



Republic of the Philippines
Supreme Court
Manila

EN BANC

ATTY. ANACLETO B. BUENA, JR., G.R. No. 181760
MNSA, in his capacity as Regional
Director of Regional Office No. XVI, Present:
Civil Service Commission,
Autonomous Region in Muslim
Mindanao, Cotabato City, SERENO, C.J.,
Petitioner, CARPIO,
VELASCO, JR.,*
LEONARDO-DE CASTRO,
BRION,**
PERALTA,
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN, and
JARDELEZA,*** JJ.

-versus-

DR. SANGCAD D. BENITO,
Respondent.

Promulgated:

OCTOBER 14, 2014

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DECISION

LEONEN, J.:

The Regional Governor of the Autonomous Region in Muslim Mindanao has the power to appoint officers in the region's civil service. However, if there is no regional law providing for the qualifications for the

* On official leave.
** On leave.
*** No Part.

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position at the time of appointment, the appointee must satisfy the civil service eligibilities required for the position in the national government to be appointed in a permanent capacity.

This is a petition for review on certiorari¹ of the Court of Appeals' resolution,² dismissing the appeal of the Civil Service Commission Regional Office for the Autonomous Region in Muslim Mindanao (Regional Office) for failure to file a memorandum. The Regional Office appealed the Regional Trial Court's decision,³ ruling that the position of Assistant Schools Division Superintendent of the Department of Education, Division of Lanao del Sur-I, does not require career executive service eligibility.

On August 27, 2004, Dr. Parouk S. Hussin (Regional Governor Hussin), then Regional Governor of the Autonomous Region in Muslim Mindanao, appointed Dr. Sangcad D. Benito (Dr. Benito) as Assistant Schools Division Superintendent of the Department of Education, Division of Lanao del Sur-I, in a temporary capacity.⁴ On June 20, 2005, Regional Governor Hussin reappointed Dr. Benito as Assistant Schools Division Superintendent, this time in a permanent capacity.⁵

To change the status of Dr. Benito's appointment from temporary to permanent, Regional Governor Hussin requested the Civil Service Commission Regional Office for the Autonomous Region in Muslim Mindanao to attest to Dr. Benito's permanent appointment.⁶ However, the Regional Office, through Regional Director Anacleto B. Buena, Jr. (Regional Director Buena), returned the appointment to the Regional Governor. According to the Regional Office, Dr. Benito did not possess the career executive service eligibility required for the position of Assistant Schools Division Superintendent.⁷

On August 24, 2005, Dr. Benito filed a petition for mandamus⁸ with the Regional Trial Court, Branch 9, Lanao del Sur, to compel the Regional Office to attest to his permanent appointment as Assistant Schools Division Superintendent. He argued that the position does not belong to the Career Executive Service under Book V, Title I, Subtitle A, Chapter 2, Section 7(3) of the Administrative Code of 1987.⁹ Consequently, the position of

¹ *Rollo*, pp. 16–32.

² *Id.* at 35–36. This June 8, 2007 resolution in CA-G.R. SP No. 01367-MIN was penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Teresita Dy-Liacco Flores and Jane Aurora C. Lantion.

³ *Id.* at 71–77.

⁴ *Id.* at 48.

⁵ *Id.* at 49.

⁶ *Id.* at 50.

⁷ *Id.* at 72.

⁸ *Id.* at 41–47.

⁹ Exec. Order No. 292 (1987), book V, title I, subtitle A, chap. 2, sec. 7(3) provides: Sec. 7. *Career Service.* -

Assistant Schools Division Superintendent does not require career executive service eligibility.¹⁰

Dr. Benito claimed that it was the Regional Office's ministerial duty to attest to his appointment.¹¹ Under Article VII, Section 19 of Republic Act No. 9054,¹² the Regional Governor of the Autonomous Region in Muslim Mindanao is the appointing authority for positions in the civil service in the region. Since the appointing authority already exercised his discretion, the Regional Office allegedly had no choice but to attest to Dr. Benito's appointment.¹³

In his answer,¹⁴ Regional Director Buena claimed that the position of Assistant Schools Division Superintendent meets the following criteria for positions in the Career Executive Service: The position is career, ranks higher than Division Chief, has a salary grade of 25, and entails performance of executive and managerial functions and supervisory responsibility over a division.¹⁵ The permanent appointee to the position must, therefore, have career executive service eligibility.¹⁶

According to Regional Director Buena, the Regional Office recognizes the autonomy of the Autonomous Region in Muslim Mindanao. However, until the region enacts its own regional civil service law, the Regional Office shall carry on with the Civil Service Commission's mandate under the Constitution to promote and enforce civil service laws and rules.¹⁷

For Dr. Benito's failure to exhaust administrative remedies before filing a petition for mandamus, Regional Director Buena prayed that the trial court dismiss the petition for mandamus.¹⁸

The Career Service shall include:

.....

