



Republic of the Philippines  
 Supreme Court  
 Manila

SECOND DIVISION

CIVIL SERVICE COMMISSION, G.R. No. 225151  
*Petitioner,*

- versus -

Present:

PERLAS-BERNABE, S.A.J.,  
*Chairperson,*  
 HERNANDO,  
 INTING,  
 DELOS SANTOS, and  
 BALTAZAR-PADILLA,\* JJ

PETER G. CUTAO,  
*Respondent.*

Promulgated:  
 30 SEP 2020

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DECISION

INTING, J.:

This resolves the Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 filed by the Civil Service Commission (CSC) against Peter G. Cutao (Cutao) assailing the Decision<sup>2</sup> dated January 27, 2016 and the Resolution<sup>3</sup> dated May 16, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 05397-MIN. In the assailed issuances, the CA reversed the CSC Resolution No. 1300213<sup>4</sup> dated January 28, 2013 that upheld the CSC Regional Office (CSCRO) No. XIII, Butuan City, recall of Cutao's appointment as: (a) Police Officer (PO) III; (b) Senior PO (SPO) I; and (c) SPO II for failure to meet the educational attainment requirement for the positions.

\* On leave.

<sup>1</sup> *Rollo*, pp. 20-32.

<sup>2</sup> *Id.* at 34-42; penned by Associate Justice Maria Filomena D. Singh with Associate Justices Edgardo A. Camello and Perpetua T. Atal-Paño, concurring.

<sup>3</sup> *Id.* at 43-46.

<sup>4</sup> *Id.* at 118-121; penned by Commissioner Mary Ann Z. Fernandez-Mendoza with Chairman Francisco T. Duque III and Commissioner Robert S. Martinez, concurring.

*The Antecedents*

Cutao started in the civil service with the Philippine National Police (PNP) as PO1. He was later on promoted to PO3,<sup>5</sup> SPO1,<sup>6</sup> and SPO2.<sup>7</sup> All of the promotions were approved by the CSC.<sup>8</sup>

As part of the documentary requirements for applying for a promotion to SPO2, Cutao accomplished and submitted his Personal Data Sheet (PDS),<sup>9</sup> indicating that he obtained a bachelor's degree in criminology from the Agusan Institute of Technology (AIT) in Butuan City in 1997. He also submitted a copy of his transcript of records from AIT which bore the following notation:

GRADUATED: From the Four Year Course in Criminology leading to the degree of BACHELOR OF SCIENCE IN CRIMINOLOGY (B.S. Crim) major in Police Administration as of October 20, 1996. **With Special Order (B)(R-X) No. 702-0094 s, 1997 dated December 14, 1997.**<sup>10</sup> (Emphasis supplied.)

Also attached to his application was a Commission on Higher Education (CHED) Certification, Authorization and Verification (CAV)<sup>11</sup> (R-X111) No. A-417, Series 2007, dated May 28, 2007 which states:

To Whom It May Concern:

THIS IS TO CERTIFY that the signature (s) appearing on the original copy (ies) of the attached Transcript of Records, Diploma and Xerox copy of Special Order of

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<sup>5</sup> *Id.* at 61-62.

<sup>6</sup> *Id.* at 63-64.

<sup>7</sup> *Id.* at 65-66.

<sup>8</sup> *Id.* at 61, 63 and 65; Cutao's promotions were approved by the CSC as follows: (a) to PO III by Priscillano E. Caday, Director II, Civil Service Commission (CSC) on March 30, 2005; (b) to SPO I by Meshach D. Dinlayan, Director II on February 23, 2009; and (c) to SPO II by Meshach D. Dinlayan, Director II on February 16, 2011.

<sup>9</sup> *Id.* at 67-70.

<sup>10</sup> See Official Transcript of Record from Agusan Institute of Technology, *id.* at 74.

<sup>11</sup> *Id.* at 77.

CUTAO, PETER G.

is/are that of The President, The Registrar, AGUSAN INSTITUTE OF TECHNOLOGY, Butuan City, Philippines.

This is to certify further that the Bachelor of Science in Criminology (B.S. Crim.) offered in the said school is duly authorized by the Government of the Republic of the Philippines.

For the Commission:

JOANNA B. CUENCA, Ph.D., CESO III  
Director IV

By:

(signed)  
ANASTACIO P. MARTINEZ, Ph.D.  
Chief Education Program Specialist<sup>12</sup>

There were other signatures on the CAV which appeared to be those of CHED officials who had verified the course, as well as the Special Order (B)(R-X) No. 702-0094 s. 1997<sup>13</sup> dated December 14, 1997, as indicated on Cutao's transcript.

