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SECOND DIVISION

[G.R. No. L-43182. November 25, 1986]

MARCIAL F. SAMSON, City Mayor of Caloocan City, THE CITY TREASURER, THE CITY AUDITOR, both of Caloocan City, and HERMOGENES LIWANAG, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, CFI-RIZAL AND FELICIANO C. TALENS,** *respondents.*

SYLLABUS

1. **ADMINISTRATIVE LAW; CIVIL SERVICE LAW; GENERALLY, POSITIONS IN THE GOVERNMENT BELONG TO THE COMPETITIVE SERVICE; EXCEPTIONS.**— As a general rule, position in all branches, subdivisions and instrumentalities of the government, including those in government owned or controlled corporations, belong to the competitive service. The only exceptions are those expressly declared by law to be in the non-competitive service and those which are policy-determining, primarily confidential or highly technical in nature. (Section 3, R.A. 2260, as amended by R.A. No. 6040). Under the rules of statutory construction, exceptions, as a general rule, should be strictly, but reasonably construed; they extend only so far as their language fairly warrants, and *all doubts should be resolved in favor of the general provisions rather than the exception.* Where a general rule is established by statute with exceptions, the court will not curtail the former nor add to the latter by implication x x x (Francisco, Statutory Construction, p. 304, citing 69 C.J., Section 643, pp. 1092-1093, italics supplied). The exceptions provided for in Section 5 of Republic Act No. 2260, as amended should be, therefore, strictly construed. It follows then that on this general governing principle, the position of assistant secretary to the City Mayor of Caloocan City should be considered as belonging to the non-competitive service.

2. **ID.; ID.; POSITIONS OF SECRETARY TO THE MAYOR AND ASSISTANT SECRETARY TO THE MAYOR; DISTINGUISHED AND EXPLAINED.** — It is not the powers and duties exercised and discharged by the Assistant Secretary to the Mayor as may be delegated and assigned by the Mayor that makes

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the position of Assistant Secretary primarily confidential. While duties possibly involving confidential matters are sometimes handled by the Assistant Secretary to the Mayor, this does not necessarily transform the nature of the position itself as one that is primarily and highly confidential. It should be stressed that the position of Secretary to the Mayor and that of Assistant Secretary to the Mayor are two separate and distinct positions. While both individuals may be called "secretary", nevertheless, one is certainly of a higher category and rank than the other with the added distinction that a Secretary must enjoy the confidence of the Mayor. However, the position of Assistant Secretary being of a lower rank, need not carry the requisites attaching to the primarily confidential position of the actual Secretary to the Mayor. Moreover, if it was the intention of Congress to include the Assistant Secretary within the purview of Section 5(f) of R.A. No. 2260, as amended, so that Assistant Secretaries are also embraced in the non-competitive service, the law could have been easily worded "secretaries and their assistance".

3. **ID.; ID.; ID.** — What petitioners fail to consider is that an "assistant secretary", although described as secretary, technically differs in function from the "Secretaries". An "assistant" merely helps, aids or serves in a subordinate capacity to the person who is actually clothed with all the duties and responsibilities Of "secretary". Needless to say, the functions strictly attributable to a "secretary" and which would repose on such person the trust and confidence of the employer, is not automatically vested or transferred to an "assistant secretary", because the latter simply assists or aids the former in the accomplishment of his duties.

APPEARANCES OF COUNSEL

Hermenegildo V. Lopez & Amado B. Cresini for petitioners.
Dominador G. Magno for private respondent.

DECISION

ALAMPAY, *J.*:

The sole issue to be resolved in this case is the legality of Administrative Order No. 3, issued on January 10, 1972, by the then mayor Marcial F. Samson, of Caloocan City, one of the petitioners herein, whereby petitioner mayor summarily terminated

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the services of the private respondent, Feliciano C. Talens, who held the position of Assistant Secretary to the Mayor, on the ground of "lack and loss of confidence" and appointing in place of the latter Hermogenes Liwag, a co-petitioner in this case. Cited in support of the challenged administrative order is section 5(f) of Republic Act No. 2260, otherwise known as the Civil Service Act of 1959, as amended. The above-cited provision declares the position of secretaries to city mayors non-competitive and this was interpreted by herein petitioner Mayor as to include the position of Assistant Secretary to the Mayor.