(3) Positions in the Career Executive Service; namely, Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President[.]

¹⁰ *Rollo*, p. 45.

¹¹ *Id.* at 42.

¹² Rep. Act No. 9054 (2001), art. VII, sec. 19 provides:

Sec. 19. *Appointments by Regional Governor.* – The Regional Governor shall appoint, in addition to the members of the cabinet and their deputies, the chairmen and members of the commissions and the heads of bureaus of the Regional Government, and those whom he may be authorized by this Organic Act, or by regional law to appoint. The Regional Assembly may, by law, vest the appointment of other officers or officials lower in rank on the heads of departments, agencies, commissions, or boards.

.....

¹³ *Rollo*, p. 45.

¹⁴ *Id.* at 51–60.

¹⁵ *Id.* at 55–56.

¹⁶ *Id.* at 56.

¹⁷ *Id.* at 56–57.

¹⁸ *Id.* at 58–59.

The trial court noted that Dr. Benito did not appeal to the Civil Service Commission proper the Regional Office's refusal to attest to his appointment. Nevertheless, the trial court found that the petition for mandamus raised a purely legal question. The case, therefore, falls within the exceptions to the rule on exhaustion of administrative remedies.¹⁹

As to whether the position of Assistant Schools Division Superintendent requires career executive service eligibility, the trial court held that it did not. Under Civil Service Commission Resolution No. 021011 dated August 1, 2002, only "director positions" in the Autonomous Region in Muslim Mindanao require career executive service eligibility. Considering that the Career Executive Service Board had not declared the position of Assistant Schools Division Superintendent a director position, the trial court ruled that the position does not require career executive service eligibility.²⁰ The Regional Office "ha[d] no choice but to attest to [Dr. Benito's] appointment in accordance with Civil Service Laws."²¹

Thus, in the decision²² dated September 12, 2005, the trial court granted Dr. Benito's petition for mandamus. It ordered the Civil Service Commission Regional Office for the Autonomous Region in Muslim Mindanao to attest to the permanent appointment of Dr. Benito as Assistant Schools Division Superintendent of the Department of Education, Division of Lanao del Sur-I.²³

In the meantime, Regional Director Buena retired.²⁴ The Regional Office, through Regional Director Grace R. Belgado-Saqueton, thus, filed a motion for reconsideration, which the trial court denied in its order²⁵ dated May 19, 2006. The notice of appeal²⁶ filed was initially denied due course in the order²⁷ dated August 16, 2006. On reconsideration, the trial court reversed itself and granted the Regional Office's notice of appeal.²⁸

The Court of Appeals took cognizance of the appeal. On November 8, 2006, the Court of Appeals directed the parties to file their respective memoranda.²⁹

¹⁹ Id. at 74.

²⁰ Id. at 75-76.

²¹ Id. at 77, citing *Luego v. Civil Service Commission*, 227 Phil. 303, 307 (1986) [Per J. Cruz, En Banc].

²² Id. at 71-77.

²³ Id. at 77.

²⁴ Id. at 20.

²⁵ Id. at 78.

²⁶ Id. at 79-80.

²⁷ Id. at 81-82.

²⁸ Id. at 117.

²⁹ Id. at 96.

Dr. Benito filed his memorandum³⁰ on December 27, 2006. As for the Regional Office, it filed a manifestation, requesting representation by the Office of the Solicitor General and an additional 30 days to file a memorandum.³¹

The 30th day within which to file a memorandum lapsed without the Regional Office filing the required memorandum. Thus, in the resolution³² dated June 8, 2007, the Court of Appeals declared the Regional Office's appeal abandoned and dismissed:

While We could have granted CSC's prayer for an additional period, per JRD Report dated April 12, 2007 however, no Memorandum for the appellant was filed as per docket book entry. Consequently, considering that appellant is the initiator of the instant appeal, We are constrained to dismiss the same pursuant to Section 3, Rule 17; Section 10, Rule 44; and Section 1(e), Rule 50 of the 1997 Rules of Civil Procedure.

