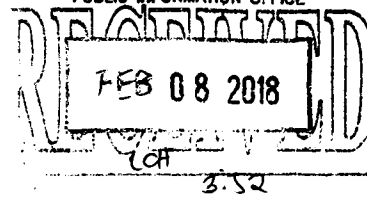




Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE



FIRST DIVISION

CAREER EXECUTIVE SERVICE G.R. No. 196890

BOARD, represented by
CHAIRPERSON BERNARDO P.
ABESAMIS, EXECUTIVE
DIRECTOR MA. ANTHONETTE
VELASCO-ALLONES, and
DEPUTY EXECUTIVE
DIRECTOR ARTURO M.
LACHICA,

Present:
 SERENO, C.J.,
Chairperson,
 LEONARDO-DE CASTRO,
 PERALTA,*
 DEL CASTILLO, and
 TIJAM, JJ.

Petitioners,

- versus -

CIVIL SERVICE COMMISSION,
 represented by **CHAIRMAN**
FRANCISCO T. DUQUE III and
BLESILDA V. LODEVICO,

Respondents.

Promulgated:

JAN 11 2018

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DECISION

TIJAM, J.:

Before Us is a petition¹ for *certiorari* and prohibition under Rule 65, seeking to declare null and void the Decision dated January 31, 2011 of the Civil Service Commission (CSC) in CSC Decision² No. 11-0047, which declared null and void the Memorandum issued by Chairman Bernardo

* Designated additional Member per Raffle dated November 20, 2017 *vice* Associated Justice Francis H. Jardeleza.

¹ *Rollo*, pp. 6-41.

² Penned by Commissioner Mary Ann Z. Fernandez-Mendoza, concurred in by Chairman Francisco T. Duque III and Commissioner Cesar D. Buenaflor; *id.* at 48-55.

Abesamis (Chairman Abesamis) of the Career Executive Service Board (CESB).

The Facts

Private respondent Blesilda Lodevico (Lodevico) was appointed by then President Gloria Macapagal-Arroyo on May 14, 2008 as Director III, Recruitment and Career Development Service, CESB.³ Lodevico possesses a Career Service Executive Eligibility since November 29, 2001, as evidenced by the Certificate of Eligibility issued by the CSC.⁴

On June 30, 2010, the Office of the President (OP) issued Memorandum Circular No. 1 (MC 1), which declared all non-Career Executive Service positions vacant as of June 30, 2010 and extended the services of contractual employees whose contracts expire on June 30, 2010.⁵

On July 16, 2010, the OP promulgated the Implementing Guidelines of MC 1, which states that all non-Career Executive Service Officers (non-CESO) in all agencies of the Executive Branch shall remain in office and continue to perform their duties until July 31, 2010 or until their resignations have been accepted and/or their replacements have been appointed or designated, whichever comes first.⁶

Acting pursuant to MC 1 and its implementing guidelines, Chairman Abesamis of the CESB issued a Memorandum⁷ which informed Lodevico that she shall only remain in office and continue to perform her duties and responsibilities until July 31, 2010.⁸

Meanwhile, Memorandum Circular No. 2 (MC 2), which extended the term stated under MC 1 to October 31, 2010, was issued on July 29, 2010. The same circular provides that all non-CESO occupying Career Executive Service (CES) positions in all agencies of the Executive Branch shall remain in office and continue to perform their duties and discharge their responsibilities until October 31, 2010 or until their resignations have been accepted and/or until their respective replacements have been appointed or designated, whichever comes first, unless they are re-appointed in the meantime. However, any official whose service has been terminated or whose resignation has been accepted on/or before July 31, 2010, but whose replacement has not yet been appointed or designated shall be deemed separated from service as of the date of termination or acceptance of resignation.⁹

³ Id. at 68.

⁴ Id. at 52.

⁵ Id. at 12-13, 52.

⁶ Id. at 13.

⁷ Id. at 70.

⁸ Id. at 52.

⁹ Id. at 14-15.

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Lodevico filed her appeal on the Memorandum issued by Chairperson Abesamis before the CSC.

On September 21, 2010, CESB received a Notice from CSC, requiring it to file a comment.¹⁰ On October 1, 2010, CESB filed its Comment,¹¹ assailing the jurisdiction of CSC to hear and decide the appeal.

