



Republic of the Philippines  
**Supreme Court**  
Baguio City

EN BANC

**EMMANUEL A. DE CASTRO,**  
Petitioner,

**G. R. No. 194994**

Present:

- versus -

**EMERSON S. CARLOS,**  
Respondent.

SERENO, *CJ*,  
CARPIO,  
VELASCO, JR.,  
LEONARDO-DE CASTRO,  
BRION,  
PERALTA,  
BERSAMIN,  
DEL CASTILLO,  
ABAD,  
VILLARAMA, JR.,  
PEREZ,  
MENDOZA,  
REYES,  
PERLAS-BERNABE, and  
LEONEN, *JJ*.

Promulgated:

APRIL 16, 2013

X ----- X

**DECISION**

**SERENO, *CJ*:**

Before us is a Petition for the issuance of a writ of *quo warranto* under Rule 66 filed by Emmanuel A. de Castro (petitioner) seeking to oust respondent Emerson S. Carlos (respondent) from the position of assistant general manager for operations (AGMO) of the Metropolitan Manila Development Authority (MMDA).

On 29 July 2009, then President Gloria Macapagal Arroyo appointed petitioner as AGMO.<sup>1</sup> His appointment was concurred in by the members of

<sup>1</sup> *Rollo*, p. 21.

the Metro Manila Council in MMDA Resolution No. 09-10, Series of 2009.<sup>2</sup> He took his oath on 17 August 2009 before then Chairperson Bayani F. Fernando.<sup>3</sup>

Meanwhile, on 29 July 2010, Executive Secretary Paquito Ochoa issued Office of the President (OP) Memorandum Circular No. 2, Series of 2010, amending OP Memorandum Circular No. 1, Series of 2010.

OP Memorandum Circular No. 2 states:

2. All non-Career Executive Service Officials (non-CESO) occupying Career Executive Service (CES) positions in all agencies of the executive branch shall remain in office and continue to perform their duties and discharge their responsibility until October 31, 2010 or until their resignations have been accepted and/or until their respective replacements have been appointed or designated, whichever comes first, unless they are reappointed in the meantime.<sup>4</sup>

On 30 July 2010, Atty. Francis N. Tolentino, chairperson of the MMDA, issued Office Order No. 106,<sup>5</sup> designating Corazon B. Cruz as officer-in-charge (OIC) of the Office of the AGMO. Petitioner was then reassigned to the Legal and Legislative Affairs Office, Office of the General Manager. The service vehicle and the office space previously assigned to him were withdrawn and assigned to other employees.

Subsequently, on 2 November 2010, Chairperson Tolentino designated respondent as OIC of the Office of the AGMO by virtue of Memorandum Order No. 24,<sup>6</sup> which in turn cited OP Memorandum Circular No. 2 as basis. Thereafter, the name of petitioner was stricken off the MMDA payroll, and he was no longer paid his salary beginning November 2010.

Petitioner sought a clarification<sup>7</sup> from the Career Executive Service Board (CESB) as to the proper classification of the position of AGMO. In her reply,<sup>8</sup> Executive Director Maria Anthonette Allones (Executive Director Allones), CESO I, stated that the position of AGMO had not yet been classified and could not be considered as belonging to the Career Executive Service (CES). She further stated that a perusal of the appointment papers of petitioner showed that he was not holding a coterminous position. In sum, she said, he was not covered by OP Memorandum Circular Nos. 1 and 2.

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<sup>2</sup> Id. at 23-24.

<sup>3</sup> Id. at 22.

<sup>4</sup> Id. at 8.

<sup>5</sup> Id. at 26.

<sup>6</sup> Id. at 30.

<sup>7</sup> Id. at 31-32, Letter dated 5 November 2010.

<sup>8</sup> Id. at 33-34 Letter dated 12 November 2010.

Petitioner was later offered the position of Director IV of MMDA Public Health and Safety Services and/or MMDA consultant. He turned down the offer, claiming that it was a demotion in rank.

Demanding payment of his salary and reinstatement in the monthly payroll,<sup>9</sup> petitioner sent a letter on 5 December 2010 to Edenison Faisan, assistant general manager (AGM) for Finance and Administration; and Lydia Domingo, Director III, Administrative Services. For his failure to obtain an action or a response from MMDA, he then made a formal demand for his reinstatement as AGMO through a letter addressed to the Office of the President on 17 December 2010.<sup>10</sup>

However, on 4 January 2011, President Benigno S. Aquino III (President Aquino) appointed respondent as the new AGMO of the MMDA.<sup>11</sup> On 10 January 2011, the latter took his oath of office.

