



This is a

**MUST-READ
RESOLUTION**

CSC Resolution No. 10-00375 dtd. Nov. 12, 2010
CSLO

BAUTISTA, Elpidio R.
Re: Extension of Service; Appointment
(Motion for Reconsideration)

Number: 1000375

12 NOV 2010

Promulgated: _____

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RESOLUTION

Dr. Elpidio R. Bautista, President, Misamis Oriental State College of Agriculture and Technology (MOSCAT), Claveria, Misamis Oriental, moves for reconsideration of CSC Resolution No. 101185 dated June 15, 2010 denying the extension of his service on the following grounds: (1) the request was belatedly filed; and (2) the MOSCAT Board of Regents (BOR) can find his replacement since the position does not belong to the death category.

In the aforesaid motion for reconsideration, Dr. Bautista represented that:

X X X

*"The Resolution was based on the assumption that Dr. Bautista already reached his compulsory age of sixty-five (65) on March 24, 2010. It is with such light that the Honorable Commission **DENIES** the request. The herein Movant has no knowledge as to the basis of the Commission where it states that 'based on records Dr. Bautista has already reached the age of 65 on March 24, 2010'. ... Although the movant also failed to adduce dissemination (Copy of the BOT Resolution No. 18, s. 2010 as certified by the Board Secretary is hereto attached as Annex 'D'). Notwithstanding the efforts to fill up the vacancy prior to the termination of ... Bautista's term, the Board was compelled to extend the services to avoid vacancy in the office and to continually render the mandated services of the College. Hence, on March 17, 2010 William C. Medrano, ... as Chair of the MOSCAT Board of Trustees and as representative of the Commission on Higher Education (CHED) issued an appointment in favor to Dr. Elpidio R. Bautista indicating therein that his appointment as SUC President shall be effective March 24, 2010 until such time that a new a College President shall have been appointed for the Approval of the Civil Service Commission. x x x*

"The said appointment was subsequently ratified by the Board of Trustees of MOSCAT ...

"Under RA 8292 ..., it is the Board of Trustees/Regents duly constituted who has the authority to appointment (sic) the President of any State Colleges and Universities respectively. x x x

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"Although the law does not expressly provides as to whether or not it is part of its power to extend the services of the President after its expiration, the same is covered under the doctrine of necessary implication which states that the grant of power maybe construed to include other powers which are necessarily implied therefrom. x x x

"... Bautista has not yet reached the compulsory age of retirement as evidenced by his certificate of live birth ... The request of extension was originally made to inform the Honorable Commission of such fact not by virtue of his age but for the reason that his Original appointment as MOSCAT president is about to expire on March 24, 2010 as provided by RA 9282

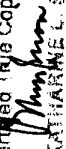
The MOSCAT Board of trustee (sic) was prompted to extend the services of ... Bautista due to the failure of the Search Committee for President (SCP) to recommend to the Board for its appointment as mandated by RA 9282 before the term of the incumbent President ends. Only on May 27, 2010, the SCP submitted a report that there is only one (1) applicant for the post and referred back to MOSCAT BOT for further instruction and containing additional recommendation to adopt additional strategies for the search to expand the search and draw more participants/candidates. In view of such development, the Board of Trustees ... adopted decisions to cause the republication of the Notice of Search for another consecutive weeks in a newspaper of national publication, extend until May 31, 2010 the deadline for submission of documents for any interested applicants and ordering the Board Secretary to send out notices of the search and letters of information to all PASUC National and Regional Offices and Officers, as well as to all SUCs nationwide and to strictly monitor such ...

"WHEREFORE, foregoing premises considered, the herein MOVANT... respectfully prays of the Honorable COMMISSION that its Resolution No. 10-1195 dated June 15, 2010 DENYING the extension of services of ... BAUTISTA be SET ASIDE and instead a Resolution VALIDATING AND APPROVING the Appointment of the MOVANT dated March 17, 2010 ... be executed until such time that a new College President shall have been appointed."

