

DE VEYRA, Delia A.
DE VEYRA, Jose V.
DIAZ, Sonia P.

Re: Illegal Termination

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RESOLUTION No. 990278

Delia a. De Veyra, Clerk III, Jose V. De Veyra, Revenue Collection Clerk I and Sonia P. Diaz, Accounting Clerk I, all of the Municipal Government of Palo, Leyte, appeal from the decision (Notice of Termination) of Mayor Federico B. Diamante III of Palo, Leyte, terminating their services within the six (6)-month probationary period.

The appeal dated July 6, 1998 read as follows:

"On July 1, 1998, we received a Notice of Termination from Mayor Federico B. Diamante III x x x.

"That I, DELIA A. DE VEYRA, was appointed as permanent x x x.

"That I, JOSE DE VEYRA, was appointed as permanent x x x.

"That I, SONIA P. DIAZ, was appointed as permanent x x x.

"That the termination of our employment was without any legal basis nor were we afforded the opportunity to explain our side before we were terminated x x x."

When requested to comment, Mayor Federico B. Diamante III, in his letter dated July 15, 1998, alleges as follows:

" x x x hereunder are the reasons for the termination of the employees concerned to wit:

"I. Delia de Veyra

Position: Clerk III

Salary Grade: 6

Date of Appointment: January 2, 1998

Status of Appointment: Within the six- (6) months probationary period

"Reasons for Termination:

"A. Recommended by the immediate supervisor for termination for want of capacity, please see attached Certification dated June 29, 1998.

"B. Appointment was not in accordance with Rule VI of the Rules Implementing Book V of Executive Order No. 292, because the previous Mayor did not consider promotion of employees within the hierarchical arrangement of positions in the agency. The appointee is an outsider having entered the service only after the appointment was issued, other permanent employees lower than Grade 6 (six) were not considered for promotion.

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"2. Jose de Veyra

Position: Revenue Collection Clerk I

Salary Grade: 5

Date of Appointment: March 16, 1998

Status of Appointment: Within the six- (6) months probationary period

"Reasons for Termination:

"A. Recommended by the immediate supervisor for termination for want of capacity,

please see attached certification dated July 1, 1998.

"B. Appointment was not in accordance with Rule VI of the Rules Implementing Book V of Executive Order No. 292, because the previous Mayor did not consider promotion of employees within the hierarchical arrangement of positions in the agency. The appointee is a casual employee, other permanent employees lower than Grade 5 were not considered for promotion.

"3. Sonia P. Diaz

Position: Accounting Clerk I

Salary Grade: 4

Date of Appointment: May 12, 1998

Status of Appointment: Within the six (6) months probationary period

"Reasons for Termination:

"A. Recommended by the immediate supervisor for termination for want of capacity, please see attached certification dated July 1, 1998."

"B. The appointee was issued after the 1998 Local Election and the appointing official who lost in the election is considered a caretaker who is not authorized to issue appointments."

In support of these allegations, Mayor Diamante submitted the following Certifications signed by Leo G. Dumas, Municipal Civil Registrar, Luz Fernandez, Acting Municipal Treasurer, and Deogracias Rosales, Municipal Accountant, recommending the termination of Delia De Veyra and Sonia P. Diaz for want of capacity:

"THIS IS TO CERTIFY that for want of capacity, the undersigned hereby recommends for the termination of Mrs. Delia de Veyra whose service in this Office is probationary in nature.

"Done this 29th day of June 1998, at Palo, Leyte.

*(SGD.) LEO G. DUMAS
Municipal Civil Registrar*

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"THIS IS TO CERTIFY that for want of capacity, the undersigned hereby recommends for the termination of Mr. Jose de Veyra whose service in this Office is probationary in nature.

"Done this 1st day of July 1998, at Palo, Leyte.

*(SGD.) LUZ FERNANDEZ
Acting Municipal Treasurer*

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"THIS IS TO CERTIFY that for want of capacity, the undersigned hereby recommends for the termination of Mrs. Sonia P. Diaz whose service in this Office is probationary in nature.

"Done this 1st day of July 1998, at Palo, Leyte.

*(SGD.) DEOGRACIAS ROSALES
Municipal Accountant*

Records show that Delia A. De Veyra was issued a permanent appointment dated January 2, 1998 as Clerk III. A permanent appointment dated March 16, 1998 was also extended to Jose V. de Veyra as Revenue Collection Clerk I. Likewise, Sonia P. Diaz was issued a permanent appointment as Accounting Clerk I on May 12, 1998. All the foregoing appointments were issued by former Mayor Teodoro M. Sevilla of the Municipality of Palo, Leyte.

Suddenly, the incumbent Mayor Federico B. Diamante III, sent notice of termination dated June 30, 1998 to Delia A. De Veyra stating as follows:

"Your service in the Municipal Government of Palo, Leyte, being probationary in nature, is hereby terminated, effective today, June 30, 1998."

Notices of termination, all dated July 1, 1998, were also sent by Mayor Diamante to Jose V. De Veyra, Sonia P. Diaz and Corina M. Ilagan, stating as follows:

"Your service in the Municipal Government of Palo, Leyte, being probationary in nature, is hereby terminated, effective today, July 1, 1998."