In the process of reviewing the documents submitted by Cutao, the CSC Field Office (CSCFO), Agusan Del Norte, through Meshach D. Dinhayan, Director II, wrote a Letter<sup>14</sup> dated February 16, 2011 to CHED Caraga Administrative Region, through Dr. Isabela L. Mahler, Director IV, requesting the latter to verify the authenticity of Cutao's transcript and CAV.

On June 30, 2011, Dr. Julius Sol O. Jamero, Chief Administrative Officer of CHED Caraga Administrative Region, responded to the query by filling out the *pro forma* verification slip<sup>15</sup> at the lower portion of the Letter dated February 16, 2011 and returning it to the CSCFO. In the

<sup>12</sup> *Id.* Emphasis omitted.

<sup>13</sup> *Id.* at 75.

<sup>14</sup> *Id.* at 78.

<sup>15</sup> *Id.*

slip, he ticked the appropriate box to indicate that the documents sought to be verified were “not authentic,” giving the following reasons: *first*, the signatures of the CHED personnel appearing on the CAV submitted were not genuine.<sup>16</sup> *Second*, Special Order (B)(R-X) No. 702-0094 s. 1997<sup>17</sup> dated December 14, 1997 does not reflect Cutao’s name. In this regard, the CHED attached a file copy<sup>18</sup> of the same Special Order referred to in Cutao’s transcript, showing that the document was issued for purposes of approving the eligibility for graduation of one Bernardo F. Dela Cruz, and confirming that he had completed the requirements to obtain a bachelor’s degree from AIT. In other words, the document was issued in the name of another person, not Cutao.

Based on the results of the CSCFO’s verification, the CSCRO concluded that the approval of Cutao’s promotional appointments was “not in order” for lack of the requisite educational qualification at the time of appointment.<sup>19</sup> Thus, through Adams D. Torres, Director IV, the CSCRO issued Decision No. LSD-NDC-12-006<sup>20</sup> dated January 19, 2012, recalling the approval of Cutao’s promotional appointments, *viz.*:

WHEREFORE, foregoing premises considered, the approval of the promotional appointments of Mr. Peter G. Cutao, as Police Officer III (PO3), Senior Police Officer I (SPO1), and Senior Police Officer II (SPO2) are hereby RECALLED. This order is without prejudice to the filing of an administrative complaint against Mr. Cutao for the offenses of Dishonesty and/or Falsification of Public Document.<sup>21</sup>

To implement the ruling, the CSCRO wrote<sup>22</sup> Police Chief Superintendent Reynaldo Serrano Rafal, Director, PNP Regional Office No. XIII, Butuan, informing his office of the above-mentioned findings and urging him to issue an order, upon finality of the decision, reverting Cutao to his original position prior to all promotions and adjust his compensation accordingly.

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 75.

<sup>18</sup> *Id.* at 79.

<sup>19</sup> *Id.* at 80-82; penned by Director IV Adam D. Torres.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 82.

<sup>22</sup> *Id.* at 83-84.

Aggrieved, Cutao appealed the CSCRO Decision No. LSD-NDC-12-006 to the Commission Proper (CSC Proper).<sup>23</sup>

*Ruling of the CSC Proper*

In Decision No. 120653<sup>24</sup> dated October 2, 2012, the CSC Proper dismissed Cutao's appeal and upheld the invalidation of the subject promotional appointments. It explained that CSC Resolution No. 02-1288<sup>25</sup> dated October 8, 2002 lists a bachelor's degree as among the qualification requirements for the positions PO3, SPO1, and SPO2. Inasmuch as CHED already declared that the transcript and CAV submitted by Cutao were not authentic, it follows that he does not possess the requisite educational attainment for the higher positions.<sup>26</sup>

The CSC Proper gave more weight to CHED's declaration over Cutao's submissions, consisting of a certification issued by the AIT Registrar dated February 23, 2012, stating that he "had graduated from the Four-Year Course in Criminology leading to the degree of Bachelor of Science in Criminology x x x as of October 20, 1996."<sup>27</sup>

In his subsequent Motion for Reconsideration,<sup>28</sup> he insisted that he graduated and obtained his bachelor's degree in Criminology from AIT. The discrepancies in his school records are "beyond his control" and "not his fault."<sup>29</sup> The CSC Proper summarized the documents submitted by Cutao to support his claims as follows:

1. Letter dated October 22, 2012 of Maria Delia M. Labado, AIT Registrar, addressed to Police Chief Superintendent Carmelo E. Valmoria praying for understanding and requesting that AIT be given time to prove that Cutao graduated [with] the degree of Bachelor of Science in Criminology on October 1996;

2. Letter dated October 23, 2012 of Labado addressed to the Regional Director, CHED Region XIII, stating that Cutao was

<sup>23</sup> *Id.* at 36.

