

FRANCIS F. YENKO, AS ADMINISTRATOR & MAYOR JINGGOY E. ESTRADA, BOTH OF THE MUNICIPALITY OF SAN JUAN, METRO MANILA, PETITIONERS, VS. RAUL NESTOR C. GUNGON, RESPONDENT.

G.R. No. 165450. August 13, 2009

Ponente: PERALTA, J.

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PERALTA, J.:

These are consolidated petitions for review on certiorari, under Rule 45 of the Rules of Court, of the Amended Decision[1] of the Court of Appeals in CA-G.R. SP No. 51093 dated September 28, 2004, reinstating Raul Nestor C. Gungon to his former position as Local Assessment Operations Officer III in the Assessor's Office of the Municipal Government of San Juan, Metro Manila, without loss of seniority rights, at the discretion of the appointing authority and subject to Civil Service law, rules and regulations; and ordering the payment to Gungon of back salaries equivalent to five years from the date he was dropped from the rolls.

The facts are as follows:

On February 28, 1987, Raul Nestor C. Gungon, who holds a professional career service eligibility, was extended a permanent appointment as Local Assessment Operations Officer III in the Assessor's Office of the Municipality of San Juan, Metro Manila.

On January 7, 1998, San Juan Municipal Administrator Francisco F. Yenke issued a Memorandum[2] temporarily reassigning Gungon to the Public Order and Safety Office (POSO) of the said municipality effective January 8, 1998 in the exigency of the service. Gungon was directed to report to Mr. Felesmeno Oliquino for further instruction. When Gungon received the Memorandum, Mr. Oliquino was confined at the San Juan Medical Center and he passed away on January 9, 1998.

On January 8, 1998, Gungon, in compliance with the reassignment Memorandum, reported to the POSO. The officer-in-charge (OIC) of the POSO, Arnulfo Aguilar, issued a Memorandum[3] dated January 8, 1998 requiring Gungon to report as Duty Agent, whose responsibility was "to conduct inspections within the municipal compound, apprehend any suspicious characters roaming within the vicinity of the municipal hall and compound," and setting his tour of duty at 12:01 a.m. to 8:00 a.m. from Monday to Friday.

In a letter[4] dated January 9, 1998 to the OIC of the POSO, Gungon protested his reassignment for being violative of the Administrative Code of 1987, which prohibits reassignment that results in reduction in rank, status or salary of an employee. Gungon went on sick leave from January 8 to 21, 1998 after filing the proper application with supporting medical certificate.[5]

On January 20, 1998, Gungon, through counsel, wrote a letter[6] to Municipal Administrator Yenke, objecting to his reassignment because it amounted to a demotion in rank; it was arbitrary, unwarranted and illegal; and it violated his constitutional right to security of tenure. Gungon requested the recall of the Memorandum dated

January 7, 1998 and his reinstatement to his position as Local Assessment Operations Officer III.

On January 22, 1998, Gungon, whose leave of absence had by then expired, reported back to his office at the Municipal Assessor's Office and continued to do so even if he was not given work there.

On February 13, 1998, Gungon received from Municipal Administrator Yenko a Memorandum,[7] which called his attention to his failure to report for duty at the POSO since the date of his reassignment. Gungon was informed that his action was a violation of Civil Service Rules which might constitute a ground for dismissal from the service.

In a letter dated February 18, 1998, Gungon replied to Municipal Administrator Yenko's Memorandum, the pertinent portion of which reads:

Dear Sir:

This is in response to your memorandum of 13 February 1998 concerning my alleged failure to report to my designated place of assignment since the effectivity of the reassignment order on January 8, 1998 up to this date.

x x x x

The transfer/reassignment is arbitrary, malicious, patently illegal, and palpably constitutes a violation of the Anti-Graft and Corrupt Practices Act (RA No. 3019) x x x. You know very well that there is no factual nor legal basis to transfer and assign me from the assessor's office, where I work as assessor, to the POSO where I will be working as a security guard in the guise of "exigency of service" which, no matter how one looks at it, is false and beyond comprehension. In fact, your memorandum is silent as to why I am purposely selected to work as security guard amidst the pendency of more important assessor's work I was doing and am still to perform being the number three man in the assessor's office, and availability of others subordinate to me who are more qualified to perform a police work, thus, establishing that the only purpose is to cause injury to me.

