ANCERO, Alex N.
JADULCO, Merna S.
EBAJO, Eduardo L.
CALDERON, Benjamin E.
EBAJO, Huberto L.
MARCELLONES, Hector R.
VILLENA, Romeo J.
ROSTATA, Reynaldo B.
APURA, Gershon E.
NORIO, Gavino D.
DE LA CRUZ, Ma. Isolde
PETARGUE, Romeo C.
MEDALLO, Elino R.
BOCA, Amencio E.
ERRO, Adriano
ARCIPE, Rodolfo
GAVIOLA, Teodora M.
PRUDENCIADO, Rudito P.
CANONOY, Anastacio M.
BAES, Gina B.
SANTOLORIN, Victor A.
SALONOY, Glicerio
MULLES, Jr., Jose
REDOBANTE, Rodrigo
ALCOBER, Rolando
Re: Termination from the Service; Reorganization; Reinstatement in the Service; Claim of Benefit under CSC Resolution Nos. 00-2617; 00-2624; 00-2629 and 00-2659; Petition for Review
x----------x

RESOLUTION NO. 021387

Alex N. Ancero, Population Officer II and twenty four (24) other employees of the Provincial Government of Biliran,

through counsel, filed a petition for review of Civil Service Commission - Regional Office (CSCRO) No. VIII Order No. 02-049 dated April 23, 2002. In said Order, the CSCRO No. VIII denied Ancero's, *et al*'s appeal from the letter of Atty. Bonifacio V. Curso, Provincial Legal Officer, same Province dated August 30, 2001 which denied their request for reinstatement and payment of back salaries.

The names and positions of the twenty-five (25) employees are, as follows:

NAME	**POSITION**
1. Alex N. Ancero	Population Officer II
2. Merna S. Jadulco	Clerk III
3. Eduardo Ebajo	Security Guard I
4. Benjamin Calderon	Security Guard I
5. Huberto Ebajo	Prison Guard III
6. Hector D. Marcellones	Community Affairs Assistant I
7. Romeo J. Villena	Carpenter I
8. Reynaldo B. Rostata	Community Affairs Assistant I
9. Gershon Apura	Planning Officer V
10. Gavino D. Norio	Prison Guard I
11. Ma. Isolde de la Cruz	Health Education and Promotion Officer
12. Romeo Petargue	Security Guard I
13. Elino R. Medallo	Heavy Equipment Operator I
14. Amencio Boca	Community Affairs Assistant I
15. Adriano Erro	Utility Worker I
16. Rodolfo M. Arcipe	Mechanic III
17. Teodoro M. Gaviola	Watchman I
18. Rodito P. Prudenciado	Watchman II
19. Anastacio Canonoy	Assistant Provincial Warden
20. Gina B. Baes	Bookbinder I
21. Victor A. Santolorin, II	Photographer
22. Glicerio Salonoy	Driver II

23. Jose Mulles, Jr.	Engineer II
24. Rodrigo Redobante	Driver I
25. Rolando Alcober	Engineering Assistant

For brevity, the appellants shall be referred to as Ancero, *et al.*

The pertinent portions of the assailed Order read, as follows:

"The records failed to show that Ancero, et al. questioned within the reglementary period their separation from the service before the proper appointing authority, then to the Commission, or with the regular courts. Neither is there any proof that appellants pursued to their final conclusions whatever actions they might have initiated to have themselves restored to their former position. Their case was brought to the attention of the Commission only when they filed the present appeal on October 4, 2001 or after the lapse of more than two (2) years from the date of their separation on February 11, 1999.

"Thus, for the appellants' failure to assert their rights to their respective positions within a period of one year from their separation, their claims are now barred by laches.

*"**WHEREFORE,** xxx, the instant appeal of xxx Ancero, et al. is hereby dismissed. Accordingly, the opinion of the Provincial Government of Biliran dated August 30, 2001 is affirmed."*

In their appeal, Ancero, *et al.* aver, as follows:

"1. Petitioners' action for reinstatement and payment of backwages and other benefits after more than two years from their illegal termination, is not barred by laches.

---

x x x

"In support of the conclusion that laches has set in, the same assailed decision cited the jurisprudence in Isberto vs. Raquiza et al., 67 SCRA 117 and the ruling in Tiatco vs. Civil Service Commission, 216 SCRA 749. Unfortunately and with due respects, the citations do not apply to the present case on review. In JUAN R. ISBERTO vs. ANTONIO V. RAQUIZA x x x, the petitioner was able to secure a temporary appointment with the same salary but he wanted to revert back (sic) to his permanent appointment after the lapse of one year. In BENITO A. TIATCO vs. THE CIVIL SERVICE COMMISSION and THE DEPARTMENT OF HEALTH, G.R. No. 100294. December 21, 1992, the case involved a demotion in a reorganization where the petitioner filed the question of his demotion after one (1) year and (5) months.

