



Republic of the Philippines  
**Supreme Court**  
Baguio City

**THIRD DIVISION**

**CIVIL SERVICE COMMISSION,**  
Petitioner,

**G.R. No. 200103**

Present:

- versus -

VELASCO, JR., J., *Chairperson*,  
PERALTA,  
ABAD,  
MENDOZA, and  
LEONEN, JJ.

**MARICELLE M. CORTES,**  
Respondent.

Promulgated:

April 23, 2014

X -----

*[Signature]* X

***DECISION***

**ABAD, J.:**

This case concerns the validity of appointment by the Commission *En Banc* where the appointee is the daughter of one of the Commissioners.

**The Facts and the Case**

On February 19, 2008 the Commission *En Banc* of the Commission on Human Rights (CHR) issued Resolution A 2008-19 approving the appointment to the position of Information Officer V (IO V) of respondent Maricelle M. Cortes. Commissioner Eligio P. Mallari, father of respondent Cortes, abstained from voting and requested the CHR to render an opinion on the legality of the respondent's appointment.

In a Memorandum dated March 31, 2008, CHR Legal Division Chief Atty. Efren Ephraim G. Lamorena rendered an opinion that respondent Cortes' appointment is not covered by the rule on nepotism because the appointing authority, the Commission *En Banc*, has a personality distinct and separate from its members. CHR Chairperson Purificacion C. Valera

*[Signature]*

Quisumbing, however, sent respondent a letter on the same day instructing her not to assume her position because her appointment is not yet complete.

On April 4, 2008 the Civil Service Commission-NCR (CSC-NCR) Field Office informed Chairperson Quisumbing that it will conduct an investigation on the appointment of respondent Cortes.

On April 9, 2008 Velda E. Cornelio, Director II of the CSC-NCR Field Office informed Chairperson Quisumbing that the appointment of respondent Cortes is not valid because it is covered by the rule on nepotism under Section 9 of the Revised Omnibus Rules on Appointments and Other Personnel Actions. According to the CSC-NCR, Commissioner Mallari is considered an appointing authority with respect to respondent Cortes despite being a mere member of the Commission *En Banc*.

Respondent Cortes appealed the ruling of Director Cornelio but the same was denied on September 30, 2008.

Consequently, respondent Cortes filed a petition for review on November 24, 2008 before the CSC.

On March 2, 2010 the CSC issued Resolution 10-0370 where it denied the petition and affirmed the nepotistic character of respondent Cortes' appointment. Respondent Cortes filed a Motion for Reconsideration but the same was denied in Resolution 10-1396 dated July 12, 2010.

Consequently, in a letter dated August 10, 2010, CHR Commissioner and Officer-in-Charge Ma. Victoria V. Cardona terminated respondent's services effective August 4, 2010.

On August 16, 2010, respondent Cortes filed a Petition for Review with Prayer for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction with the Court of Appeals (CA).

On August 11, 2011, the CA rendered its Decision granting the petition and nullified Resolution 10-0370 dated March 2, 2010 and 10-1396 dated July 12, 2010. The CA also ordered that Cortes be reinstated to her position as IO V in the CHR.

Petitioner filed a Motion for Reconsideration but the same was denied by the CA in a Resolution dated January 10, 2012.

Hence, this petition.

### Issue of the Case

Whether or not the CA erred when it ruled that the appointment of respondent Cortes as IO V in the CHR is not covered by the prohibition against nepotism.

### Ruling of the Court

The petition is impressed with merit.

Nepotism is defined as an appointment issued in favor of a relative within the third civil degree of consanguinity or affinity of any of the following: (1) appointing authority; (2) recommending authority; (3) chief of the bureau or office; and (4) person exercising immediate supervision over the appointee.<sup>1</sup> Here, it is undisputed that respondent Cortes is a relative of Commissioner Mallari in the first degree of consanguinity, as in fact Cortes is the daughter of Commissioner Mallari.

By way of exception, the following shall not be covered by the prohibition: (1) persons employed in a confidential capacity; (2) teachers; (3) physicians; and (4) members of the Armed Forces of the Philippines.<sup>2</sup> In the present case, however, the appointment of respondent Cortes as IO V in the CHR does not fall to any of the exemptions provided by law.

In her defense, respondent Cortes merely raises the argument that the appointing authority referred to in Section 59 of the Administrative Code is the Commission *En Banc* and not the individual Commissioners who compose it.

The purpose of Section 59 on the rule against nepotism is to take out the discretion of the appointing and recommending authority on the matter of appointing or recommending for appointment a relative. The rule insures the objectivity of the appointing or recommending official by preventing that objectivity from being in fact tested.<sup>3</sup> Clearly, the prohibition against nepotism is intended to apply to natural persons. It is one pernicious evil impeding the civil service and the efficiency of its personnel.<sup>4</sup>

Moreover, basic rule in statutory construction is the legal maxim that “*we must interpret not by the letter that killeth, but by the spirit that giveth*”

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<sup>1</sup> Section 59, Chapter 1, Title A, Book V of the Administrative Code of 1987.

<sup>2</sup> *Id.*

<sup>3</sup> *Debulgado v. Civil Service Commission*, G.R. No. 111471, September 26, 1994, 237 SCRA 184.

<sup>4</sup> *Civil Service Commission v. Dacoycoy*, 366 Phil. 86 (1999).


*life.*” To rule that the prohibition applies only to the Commission, and not to the individual members who compose it, will render the prohibition meaningless. Apparently, the Commission *En Banc*, which is a body created by fiction of law, can never have relatives to speak of.

Indeed, it is absurd to declare that the prohibitive veil on nepotism does not include appointments made by a group of individuals acting as a body. What cannot be done directly cannot be done indirectly. This principle is elementary and does not need explanation. Certainly, if acts that cannot be legally done directly can be done indirectly, then all laws would be illusory.


In the present case, respondent Cortes’ appointment as IO V in the CHR by the Commission *En Banc*, where his father is a member, is covered by the prohibition. Commissioner Mallari’s abstention from voting did not cure the nepotistic character of the appointment because the evil sought to be avoided by the prohibition still exists. His mere presence during the deliberation for the appointment of IO V created an impression of influence and cast doubt on the impartiality and neutrality of the Commission *En Banc*.


**WHEREFORE**, the instant petition is **GRANTED**. The Decision dated August 11, 2011 and Resolution dated January 10, 2012 of the Court of Appeals in CA-G.R. SP 115380 are **REVERSED** and **SET ASIDE**. The Resolution of the Civil Service Commission dated March 2, 2010 affirming the CSC-NCR Decision dated September 30, 2008 invalidating the appointment of respondent Maricelle M. Cortes for being nepotistic is hereby **REINSTATED**.

**SO ORDERED.**

  
**ROBERTO A. ABAD**  
Associate Justice

**WE CONCUR:**

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



**DIOSDADO M. PERALTA**  
Associate Justice




**JOSE CATRAL MENDOZA**  
Associate Justice



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

### ***ATTESTATION***


I attest 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.



**PRESBITERO J. VELASCO, JR.**  
Associate Justice  
Chairperson, Third Division

### ***CERTIFICATION***

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.



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