In a resolution dated October 29, 1982, this Court granted the motion of the widow of private respondent to substitute the heirs of private respondent Feliciano C. Talens in place of respondent, in view of the latter's death on August 28, 1982.

There is no dispute as to the factual antecedents of this case. Private respondent Feliciano C. Talens, a civil service eligible, was appointed on March 16, 1970 by then City Mayor Macario Asistio of Caloocan City, as Assistant Secretary to the Mayor. His appointment was attested to as a permanent one under Section 24(b) of Republic Act No, 2260, as amended by the Commissioner of Civil Service. He performed the duties of Assistant Secretary to the Mayor and even twice received increases in salary.

On January 11, 1972, City Mayor Marcial F. Samson, who succeeded City Mayor Macario Asistio, furnished private respondent herein with the questioned Administrative Order No. 3, which is hereunder reproduced:

"TO: Mr. Feliciano C. Talens
Assistant Secretary to the Mayor
Caloocan City

"Pursuant to the provision of Sec. 5(f) of R.A No. 2260, otherwise known as the Civil Service Act of 1959, as amended, making the positions of Secretaries of City Mayors, among others, non-competitive, and it being the inherent nature of your position to be primarily and highly confidential, you are hereby informed and advised that effective the closing hours of January 10, 1972, your services as Assistant Secretary to the Mayor are hereby TERMINATED *for lack and loss* of confidence.

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"You are therefore directed to turnover all official documents, papers and all other government records to Atty. Casiano P. Anunciacion, Jr.

(SGD.) MARCIAL F. SAMSON
City Mayor" (*Rollo*, p. 20)

Private respondent acknowledging receipt of said order demurred on the ground that his position as Assistant Secretary to the Mayor was not covered by Sec. 5(f) of the Civil Service Law, which specifies as non-competitive only the positions of "secretaries of provincial city and municipal boards and councils" He asked that the administrative order be recalled as he was permanently appointed to a classified position in the city government and that in accordance with Section 32 of the Civil Service Law, he can be removed only for cause and after due process has been observed.

On January 17, 1972, petitioner Mayor, in a letter-reply sent to private respondent, declined to recall Administrative Order No. 3, reiterating the reasons set forth in the order. Consequently, a petition for *certiorari*, prohibition, *mandamus* and *quo warranto* was filed with the then Court of First Instance of Caloocan City on January 21, 1972 by the private respondent in order to annul the disputed administrative order, to enjoin the petitioner mayor, treasurer and auditor from enforcing the same, and to compel all the said public officials to pay to private respondent the salaries and emoluments due to him as Assistant Secretary to the Mayor. He also sought the ouster from the disputed position of Hermogenes Liwag, one of the petitioners herein, who was appointed by Mayor Samson as Assistant Secretary to the Mayor, in place of private respondent.

The Court of First Instance ruled in favor of the plaintiff Feliciano C. Talens, by declaring Administrative Order No. 3 null and void, and granting all the aforestated reliefs claimed by Feliciano C. Talens. On Appeal of the said judgment to the Court of Appeals, the decision of the trial court was affirmed. Hence this petition.

According to petitioners, the only issue which this Court has to resolve is the legality of the termination of private respondent Talens' services as assistant secretary to the Mayor of Caloocan City (Petitioners' Brief, p. 4).

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Petitioners' contention is that the termination of private respondent's services is authorized by Section 5(f) of Republic Act No. 2260, as amended by Republic Act No. 6040 which declares the position of Secretaries of City Mayors as belonging to the non-competitive service. Petitioners further aver that termination of the services of private respondent Talens is justified by the fact that the disputed position of Assistant Secretary to the Mayor is inherently and primarily highly confidential in nature.

Section 5 of Republic Act No. 2260, as amended by Republic Act No. 6040 provides that "The non-competitive service shall be composed of positions expressly declared by law to be in the non-competitive service and those which are policy-determining, primarily confidential or highly technical in nature" and continues with an enumeration of specific officers and employees embraced within the scope of non-competitive service. Among those included in the enumeration are heads of departments created in charters of cities and secretaries of provincial governors, city mayors and municipal mayors.

