

GARCIA, Alvin B.

Re: Appeal; Disapproved Appointments

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RESOLUTION No. 991871

Mayor Alvin B. Garcia of the City of Cebu, through counsel, appeals the disapproval by the Civil Service Regional Office (CSRO) No. VII of the appointments of thirty two (32) employees in that city government, as a result of upgrading of their positions pursuant to Ordinance No. 1468. Said employees are as follows:

Name	Present Position/ Salary Grade	Upgraded Position/ Salary Grade
1. Crescente S. Bao-as	Registration Office IV/26	Civil Registrar IV/27
2. Bella V. Veloso	City Government Assistant Department Head II/24	City Government Assistant Department Head III/25
3. Teresa N. Abellanos	- do -	- do -
4. Estrella F. Delos Reyes	- do -	- do -
5. Felicitas L. Manaloto	- do -	- do -
6. Celso Esteban F. Jimenea	- do -	- do -

7. Pablo S. Tinga	- do -	- do -
8. Melchor P. Tormis	- do -	- do -
9. Emmanuel A. Senoron	- do -	- do -
10. Trinidad S. Modina	- do -	- do -
11. Julius B. Villordon	- do -	- do -
12. Pablo R. Diapana	- do -	- do -
13. Evangeline T. Abatayo	- do -	- do -
14. Remedios B. Belderol	- do -	- do -
15. Violeta M. Alcantara	- do -	- do -
16. Nelfa R. Briones	- do -	- do -
17. Edgardo R. Masongsong	- do -	- do -
18. Alfredo P. Galaroza	- do -	- do -
19. Dionisio A. Sy	- do -	- do -
20. Stella Rose N. Paculaba	- do -	- do -
21. Palermo M. Lugo	City Government Department Head II/26	City Government Department Head III/27

22. Jose A. Guisadio	- do -	- do -
23. Anecita P. Alo	- do -	- do -
24. Rolando M. Lagaac	- do -	- do -
25. Maura F. Sanchez	- do -	- do -
26. Antonio B. Sanchez	- do -	- do -
27. Allan C. Gaviola	- do -	- do -
28. Danilo R. Abellanosa	- do -	- do -
29. Ruben Y. Dela Torres	- do -	- do -
30. Tomas L. Fernandez	- do -	- do -
31. Edna J. Jaca	- do -	- do -
32. Jesus C. Jayme	City Budget Officer /26	City Budget Officer/27

In his appeal, Mayor Garcia is represented, as follows:

"This, appellant begs to completely disagree. Ordinance No. 1468, increasing the salaries of officials and employees of appellant particularly, the department and assistant department heads, being valid, the same shall take effect as provided in the ordinance. Since, the ordinance was approved on August 9, 1993 which provides for its effectivity, upon its approval, said date shall be controlling. Moreover, the provisions under Section

325(f), RA 7160 and MC 19, s. 1992, does (sic) not apply to appointive officials but only refers to elective officials. The appointive officials have no hand in the reclassification of their respective positions, if it is to be conceded as such. Precisely, elective officials were the ones who passed and approved the ordinance such that they are the ones being contemplated in the said prohibition embodied under Section 325(f) and MC 19, s. 1992. This finds light under Section 81, RA 7160.

'Section 81. Compensation of Local Officials and Employees. The compensation of local officials and personnel shall be determined by the Sanggunian concerned: Provided, that the increase in compensation of elective local officials shall take effect only after the terms of those approving such increase shall have expired: Provided, further, The the increase in compensation of the appointive officials and employees shall take effect as provided in the ordinance which shall not exceed the limitations on budgetary allocations for personal services provided under Title Five, Book II, of this code; Provided, finally, that such compensation may be based upon the pertinent provisions of Republic Act Numbered Sixty-seven fifty eight (RA 6758), otherwise known as the Compensation and Position Classification act (sic) of 1989.'

"With the subject ordinance, every limitation provided for under the aforequoted provision has been complied with. Since this pertains only to appointive officials, its effectivity was made upon its approval as provided for therein. The budget for the same does not exceed the limitation on budgetary allocation for personal services and finally, it is in consonance with the provisions of RA 6758, more particularly (sic) Section 13 thereof, and of Circular Nos. 37 and 39 of the then Joint Commission.

"This very provision of Section 81, RA 7160, clearly upholds the validity of Ordinance No. 1468, in its entirety. Even the Court of Appeals in the case above-adverted to, in upholding the said ordinance did not make any qualification as to its effectivity hence, provision

therein stands and remains in full force and effect.