Your charge that I have not reported for work is equally untrue. I have been reporting to the assessor's office from 8:00 a.m. to 5:00 p.m., but my time card has not been signed by my superior, evidently for fear that he could be administratively dealt with. On the other hand, I have not reported to the POSO because, instead of being assigned from 8:00 a.m. to 5:00 p.m., I was given a graveyard assignment from 12:01 in the morning up to 8:00 a.m. I certainly cannot work with that kind of schedule and work, placing my personal safety and life in peril.

There is no contumacy on my part not to report because, by your memorandum and implemented by the POSO head, I had been given an assignment impossible to perform, dangerous to undertake, and beyond my personal competence to discharge.[8]

In a Memorandum[9] dated February 23, 1998, then San Juan Mayor Jinggoy Estrada informed Gungon that he was "considered dropped from the rolls because of [his] absence without official leave from x x x January 22, 1998 up to the present x x x."

Gungon appealed the Memoranda dated January 7, 1998 and February 23, 1998 of Municipal Administrator Yenko and Mayor Estrada, respectively, to the Civil Service Commission (CSC). He alleged that the Municipal Administrator committed abuse of authority amounting to oppression in reassigning him from the Assessor's Office, where he was working as Local Assessment Operations Officer III, to the POSO, where he would be required to work as a security guard, even if the Municipal Administrator knew that he never had the knowledge, background or training as a security guard. He also alleged that the Municipal Administrator violated the Civil Service Law when he effected the reassignment, because he knew that such personnel action was meant to demote, humiliate and subject him to ridicule, risk, harassment and undue injury rather than enhance the so-called

"exigency of service." Further, he contended that Mayor Estrada approved the illegal transfer by dropping him from the rolls on the pretext that he was absent from January 22 to February 23, 1998, although his failure to report to the POSO was based on justifiable, meritorious and valid grounds, thereby rendering the Mayor's Memorandum dropping him from the rolls as illegal and void.[10]

The CSC dismissed Gungon's appeal in CSC Resolution No. 982525 dated September 28, 1998. The dispositive portion of the Resolution reads:

WHEREFORE, the Appeal of Raul Nestor C. Gungon is hereby dismissed. Accordingly, the decision of Mayor Jinggoy Estrada, Municipality of San Juan, Metro Manila, dropping him from the rolls, is affirmed.[11]

The CSC held that even if Gungon suffered a reduction in rank when he was reassigned from the Office of the Municipal Assessor to the POSO, it was improper for him to defy the reassignment order. It cited its ruling in CSC Resolution No. 95-0114 dated January 5, 1995, thus:

A reassignment order is generally implemented immediately even if the employee does not agree with it. x x x The rule is a reassigned employee who does not agree with the order must nevertheless comply until its implementation is restrained or it is declared to be not in the interest of service or have been issued with grave abuse of discretion.[12]

The CSC held that Gungon's failure to report for work for more than 30 days was violative of CSC Memorandum Circular No. 38, series of 1993, as amended, which provides that "[a]n officer or employee who is continuously absent without approved leave (AWOL) for at least thirty (30) calendar days shall be separated from the service or dropped from the rolls without prior notice."

Gungon's motion for reconsideration was denied in CSC Resolution No. 990194[13] dated January 15, 1999.

Gungon filed a petition for review of the CSC's Resolutions with the Court of Appeals. He alleged that the CSC erred (1) in not nullifying the reassignment order and order of separation from the service notwithstanding its finding that as a result thereof, he suffered a reduction in rank; (2) in holding that his failure and refusal to comply with the reassignment order was justified; and (3) in holding that for his failure and refusal to report for duty at the disputed job he was deemed to have incurred continuous absences.[14]

Gungon also raised the following issues:

- 1) Whether or not a transfer of a Career Civil Service Employee amounting to a reduction in rank, thus violative of the Civil Service Law, is valid and enforceable;
- 2) Whether or not a transfer to a new position which entails a job that is completely and entirely different from the previous assignment is valid and enforceable;
- 3) Whether or not a refusal or failure to comply with a transfer which amounts to a reduction in rank and/or involving a work completely and entirely different from the previous designation constitutes a ground for dismissal or dropping from the rolls.[15]

On October 2, 2003, the Court of Appeals rendered a Decision in favor of Gungon, the dispositive portion of which reads:

