

TIU, LIBRADA A.

Re: Appeal; Downgrading of Position

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RESOLUTION NO. 030053

Librada A. Tiu, Market Supervisor IV, Municipality of Calabanga, Camarines Sur, appeals the action of Mayor Evelyn S. Yu, same municipality, in unilaterally changing her position title from Market Supervisor IV (SG-22) to Market Supervisor III (SG-18).

In her appeal, Tiu avers, in part, as follows:

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"3. Sometime on January 18, 1995, the Sangguniang Bayan of the Municipality of Calabanga, Camarines Sur, through Resolution No. 95-14 created the position of Market Supervisor IV with Salary Grade 22 for the Local Government Unit of Calabanga, Camarines Sur. The creation of the position of Market Supervisor IV through said Resolution No. 95-14 is one of the requirements for the release of the standing loan application of the Municipality of Calabanga with PREMIUMED. x x x

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"6. The aforesaid appointment of the complainant as Market Supervisor IV with Salary Grade 22 was concurred in by the Civil Service Commission as shown by the hereto attached photocopy of the appointment by the Municipal Mayor of Calabanga and the corresponding concurrence by the authorized official of the Civil Service Commission, marked as Annex "d" hereof.

"7. From the time she received her appointment, complainant has been performing her duties and obligations as Market Supervisor IV of the Municipality of Calabanga, and receiving the salaries and benefits commensurate to her salary grade of 22.

"8. On May 5, 1999, complainant received from respondent, Hon. Evelyn S. Yu, a letter dated April 28, 1999, informing the former that her salary increase and/or differential and representation and transportation

allowance are being temporarily withheld pending resolution by the latter's office as to the correctness of the former's position title and salary grade. The action of the respondent was in reaction to Resolution No. 088 s. 1998 of the Sangguniang Panlalawigan which reviewed the budget of the Municipality of Calabanga, and stated that, 'The highest level of position below the Asst. Department Heads in 1st to 3rd class municipalities like Calabanga, shall be limited to SG-18, pursuant to LBC No. 53 of the DBM.' Hence, the position of Market Supervisor IV, SG-22, is without legal basis.

"9. The respondent withheld the complainant's salary increase and RATA notwithstanding the recommendation made in March 26, 1999 Report by a Committee ordered to study the comments and recommendations of the Sangguniang Panlalawigan regarding the position title and salary grade of the complainant. In their report, the Committee pointed out that the position of herein complainant is that of an Assistant Department Head, hence is not covered by the provision of LBC No. 53 of the DBM. Hence, her position of Market Supervisor IV is correct, and so is her salary grade of 22.

"10. On June 28, 1999, complainant received Memorandum Order No. 99-49 dated June 23, 1999 and issued by the respondent, unilaterally ordering the change of complainant's position title from Market Supervisor IV to Market Supervisor III, and her salary grade from 22 to 18. The basis of this unilateral act of the respondent is the condition No. 7 contained in Resolution No. 088 s. 1999, passed by the Sangguniang Panlalawigan of Camarines Sur, which in turn is improvidently based on Section 4(d) of LBC No. 53 issued by the DBM.

"11. On June 5, 2000, complainant, through counsel, wrote the respondent, informing her of the illegality of the Memorandum Order No. 99-49, and demanding that complainant's salary grade be restored to its former and proper level, with payment of all back salaries and benefits due to the complainant.

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"13. Respondent's unilateral act of changing the position title and salary grade of herein complainant is unlawful and ultra vires, as it is only the Sangguniang Bayan of Calabanga, Camarines Sur which is empowered by law to create and change the position all (sic) employees of the municipal government and determine their salaries and benefits. Moreover, even the reasons cited by the respondent for the unilateral downgrading of complainant's position title and salary grade is without factual and legal basis. It should be well-emphasized that complainant's position is in the level of an Assistant Department Head, while the position referred to by Section 4 (d) of LBC No. 53 is only relevant to positions below the Assistant Department Heads."