WHEREFORE, in view of the foregoing, the instant appeal is hereby deemed ABANDONED and DISMISSED pursuant to Section 3, Rule 17; Section 10, Rule 44; and Section 1(e), Rule 50 of the 1997 Rules of Civil Procedure.³³

The Regional Office, through the Office of the Solicitor General, filed a motion for reconsideration. The Associate Solicitor handling the case assumed responsibility for the non-filing of the memorandum, citing her alleged heavy workload as an excuse. She subsequently filed the required memorandum on behalf of the Regional Office.³⁴

In his comment on the motion for reconsideration, Dr. Benito argued that the delay of seven (7) months and 22 days in the filing of the memorandum was inexcusable negligence.³⁵

In the resolution³⁶ dated January 14, 2008, the Court of Appeals denied the Regional Office's motion for reconsideration.

On April 1, 2008, the Regional Office filed a petition for review on certiorari³⁷ on which Dr. Benito commented.³⁸ A reply³⁹ to the comment

³⁰ Id. at 113–134.

³¹ Id. at 35.

³² Id. at 35–36.

³³ Id.

³⁴ Id. at 38.

³⁵ Id.

³⁶ Id. at 38–40.

³⁷ Id. at 16–32.

³⁸ Id. at 94–112.

³⁹ Id. at 142–152.

was filed. Afterwards, this court considered this case submitted for deliberation in the resolution⁴⁰ dated December 1, 2009.

On March 6, 2012, this court resolved to require the parties to move in the premises.⁴¹ On June 19, 2012, this court clarified its March 6, 2012 resolution and required the parties to notify the court of new or intervening significant developments relevant to the case, if any. The parties were likewise required to signify their interest in resolving the legal matters in this case.⁴²

Dr. Benito filed the compliance⁴³ dated August 20, 2012, on which the Regional Office commented.⁴⁴

In the petition for review on certiorari for the Regional Office, the Associate Solicitor handling the case pleads for this court's "kind understanding on her human limitations as a government lawyer handling numerous cases."⁴⁵ She contends that "[the Regional Office] should not be made to bear the prejudice on account of [her] failure to submit the required memorandum."⁴⁶

The Regional Office argues that the trial court erred in taking cognizance of respondent Dr. Benito's petition for mandamus. A petition for mandamus, according to the Regional Office, is filed only when there is no other plain, speedy, and adequate remedy in the ordinary course of law. In this case, appeal to the Civil Service Commission proper was still available. Worse, the petition for mandamus was allegedly filed as a substitute for a lost appeal. Consequently, the Regional Office's action on the attestation had already become final and executory, "bar[ring] . . . resort to any judicial action."⁴⁷ The trial court should not have entertained the petition for mandamus.⁴⁸

On the merits, petitioner Regional Director Buena maintains that the position of Assistant Schools Division Superintendent requires career executive service eligibility, citing Civil Service Commission Resolution No. 021011⁴⁹ dated August 1, 2002. Since the resolution does not distinguish between a holder of a government position in the Autonomous Region in Muslim Mindanao and one in a regular agency of the national

⁴⁰ Id. at 155.

⁴¹ Id. at 155-A.

⁴² Id. at 161.

⁴³ Id. at 186–191.

⁴⁴ Id. at 204–211.

⁴⁵ Id. at 24.

⁴⁶ Id.

⁴⁷ Id. at 27.

⁴⁸ Id. at 26–27.

⁴⁹ Id. at 65–67.

government, the qualifications for positions in the national government must apply to positions in the Autonomous Region in Muslim Mindanao.⁵⁰

In his comment, respondent Dr. Benito emphasizes that the Regional Office took seven (7) months and 22 days to file a memorandum with the Court of Appeals.⁵¹ He argues that the failure of petitioner Regional Director Buena's counsel to file the memorandum is inexcusable negligence. Consequently, the negligence of petitioner Regional Director Buena's counsel binds the Regional Office.

