

ALBANO, Chalum B.

(SUMALBAG, Henrietta B.)

Re: Appointment; Recall; Appeal

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RESOLUTION NO. 030672

Henrietta B. Sumalbag, College President of the Philippine State College of Aeronautics (PSCA), in a letter dated June 28, 2002, requests reconsideration of the Order dated May 29, 2002, of the Civil Service Commission-National Capital Region (CSC-NCR), Quezon City, recalling the appointment of Chalum B. Albano as Instructor I, for being nepotic. This Commission shall treat the instant request as an appeal from the aforesaid order of CSC-NCR.

Pertinent portions of the said assailed Order read, as follows:

"This situation is covered by Section 9, Rule XIII of Civil Service Commission Memorandum Circular No. 40, s. 1998 which provides as follows:

'Section 9. No appointment in the national, provincial, city or municipal governments or any branch or instrumentality thereof, including government owned or controlled corporations with original charters shall be made in favor of a relative of the appointing authority or recommending authority, or of the chief of the bureau or office or of the person exercising immediate supervision over the appointee.

'Unless otherwise provided by law, the word 'relative' and the members of 'the family' referred to are those related within the third degree either of consanguinity or affinity.

x x x

'The following are exempted form (sic) the operation of the rules on nepotism:

'a. x x x

'b. teachers

'c. x x x

'd. x x x

'The nepotism rule covers all kinds of appointments whether original, promotional, transfer and re-employment regardless of status including casuals and contractuels except consultants.'

"Further, Republic Act No. 7836 otherwise known as 'An Act to Strengthen the Regulation and Supervision of the Practice of Teaching in the Philippines and Prescribing a Licensure Examination to Teachers and other Purpose' defines 'teachers' and 'teaching', as follows:

'Section 4. Definition of Terms – For purposes of this Act, the following terms shall mean:

'(a) 'Teaching' – refers to the profession concerned primarily with classroom instruction at the elementary and secondary levels in accordance with the curriculum prescribed by the Department of Education, Culture and Sports whether on part-time or full-time basis in the private or public schools.

'(b) 'Teachers' – refers to all persons engaged in teaching at the elementary and secondary levels, whether on full-time or part-time basis, including industrial arts or vocational teachers and all other persons performing supervisory and/or administrative functions in all schools in the aforesaid levels and qualified to practice teaching under this Act.'

"It is clear from the foregoing that teachers refer to those engaged in the teaching profession including all persons performing supervisory and/or administrative functions in the elementary and secondary levels only. It does not include therein that academic staffs in the tertiary level who are under the supervision of the Commission on Higher Education. Considering that Instructor position belongs to the tertiary level, the same is not embraced within the exemption from the rule on nepotism. Hence, the appointment of CHALUM B. ALBANO by Dr. Henrietta B. Sumalbog is covered by said rule.

"WHEREFORE, the request of Director Mercedes P. Tabao, CSC-DFA Field Office is hereby

granted. Accordingly, the approved appointment of CHALUM B. ALBANO as Instructor I at the Philippine State College of Aeronautics (PSCA) issued on June 15, 2001 is RECALLED, the aforesaid appointment being nepotistic.”

Sumalbag anchors her appeal on the following:

x x x

“Under Section 59 of the Administrative Code of 1987 as embodied under Chapter 8 of Civil Service Law and Rules under Executive Order No. 292, item 2, thereof provides that ‘the following are exempted from the operation of the rules on nepotism: a) x x x; b) teachers, c) and d) x x x. With due respect to our CSC Regional Director, the term teacher used on the recall order being appealed was extracted from Republic Act No. 7836 otherwise known as ‘An Act to Strengthen the Regulation and Supervision of the Practice of Teaching in the Philippines and Prescribing a Licensure Examination to Teachers and for other Purposes which defined teachers as follows:

“(b) ‘Teachers’ – refers to all persons engaged in teaching at the elementary and secondary levels, whether on full-time or part-time basis, including industrial arts or vocational teachers and all other persons performing supervisory and/or administrative functions in all schools in the aforesaid levels and qualified to practice teaching under this Act.’ On this definition of a ‘teacher’, the CSC NCR Office concluded that ‘it does not include therein those academic staff in the tertiary level who are under the supervision of the Commission in Higher Education.’

“With due respect again to the recall order of our CSC NCR Regional Director, this office wish to state the following grounds for appeal for the reconsideration of the temporary appointment of CHALUM B. ALBANO:

“1. The term ‘teachers’ as defined under RA 7836 was used as the basis of the recall order which is only concerned with teachers in the elementary and secondary levels, for they are the ones required to take the Licensure Examination for Teachers (LET). The members of the teaching profession of state universities and colleges are not covered by this licensure examination as a requirement for employment. (Emphasis is supplied)

“2. A recent en banc Resolution No. 01-1673 of the Civil Service Commission (CAMARAO, Fedeserio C. Re: Complaint; Nepotism) dated October 16, 2001, the Commission emphatically stated:

‘x x x since the exempting clause on nepotism envisages or speaks of

'teachers', then recourse maybe had to other existing laws, which similarly treats of teachers, in order to shed light on the real import or meaning of the word.'

