

CUARESMA, Estrella F.

Re: Dishonesty; Grave Misconduct; Falsification of
Official Document; Motion for Execution of CSC
Resolution No. 01-1187 dated May 29, 2002
Coverage under Witness Protection Program

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RESOLUTION NO. 021476

Estrella F. Cuaresma, Municipal Budget Officer, Bacnotan, La Union, in a letter received by the Commission on July 2, 2002, requests the implementation of Civil Service Commission Resolution No. 01-1187 dated May 29, 2002. In said Resolution, the Commission set aside the decision dated March 20, 2000 of then Mayor Ma. Minda L. Fontanilla, same Municipality, which found Cuaresma guilty of the offenses of Dishonesty, Grave Misconduct and Falsification of Official Document and dismissed her from the service.

On the other hand, in a letter dated July 18, 2002 and received by the Commission on August 9, 2002, Chief State Prosecutor Jovencito R. Zuno, Department of Justice (DOJ) informed the Commission that Cuaresma is under the DOJ's Witness Protection Program (WPP). In his letter, he apprised the Commission that Cuaresma was issued a Memorandum dated July 4, 2002 by Acting Municipal Mayor Francisco H. Fontanilla, Jr., same Municipality, directing her to report for work within thirty (30) days from receipt thereof pursuant to CSC Resolution No. 01-1187 and that her failure to do so shall result in her being dropped from the service. Chief State Prosecutor Zuno represented that under the WPP, Cuaresma is entitled to the right not to be removed from the service or be demoted without clearance from the DOJ. Thus, he requested the Commission to reconsider the Resolution until Cuaresma's completion of the program.

The dispositive portion of the Resolution reads, as follows:

"WHEREFORE, the appeal of Estrella F. Cuaresma is hereby GRANTED. The decision dated March 20, 2000 of Mayor Ma. Minda L. Fontanilla finding Cuaresma guilty of Dishonesty, Grave Misconduct and Falsification of Official Document and dismissing her from the service is REVERSED and SET ASIDE. Accordingly, Cuaresma should be reinstated in the service with payment of backwages from the time of her dismissal until her actual reinstatement."

In her request contained in letter dated July 1, 2002 and received by the Commission on July 2, 2002, Cuaresma pleaded for the execution, as follows:

"This has reference to your Resolution Nos 020274 and 02-0769 dated February 26, 2002 and May 29, 2002, respectively denying the two Motions for Reconsideration of complainants Ma. Minda L. Fontanilla, et al.

"Said Resolution No. 02-0769 has now become final and executory yet up to this moment, I haven't received any order yet from the municipal government of Bacnotan, La Union, re the implementation of said resolution.

"It is in this regard that I am earnestly requesting your good office to issue an order to implement your original Resolution No. 01-1187 dated July 16, 2001.

"I hope that my request be acted upon immediately for I have suffered more than enough for the wrong accusations of the mayor and her cohorts."

On the other hand, Chief State Prosecutor Zuno's request is, as follows:

"This has reference to the Memorandum dated July 4, 2002 of Acting Municipal Mayor Francisco H. Fontanilla, Jr., Bacnotan, La Union, informing MRS. ESTRELLA F. CUARESMA, Municipal Budget Officer of your Resolution No. 01-1187 reinstating her in the service and ordering her to report for work within thirty (30) days from receipt thereof, otherwise she will be dropped from the service.

"In connection therewith, please be informed that Ms. Cuaresma is presently covered under the Witness Protection Security and Benefit Program (WPSBP) and is entitled to certain rights and benefits one of which is: that she may not be removed from or demoted in her work without clearance from the Department of Justice.

"Considering that Ms. Cuaresma has not yet completed her witness duty and the reported high level of threat against her person per assessment of the Program, her release from the Program is not warranted. To do so, would be a serious violation of the provisions of Sec. 8 par. 3 of R.A. 6981. Also, the first scheduled hearing of the case wherein she is going to testify will be on October 8, 9 and 10, 2002 yet.

"In view of the foregoing, may we request for a reconsideration of the aforesaid ruling until the completion of Ms. Cuaresma's witness duty and a reevaluation of her admission."

