

SISTOZA, Reynato M.

Re: Termination of Services; Motion for
Execution of CSC Resolution No. 02-0314

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RESOLUTION NO. 021389

Reynato M. Sistoza, Sangguniang Bayan Secretary, Municipality of Cabugao, Ilocos Sur, requests the execution of Civil Service Commission Resolution No. 02-0314 dated February 28, 2002 wherein the Commission set aside the Decision dated October 24, 1994 issued by Vice Mayor Danilo Q. Gazmen. In said Decision, Vice Mayor Gazmen found Sistoza guilty of Gross Negligence, Moonlighting, Grave Misconduct and Absence Without Official Leave and imposed upon him the penalty of dismissal from the service. The Decision was vacated by reason of the Municipality's failure to conduct further investigation of the case within a period of ninety (90) calendar days pursuant to Section 48 of the Uniform Rules of Procedure in the Civil Service. The request was received by the Commission on May 29, 2002.

In his request, Sistoza represented, as follows:

"In my courtesy visit to the municipality on March 26, 2002, the Vice Mayor mentioned of the following as reasons for non-compliance to the orders set forth in the Resolution:

'regarding the order on reinstatement, that he would first refer the matter to the Sangguniang Bayan emphasizing thereon that I only won my appeal by technicality;

'as to payment of back salaries and other benefits, that I would not be entitled to these because I was 'gainfully employed' during the pendency of my appeal.'

"In reply I informed him that my reinstatement is not a legislative matter to be resolved by the Body. It is a matter for execution solely by whoever is sitting as Vice Mayor whose Decision was vacated and set aside by the Commission. It is for this reason why the Honorable Mayor even begged off to mediate when I first approached him for assistance and he referred me instead to the Vice Mayor.

"Regarding my back salaries, while it is true that I sought employment with a private organization, no one under the law is prohibited from earning a living to sustain himself and his family during the period of appeal whose outcome is never ascertainable. He told me in parting just to wait for his communication explaining that

my reassumption would not be as quick and simple as expected.

"After two months of waiting in vain, I returned to the municipality but unfortunately the Vice Mayor according to the Mayor went on leave. Through his mobile number given by the Mayor, I finally got in touch with him on May 21, 2002. He informed me must to wait again until he receives a reply to his communication with the Civil Service Commission. As of May 24, 2002, however, the Commission has not received a copy of the alleged communication."

The pertinent portions of the Resolution read, as follows:

"Records further show that the Resolution was received by the Office of the Vice Mayor through Clarita S. Savellano on February 27, 2001. Counting from said receipt, the Municipality should have terminated the investigation on May 28, 2001 or three (3) calendar months from February 27, 2001. Fifteen (15) days from May 28, 2001, the disciplining authority should have rendered its decision or on June 13, 2001, or the next day following June 12, 2001, a public holiday.

"To date, however, the records of the Commission fail to indicate that further proceedings pursuant to Section 48 of the Uniform Rules on Administrative Cases have been conducted and terminated and that a decision was rendered. Such being the case and pursuant to the mandate of the aforesaid rule, this Commission hereby vacates and sets aside the appealed Decision dated October 24, 1994 issued by Vice Mayor Gazmen and declares Sistoza exonerated of the administrative charges of Gross Negligence, Moonlighting, Grave Misconduct and Absence Without Official Leave.

***"WHEREFORE,** the request of Reynato M. Sistoza is hereby **GRANTED**. Accordingly, the Decision dated October 24, 1994 issued by Vice Mayor Danilo Q. Gazmen finding Sistoza guilty of Gross Negligence, Moonlighting, Grave Misconduct and Absence Without Official Leave and imposing upon him the penalty of dismissal from the service is hereby **VACATED** and **SET ASIDE**. Sistoza is hereby **EXONERATED** of said administrative charges.*

"The Municipality of Cabugao, Ilocos Sur, is hereby directed to immediately reinstate Sistoza, if not yet reinstated, to his former position of Sangguniang Bayan Secretary and to pay him back salaries and other benefits, if not yet paid, corresponding to said position but not to exceed five (5) years counting backward from the time of reinstatement."

Records show that the Municipality of Cabugao found Reynato M. Sistoza, Sangguniang Bayan Secretary, guilty of Gross Negligence, Moonlighting, Grave Misconduct and Absence Without Official Leave on August 20, 1994 by Vice-Mayor Danilo Q. Gazmen. Sistoza appealed the same before the Commission.

