

**BAUTISTA, Renato C.**

Re: Appeal; Termination;  
Reorganization

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## **RESOLUTION NO. 992491**

Renato C. Bautista, Administrative Officer IV, City Government of Cabanatuan, appeals his termination from the service due to reorganization. Pertinent portions of Bautista's appeal dated November 27, 1998, read as follows:

*"1. That I am devolved employee from the DSWD-Cabanatuan City Branch to the Local Government Unit of Cabanatuan City since 1993. My position then is SWO III. I was promoted to Administrative Officer IV last December 12, 1994. Am I still covered by the MOA signed between you as then our Secretary of Social Welfare and the late Mayor Honorato Perez?"*

*"2. Was the MOA signed still in force and effect? The MOA has not yet been amended, revoked or nullified."*

*"3. That the reorganization process has been declared a failure by CSC Director Anicia de Lima of Region III. Am I entitled to received my salary although I applied for terminal leave which has not been acted upon by higher authorities. I have not even apply for any separation benefits being offered. In fact I even re-apply for other position since my position has been abolished."*

Cabanatuan City Mayor Julius Cesar Vergara commented on the appeal as follows:

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*"Finding merit in the plan for reorganization, the City Council passed Resolution No. 120-98 thereby adopting Ordinance No. 98-033, An Ordinance Adopting the Revised Organizational Structure and Staffing Pattern of the Cabanatuan City Government.*

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*"Consequently, the original workforce of 1,449 was streamlined and reduced to 715 pursuant to and in compliance with the standard and mandatory needs of the local government concerned. Some Offices were either merged or consolidated, while others were dissolved taking into consideration the needs of the city government.*

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*"Appellant Bautista was a former Administrative Officer IV of the city government. When the reorganization was being implemented in September 1998, all positions were deemed vacant pursuant to Republic Act No. 6656 and Rules on Government Reorganization. Subsequently, the approved new staffing patterns was posted and employees were notified that all position is deemed vacant due to the reorganization. Termination letters with accompanying pro-forma application forms to vacant positions were furnished the employees. Thereafter, the Placement Committee created for the purpose, evaluated and assessed all applicants based on their relative fitness to the position. Appellant was not considered for the position of Assistant Department Head of CSWD. Appellant did not appeal his termination to the undersigned being the appointing authority. Instead, he filed a terminal leave effective October 16, 1998.*

*"On November 11, 1998, Atty. Anicia Marasigan-de Lima called a General Assembly of the employees of the city government to discuss the various issues relating to the reorganization being undertaken. As a result thereof, she made vital recommendations*

*aimed at ensuring that the provisions of RA 6656 are duly complied with by the undersigned, [copy of Letter dated November 19, 1998, Annex 3 and made an integral part hereof]. Thus, to comply with the technicalities of the Rules mentioned, a resolution has been passed by the Placement Committee authorizing the City Mayor to send a notice of Lay-Off to all employees concerned. A new notice, notice of 'Lay-off was sent to the employees including Bautista, [copy of Letter dated December 14, 1998, Annex 4 and made an integral part hereof] informing him further that he was being laid-off as he opted to avail of the special separation package offered by the City government and his consequent filing of a terminal leave application signifying his desire to be separated from the service. Bautista personally received this notice of 'lay-off/laid-off on December 15, 1998. As maybe due to confusion brought about by the reorganization, appellant took advantage of the situation and did not pursue his terminal leave application and now seeks an employment under the new staffing pattern by the city government.*

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*"Only when an officer or employee was not satisfied with the decision of the appointing authority can he appeal his case to the Honorable Commission. Clearly, Mr. Bautista failed to exhaust the administrative remedies available to him in the local government level, which merits dismissal of his appeal. Mr. Bautista engaged in forum shopping which is an abhorred practice in our legal system. For this reason alone, the case should be dismissed.*

*"The crux of the appeal of Mr. Bautista pertains to the validity of his termination considering that as a devolved employee from a national agency the memorandum of agreement executed between his mother agency and this local government unit guarantees his security of tenure. To this contention of the appellant, undersigned opines that during a valid reorganization devolved employees maybe terminated from services notwithstanding the existence of the alleged memorandum of agreement. Appellant's position is betrayed his own supporting records. This is his referral and emphasis to the*

