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Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

GOV. AURORA E. CERILLES,
Petitioner,

- versus -

CIVIL SERVICE COMMISSION, ANITA JANGAD-CHUA, MA. EDEN S. TAGAYUNA, MERIAM CAMPOMANES,* BERNADETTE P. QUIRANTE, MA. DELORA P. FLORES AND EDGAR PARAN,
Respondents.

G.R. No. 180845

Present:

CARPIO, *J.*, *Chairperson*,
PERALTA,
JARDELEZA,*
CAGUIOA, and
REYES, JR., *JJ.*

Promulgated:

06 JUN 2018

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DECISION

CAGUIOA, *J.:*

Before the Court is an appeal by *certiorari*[1] (Petition) under Rule 45 of the Rules of Court (Rules) assailing the Decision[2] dated June 8, 2007 (CA Decision) and Resolution[3] dated November 28, 2007 of the Court of Appeals – Twenty First Division (CA) in CA-G.R. SP No. 86627. The CA affirmed public respondent Civil Service Commission (CSC)'s Resolution No. 031239[4] dated December 10, 2003, which upheld the CSC Regional Office No. IX (CSCRO)'s invalidation of ninety-six (96) appointments made by petitioner Governor Aurora E. Cerilles (Gov. Cerilles) while sitting as Provincial Governor of Zamboanga del Sur.

The subject appointments were made in connection with the reorganization of the provincial government of Zamboanga del Sur, which reduced the number of *plantilla* positions in the staffing pattern.[5] Herein

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* Also referred to as Meriam Campones in other parts of the *rollo*.

* Designated additional Member per Raffle dated July 19, 2017 vice Associate Justice Estela M. Perlas-Bernabe.

1 *Rollo*, pp. 10-49.

2 Id. at 51-62. Penned by Associate Justice Rodrigo F. Lim, Jr., with Associate Justices Teresita Dy-Liacco Flores and Jane Aurora C. Lantion concurring.

3 Id. at 64-65.

4 Also referred to as Resolution No. 03-1239 in other parts of the *rollo*.

5 See *rollo*, p. 311.

private respondents Anita Jangad-Chua, Ma. Eden S. Tagayuna, Meriam Campomanes, Bernadette P. Quirante, Ma. Delora P. Flores, and Edgar Paran (collectively, "Respondents") were among those permanent employees terminated in relation to the subject appointments.

The Facts

The CA summarized the material antecedents as follows:

> On November 7, 2000, Republic Act No. 8973 entitled "An Act creating the Province of Zamboanga Sibugay from the Province of Zamboanga del Sur and for other purposes" was passed. As a consequence thereof, the Internal Revenue Allotment (IRA) of the province of Zamboanga del Sur (province, for brevity) was reduced by thirty-six percent (36%). Because of such reduction, petitioner [Gov. Cerilles], sought the opinion of public respondent [CSC] on the possibility of reducing the workforce of the provincial government.
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> In response, public respondent issued on August 8, 2001 Opinion No. 07 series of 2001, the pertinent portions of which are as follows:
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> > "Please be advised also that in the event reorganization is carried out in that province, the same must be authorized by appropriate Sangguniang Panlalawigan (SP) resolution, so that necessary funds may be correspondingly released, among other purposes, to aid the provincial government in the implementation thereof.
> >
> > Should you have further queries on the matter, please feel free to coordinate with our Civil Service Commission Regional Office (CSCRO) No. IX, Cabantangan, Zamboanga City."
>
> Subsequently on August 21, 2001, the Sangguniang Panlalawigan of Zamboanga del Sur passed Resolution No. 2K1-27 approving the new staffing pattern of the provincial government consisting only of 727 positions and Resolution No. 2K1-038 which authorized petitioner to undertake the reorganization of the provincial government and to implement the new staffing pattern.
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> Pursuant to said authority, petitioner appointed employees to the new positions in the provincial government. The private respondents were among those who were occupying permanent positions in the old plantilla and have allegedly been in the service for a long time but were not given placement preference and were instead terminated without valid cause and against their will. On various dates, private respondents filed their respective letters of appeal respecting their termination with petitioner. However, no action was taken on the appeals made; hence, private respondents brought the matter to public respondent's Regional Office No. IX (Regional Office, for brevity). In the meantime, the province submitted its Report on Personnel Actions (ROPA) for January 1, 2002 to the Regional Office No. IX for attestation. x x x[6]

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[6] Id. at 52-53.

Ruling of the CSC Regional Office IX

Upon review of the ROPA submitted by the provincial government, the CSCRO, in a Letter dated June 3, 2002, found that the subject appointments violated Republic Act No. (RA) 6656[7] for allegedly failing to grant preference in appointment to employees previously occupying permanent positions in the old *plantilla*. As a result, the CSCRO invalidated a total of ninety-six (96) appointments made by Gov. Cerilles after the reorganization.[8]

The CSCRO likewise took cognizance of the appeals directly lodged before it by Respondents, allegedly due to Gov. Cerilles' failure to act thereon. Thus, on June 24, 2002, the CSCRO issued an Omnibus Order directing the reinstatement of Respondents to their former positions.[9] Dismayed, Gov. Cerilles sought reconsideration with the CSCRO through a Letter dated July 13, 2002.[10] Therein, Gov. Cerilles claimed that it was not within the prerogative of the CSCRO to revoke an appointment as the same was within her exclusive discretion.[11]

Thereafter, the CSC informed Gov. Cerilles that her Letter dated July 13, 2002 was treated as an appeal and was forwarded to it by the CSCRO.[12] Thus, in an Order dated October 22, 2002, Gov. Cerilles was required to comply with the requirements for perfecting an appeal pursuant to CSC Resolution No. 02-319 dated February 28, 2002.[13]

Ruling of the CSC

In its Resolution No. 030028 dated January 13, 2003, the CSC dismissed the appeal of Gov. Cerilles for her failure to comply with its Order dated October 22, 2002.[14] Aggrieved, Gov. Cerilles filed a motion for reconsideration of the said Resolution.