In CSC Resolution No. 00-0004 dated January 4, 2000, the Commission dismissed the appeal but directed the

Municipality of Cabugao to conduct further investigation relative to the charges. In remanding the case for this purpose, the Commission ruled that Sistoza was denied due process of law. It ruled that the hearings conducted by the Investigation Committee were confined to the issue of jurisdiction, the authority of the disciplining authority to take cognizance of the complaint against Sistoza, and the procedural rules that would be observed during the investigation and not on the offenses charged. Hence, pursuant to Section 48 of the Uniform Rules on Administrative Cases in the Civil Service, the municipality was ordered to conduct the investigation and terminate the same within three (3) calendar months from receipt.

Instead of complying with the resolution, Vice Mayor Gazmen moved for reconsideration. Similarly, Sistoza filed a partial motion for reconsideration. Both motions were denied by the Commission - the former in CSC Resolution 00-2417 dated October 18, 2000 and the latter in CSC Resolution No. 00-1967 dated August 30, 2000. In the meantime, Sistoza was allowed by the Commission to report for work in the municipality pending the investigation of the case in CSC Resolution No. 00-2349 dated October 17, 2000.

Considering that the municipality's motion for reconsideration was denied, Vice Mayor Gazmen submitted a request for the Commission to designate a hearing officer from the Commission to conduct the investigation.

In CSC Resolution No. 01-0456 dated February 16, 2001, the Commission denied the request. In so denying, it ruled that the Legal Officer of the municipality has the duty and the responsibility to prosecute the case against Sistoza not the Commission as provided for under Item (b), Section 481 of the Local Government Code. The Commission also directed the Municipality to commence and terminate the conduct of investigation from receipt of said Resolution.

Records further show that the Resolution was received by the Office of the Vice Mayor through Clarita S. Savellano on February 27, 2001. Counting from said receipt, the Municipality should have terminated the investigation on May 28, 2001 or three (3) calendar months from February 27, 2001. Fifteen (15) days from May 28, 2001, the disciplining authority should have rendered its decision or on June 13, 2001, or the next day following June 12, 2001, a public holiday.

Thus, in CSC Resolution No. 02-0314 dated February 28, 2002, the Commission vacated the Decision dated October 24, 1994 issued by Vice Mayor Gazmen thereby exonerating Sistoza of the charges of Gross Negligence, Moonlighting, Grave Misconduct and Absence Without Official Leave.

A copy of said Resolution was received by the Office of the Vice Mayor on March 15, 2002.

From said date, the records of the Commission fail to indicate that further relief was taken by the Municipality either before the courts of law or this Commission.

In the instant request, Sistoza claimed that he paid the Vice Mayor a courtesy visit on March 26, 2002 regarding the implementation of the CSC Resolution. Accordingly, the Vice Mayor informed him that the matter of reinstatement will be referred to the Sangguniang Bayan maintaining that he won the appeal only by technicality. As regards the payment of back salaries and other benefits, Sistoza represented that the Vice Mayor told him that he will not receive the same because he was

gainfully employed after he was terminated from the service.

In response thereto, Sistoza represented to the Commission that he informed the Vice Mayor that his reinstatement is not a legislative matter that should be referred to the Sangguniang Bayan and that there is no law prohibiting a person from earning a living to sustain himself and his family.

To verify the representations by Sistoza, the Commission, through the Office for Legal Affairs, inquired from the CSCRO No. I the status of the implementation of the Resolution. In compliance, Director IV Lorenzo S. Danipog apprised the Commission that Vice Mayor Rex Augustus S. Morales informed the Regional Office, in a letter dated August 6, 2002, that Sistoza neither signified his intention to return to his former position nor be paid his backwages. Accordingly, Sistoza is presently employed with the Philippine Veteran's Bank. Pertinently, the letter of the Vice Mayor reads, as follows:

"May we respectfully inform your Honorable Office that since March 18, 2002 when we received the last CSC Proper resolution on the so-called Sistoza case, Mr. Reynaldo M. Sistoza has NEVER sent a written communication to this office to signify his intention to return to his former post as SB Secretary or to claim back wages. The only vital information we know about him is his being gainfully employed with the Philippine Veteran's Bank.

"Please feel assured that a prompt implementation of the pertinent CSC Proper resolution on the Sistoza case rests mainly on the cooperation and availability of Mr. Sistoza to communicate with us."

