

ILAGAN, Edgardo B.
Re: Clarification on CSC
Resolution No. 99-0124

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RESOLUTION NO. 991063

Edgardo B. Ilagan, General Manager, Tarlac Water District (TWD) and Lorna M. Tolentino, also of the TWD, request clarification regarding the implementation of CSC Resolution No. 99-0124 the dispositive portion of which read as follows:

"WHEREFORE, the appeal of Lorna M. Tolentino is hereby found meritorious. The penalties imposed in the appealed decision is hereby modified. Accordingly, the penalty of demotion is hereby declared null and void. The General Manager, Edgardo B. Ilagan is hereby ordered to reinstate Lorna M. Tolentino to her former position as Cashier or to a comparable position. CSRO No. III is hereby directed to monitor the implementation of this Resolution".

The pertinent portions of Ilagan's letter dated February 15, 1999 read as follows:

"TWD, however, is in quandary due to the following:

"1. To avoid any disruption in the operation of TWD, the Cashier position was filled up by Mrs. Melanie Quizon, whose permanent appointment has been duly attested by CSC.

"2. At present, there is no other vacant 'comparable position' in the TWD Plantilla which may be assigned to Mrs. Tolentino. TWD is, however, in the process of submitting to the Department of Budget and Management (DBM) a report for the creation of the position of Senior Property Supply Officer (Grade

16), a 'comparable position', and pending DBM approval. Mrs. Tolentino has been designated in that capacity since February 9, 1999.

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"3. At the time Mrs. Tolentino was suspended from her Cashier position on February 21, 1994, she was receiving Salary Grade 16, Step 8. Mrs. Tolentino is, therefore, apprehensive that, on the basis of past DBM actions, DBM may only approve a Salary Grade 16, Step 1 and not Step 8. Hence, she is hesitant to accept the abovementioned designation of Senior Property Supply Officer (Salary Grade 16).

"4. Upon suspension of Her suspension period, Mrs. Tolentino was issued a permanent appointment as CLERK effective February 23, 1995, which position she had held to date, or almost four years prior to the promulgation of Resolution No. 99-0124.

"In view of all the foregoing, TWD most respectfully requests for clarificatory mechanisms on how to effectively implement Resolution No. 99-01245, particularly regarding aspects, viz -

"1. Does the reinstatement of Mrs. Tolentino, either to erstwhile position as Cashier or to a 'comparable position' carry with it backwages, by way of the difference between her old salary as Cashier and her present salary as Cashier as Clerk, counted from February 23, 1995 to the present ?

"2. Can the incumbent Cashier, holder of a permanent position, be compelled to vacate her position in favor of Mrs. Tolentino ?

"3. In the event the incumbent Cashier vacates her position, what would be the source of the fund from which the backwages abovementioned could legally be paid, without violating any existing law, rule or regulation or doing injustice to innocent third persons?

"4. Does the position of Senior Property Supply Officer with a salary grade similar to that of the Cashier, which is proposed to be created and submitted for DBM approval, fall within the purview of 'comparable position'.

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"5. In the same manner as with Query No. 3 above, what would be the sources of the fund for the backwages considering especially that the position would be a new one ?

"6. Should Mrs. Tolentino refuse to accept this new position, assuming DBM approves Salary Grade 16 but allows only for Step 1, 2, or 3, and not Step 8 as desired by her, what would be the TWD's legal recourse ? "

On the other hand, Tolentino's letter also dated February 15, 1999 reads, as follows :

"Although my demotion was deemed null and void, said decision was silent on the issue of

back wages that I am entitled to. And for this reason, I am again appealing for your assistance and clarification on the matter.

"I have appended hereto a photocopy of your decision as well as the Tarlac City Water District Management's action on said decision dated February 9, 1999 designating me as Sr. Property Supply Officer. Please take note that up to this time, said action of management which is an Office Order dated February 9, 1999 is only on paper, and not yet being implemented.

"You will notice that the office order which I received on February 11, 1999, 18 days after management received the CSC's decision does not specify the salary commensurate to the position of Sr. Property Supply Officer. Verbally, I was told that I will be receiving step 1 of Salary Grade 16 or a compromise may be arrived by giving me the mid-step.

