



Republic of the Philippines  
**Supreme Court**  
Manila

**EN BANC**

**CIVIL SERVICE COMMISSION,**  
Petitioner,

**G.R. No. 190147**

Present:

- versus -

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

**PILILLA WATER DISTRICT,**  
Respondent.

Promulgated:

**MARCH 05, 2013**

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**DECISION**

**VILLARAMA, JR., J.:**

Assailed in this petition for review on certiorari under Rule 45 are the Decision<sup>1</sup> dated July 28, 2009 and Resolution<sup>2</sup> dated November 9, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 106031 which annulled and set aside Resolution Nos. 080942<sup>3</sup> and 081846<sup>4</sup> of the Civil Service Commission (CSC).

\* No Part.

<sup>1</sup> *Rollo*, pp. 59-68. Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Bienvenido L. Reyes (now a Member of this Court) and Isaias P. Dicdican concurring.

<sup>2</sup> Id. at 70-71.

<sup>3</sup> Id. at 87-90.

<sup>4</sup> Id. at 91-94.

The factual background of this case is as follows:

Paulino J. Rafanan was first appointed General Manager on a coterminous status under Resolution No. 12 issued on August 7, 1998 by the Board of Directors (BOD) of respondent Pililla Water District (PWD). His appointment was signed by the BOD Acting Chairman and attested by the CSC Field Office-Rizal.<sup>5</sup>

On October 4, 2001, petitioner issued Resolution No. 011624<sup>6</sup> amending and clarifying Section 12, Rule XIII of CSC Memorandum Circular No. 15, s. 1999, as follows:

Section 12. a) No person who has reached the compulsory retirement age of 65 years can be appointed to any position in the government, subject only to the exception provided under sub-section (b) hereof.

However, in meritorious cases, the Commission may allow the extension of service of a person who has reached the compulsory retirement age of 65 years, for a period of six (6) months only unless otherwise stated. Provided, that, such extension may be for a maximum period of one (1) year for one who will complete the fifteen (15) years of service required under the GSIS Law.

A request for extension shall be made by the head of office and shall be filed with the Commission not later than three (3) months prior to the date of the official/employee's compulsory retirement.

Henceforth, the only basis for Heads of Offices to allow an employee to continue rendering service after his/her 65<sup>th</sup> birthday is a Resolution of the Commission granting the request for extension. Absent such Resolution, the salaries of the said employee shall be for the personal account of the responsible official.

X X X X

b) A person who has already reached the compulsory retirement age of 65 can still be appointed to a **coterminous/primarily confidential position** in the government.

A person appointed to a coterminous/primarily confidential position who reaches the age of 65 years is considered automatically extended in the service until the expiry date of his/her appointment or until his/her services are earlier terminated. (Emphasis supplied)

On April 2, 2004, Republic Act (R.A.) No. 9286<sup>7</sup> was approved and signed into law, Section 2 of which provides:

SEC. 2. Section 23 of Presidential Decree No. 198, as amended is hereby amended to read as follows:

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<sup>5</sup> CA *rollo*, pp. 45-46.

<sup>6</sup> Id. at 47-49.

<sup>7</sup> AN ACT FURTHER AMENDING PRESIDENTIAL DECREE NO. 198, OTHERWISE KNOWN AS "THE PROVINCIAL WATER UTILITIES ACT OF 1973", AS AMENDED.

“SEC. 23. *The General Manager.*—At the first meeting of the Board, or as soon thereafter as practicable, the Board shall appoint, by a majority vote, a general manager and shall define [his] duties and fix his compensation. **Said officer shall not be removed from office, except for cause and after due process.**”  
(Emphasis supplied)

On June 16, 2004, the BOD approved Resolution No. 19,<sup>8</sup> Series of 2004, which reads:

EXTENSION OF SERVICES OF MR. PAULINO J. RAFANAN AS  
GENERAL MANAGER OF PILILLA WATER DISTRICT

WHEREAS[,] the General Manager, Mr. Paulino J. Rafanan[,] is reaching his age 65 this month of this year the Board, because of his good and honest performance in faithfully carrying out the policies of the Board resulting in the success of the District’s expansion program, unanimously agreed to retain his services as General Manager at least up to December 31, 2008 co-terminus with the term of the Director last appointed after which period he may stay at the pleasure of the other Board.

