

**GONZALES, Jocelyn J.**

Re: Back salaries

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**RESOLUTION No. 020858**

Jocelyn J. Gonzales, Station Manager, Philippine Broadcasting Service (PBS)-Bureau of Broadcast Services (BBS), assigned at Radyo ng Bayan-DWLC, Lucena City, files a motion dated July 31, 2001 for the payment of her back salaries in view of her reinstatement to the service pursuant to the Order dated February 14, 2000 issued by then Director Rafael Dante A. Cruz, PBS-BBS. Records disclose that Gonzales was ordered reinstated to the service after it was shown that the Order finding her guilty of Immorality and Grave Misconduct and imposing upon her the penalty of "considered resigned without prejudice" was not yet confirmed by the Press Secretary.

In her motion, Gonzales avers, as follows:

*"1. That the penalty of 'considered resigned without prejudice' is considered removal from office.*

*" In a query made to the Civil Service Commission on the case by Ms. Monina S. Cespedes, Chief, Administrative Division, Bureau of Broadcast Services, the then Director for Legal Affairs, CSC, ATTY. NELSON S. (sic) ACEVEDO, was of the opinion that 'Since the penalty imposed on Gonzales was in the nature of a removal from office, Resolution No. 96-01 should have been appealed to the department secretary, who is the Press Secretary in this case, before it may be appealed to this Commission and the penalty of removal shall be considered executory only after the confirmation of the Press Secretary.'" xxx*

*"2. That the execution of my termination was premature since the decision of the disciplining authority embodied in Resolution No. 96-01 dated November 8, 1996 was never confirmed by the OPS Secretary.*

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*"3. The illegal execution of the dismissal was an obvious violation of the above-quoted provision, the consequent verbal order made by Ms. Susan Joan Coliflores, the Network*

*Coordinator of the same Bureau, directing respondent not to report to work anymore on account of the denial of the Order dismissing the Notice of Appeal by the disciplining authority is likewise null and void and improper.*

*"4. That in a similar case of premature and illegal execution of dismissal and the subsequent issuance Return to Work Order of MR. RENE M. CEPEDA, Broadcast Program Producer Announcer II of DWPE-Tuguegarao, he was granted by the Civil Service Commission the payment of back wages embodied in CSC Resolution No. 002334 dated October 13, 2000 xxx*

*"In view of the premature and illegal execution of my dismissal and for equity and justice, may I request the Honorable Commission for my entitlement to back wages from the time that I did not report for work upon the instruction of Ms. Susan Coliflores, Area Coordinator for Luzon, until I actually reported back to work on the basis of the 14 February Return to Work Order of Director Gagelonia."*

The instant case stemmed from an administrative complaint filed by Roselyn V. Aquino against Gonzales for Immorality and Grave Misconduct before the PBS-BBS. Hearings were then conducted after which then Director Cruz issued Resolution #96-01 dated November 8, 1996 finding Gonzales guilty as charged and imposing upon her a penalty of "*considered resigned without prejudice*". Aggrieved, Gonzales, through counsel, appealed on December 5, 1996 the said resolution before the PBS-BBS. Director Cruz issued Order dated April 15, 1997 dismissing the appeal for being filed out of time and considering Resolution #96-01 final. Said resolution was thereafter implemented, allegedly upon verbal instruction of Susan Coliflores, Area Coordinator for Luzon. Nevertheless, Gonzales tried to prove that she was able to file a timely appeal by submitting a certification dated May 14, 1997 issued by Melina D. Oliva, Chief, Records Unit, Quezon City Central Post Office, NIA Road, Diliman, Quezon City, to the effect that Registered Letter No. 7970, with delivery no. 2451, addressed to Rafael Dante Cruz of Phil. Broadcasting Service, Visayas Avenue, Quezon City, was delivered by one Ricardo Robillo and duly received by one Carol de Mesa on December 17, 1996. This was followed by a motion on February 2, 1998 before the PBS-BBS to give the appeal due course but all these appeals were not given due course. Hence, on March 27, 1998, Gonzales wrote a letter to then Press Secretary Hector Villanueva requesting for assistance relative to her reinstatement, among other things, and on June 15, 1998, Gonzales reiterated her appeal with the Office of the Press Secretary.

On August 24, 1998, Monina S. Cespedes, Chief, Administrative Division of the PBS, requested opinion relative to the request for reconsideration of Gonzales of the decision rendered by former PBS Director Rafael Dante Cruz. Hence, on February 15, 1999, this Commission, through the Office for Legal Affairs, rendered an opinion relative to the queries posed by Cespedes regarding Gonzales' request for reconsideration. The said opinion reads, in part, as follows:

*"xxx a notice of appeal should have been filed initially with the department head (Press Secretary) and not with the disciplining office. Corollary thereto, the grant or dismissal of an appeal is within the jurisdiction of the appellate body and not with the office or tribunal which rendered the appealed*

*decision or resolution.*

*"Since the penalty imposed on Gonzales was in the nature of a removal from office, Resolution No. 96-01 should have been appealed to the department secretary, who is the Press Secretary in this case, before it may be appealed to this Commission and the penalty of removal shall be considered executory only after confirmation of the Press Secretary.*