In his compliance⁵² dated August 20, 2012, respondent Dr. Benito added that the issuance of Civil Service Commission Resolution No. 100623 and, subsequently, the Regional Assembly's enactment of the Muslim Mindanao Autonomy Act No. 279 or the ARMM Basic Education Act of 2010 confirm that the position of Assistant Schools Division Superintendent does not require career executive service eligibility.⁵³

The issues for our resolution are the following:

- I. Whether the Court of Appeals erred in dismissing the Civil Service Commission Regional Office for the Autonomous Region in Muslim Mindanao's appeal for its failure to file the required memorandum;
- II. Whether respondent Dr. Benito correctly availed himself of a petition for mandamus against the Civil Service Commission's refusal to attest to his appointment; and
- III. Whether the position of Assistant Schools Division Superintendent requires career executive service eligibility.

We rule for the Civil Service Commission Regional Office.

I

The Court of Appeals did not err in dismissing the Civil Service Commission's appeal for failure to file the required memorandum

⁵⁰ Id. at 27–28.

⁵¹ Id. at 102.

⁵² Id. at 186–191.

⁵³ Id. at 188–190.

Failure to comply with the Rules or with any order of the court is a ground to dismiss the action.⁵⁴ Specifically on the appellant's failure to file a memorandum with the Court of Appeals, Rule 44, Section 10 of the Rules of Civil Procedure provides:

SEC. 10. *Time for filing memoranda in special cases.* — In *certiorari*, prohibition, *mandamus*, *quo warranto* and *habeas corpus* cases, the parties shall file, in lieu of briefs, their respective memoranda within a non-extendible period of thirty (30) days from receipt of the notice issued by the clerk that all evidence, oral and documentary, is already attached to the record.

The failure of the appellant to file his memorandum within the period therefor may be a ground for dismissal of the appeal.

Rule 50, Section 1 reiterates that the appellant's failure to file the required memorandum within the reglementary period is a ground for the Court of Appeals to dismiss the appeal:

SECTION 1. *Grounds for dismissal of appeal.*— An appeal may be dismissed by the Court of Appeals, on its motion or on that of the appellee, on the following grounds:

....

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules[.]

In this case, the Court of Appeals ordered the parties to file their respective memoranda. Instead of filing the memorandum, the Regional Office requested additional 30 days to file the pleading. The additional period requested lapsed without the Regional Office filing the required memorandum. The Court of Appeals, therefore, correctly dismissed the appeal.

That “the case was not properly calendared in the list of due dates of the . . . Associate Solicitor [handling the case]”⁵⁵ and the Associate

⁵⁴ RULES OF CIVIL PROCEDURE, Rule 17, sec. 3 provides:

Sec. 3. *Dismissal due to fault of plaintiff.* —If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

⁵⁵ *Rollo*, p. 23.

Solicitor's "overwhelming workload"⁵⁶ do not justify counsel's failure to file the memorandum on behalf of the Regional Office. We have ruled that heavy workload is no excuse for failure to comply with the reglementary periods under the Rules.⁵⁷

Nevertheless, considering the important question before us, we take cognizance of the petition and resolve the case on the merits.⁵⁸

II

A petition for mandamus is the proper remedy to compel the Civil Service Commission to attest to the appointment of respondent

Under Rule 65, Section 3 of the Rules of Civil Procedure, a petition for mandamus may be filed when any tribunal, corporation, board, officer, or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station. It may also be filed when any tribunal, corporation, board, officer, or person unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled.

For mandamus to lie, the act sought to be enjoined must be a ministerial act or duty.⁵⁹ An act is ministerial if the act should be performed "[under] a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of [the tribunal or corporation's] own judgment upon the propriety or impropriety of the act done."⁶⁰ The tribunal, corporation, board, officer, or person must have no choice but to perform the act specifically enjoined by law.⁶¹ This is opposed to a discretionary act wherein the officer has the choice to decide how or when to perform the duty.⁶²

⁵⁶ Id.

⁵⁷ *Bacarra v. National Labor Relations Commission*, 510 Phil. 353, 359 (2005) [Per J. Carpio-Morales, Third Division].