Hence, the instant Petition.

The Office of the Solicitor General (OSG), representing respondent, filed its Comment on 19 August 2011.<sup>12</sup> However, upon motion of petitioner, it was disqualified from representing respondent. Thus, a private law firm<sup>13</sup> entered an appearance as counsel for respondent and adopted the Comment filed by the OSG.<sup>14</sup>

Petitioner filed his Reply on 17 November 2011.

## ISSUES

Petitioner raises the following issues<sup>15</sup> for the consideration of this Court:

- (1) Whether respondent Emerson S. Carlos was validly appointed by President Aquino to the position of AGMO of the MMDA;
- (2) Whether petitioner Emmanuel A. de Castro is entitled to the position of AGMO; and
- (3) Whether or not respondent should pay petitioner the salaries and financial benefits he received during his illegal tenure as AGMO of the MMDA.

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<sup>9</sup> Id. at 42-44.

<sup>10</sup> Id. at 45-56.

<sup>11</sup> Id. at 57.

<sup>12</sup> Id. at 111-129.

<sup>13</sup> Rodrigo, Berenguer & Guno.

<sup>14</sup> Entry of Appearance (With Prayer to Adopt Comment dated 13 September 2011).

<sup>15</sup> Id. at 14-15.

## THE COURT'S RULING

Petitioner contends that Section 2(3), Article IX(B) of the 1987 Constitution guarantees the security of tenure of employees in the civil service. He further argues that his appointment as AGMO is not covered by OP Memorandum Circular No. 2, since it is not a CES position as determined by the CESB.

On the other hand, respondent posits that the AGMO position belongs to the CES; thus, in order to have security of tenure, petitioner, must be a Career Executive Service official (CESO). Respondent maintains that the function of an AGM is executive and managerial in nature. Thus, considering that petitioner is a non-CESO occupying a CES position, he is covered by OP Memorandum Circular Nos. 1 and 2. Respondent likewise raises the issue of procedural infirmity in the direct recourse to the Supreme Court by petitioner, who thereby failed to adhere to the doctrine of hierarchy of courts.

### *Hierarchy of Courts*

As to the procedural issue, petitioner submits that a direct recourse to this Court is warranted by the urgent demands of public interest, particularly the veritable need for stability in the civil service and the protection of the rights of civil servants. Moreover, considering that no other than the President of the Philippines is the appointing authority, petitioner doubts if a trial court judge or an appellate court justice, with a prospect of promotion in the judiciary would be willing to go against a presidential appointment.

Although Section 5(1) of Article VIII of the 1987 Constitution explicitly provides that the Supreme Court has original jurisdiction over petitions for *certiorari*, prohibition, mandamus, *quo warranto*, and *habeas corpus*, the jurisdiction of this Court is not exclusive but is concurrent with that of the Court of Appeals and regional trial court and does not give petitioner unrestricted freedom of choice of court forum.<sup>16</sup> The hierarchy of courts must be strictly observed.

Settled is the rule that “the Supreme Court is a court of last resort and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition.”<sup>17</sup> A disregard of the doctrine of hierarchy of courts warrants, as a rule, the outright dismissal of a petition.<sup>18</sup>

A direct invocation of this Court’s jurisdiction is allowed only when there are special and important reasons that are clearly and specifically set

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<sup>16</sup> *Capalla v. COMELEC*, G.R. Nos. 201112, 201121, 201127, 201413, 13 June 2012.

<sup>17</sup> *Vergara Sr. v. Suelto*, 240 Phil. 719,732 (1987).

<sup>18</sup> *Lacson Hermanas, Inc. v. Heirs of Ignacio*, 500 Phil. 673, 676 (2005).

forth in a petition.<sup>19</sup> The rationale behind this policy arises from the necessity of preventing (1) inordinate demands upon the time and attention of the Court, which is better devoted to those matters within its exclusive jurisdiction; and (2) further overcrowding of the Court's docket.<sup>20</sup>

In this case, petitioner justified his act of directly filing with this Court only when he filed his Reply and after respondent had already raised the procedural infirmity that may cause the outright dismissal of the present Petition. Petitioner likewise cites stability in the civil service and protection of the rights of civil servants as rationale for disregarding the hierarchy of courts.

