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ACCORDINGLY, judgment is hereby rendered, setting aside the lower court's dismissal order of August 15, 1968 and the case is remanded to respondent Court of First Instance with instructions to expedite the proceedings and trial and determination thereof on the merits. With costs against respondents. This decision is immediately executory.

Makasiar, Fernandez, Guerrero, De Castro, and *Melencio-Herrera JJ.*, concur.

FIRST DIVISION

[G.R. No. L-35236. June 29, 1979]

SECRETARY OF EDUCATION, PERSONNEL OFFICER, DIRECTOR OF PUBLIC SCHOOLS, CASHIER, SCHOOL FINANCE DIVISION and LILIA T. AREVALO, *petitioners, vs.* **HON. MAGNO S. GATMAITAN (ponente) MANUEL P. BARCELONA and GUILLERMO S. SANTOS (concurring) as Associate Justices of the Court of Appeals (Special Fifth Division) and ALBERTO S. FERRER,** *respondents.*

SYLLABUS

POLITICAL LAW; CIVIL SERVICE; APPOINTMENTS; WHEN AN EMPLOYEE'S POSITION WAS RECLASSIFIED AND CONSIDERED AS NEW FOR PURPOSES OF CLASSIFICATION, NEW APPOINTMENT OF THE EMPLOYEE FOR SUCH POSITION IS NECESSARY; CASE AT BAR.— That position was re-classified to Auditor II, Range 41 (the disputed position), with an adjusted salary of ₱3,493.00 per annum, effective July 1, 1960. The Record of *Plantilla*-Allocation Changes dated November 7, 1960 of the WAPCO

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considered the position as "new" with the note that "converted positions are considered new positions for purposes of classification." Accordingly, a new appointment was necessary pursuant to Budget Circular No. 120.

APPEARANCES OF COUNSEL

Solicitor General Estelito P. Mendoza and *Assistant Solicitor General Bernardo P. Pardo* for petitioners.

Eligio G. Lagman for private respondent.

D E C I S I O N

MELENCIO-HERRERA, *J.*:

This is a Petition for Review on *Certiorari* of the Decision of the Court of Appeals promulgated on June 14, 1972 in CA-G.R. No. 41078-R, reversing the Decision of the Court of First Instance of Manila, Branch XXIV, dated November 9, 1967, in Civil Case No. 60784, entitled *Alberto S. Ferrer vs. Secretary of Education, et al.*, for Injunction with Damages.

The present controversy revolves around the position of Auditor II, Range 41, in the Department of Education claimed by respondent Alberto S. Ferrer to be rightfully his but to which private petitioner Lilia T. Arevalo was appointed by then Secretary of Education Alejandro Roces on May 10, 1965.

The records show that, on May 18, 1957, Ferrer was issued an appointment by the Secretary of Education as Clerk, School Finance Division, Department of Education with compensation at the rate of ₱1,800.00 per annum, effective April 29, 1957.[1] His educational qualifications were listed as "A.A., 4th Year Commerce; civil service eligibility: 2nd Grade."

On March 27, 1958, acting upon Ferrer's request for re-classification,[2] the Wage and Position Classification Office

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[1] Exh. 23, p. 160, Folder of Exhibits.

[2] Exh. 20, pp. 154-155, *Ibid.*

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(WAPCO, for short) "allocated" his position to that of Auditing Aide I, Range 28, with a salary adjustment of ₱1,951.20 per annum, effective July 1, 1957.

On December 21, 1960, Ferrer was extended an appointment as Clerk (Chief of Section), School Finance Division, in the Bureau of Public Schools, with compensation at the rate of ₱2,700.00 per annum, "the appointment to take effect from July 1, 1956 to June 30, 1960." This appointment was approved by the Commissioner of Civil Service on the basis of his second grade eligibility and educational qualifications of "A.A., 4th Yr. Comm."[3]

On July 6, 1961, Ferrer received a letter-advice from the Acting Director of the Bureau of Public Schools that for the Plantilla Fiscal Year 1960-61, his position of Auditing Aide I, R-28, had been allocated by WAPCO to the class of Auditor II, R-41, with an adjusted salary of ₱3,493.00 per annum, effective July 1, 1960.[4] Apparently, WAPCO acted favorably on Ferrer's request for re-classification of position.[5] In the WAPCO Record of Plantilla-Allocation Changes dated November 7, 1960, the position of Auditor II, R-41 was described as "new" with the note "converted positions are considered new positions for purposes of classification."[6] No new appointment was extended to Ferrer, however.

