

**GUIMONG, Benjamin G.**

Re: Accreditation of Service

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**RESOLUTION No. 041196**

Director IV Annabelle B. Rosell, Civil Service Commission Regional Office No. X, Cagayan de Oro City, has forwarded to the Commission the request of Atty. Benjamin G. Guimong of Gingoog City, for the accreditation of his service beyond the compulsory retirement age.

The request states, as follows:

*"I have applied for retirement from the government service with my last position being the secretary to the mayor, Mayor Romulo S. Rodriguez, Jr. of the City of Gingoog.*

*"To deserve the full benefits under the new GSIS Law, I was asked by the GSIS to seek the accreditation of my years of service after I turned sixty five years of age on May 25, 1998.*

*"My appointment as secretary to the mayor after turning sixty-five was approved unconditionally by the Civil Service Commission, Region X, Cagayan de Oro City."*

In her transmittal letter, Director Rosell submitted the following observation:

*"Nonetheless, we would like to express our opinion on the matter for whatever it may be worth.*

*"Section 13 of the Government Service Insurance System Act of 1997 (R.A. No. 8291), provides:*

*X X X*

*"Upon the other hand, Section 12 of Rule XIII of CSC Memorandum Circular No. 15, series of 1999, provides:*

*X X X*

*"It may be gleaned from the foregoing provisions that retirement is compulsory at the age of sixty-five (65) years regardless of employment status. However, upon representation by the head of office prior to the date of compulsory retirement, the Commission may extend the services of an employee for a maximum period of one (1) year, to complete the fifteen-year service requirement for purposes of retirement.*

*"Atty. Guimong has to his credit twelve (12) years, three (3) months and sixteen (16) days of government service when he turned sixty-five (65) years on May 25, 1998. Thus, even if his*

*services were extended for a maximum period of one (1) year, he still cannot meet the fifteen-year service requirement. Thus, while it is true that one who is more than sixty-five (65) years old may still be employed in a primarily confidential position, there appears to be no legal basis for unlimited accreditation for services rendered beyond the compulsory retirement age."*

Seemingly straightforward, the request is nothing but simple. From the records of the case, Guimong compulsorily retired from the government service on May 25, 1998. At that time, his government stint totaled twelve (12) years, three (3) months and sixteen (16) days. However, despite his compulsory retirement, he continued to serve as Secretary to the Mayor until December 31, 2002, under coterminous status on an annual rate basis. This means that his coterminous appointment as Secretary to the Mayor was renewed each year.

In his present request, Guimong seeks to have the service he rendered following his compulsory retirement accredited to enable him to enjoy full retirement benefits. This is because under existing laws, the service requirement for retirement is fixed at fifteen (15) years.

The Commission notes that Guimong is focusing his request on service accreditation in order to complete the needed fifteen years of service. In the ordinary course of things, however, a retiring employee, who falls short of the service requirement, should have his service extended by the Commission. When so granted, the extended period shall be tacked into the retiree's actual length of service.

Guimong did not have his service extended by the Commission following his compulsory retirement. Rather, he continued in the service by virtue of the coterminous appointment issued to him, which was renewed yearly until December 2002. In effect, through the repeated renewal of his coterminous appointment, Guimong was able to accumulate more than the sufficient number of years to satisfy what he lacked in government service, without having

to go through the normal process of service extension.

Is the said period of service creditable? The answer that readily suggests itself is that it is. Guimong rendered the service under a valid appointment. Therefore, the same must necessarily be credited to his favor.

Such a simple reasoning, however, ignores the fact that his coterminous appointment was issued and then renewed several times when Guimong was already of compulsorily retirement age. It is this attendant factor that precludes any immediate inference of a clear-cut conclusion.

To its mind, the Commission believes that the disposition of the present request hinges not so much on service accreditation but rather, more on service extension. For, if the service rendered by Guimong after his compulsory retirement would partake the character of service extension, then, indeed, the same shall be considered creditable for retirement.

It is clear, at least from the time of the High Court's ruling in the case of **Rabor vs. Civil Service Commission (244 SCRA 629)**, that a compulsory retiree may have his service extended for a maximum period of one year in order to complete the fifteen-year service requirement. However, the service extension is not a matter of right. Before service extension may be effectuated, it is imperative that the requisite authorization of the Commission should first be sought. On this point, the head of the agency where the compulsory retiree belongs, should, as a rule, make the proper representation.

In the case of Guimong, it is clear that no such authorization from the Commission, much less any request for service extension from the City Mayor, obtains. His continuance in office was merely by virtue of a coterminous appointment, which was renewed yearly until December 2002. In strict legal standpoint, this repeated appointment, though duly approved, cannot take the place of the Commission's authorization for a service extension.

