

**DELFIN N. DIVINAGRACIA, JR., AND ALEXIS D. SAN LUIS,
PETITIONERS, VS. HON. PATRICIA A. STO. TOMAS, RAMON P.
ERENETA, JR., AND PRESCILLA B. NACARIO, RESPONDENTS.**

G.R. No. 110954. May 31, 1995

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

The primordial purpose of our civil service laws is to establish and maintain a merit system in the selection of public officers and employees without regard to sex, color, social status or political affiliation. But there are times when appointments to public office are dominated by partisan favoritism and patronage, where tenurial rights are subject to the whims of officialdom.

On 1 August 1980 Filomena R. Mancita was appointed Municipal Development Coordinator (MDC) of Pili, Camarines Sur, in a permanent capacity. On 14 March 1983 when the Local Government Code took effect, the office was renamed Municipal Planning and Development Coordinator (MPDC).[1] On 28 March 1983 the Sangguniang Bayan of Pili approved Resolution No. 38 creating and organizing the Office of MPDC.[2] Mancita held over the position until 1985.

On 1 January 1985 the Joint Commission on Local Government Personnel Administration approved the reorganization plan and staffing pattern of the Municipality of Pili.[3] In a letter dated 17 June 1985 Mayor Anastacio M. Prila notified Mancita that her services were being terminated effective at the close of office hours on 1 July 1985 on the ground that the Office of MDC was abolished as a result of the reorganization of the local government of Pili. Private respondent Prescilla B. Nacario who was then the Municipal Budget Officer was appointed MPDC on 10 June 1985 to take effect on 1 July 1985.[4] Nacario was replaced by Digna Isidro as Municipal Budget Officer. Isidro was succeeded a year later by Eleanor Villarico who served until 1990.

In 1988 the Local Government Officers Services, which included the local Budget Office, was nationalized and placed under the Department of Budget and Management. As a result, the authority to appoint the Budget Officers of the different local government units devolved upon the Secretary of the Budget. When Villarico resigned on 1 March 1990 the Budget Office became vacant until 30 September 1991, or for more than a year, owing to the lack of a qualified candidate that the Secretary of the Budget could appoint. In the meantime, Juan Batan, the former Municipal Budget Officer of Baao, Camarines Sur, was appointed Officer-in-Charge of the Municipal Budget Office of Pili. He was later replaced by Francisco Deocareza, the former Budget Officer of Naga City, in the same capacity.[5]

On 1 October 1991, petitioner Alexis D. San Luis, Cashier II of the Department of Environment and Natural Resources (DENR), was temporarily appointed Municipal Budget Officer of Pili by Secretary Guillermo N. Carague of the Department of Budget and Management. When control over the Local Government Officers Services was returned to the local government units by virtue of the Local Government Code of 1991 (R.A. 7160 as implemented by E.O. 503), San Luis was reappointed to the same position on 22 June 1992, this time in a

permanent capacity, by petitioner Delfin N. Divinagracia, Mayor of Pili.[6]

San Luis started in the career civil service in 1977 as a casual clerk in the DENR, rising from the ranks until he was appointed Cashier II based in Legaspi City, the position he was holding when appointed Municipal Budget Officer of Pili.[7]

Meanwhile, Mancita appealed her termination to the Merit Systems and Protection Board (MSPB).[8] On 20 June 1989 the MSPB declared her separation from the service illegal, holding that the Office of the Municipal Development Coordinator was abolished by the Local Government Code of 1991 and not by the reorganization of the Municipality of Pili as claimed by Mayor Prila. According to the MSPB, Mancita was in fact qualified for the newly-created position of MPDC since the powers and duties of the two positions were essentially the same. The MSPB ordered Mayor Divinagracia to reinstate Mancita to the position of MPDC or to an equivalent position, and to pay her backwages from the date of her separation.[9] The decision of MSPB was appealed by Mayor Divinagracia to the Civil Service Commission but the appeal was dismissed on 16 July 1990 per CSC Resolution No. 90-657.[10] On 15 October 1990, Mayor Divinagracia informed private respondent, Nacario that she was being relieved of her position as MPDC effective 16 November 1990 in order to comply with the MSPB decision to reinstate Mancita as MPDC.

