

PI²⁰₁₁ON, Astrid A.

Re: Invalidated Promotional Appointment;
Protest; Appeal

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RESOLUTION NO. 002485

Jose Sal Tan, President of Palompon Institute of Technology (PIT), Palompon, Leyte, appeals the invalidation of the appointment of Astrid A. Pi²⁰₁₁on as Management and Audit Analyst II, same institute, by the Civil Service Commission Regional Office (CSCRO) No. VIII, Candahug, Palo, Leyte, in an Order dated July 16, 1999 on the ground that the said appointment was made in violation of Sections 12 (submission of Merit Promotion Plan to the Commission for approval) and 20 (a) on the recall of appointments, Rule VI of the Omnibus Rules Implementing Book V of Executive Order No. 292.

The appealed order of CSCRO No. VIII reads, in part, as follows:

"Clearly, the reconstitution of the Selection/Promotion Board, expanding its membership and vesting in the same body the power to evaluate, screen and recommend applicants/promotees for both administrative and faculty positions, in effect amends the composition of the Selection/Promotion Boards created in the MPPs of PIT for its administrative and faculty personnel.

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"It appears that the change in the composition of the membership of the Selection/Promotion Board (now renamed SJRSPB) was not submitted to the CSC for approval pursuant to the foregoing provision. In his letter dated July 12, 1999, PIT President Jose Sal Tan impliedly (sic) affirmed that said reconsitution (sic) was not submitted to the CSC when he stated that the MPPs of PIT for administrative and faculty personnel have not been amended.

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"Although agencies are encouraged to update their approved MPP's, any change or amendment thereto, shall be subject to approval by the Civil Service Commission. If approved, the said change/amendment shall take effect after six (6) months from the date of approval by the CSC.

"As such, based on the foregoing circumstances, the SJRSPB was not legally created and did not

effectively replaced the Selection/Promotion Board created in the MPPs of its administrative and faculty personnel. As such, its action/s are without legal effect or void ab initio and did not vest rights upon the affected parties.

"On the second issue on whether Piñon is qualified for the position of Management Audit Analyst II, this Office inhibits in rendering an opinion as to her suitability to the said positions, so as not to preempt the future action/s of the duly constituted Selection/Promotion Board and the choice of the appointing authority.

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"WHEREFORE, foregoing premises considered, the appointment of Ms. Astrid A. Piñon is hereby INVALIDATED having been issued in violation of Sec. 20 (a), (b) and (d), Rule VI of Omnibus Rules of E.O. 292. Accordingly, she should be reverted to her former position as Clerk I."

The Motion for Reconsideration dated August 6, 1999 was likewise denied CSCRO No. VIII in an Order dated August 25, 1999. The dispositive portion of the said Order reads, as follows:

"WHEREFORE, foregoing premises considered, the instant requests for reconsideration is hereby DENIED for lack of merit, the allegations raised thereon being exactly the same issues which were duly considered, weighed and disposed of in CSRO8 Order dated July 16, 1999."

The letter-appeal of President Tan reads, in part, as follows:

"ASSIGNMENT OF ERRORS

"In all lowliness and with all due respect, the Honorable Regional Director of CSRO8, Candahug, Palo, Leyte, committed reversible errors, to wit:

'1. IN FAVORABLY ACTING UPON THE BELATED PROTEST FILED BY NORMA SUICO BEYOND THE 15-DAY REGLEMENTARY PERIOD WHICH IS A GROSS DEPARTURE OF EXPLICIT PROVISIONS OF SECTION 47, PART III, CSC RES. NO. 94-0521, DATED JANUARY 25, 1994, ASIDE FROM THE FACT THAT SAID PROTESTEE WAS NOT EVEN CONSIDERED AS A CANDIDATE FOR PROMOTION WHOSE DEGREE EARNED FALLS SHORT OF THE MINIMUM EDUCATIONAL REQUIREMENT, BEING A GRADUATE OF BSIE MAJOR IN FOODS TECHNOLOGY AND MATHEMATICS AND, MUCH MORE, SHE IS HOLDING A POSITION NOT CONSIDERED NEXT-IN-RANK;

'2. IN GIVING DUE COURSE TO THE JOINT PROTEST OF DISGRUNTLED PROTESTANTS-APPELLEES LUCIA M. MANLOSA AND MARINA F. MARQUEZ, WHO

ARE CONSIDERED NOT NEXT-IN-RANK EMPLOYEES, PER SECTIONS 40 & 47, SUPRA;

'3. IN SUMMARILY DECLARING THE PRESENT SPECIAL JOINT RECRUITMENT SELECTION AND PROMOTION BOARD (SJRSPB) AS ILLEGALLY CREATED TO REPLACE THE SELECTION/PROMOTION BOARD OF THE APPROVED MERIT PROMOTION PLAN (MPP);

'4. BY NOT PASSING UPON THE ISSUE WHETHER APPOINTEE ASTRID A. PION²¹ IS QUALIFIED TO THE CONTESTED POSITION OF MANAGEMENT & AUDIT ANALYST II.'