On January 31, 2011, the CSC rendered the assailed Decision¹² which granted the appeal of Lodevico and declared null and void the termination of her services. The CSC ruled that CESB Chairman Abesamis has no power to terminate the services of Lodevico. As the latter was a presidential appointee, only the President has the authority to do so. Hence, the Memorandum issued by Chairman Abesamis is null and void. Also, the CSC pointed out that the services of a non-CESO occupying CES position in all agencies of the Executive Branch have been extended until October 31, 2010 pursuant to MC 2. The dispositive portion reads:

WHEREFORE, the appeal of [Lodevico], Director III, [CESB] is **GRANTED**. The Memorandum dated July 29, 2010 of CESB [Chairman Abesamis], informing Lodevico that, pursuant to the provisions of [MC 1] and its Implementing Guidelines, and after a consensus arrived at by the members of the CES Governing Board in consultation with the CESB Executive Director, her service as CESB Director III is terminated effective July 31, 2010 is hereby declared **NULL and VOID**. Accordingly, Lodevico is reinstated to her former position as Director III and shall be paid her back salaries and other benefits corresponding to the period of her illegal termination.¹³

CESB filed an Omnibus Motion for Clarification and/or Reconsideration,¹⁴ assailing the jurisdiction of CSC to issue the assailed decision.

In a Resolution¹⁵ dated April 7, 2011, the CSC denied the motion for reconsideration. The *fallo* thereof states:

WHEREFORE, the motion for reconsideration of the [CESB] is hereby **DENIED**. Accordingly, the [CSC] Decision No. 11-0047 dated January 31, 2011, **STANDS**.¹⁶

Hence, this petition.

¹⁰ Id. at 71.

¹¹ Id. at 72-91.

¹² Id. at 48-55.

¹³ Id. at 55.

¹⁴ Id. at 92-100.

¹⁵ Id. at 61-64.

¹⁶ Id. at 64.

In their Comment, Lodevico and CSC mainly argue that the latter acted within the bounds of its authority in issuing the assailed decision as it has jurisdiction over her appeal. Also, they contend that the petitioners resorted to a wrong mode of appeal. Hence, the petition should be dismissed.

Issue

Is the dismissal of Lodevico as Director III, Recruitment and Career Development Services from the CESB, proper?

Ruling of the Court

Procedurally, respondents question the impropriety of filing a petition for *certiorari* and prohibition under Rule 65 as the proper mode of appeal is *via* petition for review under Rule 43.

It is well-settled that the extraordinary remedies of *certiorari* and prohibition are resorted to only where (a) a tribunal, a board or an officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (b) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.¹⁷

In this case, it is clear that the second requirement is absent as petition for review under Section 1¹⁸ of Rule 43 is available to petitioners. However, there are exceptions to the aforementioned rule, namely: “(a) when public welfare and the advancement of public policy dictate; (b) when the broader interests of justice so require; (c) when the writs issued are null; and (d) when the questioned order amounts to an oppressive exercise of judicial authority.”¹⁹

In the case of *Leyte IV Electric Cooperative, Inc. v. Leyeco IV Employees Union-ALU*,²⁰ We relaxed the application of the rules of procedure to meet the ends of justice. In *Leyte IV*, the petitioners filed a petition for *certiorari* under Rule 65 instead of filing a petition for review

¹⁷ Sections 1 and 2, Rule 65 of the Rules of Court.

¹⁸ Section 1. Scope. — **This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions.** Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Invention Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (Emphasis ours)

¹⁹ *Leyte IV Electric Cooperative, Inc. v. LEYECO IV Employees Union-ALU*, 562 Phil. 743, 755 (2007).

²⁰ 562 Phil. 743 (2007).

under Rule 43, but We gave due course to the petition to accommodate the broader interest of justice.

In allowing the liberal application of procedural rules, We emphasized in the case of *Obut v. Court of Appeals, et al.*,²¹ that placing the administration of justice in a straightjacket, *i.e.*, following technical rules on procedure would result into a poor kind of justice. We added that a too-rigid application of the pertinent provisions of the Rules of Court will not be given premium where it would obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances of the case under consideration.²² Moreover, in the case of *CMTC International Marketing Corp. v. Bhagis International Trading Corp.*,²³ We denied the application of the technical rules to yield to substantive justice. In said case, We ruled that the rules of procedure should give way to strong considerations of substantive justice. Thus, a rigid application of the rules of procedure will not be entertained if it will obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances of the case under consideration.²⁴ Likewise, in the case of *Uy v. Chua*,²⁵ We interpreted that “[t]he Rules of Court were conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion.”²⁶

Considering the foregoing and the circumstances obtaining in this case, We allow the application of liberality of the rules of procedure to give due course to the petition filed by petitioners as the broader interest of justice so requires.

Substantively, petitioners assert that CSC has no jurisdiction to resolve the appeal of Lodevico.