WHEREFORE, premises considered, the assailed Civil Service Commission Resolution Nos. 982525 and 990194 are hereby SET ASIDE and payment of petitioner's back salaries from February 23, 1998 up to October 13, 1998 is hereby ORDERED.[16]

The Court of Appeals held that Gungon, who occupied the position of Local Assessment Operations Officer III under a permanent appointment, enjoyed security of tenure, which is guaranteed by the Constitution and Civil

Service Law. His reassignment from Local Assessment Operations Officer III to security guard involved a reduction in rank and status, which is proscribed under Section 10, Rule 7 of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Omnibus Civil Service Rules and Regulations).[17] Hence, his reassignment, which was directed by Municipal Administrator Yenke in the Memorandum dated January 7, 1998, was void ab initio. Consequently, Mayor Estrada's Memorandum dated February 13, 1998, which ordered Gungon's dismissal from the service, must suffer from the same fatal infirmity.[18]

However, the Court of Appeals, pursuant to Section 35 of Rule XVI of the Omnibus Civil Service Rules and Regulations,[19] as amended, did not grant Gungon's plea for reinstatement on the ground that Gungon applied for terminal leave on October 13, 1998, which application was approved. He was paid his terminal leave benefits in the amount of P151,514.39 on November 10, 1998.

The Court of Appeals held that having voluntarily opted to sever his employment by applying for terminal leave and having accepted his terminal leave benefits, Gungon should only be awarded back salaries from the date of his dismissal until the date he applied for terminal leave, which was from February 23, 1998 up to October 13, 1998.

The parties filed separate motions for reconsideration of the Decision of the Court of Appeals.

Gungon contended:

- The receipt by the dismissed employee of his terminal leave pay is not fatal to his appeal for reinstatement;
- Sec. 35 of the Amended Rule XVI (Leave of Absence) of the Omnibus Rules finds no application in the case x x x since Sec. 35 of the Amended Rule XVI was an amendment made only on December 14, 1998, published in the Manila Times on December 30, 1998, and took effect only on January 15, 1999;
- The applicable Omnibus Rule in fact is the original or un-amended Sec. 6 of Rule XVI (Leave of Absence) which was in force and effect at the time petitioner applied for terminal leave on [October] 13, 1998;
- The petitioner is entitled to reinstatement with back salaries to a maximum of five (5) years in view of the Honorable Court's Decision in setting aside the Memoranda of Municipal Administrator Yenke and Mayor Estrada, and the CSC Resolutions.[20]

On the other hand, Municipal Administrator Yenke and Mayor Estrada contended that the conclusion and the order of payment of Gungon's back salaries be reconsidered based on the following grounds:

- Petitioner Gungon was away on leave from January 22, 1998 to February 23, 1998.
- There was a prohibition to transfer any employee from one office to another effective January 11, 1998 until June 30, 1998 relative to the May 1998 election;
- The Memorandum of respondent Municipal Administrator Yenke did not assign petitioner Gungon to work as security guard.[21]

In an Amended Decision dated September 28, 2004, the Court of Appeals modified its Decision, the dispositive portion of which reads:

WHEREFORE, the decision dated October 2, 2003 is hereby MODIFIED. Petitioner is hereby reinstated to his former position as Local Assessment Operations Officer III (LAOO III), without loss of seniority rights, at the discretion of the appointing authority and subject to Civil Service Law, rules and regulations. Petitioner is likewise entitled to be paid five (5) years back salaries from the date he was dropped from the rolls on March 3, 1998.[22]

Citing *Dytiapco v. Civil Service Commission*,^[23] the Court of Appeals held that Gungon's application for terminal leave and his subsequent acceptance of terminal leave benefits could not be construed as an abandonment of his claim for reinstatement or indicative of his intent to voluntarily sever his employment with the government considering that Gungon had appealed his case to the CSC and had a pending motion for reconsideration of CSC Resolution No. 982525 before he received his terminal leave benefits. Gungon's appeal to the CSC and then to the Court of Appeals strongly indicated his desire to be reinstated, not separated from the government service.

The Court of Appeals stated that Section 35 of the amended Rule XVI^[24] of the Omnibus Civil Service Rules and Regulations, which was its basis for denying Gungon's reinstatement, does not apply to this case, because the amended Rule took effect on January 15, 1999, after Gungon had applied for terminal leave on October 13, 1998 and had received his terminal leave benefits on November 10, 1998. The appellate court held that the applicable rule is Sec. 6 of the original Rule XVI, which was the prevailing rule when Gungon received his terminal leave benefits.