Nonetheless, it cannot be lost sight of that in 2001, the Commission promulgated **CSC Memorandum Circular No. 27**, which stipulates, insofar as it is pertinent to the present case, as follows:

*"A person appointed to a coterminous/primarily confidential position who reaches the age of 65 years is considered automatically extended in the service until the expiry date of his/her appointment or until his/her services are earlier terminated."*

The aforequoted rule does away with the necessity of seeking the permission of the Commission with regard to the service extension of compulsory retirees holding coterminous or primarily confidential positions, like Guimong. Under the said rule, their service is deemed automatically extended until the expiry date of their appointment or until their service is sooner terminated.

Now, the abovementioned rule entered into force and effect in 2001 or three (3) years after Guimong reached his compulsory retirement. As a rule, an administrative regulation or policy, just like a statute, shall not be made to operate retroactively, unless the intent to do so is manifest. Excepted to this are rules and regulations that are remedial or curative in character like those pertaining to matters of retirement, which should be liberally construed and administered in favor of the persons intended to be benefited thereby.

The rule enunciated in CSC Memorandum Circular No. 27, s. 2001 is one such curative or remedial measure, thus, susceptible of retroactive application. It intends to supply defects and abridge superfluities in the existing policy on service extension of retiring government personnel. Its promulgation is designed to facilitate the extension of service of a certain class of retirees in order to spare them from the rigors of cumbersome and tedious administrative regulations. Verily, this is in keeping with the postulate that retirement measures are aimed at assisting retirees in old age, not at punishing them for having survived. **(In Re: Martin, 187 SCRA 477)**

From the foregoing disquisition, it may be said that Guimong's service after his compulsory retirement may be deemed as constituting service extension, for which reason, it is creditable. But to what extent shall the service be deemed creditable?

The Commission is of the view that **Section 12 (a) of CSC Memorandum Circular No. 27, s. 2001** is still applicable in so far as it limits service extension only to a maximum period of one (1) year. Said section provides as follows:

*"Section 12. a) No person who has reached the compulsory retirement age of 65 years can be appointed to any position in the government, subject only to the exception provided under subsection (b) hereof.*

*"However, in meritorious cases, the Commission may allow the extension of service of a person who has reached the compulsory retirement age of 65 years, for a period of six (6) months only unless otherwise stated. Provided, that such extension may be for a maximum period of one (1) year for one who will complete the fifteen (15) years of service required under the GSIS Law."*

Under existing Civil Service rules, service extension shall be good only for one (1) year. It is to be understood that the new rule does not seek to dispense with the said limitation. For otherwise, the new rule would result in the unbridled and unlimited extension of service, giving rise to the absurd situation contemplated in the **Rabor** case, *supra*:

*"Cena laid heavy stress on the interest of retirees or would be retirees, something that is, in itself, quite appropriate. At the same time, however, we are bound to note that there should be countervailing stress on the interests of the employer agency and of other government employees as a whole. The results flowing from the striking down of the limitation established in Civil Service Memorandum Circular No. 27 may well be 'absurd' and 'inequitable,' as suggested by Mme Justice Grino-Aquino in her dissenting opinion. An employee who has rendered only three (3) years of government service at age sixty-five (65) can have his service extended for twelve (12) years and finally retire at the age seventy-seven (77). This reduces the significance of the general principle of compulsory retirement at age sixty-five (65) very close to the vanishing point."*

Furthermore, to allow the service extension of compulsory retirees appointed to confidential or coterminous positions to coincide with the duration of their confidential or coterminous appointment would be to accord them undue preference to the discrimination of retiring employees holding permanent appointments. There is no rhyme or reason to such an unequal treatment. At best, therefore, the creditable period under the automatic service extension espoused in the CSC Memorandum Circular No. 27, s. 2001, would be one (1) year. Anything in excess of that shall not form part of government service.

However, the Commission takes exception to the case of Guimong who, records show, has been paying GSIS retirement premiums from May 1998 (the date when he is supposed to compulsorily retire) to December 2002. Thus, with this fact alone, the request of Guimong for accreditation of the period from May 1998 to December 2002 should be granted. It would be highly iniquitous if after paying retirement premiums, Guimong should be denied accreditation, when the request is primarily for the purpose of claiming retirement benefits for the said period.

In sum, on the grounds of equity, the Commission considers the service rendered by Guimong after his

compulsory retirement as creditable for purposes of retirement because he already paid retirement premiums during the said period. Be it emphasized that, considering the position of the Commission on this matter, it shall not grant a similar request for accreditation more than the one year beyond the age of 65.

**WHEREFORE**, foregoing premises considered, the request of Atty. Benjamin G. Guimong for accreditation of his service from May 26, 1998 to December 31, 2002 is hereby **GRANTED** . His service for the said period is accredited as part of his government service for the purpose of retirement.

Quezon City, November 4, 2004

**(SGD)**

**J. WALDEMAR V. VALMORES**

Commissioner

**(SGD)**

**KARINA CONSTANTINO-DAVID**

Chairman

**VACANT**

Commissioner

Attested by:

**(SGD)**

**REBECCA A. FERNANDEZ**

Director IV

Commission Secretariat and Liaison Office