*"Assuming therefore, that the filing of the Notice of Appeal with the PBS Director was proper pursuant to Section 43, Rule XIV of the Omnibus Civil Service Rules Implementing Book V of the Administrative Code of 1987, the same should not have been denied or dismissed by the PBS Director but should have been forwarded to the Office of the Press Secretary for the latter to confirm the decision against Gonzales. Neither should there have been an execution of the decision prior to such confirmation.*

*"As the case now stands, the decision of PBS Director Cruz may not yet be considered final and executory since it has not been confirmed by the Press Secretary. Only after said confirmation and during the reglementary period of 15-days may respondent Gonzales elevate her case to us on appeal following the procedure laid down in Section 38 of the Uniform Rules of Procedure in the Conduct of Administrative Investigations in the CSC.*

*"Anent your third query, we are of the view that the penalty 'considered resigned without prejudice' imposed on Gonzales is the same as the penalty of 'forced resignation' under Section 8, Rule XIV of the Omnibus Civil Service Rules. xxx*

*"In a case (University of the Philippines vs. Civil Service Commission, G.R. No. 89454 dated April 20, 1992), however, the Supreme Court held that the penalty of forced resignation without prejudice to retirement benefits was inconsistent with the removal of an erring employee from the service considering the nature of the latter's acts constituting her offense. In effect, thus, the penalty of forced resignation or its equivalent may not be proper of the facts of the case show that the erring employee should be meted out the severest administrative penalty, i.e. dismissal from the service together with all the accessory penalties."*

On September 14, 1999, Cespedes made another query before the Commission relative to the authority of the present BBS management to effect the immediate reinstatement of Gonzales and the payment of her backwages. On October 19, 1999, the OLA, through Director Florencio P. Gabriel, Jr., declared that considering that the PBS Decision dated August 15, 1997 is not yet final and executory pending confirmation by the Press Secretary, it is imperative to maintain the status quo. Thus, Gonzales should be reinstated immediately with payment of backwages.

In view of the foregoing, then Press Secretary Rodolfo T. Reyes, in an Order dated January 27, 2000, ordered for a review of the Resolutions in question for the reason that it was not confirmed by then Press Secretary Hector R. Villanueva. Thus, premised on the lack of confirmation of the decision, an Order dated February 14, 2000 was issued by Director Fernando G. Gagelonia reinstating Gonzales to her former position until final action of the case shall have been made by the Press Secretary.

Pertinent portions of the said Order read, as follows:

*"In view of the above-cited provision which rendered the execution of the forced resignation (interpreted as dismissal) without the affirmation of the Department Secretary premature, and the order of the OPS Secretary to review the above-captioned case, MS. JOCELYN GONZALES, the respondent, is hereby ordered to go back to work immediately in DWLC-Lucena City until final action on her case has been made by the OPS Secretary.*

*"The Station Manager of DWLC-Lucena is directed to advise Central Offices on the date the respondent will return to work as a result of this Order."*

Hence, this motion.

After a careful evaluation of the records of the instant case, the Commission finds the motion impressed with merit.

Relevant thereto is **Section 47(2), Chapter 7 of Title I(A) of Book V of the Revised Administrative Code of 1987** which provides, as follows:

*"(2) xxx In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned."*

Applying the aforecited provision, the decision of the PBS-BBS in imposing the penalty of removal shall be executory only after the confirmation by the Secretary concerned, who, in this case, is the Press Secretary. Hence, in view of the invalidity of Gonzales' removal from office prior to the confirmation of the Press Secretary, prudence dictates that not only she be reinstated but also that she be paid her back salaries from the time of the implementation of Resolution #96-01 until her actual reinstatement.

This is in consonance with the declaration of the Commission in the case of **CEPEDA, Rene Antonio M.**\* which reads, as follows:

*"The Commission takes note of the fact that PBS-BBS is under the jurisdiction of the*

*Office of the Press Secretary, thus, the decision of then Director Cruz finding Cepeda guilty of Conduct Grossly Prejudicial to the Best Interest of the Service and Gross Insubordination is still not executory since the same was not yet confirmed by the Office of the Press Secretary. Thus, it is only but proper to reinstate Cepeda to his former position as BPPA II and to pay him his backwages from the time that Resolution No. 97-01 dated April 7, 1997 was implemented by PBS-BBS."*

Moreover, glaring to the Commission are the efforts of Gonzales to seek justice from the agency but it appears that her appeals were not given proper attention, thus the delay in the resolution of her case.

**WHEREFORE**, the motion of Jocelyn J. Gonzales is hereby **GRANTED**. Accordingly, the PBS-BBS is ordered to pay her back salaries from the time of the implementation of Resolution #96-01 until her actual reinstatement but not to exceed five (5) years. The PBS-BBS is further ordered to facilitate the prompt review of the case so as not to deny Gonzales of her right to speedy disposition of cases.

Quezon City, **JUN 24 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

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