"The High Tribunal applied the doctrine on laches because the petitioners in Isberto and Tiatco filed after one year their claim to a previous position after accepting another position. Even the Respondent Province of Biliran misapplied the doctrine on laches by citing the ruling of the Supreme Court in Maza vs. Ochave, G.R. No. L-22336, May 23, 1967, 20 SCRA 142, 145. In the Maza case, there was a valid abolition of an office after the resignation of petitioner Mercedes de la Maza. After one year, she was claiming her rights to a validly abolished position.

x x x

"Petitioners, on the contrary, rely heavily on the ruling of the Supreme Court by applying the leading case in Cruz v. Primicias, Jr. En Banc, G.R. No. L-28573, June 13, 1968, (23 SCRA 998), involving the massive termination of employees in the Province of Pangasinan, where the High Tribunal ruled as follows:

> *`It is a well-known rule also that valid abolition of offices is neither removal nor separation of the incumbents (Manalang vs. Quitoriano, 94 Phil. 903; Rodriguez vs. Montemayor, 94 Phil. 964; Castillo vs. Pajo, 103 Phil. 515).* ***And, of course, if the abolition is void, the incumbent is deemed never to have ceased to hold office****.' (Underscoring and emphasis are supplied)*

x x x

"The issue on the timeliness petitioners' request for reinstatement is further buttressed in Violeta Aldovino et al., vs. Secretary Rafael Alunan III, et al., G.R. No. 102232, En Banc, March 9, 1994 which apply squarely to employees victimized by illegal termination in an illegal reorganization. The case succinctly described the distinction between prescription and laches as they apply to high – handed violation of the right to employment of government employees when the Court categorically stated that:

x x x

"Petitioners' contention from the very outset is that their claims have not prescribed because they were illegally terminated so that they are incumbents and that they are ***deemed never to have ceased to hold office****, applying the above-cited ruling in Cruz vs. Primicias. Thus, there really is no prescription for their appeal for reinstatement.*

"The initial appeal for reinstatement is very patent in the allegations of petitioner and the designation of their appeal. Even if the law on prescription is applied to petitioners' claims, the tolling of the period is still in favor of petitioners who may avail of the periods for an action for reinstatement applying the above-cited case in Aldovino vs. Alunan III where the prescriptive period for reinstatement in illegal termination maybe brought within four years when the Supreme Court ruled that:

`Considering that they ultimately took this recourse after four years, it would be safe to presume that the decisions of the DOLE and the CSC were adverse to them; they took no further action thereon, and allowed the decisions to become final.'

"Since the action of petitioners is for reinstatement, it is then considered as an action upon an injury to the rights of petitioners where Article 1146 of the Civil Code finds application which provides:

`The following actions must be instituted within four years:

`(1) Upon an injury to the rights of the plaintiffs;

`(2) x x x'

"The position of petitioners is adopted from the majority ruling in Aldovino vs. Alunan III which is clarified in the opinion by now Honorable Chief Justice Davide in Aldovino vs. Alunan III where he said as follows:

`An illegal dismissal is an injury to a person's rights. Accordingly, pursuant to Article 1146 of the Civil Code, an action for reinstatement and back salaries must be filed within four years from the accrual of the cause of action or from the illegal dismissal.'

x x x

"2. The various decision of the Honorable Commission in Resolution No. 002617 x x x, Resolution No. 002624 x x x and Resolution No. 002659 x x x where the Honorable Commission declared as illegal the termination from the service of the twenty (20) other provincial employees apply to herein petitioners.

---

x x x

"The Honorable Commission, after the factual findings that Former Governor Parilla through the Placement Committee evaluated and assessed the qualifications only of those who were re-appointed. He and the Placement Committee could not present evidence that those who were terminated or separated where also considered for possible re-employment. Thus, on 06 March 2001, the Honorable Commission in Resolution No. 010530 denied the motion for reconsideration filed by Former Governor Danilo M. Parilla by categorically ruling that:

`On this premise, CSC Resolution No. 00-2617 validly declared that there is ***absolutely no basis for Governor's action in severing*** *the employment of Corpin, et al., as there was no*

evidence showing that they were not qualified or ill-equipped to perform the functions of the office to which they enjoy the preferential right of re-appointment.' (Emphasis and underscoring are supplied)

"The petitioners included in their appeal the denial of their right to due process when their qualification and performance were neither assessed nor given due consideration by the Placement Committee and by Former Governor Parilla in the process of selection and appointment to the new staffing pattern and/or plantilla in the reorganization of Biliran Province.

"Respondent Province of Biliran in opposing the appeal, maintained the position that herein petitioners cannot invoke the above-cited resolutions for the `simple reason that they are not parties therein'. In support to respondent's position, the jurisprudence in of Hollero vs. Court of Appeals, 11 SCRA 310 and Plata vs. Yatco, 12 SCRA 718 are cited.

"With due respects to Respondent Province of Biliran, the citations are completely misplaced. The Hollero case refers to the award of a piece of land to a person who is not a party to the case. The Plata case is, likewise, misplaced because it applies to an illegal detainer case where the action against the husband cannot affect the possession of the property by the wife. There is zero relevance of the two cited cases to situations involving illegal termination or illegal separation of employees who seek reinstatement.

"Petitioners, in their contention that they stand to gain by the resolutions promulgated by the Honorable Commission ordering the reinstatement the twenty provincial employees, rely on the jurisprudence laid down in Cristobal vs. Melchor, L-43203, 29 July 1977; 78 SCRA 175 and 183, where the Court citing the statement of Justice Brandeis stated as follows:

x x x

`Where the cause of action is of such a nature that a suit to enforce it would be brought on behalf, not only of the plaintiff, ***but of all persons similarly situated, it is not essential that each such person should intervened (sic) in the suit brought in order that he be deemed thereafter free from the laches which bars those who sleep on their rights****.' (250 U.S. 483, 39 S. Ct. 536, 63 L. Ed. 1099, 1106-1107; Italics supplied. See also Overfield vs. Pennroad Corporation, et al., 42 Fed. Supp. 586, 613). (Emphasis and underscoring are supplied)*

x x x

"3. The unanimous withdrawal of support by the Sangguniang Panlalawigan of Biliran Province by promulgating Resolution No. 39, series of 2000 withdrawing support from Resolution No. 92, series of 1998, nullified the legal basis of the removal/separation of petitioners from the service.

