

**BONGAY, Edralin**

Re: Disapproved Appointment;  
Appeal

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## **RESOLUTION NO. 021285**

On May 2, 2002, Director IV Dolores Bonifacio of Civil Service Commission-Cordillera Administrative Region (CSC-CAR) forwarded to the Commission the appeal dated April 19, 2002 of Edralin D. Bongay, through counsel, from the Order dated September 5, 2001 of the Civil Service Commission, CSC-CAR, which disapproved his appointment as Executive Assistant in the Office of the Provincial Governor, Local Government of Apayao, Kabugao, Apuyao. In its Decision No. 02-080 NDC dated March 12, 2002, CSC-CAR denied Bongay's motion for reconsideration.

Pertinent portions of the assailed Order dated September 5, 2001, states as follows:

*"Attached to the appointment is a Notice of Judgment signed by Maria Romelia U. Gonzales, Division Clerk of Court, Court of Appeals, that on March 15, 2001, a Decision was rendered by the thirteenth division of the Court of Appeals on the case, the dispositive portion of which reads:*

*'WHEREFORE, premises considered, the present petition is hereby GIVEN DUE COURSE and accordingly GRANTED. The two (2) resolutions of the Civil Service Commission in Administrative Case No. 97-05 entitled Nerio P. Diza and Edralin D. Bongay v. Civil Service Commission, namely, (a) Resolution no. 00842 dated March 29, 2000, which affirmed the Decision dated October 14, 1999 of the Civil Service Commission – Cordillera Administrative Region, and (b) Resolution No. 001691 dated July 21, 2000, which denied the motion for reconsideration thereof, are hereby both NULLIFIED and SET ASIDE.'*

*"It is noted however, that no certification of finality of judgment has been submitted.*

*"In view thereof, the appointment of Mr. Edralin D. Bongay as Executive Assistant under coterminous status is hereby disapproved."*

On the other hand, the Decision dated March 12, 2002 of CSC-CAR reads, as follows:

*"Anent the allegation of Bongay that the personnel Officer/HRMO and the Local Chief Executive of the province of Apayao have both issued certification, respectively certifying compliance with the Civil Service Law and Rules on Appointment and recommending approval of appointment, cannot effectively change the stand of the CSC-CAR on his appointment. These certifications mentioned only focus on the procedural requirements of the appointment. They cannot cure the disqualification imposed on Bongay, he is perpetually disqualified from entering the government service.*

*"On the request for clarification of the phrase, dismissed from the service, let the foregoing discussions suffice to clarify its inclusion in the questioned Order of the CSC-CAR. It simply means that Bongay is perpetually disqualified from entering the service as he is dismissed from the service. This disqualification can only be removed if the Supreme Court upholds the Court of Appeals decision, else, an executive clemency from the President of the Philippines.*

*"In fine, Bongay has not given any cogent reason for the CSC-CAR to reverse its initial action on his appointment. There is no merit to the instant motion for reconsideration.*

*"WHEREFORE, the motion for reconsideration of Edralin Bongay is hereby denied for lack of merit. Accordingly, the assailed CSC-CAR Order of September 5, 2001 stands."*

In his appeal, Bongay avers, as follows:

*"Appellant EDRALIN D. BONGAY and NERIO P. DIZA were respondents in Administrative Case No. 97-05 for 'Dishonesty and Falsification' initiated, prosecuted and decided by the Civil Service Commission, Regional Administrative Region, Baguio City (CSC-CAR hereafter) which found them guilty of 'Dishonesty and Falsification' and imposed upon them the 'accessory penalty of perpetual disqualification from joining the public service and from taking government examinations in the future x x " per its Decision dated October 14, 1999. Unfortunately, the said decision of the CSC-CAR was affirmed by this Honorable Commission per its RESOLUTION No. 000842 dated March 29, 2000, and also denied their Motion for Reconsideration per its Resolution No. 001691 dated July 21, 2000. Fortunately, however, the Court of Appeals, per its DECISION dated March 15, 2001 in NERIO P. DIZA and EDRALIN D. BONGAY versus CIVIL SERVICE COMMISSION, CA-G.R. SP NO. 60440, nullified and set aside the aforementioned Resolutions and, per its Resolution dated June 19, 2001, denied the CSC's Motion for Reconsideration. From the said Decision and Resolution of the Court of Appeals, this Honorable Civil Service Commission filed with the Supreme Court a 'PETITION FOR CERTIORARI UNDER RULE 65' dated September 7, 2001. The said petition states that 'the resolution dated June 19, 2001 of the Honorable Court of Appeals denying the CSC's Motion for Reconsideration of its Decision dated March 15, 2001, was received by the CSC on July 6, 2001.' The envelope of mailing used for the copy sent to the undersigned counsel DIZA and BONGAY contains the rubber stamp showing that the same was mailed at 'Registered Batasang Pambansa Post Office SEPT. 10, 2001.' This shows that the petition for certiorari was filed with the Supreme Court sixty six (66) days*