On August 11, 1961, the Director of Public Schools wrote Ferrer advising him of the "allocation" by WAPCO of his position to the class of Auditor II, R-41, for the Plantilla Fiscal Year 1961-1962, with a salary adjustment of ₱4,404.00 per annum, effective July 1, 1961. It should be noted that this letter-advice contained the statement that "under this WAPCO salary adjustment, your status is provisional."[7]

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[3] Exh. A or 1, p. 1, *Ibid.*

[4] Exh. B or 5, p. 9, *Ibid.*

[5] Exh. 22, pp. 158-159, *Ibid.*

[6] Exh. 4, p. 135, *Ibid.*

[7] Exh. 6, p. 136, *Ibid.*

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In a letter dated September 6, 1962, Ferrer was asked by the Director of Public Schools to signify whether he was willing to accept appointment under a provisional status at ₱4,404 per annum, effective July 1, 1961, and at ₱4,632 per annum, effective July 1, 1962, considering that the records show that he was only a Second Grade civil service eligible, the maximum salary allowable for which was ₱3,720.00 per annum. In the same letter, Ferrer was informed that "as a provisional employee, you are subject to replacement by an applicant with appropriate educational qualification and civil service eligibility."[8]

On September 20, 1962, Ferrer replied by indorsement expressing his willingness to accept appointment under a provisional status.[9] It should be noted, however, that neither was any formal provisional appointment as Auditor II, R-41, extended to Ferrer.

In the meantime, Ferrer took the civil service examinations for "Supervisor (1st Grade) Promotional" on March 31, 1962 the results of which were released on May 8, 1964 showing that he had passed the same with a rating of 72.25%.[10]

In a 3rd Indorsement dated January 20, 1965 of the Commissioner of Civil Service to the Secretary of Education, the latter was advised that the position occupied by Ferrer was that of Clerk (Chief of Section) at ₱2,760.00 per annum effective July 1, 1956 to June 30, 1960, and that there was no record of any appointment in due form extended to him as Internal Auditor II, R-41. Further, that under the WAPCO Salary Adjustment his status was provisional. This communication was brought about by Ferrer's opposition to the appointment of Mrs. Lourdes Reyes as Internal Auditor III in the Department of Education.[11]

Effective February 1, 1965, Ferrer's salary was ordered reduced to ₱2,760 per annum.[12]

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[8] Exh. 19, p. 152, *Ibid.*

[9] Exh. 19-A, p. 153, *Ibid.*

[10] Exh. U or 13, p. 59, *Ibid.*

[11] Exh. 11, p. 144, *Ibid.*

[12] Exh. I, p. 45, *Ibid.*

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On February 3, 1965, the Acting Director of Public Schools wrote the Secretary of Education, proposing the appointment of Ferrer to the position of Auditor II, R-41, at ₱3,493.00 per annum to have retroactive effect as of July 1, 1960, the date of termination of the last appointment extended to Ferrer. The letter went on further to state that "thru an oversight, a WAPCO notice of salary adjustment was issued for Mr. Ferrer as Auditor II at ₱3,493.00 per annum effective July 1, 1960, instead of an appointment."[13]

In a 1st Indorsement dated February 17, 1965, the Secretary of Education disapproved the appointment proposed, in this tenor:

"It is noted in the basic communication that no appointments were issued to cover the change of designations of the appointee as Auditing Aide I, Auditor II, and Internal Auditor II. It is further noted that the appointee does not possess the appropriate civil service eligibility, which prompts this Office to conclude that no appointments were issued, not due to oversight but because of the fact that he was not qualified at the time the position was reclassified by the WAPCO. In view thereof, the attached appointment cannot be approved by this Office. It is suggested that a fully qualified employee be appointed to the position."[14]

In a 2nd Indorsement dated March 2, 1965, Ferrer sought the intercession of the Director of Public Schools and others for the approval of his appointment contending that he was not only qualified but had actually performed the duties of the position for several years;[15] but his efforts were unavailing.