On 8 November 1990 private respondent Prescilla B. Nacario filed a Petition for Declaratory Relief and Prohibition with Preliminary Injunction with the Regional Trial Court of Pili, Br. 31, docketed as Civil Case No. P-17819, against CSC Chairperson Patricia A. Sto. Tomas, Mayor Delfin N. Divinagracia, Jr., Elium Banda, Regional Director of CSC in Region 5, and Filomena R. Mancita, praying for the annulment of CSC Resolution No. 90-657. Presiding Judge Ceferino P. Barcinas of Br. 31 issued a temporary restraining order enjoining the implementation of the questioned CSC resolution and set the date for the hearing of the application for preliminary injunction. Mancita filed a motion to dismiss on the ground that the trial court had no jurisdiction over the subject matter. Her motion was denied. Mancita then filed a special civil action for certiorari under Rule 65 before this Court questioning the denial of her motion. Through Mr. Justice Teodoro R. Padilla we granted the petition and held that the lower court had no jurisdiction over the case since all decisions, orders and resolutions of the Civil Service Commission were subject to review only by this Court on certiorari under Rule 65 of the Rules of Court.[11]

While the petition of Mancita was pending with us, Nacario sent a query to public respondent Commission asking about her status as a permanent employee of the Municipality of Pili after she had accepted the position of MPDC. In a letter dated 8 December 1992 public respondent opined that the reinstatement of Mancita to the position of MPDC was not a valid cause for Nacario's termination, and since she was the former Municipal Budget Officer she had the right to return to that position.[12]

On 15 March 1993 Mayor Divinagracia wrote to CSC Chairperson Patricia A. Sto. Tomas seeking a reconsideration of her opinion of 8 December 1992. Mayor Divinagracia explained the factual circumstances behind the ouster of Mancita and the resulting appointment of Nacario to the position of MPDC, arguing that San Luis was validly appointed by the Secretary of the Budget and confirmed by the CSC, hence, entitled to security of tenure.[13]

On 27 May 1993 public respondent issued CSC Resolution No. 93-1996 denying the request of Mayor Divinagracia for a reconsideration. Upholding Nacario's right to security of tenure the CSC held that the reinstatement of Mancita to the position of MPDC could not be a valid cause for the termination of Nacario. Public respondent relied on Sec. 13, Rule VI, of the Omnibus Rules Implementing Book V of E.O. No. 292, otherwise known as the Revised Administrative Code of 1978 in directing the restoration of Nacario to her former

position. Sec. 13 mandates the return of an appointee, in a chain of promotions, to his former position once his appointment is subsequently disapproved.

Petitioners have come to us for relief praying that CSC Resolution No. 93-1996 be nullified for having been issued with grave abuse of discretion. On 5 October 1993, upon motion of petitioners, this Court issued a status quo ante order enjoining the enforcement of the questioned CSC order.[14] Petitioners contend that Sec. 13, Rule VI, of the Omnibus Rules Implementing the Revised Administrative Code (E.O. 292) does not apply to the present case because the rule covers only appointments in a chain of promotions and not where a public officer was merely transferred to another position of the same rank, grade and level.

Petitioners further contend that Nacario was deemed to have vacated her position as Budget Officer when she accepted her appointment as MPDC considering that there were several appointments made to the Budget Office in the past eight (8) years since her transfer.[15] According to petitioners, San Luis was also denied his right to be heard when public respondent ordered him to vacate his position without affording him an opportunity to contest the claim of Nacario thus violating his constitutional right to due process.[16]

Upon the other hand, private respondent claims that she did not voluntarily apply for transfer from the Budget Office to the Office of MPDC but was constrained to "accept" the new position because of Mayor Prila. She was, in her own words, "a passive participant in the movement of personnel" in the municipal government of Pili having acted as a "subservient public official" in assuming the position of MPDC.

Nacario maintains that her "acceptance" of the position of MPDC which she admits is of the same rank, salary grade and level was motivated by her respect for Mayor Prila who was then her superior. In fact, according to her, she applied for the position of Budget Officer with the Department of Budget and Management while she was MPDC indicating that she did not abandon or relinquish her former position as alleged by petitioners.[17]

For their part, public respondents Sto. Tomas and Ereneta, Jr., insist on the application to the present case of the automatic reversion rule provided under Sec. 13, Rule VI, of the Omnibus Rules Implementing Book V of E.O. 292. They submit that the term "chain of promotions" must not be interpreted in a literal, rigid and narrow sense but must be construed liberally in favor of private respondent who merely accepted the position of MPDC to accommodate her superior unaware that her new appointment thereto would be infirmed.[18]

We deny the petition. Petitioner Alexis D. San Luis cannot hold on to the position of Municipal Budget Officer. On the other hand, respondent Prescilla B. Nacario who is protected by law in her security of tenure should be reinstated thereto.