In its Resolution No. 031239 dated December 10, 2003, the CSC granted the motion for reconsideration and forthwith reinstated the appeal.[15] However, in the same resolution, the CSC dismissed the appeal just the same and upheld the CSCRO's invalidation of the subject appointments.[16]

Gov. Cerilles then filed a motion for reconsideration of Resolution No. 031239, which was eventually denied by the CSC in its Resolution No. 040995[17] dated September 7, 2004.[18]

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7 AN ACT TO PROTECT THE SECURITY OF TENURE OF CIVIL SERVICE OFFICERS AND EMPLOYEES IN THE IMPLEMENTATION OF GOVERNMENT REORGANIZATION, June 10, 1988.

8 See *rollo*, p. 53.

9 Id. at 53-54.

10 Id. at 54.

11 See id.

12 Id. at 54-55.

13 Id.

14 Id. at 55.

15 Id.

16 Id.

17 Also referred to as Resolution No. 04-0995 in other parts of the *rollo*.

18 *Rollo*, p. 55.

Unfazed, Gov. Cerilles elevated the matter to the CA through a petition for *certiorari* under Rule 65 on the following grounds, *inter alia*: (i) that the CSC is without original jurisdiction over protests made by an aggrieved officer or employee during government reorganization, pursuant to RA 6656, and (ii) that the CSC committed grave abuse of discretion in affirming the invalidation of the subject appointments.[19]

Ruling of the CA

In the CA Decision, the CA observed that Gov. Cerilles resorted to the wrong mode of review, the proper remedy being an appeal under Rule 43 of the Rules, which governs appeals from judgments, final orders, or resolutions of the CSC.[20] Nevertheless, the CA proceeded to resolve the petition and upheld the CSCRO's jurisdiction to entertain the appeals of Respondents. Notably, however, no discussion was made on the CSC's power to invalidate the subject appointments.

A Motion for Reconsideration[21] dated August 3, 2007 was filed by Gov. Cerilles, which was denied by the CA in its Resolution dated November 28, 2007.

Hence, this Petition.

On May 5, 2008, Respondents jointly filed their Comment dated May 3, 2008.[22] Likewise, on August 15, 2008, the CSC filed its Comment dated August 14, 2008.[23] On December 9, 2008, Gov. Cerilles accordingly filed her Reply.[24]

Issuance of the Temporary Restraining Order (TRO)

In the interim, Respondents filed a Motion for Execution dated January 31, 2008 with the CSC,[25] seeking the immediate execution of its Resolution No. 031239 pending appeal, citing Section 47(4),[26] Chapter 6, Subtitle A, Title I, Book V of the Administrative Code of 1987.[27] In its Resolution No. 080712[28] dated April 21, 2008, the CSC granted Respondents' motion as follows:

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19 Id. at 19.
20 Id. at 56.
21 Id. at 66-87.
22 Id. at 99-114.
23 Id. at 124-137.
24 Id. at 160-183.
25 Id. at 204.
26 SEC. 47. Disciplinary Jurisdiction. – x x x
x x x x
(4) An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal in the event he wins an appeal.
27 See *rollo*, p. 205.
28 Id. at 203-206. Also referred to as Resolution No. 08-0712 in other parts of the *rollo*.

> **WHEREFORE**, the Motion for Execution of Judgment filed by Anita N. Jangad-Chua, *et al.* is hereby **GRANTED**. Accordingly, the Provincial Government of Zamboanga del Sur is hereby directed to reinstate Anita N. Jangad-Chua, Ma. Eden Saldariega-Tagayuna, Meriam A. Campomanes, Bernarda P. Quirante, Ma. Delora D. Flores and Edgar A. Paran to their respective former positions with payment of back salaries and other benefits due them without further delay.[29]

Alarmed, Gov. Cerilles filed a Motion for Issuance of a Temporary Restraining Order (TRO) dated February 24, 2009 with the Court.[30] In support thereof, Gov. Cerilles claimed that the execution of Resolution No. 031239 would be detrimental to the operations of the provincial government of Zamboanga del Sur and would render inutile a favorable ruling from the Court.[31]

In a Resolution[32] dated March 17, 2009, the Court granted the motion of Gov. Cerilles and issued a TRO directing CSC to cease and desist from executing the following issuances: (i) Resolution No. 031239 dated December 10, 2003, (ii) Resolution No. 040995 dated September 7, 2004, (iii) CSC Resolution No. 080712 dated April 21, 2008, and (iv) Resolution No. 090102[33] dated January 20, 2009.

