



REPUBLIC OF THE PHILIPPINES

Department of Budget and Management
Malacañang, Manila

LEGAL OPINION NO. L-B/C-2002-02

SUBJECT : **Local Government Budgeting and Compensation**

ISSUES : (1) Legal benefits of employees terminated due to reorganization but who were ordered by the Supreme Court to be reinstated. Whether or not they are entitled to PERA, ADCOM, Clothing allowances, bonuses, even if they have not rendered services to the Municipality since the effectivity of their termination on 21 January 1999.

(2) How will the reinstatement of the employees be effected considering that there is no budget appropriated for the purpose since said employees were not included in the 2001 Plantilla of Personnel?

(3) Until when will the subject employees be paid their legal benefits?

(4) How is the term "backwages" interpreted when the subject employees have not rendered actual services?

(5) For those employees who have already gained employment outside government service, if they will be paid, what will be the mode of payment?

(6) Who will shoulder the amount of back salaries and other benefits due the reinstated employees?

(7) Is the Mayor personally liable because of his gross violation of R.A. No. 6656 (An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization) which was done in bad faith?

(8) If said amount will be shouldered by the Local Government Unit (LGU), what is the priority of payment of said demand above all other obligations of the Municipality?

FACTS : In Memorandum dated 28 September 2001, DBM RO-V referred the request of Mayor Arturo Vicente P. Maristela, Jr., of the Municipality of Aroroy, Masbate, for clarification on the Supreme Court decision in G.R. No. 147000 (Municipal Government of Aroroy, Masbate vs. Benjamin

employees in the Plantilla of personnel may be undertaken but will be subject to the PS limitations under Section 325 (a) of the Local Government Code of 1991 (R.A. No. 7160).

Issue No. 3. For backwages, the subject employees shall be paid their benefits from the time they were illegally dismissed up to their actual reinstatement. Upon reinstatement, they shall be entitled to the regular benefits until their separation from the service.

Issue No. 4. Backwages are earnings which an employee or worker lost due to dismissal from work (*New Manila Candy Workers Union vs. CIR*, 86 SCRA 44). In the case of *Mayor Jesus Miguel Yulo vs. CSC, et. al.*, 219 SCRA 470, it was held that payment of backwages shall include all the rights, privileges and other benefits, i.e., salary increases, bonuses, allowance and fringe benefits. Moreover, the "right to backwages is afforded only to those who have been illegally dismissed and were thus ordered reinstated or otherwise acquitted of the charge against them" (*Sabello vs. DECS, G.R. No. 87687, 180 SCRA 623*).

Accordingly, payment of backwages is necessary even though these employees have not rendered actual services.

Issue No. 5. For those employees who have gained employment outside government service, the payment of back salaries may be based on the difference between the salary of the former position of the concerned employees and the salary of their present position.

We have considered the pertinent provision of Section 8, Article IX-B of the Constitution and the case *Tan vs. Gimenez*, 107 Phil. 17, (a case cited by the Supreme Court in its Resolution in the case of *Canonizado vs. Aguirre*, G.R. No. 133132 dated January 25, 2000, 323 SCRA 312), to wit:

"Section 8, Article IX-B, 1987 Constitution

"No elective or appointive public officer or employee

"No elective or appointive public officer or employee shall receive additional, double or indirect compensation, unless specifically authorized by law, nor accept without the consent of Congress, any present, employment, office or title of any kind from any foreign government. x x x." (underscoring supplied)

"Tan vs. Gimenez, 107 Phil. 17

x x x. The fact that during the time his appeal was pending and was thus deprived of his office and salary, he sought and found employment in another branch of the government does not constitute abandonment of his former position. x x x. However, as provided for in Section 259 of the Revised Administrative Code, the sum P5,509.63 received by the petitioner as clerk in the Office of the Provincial Treasurer of Leyte from 2 March

Bautista, et. al.) which upheld the Order of the Civil Service Commission (CSC), Region V, Legaspi City, directing the said Municipality to reinstate the twenty-two (22) terminated employees with payment of backwages and other benefits

Upon assumption of Mayor Arturo Vicente P. Maristela, Jr., on 30 June 1998, he reorganized the Municipality as part of cost-cutting measures and due to its precarious financial condition pursuant to Administrative Order No. 372, which, in brief, led to the termination of twenty-two (22) employees effective 21 January 1999.

