

GELLEGANI, Ma. Cynthia P. A.

Re: Appeal; Preventive Suspension

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RESOLUTION NO. 021021

Ma. Cynthia P. A. Gellegani, Human Resource Management Officer (HRMO) IV, Provincial Government of Compostela Valley, Cabidanan, Nabunturan, Compostela Valley, appeals the directive of Governor Jose R. Caballero, placing her under preventive suspension for a period not exceeding ninety (90) days, contained in the Formal Charge dated November 22, 2001, pertinent portions of which read, as follows:

"Wherefore, premises considered, Ma. Cynthia P.A. Gellegani, Human Resource Management Officer IV of the Provincial Government of Compostela Valley is hereby charged of the following offenses under the Civil Service Law, to wit:

- `a. Dishonesty;*
- `b. Falsification;*
- `c. Conduct grossly prejudicial to the best interest of the service; and*
- `d. Gross Neglect of Duty/Insubordination'*

"Considering the nature and gravity of the offense and there are reasons to believe that Ma. Cynthia P.A. Gellegani is guilty of the charges which would warrant her removal from the service, she is placed under preventive suspension for a period not exceeding ninety (90) days from receipt hereof."

The material averments of Gellegani in her appeal are, as follows:

"4. That the formal charge contained an order placing the petitioner under preventive suspension for a period not exceeding ninety (90) days from receipt of the said order; x x x

x x x

"A. That the 'formal charge' dated November 22, 2001 containing the order issued by the respondent/appellee placing the petitioner under preventive suspension grossly violated Sections 12, 13, 14 and 15 of the Uniform rules on Administrative Cases promulgated by the Civil Service Commission on August 31,

1999; The provisions of the said sections categorically outlined that the conduct of a PRELIMINARY INVESTIGATION is a condition precedent before the disciplining authority (in the instant case the respondent/appellee) could issue the 'formal charge';

"B. That the order of preventive suspension violated Section 85 of RA 7160, otherwise known as the Local government Code of 1991;

"C. That as can be gleaned from petitioner's counter-affidavit which she executed in answer to the irregularly issued 'formal charge', there is no actual or legal basis to warrant the issuance of an order placing the petitioner under preventive suspension;

"D. That the 'formal charge' containing the petitioner's preventive suspension constitutes as one of the UNBROKEN SERIES OF HARASSMENTS AND INTIMIDATIONS committed by the respondent/appellee in order to pressure her to resign from her employment as Chief of the Human Resource Management Division holding the position of Human Resource Management Officer IV of the Province of Compostela Valley, Philippines;

X X X

When requested to comment, Governor Caballero argued, as follows:

"2. It must be stressed that the conduct of a preliminary investigation as described in Sections 12, 13, 14 and 15 of CSC Resolution 991936 includes the ex-parte examination of records and documents readily available from a government office and necessarily includes a fact-finding investigation. These requirements have been complied with by the undersigned. A fact-finding investigation was in fact made wherein official documents such as petitioner's daily time records showing falsification were gathered and were among those made as basis for the issuance of the formal charge. Before the formal charge was issued, the undersigned in fact directed the herein appellant on November 5, 2001 x x x to explain in writing her submission of a falsified daily time record. Because prima facie evidence was established based on the foregoing official documents and other evidence, the formal charge was issued. xxx.

X X X

"3. x x x The preventive suspension does not in any way violate Section 85 of Republic Act 7160. It is worth emphasizing that Sec. 85(b) thereof states that if the delay in the proceedings of the case is due to the fault, neglect or request of the respondent, the time of the delay shall not be counted in computing the period of suspension. This provision is reiterated in Section 20 of CSC Resolution 991936. Appellant's preventive suspension started on December 4, 2001, the date she received the formal charge. The formal investigation of the administrative case against her started on January 3, 2002 and is still on-going up to the present. If there is a

delay in the conclusion of the hearing, it is solely attributable to her.

"4. Records bear out that series of postponements were made at her instance - first, due to the death of her counsel, Atty. Florante Garcia, the withdrawal of Atty. Jumamil, her second lawyer and a request for resetting made by her present lawyer, Atty. Abarquez. She was in fact supposedly deemed to have waived her right to cross-examine the prosecution's witnesses due to her non-appearance during the hearing of the case if not for the reconsiderations given to her. The time of the delay caused by her should not have been counted in the computation of the period of suspension but despite this, she was ordered to report back to work in the exigency of the service x x x. Still, she refused to heed said order x x x.

x x x

"5. Appellant's claim that the issuance of the preventive suspension order is improper is without merit. She was formally charged of dishonesty, falsification, conduct grossly prejudicial to the best interest of the service, gross neglect of duty and insubordination. The charges of dishonesty and neglect in the performance of duty are among the offenses of which a respondent may be preventively suspended as stated in Section 19 of CSC Resolution No. 991936.