Issues

The Petition questions the CA Decision on the following grounds:

(i) Whether Gov. Cerilles correctly availed of the remedy of *certiorari* under Rule 65 of the Rules when she filed her petition before the CA questioning the invalidation of the subject appointments, there being no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law;[34]

(ii) Whether the CA misapplied Section 9 of Presidential Decree No. 807 (Powers and Functions of the CSC to Approve and Disapprove Appointments) in ruling that an aggrieved applicant for a position due to reorganization does not need to seek recourse first before the appointing authority (*i.e.*, Gov. Cerilles as Provincial Governor of Zamboanga del Sur);[35]

(iii) Whether the CA deliberately misapplied Section 7 of RA 6656 in favor of Respondents in order to evade discussion on the validity of the subject appointments;[36] and

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29 Id. at 206.
30 Id. at 190-201.
31 Id. at 187-188.
32 Id. at 217-218.
33 Id. at 208-212. Also referred to as Resolution No. 09-0102 in other parts of the *rollo*.
34 Id. at 27-28.
35 See id. at 28.
36 Id.

(iv) Whether the CA misinterpreted the jurisdiction of CSCROs, as contained in Section 6[B1] of CSC Memorandum Circular No. 19-99.[37]

The Court's Ruling

The Petition is denied.

Preliminary issue: propriety of filing a Rule 65 petition for certiorari with the CA

In her Petition, Gov. Cerilles questions the CA Decision insofar as it considered her petition for *certiorari* an improper remedy — the proper remedy being a petition for review under Rule 43 of the Rules. Gov. Cerilles claims that Resolution No. 031239 and Resolution No. 040995 were non-appealable as the CSC rendered them in its "non-disciplinary" jurisdiction; thus, she insists that the correct remedy was a petition for *certiorari* under Rule 65.

The Court is not impressed.

The Rules and prevailing jurisprudence are settled on this matter. It is well-established that as a condition for the filing of a petition for *certiorari*, there must be no appeal, nor any plain, speedy, and adequate remedy available in the ordinary course of law.[38] In this case, the CA correctly observed that a Rule 43 petition for review was then an available mode of appeal from the above CSC resolutions. Rule 43, which specifically applies to resolutions issued by the CSC, is clear:

> 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, x x x.
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> x x x x
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> SEC. 5. *How appeal taken.* — **Appeal shall be taken by filing a verified petition for review** in seven (7) legible copies **with the Court of Appeals**, with proof of service of a copy thereof on the adverse party and on the court or agency *a quo*. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner. (Emphasis and underscoring supplied)

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37 Id.

38 *Balindong v. Dacalos*, 484 Phil. 574, 580 (2004); RULES OF COURT, Rule 65, Sec. 1.

It bears reiterating that the extraordinary remedy of *certiorari* is a prerogative writ and never issues as a matter of right.[39] Given its extraordinary nature, the party availing thereof must strictly observe the rules laid down and non-observance thereof may not be brushed aside as mere technicality.[40] Hence, where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.[41]

Applying the foregoing, the Court thus finds Gov. Cerilles' failure to abide by the elementary requirements of the Rules inexcusable. That she repeatedly invoked "grave abuse of discretion" on the part of the CSC was of no moment; the records failed to demonstrate how an appeal to the CA via Rule 43 was not a plain, speedy, and adequate remedy as would allow a relaxation of the rules of procedure.

Non-observance of procedure under Sections 7 and 8 of RA 6656

Gov. Cerilles also faults the CA for upholding the CSCRO's jurisdiction over the appeals directly lodged before it by Respondents.[42] Gov. Cerilles anchors her claim on Sections 7 and 8 of RA 6656, which provide the appeal procedure for aggrieved applicants to new positions resulting from a reorganization:

> SEC. 7. A list of the personnel appointed to the authorized positions in the approved staffing pattern shall be made known to all the officers and employees of the department or agency. **Any of such officers and employees aggrieved by the appointments made may file an appeal with the appointing authority** who shall make a decision within thirty (30) days from the filing thereof.
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> SEC. 8. An officer or employee who is still not satisfied with the decision of the appointing authority may further appeal within ten (10) days from receipt thereof to the Civil Service Commission which shall render a decision thereon within thirty (30) days and whose decision shall be final and executory. (Emphasis and underscoring supplied)

On the basis of the cited provision, Gov. Cerilles claims that it was erroneous for the CSCRO to have taken cognizance of the appeals of Respondents as the same should have first been filed before her as the appointing authority.[43] Specifically, Gov. Cerilles posits that the foregoing provisions conferred "original jurisdiction" to the appointing authority over appeals of aggrieved officers and employees and only "appellate jurisdiction"

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39 *Balindong v. Dacalos*, id. at 579.
40 *Garcia, Jr. v. Court of Appeals*, 570 Phil. 188, 193 (2008).
41 See *Career Executive Service Board v. Civil Service Commission*, G.R. No. 197762, March 7, 2017, pp. 13-14.
42 See *rollo*, p. 33.
43 See id. at 34.

to the CSCRO.[44] Thus, she claims that Respondents' failure to observe the proper procedure deprived the CSCRO of jurisdiction over their appeals.

The Court disagrees.