Section 6 of the original Rule XVI of the Omnibus Civil Service Rules and Regulations gives two options to a person whose leave credits have been commuted following his separation from the service, but who is thereafter reappointed in the government service before the expiration of the leave commuted. These options are:

- (a) Refund the money value of the unexpired portion of the leave commuted; or
- (b) May not refund the money value of the unexpired portion of the leave commuted, but insofar as his leave credits is concerned, he shall start from zero balance.

The Court of Appeals noted that the original provision in Section 6 of Rule XVI of the Omnibus Civil Service Rules and Regulations was substantially carried in Section 26 of the amended Rule XVI, except that the first option to refund the money value of the unexpired portion of the leave commuted was no longer included. Hence, the Court of Appeals held that Gungon may start from zero balance of his leave upon reemployment in the government service.

As regards the motion for reconsideration filed by Municipal Administrator Yenke and Mayor Estrada, the Court of Appeals found no reason to change the position it had taken on the said issues since no new matters were raised.

Both parties filed a petition for review on certiorari of the Amended Decision of the Court of Appeals. The petition of Municipal Administrator Yenke and Mayor Estrada was docketed as G.R. No. 165450, while that of Gungon was docketed as G.R. No. 165452. The Court resolved to consolidate both cases in a Resolution^[25] dated December 14, 2004.

Municipal Administrator Yenke and Mayor Estrada raised the following issues:

- Whether or not the Court of Appeals erred in ordering the reinstatement of Gungon to his former position as Local Assessment Operations Officer III without loss of seniority rights despite the fact that Gungon subsequently opted to sever his employment by applying for terminal leave and receiving the equivalent payments thereon.
- Whether or not the Court of Appeals erred in ordering the payment to Gungon of five years back salaries from the date he was dropped from the rolls on March [1], 1998 despite the undisputed fact that Gungon did not render any service to the Municipal Government of San Juan from the time he was reassigned to POSO up to the time he opted to voluntarily sever his employment when he applied for terminal leave.^[26]

Gungon raised these issues:

- 1) Whether or not the appellate court was correct in declaring the reassignment of petitioner and the dropping of petitioner from the rolls as void ab initio and in setting aside the questioned CSC Resolutions;
- 2) Whether or not the petitioner, who was illegally dismissed, has the vested right to his former position; hence, the right to be reinstated;
- 3) Whether or not the reinstatement of a career government employee who was illegally dismissed, through no delinquency or misconduct, is discretionary upon the appointing authority as ordered in the decretal portion of the Amended Decision of the Court of Appeals.
- 4) Whether or not the Supreme Court, based on the realities of the time and situation, may now change its principle adopted in the "Mercury Drug Rule" in fixing the amount of back wages at a reasonable level without qualification and deduction.[27]

As regards the first issue raised by petitioner Gungon in G.R. No. 165452, the Court agrees with the decision of the Court of Appeals that the reassignment of Gungon from the Municipal Assessor's Office, where his primary function was that of land appraiser, to the POSO, where he was required to work as a security guard/duty agent, was void ab initio because it clearly involved a reduction in rank and status. The CSC affirmed the reduction in rank; petitioners Municipal Administrator Yenke and Mayor Estrada did not dispute it. Such reassignment is expressly prohibited by Executive Order No. 292, otherwise known as the Administrative Code of 1987, under Book V, Title 1, Subtitle A, Chapter 5, Sec. 26 (7), thus:

(7) Reassignment.--An employee may be reassigned from one organizational unit to another in the same agency; Provided, That such reassignment shall not involve a reduction in rank, status or salaries.[28]

The above provision is reflected in Section 10, Rule VII of the Omnibus Civil Service Rules and Regulations:

Sec. 10. A reassignment is the movement of an employee from one organizational unit to another in the same department or agency which does not involve a reduction in rank, status or salaries and does not require the issuance of an appointment.[29]

Reassignments involving a reduction in rank, status or salary violate an employee's security of tenure, which is assured by the Constitution, the Administrative Code of 1987, and the Omnibus Civil Service Rules and Regulations.[30] Security of tenure covers not only employees removed without cause, but also cases of unconsented transfers and reassignments, which are tantamount to illegal/constructive removal.[31]

Since Gungon's reassignment order was void ab initio, his alleged failure to report for duty at the POSO, where he was reassigned, had no legal basis. Gungon could not have incurred absences in the POSO, because his reassignment was void. Thus, the cause of his separation from the service, which was unauthorized absences from the post where he was reassigned, was not a valid cause for dismissing him from the service. It is undisputed that Gungon reported at the Municipal Assessor's Office after his leave of absence, instead of the POSO. Under the circumstances, Gungon is considered to have been illegally dismissed from the service and entitled to reinstatement.