On May 10, 1965, the Secretary of Education appointed private petitioner Lilia T. Arevalo, a B.S.C.-CPA and, therefore, a First Grade civil service eligible, to the position of Internal Auditor II, Range 41, with compensation at ₱4,860.00 per annum, "vice Mr. Alberto Ferrer to be shifted to another item." The appointment was approved by the Civil Service Commissioner.[16]

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[13] Exh. 24-A, p. 163, *Ibid.*

[14] Exh. 9, p. 141, *Ibid.*

[15] Exh. 10, p. 142, *Ibid.*

[16] Exh. 28, pp. 173-177, *Ibid.*

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On May 5, 1965, Ferrer filed the original Complaint for Injunction and Damages, which was amended three times. After due trial, on November 9, 1967, the trial Court rendered judgment, the dispositive portion of which reads:

"Wherefore, judgment is hereby rendered dismissing plaintiff's 'Third Amended Complaint' as well as defendants' counterclaims without pronouncement as to costs.

"Without prejudice to the interested party or parties obtaining similar or other proper provisional relief before the appropriate forum in the event of and in the course of appeal, the writ of preliminary injunction issued on May 15, 1965 and the temporary restraining order referred to in the order of May 10, 1966 and defined by the Order of July 8, 1966, are hereby set aside."

In reaching this conclusion, the trial Court considered Ferrer estopped from claiming any right to the disputed position in view of his 2nd Indorsement dated September 20, 1962,[17] expressing his willingness to accept a provisional appointment as Auditor II.[18] Said the trial Court:

"Plaintiff's manifestation amounted to an admission that as a provisional employee, he was subject to replacement by an applicant with appropriate educational qualification and civil service eligibility which includes the consequential admission that he himself did not even have these qualifications and eligibility. By these admissions, plaintiff is estopped from challenging the official stand collectively taken by the defendants in their capacity as public officials on the import and implementation of the law, rules and regulations involved in this case. Thereafter, as correctly contended by the defendants, plaintiff lost his prerogative to contest his replacement (*Ferrer vs. Hechanova*, L-24418, January 26, 1967). Even assuming that the letter advices of WAPCO relied upon by plaintiff were valid appointments, the concession by plaintiff of the provisional character of his position in question removed him from legal guarantees of tenure (*Limchayco, et al. vs. CA*, L-19528, December 29, 1964). x x x

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[17] Exh. 19-A, *supra*.

[18] Exh. 19-A.

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"Exhibit 19-A manifests an admission by plaintiff not only of the need for a new appointment but of the fact that plaintiff had not yet been given that requisite appointment."[19]

Ferrer's Motion for Reconsideration having been denied, he appealed to the Court of Appeals, which, on June 14, 1972, promulgated a Decision* reversing the trial Court, thus:

"IN VIEW WHEREOF, this Court is constrained to reverse, as it now reverses, the judgment appealed therefrom; plaintiff is declared the rightful occupant to the position of Auditor II, disputed in this litigation, with the right to collect the salary from the government from 1 February, 1965, annulling for this purpose the appointment by the then Secretary of Education to defendant Arevalo on 10 May, 1965; but in the absence of clear and positive proof of ill-will from defendants, no further damages are unto him awarded; no more pronouncements as to costs."