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"With all humility and all due respect, CSRO8, through its Regional Director, Hon. Ireneo A. Morales, erred in summarily declaring that the present Special Joint Recruitment Selection and Promotion Board (SJRSPB) as illegally created, replacing the Selection/Promotion Board of the Approved Merit Promotion Plan.

"Prefatorily, to attain the ultimate objectives envisioned by the Merit Promotion Plan of PIT, especially crafted to tailor with the present demands for effectuality and competence in the public service and the never ending changes of times, the incumbent president, Jose Sal Tan, in the exercise of his prerogative, issued Administrative Order No. 05, a copy of which is hereto attached as Annex 'I', geared not to replace the approved Selection and Promotion Board but rather to strengthen and expand its existing membership, adopting the same procedures, standards and methods in evaluating the competence and qualifications of employees competing for the position and the same criteria for the evaluation of candidates for promotion which were considered by the Board with its new name, the Special Joint Recruitment Selection and Promotion Board. As thoroughly discussed earlier (Facts of the Case), the new Board (SJRSPB) used and adopted exactly the same process and methods, with reference to the approved Selection and Promotion Board, giving the applicants fair and honest evaluations of their qualifications based on the following factors and point systems, viz: Performance – 30 points; Education and Training – 25 points; Experience and Outstanding Accomplishment – 25 points; Physical Characteristics and Personality Traits – 10 points; and Potential – 10 points, making a total of 100 points. After deliberation and recommendation by the Board, the proposed appointment is again deliberated by the Board of Trustees and finally, should the candidate meet the qualification requirements of the position, the President of PIT, appoints the qualified candidate and thereafter, the notice of the appointment will be posted in the Bulletin Board, to afford the disgruntled applicants to file their written protest with the appropriate body. This is how the Board, in its new name, SJRSPB undertakes the selection and promotion of qualified applicants. It has adopted exactly the same process, procedures and methods as that of the Selection and Promotion Board, duly approved by the Civil Service Commission.

"The membership of the Selection and Promotion Board, duly approved by the Civil Service Commission, as incorporated under PIT's Merit Promotion Plan and the present Board, in its new name, Special Joint Recruitment Selection and Promotion Board, may be illustrated as follows:

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"Evidently therefore, the membership of the Selection and Promotion Board under the approved Merit Promotion Plan is still intact with the new Board, SJRPSB, and the inclusion of the new members was sought to insure that the recommended candidate for selection and promotion shall be the most competent and qualified to handle the job, to insure that the recommended candidate for selection and promotion shall be the most competent and qualified to handle the job.

*"The inclusion of additional members is not illegal but within the province of the substantial compliance doctrine, laid down by the High Court in the case of **Segundo Abando vs. Court of Appeals, G.R. No. L-37697.***

"ON THE FOURTH ERROR.

"BY NOT PASSING UPON THE ISSUE WHETHER ASTRID A. PISON IS QUALIFIED FOR THE POSITION.

"With all due respect, CSRO8, through its Regional Director, Hon. Ireneo A. Morales, erred in not passing upon the issue whether Astrid A. Pison is qualified for the contested position and instead it entertains the bare and frivolous protest of protestants-appellees which should have been dismissed outrightly for having no legal personality to do so.

"PRAYER

*"**WHEREFORE**, it is most respectfully prayed of this Honorable Commission that the assailed order of CSRO8, through its Regional Director, Hon. Ireneo A. Morales, be set aside for being bereft of merit, and its findings having grossly departed from existing laws and jurisprudence, and further declaring the appointment of Astrid A. Pison as Management and Audit Analyst II, as legal and proper under the prevailing circumstances."*

Director Ireneo A. Morales of Civil Service Commission – Regional Office No. VIII commented on the appeal, as follows:

"Anent the grounds on which the appeal is anchored, we interpose by way of comment, that as regards the issue that Protestants have no personality to file a protest, not being considered next-in-rank to the position of MAA II, in the absence of a CSC approved System of Ranking Positions, it would then be inferred from said representation that in the absence of such a system of ranking, any interested and/or aggrieved party to the promotion may file a protest. Moreover, granting for the sake of argument that Suico, one of the protestants had filed her protest beyond the reglementary period, the same would not render moot and academic the other joint protest of

Manlosa and Marquez, they having filed their protest on time.

