

**MACARANDAN, Abella C., et al.**

Re: Payment of Back Salaries and Benefits;  
Retroactive Appointments

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## **RESOLUTION NO. 030287**

Dr. Abella C. Macarandan and Josephine M. Cruz, Schools Division Superintendent, Division of Pasig and San Juan, and Principal of Rizal High School, respectively, appealed from the Order dated November 29, 2001 of the Civil Service Commission-National Capital Region (CSC-NCR), insofar as it decreed the payment of back salaries and other benefits to Maria Cecilia C. Perez, and twenty-seven (27) other teachers of the Rizal High School (to be referred hereinafter as Perez, *et al.*). Specifically, Macarandan and Cruz pleaded that Perez, *et al.* be conferred either service credits or issued retroactive appointments with payment of salaries and incentives.

Briefly, the CSC-NCR Order in question ordains that Perez, *et al.* should be compensated for actual services rendered in the Rizal High School from June to August 2000, notwithstanding their lack of appointments. It stipulates that the absence of appointments should not disqualify them from receiving what were properly due them. It says, "*because they have so labored, so should they be rewarded,*" conformably with the well-ensconced principle of *quantum meruit*. It also expressly finds that Perez, *et al.* did not bargain "*their willingness to work*" in exchange for the promise of permanent employment, contrary to the allegation of the concerned officials. They worked since they were made to do so.

At the same time, the Order absolves the concerned officials of any fault "*for requiring the complainants to immediately assume office considering the nature and necessity of their services.*" It states that "*the complainants are classroom teachers and they reported for work either in the first day or immediately after classes started for school year 2000-2001. A delay or deferment in their assumption to duty will necessarily impair the operations of their respective schools and unduly affect the studentry.*" Owing to this peculiar circumstance, the Order deems the case to be outside of the purview of **Section 5, Rule IV of CSC Memorandum Circular No. 40, s. 1999**, as amended, which makes an individual personally accountable for allowing another to assume a public office sans an appointment.

In their representation, Macarandan and Cruz disavowed any culpability relative to the non-payment of the back salaries and other benefits of Perez, *et al.* since they acted in "*good faith*" as purportedly evidenced by the following circumstances:

*"The undersigned made no directive as to the 'reporting for duty of the teacher complainants'. Her*

*directive as early as June 2000 to the Personnel Officer, Administrative Officer, and Principals was to stop the hiring of teachers.*

*"The directive is based on the temporary suspension of DECS Order No. 50, s. 1999, entitled 'Delegation of Authority to the Regional Directors and Schools Division Superintendents on Certain Personnel Management Functions,' by a DECS Memorandum entitled 'Adaptive Measures on Filling of Vacant Teachers Positions', which banned Superintendents from signing appointment of teachers.*

*"Upon receipt of said DECS Memorandum and cognizant of the problem that could be encountered by this Office, inasmuch as the Division is financially incapable to pay their services, the Principal of Rizal High School was ordered by the undersigned to inform the teachers of the said directive and to stop them temporarily from teaching until the lifting of the ban. Meetings conducted by the Division Personnel Officers, Administrative Officer, and Principal explained to the teachers the situation.*

*"According to Ms. Cruz, the said 28 teachers refused to stop and willingly and voluntarily insisted to teach just to hold on to the items.*

*"When the ban was lifted; surely, they were given permanent items they expected after months of waiting; however, they began clamoring for back pay when in fact they refused to stop despite the order for them to do so. Therefore, their work services were rendered under the spirit of volunteerism which is common in educational undertakings.*

*"It was not the intention of the concerned school nor this Division to take advantage of the said teachers; that was the reason, early enough they were ordered to stop. And as a proof, communication had been sent to proper Offices as early as June 23, 2000 to expedite the granting of authority to the undersigned so she could sign the appointments of said teachers the soonest time possible. Much as it needed to be facilitated, the policy so ordered us to wait. In fact, no appointment nor designation was issued to them.*