x x x"

Records show that on July 9, 2001, Governor Caballero issued two (2) office orders to Gellegani, specifically Office Order No. 025-2001 which reads:

"In the exigency of the service, you are hereby reassigned to the Office of the Provincial Governor, Purok I, Poblacion, Nabunturan. As such you are to report to the undersigned for further instructions."

and Office Order No. 025-A-2001 which states:

"In view thereof, you are directed to conduct a 2-month personnel and organizational audit of the Office of the Provincial Health with the end view of determining its service delivery efficiency and effectiveness, manpower needs, present personnel skills inventory and organizational and structural needs. Upon completion of this assigned task, you are to submit to the undersigned a written detailed report to guide management of future decision making.

"In order to pursue this special assignment effectively, you are temporarily relieved of your present assignment and functions as Chief of the Human Resource Management Division in the Office of the Provincial Administrator effective immediately."

Gellegani received Office Order Nos. 025-2001 and 025-A-2001 on July 10, 2001 and July 26, 2001, respectively. Upon

receipt of Office Order No. 025-A-2001, she immediately reported for work at the Provincial Health Office and stayed thereat until she completed her assigned task and submitted the personnel audit report to the Office of the Governor on October 26, 2001.

On October 30, 2001, she wrote to Governor Caballero apprising him, among other things, that she has reported back to the Human Resource Management Division. In response thereto, Governor Caballero in his letter dated November 5, 2001 said, thus:

"Referring to your letter of 30 October 2001, please be informed that Office Order No. 025-2001 has not been recalled or modified by any subsequent order or issuances made by this office.

"As such, your legal place of work is still with the Office of the Provincial Governor. Your non-reporting to the Office is tantamount to absence without leave."

On the same date, November 5, 2001, Governor Caballero required Gellegani to explain in writing why she should not be administratively charged for falsifying her daily time record, specifically for her failure to record her attendance in the Computerized Attendance Tracking System (CATS) at the Office of the Provincial Governor after the conduct of the personnel audit. Gellegani explained that she did not falsify her daily time record and claimed that:

"02. Up to October 26, 2001 I was finalizing my PHO personnel audit report, hence, I was logging-in/timing-in through Computerized Attendance Tracking System (CATS) at the PHO, therefore I did not falsify my DTR. Furthermore, even my October 01-15, 2001 DTR was initialed by Dr. Basanes because even the other PHO personnel actually saw and witnessed my audit work. After Dr. Basanes initialed my DTR, Atty. Ranario signed it, I was informed that subsequently Atty. Ranario had his signature erased, and Dr. Basanes also had his initial erased. I then had an audience with Atty. Ranario asking why he had his signature erased when in fact he is still my immediate superior, he said that he is just following orders. So I tried to trace my DTR and M. Labrador, PHO AO-Designate said that you will be the one to sign my DTR. Consequently, I forwarded said DTR to you for signature and in your behalf Mr. J. Reterba signed x x x.

"03. After I finished my personnel audit at PHO, as stated in my letter of October 30, 2001, I returned to my official work station, Human Resource Management Division, Office of the Governor;"

On November 22, 2001, Governor Caballero issued a Formal Charge to Gellegani charging her with Dishonesty, Falsification of Official Documents, Conduct Grossly Prejudicial to the Best Interest of the Service, Gross Neglect of Duty and Insubordination. Likewise, the formal charge contained a directive placing Gellegani under preventive suspension for a period not exceeding ninety (90) days effective from receipt thereof.

Thus, the instant appeal.

The focal issue to be resolved is whether the imposition of the preventive suspension upon Gellegani is in order and in accordance with the Civil Service law and rules and existing jurisprudence.

The Commission rules in the negative.

At the outset, the ninety (90)-day preventive suspension imposed upon Gellegani is clearly repugnant to **Section 85(a) of the Local Government Code of 1991** which provides, as follows:

"Section 85. Preventive Suspension of Appointive Local Officials and Employees. – (a) *The local chief executives may preventively suspend for a period of sixty (60) days any subordinate official or employee under his authority pending investigation if the charge against such official or employee involves dishonesty, oppression, grave misconduct or neglect in the performance of duty, or if there is a reason to believe that the respondent is guilty of charges which would warrant his removal from the service.*" (Underlining supplied)

As can be gleaned from the aforequoted provision, local chief executives are empowered to place under preventive suspension any subordinate appointive official or employee pending investigation of the charge against the latter involving offenses enumerated therein for a maximum period of sixty (60) days only. In the formal charge issued by Governor Caballero, Gellegani was placed under preventive suspension for a period of ninety (90) days which is, thus, violative of the aforementioned law.