The Civil Service Regional Office (CSRO) No. VIII, Candahug, Palo, Leyte, through Atty. Marilyn E. Taldo, issued a subpoena to Leo G. Dumas, Edgardo M. Celerinos, Luz Fernandez, Deogracias Rosales, Delia de Veyra, Jose de Veyra, and Sonia P. Diaz, requiring them to appear before the CSRO No. VIII Legal Affairs Division on July 27, 1998 to clarify matters material to the judicious resolution of this case.

The Report of Investigation of CSRO No. VIII dated August 21, 1998 reads, in part, as follows:

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"Engr. Leo G. Dumas, Municipal Civil Registrar, testified that he refused to sign Ms. De Veyra's Performance Evaluation Report (January to June, 1998) not because he does not concur with her Very satisfactory Rating but because the duties specified in item no. 5 therein are beyond the jurisdiction of his Office; that as regards the certification, the same was prepared by the Office of the Mayor and that he was just forced to sign it.

"Mr. Edgardo Celerinos, the former supervisor of Jose V. De Veyra, who had transferred to COA, Region VIII effective June 3, 1998, informed the Investigating Officer that he found De Veyra's conduct acceptable and work performance satisfactory. Ms. Luz Fernandez, Acting Municipal Treasurer and the immediate supervisor of De Veyra effective June 3, 1998, concurred with the observations of Mr. Celerinos and explained that she signed the 'ready-made' Certification, as she was 'under pressure'.

"On the other hand, Mr. Deogracias Rosales, Municipal Accountant and immediate supervisor of appellant Sonia Diaz clarified that he was constrained to sign the 'ready-made' Certification on July 7, 1998 because of the two (2) memoranda issued to him on July 1, 1998 requiring him to explain why he should not be administratively charged for alleged commission of some offenses; and that a day after he signed said document he sent a confidential letter dated July 8, 1998 to Mayor Diamante, the pertinent portions of which read, as follows:

"Regarding the recommendation for termination of Sonia Diaz which I was made to sign yesterday, please be informed that after due consideration said recommendation may not hold water for the following reasons:

1. I was the one who recommended her for the position.

1. As I informed you, her last rating made June 29, 1998, was VS and it contradicts the reason of 'incapacity' stated in the recommendation.

1)

1. *The recommendation was signed only July 7, 1998 while the termination was made July 1.*

6.

"In view of the above, it is suggested that said recommendation be withdrawn and another basis for her termination be studied."

After a careful scrutiny of the records of this case, the Commission finds the appeal meritorious.

It is undisputed that the appointments of Delia De Veyra, Jose De Veyra and Sonia P. Diaz as Clerk III, Revenue Collection Clerk I and Accounting Clerk I, respectively, are all permanent. The Performance Evaluation Report Forms of Delia De Veyra, Jose De Veyra and Sonia Diaz indicate that they have Very Satisfactory rating from January 1 to June 29, 1998. Based on the oral testimonies of Leo G. Dumas, Edgardo Celerinos, Luz Fernandez and

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Deogracias Rosales, there appears no legal basis for said Termination on the ground of 'want of capacity'. Hence, the notices of termination issued by incumbent Mayor Diamante to Delia De Veyra, Jose De Veyra and Sonia Diaz were imbued with grave abuse of discretion.

While Mayor Diamante, as the head of office, has the responsibility to assess the conduct and performance of his employees during the first six (6) months in office, the same however must be done objectively. When Mayor Diamante issued the subject termination orders on June 30, 1998 and July 1, 1998, he had served as Mayor for barely a day, which period is not ample for him to evaluate appellant's capacity to perform their respective duties. Applicable to this case is the ruling of this Commission in

CSC Resolution No. 94-4180 dated August 4, 1994, which reads as follows:

"x x x. Under the rules, an employee undergoing a probationary period may be terminated for unsatisfactory conduct or want of capacity. It is implied that the head of office should have had the opportunity to close observe the employee so as to have a just and valid reason to arrive at a conclusion that such employee was wanting in capacity. In a similar case, particularly in Resolution No. 93-2094, the Commission ruled that the statement 'I find you wanting in capacity' implies knowledge which is borne out of a working relationship established through time on the part of the appointing authority of the capabilities of the employee to whom it is addressed.

"In the instant case, Mayor Velez, when he issued the notice of termination to Machan on July 1, 1992, was only one (1) day as Mayor as he assumed office only on June 30, 1992. One day cannot be considered as ample time for Mayor Velez to determine Machan's capacity to perform her job, as well as her conduct. Therefore, the Commission finds the termination of Machan as illegal."

WHEREFORE, the appeal of Delia De Veyra, Jose V. De Veyra and Sonia P. Diaz is hereby found meritorious. The Order terminating them from the service is thus set aside. Accordingly, they should be reinstated to their former positions with payment of back salaries.

Quezon City, Jan 28, 1999

JOSE F. ERESTAIN, JR.
Commissioner

CORAZON ALMA G. DE LEON

Chairman

THELMA P. GAMINDE
Commissioner

Attested by:

ARIEL G. RONQUILLO
Director III