"Further, the subject appointments does (sic) not have any retroactive effectivity considering that it took effect on the date of the approval of the ordinance from which it was legally based and cannot be considered as having a retroactive effectivity as claimed by Director Clarita A. Jumalon."

By the way of comment, the CSRO VII cited the reasons for its disapproval as follows:

"The appointments were issued to incumbents as 'automatic' promotions from City Government Department Heads (some with different position titles) with salary grades 26 to City Government Department Heads III, salary grades 27; and from City Government Assistant Department Heads III, salary grades 24 to City Government Assistant Department Heads III, with salary grades of 25, in violation we believe, of Section 325 (f) of RA 7160, otherwise known as the Local Government Code, which provides:

'Sec. 325 (f). No changes in designation or nomenclature of positions resulting in a promotion or demotion in rank or increase or decrease in compensation shall be allowed, except when the position is actually vacant, and the filling of such position shall be strictly made in accordance with the civil service law, rules and regulations.'

"We also find them violative of Section 10, Rule V of the Omnibus Rules Implementing Book V of EO 292, which states:

'Sec. 10. An appointment issued in accordance with pertinent laws and rules shall take effect immediately upon its issuance by the appointing authority...'

"Subject appointments were signed by the Honorable Mayor on April 25, 1996, yet their effectivity were made retroactive to January 1, 1995, one (1) year and four (4) months from the dates of issuance."

Records show that on August 9, 1993, the Sangguniang Panlungsod of Cebu passed Ordinance No. 1468 and thereafter approved by the former Mayor, Tomas R. Osmena. Said ordinance appropriated funds for the increase of salaries of City Officials and employees pursuant to the authority vested in them under Sections 81 and 458 of RA 7160 (The Local Government Code of 1991). The title of the ordinance reads as follows:

"AN ORDINANCE AMENDING SECTION 4 OF ORDINANCE NO 1461 ENTITLED: AN ORDINANCE APPROPRIATING THE AMOUNT OF FIFTY EIGHT MILLION ONE HUNDRED FIFTY SEVEN THOUSAND SEVEN HUNDRED FIFTY SIX & 03/100 CTVS (p58,157,756.03) TO COVER URGENT AND NECESSARY EXPENSES OF THE CITY GOVERNMENT OF CEBU UNDER THE GENERAL FUND AND ITS SUB-ACCOUNTS ON ECONOMIC ENTERPRISES FOR CY 1993."

The Department of Budget and Management (DBM) disapproved the salary increase because the same has the effect of fully implementing the 8th step of the Salary Schedule provided under the Joint Commission Circular No. 36 and thus, in violation of RA 6758 and CSC-DBM Joint Circular No. 1, which mandates that the grant of step increments shall only be based on merit and length of service.

Said increase was also subsequently disallowed by the City Auditor, and a refund was ordered.

On account of the disapproval and order to refund, the City Government of Cebu filed a Petition for Certiorari with the Supreme Court to question the validity of Memorandum Circular No. 92-1 dated March 23, 1992, enjoining local government units from granting step or salary increments not in accordance with the CSC-DBM Joint Circular No. 1. The Supreme Court referred the petition to the Court of Appeals.

On February 22, 1996, the Court of Appeals promulgated its decision. The pertinent portions thereof read as follows:

"Clearly, Ordinance No. 1468 had the effect of increasing the salary of the concerned

personnel. However, such progressive growth is not a step-increment. Ordinance No. 1468 increased the salary of concerned personnel not through a step increment but through changes in position titles and in their corresponding salary grades. The position titles of Department Heads and Assistant Department Heads were changed. Correspondingly, a change in salary grades. In this case, from a lower grade to a higher grade. Correspondingly, an increase in salary. This is not step-increment. The salary increased because the position titles and salary grades were changed. Ordinance No. 1468 is not a grant of step-increment. Therefore, its passage cannot be in violation of Memorandum Circular No. 92-1.

"While Republic Act No. 7160 afforded local government units the liberty to fix the compensation of their personnels (sic) and employees, the law likewise subjected said liberty to certain conditions one of thwch is that any increase may be based upon the provisions of RA No. 6758, which mandates equal pay only for equal work. Petitioner contended that there would be no overlap of salary grades in case of Ordinance No. 1450 is allowed because City Government Assistant Department is actually in salary grade 25 and not 24 as claimed by respondents.

"Indeed there would be no overlapping of salary grade if the City Government Assistant Head is in salary grade 25. However, petitioner did not present any evidence which would prove that indeed City Government Assistant Head is in salary grade 25. Unlike respondent which cited JCLGPA Bulletin No. 10 dated March 7, 1991 which shows that City Government Assistant Department Head is in salary grade No. 24.