Moreover, **Section 19 of the Uniform Rules on Administrative Cases in the Civil Service** provides, as follows:

"Section 19. Preventive Suspension. – *Upon petition of the complainant or motu proprio, the proper disciplining authority may issue an order of preventive suspension upon service of the Formal Charge, or immediately thereafter to any subordinate officer or employee under his authority pending an investigation, if the charge involves:*

- `a. dishonesty;*
- `b. oppression;*
- `c. grave misconduct;*
- `d. neglect in the performance of duty; or*
- `e. if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.*

"An order of preventive suspension may be issued to temporarily remove the respondent from the scene of his misfeasance or malfeasance and to preclude the possibility of exerting undue influence or pressure on the witnesses against him or tampering of documentary evidence on file with his Office.

"In lieu of preventive suspension, for the same purpose, the proper disciplining authority or head of

office, may reassign respondent to other unit of the agency during the formal hearings."

Apparently, Governor Caballero is banking on the notion, albeit erroneous, that it is mandatory on the part of the disciplining authority to always place an employee charged with any of the offenses enumerated under the aforementioned rule under preventive suspension.

It bears emphasis that preventive suspension must *"be resorted to with caution taking into consideration the fact that the same (preventive suspension) will entail deprivation of work and salary during the period of suspension"* (**CSC Resolution No. 96-2570 dated April 11, 1996**). Preventive suspension is a remedy resorted to *"to prevent the accused from hampering the normal course of the investigation with his influence and authority over possible witnesses or to keep him off the records and other evidence"* (**Bunye vs. Escareal, 226 SCRA 332, citing Ganzon vs. CA, 200 SCRA 271**).

There is no dispute that Gellegani was charged with offenses which are among those enumerated in Section 19, *supra*. This alone, however, cannot be used as a basis to preventively suspend her. There must first be a showing that her presence in the workplace may hamper the normal course of the investigation against her or that she may unduly influence or pressure the witnesses or tamper with the pieces of evidence that may be presented against her.

As records will show, Gellegani was directed to report back to the Office of the Provincial Governor after she completed the personnel audit at the Provincial Health Office so that granting without admitting that her position could have enabled her to exert undue influence over possible witnesses, she could not do so since she was made to work in the Office of the Governor located at the Governor's residence where she was initially tasked to man the garage to monitor the visitors coming to the Governor's residence and later at the house of the Governor itself where she was not given any work. Needless to state, she was far from her official place of business and she performed menial, if not no work at all.

In sum, there is no showing from the records that Gellegani is in a position to forestall the normal course of the investigation against her. Considering her present state, she could not possibly use her position to harass witnesses or tamper documents and other pieces of evidence that may be offered against her. This being the case, the Commission finds no factual nor legal basis to preventively suspend Gellegani.

Finally, it bears emphasis that Gellegani's reassignment to the Office of the Governor is tantamount to constructive dismissal when she was tasked to perform menial job at the garage of the Governor's residence. This being so, she should be restored to her position as Human Resource Management Officer IV at the Provincial Capitol. Besides, granting *ex-argumenti* that her reassignment which took effect on July 9, 2001 is indeed in the exigency of the service, she should be restored to her official station at the Capitol by July 10, 2002 or after the lapse of one (1) year considering that this is a case of unconsented reassignment contemplated in **Section 6(a), Rule III of CSC Memorandum Circular No. 40, s. 1998 otherwise known as the Revised Omnibus Rules on Appointments and Other Personnel Actions** which reads, thus:

"Section 6. Other Personnel Movements. – x x x

"a. Reassignment – xxx. If reassignment is without the consent of the employee being reassigned it shall be allowed only for a maximum period of one (1) year. x x x

X X X

"Constructive Dismissal exists when an employee quits his work because of the agency head's unreasonable, humiliating, or demeaning actuations which render continued work impossible. Hence, the employee is deemed to have been illegally dismissed. This may occur although there is no diminution or reduction of salary of the employee. It may be a transfer from a position of dignity to a more servile or menial job."

WHEREFORE, the appeal of Ma. Cynthia P.A. Gellegani is hereby **GRANTED**. Accordingly, the directive of Governor Jose R. Caballero of Compostela Valley, placing her under preventive suspension for a period not exceeding ninety (90) days, contained in the Formal Charge dated November 22, 2001, is not in order. Moreover, she is entitled to the payment of backwages for the period in excess of the prescribed 60 days.

Quezon City, AUG 05 2002

(Signed)

J. WALDEMAR V. VALMORES
Commissioner

(Signed)

KARINA CONSTANTINO-DAVID
Chairman

(Signed)

JOSE F. ERESTAIN, JR.
Commissioner

Attested by:

(Signed)

ARIEL G. RONQUILLO

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