Sec. 13 of the Omnibus Rules Implementing Book V of E.O. 292 provides that -

Sec. 13. All appointments involved in a chain of promotions must be submitted simultaneously for approval by the Commission. The disapproval of the appointment of a person proposed to a higher position invalidates the promotion of those in lower positions and automatically restores them to their former positions. However, the affected persons are entitled to the payment of salaries for services actually rendered at a rate fixed in their promotional appointments.

Under the aforecited section, before a public official or employee can be automatically restored to her former position, there must first be a series of promotions; second, all appointments are simultaneously submitted to the CSC for approval; and third, the CSC disapproves the appointment of a person proposed to a higher position.

The essential requisites prescribed under Sec. 13 do not avail in the case at bench. To start with, the movement of Nacario from the Budget Office to the Office of MPDC cannot be considered a promotion for the term connotes

an increase in duties and responsibilities as well as a corresponding increase in salary.[19] Conformably therewith, we find the movement of Nacario one of lateral transfer.[20]

A careful examination of the qualifications, powers and duties of a Budget Officer and an MPDC provided under Secs. 475 and 476 of the Local Government Code of 1991 shows that the latter office is not burdened with more duties and responsibilities than the former. It is also interesting to note that there was, on the contrary, a reduction in the basic salary of Nacario, from P30,505.20 per annum[21] as Budget Officer to P27,732.00 per annum[22] as MPDC. Moreover, private respondent admitted in her comment and in her memorandum that the position of Budget Officer and MPDC were of the same rank, salary grade and level.[23] This was attested to by Vilma J. Martus, the Human Resource Management Officer of Pili, who certified that per Position Allocation List (PAL) of the municipality the Budget Officer and MPDC are of equal level.[24]

Aside from the lack of a series of promotions, the other two (2) requisites are not also present, i.e., the appointments of the parties concerned were not simultaneously submitted to the CSC for approval - the appointment (permanent) of Nacario was approved by the CSC on 13 June 1985 while the appointment (permanent) of San Luis was approved by the CSC on 9 February 1993 - and, the ouster of Nacario from the Office of MPDC was a result of the MSPB decision directing the reinstatement of Mancita and not because the CSC disapproved her appointment as MPDC.

While the contemporaneous construction of Sec. 13 by the CSC is entitled to great weight and respect, this Court shall depart from such interpretation when it is clearly erroneous[25] or when there is no ambiguity in the rule,[26] as is in the instant case, and yield to the letter of the law taking its terms in their plain, ordinary and popular meaning.[27]

Let us now examine whether the lateral transfer of private respondent was validly made in accordance with Sec. 5, par. 3, Rule VII, Omnibus Rules Implementing Book V of E.O. 292. If not, then private respondent is entitled to be protected in her security of tenure.

Sec. 5, par. 3, of Rule VII provides that -

Transfer shall not be considered disciplinary when made in the interest of public service, in which case, the employee concerned shall be informed of the reasons therefor. If the employee believes that there is no justification for the transfer, he may appeal his case to the commission. (underscoring supplied)

According to Nacario she never applied or sought appointment by transfer to the position of MPDC since she even had no prior knowledge of her appointment.[28] She assumed the new position only in order to comply with the move of Mayor Prila to supposedly "reorganize" the municipal government of Pili. Nacario did not question her transfer because she revered the mayor and did not in any way intend to displease him.

The submissive attitude displayed by private respondent towards her transfer is understandable. Although Nacario was not informed of the reasons therefor she did not complain to the mayor or appeal her case to the CSC if in fact the same was not made in the interest of public service. For it is not common among local officials, even those permanent appointees who are more secured and protected in their tenurial right, to oppose or question the incumbent local executive on his policies and decisions no matter how improper they may seem.

Even as early as 1968, in *Nemenzo v. Sabillano*,[29] we held that -

There are altogether too many cases of this nature, wherein local elective officials, upon assumption of office, wield their new-found power indiscriminately by replacing employees with their own proteges, regardless of the laws and regulations governing the civil service. Victory at the polls should not be taken as authority for the

commission of such illegal acts.