Records show that Bautista was appointed as SUC President I (SG- 27) under "Permanent" status by the BOR on March 21, 2006 "Effective 22 March 2006 until 23 March 2010". Said appointment was validated by Director Lourdes C. Vidal of the CSCRO No. X on May 11, 2009.

During Bautista's term as President of MOSCAT, the SUC President I position which he held was upgraded to SUC President II (SG-28). Consequently, the BOR, through Dr. William Medrano, issued another "Permanent" appointment to Bautista as SUC President II on October 5, 2009. Said appointment was approved by Commissioner Cesar D. Buenaflor on the basis of the delegated authority granted him by the Commission on December 4, 2009.



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On March 17, 2010, William Medrano issued another appointment to Bautista as SUC President II under "Permanente" status bearing a collatilla, to wit: "Extension of the services as SUC President effective March 24, 2010 until such time that a new College President shall have been appointed." (Underscoring Supplied) Said appointment of Bautista was subsequently ratified by the majority of the BOR members in MOSCAT BOR Referendum No. 01, series of 2010 entitled "APPROVING the EXTENSION of the services of Dr. ELPIDIO R. BAUTISTA as MOSCAT President, effective March 24, 2010, until such time that a new College President shall have been appointed or until this Order is revoked." (Underscoring Supplied)

Thereafter, MOSCAT submitted the subject March 17, 2010 appointment of Bautista to the CSCRO No. X. In a Memorandum dated April 5, 2010 (entitled: "Extension of the services of Dr. ELPIDIO R. BAUTISTA, as MOSCAT President, effective March 24, 2010 ..."), the CSCRO No. X transmitted to the Commission the subject appointment for appropriate action.

Meanwhile, on May 27, 2010, the BOR of MOSCAT passed Resolution No. 18, s. 2010 which reads, as follows:

"CONFIRMING BOT RESOLUTION No. 17, S. 2010 re: Recommendations of the MOSCAT Search Committee for the Presidency (SCP), to wit:

"(a) Given that there is only one (1) applicant for the post, the SCP is herewith referring back to the MOSCAT GB this development for further instruction ...

"(b) To expand the search and draw more applicants/candidates for the MOSCAT Presidency post, the SCP recommends the adoption of additional strategies for the search, such as sending out letters of invitation to potential candidates recommended by the members of the Search Committee,


"The MOSCAT Board of Trustees herewith adopts the following decision:

"(1) For the MOSCAT Board Secretary to cause the republication of the Notice of Search for another two (2) consecutive weeks in a newspaper of national publication;

"(2) To extend until May 31, 2010 the deadline for the submission of documents of interested applicants for the said post;

"(3) For the MOSCAT Board Secretary to send out notices of the search and letters of information to all PASUC National and Regional Offices and Officers, as well as to all SUCs nationwide, and to strictly monitor such dissemination."

On June 15, 2010, the Commission passed Resolution No. 10-1185 denying the request for extension of service of Bautista as MOSCAT President. Hence, the instant motion for reconsideration.

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A cursory review of the matter shows there was actually a confusion on the nature of the request noting that all the documents submitted (e.g., appointment paper, MOSCAT BOR Referendum No. 01, series of 2010, CSCRO No. XI Memorandum dated April 5, 2010) used the phrase "extension of service" which in ordinary sense pertains to a situation where one is reaching the mandatory retirement age of sixty five (65) subject of the power of the Commission provided under Section 12 (14), Chapter 3, Book V of Executive Order No. 292 (Administrative Code of 1987)¹. In the light of the representations of the movant and the documents he submitted, it appears that the matter is actually not a case of ordinary extension of service especially because Bautista was just sixty (60) years old at the time the subject appointment was issued². Actually, it is in the nature of a reappointment after the expiration of Bautista's term of office and in the meantime that the BOR is not yet able to select or appoint his replacement.

Hence, since the instant matter does not pertain to Bautista's services as President of MOSCAT after his compulsory retirement age, the Commission resolves to set aside CSC Resolution No. 101185 dated June 15, 2010. Incidentally, however, the Commission will resolve the issue whether the subject March 17, 2010 permanent appointment of Bautista as SUC President II can be approved as proposed in the light of the facts and law at hand.