THEREFORE[,] THE BOARD RESOLVED[,] AS IT HEREBY RESOLVED that the services of Mr. Paulino J. Rafanan as General Manager of Pililla Water District is extended up to December 31, 2008 as a reward for his honest and efficient services to the District.

In its Resolution No. 04-1271 dated November 23, 2004, petitioner denied the request of BOD Chairman Valentin E. Paz for the extension of service of Rafanan and considered the latter “separated from the service at the close of office hours on June 25, 2004, his 65<sup>th</sup> birthday.” Petitioner also denied the motion for reconsideration filed by Chairman Paz under its Resolution No. 05-0118 dated February 1, 2005.<sup>9</sup>

On April 8, 2005, the BOD issued Resolution No. 09, Series of 2005 reappointing Rafanan as General Manager on coterminous status. Said reappointment was signed by Chairman Paz and attested by the CSC Field Office-Rizal.<sup>10</sup> A year later, the BOD approved Resolution No. 20 declaring the appointment of General Manager Rafanan as permanent<sup>11</sup> but this resolution was not implemented.

In a letter dated November 19, 2007, Pililla Mayor Leandro V. Masikip, Sr. questioned Rafanan’s coterminous appointment as defective and void *ab initio* considering that he was appointed to a career position despite having reached the compulsory retirement age. Said letter-complaint was treated as an appeal from the appointment made by the BOD Chairman of respondent.

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<sup>8</sup> CA rollo, p. 50.

<sup>9</sup> Id. at 37.

<sup>10</sup> Id. at 55-56.

<sup>11</sup> Id. at 37.

On May 19, 2008, petitioner issued Resolution No. 080942 invalidating the coterminous appointment issued to Rafanan as General Manager on April 8, 2005 on the ground that it was made in violation of Section 2 of R.A. No. 9286. Petitioner further observed that the appointment was issued to circumvent the denial of the several requests for extension of service of Rafanan.

Rafanan filed a motion for reconsideration which was denied by petitioner under its Resolution No. 081846 dated September 26, 2008.

Respondent filed in the CA a petition for review with application for temporary restraining order and/or writ of preliminary injunction under Rule 43 of the 1997 Rules of Civil Procedure, as amended. Insisting that Rafanan's coterminous appointment was based on CSC Resolution No. 011624, respondent contended that petitioner cannot usurp the power of appointment and removal of the appointing authority, and that petitioner failed to observe due process.

In the assailed Decision, the CA reversed the CSC and ruled that the position of General Manager in water districts remains primarily confidential in nature and hence respondent's BOD may validly appoint Rafanan to the said position even beyond the compulsory retirement age.

Petitioner filed a motion for reconsideration which the CA denied.

Hence, this petition submitting the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT RULED THAT THE POSITION OF GENERAL MANAGER OF A LOCAL WATER DISTRICT IS PRIMARILY CONFIDENTIAL IN NATURE.

II

WHETHER OR NOT THE COURT OF APPEALS ERRED WHEN IT RULED THAT THE APRIL 8, 2005 APPOINTMENT OF RAFANAN IN A CO-TERMINOUS CAPACITY WAS VALID.<sup>12</sup>

Under Section 13, Rule V of the Omnibus Rules Implementing Book V of Executive Order No. 292 and other Pertinent Civil Service Laws and CSC Resolution No. 91-1631 issued on December 27, 1991, appointments in the civil service may either be of permanent or temporary status. A permanent appointment is issued to a person who meets all the requirements for the position to which he is being appointed/promoted, including the appropriate eligibility prescribed, in accordance with the provisions of law, rules and standards promulgated in pursuance thereof, while a temporary appointment may be extended to a person who possesses all the

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<sup>12</sup> *Rollo*, p. 161.

requirements for the position except the appropriate civil service eligibility and for a limited period not exceeding twelve months or until a qualified civil service eligible becomes available.

Section 14 of the same resolution provides for a coterminous appointment:

Sec. 14. An appointment may also be co-terminous which shall be issued to a person whose entrance and continuity in the service is based on the trust and confidence of the appointing authority or that which is **subject to his pleasure**, or co-existent with his tenure, or limited by the duration of project or subject to the availability of funds.