When requested to comment on the appeal, Mayor Yu states, as follows:

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"2. Paragraph 8 is admitted, and for emphasis, it is here stated that herein respondent has decided to take that specific course of action in compliance with a standing legal directive coming as it does from a lawfully constituted authority pursuant to the 1991 Local Government Code.

"3. That paragraph 3 is qualifiedly admitted to the extent that such report/recommendation had been presented, but to complete the facts and thus set the entire records straight, herein respondent states that the conclusion arrived at by the committee, i.e., 'the intention of the proponents of the appointment of Mrs. Tiu was for her to be appointed at Grade 22, nothing less' was erroneous as it was devoid of any legal basis. In the first place, the power to appoint is not wholly unbridled nor entirely 'not canalized within the banks to keep it from overflowing'. secondly, the committee's conclusion was merely recommendatory such that herein respondent was not bound to take the same in its entirety.

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"5. That the allegations in paragraph 13 are hereby denied, the truth of the matter being that even as the power to create and change appointments is lodged in the Sangguniang Bayan, yet, such power is subject to existing rules and regulations setting the parameters for the exercise of such power. Thus, creating an office for the local government is subject to the review powers of the Sangguniang Panlalawigan. It was the decision of the Sangguniang Panlalawigan overturning the propriety of the appointment of the complainant according to the questioned salary grade which herein respondent complied with and enforced, as was her duty under the circumstances.

"6. That no less that Director R.A. Morales of the Civil Service Commission (Camarines Sur Field office) had initially ruled that the path treaded by herein respondent is the true and correct one, as embodied in a letter dated April 22, 1999, copy of which is here attached and marked as Annex 'I' to become an integral part hereof.

"7. That in a more definitive tone, Regional Director Salvador C. Fernandez of the Civil Service Commission, Regional Office No. V wrote finis to the controversy when he ruled:

"After a careful evaluation of the facts presented, it appeared that the creation of the positions of Market Supervisor IV, SG 22 and Rural Health Physician, SG 20 were in conformity with Section 4 (d) of Local Budget Circular No. 53 dated September 1, 1993 and LBC No. 61 dated March 18, 1996 annual budget of that Municipality by the Sangguniang Panlalawigan of the Province of Camarines Sur, it was recommended that the highest level of position below the

Assistant Department heads shall be limited to 18.

'In this connection, your office will not violate any existing civil service law, rules and regulations if you will comply with the recommendations made by the Sangguniang Panlalawigan of the Province of Camarines Sur that the position of Market Supervisor IV, be changed to Market Supervisor III, SG 18... since it is in accordance with Section 4 (d) of LBC No. 53 dated September 1, 1993.

"8. From all these, it reasonably becomes clear that complainant has absolutely no cause of action against herein respondent."

Records show that the position of Market Supervisor IV (SG-22) was created by the Sangguniang Bayan of Calabanga, Camarines Sur through Resolution No. 95-14 dated January 18, 1995. On January 25, 1995, the Sangguniang Bayan of Calabanga, Camarines Sur enacted Resolution No. 95-20 which concurred in the appointment of Librada Tiu as Market Supervisor IV (SG-22). On May 11, 1995, the Civil Service Commission approved the said appointment on a permanent status. Hence, Tiu started to receive her salary based on the said salary grade.

However, the Municipality of Calabanga, a fourth class municipality at that time did not have a budget for Fiscal Years 1994 and 1995. The budgets for 1994 and 1995 were submitted to and received by the Provincial Budget Office only on September 18, 1996 and were returned unacted. Hence, the budget for 1993 was deemed re-enacted. Records, however, show that the budget for 1993 did not carry the position of and the corresponding appropriation to the position of Market Supervisor IV.