Private respondent was the Budget Officer of Pili for almost eight (8) years from August 1980 until her transfer in July, 1988.[30] Nacario appeared to be satisfied with her work and felt fulfilled as Budget Officer until Mayor Prila appointed her MPDC to fill up the position, which was not even vacant at that time. It was only seven (7) days after Nacario's appointment when Mayor Prila informed Mancita that her services were being terminated. Simply put, Mayor Prila was so determined in terminating Mancita that he conveniently pre-arranged her replacement by Nacario. Although Nacario continued to discharge her duties, this did not discourage her from trying to regain her former position. Undaunted, she applied with the Office of the Budget Secretary for the position of Budget Officer upon learning that it was placed under the Department of Budget and Management. She was not however successful.

In *Sta. Maria v. Lopez*[31] we distinguished between a transfer and a promotion and laid down the prerequisites of a valid transfer thus -

A transfer is a 'movement from one position to another which is of equivalent rank, level and salary, without break in service.' Promotion is the 'advancement from one position to another with an increase in duties and responsibilities as authorized by law, and is usually accompanied by an increase in salary' x x x A transfer that results in promotion or demotion, advancement or reduction or a transfer that aims to 'lure the employee away from his permanent position,' cannot be done without the employees' consent. For that would constitute removal from office. Indeed, no permanent transfer can take place unless the officer or employee is first removed from the position held, and then appointed to another position (underscoring provided)

The rule that unconsented transfers amount to removal is not however without exception. As we further said in *Sta. Maria*, -

Concededly there are transfers which do not amount to removal. Some such transfers can be effected without the need for charges being proffered, without trial or hearing, and even without the consent of the employee x x x x The clue to such transfers may be found in the 'nature of the appointment.' Where the appointment does not indicate a specific station, an employee may be transferred or assigned provided the transfer affects no substantial change in title, rank and salary x x x x Such a rule does not proscribe a transfer carried out under a specific statute that empowers the head of an agency to periodically reassign the employees and officers in order to improve the service of the agency x x x x Neither does illegality attach to the transfer or reassignment of an officer pending the determination of an administrative charge against him; or to the transfer of an employee from his assigned station to the main office, effected in good faith and in the interest of the service pursuant to Sec. 32 of the Civil Service Act.

Clearly then, the unconsented lateral transfer of Nacario from the Budget Office to the Office of MPDC was arbitrary for it amounted to removal without cause, hence, invalid as it is anathema to security of tenure. When Nacario was extended a permanent appointment on 1 August 1980 and she assumed the position, she acquired a legal, not merely an equitable, right to the position. Such right to security of tenure is protected not only by statute, but also by the Constitution[32] and cannot be taken away from her either by removal, transfer or by revocation of appointment, except for cause, and after prior notice.[33]

The guarantee of security of tenure is an important object of the civil service system because it affords a faithful employee permanence of employment, at least for the period prescribed by law, and frees the employee from the fear of political and personal prejudicial reprisal.[34]

Consequently, it could not be said that Nacario vacated her former position as Budget Officer or abdicated her

right to hold the office when she accepted the position of MPDC since, in contemplation of law, she could not be deemed to have been separated from her former position or to have terminated her official relations therewith notwithstanding that she was actually discharging the functions and exercising the powers of MPDC. The principle of estoppel, unlike in *Manalo v. Gloria*,^[35] cannot bar her from returning to her former position because of the indubitable fact that private respondent reluctantly and hesitantly accepted the second office. The element of involuntariness tainted her lateral transfer and invalidated her separation from her former position.

For another thing, the appointment of San Luis as Budget Officer carried with it a condition. At the back of his appointment is inscribed the notation *Sa kondisyon nasa ayos ang pagkakatiwalag sa tungkulin ng dating nanunungkulan*, which when translated means "Provided that the separation of the former incumbent is in order." Considering that the separation of Nacario who was the former incumbent was not in order, San Luis should relinquish his position in favor of private respondent Nacario. This is, of course, without prejudice to San Luis' right to be reinstated to his former position as Cashier II of the DENR, he being also a permanent appointee equally guaranteed security of tenure.

