

CALACAL, ELIAS L.

Re: Presidential Appointee; Motion for Reconsideration
(CSC Resolution No. 99-0037)

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RESOLUTION NO. 990952

Delia Abon, Joan Lacar and Riza Haradji, complainants in the administrative case for Grave Misconduct (Sexual Harrassment) filed with the Civil Service Regional Office No. 1 (CSRO No. 1), San Fernando, La Union, against Elias L. Calacal, President of the Mariano Marcos State University, Batac, Ilocos Norte, move for the reconsideration of CSC Resolution No. 99-0037 dated January 7, 1999 denying the request that Calacal be preventively suspended by the Commission.

Pertinent portions of the assailed Resolution read as follows:

X X X

"After due consideration, this Commission resolves to deny the request for preventive suspension.

"It should be noted that Dr. Elias Calacal, as the President of the Mariano Marcos State University, is a presidential appointee. And as such, this Commission has no administrative disciplinary jurisdiction over him (CSC vs. Nayga, CA G.R. No. 131710 dated February 17, 1998). However, his being a presidential appointee is not a license for him to commit dastardly acts against his subordinates.

"WHEREFORE, the request of Director Abueg to place Dr. Elias L. Calacal under preventive suspension is hereby denied. Accordingly, this case is referred to the

Presidential Commission Against Graft and Corruption for appropriate action."

Abon, et al., in their Motion, allege that:

"Under Republic Act No. 8292 (An Act providing for the Uniform Composition and Powers of the Governing Boards, the Manner of Appointment and Term of Office of the President of Chartered State Universities and Colleges, and for other purposes) otherwise known as the Higher Education Modernization Act of 1997, the President of a State College or University shall be appointed by the Board of Regents/Trustees, upon the recommendation of a duly constituted search committee. Section 6 of the said law thus provides:

'Section 6. The Administration - The administration of the university or college shall be vested in the president of the university or college who shall render full-time service. He shall be appointed by the Board of Regents/Trustees, upon the recommendation of a duly constituted search committee. He shall have a term of four (4) years and shall be eligible for reappointment for another term: Provided, that this provision shall not adversely affect terms of the incumbents'.

X X X

"Considering the above-quoted provision of law which took effect in 1997 and which is specific and clear that a president of a state college or university shall be appointed by the Board of Regents/Trustees, the position of president of a state college or university has therefore ceased to be a position requiring the issuance of an appointment from the President of the Republic. Consequently, the person holding the position likewise ceased to be considered a presidential appointee.

"The Honorable Commission therefore erred in holding that respondent Calacal is a presidential appointee and as such could not be proceeded against administratively.

*Again, the position held by Calacal is no longer considered as one requiring the appointment of the Chief Executive and considering that one's position cannot be separated from the occupant, it follows that the former has now ceased to be a presidential appointee. In other words, the Supreme Court ruling in *Nayga vs. CSC* (SC G.R. No. 131710) is not applicable to the instant case of respondent Calacal. It is therefore the submission of herein complainants-victims that Calacal could be administratively disciplined not only by the Board of Regents/Trustees which, under RA 8292, has the power to appoint the president of state college or university, but likewise by the Civil Service Commission which can exercise concurrent administrative disciplinary jurisdiction over non-presidential appointees under the Civil Service Law and rules."*

Relevant to the judicious disposition of this case is Section 7 of **CSC Resolution No. 94-0521** which provides:

"Section 7. Motion for Reconsideration - A motion for reconsideration may be filed within fifteen (15) days from receipt of the decision. However, in disciplinary cases where a decision is rendered after the respondent has been formally charged, only said respondent may file a motion for reconsideration or file an appeal."

Thus, it should be emphasized at the outset that an appeal or a motion for reconsideration, being a statutory right, must be exercised only in the manner provided by law and by the party extended such right. In fact, in a string of Supreme Court cases, the High Court declared that::

"Petitioner, not being the party adversely affected by the decision, has no legal personality to interpose an appeal to the Civil Service Commission. x x x No private interest is involved in an administrative case as the offense is committed against the government." (Paredes vs. CSC, 192 SCRA 84; Mendez vs. CSC, 204 SCRA 965; Tiatco v. CSC, 216 SCRA 749, all cited in Cecilia Arong, CSC Resolution No. 97-2902)

In line with the aforesaid doctrine, complainants Abon, Lacar and Haradji have no legal personality to

file the instant motion as they are not the respondents who are adversely affected by the CSC decision.

Granting en arguendo that they can rightfully interpose this motion, still, the motion is bound to fail.

Movants assert that the Commission has disciplinary jurisdiction over Calacal on the basis of RA 8292 which specifically provides that the President of a State University shall be appointed by the Board of Regents. Consequently, they insist that there was error in the Commission's denial of jurisdiction over Calacal.

We beg to disagree.

Calacal was appointed as University President of MMSU on June 7, 1993 by then President Ramos. At the time of his appointment, RA 8292 was not in effect yet considering that it took effect only on June 6, 1997. Consequently, what will apply are Article 4 of the Civil Code of the Philippines and the case of *Development Bank of the Philippines vs. Court of Appeals*, as follows:

Article 4, Civil Code of the Philippines provides:

"Laws shall have no retroactive effect, unless the contrary is provided."

The Supreme Court, in the case of **Development Bank of the Philippines vs. Court of Appeals (262 SCRA 245)**, held that:

"Laws cannot have retroactive effect unless there is an express provision in them to that effect."

Very clearly then, the law upon which Abon et al anchor herein Motion is not correct. Accordingly, the applicability of the resolution of the Supreme Court in the case of **CSC vs. Nayga** still stands. The dispositive portion of the said resolution reads as follows:

"GR No. 131710 (Civil Service Commission v. Rodolfo C. Nayga, et al.). - After due

deliberation on the petition for review on certiorari filed by the Civil Service Commission, the Court RESOLVED to dismiss the same x x x because the Court of Appeals correctly held and therefore committed no reversible error that the Civil Service Commission has no original jurisdiction to investigate presidential appointees such as private respondent members of the Board of regents of the Isabela State University." (Emphasis supplied)

Pointedly, the denial of the request for preventive suspension and the subsequent denial of disciplinary jurisdiction over Dr. Calacal is with legal and jurisprudential basis.

WHEREFORE, the herein motion for reconsideration of Delia Abon, Joan Lacar and Rizal Haradju is hereby denied for lack of merit.

Quezon City, **MAY 06 1999**

CORAZON ALMA G. DE LEON
Chairman

THELMA P. GAMINDE
Commissioner

JOSE F. ERESTAIN, JR.
Commissioner

Attested by:

ARIEL G. RONQUILLO
Director III

CADL-RES/calacal/NLA/FPG/A2/A5(7)/d-980043