<sup>24</sup> *Id.* at 94-99; penned by Commissioner Mary Ann Z. Fernandez-Mendoza with Commissioner Robert S. Martinez, concurring, and Chairman Francisco T. Duque III, on official business.

<sup>25</sup> *Id.* at 97.

<sup>26</sup> *Id.* at 99.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 100-102.

<sup>29</sup> *Id.* at 100.

enrolled in 1994 up to 1997 and that they are re-applying to re-check the form of Cutao in the issuance of Special Order;

3. Letter dated June 21, 2012 issued by Labado, attested by Elison O. Tacasan and Shirely T. Lim, AIT Dean and President, respectively, addressed to the Regional Director, CHED Region XIII, certifying under oath that Cutao has fully complied with the requirements for graduation for the degree of Bachelor of Science in Criminology as of October 1996; and

4. Enrollment Forms of Cutao for the summer of 1994, first and second semester of 1994-1995, and first semester of 1996.<sup>30</sup>

However, the CSC Proper denied his motion for failure to proffer new evidence or cite errors of law that would justify a revision, modification, or reversal of its assailed ruling. It found the above-enumerated documents as inconclusive as these do not controvert the CHED declaration that his transcript and CAV are not authentic.<sup>31</sup>

Undaunted, Cutao elevated the case to the CA arguing that the CSC violated his constitutional right to due process when the CSCRO promulgated Decision No. LSD-NDC-12-006 on January 19, 2012.<sup>32</sup>

### *Ruling of the CA*

In its assailed Decision,<sup>33</sup> the CA overturned the CSC's rulings. It held as follows: *first*, the CHED-accomplished verification slip relied upon by the CSC in recalling Cutao's promotional appointments did not amount to substantial evidence—the burden of proof required in administrative cases.<sup>34</sup> *Second*, Cutao has served in the government as a member of the PNP for seven years. Thus, “he has already acquired a legal right to the office.”<sup>35</sup> The CSC, in initially approving his promotions, led him to believe that his appointments were regular in all material respects.<sup>36</sup> *Third*, Cutao was in good faith. That his documents

<sup>30</sup> *Id.* at 120.

<sup>31</sup> *Id.* at 121.

<sup>32</sup> *Id.* at 37.

<sup>33</sup> *Id.* at 34-42.

<sup>34</sup> *Id.* at 39.

<sup>35</sup> *Id.* at 39-40.

<sup>36</sup> *Id.* at 40.

turned out to be inauthentic was not his fault, but that of AIT. He relied on the TOR and CAV issued by the AIT and was led to believe that he was duly qualified to apply for those positions and, thereafter, hold and assume the responsibilities of office. As held in *Obiasca v. Basallote*,<sup>37</sup> an appointment to civil service must be upheld, despite procedural lapses, if these were beyond the civil servant's control and not of his own making.<sup>38</sup> *Fourth*, based on the foregoing, Cutao was duly qualified for the position and eventually "became a permanent[-]status civil servant."<sup>39</sup> Thus, he must be accorded due process—consisting of notice and hearing—before his appointments could be recalled,<sup>40</sup> and him removed from office.<sup>41</sup>

The CSC moved to reconsider arguing that Cutao's appointments were merely recalled. He was not dismissed from service. The present controversy is a "non-disciplinary" case. Under the circumstances, the CSC rules do not require notice and hearing, but allow the aggrieved party to appeal the case or move for reconsideration.

In denying the CSC's motion for lack of merit, the CA explained that while the CSC has power to recall appointments, it may only exercise it based on specific grounds.<sup>42</sup> Thus, the CSC bore the burden of proving that Cutao violated existing civil service laws or regulations and that fraud attended his appointments.<sup>43</sup>

Moreover, although it is a non-disciplinary case under the CSC rules, the CSC's recall without notice and hearing and after Cutao had already been occupying the positions for a total of six years "violated all norms of fair play and equity."<sup>44</sup>

Hence, the CSC filed the present petition.

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<sup>37</sup> 626 Phil. 775 (2010).

<sup>38</sup> *Rollo*, p. 41.

<sup>39</sup> *Id.* at 40.

<sup>40</sup> *Id.* at 39.

<sup>41</sup> *Id.* at 40.