"Absence of any evidence (sic) which would show that City Government Assistant Head is holding a position with salary grade 25, we are constrained to hold that Ordinance No. 1468 should be disallowed for being violative of RA No. 6758 which mandates equal pay only for equal work.

"WHEREFORE, foregoing considered, the petition is hereby DENIED for lack of merit.

Memorandum Circular No. 55 dated November 19, 1993, Regional Memorandum Circular 92-1 dated March 23, 1992 and letter dated November 19, 1993 disapproving Special Ordinance No. 1450 are declared VALID and EFFECTIVE.

"Further, Ordinance No. 1468 and the appropriation ordinance increasing the allowance of judges and prosecutors issued by the petitioner are likewise declared valid.

"Petitioner's Ordinance No. 1450 is hereby declared VOID for being violative of RA No. 6758."

Considering that the Court of Appeals declared as valid Ordinance No. 1468 dismissing the allegation of the DBM that the increase in the salary provided thereof is a full implementation of the salary step increment, Mayor Garcia issued appointments to city officials and employees on April 25, 1996, with the notation that they are effective on certain dates before the actual issuance thereof claiming exception from RA 7160. The appointments were disapproved by the Civil Service Field Office in Cebu City on May 29, 1996, based on the following grounds:

"a. Violation of RA 6758 (Salary Standardization Law) and Sec. 325 (f) of RA 7160

"b. Court of Appeals decision under CA GR SP No. 38015 dated February 22, 1996 denying petition for Upgrading of Salary

"c. Violation of Sec. 10, Rule V of OR Impl. Bk V of EO 292 (retroactive appts.)"

The effected employees themselves, moved to reconsider the disapproval of their appointments, but the same was denied by the CSC Field Office - Cebu City, in its letter dated 18 June, 1996, where it was stated that:

"With due respect to the decision handed down by the Court of Appeals, we would like to state that the disapproval of the appointments of Tomas L. Fernandez, et. al. was in compliance with MC 19, s. 1992. It does not nullify Ordinance No. 1468. The subject

provision of MC 19 is merely a reiteration of Section 325(f) of the New Local Government Code. It is settled that Ordinance No. 1468 is a valid one but it can not be given effect while incumbents to the positions are still the same people occupying the position which were upgraded at the time these were reclassified. Said Ordinance would become effective only when said positions become vacant and subsequent appointments are issued."

On appeal to CSRO VII, the same was dismissed.

Hence, this appeal.

The issue in the instant case is not the validity of City Ordinance No. 1468 which has been upheld by the Court of Appeals in CA G.R. SP No. 38015 dated February 22, 1996, but the validity of the appointments issued pursuant to said ordinance.

After a careful evaluation of the records of the case as well as the arguments of Mayor Garcia, the Commission finds the appeal without merit.

The appointments were issued in violation of Section 325 (f) of the Local Government Code of 1991. Said section reads as follows:

"Sec. 325. General Limitations. - The use of the provincial, city, and municipal funds shall be subject to the following limitations:

'(f) No changes in designation or nomenclature of positions resulting in promotion or demotion in rank or increase or decrease in compensation shall be allowed, except when the position is actually vacant, and the filling of such positions shall be strictly made in accordance with the civil service law, rules and regulations."

It is clear from the foregoing section that any changes in the designation or nomenclature of positions in local government units resulting either to a promotion or demotion or increase or decrease in

compensation can be allowed only when said position is actually vacant. In other words, the resulting personnel action is a reclassification of position which under the law can be effected only when the position is vacant (**CSC Resolution No. 95-4914, Abela, Epifanio, Jr. O. dated August 5, 1995**).

In the instant case, the records clearly show that the incumbents to the positions are still the very same people occupying the said positions at the time of reclassification.

The position of Registration Officer IV (Salary Grade [SG] 26) was reclassified to Civil Registrar IV (SG 27) with the occupant, Bao-as, being reappointed thereto. The previous incumbents of City Government Department Head II (SG 26) positions, namely, Lugo, Guisadio, Alo, Lagaac, M. Sanchez, A. Sanchez, Gaviola, Abellanosa, dela Torre, Fernandez, and Jaca, were likewise reappointed in the reclassified position of City Government Head III (SG 27). The same is true in the case of Abellanosa, Delos Reyes, Manaloto, Jimenea, Tinga, Tormis, Senoron, Molina, Villardon, Diapana, Abatayo, Belderol, Alcantara, Briones, Masongsong, Dalaroza, Sy, Paculaba, former City Government Head II (SG 24) incumbents who also assumed the reclassified position of City Government Assistant Head III (SG 25). In that case of the City Budget Officer position occupied by Jayme, although there was no change of position title, the item's salary grade was increased from 26 to 27. These findings are strengthened by the fact that said employees collected the salary differential representing the increase in salary grades.