*from July 6, 2001 when the CSC received the Resolution of the Court of Appeals, well beyond the 60-day period provided for in Section 4 of Rule 65 of the 1997 Rules of Civil Procedure. This is in addition to the fact that said petition is erroneous because the legal remedy is Appeal by Certiorari to the Supreme Court under Rule 45 of the 1997 Rules of Civil procedure which should be filed within 15 days from notice of the x x x resolution appealed from. It could then be safely expected that the Supreme Court will dismiss the said petition.*

*"EDRALIN D. BONGAY was charged criminally by the CSC-CAR for the same offense of Falsification of Public Document before the Baguio City Prosecutor's Office, which however, dismissed the charge for lack of evidence per its Resolution dated August 30, 1996, which forms part of the records of the above-mentioned Administrative Case No. 97-05.*

*"1. EDRALIN D. BONGAY was appointed as Executive Assistant I in the office of the Sangguniang Panlalawigan of Apayao, per his appointment letter dated July 28, 2001. The same was, however disapproved on September 5, 2001 by Director DOLORES B. BONIFACIO of the Civil Service Commission, Cordillera Administrative Region, Baguio city (CSC-CAR).xxx*

#### GROUNDS

**"1. THE CSC-CAR AND ITS DIRECTOR DOLORES B. BONIFACIO, BY DISAPPROVING EDRALIN D. BONGAY'S APPOINTMENT AS EXECUTIVE ASSISTANT I IN THE OFFICE OF THE SANGGUNIANG PANLALAWIGAN OF APAYAO AND BY DISQUALIFYING HIM PERPETUALLY FROM ENTERING GOVERNMENT SERVICE, HAVE DEPRIVED HIM OF HIS CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW AND EQUAL PROTECTION OF LAW.**

**"2. THE CSC-CAR AND ITS DIRECTOR DOLORES B. BONIFACIO DISREGARDED THE COURT OF APPEALS' DECISION NULLIFYING AND SETTING ASIDE THE CSC DECISIONS/RESOLUTIONS IN 'ADMINISTRATIVE CASE NO. 97-05 ENTITLED NERIO P. DIZA AND EDRALIN D. BONGAY VS. CIVIL SERVICE COMMISSION, NAMELY, (1) RESOLUTION NO. 000842 DATED MARCH 29, 2000, WHICH AFFIRMED THE DECISION DATED OCTOBER 14, 1999 OF THE CIVIL SERVICE COMMISSION – CORDILLERA ADMINISTRATIVE REGION, and (2) RESOLUTION NO. 001691 DATED JULY 21, 2000 WHICH DENIED THE MOTION FOR RECONSIDERATION THEREOF."**

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*"1.a) As to the Order dated September 5, 2001 (Annex 'B'): The fact that no certification of finality has been issued by the Clerk of Court of the Court of Appeals of its Decision in CA-G.R. SP No. 60440 does not justify the CSC-CAR and Director BONIFACIO in still implementing its decision/resolution of this Honorable*

*Commission which had been nullified and set aside by the Court of Appeals. There is, in law, no more order of disqualification to speak of. Furthermore, the lack of certificate of finality of the CA decision can also be used with equal force, to prevent the implementation of the 'disapproval' and 'disqualification' decision of the CSC-CAR because it has not become final by virtue of Court of Appeals. The said CSC-CAR decision is not immediately executory and the right of BONGAY to be presumed innocent should still be observed. After all, BONGAY was cleared of any criminal liability by the Baguio City Prosecutor's Office as stated above.*

*"1.b) As to the Decision dated march 112, 2002 (Annex "d"): The perpetual disqualification imposed upon BONGAY from entering government service is without any justification and deprives him of his constitutional right to due process of law and equal protection of the law. BONGAY is qualified for the job to which he has appointed. When the CSC-CAR and its Director BONIFACIO disapproved his appointment and further declared him perpetually disqualified from entering the government service, they denied him his rights of due process of law and equal protection of the law. In so doing, they violated his constitutional rights which is actionable under Article 32 (6) & (8) of the Civil Code. It is very evident,, if not clear that the assailed actions of the CSC-CAR and Director BONIFACIO are arbitrary and despotic. There was no justifiable reason for them to disapprove BONGAY's appointment to which he qualified, or to perpetually disqualify him or to disqualify him from entering government service.*

*"2. Due process is a guarantee against any arbitrariness on the part of the government and its officers and employees. If the enjoyment of his rights is conditioned on an unreasonable requirement, as in this case, due process is violated. Whatever be the source of such rights, be it the Constitution itself or merely a status, its unjustifiable withholding would be violation of due process xxx*

*"WHEREFORE, Appellant EDRALIN D. BONGAY respectfully prays that the Honorable Commission set aside and nullify the assailed Order and Decision of the CSC-CAR and Director DOLORES B. BONIFACIO xxx and approve appellant BONGAY's appointment as Executive Assistant in the office of the Sangguniang Panlalawigan of Apayaosxxx"*

Records show that in a Decision dated October 14, 1999, Edralin D. Bongay and Nerio P. Diza were found guilty of Dishonesty and Falsification of Public Documents by the CSC-CAR relative to the examination irregularity committed during the July 14, 1996 POI Examination held in Baguio City. Consequently, respondents who were not government personnel were imposed accessory penalties of perpetual disqualification from entering the public service and taking government examinations in the future.