Gungon contends that the Court of Appeals erred in subjecting his reinstatement to the discretion of the Municipal Government of San Juan.

The contention is meritorious.

The Court of Appeals misconstrued CSC Memorandum Circular No. 12, series of 1994 when it cited the Circular as the basis for holding Gungon's reappointment as "subject to the discretion of the appointing authority and Civil Service Law, rules and regulations."

CSC Memorandum Circular No. 12, Series of 1994 has for its subject Amendment No. 1 to the Omnibus Guideline on Appointments and Other Personnel Actions, CSC Memorandum Circular No. 38, Series of 1993 (Dropped from the Rolls). The pertinent portion of the Memorandum provides:

In order to promote efficient and effective personnel administration in government and to obviate any prejudice to the service, the Civil Service Commission pursuant to Resolution No. 94-1464 dated March 10, 1994 hereby promulgates the following procedure to be followed in separating from the service officials and employees who are either habitually absent or have unsatisfactory or poor performance or have shown physical and mental unfitness to perform their duties.

Accordingly, Item 2 of Section VI of the Omnibus Guidelines on Appointments and other Personnel Actions (MC No. 38, s. 1993- Dropped from the Rolls), now reads as follows:

2. Dropped from the Rolls

2.1 . Absence without Approved Leave

a. An officer or employee who is continuously absent without approved leave (AWOL) for at least thirty (30) calendar days shall be separated from the service or dropped from the rolls without prior notice. He shall however be informed of his separation from the service not later than five (5) days from its effectivity which shall be sent to the address appearing on his 201 files; and

b. If the number of unauthorized absences incurred is less than thirty (30) calendar days, written return to work order shall be served on the official or employee at his last known address on record. Failure on his part to report for work within the period stated in the order shall be a valid ground to drop him from the rolls.

2.2 . Unsatisfactory or Poor Performance

x x x x

2.3. Physical and Mental Unfitness

x x x x

2.4. The officer or employee who is separated from the service through any of the above modes has the right to appeal his case to the CSC or its Regional Office within fifteen (15) days from receipt of such order or notice of separation;

2.5. The order of separation is immediately executory pending appeal, unless the Commission on meritorious grounds, directs otherwise;

2.6. This mode of separation from the service for unauthorized absences or unsatisfactory or poor performance or physical and mental incapacity is non-disciplinary in nature and shall not result in the forfeiture of any benefits on the part of the official or employee nor in disqualifying him from reemployment in the government;

2.7. The written notice mentioned in the preceding paragraphs may be signed by the person exercising immediate supervision over the official or employee. However, the notice of separation shall be signed by the appointing authority or head of office.

This shall likewise be without prejudice to the reappointment of the official or employee to government at the discretion of the appointing authority and subject to Civil Service law, rules and regulations.[32]

To reiterate, the italicized paragraph above was used by the Court of Appeals as the basis for subjecting Gungon's reinstatement to the discretion of the appointing authority. The basis is misplaced, because what the provision means is that the separation of an employee from government service through any of the modes enumerated in the

Memorandum Circular, which includes unauthorized absences, shall be without prejudice to his reappointment in the government service at the discretion of the appointing authority and subject to Civil Service law, rules and regulations. Hence, an employee who is validly dismissed due to unauthorized absences may still be reappointed in the government service, but the reappointment is at the discretion of the appointing authority and subject to Civil Service law, rules and regulations.

In this case, Gungon was not validly dismissed from the service. His reassignment to the POSO, which involved a reduction in rank and status, was void for being violative of Executive Order No. 292 and the Omnibus Civil Service Rules and Regulations. Hence, Gungon could not have incurred absences in the office where he was reassigned since the reassignment was void. Consequently, his dismissal for unauthorized absences in the office where he was reassigned was not valid. Therefore, Memorandum Circular No. 12, series of 1994, does not apply in the case of Gungon.

