

**CITY GOVERNMENT OF MAKATI CITY REPRESENTED HEREIN BY
JEJOMAR C. BINAY IN HIS CAPACITY AS MAYOR OF MAKATI CITY,
PETITIONER, VS. CIVIL SERVICE COMMISSION AND EUSEBIA R.
GALZOTE, R...**

G.R. No. 131392. February 06, 2002

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

Is a government employee who has been ordered arrested and detained for a non-bailable offense and for which he was suspended for his inability to report for work until the termination of his case, still required to file a formal application for leave of absence to ensure his reinstatement upon his acquittal and thus protect his security of tenure? Concomitantly, will his prolonged absence from office for more than one (1) year automatically justify his being dropped from the rolls without prior notice despite his being already placed under suspension by his employer until the termination of his case, which finally resulted in his acquittal for lack of evidence?

EUSEBIA R. GALZOTE was employed as a lowly clerk in the service of the City Government of Makati City. With her meager income she was the lone provider for her children. But her simple life was disrupted abruptly when she was arrested without warrant and detained for more than three (3) years for a crime she did not commit. Throughout her ordeal in detention she trusted the city government that the suspension imposed on her was only until the final disposition of her case. As she drew near her vindication she never did expect the worst to come to her. On the third year of her detention the city government lifted her suspension, dropped her from the rolls without prior notice and without her knowledge, much less gave her an opportunity to forthwith correct the omission of an application for leave of absence belatedly laid on her.

Upon her acquittal for lack of evidence and her release from detention she was denied reinstatement to her position. She was forced to seek recourse in the Civil Service Commission which ordered her immediate reinstatement with back wages from 19 October 1994, the date when she presented herself for reassumption of duties but was turned back by the city government, up to the time of her actual reinstatement.

Petitioner went to the Court of Appeals, but private respondent was sustained and the petition was dismissed. In other words, in both the Civil Service Commission[1] and the Court of Appeals,[2] private respondent obtained favorable relief.

Plainly, the case of petitioner City Government of Makati City revolves around a rotunda of doubt, a dilemma concerning the legal status and implication of its suspension of private respondent Eusebia R. Galzote and the automatic leave of absence espoused by the Civil Service Commission. Against this concern is the punctilious adherence to technicality, the requirement that private respondent should have filed an application for leave of absence in proper form. The instant case is therefore a dispute between, at its worst, private respondent despite her detention, of which petitioner had actual notice, and the suspension order couched in simple language that she was being suspended until the final disposition of her criminal case.

The meaning of her suspension until the final disposition of her case is that should her case be dismissed she should be reinstated to her position with payment of back wages. She did not have to apply for leave of absence since she was already suspended by her employer until her case would be terminated. We have done justice to the workingman in the past; today we will do no less by resolving all doubts in favor of the humble employee in faithful obedience to the constitutional mandate to afford full protection to labor.[3]

What follows is the pathetic story of private respondent Eusebia R. Galzote as recorded by the Civil Service Commission, adopted and sustained by the Court of Appeals: Private respondent was employed as a clerk in the Department of Engineering and Public Works of Makati City.[4] On 6 September 1991 she was arrested without warrant and detained allegedly for kidnapping for ransom with physical injuries, and thereafter subjected to inquest proceedings[5] with the criminal case eventually docketed as Crim. Case No. 88357 of the Regional Trial Court of Pasig, Metro Manila.[6] Incarcerated from then on, she could not report for work as a result of which she was suspended from office by petitioner City Government starting 9 September 1991 until the final disposition of her case.[7] Unfortunately, however, the City Government thereafter changed its policy. Without informing private respondent who was then already detained at the Rizal Provincial Jail,[8] and even as her trial for the criminal case was going on, she was dropped from the rolls of municipal employees effective 21 January 1993 for having been absent from work for more than one (1) year without official leave.[9]

Three (3) years later, or on 22 September 1994, private respondent Galzote was acquitted of the crime charged. The trial court strongly noted the failure of the prosecution to prove any act establishing her complicity in the crime, and thus ordered her immediate release from detention.[10]

On 19 October 1994 she requested the Municipal Personnel Officer as well as Mayor Jejomar Binay, both of petitioner city government, for the lifting of her suspension and for her reinstatement to her position in accordance with the 9 September 1991 memorandum.[11] On 4 August 1995, or nearly a year after she made her request for reinstatement from petitioner City Government and no action was taken thereon, private respondent filed a letter-request with the CSC for the same cause.[12] Consequently, in Resolution No. 960153 the CSC found merit in her submissions and ordered her immediate reinstatement to the position of Clerk III with back wages from 19 October 1994, which was the day she presented herself as reporting for work after her detention, until her actual resumption of duty.[13]

The City Government of Makati City filed a Petition for Review of the Resolution of the CSC but the same was denied by the Court of Appeals, thus sustaining the assailed Resolution of the CSC.

As may be gleaned from the pleadings of the parties, the issues are: (a) whether private respondent Eusebia R. Galzote may be considered absent without leave; (b) whether due process had been observed before she was dropped from the rolls; and, (c) whether she may be deemed to have abandoned her position, hence, not entitled to reinstatement with back salaries for not having filed a formal application for leave. Encapsulated, the issues may be reduced to whether private respondent may be considered absent without leave or whether she abandoned her job as to justify being dropped from the service for not filing a formal application for leave.

Petitioner would have private respondent declared on AWOL and faults her for failing to file an application for leave of absence under Secs. 20[14] and 35[15] of the CSC Rules and rejects the CSC's ruling of an "automatic leave of absence for the period of her detention" since the "current Civil Service Law and Rules do not contain any specific provision on automatic leave of absence."

The Court believes that private respondent cannot be faulted for failing to file prior to her detention an application for leave and obtain approval thereof. The records clearly show that she had been advised three (3) days after her arrest, or on 9 September 1991, that petitioner City Government of Makati City had placed her under suspension

until the final disposition of her criminal case.[16] This act of petitioner indubitably recognized private respondent's predicament and thus allowed her to forego reporting for work during the pendency of her criminal case without the needless exercise of strict formalities. At the very least, this official communication should be taken as an equivalent of a prior approved leave of absence since it was her employer itself which placed her under suspension and thus excused her from further formalities in applying for such leave. Moreover, the arrangement bound the City Government to allow private respondent to return to her work after the termination of her case, i.e., if acquitted of the criminal charge. This pledge sufficiently served as legitimate reason for her to altogether dispense with the formal application for leave; there was no reason to, as in fact it was not required, since she was for all practical purposes incapacitated or disabled to do so.

Indeed, private respondent did not have the least intention to go on AWOL from her post as Clerk III of petitioner, for AWOL means the employee leaving or abandoning his post without justifiable reason and without notifying his employer. In the instant case, private respondent had a valid reason for failing to report for work as she was detained without bail. Hence, right after her release from detention, and when finally able to do so, she presented herself to the Municipal Personnel Officer of petitioner City Government to report for work. Certainly, had she been told that it was still necessary for her to file an application for leave despite the 9 September 1991 assurance from petitioner, private respondent would have lost no time in filing such piece of document. But the situation momentarily suspending her from work persisted: petitioner City Government did not alter the *modus vivendi* with private respondent and lulled her into believing that its commitment that her suspension was only until the termination of her case was true and reliable. Under the circumstances private respondent was in, prudence would have dictated petitioner, more particularly the incumbent city executive, in *patria potestas*, to advise her that it was still necessary - although indeed unnecessary and a useless ceremony - to file such application despite the suspension order, before depriving her of her legitimate right to return to her position. *Patria potestas in pietate debet, non in atrocitate, consistere*. Paternal power should consist or be exercised in affection, not in atrocity.

It is clear from the records that private respondent Galzote was arrested and detained without a warrant on 6 September 1991 for which reason she and her co-accused were subjected immediately to inquest proceedings. This fact is evident from the instant petition itself[17] and its attachments, namely, the Information filed against them on 17 September 1991 as well as the Decision of the trial court acquitting private respondent of kidnapping and physical injuries. Hence, her ordeal in jail began on 6 September 1991 and ended only after her acquittal, thus leaving her no time to attend to the formality of filing a leave application.

But petitioner City Government would unceremoniously set aside its 9 September 1991 suspension order claiming that it was superseded three (3) years later by a memorandum dropping her from the rolls effective 21 January 1993 for absence "for more than one (1) year without official leave." [18] Hence, the suspension order was void since there was no pending administrative charge against private respondent so that she was not excused from filing an application for leave.