Although the position of assistant secretary to the city mayor is *not among those expressly declared* in Section 5 of Republic Act No. 2260, as amended, to be within the non-competitive service, petitioners, however, argue that an assistant secretary is also a secretary, and thus comprised within the general term "secretaries" as provided for in Section 5(f).

We are not persuaded and find unacceptable such submission of the herein petitioners. As may be noted, the general purpose of the Civil Service Law (Republic Act No. 2260) is "to insure and promote the constitutional mandate regarding appointments only according to merit and fitness, and to provide within the public service a progressive system of personal administration to insure the maintenance of an honest and efficient progressive and courteous civil service in the Philippines." (Section 2, R.A. 2260).

As a general rule, position in all branches, subdivisions and instrumentalities of the government, including those in government owned or controlled corporations, belong to the competitive service. The only exceptions are those expressly declared by law to be in the non-competitive service and those which are policy-

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determining, primarily confidential or highly technical in nature. (Section 3, R.A. 2260, as amended by R.A. No. 6040).

Under the rules of statutory construction, exceptions, as a general rule, should be strictly, but reasonably construed; they extend only so far as their language fairly warrants, and *all doubts should be resolved in favor of the general provisions rather than the exception.* Where a general rule is established by statute with exceptions, the court will not curtail the former nor add to the latter by implication x x x (Francisco, Statutory Construction, p. 304, citing 69 C.J., Section 643, pp. 1092-1093, italics supplied).

Where a statute enumerates the subjects or things on which it is to operate, it is to be construed as excluding from its effects all those not expressly mentioned (Martin, Statutory Construction, 1979 ed., p. 71 citing *Dave's Place vs. Liquor Control Comm.*, 269 N.W., p. 504).

The exceptions provided for in Section 5 of Republic Act No. 2260, as amended should be, therefore, strictly construed. It follows then that on this general governing principle, the position of assistant secretary to the City Mayor of Caloocan City should be considered as belonging to the non-competitive service.

The parties are agreed that the nature of the functions attaching to office or position ultimately determines whether such position is policy-determining, primarily confidential or highly technical. It is the nature of the position which finally determines a position to be primarily confidential (*Leon A. Pinero, et al. vs. Rufino Hechanova, et al.*, 18 SCRA 421). Stated differently, it is not the powers and duties exercised and discharged by the Assistant Secretary to the Mayor as may be delegated and assigned by the Mayor that makes the position of Assistant Secretary primarily confidential. While duties possibly involving confidential matters are sometimes handled by the Assistant Secretary to the Mayor, this does not necessarily transform the nature of the position itself as one that is primarily and highly confidential.

It should be stressed that the position of Secretary to the Mayor and that of Assistant Secretary to the Mayor are two separate and distinct positions. While both individuals may be called "secretary,"

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nevertheless, one is certainly of a higher category and rank than the other with the added distinction that a Secretary must enjoy the confidence of the Mayor. However, the position of Assistant Secretary being of a lower rank, need not carry the requisites attaching to the primarily confidential position of the actual Secretary to the Mayor.

Moreover, if it was the intention of Congress to include the Assistant Secretaries within the purview of Section 5(f) of R.A. No. 2260, as amended, so that Assistant Secretaries are also embraced in the non-competitive service, the law could have been easily worded "secretaries and their assistance."

Petitioners also contend that an assistant secretary is also a secretary and thus included in the general term "secretaries" as provided for in Section 5(f) in the above-quoted provision. From this premise, the conclusion drawn by petitioners is that the position of Assistant Secretary to the Mayor should be considered as in the non-competitive service and that the tenure of assistant secretary lasts only as long as the Mayor's confidence in him remains. Petitioners' submission is that the assistant secretary is no less a secretary to the mayor.

We are not disposed to agree with petitioners. What petitioners fail to consider is that an "assistant secretary," although described as secretary, technically differs in function from the "Secretaries." An "assistant" merely helps, aids or serves in a subordinate capacity to the person who is actually clothed with all the duties and responsibilities of "secretary." Needless to say, the functions strictly attributable to a "secretary" and which would repose on such person the trust and confidence of the employer, is not automatically vested or transferred to an "assistant secretary," because the latter simply assists or aids the former in the accomplishment of his duties.

