

**DE JESUS, Miguel C.**

Re: Termination of Employment; Appeal

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**RESOLUTION NO. 021216**

Miguel C. de Jesus, Vice Governor, Misamis Oriental, appeals from the Order dated September 20, 2001 of the Civil Service Commission Regional Office (CSCRO) No. X, Cagayan de Oro City, which set aside his Order dated July 6, 2001 terminating the services of Teresita Alaya-ay, Emmanuel Jamito, Crisel E. Cai<sup>91</sup><sub>11</sub>a, Evangeline L. Diaz, Marilyn A. Hernandez, Charito S. Lago, Marilou B. Ong, Adelina S. Amon and Maricon G. Palacio, all employees of the Sangguniang Panlalawigan of the same Province occupying the position of Local Legislative Staff Assistant II. The appeal was filed on January 7, 2002, the comment thereon by CSCRO No. X was received on March 4, 2002.

The material portions of the assailed Decision read, as follows:

*"The mere fact that the 14 positions are all in the Office of the Vice-Governor, and that, the Vice-Governor is their immediate supervisor will not render said positions as primarily confidential in nature and therefore, co-terminus with the appointing authority. Xxx*

*"In the absence of such declaration, the positions of Local Legislative Staff Assistant are considered career positions. Hence, permanent employees may only be removed for cause as provided by law and after due process. Separating them from the service due to expiration of term is not one of the causes provided for by law.*

**"WHEREFORE**, the ORDER of Vice Governor J. Miguel C. De Jesus terminating the services of Teresita A. Alaya-ay, et al. Effective June 30, 2001 is hereby **SET ASIDE**. Accordingly, Vice-Governor De Jesus is hereby directed to reinstate, and pay the corresponding salaries from the time of separation, the following xxx."

In the instant appeal, appellant-respondent De Jesus ascribed to the Civil Service Regional Office the following errors in issuing the assailed Decision, to wit:

**"THE CIVIL SERVICE COMMISSION REGIONAL OFFICE 10 ERRED IN HOLDING THAT THE POSITION OF LOCAL LEGISLATIVE STAFF ASSISTANT II WAS VALIDLY CREATED. XXX**

*"(T)he herein appellees were not illegally terminated but their employment were terminated on the ground*

*that the position of Local Legislative Staff Assistant II being a non-existent positions (sic) there is no ordinance creating such position.*

*xxx*

*"The appellees in their petition before the Civil Service Commission Regional Office 10 alleged that they were appointed and their salary and wages were funded under Ordinances No. 289-98, 417-99 and 442-2000. Xxx*

*"This is very misleading because the Ordinances cited by the appellees did not provide for the creation of a position of Local Legislative Staff Assistant II nor did it provide for an appropriation of funds on the said position.*

*"The position that was created in the ordinances cited xxx is Local Legislative Assistants and not Local Legislative Staff Assistant II xxx.*

*"The CSC Regional Office 10 in its order xxx declared that the determination was made by them on the basis of Personnel Schedule of the Sangguniang Panlalawigan for 1998 which was part of Ordinance No. 280-98. Xxx*

*"This finding is absurd.*

*"Firstly, the inclusion of the position of Local Legislative Staff Assistant II personnel schedule was from the very beginning void for there is no ordinance that can support the creation of the position.*

*"It is worthy to note that when former Vice Governor Lagbas appointed and forwarded the appointment of Teresita Alaya-ay to the Civil Service Commission xxx Director Edgar P. Laygo observed that Ms. Alaya-ay was appointed as Local Legislative Assistant and not Local Legislative Staff Assist II which is the vacant position in the plantilla of personnel. It only goes to show that what was created in the first place was the position of Local Legislative Assistant under Section 19 of Ordinance No. 289-98 but the position in the Plantilla of Personnel indicated the position of Local Legislative Staff Assistant II. There was a mistake in the entry of the personnel schedule from that of the position that was created by the ordinance. The Ordinance created the position of Local Legislative Assistant while in the Personnel Schedule what was inadvertently entered was the position of Local Legislative Staff Assistant II.*