*pertinent provisions of Executive Order No. 503 dated January 22, 1992 which states, 'devolved permanent personnel shall enjoy security of tenure', and 'any reorganization that will be implemented by the LGU's after the devolution of functions shall be governed by the provision of RA 6656, otherwise known as An Act to Protect The Security of Tenure of Civil Service Officers and Employees in the implementation of Government Reorganization. [underscoring supplied. In this regard, the provisions of EO 503 is clear and leaves no room for interpretation that devolved employees maybe subject of a government reorganization provided the procedures laid down in RA 6656 is observed. It is evident that Executive Order 503 is subservient to RA 6656. RA 6656 mandates that no officer or employee in the career service shall be removed except for a valid cause and after due hearing, this provision of law applies to all government employees.*

*"Notwithstanding the existence of the alleged memorandum of agreement, devolved employees are still subject to government reorganization, their being devolved employees is not a perpetual guarantee to remain in government employment, if at all, their security of tenure is guaranteed but still they can be removed from office if a valid cause exists.*

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*"Clearly, there existed a valid cause of removal against appellant Renato Bautista. Section 2 of RA 6656 expressly states that 'a valid cause for removal exists when pursuant to a bona fide reorganization, a position has been abolished or redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of service'. The administrative division of the Social Welfare Department wherein Mr. Bautista was employed was merged with the Human Resource Management Office.*

*"During the selection process of the reorganization, all applicants were evaluated and assessed according to the standards laid down by RA 6656 in relation with the Rules on Government Reorganization. Mr. Bautista was assessed and evaluated in terms of his relative fitness to the positions where he applied. Unfortunately, other applicants more*

*qualified and competent to the few retained positions bested him. In terms of ranking, Mr. Bautista obtained a lower score as against the other applicants who were appointed to the positions he applied.*

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*"By his own admission, he admitted that he applied for a terminal leave, he willfully withheld its processing but rather took advantage of the procedural lapse of this reorganization. [copy of letter hereto attached and made an integral part hereof as annex 6 and made an integral part hereof] When Atty. Anicia Marasigan-de Lima, Director IV of the Civil Service Commission Region III intervened in the reorganization, it was intended merely to rectify procedural lapses and further assist both the city government and employees in the smooth implementation of the reorganization. Mr. Bautista's allegation that Director Marasigan declared the reorganization as a failure is misleading and tainted with malice."*

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Records reveal that on September 4, 1998, the Sangguniang Panglungsod of Cabanatuan passed **S.P. Resolution No. 120-98** approving **Ordinance No. 98-033**, ' *An Ordinance Adopting the Revised Organizational Structure and Staffing Pattern of the City Government of Cabanatuan*'. Pursuant thereto, all positions in the City Government of Cabanatuan were deemed vacant. Subsequently, termination letters were furnished the employees. The termination letters read as follows:

*"Pursuant to Ordinance No. 98-033 dated September 4, 1998 <sup>98</sup>/<sub>98</sub> and in accord further with Reorganization policies, procedures, rules and regulations stipulated under Republic Act No. 6656 of the Civil Service Commission, all positions are hereby declared vacant.*

*"In view thereof, this serves as your notice of termination from your present office/position/designation effective October 15, 1998."*

However, in a letter dated November 19, 1998, Director Anicia M. De Lima of Civil Service Commission Regional Office (CSCRO) No. III made the following findings and recommendations:

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*"2. The City Government, represented by Mayor Vergara, sent notices of termination to all its permanent employees, the effectivity date of which is October 16, 1998. The employees have not been paid their salaries from said date up to this time.*

*"What should have been sent, pursuant to RA 6656, are notices to concerned employees that they will be laid off so that they will be given an opportunity to present their side. Having failed to do this, the services of the employees are not terminated, notwithstanding the notice of termination served on time. Hence, they are entitled to receive their salaries from October 16, 1998, the effectivity date of their termination as specified in their notices. This is true even if they have not reported for office during the said period which is understandable as a result of their receipt of notice of termination. This is because under prevailing jurisprudence, they are considered as not having left their office so that they are entitled to all the rights and privileges that accrue to them by virtue of the office that they hold.*

*"Entitled to receive their salaries starting October 16, 1998 are all the employees served with the above-mentioned notice of termination, except those who have opted to avail of the special separation package. As regards these latter employees, the City Government should exert all efforts to ensure the immediate payment of the amount due them under the said package." (Underscoring supplied)*

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The notice requirement is found under Section 10 of the Implementing Rules of **Republic Act No. 6656**, otherwise known as the **Rules on Government Reorganization**, which reads as follows:

*"Section 10. Notice and Hearing. (1) Officers and employees who upon evaluation and assessment will be laid off for any of the valid causes as provided for in these rules, shall be duly notified thereof and shall be given opportunity to present their side to assure utmost objectivity and impartiality."*

In compliance with the abovequoted provision of the Rules on Government Reorganization, Mayor Vergara issued a notice of lay-off to Bautista dated December 14, 1998, thereby curing the defect of lack of due process.

