RULINGS

Civil Service Commission

On leaves of absence

ISSUE: Whether an employee who has been enjoying permanent status but whose promotional appointment has been approved by the Civil Service Commission as temporary under Section 24 (c) Republic Act No. 2260, as amended (now Section 25 (b), Presidential Decree No. 807), may be granted maternity leave of absence with full pay.

FACTS: Mrs. X started her services with the government on February 2, 1970, under permanent status until September 14, 1975; that on September 15, 1975, she was promoted to Statistician I, an appointment which was attested by this Commission as temporary; that while under such temporary status of appointment, she filed her application for maternity leave.

RULING: The Commission ruled that the maternity Leave Law (C.A. 647, as amended, Section 12, Civil Service Rule XVI) is essentially a social legislation and recognizes the very important function of motherhood, so that it gives to married woman employee early possible protection and assistance relative to her delivery by way of maternity leave benefits. Such being the case, it must be so interpreted as to effectuate the purposes for which it was enacted and to insure that the benefits granted therein are not unjustly denied. It will be observed that the pertinent provision therein which reads:

"xx xx xx

(a) Permanent or regular employees who have rendered two or more years of continuous service shall be entitled to 60 days with full pay. The two or more years service should be under regular and permanent appointment exclusive of service under provisional or temporary status."

x

does not clearly indicate the relation of time between the two years mandatory period of service under permanent status and the moment of delivery. However, it explicitly provides that the period of service up to the time the benefit is availed of must be continuous and uninterrupted.

As it appears that the services of Mrs. X have been continuous from the time of her original appointment to the present and she has held a permanent appointment for more than two years, she satisfies the requirement of the law to be entitled to maternity leave with full pay.

Query was, therefore, answered in the affirmative.

SOURCE: CSC Letter dated January 14, 1976 to the Executive Director, Dangerous Drugs Board, Manila

On cultural minorities

ISSUE: Whether a member of a cultural minority who is not a civil service eligible may be granted permanent status in appointment.

RULING: The Commission ruled that the privilege granted to cultural minorities under the provisions of Section 23 of Republic Act No. 2260, as amended, is not a grant of civil service eligibility but is an exception to the constitutional provision that appointment shall be through merit and fitness to be determined as far as practicable by competitive examination. The said constitutional provision must always prevail and in keeping with this mandate, only persons who have qualified in an appropriate examination should be given permanent status of appointment. Accordingly, if a person has not qualified in an appropriate examination, even if he is a member of the cultural minorities, he should be extended only a "temporary" employment. To do otherwise would be to disregard the fundamental requirement that appointments shall be made only according to merit and fitness.

Moreover, the provision contained in Section 23, R.A. 2260, as amended, pertaining to cultural minorities, being an exception to the general rule requiring qualification in an appropriate examination for appointment in the competitive service, should be construed strictly. Hence, when the law provides that the examination requirements may be dispensed with "whenever the appointment of persons belonging to said cultural minorities is called for in the interest of the service as determined by the appointing authority," with the concurrence of the Commissioner of Civil Service, "there must be a showing that a determination to that effect by the appointing authority has been made with the concurrence of the Commissioner."

The provision that the examination requirements are dispensed with only "when not practicable", means that no examination was given in the place where the cultural minority is proposed to be appointed. In case there were examinations given in the place, then the examination requirements are deemed "practicable" and the eligibles in that locality shall have preference over non-eligible members of the cultural minorities. This was the interpretation given to the provisions of RA 2260 on the matter.

If under Republic Act No. 2260, before its amendment by Republic Act No. 6040, a non-eligible member of the cultural minorities is extended only a temporary appointment in the competitive service, this Commission cannot find any reason why he should be extended a permanent appointment under RA 6040 when the same provision was copied *verbatim* in the amendatory provision of Republic Act No. 6040. For in accordance with well-settled rule on statutory construction:

"Where a statute, or provision thereof, has been reenacted by the legislature in the same or substantially the same language, *the lawmakers are presumed to have adopted the previous authoritative construction*, whether judicial, legislative or administrative, which has been placed upon such statute or provisions, unless the statute reenacted clearly indicates a different intention." (Gonzaga, Statutes and Their Construction, 1st Ed. p. 235) (Emphasis supplied).