Article IX-B of the 1987 Constitution charged the CSC, as the central personnel agency of the Government, with the administration of the civil service.²⁷ Book V, Title I, Subtitle A, Chapter 3, Section 12 of the Administrative Code of 1987 provides for the powers and functions of the CSC, which, among others, include its power to decide and pass upon all civil service matters. On the other hand, CESB was specifically established to serve as the governing body of the CES and mandated to promulgate rules, standards and procedures on the selection, classification,

²¹ 162 Phil. 731 (1976).

²² *Id.* at 744.

²³ 700 Phil. 575 (2012).

²⁴ *Id.* at 582, citing *Al-Amanah Islamic Investment Bank of the Phils. v. Celebrity Travel and Tours, Inc.*, 479 Phil. 1041, 1052 (2004).

²⁵ 616 Phil. 768 (2009).

²⁶ *Id.* at 785.

²⁷ 1987 CONSTITUTION, Article IX-B, Section 1(1).

compensation and career development of members of the CES.²⁸ “From its inception, the CESB was intended to be an autonomous entity, albeit administratively attached to respondent Commission.”²⁹ As an attached agency, the decisions of the CESB are expressly subject to the CSC's review on appeal.³⁰

As to petitioners' second contention, they aver that Lodevico's removal from service is justified in that her appointment as Director III, equivalent to Assistant Bureau Director, is not a permanent one. Hence, her removal from service by the CESB, following the orders of MC Nos. 1 and 2 issued by the President was valid and she was not entitled to security of tenure.

It must be noted that the President, thru the issuance of MC 1, effectively discharged all non-CESOs occupying CES positions in all agencies until July 31, 2010. MC 2 extended the term of their service until October 31, 2010. However, MC2 mentioned that those who have been terminated pursuant to the earlier Memorandum but whose replacement has not yet been appointed shall be deemed separated from service as of the date of termination.

Going into the issue, it is necessary to determine the nature of Lodevico's position.

The Civil Service Law classifies the positions in the civil service into career and non-career, to wit:

The **career service** is characterized by (1) entrance based on merit and fitness to be determined as far as practicable by competitive examinations, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure; while a **non-career position** is characterized by (1) entrance on bases other than those of the usual tests of merit and fitness utilized for the career service; and (2) tenure which is limited to a period specified by law, or which is coterminous with that of the appointing authority or subject to his pleasure, or limited to the duration of a particular project for which purpose employment was extended.³¹ (Citations omitted and emphasis ours)

There are also three levels of positions in the career service, namely: (a) the first level shall include clerical, trades, crafts and custodial service positions which involve non-professional or sub-professional work in a non-supervisory or supervisory capacity requiring less than four years of

²⁸ Article IV, Part III of the Integrated Reorganization Plan as approved by P.D. No. 1 dated September 24, 1972.

²⁹ *Eugenio v. CSC*, 312 Phil. 1145, 1155 (1995).

³⁰ *Career Executive Service Board, et.al. v. Civil Service Commission, et.al.*, G.R. No. 197762, March 7, 2017.

³¹ *Jocom v. Judge Regalado*, 278 Phil. 83, 93-94 (1991).

collegiate studies; (b) the second level shall include professional, technical, and scientific positions which involve professional, technical or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief level; and (c) **the third level shall cover positions in the Career Executive Service.**³²

Under the third level, such positions in the **Career Executive Service** are further classified into Undersecretary, Assistant Secretary, Bureau Director, **Assistant Bureau Director**, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President.³³

As to employment status and security of tenure, appointment in the career service shall be either permanent or temporary.³⁴ Lack of civil service eligibility makes an appointment a temporary one and without a fixed and definite term and dependent entirely upon the pleasure of the appointing power.³⁵ On the other hand, the acquisition of security of tenure is governed by the rules and regulations promulgated by the CESB.

Sections 2 and 3, Article I, Circular No. 2 Series of 2003 issued by the CESB provide:

Section 2. Membership in the CES. Upon inclusion of his/her name in the Roster of CES Eligibles after the conferment of CES Eligibility and compliance with the other requirements prescribed by the Board, a CES Eligible assigned to any CES position and appointed by the President to a CES Rank becomes a member of the CES.

Section 3. Original Appointment to CES Rank. Appointment to appropriate classes, based on ranks in the CES, shall be made by the President from a list of CES Eligibles recommended by the Board.

Only a CES Eligible assigned to a CES position may be appointed by the President to a CES Rank. The Entry Rank in the CES shall be CESO Rank VI regardless of the position to which a CES Eligible is assigned.

³² Administrative Code of 1987, Book V, Title I, Subtitle A, Chapter 2, Section 8.

