



TIRONA, Rosalinda V.
 Re: Illegal Termination; Mandatory
 Retirement; President; Local
 University
 (Appeal)

Number: 100068

Promulgated: 23 SEP 2010

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This is a
**MUST - READ
 DECISION**
 CSC Decision No. 10-0068 dated Sept. 23, 2010
 CSLO

DECISION

Rosalinda V. Tirona, University President III, Pamantasan ng Lungsod ng Pasig (PLP), writes the Commission requesting a ruling on the legality of the letter-directive dated July 19, 2010 of City Mayor Roberto C. Eusebio of the Pasig City government, the content of which is hereunder quoted:

"As per the last PLP Board of Regents meeting held July 16, 2010, a Resolution was passed deeming that as of January 9, 2010, your 70th birthday, you are compulsorily retired as President of the Pamantasan ng Lungsod ng Pasig, in obedience to the mandate of the Civil Service Law and as stated in Republic Act No. 8292 x x x stating that seventy (70) years is the compulsory retirement of all employees.

"As per recommendation of the PLP Board of Regents, the undersigned has approved Resolution No. 27, series of 2010 signed by the Board July 16, 2010. In this conjecture and effective immediately, the position of University President is hereby declared vacant by reason of your retirement. Relative thereto, you are directed to turn-over all your responsibilities and accountabilities to the Vice President of the Pamantasan Dr. Hernando Gomez pending the appointment of a new University President and given five (5) days upon receipt of this letter to clear your office of all your personal belongings assisted by the General Services Office."

In her letter of even date, Tirona has asseverated, thus:

"I refer to the attached letter dated 19 July 2010 from the Hon. Mayor of Pasig City, Robert C. Eusebio regarding 'forcible retirement' of the undersigned from the Presidency of the Pamantasan ng Lungsod ng Pasig on the basis of age x x x.

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"This issue was raised earlier and the CSC had rendered its opinion x x x the highlights of which are as follows:

- (1) the CSC refrains from rendering opinions which may be the subject of complaint later on especially in the case of Ms. Tirona where it is not materially substantiated.*
- (2) Judges and justices retire at the age of 70 years old as mandated in the Constitution. Ms. Tirona is not a member of the judicial branch so that this does not apply to her*
- (3) Under the Higher Education Act (RA 7722), LCU's and SUC's President serve for a fixed term of four years*

"As the Civil Service Commission is aware there is a pending case against the Pasig City Mayor for constructive dismissal which is against the Administrative Code. Isn't this a formal manifestation of the violation of law.

"I therefore appeal to the Civil Service to issue a ruling on the legality of the attached directive from the Mayor. In the meanwhile, I shall continue to perform my position until such time the Commission upholds the precept of a Philippine Government of laws and not of men."

Treating Tirona's letter as an appeal considering its tenor and the relief being prayed for, the Commission, through the Office for Legal Affairs (OLA), directed the Pasig City Government to submit its comment. In due time, the said comment was submitted. Therein, the Pasig City government has proffered:

x x x

"We have thought that the Higher Education Act, Republic Act 8292, which gives the President of a State University or College a fixed term of four (4) years to hold on to the said position is not applicable to the PLP because the Higher Education Modernization Act or RA 8292 is enacted for chartered State Universities and Colleges (SUCs) and not enacted for locally established local colleges and universities, like the Pamantasan ng Lungsod ng Pasig, x x x. It is our position that the law that governs over (sic) very own PLP is Sangguniang Panglungsod Ordinance No. 11, series of 1999, duly enacted by the Pasig City Council for the purpose. There is no equivalent provision in the prevailing law of the PLP x x x to the Section 6 of the Higher Education Act, which fixes the term of the President to four (4) years. x x x.