On July 1, 1998, Mayor Evelyn S. Yu took over as the newly elected Mayor of the Municipality of Calabanga. On December 23, 1998, the Sangguniang Panlalawigan of Camarines Sur passed Resolution No. 088, s. 1998, approving on review the annual budget for 1998 of the Municipality of Calabanga, Camarines Sur as embodied in Resolution No. 98-A-077 and Appropriation Ordinance No. 98-A-1 in the amount of Thirty Million, Five Hundred Eight Thousand and Eight Hundred Eighty Pesos (P30,508,880.00) in the General Fund.

Said Resolution provides, among others, the following conditions:

"1. Condition No. 7 - That the highest level of position below the Assistant Department Heads in the 1st to 3rd class municipalities like Calabanga shall be limited to SG-18, pursuant to Section 4 (d) of LBC No. 53 of DBM, hence the position of Market Supervisor IV, SG 22, is without basis. That level has been reminded about this in the review action of their 1996 Annual Budget, specifically in Condition No. 2(5);"

On March 15, 1999, Mayor Yu issued Memorandum Order No. 99-19 creating a Committee that will study the

propriety of the conditions set forth by the Sangguniang Panlalawigan of Camarines Sur on their Annual Budget for Calendar Year 1998. Pending the result of the study by the said Committee, Mayor Yu, in a letter dated April 28, 1999 withheld Tiu's salary increase and RATA.

On March 26, 1999, the Committee submitted its report and states, as follows:

"Item No. 7 - Re: Appointment of Mrs. Librada Tiu as Market Supervisor IV. This level has researched, studied and evaluated this case and found that the appointment is legal, necessary and in order.

"The appointment of Mrs. Tiu as Market Supervisor IV, with the rank of Assistant Department head was approved by the Civil Service Commission on May 11, 1995 as permanent. Before this approval, the Sangguniang Bayan of Calabanga, Camarines Sur on its Regular Session on January 18, 1995, has first created and approved the position of Market Supervisor IV, salary Grade 22, thru Resolution No. 95-14. This measure is in pursuance with the provisions of par. b, Section 4 of LBC No. 53 regarding position classification. This is also one of the requirements of PREMIUMED before the loan package was granted for the construction of the New Calabanga Public Market. With the size of the proposed public market and the perceived activities it would generate, the lending institution was even demanding for a Market Administrator with the rank of Department Head. But it finally settled with an Assistant Department Head.

"Subsequently, the Personnel and Selection and Promotion Board, thru Resolution No. 95-01 approved the filling up of the new (sic) created position of Market Supervisor IV, Salary Grade 22. This measure was concurred by (sic) the Sangguniang Bayan on January 25, 1995, under Resolution No. 95-20, which paved the way for the appointment of Mrs. Librada A. Tiu as Market Supervisor IV, with salary Grade 22. As required by the Civil Service Commission, the vacant position was published in a local weekly tabloid (VOX BICOL) on January 22, 1995.

"It is very clear that the intentions of the proponents of the appointment of Mrs. Tiu was for her to be appointed at Grade Level 22, nothing less.

"It is therefore recommended that Mrs. Librada A. Tiu, be retained in the same position with the same salary grade level."

As borne from the records, despite the foregoing recommendation, Mayor Yu issued Memorandum Order No. 99-49 dated June 23, 1999, ordering the change of Tiu's position title and salary grade from Market Supervisor IV (SG-22) to Market Supervisor III (SG-18).

Hence, Tiu appealed the action of Mayor Yu to the Commission.

Thus, the issue to be resolved is whether Evelyn S. Yu, in her capacity as Municipal Mayor of Calabanga, Camarines Sur, can change the position title and salary grade of Librada A. Tiu, from Market Supervisor IV (SG-22) to Market Supervisor III (SG-18).

It is worthy to note that the position to which Tiu was appointed has been created by the Sangguniang Bayan of Calabanga, Camarines Sur and the appointment has been attested by the Civil Service Commission. Such appointment became effective upon such attestation and the appointee shall then be entitled to collect the rate of compensation embodied in her appointment.

