

CHANROBLES PUBLISHING COMPANY

**SUPREME COURT
EN BANC**

**BILLY MILLARES,
*Petitioner-Appellee,***

-versus-

**G.R. No. L-23281
August 10, 1967**

**ABELARDO SUBIDO, ET AL.,
*Respondents.***

**ABELARDO SUBIDO, in his capacity as
Acting Commissioner of Civil Service,
and JOSE ERESTAIN, in his capacity as
City Auditor of Manila,
*Respondents-Appellants.***

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DECISION

REYES, J.:

The Commissioner of Civil Service, the Treasurer and Auditor of the City of Manila, are appealing from the decision of the Court of First Instance of Manila (in its Civil Case No. 53383), declaring the order of appellant Civil Service Commissioner, terminating the services of appellee Billy Millares null and void, and ordering appellants city officials to pay Millares' salary from February 15, 1963 and thereafter, at the rate of P6,600.00 per annum.

The facts of this case are not in dispute.

Under date of September 24, 1962, Billy Millares, a lawyer employed in the office of the City Treasurer of Manila since 1946, was appointed "Technical Assistant on Fiscal Matters" in the office of the Mayor of the City of Manila, with compensation at P6,600.00 per annum, effective July 1, 1962. The appointment further carried the notation - "transfer from the office of the City Treasurer, Manila as Field Supervisor at P3,120.00 p.a." (Exh. 1).

Submitted to the Civil Service Commission, the appointment was approved by the Chief, Personnel Transactions Division, signing on behalf of the then Acting Commissioner of Civil Service (Exh. 1-A).

On February 8, 1963, Acting Commissioner of Civil Service Abelardo Subido issued an order (sent to the City Mayor of Manila for compliance) terminating the services of Billy Millares, on the grounds that although Millares has passed the bar examinations, the position of Technical Assistant on Fiscal Matters does not require the knowledge of the law profession and the latter's bar-eligibility under Republic Act 1080 is only equivalent to second grade, thus he cannot receive more than P3,720.00 per annum; that Millares has not pursued any course in economics, banking or finance; that the approval of the appointment was not complete, because it was signed by the Chief of the Personnel Transactions Division who has no authority to approve appointments or promotions involving compensation beyond P4,800.00; that the position in question should have been filled by certification from the appropriate register of eligibles; and that the transfer of Millares, from field inspector in the office of the City Treasurer at P3,120.00 per annum to that of Technical Assistant on Fiscal Matters, office of the City Mayor, at P6,600.00 per annum, was irregular (Exh. D).

Following the directive of the Commissioner of Civil Service, further payment of the salary of Millares was discontinued by the City Treasurer.

On March 14, 1963, and after the Civil Service Commissioner had refused to revoke his order, Millares filed an action for mandamus

against herein appellants in the Court of First Instance of Manila (Civ. Case No. 53383), asserting that the Civil Service Commissioner had no authority to terminate his services there having been no administrative charges filed against him, and that the withholding of his salaries by the City Treasurer and the City Auditor was made in violation of Section 4, Article XII of the Constitution and Section 32 of Republic Act 2260.

For his part, respondent Civil Service Commissioner contended that the action complained of was within the general powers conferred on him “to enforce, execute and carry out the constitutional and statutory provisions on the merit system” (Sec. 1, Art. XII, Constitution; Sec. 16-b, Rep. Act 2260), and “to have exclusive jurisdiction over the approval under the Civil Service law and rules of all appointments including promotions to positions in the competitive service.” (Sec. 16-h, Rep. Act 2260) Respondents City officials alleged that the withholding of the salaries of petitioner was made in obedience to the order of the Commissioner of Civil Service.