We do not agree. In placing private respondent under suspension until the final disposition of her criminal case, the Municipal Personnel Officer acted with competence, so he presumably knew that his order of suspension was not akin to either suspension as penalty or preventive suspension since there was no administrative case against private respondent. As competence on the part of the MPO is presumed, any error on his part should not prejudice private respondent, and that what he had in mind was to consider her as being on leave of absence without pay and their employer-employee relationship being merely deemed suspended, not severed, in the meanwhile. This construction of the order of suspension is actually more consistent with logic as well as fairness and kindness to its author, the MPO. Significantly, the idea of a suspended employer-employee relationship is widely accepted in labor law to account for situations wherein laborers would have no work to perform for causes not attributable to

them.[19] We find no basis for denying the application of this principle to the instant case which also involves a lowly worker in the public service.

Moreover, we certainly cannot nullify the City Government's order of suspension, as we have no reason to do so, much less retroactively apply such nullification to deprive private respondent of a compelling and valid reason for not filing the leave application. For as we have held, a void act though in law a mere scrap of paper nonetheless confers legitimacy upon past acts or omissions done in reliance thereof.[20] Consequently, the existence of a statute or executive order prior to its being adjudged void is an operative fact to which legal consequences are attached.[21] It would indeed be ghastly unfair to prevent private respondent from relying upon the order of suspension in lieu of a formal leave application.

At any rate, statements are, or should be, construed against the one responsible for the confusion; otherwise stated, petitioner must assume full responsibility for the consequences of its own act, hence, should be made to answer for the mix-up of private respondent as regards the leave application. At the very least, it should be considered estopped from claiming that its order of suspension is void or that it did not excuse private respondent from filing an application for leave on account of her incarceration. It is a fact that she relied upon this order, issued barely three (3) days from the date of her arrest, and assumed that when the criminal case would be settled she could return to work without need of any other prior act.[22] In *Laurel v. Civil Service Commission* we held -

The sole ground invoked by him for exemption from the rule on nepotism is, as above indicated: the rule does not apply to designation - only to appointment. He changed his mind only after the public respondent, in its Resolution No. 83-358, ruled that the "prohibitive mantle on nepotism would include designation, because what cannot be done directly cannot be done indirectly" and, more specifically, only when he filed his motion to reconsider said resolution. Strictly speaking, estoppel has bound petitioner to his prior admission. Per Article 1431 of the Civil Code, through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.[23]

If it is true that the City Government of Makati City wanted to change its stance and consider the suspension memorandum as an error, it should have required private respondent to file an application for leave as it was its obligation to inform her of such requirement. In particular, the subsequent memorandum dropping Galzote from the rolls effective 21 January 1993 should have been sent to her at the Rizal Provincial Jail where she had been detained and where she could have received it. This Court will not confer validity upon the later memorandum which violates due process. As we ruled in *Gonzales v. Civil Service Commission*[24] -

It is the ruling of the respondent Civil Service Commission that the sending of the said notice to the residence of petitioner constitutes "substantial" compliance with the demands of due process. The ruling would have some allure if the address of petitioner in the United States was not known to the officials of ATI and if his Philippine address was his last known address. But as stressed above, they knew of petitioner's exact address in the United States and there appears no impediment for them to send the notice in this correct address x x x x. The disputed ruling cuts too deeply on petitioner's right to continue his employment in the government and unduly dilutes the protection of due process. x x x x Nothing less than strict compliance with the demands of due process should have been demanded by the respondent Commission from the officials of ATI in light of the equities of the case. Nor can we give our concurrence to the further ruling of the respondent Commission that the denial of due process to the petitioner was cured by the publication of said notice in three (3) issues of the Philippine Journal. Notice by publication might have been proper if the address of petitioner were unknown. Since the officials of ATI knew the whereabouts of petitioner, they have no legal warrant to notify him thru the newspapers.

We find no relevance to the reference of petitioner City Government to the presumption of regularity in the performance of duties as regards the service of the memorandum upon private respondent which dropped her from

the rolls. In the first place, the presumption would only cover the proposition that the City Government did serve the memorandum at the house of private respondent. It does not prove however that she received the memorandum or was sufficiently informed that she had been dropped from the rolls. Still and all, the presumption stands on shaky foundation since, as noted by the Court of Appeals, even the delivery of the memorandum to private respondent's house is of doubtful veracity "in light of the non-submission by the petitioner of the corresponding proof of service, i.e., the affidavit of the party serving, containing a full statement of the date, place and manner of service." [25] Besides, petitioner City Government of Makati City had actual and official knowledge of private respondent's incarceration by virtue of a valid process of detention (beginning September 1991 until she was declared innocent of the charges in 1994) as obvious from the admissions in the instant petition that left her no choice but to follow and obey, and even suffer in silence, a lawful order of the court, although actually unjust to her. Petitioner's knowledge thereof, which obliges it to send the notice to where private respondent was detained, cannot be denied. Thus -

x x x x 2.02 On September 11, 1991, she was arrested on a charge of kidnapping with serious physical injuries and consequently Criminal Case No. 88357 was filed against her at the Regional Trial Court of Pasig, Metro Manila, Branch 166 x x x x 2.03 During the pendency of the criminal case, Galzote remained in jail without filing any application for leave with the then Municipality of Makati. On January 21, 1993 she was dropped from the rolls for her continued absence without official leave for more than a year. [26]

The attention of the Court is invited to the cases of *Ramo v. Elefaño* [27] and *Quezon v. Borromeo*, [28] which dwell on the immateriality of sending the notice to drop the employees concerned from the rolls. But these cases, sadly, are not in point.

In *Ramo* the Dean of the Graduate Studies of the Leyte Normal School abandoned the deanship of the school and transferred to the National Manpower and Youth Council from where she was deriving her salary from the time she went on leave from the school. It must be stressed that it was the Dean herself who by desire and choice refused to report for work at the Leyte Normal School, her former employer.

The case of *Quezon* involved an erring Chief Nurse of the Iligan City Hospital who went on an extended study leave despite the clear instructions for her to return to work immediately, and the absence of any legal impediment to her prompt compliance with the order. Besides the voluntary act of the Chief Nurse to refuse the employment, her employer did not also excuse her from filing a leave application.

In other words, what the *Ramo* and *Quezon* cases resolved was the adamant refusal of the employees concerned to return to work by their own choosing and the consistent demand of their respective employers to immediately resume their duties.

In contrast, the instant case involves the technicality of private respondent's failure to file a leave application on account of the representation of petitioner City Government to suspend her from work until her criminal case was terminated. It also refers to the legal and physical impediment of a pending criminal case that prevented her from reporting for work, a situation she did not wish for, much less cherish. Being the sole provider of her children, the employment could not have but meant so much to her and her family.

Clearly, therefore, *Ramo* and *Quezon* cases do not apply to the case before us. What should indeed apply is our ruling in *Gonzales v. Civil Service Commission* [29] where we held that due process demands serving upon the employee himself the notice dropping him from the rolls. In *Gonzales*, the government sat on the application for leave for an unreasonable period of time and the only time it acted on the application was to drop the employee unceremoniously from the rolls. This factual setting in *Gonzales* fits snugly into the instant case where the City Government of Makati City slept on the request of private respondent to reinstate her on the basis of the condition

in the order suspending her, i.e., her reinstatement upon her acquittal; instead, after three (3) long years, without prior warning and out of the blue, petitioner acted adversely by dropping her from the service for not filing an application for leave. The action of herein petitioner cuts too deeply into private respondent's right to continue her employment in the government and unduly dilutes the constitutional guarantees of security of tenure and due process.

The holding of the Civil Service Commission that private respondent was on automatic leave of absence during the period of her detention must be sustained. The CSC is the constitutionally mandated central personnel agency of the Government tasked to "establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness and courtesy in the civil service"[30] and "strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability."[31] Besides, the Administrative Code of 1987 further empowers the CSC to "prescribe, amend, and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws,"[32] and for matters concerning leaves of absence, the Code specifically vests the CSC to ordain -

Sec. 60. Leave of Absence. - Officers and employees in the Civil Service shall be entitled to leave of absence, with or without pay, as may be provided by law and the rules and regulations of the Civil Service Commission in the interest of the service.