In fine, Gungon is entitled to reinstatement, without qualification, for having been illegally dismissed. A government official or employee reinstated for having been illegally dismissed is considered as not having left his office.^[33] His position does not become vacant and any new appointment made in order to replace him is null and void ab initio.^[34]

As regards the award of Gungon's back salaries, it is settled jurisprudence that an illegally terminated civil service employee is entitled to back salaries limited only to a maximum period of five years,^[35] and not full back salaries from his illegal termination up to his reinstatement.

In G.R. No. 165450, petitioners Municipal Administrator Yenke and Mayor Estrada contend that an application for commutation of vacation and sick leaves under Section 6 of the original Rule XVI of the Omnibus Civil Service Rules and Regulations is similar to an application for terminal leave under Section 35 of the amended Rule XVI of the Omnibus Civil Service Rules and Regulations, because in both provisions the application for the respective leaves requires prior severance of employment. Thus, petitioners assert that when Gungon applied for terminal leave or commutation of his leave credits, the application ended his employment with the Municipal Government of San Juan. The subsequent payment was merely the result of his severance from employment. Consequently, the municipal government's obligation to pay Gungon's salaries ended. Hence, the Court of Appeals erred in ordering the municipal government to pay Gungon back salaries equivalent to five years.

The arguments of petitioners Municipal Administrator Yenke and Mayor Estrada do not persuade.

When Gungon applied for terminal leave on October 13, 1998 and received his terminal leave pay on November 10, 1998, there was no specific provision on terminal leave. The applicable rule was Section 6, Rule XVI (Leave of Absence) of the Omnibus Civil Service Rules and Regulations, before Rule XVI was amended by CSC Memorandum Circular No. 41, series of 1998. Section 6 of Rule XVI provides:

Sec. 6. Vacation and sick leave shall be cumulative and any part thereof which may not be taken within the calendar year in which earned may be carried over the succeeding years. Whenever any officer or employee retires, voluntarily resigns or is allowed to resign or is separated from the service through no fault of his own, he shall be entitled to the commutation of all the accumulated vacation and/or sick leave to his credit, provided his leave benefits are not covered by special law.

The proper head of Department, local government agency, government-owned or controlled corporation with original charter and state college and university may, in his discretion, authorize the commutation of the salary that would be received during the period of vacation and sick leave of any appointive officer and employee and direct its payment on or before the beginning of such leave from the fund out of which the salary would have been paid.

When a person whose leave has been commuted following his separation from the service is reappointed in the government before the expiration of the leave commuted, he is given two options, as follows:

- (a) Refund the money value of the unexpired portion of the leave commuted; or
- (b) May not refund the money value of the unexpired portion of the leave commuted, but insofar as his leave credits is concerned, he shall start from zero balance.[36]

On December 24, 1998, the CSC issued Memorandum Circular No. 41, which, pursuant to CSC Resolution No. 98-3142, series of 1998, adopted the amendment to Rule XVI (Leave of Absence) and the definitions of leave terms under Rule I of the Omnibus Civil Service Rules and Regulations. The amended Rule XVI contained a specific provision on terminal leave in Sec. 35, and substantially reflected in Sec. 26 the provision in Sec. 6 of the original Rule XVI. The pertinent provisions of Rule XVI, as amended, are as follows:

Sec. 26. Accumulation of vacation and sick leave. -- Vacation and sick leave shall be cumulative and any part thereof which may not be taken within the calendar year may be carried over to the succeeding years. Whenever any official or employee retires, voluntarily resigns or is allowed to resign or is separated from the service through no fault of his own, he shall be entitled to the commutation of all the accumulated vacation and/or sick leave to his credit, exclusive of Saturdays, Sundays, and holidays, without limitation as to the number of days of vacation and sick leave that he may accumulate provided his leave benefits are not covered by special law.

