

**BAYONA, Juanito H.**  
**Re: Reinstatement; Payment of**  
**Back Salaries and other Benefits;**  
**Motion for Reconsideration**  
**(CSC Resolution No. 00-1281)**

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## **RESOLUTION NO. 002606**

Bacolod City Water District (BACIWA), through the Office of the Government Corporate Counsel (OGCC), moves for the reconsideration of CSC Resolution No. 00-1281 dated May 26, 2000, the dispositive portion of which reads, as follows:

"WHEREFORE, the Commission hereby rules that Juanito H. Bayona be paid his back salaries and other benefits covering the period January 1, 1996 to May 16, 1999."

In its motion for reconsideration, BACIWA averred as follows:

"3. The filing of Mr. Bayona's letter of May 6, 1999 and the corresponding issuance of CSC Resolution No. 001281 is grossly violative of the elementary tenets of due process and fair play.

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"5. With all due respect, the act of the CSC of springing a 'surprise' or sneaking an 'ambush' on BACIWA and OGCC by giving due course to the letter of Mr. Bayona and issuing CSC Resolution No. 001281 without furnishing thereof to the OGCC and affording the latter the opportunity to comment or oppose the letter and the CSC Resolution, is not in consonance with the time-honored principles of due process, justice, and fair play; hence, this Manifestation and Motion.

"6. To recall, the issue involved in the original case is purely a legal issue, i.e. whether or not Mr. Bayona should be compulsorily retired at age 60 in accordance with the pertinent CBA provisions or at age 65 pursuant to the applicable GSIS retirement law, considering the peculiar attendant circumstances of the case? All the pleadings of the parties as well as the dispositions of the CSC and CA pivoted around and centered on this sole legal issue.

"7. The actual case never touched on the reinstatement and payment of back salaries and other benefits in favor of Mr. Bayona which were not alledged or prayed for in the pleadings. Neither was the issue on reinstatement and payment of back salaries and benefits littigated upon nor dealt with in the decisions of the CSC and CA obviously because the issue was not alledged in the pleadings.

"I6. Definitely, Mr. Bayona can no longer be reinstated because he has already reached the age for compulsory retirement (65 years) under the GSIS laws. Regarding the so-called unserved period, the occurrence of which was neither BACIWA's or Mr. Bayona's fault, the no-work no-pay principle should have been applied either strictly or equitably. To require BACIWA to pay the alleged back salaries and other benefits of Mr. Bayona corresponding to the entire unserved period during which Mr. Bayona did not contribute anything or perform any service to BACIWA, is tantamount to penalizing BACIWA for a fault or omission which was not of its own doing or making.

"Since Mr. Bayona is claiming more than a million pesos by way back salaries and unpaid benefits, it would be the height of injustice if BACIWA with its limited resources - be suffered or arm-twisted to pay for such dubious obligation."

For his part, Bayona requested that the period within which he is entitled to back salaries and other benefits, be rectified. His request reads, as follows:

"On pages 3 and 4 of the CSC Resolution No. 001281, promulgated on May 26, 2000 please allow me to request that the starting date of the period of my reinstatement to the service and the payment of my back salaries and other benefits be corrected to read December 1, 1995 instead of January 1, 1996.

"The Board of Directors of BACIWA in its Board Resolution No. 046. Series of 1995, passed on May 12, 1995 approved the recommendation of Management to extend my term up to December 31, 1995 but the approval was made subject to two conditions, one of which is that the extension (sic) may be shortened in the exercise of the sound discretion of the Board of Directors.

"On November 29, 1995 Juliana B. Carbon, Officer-in-Charge at that time, wrote me a letter informing me that the Board approved to extend my term of office up to November 30, 1995. Board Resolution No. 046 was therefore superseded by Board Resolution No. III, Series of 1995 extending my services up to November 30, 1995 only, instead of December 31, 1995. Thus I was separated from the service effective December 1, 1995 and not January 1, 1996."

It is of record that this case arose when Juanito H. Bayona was then the Manager of the General Services Division of BACIWA. At that time, there was an existing Collective Bargaining Agreement (CBA) entered into on October 1, 1991 between the employee's union and management of BACIWA. Under said CBA, any employee who reaches the age of 60 years shall be deemed to be compulsorily retired from the service. Hence, upon reaching the age of sixty (60) years on May 16, 1994, Bayona was considered compulsorily retired from the service. Bayona, however, refused to retire because he believed that the compulsory retirement age is sixty-five (65) years as provided for in Presidential Decree No. 1146 (the old GSIS Law).