A final word. Petitioners cannot claim that they have been denied due process of law by public respondent. The records reveal that petitioners had the opportunity to question the adverse opinion rendered by CSC Chairperson Sto. Tomas in a letter dated 15 March 1993.^[36] The correspondence which was in the nature of a motion for reconsideration constitutes sufficient opportunity for petitioners who felt aggrieved to inform the CSC of their side of the controversy. What is sought to be safeguarded in the application of due process is not the lack of previous notice but the denial of opportunity to be heard.^[37]

Before we write *finis* to this ponencia, we remind those public officials who flaunt their authority - and those similarly inclined - to faithfully abide by the Constitution and observe honestly and in good faith the tenurial security of public servants who serve the government with sincerity and dedication. They should not be moved or removed from their established positions without any lawful cause and pushed at will like pawns on the bureaucratic chessboard.

WHEREFORE, premises considered, the petition is DISMISSED. CSC Resolution No. 93-1996 is AFFIRMED insofar as it orders the reinstatement of PRESCILLA B. NACARIO to the Office of Municipal Budget Officer of Pili, Camarines Sur. Accordingly, petitioner Mayor Delfin N. Divinagracia, or whoever is now the incumbent Mayor of Pili or acting in his behalf, is ORDERED to reinstate private respondent Prescilla B. Nacario immediately to the position of Municipal Budget Officer of Pili and petitioner Alexis D. San Luis to vacate the said office without prejudice to regaining his former position in the government if legally feasible and warranted.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Romero, Melo, Puno, Vitug, Kapunan, Mendoza, and Francisco, JJ., concur.

Regalado, J., join J. Davide Jr. in his dissent.

Davide, Jr., J., please see dissenting opinion.

Quiason, J., on leave.

[1] Book II, Title II, Art. 8, Sec. 161, B.P. 337, Local Government Code (1983).

[2] Sangguniang Bayan Resolution No. 38, Rollo, p. 48.

[3] *Id.*, p. 8. The Joint Commission on Local Government Personnel Administration organized under P.D. 1136 was abolished by the Local Government Code of 1991, and its personnel, records, equipment and other assets

were transferred to the Civil Service Commission, Sec. 77, 2nd par., R.A. 7160.

[4] Id., p. 8.

[5] Rollo, p. 6.

[6] Annex "F," Id., p. 33.

[7] Id., p. 7.

[8] On 1 July 1993 the Civil Service Commission issued Resolution No. 93-2387 abolishing the Merit Systems and Protection Board (MSPB) in order to streamline the operations of CSC.

[9] Annex "N," Id., pp. 47-49.

[10] Annex "O," Id., p. 50.

[11] Mancita v. Barcinas, G.R. No. 98120, 22 December 1990, 216 SCRA 772.

[12] Annex "I," Rollo, p. 36.

[13] Annex "K," Id., pp. 39-40.

[14] On 10 August 1993, the Civil Service Commission issued an Order directing the Municipality of Pili to implement CSC Resolution No. 93-1996; Id., pp. 81-82.

[15] Id., pp. 16-20.

[16] Id., pp. 18-19.

[17] Memorandum of Private Respondent, Rollo, p. 132.

[18] Comment of Public Respondent, id., pp. 102-107.

[19] Sec 1. Rule IV of the implementing Rules defines promotion as the advancement of an employee from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary. Promotion involves a movement from one department or agency to another, or from one organizational unit to another in the same department or agency.

[20] Pars. 1 and 2, Sec. 5, Rule VII of the Omnibus Rules implementing Book V of E.O. 292 defines transfer as "a movement from one position to another which is of equivalent rank, level or salary without break in service involving the issuance of an appointment x x x x The transfer may be from one department or agency to another or from one organizational unit to another in the same department or agency; provided however, that any movement from non-career service to the career service shall not be considered a transfer.

[21] Service Record of Precilla B. Nacario, Annex "B," Rollo, p. 137.

[22] Appointment of Prescilla B. Nacario as MPDC by Mayor Prila dated 10 June 1985, Annex "A," Id., p. 28.

[23] Annex "P," Rollo p. 55.

[24] Comment of private respondent, Id., p. 63; Memorandum, p. 132.

[25] Molina v. Rafferty, 37 Phil. 545 (1918).

[26] Regalado v. Yulo, 61 Phil. 173 (1935).

[27] Portland Cement Co. v. Municipality of Naga, G.R. No. 241116, 22 August 1968, 24 SCRA 708.

[28] Memorandum of private respondent, Rollo, p. 132.

[29] No. L-20977, 7 September 1968, 25 SCRA 1.

[30] Service Record of Prescilla B. Nacario, Annex "B," of her memorandum, Rollo, p. 137.