The co-terminous status may be further classified into the following:

(1) co-terminous with the project - when the appointment is co-existent with the duration of a particular project for which purpose employment was made or subject to the availability of funds for the same;

(2) co-terminous with the appointing authority - when appointment is co-existent with the tenure of the appointing authority **or at his pleasure**;

(3) co-terminous with the incumbent - when the appointment is co-existent with the appointee, in that after the resignation, separation or termination of the services of the incumbent the position shall be deemed automatically abolished; and

(4) co-terminous with a specific period - appointment is for a specific period and upon expiration thereof, the position is deemed abolished.

For the purpose of coverage or membership with the GSIS, or their right to security of tenure, co-terminous appointees, except those who are co-terminous with the appointing authority, shall be considered permanent. (Emphasis supplied)

Section 23 of Presidential Decree (P.D.) No. 198, otherwise known as “The Provincial Water Utilities Act of 1973” reads:

SEC. 23. *Additional Officers.*—At the first meeting of the board, or as soon thereafter as practicable, the board shall appoint, by a majority vote, a general manager, an auditor, and an attorney, and shall define their duties and fix their compensation. **Said officers shall serve at the pleasure of the board.** (Emphasis supplied)

The provision was subsequently amended by P.D. No. 768<sup>13</sup>:

SEC. 23. *The General Manager.*—At the first meeting of the board, or as soon thereafter as practicable, the board shall appoint, by a majority vote, a general manager and shall define his duties and fix his compensation. **Said officer shall serve at the pleasure of the board.** (Emphasis supplied)

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<sup>13</sup> Promulgated on August 15, 1975.

In the case of *Paloma v. Mora*,<sup>14</sup> we held that the nature of appointment of General Managers of Water Districts under Section 23 of P.D. No. 198 falls under Section 14 of the Omnibus Rules Implementing Book V of Executive Order No. 292, otherwise known as the “Administrative Code of 1987”, that is, the General Manager serves at the pleasure of the BOD.

As mentioned, Section 23 of P.D. No. 198 was already amended by R.A. No. 9286 which now provides that the General Manager of a water district shall not be removed from office except for cause and after due process. Said law, however, cannot be retroactively applied as to preclude the BOD from terminating its General Manager at the time the governing law was still P.D. No. 198, thus:

Unfortunately for petitioner, Rep. Act No. 9286 is silent as to the retroactivity of the law to pending cases and must, therefore, be taken to be of prospective application. The general rule is that in an amendatory act, every case of doubt must be resolved against its retroactive effect. Since the retroactive application of a law usually divests rights that have already become vested, the rule in statutory construction is that all statutes are to be construed as having only a prospective operation unless the purpose and intention of the legislature to give them a retrospective effect is *expressly* declared or is necessarily implied from the language used.

*First*, there is nothing in Rep. Act No. 9286 which provides that it should retroact to the date of effectivity of P.D. No. 198, the original law. *Next*, neither is it necessarily implied from Rep. Act No. 9286 that it or any of its provisions should apply retroactively. *Third*, Rep. Act No. 9286 is a substantive amendment of P.D. No. 198 inasmuch as it has changed the grounds for termination of the General Manager of Water Districts who, under the then Section 23 of P.D. No. 198, “shall serve at the pleasure of the Board.” Under the new law, however, said General Manager *shall not be removed from office, except for cause and after due process*. To apply Rep. Act No. 9286 retroactively to pending cases, such as the case at bar, will rob the respondents as members of the Board of the Palompon, Leyte Water District of the right vested to them by P.D. No. 198 to terminate petitioner at their pleasure or discretion. Stated otherwise, **the new law can not be applied to make respondents accountable for actions which were valid under the law prevailing at the time the questioned act was committed.**

Prescinding from the foregoing premises, **at the time petitioner was terminated by the Board of Directors, the prevailing law was Section 23 of P.D. No. 198 prior to its amendment by Rep. Act No. 9286.**<sup>15</sup> (Italics in the original; emphasis supplied)

In this case, respondent’s BOD reappointed Rafanan as General Manager on April 8, 2005 when R.A. No. 9286 was already in force and the BOD no longer had the authority to terminate the General Manager at its pleasure or discretion.

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<sup>14</sup> 507 Phil. 697, 708 (2005).

<sup>15</sup> Id. at 710-711.