Despite his refusal to retire, however, the records disclose that Bayona was separated from the service effective December 1, 1995. This is confirmed by a letter dated November 29, 1995 of BACIWA Officer-in-Charge Juliana B. Carbon addressed to Bayona which reads, in part, as follows:

"Please be informed that the Board approved to extend your service until November 30, 1995, as per Board Resolution No. 111, Series of 1995. As such, you are hereby directed to turn-over all documents/unfinished work to Bernardita Piamonte on or before November 30, 1995."

Eventually, the issue as to the legally sanctioned age of compulsory retirement found its way to the Commission for resolution. Consequently, the Commission issued CSC Resolution No. 96-4918 dated August 5, 1996, wherein it ruled that:

"It should be pointed out that although a contract is considered to be the law between the parties, the same must not be contrary to law, morals, good customs, public order, or public policy. Hence, the said CBA cannot shorten the employees' term of office fixed by law which is until the employees reached the age of sixty-five years. This is recognized in Section 6 of Article XXVIII of the CBA of the BEU and the BACIWA, which provides:

'All laws, including Presidential Decrees, letters of Instruction, and Rules and Regulation Implementing the New Labor Code of the Philippines are adopted and made part of this agreement.'

"Therefore, the compulsory retirement age of sixty-five (65) years as provided in Section 11 (b) of P.D. 1146 applies to BACIWA employees. In effect, Section 2 of Article XVI of the CBA merely gives the employee an option to retire at the age of sixty (60) years."

The BACIWA moved for the reconsideration of the abovequoted ruling but was denied in CSC Resolution No. 97-3564 dated August 5, 1997.

Undaunted, the BACIWA elevated the case before the Court of Appeals by way of an appeal. And the said Court rendered a decision dated March 29, 1999, the material portions of which read, as follows:

"Petitioner's contentions does not persuade. If respondent Juanito Bayona were an employee in a private firm, there would be no dispute that the CBA stipulating that the compulsory retirement age of the covered employee is 60 years is valid. This is so because there is no law fixing the compulsory retirement age for private employees. In the case of public employees like Bayona, there is a law fixing the compulsory retirement age of 65 years which is P.D. 1146 (Revised Government Service Insurance Act of 1977).

"In 1977, P.D. 1146 was promulgated decreeing that the compulsory retirement age of officers and members of the civil service is 65 years old. On February 20, 1984, the Supreme Court in Baguio Water District v. Trajano, 127 SCRA 730

already ruled that a water district is a corporation created pursuant to a special law - P.D. No. 198, as amended, and as such its officers and employees are covered by the Civil Service Law. This ruling was reiterated in Hagonoy Water District v. NLRC, 165 SCRA 272 and Tanjay Water District v. Gabaton, 172 SCRA 253.

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"Can the statutorily fixed compulsory retirement age be lowered by a CBA between the union of employees belonging to the civil service and the government-owned and controlled corporation? Negative is the answer.

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"upon the foregoing disquisition, this Court holds that the CBA lowering the compulsory retirement age of the officers and employees of BACIWA from the statutorily fixed 65 years is null and void because: a) PD 1146 gives Bayona a right to be compulsorily retired at age 65 and he cannot waive that right because such waiver is contrary to public policy; and, b) it is a fundamental principle that an existing law is in legal contemplation a part of a contract so that PD 1146 is a part of the CBA, hence the latter violated the law by lowering the compulsory retirement age fixed by PD 1146.

"WHEREFORE, for lack of merit, the appeal is DISMISSED and the appealed Decision is AFFIRMED"

Thereafter, Bayona requested the Commission to issue an order to effect his reinstatement to his former position and the payment of his back salaries from the date of his illegal removal from the service up to May 16, 1999---the date when he reached his compulsory retirement age of 65 years. In CSC Resolution No. 00-1281 dated May 26, 2000, the Commission granted Bayona's request, to wit:

"In the instant case, it was Bayona who requested the Commission to render an opinion regarding the validity of Section 2, Article XVI of then CBA. Hence, when Commission rendered its decisions in CSC Resolution Nos. 96-4918 and 97-3564, it was for the purpose of determining the legal right of Bayona to his position as Manager of the General Service Division of BACIWA for the period May 16, 1994 (date of 60th birthday) up to May 16, 1999 (date of 65th birthday).