"The decision under review did not rule on the issue on the lack of legislative fiat by the Sangguniang Panlalawigan. The withdrawal of support is expressed in Resolution No. 39, series of 2000 which was unanimously approved after the privilege speech by Honorable Vice Governor Carlos Chan who condemned the implementation of the reorganization by Former Governor Parilla when he said:

> *`So my friends, my colleagues I therefore say that **I firmly believe that this particular reorganization should be condemned as well**. For the very reasons that I find out and I gathered that the implementation of the reorganization which we all approve and hope to come up was implemented in bad faith.' (Underscoring and emphasis are provided).*

"Respondent Biliran Province in their comments by way of adopting their Memorandum dated October 5, 2001, did not question the existence and due execution of the Minutes and Resolution No. 39, series of 2000. Hence, the copies of the Minutes (ANNEX `M' in the appeal) and Resolution No. 39 (ANNEX `L') are adopted as attached in the appeal now with Regional Office No. 8, Candahug, Palo, Leyte.

"However, respondent argued that the Sangguniang Panlalawigan in promulgating Resolution No. 39 did not repeal nor withdrew Resolution No. 102, series of 1998 because it only condemned the manner by which the reorganization was implemented.

x x x

"The petitioners, by this petition for review, are pointing out to the Honorable Commission that the very source of the power to reorganize, namely, the Sangguniang Panlalawigan, has declared the implementation to be illegal. For reason of illegality in the implementation of the reorganization, petitioners are seeking to be reinstated.

"The removal or separation of petitioners was illegal mainly because it violated their constitutional right to due process. In effect, the implementation was not in accord with the constitutional guarantees affording tenure to permanent employees in government. x x x

"Furthermore, Respondent Province of Biliran concluded that the reorganization resolution was never repealed nor withdrawn because Resolution No. 39, series of 2000 was not signed by the Governor of Biliran Province as it was never submitted to him for signature. This claim is flimsy and a mere assertion. There is no evidence presented by Respondent Province to prove that it was not signed by Former Governor Parilla because it was not submitted to him."

x x x

Records show that on July 20, 1998, the Sangguniang Panlalawigan of Biliran passed Resolution No. 92 which authorized Governor Danilo M. Parilla to undertake a total reorganization of the provincial government. On November 4, 1998, Executive Order No. 98-07, Series of 1998 was signed by the governor to implement the reorganization. Except for the elective positions and the position of Provincial Treasurer, all positions therein were declared abolished.

As a result of the reorganization, it appeared that a total of seventy three (73) employees appointed under permanent status were separated and twenty four (24) employees previously appointed under casual status were reappointed in the new staffing pattern.

Of those separated from the service, twenty (20) employees appealed before the Commission namely: Estelita Corpin, Miguel Sanosa, Gideon Batiquin, Rene Barantes, Salvador Morillo, Eladio Gavilo, Robert Ramirez, Noel Regir, Edelito Montes, Jigie Nuijts Amelia V. Brosoto, Alfonso Morillo, Pascual Mulles, Gemma Regla, Noel D. Dela Cruz; Sarah Montes, Remegio dela Cruz, Manuel Atok, Miguel Moncada and Teresita Ty.

In the interim, the term of office of Governor Parilla expired. In his place, Rogelio J. Espina was elected and installed as the new Governor of the Province of Biliran. Correspondingly, a new set of members of the Sangguniang Panlalawigan was also elected.

On May 5, 2000, the Office of the Sangguniang Panlalawigan (SP), under the new administration, issued Resolution No. 39 entitled *"A Resolution Declaring a Withdrawal of Support to the Reorganization of the New Organizational Structure and Staffing Pattern of the Provincial Government of Biliran"* wherein the members unanimously withdrew their support to Sangguniang Panlalawigan Resolution No. 92, Series of 1998 which authorized former Governor Parilla to reorganize the provincial government.

The SP Resolution is quoted *en toto*, as follows:

> *"**WHEREAS,** the august body through Resolution No. 92, series of 1998 approved the New Organizational Structure and Staffing Pattern of the Provincial Government of Biliran;*
>
> *"**WHEREAS,** it was observed that there was an alleged wrong in the implementation of the reorganization especially on the preferences of re-employment of the terminated or separated employees;*
>
> *"**WHEREAS,** there was an alleged delay or no immediate renumeration or the giving or releasing of separation and/or terminal pay to those employees who were separated as an effect of the reorganization;*
>
> *"**WHEREAS,** the august body had created an oversight committee to investigate whether or not the implementation of the reorganization was correct or not;*

*"**NOW, THEREFORE;***

"On motion of Hon. Carlos Chan, Sr., duly seconded by Hon. Edgar Igano, Be It,

*"**RESOLVED,** to withdraw, as it is hereby **WITHDRAWN,** the support of the august body the New Organizational Structure and Staffing Pattern of the Provincial Government of Biliran or the Reorganization as embodied in SP Resolution No. 92, series of 1998.*

*"**RESOLVED further,** to furnish a copy of this resolution to the parties concerned for their information and guidance.*

*"**CARRIED Unanimously.***

"CERTIFIED CORRECT:

*"**CRESENCIO S. VICTORIA, JR.***
"Secretary to the
"Sangguniang Panlalawigan

"ATTESTED BY:

*"**HON. ROMULO V. BERNARDES***
"Majority Floor Leader
"Presiding Officer
"Pro Tempore"

