

**GUTIERREZ, Ernesto B.**

Re: Recall of Appointment;  
Motion for Reconsideration

X-----X

### **RESOLUTION NO. 021030**

Tito Tony H. Dolor, Municipal Civil Registrar, Naujan, Oriental Mindoro, moves for the reconsideration of Civil Service Commission Resolution No 02-0526 dated April 11, 2002, whereby his appointment as Municipal Civil Registrar issued on December 29, 1999 was recalled. The motion for reconsideration was filed on May 30, 2002.

The pertinent portions of **CSC Resolution No. 02-0526** read, as follows:

*"In sum, while Dolor may have met the experience requirement for appointment as Municipal Civil Registrar of Naujan, Oriental Mindoro, it is apparent that the majority concurrence of all the members of the Sangguniang Bayan was not obtained. Therefore, the appointment of Dolor should be recalled.*

**"WHEREFORE, the appeal of Ernesto B. Gutierrez is hereby GRANTED. The Decision of CSCRO No. IV dated August 1, 2001, upholding the validity of the appointment of Dolor as Municipal Civil Registrar, is hereby ANNULLED and SET ASIDE. The appointment of Dolor is hereby recalled for lack of sangguniang bayan concurrence."**

As grounds for his motion for reconsideration, Dolor raised the following:

*"1 - The Honorable Commission erred in giving due course to the appeal filed by Mr. Gutierrez; and,*

*"2 - The Honorable Commission erred in ruling that Mr. Dolor's appointment lack the required Sangguniang Bayan Concurrence;"*

In support of the grounds raised in the motion, Dolor advanced the following arguments, to wit:

*"1 - It is humbly submitted, with due respect, that the Honorable Commission committed an error when it on its own (sic) considered the appeal filed by Mr. Gutierrez as petition for recall. In effect, it has deviated from the rules governing/mandating the procedures on the manner of appointment in the Civil Service. There are certain rules that must remain inviolable, like those setting the periods for perfecting an appeal or filing a petition*

*for review, for it is doctrinally entrenched that the right to appeal is a statutory right, and one who seeks to avail of that right must comply with the statute or rules (Videogram Regulatory Board v. CA, 265 SCRA 50, 55-56 (1996)).*

*"It is crystal clear from the records that of (sic) the instant controversy was premised on the letter-complaint of Mr. Gutierrez questioning the appointment of the undersigned. Indeed when he instituted the said protest, he has to abide with the law and rules governing the same. But Mr. Gutier (sic) failed to observed (sic) faithfully the mandate of the rules, when he did not file the protest within the required reglementary period (Section 62, Uniform Rules on Administrative Cases in the Civil Cases [sic]). The right afforded being statutory, compliance therewith is mandatory and deviation thereof cannot be tolerated. While it is true that that (sic) litigation is not a matter of technicalities, it is equally true that every case is (sic) must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy disposition of justice (Casolita, Sr., CA, 275 SCRA 257). In addition to, at the risk of being repetitious, the protestee-appellant has no basis for filing said protest-appeal with the Honorable Commission being not a qualified next-in-rank. It is a settled rule in statutory construction that the express mention of person, thing, act or consequence excludes all others (Commissioner of Customs v. CTA, 224 SCRA 665).*

*"Henceforth, it is undersigned submission that the Honorable Commission could not, just on its own and without violating the law, change the nature of the remedy one intends to avail and consequently giving its own denomination as its seeds fit (sic). Otherwise, the rules procedure would be an exercise in futility.*

*"2 - Moreover, it is respectfully submitted that the Honorable Commission possesses no power to determine the legality or illegality of the act of a legislative body without violating the doctrine of Separation of powers. The Honorable Court erred by asserting its interpretation that no concurrence had been made and even greater mistake when it ruled that the appointment in question did not go through the proper appointing process. It should not escape notice that the resolution concurring said appointment is still validly existing for there was no order, decision, resolution or any kind of mandate revoking or rendering said resolution as void. The Honorable Commission, with due respect, mistakenly encroached the power as well as the function that does not belong to it."*

X X X

Records show that movant Dolor was appointed as Municipal Civil Registrar, Naujan, Oriental Mindoro on December 29, 1999. However, Ernesto B. Gutierrez, Municipal Planning and Development Coordinator, same municipality, and an applicant to the position of Municipal Civil Registrar, filed a letter protest with CSCRO No. IV against the appointment of Dolor. In said letter-protest, Gutierrez argued that 1) appointee Dolor does not meet the minimum experience requirements set by Section 479 (a) of the Local Government Code which provides that the appointee must have acquired experience in civil registry work; and 2) that the appointment failed to comply with the required concurrence of the Sangguniang Bayan. Thus, in an Order Dated October 3, 2000, CSCRO No. IV directed the disapproval of the appointment of Dolor for failure to meet the experience

requirement and the Sangguniang Bayan concurrence pursuant to **Section 443(d) of RA 7160** otherwise known as the **Local Government Code of 1991**.