Petitioner assails the CA in upholding the April 8, 2005 reappointment of Rafanan as General Manager on coterminous status, arguing that the change of phraseology of Section 23 under R.A. No. 9286 *ipso facto* reclassified said position from non-career to career position. Petitioner points out that it issued CSC Memorandum Circular No. 13, Series of 2006 entitled “Considering the Position of General Manager Under the Career Service and Prescribing the Guidelines and Qualification Standards for the said Position Pursuant to R.A. No. 9286,”<sup>16</sup> which applies to respondent under local water district Medium Category:

D (SG-24) - Medium

Education	:	Master’s degree
Experience	:	4 years in position/s involving management and supervision
Training	:	24 hours of training in management and supervision
Eligibility	:	Career Service (Professional)/Second Level Eligibility <sup>17</sup>

Respondent contends that the amendment introduced by R.A. No. 9286 is not in conflict with the coterminous appointment of Rafanan since the latter can be removed for “loss of confidence,” which is “cause” for removal. As to the above-cited CSC Memorandum Circular No. 13, Series of 2006, the same should be applied only to appointments made after its issuance, and not to Rafanan who was already the incumbent General Manager before August 17, 2006. Respondent maintains that since the General Manager of a water district holds a primarily confidential position, Rafanan can be appointed to or remain in said position even beyond the compulsory retirement age of 65 years.

The threshold issue is whether under Section 23 of P.D. No. 198 as amended by R.A. No. 9286, the position of General Manager of a water district remains as primarily confidential.

In the 1950 case of *De los Santos v. Mallare*<sup>18</sup> a position that is primarily confidential in nature is defined as follows:

x x x. These positions [policy-determining, primarily confidential and highly technical positions], **involve the highest degree of confidence, or are closely bound up with and dependent on other positions to which they are subordinate, or are temporary in nature.** It may truly be said that the good of the service itself demands that appointments coming under this category be terminable at the will of the officer that makes them.

x x x x

Every appointment implies confidence, but much more than ordinary confidence is reposed in the occupant of a position that is

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<sup>16</sup> *Rollo*, pp. 83-85.

<sup>17</sup> *Id.* at 84.

<sup>18</sup> 87 Phil. 289 (1950).

primarily confidential. The latter phrase **denotes not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which insures freedom of [discussion, delegation and reporting] without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state. x x x.**<sup>19</sup>  
(Emphasis supplied)

From the above case the “proximity rule” was derived. A position is considered to be primarily confidential when there is a primarily close intimacy between the appointing authority and the appointee, which ensures the highest degree of trust and unfettered communication and discussion on the most confidential of matters.<sup>20</sup> Moreover, in classifying a position as primarily confidential, its functions must not be routinary, ordinary and day to day in character. A position is not necessarily confidential though the one in office may sometimes hold confidential matters or documents.<sup>21</sup>

The case of *Piñero v. Hechanova*<sup>22</sup> laid down the doctrine that it is the nature of the position that finally determines whether a position is primarily confidential, policy determining or highly technical and that executive pronouncements can be no more than initial determinations that are not conclusive in case of conflict. As reiterated in subsequent cases, such initial determination through executive declaration or legislative fiat does not foreclose judicial review.<sup>23</sup>

More recently, in *Civil Service Commission v. Javier*,<sup>24</sup> we categorically declared that even petitioner’s classification of confidential positions in the government is not binding on this Court:

At present, there is no law enacted by the legislature that defines or sets definite criteria for determining primarily confidential positions in the civil service. Neither is there a law that gives an enumeration of positions classified as primarily confidential.

What is available is only petitioner's own classification of civil service positions, as well as jurisprudence which describe or give examples of confidential positions in government.

Thus, the corollary issue arises: should the Court be bound by a classification of a position as confidential already made by an agency or branch of government?

Jurisprudence establishes that **the Court is not bound by the classification of positions in the civil service made by the legislative or executive branches, or even by a constitutional body like the petitioner. The Court is expected to make its own determination as to the nature of a particular position, such as whether it is a primarily confidential position or not**, without being bound by prior classifications

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<sup>19</sup> Id. at 297-298.

<sup>20</sup> *Civil Service Commission v. Javier*, G.R. No. 173264, February 22, 2008, 546 SCRA 485, 507.

<sup>21</sup> Id. at 506, citing *Tria v. Sto. Tomas*, 276 Phil. 923 (1991) and *Ingles v. Mutuc*, 135 Phil. 177 (1968).