In reaching this conclusion, the Court of Appeals opined:

"x x x the position of this Court on the legal question is that the truth of the extension of a valid appointment, and the written evidence thereof in a sacrosant form are two concepts that should not be confused one from the other, of these it is the first that is far more important, it is true that if the second were present, that would be best and with it there would be no more litigation, but even without it, the first is enough, because it can exist without need for the second, just as substance must prevail over form, therefore, the conclusion must have to be that from 1 July, 1960 up and thru to 10 May, 1965 when Sec. Roces appointed defendant Arevalo in place of plaintiff, Ferrer, the latter was or should have been considered the *de jure* occupant of the position of 'Auditor II' now in litigation; for he was there not only discharging the duties of the position but he was doing so pursuant to the directive of the Secretary of Education, and pursuant to a series of Republic Acts yearly passed carrying his designation, he was recognized not by the public alone, which would have made him only *de facto*, but by the Office and the Republic itself, as the officer holding the office of 'Auditor II'; if it was true

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[19] CFI Decision, p. 173, Record on Appeal.

* Decision penned by Justice Magno S. Gatmaitan and concurred in by *JJ.* Manuel P. Barcelona and Guillermo S. Santos.

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that originally, he was not eligible, he became fully qualified afterwards by civil service examinations, nor had there been any proceeding of removal upon him instituted, what happened only was that he was replaced, but peculiarly enough also, for him to be shifted to 'another item,' but certainly, a civil service employee can not be shifted just like that to another item, against his will, more so, if the shifting must involve as it has in this case, a rather substantial diminution in pay, and besides some understandable humiliation because this Court neither can ignore the equities and the human side to this litigation, that from the record it has been shown that ever since its creation, in 1965, the Internal Audit had been under the charge of plaintiff Ferrer, he had nursed it so to speak during its formative years since then and he was there when most needed in those years; 1956 to 1965, only to be replaced afterwards, after having fully qualified to the position removing all taint of his ineligibility, to say it in common parlance, as it was he who had toiled to plant, to reap, to cook and lay the rice on the table ready to eat, why should it be that another should eat?, — the result must be to sustain petitioner, x x x"[20]

Hence, this Petition for Review on *Certiorari* filed, on June 30, 1972, by petitioner public officials and appointee Lilia T. Arevalo, interposing the following Assignments of Error:

"I

THE COURT OF APPEALS ERRED IN RULING THAT RESPONDENT ALBERTO S. FERRER IS AUTOMATICALLY DEEMED APPOINTED TO THE POSITION OF INTERNAL AUDITOR II, RANGE 41 WITHOUT THE NECESSITY OF BEING EXTENDED A FORMAL APPOINTMENT THERETO.

"II

THE COURT OF APPEALS ERRED IN RULING THAT PRIVATE RESPONDENT FERRER IS THE ONE SUPPOSED TO BE APPOINTED TO THE POSITION IN QUESTION AS HE WAS THE OFFICER HOLDING THE POSITION PRIOR TO JULY 1, 1961 AND HAD QUALIFIED AFTER PASSING THE CIVIL SERVICE EXAMINATIONS FOR FIRST GRADE ON MARCH 31, 1962.

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[20] pp. 64-65. *Rollo.*

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"III

THE COURT OF APPEALS ERRED IN RULING THAT THE NOTATION 'VICE MR. ALBERTO S. FERRER TO BE SHIFTED TO ANOTHER ITEM' CONTAINED IN PETITIONER AREVALO'S APPOINTMENT WAS A CONDITION PRECEDENT TO AREVALO'S APPOINTMENT AND WIPED OUT THE NEED FOR ANY FORMALIZED APPOINTMENT."

While we differ from respondent Court's conclusion that Ferrer is deemed automatically appointed to the disputed position, we hold that he is rightfully entitled to the same.

The appointment of Ferrer as Clerk (Chief of Section) dated December 21, 1960, effective July 1, 1956 to June 30, 1960[21] was classified by WAPCO to Auditing Aide I, Range 28, effective July 1, 1957, with a salary adjustment of ₱1,951.20 per annum. Under Rep. Act. No. 2700, this re-classification had no effect on the tenure of Ferrer, and he was deemed to have been appointed to that position and class.