Petitioner's excuses are not special and important circumstances that would allow a direct recourse to this Court. More so, mere speculation and doubt to the exercise of judicial discretion of the lower courts are not and cannot be valid justifications to hurdle the hierarchy of courts. Thus, the Petition must be dismissed.

### ***Nature of the AGMO Position***

Even assuming that petitioner's direct resort to this Court is permissible, the Petition must still be dismissed for lack of merit.

"A petition for *quo warranto* is a proceeding to determine the right of a person to use or exercise a franchise or an office and to oust the holder from the enjoyment, thereof, if the claim is not well-founded, or if his right to enjoy the privilege has been forfeited."<sup>21</sup> Where the action is filed by a private person, in his own name, he must prove that he is entitled to the controverted position, otherwise, respondent has a right to the undisturbed possession of the office.<sup>22</sup>

The controversy arose from the issuance of OP Memorandum Circular Nos. 1 and 2, which applies to all non-CESO's occupying CES positions in all agencies of the executive branch. Petitioner, being a non-CESO, avers that he is not covered by these OP memoranda considering that the AGMO of the MMDA is a non-CES position.

In order to settle the controversy, there is a need to determine the nature of the contentious position of AGMO of the MMDA.

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<sup>19</sup> *Ouano v. PGTT*, 434 Phil. 28, 34 (2002).

<sup>20</sup> *Santiago v. Vasquez*, G.R. Nos. 99289-90, 27 January 1993, 217 SCRA 633; and *People v. Cuaresma*, 254 Phil. 418, 427 (1989).

<sup>21</sup> *Mendoza v. Allas*, 362 Phil. 238, 244 (1999).

<sup>22</sup> *Id.*

***Career vs. non-career***

Section 4 of Republic Act No. (R.A.) 7924,<sup>23</sup> otherwise known as the MMDA Charter, specifically created the position of AGMO. It reads as follows:

Sec. 4 Metro Manila Council. x x x.

x x x x

The Council shall be headed by a Chairman, who shall be appointed by the President and who shall continue to hold office at the discretion of the appointing authority. He shall be vested with the rank, rights, privileges, disqualifications, and prohibitions of a Cabinet member.

The Chairman shall be assisted by a General Manager, an Assistant General Manager for Finance and Administration, an Assistant General Manager for Planning and an **Assistant General Manager for Operations, all of whom shall be appointed by the President with the consent and concurrence of the majority of the Council, subject to civil service laws and regulations. They shall enjoy security of tenure and may be removed for cause in accordance with law.** (Emphasis supplied)

Executive Order No. (E.O.) 292, otherwise known as The Revised Administrative Code of 1987, provides for two classifications of positions in the civil service: career and non-career.<sup>24</sup>

Career service is characterized by the existence of security of tenure,<sup>25</sup> as contradistinguished from non-career service whose tenure is coterminous with that of the appointing authority; or subject to the latter's pleasure; or limited to a period specified by law or to the duration of a particular project for which purpose the appointment was made.<sup>26</sup>

Applying the foregoing distinction to the instant case, this Court finds that an AGMO holds a career position, considering that the MMDA Charter specifically provides that AGMs enjoy security of tenure – the core characteristic of a career service, as distinguished from a non-career service position.

***CES vs. non-CES***

Career service includes the following:

- (1) Open Career positions for appointment to which prior qualification in an appropriate examination is required;

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<sup>23</sup> An Act Creating The Metropolitan Manila Development Authority, Defining Its Powers And Functions, Providing Funding Therefor And For Other Purposes.

<sup>24</sup> Administrative Code, Book V, Title I, Subtitle A, Chapter 2, Sec. 6.

<sup>25</sup> Administrative Code, Book V, Title I, Subtitle A, Chapter 2, Sec. 7.

<sup>26</sup> Administrative Code, Book V, Title I, Subtitle A, Chapter 2, Sec. 9.