[31] No. L-30773, 18 February 1970, 31 SCRA 637.

[32] Art. IX-B, Sec. 2, par.3 of the 1987 Constitution.

[33] *Gaga Maura v. Civil Service Commission*, G.R. No. 97794, 13 May 1994, citing *Aquiano v. Civil Service Commission*, 208 SCRA 240, and *Mitra v. Subido*, 21 SCRA 127.

[34] 15 Am Jur 2d, p. 5.

[35] G.R. No. 106692, 1 September 1994, En Banc. In this case, the Court found petitioner to have voluntarily accepted the new position of Clerk II and even assumed the same after she had appealed with the DOST/RAB to place her to any comparable position to which her qualification fit, instead of questioning the new position structure or taking the other alternatives of either accepting separation pay or retiring from the service. The Court further held that "reluctance and involuntariness in relation thereto is not asserted in her petition and in her letters of 3 September 1990 and 4 March 1991."

[36] Annex "K," Rollo, p. 39.

[37] *Simpao v. Civil Service Commission*, G.R. No. 85976, 15 November 1990, 191 SCRA 396 citing *Sumadchat v. Court of Appeals*, 30 January 1982, 111 SCRA 501.

DISSENTING OPINION

DAVIDE, JR., J.:

I respectfully submit that it is private respondent Prescilla B. Nacario who should bear the prejudicial consequence of the reinstatement of Filomena R. Mancita to the position of Municipal Planning and Development Coordinator (MPDC), formerly Municipal Development Coordinator (MDC), and that in restoring Nacario to the position of Municipal Budget Officer (MBO) and ousting therefrom petitioner Alexis San Luis, the public respondent acted with grave abuse of discretion.

I gather from the ponencia the following facts:

Mancita was appointed to the position of MDC of Pili, Camarines Sur, on 1 August 1980. The name of this office was changed to MPDC in March 1983.

On 10 June 1985, Mayor Anastacio M. Prila of Pili appointed Nacario, who was then holding the position of MBO of Pili, as MPDC. This appointment was to take effect on 1 July 1985. Nacario accepted the appointment and assumed office.

In his letter of 17 June 1985, Mayor Prila notified Mancita that her services as MDC would be terminated effective at the close of business hours on 1 July 1985 on the ground that the office of MDC was abolished as a result of the reorganization of the local government of Pili.

Nacario assumed her new office over the objection of Mancita who did not accept her termination from the service and, instead, forthwith appealed to the Merit Systems Protection Board (MSPB). In its decision of 20 June

1989, the MSPB declared illegal Mancita's termination from the service, ruled that she was qualified for the position of MPDC, and ordered the new mayor, petitioner Delfin N. Divinagracia, Jr., to reinstate Mancita to the position of MPDC with back salaries. Divinagracia's appeal to the Civil Service Commission (CSC) was dismissed on 16 July 1990 per CSC Resolution No. 90-657.

On 15 October 1990, Divinagracia informed Nacario that her services as MPDC would be terminated effective 16 November 1990 in compliance with the decision of the MSPB. Nacario would not accept her termination. However, instead of going to the CSC for a possible reconsideration of CSC Resolution No. 90-657, she filed with the Regional Trial Court (RTC) of Camarines Sur a petition for declaratory relief and prohibition with preliminary injunction (Civil Case No. P-17819) against CSC Chairperson Patricia A. Sto. Tomas, Mayor Divinagracia, the CSC Regional Director, and Filomena Mancita. She prayed for the annulment of CSC Resolution No. 90-657.

Mancita's motion to dismiss on the ground of lack of jurisdiction having been denied, she came to this Court via a special civil action for certiorari, G.R. No. 98120, which this Court granted in its decision of 22 December 1992 (216 SCRA 772 [1992]). This Court held that the trial court had no jurisdiction over Civil Case No. P-17819 because decisions, orders, or rulings of the CSC are subject to review only by this Court under Rule 65 of the Rules of Court.

During the pendency of G.R. No. 98120, Nacario sent a query to the CSC asking about her status as a permanent employee of the Municipality of Pili after she had accepted the position of MPDC. In a letter dated 8 December 1990, the CSC opined that the reinstatement of Mancita to the position of MPDC was not a valid cause for Nacario's termination and since she was the former MBO, she has the right to return to the position of MBO.