The records indicate that Respondents **did in fact** file letters of appeal with Gov. Cerilles on various dates after their separation.[45] Said appeals, however, were not acted upon despite the lapse of time, which prompted Respondents to instead seek relief before the CSCRO.[46] While Gov. Cerilles disputes this fact,[47] the Court, being a trier of law and not of facts, must necessarily rely on the factual findings of the CA.[48] In Rule 45 petitions, the Court cannot re-weigh evidence already duly considered by the lower courts. In this regard, it was held by the CA:

> Even assuming that petitioner correctly relied on Sections 7 and 8 of R.A. 6656, We still find that private respondents fully complied with the requirements of the said provisions.
>
> Contrary to petitioner's claim, private respondents indeed filed letters of appeal on various dates after their termination. Said appeals however, were unacted despite the lapse of time given the appointing authority to resolve the same which prompted private respondents to seek redress before public respondent's Regional Office. We, thus, cannot give credence to petitioner's claim that no appeal was filed before her as the appointing authority. As what petitioner would have private respondents do, the latter indeed went through the motions of first attempting to ventilate their protest before the appointing authority. However, since the appointing authority failed to take any action on the appeal, private respondents elevated the same to the Regional Office and correctly did so. x x x[49]

While no decision on the appeals was ever rendered by Gov. Cerilles, it would be unjust to require Respondents to first await an issuance before elevating the matter to the CSC, given Gov. Cerilles' delay in resolving the same. In such case, an appointing authority could easily eliminate all opportunities of appeal by the aggrieved employees by mere inaction. It is well-settled that procedural rules must not be applied with unreasonable rigidity if substantial rights stand to be marginalized; here, no less than Respondents' means of livelihood are at stake.

Proceeding therefrom, the Court cannot therefore ascribe any fault to the CSCRO in resolving the appeals of Respondents due to Gov. Cerilles' refusal to act, especially since the CSC is, in any case, vested with jurisdiction to review the decision of the appointing authority.[50]

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44 Id. at 20.
45 Id. at 60.
46 Id.
47 Id. at 37.
48 See *Medina v. Court of Appeals*, 693 Phil. 356, 366 (2012).
49 *Rollo*, p. 60.
50 RA 6656, Sec. 8.

The foregoing issues resolved, the Court now confronts the principal issue in this case: whether the CSC, in affirming the CSCRO, erred in invalidating the appointments made by Gov. Cerilles. Otherwise stated, can the CSC revoke an appointment for violating the provisions of RA 6656?

RA 6656 vis-à-vis the Power of Appointment

RA 6656 was enacted to implement the State's policy of protecting the security of tenure of officers and employees in the civil service during the reorganization of government agencies.[51] The pertinent provisions of RA 6656 provide, thus:

> SEC. 2. No officer or employee in the career service shall be removed except for a valid cause and after due notice and hearing. **A valid cause for removal exists when, pursuant to a *bona fide* reorganization, a position has been abolished or rendered redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service**, or other lawful causes allowed by the Civil Service Law. **The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party**:
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> (a) Where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned;
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> (b) Where an office is abolished and another performing substantially the same functions is created;
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> (c) Where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit;
>
> (d) Where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same functions as the original offices;
>
> (e) Where the removal violates the order of separation provided in Section 3 hereof.
>
> SEC. 3. In the separation of personnel pursuant to reorganization, the following order of removal shall be followed:
>
> (a) Casual employees with less than five (5) years of government service;
>
> (b) Casual employees with five (5) years or more of government service;
>
> (c) Employees holding temporary appointments; and
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> (d) Employees holding permanent appointments: *Provided*, That those in the same category as enumerated above, who are least qualified in

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[51] RA 6656, Sec. 1.

terms of performance and merit shall be laid off first, length of service notwithstanding.

SEC. 4. **Officers and employees holding permanent appointments shall be given preference for appointment to the new positions in the approved staffing pattern** comparable to their former positions or in case there are not enough comparable positions, to positions next lower in rank.

No new employees shall be taken in until all permanent officers and employees have been appointed, including temporary and casual employees who possess the necessary qualification requirements, among which is the appropriate civil service eligibility, for permanent appointment to positions in the approved staffing pattern, in case there are still positions to be filled, unless such positions are policy-determining, primarily confidential or highly technical in nature. (Emphasis supplied)

The following may be derived from the cited provisions — **First**, an officer or employee may be validly removed from service pursuant to a *bona fide* reorganization; in such case, there is no violation of security of tenure and the aggrieved employee has no cause of action against the appointing authority. **Second**, if, on the other hand, the reorganization is done in bad faith, as when the enumerated circumstances in Section 2 are present, the aggrieved employee, having been removed *without* valid cause, may demand for his reinstatement or reappointment. **Third**, officers and employees holding permanent appointments in the old staffing pattern shall be given preference for appointment to the new positions in the approved staffing pattern, which shall be comparable to their former position or in case there are not enough comparable positions, to positions next lower in rank. **Lastly**, no new employees shall be taken in until all permanent officers and employees have been appointed unless such positions are policy-determining, primarily confidential, or highly technical in nature.

Bearing the foregoing in mind, the Court now discusses the matter of appointment.

Appointment, by its very nature, is a highly discretionary act. As an exercise of political discretion, the appointing authority is afforded a wide latitude in the selection of personnel in his department or agency and seldom questioned, the same being a matter of wisdom and personal preference.[52] In certain occasions, however, the selection of the appointing authority is subject to review by respondent CSC as the central personnel agency of the Government. In this regard, while there appears to be a conflict between the two interests, *i.e.*, the discretion of the appointing authority and the reviewing authority of the CSC, this issue is hardly a novel one.