(2) Closed Career positions which are scientific, or highly technical in nature; these include the faculty and academic staff of state colleges and universities, and scientific and technical positions in scientific or research institutions which shall establish and maintain their own merit systems;

(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;**

(4) Career officers, other than those in the Career Executive Service, who are appointed by the President, such as the Foreign Service Officers in the Department of Foreign Affairs;

(5) Commissioned officers and enlisted men of the Armed Forces which shall maintain a separate merit system;

(6) Personnel of government-owned or controlled corporations, whether performing governmental or proprietary functions, who do not fall under the non-career service; and

(7) Permanent laborers, whether skilled, semi-skilled, or unskilled.<sup>27</sup> (Emphasis supplied)

In *Civil Service Commission v. Court of Appeals and PCSO*,<sup>28</sup> the Court clarified the positions covered by the CES:

Thus, from the long line of cases cited above, in order for a position to be covered by the CES, two elements must concur. First, the position must either be (1) **a position enumerated under Book V, Title I, Subsection A, Chapter 2, Section 7(3) of the Administrative Code of 1987, i.e., Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service, or** (2) **a position of equal rank as those enumerated, and identified by the Career Executive Service Board to be such position of equal rank.** Second, **the holder of the position must be a presidential appointee.** Failing in any of these requirements, a position cannot be considered as one covered by the third-level or CES. (Emphasis supplied)

In sum, there are two elements required for a position to be considered as CES:

- 1) The position is among those enumerated under Book V, Title I, Subtitle A, Chapter 2, Section 7(3) of the Administrative Code of 1987 OR a position of equal rank as those enumerated *and* identified by the CESB to be such position of equal rank; AND
- 2) The holder of the position is a presidential appointee.

Records show that in reply<sup>29</sup> to Chairperson Tolentino's query on whether the positions of general manager and AGM of the MMDA are

<sup>27</sup> Administrative Code, Book V, Title I, Subtitle A, Chapter 2, Sec. 7.

<sup>28</sup> G.R. Nos. 185766 and 185767, 23 November 2010, 635 SCRA 749, 765.

<sup>29</sup> *Rollo*, p. 41, Letter dated 8 September 2010.

covered by the CES,<sup>30</sup> the CESB – thru Executive Director Allones – categorically stated that these positions are not among those covered by the CES.

Upon petitioner's separate inquiry on the matter,<sup>31</sup> the CESB similarly responded that the AGMO's position could not be considered as belonging to the CES.<sup>32</sup> Additionally, Executive Director Allones said that petitioner was not covered by OP Memorandum Circular Nos. 1 and 2, to wit:

A cursory perusal of your appointment papers would show that it does not bear any indication that you are holding a coterminous appointment. Neither your position as AGMO can be considered as created in excess of the authorized staffing pattern since RA 7924, the law that created the MMDA clearly provided for such position. As further stated above, your position will not fall under paragraph No. 2 of OP MC 1 because it is not yet considered as belonging to the CES. Hence, we posit that you are not covered by OP MC 1 and 2.<sup>33</sup>

However, contrary to Executive Director Allones' statement, the CESB, through Resolution No. 799 already declared certain positions meeting the criteria set therein as embraced within the CES.

It is worthy of note that CESB Resolution No. 799 was issued on 19 May 2009, even prior to petitioner's appointment on 29 July 2009. Moreover, as early as 31 May 1994, the above classification was already embodied in CSC Resolution No. 34-2925, circularized in CSC Memorandum Circular 21, Series of 1994.

Resolution No. 799 classified the following positions as falling within the coverage of the CES:

- a. The Career Executive Service includes the positions of Undersecretary, Assistant Secretary, Bureau director, Assistant Bureau Director, regional Director (department-wide and bureau-wide), Assistant Regional Director (department-wide and bureau-wide), and Chief of Department Service;
- b. Unless provided otherwise, all other managerial or executive positions in the government, including government-owned or controlled corporations with original charters are embraced within the CES provided that they meet the following criteria:
  - i.) The position is a career position;
  - ii.) The position is above division chief level; and,
  - iii.) The duties and responsibilities of the position require performance of executive and managerial functions.

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<sup>30</sup> Id. at. 35-40, Letter dated 28 August 2010.

<sup>31</sup> Supra at note 6.

<sup>32</sup> Supra at note 7.

<sup>33</sup> Id at 34.



Without a doubt, the AGMO position is not one of those enumerated in the above-cited paragraph(a) but it clearly falls under paragraph(b) considering that it belongs to a government-owned and controlled corporation with an original charter. The nature of AGMO is clear from the provisions of the MMDA Charter.

*First*, we have already determined that an AGMO is a career position that enjoys security of tenure by virtue of the MMDA Charter.

*Second*, it is undisputed that the position of AGMO is above the division chief level, which is equivalent to the rank of assistant secretary with Salary Grade 29.<sup>34</sup>

*Third*, a perusal of the MMDA Charter readily reveals that the duties and responsibilities of the position require the performance of executive and managerial functions.