To determine the intent of the SP when it issued the Resolution, the pertinent excerpts of the deliberation thereof are also reproduced, as follows:

"Hon. Charlie Chan, Vice-Governor delivered his privilege speech to wit:

`I stand before you today because I find it worth necessary to speak out of my conscience and out of my own desire to really express what I feel and what I believe I should do being a public servant of itself and being a member of the Sangguniang Panlalawigan body. You may remember that in the first three months since the commitment for the job here, you talk and deliberated and I presided over the matter regarding that request by the governor to reorganize structurally the staffing pattern of the Province of Biliran. And may be during that time some of you remember so if not the majority so remembers that I personally somehow manifested that I personally also dislike

and honestly disapproved that particular reorganization move but somehow being only the presiding officer submitting for the deliberations of the members, I did not actually participated because I firmly believe then that the reorganization per se was valid. And we were hoping that it was only for the best for our people and our constituents. Only to find out my dear friends and colleagues that recently I've been gathering, receiving complaints and reports from several sector of our society condemning that particular reorganization. Condemning in the sense that the reorganization had actually come up with disadvantages and given for a deservice to our people than the positive aspects. So my friends, my colleagues I therefore say that I firmly believe that this particular reorganization should be condemned as well. For the very reasons that I find out and I gathered that the implementation of the reorganization which we all approve and hope to come up was implemented in bad faith. I say that it was implemented in bad faith for a number of reasons: One, I believe that the implementation, the preferences of re-employment first, new employees were given preference over terminated or separated employees with equal qualifications or rather I gathered. Two, that there is no immediate recommendation or giving or releasing of the separation and or terminal pay of those employees who were separated or terminated as an effect of that reorganization. Another reason is that, I gathered that there was somehow some kind of compulsion that all those employed or rather there were employees that were terminated who were ask to sign waivers, or waiver to appeal to restatement before being given any termination or separation pay. x x x'

"Hon. Edgar Igano asked whether he heard it right that nobody among the terminated employees of the province have been given a separation pay.

"Hon. Carlos Chan, Sr. corrected the gentleman's statement. He clarified that he did not say nobody but he only said that there was no immediate release of the separation pay.

"Hon. Edgar Igano asked on how many employees have been given a terminal pay.

"Hon. Carlos Chan, Sr. answered that he had no actual records but he knew that that (sic) there were subjects who went as far as filing cases in the Ombudsman.

"Hon. Edgar Igano stressed that he remembered that the august body appropriated the amount of more than P8 M as support to those who were terminated which shall be given a separation pay. He pointed out that if the report was true, then, there must be something wrong with the implementation.

"Hon. Carlos Chan, Sr. stressed that the gentleman from Bunga was correct that there was an appropriation to that effect.

x x x

"Hon. Edgar Igano clarified that the motion was to withdraw support on the reorganization because the body cannot declare it in bad faith. He explained that it was just a manifestation of withdrawing support. Anyway, he added that there were cases who were already filed in court and the resolution was just a matter of manifestation.

"Hon. Rosario Calderon manifested that he was very glad to hear the speech of the vice-governor and relinquishing the chair to give the members the confirmation that the reorganization of the Province of Biliran was really in bad faith because retireable (sic) permanent employees were terminated and some position were abolished without due process and were not given any opportunity to re-apply most especially those who were identified supporters of the opposition party of the government. x x x He believed that the body cannot revoke the said resolution thus, he opted to fully concur with the idea of withdrawing the support of the august body on the reorganization because it was implemented in bad faith. He later asked the members to fully support the withdrawal since the members were also guilty publicly of illegal termination because of the support accorded to the resolution. He added that it should be on record that during the term of the members, the people should know that they did not have done wrong to the families who were affected by the reorganization. He finally said that they were mislead by the governor into believing that there were legal basis on the said issue without anticipating that it would be done in bad faith.

x x x

"Hon. Carlos Chan, Sr. explained that the reorganization per se was not wrong and it was valid. He added that it was the very reason why most members agreed that it cannot just be revoke. He pointed out that what he was saying was only the implementation.

"Hon. Enrico Uyvico asked whether the vice-governor accepted the idea that the reorganization was in bad faith.

"Hon. Carlos Chan, Sr. stressed that there was bad faith as far as the actions were concern.

"Hon. Edgar Igano explained as a rejoinder that the reorganization per se was not illegal. In fact, he added that it was provided under the law and it was precisely the reason why they approved the resolution with the belief that the governor shall do it effectively for the benefit of the provincial government. He explained that one of the reasons for the support of the withdrawal was the non-payment up to this time of separation pays to the affected employees."

Subsequently, the Commission resolved the appeal filed by the twenty (20) employees. It declared the implementation by the Sangguniang Panlalawigan of the reorganization not in order and directed the reappointment of the following employees

in the service and the payment of back salaries of Estelita Corpin, Miguel Sanosa, Gideon Batiquin, Rene Barantes and Salvador Morillo (CSC Resolution No. 00-2617 dated November 21, 2000); Eladio Gavilo, Robert Ramirez, Noel Regir, Edelito Montes and Jigie Nuijts (CSC Resolution No. 00-2624 dated November 21, 2000); Amelia V. Brosoto, Alfonso Morillo, Pascual Mulles, Gemma Regla, Noel D. Dela Cruz (CSC Resolution No. 00-2629 dated November 22, 2000); Sarah Montes, Remegio dela Cruz, Manuel Atok, Miguel Moncada and Teresita Ty (CSC Resolution No. 00-2659 dated November 28, 2000).