⁵⁸ *Office of the Ombudsman v. Laja*, 522 Phil. 532, 539–540 (2006) [Per J. Ynares-Santiago, First Division]; *Grand Placement and General Services Corporation v. Court of Appeals*, 516 Phil. 541, 552–554 (2006) [Per J. Austria-Martinez, First Division].

⁵⁹ *Alvarez v. PICOP Resources, Inc.*, 621 Phil. 403, 421 (2009) [Per J. Chico-Nazario, En Banc]; *San Juan v. Castro*, 565 Phil. 810, 817–818 (2007) [Per J. Carpio Morales, Second Division]; *Heirs of Spouses Venturillo v. Quitain*, 536 Phil. 839, 846 (2006) [Per J. Tinga, Third Division].

⁶⁰ *De Castro v. Judicial and Bar Council*, G.R. No. 191002, March 17, 2010, 615 SCRA 666, 753 [Per J. Bersamin, En Banc], citing *Espiridion v. Court of Appeals*, 523 Phil. 664, 668 (2006) [Per J. Corona, Second Division].

⁶¹ *Luego v. Civil Service Commission*, 227 Phil. 303, 307 (1986) [Per J. Cruz, En Banc].

⁶² *De Castro v. Judicial and Bar Council*, G.R. No. 191002, March 17, 2010, 615 SCRA 666, 753 [Per J. Bersamin, En Banc], citing *Espiridion v. Court of Appeals*, 523 Phil. 664, 668 (2006) [Per J. Corona, Second Division].

In the context of attestation of appointments in the civil service, this court has ruled that the Civil Service Commission's attestation is a ministerial duty once it finds the appointee eligible for the position. The Commission "is limited only to the non-discretionary authority of determining whether or not the person appointed meets all the required conditions laid down by the law."⁶³ If the appointee possesses the required civil service eligibility, the Commission has "no choice but to attest to the appointment."⁶⁴ As this court explained in *Luego v. Civil Service Commission*:⁶⁵

The Civil Service Commission is not empowered to determine the kind or nature of the appointment extended by the appointing officer, its authority being limited to approving or reviewing the appointment in the light of the requirements of the Civil Service Law. When the appointee is qualified and all the other legal requirements are satisfied, the Commission has no choice but to attest to the appointment in accordance with the Civil Service Laws.⁶⁶

Mandamus, therefore, is the proper remedy to compel the Civil Service Commission to attest to a valid appointment as this court ruled in *Villegas v. Subido*.⁶⁷

In *Villegas*, Manila Mayor Antonio J. Villegas appointed Gregorio A. Ejercito as City Legal Officer pursuant to Republic Act No. 5185. Mayor Villegas then sent the appointment of Atty. Ejercito to the Civil Service Commission for attestation.⁶⁸

The Commission disapproved the appointment, reasoning that Atty. Ejercito did not meet the required trial work experience. Arguing that Atty. Ejercito possessed the requirements under the civil service law, Mayor Villegas filed a petition for mandamus to compel the Commission to attest to Atty. Ejercito's appointment.⁶⁹

Finding that Atty. Ejercito possessed the required civil service eligibility, this court granted the petition for mandamus. The Civil Service Commission was ordered to approve the appointment of Atty. Ejercito as City Legal Officer of Manila.⁷⁰

⁶³ *Luego v. Civil Service Commission*, 227 Phil. 303, 308 (1986) [Per J. Cruz, En Banc].

⁶⁴ Id. at 307.

⁶⁵ 227 Phil. 303 (1986) [Per J. Cruz, En Banc].

⁶⁶ Id. at 306–307.

⁶⁷ 135 Phil. 522 (1968) [Per J. Capistrano, En Banc].

⁶⁸ Id. at 525–526.

⁶⁹ Id. at 528–529.

⁷⁰ Id. at 524 and 526–527.

In this case, respondent Dr. Benito availed himself of the correct remedy. Given his claim that he possesses the required civil service eligibility for the position of Assistant Schools Division Superintendent, he correctly filed a petition for mandamus to compel the Civil Service Commission to approve his appointment.

The Regional Office argues that respondent Dr. Benito availed himself of the wrong remedy considering that the plain, speedy, and adequate remedy of appeal to the Civil Service Commission proper was still available. The trial court should have dismissed respondent Dr. Benito's petition for mandamus.