'One such law is the Republic Act No. 4670 or the Magna Carta for Public School Teachers. Under section 2 thereof, it defines 'teacher' to wit:

'(T)he term 'term teacher' shall mean all persons engaged in classroom teaching, in any level of instruction, on full-time basis, including guidance counselors, school librarians, industrial arts or vocational instructors, and all other persons performing supervisory and/or administrative functions in all schools, colleges and universities operated by the Government or its political subdivisions; but shall not include school nurses, school physicians, school dentists and other school employees.'

"From the foregoing definition of a 'teacher' and quoting the aforesaid en banc resolution of the Civil Service Commission, it ruled out in the foregoing case on nepotism leveled against the TUP President for appointing her own spouse in the state university he heads that 'in the case at bar, there is no question that the appointment of Dr. Camarao as Professor VI, even though issued by her husband, does not amount to nepotism.

"PREMISES CONSIDERED, it is respectfully prayed that since the appointment at bar which is the subject of recall is an appointment of an instructor who is by all intends (sic) and purposes is really a 'teacher' at the tertiary level as defined in R.A. 4670 and when the Civil Service Commission, the temporary appointment of CHALUM B. ALBANO, as instructor of this state institution of higher learning recalled by our CSC NCR Regional Director be respectfully reconsidered."

When asked to comment, CSC-NCR stated that:

"It may be stated that Republic Act No. 4670 or the Magna Carta for Public School Teachers is the general law, while Republic Act No. 7836 otherwise known as an 'Act to Strengthen the Regulation and Supervision of the Practice of Teaching in the Philippines and Prescribing a Licensure Examination to Teachers and for other Purpose' is the special law. Under the rule on statutory construction when there is a conflict between a General and a Special Law, the latter will control the former without regard to the respective dates of passage (Lagman vs. City of Manila, 64 O.G. 2185). The special law is to be taken as an exception to the general law (City Mayor vs. Chief of Philippine Constabulary, G.R. No. L-20346, October 31, 1967). Hence, RA 7836 may prevail. (Emphasis is supplied)

"Corollary thereto is CSC Resolution No. 01-0951 dated May 22, 2001. the Commission stated

that the term 'Teachers' within the contemplation of R.A. 7836 does not refer to teachers (Instructors and Professors) in the tertiary level and are therefore not covered by the said Act. (Emphasis is supplied)

“Consequently, since the position of Instructor is not one of the exceptions to the prohibitions against nepotism as provided by law, there could be no other conclusion that appointment of Albano issued by PSCA President Sumalbag is subject or covered by the operation on the law against nepotism.”

Records show that Albano was appointed to the position of Instructor I, SG-12, under temporary status at the Philippine State College of Aeronautics (PSCA). Her Personal Data Sheet, accomplished on June 14, 2001, shows that she is related within the third degree of consanguinity (niece) to the appointing authority of the PSCA, Dr. Henrietta B. Sumalbag, its College President. Initially, the Civil Service Commission-Department of Foreign Affairs (CSC-DFA) Field Office approved the appointment on July 28, 2001.

Subsequently, however, in a Memorandum dated September 25, 2001, Director Mercedes P. Tabao of the CSC-DFA Field Office, inquired from CSC-NCR as to whether Instructor position is exempted from the rule on nepotism. Director Agnes D. Padilla, in an Order dated May 29, 2002, recalled the appointment of Albano on the ground that it is nepotic.

Not contented, Henrietta B. Sumalbag, in a letter dated June 28, 2002, requested the consideration of the above Order before this Commission. Treated as an appeal, the same was received by the Commission only on July 2, 2002. Records show that the PSCA received the assailed Order on June 10, 2002. Notwithstanding the fact that the appeal was filed out of time, it is within the power and discretion of the Commission to temper its rigid rules in favor of substantial justice and decide the appeal on the merits.

The provision subject of discussion is **Section 59 of the Administrative Code of 1987** (which was likewise reiterated in **Section 9, Rule XIII of CSC Memorandum Circular No. 40, s. 1998**) which reads, as follows:

“Section 59. Nepotism. – (1) *All appointments in the national, provincial, city and municipal governments or in any branch or instrumentality thereof, including government-owned or controlled corporations, made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him, are hereby prohibited.*

x x x

“(2) The following are exempted from the operation of the rules on nepotism: xxx, (b) teachers xxx: Provided. however. That in each particular instance full support (sic) of such appointment

shall be made to the Commission.