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"Bayona turned sixty-five (65) years old on May 16, 1999, which is the compulsory retirement age under Section 11 (b) of P.D. 1146. Were it not for the invalidated provision in the CBA providing for a compulsory retirement age of 60. Bayona should have continued to render government service until May 16, 1999. Therefore, he should be paid the amount corresponding to his salaries and other benefits for the period January 1, 1996 to May 16, 1999.

"WHEREFORE, the Commission hereby rules that Juanito H. Bayona be paid his back salaries and other benefits covering

the period January 1, 1996 to May 16, 1999."

Hence, the present motion for reconsideration of BACIWA where the main issue to be resolved is whether Bayona is legally entitled to be reinstated to his former position and/or to be paid his back salaries and other benefits.

BACIWA contents that since BAYONA never raised the issue of reinstatement and/or payment of back salaries at the very outset, he has lost his right thereto based on the so-called "raise-or-waive rule". There is no merit in this contention.

Admittedly, the issue on reinstatement and/or payment of back salaries was never raised by Bayona at the very outset. Hence, such was never discussed nor passed-upon in CSC Resolution Nos. 96-4918 dated August 5, 1996, 97-3564 dated August 5, 1997, and CA Decision dated March 29, 1999. This should not be construed, however, that Bayona is no longer entitled to the payment of his back salaries and other benefits. In the related case of Del Castillo vs. CSC, et al., G.R. No. 112513, August 21, 1997, the High Tribunal had the occasion to rule that:

"As likewise reaffirmed by the Court in Perez vs. Evite, 'under Section 45 of rule 39, Rules of Court . . . a judgement is not confined to what appears upon the face of the decision, but also those necessarily included therein or necessary thereto.' The late Chief Justice Fred Ruiz Castro stressed for the Court in Padua vs. Robles, that (T)he sufficiency and efficacy of a judgement must be tested by its substance rather than its form. In construing a judgement, its legal effects including such effects that necessarily follow because of legal implications, rather than the language used, govern. Also, its meaning, operation, and consequences must be ascertained like any other written instrument. Thus, a judgement rests on the intention of the court as gathered from every part thereof, including the situation to which it applied and the attendant circumstances."

One should not lose sight of the fact that the removal of Bayona was in violation of the law. Hence, he is entitled, as a matter of course, to be reinstated to his former position and be paid all his back salaries and other benefits. Considering, however, that his reinstatement to the service is no longer legally feasible as he already reached the compulsory retirement age, he must be paid his back salaries from the date of his illegal removal from the service effective December 1, 1995 to May 16, 1999 --the date he reached the compulsory retirement age of 65 years. This precept was explained in the case of San Luis vs. CA, 174 SCRA 258, where the Supreme Court ruled:

"As respondent Berroya can no longer be reinstated because he has already reached the compulsory retirement age of sixty five years on December 7, 1986, he should be paid his back salaries and also all the retirement and leave privileges that are due him as a retiring employee in accordance with law. . . ."

Finally, movant BACIWA's claim that it was denied due process when the Commission issued CSC Resolution No. 00-1281 dated May 26, 2000 without giving it the opportunity to oppose the request of Bayona to be paid his back salaries deserves scant consideration. Movant misconceives the nature of the ruling rendered by the Commission in the present case. Be it stressed that the Commission did not impose any disciplinary sanction upon any party. Neither was there an administrative

charge filed against any of the officers of the movant so as to entitle it to notice and hearing (Debulgado vs. CSC, 237 SCRA 184). And even on the assumption that movant was indeed denied its right to due process, this was cured upon its filing of the present motion for reconsideration (Simpao vs. CSC, 191 SCRA 396).

WHEREFORE, the motion for reconsideration of Bacolod City Water District is hereby denied for lac of merit. Accordingly, BACIWA is directed to pay the back salaries and other benefits of Juanito H. Bayona from December 1, 1995 to May 16, 1999. CSC Resolution No. 00-1281 dated May 26, 2000 is thus modified.

Quezon City, Nov 20 2000

**CORAZON ALMA G. DE LEON**

Chairman

**JOSE F. ERESTAIN, JR.**

Commissioner

**J. WALDEMAR V. VALMORES**

Commissioner

Attested by:

**ARIEL G. RONQUILLO**

Director II

*MVMV/Y9/Y6/vog/volt19*

*Bayona*

*NDC 95-1924*