Governor Parilla moved for the reconsideration therefrom but the same was denied by the Commission in CSC Resolution No. 01-0530 March 6, 2001 which reiterated the order to reappoint Corpin, *et al.* in the new staffing pattern and directed the Provincial Treasurer to cause the payment of their back salaries.

In view of the Commission's ruling in favor of Corpin, *et al.*, the Petitioners herein, Ancero, *et al.* represented by Atty. Antonio A. Fabilar, requested the legal opinion of CSCRO No. VIII and the full implementation of CSC Resolution No. 01-0530. In response thereto, CSCRO No. VIII merely quoted Section 80 of the Uniform Rules on Administrative Cases in the Civil Service on the Execution of Decisions and CSC Resolution No. 00-1240 on the finality and executory character of CSC decisions.

Similarly, on account of the positive decision by the CSC on the matter of the separation of Corpin, *et al.*, the denial of the motion for reconsideration of Governor Parilla by the CSC, the compliance by the provincial government to implement the Resolution and the withdrawal of support expressed by the SP Members to Resolution No. 98, Atty. Abilar requested Atty. Bonifacio V. Curso, Provincial Legal Officer, of Biliran Province, to reinstate in the provincial government Ancero, *et al.* and pay them backwages similar to those enjoyed by Corpin, *et al.* The request was denied by Atty. Curso in his letter dated August 30, 2001. In ruling so, Atty. Curso declared that the termination of Ancero, *et al.* has attained finality because they failed to seasonably appeal their termination and they also abandoned their offices. Pertinently, the letter reads, as follows:

> *"1. **Their termination, even assuming it to be illegal, is now final.** The records show that they were served with notices of non-reappointment or termination from the service as early as January of 1999. Yet, they did not avail themselves of the remedy of appeal therefrom provided in Sec. 7 and 8 of R.A. No. 6656. The provision of these sections were elaborated by the Rules On Government Reorganization promulgated by the Civil Service Commission (pursuant to Sec. 12 of the said law), to wit:*
>
> > *`Section 18. Appeal to the Appointing Authority. An officer or employee aggrieved by the appointments made may file an appeal with the appointing authority within ten (10) days from the last day of posting of the appointments by the Personnel Officer. Any officer or employee whose services were terminated may also appeal to the appointing authority within ten (10) days from receipt of his notice of termination.*
>
> *x x x*

`Clearly, then, termination or dismissal of your clients, even assuming it to be illegal, is now final and irrevocable by the refusal or failure of your clients to appeal therefrom. The law gave them a remedy but they refused or failed to avail themselves of it.'

*"2. **Your clients have abandoned their offices.** The only other remedy available to your clients was to file a petition for quo warranto for reinstatement within the period of one (1) year from their alleged illegal dismissal. But this again they failed to do. Thus the Supreme Court ruled:*

x x x

"In the case of your clients, they received in January 1999 their notice of non-reappointment (dismissal) which became effective on February 11, 1999. Yet it took them until this month, or a period of more than two and half (2 ½) years, to request for reinstatement. Undoubtedly, therefore, they are now in law considered to have abandoned their right to be reinstated, assuming that they had it in the first place."

An appeal was taken from said adverse opinion before the Commission Proper. In Order dated February 7, 2002, the Commission referred the appeal to the CSCRO No. VIII.

In CSCRO No. VIII Order No. 02-049 dated April 23, 2002, the Regional Office upheld the ruling of Atty. Curso. In denying the appeal of Ancero, *et al.*, it declared that the employees failed to appeal the termination of their services within the reglementary period provided for under **Republic Act No. 6656 (An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization)** as it filed the appeal after the lapse of more than two (2) years from the time they received the notice of termination. Such being the case, the Regional Office ruled that laches has already set in.

The instant petition for review shall be treated as an appeal.

Ancero, *et al.* claimed their action for reinstatement and payment of backwages and other monetary benefits is not barred by laches and that the Supreme Court rulings in the cases of **Isberto vs. Raquiza, *et al.*** and **Tiatco vs. CSC** relied upon by the Regional Office do not find application in their case. The former case is about the petition of Isberto for his reversion to his former position after the lapse of one (1) year while the latter involved a demotion in a reorganization where the petitioner questioned such demotion after one (1) year and five (5) months. On the other hand, they declared that Ancero, *et al.* rely heavily on the decision of the Supreme Court in the case of **Cruz vs. Primicias** wherein the High Court ruled that when the abolition of an office is void, the incumbent thereof is not deemed to have ceased to hold office. Thus, they maintained that they never ceased to hold office.

Ancero, *et al.* asserted that since the Supreme Court found the ruling in the case of **Cruz vs. Primicias** relevant in the cases of **Felix vs. Buenaseda** and **DTI vs. CSC, *et al.*** involving illegal separation and illegal removal of civil servants with security of tenure, said ruling should also apply to them.

As regards the timeliness of their appeal, the appellants cited the case of Aldovino, *et al.* vs. Alunan III decided by the Supreme Court relating to the illegal termination of employees as a result of an illegal reorganization. In the said case, the appellant's averred that the Court differentiated the principle of laches and prescription and ruled that the prescriptive period for reinstatement in illegal termination is four (4) years based on Article 1146 of the Civil Code for it is considered an injury to a person's right.