Subsequently, Mayor Norberto M. Mendoza, who appointed Dolor, filed a motion for reconsideration of the CSCRO No. IV Order dated October 3, 2000, assigning as errors the following:

*"1. The Honorable Office erred in ruling that the appointee failed to meet the minimum experience required of the position;*

*"2. The Honorable Office erred in ruling that the Municipal Vice-Mayor is not a member of the Sangguniang Bayan, thus the appointment lacks the resolution of concurrence;*

*"3. The Honorable Office erred in giving due course to the protest considering that the protestant is not the qualified-next-in-rank;*

*"4. Protest was filed outside the 15-day reglementary period; and*

*"5. In disregarding that the protestant is not qualified to any promotion or transfer as there are pending criminal cases filed against said protestant before the Sandiganbayan."*

Acting on the said motion, CSCRO No. IV rendered Decision dated August 1, 2001, granting the motion for reconsideration and setting aside its previous Order dated October 3, 2000 and rendered a new ruling upholding the validity of the appointment of Dolor. Thus, Gutierrez elevated the case to the Commission raising the issues relative to the failure of Dolor to meet the experience requirement and lack of Sangguniang Bayan concurrence.

Cognizant of the fact that it cannot just close its eyes and ignore an information that an appointee is not qualified for the position or did not go through the proper appointing process, the Commission found the appeal meritorious and treated the protest as a petition for the recall of the appointment of Dolor. Thus, in CSC Resolution No. 02-0526 dated April 11, 2002, the Commission annulled and set aside the Decision of CSCRO No. IV dated August 1, 2001 and recalled the approval of the appointment of Dolor for lack of Sangguniang Bayan concurrence.

Aggrieved, Dolor filed the instant motion for reconsideration.

The Commission carefully reviewed the records to determine whether there is a ground for Dolor to file a motion for reconsideration. The Commission exerted much care in evaluating the records of the case but finds no ground upon which Dolor's motion for reconsideration is anchored.

Squarely applicable to the instant case is **Section 40, Rule III of the Uniform Rules on Administrative Cases in the Civil Service** which provides, as follows:

*"Section 40. **Grounds for Motion for Reconsideration** – The motion for reconsideration shall be based on any of the following:*

*"a. New evidence has been discovered which materially affects the decision rendered; or*

*"b. The decision is not supported by the evidence on record; or*

*"c. Errors of law or irregularities have been committed prejudicial to the interest of the movant."*

Movant Dolor has neither presented new evidence nor raised any valid argument to warrant the reversal or modification of CSC Resolution No. 02-0526 dated April 11, 2002. The arguments raised in the present motion are practically the same arguments judiciously passed upon and resolved by the Commission in the resolution sought to be reconsidered.

Be that as it may, it behooves the Commission to discuss the issue relative to its treatment of Gutierrez' protest as a petition to recall an appointment. Movant maintains that the Commission erred in giving due course to Gutierrez' appeal to CSCRO No. IV Decision dated August 1, 2001 considering that he has no personality to question it inasmuch as he does not occupy the next-in-rank position to the Municipal Civil Registrar. The contention is untenable. On appeal, the review is not limited to the issues raised therein but extends even to those not put in issue. **(Sociedad Europa de Financiacion, S.A. vs. Court of Appeals, 193 SCRA 105)** In the case at bar, it is clear that the Commission has exercised its appellate jurisdiction. It is a violation of its constitutional mandate to approve an appointment notwithstanding the failure of appointee Dolor to meet the prescribed Sangguniang Bayan concurrence on the mere ground that Gutierrez is not next-in-rank and, thus, without capacity to question the issuance thereof. Therefore, notwithstanding the initial approval of Dolor's appointment, the same may be recalled as it was issued in violation of civil service law **(Section 20, Rule VI, Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Law)**

Thus, the Commission finds no compelling reason to disturb CSC Resolution No. 02-0526.

**WHEREFORE**, the motion for reconsideration of Tito Tony H. Dolor is hereby **DENIED**. Accordingly, CSC Resolution No. 02-0526 dated April 11, 2002 stands.

Quezon City, AUG 06 2002

(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

FPG/KPZ/X8/X19/jca193  
NDC-011041  
20020530-012  
/gutierrez'r