X X X

In defining the term “teachers” as referred to in the above provision, Dr. Sumalbag and CSC–NCR made reference to what appears to be two conflicting provisions: Republic Act Nos. 4670 and 7836. In resolving the seeming conflict on the provisions of two different laws, tackling apparently the same subject matter, a cursory review of the two laws is in order.

Section 2 of Republic Act No. 4670 or the **Magna Carta for Public School Teachers**, which was quoted by appellant Sumalbag in support of the appointment of Albano, is quoted by Sumalbag without taking the provision therein in its entirety. **Section 2 of Republic Act No. 4670**, states in its entirety:

“Section 2. Title – Definition. This Act shall be known as the ‘Magna Carta for Public School Teachers’ and shall apply for all public school teachers except those in the professorial staff of state colleges and universities.”

“As used in this Act, the term ‘teacher’ shall mean all persons engaged in classroom teaching, in any level of instruction, on full-time basis, including arts or vocational instructors, and all persons performing supervisory and/or administrative functions in all schools, colleges and universities operated by the Government or its political subdivisions; but shall not include school nurses, school physicians, school dentists, and other school employees.”

It is therefore a mistake for appellant, Dr. Sumalbag, to quote R.A. 4670 when even the definition of ‘teachers’ therein EXEMPTS professors of state colleges and universities. For her to use the above provision only strengthens the case in favor of the recall. However, the Commission is of the view that it is not appropriate to use the definition of “teachers” in the Magna Carta for Public School Teachers. The definition therein limits the definition of teachers to all public school teachers, EXCEPT the professorial staff of state universities and colleges, precisely because the Magna Carta for Public School teachers applies only to them. The definition therein was not intended to define teachers, but rather to define those teachers covered under the Magna Carta for Public School Teachers.

On the other hand, CSC-NCR anchors its view on the provision of R.A. 7836 when defining “teachers”. From the very title of the Act it is apparent that R.A. 7836 applies only to teachers who are required to take the Licensure Examination for Teachers (LET). The Commission, as it did in the former law, is of the view that the definition of “teachers” therein is so limited precisely because it was intended to include only those teachers covered by R.A. 7836, or those teachers who are required to take the LET.

Consequently, absent any applicable provision of law excluding professors or instructors in the tertiary level from the definition of teachers, the Commission deems it wise to define the word “teachers” to mean “teachers” as used in common parlance. As a general rule, words do not acquire a peculiar and different meaning when used in a statute. Ordinarily, they are to be given their usual, natural, plain, ordinary and commonly understood meaning (**Alcantara, Samson S., Statutes [1993]**).

Teacher is defined as one who teaches or instructs; especially one whose business or occupation is to teach others (**Black’s Law Dictionary [Fifth Edition]**). Further, as held in **People vs. Cariaso (50 Phil 886)**, teachers are defined as those who give academic instruction, and include those in trade schools (**Moreno, Federico B., Philippine Law Dictionary**).

It is in this light that the Commission gave the interpretation of the term “teachers” in **Camarao, Fedeserio C., CSC Resolution No. 01-1673 dated October 16, 2001**. In said Resolution, Dr. Fedeserio Camarao, President of the Technological University of the Philippines (TUP), appointed his wife, Dr. Gloria C. Camarao, as Assistant to the Vice President on Academic Affairs (AVPAA) on Research, Extension and Graduate Education of the same university. Dr. Camarao avers on the other hand that the appointment extended to his wife was only as Professor VI, and she was merely “*recommended by no less than the Vice President for Academic Affairs (VPAA) to do certain specific academic tasks*”. The Commission, in passing upon the matter of her appointment as Professor VI, stated thus:

“In the case at bar, there is no question that the appointment of Dr. Camarao as Professor VI, even though issued by her husband, does not amount to nepotism. In fact, Professor Marquez does not assail the propriety of the said appointment. Perhaps, this is because of the implicit recognition or acknowledgment, and rightly so, of the fact that as Professor VI, she can be considered as a teacher within the contemplation of the exemption. x x x” (Emphasis is supplied)

The Commission, therefore, rules that the appointment of Chalum Albano as Instructor I at the PSCA is not nepotism as the same falls clearly within the exemption provided under **Section 9, Section 59 of the Administrative Code of 1987**.

WHEREFORE, the appeal of Henrietta B. Sumalbag, College President and appointing authority of the Philippine State Colleges of Aeronautics, is hereby **GRANTED**. Accordingly, the Order of CSC-National Capital Region dated May 29, 2002, recalling the appointment of Chalum B. Albano as Instructor I, is hereby **SET ASIDE**.

Quezon City, JUN 12, 2003

(Original Signed)
KARINA CONSTANTINO-DAVID
Chairman

(Original Signed)
JOSE F. ERESTAIN, JR.
Commissioner

(Original Signed)
J. WALDEMAR V. VALMORES
Commissioner

Attested by:

(Original Signed)
REBECCA A. FERNANDEZ
Director IV
Commission Secretariat and Liaison Office

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