The appellants similarly claimed that CSC Resolution Nos. 00-2617, 00-2624, 00-2629 and 00-2659 which declared the non reappointment of Corpin, *et al.* resulting in the termination of their services during the reorganization of the Provincial Government of Biliran find application to their case. Anchoring their claim on the Commission's findings in favor of Corpin, *et al.* who were never shown to have been assessed by Governor Parilla before he effected the separation of Corpin, *et al.* Ancero, *et al.* argued that they also questioned the denial of their right to due process of law when the former Governor failed to evaluate and assess their qualifications in the appeal they filed before the Regional Office questioning the letter dated August 30, 2001 of Atty. Curso. Accordingly, the same was not given due consideration.

In contradicting Atty. Curso's opinion that herein appellants are not parties to the CSC Resolution invoking the ruling in the Supreme Court cases of **Hollero vs. Court of Appeals** and **Plata vs. Plata vs. Yatco,** Ancero, *et al.* declared that the former case refers to an award of a piece of land to one who is not a party to the case and the latter to an illegal detainer case, thus, appellants asserted that the ruling in said cases is not relevant in this case.

On the other hand, the appellants rely on the ruling of the Supreme Court in the case of **Cristobal vs. Melchor** citing the United States Supreme Court in **Southern Pacific vs. Bogert.** The United States Supreme Court ruled that *"when the cause of action is of such nature that a suit to enforce it would be brought on behalf, not only of the plaintiff, but all persons similarly situated, it is not essential that each such person should intervened (sic) in the suit brought in order that he be deemed thereafter free from the laches which bars those who sleep on their rights".*

Finally, the appellants banked on SP Resolution No. 39, Series of 2000 withdrawing support to SP Resolution No. 92, Series of 1998. They pointed out that because the SP, the very source of power to reorganize, declared that the implementation thereof was illegal, they are now seeking reinstatement. They also contended that the argument of Atty. Curso that the Resolution No. 92 was neither withdrawn nor repealed because Resolution No. 39 was not signed by the Governor Parilla is flimsy and a mere assertion.

Against this backdrop, the sole issue to be resolved is whether the request of Ancero, *et al.* for their reinstatement in the Provincial Government of Biliran and payment of back salaries should be granted.

The issue is resolved in the negative.

The right to assert reinstatement in the service and payment of back salaries as a relief from the termination from the service of Ancero, *et al.* has already prescribed. Under Section 18 of the Rules on Government Reorganization (Rules, for

brevity), an employee separated from the service as a result of a reorganization may assail the validity thereof *via* an appeal to the appointing authority within ten (10) days from receipt of the notice of termination. Pertinently, the Section reads, as follows:

> *"SECTION 18. Xxx Any officer or employee whose services were terminated may also appeal to the appointing authority within ten (10) days from receipt of his notice of termination."*

In the case at bar, there is no showing that the appellants interposed an appeal before Governor Parilla relative to their non-reappointment in the new staffing pattern within a period of ten (10) days from their receipt of Notice of Termination in January, 1999. On the other hand, the records clearly indicated that the appellants sought their reinstatement and payment of back salaries only on October 5, 2001 after the Commission ordered the reinstatement of Corpin, *et al.* and payment of their back salaries. Manifestly, the appeal is outside the prescribed period of ten (10) days and is likewise erroneous considering that it was filed before the Commission and not with the appointing authority.

Albeit, the elevation of an appeal before the Commission Proper is a recourse accorded under the Rules, which may be availed only when an appeal was initially had before the appointing authority and the employee concerned is dissatisfied with the decision pursuant to Section 19 thereof. The Section 19 provides, as follows:

> *"SECTION 19. Appeal to the Civil Service Commission.*
>
> *"(1) Any officer or employee who is still not satisfied with the decision of the appointing authority may further appeal within ten days from receipt thereof to the Civil Service Commission.*
>
> *"(2) xxx*
>
> *"(3) The Commission shall render a decision within thirty (30) days from the filing of the appeal. Its decision shall be final and executory."*

In other words, a prior appeal to the appointing authority is a condition precedent to an appeal before the Commission which is wanting in the appellants' case. In the absence of any previous decision on the matter, there is nothing for the Commission to review.

Assuming *en arguendo* that the appeal before the Commission Proper may be considered an appeal to the appointing authority, the same has similarly prescribed. Counting from the date the appellants received their Notice of Termination in January, 1999 up to the time the appeal was filed before the Commission Proper on October 5, 2001, a period of one (1) year and nine (9) months passed.

On this note, the principle that an appeal is a statutory right finds application in the appellants' appeal. The Commission reiterates the ruling of the Supreme Court in the case of **Ceniza vs. Court of Appeals (218 SCRA 390),** as follows:

"Suffice it to state that the period for filing an appeal is by no means a mere technicality law or procedure. It is an essential requirement without which the decision appealed from would become final and executory as if no appeal was filed at all. The right of appeal is merely statutory privilege and must be exercised only in the manner prescribed by, and in accordance with the provisions of law".

This is reiterated by the Supreme Court in the case of **Laza v. CA, 269 SCRA 654 cited in Antonio v. COMELEC, G.R. No. 135869 dated September 12, 1999,** that perfection of appeal in the manner and within the period laid down by law is not only mandatory but jurisdictional, to wit:

"x x x. This Court has, time and again, held that perfection of appeal in the manner and within the period laid down by law is not only mandatory but jurisdictional x x x."

The right to appeal one's separation from the service is explicitly provided for under the aforequoted Sections 18 and 19 of the Rules. It cannot be exercised one way or the other.

The four (4) issues raised by the appellants will now be passed upon.