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x x x

“What we have in Section 9 of Sangguniang Panglungsod No. 11, series of 1999, the Section defining the parameters of the Presidency of the PLP, is the provision which states that:

‘The head of the Pamantasan shall be known as the President of the Pamantasan ng Lungsod ng Pasig. He shall be appointed by the City Mayor subject to confirmation by the Sangguniang Panglungsod. His salary shall be comparable to that being received by presidents of educational institutions, similar in enrolment and standing subject to the revised compensation and position classification system.

‘The powers and duties of the President of the Pamantasan in addition to those specifically provided for in this city ordinance shall be those usually pertaining to the office of the president of a state college or university.’

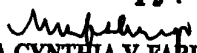
“It is very clear that in the Section 9 above of the chartering law of the Pamantasan, the Section in the law that speaks of the duties, powers, functions, appointment and salaries of the President of the PLP, there is no equivalent provision similar to Section 6 of RA 8292 fixing the term of the office of the President to four (4) years.

“What is commonly mistaken, by those who review the Chartering law and RA 8292 x x x as the equivalent provision for the four (4) year term fixed for the PLP President is Section 3, 2nd paragraph of Sangguniang Panglungsod, which states that:

‘Section 3. The governing body of the Pamantasan shall be the Board of Trustees or hereinafter referred to as the Board. It shall be composed of the City Mayor, as Chairman of the Board of Trustees; the President of the Pamantasan who shall be appointed by the City Mayor subject to confirmation by the Sangguniang Panglungsod;
x x x

‘Of the first group of appointive members, the City Mayor shall designate one (1) to serve for one (1) year; one (1) to serve for two (2) years; one (1) to serve for three (3) years; and the President to serve for four (4) years.

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Thereafter, the persons appointed to succeed such members shall hold office for a term of four (4) years or until their successors shall have been appointed or qualified.'

"Section 3 above of the Sangguniang Panglungsod Ordinance No. 11, series of 1999 is the Section specifically for the Board of Regents. It talks about the composition of the Board of Regents of the Pamantasan x x x. But the four year period referred to in this paragraph refers to the service of the President to the Board of Regents, and not his/her term as President of the Pamantasan; such that should he/she is no longer the President, he/she can no longer continue his/her four year service to the Board of Regents x x x.

"The bottom line is that, if RA 8292 gives a fixed four (4) years as the tenure in office of a President of a state college or university, Sangguniang Panglungsod No. 11, series of 1999 which is the enabling law of the Pamantasan ng Lungsod ng Pasig does not give the President of the PLP, a local university, such fixed tenure. Thus, the President of the Pamantasan is only serving in the said Position as a confidential appointee. He/she only serves at the pleasure of the Board of Regents.

x x x

"In the case of Ambassador Rosalinda V. Tirona, the Board of Regents appointed her to said position sometime in 2008 as President because then, she was still enjoying their trust and confidence. But now she no longer has the trust and confidence of the Board. This is because of the many complaints lodged against her by some members of the faculty x x x, the students x x x, and the non-academic personnel x x x. She was given the chance to defend herself when the Board of Regents gave her the letter to explain her side on November 19, 2009 x x x but she did not bother to explain herself, and instead, did acts that are contrary to the decisions of the Board of Regents x x x. She also filed several cases against the Board of Regents and sowed chaos and discontent within the Pamantasan.

"After giving her the chance to explain herself as per the November 19, 2009 letter x x x and after giving her all the chances to follow the resolutions of the Board and she chose not to abide by them, the Board of Regents passed Resolution No. 27, series of 2010 deeming her as compulsorily retired from her position because she reached the mandatory retirement age of 70 last January 29, 2010.



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“Under civil service law, all government employees who have reached 70 years of age are already compulsorily retired. The only exception to this is when the employee enjoys the trust and confidence of the appointing authority, which in this case, she does not. x x x.”

x x x

As may be culled from the extant records of the case, the Pasig City Government, through its local council, enacted Sangguniang Panglungsod Ordinance No. 11 sometime in 1999. The said ordinance mandated the establishment of the PLP to provide higher academic, technological, professional, occupational, and vocational instruction and training in applied research, advanced studies, and progressive leadership in its chosen areas of specialization. It appears that the said ordinance was enacted pursuant to the power conferred by the Local Government Code of 1991 on local governments to establish and provide for the operation of post-secondary institutions, among others, subject to certain requirements.