Aggrieved by the CSC-CAR decision, Bongay and Diza appealed their case before the Commission Proper. In CSC Resolution No. 00-0842 dated March 29, 2000, the Commission dismissed appellants' appeal. Thereafter they filed a motion for reconsideration but the same was denied in CSC Resolution No. 00-1691 dated July 21, 2000.

Not contented, appellants filed before the Court of Appeals a Petition for the Review of CSC Resolutions No. 00-0842 and 00-1691, docketed as CA – G.R. SP No. 60440.

In its decision dated March 15, 2001, the Court of Appeals, through its Thirteenth (13th) Division, granted the said petition of Diza and Bongay, and nullified the subject CSC resolutions. The Commission moved for the reconsideration of the decision dated March 15, 2001 of the Honorable court of Appeals, but the same was denied in a Resolution dated June 19, 2001.

On September 10, 2001, the Commission filed a Petition for Certiorari under Rule 65 before the Supreme Court. While the said petition is still pending before the Supreme Court, the Local Government of Apayao issued an appointment to Edralin D. Bongay as Executive Assistant I, Sangguniang Panlalawigan Office on July 23, 2001.

On August 4, 2001, the said appointment was forwarded to CSC-CAR for attestation. On September 5, 2001, however, the CSC-CAR disapproved the appointment of Bongay on the ground that no certificate of finality of judgment was submitted. Bongay moved for reconsideration but the same was denied in a Decision No. 02-080NDC dated March 12, 2002.

Hence, this appeal.

The sole issue is whether the CSC-CAR is correct in disapproving the appointment of Bongay as Executive Assistant due to the pendency of a Petition for Certiorari under Rule 65 filed by the Commission.

It is imperative that certiorari as an original special civil action under Rule 65 must be distinguished from Certiorari as a mode of appeal under Rule 45. In an original special civil action for certiorari under Rule 65, unless a writ of preliminary injunction or a temporary restraining order shall have been issued, it does not stay the challenged proceeding. An appeal by certiorari under Rule 45 on the other hand, stays the judgment, award or order appealed from.

Rule 45 of the 1997 Revised Rules of Court was clarified by Justice Florenz D. Regalado in his ***Remedial Law Compendium, Volume I, 1997 edition*** which states that:

*"d. Appeal by certiorari stays the judgment, award or order appealed from. An original action for certiorari, unless a writ of preliminary injunction or temporary restraining order shall have been issued, does not stay the challenged proceeding." (Underscoring ours)*

Also, in point is **Section 7, Rule 65 of the 1997 Revised Rules of Court** which states, as follows:

*"Sec. 7. Expediting proceedings; injunction relief. – The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction*



has been issued against the public respondent from further proceeding in the case." (Emphasis supplied)

Since the Commission filed a Petition for Certiorari under Rule 65 before the Supreme Court, it will not operate to bar the execution of the decision of the Court of Appeals in the absence of a restraining order or injunction issued by the Supreme Court. Thus, the subject CSC Resolutions imposing the accessory penalties of perpetual disqualification from joining the public service and from taking government examinations in the future upon Bongay and Diza can no longer be executed since it has already been nullified and set aside by the decision of the Court of Appeals. It would have been different if the action filed is a Petition for Review on Certiorari under Rule 45 as it is an appeal available to it and said appeal operates to hold in abeyance the execution of the order of the Court of Appeals, the absence of a certificate of finality, notwithstanding.

In fine, since there is no restraining order or injunction issued by the Supreme Court, Bongay can now join the government service unless there is a finality of judgment setting aside the decision dated March 15, 2001 and June 19, 2001 promulgated by the Court of Appeals in the case of Nerio P. Diza and Edralin D. Bongay vs. Civil Service Commission, CA-G.R. SP No. 60440 and affirming CSC Resolution No. 00-0842 dated March 29, 2000 and CSC Resolution No. 00-1691 dated July 21, 2000.

In light of the foregoing, the Commission finds the appeal impressed with merit.

**WHEREFORE**, in view of the foregoing, the appeal of Edralin D. Bongay is hereby **GRANTED**. Accordingly, the decisions dated September 5, 2001 and March 12, 2002 of CSC-CAR disapproving Bongay's appointment as Executive Assistant and denying his motion for reconsideration are hereby reversed and set aside. The CSC-CAR is hereby directed to approve the appointment of Edralin D. Bongay as Executive Assistant I, Office of the Provincial Governor, Local Government of Apayao, Kabugao, Apayao in accordance with this resolution and Civil Service Law, Rules and Regulations.

Quezon City, **OCT 08 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