As regards the first issue on the period of the right to file an action for reinstatement, there is merit in the contention of Ancero, *et al.* that the rulings of the Supreme Court in the cases of **Isberto vs. Raquiza, *et al.*** and **Tiatco vs. CSC** limiting the period for recovery of a position in the government to one (1) year are not applicable in the instant case. It is apparent that said cases do not relate to severance of employment by reason of a reorganization but rather dealt with the reversion and demotion to positions of the respective petitioners. Obviously, the rulings thereon are alien to the case at bar.

However, the Commission cannot accept the argument advanced by the appellants on the appropriateness of the decision laid down by the Supreme Court in **Cruz vs. Primicias (23 SCRA 998)** to their case. In the first place, the Supreme Court has made a finding and categorical ruling that the abolition of the offices of petitioners Cruz, *et al.* by the Provincial Government of Pangasinan was illegal. There is no such finding by the Supreme Court or this Commission relative to the abolition of appellant's offices to warrant the application of the said decision. Second, the case was decided on June 13, 1968 hence it was not decided under the provisions of Republic Act No. 6656 which was approved on June 10, 1988. Stated differently, there is neither similarity nor parallelism of facts between the appellants' case and the aforementioned ruling.

The appellant further contends the applicability of the Cruz ruling finds more strength because it was cited in the cases of **Felix vs. Buenaseda (G.R. No. 109704, January 17, 1995)** and **Department of Trade and Industry vs. The Chairman and Commissioners of the Civil Service Commission (G.R. No. 96739, October 13, 1973).** The argument does not deserve weight. In the former, the reorganization was pursued under the provisions of Executive Order No. 119 not R.A. No. 6656 and the cause of action of petitioner Felix is the termination of his service by the non-renewal of his appointment under temporary status which is not an issue in the case at hand. In the latter, the Supreme Court upheld the finding of the Commission on the illegality of the demotion of private respondent Taciana B. Espejo as a result of reorganization. In the case under review, there

was neither a ruling from the Supreme Court finding the termination from service of the appellants invalid nor was demotion put in issue.

The same findings hold true with regard to the second argument that the appellants' present claim is not barred by prescription or that laches has not set in and that the prescriptive period for reinstatement in illegal termination is four (4) years citing the case of **Aldovino vs. Alunan III (G.R. No. 102232, March 9, 1994).** On this argument, there is a need to distinguish prescription from laches. In the case of **Maneclang vs. Baun (cited in Cutanda, *et al.* vs. Cutanda, *et al.*, G.R. No. 109215 July 11, 2000),** the Supreme Court differentiated the two (2), as follows:

> *". . . While prescription is concerned with the fact of delay, laches is concerned with the effect of delay. Prescription is a matter of time; laches is principally a question of inequity of permitting a claim to be enforced, this inequity being founded on some change in the condition of the property or the relation of the parties. Prescription is statutory; laches is not. Laches applies in equity, whereas prescription applies at law. Prescription is based on fixed time, laches is not."*

Based on this distinction, the Commission holds and as earlier observed that prescription, not laches, is the proper ground for dismissing the present appeal. Article 1139 of the Civil Code of the Philippines provides that actions prescribe by the mere lapse of time fixed by law. The period fixed by RA No. 6656 as implemented under the Rules on Government Reorganization to question termination from the service arising from a reorganization is ten (10) days. Laches, therefore, as contended by the appellants as not having been set in, is irrelevant to the issue.

The appellants further insist that the present action has not prescribed anchoring their right on Article 1146 of the same Code which fixes the period of four (4) years within which to bring an action upon injury to the rights of the plaintiff. There lacks basis for the Commission to yield on the argument. The argument is debunked in the case of **Romualdez-Yap vs. Civil Service Commission and Philippine National Bank (225 SCRA 285)** wherein the Supreme Court categorically declared that the separation from the service due to the abolition of office in the implementation of valid reorganization is not an unjustifiable cause which results in injury to the rights of a person contemplated under the Article. Pertinently, the High Court pronounced, as follows:

> *"**Santos v. CA, et. al and Magno v. PNNC Corp.** are invoked by petitioner to illustrate that this action is one for separation without just cause, hence, the prescriptive period is allegedly four (4) years in accordance with Article 1146 of the Civil Code. We do not agree. Petitioner's separation from the service was due to the abolition of her office in implementation of a valid reorganization. This is not the unjustifiable cause which results in injury to the rights of a person contemplated by Article 1146. x x x"*

The foregoing findings hold true on the contention that the four (4) years prescriptive period to question the termination of the appellants is clarified in the opinion of Chief Justice Hilario Davide, Jr. in the case of **Aldovino vs. Alunan III.** A perusal of the cited case showed that the clarification was expressed by Chief Justice Davide, Jr. in his dissenting opinion. While a

dissenting opinion indicates that the consideration of the case, however thorough, might not have been sufficient to carry conviction to the minds of the jurists in the Supreme Court **(Appeal and Review in the Philippines, Judge Lucas P. Bersamin, First Edition),** it is not, however, the unanimous or majority opinion of the Supreme Court as a collegial body. The 1987 Philippine Constitution, in particular Section 4, Item Numbers 2 and 3, specifically sets forth the concurrence of a majority vote of the Justices who participated in the deliberation of cases requiring to be decided *en banc* and those decided by a division. By way of reiteration, the opinion of the Chief Justice was not concurred in by the majority of the other justices. As such, it remains a singular not a majority opinion.

In this connection, it is worth reiterating that the sole rule governing the reorganization and its incidents is Republic Act No. 6656. There is no law, rule or issuance amending or repealing the same.