<sup>22</sup> 124 Phil. 1022, 1028 (1966).

<sup>23</sup> *Civil Service Commission v. Javier*, supra note 20, at 501-502; *Laurel v. Civil Service Commission*, G.R. No. 71562, October 28, 1991, 203 SCRA 195, 206.

<sup>24</sup> Id. at 499-500.



made by other bodies. The findings of the other branches of government are merely considered initial and not conclusive to the Court. Moreover, it is well-established that in case the findings of various agencies of government, such as the petitioner and the CA in the instant case, are in conflict, the Court must exercise its constitutional role as final arbiter of all justiciable controversies and disputes. (Emphasis supplied)

Applying the proximity rule and considering the nature of the duties of the office of the Corporate Secretary of the Government Service Insurance System (GSIS), we held in the above-cited case that said position in the GSIS or any government-owned or controlled corporation (GOCC) for that matter, is a primarily confidential position.<sup>25</sup>

In holding that the position of General Manager of a water district is primarily confidential in nature, the CA said:

X X X we rule that the position of general manager remains primarily confidential in nature despite the amendment of Section 23 of P.D. No. 198 by R.A. No. 9286, which gave the occupant of said position security of tenure, in that said officer could only be removed from office for cause and after due process. The nature of the duties and functions attached to the position points to its confidential character. **First**, the general manager is directly appointed by the board of directors. **Second**, the general manager directly reports to the board of directors. **Third**, the duties and responsibilities of a general manager are determined by the board of directors, which is a clear indication of a closely intimate relationship that exists between him and the board. **Fourth**, the duties and responsibilities of a general manager are not merely clerical and routinary in nature. His work involves policy and decision making. **Fifth**, the compensation of the general manager is fixed by the board of directors. And **last**, the general manager is directly accountable for his actions and omissions to the board of directors. Under this situation, the general manager is expected to possess the highest degree of honesty, integrity and loyalty, which is crucial to maintaining trust and confidence between him and the board of directors. The loss of such trust or confidence could easily result in the termination of the general manager's services by the board of directors. To be sure, regardless of the security of tenure a general manager may now enjoy, his term may still be ended by the board of directors based on the ground of "**loss of confidence.**"<sup>26</sup> (Emphasis in the original)

We sustain the ruling of the CA.

We stress that a primarily confidential position is characterized by the *close proximity of the positions* of the appointer and appointee as well as the *high degree of trust and confidence* inherent in their relationship.<sup>27</sup> The tenure of a confidential employee is coterminous with that of the appointing authority, or is at the latter's pleasure. However, the confidential employee may be appointed or remain in the position even beyond the compulsory retirement age of 65 years.<sup>28</sup>

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<sup>25</sup> Id. at 504.

<sup>26</sup> *Rollo*, p. 66.

<sup>27</sup> *Civil Service Commission v. Javier*, supra note 20, at 509.

<sup>28</sup> Id. at 498.

Among those positions judicially determined as primarily confidential positions are the following: Chief Legal Counsel of the Philippine National Bank; Confidential Agent of the Office of the Auditor, GSIS; Secretary of the *Sangguniang Bayan*; Secretary to the City Mayor; Senior Security and Security Guard in the Office of the Vice Mayor; Secretary to the Board of a government corporation; City Legal Counsel, City Legal Officer or City Attorney; Provincial Attorney; Private Secretary; and Board Secretary II of the Philippine State College of Aeronautics.<sup>29</sup> The Court in these instances focused on the nature of the functions of the office characterized by such “close intimacy” between the appointee and appointing power which insures freedom of intercourse without embarrassment or freedom from misgivings of betrayals of personal trust or confidential matters of state.<sup>30</sup>

In the case of the General Manager of a water district, Section 24 in relation to Section 23 of P.D. No. 198, as amended, reveals the close proximity of the positions of the General Manager and BOD.