*"Being informed that the proper position title should be Local Legislative Staff Assistant II and not Local Legislative Assistant, former Vice Governor Lagbas should have amended Section 19 of Ordinance No. 298-98 that instead of Local Legislative Assistant it should be amended to Local Legislative Staff Assistant II. Xxx*

*"Second, even if there is such recommendation that the position created should be in accordance with Memorandum Circular No. 1 series of 1997, there is still a need for an ordinance creating a position and not*

*merely including it in the plantilla of personnel. An ordinance creating a position is necessary because this is the legal basis of the valid existence of a position as found in the plantilla of personnel without it there can be never be a position to speak of.*

*"The CSC Regional Office 10 in its order xxx provided that the publication of positions of the petitioners in effect admits the legal and valid existence of the position. This is very much an erroneous conclusion since how can there be a valid existence of the position of Local Legislative Staff Assistant II when it does not have an ordinance supporting its creation. A mere publication of a position does not in effect be used (sic) as a basis of a valid and legal existence of a position in the Civil Service. Xxx"*

In its comment on the appeal, Civil Service Regional Office No. 10 maintained that it did not commit an error in holding that the position of Local Legislative Staff Assistant II was validly created. In sum, it argued, as follows:

*"It is also worthwhile stressing that while it is true that the position created xxx is that of LOCAL LEGISLATIVE ASSISTANT only, but the determination of the position as having corresponding salary grade of 8 is that of a LOCAL LEGISLATIVE STAFF ASSISTANT II as provided for under Civil Service Commission Memorandum Circular No. 1 series of 1997, the manual used as basis for personnel selection for service wide positions listed in the Index of Occupational Service.*

*"This observation is consistent with the act of the Provincial Government in its publication of vacant positions which includes the position of that of a LOCAL LEGISLATIVE STAFF ASSISTANT II. By indicating the positions of the petitioners in the publication of vacant positions, it in effect admits the legal and valid existence of petitioners' positions in the Office of the Sangguniang Panlalawigan of Misamis Oriental."*

The petitioners-appellees, for their part, filed their own brief opposing the appeal of respondent-appellant de Jesus. The material portions of which are hereunder quoted, as follows:

*"But contrary to the allegations of the respondents-appellants, the positions of the petitioners-appellees as LOCAL LEGISLATIVE STAFF ASSISTANT II were created by the provisions of the Personnel Schedule of the Sangguniang Panlalawigan which was approved as part and parcel of the Annual Budget Ordinance No. 289-98. Being part and parcel of Annual Budget Ordinance No. 289-98, the Personnel Schedule has the same legal force and effect of Ordinance No. 289-98. Xxx*

*"The legal creation of the positions of the petitioners-appellees xxx was affirmed by the Department of Budget and Management. The DBM affirmed the legal creation of the positions of the petitioners-appellees when the expenses for the Personnel Services of the province under Ordinance No. 289-98 xxx were passed in review by the DBM. Further, the legal creation of the positions of the petitioners-appellees was affirmed by the Commission on Audit when the expenses for the Personnel Services xxx were passed in review by the COA.*

*"In addition to the DBM and COA, the Honorable Commission affirmed the legal creation of the positions of the petitioners-appellees when the Honorable Commission xxx cited the Plantilla of Personnel xxx.*

*"The legal creation of the positions of the petitioners-appellees xxx was further affirmed when the same positions and appropriations were reiterated in the succeeding Personnel Schedules of the succeeding Annual Budget Ordinance No. 417-99 for the year 1999 and Annual budget Ordinance No. 442-2000 for the year 2000.*

*"The respondents-appellants have waived their rights and are estopped in questioning the creation of the positions of the petitioners in the Personnel Schedules when the respondents-appellants and/or their offices themselves indorsed the approval of the said positions in the Personnel Schedules to the Governor for approval as part of the Executive Budget Proposal xxx.*