Pursuant thereto the CSC promulgated Resolution No. 91-1631 dated 27 December 1991 entitled Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws which it has several times amended through memorandum circulars. It devotes Rule XVI to leaves of absence. Petitioner City Government relies upon Secs. 20 and 35 to debunk the CSC ruling of an automatic leave of absence. Significantly, these provisions have been amended so that Sec. 20 of the Civil Service Rules is now Sec. 52 of Rule XVI, on Leave of Absence, of Resolution No. 91-1631 dated 27 December 1991 as amended by CSC MC No. 41, s. 1998, and Sec. 35 is now Sec. 63 as amended by CSC MC Nos. 41, s. 1998 and 14, s. 1999.

While Sec. 20 or Sec. 52 still reads -

Approval of vacation leave. - Leave of absence for any reason other than illness of an official or employee or of any member of his immediate family must be contingent upon the needs of the service. Hence, the grant of vacation leave shall be at the discretion of the head of department/agency,

Sec. 35 or Sec. 63 now provides -

Effect of absences without approved leave. - An official or an employee who is continuously absent without approved leave for at least thirty (30) working days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice. He shall, however, be informed, at his address appearing on his 201 files or at his last known written address, of his separation from the service, not later than five (5) days from its effectivity x x x

As a general rule Secs. 20 and 52, as well as Secs. 35 and 63, require an approved leave of absence to avoid being on AWOL.[33] However, these provisions cannot be interpreted as exclusive and referring only to one mode of securing the approval of a leave of absence which would require an employee to apply for it, formalities and all, before exceeding thirty (30) days of absence in order to avoid being dropped from the rolls.[34] There are, after all, other means of seeking and granting an approved leave of absence, one of which is the CSC recognized rule of automatic leave of absence under specified circumstances. As the CSC states in its assailed Resolution -

In a similar case (Cenon Vargas, CSC Resolution Nos. 94-2795 and 95-5559), the Commission said -
When Mr. Vargas was in jail, his services were considered automatically suspended. He could not be expected

to file his corresponding application for leave of absence, because whether he likes it or not he could not possibly report to work. He is considered on automatic leave of absence for the period of his detention in jail.

Finally, Vargas had been acquitted of the criminal charges levelled against him. Since no separate administrative case was filed against him, there is no basis to separate him from the service.

Based on the abovementioned decision, Galzote is excused from filing her leave of absence because she could not report to work. She is therefore on automatic leave of absence for the period of her detention there being no evidence to show that Galzote deliberately absented herself from work. Besides, her act of requesting the Municipal Personnel Officer for reinstatement after she was released from jail shows that she had no intention to go on AWOL.[35]

As properly noted, CSC was only interpreting its own rules on leave of absence and not a statutory provision[36] in coming up with this uniform rule. Undoubtedly, the CSC like any other agency has the power to interpret its own rules and any phrase contained in them[37] with its interpretation significantly becoming part of the rules themselves. As observed in *West Texas Compress & Warehouse Co. v. Panhandle & S.F. Railing Co.* -

In construing the above and similar antecedent rules bearing on the same subject, the railroad commission of this state has, for many years, uniformly officially construed it to give to the railroad company the right to designate and select the compress at which the cotton is to be compressed either at origin, in transit or at destination. Since the commission is an instrumentality of the state, exercising delegated powers, its orders are of the same force as would be a like enactment by the Legislature. It therefore follows that the interpretation officially placed on the order or rule by the commission becomes a part of the rule. Further, the rule is susceptible of no other interpretation (underscoring supplied).[38]

This principle is not new to us. In *Geukeko v. Araneta*[39] this Court upheld the interpretation of the Department of Agriculture and Commerce of its own rules of procedure in suspending the period of appeal even if such action was nowhere stated therein. We said -

The main question at issue hinges on the interpretation of Section 2 of the Lands Administrative Order No. 6, promulgated by the Secretary of Agriculture and Commerce on May 1, 1934, providing for the filing of appeals from decisions or orders of the Director of Lands to the said Department Secretary, which reads as follows:

SEC. 2. APPEAL FROM DECISION OR ORDER OF THE DIRECTOR OF LANDS, MOTION FOR RECONSIDERATION. — An appeal shall lie from a decision of the Director of Lands to the Secretary of Agriculture and Commerce within a period of sixty (60) days to be counted from the date the interested party received notice thereof unless a motion for reconsideration is filed within the said period, in which case, appeal shall be made within sixty (60) days from his receipt of notice of the order or decision of the Director of Lands disposing of the motion for reconsideration x x x x

This Lands Administrative Order No. 6 governing the promulgation of decisions and orders of the Director of Lands and providing for the prescriptive period within which appeals may be interposed was issued pursuant to the provisions of section 79(b) of the Revised Administrative Code, section 5 of Act No. 2874 and Act No. 3038. x x x x Looking at the question at issue in this case independently of the aforecited authorities, it may be asked: After the civil cases filed by the sub-lessees were thrown out of court, could they still invoke administrative relief by appealing to the Secretary of Agriculture and Natural Resources? Said Administrative official answers in the affirmative, maintaining that the period of 60 days provided for by section 2 of the Lands Administrative Order No. 6 aforequoted has not yet prescribed, it being the adopted policy of their office to consider the filing of civil actions in court as suspending the running of said period. It must be remembered that Lands Administrative Order No. 6 is in the nature of procedural rules promulgated by the Secretary of Agriculture and Natural Resources pursuant to the power bestowed on said administrative agency to promulgate rules and regulations necessary for

the proper discharge and management of the functions imposed by law upon said office. x x x Recognizing the existence of such rule-making authority, what is the weight of an interpretation given by an administrative agency to its own rules or regulations? Authorities sustain the doctrine that the interpretation given to a rule or regulation by those charged with its execution is entitled to the greatest weight by the Court construing such rule or regulation, and such interpretation will be followed unless it appears to be clearly unreasonable or arbitrary (42 Am. Jur. 431). It has also been said that:

An administrative body has power to interpret its own rules which have the force and effect of law, and such an interpretation becomes part of the rule (Foley vs. Benedict, 122 Tex 193, 55 SW [2d] 805, 86 ALR 477). x x x The contemporaneous construction of a statute (and similarly of rules and regulations) by the executive officers of the government whose duty it is to execute it is entitled to great respect, and should ordinarily control the construction of the statute by the courts (United States vs. Philbrick, 120 U.S. 52, 30 L Ed. 559).

x x x In this connection, We can also say that the interpretation given by the Department of Agriculture and Natural Resources to the provisions of section 2 of Lands Administrative Order No. 6 appears to be reasonable for it merely reflects the intent of the law in placing the disposition of lands within the Tambobong Estate in the hands of the officials of the Land Department (Executive Order No. 376; Commonwealth Act No. 539; Lands Administrative Order No. R-3). The underlying idea seems to be that those officials are considered in a better position to decide controversies regarding the disposition of said Estate (underscoring supplied).

The same precept was enunciated in *Bagatsing v. Committee on Privatization*[40] where we upheld the action of the Commission on Audit (COA) in validating the sale of Petron Corporation to Aramco Overseas Corporation on the basis of COA's interpretation of its own circular that set bidding and audit guidelines on the disposal of government assets -

The COA itself, the agency that adopted the rules on bidding procedure to be followed by government offices and corporations, had upheld the validity and legality of the questioned bidding. The interpretation of an agency of its own rules should be given more weight than the interpretation by that agency of the law it is merely tasked to administer (underscoring supplied).

Given the greater weight accorded to an agency's interpretation of its own rules than to its understanding of the statute it seeks to implement, we simply cannot set aside the former on the same grounds as we would overturn the latter. More specifically, in cases where the dispute concerns the interpretation by an agency of its own rules, we should apply only these standards: "Whether the delegation of power was valid; whether the regulation was within that delegation; and if so, whether it was a reasonable regulation under a due process test." [41] An affirmative answer in each of these questions should caution us from discarding the agency's interpretation of its own rules.

To set aside the CSC ruling will not be consistent with the established principle above stated. Rejecting the CSC ruling on an automatic leave of absence solely for want of a provision expressly and specifically allowing such leave would erroneously repudiate the difference between the agency's own understanding of its rules and its interpretation of a statute. The difference is important and should not be glossed over to avoid compromising the authority of the CSC as the constitutionally mandated central personnel agency of the Government. In this regard, the rule of automatic leave of absence clearly falls within the constitutionally delegated power of the CSC and is reasonable under the circumstances to address absences from work which are not attributable to the concerned government employee. Verily, if petitioner City Government plainly applied the proper standards, it would have easily implemented the CSC's institution of an automatic leave of absence, and consequently avoided declaring private respondent on AWOL.