In 2008, Tirona, who retired in 2005 as a career diplomat after reaching the age of sixty-five (65), was appointed by City Mayor Eusebio as University/College President III under permanent status, becoming the third President of the PLP. It appears that her appointment was initially disapproved by the Commission, but upon the subsequent request for reconsideration of the City Mayor, the disapproval was set aside and the appointment was approved.

Sometime in January 2010, the Pasig City Government, through its City Legal Office, sought legal opinion on whether reaching the age of seventy (70) would be a ground for compulsory retirement, alluding to the case of Tirona, who would soon be celebrating her seventieth birthday.

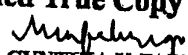
In response, the Commission, through the OLA, ratiocinated, thus:

x x x

“Please be informed that as a matter of policy, the Commission refrains from rendering opinion on matters that may eventually be the subject of complaint or appeal before the Commission. This is especially so if the material facts necessary to a judicious adjudication of the issues are not fully presented or not substantiated as in this case.

“For your guidance, however, your attention is invited to the provisions of the Higher Education Modernization Act of 1997 x x x.”

x x x

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“Significantly, in Civil Service Commission Resolution No. 99-0764 dated April 7, 1999, the Commission ruled, as follows:

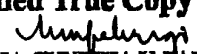
‘In this connection, Section 6 of RA 8292 should be related to Section 4 of the same Act which provides that the Governing Boards of SUCs shall have the power, among others, to extend the term of the president of the college or the university beyond the age of retirement but not later than the age of seventy (70) x x x. This contemplates a situation, taking into account the word “extend” where the SUC President is already holding said position before reaching the retirement age. Consequently, if the Governing Board does not seem fit to extend the term of office of the SUC President who reached the retirement age, the latter must yield to the operation of the retirement laws.’

*“In CSC Resolution No. 981448 dated June 11, 1998, the Commission, citing *Ambas vs. Buenaseda*, ruled that considering that the TUP Charter categorically fixed the six-year term of its President, the same must prevail over general laws. A term of office fixed by law allows the appointee to hold office, perform its functions, and enjoy its privileges and emoluments until the expiration of said period. It is the definite period of time prescribed by law by which an officer may hold office.*

“Your query is whether it is a ground for compulsory retirement upon reaching the age seventy (70), which is the compulsory retirement age of the justices. Under the Constitution, the members of the Judiciary shall hold office during good behavior until they reach the age of seventy (70) or become incapacitated to discharge the duties of their office. It does not speak of term of office. On the other hand, the afore-stated provision of the Higher Education Modernization Act of 1997 provides that the President of the university or college shall have a fixed term of office which is four years.”

Apparently, the Pasig City government, through its Human Resource Management Office, apprised Tirona that as per the above-quoted legal opinion, the compulsory retirement age of a civil service official or employee cannot be extended beyond 70 years of age. The said opinion should therefore be made applicable to her given her seventieth birthday.



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Tirona took exception from the posturing of the city government and insisted that she still has two years to go to finish her tour of duty as PLP President. Among others, she took note of other Presidents of local universities, who are still in the service despite attaining the age of 70. This provoked a rejoinder from the City Legal Office, basically affirming the stand that Tirona should compulsorily retire at 70.

Meanwhile, following the election, the city government issued a memorandum, directing all heads of offices, including Tirona, to submit their courtesy resignation purportedly to allow the re-elected Mayor enough leeway to choose the men and women to assist him as he embarks on his second term. Forthwith, Tirona interposed her objection to the said directive. It appears that no action has been taken thereon.


Subsequently, on July 19, 2010, the City Mayor issued the directive to which Tirona has hurled the present legal challenge. Parenthetically, she has sought the deferment of this directive, but her effort has proved unavailing as per CSC Resolution No. 10-00010 dated August 10, 2010.