*"When the respondents-appellants indorsed the approval of the appropriations of the positions of the petitioners-appellees in the Personnel Schedules, the respondents-appellants admitted the legal existence and the legal creation of the said positions. In admitting the legal existence and legal creation of the positions of the petitioners-appellees, the respondents-appellants waived their rights and are estopped in questioning the legal creation of the positions of the petitioners-appellees.*

*"2.3 The respondents-appellants waived their rights and are estopped in questioning the legal creation of the positions of the petitioners-appellees when the respondents-appellants failed to object or protest the appointments of the petitioners-appellees for more than two (2) years after the approval of their said appointments by the Honorable Commission xxx.*

*"2.4 The respondents-appellants waived their rights and are estopped in questioning the legal creation of the positions of the petitioners-appellees when the respondents-appellants failed to object or protest the assumption of duties and the payment of salaries of the petitioners-appellees for more than two (2) years since their appointments.*

*"2.5 The respondents-appellants waived their rights and are estopped in questioning the creation and legal existence of the positions of the petitioners-appellees when the respondents-appellants declared the said positions as vacant. Xxx Needless to say that when the said positions were considered by the respondents-appellants as vacant, then the respondents-appellants admitted the legal existence of said positions.*

*"2.6 The respondents-appellants admitted the legal creation and legal existence of the positions of the petitioners-appellees as LOCAL LEGISLATIVE STAFF ASSISTANT II when the respondent-appellant Vice Governor Miguel de Jesus himself did not question the legal creation and the legal existence of the said positions in his memorandum. In the said memorandum, the respondent-appellant Vice Governor Jesus de Miguel terminated the petitioners-appellees solely on the ground that their said positions were coterminus, hence, the*

*respondent-appellant Vice Governor Miguel de Jesus relied solely on the alleged 'coterminus status' of the petitioners-appellees as the ground for their termination, but the respondent-appellant never questioned the legal creation and legal existence of the positions of the petitioners-appellees.*

*"In admitting that the positions of the petitioners-appellees were coterminus, the respondent-appellant in effect admitted that the positions of the petitioners-appellees legally existed and were legally created. Xxx"*

Petitioners-appellees further submitted Supplemental Brief, the material portions of which are hereunder quoted, as follows:

*"2. That in addition to the evidence of the petitioners-appellees in support of its claims, the petitioners-appellees submit the hereto attached copies of the new and latest Personnel Schedule of the Sangguniang Panlalawigan under the Annual Budget Ordinance No. 512-2002 xxx. Under the said Personnel Schedule of the Sangguniang Panlalawigan for the year 2002, the positions of the petitioners-appellees as LOCAL LEGISLATIVE STAFF ASSISTANT II were declared vacant. By declaring the said positions as vacant, the respondent-appellant Vice Governor Miguel de Jesus himself approved and admitted the legal existence and the legal creation of the said positions of the petitioners-appellees.*

*"3. The positions of LOCAL LEGISLATIVE STAFF ASSISTANT II that were approved under the Personnel Schedule of the Sangguniang Panlalawigan under Ordinance No. 512-2002 for the year 2002, are the same positions being authorized by the Personnel Schedules under Nos. 289-98, 417-99 and 442-2000 which were the basis of the appointments of the petitioners-appellees.*

*"4. The respondent, Governor Antonio P. Calingín on his part effectively approved the positions of LOCAL LEGISLATIVE STAFF ASSISTANT II in the Personnel Schedule of the Sangguniang Panlalawigan for 2002 under Ordinance No. 512-2002 when the said respondent failed to veto any of the provisions of the said Personnel Schedule.*

*"5. In admitting the legal existence and legal creation of the positions of the petitioners-appellees as LOCAL LEGISLATIVE STAFF ASSISTANT II, the respondents-appellants have waived and are estopped in questioning the legal creation of the said positions."*

