

## SECOND DIVISION

[ G.R. No. 143289, November 11, 2004 ]

**CRESENCIA L. TAN, PETITIONER, VS. DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH), RESPONDENT.**

### DECISION

**CALLEJO, SR., J.:**

This is a petition for review on certiorari of the Decision<sup>[1]</sup> dated February 29, 2000 of the Court of Appeals (CA) in CA-G.R. SP No. 46752, dismissing the petition for review of petitioner Cresencia Tan and affirming the assailed resolution of the Civil Service Commission (CSC) and the resolution denying the motion for reconsideration thereof.

#### The Antecedents

The petitioner was employed as Accountant I in the Office of the Siquijor Highway Engineering District (SHED). However, she and sixteen (16) others were charged with twenty-two (22) counts of *estafa* through falsification of public documents before the Sandiganbayan. She was also charged with dishonesty and/or grave misconduct on account of the transactions subject of the criminal charges. In compliance with the Resolution of the Sandiganbayan ordering the suspension of the petitioner and her co-accused, the District Engineer ordered her suspension per his Memorandum dated November 5, 1982. The petitioner filed a motion for reconsideration of the Resolution of the Sandiganbayan.

Earlier, on July 27, 1981, the President of the Philippines had issued Executive Order (E.O.) No. 710, abolishing the Ministry of Public Works and the Ministry of Public Highways and all sections, bureaus, regional offices under its supervision and control and creating the Ministry of Public Works and Highways. Under Section 10 of the said E.O., the Minister of the newly-created ministry, was allowed to appoint qualified personnel to appropriate positions in the new ministry. These included the personnel of the abolished ministry and those not so appointed would be deemed laid off.

A list of prospective appointees for the positions from among those formerly employed in the abolished offices was thereafter prepared. However, the name of the petitioner was not included in the list because of the pending criminal and administrative charges against her. She wrote to the respondent ministry and protested her exclusion from the list, but the Deputy Minister rejected the protest in a Memorandum dated January 5, 1983.

In a Decision dated March 11, 1983, the Minister provisionally dismissed the administrative charges against the petitioner without prejudice to the reopening thereof in the event that she would be reinstated in the government service. On

August 4, 1987, the Sandiganbayan issued a Resolution granting the petitioner's motion for reconsideration of its Resolution dated August 31, 1982. As such, the petitioner's suspension was lifted. The petitioner then requested the district engineer to reinstate her to her former position as accountant, but the request was denied. The district engineer reasoned that the position had already been abolished and that Ernesto Calido had been appointed as the accountant in the new ministry's office. The petitioner appealed to the Secretary of Public Works and Highways, but the latter denied the appeal in a Letter dated June 23, 1988. In so ruling, the Secretary relied on Opinion No. 44, series of 1988, of the Secretary of Justice, viz:

That your name was deleted as a contender to the position of accountant of the Office of the District Engineer, Siquijor Engineering District of the merged Ministry of Public Works and Highways on the ground that you were facing administrative and criminal charges finds justifiable and legal basis, especially considering Opinion No. 44, s. 1988, of the Secretary of Justice dated March 11, 1988 wherein it wisely held that:

"It is settled that the abolition of an office effectively terminates the official relation of an officer thereto ... reappointment to the new positions created in the then Ministry (now Department) of Public Works and Highways is not a matter of right, but a matter of privilege, to be determined according to the best judgment of the appointing authority or recommending authority. ..."<sup>[2]</sup>

In the meantime, on May 30, 1989, the Sandiganbayan convicted the petitioner of the crimes charged. She, thereafter, filed a petition for review with this Court docketed as G.R. Nos. 88475-96 assailing the decision. On August 5, 1993, the Court rendered judgment reversing the decision of the Sandiganbayan and acquitting the petitioner of the charges.

The petitioner again wrote the now Department of Public Works and Highways (DPWH), the respondent herein, requesting for her reinstatement as Accountant I in the District Engineer's Office of Siquijor, and for the payment of benefits from November 1982 when she was suspended up to the time of her reinstatement. On June 17, 1994, the respondent DPWH wrote the Regional Director and informed the latter that the petitioner could not be reinstated and granted back salaries because she had been laid off; however, she was entitled to all the benefits and gratuities provided under existing laws. The petitioner sought a reconsideration of the said letter, but the same was denied. Nevertheless, the petitioner sought another reconsideration of the said decision, citing Section 27 of Presidential Decree No. 807 and Section 13 of Rep. Act No. 3019. She also emphasized that Ernesto Calido, who was appointed to the position, had resigned effective August 5, 1991.

When her request was denied, the petitioner filed a petition for reinstatement and payment of benefits with the CSC. In Resolution No. 971163, the CSC dismissed the petition, citing Section 10 of E.O. No. 710. The petitioner filed a motion for clarification/reconsideration of the Resolution, which the CSC denied in Resolution No. 974118.