<sup>42</sup> *Id.* at 44.

<sup>43</sup> *Id.* at 45.

<sup>44</sup> *Id.*

### *Issues*

The sole issue for the Court's resolution is whether the CSC may recall a previously approved appointment to civil service without prior notice and hearing.

### *The Court's Ruling*

The petition is meritorious.

It is well-settled that the CSC's authority "to take appropriate action on all appointments and other personnel actions"<sup>45</sup> includes the power "to recall an appointment initially approved, [if later on found to be] in disregard of applicable provisions of the Civil Service law and regulations."<sup>46</sup>

The recall or invalidation of an appointment does not require a full-blown, trial-type proceeding. "[I]n approving or disapproving an appointment, [the CSC] only examines the conformity of the appointment with applicable provisions of law and whether the appointee possesses all the minimum qualifications and none of the disqualifications." Thus, in contrast to administrative disciplinary actions, a recall does not require notice and hearing.<sup>47</sup>

The essence of due process is the right to be heard. Thus, a party can be accorded due process through means other than a notice or hearing. The Revised Rules on Administrative Cases in the Civil Service (Civil Service Rules)<sup>48</sup> aptly provides for a remedial procedure applicable specifically to non-disciplinary cases, such as a recall or invalidation of appointment, *viz.*:

<sup>45</sup> Title I, Subtitle A, Chapter 3, Section 12(14) of Book V of Executive Order No. 292.

<sup>46</sup> *CSC v. Tinaya* 491 Phil. 729, 739 (2005) citing *Mathay, Jr. v. CSC* 371 Phil. 17, 29 (1999). Also see *City Mayor Debulgado v. Civil Service Commission*, 307 Phil. 195 (1994).

<sup>47</sup> *City Mayor Debulgado v. Civil Service Commission*, *supra* at 213.

<sup>48</sup> Revised Uniform Rules on Administrative Cases in the Civil Service, CSC Resolution No. 1101502, [November 8, 2011].



## NON-DISCIPLINARY CASES

## RULE 16

## Invalidation or Disapproval of Appointment

SECTION 77. Invalidation or Disapproval; Who May Appeal. — Either the appointing authority or the appointee may assail the invalidation or disapproval of an appointment.

SECTION 78. Where and When to File. — Appointments invalidated or disapproved by the CSCFO may be appealed to the CSCRO while those invalidated or disapproved by the CSCRO may be appealed to the Commission within the fifteen (15)-day reglementary period.

To facilitate prompt actions on invalidated or disapproved appointments, motions for reconsideration filed with the CSCFO shall be treated as an appeal to the CSCRO and a Motion for Reconsideration at the CSCRO will be treated as an appeal to the Commission and all the records thereof including the comments of the CSCFO or CSCRO shall, within ten (10) days from receipt of the latter, be forwarded to the CSCRO or the Commission as the case may be.

The action of the CSCRO concerned may be appealed to the Commission within fifteen (15) days from receipt thereof.

The appeal filed before the CSCROs and the Commission shall comply with the requirements for the perfection of an appeal enumerated in Sections 113 and 114.

An appointment invalidated by the CSCRO, as in the present case, may be appealed to the CSC Proper. If the parties remain unsatisfied with the outcome, they may question the CSC Proper's Decision before the CA *via* Rule 43<sup>49</sup> of the Rules of Court. Later on, the CA decision may be reviewed by the Court *via* a petition for review on *certiorari* under Rule 45 of the Rules of Court.

It is not disputed that Cutao availed himself of these remedial measures. And even after obtaining a favorable decision from the CA, he was allowed to file his comment on the present petition. That he has

<sup>49</sup> See Sections 1 and 3, Rule 43 of the Rules of Court.

taken every available opportunity to ventilate his defenses and other concerns only means that he has been sufficiently accorded due process.

In any case, the Court finds the CSC's recall or invalidation of the subject promotional appointments to be justified.

To recall, Cutao submitted his TOR and CAV as part of his application for promotion to show that he obtained a college degree from AIT, a qualification standard for the SPO2 position. Upon the CSCFO's request, the CHED declared the documents as inauthentic. The lack of other documents showing his educational attainment led the CSC to conclude that Cutao did not hold the bachelor's degree required not only for the position of SPO2, but also for SPO1 and PO3.

When the CSC recalled his promotional appointments for not meeting the qualification standard,<sup>50</sup> it was merely performing its recognized duty of ensuring "that the appointee has all the qualifications for the position."<sup>51</sup> If it finds that the appointee does not "possess the appropriate eligibility or required qualification,"<sup>52</sup> it is duty-bound to disapprove his appointment.

