Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

CIVIL SERVICE COMMISSION,		**G.R. No. 225895**
	Petitioner,	Present:
		GESMUNDO, *C.J.*, *Chairperson*,
	- *versus* -	HERNANDO, ZALAMEDA, ROSARIO, and MARQUEZ, *JJ.*
		Promulgated:
ROSELLE C. ANNANG,	*Respondent.*	SEP 28 2022

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DECISION

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] assails the October 6, 2015 Decision[2] and the July 19, 2016 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 135765, which reversed and set aside petitioner Civil Service Commission (CSC)'s Decision No. 140384 dated May 20, 2014,[4] and denied its Motion for Reconsideration,[5] respectively.

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1 *Rollo*, Vol. 1, pp. 16-44.
2 Id. at 45-62. Penned by Associate Justice Rosmari D. Carandang (now a retired Member of this Court), and concurred in by Associate Justices Mario V. Lopez (now a Member of this Court) and Myra V. Garcia-Fernandez.
3 Id. at 63-64.
4 Id. at 62.
5 Id. at 64.

there was no need for Dr. Annang to be appointed first before her services can be considered as government service;[27] and that the issue of whether Dr. Annang can avail of the retirement benefits under RA 8291 is beyond the jurisdiction of the CSC.[28]

The CSC filed a Motion for Reconsideration[29] but this was denied by the CA in the assailed Resolution.[30] Hence, the Petition.[31]

Issue

Did the appellate court err in reversing the CSC?

Our Ruling

The Petition is meritorious.

Dr. Annang, having already retired, may no longer request for accreditation of service

The records show that the present controversy stemmed from the CSC's denial of Dr. Annang's request for accreditation of service. Requests for accreditation are governed by Section 100, Rule 21 of CSC Resolution No. 1101502, or the Revised Rules on Administrative Cases in the Civil Service (RRACCS).[32] Section 100 reads:

> SECTION 100. *Request for Accreditation of Service.* — Officials and employees who rendered actual services pursuant to defective appointments or without any appointment **except those who have already retired**, may request the inclusion of said services in their official service record in the Commission. (Emphasis supplied)

As expressly provided, those who have already retired may no longer request for accreditation. Aside from being clear on the wording, this is also the ruling of the Court in *Cubillo v. Social Security System*,[33] where it held that

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[27] Id. at 60-61.
[28] Id. at 61.
[29] Id. at 63.
[30] Id. at 63-64.
[31] Id. at 16-44.
[32] Dated November 8, 2011.
[33] G.R. No. 221067, January 14, 2019.

"[e]mployees and officials who have already retired can no longer request for accreditation."[34]

Here, petitioner retired from service on October 20, 2012.[35] However, she only filed the request on March 11, 2013.[36] Clearly, under Section 100 of Rule 21, she may no longer request for accreditation. Hence, on this ground alone, the appellate court should have upheld the CSC's denial of Dr. Annang's request.

The relationship between the government and its supposed employees is primarily determined by special and civil service laws, rules, and regulations

In reversing the CSC, the appellate court applied the four-fold test to determine whether there was an employer-employee relationship between CSU and Dr. Annang.[37] The CA heavily relied on the 2005 case of *Lopez v. Metropolitan Waterworks and Sewerage System (MWSS)*[38] *(Lopez)*, where the Court, after applying the same test, found and declared the petitioner bill collectors to be employees of MWSS despite the contrary stipulation in their service contracts.[39]

However, it should be noted that the Court has already abandoned *Lopez* in the 2016 case of *National Transmission Corp. v. Commission on Audit*,[40] where it held that rather than the four-fold test and the other standards provided in the Labor Code, it is the special and civil service laws, rules, and regulations which primarily determine the relationship between the government and its alleged employees.[41] The Court aptly discussed:

> *Lopez revisited*
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> In finding for therein petitioners that they were regular government employees, the Court applied the four-fold test, and found that the functions they

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[34] Id.
[35] *Rollo*, Vol. 1, pp. 18 and 47.
[36] Id. at 218. See also *rollo*, Vol. 2, p. 752.
[37] Id. at 50-51.
[38] 501 Phil. 115 (2005).
[39] Id. at 130-143.
[40] 800 Phil. 618 (2016).
[41] Id. at 629.

performed [were] reasonably necessary to the business of the MWSS. For the said reasons, they were considered regular government employees despite the absence of approval or attestation by the CSC.

It must be remembered, however, that the rules of employment in private practice differs from government service. As astutely explained by our colleague Justice Marvic Leonen, that while a private employer should apply the four-fold test in determining employer-employee relationship as it is strictly bound by the labor code, a government employer or GOCC, must, apart from applying the four-fold test, comply with the rules of the CSC in determining the existence of employer-employee relationship.

The difference between private and public employment is readily apparent in our legal landscape. For one, the Labor Code recognizes that the terms and conditions of employment of all government employees, including those of GOCCs, shall be governed by the civil service law, rules and regulations. Particularly, in cases of GOCCs created by special law, the terms and conditions of employment of its employees are particularly governed by its charter.