At this juncture, it may now be posed—is there basis to the present appeal of Tirona? Addressing this question necessitates delving on the following ancillary issues:

1. Whether the position of the PLP President is primarily confidential in nature or one with fixed term of office; and
2. Whether, as PLP President, Tirona should mandatorily retire on her 70th year.

Anent the first issue, the contention of the Pasig City government that the position of Tirona is primarily confidential such that she can be separated the moment the Board of Regents has lost its trust and confidence on her is patently without merit. It has been consistently ruled in a long line of cases that it is the nature of the functions attached to the position that determines ultimately whether a position is primarily confidential. If the functions of the position would show such close intimacy and trust between the appointing power and the appointee as would support a finding that confidence was the primary reason for the existence of the position, the said position can be deemed primarily confidential in nature. Elsewise stated, the occupant of a particular position could be considered a confidential employee if the predominant reason why he was chosen by the appointing authority was the latter's belief that he can share a close intimate relationship with the occupant which ensures freedom of discussion, without fear of embarrassment or misgivings of possible betrayal of personal trust or confidential matters of state.



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In the herein case, there is only the claim of the Pasig City government that as University President, Tirona is a confidential appointee. Yet, this executive pronouncement or determination by the concerned local government is ineffectual. For one, it goes against the very appointment that was issued to Tirona, which is permanent. More so, if there is any agency statutorily authorized to make an initial ascertainment as to whether a position is primarily confidential or not, it is the Commission, subject, of course, to judicial review. This is based on Section 12, Chapter 3, Book V of the Administrative Code of 1987, which stipulates that the Commission is empowered to declare positions in the civil service as may properly be primarily confidential, highly technical or policy determining. Pointedly, there is no showing in the records of the case that Tirona's position has been declared, at one time or another, by the Commission as primarily confidential. Also, it may not be amiss to mention that allowing the city government to make the declaration on its own would be to subject Tirona's tenurial security, if there be any, to its own whim and caprice, which would be anathema to the merit and fitness principle underlying the civil service.

Furthermore, it is, to reiterate, the nature of the duties and responsibilities attached to the position that spells out whether it is primarily confidential. Regrettably, the Pasig City government has failed to specify the particular duty or duties of Tirona that would classify her position as highly confidential. Indeed, no evidence has been adduced to demonstrate that an extraordinary level of trust is demanded by the working relationship between the University President of the PLP and the City Mayor (and not the Board of Regents as erroneously posited by the city government), who is the appointing authority. While it cannot be discounted that the University President should have the confidence of the Mayor, it cannot be said that much more than ordinary confidence is necessary. Indeed, the Commission does not see enough justification to make the tenure of the University President of the PLP terminable at the pleasure of the City Mayor. The good of the service itself does not demand the appointment and tenure of the University President to be at the pleasure and will of the appointing authority as this will inevitably politicize the academic institution to the detriment of its academic freedom.

If it is not a primarily confidential position, what does this make of the nature of the PLP President?

It is of note that the PLP came into existence via a local ordinance enacted by the Sangguniang Panglungsod of the Pasig City Government, i.e., Sangguniang Panglungsod No. 11, s. 1999. Based on this ordinance, it is provided in Section 9 thereof that the PLP shall be headed by a President, who shall be appointed by the City Mayor subject to the confirmation of the local sanggunian. It is also decreed in the same section that his salary shall be comparable to other educational institutions similar in enrolment and standing subject to the revised compensation and position classification system. As well, the aforesaid provision stipulates that his powers and duties shall include not only those specifically provided in the ordinance but also those that usually pertain to the office of the president of a state university or college. Quite significantly, there is nothing in the

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above-mentioned provision that relates to the tenure of the PLP President, which may somehow give rise to the impression that incumbency in the said position is to be dependent upon the discretion or pleasure of the appointing power.