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*"As shown by the efforts undertaken by this Division to wit: letter of the undersigned dated June 23, 2000 for authority to fill up vacant teaching positions in the secondary level; meetings undertaken by Mr. Jacosalem, Mrs. Aberilla and Ms. Pantaleon with the 28 teachers; meeting of Ms. Cruz with the teachers x x x; coordination with the DECS-NCR and Central Office, this Office tried all possible means within its control to assist such teachers."*

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Subsequent to the appeal, the CSC-NCR was asked to submit its comment thereon, which it accordingly did. In its

comment, the CSC-NCR first rendered a recounting of the factual antecedents of the instant controversy. It found that Perez, *et al.* instituted the complaint to compel the payment of their salaries and other benefits corresponding to their first day of service in the school year, 2000-2001. The said complaint resulted in the Order now being impugned. Thereafter, Macarandan and Cruz moved to reconsider.

While the said motion for reconsideration was pending, a meeting between the parties was held, upon the initiative of Macarandan. During the meeting, it was learned that *"although verbal instructions were given by Macarandan for the teachers to stop reporting for work, such instructions were not communicated/disseminated to all the teachers concerned."* As a matter of fact, only four (4) were so informed, but were still *"constrained to continue their services because classes have already started and nobody could substitute for them."*

It also surfaced during the meeting that *"most of the teachers originally held contractual appointments,"* and *"were advised that their permanent appointments were already being processed, hence, they continued their services. According to them, had they known that their proposed permanent appointment would create a gap in their service, they would have opted to hold on to their contractual appointments."* For her part, Macarandan clarified that *"their difficulty in paying the back salaries of the concerned teachers"* stemmed from *"the requirement of the Accounting Office that payment of salaries should be based on approved appointments."* She stressed, however, that they were prohibited from issuing retroactive appointments.

Afterwards, the parties concluded their talks but agreed to further dialogue. A second meeting did ensue not long after. The meeting resulted in Macarandan's withdrawal of their motion for reconsideration and her manifestation to abide by the CSC-NCR Order. At the same time, she gave an assurance that proper *"representations will be made, requesting authority from the CSC-Central Office for certain personnel actions,"* which, apparently, was in reference to the issuance of retroactive appointments.

Having presented the factual backdrop, the CSC-NCR proceeded to elaborate on its position on the appeal of Macarandan and Cruz. It said:

*"11. As regards the letter-request of the Division Office itself, subject of the Order dated June 10, 2002 of that Office, please consider that:*

*`11.1 This Office is of the opinion that Dr. Macarandan's letter dated April 26, 2002 is not an appeal per se, but more of a request for the retroactive issuance of complainant's appointments, effective on their assumption to duty. x x x Such retroactive appointment will serve as basis for the payment of complainants' back wages and entitlements to such benefits as leave, 13th month pay and cash gift, among others.*

*`11.2 We recommend approval of the request. The only consideration that may weigh*

*against such approval is the existence of DECS Memorandum dated May 17, 2000, the pertinent provisions of which are quoted on page 5 of the CSC-NCR Order. However, the clearance/ authorization given by the DECS Secretary to Dr. Macarandan as an exception to DECS Memorandum dated May 17, 2000 may be interpreted in favor of retroactivity. x x x*

*"11.3 In favor of the retroactive appointments of complainants, may we cite the Honorable Commission's decision in the case of Celita Victoria S. Lorredo (CSC Resolution No. 020450). We believe that the principles enunciated therein apply in the instant case."*

The records of the case show that Perez, *et al.* were contracted prior to schoolyear 2000-2001 to teach at the Rizal High School. In June 2000, during the start of the schoolyear in question, they were asked to handle teaching loads in the same school. Apparently, they were persuaded to accept their teaching assignments upon the representation of school officials that they shall be issued appointments. It is noted, though, that the delegated authority of Schools Division Superintendents in Metro Manila to approve appointments and effect other personnel actions of school personnel occupying positions with salary grade 18 and below, was revoked a month earlier or in May 2000, pursuant to **DECS Memorandum dated May 17, 2000**. On June 23, 2000, Macarandan requested exemption from the aforesaid DECS Memorandum, which request was granted on August 30, 2000, pursuant to the 2nd Indorsement of then Secretary Gonzales. It was only at that time that Macarandan was able to extend to Perez, *et al.* their respective appointments.