Section 12.4, Rule IV of the Rules and Regulations Implementing R.A. 7924 provides the powers, functions, duties and responsibilities of an AGMO, as follows:

#### 12.4 Assistant General Manager for Operations

The Assistant General Manager for Operations shall perform the following functions:

- a. Establish a mechanism for coordinating and operationalizing the delivery of metro-wide basic services;
- b. Maintain a monitoring system for the effective evaluation of the implementation of approved policies, plans and programs for the development of Metropolitan Manila;
- c. Mobilize the participation of local government units, executive departments or agencies of the national government, and the private sector in the delivery of metro-wide services; and
- d. Operate a central radio communication system.

He shall perform such other duties as are incidental or related to the above functions or as may be assigned from time to time.

An AGMO performs functions that are managerial in character; exercises management over people, resource, and/or policy; and assumes functions like planning, organizing, directing, coordinating, controlling, and overseeing the activities of MMDA. The position requires the application of managerial or supervisory skills necessary to carry out duties and responsibilities involving functional guidance, leadership, and supervision.

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<sup>34</sup> *Rollo*, p. 123, Comment.

For the foregoing reasons, the position of AGMO is within the coverage of the CES.

In relation thereto, positions in the career service, for which appointments require examinations, are grouped into three major levels:<sup>35</sup>

Sec. 8. Classes of positions in the Career Service. — (1) Classes of positions in the career service appointment to which requires examinations shall be grouped into three major levels as follows:

- (a) The first level shall include clerical, trades, crafts and custodial service positions which involve non-professional or sub-professional work in a non-supervisory or supervisory capacity requiring less than four years of collegiate studies;
- (b) The second level shall include professional, technical, and scientific positions which involve professional, technical or scientific work in a non-supervisory or supervisory capacity requiring at least four years of college work up to Division Chief levels; and
- (c) **The third level shall cover positions in the Career Executive Service.** (Emphasis supplied)

Entrance to different levels requires corresponding civil service eligibilities.<sup>36</sup> Those at the third level (CES positions) require career service executive eligibility (CSEE) as a requirement for permanent appointment.<sup>37</sup>

Evidently, an AGMO should possess all the qualifications required by third-level career service within the CES. In this case, petitioner does not have the required eligibility. Therefore, we find that his appointment to the position of AGMO was merely temporary.

*Amores v. Civil Service Commission*<sup>38</sup> is instructive as to the nature of temporary appointments in the CES. The Court held therein that an appointee cannot hold a position in a permanent capacity without the required CES eligibility:

We begin with the precept, firmly established by law and jurisprudence that a permanent appointment in the civil service is issued to a person who has met the requirements of the position to which the appointment is made in accordance with law and the rules issued pursuant thereto. An appointment is permanent where the appointee meets all the requirements for the position to which he is being appointed, including the appropriate eligibility prescribed, and it is temporary where the appointee meets all the requirements for the position except only the appropriate civil service eligibility.

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<sup>35</sup> Administrative Code, Book V, Title 1, Subtitle A, Chapter 2, Sec. 8.

<sup>36</sup> *Abella Jr. v. CSC*, 485 Phil. 182, 204 (2004).

<sup>37</sup> Memorandum Circular 37, s. 1998, dated 20 October 1998; Memorandum Circular 1, s. 1997, dated 24 January 1997.

<sup>38</sup> G.R. No. 170093, 29 April 2009, 587 SCRA 160, 167-169.

x x x x

With particular reference to positions in the career executive service (CES), the requisite civil service eligibility is acquired upon passing the CES examinations administered by the CES Board and the subsequent conferment of such eligibility upon passing the examinations. Once a person acquires eligibility, he either earns the status of a permanent appointee to the CES position to which he has previously been appointed, or he becomes qualified for a permanent appointment to that position provided only that he also possesses all the other qualifications for the position. Verily, it is clear that the possession of the required CES eligibility is that which will make an appointment in the career executive service a permanent one. Petitioner does not possess such eligibility, however, it cannot be said that his appointment to the position was permanent.

Indeed, the law permits, on many occasions, the appointment of non-CES eligibles to CES positions in the government in the absence of appropriate eligibles and when there is necessity in the interest of public service to fill vacancies in the government. But in all such cases, the appointment is at best merely temporary as it is said to be conditioned on the subsequent obtention of the required CES eligibility. This rule, according to *De Leon v. Court of Appeals*, *Dimayuga v. Benedicto*, *Caringal v. Philippine Charity Sweepstakes Office*, and *Achacoso v. Macaraig*, is invariable even though the given appointment may have been designated as permanent by the appointing authority.

x x x x

Security of tenure in the career executive service, which presupposes a permanent appointment, takes place upon passing the CES examinations administered by the CES Board x x x.

