

INOK, Khem N.

Re: Leave of Absence as Assumption
to Office; Motion for Reconsideration

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RESOLUTION NO. 01-1341

Atty. Khem N. Inok, Assistant Director, formerly of Commission on Audit-Autonomous Region in Muslim Mindanao (COA-ARMM), moves for the reconsideration of the decision of the Commission in CSC Resolution No. 01-0016, dated January 4, 2001.

The dispositive portion of the subject decision reads, as follows:

"WHEREFORE, the Commission hereby rules that the act of Assistant Director Khem N. Inok, in filing a leave of absence can not be considered as assumption to duty. To be considered as having assumed to duty, Inok must physically assume the duties and functions of his office."

In his appeal, Inok states, as follows:

"2. With due respect, the ruling, infra, of the Honorable Commission is based on a strict interpretation of the phrase 'assumption to office' thereby disregarding the basic rule in

statutory construction that social legislation should be liberally construed and in the case of doubt, it should be resolved in favor of the workers.

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"7. Assumption to office does not necessarily mean 'physical appearance' but it could also be executed thru an 'intention to assumption by implied agreement', as distinguished from AWOL which is characterized by bad faith on part of the government employee concerned, and the fact that COA did not deny appellant's signifying to report to COA Regional Office No. X and his Notice of Assumption thru a conventional mean is a substantial compliance of Section 60, Chapter I, Title I, Book V, of the 1987 Administrative Code, and Section 49 of the Omnibus Rules on Leave x x x

"8. Had COA, upon receipt of appellant's application for leave from the good director of COA Regional Office No. X, deny same application, appellant could have physically reported to office notwithstanding all the risks and other predicaments to avoid being declared AWOL and tainting his good government records which he considered as his only assets to be proud of to his family and friends.

X X X

"13. From the Legal Office of the COA Central Office, Quezon City, appellant was reshuffled on April 11, 1997 to COA Regional Office in the ARMM based in Cotabato City. Based on the three-year reshuffling policy of the COA, appellant should have been reshuffled only on April 10, 2000.

"14. Thus, the Commission's predicate to the effect that appellant is appointed to a particular office is not accurate. It was neither a reshuffling pursuant to COA policy nor an

appointment to an office but it was a case of a prejudicial swapping without the consent of both parties.

X X X

"16. Notwithstanding the fact that his unconsented swapping to another place of assignment has tantamount to removal from office under existing jurisprudence, infra, the undersigned, expressing his gesture of utmost respect to his superior, the COA Chairman, did not question his order. Instead, he (appellant) accepted it heartedly and begged for kind understanding and manifested his intention to comply, though on a conventional way as earlier described, due to following reasons:

"A. REAL RISKS TO APPELLANT'S LIFE

"21. Appellant, during the period that he was on leave of absence, was only confined and virtually a prisoner in his own residence x x x. Thus, it was so very risky on the part of the undersigned to travel by land from Cotabato City to Cagayan de Oro City with only three (3) choices of routes x x x. Parenthetically, all of the underlined places thereof are known danger zones during that period specially to someone under threats like appellant.

"22. Neither advisable on the part of appellant to report to Cagayan de Oro City via airplane. Apart from the fact that appellant was in the state of an extreme financial distress and can not afford the high cost of fares from Cotabato City to Manila then to Cagayan de Oro City and vise versa, it was likewise risky then to travel from appellant's residence to Awang Airport as the areas in going to said airport are also dangerous for someone under threats.

"23. When the threats have calm down, appellant reported physically reported to Cagayan de Oro City after the expiration of his first application for leave of absence.

"B. PRE-JUDICIAL TO APPELLANT'S FAMILY

"24. x x x appellant enrolled his only child, Erick Jay Inok, who was then five (5) years of age, in the pre-school curriculum of the Cotabato City Pilot Elementary School to enable the child to qualify in grade-one in the following school year. Knowing that he is already fifty (50) years of age, appellant can not afford to delay the schooling of his only child.

"25. During that period, Erick Jay was undergoing a three-time a day medication for tuberculin for six (6) months. As a single parent and knowing the inaccessibility of Cagayan de Oro City from Cotabato City by land transportation coupled by the obtaining peace and order circumstances, appellant can not entrust his only child under the care of anyone in Cotabato City.

"C. REAL RISK TO THE CAREER GROWTH OF APPELLANT AND MANY OTHER OFFICIALS OF COMMISSIONAL COMMISSIONS

"31. As acknowledged by the Honorable Commission in its assailed resolution, one of the reasons that appellant had taken leave of absence because he wanted to concentrate in the preparation of the simultaneous memorandum required by the court since appellant was the petitioner and counsel, himself, in the said case.

"32. Petitioner could not have probably won the case in the appellate Court if appellant did not sacrifice to take a leave of absence.

"33. Thus, as guardian of the morale, career growth and interest of public servants under the Constitution, the Honorable Commission should at least protect appellant's clean government service rather than allow it to be soiled with its subject resolution."

Records show that Santos M. Alquizalas, General Counsel, COA, Commonwealth Avenue, Quezon City, sought the opinion of the Commission on whether the filing of a leave of absence can be considered as constructive assumption to duty of Atty. Khem N. Inok.

On September 8, 1999, Atty. Inok, Assistant Director, COA-ARMM, Cotabato City was issued COA Reassignment Order No. 99-194, reassigning him to COA Regional Office No. X, Cagayan de Oro City. Signifying his acceptance and intention to report to the Regional Office, Atty. Inok sent through registered mail a letter addressed to the Director of COA Regional Office No. X, containing a Notice of Assumption in Office. In the letter, Atty. Inok informed the Director that he would file a leave of absence from October 8, 1999 to October 31, 1999 in order to concentrate on preparing the simultaneous memoranda required by the Court of Appeals. To avoid expenses in going to Cagayan de Oro City, Atty. Inok also requested that he be considered to have constructively assumed office effective October 8, 1999. Attached to the letter is the application for vacation leave of absence and records of attendance.

Leave of absence is generally defined as a right granted to officials and employees not to report for work with or without pay as may be provided by law and as the rules prescribe in Rule XVI of the Omnibus Rules Implementing Book V of Executive Order No. 292. Although leave of absence is a right given to officials and employees, the application for the same must be on a prescribed form for action by the proper head of agency. In this case, Atty. Inok applied for a vacation leave. Relevant thereto, **Sections 49 and 52 of the Omnibus Rules on Leave, CSC Memorandum Circular No. 41, s. 1998 as amended by CSC MC No. 14, s. 1999**, provide as follows:

*“Sec. 49. **Period within which to act on leave application.** – Whenever the application for leave of absence, including terminal leave, is not acted upon by the head of agency or his duly authorized representative within five (5) working days after receipt thereof, the application for leave of absence shall be deemed approved.”*

*“Sec. 52. **Approval of vacation leave.** – Leave of absence for any reason other than illness of an official or employee or of any member of his immediate family must be contingent upon the needs of the service. Hence, the grant of vacation leave shall be at the discretion of the head of department/agency.”*

From the foregoing, it is evident that the grant of vacation leave is at the discretion of the head of agency, which in this case is the Director of Regional Office No. X. As the records do not show whether the application for leave was properly approved or not, such application shall be deemed approved if it is not acted upon by the head of agency or his duly authorized representative within five working days after receipt thereof.

It is provided under **Section 64 of the aforesaid Omnibus Rules on Leave**, that the position of an employee though on vacation leave is not considered vacant.. Corollary to that, **Section 28** of the same rules provides that, *the term 'actual service' refers to the period of continuous service since the appointment of the official or employee concerned, including the periods covered by any previously approved leave with pay.* Thus, an employee is considered to be a lawful holder of the functions of his office even while on vacation or sick leave and deemed on actual service during the period of his approved leave with pay.

It must be underscored that the head of agency is in the best position to determine whether to approve or disapprove an application for vacation leave, taking into consideration the exigency of the service as well as the reasons of the employee in filing an application for leave of absence. In this case, the application for leave of absence by Atty. Inok addressed to the Director of COA Region X, is an indication that he recognizes the authority of the head of agency. Since the application for leave of Inok is deemed to have been approved by the head of agency, then, he may be considered to have assumed duty, as such approval has the effect of acquiescing to the request of the applicant and the head of agency having acquired ascendancy over Atty. Inok.

At this juncture, it must be considered that, this case involves reassignment only and not a new appointment where actual assumption to duty is required for the completion of the appointment. In cases of reassignment, the filing of a leave of absence may be considered as constructive assumption to duty if the head of agency concerned approved or is deemed to have approved the application.

Finally, the Commission notes that the reasons of Atty. Inok for filing a leave of absence are justified. We give credit to his assertion that, despite the dangers to himself, he would have physically assumed duty if only he was informed that his application for leave was disapproved. In the same manner, the Commission gives consideration to the request of the appellant for liberal interpretation of the phrase 'assumption to office' for humanitarian reasons.

WHEREFORE, the Motion for Consideration of Atty. Khem N. Inok is hereby **GRANTED**. CSC Resolution No. 01-10016 is modified to the extent that in case of a new appointment, physical assumption of the duties and functions of the office is required before one may be considered to have assumed duty. In case of reassignment, the filing of a leave of absence may be considered as constructive assumption to duty if the head of agency concerned approved or is deemed to have approved the application.

Quezon City, **AUGUST 8, 2001**

(signed)

J. WALDEMAR V. VALMORES

Commissioner

(signed)

KARINA CONSTANTINO-DAVID

Chairperson

(signed)

JOSE F. ERESTAIN, JR.

Commissioner

Attested by

(signed)

ARIEL G. RONQUILLO

Director III

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