

FIRST DIVISION

[G.R. No. 136480, December 04, 2001]

**LACSASA M. ADIONG, PETITIONER, VS. COURT OF APPEALS AND
NASIBA A. NUSKA, RESPONDENTS.**

D E C I S I O N

PARDO, J.:

The Case

In this petition for review on *certiorari*,^[1] petitioner seeks the review of the decision^[2] of the Court of Appeals as well as its resolution^[3] denying reconsideration thereof.

The Facts

On December 6, 1994, Mayor Sultan Serad A. Batua issued a permanent appointment to Nasiba A. Nуска to the position of Municipal Local Civil Registrar. The same appointment was duly approved by the Civil Service Commission Office, Marawi City on December 9, 1994.^[4]

On June 30, 1995, Mayor Lacsasa M. Adiong issued a memorandum^[5] informing all municipal employees of the termination of their appointment and directing them to clear themselves from money and property accountabilities. On July 1, 1995,^[6] another memorandum clarified this by specifying that the mass termination of services applied only to temporary or casual workers and requiring those holding approved permanent appointments to submit copies of their appointments.

Due to respondent Nуска's failure to submit a copy of her appointment coupled with her failure to make a courtesy call on the petitioner as the new mayor, he terminated her services and appointed a certain Nanayaon Samporna in her stead.^[7]

On August 27, 1995, respondent Nуска wrote Mayor Adiong requesting for her reinstatement and payment of salaries covering the period July 1, 1995 to August 31, 1995.^[8] Mayor Adiong failed to act on the request. Hence, on March 11, 1996, respondent Nуска appealed to the Civil Service Commission.^[9]

On January 28, 1997, the Civil Service Commission issued Resolution No. 970688, which held that:

"WHEREFORE, the Commission finds the termination of the services of Nasiba A. Nуска as Municipal Local Registrar not in order. Accordingly, she should be reinstated or restored to her position. The Personnel

Officer/Human Resource Management Officer and Cashier, Municipality of Ditsaan-Ramain, Lanao del Sur, are hereby directed to enter her name in the rolls of employees of said municipality and to pay her back salaries from the date of her illegal separation until her reinstatement."^[10]

On March 17, 1997, petitioner Mayor Adiong filed a motion for reconsideration.^[11]

On December 11, 1997, the Civil Service Commission denied the motion.^[12]

On February 18, 1998, Mayor Adiong filed with the Court of Appeals a petition for review with preliminary injunction and temporary restraining order.^[13]

On September 15, 1998, the Court of Appeals promulgated a decision^[14] dismissing the petition and affirming the resolution of the Civil Service Commission.

On November 18, 1998, the motion for reconsideration^[15] filed by Mayor Adiong was denied by the Court of Appeals.^[16]

Hence, this petition.^[17]

Issues

The issues raised are whether the termination of respondent Nuska's employment was proper; whether Adiong was denied due process in the proceedings before the Civil Service Commission; and whether the administrative case against Nuska^[18] validated her termination.

The Court's Ruling

The petition is without merit.

The Constitution provides that:

"No person shall be deprived of life, liberty or property without due process of law, nor shall any person be denied the equal protection of the laws."^[19]

It further mandates that:

"No officer or employee of the civil service shall be removed or suspended except for cause provided by law."^[20]

Section 1, Rule XIV of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 provides that:

"No officer or employee in the civil service shall be removed or suspended except for cause as provided by law and after due process."

In this case, respondent Nuska had a permanent appointment to the position of municipal civil registrar of Ditsaan-Ramain, Lanao del Sur. She thus enjoyed security of tenure as guaranteed by law. As an employee in the civil service and as a civil service eligible, respondent Nuska is entitled to the benefits, rights and privileges extended to those belonging to the classified service. She could not be removed or

dismissed from the service without just cause and without observing the requirements of due process.^[21]

The reasons advanced by petitioner why respondent Nuska's employment was terminated were the following: failure to make a courtesy call, failure to submit her appointment papers, and failure to report to work which was tantamount to abandonment.

We agree with the Solicitor General that failure to make a courtesy call to one's superior is not an offense, much less a ground to terminate a person's employment.^[22]

Respondent Nuska's failure to submit her appointment papers is not a cause for her outright dismissal. It was not shown that respondent Nuska was informed of the July 1, 1995 memorandum requiring those with permanent appointments to submit their papers. At the very least, petitioner could have reminded her to submit the documents without terminating her employment immediately.

On the alleged abandonment by respondent Nuska of her position, we agree with the stand of the Civil Service Commission in Resolution No. 970688 when it said that:

"As to the alleged abandonment of office, the same is without any basis. It is significant to note that Nuska, in her letter dated 27 August 1995, informed Mayor Adiong that she did not resign and that the termination of her services was not in accordance with existing Civil Service rules and regulations. She requested that she be reinstated to her lawful position and her back salaries be paid accordingly. The foregoing explains that although Nuska was physically absent in the office premises, all the while, she had the intention to return to work. Hence, she could not be deemed to have abandoned or relinquished her right to the position under an appointment with permanent employment status."^[23]

Generally speaking, a person holding a public office may abandon such office by non-user or acquiescence.^[24] Non-user refers to a neglect to use a right or privilege or to exercise an office.^[25] However, nonperformance of the duties of an office does not constitute abandonment where such nonperformance results from temporary disability or from involuntary failure to perform.^[26] Abandonment may also result from an acquiescence by the officer in his wrongful removal or discharge, for instance, after a summary removal, an unreasonable delay by an officer illegally removed in taking steps to vindicate his rights may constitute an abandonment of the office.^[27]

In this case, respondent Nuska's failure to perform her duties was involuntary and cannot be considered as acquiescence. In her August 27, 1995 letter to petitioner, she claimed that she did not resign and she considered her termination from the service as illegal. She insisted on her reinstatement. Clearly, there was no abandonment of office.

Hence, the reasons given by petitioner for separating respondent Nuska from office are not just causes for terminating the services of an official or employee in the civil