However, a careful review of the records adduced to the Commission shows that the position of Market Supervisor IV was not included in the 1993 Budget of the Municipality of Calabanga. Therefore, the said position is bereft of any financial appropriation. The Sangguniang Bayan Resolution creating the position of Market Supervisor IV was passed only in 1995 at the time the Municipality of Calabanga was operating on a reenacted budget. In this connection, the Commission, in the case of **Bongosia, Edgardo D. (CSC Resolution No. 95-055 dated August 17, 1995 Re: Appointment; Recall of Approval)** had the occasion to rule, thus:

"x x x Since no validly appropriated fund to pay the salary of the appointee is available, therefore, an appointment to said position cannot be given effect. In this situation, the Commission has no choice but to disapprove the appointment or recall the earlier approval of the appointment."

However, the Commission believes that the act of Mayor Yu in changing the position title of Tiu from Market Supervisor IV (SG-22) to Market supervisor III (SG-18) is not valid. **Section 447 of Republic Act No. 7160** otherwise known as **The Local Government Code of 1991**, provides, as follows:

"Section 447. Powers, Duties, Functions and Compensation. (a) The sangguniang bayan, as the legislative body of the municipality, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the municipality as provided for under Section 22 of this Code, and shall:

- 1. Approve ordinances and pass resolutions necessary for an efficient and effective municipal government, and in this connection, shall:*

X X X

(viii) Determine the positions and the salaries, wages, allowances and other emoluments and benefits of officials and employees paid wholly or mainly from municipal funds and provide for expenditures necessary for the proper conduct of programs, projects, services and activities of

the municipal government;"

The foregoing provision denotes that the Sangguniang Bayan (SB) now has the power to create positions and fix the salaries, wages, allowances, and other emoluments and benefits of all officials or employees paid wholly or partially from municipal funds. It can exercise this power without need of having the matter approved by the central government. Therefore, since the position of Market Supervisor IV was created by the Sangguniang Bayan through a resolution, it logically follows that the municipal mayor has no power to change the said position title. It is the SB who has the power to recall said resolution.

Moreover, let it be emphasized that the Commission is not precluded from revoking or recalling appointments which had been previously approved but were issued in violation of existing law, rules and regulations. Under **Section 20, Rule VI of the Omnibus Rules Implementing Book V of Executive Order No. 292 (Administrative Code of 1987)**: *"(N)otwithstanding the initial approval of an appointment, the same may be recalled on any of the following grounds: x x x violation of other existing civil service law, rules and regulations.* Hence, as the subject appointment of Tiu does not have a valid appropriation, approval thereof is recalled.

Per inquiry from Agustin G. De Leon, Municipal Budget Officer and designated as Human Resource Management Officer IV of the Municipality of Calabanga, prior to Tiu's appointment as Market Supervisor IV (SG 22), Tiu held the position of Local Treasury Operations Officer II (SG-15). Since Tiu's position of Market Supervisor IV had no valid appropriation and neither the position of Market Supervisor III is found in the plantilla of positions, the Commission rules that the appointment of Tiu to the latter position of Market Supervisor III (SG-18) is likewise not valid. Hence, Tiu should be reverted to her previous position of Local Treasury Operations Officer II.

WHEREFORE, the appeal of Librada A. Tiu is hereby **GRANTED**. Mayor Evelyn S. Yu has no power to change the position title of Market Supervisor IV to Market Supervisor III. The power is lodged with the Sangguniang Bayan. However, the approval of the appointment of Tiu as Market Supervisor IV is hereby recalled on the ground that the position has no appropriation passed by the Sanggunian."

Quezon City, JAN 20 2003

(Original Signed)
J. WALDEMAR V. VALMORES
Commissioner

(Original Signed)

KARINA CONSTANTINO-DAVID
Chairman

(Original Signed)
JOSE F. ERESTAIN, JR.
Commissioner

Attested by:

(Original Signed)
ARIEL G. RONQUILLO
Director III

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