In the instant motion for reconsideration, Bautista prays for the approval of his March 17, 2010 permanent appointment as SUC President II relying on R.A. 8292³, pertinent portions of which provide, as follows:

"Section 4. Powers and Duties of Governing Boards. - *The governing board shall have the following specific powers and duties in addition to its general powers of administration and the exercise of all the powers granted to the board of directors of a corporation under Section 36 of Batas Pambansa Blg. 68 otherwise known as the Corporation Code of the Philippines:*

X X X

"(x) to extend the term of the president of the college or university beyond the age of retirement but not later than the age of seventy (70), whose performance has been unanimously rated as outstanding and upon unanimous recommendation by the search committee for the president of the institution concerned.

X X X

¹ Sec. 12. Powers and Functions. *The Commission shall have the following powers and functions:*


X X X

"(14) Take appropriate action on all appointments and other personnel matters in the Civil Service including extension of service beyond retirement age;"

² Certificate of Live Birth showing that Bautista's date of Birth is April 16, 1949

³ Higher Education Modernization Act of 1997

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"Section 6. The Administration. - The administration of the university or college shall be vested in the president of the university or college who shall render full-time service. He shall be appointed by the Board of Regents/Trustees, upon the recommendation of a duly constituted search committee. He shall have a term of four (4) years and shall be eligible for reappointment for another term: provided, That this provision shall not adversely affect the terms of the incumbents

x x x

"In case of vacancy by reason of death, resignation, removal for cause or incapacity of the president to perform the functions of his office, the Board shall have the authority to designate an officer-in-charge pending the appointment of a new president.


"In case of vacancy in the office of the president as mentioned in the immediately preceding paragraph, his successors shall hold office for the unexpired term." (Underscoring Supplied)

Section 4 (x) of RA 8292 explicitly provides that the governing board of a state university or college (SUC) has the authority to extend the term of its president beyond the retirement age but not later than the age of seventy (70). In this particular case, the subject president's performance is required to be unanimously rated as outstanding and such official must be unanimously recommended for extension by the search committee. This provision, however, does not apply to nor affect the instant case primarily because Bautista did not retire compulsorily from the service. His four (4) year term of office as President of MOSCAT merely expired on March 23, 2010.

On the other hand, Section 6 of RA 8292 clearly provides that the same governing board in an SUC has the power to appoint a president for a term of four (4) years and the person so appointed is still eligible for reappointment for another term. A term of office, as distinguished from tenure of office, is fixed or definite in nature (**Paredes, et al. vs Abad, et al, G.R. No. 36927-28, April 5, 1974**)⁴. In fact, this fixed nature of the term of office of an SUC president is more pronounced from the provision of Section 6 of RA 8292 saying that in case of vacancy in the office of the president owing to death, resignation, removal for cause or incapacity to perform, the governing board may designate an officer-in-charge pending the appointment of a new president who will only serve as such for the unexpired portion of the term left by his/her predecessor. Moreover, it must be noted that while a president is made eligible for reappointment to the same position after the expiration of his/her first term of office, the law, however, is quite clear and explicit that it is meant for "another term" of office which in this case is fixed by the statute as four (4) years.

A scrutiny of the March 17, 2010 permanent appointment of Bautista as President shows the following annotation: "Extension of the services as SUC President effective March 24, 2010 until such time that a new College President shall have been appointed." (Underscoring Supplied). This is made consistent by the

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⁴ 56 SCRA 522

following title of MOSCAT BOR Referendum No. 01, series of 2010, to wit: "APPROVING the EXTENSION of the services of Dr. ELPIDIO R. BAUTISTA as MOSCAT President, effective March 24, 2010, until such time that a new College President shall have been appointed or until this Order is revoked." (Underscoring Supplied). Given these facts, it would appear that the BOR of MOSCAT did not appoint Bautista for another term of four (4) years as provided for in Section 6 of RA 8292. Hence, since the subject appointment was not consistent with the provisions of Section 6 of RA 8292 and *ultra vires* in character, it has to be disapproved by the Commission.