The affected employees appealed their dismissal to the CSC Regional Office (RO) V, Legaspi City. In Order dated 01 March 1999, the CSC-RO ordered the reinstatement of the permanent employees with back salaries and without loss of benefits.

The Mayor appealed the case but the Order of the CSC-RO was affirmed by the Commission Proper. On reconsideration, the appeal was denied for lack of merit. Consequently, the case was elevated to the Court of Appeals and later to the Supreme Court. The Supreme Court resolved with finality to uphold the decision of the CSC-RO, ordering/directing the respondent Municipality to reinstate the services of the 22 terminated employees and to pay their backwages and benefits.

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OPINION : **Issue No. 1.** The terminated employees may be entitled to their basic salaries and other benefits like PERA, ADCOM, Clothing Allowance and year-end bonus and cash gift.

Backwages are earnings, which an employee has lost in the way of wages due to dismissal. The amount which he lost daily by reason of his dismissal (*Bachiller vs. National Labor Relations Commission, L-51484, June 25, 1980, 98 SCRA 396*).

If a government official or employee in the classified service had been illegally dismissed, and his reinstatement had later been ordered, for all legal purposes he is considered as not having left his office so that he is entitled to all the rights and privileges that accrue to him by virtue of the office that he held (*Tanala vs. Legaspi, 13 SCRA 566, 576*):

An employee reinstated for having been illegally dismissed is considered as not having left his office and should be given a comparable position and compensation at the time of reinstatement, including all leave privileges and additional benefits and allowances granted while he has not been reinstated (*Cristobal vs. Melchor, 101 SCRA 857*).

Issue No. 2. The preparatory move of the Municipality of earmarking P1.5 Million in its FY 2002 Annual Budget, as informed, may be pursued. Programming of local funds and the reinstatement of the positions of the

1951 to 17 February 1955 **must be deducted from the total amount due him during the period of his illegal suspension.**

x x x According to the Accounting Officer of the Bureau of Public Schools, the salary due the petitioner as teacher from 6 August 1949 to 17 February 1955 at the rate of P140 a month was P9,294.20. Deducting therefrom the sum of P5,509.63 the petitioner is entitled to receive the sum of P3,784.57." (emphasis supplied)

Issue No. 6. The Municipality of Aroroy is responsible for the payment of the benefits of the reinstated employees. The reorganization of the Municipality, which led to the dismissal of the employees, was not done motu proprio by the Mayor but as an implementation of Municipal Resolutions and Ordinances enacted by the Sanggunian Bayan (SB).

Issue No. 7. Since the reorganization was implemented through various Resolutions and Ordinances passed and approved by the SB of Aroroy, the Municipal Mayor cannot be held personally liable to pay the backwages of the reinstated employees, unless there is a finding of bad faith and is accordingly adjudged by competent authorities.

There is presumption in law that, unless overcome by contradictory evidence, an official duty has been regularly performed (People vs. Yanson, G.R. No. 111951, February 24, 1994).

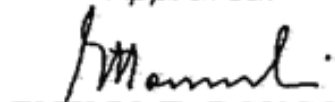
Issue No. 8. The prioritization in the disbursement of local funds involves a budget execution policy, which is within the cognizance of the LGU concerned. Administration of local funds is, by law, vested upon the LGU so long as the same is in accordance with the appropriations in the approved annual budget of the LGU. Paragraph 2 of Section 320 of R.A. No. 7160 provides that, "*the responsibility for the execution of the annual and supplemental budgets and the accountability therefore shall be vested primarily in the local chief executive concerned.*"

REFERENCE : Memorandum of the Secretary dated 03 January 2002 to DBM-RO-V

Recommended:


JANET B. ABUEL
Director, LLS

Approved:


EMILIA T. BONCODIN
Secretary