Thus, it is high time that the pronouncements in *Lopez* be abandoned. The authorities cited in the said case pertained to private employers. As such, it was expected that the four-fold test, the reasonable necessity of the duties performed[,] and other standards set forth in the Labor Code were used in determining employer-employee relationship. None of the cases cited involved the government as the employer, which poses a different employer-employee relationship from that which is present in private employment.

Also, the *Lopez* case was never cited as an authority in determining employer-employee relationship between the government and its employees. Consequently, it is best that *Lopez* be abandoned because it sets a precarious precedent as it fixes employer-employee relationship in the public sector in disregard of civil service laws, rules and regulations.

To summarize, employer-employee relationship in the public sector is primarily determined by special laws, civil service laws, rules and regulations. While the four-fold test and other standards set forth in the labor code may aid in ascertaining the relationship between the government and its purported employees, they cannot be overriding factors over the conditions and requirements for public employment as provided for by civil service laws, rules and regulations.[42] (Emphasis supplied)

Applying the foregoing, the appellate court should have primarily relied on the pertinent civil service laws, rules, and regulations to determine the relationship between CSU and Dr. Annang, and to ascertain whether the service rendered by the latter should be counted as government service. For mainly relying on the four-fold test, the CA committed a reversible error.

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[42] Id. at 627-629.

Civil service rules do not recognize service rendered pursuant to contracts of service as government service

Section 1, Rule XI of CSC Memorandum Circular (MC) No. 40-98, or the Revised Omnibus Rules on Appointments and Other Personnel Actions,[43] expressly states that services rendered under contracts of service are not considered government service, *viz.:*

> SECTION 1. Contracts of Services/Job Orders, as distinguished from those covered under Sec. 2 (e) and (f), RULE III of these Rules, need not be submitted to the Commission. **Services rendered thereunder are not considered government services.** (Emphasis supplied)

The provision is reiterated in CSC Resolution No. 020790, or the Policy Guidelines for Contracts of Services,[44] *viz.:*

> Section 1. *Definitions.* The terms hereunder shall be construed, as follows:
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> a. *Individual Contract of Services/ Job Order* - refers to employment described as follows:
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> 1. The contract covers lump sum work or services such as janitorial, security, or consultancy where no employer-employee relationship exists between the individual and the government.
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> 2. The job order covers piece of work or intermittent job of short duration not exceeding six months and pay is on a daily basis;
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> 3. The contract of services and job order are not covered by Civil Service law, rules and regulations, but covered by Commission on Audit (COA) rules;
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> 4. The employees involved in the contract or job order do not enjoy the benefits enjoyed by government employees, such as PERA, ACA and RATA.
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> 5. **Services rendered thereunder are not considered as government service.** (Emphasis supplied)

And in CSC Resolution No. 021480 or the Clarifications on Policy Guidelines for Contracts of Services,[45] *viz.:*

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[43] Dated December 14, 1998.
[44] Dated June 5, 2002.
[45] Dated November 12, 2002.

> Section 1. a. Contract of Service - refers to the engagement of the services of a person, private firm, nongovernmental agency or international organization to undertake a specific work or job requiring special or technical skills not available in the agency to be accomplished within a specific period not exceeding one (1) year. The person engaged performs or accomplishes the specific work or job under his own responsibility and with minimum supervision by the hiring agency. For purposes of this issuance, contract of services shall include the hiring of consultants and personnel engaged to perform work for special projects whether funded by the agency itself or externally funded.
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> b. Job Order- refers to the hiring of a worker for piece work or intermittent job of short duration not exceeding six months and pay is on a daily or hourly basis. It is to be understood that the piece work or job to be performed requires special or technical skills not available in the agency and the same is to be accomplished under the worker's own responsibility and with minimum supervision by the hiring agency.
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> A contract of service or job order which does not cover special or technical skills or where the functions to be performed are clerical or administrative in nature or where the work is also performed by the regular personnel of the agency may be entered only when done in the exigency of the service and it is not feasible for the agency to hire said services under a casual or contractual appointment.
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> In contracts of services and job orders, there exists no employer-employee relationship between the hiring agency and the persons hired and it should be made clear in their contracts that services rendered thereunder can never be accredited as government service. Furthermore, the persons hired are not entitled to benefits enjoyed by government employees such as PERA, ACA and RATA. (Emphasis supplied)

In her Comment,[46] Dr. Annang points out that under CSC rules, contracts of service are described as covering "lump-sum work or services such as janitorial, security[,] or consultancy services," and "specific work or job requiring special or technical skills **not available** in the agency."[47] Since her work is far from being janitorial or security-related in nature, and is actually integral and indispensable to the business of CSU as a state university, Dr. Annang argues that her contract cannot be considered as a contract of service.[48]

Indeed, CSC MC No. 40-98 and CSC Resolution No. 021480 **generally** describe contracts of service as covering "lump-sum work or services such as janitorial, security[,] or consultancy services"[49] and "specific work or job

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[46] *Rollo*, Vol. 2, pp. 684-709.

