

ADVIENTO, Edna A
Re: Appeal; Reinstatement;
Back salaries

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RESOLUTION NO. 010908

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Mayor Nancy Dy Tabanda of the Municipality of San Vicente, Ilocos Sur, appeals the decision rendered by Civil Service Commission Regional Office No. I (CSCRO No. I), San Fernando City, La Union, declaring the termination of Edna A. Adviento null and void and directing her reinstatement to the position of Municipal Budget Officer with payment of back salaries from the time of her termination up to her actual reinstatement, the dispositive portion of which reads:

“WHEREFORE, considering the foregoing findings and provisions of law, this Office finds no legal ground for terminating the appellant from the service. Thus, the instant appeal of Edna Adviento is hereby granted, and the memorandum dated December 28, 1999 terminating the appellant from the service is hereby declared null and void. Consequently, the Municipal Mayor of San Vicente, Ilocos Sur is directed to reinstate Mrs. Adviento to her position as Municipal Budget Officer with payment of back salaries from the time of her termination up to her actual reinstatement.”

Appellant – Mayor Tabanda, in her pleading, represents:

“A) The appeal filed with the Civil Service Commission, Regional Office No. I, was filed out of time;

“B) Herein Respondent (appellant before the CSC Regional Office) was given the benefit of due process.”

CSCRO No. I, in its Comment, argues, as follows:

“xxx It must be noted, however, that the grounds posited for filing the petition for review were already discussed and controverted in detail in our Decision No. 2000-175, as follows:

“1) On the alleged filing of appeal out of time –

“The Office Memorandum dated December 28, 1999 issued by Mayor Tabanda terminating the services of Mrs. Adviento was received by the latter on December 29, 1999. On January 10, 2000, Mrs. Adviento filed a request for reconsideration but the same was denied by the Mayor on January 11, 2000. Copy of the said denial was received by Mrs. Adviento on January 12, 2000. In the counting of the period, the date of receipt should not be included but the next day following the date of receipt. Therefore, when Mrs. Adviento filed her Notice of Appeal on January 15, 2000, as evidenced by the Registry Receipt, it is considered to have been filed exactly on the 15th day, or within the reglementary period of 15 days.

“2) On the giving of due process to respondent (appellant) –

“It was very clear from the records submitted that the performance rating given to Mrs. Adviento is not in accordance with the approved Agency Performance Evaluation System. Further, it was not reasonably established that there was an effort on the part of Mayor Tabanda to give notice and warning to Mrs. Adviento of her ‘Unsatisfactory’ performance 30 days from the end of the 2nd semester of 1998. Glaring is the absence of due notice and warning about the latter’s ‘Poor’ performance on the 4th month of the 1st semester of 1999. The handwritten notes cannot be considered valid notice and warning referred to under Section 2, paragraph 2.2, subparagraphs (a) and (b) of Rule XII of CSC Memorandum Circular No. 40, s. 1998, as these were made months later than required. The dropping of Mrs. Adviento from the rolls can only be viewed as an afterthought of belated justification. Undoubtedly, the termination of Mrs. Adviento from the service was a violation of the due process clause.”

Records disclose that for the period covering June to December 1998, Adviento was given an unsatisfactory performance rating. No notice was given to her regarding the same nor was she warned that a succeeding unsatisfactory rating shall warrant her separation from the service. For the immediately succeeding performance rating period covering January to June 1999, Adviento again received an unsatisfactory rating. Said unsatisfactory performance ratings do not

conform with the approved mechanics of the Performance Evaluation System of San Vicente, Ilocos Sur.

One (1) month and eighteen (18) days after the end of the rating period covering January to June 1999, in handwritten notes dated August 18, 1999, Adviento was initially informed of her unsatisfactory ratings for the periods covering June to December 1998 and January to June 1999.

In a letter dated November 26, 1999 or five months after Adviento received her second unsatisfactory rating, she was formally given notice of her two (2) consecutive unsatisfactory performance ratings and warned that a succeeding unsatisfactory rating would result in her separation from the service. Subsequently, in an Office Memorandum dated December 28, 1999, Adviento was terminated from the service effective January 3, 2000 without mentioning the reason therefor, to wit:

“Your services as Municipal Budget Officer in this municipality is hereby terminated effective January 03, 2000. As such you have to clear yourself for (sic) all property and money accountabilities.”