It is hinted that the purported automatic leave of absence is a non-existent rule hence CSC has no power to

interpret such non-existent provision; further, that the CSC has no power to provide for exemptions since none is stated in the CSC rules.

If the rule on automatic leave of absence were already written in the CSC rules or truly an existing provision therein, then there would have been no reason for the instant case to ensue and be vigorously disputed. In fact, if such legal concept were already in place, the CSC would have no basis for interpreting its rules since all it had to do was to implement them. Actually, what the CSC interpreted in the case at bar were Secs. 20, 35 and other related provisions of the CSC rules on the requirement of an approved leave of absence.

Section 20 of the CSC Rules allows absences even without prior approved leave, e.g., in case of illness. Thus, "[l]eave of absence for any reason other than illness of an official or employee or of any member of his immediate family must be contingent upon the needs of the service. Hence, the grant of vacation leave shall be at the discretion of the head of department/agency." Obviously, illness cannot be scheduled and is beyond the control of the absent employee so that contingency upon the needs of the service would be irrelevant. It is enough that the employer be informed of the absent employee's illness, which information is the effective substitute for a prior leave application. But situations of illness are not the only instances of force majeure; other events beyond the control of the employee may also force him to be absent from work, such as when the employee himself is kidnapped or arrested and detained for alleged crimes. It is the latter cases, akin to predicaments of illness, that the CSC sought to address in interpreting the CSC rules on leave of absence as including or contemplating an automatic leave of absence. In these items of force majeure, the employee is excused from filing an application for leave of absence provided that he informs the employer of the unfortunate event underlying his absence.

In the instant case, we believe that private respondent has sufficiently informed petitioner City Government of her predicament for which no logical purpose arises for a prior leave application. Significantly, the rule on automatic leave of absence is part and parcel of the authority to drop employees from the rolls under Sec. 35 or Sec. 63 of the CSC Rules for it tempers the exercise of such authority where the absences are beyond the control of the concerned employee. As explained by CSC -

Dropping from the rolls of an employee who fails to file an application for leave during her absence is a non-disciplinary measure provided for under Section 35, Rule XVI of the Omnibus Rules Implementing Book V of Executive Order No. 292 x x x x Be it noted that the main concept of "dropping from the rolls" is the refusal of an employee to report for work or to go on absence without official leave (AWOL) despite the employer's notice to report. Such refusal to be a ground therefor is, of course, anchored on the fact that there is no other impediment on the part of the employee concerned which would prevent him from filing said leave application (underscoring supplied).[42]

Indeed no tinge of arbitrariness can be ascribed to the concept of automatic leave of absence. This kind of leave of absence is the substantial equivalent in the public sector of our ruling in *Magtoto v. NLRC*[43] where we considered a worker to have been on leave of absence without pay pending resolution of a criminal complaint for rebellion against him. We ruled -

The employer tries to distance itself from the detention by stressing that the petitioner was dismissed due to prolonged absence. However, Mr. Magtoto could not report for work because he was in a prison cell. The detention cannot be divorced from prolonged absence. One caused the other. Since the causes for the detention, which in turn gave the employer a ground to dismiss the petitioner, proved to be non-existent, we rule that the termination was illegal and reinstatement is warranted x x x x It was beyond the petitioner's power to limit the duration of his unfounded detention. It was a matter purely within the discretion of the military authorities. It was then the contention of the military that not even the courts of justice should inquire into the causes and the duration of detentions for rebellion-related offenses x x x x Equitable considerations favor the petitioner. The employer is a stable company with a large work force x x x. The petitioner is a mere clerk. It should not be

difficult to find another item for him. As between the employee and the employer, the latter is in a singularly better position to shoulder the unfortunate consequences of the unfounded detention. Thus, the remedy left for the petitioner is reinstatement to a substantially equivalent position x x x x" (underscoring supplied).[44]

The same concept may also be found in Sec. 677 of The Revised Manual Instructions to Treasurers[45] -

The attendance of a witness in his own behalf, to secure his exoneration of charges or matter alleged against him is attendance for his own benefit. If he is not under suspension, the time consumed in such attendance shall be charged to his leave, if he has any. Otherwise he shall be considered on leave without pay x x x x When the criminal charges filed are not the direct result of an act performed by him in connection with his official duties, his forced absences from duty resulting from his arrest and required attendance in court may not be considered official. He shall not in such case be entitled to salary (underscoring supplied).

Neither do we doubt that the CSC has the power to allow exemptions from prior filing of leave applications. This power logically flows from the task of the CSC to regulate civil service in the country as ordained in the Constitution and mandated in the Administrative Code of 1987. The CSC Rules themselves (Sec. 20 or Sec. 35) do not limit the powers of the CSC in this regard to cases of illness only. With reasonableness as the standard, the CSC is far from being presumptuous when it states that other instances of force majeure (such as the arrest and detention of a civil servant for a crime she did not commit) may excuse the prior filing of an approved leave of absence. This determination is an exercise of the CSC's constitutional mandates - certainly these mandates are not matters of mere excuses.

The case of private respondent Galzote is not the first time that this Court has done away with the requirement of an approved leave of absence. In *University of the Philippines v. Civil Service Commission*[46] we disregarded the literal import of Sec. 33[47] (equivalent of Secs. 35 and 63 above-quoted) of Rule XVI of the Revised Civil Service Rules in recognition of UP's constitutionally guaranteed academic freedom to allow the university to continue employing a teacher-employee who had been on AWOL. UP teaches that although academic freedom is not written in the CSC Rules on leave of absence, we can factor such freedom in establishing the validity of UP's action to override it. We therefore advocate equal treatment for CSC's reasonable implementation of its own rules in the specific and actual case of private respondent, an exercise which like UP's academic freedom also has the Constitution as its basis. Truly, if we could accept the exemption of UP from the CSC Rules on grounds not stated therein, i.e. academic freedom, then equally, if not with more reason, must we recognize the CSC's accepted authority to incorporate as part of the CSC Rules its own interpretations thereof.

In two (2) other decisions of this Court, we treated with compassion an absence although without prior leave for causes beyond the control of the absent employee. In *Re: Pedro P. Tiongson*,[48] we ruled that "the misfortunes that were visited upon his family and which prevented him from attending office were not of his own making and were beyond his control. It was but natural for him to move his family in the face of danger from his son's enemies and when he was in the province, even if he wanted to return, he could not do so on account of the floods." [49] In *Makabuhay v. Manuel*[50] we recognized that an employee may be forced to go on leave even if he no longer has any leave credits because of the administrative case that was filed against him.

Lastly, petitioner City Government cannot pin the blame on private respondent Galzote for her failure to assume her work. Clearly, she reported for work as soon as she was free to do so, but was unfortunately turned back by petitioner City Government. In locking her out of her job, the City Government illegally deprived her of the opportunity to work and so must be held liable for such unlawful action. All in all, we hold that private respondent must be reinstated as Clerk III or a position of equivalent rank and compensation in the City Government. She must also be paid back wages and other benefits lawfully due her counted from 19 October 1994 when she presented herself for resumption of duties but was refused. This is very much consistent with the elementary rule

that a government official or employee who had been illegally dismissed and whose reinstatement had later been ordered is considered as not having left his office, so that he is entitled to all the rights and privileges that should accrue to him by virtue of the office that he held.

Needless to stress, if private respondent's request for reinstatement with back wages is granted, the benefits she will derived will not even be enough to compensate her for the untold sufferings and privations she went through while in jail, away from her growing children. Perhaps only a miracle could have provided for them in her forced absence. Now we say, enough should be enough.

Under RA 6656 (An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization) and RA 7160 (The Local Government Code of 1991), civil servants who are found illegally dismissed or retrenched are entitled to full pay for the period of their separation.

Our final point. An efficient and honest bureaucracy is never inconsistent with the emphasis on and the recognition of the basic rights and privileges of our civil servants or, for that matter, the constitutional mandates of the Civil Service Commission. In fact only from an enlightened corps of government workers and an effective CSC grows the professionalization of the bureaucracy. Indeed the government cannot be left in the lurch; but neither could we decree that government personnel be separated from their jobs indiscriminately regardless of fault. The fine line between these concerns may be difficult to clearly draw but if we only exerted extra effort to rebel against the allure of legal over-simplification, justice would have been done where it is truly due.

WHEREFORE, the petition of the City Government of Makati City is DENIED and the Decision of the Court of Appeals affirming Resolution No. 960153 of the Civil Service Commission ordering the immediate reinstatement of private respondent EUSEBIA R. GALZOTE as Clerk III or a position of equivalent rank and compensation in the rank and file service of petitioner City Government of Makati City with back wages from 19 October 1994 up to the time of her actual reinstatement is likewise AFFIRMED.