"x x x SEC. 31. — *Change of designation of any position by WAPCO classification.* — The change of designation of any position authorized in this Act due to the classification of such position in accordance with the WAPCO plan shall not affect the tenure of office of the incumbent, shall not constitute a demotion either in rank or salary, nor result in a change of status or assignment and the incumbent shall in all cases be deemed to have been appointed in that position and class: PROVIDED, HOWEVER, That any change in designation effected in this Act shall not affect in any manner the status or tenure of office of the incumbent, the provisions of any existing law or the contrary notwithstanding."[22]

That position was re-classified to Auditor II, Range 41 (the disputed position), with an adjusted salary of ₱3,493.00 per annum, effective July 1, 1960.[23] The Record of Plantilla-Allocation Changes dated November 7, 1960 of the WAPCO

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[21] Exh. A or 1, p. 1, Folder of Exhibits.

[22] Exh. G, p. 41, *Ibid.*

[23] Exh. B or 5, p. 9, *Ibid.*

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considered the position as "new" with the note that "converted positions are considered new positions for purposes of classification."[24] Accordingly, a new appointment was necessary pursuant to Budget Circular No. 120, dated June 28, 1961, the pertinent section of which is quoted hereunder:

"D. *Salary Adjustments for Up-graded Positions.* — Employees whose positions have been up-graded by WAPCO without change in title or designations may be paid salary adjustment in accordance with this Circular. However, employees whose positions have been up-graded by WAPCO with change in title or designation may be paid salary adjustment only after issuance and approval of individual appointments in accordance with existing rules and regulations regarding promotions. It is understood that the employees occupying before July 1, 1961 the positions and items which have been up graded shall be the ones issued such appointments, *if qualified*"[25] (Italics ours).

Having occupied the position before upgrading, the question posed is whether Ferrer was qualified for that position. Petitioners contend that he was not, arguing that on November 7, 1960, when the position was upgraded, he was only a second grade eligible. This submission is not well taken. Under the Qualification Standards Section of the Civil Service Commission, the requirements for the disputed position are:

"EDUCATION — Bachelor's degree in Business Administration or Commerce, major in Accounting, or in Law.

EXPERIENCE — Six (6) years experience in Accounting or Auditing work, 2 years of which must have been in supervisory capacity.

APPROPRIATE CIVIL SERVICE ELIGIBILITY — Auditor, however, pending the establishment of the Auditor register, the following may be considered most nearly appropriate: RA 1080 (CPA); RA 1080 (BAR); FIRST GRADE"[26]

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[24] Exh. 4, p. 135, *Ibid.*

[25] Exh. 8, pp. 138-140, *Ibid.*

[26] Exh. 30, p. 4, Commissioner's Report, p. 187, *Ibid.*

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In respect of education, Ferrer graduated from the University of the East as of October, 1956 with the degree of Bachelor in Business Administration, major in Accounting.[27] Therefore, he meets the educational requirements.

As to experience, Ferrer had been performing auditing functions even before July, 1960. Thus, on January 24, 1957, the Acting Director of Public Schools designated Ferrer as Audit Clerk in the Office of the Cashier and Disbursing Officer of the Bureau of Public Schools. In the same communication, Ferrer was also instructed to report to the Auditor of that Bureau for training until "thoroughly acquainted with the process of auditing."[28] On September 8, 1959, Auditor General Gimenez wrote the Director of Public Schools stating that "after screening your nominees, only Mr. Alberto S. Ferrer has been selected" for the Fifth Classroom Training Course on Internal Auditing.[29] A Certification from the General Auditing Office dated November 6, 1959 indicates that Ferrer had satisfactorily completed the in-service training course in Internal Auditing.[30] Another Certification, dated August, 1960, attests that Ferrer had completed a course of instruction in Government Auditing from January, 1960 to August, 1960 under the Technical Cooperation Scheme of the Colombo Plan.[31] On December 9, 1964, the Acting Asst. Director of Public Schools wrote a letter to the Division Superintendent of Schools, Cebu City, introducing Ferrer as Chief Internal Auditor of the Bureau and authorizing him "to visit your division and look into the fiscal and management phases of school accounts" and whose "services may be availed of on problems regarding handling of school funds and property, if any."[32] With respect to Ferrer's supervisory experience, suffice it to state that since the positions involved are classified as