The Commission initially takes note of the submission of the CSC-NCR that the present action should not be treated as an appeal from its Order but as a request for authority to issue retroactive appointments. Indeed, the drift of Macarandan and Cruz's action tends towards this relief. More so, since the CSC-NCR was in the thick of things, so to speak, it was thus in a more vantage position to ascertain the real issue involved. This being the case, the Commission shall take the words of the CSC-NCR on its face and proceed to evaluate the instant controversy on the premise that what is being pleaded for is the authority to issue retroactive appointments. The issue as to the grant of service credits shall be deemed moot.

The rules proscribing the non-retroactivity of appointments are clearly and expressly spelled out under existing civil service rules. **Section 1, Rule IV of the Revised Omnibus Rules on Appointments and Other Personnel Actions**, as amended, provides, as follows:

*"Section 1. An appointment issued in accordance with pertinent laws and rules shall take effect immediately upon its issuance by the appointing authority, and if the appointee has assumed the duties of the position, he shall be entitled to receive his salary at once without awaiting the approval of his appointment by the Commission. The appointment shall remain effective until disapproved by the Commission. In no case shall the appointment take effect earlier than the date of issuance."*

The said provision should be correlated with the immediately succeeding section, **Section 2**, which states that:

*"Section 2. No appointment shall be made effective earlier than the date of issuance, except in the case of change of status in view of having acquired a civil service eligibility or in case of a teacher having acquired a valid certificate of registration and valid professional license."*

As can be gleaned from the foregoing provisions, an appointment shall generally be prospective in character. It shall be forward-looking, meaning it shall take effect at the time of its issuance but not earlier. It is only in certain exceptional cases that retroactivity may be warranted. Thus, in case of change of status of appointment owing to the obtention of the requisite civil service eligibility, the change shall retroact to the date of the issuance thereof. The same is true in the event that a teacher is able to acquire a valid certificate of registration and professional license. But in these illustrative cases, what actually retroacts, to be more exact, is not the effectivity of appointment *per se* but the change in status brought about by the concomitant change in the circumstances of the appointee.

Nevertheless, this does not mean that the giving of retroactive effectivity to an appointment is entirely ruled out. That would depend on a case to case basis. If the circumstances obtaining in a particular case are such that justice and equity would be better served if retroactivity is allowed, the same may properly be given due course. The rules, it must be remembered, are not sheathed in iron-clad armor so as to be immuned to unforeseen quirks and peculiarities of human affairs. They must be flexible enough to allow adjustments for borderline cases or those occurring in the interstices of the law. For in the end, the rules are mere instruments for the attainment of what is just and reasonable.

In the case at bar, the Commission concurs with the view of the CSC-NCR that the demands of justice and equity warrant the granting of retroactive appointments to Perez, *et al.*

From the records of the case, it is evident that Perez, *et al.* were made to assume teaching functions sans the benefit of appointments because their services were badly needed by the school at that time. It should be noted that classes had already commenced, and that they were given their respective assignments. Were they asked to desist at that particular stage, the result would have been disastrous, not only in terms of the school operations but also for the students. Unquestionably, the institution would be placed in a very distressing situation of having to attend to the learning needs of students with less than the desired number of teaching personnel. The regular teaching complement, who would inevitably fill in the vacuum, would be handling more than what they could normally manage. In all these, the interests of the students would be unduly prejudiced. Needless to say, their being left in mid-air, would have detrimental consequences to the students literacy development. At this time when no less than the Philippine Constitution is guaranteeing the right to education, any impediments thereto must be fastidiously avoided and obviated.