Yet, it is gleaned that in a separate section of the ordinance in question, that is, Section 3, it is ordained that the governing body of the PLP shall be the Board of Trustees, whose membership shall include the PLP President. It is likewise worth noting therein that:

"Of the first group of appointive members, the City Mayor shall designate one (1) to serve for one (1) year; one (1) to serve for two (2) years; one (1) to serve for three (3) years and the President to serve for four (4) years. Thereafter, persons appointed to succeed such members shall hold office for a term of four (4) years or until their successors shall have been appointed or qualified."

Now, it is a basic precept in statutory construction that a statute or an ordinance for that matter shall be taken in its entirety. This means that every constituent part of a statute or an ordinance shall be considered and interpreted together. Corollarily, one provision shall not be construed in isolation but must be interpreted in relation to other provisions in order to make effective the legislative policy or intendment. At the same time, it is equally important in statutory construction that the language of a law or ordinance must be construed in such a way as to give a sensible meaning, and avoid nonsensical or absurd results.

Pursuant to the above-mentioned canons of statutory construction, it is incumbent that Section 9 of Sangguniang Panglungsod No. 11, s. 1999 should be correlated with Section 3 thereof. When these two provisions are taken jointly, it becomes fairly evident that the PLP President is given a fixed term of office of four years. The countervailing contention of the city government that the said fixed term only relates to the incumbency of the PLP President in the Board of Trustees and does not govern the duration of his stay in office amounts to a strained, if not absurd, interpretation. This would give rise to a ridiculous situation where the PLP President shall have two varying tenures in office—one is with a fixed period, while the other is without any specified term. The absurdity is even more accentuated in that the fixed term of the PLP President in the Board of Trustees would be rendered meaningless if his tenure as PLP President is such that it is subject to the trust and confidence of the appointing authority as urged upon by the Pasig City government. Indeed, why go to the extent of fixing his term in the Board if, in the first place, his status as PLP President is terminable at a moment's notice? Even more so, if a PLP President is a confidential appointee, his tenure is, unless sooner replaced, coterminous or coexistent with that of the appointing authority in the person of the City Mayor. Under the law, the City Mayor shall serve for a term of three years, albeit subject to possible re-election. Given this context, there shall never arise a situation where the

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PLP President would be able to completely serve out, in a single instance, his term of four years in the Board since on the third year, his coterminous appointment shall ineluctably expire. So, the four-year term prescribed would amount to nothing more than a mere surplusage.

The interpretation that the PLP President has a four-year term of office is actually not without any legal foundation elsewhere. In line with its statutory authority under Republic Act No. 7722 to enact rules and regulations governing higher institutions of learning, the Commission on Higher Education (CHED) issued CHED Memorandum Order (CMO) No. 32, s. 2006. CMO No. 32, s. 2006 lays down the policies, standards and guidelines on the establishment and operation of local colleges and universities. Insofar as it is pertinent to the instant case, Section 14, Article VII of the said memorandum order reads, as follows:

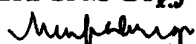
“Section 14. The administration of the University or Pamantasan shall be vested in the President of the University who shall render full-time service to implement policies promulgated by the BOR. He/she shall be appointed by the Board of Regents upon the recommendation of a duly constituted search committee. He/she shall have a term of four (4) years and shall be eligible for reappointment for another term only unless otherwise provided in the Ordinance creating the LCU. x x x.”
(Underscoring supplied for emphasis)

Note that the above underscored portion unequivocally provides for a fixed term of office of four years for a President of a local university.

Additionally, it bears stressing that an ordinance enacted by a local government pursuant to its delegated authority must be consistent with the general laws and policy of the state. For, it has been held that a grant of power to a municipal corporation, like the Pasig City government, to enact by-laws for its own government cannot be construed as imparting to it the power to repeal the laws in force or to supersede their operations by its own ordinances. This being the case, the local ordinance creating the PLP should be viewed in conformity with applicable laws on the matter. Now, the specific law governing higher education in the country is embodied in Republic Act No. 8292 or the Higher Education Modernization Act of 1997. It is observed that this law, which covers all higher institutions of learning except the University of the Philippines System and the Mindanao State University, provides for a fixed term of four years for a President of a chartered college or university. Being a statutory edict, this provision should similarly extend to the Presidents of universities and colleges established through local ordinances, like the PLP.