Records further disclose that the Office Memorandum dated December 28, 1999 issued by Mayor Tabanda terminating Adviento’s services was received by the latter on December 29, 1999. On January 10, 2000, Adviento filed a motion for reconsideration but the same was denied on January 11, 2000. The denial of Adviento’s motion for reconsideration was served on her on January 12, 2000. On January 15, 2000, Adviento filed an appeal with CSCRO No. I, by registered mail, which declared the said Office Memorandum as null and void.

Thus, the instant appeal.

The issues to be resolved in the instant case are:

- (1) whether Adviento’s appeal with CSCRO No. I was filed within the reglementary period;
- (2) whether Adviento was given due process prior to her being dropped from the rolls for unsatisfactory performance; and
- (3) whether the unsatisfactory performance ratings given to Adviento for the periods covering June to December 1998 and January to June 1999, were in accordance with the approved Performance

Evaluation System of San Vicente, Ilocos Sur.

Anent the first issue, Adviento's appeal with CSCRO No. I from the decision of Mayor Tabanda was filed within the reglementary period. The Commission in the case of **De Guzman, CSC Resolution No. 96-7616 dated December 3, 1996**, citing the case of *University of the Philippines vs. Regino*, 221 SCRA 598, and Section 20 of Book VII of the Administrative Code of 1987, ruled that the period of appeal shall be interrupted by a timely motion for reconsideration, to wit:

*“The number of days that elapsed from the date of receipt of the decision up to the filing of a motion for reconsideration is deducted from the 15-day reglementary period to file an appeal. This means that the 15-day period does not start all over again after the denial of a motion for reconsideration which was explained by the Supreme Court in the case of *University of the Philippines v. Regino* (GR No. 88167, 03 May 1993) as follows:*

‘...it is stressed that where a motion for reconsideration of a decision, order or ruling of any Constitutional Commission is denied, the 30-day reglemenatry period does not begin anew. The petitioner has only the balance of that period (after deducting the time elapsed before the motion was filed) to come to this Court on certiorari.’

“Likewise, Sec. 20 of Book VII of the Administrative Code of 1987 (Administrative Procedure), provides as follows:

‘Sec. 20. Perfection of Administrative Appeals. –

x x x

‘ (2) If a motion for reconsideration is denied, the movant shall have the right to perfect his appeal during the remainder of the period for appeal, reckoned from receipt of the resolution of denial.’ xxx”

Also, **Section 3, Rule 41 of the Revised Rules of Court**, hereunder quoted, finds suppletory application in the instant case:

“SEC. 3. Period of ordinary appeal. xxx

‘The period of appeal shall be interrupted by a timely motion for xxx reconsideration.’ xxx”

To reiterate, notice of the said Office Memorandum was received by Adviento on December 29, 1999. Accordingly, she had fifteen (15) days within which to file an appeal or motion for reconsideration. She filed a motion for reconsideration of said Office Memorandum on January 10, 2000, such that, applying the above-quoted ruling of the Commission in CSC Resolution No. 96-7616, and the above-quoted provision of the Revised Rules of Court, she still had three (3) days from receipt of its denial within which to file an appeal. Adviento received the denial of her motion for reconsideration on January 12, 2000. Therefore, when she filed her appeal on January 15, 2000, the same was filed on time or within the fifteen (15)-day reglementary period.

As regards the issue of whether due process was accorded to Adviento prior to her being dropped from the rolls due to unsatisfactory performance, the same is resolved in the negative. It is clear from the records that the handwritten notices of unsatisfactory performance ratings dated August 18, 1999 as well as the formal notice of said ratings dated November 26, 1999 with a warning that a succeeding unsatisfactory performance rating would warrant her separation from the service, do not comply with the due process requirement prescribed in **Section 2, paragraph 2.2 subparagraph (a) , Rule XII of CSC Memorandum Circular No. 40, Series of 1998**, hereafter quoted, as follows:

“2.2 Unsatisfactory or Poor Performance

“a. An official or employee who is given two (2) consecutive unsatisfactory ratings may be dropped from the rolls after due notice. Notice shall mean that the officer or employee concerned is informed in writing of his unsatisfactory performance for a semester and is sufficiently warned that a succeeding unsatisfactory performance shall warrant his separation from the service. Such notice shall be given not later than 30 days from the end of the semester and shall contain sufficient information which shall enable the employee to prepare an explanation.”