³³ Administrative Code of 1987, Book V, Title I, Subtitle A, Chapter 2, Section 7(3).

³⁴ Administrative Code of 1987, Book V, Title I, Subtitle A, Chapter 5, Section 27:

Sec. 27. *Employment Status.* - Appointment in the career service shall be permanent or temporary.

(1) *Permanent status.* A permanent appointment shall be issued to a person who meets all the requirements for the positions to which he is being appointed, including the appropriate eligibility prescribed, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof.

(2) *Temporary appointment.* In the absence of appropriate eligibles and it becomes necessary in the public interest to fill a vacancy, a temporary appointment shall be issued to a person who meets all the requirements for the position to which he is being appointed except the appropriate civil service eligibility: *Provided*, That such temporary appointment shall not exceed twelve months, but the appointee may be replaced sooner if a qualified civil service eligible becomes available.

³⁵ *Province of Camarines Sur v. CA*, 316 Phil. 347, 351 (1995).

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In sum, for an employee to attain a permanent status in his employment, he must first be a CES eligible. Such eligibility can be acquired by passing the requisite civil service examinations and obtaining passing grade to the same.³⁶ “At present, the CES eligibility examination process has four stages, namely: (1) Written Examination; (2) Assessment Center; (3) Performance Validation; and (4) Board Interview.”³⁷ After completing and passing the examination process, said employee is entitled to conferment of a CES eligibility and the inclusion of his name in the roster of CES eligibles. Such conferment of eligibility is done by the CESB through a formal Board Resolution after an evaluation is done of the employee's performance in the four stages of the CES eligibility examinations.³⁸

Conferment of a CES eligibility does not complete one's membership in the CES nor does it confer security of tenure. It is also necessary that an individual who was conferred CES eligibility be appointed to a CES rank. Such appointment is made by the President upon the recommendation of the CESB. Only after such process will the employee's appointment in the service be considered as a permanent one, entitling him to security of tenure.³⁹

In the CES ranking structure, there are recognized six ranks – the highest rank is that of a CESO I while the lowest is that of CESO VI.⁴⁰

As clearly set forth in the foregoing provisions, two requisites must concur in order that an employee in the career executive service may attain security of tenure, to wit:

- a) CES eligibility; and
- b) Appointment to the appropriate CES rank.⁴¹

Here, Lodevico was appointed as Director III as evidenced by a Letter⁴² dated May 14, 2008. The position of Director III, equivalent to Assistant Bureau Director, is considered as a Career Executive Service position, belonging to the third-level. Lodevico met the first requisite as she is a CES eligible, evidenced by a Certificate of Eligibility.⁴³ However, the second requisite is wanting because there was no evidence which proves that Lodevico was appointed to a CES rank.

³⁶ *Home Insurance and Guaranty Corp. v. CSC*, 292-A Phil. 247, 254 (1993).

³⁷ *Señeres v. Sabido, et al.*, 772 Phil. 37, 62 (2015).

³⁸ *General v. Roco*, 403 Phil. 455, 459-460 (2001).

³⁹ *Id.* at 460.

⁴⁰ Section 1, Article I, Circular No. 2 Series of 2003 issued by the CESB.

⁴¹ *Id.*

⁴² *Rollo*, p. 68.

⁴³ *Id.* at 69.

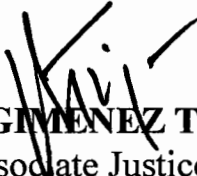
Guilty of repetition, being CES eligible alone does not qualify her appointment as a permanent one, for there is a necessity for her appointment to an appropriate CES rank to attain security of tenure.

That being said, We consider Lodevico's appointment as mere temporary. Such being the case, her services may be terminated with or without cause as she merely serves at the pleasure of the appointing authority. “[T]he temporary appointee accepts the position with the condition that he shall surrender the office when called upon to do so by the appointing authority.”⁴⁴ Consequently, her removal from service based on MC Nos. 1 and 2, which discharged all non-CESO occupying CES positions in all agencies, was proper.

Thus, petitioners are correct in stating that mere appointment of Lodevico as Director III and her CES eligibility do not automatically mean that her appointment becomes a permanent one. It is necessary that she be appointed in an appropriate CES rank to convert her temporary appointment into a permanent one.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated January 31, 2011 and Resolution dated April 7, 2011 of the Civil Service Commission in CSC Decision No. 11-0047 are **REVERSED and SET ASIDE**.


SO ORDERED.



NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

⁴⁴ *CSC v. Engr. Darangina*, 542 Phil. 635, 639 (2007).



TERESITA J. LEONARDO-DE CASTRO
Associate Justice


DIOSDADO M. PERALTA
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice