

BRIONES, Rolando A.

Re: Appointment; Retroactive Approval;
Reinstatement

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RESOLUTION No. 020805

Regional Director Everdina Echalar-Doctor, Department of the Interior and Local Government-Cordillera Administrative Region (DILG-CAR), Baguio City, requests approval of the appointment of Rolando A. Briones, Driver I, dated June 01, 1995 and the revocation of his appointment dated January 02, 2001 issued in compliance with the decision dated March 02, 2000 of the Court of Appeals (CA) reinstating him to the service. Said request is anchored on the CA Decision dated March 02, 2000 which exonerated Briones from the administrative case filed against him by the Commission for Dishonesty and Falsification of Official Documents for lack of substantial evidence and ordered his reinstatement with payment of backwages.

The pertinent portions of the Court of Appeals' decision read, as follows:

"It is significantly clear from the aforesaid Report that it was in 1988 when petitioner Briones accomplished his PDS, in which he gave a negative answer to question No. 23 therein. As explained by petitioner, when 'he applied for the position of Driver, he did so without expressing his preference to a certain field of assignment' x x x. This point has not been controverted any by complainant. What petitioner really means is that when he accomplished his PDS in 1988 he had no reason to think that his uncle Trinidad was his immediate supervisor, since in that year he did not as yet receive his appointment for the DLG Office in Abra. To be sure, petitioner's appointment was issued only on February 7, 1989 x x x. If at all then, it must have been only on February 7, 1989 when he was issued an appointment for the DLG Office Abra or thereafter that petitioner came to know of the actual setup in his station, in which his uncle was his immediate supervisor. In fact, even on this score petitioner, in his answer to the formal charge, said that 'at the time of the issuance xxx xxx appointment as Driver, his immediate supervisor was Mr. Basiliso A. Pascua, Jr., the Supervising Local Government Officer and not Marino B. Trinidad as alleged in the Formal Charge as shown in the Organizational Structure of the Provincial Office' x x x . In the same answer petitioner (respondent therein) went on to state that when he 'answered NO' in item No. 23 of his Personal Data Sheet' in good faith respondent believes that his immediate supervisor was Basiliso A. Pascua, Jr. and not Marino B. Trinidad as alleged and that the appointing authority was Director Alejandro C. Valera and respondent did not have any malicious intent to commit fraud or dishonesty in filing up Personal Data Sheet. Indeed, going over the DILG Provincial Organizational Structure for the Province of Abra x x x, the position of driver to which petitioner was appointed is directly under the Administrative Services Station

(LGOO V), while that of his uncle Trinidad, as Provincial Director, is far removed therefrom. In this context, it would have been extremely difficult for petitioner to think that Trinidad who occupies the top position, as depicted in the organizational chart, was his immediate supervisor.

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"To our mind, the date or year when petitioner accomplished his PDS is decisive on the question as to whether he gave a false or untruthful answer to item No. 23 therein. Petitioner claims that he acted in good faith when he gave a negative answer to the said item. According to petitioner, at the time not only was he still unaware that he could get an appointment for Abra where his uncle was assigned, but he likewise believe in good faith that another person (Basiliso A. Pascua, Jr.) was the head of the Abra DLG Office. We have no reason to doubt petitioner's professed good faith or lack of intent to falsify his record. Apart from being consistent with the jural concept that good faith is always presumed (Art. 527, Civil Code; Ballantan v. CA, G.R. No. 125683, March 2, 1999; Baron Marketing Corp. v. CA, 286 SCRA 96 [1998]; Ford Phils. V. CA, 267 SCRA 320 [1997]), it is further compatible with the undisputed fact that petitioner's appointment was issued only on February 7, 1989 or long after he had filled up his PDS in 1988. If only to stress this point, petitioner may be charged with knowledge that his uncle Trinidad is his immediate supervisor only after his appointment for Abra was issued on February 7, 1989 and not before said date.

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"We recognize the rule that factual findings of administrative agencies must be respected on appeal, so long as they are supported by substantial evidence (Villanueva v. CA, 205 SCRA 537 at 545 [1992]; Tiatco v. Civil Service Commission, 216 SCRA 749 [1992]). In the instant case, however, we hold that the appealed decision of respondent CSC does not find evidentiary support, as it is in fact contradicted by the very documentary evidence upon which it is supposed to rest, for which reason, the findings therein contained do not bind this Court.

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"WHEREFORE, in view of all the foregoing considerations, the resolutions of respondent CSC which are assailed in this petition are hereby SET ASIDE, and petitioner's reinstatement to his position with backwages computed at the rate he was receiving from the date of his dismissal up to his reinstatement and without loss of any seniority rights, is hereby ORDERED. However, if the setup then obtaining at the time of his dismissal, in which petitioner's uncle is the head of the Abra DILG Office still persists, the DILG-CAR is hereby DIRECTED to reassign and or transfer petitioner to another station within the region." (Underscoring supplied)

The request of Regional Director Doctor is hereunder quoted as follows:

"May we respectfully submit the attached retroactive Reappointment, dated June 01, 1995, of Mr. Rolando A. Briones, Driver I of DILG-CAR, for your approval.