Records show that Cuaresma was found guilty of the administrative offenses of Dishonesty, Grave Misconduct and Falsification of Official Documents by Mayor Fontanilla and imposed upon her the penalty of dismissal from the service. The ruling was contained in a Decision dated March 20, 2000. Aggrieved, an appeal was taken by Cuaresma. Finding merit on the appeal, the Commission issued CSC Resolution No. 01-1187 dated July 16, 2001, reversing and setting aside the appealed decision.

Subsequently, a motion for reconsideration was filed by Mayor Fontanilla, *et al.* but the same was denied in CSC Resolution No. 02-0274 dated February 26, 2002. In denying the same, the Commission ruled that the movants were not vested with the personality to question CSC Resolution No. 01-1187 considering that they are not parties adversely affected by the decision.

Not satisfied with the ruling, Mayor Fontanilla, *et al.* interposed this second motion for reconsideration. But the same was denied in CSC Resolution No. 02-0769 dated May 29, 2002.

The Municipal Government of Bacnotan received the copy of the Resolution on June 18, 2002. Thereafter, the records of the Commission failed to indicate that said Municipality sought further relief from the Commission *a quo* or courts of law.

Records further show that pursuant to CSC Resolution No. 01-1187 Director II Violeta N. Mendoza, CSC Field Office in La Union reported to the CSC Regional Office No. I on August 14, 2002 that acting Municipal Mayor Francisco H. Fontanilla, Jr. issued Memorandum dated July 4, 2002 directing Cuaresma to report back to work in the Municipality in compliance with CSC Resolution No. 01-1187 with a warning that Cuaresma's failure to report within the prescribed period shall cause her being dropped from the rolls.

In response to the Memorandum dated July 30, 2002, Cuaresma informed the Mayor that she is under the DOJ's WPP and that she cannot leave the program without permission from the DOJ. Cuaresma further represented that she already requested permission to leave the program in view of the said Memorandum but the said request remains unacted upon because the officer heading the program is out of the country. On account of said absence, Cuaresma begged the Mayor to wait for the reply of her letter.

In a letter dated August 8, 2002 Acting Mayor Fontanilla informed Cuaresma that her back salaries will not be released until the Commission resolves the request of the Chief State Prosecutor that the Commission defer the implementation of Resolution No. 01-1187 until the completion of the Witness Protection Program.

The issues to be resolved are the following:

1. Whether the motion for execution of Cuaresma should be granted; and
2. Whether CSC Resolution No. 01-1187 should be modified in view of Cuaresma's coverage under the Witness Protection Program.

The first issue is partially rendered moot and academic by the July 4, 2002 Order of Acting Mayor Fontanilla, Jr. for Cuaresma to report back to work. In said Memorandum, the Acting Mayor directed Cuaresma to report within a period of thirty (30) days from receipt pursuant to CSC Resolution No. 01-1187. In fact, she was warned that she will be dropped from the rolls if she fails to comply with the order. Thus, as far as the Commission is concerned the Municipality has complied with its directive to reinstate Cuaresma in the service.

In this connection, the Acting Mayor's warning that Cuaresma will be dropped from the rolls pursuant **Memorandum Circular No. 40, Series of 1998 (Revised Omnibus Rules on Appointments and Other Personnel Actions)** if she fails to report for work within thirty (30) days from receipt will not lie. The application of the Circular is predicated on the voluntary absence of the subject employee within the fixed period. It does not cover an absence compelled by law such as the one obtaining in Cuaresma's case. However, Cuaresma is obligated to report to the Municipality immediately after her release from the WPP. Failure, in this instance, by Cuaresma to do so shall entitle the Municipality to apply the provisions of CSC Memorandum Circular No. 40, s. 1998.

However, the Municipality shall not be liable for the payment of salaries during the entire period of Cuaresma's commitment under the WPP. Under Section 8, second paragraph of Item C of the Act specifically directs its payment from the funds allotted to the WPP. Cuaresma shall be entitled to receive her salaries. Conditioned on her faithful compliance under the provisions of the witness agreement with the DOJ, Cuaresma shall be paid by the DOJ her salaries equivalent to the number of days of her absence occasioned by the WPP. Pertinently, the second paragraph of Item C states, as follows:

"Any witness who failed to report for work because of witness duty shall be paid his equivalent salaries or wages corresponding to the number of days of absence occasioned by the Program. For purposes of this Act, any fraction of the day shall constitute a full day salary or wage. This provision shall be applicable to both government and private employees."