In countless occasions, the Court has ruled that the only function of the CSC is merely to ascertain whether the appointee possesses the minimum requirements under the law; if it is so, then the CSC has no choice

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[52] See *Lapinid v. Civil Service Commission*, 274 Phil. 381, 385 and 387 (1991).

but to attest to such appointment.[53] The Court recalls its ruling in *Lapinid v. Civil Service Commission*,[54] citing *Luego v. Civil Service Commission*,[55] wherein the CSC was faulted for revoking an appointment on the ground that another candidate scored a higher grade based on comparative evaluation sheets:

> We declare once again, and let us hope for the last time, that the Civil Service Commission has no power of appointment except over its own personnel. Neither does it have the authority to review the appointments made by other offices except only to ascertain if the appointee possesses the required qualifications. The determination of who among aspirants with the minimum statutory qualifications should be preferred belongs to the appointing authority and not the Civil Service Commission. It cannot disallow an appointment because it believes another person is better qualified and much less can it direct the appointment of its own choice.
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> x x x x
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> Commenting on the limits of the powers of the public respondent, *Luego* declared:
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> > It is understandable if one is likely to be misled by the language of Section 9(h) of Article V of the Civil Service Decree because it says the Commission has the power to "approve" and "disapprove" appointments. Thus, it is provided therein that the Commission shall have *inter alia* the power to:
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> > > "9(h) *Approve all appointments, whether original or promotional, to positions in the civil service*, except those presidential appointees, members of the Armed Forces of the Philippines, police forces, firemen, and jailguards, and *disapprove those where the appointees do not possess appropriate eligibility or required qualifications*." (Italics supplied)
> >
> > However, a full reading of the provision, especially of the underscored parts, will make it clear that all the Commission is actually allowed to do is check whether or not the appointee possesses the appropriate civil service eligibility or the required qualifications. If he does, his appointment is approved; if not, it is disapproved. No other criterion is permitted by law to be employed by the Commission when it acts on – or as the Decree says, "approves" or "disapproves" – an appointment made by the proper authorities.

The Court believes it has stated the foregoing doctrine clearly enough, and often enough, for the Civil Service Commission not to

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53 See id. at 387-388.
54 Supra note 52.
55 227 Phil. 303, 308-309 (1986).

> understand them. The bench does; the bar does; and we see no reason why the Civil Service Commission does not. If it *will* not, then that is an entirely different matter and shall be treated accordingly.
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> We note with stern disapproval that the Civil Service Commission has once again *directed* the appointment of its own choice in the case at bar. We must therefore make the following injunctions which the Commission must note well and follow strictly.[56] (Italics in the original)

The foregoing doctrine remains good law.[57] However, in light of the circumstances unique to a government reorganization, such pronouncements must be reconciled with the provisions of RA 6656.

To be sure, this is not the first time that the Court has grappled with this issue. As early as *Gayatao v. Civil Service Commission*,[58] which is analogous to this case, the Court already ruled that in instances of reorganization, **there is no encroachment on the discretion of the appointing authority when the CSC revokes an appointment on the ground that the removal of the employee was done in bad faith. In such instance, the CSC is not actually directing the appointment of another but simply ordering the reinstatement of the illegally removed employee**:

> The focal issue raised for resolution in this petition is **whether respondent commission committed grave abuse of discretion in revoking the appointment of petitioner and ordering the appointment of private respondent in her place.**
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> **Petitioner takes the position that public respondent has no authority to revoke her appointment on the ground that another person is more qualified, for that would constitute an encroachment on the discretion vested solely in the appointing authority**. In support of said contention, petitioner cites the case of *Central Bank of the Philippines, et al. vs. Civil Service Commission, et al.* x x x.
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> x x x x
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> The doctrine laid down in the cited case finds no determinant application in the case at bar. **A reading of the questioned resolution of respondent commission readily shows that the revocation of the appointment of petitioner was based primarily on its finding that the said appointment was null and void by reason of the fact that it resulted in the demotion of private respondent without lawful cause in violation of the latter's security of tenure.** The advertence of the CSC to the fact that private respondent is better support to its stand that the removal of private respondent was unlawful and tainted with bad faith and that his reinstatement to his former position is imperative and justified.
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> x x x x
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> **Clearly, therefore, in the said resolution the CSC is not actually directing the appointment of private respondent but simply ordering his reinstatement to the contested position being the first**

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56 Supra note 52, at 387-388.

57 See *Guieb v. Civil Service Commission*, 299 Phil. 829, 836-839 (1994).

58 285 Phil. 652 (1992).

> **appointee thereto.** Further, private respondent was already holding said position when he was unlawfully demoted. The CSC, after finding that the demotion was patently illegal, is merely restoring private respondent to his former position, just as it must restore other employees similarly affected to their positions before the reorganization.
>
> **It is within the power of public respondent to order the reinstatement of government employees who have been unlawfully dismissed. The CSC, as the central personnel agency, has the obligation to implement and safeguard the constitutional provisions on security of tenure and due process.** In the present case, the issuance by the CSC of the questioned resolutions, for the reasons clearly explained therein, is undubitably (*sic*) in the performance of its constitutional task of protecting and strengthening the civil service.[59] (Emphasis and underscoring supplied)

The reorganization of the Province of Zamboanga del Sur was tainted with bad faith

Following the discussion above, the resolution of the Petition simply hinges on whether the reorganization of the Province of Zamboanga Del Sur was done in good faith. The Court rules in the negative.