"It may be recalled that Mr. Briones' earlier Reappointment (also dated June 01, 1995) pursuant to RA 6975 otherwise known as AN ACT ESTABLISHING THE PHILIPPINE NATIONAL POLICE UNDER A REORGANIZED DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT, AND FOR OTHER PURPOSES, was disapproved on June 09, 1995 by the CSC-CAR on the ground that there is a pending administrative case against him.

"Subsequently, on the basis of CSC Resolution Nos. 97340 and 974566, dated September 28, 1997 and December 02, 1997, respectively, the DILG-CAR terminated the services of Mr. Briones effective March 01, 1998. On March 2, 2000, however, the Court of Appeals, Twelfth Division promulgated its Decision on the Briones' case ordering his reinstatement to his position with back wages.

"In compliance therefore with the CA decision, we issued on January 02, 2001 the Reinstatement of Mr. Briones to another position of Driver I, which, at that time, was already vacant. However, upon a second look, we are of the belief that Mr. Briones cannot be reinstated until and unless his retroactive Reappointment be duly approved by the CSC for, as of this moment, he has no existing valid appointment. Besides, the Department of Budget and Management will require the presentation of this document to support the release of funds for the payment of his back wages from the time of the termination of his services up to December 31, 2000.

"Thus, aside from our request for the approval of the retroactive Reappointment of Mr. Briones, may we also ask that the Reinstatement earlier issued to Mr. Briones be cancelled."

Records show that on February 07, 1989, Briones was issued an appointment as Driver under temporary status by the Department of Local Government-Cordillera Administrative Region (DLG-CAR). On March 13, 1990, Briones' appointment was changed from temporary to permanent status pursuant to CSC Memorandum Circular No. 10, s. 1977 with the position title likewise changed from Driver to Driver I. On February 08, 1994, this Commission received a complaint from the "DILG-CAR Below the Poverty Line" which alleged that Rolando A. Briones was issued nepotic appointments to the positions abovestated. In said complaint, it was alleged that Briones' immediate supervisor Marino B. Trinidad, is his relative within the third degree of affinity. In a Memorandum dated April 26, 1994, the Commission referred the said complaint to the Civil Service Commission-Cordillera Administrative Region (CSC-CAR) for appropriate action. A preliminary investigation ensued. Finding prima facie evidence against Briones, the CSC-CAR on September 05, 1994 issued a formal charge against the respondent for Dishonesty and Falsification of Official Documents. After the termination of the investigation, a Report of Investigation was submitted to the Commission for resolution.

While the administrative case of Briones was still pending with the Commission, the Department of Local Government (DLG) was reorganized and renamed Department of the Interior and Local Government (DILG) pursuant to **Republic Act No.**

6975 (An Act Establishing the Philippine the Philippine National Police Under a Reorganized Department of the Interior and Local Government And For Other Purposes). Consequently, on June 01, 1995, Briones was reappointed to the Driver I position. Said appointment was submitted to the CSC-CAR on June 06, 1995. On June 09, 1995, Briones' appointment was disapproved by the CSC-CAR on the ground that the appointee has a pending administrative case. No motion for reconsideration was filed by the appointing authority relative to the disapproval of Briones' appointment making the action of the CSC-CAR final and executory.

It is noted that the CSC-CAR erred in disapproving the June 01, 1995 appointment of Briones as Driver I on the ground that at the time of its issuance, the pendency of his administrative case is not a legal impediment for him to be reappointed to a similar position upon the implementation of R.A. 6975. It must be stated that the legal impediment then pertains to promotional appointments and not reappointments to the same position due to a reorganization. It is further noted that at the time of the issuance of said appointment and its subsequent disapproval, the governing provision relative thereto is **Section 14, Rule VI of the Omnibus Rules Implementing Book V of Executive Order No. 292**, which provides the following:

"SEC. 14. When an employee has a pending administrative case, he shall be disqualified for promotion during the pendency thereof."(Underscoring supplied)

It must be emphasized that during reorganization, officers and employees holding permanent appointments shall be reappointed to the new positions in the approved staffing pattern comparable to their former position and if none, to the next lower rank. **Section 4 of R.A. 6656 (An Act To Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization)** clearly provides, as follows:

"SEC. 4. Officers and employees holding permanent appointments shall be given preference for appointment to the new positions in the approved staffing patterns comparable to their former positions or in case there are not enough comparable positions next lower in rank."