Records show that the Sangguniang Panlalawigan (SP) of Misamis Oriental passed Ordinance No. 289-98 on February 9, 1998. Under Section 19 thereof, Sangguniang Panlalawigan appropriated funds for the 2 positions created under SP Ordinance No. 140-97, namely 14 positions of Local Legislative Assistant and 1 position of Data Entry Machine Operator II. The Section reads, as follows:

*"Section 19. SANGGUNIANG PANLALAWIGAN PERSONAL SERVICES. – The appropriation provided for under the Sangguniang Panlalawigan Personal Services requirement for the newly created positions in*

*accordance with SP ORDINANCE No. 140-97, are hereby incorporated and including the following positions which are created and funded under this Ordinance, to wit:*

*'a. 14 Local Legislative Assistant with a salary grade 8 and co-terminus with the appointing authority;*

*'b. 1 Data Entry Machine Operator II with a salary grade 8.'*"

In the subsequent section, Section 20, of the same Ordinance, the local legislative body provided for amendment of the position titles of the two (2) created positions for the purpose of conforming the said position titles with those under the Local Budget Circular No. 61 dated March 18, 1996 issued by the Department of Budget and Management. Apparently, the position title of Local Legislative Assistant does not exist in the DBM's Index of Occupational Services for Local Government. Thus, the Local Legislative Assistant was retitled to Local Legislative Staff Officer II. Section 20 provides, as follows:

*"Section 20. AMENDMENTS on position titles under SP Ordinance No. 140-97-There is hereby amended the position title from LEGISLATIVE OFFICER III, LEGISLATIVE STAFF OFFICER II AND COMPUTER OPERATOR II shall be changed to LOCAL LEGISLATIVE OFFICER III, LOCAL LEGISLATIVE STAFF OFFICER II AND DATA ENTRY MACHINE OPERATOR II respectively with salary grade 8, to conform with the provisions of LBC NO. 61, dated March 18, 1996 of the Department of Budget and Management."*

The petitioners-appellees were issued, by virtue of Sangguniang Panlalawigan Ordinance Nos. 289-98, appointments on separate dates to fill up the newly created positions. Petitioner-appellee Teresita Alaya-ay was the first to be issued an appointment to the post of Local Legislative Assistant under a co-terminous status. Seemingly, Vice-Governor Lagbas mistakenly issued the appointment to the position of Local Legislative Assistant which was already retitled to Local Legislative Staff Assistant II. Thus it was disapproved by the Civil Service Field Office on the following grounds, *inter alia*, to wit:

*"1. It was submitted beyond the reglementary period of thirty (30) days after its issuance.*

*"2. The Plantilla of Personnel (Personnel Schedule) shows that the vacant position under item 64 is Local Legislative Staff Assistant II and not Local Legislative Assistant as proposed in the appointment issued to the appointee.*

*"3. The position of Local Legislative Staff Assistant II is a career position, hence the proposed status as Permanent, Cotermimus in her appointment is not correct."*

Alaya-ay was issued a new appointment on September 1, 1998 by then Vice Governor Danilo P. Lagbas satisfying the infirmities cited by the Civil Service Regional Office No. X in disapproving her appointment. Thus, Alaya-ay was issued another appointment to the position of Local Legislative Staff Assistant II under permanent status. The CSCRO No. X attested the same on October 13, 1998. Subsequent appointments to the position Local Legislative Staff Assistant II with permanent status were

issued to herein other petitioners-appellees to fill up the 14 vacant positions as indicated in the Personnel Schedule of the Sangguniang Panlalawigan.

The appropriation ordinances for the years 1999 and 2000 included the position of Local Legislative Staff Assistant II and were accordingly funded particularly by Ordinance Nos. 417-99 and 442-2000.