In his letter of 15 March 1993, Divinagracia sought to reconsider the opinion for the reason that petitioner San Luis was validly appointed as MBO by the Secretary of Budget and Management and that this appointment was confirmed by the CSC. In its CSC Resolution No. 93-1996 of 27 May 1993, the CSC denied the request and upheld Nacario's right to security of tenure as MBO pursuant to Section 13, Rule VI of the Omnibus Rules Implementing Book V of E.O. No. 292. This Section mandates the return of an appointment, in a chain of promotions, to his former position once his appointment is subsequently disapproved.

As regards her former office of MBO which Nacario vacated, several persons held it after she had assumed office as MPDC pursuant to the 10 June 1985 appointment extended her by Mayor Prila. She was first replaced by Digna Isidro. A year later, Digna was succeeded by Eleonor Villarico who served until 1 March 1990 when she resigned. It may be recalled that in 1988 the Local Officers Services, which included the local budget office, was nationalized and placed under the Department of Budget and Management (DBM). Consequently, the authority to appoint the MBOs devolved on the Secretary of Budget and Management. Owing to the lack of qualified candidates for the position, the vacancy lasted until 30 September 1991. In the meantime, Juan Batan, the former MBO of Baao, Camarines Sur, was appointed officer-in charge. He was later replaced, also in such capacity, by Francisco Deocareza, the former MBO of Naga City.

On 1 October 1991, Secretary Guillermo Carague of the DBM appointed in a temporary capacity petitioner Alexis San Luis, then Cashier II of the Department of Environment and Natural Resources (DENR), as MBO of Pili.

On 22 June 1992, after control over the Local Government Officers Services was returned to the local government units concerned by virtue of the Local Government Code of 1991 (R.A. 7160) as implemented by E.O. No. 503, San Luis was re-appointed, in a permanent capacity, as MBO of Pili.

From the foregoing facts, it is clear that private respondent Nacario voluntarily accepted her appointment as

MPDC, thereby effectively relinquishing and abandoning her position as MBO. She held the new position continuously and uninterruptedly, even peacefully, until, at the earliest, 15 October 1990 when she was told to vacate it to comply with the decision of the MSPB reinstating Mancita. She was, as well, fully aware of the fact that several persons had succeeded her as MBO. Nacario's explanation that she assumed the new position only in order to comply with the move of Mayor Prila to reorganize the municipal government of Pili is implausible and simply incredible. On the contrary, she appeared to have relished the prestige and ascendancy of her new office and the challenge of a new role as coordinator of planning and development in the municipality. If indeed she was "forced" to accept the new position, then she could have requested the new mayor, Mayor Divinagracia, to return her to the position of MBO.

I find, as well, the conclusion in the majority opinion that her transfer to the position of MPDC was an "unconsented lateral transfer" to be without factual basis. It should be noted that there was no reception of evidence before the CSC. As earlier stated, Nacario merely sent to the CSC a letter-query during the pendency of Mancita's petition in this Court (G.R. No. 98120) inquiring about her status as a permanent employee of the Municipality of Pili after she had accepted the position of MPDC. The letter-query seems to be a last-ditch effort at damage control after Nacario realized her fatal mistake of invoking the regular court's jurisdiction to set aside the CSC resolution reinstating Mancita. By then, however, Nacario had lost her period to seek relief from CSC Resolution No. 90-657. Besides, since the CSC was aware of the pendency of G.R. No. 98120, it should not have entertained the letter-query.

Any suggestion of involuntariness in Nacario's acceptance of her appointment as MPDC appears only in her memorandum. This Court should not accept it as the gospel truth.

On the other hand, the appointment of San Luis as MPDC was regularly done and without any protest from Nacario. If the latter honestly believed that she was illegally and arbitrarily transferred to the position of MPDC, she should have protested the appointment of San Luis.

Howsoever viewed, Nacario had lost her position as MBO of Pili by having voluntarily accepted her appointment as MPDC and, voluntarily and faithfully serving the new office. Even if the majority's theory of "unconsented lateral transfer" was to be accepted, Nacario must further be barred on the ground of estoppel.

If there is any party whose security of tenure should be protected, it is San Luis. Hence, he should not be given his walking papers. The disposition in the majority opinion that the dismissal is without prejudice to regaining his former position in the government if legally feasible is inconsistent with its conclusion that Section 13, Rule VI of the Omnibus Rules Implementing Book V of E.O. No. 292 on appointments involved in a chain of promotions is inapplicable to this case.

I vote then to grant the petition.

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