After due hearing, decision was rendered for the petitioner, the court holding that, as two of the four duties assigned to him involve knowledge of the law profession, petitioner may be considered a first-grader; that having been employed in the office of the City Treasurer of Manila for 16 years, he must have received practical training in finance and economics; that although the appointment stated that it was a transfer from the position of field inspector in the office of the City Treasurer with compensation at P3,120.00 per annum, it was evidently both a transfer and promotion and, consequently, not governed by the rule on transfers; that the list of eligibles does not include technical assistant on fiscal matters; that there is no proof that the approval of petitioner’s appointment by the Chief of the Personnel Transactions Division of the Civil Service Commission was ultra vires act; and that the summary termination of petitioner’s services without observance of due process makes his removal illegal. The trial judge, therefore, rendered judgment as stated at the beginning of this opinion.

Herein appellants raise several legal issues which can be re-stated as follows: (1) whether or not petitioner is qualified to occupy the position of Technical Assistant on Fiscal Matters in the office of the

City Mayor of Manila; (2) whether or not the appointment of petitioner-appellee was made in pursuance of the Civil Service rules on certification and transfer; (3) whether or not there was valid approval of appellee's appointment by the Civil Service Commission; (4) whether or not the Civil Service Commissioner has authority to order the revocation or cancellation of appointments already approved; (5) whether or not appellant Commissioner of Civil Service has authority to order the termination of the services of appellee; and (6) whether or not the institution of the present court proceeding was proper.

1. The first issue calls for the resolution of other questions, namely, whether or not the position of "Technical Assistant on Fiscal Matters" involves "professional knowledge of law" and, whether or not to qualify for appointment to that position, it is necessary for petitioner to have taken subjects in economics and finance.

Section 1 of Republic Act 1080, as amended by Republic Act 1844, reads:

"SECTION 1. The bar examinations and the examinations given by the various boards of examiners of the Government are declared as civil service examinations, and shall, for purposes of appointment to positions in the classified service the duties of which involve knowledge of the respective professions except positions requiring highly specialized knowledge not covered by the ordinary board examinations, be considered as equivalent to the first grade regular examination given by the Bureau of Civil Service if the profession requires at least four years of study in college, and as equivalent to the second grade regular examination if the profession requires less than four years of college study: Provided, however, That such bar or board examination shall be equivalent to the next lower grade of civil service examination when the person is to be employed in a position other than one requiring his professional knowledge:" (Emphasis supplied.)

In connection with the position involved in this case, the Mayor of Manila issued a certification, dated October 8, 1962, that petitioner was assigned the following duties:

1. Study and check ways and means of increasing collection of revenues for the City of Manila;
2. To handle and investigate cases pertaining to City Finances and make reports of his findings to the Mayor;
3. Study and propose ordinances pertaining to revenue measures affecting the City Government; and
4. To assist in general the Mayor on other matters pertaining to the City Finance. (Exh. B).

Explaining the nature and scope of the foregoing duties, petitioner testified:

“A. In connection with my duty, that is, to study and check ways and means of increasing collection of revenue for the City of Manila, I know of pending tax cases with the Office of the City Treasurer and Office of the License Division. In this respect, I see to it that pending cases with the Office of the Mayor are acted upon immediately, and those cases referred to the Office of the Mayor by inspectors from the Office of the City Treasurer are studied by me and I assist the Office of the City Fiscal, after which I make my recommendation either for immediate closure or for collection on the basis of court decisions. The Mayor then signs my recommendation and the same is approved.

“As regards tax cases that are pending with the Office of the City Treasurer that I know — because I had been with that office for a number of years prior to my appointment as technical assistant on fiscal matters in the Office of the Mayor — I recommend to His Honor, the Mayor, the indorsement of these cases to the Office of the Mayor (must be the Fiscal) for appropriate action.

“Q With respect to your duty No. 3 in this Exhibit B, what exactly do you do, regarding your duty to study and propose

ordinances pertaining to revenue measures affecting the city government?