On June 21, 2001, respondents Governor Antonio P. Calingin, Acting Personnel Officer Jusie C. Roxas and Acting Assistant Administrator Calvin A. Akut included in the list of Vacant Positions in the Government the positions of the petitioners-appellees. Less than a week after respondent-appellant de Jesus assumed office as the newly elected Vice Governor of the province, he issued Memorandum No. 01-2001 dated July 6, 2001 which formally notified all the Legislative Assistants as considered terminated as of June 30, 2001. Pertinent portions of the said Memorandum are quoted, as follows:

*"SANGGUNIANG PANLALAWIGAN PERSONAL SERVICES. The appropriation provided under the Sangguniang Panlalawigan Personal Services requirement for the newly created positions in accordance with SP ORDINANCE NO. 140-97 are hereby incorporated and including the following positions which are created and funded under this Ordinance to wit:*

*"and **co-terminus with the appointing authority.***

*"In view therefore, you are hereby formally notified that as of June 30, 2001 your appointments are considered terminated."*

The petitioners-appellees questioned the validity of the said Memorandum and the legality of their termination before the Civil Service Regional Office No. X. The Regional Office, in its decision dated September 20, 2001, set aside the aforesaid order of Vice Governor de Jesus and directed him to reinstate the herein petitioners-appellees to their former positions and pay them their corresponding salaries from the time of their separation.

CSCRO No. X denied the motion for reconsideration filed by Vice Governor de Jesus in an Order dated November 19, 2001. Hence, the instant appeal.

In resolving the instant appeal, this Commission is confronted with the sole issue of whether CSCRO No. X abused its discretion in setting aside the Order dated July 6, 2001 of appellant-respondent Governor de Jesus terminating the services of the petitioners-appellees.

Respondent-appellant de Jesus terminated the services of the herein petitioners-appellees on the ground that the positions held by the petitioners-appellees as Local Legislative Staff are co-terminous with the appointing authority. In fact, his Order dated July 6, 2001 set aside by the CSCRO No. X, made emphasis on the phrase "*co-terminous with the appointing authority.*" This is misplaced. Positions in the civil service are presumed to be career positions unless specifically declared to be primarily confidential by the Civil Service Commission. Admittedly, local government units have the power to create positions

but they do not have the specific power to declare *motu proprio* positions as confidential positions. This is an exclusive power given/granted to the Civil Service Commission under **Section 12 (9) Book V of Executive Order No. 292, The Revised Administrative Code of 1987** which reads, as follows;

*"Section 12. Powers and Functions. - The Commission shall have the following powers and functions:*

X X X

*"(9) Declare positions in the Civil Service as may properly be primarily confidential, highly technical or policy determining;"*

Moreover, when petitioners-appellees questioned the aforesaid order before CSCRO No. X, respondent-appellant de Jesus, aside from justifying that the position held by the petitioners-appellees were co-terminous with the appointing authority, ratiocinated that the position to which they were appointed were non-existent because of the absence of an ordinance that provided for its creation.

In elevating the case before this Commission, respondent-appellant de Jesus wants to impress upon this body that CSCRO No. X committed a reversible error in setting aside his Order as the 14 Local Legislative Staff Assistant II positions held by the appellees as those positions were allegedly not validly created. He advanced his theory that what was created by Sangguniang Panlalawigan Ordinance No. 289-98 was the position of Local Legislative Assistant and that the 14 Local Legislative Staff Assistant II positions were mistaken entries in the Personnel Schedule.

The justification is not meritorious. The position of Local Legislative Staff Assistant II was a re-titled position of Local Legislative Staff. The former was created under SP 140-97 which was subsequently amended under Section 20 of Ordinance No. 298-98 dated February 9, 1998 by re-titling it as the latter. The appellant obviously did not see Section 20 as the authority of the re-titling of the position. Such being the case, the Regional Office correctly ruled that petitioners-appellees are not confidential employees and so that their terms of offices are not co-terminus with the appointing authority. Consequently, they can only be removed for a valid cause in accordance with the civil service laws and regulations.

Moreover, the respondent-appellant is estopped from declaring non-existent the positions of Local Legislative Staff Assistant II by his own act in issuing the Order dated June 21, 2001 declaring that the term of office of the holders thereof had already expired. In other words, the declaration *per se* is an admission of the position's existence.