"On my part, I believe that I should be given salary step 8 because of the fact that should have I been not demoted during that time and I assumed my original position as Cashier when I reported back for work after my one year suspension, which should have been the case, my salary could have been

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adjusted in the manner provided by law during that period particularly the Salary Standardization Law and I should be receiving Step 8 of Salary Grade 16 by now.

"I have heard that management's reason for giving me Step 1 of Salary Grade 16 is

because I am new to the position of Senior Property Supply Officer, so I should receive the hiring rate for this position which is step 1. If this is the case, I might as well insist that I be given my position as Cashier and receive a salary under Step 8, and the employee presently designated as Cashier be designated as Property Supply Officer and receive Step 1, in as much as her salary at present falls under step 1 of Salary Grade 16. "

It is noteworthy to mention that the Supreme Court held that demotion to a lower position with a lower rate of compensation is also equivalent to removal if no cause is shown for it. (Floresca V. Ongpin, 182 SCRA 691; Department of Transportation and Communications v. Civil Service Commission, 202 SCRA 340).

On the other hand, there is a vacancy when an office is empty and without a legally qualified incumbent appointed or elected to it with a lawful right to exercise its powers and performs its duties. The incumbent must have been lawfully removed or his appointment validly terminated, since an appointment to an office not vacant is null and void ab initio (Gayatao v. Civil Service Commission, 210 SCRA 103; Morata V. Court of Appeals, 11 SCRA 42). Thus, when a regular employee is illegally suspended or dismissed, legally speaking, the office never becomes vacant.

As the Commission held in CSC Resolution No. 99-0124, thus:

"The imposition of suspension, demotion and order to refund the amount of P3,057.60 for the two (2) offenses Appellant was found guilty of finds no legal support. Section 17, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987) provides as follows:

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"The imposition, therefore, of the penalty of demotion in addition to suspension, was excessive and violative of the Rules."

Having said, since in Resolution No. 99-0124, the Commission set aside and declared null and void the penalty of demotion imposed on Tolentino, it means as if the same had not been imposed and as if Tolentino has not left her position as Cashier. Stated otherwise, Tolentino never vacated the position of Cashier.

And there being no comparable position, Tolentino has the right to claim her said position from the person appointed in her stead, Melanie Quizon, who has no vested right therein nor is entitled to security of tenure notwithstanding her appointment thereto under permanent status since the position has never become vacant in the legal standpoint. The position of Senior Property Supply Officer cannot be considered a comparable position in this instance because there is no such position yet in the TWD's Plantilla. As represented by Ilagan himself, it is a mere proposal under consideration by the Department of Budget and Management (DBM).

The Commission quotes the Supreme Court in *Tanala V. Legaspi* (13 SCRA 566) citing its earlier ruling in *Batungbakal V. National Development Co., et al.* (93 Phil. 182), to wit:

"x x x, when a regular government employee was illegally suspended or dismissed, legally speaking, his position never became vacant, hence, there was no vacancy to which a new incumbent could be permanently appointed, it being considered that the incumbency of the person appointed to the position is temporary and he has to give way to the employee whose right to the office has been recognized by the competent authority."

Consequently, as the rightful claimant to the position of Cashier, Tolentino is entitled to a salary differential accruing from her illegal demotion to Clerk II on February 23, 1995. For such purpose, the Department of Budget and Management (DBM) should appropriate fund for such purpose.

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WHEREFORE, this Commission resolves to rule and clarify that Lorna M. Tolentino is entitled to reinstatement to her position as Cashier and to salary differential from February 23, 1995, the date she was illegally demoted to Clerk.

Accordingly, the CSRO III is directed to monitor the implementation of CSC Resolution No. 99-0124 and this Resolution.

Quezon City. **MAY 21, 1999.**

ORIGINAL SIGNED
THELMA P. GAMINDE
Commissioner

ORIGINAL SIGNED
CORAZON ALMA G. DE LEON
Chairman

DID NOT PARTICIPATE
JOSE F. ERESTAIN, JR.
Commissioner

Attested by:

ARIEL G. RONQUILLO
Director III

NLA/FPG/MVM/A6(#1)/twd/mjp
D-98-0337