In *Blaquera v. Civil Service Commission*,[60] citing *Dario v. Mison*,[61] the Court had the occasion to define good faith in the context of reorganization:

> x x x Good faith, we ruled in *Dario vs. Mison* is a basic ingredient for the validity of any government reorganization. It is the golden thread that holds together the fabric of the reorganization. Without it, the cloth would disintegrate.
>
> > "*Reorganization is a recognized valid ground for separation of civil service employees, subject only to the condition that it be done in good faith.* No less than the Constitution itself in Section 16 of the Transitory Provisions, together with Sections 33 and 34 of Executive Order No. 81 and Section 9 of Republic Act No. 6656, support this conclusion with the declaration that all those not so appointed in the implementation of said reorganization shall be deemed separated from the service with the concomitant recognition of their entitlement to appropriate separation benefits and/or retirement plans of the reorganized government agency." x x x
>
> A reorganization in good faith is one designed to trim the fat off the bureaucracy and institute economy and greater efficiency in its operation. It is not a mere tool of the spoils system to change the face of the bureaucracy and destroy the livelihood of hordes of career employees

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59 Id. at 657-660.
60 297 Phil. 308 (1993).
61 257 Phil. 84 (1989).

> in the civil service so that the new-powers-that-be may put their own people in control of the machinery of government.[62] (Citation omitted)

Again, citing *Dario v. Mison*,[63] the Court in *Larin v. Executive Secretary*[64] (*Larin*) held:

> As a general rule, a reorganization is carried out in "good faith" if it is for the purpose of economy or to make bureaucracy more efficient. In that event no dismissal or separation actually occurs because the position itself ceases to exist. And in that case the security of tenure would not be a Chinese wall. Be that as it may, if the abolition which is nothing else but a separation or removal, is done for political reason or purposely to defeat security of tenure, or otherwise not in good faith, no valid abolition takes place and whatever abolition is done is void *ab initio*. There is an invalid abolition as where there is merely a change of nomenclature of positions or where claims of economy are belied by the existence of ample funds.[65]

Good faith is always presumed. Thus, to successfully impugn the validity of a reorganization — and correspondingly demand for reinstatement or reappointment — the aggrieved officer or employee has the burden to prove the existence of bad faith.[66] In *Cotiangco v. The Province of Biliran*,[67] which involved the reorganization of the Province of Biliran, the Court upheld the validity of the reorganization due to the failure of the aggrieved employees to adduce evidence showing bad faith, as provided in Section 2 of RA 6656.

On the other hand, in the case of *Pan v. Peña*,[68] (*Pan*) the Court found that the reorganization of the Municipality of Goa was tainted with bad faith based on its appreciation of circumstances indicative of an intent to circumvent the security of tenure of the employees. The Court therein upheld the invalidation of the subject appointments notwithstanding the claim that there was a reduction of *plantilla* positions in the new staffing pattern:

> In the case at bar, petitioner claims that there has been a drastic reduction of *plantilla* positions in the new staffing pattern in order to address the LGU's gaping budgetary deficit. Thus, he states that in the municipal treasurer's office and waterworks operations unit where respondents were previously assigned, only 11 new positions were created out of the previous 35 which had been abolished; and that the new staffing pattern had 98 positions only, as compared with the old which had 129.
>
> The CSC, however, highlighted the recreation of six (6) *casual* positions for clerk II and utility worker I, which positions were previously held by respondents Marivic, Cantor, Asor and Enciso. Petitioner inexplicably never disputed this finding nor proffered any proof that the new positions do not perform the same or substantially the same functions

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62 *Blaquera v. Civil Service Commission*, supra note 60, at 321.
63 Supra note 61, at 130.
64 345 Phil. 962 (1997).
65 Id. at 980-981.
66 See *Cotiangco v. The Province of Biliran*, 675 Phil. 211, 219 (2011).
67 Id. at 219-220.
68 598 Phil. 781 (2009).

> as those of the abolished. And nowhere in the records does it appear that these *recreated* positions were first offered to respondents.
>
> x x x x
>
> While the CSC never found the new appointees to be unqualified, and never disapproved nor recalled their appointments as they presumably met all the minimum requirements therefor, there is nothing contradictory in the CSC's course of action as it is limited only to the *non-discretionary* authority of determining whether the personnel appointed meet all the required conditions laid down by law.
>
> Congruently, the CSC can very well order petitioner to reinstate respondents to their former positions (as these were never actually abolished) or to appoint them to comparable positions in the new staffing pattern.
>
> In fine, the reorganization of the government of the Municipality of Goa was not entirely undertaken in the interest of efficiency and austerity but appears to have been marred by other considerations in order to circumvent the constitutional security of tenure of civil service employees like respondents.[69]

Applying the foregoing to the facts of this case, the Court finds that Respondents were able to prove bad faith in the reorganization of the Province of Zamboanga del Sur. The Court explains.

At the outset, it must be stressed that the existence or non-existence of bad faith is a factual inquiry.[70] Its determination necessarily requires a scrutiny of the evidence adduced in each individual case and only then can the circumstance of bad faith be inferred.[71] In this respect, the Petition is infirm for raising a question of fact, which is outside the scope of the Court's discretionary power of review in Rule 45 petitions.[72] While questions of fact have been entertained by the Court in justifiable circumstances, the Petition is bereft of any allegation to show that the case is within the allowable exceptions.