There are two issues for resolution in the case at hand, namely:

- a) Whether or not Bautista is entitled to his salaries for the period October 16, 1998 to December 14, 1998 notwithstanding that he applied for terminal leave on October 28, 1998; and
- b) Whether or not a devolved employee may be separated from the service by virtue of a subsequent reorganization.

Anent the first issue, the Commission finds Bautista entitled to receive his salaries for the period October 16, 1998 to December 14, 1998. It is noted that the first termination letter issued by Mayor Vergara to Bautista was defective, the same having failed to give Bautista the opportunity to present his side. To reiterate the recommendation of Director De Lima, the employees should have not only been notified that they will be laid off but should have also been given the opportunity to present their side. Mayor Vergara erred when he failed to give such notice before issuing the termination letters. As such, the employees, including the herein appellant, are deemed not to have vacated their respective positions on October 16, 1998. Thus, it is only on December 14, 1998, when Mayor Vergara complied with the rules of reorganization, that the termination of appellant took effect. Hence, Bautista is entitled to his salaries from October 16, 1998 to December 14, 1998.

The fact that appellant applied for terminal leave on October 23, 1998 cannot be used to defeat his

entitlement to his salaries. The belief of the appellant that he was validly terminated and that he could file for terminal leave cannot cure or validate the defective procedure adopted by Mayor Vergara.

With regard to the second issue, the Commission finds that a devolved employee maybe separated pursuant to a valid reorganization, notwithstanding the existence of a Memorandum of Agreement entered into by the department and the local government unit to facilitate the devolution of basic services to the local government unit concerned and to guarantee his security of tenure. The **Local Government Code of 1991 (Republic Act 7160)** specifically grants to local governments the power to reorganize, to wit:

*"Section 76. Organizational Structure and Staffing Pattern. - Every local government shall design and implement its own organizational structure and staffing pattern taking into consideration its service requirements and financial capability, subject to the minimum standards and guidelines prescribed by the Civil Service Commission."*

Morevoer, **Executive Order (E.O.) No. 503** dated January 22, 1992 laid down the rules and regulations implementing the transfer of personnel, among others, of national government agencies whose functions are to be devolved to the local government units. Pertinent portions of said Executive Order read as follows:

*"Section 2. Principle and Policies Governing Transfer of Personnel a. Coverage, Tenure, Compensation and Career Development -*

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*"6. Devolved personnel shall enjoy security of tenure.*

*"7. Any reorganization that will be implemented by the LGU's after the devolution of functions shall be governed by the provisions of Republic Act No. 6656."*

The above-quoted provisions of **E.O. No. 503** clearly show that the local government unit is not

precluded from approving an ordinance reorganizing its present structure and staffing pattern. While said Executive Order guarantees the security of tenure of devolved employees, it does not in anyway curtail the freedom of the local government unit to reorganize, subject of course to the provisions of R.A. 6656.

Further, the records of the case also show that in the evaluation conducted by the Placement Committee, Bautista rated the lowest among the three employees vying for the position of Administrative Officer IV. Thus, he was not rehired in accordance with Section 3 (d) of Republic Act No. 6656.

In view of the fact that the rules on government reorganization has been complied with, the Commission finds the separation of Bautista on December 14, 1998, in order.

**WHEREFORE**, the Commission hereby rules that the separation of Renato C. Bautista from the service pursuant to reorganization effected by the City Government of Cabanatuan is valid. However, Bautista is entitled to his salaries from October 16, 1998 to December 14, 1998, with all benefits, including the money value of his leave credits.

Quezon City, November 10, 1999

**(Sgd.) JOSE F. ERESTAIN, JR.**  
Commissioner

**(Sgd.) CORAZON ALMA G. DE LEON**  
Chairman

(OB)  
**THELMA P. GAMINDE**  
Commissioner

Attested by:

MA. FELISA F. MAGUD  
**(For) ARIEL G. RONQUILLO**  
Director III