True, the general rule is that there be no other plain, speedy, and adequate remedy in the ordinary course of law when filing a petition for mandamus.⁷¹ Moreover, the rule on exhaustion of administrative remedies requires that a party "exhaust all administrative remedies to give the administrative agency an opportunity to decide the matter and to prevent unnecessary and premature resort to the courts."⁷² The Revised Uniform Rules on Administrative Cases in the Civil Service,⁷³ then effective when Dr. Benito was appointed, states:

Section 71. Complaint or Appeal to the Commission. – Other personnel actions, such as, but not limited to, separation from the service due to unsatisfactory conduct or want of capacity during probationary period, dropping from the rolls due to Absence Without Official Leave (AWOL), physically and mentally unfit, and unsatisfactory or poor performance, *action on appointments (disapproval, invalidation, recall, and revocation)*, reassignment, transfer, detail, secondment, demotion, or termination of services, *may be brought to the Commission, by way of an appeal.*

Section 72. When and Where to File. – A decision or ruling of a department or agency may be appealed within fifteen (15) days from receipt thereof by the party adversely affected to the Civil Service Regional Office and finally, to the Commission Proper within the same period.

A motion for reconsideration may be filed with the same office which rendered the decision or ruling within fifteen (15) days from receipt thereof. (Emphasis supplied)

Nevertheless, there are exceptions to the rule on exhaustion of administrative remedies. A party may directly resort to judicial remedies if any of the following is present:

⁷¹ RULES OF CIVIL PROCEDURE, Rule 65, sec. 3.

⁷² *Cabungcal v. Lorenzo*, G.R. No. 160367, December 18, 2009, 608 SCRA 419, 430 [Per J. Del Castillo, Second Division].

⁷³ CSC Memorandum Circular No. 19 (1999).

1. when there is a violation of due process;
2. when the issue involved is purely a legal question;
3. when the administrative action is patently illegal amounting to lack or excess of jurisdiction;
4. when there is estoppel on the part of the administrative agency concerned;
5. when there is irreparable injury;
6. when the respondent is a department secretary whose acts as an alter ego of the President bear the implied and assumed approval of the latter;
7. when to require exhaustion of administrative remedies would be unreasonable;
8. when it would amount to a nullification of a claim;
9. when the subject matter is a private land in land case proceedings;
10. when the rule does not provide a plain, speedy and adequate remedy; and
11. when there are circumstances indicating the urgency of judicial intervention.⁷⁴

In this case, the facts are undisputed. Respondent Dr. Benito is not career executive service eligible. The question is whether the position for which he was appointed requires career executive service eligibility. This is a purely legal question which is an exception to the rule on exhaustion of administrative remedies.

All told, respondent Dr. Benito did not err in filing a petition for mandamus with the trial court.

III

The position of Assistant Schools Division Superintendent is a position in the Career Executive Service

⁷⁴ *Cabungcal v. Lorenzo*, G.R. No. 160367, December 18, 2009, 608 SCRA 419, 430–431 [Per J. Del Castillo, Second Division].

Under the civil service law, positions in the Career Executive Service are: “Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service, and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President.”⁷⁵

In the exercise of its legal mandate, the Career Executive Service Board issued Resolution No. 945 dated June 14, 2011, where it set the following criteria to determine whether a position belongs to the Career Executive Service:

1. The position is career;
2. The position is above division chief; and
3. The position entails performance of executive and managerial functions.

Aside from satisfying the criteria set by the Career Executive Service Board, the holder of the position must also be a presidential appointee.⁷⁶

Applying these principles in this case, we rule that the position of Assistant Schools Division Superintendent belongs to the Career Executive Service.

The position of Assistant Schools Division Superintendent is a career position. Appointment to the position is based on merit and fitness and gives the appointee an opportunity for advancement to higher career positions,⁷⁷ such as Schools Division Superintendent. If permanently appointed, the appointee is guaranteed security of tenure.⁷⁸

The position is above Division Chief. An Assistant Schools Division Superintendent has a salary grade of 25.⁷⁹

As to functions and responsibilities, the Assistant Schools Division Superintendent assists the Schools Division Superintendent in performing

⁷⁵ Exec. Order No. 292 (1987), book V, title I, subtitle A, chap. 2, sec. 7(3).