SEC. 24. *Duties.*—The duties of the General Manager and other officers shall be **determined and specified from time to time by the Board**. The General Manager, who shall not be a director, shall have **full supervision and control of the maintenance and operation of water district facilities**, with power and authority to appoint all personnel of the district: Provided, That the appointment of personnel in the supervisory level shall be subject to approval by the Board. (As amended by Sec.10, PD 768) (Emphasis supplied)

While the BOD appoints by a majority vote the General Manager and specifies from time to time the duties he shall perform, it is the General Manager who exercises full supervision and control of the maintenance and operation of water district facilities. The BOD is confined to policy-making and prescribing a system of business administration and accounting for the water district patterned upon and in conformity to the standards established by the Local Water Utilities Administration (LWUA), and it is the General Manager who implements the plans and policies approved by the BOD. And while the BOD may not engage in the detailed management of the water district, it is empowered to delegate to such officers or agents designated by it any executive, administrative or ministerial power,<sup>31</sup> including entering into contracts under conditions and restrictions it may impose. Moreover, though the General Manager is vested with the power to appoint all personnel of the water district, the appointment of personnel in the supervisory level shall be subject to the approval of the BOD. It is likewise evident that the General Manager is directly accountable to the BOD which

<sup>29</sup> Id. at 508-509, citing *Besa v. Philippine National Bank*, 144 Phil. 282 (1970); *Salazar v. Mathay, Sr.*, 165 Phil. 256 (1976); *Cortez v. Bartolome*, No. L-46629, September 11, 1980, 100 SCRA 1; *Samson v. Court of Appeals*, 230 Phil. 59, 65 (1986); *Borres v. Court of Appeals*, No. L-36845, August 21, 1987, 153 SCRA 120; *Gray v. De Vera*, 138 Phil. 279 (1969); *Pacete v. Acting Chairman of the Commission on Audit*, G.R. No. 39456, May 7, 1990, 185 SCRA 1; *Cadiente v. Santos*, 226 Phil. 211 (1986); *Hilario v. Civil Service Commission*, 312 Phil. 1157 (1995); *Griño v. Civil Service Commission*, G.R. No. 91602, February 26, 1991, 194 SCRA 458; and *Sec. Gloria v. Hon. De Guzman, Jr.*, 319 Phil. 217 (1995).

<sup>30</sup> See *Civil Service Commission v. Javier*, id. at 506.

<sup>31</sup> Sections 17, 18, 19 & 20, P.D. No. 198, as amended.

has disciplinary jurisdiction over him. The foregoing working relationship of the General Manager and BOD under the governing law of water districts clearly demands a high degree of trust and confidence between them. The CA therefore correctly concluded that the position of General Manager is primarily confidential in nature.

Petitioner contends that the amendment introduced by R.A. No. 9286 in effect placed the position of General Manager of a water district in the category of career service. It posits that this can be inferred from the removal of the sentence “Said officer shall serve at the pleasure of the Board,” and replaced it with the sentence “Said officer shall not be removed from office, except for cause and after due process.” Accordingly, petitioner said it issued CSC MC No. 13, Series of 2006 prescribing guidelines for the implementation of the new law and qualification standards for the position of General Manager of a water district, whereby all incumbent general managers who hold appointments under coterminous status upon the effectivity of R.A. No. 9286 were given two years to meet all the requirements for permanent status.

Such interpretation is incorrect.

To our mind, the amendment introduced by R.A. No. 9286 merely tempered the broad discretion of the BOD. In *Paloma v. Mora*<sup>32</sup> we noted the change brought about by the said law insofar as the grounds for terminating the General Manager of a water district. Whereas previously the General Manager may be removed at the pleasure or discretion of the BOD even without prior notice and due hearing, the amendatory law expressly demands that these be complied with. Such condition for the exercise of the power of removal implements the fundamental right of due process guaranteed by the Constitution. In *De los Santos v. Mallare*,<sup>33</sup> the Court simply recognized as a necessity that confidential appointments be “terminable at the will” of the appointing authority.

It is established that no officer or employee in the Civil Service shall be removed or suspended except for cause provided by law. However, this admits of exceptions for it is likewise settled that the right to security of tenure is not available to those employees whose appointments are contractual and coterminous in nature.<sup>34</sup> Since the position of General Manager of a water district remains a primarily confidential position whose term still expires upon loss of trust and confidence by the BOD provided that prior notice and due hearing are observed, it cannot therefore be said that the phrase “shall not be removed except for cause and after due process” converted such position into a permanent appointment. Significantly, loss of

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<sup>32</sup> Supra note 14, at 711.

<sup>33</sup> Supra note 18, at 297.