Be that as it may, after a judicious scrutiny of the records and the submissions of the parties, the Court finds no cogent reason to vacate the CA Decision, as well as the relevant rulings of the CSC and CSCRO.

First, the sheer number of appointments found to be violative of RA 6656 is astounding. As initially observed by the CSCRO, no less than **ninety-six (96)** of the appointments made by Gov. Cerilles violated the rule on preference and non-hiring of new employees embodied in Sections 4 and 5 of the said law. While the relative scale of invalidated appointments does not conclusively rule out good faith, there is, at the very least, a strong indication that the reorganization was motivated not solely by the interest of economy and efficiency, but as a systematic means to circumvent the security of tenure of the ninety-six (96) employees affected.

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69 Id. at 791-793.

70 See *Tabangao Shell Refinery Employees Association v. Pilipinas Shell Petroleum Corp.*, 731 Phil. 373, 393 (2014).

71 See id.

72 See *Miro v. Vda. de Erederos*, 721 Phil. 772, 785 (2013).

Second, Respondents were replaced by either new employees or those holding lower positions in the old staffing pattern — circumstances that may be properly appreciated as evidence of bad faith pursuant to Section 2 and Section 4 of RA 6656. Significantly, Gov. Cerilles plainly admitted that new employees were indeed hired after the reorganization.[73]

On this matter, the Court's ruling in *Larin* is instructive. In that case, a new employee was appointed to the position of Assistant Commissioner of the Bureau of Internal Revenue, notwithstanding the fact that there were other officers holding permanent positions that were available for appointment. Thus, for violating Section 4 of RA 6656, the Court ordered the reinstatement of the petitioner, who was the previous occupant of the position of Assistant Commissioner prior to the reorganization:

> A reading of some of the provisions of the questioned E.O. No. 132 clearly leads us to an inescapable conclusion that there are circumstances considered as evidences of bad faith in the reorganization of the BIR.
>
> x x x x
>
> x x x **it is perceivable that the non-reappointment of the petitioner as Assistant Commissioner violates Section 4 of R.A. 6656.** Under said provision, officers holding permanent appointments are given preference for appointment to the new positions in the approved staffing pattern comparable to their former positions or in case there are not enough comparable positions to positions next lower in rank. It is undeniable that petitioner is a career executive officer who is holding a permanent position. Hence, he should have been given preference for appointment in the position of Assistant Commissioner. **As claimed by petitioner, Antonio Pangilinan who was one of those appointed as Assistant Commissioner, "is an outsider of sorts to the bureau, not having been an incumbent officer of the bureau at the time of the reorganization." We should not lose sight of the second paragraph of Section 4 of R.A. No. 6656 which explicitly states that no new employees shall be taken in until all permanent officers shall have been appointed for permanent position.**
>
> **IN VIEW OF THE FOREGOING**, the petition is granted, and **petitioner is hereby reinstated to his position as Assistant Commissioner without loss of seniority rights and shall be entitled to full backwages** from the time of his separation from service until actual reinstatement unless, in the meanwhile, he would have reached the compulsory retirement age of sixty-five years in which case, he shall be deemed to have retired at such age and entitled thereafter to the corresponding retirement benefits.[74] (Emphasis and underscoring supplied)

Further, in the case of *Pan*, the Court once again found that the appointment of new employees despite the availability of permanent officers and employees indicated that there was no *bona fide* reorganization by the appointing authority:

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[73] See *rollo*, p. 301.

[74] *Larin v. Executive Secretary*, supra note 64, at 981-983.

The appointment of casuals to these *recreated* positions violates R.A. 6656, as Section 4 thereof instructs that:

> Sec. 4. Officers and employees holding **permanent** appointments shall be **given preference** for appointment to the new positions in the approved staffing pattern **comparable to** their former positions **or** in case there are not enough comparable positions, to **positions next lower in rank.**
>
> **No new employees shall be taken until all permanent officers and employees have been appointed,** including temporary and casual employees who possess the necessary qualification requirement, among which is the appropriate civil service eligibility, for permanent appointment to positions in the approved staffing pattern, in case there are still positions to be filled, unless such positions are policy-determining, primarily confidential or highly technical in nature. x x x

In the case of respondent Peña, petitioner claims that the position of waterworks supervisor had been abolished during the reorganization. Yet, petitioner appointed an officer-in-charge in 1999 for its waterworks operations even after a supposed new staffing pattern had been effected in 1998. Notably, this position of waterworks supervisor does not appear in the new staffing pattern of the LGU. Apparently, the Municipality of Goa never intended to do away with such position wholly and permanently as it appointed another person to act as officer-in-charge vested with similar functions.[75] (Emphasis and underscoring in the original)

Moreover, the Court notes that the positions of Respondents were not even abolished.[76] However, instead of giving life to the clear mandate of RA 6656 on preference, Gov. Cerilles terminated Respondents from the service and forthwith appointed other employees in their stead. Neither did Gov. Cerilles, at the very least, demote them to lesser positions if indeed there was a reduction in the number of positions corresponding to Respondents' previous positions. This is clear indication of bad faith, as the Court similarly found in *Dytiapco v. Civil Service Commission*[77]:

> Petitioner's dismissal was not for a valid cause, thereby violating his right to security of tenure. The reason given for his termination, that there is a "limited number of positions in the approved new staffing pattern" necessitating his separation on January 31, 1988, is simply not true. **There is no evidence that his position as senior newscaster has been abolished, rendered redundant or merged and/or divided or consolidated with other positions. According to petitioner, respondent Bureau of Broadcast had accepted applicants to the position he vacated. He was conveniently eased out of the service** which he served with distinction for thirteen (13) years to accommodate the proteges of the "new power brokers".
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> x x x x

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75 *Pan v. Peña*, supra note 68, at 792.
76 *Rollo*, pp. 247-248, 254-A.
77 286 Phil. 174 (1992).

