



REPUBLIC OF THE PHILIPPINES

Department of Budget and Management
 Malacañang, Manila

LEGAL OPINION NO. N-C-2001-05

SUBJECT : National Government Budgeting - Compensation

- ISSUES** : (1) Is the Department of Education, Culture and Sports (DECS) Secretary considered as competent authority to decide on matters involving disciplinary action against officers and employees of the DECS?
- (2) Whether or not the request of Don Sergio Osmeña Memorial National High School, DECS, Division of Cebu City for the payment of backwages of Dr. Eva Vaño, Secondary School Principal, covering the period January 2, 1997 to July 15, 2001, may be given favorable course.

- FACTS** : On July 29, 1996, Dr. Vaño was charged with grave misconduct, conduct prejudicial to the interest of the service and gross insubordination. Pursuant to a Decision of the Regional Director, DECS RO VII, dated January 2, 1997, she was found guilty and was imposed the penalty of dismissal from the service under Omnibus Rules Implementing Book V of the Administrative Code of 1987.

Respondent Dr. Vaño appealed to the Secretary of DECS on the ground that no investigating committee was constituted thereby denying her right to administrative due process. Former DECS Secretary Andrew Gonzales in a DECS Order dated March 7, 2000 declared the decision of Regional Director DECS RO VII null and void on the ground that the investigation conducted was not in accordance with Section 9 of Republic Act No. 4670, otherwise known as, the Magna Carta of Public School Teachers.

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In a Resolution dated June 22, 2001, DECS Undersecretary Ramon C. Bacani, ordered Dr. Vaño's reinstatement and granted backwages including all other monetary benefits that may have accrued to her during the period of her unjustified suspension or dismissal, without prejudice to the reinvestigation of the administrative case, to wit:

"In view thereof, the reinstatement of respondent appellant Eva Gladys Vaño to her former position without loss of seniority and promotional rights is hereby ORDERED; and henceforth, respondent-appellant is granted back wages, to be computed

from the time she served her penalty of dismissal from service until her actual reinstatement, for a period, consistent with prevailing jurisprudence, not exceeding five (5) years, without prejudice to the reinvestigation of the administrative case as earlier ordered by this Office. Respondent is entitled to salaries during the period of her 90-day preventive suspension."

Dr. Eva Vaño, through counsel, informed DECS that she would be reporting for duty on July 16, 2001.

OPINION : **First Issue:** The DECS Secretary is considered as competent authority to decide on matters involving disciplinary action against officers and employees of the DECS.

Section 47(2), Chapter 6, Book V of Executive order No. 292 (The Administrative Code of 1987) states:

"Sec. 47. Disciplinary Jurisdiction.

(2) The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned." (Emphasis Ours)

The DECS Secretary has jurisdiction to decide on matters involving disciplinary actions against Dr. Eva Vaño who is an employee of the DECS. Accordingly, the DECS Secretary's Order dated 07 March 2000, ruling that the proceedings is null and void because it failed to satisfy the requirements of Section 9 Republic Act No. 4670, otherwise known as, the Magna Carta for Public School Teachers, is legally binding.

Second Issue: Dr. Eva Vaño is entitled to backwages from 02 January 1997 to 15 July 2001. However, the same should be charged against existing appropriations or savings of the DECS.

In the case of *Miranda vs. COA* (200 SCRA 657), the Supreme Court ruled that "Engineer Miranda is entitled to backwages during the period of his suspension as it is already settled in this jurisdiction that a government official or employee is entitled to backwages not only if he is exonerated in the administrative case but also when the suspension is unjustified. . . As regards the computation of backwages, we apply the formula adopted in a long line of cases involving illegally dismissed civil servants who were subsequently reinstated."

Accordingly, paragraph 4 of Section 220 of the Government Accounting and Auditing Manual (GAAM) in relation to paragraph 5 thereof expressly clarifies the subject matter, to wit:

"An employee who is reinstated after having been illegally dismissed is considered as not having left the office should be given comparable compensation at the time of his reinstatement in an amount not exceeding 5 years salary regardless of whether the period of illegal dismissal exceeds 5 years. Such employee cannot be faulted for his inability to work or render any service as a result of his illegal dismissal because this was not his own making or liking. If dismissal was due to bad faith or personal malice of superior officers, they will be held personally accountable for the employee's back wages (Gabriel vs. Hon. Eufemio C. Domingo, GR No. 87420, Sept. 17, 1990)."

Relatedly, the Commission on Audit in its Opinion No. 99-007 dated September 22, 1999 ruled that back salaries shall include all the remunerations, i.e., basic salary, PERA and other fringe benefits, received by her as though she was working during the period she was illegally terminated up to the time she was reinstated. (Citing *Yulo vs. CSC*, 21 SCRA 470).

SUM 470).

Moreover, the Civil Service Commission in its Resolution No. 000265 likewise resolved that back salaries include all the rights, privileges, and benefits, i.e., salary increases, bonuses, allowance and fringe benefits.


In sum, what should be given as back salaries to Dr. Vaño are those corresponding to her basic salary and other remunerations covering the period of her illegal dismissal but not exceeding five (5) years; and the computation thereof should be based on the rate last received by her before her dismissal.

REFERENCE: Memorandum of the Secretary dated 15 November 2001 to DBM-RO-VII

Recommended:


JANET B. ABUEL
Director, LLS

Approved:


EMILIA T. BONCODIN
Secretary