SO ORDERED.

Puno, Pardo, Buena, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

Davide, Jr., C.J., Melo, Mendoza, Quisumbing, and Carpio, JJ., join the dissent of J. Panganiban.

Vitug, J., see separate opinion.

Kapunan, J., see separate concurring opinion.

Panganiban, J., see dissenting opinion.

[1] Resolution No. 960153, 9 January 1996, penned by CSC Chairman Corazon Alma G. de Leon, concurred in by Commissioners Ramon P. Ereneta, Jr. and Thelma P. Gaminde; Rollo, pp. 57-60

[2] Decision penned by Associate Justice Salvador J. Valdez, Jr., concurred in by Associate Justices Gloria C. Paras and Lourdes K. Tayao-Jaguros, CA-G.R. SP No. 40195, Rollo, pp. 8-16.

[3] Const., Art. XIII, Sec. 3, par. 1; Art. II, Sec. 18.

[4] Rollo, p. 24.

[5] Docketed as I.S. No. 7429; Id., p. 39-40

[6] Crim. Case No. 88357 was raffled to RTC-Br. 166, Pasig, Metro Manila; id., pp. 39-40, 45.

[7] Id., p. 50.

[8] Id., p. 68.

[9] Id., pp. 63-64.

[10] Id., pp. 47-48.

[11] Id., pp. 49, 50-51.

[12] Id., pp. 52-53.

[13] Id., pp. 57, 59-60.

[14] Now Sec. 52 of Rule XVI, Leave of Absence, of Res. No. 91-1631 dated 27 December 1991, as amended by CSC MC No. 41, s. 1998.

[15] Now Sec. 63 of Rule XVI, Leave of Absence, of Res. No. 91-1631 dated 27 December 1991, as amended by CSC MC Nos. 41, s. 1998 and 14, s. 1999.

[16] Rollo, p. 50.

[17] In par. 2.02 of the Petition, the City Government avers that "On September 11, 1991, she was arrested on a charge of kidnapping with serious physical injuries and consequently Criminal Case No. 88357 was filed against her at the Regional Trial Court of Pasig, Metro Manila, Branch 166." But cross-referred to the fact that private respondent was arrested sans an arrest warrant and later subjected to inquest proceedings, the arrest could not have been made on 11 September 1991, the date of the Information, but certainly earlier or on 6 September 1991.

[18] Rollo, pp. 63-64.

[19] See e.g., *Visayan Stevedore Transportation Company v. Court of Industrial Relation*, No. L-21696, 25 February 1967, 19 SCRA 426; *Tomas Lao Construction v. NLRC*, G.R. No. 116781, 5 September 1997, 278 SCRA 716.

[20] *De Agbayani v. Philippine National Bank*, G.R. No. 231127, 29 April 1971, 38 SCRA 429; *Municipality of Malabang v. Benito*, G.R. No. 28113, 28 March 1969, 27 SCRA 545.

[21] *De Agbayani*, supra, p. 435.

[22] Rollo, p. 49.

[23] G.R. No. 71562, 28 October 1991, 203 SCRA 195, 203-204.

[24] G.R. No. 105752, 2 September 1993, 226 SCRA 66, 71.

[25] Rollo, pp. 68-69.

[26] Id., p. 25.

[27] G.R. No. 556293, 30 July 1981, 106 SCRA 221, 234.

[28] G.R. No. 70953, 9 April 1987, 149 SCRA 205, 216.

[29] See Note 24.

[30] Const., Art. IX-B, Sec. 3.

[31] Ibid.

[32] Bk. V, I (A), Ch. 3, Sec. 12.

[33] Decision, p. 8.

[34] *Id.*, p. 7.

[35] Rollo, pp. 58-59.

[36] As a matter of fact, Sec. 60 of the Administrative Code does not provide for any rule on leave of absence other than that civil servants are entitled to leaves of absence.

[37] *Norwegian Nitrogen Products Co. v. United States of America*, 288 U.S. 294, 325, 77 L.ed. 796, 812 (1933).

[38] 15 S.W. (2d) 558, 560 (1929); *Folley v. Benedict*, 55 S.W. (2d) 805, 808 (1932). “Since the board of regents exercises delegated powers, its rules are of the Legislature, and its official interpretation placed upon the rule so enacted becomes a part of the rule.”

[39] No. L-10182, 24 December 1957.

[40] G.R. No. 112399, 14 July 1995, 246 SCRA 334, 352 - 353.

[41] *Utah Hotel Co. v. Industrial Com.*, 151 P2d 467, 472 (1944).

[42] Rollo, p. 80.

[43] G.R. No. 63370, 18 November 1985, 140 SCRA 58.

[44] *Id.*, pp. 64-66.

[45] Cited in R.G. Martin, II *The Revised Administrative Code with Annotations* (1961), pp. 19-20.

[46] G.R. No. 132860, 3 April 2001; Decision penned by Mr. Justice Artemio V. Panganiban.

[47] This provision states: “Under no circumstances shall leave without pay be granted for more than one year. If an employee who is on leave without pay for any reason fails to return to duty at the expiration of one year from the effective date of such leave, he shall be considered automatically separated from the service; Provided, that he shall, within a reasonable time before the expiration of his one year leave of absence without pay, be notified in writing of the expiration thereof with a warning that if he fails to report for duty on said date, he will be dropped from the service.”

[48] A.M. No. T-344, 22 July 1975, 65 SCRA 181.

[49] *Id.*, p. 184.

[50] No. L-40872, 29 December 1980, 101 SCRA 834, 840.

SEPARATE OPINION

VITUG, J.:

I concur with my esteemed colleague, Mr. Justice Josue N. Bellosillo, in finding for private respondent Eusebia R. Galzote; however, I would limit the award of back salaries to five years conformably with the pronouncement of this court in a long line of cases (*Cristobal vs. Melchor*, 78 SCRA 175; *Gementiza vs. CA*, 113 SCRA 477; *Ginzon vs. Municipality of Murcia*, 158 SCRA 1; *Laganapan vs. Asedillo*, 154 SCRA 377; *San Luis vs. CA*, 174 SCRA 258; *Tan, Jr. vs. Office of the President*, 229 SCRA 677; *Bangalisan vs. Court of Appeals*, 276 SCRA 619; *Jacinto vs. Court of Appeals*, 281 SCRA 657; *Gloria vs. Court of Appeals*, 306 SCRA 287; and *Caniete vs.*

Secretary of Education, Culture and Sports, 333 SCRA 849, as opposed to Garcia vs. Chairman, Commission on Audit, 226 SCRA 356).

CONCURRING OPINION

KAPUNAN, J.:

I join Justice Bellosillo in his well-crafted and logically compelling ponencia. It is a consecrated legal axiom that the reason of the law is the life of the law. *Ratio legis est anima*, which means the reason of the law is its soul.[1] The reason of a law may cease in a given situation. This may happen when the purpose of the law sought to be achieved is accomplished, or the mischief sought to be repressed is prevented, by an act or event independent of the statute itself. The law, in such a case, though remaining in force and effect, finds no application in the given situation.[2] This truism hold true in the case at bar.

Petitioner assails the decision of the Court of Appeals affirming that of the Civil Service Commission which directed petitioner to reinstate private respondent. Petitioner maintains that the dismissal of private respondent was justified as it insists on the strict application of the civil service rules on Absence Without Official Leave (AWOL):

Sec. 15. Applications for vacation leave of absence for one full day or more shall be submitted on the prescribed form for action by the proper chief agency in advance, whenever possible, of the effective date of such leave.

Sec. 20. Leave of absence for any reason other than illness of an officer or employee or of any member of his family must be contingent upon the need of the service. Hence, the grant of vacation leave shall be at the discretion of the head of department/agency.

Sec. 21. Any violation of the leave laws, rules or regulations, or any misrepresentation or deception in connection with an application for leave, shall be a ground for disciplinary action.

Sec. 35. Officers and employees who are absent for at least thirty (30) days without approved leave are considered on Absence Without Leave (AWOL) and shall be dropped from the service after due notice. However, when the exigencies of the service require the immediate presence and he fails/refuses to return to the service, the head of office may drop him for the service even prior to the expiration of the 30-day period abovestated.[3]

Invoking Sections 20 and 35 quoted above, petitioner argues that any absence without leave, for whatever cause or reason, is a ground for dropping of the officer or employee from the service.