"Further, the defect which inures in the appointment of Pi [redacted] on pertained to a violation in the provisions of an approved MPP of an agency, which is a ground for the recall and/or invalidation of an appointment, pursuant to Section 20 (a), Rule VI of the Omnibus Rules Implementing Book V of E.O. 292. Such power of review of the CSC should not rendered ineffective by the lack of personality and/or prescription of filing action by the protestants.

"We likewise adopt other arguments we propounded in our Orders dated July 16, 1999 and August 25, 1999."

Records show that on December 16, 1998, the Palompon Institute of Technology, through its Human Resource Management Officer III, submitted to the Civil Service Commission, Leyte Field Office, for publication in the CSC Bulletin the vacant position of Management and Audit Analyst II, Thereafter, three (3) applicants, namely: Lucia M. Manlosa, Marina F. Marquez and Astrid A. Pi [redacted] on applied for the said position.

On January 18, 1999, in a meeting/deliberation held by the Special Joint Recruitment Selection and Promotion Board (SJRSPB) of the said institute, for the purpose of screening the candidates and evaluating their respective qualifications, the following scores were garnered by the applicants, to wit:: Astrid A. Pi [redacted] on – 81.82 points; Lucia M. Manlosa – 81.77 points; and Marina F. Marquez – 78.6 points.

Subsequently, per Board Resolution No. 03, s. 1999 of the Board of Trustees, the promotional appointment of Astrid A. Pi [redacted] on as Management and Audit Analyst II of PIT was approved. Finally, on March 4, 1999 President Tan appointed Astrid A. Pi [redacted] on to the said position. After which, the notice of appointment was posted in the Bulletin Board of PIT.

On March 9, 1999, the disgruntled applicants/contestants for the said position, namely: Lucia M. Manlosa and Marina F. Marquez seasonably filed their joint protest, alleging *inter alia*; that they are more qualified than the protestee, Astrid A. Pi [redacted] on, and that, they are considered next-in-rank employees, and further assailing the alleged bias and the illegal creation of the Selection/Promotion Board, now named as Special Joint Recruitment, Selection and Promotion Board (SJRSPB) which had passed upon and recommended the promotion of Pi [redacted] on. The said board was created on May 14, 1998, per Administrative Order No. 5, s. of 1998 and noted by the Board of Trustees under Board Resolution No. 26 in its 110th regular meeting. Subsequently, on March 29, 1999, Norma Suico filed her protest against the appointment of Pi [redacted] on premised on the same grounds posited by Manlosa, et al.

President Tan commented on the protest filed by Manlosa, et al., submitting the required documents in support thereof. Subsequently, in an Order dated July 16, 1999 the CSCRO No. VIII invalidated the appointment of Pi [redacted] on, *"having been issued in violation of Sections 20 (a), (b), and (d), Rule VI of the Omnibus Rules of E.O. 292"*. Finally, the motion for reconsideration was denied on August 25, 1999.

Hence, this appeal.

The sole issue to be resolved is whether or not the invalidation of the appointment of Pi²⁹on is in order.

Relative to the issue is **Sections 12 and 20 of Rule VI of the Omnibus Rules Implementing Book V of Executive Order No. 292** which read, as follows:

"SEC. 12. Each department or agency shall have a Merit Promotion Plan including a System of Ranking Positions. Newly organized and/or reorganized departments or agencies shall develop a Merit Promotion Plan which shall be submitted to the Commission for approval within a year from its organization or reorganization. All Merit Promotion Plans shall be continually updated and any changes or amendments shall take effect six months from date of approval by the Commission. All employees shall be informed by the department or agency of the Merit Promotion Plan and System of Ranking Positions and amendments thereto, as approved. (Underlining ours)

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"SEC. 20. Notwithstanding the initial approval of an appointment, the same may be recalled on any of the following grounds:

"(a) non-compliance with the procedures/criteria provided in the agency's Merit Promotion Plan:

"(b) failure to pass through the agency's Selection/Promotion Board;

"(c) violation of the existing collective agreement between management and employees relative to promotion; or

"(d) violation of other existing civil service law, rules and regulations." (Underlining ours)

And Section 4 of Rule VII of the same Rules:

"SEC. 4. Promotions shall be governed by Rule VI hereof."

From the foregoing provisions, it is clear that any amendment to the Merit Promotion Plan of an agency must be approved by the Commission. Moreover, the effectivity of the amended Merit Promotion Plan shall take effect after six months from the date of the approval by the Commission.

No. 5 (3), Chapter IV of the Merit Promotion Plan (MPP) for Administrative Personnel of the Palompon Institute of Technology reads, as follows:

"The Selection/Promotion Board shall have the following composition pursuant to MC # 18, s. 1998 as amended by MC # 38, s. 89:

"(a) The Human Resource Management Officer;

"(b) A representative of Management;

"(c) A representative of the Office, Section, Department, or Division where the vacancy is ;

"(d) The representative of the rank and file employees, one from the first level and one from the second level who shall both be chosen by the duly recognized employee association. The former shall sit during the screening of candidates for vacancies in the first level, while the latter shall participate in the screening of candidates for vacancies in the second level.