The same finding holds true when the respondent signed and authorized the payment of Personal and Emergency Relief Allowance (PERA) of the provincial government's employees for the month of July 2001, which included the appellees. The payment of the appellees' PERA came after the posting of the position as vacant on June 21, 2001. The fact that the assailed positions were previously declared vacant can not be reconciled with the action of allowing payment of PERA to the holders thereof simply because there can be no holder of a non-existent position.



Moreover, a perusal of the provisions of Section 20 expressly shows that the intent thereof is to conform the position of Local Legislative Staff to that of Local Budget Circular No. 61 dated March 18, 1996 of the Department of Budget and Management providing for the position of Local Legislative Staff Officer II. Under the said Circular, the latter position is a career position not co-terminous with appointing authority. The Local Legislative Staff position was, likewise, nowhere to be found in the 1997 Qualifications Standards (QS) Manual or in its later supplements. The position appearing in the QS Manual having the closest functional relationship with the subject position is Local Legislative Staff Assistant II which is assigned the corresponding Salary Grade of 8. Besides, what was provided, existing and funded in said appropriation ordinance is the position of Local Legislative Staff Assistant II. For this reason, Civil Service Regional Office No. X was correct in ruling that the creation of the position Local Legislative Staff Assistant II was actually based on the approved Personnel Schedule of the Sangguniang Panlalawigan for 1998 which was part of Ordinance No. 289-98.

While there is no dispute that by the authority expressly granted by the Local Government Code of 1991, it is the Sangguniang Panlalawigan which has the power to create positions, such power is, nonetheless, without restrictions. It is subjected to existing laws and regulations. For a position to be legally created, its position title, for one, should conform with those enumerated under the Index of Occupational Services, Position Titles and Salary Grades (IOS), otherwise, the same cannot be deemed valid. Pointedly, while local government units may create positions in the exigencies of public service, but they cannot just indiscriminately adopt any position title they so fancy. In the case of **Eduardo C. Tolentino (CSC Resolution No. 96-2402)**, the Commission held, as follows:

*"After a careful review of the case, the Commission finds merit in the instant request. The provisions in the charter of PPA is sufficient basis to validly create positions in the PPA provided that the position titles and corresponding salaries that they will use are found in the Index of Occupational Services pursuant to the Salary Standardization Law."*

It is, therefore, indubitably apparent that the Sanggunian Panlalawigan of Misamis Oriental created the 14 Local Legislative Assistant positions through SP Ordinance No. 289-98 which position title was modified in Ordinance No. 298-98 dated February 9, 1998 to Local Legislative Staff Assistant II as provided in the Qualification Standards Manual of 1997 and the Index of Occupational Services, Position Titles and Salary Grades (IOS) to comply with the mandates of existing laws and regulations. In fact, when CSCRO No. 10 pointed out this misnomer in the position title when it disapproved the appointment of Teresita Alay-ay who was appointed as Local Legislative Assistant, it readily corrected the mistake by issuing a new appointment to Alay-ay as Local Legislative Staff Assistant II under item 51 of the Plantilla of Position. Similarly, all appointments issued afterwards were for the position of Local Legislative Staff Assistant II.

From the foregoing facts and conclusions of law, the instant appeal of Vice Governor de Jesus must necessarily fail.

**WHEREFORE**, the appeal of Vice Governor Miguel de Jesus is hereby **DISMISSED**. Accordingly, the Civil Service Regional Office No. X Decision dated September 20, 2001 which set aside the Order of Vice Governor J. Miguel C. de Jesus terminating the services of Teresita Alay-ay, *et al.* of the Sangguniang Panlalawigan of Misamis Oriental is affirmed *en toto*.

Quezon City, SEP 23 2002

(Signed)  
**KARINA CONSTANTINO-DAVID**  
Chairman

(Signed)  
**JOSE F. ERESTAIN, JR.**  
Commissioner

(Signed)  
**J. WALDEMAR V. VALMORES**  
Commissioner

Attested by:

(Signed)  
**ARIEL G. RONQUILLO**  
Director III

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