“A In that regard the Mayor has instructed me to study the present laws on tax allotments to local governments. As we all know, one of the sources of the city revenue is the aid from the national government to the local governments. These aids are based on tax laws and the Mayor has instructed me to make a thorough study of these different tax laws with the view of increasing the allotments to local governments, more particularly to the City of Manila, and also of finding a way whereby we could formulate or propose a bill which would give an authority to cities or local governments to retain that which is due them, because under present laws before the city or local government could get a revenue it has yet to be passed upon by the national government. So the Mayor wants a law — if we could make or propose a bill — which would automatically grant the local government an authority to retain that which is due the local government.” (t.s.n., pp. 4-6, Aug. 24, 1963.)

As thus testified to, which testimony respondents-appellants failed to rebut, it is evident that the nature of the duties assigned to and performed by petitioner-appellee requires the use of his knowledge as a lawyer; that the discharge of the duties attached to the office actually involves the exercise of the legal profession. As the law-course involves more than 4 years of study, the conversion of appellee’s bar-qualification into first grade eligibility under Republic Act 1080, as amended, was proper.

There is no denying the laudable purpose of appellant Civil Service Commissioner in requiring the appointee to the position of Technical Assistant on Fiscal Matters to have some knowledge of finance and economics. It is really high time that we adhere, strictly, to the merit principle embodied in the Civil Service law and the Constitution, and give due recognition to the desirability of specialization in the public service, the way it is observed in more progressive countries. Thus, in the present case, a lawyer with background in economics and finance certainly would have been preferred. However, there being no showing that when the disputed appointment was extended, there were other eligible persons better prepared, technically, than herein

appellee, or that the latter was not competent to discharge the duties attached to said office, the ruling of the lower court that appellee is qualified to hold the position must be upheld.

Coming to the second issue, it may be pointed out that, in connection with the filling of vacant position, the Revised Civil Service law (Rep. Act 2260) is very specific. It provides:

“Whenever a vacancy occurs in any competitive or classified position in the government or in any government-owned or controlled corporation or entity, the officer or employee next in rank who is competent and qualified to hold the position and who possesses an appropriate civil service eligibility shall be promoted thereto: Provided, That should there be two or more persons under equal circumstances, seniority shall be given preference: And provided, however, That should there be any special reason or reasons why such officer or employee should not be promoted, such special reason or reasons shall be stated in writing by the appointing official and the officer or employee concerned shall be informed thereof and be given an opportunity to be heard by the Commissioner of Civil Service whose decision in such case shall be final. If the vacancy is not filled by promotion as provided herein, then the same shall be filled by transfer of present employees in the government service, by reinstatement, by reemployment of persons separated through reduction in force, or by certification from appropriate registers of eligibles, in accordance with rules promulgated in pursuance of this Act.” (Sec. 23; Emphasis supplied.)

In other words, a vacant position (be it new or created by the cessation of an incumbent in office) shall be filled by promotion of the ranking officer or employee, who is competent and qualified^[1] to hold the same. And only where, for special reason or reasons of which the affected officer or employee will be notified, this mode of recruitment or selection cannot be observed, that the position may be filled either by transfer, or re-employment, or by getting from the certified list of appropriate eligibles, in that order.

In the case at bar, however, no evidence was presented that there were ranking employees in the office of the City Mayor affected by the appointment of appellee to the position involved herein. We have to rule, therefore, that the appointment in question did not violate the next-in-rank or seniority rule of the Civil Service Act.

Anent the charge of irregularity in the transfer of appellee, from the position of field supervisor, at P3,120.00 per annum, to that of Technical Assistant at P6,600.00 per annum, it may be stated that a transfer is a “movement from one position to another which is of equivalent rank, level or salary, without break in service.”^[2] Promotion, on the other hand, is the “advancement from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary.”^[3]

There is no allegation that the transfer of appellee from the position of field supervisor in the office of the City Treasurer to that of Technical Assistant on Fiscal Matters in the office of the City Mayor involves an increase of his duties and responsibilities. But assuming this to be so, such increase of duties would not justify an increase of his salary simultaneous with his transfer of office. For, under the Civil Service rules, promotion and transfer connote two different personnel movements which cannot take place, in a single instance, at the same time. Whereas the first denotes a scalar ascent of a senior officer or employee to another position, higher either in rank or salary, the second refers to a lateral movement from one position to another, of equivalent rank, level or salary. Evidently, this rule prohibiting an immediate increase of compensation in cases of transfers was intended to safeguard the rule on seniority. Appellee’s latest appointment, insofar as it involves an immediate increase of compensation, is violative of Civil Service rules and, therefore, invalid.^[4]