It is conceded that the delegation of authority to the Schools Division Superintendents in the DECS-NCR to issue appointments had been recalled as early as May 17, 2000, when then Secretary Gonzales decided to revert the prerogative to himself. But the temporary abrogation came too close at the start of the school year. Most certainly, faced with a swelling student populace and the impending school opening, the officials concerned had no other recourse but to enlist the services of Perez, *et al.*, knowing that majority of them already had prior teaching experience, considering that they were contracted

to teach the year before.

But it is not that the concerned officials did not do anything to bring resolution to the unfortunate state of affairs. Macarandan, in her capacity as Schools Division Superintendent, exerted all her efforts to rectify the situation. She forthwith requested an exemption from the directive of the DECS Secretary. While the same was granted, it came quite belatedly, thus, rendering it impossible for her to issue appointments to Perez, *et al.* at a much earlier date.

At the same time, the teachers in question already adduced all the necessary documents for the issuance of regular appointments to them. Save for the DECS directive, there was no more legal bar to their appointment. Coupled with the pressing need of the school for their services, their rightful entitlement to retroactive appointments becomes all too clear.

The CSC-NCR, though, expressed some apprehension that retroactivity might not be legally possible in the light of the DECS directive temporarily suspending the appointing power of Schools Division Superintendents in the DECS-NCR. Yet, it must be noted that Macarandan was able to obtain an exemption therefrom, and there is no cogent reason not to accord the same exemption with retroactive effect. This is because the exemption partakes of a corrective or remedial measure.

This is not the first time that the Commission has allowed the issuance of a retroactive appointment. In **CSC Resolution No. 02-0450, dated March 21, 2002**, the Commission gave due course to a request of this nature, asseverating that:

*"It is the general rule that an appointment cannot be made effective earlier than the date of issuance. Retroactivity is only allowed with respect to change of status in view of having acquired civil service eligibility or a valid certificate of registration and valid professional license in case of teachers. However, the Commission is of the view that the rule on retroactivity is not applicable in Lorredo's case.*

*"The Commission recognizes GSIS' willingness to rectify the error in its failure to appoint Lorredo to a comparable position or promote her to a higher position as a consequence of the 1998 reorganization. The fact that Barcelona was appointed to Lorredo's position as Division Chief III, chained with Bata's promotion to Barcelona's position as Accountant III, signifies GSIS' intention not to sever Lorredo's employment. It was only unfortunate that it took GSIS a delay of almost two years to discover that Lorredo was not issued an appointment to the position of ADM II. All this time during the said period, she was performing the duties of the said position pursuant to the office orders designating her to such while receiving the salary of a Division Chief III. Furthermore, the fact that it was even GSIS' management which requested for Lorredo's appointment to be made retroactive shows its clear intention to appoint her to the said position pursuant to the reorganization. Thus, it is only just and equitable that said request be granted. x x x"*

With this disquisition, the Commission should not be construed as relaxing the rule on the retroactivity of

appointments. It must be made clear that this is far from its intent. As stated earlier, the Commission shall rule on the individual merits of each case. If it finds that retroactivity is proper or warranted under the circumstances, just like in the instant case, then it shall so hold. But it is incumbent upon the pleading parties to prove their case before the Commission. Failure to discharge this burden would mean maintaining the prospective effect of an appointment, for retroactivity, to reiterate, constitutes the exception to the general rule.

**WHEREFORE**, the Commission hereby **GRANTS** the request of Dr. Abella C. Macarandan and Josephine M. Cruz to make the appointments of Perez, *et al.* take effect on the first day of school year 2000-2001.

Quezon City, MAR 05 2003

(Original Signed)  
**KARINA CONSTANTINO-DAVID**  
Chairman

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

(Original Signed)  
**J. WALDEMAR V. VALMORES**  
Commissioner

Attested by:

(Original Signed)  
**ARIEL G. RONQUILLO**  
Director III

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