⁷⁶ *De Castro v. Carlos*, G.R. No. 194994, April 16, 2013, 696 SCRA 400, 411 [Per C.J. Sereno, En Banc]; *Civil Service Commission v. Court of Appeals*, G.R. Nos. 185766 and 185767, November 23, 2010, 635 SCRA 749, 761 [Per J. Mendoza, En Banc].

⁷⁷ Exec. Order No. 292 (1987), book V, title I, subtitle A, chap. 2, sec. 7.

⁷⁸ Exec. Order No. 292 (1987), book V, title I, subtitle A, chap. 2, sec. 7.

⁷⁹ *Rollo*, p. 62.

the following executive and managerial functions under Republic Act No. 9155 or the Governance of Basic Education Act of 2001:

1. Developing and implementing division education development plans;
2. Planning and managing the effective and efficient use of all personnel, physical and fiscal resources of the division, including professional staff development;
3. Hiring, placing and evaluating all division supervisors and schools district supervisors as well as all employees in the division, both teaching and non-teaching personnel, including school heads, except for the assistant division superintendent;
4. Monitoring the utilization of funds provided by the national government and the local government units to the schools and learning centers;
5. Ensuring compliance of quality standards for basic education programs and for this purpose strengthening the role of division supervisors as subject area specialists;
6. Promoting awareness of and adherence by all schools and learning centers to accreditation standards prescribed by the Secretary of Education;
7. Supervising the operations of all public and private elementary, secondary and integrated schools, and learning centers; and
8. Performing such other functions as may be assigned by proper authorities.⁸⁰

In fact, the law recognizes that the position of Assistant Schools Division Superintendent belongs to the Career Executive Service. Section 7 of Republic Act No. 9155 explicitly provides that an appointee to the position must be a career executive service officer:

SEC. 7. Powers, Duties and Functions. –

....

No appointment to the positions of regional directors, assistant regional directors, schools division superintendents and assistant schools division superintendents shall be made unless the appointee is a career executive service officer who preferably shall have risen from the ranks. (Emphasis supplied)

⁸⁰ Rep. Act No. 9155 (2001), sec. 7(C).

In *Osea v. Malaya*,⁸¹ this court took judicial notice of the Career Executive Service Board's Memorandum Circular No. 21, Series of 1994, where the Board identified the position of Assistant Schools Division Superintendent as a Career Executive Service position.⁸²

Even Regional Governor Hussin admitted that the President appoints the Assistant Schools Division Superintendent. In his letter-request for attestation of respondent Dr. Benito's appointment, he said:

Our stand is that Dr. Benito, Assistant Schools Division Superintendent being an appointee of the ARMM Regional Governor need not possess the said eligibility. More importantly, if the agencies of the National Government who have fiscal autonomy enjoys the exemption, then the more for an appointee of the ARMM for the reason that in the ARMM we do not only exercise fiscal autonomy but we are an Autonomomous [sic] Local Government Unit with unique structure.

We emphasize that the other Assistant Schools Superintendents in the ARMM were appointed by the President thus, they were required to have the 3rd level eligibility pursuant to Presidential Decree 1.

In view of this, we are submitting the herein appointment for the approval of your Office.⁸³ (Emphasis supplied)

It is settled, therefore, that the position of Assistant Schools Division Superintendent belongs to the Career Executive Service. The appointee to the position must be career executive service eligible.

Permanent appointment to positions in the Career Executive Service presupposes that the appointee has passed the Career Executive Service examinations.⁸⁴ In this case, respondent Dr. Benito does not possess the required career executive service eligibility. He, therefore, cannot be appointed to the position of Assistant Schools Division Superintendent in a permanent capacity. The Civil Service Commission cannot be compelled to attest to the permanent appointment of respondent Dr. Benito.

The Regional Governor has the power to appoint civil servants in the Autonomous Region in Muslim Mindanao under Article VII, Section 19 of Republic Act No. 9054.⁸⁵ In Muslim Mindanao Autonomy Act No. 279 or

⁸¹ 425 Phil. 920 (2002) [Per J. Ynares-Santiago, En Banc].

⁸² Id. at 925.

⁸³ *Rollo*, p. 50.