Petitioner's contention is untenable. The requirement for leave application contemplated in Sections 20 and 35 cannot apply to extraordinary or abnormal situations such as the one private respondent was confronted with. Private respondent's failure to apply for leave was not because of her "whim," "defiance" or "impertinence," as petitioner put it, but due to circumstances beyond her control. Her absence from work was clearly involuntary. It is undisputed that she was incarcerated and was not allowed to post bail. The criminal charge against her, kidnapping with serious physical injuries, was grave and carried with it the capital penalty of reclusion perpetua to death. Her life and liberty were then at stake. During that time, private respondent could not obviously be expected to think of the formality of filing an application for leave, which would have been absurd if she did in the first place! In the situation she was in, she was not in the position to apply for leave of absence, nor for her superiors to grant it.

These were the circumstances that were taken into account by the CSC when it held that private respondent cannot be considered on AWOL as she was considered on “automatic” leave of absence. The CSC recognized that the policy on absence without leave is not a hard and fast rule and admits of some exceptions such as the case of private respondent. Accordingly, the CSC found in favor of private respondent as it cited its previous ruling in a case involving substantially similar facts:

In a similar case (Cenon A. Vargas, CSC Resolution Nos. 94-2795; 95-5559), the Commission said:

When Mr. Vargas was in jail, his services were considered automatically suspended. He could not be expected to file his corresponding application for leave of absence, because whether he likes it or not he could not possibly report to work. He is considered on automatic leave of absence for the period of his detention on jail. Finally, Vargas had been acquitted of the criminal charges leveled against him. Since no separate administrative case was filed against him, there is no basis to separate him from the service.

Based on the abovementioned decision, Galzote is excused from filing her leave of absence because she could not report to work. She is therefore, on automatic leave of absence for the period of her detention there being no evidence to show that Galzote deliberately absented herself from work. Besides, her act of requesting the Municipal Personnel Officer for reinstatement after she was released from jail show the she had no intention to go on AWOL.[4]

This interpretation of the CSC of the pertinent civil service rules is entitled to great weight and respect.[5]

Likewise, I agree with the CA that petitioner’s act of suspending private respondent is incongruous to its position that private respondent went on AWOL. As the CA rhetorically asked, “For how can one who is suspended go on leave?”[6]

Petitioner, tried to downplay this inconsistency by stating that private respondent’s suspension was lifted on December 8, 1991 as indicated in her employment record. It does not appear from the records, however, that private respondent was even informed of the purported lifting of her suspension. Private respondent’s ignorance thereof is evident from her letter-request for reinstatement, dated October 19, 1994, which is quoted below in part:

In view thereof, may I respectfully request that the suspension issued on 9 September 1991 be lifted and that the undersigned be allowed to resume position as Clerk III, in the Department of Engineering and Public Works in this municipality.[7]

However, petitioner now advances the view that the suspension was erroneous and void as there was then no administrative charge against private respondent. In other words, the suspension was without basis. Hence, according to petitioner, private respondent should have filed an application for leave as she was not excused therefrom under the law. To my mind, this ratiocination is quite unfair. How would private respondent, not being well versed in the fine points of the law, to know that her suspension was invalid? Since she was already under suspension, why would she still file an application for leave for the duration thereof? Her letter to Hon. Jejomar Binay is revealing:

On the second ground cited by Atty. NERY,[8] the undersigned, in view of the suspension order, assumed that there is no need on her part to file an application for leave of absence.

It is very illogical on the part of an individual who is suspended from work to file a leave of absence during the duration of the suspension.[9]

On the other hand, the manner by which she was dropped from the roll violated due process. The fundamental rule of due process requires that a person be accorded notice and an opportunity to be heard.[10] These requisites were not observed in private respondent’s case. Private respondent was neither notified of the charge against her

nor given the opportunity to present her side.

Even the service of termination, dated January 21, 1993, was defective. The same was served at the home address of private respondent, when petitioner fully knew that at that time private respondent was still in prison. The CA aptly applied our ruling in *Gonzales vs. Civil Service Commission*[11] on this point:

It is the ruling of the respondent Civil Service Commission that the sending of the said notice to the residence of the petitioner constitutes “substantial” compliance with the demands of due process. The ruling would have some allure if the address of petitioner in the United States was not known to the officials of ATI and if his Philippine address was his last known address. But as stressed above, they knew of petitioner’s exact address in the United States and there appears no impediment for them to send the notice in this correct address. Petitioner, be it noted, was not moving from one residence to another, to avoid service of legal notices. They were aware that petitioner was not momentarily staying in his address in Quezon City where he could receive said notice. Under the circumstances, it is grave abuse of discretion for the respondent Commission to hold that there was “substantial” compliance with the notice requirement of the due process. The disputed ruling cuts too deeply on petitioner’s right to continue his employment in the government and unduly dilutes the protection of due process.[12]

Finally, petitioner’s allegation that private respondent abandoned her position cannot hold water. The rule on abandonment by a public employee is explained in this manner:

Abandonment of the duties of a position is generally regarded as a form of resignation, having all the consequences of a voluntary resignation. The rule is: A position is held upon the implied condition that the employee will diligently and faithfully perform the duties assigned to him. Where it appears that the employee refuses or neglects to perform the duties of his position for so long a period of time and under such circumstances as to reasonably warrant the presumption that he does not desire or intend to perform the duties of his position he will be held to have abandoned it, not only where his refusal to perform was willful but also where, though not intending to vacate the position, he in good faith but mistakenly supposed he had no right to it. While an abandonment of a position by an employee must be total and under such circumstances as to clearly indicate its absolute relinquishment, whether or not a position has been abandoned is dependent on his acts and conduct rather than his declared intention. The law will infer an abandonment where the acts and conduct of the employee indicate that he has completely relinquished the duties of his position.[13]

In other words, in order to constitute abandonment, it is necessary to show that the incumbent has manifested a clear intention to abandon the office and its duties, although such intention may be inferred from conduct.[14] Further, an office cannot be abandoned without the intention by the officer to relinquish the same.[15] Private respondent’s absence from work, albeit prolonged, was certainly not due to any intention to relinquish her duties. Rather, as earlier explained, she was wrongfully implicated and imprisoned for a crime that she did not commit. Upon her acquittal, private respondent’s act of immediately requesting that she be reinstated to her position negates any claim that she abandoned the same.

Private respondent had been unjustifiably dismissed from the service due to petitioner’s rigid and unreasonable application of the civil service rules. Faced with a choice between a decision that will serve justice and another that will deny it because of a too-strict interpretation of the law, the Court, as in this case, will resolve in favor of the former, for the ultimate end of the law is justice.[16] Indeed, “[a]s judges, we are not automatons. We do not and must not unfeelingly apply the law as it is worded, yielding like robots to the literal command without regard to its cause and consequence.”[17]

For the foregoing reasons, I concur with the majority opinion and vote to DENY the petition.

- [1] Concurring opinion of Justice Perfecto in *Ocampo Vda. De Gomez vs. Government Insurance Board*, 78 Phil. 217 (1947) citing *Bocobo*, *Cult of Legalism*.
- [2] *Agpalo*, *Statutory Construction*, 2[nd] Ed. (1990).
- [3] Rule XVI, omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws.
- [4] CSC Resolution No. 960153, January 6, 1996, pp. 2-3; *Rollo*, pp. 58-59.
- [5] *Divinagracia vs. Sto. Tomas*, 244 SCRA 595 (1995).
- [6] CA Decision, October 27, 1997, p. 5.; *Rollo*, p. 66.
- [7] *Records*, p. 13.
- [8] One of the legal officers in petitioner's Office of the Municipal Attorney and Chief of Legal Division.
- [9] See Note 3, p. 15.
- [10] *Rubenecia vs. Civil Service Commission*, 244 SCRA 640 (1995).

[11] 226 SCRA 66 (1993).

- [12] *Ibid.*, p. 71.
- [13] *State of Nebraska v. City of Scottsbluff*, 100 N.W. 2d 202 (1960) citing *Mechem on Public Officers*, § 435, p. 278.
- [14] *State v. Green*, 175 S.W.2d 575 (1943).
- [15] *Ibid.*
- [16] *Pangan vs. Court of Appeals*, 166 SCRA 375 (1988).
- [17] *Alonzo vs. IAC*, 150 SCRA 259 (1987).