Moreover, attention is invited to the provisions of Section 23, Article VIII of Presidential Decree No. 807 which states:

"Section 23. Cultural Communities—In line with the national policy to facilitate the integration of the members of cultural communities and accelerate the development of the areas occupied by them, the Commission shall give special civil service examinations to qualify them for appointment in the civil service."

SOURCE: CSC 2nd Indorsement dated April 8, 1976 to the Chairman, Commission on Audit.

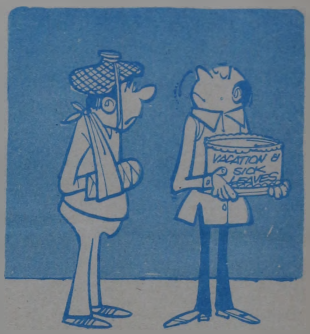
On contractual's leaves

QUERY: Whether personnel employee on contractual basis whose contracts are renewable every month and whose services are continuous, fall within the coverage of Section 14, Rule XVI of the Civil Rules which grants vacation and sick leave benefits to casual or emergency employees.

RULING: Contractual personnel or persons on contract basis belong to the noncareer service as defined in Section 6(4), Article IV of Presidential Decree No. 807, dated October 6, 1975, which reads:

"(4) Contractual personnel are 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."

In view of the nature of their employment, contractual personnel undertake to do a piece of work for the government under their own responsibility with minimum interference on the part of the government agency in the performance or accomplishment thereof. As such they do not enjoy privileges accorded ordinary employees such as vacation, sick, and maternity leaves, retirement benefits and gratuities in as much as the contract itself is the law that governs such personnel and the contracting agency. Since the personnel thereat are hired on contractual basis, they are not, therefore, within the coverage of Section 14, Rule XVI of the Civil Service Rules. The benefits accruing to said personnel will depend upon the terms of the respective contracts.



In connection with contracts of employment, attention is invited to Resolution No. 117-A, s 1975 of this Commission, pertinent portion of which states:

1. The contractual employee shall undertake a specific work or project to be completed within a limited period, not to exceed one year;

2. The contractual employee shall have special or technical skills not available in the employing agency;

3. The contractual employee shall perform or accomplish his work under his own responsibility with minimum direction and supervision from the hiring agency; and

4. In the case of aliens, a contractual appointment shall be extended only if it can be shown that the expertise possessed by the alien is not available locally.

Also pertinent is the Civil Service Memorandum Circular No. 15, series of 1963, which reads:

"In view of the above-cited provisions of the Civil Service Law and the Revised Civil Service Rules, and in the exercise of the power of this Office to enforce, execute and carry out the Constitutional and statutory provisions on the merit system, it is hereby enjoined that proposals to employ persons on contract basis under Section 6 of Republic Act 2260 should first be submitted by the appointing officers to the Commissioner of Civil Service for the purpose of determining whether or not the proposed employment is properly a contract within the meaning of the pertinent provision of the Civil Service Law and Rules."

SOURCE: CSC 1st Indorsement dated January 20, 1976 to the Office of the President.

On maximum salaries

ISSUE: Information was requested on which provision should prevail—Section 9 of Republic Act No. 2260, as amended, or Section 16, Rule III on the New Rule on Personnel Actions and Policies promulgated to implement certain provisions of Presidential Decree No. 807.

RULING: The Commission ruled that Section 9 of Republic Act No. 2260, as amended provided for maximum salary allowable to civil service eligibilities. On the other hand, Presidential Decree No. 807 which took effect on October 6, 1975, *does not contain a similar limitation of maximum salary for civil service eligibilities.* This becomes more apparent when we consider that the same expressly provides for the classification of positions in the Career Service into different levels on the basis of the required educational qualifications for the positions, namely: First, second, and third levels (Sec. 7), and accordingly, prescribes the appropriate eligibilities for the said different levels of positions, thereby rendering the imposition of salary limitation not legally tenable because under this system of leveling of positions, the salary should attach not to eligibilities but to the positions, corresponding to the levels to which these positions belong.

Hence, the provision of Section 16, Rule III in the New Rule on Personnel Actions and Policies reads as follows:

"A salary ceiling shall not be attached to any civil service eligibility. The appropriateness of an eligibility for a position, therefore, shall not be affected by any increase in the salary of such positions."

The query for which opinion is sought is thus answered accordingly.

SOURCE: CSC 1st Indorsement dated March 16, 1976, to the Secretary of Finance, Manila. □