Additionally, Director II John C. Rivera, CSC Field Office in Vigan, Ilocos Sur made known to Director IV Danipog in his letter dated August 2, 2002 that the Municipality is merely waiting for Sistoza to report for work but he failed to do so. The relevant portions of the said letter read, as follows:

"In connection with Res. No. 02-0314 relative to the case of Renato M. Sistoza in the Local Government Unit of Cabugao, Ilocos Sur, please be informed that this Office is in constant touch with the officials in the said municipality and this Office was informed that they are awaiting for Mr. Sistoza to report in the municipality, but to this date, he has not yet reported."

Against the two seemingly conflicting representations, the sole issue to be resolved is whether Sistoza's motion for execution should be granted.

The issue is resolved in the affirmative.

Civil Service Commission Resolution No. 02-0314 dated February 28, 2002 has attained finality and, therefore, by operation of law, should be implemented. This is taking into account the receipt thereof by the Municipality on March 15, 2002 and its failure to take a relief therefrom up to March 30, 2002, fifteen (15) days from its receipt. **Section 80 of the Uniform Rules on Administrative Cases in the Civil Service** is explicit on the matter, as follows:

"Section 80. Execution of Decision. - The decisions of Commission Proper xxx shall be immediately executory after fifteen (15) days from receipt thereof, unless a motion for reconsideration is seasonably filed, in which case the execution of the decision shall be held in abeyance."

Thus, execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected (**Section 1, Rule 39 of the Rules of Court**).

The findings hold true notwithstanding the representation of Vice Mayor Morales that Sistoza never communicated with him his interest to be reinstated in the service or to claim his backwages. This statement should not be taken hook, line and sinker considering that Sistoza would not have sought the assistance of the Commission in the execution of the Resolution if it was, indeed, true that the Municipality is merely waiting for him. On the other hand, the Commission finds truth in Sistoza's statement that the Vice Mayor informed him that the matter of his reinstatement should be referred to the Sangguniang Bayan, and that, he will not receive his backwages inasmuch as he was gainfully employed during the pendency of his case.

It should be noted that the subject of implementation of a final decision of the Commission is not a matter of discretion but a call of duty. It is a ministerial act not discretionary. Thus, for the Vice-Mayor to refer the matter of Sistoza's reinstatement to the Sangguniang Bayan is a contemptible act for which he may be liable for in addition to exposing himself to a liability for the offense of Neglect of Duty. Considering that the Resolution has attained finality, there is an affirmative obligation on the part of the Vice Mayor to implement it.

The same findings hold true relative to the payment of backwages. Sistoza's clear right to receive back salaries has already been established and, as such, he is entitled to receive back salaries from the Municipality for a period of five (5) years (**Cristobal vs. Melchor, 78 SCRA 175**) without regard or without deducting the salary he may have earned during his employ in another office while his appeal is pending evaluation. This is the ruling of the Supreme Court in the case of **Tan vs. Gimenez**, to wit:

"xxx [h]e was ordered to resign from the service with prejudice to reinstatement pursuant to the decision of the Commissioner of Civil Service and by virtue thereof was prevented from exercising the functions of his position and receiving the corresponding compensation therefor. While thus deprived of his office and emoluments thereunto appertaining the petitioner had to find means to support himself and his family. The fact that during the time his appeal was pending and was thus deprived of his office and salary, he sought and found employment in another branch of the government does not constitute abandonment of his former position. To deny him the right to collect his back salaries during such period would be tantamount to punishing him after his exoneration from the charge which caused his dismissal from the service . . ."

The High Court reiterated the pronouncement in the case of **Bandelaria vs. CSC, et al. (G.R. No. 110400 dated October 18, 1993)** viz:

"The award to him of back salaries of five years without qualification and deduction, with legal interest at the legal rate from the date of his illegal dismissal is in accord with applicable jurisprudence."

Thus, Sistoza's employment with the Philippine Veteran's Bank is not material to the computation of back salaries.

WHEREFORE, the motion for execution of Reynato S. Sistoza is **GRANTED**. Accordingly, the Municipality of Cabugao is directed to implement Civil Service Commission Resolution No. 02-0314 dated February 28, 2002.

The Civil Service Commission Regional Office No. I is hereby directed to monitor the implementation of this Resolution.

Quezon City, OCT 18 2002

(Signed)
J. WALDEMAR V. VALMORES
Commissioner

(Signed)
KARINA CONSTANTINO-DAVID
Chairman

(Signed)
JOSE F. ERESTAIN, JR.
Commissioner

Attested by:

(Signed)
ARIEL G. RONQUILLO
Director III

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/sistoza'r