DISSENTING OPINION

PANGANIBAN, J.:

With due respect, I dissent from the ponencia penned by Mr. Justice Josue N. Bellosillo. I believe that, on the basis of applicable laws and rules, the Makati City government is correct in contending (1) that Respondent Eusebia R. Galzote should be deemed absent without leave (AWOL) and dropped from the roll of employees, and (2) that she was not deprived of due process.

1. Galzote Was AWOL

The ponencia of Justice Bellosillo upholds the Court of Appeals and the Civil Service Commission which considered Galzote "excused from filing her application for leave of absence because she could not report [for] work. She is therefore on automatic leave of absence for the period of her detention xxx." [1]

I respectfully submit that this holding will not stand scrutiny and analysis.

No Automatic

Leave of Absence

To begin with, the current Civil Service Law and Rules do not contain any provision on automatic leaves of absence. This is not disputed. The Rules, inter alia, unmistakably state that government employees who are AWOL for at least 30 days shall be dropped from the service:

“Sec. 35. Officers and employees who are absent for at least thirty (30) days without approved leave are considered on Absence Without Leave (AWOL) and shall be dropped from the service after due notice. However, when the exigencies of the service require his immediate presence and he fails/refuses to return to the service, the head of office may drop him from the service even prior to the expiration of the thirty (30) day period abovementioned.”

In providing for absence without approved leave, the above regulation makes no distinction or qualification. It gives no regard for the reason for the absence. It simply states that an employee who fails to report continuously for at least thirty days without an approved leave is considered absent without leave.

Moreover, Section 20 of the Rules states that the approval of a leave of absence is “contingent on the needs of the service.”

“Sec. 20. Leave of absence for any reason other than illness of an officer or employee or of any member of his immediate family must be contingent upon the needs of the service. Hence, the grant of vacation leave shall be at the discretion of the head of department/agency.”

Clearly, the approval of a leave for any reason other than the illness of an officer or employee, or of any member of that employee's immediate family, cannot be presumed. To stress, it is granted only after evaluation of the “needs of the service.” Thus to secure such approval, it becomes necessary for one to file an application for it before exceeding 30 days of absence in order to avoid being dropped from the rolls. There being no specific or clear-cut provision allowing an automatic leave of absence, the above-quoted rule forecloses the possibility of such leave, even on the ground of incarceration. After all, an incarcerated person is not prevented from communicating with the outside world.

In this case, since Galzote did not file an application for any type of leave -- whether sick leave, vacation leave or leave without pay -- she cannot be said to have an approved leave.

True, she could not have physically reported for work during her incarceration. However, there was nothing to stop her from writing to petitioner, informing it of her plight and applying for leave. Even if she was deprived of her liberty, she retained the capacity to inform petitioner that she was still interested in her job. That information was necessary to enable the government to take appropriate measures to ensure the smooth delivery of its services to the public.

The government cannot be left in the lurch. Public service would suffer if the position of a government employee, who just disappears without a word, were left vacant for an indefinite period of time. “Public office requires utmost integrity and strictest discipline. x x x. A public office is a public trust; and all public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency.”[2] Every public employee is bound to xxx act primarily for the benefit of the public.[3] Consequently, private respondent's nonchalance with respect to her duties as a government employee should not be countenanced.

Over and above the Civil Service Rules, the law -- EO 292[4] -- provides:

“Sec. 60. Leave of Absence. – Officers and employees in the Civil Service shall be entitled to leave of absence, with or without pay, as may be provided by law and the rules and regulations of the Civil Service

Commission in the interest of the service.

The law is crystal clear. The only leave of absence that a civil service employee like Galzote is entitled to is that which may be provided by law, rules and regulations. Neither the law nor the rules and regulations of the CSC provide for automatic leaves of absence.

More important, the law itself, while granting leaves of absence, still considers the grant subservient to the “interest of the service.” Thus, as between the ponencia’s interpretation that would prejudice the government service and an interpretation that would promote and enhance it, surely the latter should be upheld.

As can be seen from the legal provisions on leaves, it was the duty of Galzote to appraise the government of her inability to report for work. Having been absent for more than 30 days without an approved leave, she was clearly AWOL. Pursuant to the Civil Service Law and Rules, she should be dropped from the service. The rule of law requires no less.

The majority faults the Makati government for its “punctilious adherence to technicality” in requiring observance of the rule on leaves of absence. I respectfully submit that an application for leave is not a mere formality; it is not a “useless ceremony” as the majority calls it. It is essential to the proper delivery of service to the public. If the government employees are given absolute discretion to be absent on their mere say-so, without an approved leave, then the efficiency of public service will depend on the whim of the individual employee.

Much is also being argued about the acquittal of Galzote -- that because she was released from detention, then she should ipso facto be returned to her old job and given back pay. This is clearly untenable. Respondent’s entanglement in the crime of kidnapping was not instigated by petitioner. The criminal charge was not the reason for the loss of her employment. She was not dropped from the rolls because of the pending criminal case. She lost her job because of her unexplained absence for several years -- her absence without an approved leave. In short, she was dropped from the rolls because she was AWOL.

Interpretation Refers Only
to Extant Laws and Rules

The ponencia also contends that the Civil Service Commission is granted sufficient residual authority via its power of “interpreting” its own rules, to allow “automatic” leaves of absence. I disagree. How can the Commission “interpret” a nonexisting provision? It is undisputed that the CSC Law and Rules do not provide for an “automatic” leave. Construction or interpretation is resorted to only in case of doubt on how to understand an existing legal provision. In the present case however, there is no room for doubt: very clearly, the law and the rules do not provide for “automatic” leaves of absences. What is there to interpret?

The Court, in a number of cases, has always adhered to the well-settled rule that “when the law speaks in clear and categorical language, there is no reason for interpretation or construction, but only for application.”[5] Indeed, “a meaning that does not appear nor is intended or reflected to appear in the very language of the statute cannot be placed therein.”[6] Verily, “[o]urs is not the duty nor the power to amend the statute, which by the way, presents no interstitial space wherein to insert, in the words of Cardozo, ‘judge-made innovations.’”[7]

In *People v. Maceran*,^[8] the Court through then Justice (later Chief Justice) Ramon C. Aquino explained the limitations of administrative regulations adopted under legislative authority, as follows:

“Administrative regulations adopted under legislative authority by a particular department must be in harmony with the provisions of law, and should be for the sole purpose of carrying into effect its general supervisions. By such regulations, of course, the law itself cannot be extended. (*U.S. vs. Tupasi Molina*, *supra*). An administrative agency cannot amend an act of Congress (*Santos vs. Estenzo*, 109 Phil. 419, 422; *Teoxon vs.*

Members of the Board of Administrators, L-25619, June 30, 1970, 33 SCRA 585; Manuel vs. General Auditing Office, L-28952, December 29, 1971, 42 SCRA 660; Deluao vs. Casteel, L-21906, August 29, 1969, 29 SCRA 350).

“The rule-making power must be confined to details for regulating the mode or proceeding to carry into effect the law as it has been enacted. The power cannot be extended to amending or expanding the statutory requirements or to embrace matters not covered by the statute. Rules that subvert the statute cannot be sanctioned. (University of Santo Tomas vs. Board of Tax Appeals, 93 Phil. 376, 382, citing 12 C.J. 845-46. As invalid regulations, see Collector of Internal Revenue vs. Villaflor, 69 Phil. 319; Wise & Co., vs. Meer, 78 Phil. 655, 676; Del Mar vs. Phil. Veterans Administration, L-27299, June 27, 1973, 51 SCRA 340, 349).”[9]

This principle has been reiterated by the Court in *Shell Philippines v. Central Bank of the Philippines*[10] and *Land Bank of the Philippines v. CA*. [11]

Applying this principle to the instant case, I believe that the CSC has no power to interpret an inexistent rule, especially if such “interpretation” takes away the provision of Section 60 of EO 292 which mandates that leaves of absence shall be allowed only “in the interest of the service” -- meaning, approval cannot be presumed but may be granted only after considering “the exigencies of government service.”

Incongruent Citations

The ponencia rules that *Gonzales v. Civil Service Commission*[12] “fits snugly into the instant case.” I disagree. *Gonzales* involves the failure of the officials of the Agriculture Training Institute to act on the request for leave of absence without pay of therein petitioner, a government employee who has rendered 36 years of his life to public service and who received two merit awards for his continuous, dedicated, and faithful service in the government. In the present case, respondent who was charged with the heinous crime of kidnapping with serious physical injuries and who was acquitted “on reasonable doubt,” did not apply for a leave of absence. This is precisely the problem here -- respondent did not apply for any leave, whether with or without pay. On the other hand, the issue in *Gonzales* involved the refusal of his superiors to approve his application. *Gonzales* did not pass upon the critical issue of automatic leaves. How then can *Gonzales* “fits snugly” in the present one?