The CSC properly relied on the CHED certification expressly declaring the subject documents as inauthentic for the following reasons: *First*, the certification is presumed to have been accomplished in the regular performance of CHED's official functions. It must be upheld

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<sup>50</sup> Title I, Subtitle A, Chapter 5, Section 22 of Book V of Executive Order No. 292 defines qualification standards as follows: (1) A qualification standard expresses the minimum requirements for a class of positions in terms of education, training and experience, civil service eligibility, physical fitness, and other qualities required for successful performance. The degree of qualifications of an officer or employee shall be determined by the appointing authority on the basis of the qualification standard for the particular position.

Qualification standards shall be used as basis for civil service examinations for positions in the career service, as guides in appointment and other personnel actions, in the adjudication of protested appointments, in determining training needs, and as aid in the inspection and audit of the agencies personnel work programs.

It shall be administered in such manner as to continually provide incentives to officers and employees towards professional growth and foster the career system in the government service.

(2) The establishment, administration and maintenance of qualification standards shall be the responsibility of the department or agency with the assistance and approval of the Civil Service Commission and in consultation with the Wage and Position Classification Office.

<sup>51</sup> *Civil Service Commission v. Josen, Jr.*, 473 Phil. 844, 853 (2004).

<sup>52</sup> *Santiago, Jr. v. Civil Service Commission*, 258-A Phil. 519, 524 (1989).

absent clear and convincing proof to the contrary.<sup>53</sup> *Second*, it was based on CHED's independent evaluation and supported by official documents. That it was embodied in a *pro forma* verification slip did not diminish its credibility and veracity. *Third*, there is nothing on the records of the case clearly establishing that Cutao obtained a bachelor's degree. Verily, Cutao presented letters<sup>54</sup> from the AIT registrar stating that he was enrolled in AIT from 1994 to 1997 and that he had complied with the requirements for graduation. To the Court's mind, if he was able to obtain the letters, he should have also been capable of simply requesting the university to issue a copy of his official transcript of records and diploma to once and for all remove any doubt clouding his educational attainment. But he did not. This only leads to the inescapable conclusion that he does not have a bachelor's degree in criminology from AIT as he claims.

Finally, that Cutao's appointments were initially approved by the CSC and that he has been in position for six years do not preclude the CSC from reviewing his appointments and disapproving them if the appointee is eventually found ineligible to occupy such office. The fundamental rule is that "appointments in the civil service shall be made only according to merit and fitness."<sup>55</sup> As his promotional appointments violated the qualification standards set for the positions of PO3, SPO1, and SPO3, these were all null and void *ab initio*.<sup>56</sup> "A void appointment cannot give rise to security of tenure on the part of the holder of such appointment"<sup>57</sup> much less ripen into a vested right to office. Thus, contrary to the CA ruling, the Court cannot allow Cutao to hold office merely on the basis of good faith or the sheer length of time spent therein. Otherwise, the Court would be condoning the entrance of unqualified individuals to government service.

**WHEREFORE**, the instant petition is **GRANTED**. The Decision dated January 27, 2016 and the Resolution dated May 16, 2016, of the Court of Appeals in CA-G.R. SP No. 05397-MIN are **REVERSED** and **SET ASIDE**. The Civil Service Commission Decision No. 120653 dated October 2, 2012 and Resolution No. 1300213 dated January 28, 2013 are **REINSTATED**.

<sup>53</sup> See *Yap v. Lagtapon*, 803 Phil. 652, 663 (2017).

<sup>54</sup> *Rollo*, p. 118.

<sup>55</sup> Article IX(B), Section 2(2), 1987 Constitution.


<sup>56</sup> See *Debulgado v. Civil Service Commission*, *supra* note 46 at 212-213. See also Section 3, Rule V of the Omnibus Implementing Rules.

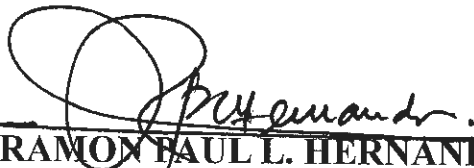
<sup>57</sup> *Id.*

**SO ORDERED.**

  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

WE CONCUR:

  
**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*

  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

  
**EDGARDO L. DELOS SANTOS**  
*Associate Justice*

(On leave)

**PRISCILLA J. BALTAZAR-PADILLA**  
*Associate Justice*

**ATTESTATION**

I attest 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.

  
**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*



**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.



**DIOSDADO M. PERALTA**  
*Chief Justice*