<sup>34</sup> *Ong v. Office of the President*, G.R. No. 184219, January 30, 2012, 664 SCRA 413, 425, citing *De Tavera v. Philippine Tuberculosis Society, Inc., et al.*, 197 Phil. 919, 931 (1982) and *Civil Service Commission v. Magnaye, Jr.*, G.R. No. 183337, April 23, 2010, 619 SCRA 347, 357.

confidence may be predicated on other causes for removal provided in the civil service rules and other existing laws.

In *Tanjay Water District v. Quinit, Jr.*,<sup>35</sup> we said:

Indeed, no officer or employee in the Civil Service shall be removed or suspended except for cause provided by law. The phrase “cause provided by law,” however, *includes* “loss of confidence.” It is an established rule that the tenure of those holding primarily confidential positions ends upon loss of confidence, because their term of office lasts only as long as confidence in them endures. Their termination can be justified on the ground of loss of confidence, in which case, their cessation from office involves no removal but the expiration of their term of office.

The Civil Service Law classifies the positions in the civil service into career and non-career service positions. Career positions are characterized by: (1) entrance based on merit and fitness to be determined as far as practicable by competitive examinations, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure.<sup>36</sup>

The Career Service shall include<sup>37</sup>:

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

(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. (Emphasis supplied)

<sup>35</sup> G.R. No. 160502, April 27, 2007, 522 SCRA 529, 545-546.

<sup>36</sup> *Civil Service Commission v. Javier*, supra note 20, at 497, citing ADMINISTRATIVE CODE of 1987 (Executive Order No. 292), Book V, Title I, Subtitle A, Chapter 2, Sec. 7.

<sup>37</sup> ADMINISTRATIVE CODE of 1987 (Executive Order No. 292), id.

On the other hand, non-career positions are defined by the Administrative Code of 1987<sup>38</sup> as follows:

SEC. 9. *Non-Career Service.* – The Non-Career Service shall be characterized by (1) entrance on bases other than those of the usual tests of merit and fitness utilized for the career service; and (2) ***tenure which is limited to a period specified by law, or which is coterminous with that of the appointing authority or subject to his pleasure***, or which is limited to the duration of a particular project for which purpose employment was made.

The Non-Career Service shall include:

(1) Elective officials and their personal or confidential staff;

(2) Secretaries and other officials of Cabinet rank who hold their positions at the pleasure of the President and their personal or confidential staff(s);

(3) Chairman and members of commissions and boards with fixed terms of office and their personal or confidential staff;

(4) Contractual personnel or those whose employment in the government is in accordance with a special contract to undertake a specific work or job, requiring special or technical skills not available in the employing agency, to be accomplished within a specific period, which in no case shall exceed one year, and performs or accomplishes the specific work or job, under his own responsibility with a minimum of direction and supervision from the hiring agency; and

(5) Emergency and seasonal personnel. (Emphasis supplied)

As can be gleaned, a coterminous employment falls under the non-career service classification of positions in the Civil Service,<sup>39</sup> its tenure being limited or specified by law, or coterminous with that of the appointing authority, or at the latter's pleasure. Under R.A. No. 9286 in relation to Section 14 of the Omnibus Rules Implementing Book V of the Administrative Code of 1987,<sup>40</sup> the coterminous appointment of the General Manager of a water district is based on the majority vote of the BOD and whose continuity in the service is based on the latter's trust and confidence or co-existent with its tenure.

The term of office of the BOD members of water districts is fixed by P.D. No. 198 as follows:

SEC. 11. *Term of Office.* -- Of the five initial directors of each newly-formed district, two shall be appointed for a maximum term of two years, two for a maximum term of four years, and one for a maximum term of six years. Terms of office of all directors in a given district shall be such that the term of at least one director, but not more than two, shall expire on December 31 of each even-numbered year. Regular terms of office after the initial terms shall be for **six years** commencing on January 1 of odd-numbered years. Directors may be removed for cause only,

<sup>38</sup> Id., Sec. 9.

<sup>39</sup> *Orcullo, Jr. v. Civil Service Commission*, 410 Phil. 335, 339 (2001).

<sup>40</sup> CSC Resolution No. 91-1631 dated December 27, 1991.

subject to review and approval of the Administration. (As amended by Sec. 5, P.D. No. 768.) (Emphasis supplied)

On the basis of the foregoing, the logical conclusion is that the General Manager of a water district who is appointed on coterminous status may serve or hold office for a maximum of six years, which is the tenure of the appointing authority, subject to reappointment for another six years unless sooner removed by the BOD for loss of trust and confidence, or for any cause provided by law and with due process.