Thereafter, the petitioner filed a petition for review with the CA assailing the CSC Resolution. However, the appellate court rendered judgment dismissing the petition

for lack of merit. It cited the ruling of this Court that the reorganization order of the President of the Philippines in E.O. No. 710 was made in good faith; having been laid off under the said order, she could no longer be reinstated to her former position.

### **The Present Petition**

In her petition at bar, the petitioner avers that she was illegally dismissed from the government service, in violation of her constitutional right of security of tenure. She contends that she was never notified that her employment was terminated because her position was abolished. She further avers that the power of the Minister to select and appoint personnel from among the employees of the abolished ministries under Section 10 of E.O. No. 710 must be exercised in good faith. She posits that the position of Accountant I, which was filled up by the new Minister by appointing Ernesto Calido, became vacant upon the latter's resignation. There was no valid reason why she should not be appointed to the said position, in view of the letter and spirit of Section 13 of Rep. Act No. 3019 and the rulings of this Court in *Pari-an v. Civil Service Commission*<sup>[3]</sup> and *Sabello v. DECS*.<sup>[4]</sup> She asserts that she should also be granted back salaries, as in the case of Engineer Norberto Bernad and Engineer Jaime T. Obsequio who, like her, were acquitted and were given back salaries.

The Office of the Solicitor General posits, in its Comment on the Petition, that the CA committed no error in affirming the assailed Resolutions of the CSC.

### **The Court's Ruling**

The petition is denied due course.

In ordering the dismissal of the petitioner, the CA affirmed the rulings of the CSC in its assailed Resolutions Nos. 971163 and 974118, to wit:

After a careful evaluation of the records, We find the appeal without merit.

The position which Tan seeks to be reinstated to in the Ministry of Public Highways has ceased to exist by virtue of Executive Order No. 710 abolishing said office and thereby creating the Ministry (now Department) of Public Works and Highways (MPWH). Tan can no longer claim for reinstatement despite her acquittal by the Supreme Court on the ground that when MPWH was created and she was not reappointed to her original position, she was deemed legally separated from the service.

The power of the Minister to appoint personnel is discretionary. Section 10 of Executive Order 710 provides as follows:

*"Section 10. x x x. The Minister may appoint qualified personnel of the abolished Ministries to appropriate positions in the new Ministry, and those not so appointed are deemed laid off."*

Since Tan was not so appointed in the newly created Ministry, she can no longer claim for reinstatement to her former position.<sup>[5]</sup>

After a circumspect re-examination of the records at hand, the Commission finds no substantial basis to reconsider its previous resolution dismissing the appeal of Tan.

Although the issue on Tan's non-reinstatement has already been squarely passed upon by the Commission in the herein assailed resolution, it is worthy to restate the well-entrenched rule that the payment of back salary is afforded only to those who have been illegally dismissed and were, thus, ordered reinstated or to those otherwise acquitted of the charges against them (*Sabello vs. DECS*, 180 SCRA 623).

In the instant case, while it is true that Tan was acquitted by [the] Supreme Court from *Estafa Through Falsification of Public Documents*, her reinstatement to her former position as well as payment of back salary do not automatically attach considering that her separation from the service did not arise from that criminal offense. On the contrary, her separation was due to the abolition of her position by virtue of the reorganization of the MPWH (now DPWH). Since Tan was not reappointed to a position equivalent to her former position, she was deemed separated pursuant to the express provisions of Executive Order No. 710.

Moreover, Tan cannot claim that she was deemed reappointed to her position since she was allowed to exercise her functions even after the reorganization. The fact remains that she was not reappointed to an equivalent position in the reorganized agency.<sup>[6]</sup>

The appellate court also cited the 1<sup>st</sup> Indorsement dated June 17, 1994 of Undersecretary Gregorio S. Alvarez, to wit:

The request of Ms. Tan for reinstatement and payment of back salaries has no basis despite her acquittal because during the pendency of the case against her, the Ministry of Public Highways, where she was an employee, and the Ministry of Public Works were abolished by Executive Order #710 and a new Ministry, the Ministry of Public Works and Highways was created.

Sec. 10 of said Executive Order provided that the Minister may appoint qualified personnel of the abolished Ministries to appropriate positions in the new Ministry and those not so appointed are deemed laid-off.

Ms. Tan was not considered for re-appointment to the new Ministry of Public Works and Highways; hence, in accordance with Sec. 10, she was deemed laid off and is no longer an employee of the Department.

Sec. 12 of the same Executive Order provides that "all those who are laid-off under the provisions of this Executive Order shall be entitled to all benefits and gratuities provided for under existing laws."

Considering, therefore, that Ms. Tan was laid-off during the merger of the two Ministries, she is not entitled to reinstatement and payment of back salaries. She is, however, entitled to the payment of her accrued