⁸⁴ *De Castro v. Carlos*, G.R. No. 194994, April 16, 2013, 696 SCRA 400, 416 [Per C.J. Sereno, En Banc], citing *Amores v. Civil Service Commission*, 605 Phil. 232, 241 (2009) [Per J. Peralta, En Banc].

⁸⁵ Rep. Act No. 9054 (2001), Art. VII, sec. 19 provides:

Sec. 19. *Appointments by Regional Governor.* – The Regional Governor shall appoint, in addition to the members of the cabinet and their deputies, the chairmen and members of the commissions and the

the ARMM Basic Education Act of 2010, the Regional Assembly set the qualification standards of Assistant Schools Division Superintendents of Divisions of the Department of Education in the Autonomous Region:

Sec. 45. Qualification Standards of Schools Division Superintendent and Assistant Schools Division Superintendent. No person may be appointed Schools Division Superintendent or Assistant Schools Division Superintendent unless he is natural born citizen of the Philippines; a native inhabitant of the Autonomous Region; a registered voter in any province or city in the region for at least five years prior to his appointment.

. . . The Assistant Schools Division Superintendent, at the time of his appointment, shall at least be a Master's Degree holder; five years of supervisory and administrative experiences; with relevant trainings; and possesses appropriate civil service eligibility.

. . . .

Nevertheless, when respondent Dr. Benito was appointed Assistant Schools Division Superintendent in 2005, there was yet no regional law providing for the qualifications for the Assistant Schools Division Superintendents of Divisions of the Department of Education in the Autonomous Region. Consequently, the civil service eligibilities required for positions in the national government shall likewise be required for appointments to positions in the Autonomous Region. Article XVI, Section 4 of Republic Act No. 9054 provides:

SEC. 4. Civil Service Eligibility. – Until the Regional Assembly shall have enacted a civil service law, the civil service eligibilities required by the central government or national government for appointments to public positions shall likewise be required for appointments to government positions in the Regional Government. As may be necessary, the Civil Service Commission shall hold special civil service examinations in the autonomous region. For a period not longer more than six (6) years from the approval of this Organic Act, the central government or national government shall endeavor to provide appropriate civil service eligibility to applicants coming from the autonomous region for government positions therein. The minimum qualifications prescribed by law shall, however, be met.


All told, respondent Dr. Benito did not possess the required civil service eligibility at the time he was appointed Assistant Schools Division Superintendent. Consequently, he cannot be appointed in a permanent

heads of bureaus of the Regional Government, and those whom he may be authorized by this Organic Act, or by regional law to appoint. The Regional Assembly may, by law, vest the appointment of other officers or officials lower in rank on the heads of departments, agencies, commissions, or boards. The powers, functions, responsibilities, and structure of the departments, agencies, bureaus, offices, and instrumentalities of the Regional Government including the corporations owned or controlled by the Regional Government shall be prescribed and defined by the Regional Assembly.

capacity to the position. The Civil Service Commission cannot be compelled through a writ of mandamus to attest to the permanent appointment of respondent Dr. Benito.


WHEREFORE, the petition for review on certiorari is **GRANTED**. The Regional Trial Court, Branch 9, Lanao del Sur's September 12, 2005 decision in Special Civil Action Case No. 1538-05 is **SET ASIDE**.

SO ORDERED.



MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice



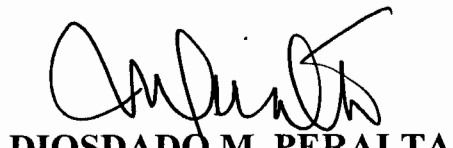
ANTONIO T. CARIPIO
Associate Justice

(On official leave)
PRESBITERO J. VELASCO, JR.
Associate Justice

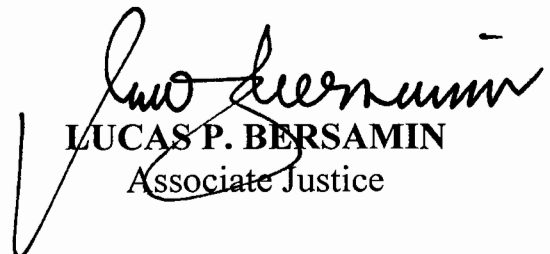


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


(On leave)
ARTURO D. BRION
Associate Justice




DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice



BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

(No part)
FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

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.


MARIA LOURDES P. A. SERENO
Chief Justice