Since Briones' reappointment is not a promotional appointment, there is no basis to disapprove said appointment on the ground of pendency of an administrative case. Moreover, as earlier stated, there was no motion for reconsideration filed by the appointing authority assailing the disapproval of the subject appointment within the fifteen (15) day reglementary period, hence, its disapproval has attained finality. **Item No. 3 of CSC Memorandum Circular No. 38, s. 1993**, which is the provision that governs at the time of such disapproval, reads, as follows:

"3. Request for Reconsideration

"Request for Reconsideration of action taken by the CSC Office on appointments shall always be made by the appointing officer and shall be submitted to the CSC office concerned within fifteen (15) days from the date of receipt of the appointment, the action on which is sought to be reconsidered."

Although the disapproval of said appointment has become final and executory, Briones continuously reported to office.

On August 28, 1997, the Commission promulgated CSC Resolution No. 97-3740 which found Briones guilty of Dishonesty for which he was imposed the penalty of dismissal from the service including all its accessory penalties. A motion for reconsideration was filed by Briones assailing the subject resolution. However, the same was denied by the Commission in CSC Resolution No. 97-4566 dated December 02, 1997. On March 01, 1998 the DILG-CAR implemented the CSC decision dismissing Briones from the service. On March 28, 1998, Briones filed a Petition for Review before the Court of Appeals. On March 02, 2000, the Court of Appeals rendered its decision nullifying CSC Resolution No. 97-3740 dated August 28, 1997 for lack of substantial evidence and exonerated Briones from the administrative case filed against him and ordered his reinstatement with payment of backwages. On July 21, 2000, Briones filed a motion with the Commission for the execution of the Decision of the Court of Appeals which was granted in CSC Resolution No. 00-2156 dated September 13, 2000. On September 28, 2000, DILG Regional Director Doctor requested advice from the CSC-CAR on how to implement the reinstatement of Briones since DILG-CAR does not have any vacant position to where Briones can be reinstated and where to get the necessary funding for the payment of his backwages. In its Memorandum dated October 16, 2000, CSC-CAR referred the same to the Commission which ruled that Briones be reinstated to his former position. The pertinent portions of said Memorandum read, as follows:

"As regards the second issue, the Commission is not convinced that a problem will arise upon the reinstatement of Briones. In the case of De Guzman vs. CSC, 231 SCRA 169, the High Tribunal held:

'When an official or employee was illegally dismissed and his reinstatement has later been ordered, for all legal purposes he is considered as not having left his office. Therefore, he is entitled to all the rights and privileges that accrue to him by virtue of the office he held. (Tan²⁹ala vs. Legaspi, 13 SCRA 566 [1965]).'

"Furthermore, in Tan, Jr. vs. Office of the President, 229 SCRA 677, the same High Court ruled that:

' . . . Such award of backwages, however, has since been limited to a maximum period of five (5) years (San [Luis] vs. CA, 174 SCRA 258)'

"On the strength of the foregoing jurisprudence, Briones cannot be considered to have vacated his position. He is deemed to be still holding his position and whoever is presently occupying his position is merely considered as a de facto employee who can be removed therefrom at anytime. This precept was further explained by the Supreme Court in the case of Garces vs. CA, 259 SCRA 99, to wit:

' . . . It is a basic precept in the law of public officers that 'no person, no matter how qualified and eligible he is for a certain position may be appointed to an office which is not vacant.' There can be no appointment to a non-vacant position. The incumbent must first be legally removed, or his appointment validly terminated before one could be validly installed to succeed

him. . .'

"Thus, Briones must now be reinstated to his former position. And since the one presently occupying said position is an original appointee, he must vacate the position as his right thereto was dependent upon the final resolution of the case of Briones. This is so because he was appointed to a position-Briones' position-that was never vacant.

"Finally, on the issue on the source of the funds to pay the back salaries and other benefits of Briones, proper representation must be made by the DILG-CAR with the Department of Budget and Management."

Subsequently, on the strength of the foregoing, DILG-CAR issued an appointment to Briones as Driver I dated June 01, 1995 in place of the previously disapproved appointment of Briones of the same date. However, on January 02, 2001 the DILG-CAR pursuant to the decision dated March 02, 2000 of the CA issued another appointment to Briones to the same position for his reinstatement which was approved by the CSC-CAR on January 25, 2001. Thereafter, Regional Director Doctor sought approval of the newly issued appointment dated June 01, 1995 and at the same time the revocation of the CSC approval of the appointment issued for the reinstatement of Briones contending that Briones can not be actually reinstated unless his appointment dated June 01, 1995 is approved. Hence, this Resolution.

The two (2) issues to be resolved in the instant case are as follows:

1. Whether the instant request for the approval of the reissued appointment of Briones dated June 01, 1995 as Driver I shall be granted.
2. Whether the approved appointment issued by the DILG-CAR on January 02, 2001 for Briones' reinstatement shall be revoked.