When a person whose leave has been commuted following his separation from the service is reemployed in the government before the expiration of the leave commuted, he shall no longer refund the money value of the unexpired portion of the said leave. Insofar as his leave credits is concerned, he shall start from zero balance.

x x x x

Sec. 35. Terminal leave.--Terminal leave is applied for by an official or an employee who intends to sever his connection with his employer. Accordingly, the filing of application for terminal leave requires as a condition sine qua non, the employee's resignation, retirement or separation from the service without any fault on his part. It must be shown first that public employment ceased by any of the said modes of severance.[37]

Section 6 of the original Rule XVI of the Omnibus Civil Service Rules and Regulations, which is applicable to this case, provides two options for an employee like Gungon whose leave credits have been commuted after separation from the service through no fault of his, and who is subsequently reinstated. These options are: (1) He may refund the money value of the unexpired portion of the leave commuted; or (2) he may not refund the money value of the unexpired portion of the leave commuted, but insofar as his leave credits is concerned, he shall start from zero balance. Hence, the Court of Appeals correctly held that Gungon may start from zero balance of his leave upon re-employment in the government. Notably, the second option of Section 6 of the original Rule XVI is still contained in Sec. 26 of the amended Rule XVI.

The Court cannot subscribe to the assertion of Municipal Administrator Yenko and Mayor Estrada that mere application for terminal leave or the commutation of leave credits ended Gungon's employment because an application for terminal leave and receipt of terminal leave benefits are not legal causes for the separation or dismissal of an employee from the service. The Constitution explicitly states that "[n]o officer or employee of the civil service shall be removed or suspended except for cause provided by law." [38]

At most, an application for terminal leave under Sec. 35 of the amended Rule XVI of the Omnibus Civil Service Rules and Regulations shows the intent of an employee to sever his employment, which intent is clear if he has resigned or retired from the service. However, such intent may be disproved in cases of separation from the service without the fault of the employee, who questions his separation, even if the government agency, pending

the employee's appeal, grants his application for terminal leave because it has already dropped him from the rolls. In *Dytiapco v. Civil Service Commission*,^[39] the Court understood the predicament of an employee who accepted terminal leave benefits because of economic necessity rather than the desire to leave his employment with the government.

In this case, the Court of Appeals correctly held that Gungon's application for terminal leave and his acceptance of terminal leave benefits could not be construed as an abandonment of his claim for reinstatement or indicative of his intent to voluntarily sever his employment with the government, because Gungon had appealed his case to the CSC and had a pending motion for reconsideration of CSC Resolution No. 982525 before he received his terminal leave benefits. Indeed, Gungon's appeal against his dismissal to the CSC and, thereafter, to the Court of Appeals, and his petition before this Court - all taken within a span of 11 years - show his desire to be reinstated, not separated from the government service. In this connection, the Court of Appeals aptly stated that it would have been unjust for petitioner, who was dropped from the rolls not to claim his terminal leave pay considering that it would take some time for his appeal to be resolved. Gungon had no permanent employment and had to sustain the needs of his two sons.

Further, Municipal Administrator Yenke and Mayor Estrada contend that the Court of Appeals erred in ordering the payment to Gungon of five years back salaries equivalent to five years from the date he was dropped from the rolls on March 1, 1998 despite the fact that Gungon did not render any service to the Municipal Government of San Juan from the time he was reassigned to POSO up to the time he opted to voluntarily sever his employment when he applied for terminal leave.

The contention is without merit.

It is settled that a government official or employee who had been illegally dismissed and whose reinstatement was later ordered is considered as not having left his office, so he is entitled to all the rights and privileges that should accrue to him by virtue of the office that he held.^[40] Thus, Gungon is entitled to payment of back salaries equivalent to a maximum period of five years.^[41]

Lastly, the Court notes that the dispositive portion of the Amended Decision of the Court of Appeals states that Gungon is "entitled to five (5) years' back salaries from the date he was dropped from the rolls on March 3, 1998." However, the records showed that per Mayor Estrada's Memorandum^[42] dated February 23, 1998, Gungon was informed that he would be considered dropped from the rolls due to his absences without official leave effective March 1, 1998.

WHEREFORE, the Amended Decision of the Court of Appeals in CA-G.R. SP No. 51093 dated September 28, 2004 is MODIFIED. Petitioner Gungon is hereby reinstated, without qualification, to his former position as Local Assessment Operations Officer III in the Assessor's Office of the Municipal Government of San Juan, Metro Manila, without loss of seniority rights. Gungon is entitled to payment of back salaries equivalent to five (5) years from the date he was dropped from the rolls, which is March 1, 1998. No costs.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

REYNATO S. PUNO

Chief Justice

On Official Leave

LEONARDO A. QUISUMBING

Associate Justice

ANTONIO T. CARPIO

Associate Justice

On Official Leave

CONSUELO YNARES-SANTIAGO

Associate Justice

RENATO C. CORONA

Associate Justice

CONCHITA CARPIO MORALES

Associate Justice

MINITA V. CHICO-NAZARIO

Associate Justice

PRESBITERO J. VELASCO, JR.