To comply strictly with the Civil Service policy regulations in force at the time of petitioner-appellee’s transfer, the same should not have included any immediate increase in salary, but without prejudice to a subsequent promotional appointment after a minimum service of three months in the new position for the policy established before 1967 was:

“That appointments of employees transferring from one agency to another at a higher salary rate shall be approved at the salary last received in the former Office, and that the full rate shall be allowed only after the employees concerned shall have completed three months of service in the new agency. Said policy was designed to protect the promotional opportunities of insiders who, although not next in rank, meet the requirements for appointment to vacant positions in their respective offices.” (See par. 1, Civil Service Commission Memorandum Circular No. 19, series of 1967).

Considering, however, the equities and circumstances of the case, and particularly that petitioner Millares has been found qualified for the position of Technical Assistant on Fiscal Matters; that no evidence was produced that his services in the new position have not been satisfactory, and that the City Mayor’s insistence upon his appointment is substantially equivalent to a promotional appointment, we are of the opinion that petitioner should be considered entitled to full compensation after three months from his original transfer from the City Treasurer’s office to that of the City Mayor. It is thus unnecessary to determine the authority of the Chief of Personnel Transactions Division to approve the disputed appointment of petitioner herein or the authority of the Commissioner to revoke such appointment.

The directive of appellant Commissioner of Civil Service terminating the services of petitioner-appellee on account of his improper transfer, is not in order. The Commissioner’s power of removal, demotion or suspension, it must be remembered, arises from his authority over all subordinate officers and employees, members of the Civil Service, in all matters relating to their conduct, discipline and efficiency, and this authority may be exercised only for any of the causes provided in Section 33, Article VII of Republic Act 2260, as implemented by Sections 3 and 19, Rule XVIII, Civil Service Rules, and after due notice and hearing. As improper transfer from one position in the government service to another is not one of the grounds for dismissal of an employee, the order of appellant Civil Service Commissioner has no basis in law.

On the matter of the propriety of appellee's resorting to the courts from the unfavorable decision of the Civil Service Commissioner, suffice it to state that the action taken by the latter was not in the exercise of his power to impose disciplinary measures to erring subordinate officers and employees, which is subject to review by the Civil Service Board of Appeals and the President, but in pursuance of his power to approve (or disapprove) appointments. In the exercise of this latter function, the jurisdiction of the Civil Service Commissioner is exclusive.^[5] Obviously, appellant's claim of non-exhaustion of administrative remedies in this case, is untenable.

For all the foregoing considerations, the decision appealed from is modified, upholding the authority of the Commissioner of Civil Service to withhold approval of petitioner's appointment as Technical Assistant on Fiscal Matters insofar as it involves an immediate increase of compensation to P6,600.00 per annum, but declaring invalid the order of said Commissioner terminating petitioner's employment. The payment of the salaries of petitioner-appellee, for actual services rendered, at the rate of P3,120.00 per annum, for the first three (3) months following his transfer and at full rate thereafter, is also hereby directed. No costs. So ordered.

Makalintal, Bengzon, Zaldivar, Sanchez, Castro, Angeles and Fernando, JJ., concur.
Concepcion, C.J., and Dizon, J., on leave, did not take part.

[1] The qualification and competence of an employee shall be determined by the extent to which he meets the conditions specified in Section 4, Rule VII of the Civil Service Rules.

[2] Sec. 1, Rule V-P, Civil Service Rules.

[3] Sec. 1, Rule VII, Civil Service Rules.

[4] Carrich vs. Sherman, 288 p. 143; 105 Cal. App. 546; Couch vs. Stanley, 292 N. W. 482.

[5] Sec. 16-h, Rep. Act 2260.