> **WHEREFORE**, the petition for *certiorari* is given due course and the Resolutions of the CSC of June 28, 1989 and November 27, 1989 are hereby annulled and set aside. **Respondents Press Secretary and Director of the Bureau of Broadcasts are hereby ordered to reinstate petitioner Edgardo Dytiapco to the position he was holding immediately before his dismissal without loss of seniority with full pay for the period of his separation.** Petitioner is likewise ordered to return to respondent Bureau of Broadcast the separation pay and terminal leave benefits he received in the amount of ₱26,779.72 and ₱19,028.86 respectively. No costs.[78] (Emphasis supplied)

In view of the foregoing, the Court quotes with approval the following findings of the CSCRO in its Decision dated June 3, 2002:

> "*Moreover, **in our post audit of the Report on Personnel Actions (ROPA) of the province relative to the implementation of its reorganization we invalidated one hundred (100) appointments**[79] **mainly for violation of RA 6656 and because of other CSC Law and Rules. This leads us to the inevitable conclusion that the reorganization in the province was not done in good faith**. This Office quite understands the necessity of the province to retrench employees holding redundant positions as it can no longer sustain the payment of their salaries. But **we cannot understand the need to terminate qualified incumbents of retained positions and replace them with either new employees or those previously holding lower positions.** We do not question the power of the province as an autonomous local government unit (LGU) to reorganize nor the discretion of the appointing authority to appoint. However, such power is not absolute and does not give the LGU the blanket authority to remove permanent employees under the pretext of reorganization (CSC Resolution No. 94-4582 dated August 18, 1994, Dionisio F. Rhodora, et. al.). Reorganization as a guise for illegal removal of career civil service employees is violative of the latter's constitutional right to security of tenure (Yulo vs. CSC 219 SCRA 470). Reorganization must be done in good faith (Dytiapco vs. CSC, 211 SCRA 88).*"
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> x x x x
>
> "***First, the appellants are all qualified for their respective positions. Second, they are all permanent employees. Third, their positions have not been abolished. And fourth, they were either replaced by those holding lower positions prior to reorganization or worse by new employees. In fine, a valid cause for removal does not exist in any of their cases.***"[80] (Emphasis supplied; italics in the original)

The foregoing findings, as affirmed by the CSC, are entitled to great weight, being factual in nature. It is settled doctrine that the Court accords respect, if not finality, to factual findings of administrative agencies because of their special knowledge and expertise over matters falling under their

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78 Id. at 179, 181.

79 Consisting of ninety-six (96) appointments made by Gov. Cerilles and four (4) appointments made by then Vice-Governor Ariosa; *rollo*, p. 247.

80 *Rollo*, pp. 247-248, 254-A.

jurisdiction.[81] No compelling reason is extant in the records to have this Court rule otherwise.

All told, the Court finds that the **totality** of the circumstances gathered from the records reasonably lead to the conclusion that the reorganization of the Province of Zamboanga del Sur was tainted with bad faith. For this reason, following the ruling in *Larin*, Respondents are entitled to no less than reinstatement to their former positions without loss of seniority rights and shall be entitled to full backwages from the time of their separation until actual reinstatement; or, in the alternative, in case they have already compulsorily retired during the pendency of this case, they shall be awarded the corresponding retirement benefits during the period for which they have been retired.

A final note. The Court is not unmindful of the plight of the incumbents who were appointed after the reorganization in place of Respondents. However, as a result of the illegal termination of Respondents, there was technically no vacancy to which the incumbents could have been appointed. As succinctly held in *Gayatao v. Civil Service Commission*[82]:

> The argument of petitioner that the questioned resolution of respondent CSC will have the effect of her dismissal without cause from government service, since she is already an appointee to the position which private respondent claims, is devoid of legal support and logical basis.
>
> In the first place, **petitioner cannot claim any right to the contested position. No vacancy having legally been created by the illegal dismissal, no appointment may be validly made to that position and the new appointee has no right whatsoever to that office.** She should be returned to where she came from or be given another equivalent item. **No person, no matter how qualified and eligible for a certain position, may be appointed to an office which is not yet vacant.** The incumbent must have been lawfully removed or his appointment validly terminated, since an appointment to an office which is not vacant is null and void *ab initio*.[83] (Emphasis supplied)

WHEREFORE, premises considered, the Petition is **DENIED** and the temporary restraining order issued on March 17, 2009 is deemed **LIFTED**. Resolution No. 031239 dated December 10, 2003 issued by respondent Civil Service Commission is hereby ordered executed without delay.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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81 *Miro v. Vda. de Erederos*, supra note 72, at 784; see *Gannapao v. Civil Service Commission*, 665 Phil. 60, 77-78 (2011).

82 Supra note 58.

83 Id. at 662-663.

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

DIOSDADO M. PERALTA
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ANDRES B. REYES, JR.
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.

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296, The Judiciary Act of 1948, as amended)