The first issue is answered in the negative. Relevant thereto is **Item 6 (a) of CSC Memorandum Circular No. 38, s. 1993** the rule then applicable which reads, as follows:

"6. Submission to CSC

"a. All appointments should be submitted to the CSC Office concerned within 30 days from the date of issuance, which shall be the date indicated by the appointing authority below his signature, otherwise they shall become ineffective and shall be disapproved." (Underscoring in the original)

The rationale behind the non-retroactivity of appointments is to discourage heads of agencies to allow their employees to render service without the issuance of an appointment to deter undue payment of salaries for unrendered service. In the case of the **House of Representatives (HOR), CSC Resolution No. 98-3084 dated December 03, 1998**, the Commission ruled:

"Pointedly, the policy against retroactivity of appointments is to discourage heads of government

agencies and offices to require their employees to render work or service pertaining to the position involve without issuing the corresponding appointments first, and to prevent undue payment of compensation x x x."

Furthermore, since the decision of the CSC-CAR in disapproving the appointment of Briones dated June 01, 1995 has long been become final and executory, logic dictates that there is no more appointment to speak of. A decision that attains finality whether properly or erroneously done becomes the law of the case. This assertion finds support in the ruling of the Supreme Court in the case of **Enriquez vs. CA, 202 SCRA 487** wherein the High Court ruled as follows:

"x x x. Once a decision attains its finality, it becomes the law of the case whether or not said decision is erroneous. x x x."

However, since Briones served his office continuously without a valid appointment from June 01, 1995 to February 28, 1998, despite the finality of the decision of the CSC-CAR in the disapproval of his appointment, he is deemed a de facto officer. A de facto officer is defined as one who performs the functions of the officer in good faith and under color of right to the position involved (**Philippine Law Dictionary, Moreno, Third Edition, p. 248**). Be it noted that a de facto officer is entitled to salary for services actually rendered (**Cui v. Ortiz, 107 Phil. 1000**). From the foregoing, the disapproved appointment of Briones dated June 01, 1995 can not be considered a subsisting appointment on the ground that its disapproval has already gained its finality. However, an appointment dated March 01, 1998 (the date when the DILG-CAR implemented the CSC Decision dismissing Briones from the service), shall be issued by the DILG-CAR for Briones' reinstatement pursuant to the CA decision dated March 02, 2000.

Furthermore, it must be stressed that an employee who has been dismissed from the service and was later exonerated and his reinstatement is ordered, is considered not to have vacated his former position. Thus, the reinstatement of Briones to his former position *ipso facto* voided the appointment of the person currently occupying the said position. Hence, the person who is presently occupying the position of Briones shall be reverted to his former position. And if the incumbent was issued an original appointment, he must give way to the employee whose right to office has been recognized by the competent authorities. In other words, no appointment can be issued to a position that is not vacant. This has been the ruling of the Supreme Court in the case of **Tanala vs. Legazpi, 13 SCRA 566** pertinent portion of which reads, as follows:

"Same; Reinstatement; Appointment of another person during suspension no bar to reinstatement.— When a regular government employee was illegally suspended or dismissed, legally speaking, his position never became vacant, hence there was no vacancy to which a new incumbent could be permanently appointed, it being considered that the incumbency of the person appointed to the position is temporary and he has to give way to the employee whose right to the office has been recognized by the competent authorities."

From the foregoing, the issuance of the appointment in favor of Briones for his reinstatement dated January 02, 2001 shall be revoked. In place of the revoked appointment, the DILG-CAR shall issue another appointment to Briones in the same position in the present date but effective March 01, 1998. This is to comply with the Decision dated March 02, 2000 of the CA

for Briones' reinstatement with payment of backwages from the date he was dismissed from the service.

WHEREFORE, the instant request of Regional Director Everdina Echalar-Doctor for the retroactive approval of the appointment of Rolando A. Briones as Driver I is hereby **DENIED**. However, the DILG-CAR shall issue another appointment to Briones to the same position but on the present date and shall be effective March 01, 1998. Hence, the appointment dated January 02, 2001 issued by the DILG-CAR for the reinstatement of Briones is revoked.

CSC-CAR is hereby directed to approve the appointment of Briones and reflect the same in his service card on file with that office in accordance with this resolution.

Quezon City, **JUN 10, 2002**

(Signed)
JOSE F. ERESTAIN, JR.
Commissioner

(Signed)
J. WALDEMAR V. VALMORES
Commissioner

(Signed)
KARINA CONSTANTINO-DAVID
Chairman

Attested by:

(Signed)
ARIEL G. RONQUILLO
Director III

FPG/KPZ/X2/Y12(d2)
Briones
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