Petitioner undisputedly lacked CES eligibility. Thus, he did not hold the position of AGMO in a permanent capacity or acquire security of tenure in that position. Otherwise stated, his appointment was temporary and “co-terminus with the appointing authority.”<sup>39</sup> In *Carillo v. CA*,<sup>40</sup> this Court ruled that “one who holds a temporary appointment has no fixed tenure of office; his employment can be terminated at the pleasure of the appointing power, there being no need to show that the termination is for cause.” Therefore, we find no violation of security of tenure when petitioner was replaced by respondent upon the latter’s appointment to the position of AGMO by President Aquino.

Even granting for the sake of argument that the position of AGMO is yet to be classified by the CESB, petitioner’s appointment is still deemed coterminous pursuant to CESB Resolution No. 945 issued on 14 June 2011, which reads:

WHEREAS, on November 23, 2010, the Supreme Court in the case of PCSO v. CSC, G.R. NO. 185766 and G.R. No. 185767 limited the

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<sup>39</sup> *Ong v. Office of the President*, G.R. No. 184219, 30 January 2012, 664 SCRA 413, 418-419.

<sup>40</sup> 167 Phil. 527, 533 (1977).

coverage of positions belonging to the CES to positions requiring Presidential appointments.

WHEREAS, in the same vein, CES positions have now become synonymous to third level positions by virtue of the said ruling.

WHEREFORE, foregoing premises considered, the Board RESOLVES, as it is hereby RESOLVED, to issue the following guidelines to clarify the policy on the coverage of CES and its classification:

1. For career service positions requiring Presidential appointments expressly enumerated under Section 7(3), Chapter 2, Subtitle A, Title 1, Book V of the Administrative Code of 1987 namely: Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, and Chief of Department Service, no classification of position is necessary to place them under the coverage of the CES, except if they belong to Project Offices, in which case a position classification is required, in consultation with the Department of Budget and Management (DBM).
2. **For positions requiring Presidential appointments other than those enumerated above**, a classification of positions is necessary which shall be conducted by the Board, upon request of the head of office of the government department/agency concerned, to place them under the coverage of the CES provided they comply with the following criteria:
  - i.) The position is a career position;
  - ii.) The position is above division chief level; and,
  - iii.) The duties and responsibilities of the position require the performance of executive and managerial functions.

**All appointments to positions which have not been previously classified as part of the CES would be deemed co-terminus with the appointing authority.** (Emphasis supplied)

Therefore, considering that petitioner is an appointee of then President Arroyo whose term ended on 30 June 2010, petitioner's term of office was also deemed terminated upon the assumption of President Aquino.

Likewise, it is inconsequential that petitioner was allegedly replaced by another non-CESO eligible. In a *quo warranto* proceeding, the person suing must show that he has a clear right to the office allegedly held unlawfully by another. Absent a showing of that right, the lack of qualification or eligibility of the supposed usurper is immaterial.<sup>41</sup>

All the foregoing considered, the petition merits an outright dismissal for disregarding the hierarchy of courts and petitioner's lack of cause of action against respondent for failure to sufficiently show that he has undisturbed rights to the position of AGMO of the MMDA.

**WHEREFORE**, premises considered, the Petition is **DENIED**.

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<sup>41</sup> See *Civil Service Commission v. Engineer Ali Darangina*, 542 Phil. 635 (2007).


**SO ORDERED.**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice

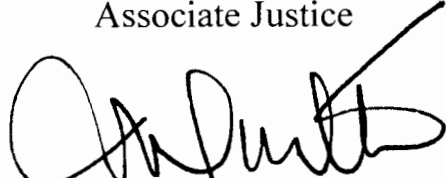
WE CONCUR:


  
**ANTONIO T. CARPIO**  
Associate Justice

  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice


  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**ARTURO D. BRION**  
Associate Justice


  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice


  
**MARIANO C. DEL CASTILLO**  
Associate Justice


  
**ROBERTO A. ABAD**  
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

  
**MARIO VICTOR F. LEONEN**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court.



**MARIA LOURDES P. A. SERENO**  
Chief Justice