[47] Id. at 696-698. Emphasis supplied.

[48] Id.

[49] Section 2. Contracts of Services/Job Orders refer to employment described as follows:
a.The contract covers lump sum work or services such as janitorial, security, or consultancy services where no employer-employee relationship exist;

requiring special or technical skills not available in the agency."[50] However, CSC Resolution No. 021480 (the latest CSC issuance concerning contracts of service at that time) also recognizes that a contract of service may cover those not requiring special or technical skills, and those performed by the regular personnel of the agency—such as Dr. Annang's work as a teacher—"**when done in the exigency of the service and it is not feasible for the agency to hire said services under a casual or contractual appointment**," *viz.*:

> Section 1. a. Contract of Service - refers to the engagement of the services of a person, private firm, nongovernmental agency or international organization to undertake a specific work or job requiring special or technical skills not available in the agency to be accomplished within a specific period not exceeding one (1) year. The person engaged performs or accomplishes the specific work or job under his own responsibility and with minimum supervision by the hiring agency. For purposes of this issuance, contract of services shall include the hiring of consultants and personnel engaged to perform work for special projects whether funded by the agency itself or externally funded.
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> **A contract of service or job order which does not cover special or technical skills or where the functions to be performed are clerical or administrative in nature or where the work is also performed by the regular personnel of the agency may be entered only when done in the exigency of the service and it is not feasible for the agency to hire said services under a casual or contractual appointment.** (Emphasis supplied)

Here, the contract between Dr. Annang and CSU expressly provided that it was entered into because "it is not possible to hire on casual or contractual basis, and that it is done in the exigency of service."[51] Given such circumstance, CSU was allowed by CSC Resolution No. 021480 to engage Dr. Annang as a part-time faculty member under a contract of service. Hence, it is incorrect to argue that because Dr. Annang's services were integral to the function of CSU as a university, she cannot be engaged through a contract of service. That there was an urgent need for her service allowed CSU to engage her through such contract.

More importantly, it is incorrect to disregard the stipulations in the contract, particularly that there would be no employer-employee relationship

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[50] Section 1. a. Contract of Service - refers to the engagement of the services of a person, private firm, nongovernmental agency or international organization to undertake a specific work or job requiring special or technical skills not available in the agency to be accomplished within a specific period not exceeding one (1) year. The person engaged performs or accomplishes the specific work or job under his own responsibility and with minimum supervision by the hiring agency. For purposes of this issuance, contract of services shall include the hiring of consultants and personnel engaged to perform work for special projects whether funded by the agency itself or externally funded.

[51] *Rollo*, Vol. 1, pp. 113, 115, 117, 119, 121, 123.

between the parties; that Dr. Annang's service will not be credited as government service; that she will not be entitled to the benefits enjoyed by the regular personnel of CSU; and that the contract is not subject to civil service laws, rules, and regulations. While it is true that the employment status of a person is defined and prescribed by law and not by what the parties say it should be, it is equally true that courts cannot stipulate for the parties nor amend their agreement for to do so would alter their true intention.[52] This especially applies here where the engagement of Dr. Annang was done pursuant to a specific arrangement fully recognized by CSC rules.

Since CSC MC No. 40-98, CSC Resolution No. 020790, and CSC Resolution No. 021480 all provide that work pursuant to a contract of service may not be credited as government service, it follows that Dr. Annang's work as a part-time faculty member cannot be accredited as such. Unless these rules are invalidated in the proper proceeding, they are presumed valid and thus control.

Finally, as to Dr. Annang's entitlement to retirement benefits under RA 8291—an issue raised by the CSC in the Petition—the Court need not rule on such matter because as correctly held by the appellate court, it is outside the jurisdiction of the CSC.[53]

In fine, the appellate court erred in reversing the CSC Decision which denied Dr. Annang's request for accreditation. Not only was the request filed out of time, but the accreditation would also run counter against the pertinent CSC rules. This ruling holds even if there may have been an employer-employee relationship pursuant to the four-fold test. While such test may aid in ascertaining the relationship between the government and its supposed employees, it is the special and civil service laws, rules, and regulations which primarily determine the relationship between them.[54]

WHEREFORE, the Petition is **GRANTED**. The October 6, 2015 Decision and July 19, 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 135765 are **REVERSED** and **SET ASIDE**, and the Civil Service Commission's Decision No. 140384 dated May 20, 2014 is **REINSTATED**. No costs.

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[52] *Norton Resources and Development Corp. v. All Asia Bank Corp.*, 620 Phil. 381, 392 (2009), citing *Heirs of San Andres v. Rodriguez*, 388 Phil. 571, 586 (2000).

[53] *Rollo*, Vol. 1, p. 61.

[54] *National Transmission Corp. v. Commission on Audit*, supra note 40, at 629.

SO ORDERED.

RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice
Chairperson

RODIL V. ZALAMEDA
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JOSE MIDAS P. MARQUEZ
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's Division.

ALEXANDER G. GESMUNDO
Chief Justice