The matter, however, of payment of back salaries has not been complied with by the Municipality. The Acting Mayor's request that the Commission rule upon Cuaresma's entitlement thereto cannot excuse him from performing such duty because the Commission in the said Resolution has already categorically ruled on Cuaresma's right to receive it. Such ruling was based on its finding that Cuaresma is not guilty of Dishonesty, Grave Misconduct and Falsification of Official Documents. It would be repetitious for the Commission to make a finding anew on Cuaresma's right to receive back wages from the time she was dismissed from the service until her actual reinstatement thereto.

At this point, it should be stressed that any officer or employee who willfully refuses or fails to implement the final resolution, decision, order or ruling of the Commission to the prejudice of the public service and the affected party, may be cited in contempt of the Commission and administratively charged with Conduct Prejudicial to the Best Interest of the Service or Neglect of Duty (**Section 84, Uniform Rules on Administrative Cases in the Civil Service**).

Anent the second issue, Chief State Prosecutor Zuno requests the Commission to defer execution of the Resolution until the completion of Cuarema's duty under the WPP and her release therefrom. He represented that Cuaresma still has to testify on October 8, 9 and 10, 2002. He further stated that under **Section 8, paragraph 3 of Republic Act No. 6981 (An Act Providing for a Witness Protection, Security and Benefit Program and for other Purposes)**, Cuaresma may not be removed from the service or be demoted in the absence of any clearance from the DOJ. For clarity, the paragraph 3 or Item C reads, as follows:

"(c) In no case shall the Witness be removed from or demoted in work because or on account of his absences due to his attendance before any judicial or quasi-judicial body or investigating authority, including legislative investigations in aid of legislation, in going thereto and in coming therefrom; Provided, That his employer is notified through a certification issued by the Department, within a period of thirty (30) days from the date when the Witness last reported for work: Provided, further, That in the case of prolonged transfer or permanent relocation, the employer shall have the clearance from the Department upon recommendation of the Department of Labor and Employment."

The Commission is of the view that Cuaresma's obligation and duty to testify for the government under the WPP constitutes a legal justification for her failure to report back to the work. As a witness, Cuaresma is bound by law to testify before the courts of law or investigating bodies as mandated by the DOJ in the same manner that the Commission and the Acting Municipal Mayor Fontanilla, Jr. are duty bound to allow her to perform such duty. The circumstance of the witness absence from work and the possibility of subjecting her to disciplinary action for such absence is a fact recognized by the Act for which reason it has explicitly declared the witness exempt from such action by the employer.

In view of the foregoing discussion, the Commission sees no justifiable reason to reconsider CSC Resolution No. 01-1187 dated May 29, 2002. As earlier noted, Cuaresma's legal and physical impediment to report to the Municipality as directed by Acting Municipal Mayor Fontanilla, Jr. in his Memorandum dated July 4, 2002 by virtue of her coverage under the WPP justifies the deferment of Cuaresma's compliance to the said Memorandum.

WHEREFORE, the motion for execution of Estrella F. Cuaresma is hereby **GRANTED**. Accordingly, the Municipality of Bacnotan, La Union is hereby directed to pay Cuaresma or her authorized representative/s the back salaries accruing from the time she was dismissed from the service until the day before she was admitted under the Witness Protection Program by the Department of Justice. However, her request for reinstatement in the service is rendered moot and academic by the order of Acting Mayor Francisco H. Fontanilla, Jr. directing her to report to the Municipality.

The request of Chief State Prosecutor Jovincito R. Zuno to allow Cuaresma to complete her witness duty under the Witness Protection Program is hereby granted. Accordingly, Cuaresma is directed to perform her obligation under the said Program until its termination and release therefrom.

The Civil Service Commission resolves that Cuaresma's commitment under the Witness Protection Program shall excuse her from reporting back to the Municipality for the entire duration thereof. However, she shall immediately report therein as soon as her service is completed.

Quezon City, NOV 08 2002

(Signed)
J. WALDEMAR V. VALMORES
Commissioner

(Signed)
KARINA CONSTANTINO-DAVID
Chairman

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

Attested by:

(Signed)
ARIEL G. RONQUILLO
Director III

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