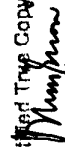
It could be deduced from the foregoing facts and circumstances that the subject March 17, 2010 appointment was issued by the BOR to fill the void after it failed to select a new president upon the expiration of the term of office of Bautista. The Commission is not ready to accept this explanation for being unmeritorious. Pointedly, the law was quite explicit as to the action that must be taken by the BOR in case of vacancy in the office of the president. Accordingly, the BOR can designate an officer-in-charge pending the appointment of a new president or reappoint Bautista to the same position for another term, as the case may be. Moreover, the BOR could have adopted a contingency measure to avoid a hiatus in leadership especially because the expiration of the term of office of Bautista as president had been quite clear or definite from the very beginning. In this case, the BOR appears to have not been diligent basing from the fact that even during the May 17, 2010 board meeting or after more than two (2) months from the expiration of the term of Bautista, it still failed to select or appoint a new president. Hence, it is regretted that the Commission cannot give its *imprimatur* on the subject appointment of Bautista, not only because of lack of legal basis but also because of unmeritorious justification.

Consequently, since the subject appointment was issued in violation of a Civil Service Law, **Section 65, Chapter 10, Book V of The Administrative Code of 1987⁵** applies, to wit:

"Sec. 65, Liability of Appointing Authority. - No person employed in the Civil Service in violation of the Civil Service Law and rules shall be entitled to receive pay from the government; but the appointing authority responsible for such unlawful employment shall be personally liable for the pay that would have accrued had the employment been lawful, and the disbursing officials shall make payment to the employee of such amount from the salary of the officers so liable." (Underscoring Supplied)

Finally, it may be pointed out that since the first appointment of Bautista as SUC President I in 2006 up to his appointment to the upgraded position of SUC President II in 2009 and even in the subject appointment issued on March 17, 2010, the status of appointment indicated in his appointment papers was always "permanent". On this score, and purposes of clarification and guidance, let it be underscored that "permanent" status of appointment cannot be properly used in appointing a person as president of an SUC since it involves a fixed term of office

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⁵ Executive Order No. 292

provided for in RA 8292, thus, belonging to the Non-Career Service defined under Section 9, Chapter 2, Book V of The Administrative Code of 1987. Pointedly, permanent or temporary status of appointment, as the case may be, applies only to Career Service positions as provided for in Section 27, Chapter V of The Administrative Code of 1987⁶. Under the circumstances, it will suffice that the subject portion of the appointment form when appointing an SUC president be just indicated as "not applicable" or "non-career" or "with fixed term of office".

WHEREFORE, the instant motion for reconsideration of Dr. Elpidio R. Bautista, SUC President I, Misamis Oriental State College of Agriculture and Technology (MOSCAT), Claveria, Misamis Oriental, is hereby **DENIED**. Accordingly, the permanent appointment of Bautista as SUC President II issued on March 17, 2010 bearing the collatilla "Extension of the services as SUC President effective March 24, 2010 until such time that a new College President shall have been appointed" is **DISAPPROVED**.

CSC Resolution No. 101185 dated June 15, 2010 is **SET ASIDE**.

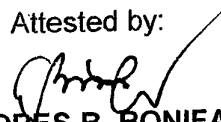
Copies of this Resolution shall be furnished the Commission on Audit, the disbursing officer of MOSCAT, the CSCRO No. X and the CSCFO-Misamis Oriental for their information and appropriate action.

Quezon City,



FRANCISCO T. DUQUE III
Chairman


CESAR D. BUENAFLOR
Commissioner


MARY ANN Z. FERNANDEZ-MENDOZA
Commissioner

Attested by:

DOLORES B. BONIFACIO
Director IV
Commission Secretariat and Liaison Office

OCOM-C/PRB/balong
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bautista

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⁶ "Sec. 27. Employment Status. - Appointment in the career service shall be permanent or temporary."