The rulings of this Court in *De Los Santos vs. Mallare*, 87 Phil. 289 and *Besa vs. PNB*, 33 SCRA 330 which have been invoked by the petitioners do not provide support to petitioners' case. The aforestated cases have no parallel to the case at bar. The case of *De los Santos vs. Mallare*, relates to a *quo warranto* proceeding, questioning the legality of the appointment of the respondent therein to the office of the City Engineer for the City of Baguio which

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petitioner De los Santos was then occupying. Said position was in fact declared to be neither primarily confidential, policy-determining, nor highly technical and petitioner therein was adjudged to be entitled to remain in office and the respondent's appointment was declared ineffective. Neither would the other case of *Besa vs. PNB* find any application to the instant case because the position therein involved was that of Chief Legal Counsel which, by its very nature, was rightfully ruled to be both impressed with a highly technical aspect and confidential character. It can be readily noted that the facts and circumstances in the present case and even the principal issue involved in the case at bar are distinctly different from the cases cited by petitioners.

More pertinent and relevant are the pronouncements in *Ingles vs. Mutuc,* 26 SCRA 177, wherein We stated:

"x x x. On the contrary, the compensation attached and the designation given thereto suggest the purely, or, at least, mainly clerical nature of their work. The fact that they, at times, handle 'confidential matters' does not suffice to characterize their 'positions' as primarily confidential. Indeed, it is admitted that plaintiffs, likewise, handle 'other routine matters,' and it has not even been shown that their work is, at least, principally confidential."

WHEREFORE, the decision appealed from is hereby AFFIRMED but considering the notice of death given to this Court of the death of the herein private respondent Feliciano C. Talens, on August 28, 1982 (*Rollo*, p. 184), the dispositive portion of the subject decision of the trial court in Civil Case No. C-2308, is hereby MODIFIED, to now read as follows:

"IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, the Court hereby renders judgment in favor of Petitioner Feliciano C. Talens. and against the Respondents, and

1.) Declaring Administrative Order No. 3, dated January 10, 1972, of Respondent City Mayor Marcial F. Samson, null and void;

2.) Ordering Respondents, except private respondent Hermogenes Liwag, to pay Petitioner Feliciano C. Talens, all the salaries and emoluments appurtenant to and due to the latter as Assistant Secretary to the Mayor of Caloocan City, but for a limited period of three years. Without costs."

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SO ORDERED.

Feria (Chairman), Fernan, Gutierrez, Jr., and *Paras, JJ.*, concur.

SECOND DIVISION

[G.R. No. 56315. November 25, 1986]

CLEMENTE FONTANAR, DIOSDADO PELAYO, ANTONIO PELAYO JR., and NORMA S. PELAYO, *petitioners, vs.* **RUBEN BONSUBRE, LEONARDO BONSUBRE, Hon. BERNARDO Ll. SALAS, Presiding Judge, CFI of Cebu, Branch VIII, Hon. GALICANO ARRIESGADO, Presiding Judge, Municipal Circuit Court of Bogo-San Remegio, Cebu,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE ON PAYMENT OF APPELLATE COURT DOCKET FEE; MERELY DIRECTORY NOT MANDATORY.** — In the case of *NAWASA vs. Secretary of Public Works and Communications*, 16 SCRA 536 (1966) this Court, speaking thru Justice J.B.L. Reyes, laid down the rule that in appealed cases, the failure to pay the appellate court docket fee does not automatically result in the dismissal of the appeal, much less affect the court's jurisdiction, the dismissal being discretionary in the appellate court, and this rule is applicable by analogy to Courts of First Instance in the exercise of the appellate jurisdiction conferred upon them. In the subsequent cases of *Favis vs. Municipality of Sabangan*, 27 SCRA 92 (1969), *Lopez vs. Court of Appeals*, 75 SCRA 401 (1977), *Panes vs. Court of Appeals*, 120 SCRA 509 (1983) and more recently in the case of *Del Rosario & Sons Logging Enterprises, Inc., vs. National Labor Relations Commission, et al.*, 136 SCRA 669 (1985), this Court not only emphasized the rule that the failure to pay the appellate court