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[27] Exh. N, p. 51, *Ibid.*

[28] Exh. T, p. 58, *Ibid.*

[29] Exh. S, p. 56, *Ibid.*

[30] Exh. O, p. 52, *Ibid.*

[31] Exh. P, p. 53, *Ibid.*

[32] Exh. V, p. 61, *Ibid.*

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Chiefs of Section,[33] necessarily the incumbents would perform supervisory functions. It will have to be concluded then that Ferrer also possessed the required experience.

Coming now to Ferrer's civil service eligibility — it is true that when Ferrer's position was upgraded by WAPCO to Auditor II, R-41, effective July 1, 1960[34] his eligibility was that of 2nd Grade. But considering that pursuant to Budget Circular No. 120, dated June 28, 1961, *supra*, employees occupying before July 1, 1961 the positions and items which have been upgraded shall be the ones issued such appointments, if qualified, and as pointed out in the Commissioner's Report submitted to the trial Court on January 10, 1966 by Atty. Celerina Gotladera, Chief, Qualification Standard Section, Recruitment and Examining Division of the Civil Service Commission, Ferrer could have been issued a provisional appointment from July 1, 1960 to March 31, 1962 since the Civil Service Commission did not have then an appropriate register of auditors. On March 31, 1962, Ferrer passed the "Supervisor (First Grade) *Promotional* examination," and while he was notified thereof only on May 8, 1964, the same retroacts to the day after the date of examination. So that from April 1, 1962, Ferrer's status could have been changed to permanent, as pointed out by the same Commissioner.[35] To all intents and purposes, therefore, from April 1, 1962 to February 1, 1965 when Ferrer was relieved of his duties and functions as Auditor II, he was the *de facto* Auditor II lacking only a formal appointment to the same. At this juncture, it may also be pointed out that when Ferrer signified his willingness to accept a provisional appointment to the disputed position on September 20, 1962, he was already *actually qualified* for the disputed position. Likewise, when petitioner Arevalo was appointed in May, 1965, Ferrer was himself also fully qualified.

In fine, it has to be held that Ferrer is entitled to a formal appointment to the position of Auditor II, R-41 of the Bureau

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[33] Exh. A-3, p. 4, *Ibid.*

[34] Exh. B or 5, p. 9, *Ibid.*

[35] Exh. 30, p. 188, *Ibid.*

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of Public Schools, effective April 1, 1962. This conclusion is further bolstered by considerations of justice and equity considering that official documents proceeding from the Department of Education itself,[36] the yearly Plantilla of Personnel of the Bureau of Public Schools,[37] School Finance Division, all referred to Ferrer as Auditor II, besides the fact that he had been discharging the functions of that office.

Having arrived at the foregoing conclusion, a discussion on whether the notation on petitioner Arevalo's appointment "vice Mr. Alberto S. Ferrer to be shifted to another item" should be considered a condition precedent or a condition subsequent, would already be surplusage.

WHEREFORE, modifying the appealed Decision of the appellate Court, we declare that Alberto S. Ferrer is entitled to a formal appointment to the position of Auditor II, R-41, Bureau of Public Schools, Department of Education, effective April 1, 1962, and to collect his salary as such from February 1, 1965, but with no entitlement to damages from petitioners. The annulment of the appointment of petitioner Lilia T. Arevalo, dated May 10, 1965, is hereby affirmed.

Without pronouncement as to costs.

SO ORDERED.

Teehankee (Chairman), Makasiar, Fernandez, Guerrèro, and *De Castro, JJ.*, concur.

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[36] *e.g.* Exhs. A-1 & A-2, pp. 2-3, *Ibid.*

[37] Exhs. A-3 to A-7, pp. 4-8, inclusive, *Ibid.*