The majority also insists that in *University of the Philippines v. Civil Service Commission*, [13] -- a Decision I had the honor of writing -- this court allowed UP to continue employing a teacher who had gone AWOL; thus, the ponencia opines that the same token, we should also allow herein private respondent -- who was also AWOL -- to resume her employment.

Again, I disagree. The cited case was decided on the basis of UP’s academic freedom to select its own teaching faculty. Hence, it should be exempted from the scope of CSC Rules. In the present case, academic freedom is NOT involved at all. Herein Petition refers to an ordinary employee of the Makati government -- not to a teaching personnel of the State University, who has been the recipient of scholarship grants and whose continuation in UP’s faculty roster is thus “in the interest of the service.” I stress that it was UP, the employer, which wanted to retain the teacher; here, it is the unwanted employee who is insisting on her employment. At bottom, the facts of the present proceedings are simply incongruent with those of the cited case.

Galzote’s Suspension

Was Not Valid

The ponencia also asserts that there was no need for Galzote to file an application for leave, since the “city government of Makati had placed her under suspension.”

In *Bangalisan v. Court of Appeals*, [14] this Court has ruled that preventive suspension is valid only as an incident

in a pending administrative investigation.

“Section 51 of Executive Order No. 292 provides that ‘[t]he proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service.

“Under the aforesaid provision, it is the nature of the charge against an officer or employee which determined whether he may be placed under preventive suspension.”

In the present case, there is no pending administrative investigation involving dishonesty, oppression or grave misconduct, or neglect in the performance of duty. Neither was there, on September 9, 1991, any charge against Galzote that would warrant her removal from the service. Accordingly, the “suspension” imposed on her was clearly erroneous and void. Consequently, she was not excused from filing an application for leave.

The majority claims that to attribute to Galzote knowledge of the nullity of her suspension is “too harsh” on a “lowly clerk.” Suffice it to say that “ignorance of the law excuses no one from compliance therewith.”[15]

Assuming for the sake of argument that Galzote’s preventive suspension was valid or that the Makati government is, as argued by the majority, “estopped from claiming that its order of suspension is void,” still it is hornbook doctrine under Section 52 of the Administrative Code that a preventive suspension is valid only for “a period of ninety (90) days after the date of suspension.”

At best then, Galzote can seek shelter in this void suspension order only for 90 days. Thereafter, she should have applied for the required leave of absence. Since her suspension was only from September 9, 1991 to December 8, 1991, she could indeed be dropped from the service thirty days after that date for being AWOL.

Finally, the appealed CA Decision requires the government to give back pay to respondent for the many years she did not work, the years she was unheard from, the years during which another employee performed what she should have done. This is most unfair. The Makati government is being made to pay for the absent employee’s rank negligence or failure in applying for a leave of absence.

2. Galzote Was Accorded Due Process

Section 35 of the Civil Service Rules provides that an employee who is on AWOL “shall be dropped from the service after due notice.”

In this case, petitioner sent Galzote a letter dated January 21, 1993, informing her that she had been reported absent without leave for over a year, for which reason she was dropped from the rolls. That letter was delivered to her house. She did not respond to, much less contest, this letter.

The Court of Appeals assumed that petitioner knew of the continued incarceration of Galzote and thus opined that it knew her address to be the Rizal Provincial Jail, Pasig, Metro Manila, as of January 21, 1993. An examination of the records, however, shows a total absence of support for such assumption. It is undisputed that she had not filed any application for leave of absence. It therefore follows that petitioner had no record of the reason for her continued absence.

It should be considered further that petitioner is a public corporation. Thus, to expect it -- specially its many officials -- to take a special interest in, know, and keep track of the whereabouts of Galzote, would be unreasonable and unjustly burdensome on its part, when she herself did not bother to inform it of her situation. She was merely one of its many thousand employees. For it to rely on its records in ascertaining where to address

notices to its numerous employees would be more in accord with reason and the exigencies of the public service. Consequently, the letter addressed to private respondent and delivered to her house, informing her that she was considered AWOL was due notice to her.

Finally, in *Quezon v. Borromeo*,^[16] this Court en banc -- speaking through the learned Justice Florentino P. Feliciano -- has unanimously ruled that the notice contemplated by the Civil Service Rules is not jurisdictional in nature and the failure to give such notice does not prevent the dropping of the employee concerned from the government service. Said the Court:

“We read *Isberto and Ramo* to have held, and in any case we now so hold, that the written notice contemplated in Rule XVI, Section 33 is not jurisdictional in nature and that the failure to give such notice by the appropriate government office does not prevent the dropping of the employee concerned from the government service. In the nature of things, staying away from one’s regular employment in the government or remaining on leave without pay is something that an employee can scarcely be unaware of.”

EPILOGUE

OVER AND ABOVE the legalisms debated in the ponencia and in this opinion is the judicial policy of upholding public service. Our Ethical Standards Law requires public officials and employees to observe “utmost integrity and strictest discipline.” They cannot be allowed to just “disappear” from their jobs and then, after many years, claim that their absence was “due to circumstances beyond their control.”

Indeed, government service would greatly suffer if public servants are allowed unbridled liberty in finding excuses for the violation of simple rules. In the present case, respondent was not prevented by the alleged “circumstances beyond her control” from writing her superiors and advising them of her desire to resume work after her incarceration.

Why should public service be prejudiced by her unexcused failure to apply for a legally required leave of absence? It must be stressed that approval of a leave application is not automatic, but is subject to the discretion of competent authorities, depending on the exigencies of the service. So, how can a leave be ever automatic, especially here where no application was even filed? Approved cannot be presumed.

What is more, the appealed CA Decision requires the government to give back pay to respondent for the many years she did not work, the years she was unheard from and the years that another person performed what she should have done.

The ponencia holds that the “back pay and benefits she would receive will not even be enough to compensate her for the untold sufferings and privations she went through while in jail.” This tear-jerking rhetoric, with all due respect, is misplaced. I stress that the Makati government had absolutely nothing to do with her incarceration. Why should it pay for such alleged “untold sufferings”? Let it be remembered that she was acquitted “on reasonable doubt,” not because of any finding that she did not participate in the crime. If compensation is due her, then it should come from those who caused her alleged “privations” -- from those who “maliciously prosecuted” her if any -- not from her clearly innocent employer. This is just and fair.

I believe that the better policy is to uphold public service, discipline and integrity. No work, no pay. No application, no approval. No leave, no benefits. The rule of law requires no less.

[1] CA Decision, p. 6; rollo, p. 13.

[2] *Makati Movement Against Graft and Corruption v. Dumlao*, 247 SCRA 108, August 9, 1995, Kapunan, J.

- [3] *Viuda e Hijos de Crispulo Zamora v. Wright and Segado*, 53 Phil 613, 625, September 28, 1929, Villamor, J.
- [4] Section 60, *ibid.*
- [5] *Land Bank of the Philippines v. CA*, 258 SCRA 404, 407, July 5, 1996, per Francisco, J.; *Shell Philippines, Inc. v. Central Bank of the Philippines*, 162 SCRA 628, 633, June 27, 1998.
- [6] *Mankiad v. Tanodbayan*, 127 SCRA 724, 728, February 20, 1984, per Escolin, J., citing *Chang Yung Fa et al. v. Ganzon*, 97 Phil. 913, November 25, 1955.
- [7] *Crisolo v. Macadaeg, et al.*, 94 Phil. 862, 864, April 29, 1954, per Bengzon, J (later CJ).
- [8] 79 SCRA 450, October 18, 1977.
- [9] *Ibid.*, p. 458.
- [10] *Supra*, p. 633.
- [11] *Supra*, p. 407.
- [12] 226 SCRA 66, September 2, 1993.
- [13] GR No. 132860, April 3, 2001, per Panganiban, J.
- [14] 276 SCRA 619, July 31, 1997, per Regalado, J. See also *Jacinto v. Court of Appeals*.
- [15] Art. 3. Civil Code; *Espino v. Salubre*, AM MTJ-00-1255, February 26, 2001.
- [16] 149 SCRA 205, 216, April 9, 1987, per Feliciano, J., citing *Ramo v. Elefaño*, 106 SCRA 221, 234, July 30, 1981.

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