That said, the next question that arises is—which should prevail between the mandatory retirement age and the fixed term of office?

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Based on the facts of the case, Tirona was appointed as PLP President at the time when she was already sixty-eight (68) years old. In view of the conclusion reached above that the position of PLP President is imbued with a fixed term of office, it follows therefore that Tirona shall remain in her post for the stated period. Yet, the records show that in January 2010, she has reached the age of seventy years old. This is where the bone of contention lies. Tirona insists that she should be allowed to finish her term even if she is already beyond 70 years old. The Pasig City government contends otherwise, opining that 70 years is the compulsory retirement age for a University President like her.

Preliminarily, it must be pointed out that the compulsory retirement age in the government is not exactly 70 as posited by the Pasig City Government. The said retirement age pertains most specifically to the justices and judges belonging to the judiciary. For most appointive officials and employees, they are mandatorily retired at the age of sixty-five (65). This is in consonance with Republic Act No. 8291 or the GSIS Law.

Going into the substance of the issue posed, the Commission finds it apropos to quote its earlier ruling in CSC Resolution No. 01-1645 dated October 12, 2001. Therein, the Commission passed upon the propriety of the service rendered by a government official beyond his the compulsory retirement age but still within the purview of his term of office. Resolving the controversy, the Commission had this to say:

"Considering that the TIDCORP Charter, which is a special law, categorically fixes the term of office of its President for a period of six (6) years, the same must prevail over all general laws. In this regard, Macalincag is entitled to serve the entire term of six (6) years as President of TIDCORP together with all the functions, responsibilities as well as benefits attached to the position. 'A "term" of office fixed by law allows the appointee to hold office, perform its functions, and enjoy its privileges and emoluments until the expiration of said period. It is the definite period of time prescribed by law by which an officer may hold office.' (Ambas vs. Buenaseda, 201 SCRA 308)

"It necessarily follows, therefore, that service rendered during the fixed term of office, regardless of whether one has already reached the compulsory retirement age of sixty-five (65) years shall be credited as part of government service for purposes of retirement. As such, Macalincag's service as TIDCORP President, which includes that service rendered beyond his sixty-fifth birthday, until his resignation effective September 1, 2001, shall be credited as government service. He is likewise entitled to all the benefits attached to his position including leave benefits during his tenure."



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It may be discerned from the tenor of the aforementioned pronouncement that a fixed term of office prevails over the mandatory retirement age. This is because by its nature, a fixed term capacitates the appointee to hold office and discharge the attached functions until the expiration of the prescribed period. Prescinding therefrom, Tirona, irrespective of her late age, is entitled to continue in her office as PLP President, until she completes her term or unless earlier terminated for cause. For this reason, the Commission is of the considered view that her termination from the service on the ground of mandatory retirement is without basis.

WHEREFORE, foregoing premises considered, the Commission hereby resolves to **GRANT** the appeal of Rosalinda V. Tirona. The letter dated July 19, 2010 of City Mayor Roberto C. Eusebio terminating her service as President of the Pamantasan ng Lungsod ng Pasig is **REVERSED AND SET ASIDE**. Tirona should be reinstated into the service.

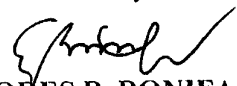
Quezon City.


FRANCISCO T. DUQUE III
Chairman

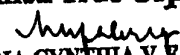

CESAR D. BUENAFLOR
Commissioner


MARY ANN Z. FERNANDEZ-MENDOZA
Commissioner

Attested by:


DOLORES B. BONIFACIO
Director IV
Commission Secretariat and Liaison Office

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