Associate Justice

ANTONIO EDUARDO B. NACHURA

Associate Justice

TERESITA J. LEONARDO-DE CASTRO

Associate Justice

ARTURO D. BRION

Associate Justice

LUCAS P. BERSAMIN

Associate Justice

MARIANO C. DEL CASTILLO

Associate Justice

ROBERTO A. ABAD

Associate Justice

[1] Penned by Associate Justice Godardo A. Jacinto, with Associate Justices Mariano C. del Castillo and Lucas P. Bersamin (now both members of this Court), concurring; rollo (G.R. No. 165450), pp. 25A-32.

[2] CA rollo, p. 26.

[3] Id. at 27.

[4] Id. at 28.

[5] Id. at 30.

[6] Id. at 31.

[7] Id. at 32.

[8] Id. at 33-34.

[9] Id. at 36.

[10] Petition, rollo (G.R. No. 165452), pp. 31-32.

[11] Rollo (G.R. No. 165450), p. 53.

[12] Id. at 52.

[13] Id. at 55.

[14] Id. at 38-39.

[15] Id. at 39.

[16] Id. at 47.

[17] Sec. 10. A reassignment is the movement of an employee from one organizational unit to another in the same department or agency which does not involve a reduction in rank, status or salaries and does not require the issuance of an appointment.

[18] Rollo (G.R. No. 165450), pp. 39-46.

[19] Sec. 35. Terminal leave. - Terminal leave is applied for by an official or an employee who intends to sever his connection with his employer. Accordingly, the filing of application for terminal leave requires as a condition sine qua non, the employee's resignation, retirement or separation from the service without any fault on his part. It must be shown first that public employment ceased by any of the said modes of severance.

[20] Rollo (G.R. No. 165450), p. 25-B.

[21] Id. at 25-B to 26.

[22] Id. at 31.

[23] G.R. No. 92136, July 3, 1992, 211 SCRA 88.

[24] As amended by CSC Memorandum Circular No. 41, series of 1998.

[25] Rollo (G.R. 165450), p. 85.

[26] Id. at 15-16.

[27] Rollo (G.R. No. 165452), pp. 44-45.

[28] Emphasis supplied.

[29] Emphasis supplied.

[30] See *Bentain v. Court of Appeals*, G.R. No. 89452, June 9, 1992, 209 SCRA 644.

[31] Id.

[32] Italics supplied.

[33] *Gementiza v. Court of Appeals*, G.R. Nos. L-41717-33, April 12, 1982, 113 SCRA 477, 488; *Cristobal v. Melchor*, No. L-43203, December 29, 1980, 101 SCRA 857.

[34] *Canonizado v. Aguirre*, G.R. No. 133132, February 15, 2001, 351 SCRA 659, 673.

[35] *Adiong v. Court of Appeals*, G.R. No. 136480, December 4, 2001, 371 SCRA 373, 381; *Marohombsar v. Court of Appeals*, G.R. No. 126481, February 18, 2000, 326 SCRA 62, 73-74; *San Luis v. Court of Appeals*, G.R. No. 80160, June 26, 1989, 174 SCRA 258, 273; *Tan, Jr. v. Office of the President*, G.R. No. 110936, February 4, 1994, 229 SCRA 677; *Salcedo v. Court of Appeals*, No. L-40846, January 31, 1978, 81 SCRA 408; *Balquidra v. CFI of Capiz, Branch II*, No. L-40490, October 28, 1977, 80 SCRA 123.

[36] Emphasis supplied.

[37] Emphasis supplied.

[38] The Constitution, Art. IX (B), Sec. 2 (3).

[39] *Supra* note 23.

[40] *City Government of Makati City*, G.R. No. 131392, February 6, 2002, 376 SCRA 248, 271; *Cristobal v. Melchor*, No. L-43203, December 29, 1980, 101 SCRA 857; *Tan, Jr. v. Office of the President*, *supra* note 35.

[41] *Tan, Jr. v. Office of the President*, *supra* note 35.

[42] CA rollo, p. 36.

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