It may also be mentioned that under Section 36<sup>41</sup> of P.D. No. 198, as amended, the LWUA is empowered to take over the operation and management of a water district which has defaulted on its loan obligations to LWUA. As the bondholder or creditor, and in fulfilment of its mandate to regulate water utilities in the country, LWUA may designate its employees or any person or organization to assume all powers or policy-decision and the powers of management and administration to undertake all such actions as may be necessary for the water district's efficient operation. This further reinforces the conclusion that the position of General Manager of a water district is a non-career position.

In fine, since the position of General Manager of a water district remains a primarily confidential position, Rafanan was validly reappointed to said position by respondent's BOD on April 8, 2005 under coterminous status despite having reached the compulsory retirement age, which is allowed under Section 12 (b), Rule XIII of CSC Memorandum Circular No. 15, s. 1999, as amended by Resolution No. 011624 dated October 4, 2001.

**WHEREFORE**, the petition for review on certiorari is **DENIED**. The Decision dated July 28, 2009 and Resolution dated November 9, 2009 of the Court of Appeals in CA-G.R. SP No. 106031 are **AFFIRMED and UPHELD**.

No costs.

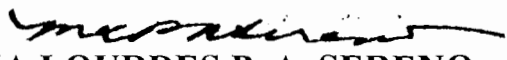
**SO ORDERED.**

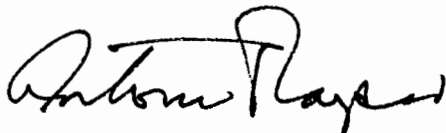
  
**MARTIN S. VILLARAMA, JR.**  
Associate Justice

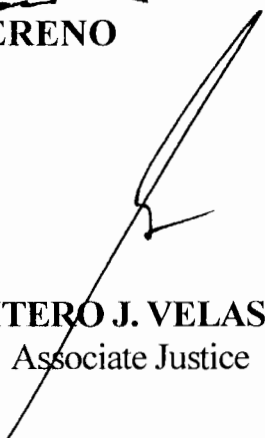
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<sup>41</sup> Sec. 36. *Default.* – In the event of the default by the district in the payment of principal or interest on its outstanding bonds or other obligations, any bondholder or creditor shall have the right to bring an action before the appropriate court to compel the payment of such obligations. If the bondholder or creditor concerned is the Administration, it may, without the necessity of judicial process, take over and operate the entire facilities, systems or properties of the district. For this purpose, the Administration may designate its employees or any person or organization to assume all powers of policy-decision and the powers of management and administration, including but not limited to the establishment of water rates and charges, the dismissal and hiring of personnel, the purchase of supplies, equipment and materials and such other actions as may be necessary to operate the utility efficiently.

WE CONCUR:

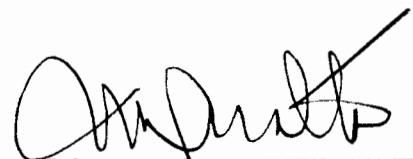
  
**MARIA LOURDES P. A. SERENO**  
Chief Justice

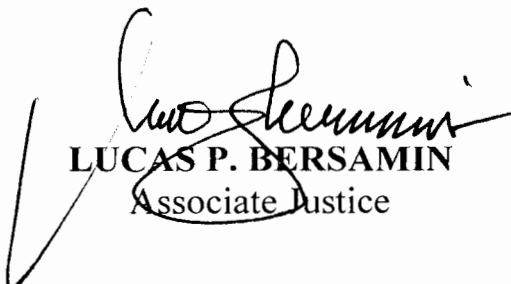
  
**ANTONIO T. CARPIO**  
Associate Justice

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

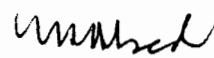
  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**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

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

  
**JOSE CATRAL MENDOZA**  
Associate Justice

(No Part)  
**BIENVENIDO L. REYES**  
Associate Justice

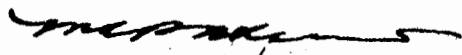
  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice



**MARVIC MARIO VICTOR F. LEONEN**  
Associate Justice

### **C E R T I F I C A T I O N**

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified 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