"In case there is no accredited employee association in the Institute, the representatives shall be chosen at large by the employees through a general election to be called for the purpose."

The abovementioned provision was amended by Administrative Order No. 05, s. 1998 on May 14, 1998. The said amendment was never submitted to the Commission for approval. The said Administrative Order reads, in part, as follows:

"TO : ALL COLLEGE PERSONNEL

"Subject : CONSTITUTION OF A SPECIAL JOINT RECRUITMENT, SELECTION AND PROMOTION BOARD FOR ACADEMIC AND ADMINISTRATIVE PERSONNEL

"A Special Joint Recruitment, Selection and Promotion Board for Academic and Administrative Personnel is hereby constituted composed of the following:

"Chairman MR. PEDRO S. OMEGA, JR., Administrative Officer

"Members DR. APOLONIO A. ABORDO, Senior Faculty Member & representative of the College President

*PROF. NORBERTO C. OLAVIDES, Junior Faculty Member & representative of
Research and Extension*

*ENGR. FLAVIANO C. SENTINA, Junior Faculty Member & representative for academic
management*

PROF. PLACIDO F. BERCERO, President of the Faculty Association

DR. ANGELITA F. PAJARON, College Registrar

MR. MAXIMO T. LIMPIADO, Accountant & President of the Association of Administrative Personnel

MRS. CORAZON D. MAGDADARO, Records Officer & Assistant to the President

DEPARTMENT CHAIRMAN/SECTION HEAD CONCERNED REPRESENTATIVE OF THE RANK AND FILE EMPLOYEES FOR THE FIRST OR SECOND LEVEL ADMINISTRATIVE POSITION

"Secretary MRS. MAGDALENA C. Pilon, Human Resource Management Officer

"This Special Board shall have the following responsibilities:

'1. Submits for review and appropriate action to the Special Review Committee on Recruitment, Selection and Promotion which shall be created for the purpose, all recommendations for personnel action and progression in the service in accordance with pertinent policies and procedural requirements contained in the Revised Merit System for Faculty and Academic Staff approved by the CSC on January 22, 1993 and the Merit Promotion Plan for Administrative Personnel approved by the CSC on November 25, 1992.

'2. Periodically update the College President for his information, guidance and executive action on the management and status of the College's Personal Services appropriation especially over the funds allocated for authorized itemized positions subject of any or all personnel movement.'

"This Order specifically supercedes Items No. 1.2, 1.3 and 1.6 of Administrative Order No. 15, s. 1996, dated July 14, 1996 on the matter of selection and promotion of applicants or candidates for career and non-career positions in the College effective May 15, 1998 and shall continue to be in force and effect until otherwise rescinded by this Office."

A close scrutiny of the abovequoted provisions reveals that Administrative Order No. 5, s. 1998 amended the Merit Promotion Plan of PIT by adding new members to the existing Selection/Promotion Board. This was admitted by President Tan in his appeal to the Commission, thus, *"the inclusion of the new members was sought to insure that the recommended candidate for selection and promotion shall be most competent and qualified to handle the job"*.

The Commission recognizes the laudable intention of President Tan in adding new members to the Selection and Promotion Board but in order for an amendment to be valid certain requirements and procedures must be followed. Hence, submission of the said amendment to the Commission for its approval is mandatory. Therefore, the appointment issued to Pilon is void *ab initio* because of non-compliance with the procedures/criteria provided in the agency's Merit Promotion Plan.

The contention of the Appellant that the Regional Office should not have taken cognizance of the protest because the same belatedly filed by Suico, and that, Manlosa, et al., were not the qualified next-in-rank cannot be considered. The appointment itself, even without the protest, is materially defective, hence, the Regional Office can *motu proprio* invalidate the said appointment under Section 12, Rule VI of the Omnibus Rules Implementing Book V of Executive Order No. 292.

Lastly, the issue of whether Piñon is qualified for the said position need not be discussed as of this time. The Commission will not interfere with the selection process to be undertaken later.

WHEREFORE, the appeal of President Jose Sal Tan of Palompon Institute of Technology is hereby **DISMISSED**. Accordingly, the invalidation of the appointment of Astrid A. Piñon as Management and Audit Analyst II is affirmed.

Quezon City, Oct 27 2000

O.B.
JOSE F. ERESTAIN, JR.
Commissioner

(SGD.)
J. WALDEMAR V. VALMORES
Commissioner

(SGD.)
CORAZON ALMA G. DE LEON
Chairman

Attested by:

(SGD.)
ARIEL G. RONQUILLO
Director III

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