From the foregoing, there is no doubt that the positions reclassified pursuant to Ordinance No. 1468 were not actually vacant at the time of said reclassification, in patent violation of Sec. 325 (f) of the Local Government Code and Memorandum Circular No. 19, s. 1992. Hence, the appointments issued to said employees are not valid and have no legal effect.

Anent appellant's argument that since the ordinance is valid, then the salary increased pursuant thereto should take effect as provided in the ordinance, the Commission finds the same inaccurate. The validity of the ordinance is one thing, its implementation is another. Ordinance No. 1468 was declared valid by the Court of Appeals which meant that the City Government of Cebu has the power to increase the salary of local officials and personnel pursuant to Section 81 of the Local Government Code. However, the court also declared that such power is with limitations, as it is in fact circumscribed by the provisions of

Section 81 which, in turn, subjects such authority to Section 325 (f), Title Five, Book II. The latter provision expressly imposes the condition that the reclassified position must be actually vacant. As discussed earlier, such condition was not met.

In a similar case, the Commission, in **CSC Resolution No. 94-0984 (Abela, Epifanio, Jr. dated February 15, 1994)**, ruled, as follows:

"Ordinance No. SP-75 is a valid ordinance but it cannot be given effect while incumbents to the positions are still the same people occupying the said positions at the time these were reclassified. However, once the said positions become vacant and subsequent appointments are issued, the ordinance would become effective."

Likewise, relevant is the ruling of the Commission in **CSC Resolution No. 98-2338 (Colpito, Eduardo dated September 4, 1998)**, which reads, as follows:

"In an effort to justify his position that the reclassification of position is not subject to Section 325(f), the appellant contended that said section and MC No. 19, s. of 1992 does not apply to appointive officials but refers to elective officials. Not only is the argument bereft of legal basis but also overlooks the plain impact of Section 325 (f) which speaks of 'promotion or demotion' and 'filling of such positions' x x x ' in accordance with civil service law x x x' which as such are personnel actions governing appointive officials and employees. For obvious reasons, elective officials cannot be made subject of 'promotion or demotion much less said positions be filled-up in accordance with civil service law x x x'."

Further, Section 81 itself expressly declares that it is subject to the provisions of Title Five, Book II where Section 325(f) is found. From said declaration, there leaves no doubt that Section 325 (f) cannot be isolated from and construed independently of Section 81. Thus correlated, any personnel action resulting in increase in salary arising from changes in designation or nomenclature of position can be given effect only when the position is actually vacant.

Furthermore, no less that the Court of Appeals ruled that the salary increase of the concerned personnel was effected through changes in position titles and not through step-increments.

At this juncture, it is important to discuss appellant's argument, through moot, that the effectivity of appointments issued pursuant to the ordinance is the date of the approval and passage of said ordinance. On the premise that the reclassification was undertaken in observance of Section 325 (f), the contention is untenable. The operative act is the issuance of the appointment by the appointing authority and not the passage of the ordinance. This is pursuant to Memorandum Circular No. 38, s. 1993, which provides as follows:

"7. Effectivity of Appointment

"b. No appointment shall be made effective earlier than the date of issuance x x"

Pertinent to this is **CSC Resolution No. 97-4260 (Cabana, Ma. Gemma et al. dated October 21, 1997)**, which reads as follows:

"As to the request that the appointments which took effect on June 3, 1996, be made retroactive to January 8, 1996, the same could not be granted for lack of basis. Part II, Item 7 of CSC Memorandum Circular No. 38, s. 1993 clearly provides that in no case should an appointment take effect earlier than the date of its issuance."

In fine, the increase of compensation as provided for in Ordinance No. 1468 is valid and effective, but appointments to the upgraded positions cannot be approved unless the same are vacant.

WHEREFORE, the appeal of Mayor Alvin Garcia is hereby dismissed. The disapproval of the appointments of Crescente S. Bao-as, et. al. is affirmed. Accordingly, Bao-as et al. are reverted to their former positions and shall continue to receive their salary prior to the reclassification of their positions.

Quezon City, August 20, 1999

(Sgd.) CORAZON ALMA G. DE LEON
Chairman

(Sgd.) THELMA P. GAMINDE
Commissioner

DID NOT PARTICIPATE
JOSE F. ERESTAIN, JR.
Commissioner

Attested by:

(Sgd.) ARIEL G. RONQUILLO
Director III