

BAUTISTA, Felicitation E.

Re: Validity of Nullification of the
Previous Order by the Successor
Query

X- ----- X

RESOLUTION NO. 992759

Felicitation E. Bautista, Teacher, Leyte National High School, Division of Tacloban City, Tacloban City, Leyte, requests an opinion or ruling "as to whether an administrative case already dismissed by the CSC Regional Director be ordered heard again by the then succeeding Regional Director who is new in that Office."

In her letter, Bautista, represented, among others, as follows:

" x x x This is the case of the undersigned when she was charged with dishonesty by a Ms. Rocabo using an illegally produced PDS which is incompletely filled-up and not even under oath. x x x This complaint is an item no. 24 of the PDS, asking whether, the applicant has a pending civil and administrative cases. It is almost a public knowledge that the undersigned has pending civil and criminal cases related to property and inheritance which cases were inherited from her parents. So, she doesn't find any reason why she should publicly announced it inasmuch as these are personal and has nothing to do with her job.

" After several hearing, the case was eventually dismissed by the then Regional Director, Dalisay Sevilla.

"However, early this year the undersigned was again formally charged with Dishonesty,

Grave Misconduct x x x

"I know, I have been doubly jeopardized considering that this is harassment x x x"

As culled from the records, a certain Fulgencia Rocabo filed a complaint against Bautista for Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service in connection with the misrepresentation she made in accomplishing a Personal Data Sheet dated July 11, 1997. Bautista, in answer to Item No. 24 question "Do you have any pending criminal/administrative case", checked the answer "No".

CSRO No. VIII conducted a preliminary investigation and required Bautista to submit her Counter Affidavit/Comment on the complaint. Then Director IV Dalisay Sevilla, after examination of the documents submitted by the complainant Rocabo as well as the evidence of Bautista, dismissed the complaint as contained in an Order dated November 10, 1998 for lack of *prima facie* case.

Relevant portions of said Order reads, as follows:

X X X

"Nevertheless, it is evident from the facts that aside from the aforesaid criminal case there is still another one docketed as Criminal Case No. 21961 pending with the Municipal Trial Court of Tacloban. Although it is an uncontroverted fact that the same had been declared suspended because of a prejudicial question, such suspension does not in any manner erase the fact that the accused had a pending criminal case filed against her. This fact is suppose to have been reflected by Ms. Bautista in her Personal Data Sheet.

"For an act to constitute the offense of falsification of public/official documents, there must be malice which attends the commission thereof. Although it is an uncontroverted fact that the same had been declared suspended because of a prejudicial question, such suspension does not in any manner erase the fact that the accused had a pending criminal case filed against her. This fact is supposed to have been reflected by Ms.

Bautista in her Personal Data Sheet.

"For an act to constitute the offense of falsification of public/official documents, there must be malice which attends the commission thereof. Although malice resides in the mind, it is generally manifested and can be deduced from the circumstances which attended the performance of particular act or acts. An act becomes malicious when it is intended to deceive and derive benefits which are not due and performed surreptitiously to hide the same from the knowledge of other people.

"It must be noted that Ms. Bautista submitted the subject Personal Data Sheet to the DECS, Tacloban City Division, to support her application to the position of Administrative Officer III. Corollarily, Section 14, Rule VI of the Omnibus Rules Implementing Book V of E.O. 292, provides, thus:

'Sec. 14. When an employee has a pending administrative case, he should be disqualified for promotion during the pendency thereof.

X X X

"The foregoing provision connotes that only those with pending administrative cases are disqualified for promotion. As such, the non-disclosure of Ms. Bautista of the fact that she had a pending criminal case is not material to the approval of her appointment, if ever there be, because the existence of a criminal case is not a bar to the approval thereof. These facts are indications that Ms. Bautista had acted upon without malice as she cannot derive any benefit from her non-disclosure of the existence of criminal cases against her.

"Moreover, no appointment has yet been issued as a result of the submission of the subject Personal Data Sheet.

Complainant Rocabo files a motion for reconsideration of the dismissal of her complaint. Bautista filed an Opposition to the motion.

It appears that CSRO No. VIII Director IV Ireneo Morales, successor of Director Dalisay Sevilla, in an Order dated March 22, 1999 set aside the earlier Order of former Director IV Sevilla and, thus formally charged Bautista with Grave Misconduct, dishonesty and Falsification of Official Document. In the same Order of Director Morales, Bautista was required to submit her written Answer under oath.

Bautista, on the other hand filed a motion seeking the reconsideration of the Order, charging her with said offenses. Meanwhile, she also filed this instant request for a ruling by this Commission.

Section 20, Part II (A) (Fact-Finding And preliminary Investigation) of the **Uniform Rules of Procedure in the Conduct of Administrative Investigation in the Civil Service Commission** provides as follows:

"Section 20. Decision or Resolution After Preliminary Investigation. -

X X X

"In the event that no sufficient evidence was submitted or no prima facie case is found after the conduct of a preliminary investigation, the complaint shall be dismissed without prejudice to the filing of a motion for reconsideration. An appeal may also be filed with the Commission in cases where the decision dismissing the complaint was rendered by the Regional Director. (Underlining supplied)

The foregoing provision categorically authorizes the filing of a motion for reconsideration by the complainant in the event his complaint was dismissed for lack of a **prima facie** case. As previously pointed out, CSCRO No. VIII Director IV Morales, acted on the motion filed and set aside the earlier Order of former Director IV Sevilla. Specifically, he reversed the previous action of his predecessor and instead, ruled that a **prima facie** case exists against Bautista for Grave Misconduct, Dishonesty and Conduct Prejudicial to the Best Interest of the Service which action is in accordance with the Rules.

In fine there is nothing irregular, malicious or censurable with the order of Director Morales as said order

may still be appealed by way of a petition for review to the Commission.

WHEREFORE, in the light of the foregoing premises, the Commission rules that the action of director IV Ireneo Morales in reversing the previous action of his predecessor is in accordance with existing Civil Service laws and rules.

Quezon City, **DEC 15 1999**

(signed)

THELMA P. GAMINDE
Commissioner

(signed)

CORAZON ALMA G. DE LEON
Chairman

DID NOT PARTICIPATE
JOSE F. ERESTAIN, JR.
Commissioner

Attested by:

(signed)
ARIEL G. RONQUILLO
Director III