Based on the above-quoted provision, a notice should inform, within thirty (30) days from the end of the semester wherein said employee obtained an unsatisfactory rating, the concerned employee of her rating, and warn said employee of the consequence of a succeeding unsatisfactory rating. In the instant case, the handwritten notices both dated August 18,

1999 do not comply with the warning requirement of the above-quoted provision, whereas, the formal notice dated November 26, 1999, does not constitute due notice for being served on Adviento several months after it was due.

The third issue regarding whether the unsatisfactory performance ratings given to Adviento for the periods covering June to December 1998 and January to June 1999 were in accordance with the approved Performance Evaluation System of San Vicente, Ilocos Sur, is resolved in the negative. The Performance Evaluation System of San Vicente, Ilocos Sur, provides as its mechanics, as follows:

“MECHANICS OF THE SYSTEM

“The performance evaluation procedure shall follow the following process:

“1. Planning

“There shall be a planning session at the start of the rating period during which targets or expected outputs shall be set jointly by the supervisor and employees. Furthermore, the supervisor and employees define the job of each member of the group, agree on the duties and responsibilities attached to a particular job, and establish the standards on which specific work outputs and behaviors shall be measured.

“2. Setting Commitments

“Targets/major duties and responsibilities established during the planning session shall be listed in the Performance Evaluation Report Form under the PLANNED column. Agreement shall be jointly signed by both parties.

“3. Progress Review

“The process involves a discussion between a supervisor and a subordinate using the following steps:

“1) Subordinate reviews the progress of all the jobs assigned to him.

“2) The supervisor reinforces progress on job goals already accomplished by recognizing employee’s efforts and praising him for specific achievements.

“3) They both discuss goals and standards not being met and identify causes.

“4) They identify and agree on appropriate action to overcome causes of difficulties.

“5) They re-negotiate goals and standards where necessary.

“4. Appraisal Discussion

“There shall be a highly interactive performance appraisal discussion and feedback mechanism to foster better working relationship between supervisor and subordinate.”

As correctly pointed out by the CSCRO No. 1 in the assailed decision, a relevant portion of which is hereunder quoted, the performance ratings given to Adviento do not comply with the mechanics of the Performance Evaluation System of San Vicente, Ilocos Sur, as above-quoted:

“It is apparent from the documents submitted that the mechanics set forth in their approved Performance Evaluation System particularly the planning; setting of commitments; Progress Review and the Appraisal Discussion were not at all complied with.

“Had there been planning and setting of commitments, the alleged target of underloading claimed by Mayor Tabanda could have been addressed at the start of the rating periods in July 1998 and January 1999 at the latest. Recommendation to improve performance of appellant could have appropriately been given during progress review within the rating period. But such was not the case. What is even more appalling is that there is no showing that appraisal discussion was ever made between appellant and appellee at the end of the rating period.

“Absence of the procedural requirements, the performance rating for the appellant is not in accordance with the agency Performance Evaluation System then obtaining.”

In view of the foregoing, there is no cogent reason to reverse or modify the decision of CSCRO No. I assailed in the instant appeal.

WHEREFORE, the appeal of Mayor Nancy Dy Tabanda of the Municipality of San Vicente, Ilocos Sur, is hereby **DISMISSED**. Accordingly, DECISION No. 2000-175 of CSCRO No. I dated August 14, 2000, declaring the termination of Edna A. Adviento null and void and directing her reinstatement to the position of Municipal Budget Officer with payment of back salaries from the time of her termination up to her actual reinstatement, is affirmed.

Quezon City, **MAY 09, 2001**

(SIGNED)

J. WALDEMAR V. VALMORES

Commissioner

(SIGNED)

KARINA CONSTANTINO-DAVID

Chairman

(SIGNED)

JOSE F. ERESTAIN, JR.

Commissioner

Attested by:

(SIGNED)

ARIEL G. RONQUILLO

Director III

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