On the third issue, appellants pleaded that the Commission's favorable ruling in CSC Resolution Nos. 00-2617 dated November 21, 2000 (Estelita Corpin, Miguel Sanosa, Gideon Batiquin, Rene Barantes and Salvador Morillo); 00-2624 dated November 21, 2000 (Eladio Gavilo, Robert Ramirez, Noel Regir, Edelito Montes and Jigie Nuijts); 00-2629 dated November 22, 2000 (Amelia V. Brosoto, Alfonso Morillo, Pascual Mulles, Gemma Regla, and Noel D. Dela Cruz) dated November 22, 2000; and 00-2659 (Sarah Montes, Remegio Atok, Miguel Moncada and Teresita Ty) dated November 28, 2000 should also accrue in their favor. Thus and inasmuch as the Commission ruled on the non reappointment of Corpin, *et al.* which resulted in the termination of their services during the reorganization, they represented that they should also be reinstated in the Provincial Government and be paid the back salaries attached to their office.

Appellants anchored their claim on the findings of the Commission in the aforementioned Resolutions wherein it found that the assessment and evaluation made by the Placement Committee were limited only to those who were reappointed in the new staffing pattern and excluded therefrom all those who were separated among them herein appellants. For clarity, the provision referred to is, as follows:

> *"In the case at bar, no evidence was shown by Governor Parilla that such preferential right to re-appointment was accorded to Montes, et al. This is taking into account the absence of any proof that the appellants' qualifications were assessed, evaluated and determined for possible appointment to a position equivalent to or next lower in rank to that held her prior to the questioned reorganization, and that, they failed to qualify thereto x x x."*

To this end, the appellants alleged that they were not accorded the due process of law because their qualifications were not assessed by the Placement Committee.

There lacks legal and factual bases for the Commission to extend to the appellants the benefits of the Resolutions simply because they are not parties to the appeal. The American case of **Southern Pacific vs. Bogert** cited by the Supreme Court in the case of **Cristobal vs. Melchor (78 SCRA 175)** stating that:

"Where the cause of action is of such nature that a suit to enforce it would be brought on behalf, not only of the plaintiff, but all such persons similarly situated, it is not essential that each such person should intervene (sic) in the suit brought in order that he be deemed thereafter free from laches which bars those who sleep on their rights."

fails to sustain their claim considering that the subject matter of the case is the legal principle of laches. Moreover, the factual circumstances obtaining in Cristobal's case are widely different from that of the appellants. Cristobal consistently and continuously requested and exerted efforts for his reinstatement all the time during the pendency of the civil case filed by the other employees and he also relied on the promise by the Executive Secretary that he would be re-employed at the oppurtune time. In appreciating the efforts exerted by Cristobal, the Supreme Court, notwithstanding his failure to join the civil case for reinstatement, ruled that injustice will be committed if laches is invoked to defeat the latter's right. Evidently, Ancero, *et al.* failed to demonstrate any action towards the recovery of their respective positions in the Provincial Government.

Finally, appellants relied on the passage of Resolution No. 39, Series of 2000 wherein the new members of the Sangguniang Panlungsod resolved to withdraw their support to Resolution No. 92, Series of 1998. The reliance on the SP Resolution is misplaced. While it has withdrawn support to the Resolution, it did not declare the nullity of its reorganization. On the contrary, the local legislative body directed the creation of the oversight committee to look into the matter of the implementation of the reorganization. In turn, the said directive was based on the *"alleged wrong in the implementation of the reorganization x x x"*, *"alleged delay or no immediate remuneration x x x or release of the separation and/or terminal pay to those x x x who were separated x x x".* In other words, the Sangguniang Panlalawigan merely made the implementation of the reorganization as the subject of investigation.

The same holds true with the withdrawal of support to Resolution No. 92, Series of 1998. The withdrawal does not *ipso facto* render it void. It should be noted that only the Supreme Court has the power to declare the invalidity of an ordinance and a resolution of the local legislative body partakes the nature of an ordinance, it being a legislative fiat. **Item (a), Section 5, Article VIII of the 1987 Constitution** states, as follows:

"Sec. 5. The Supreme Court shall have the following powers:

"1. xxx

"2. Review, revise, reverse, modify, or affirm on appeal, or certiorari, as the law or the Rules of Court may provide, final judgments and orders of lower courts in:

"(a) All cases in which the constitutionality or validity of any xxx ordinance xxx is in question."

The absence of the Sangguniang Panlalawigan's power to declare the Resolution in question invalid was recognized by SP Member Rosario Calderon.

In sum, this Commission finds that appellants Ancero, *et al.* 's instant action a mere afterthought. No evidence was submitted to prove that they have exercised vigilance in claiming the right to their respective offices after they were separated from the service to justify the Commission's action in applying the cited rulings of the Supreme Court specifically or for it to *motu proprio* grant the request.

WHEREFORE, the appeal of Alex N. Ancero, *et al.* is hereby **DISMISSED.** Accordingly, Civil Service Commission - Regional Office (CSCRO) No. VIII Order dated No. 02-049 dated April 23, 2002 dismissing appellants' appeal from the decision of the Province of Biliran denying their request for reinstatement and payment of back salaries, is **AFFIRMED.**

Quezon City, OCT 18 2002

(Signed)
KARINA CONSTANTINO-DAVID
Chairman

O.B.
JOSE F. ERESTAIN, JR.
Commissioner

(Signed)
J. WALDEMAR V. VALMORES
Commissioner

Attested by:

(Signed)
ARIEL G. RONQUILLO
Director III

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