

**GARCIA, Delia G.**

**Re: Insubordination; Appeal**

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**RESOLUTION NO. 030811**

Delia G. Garcia, Professor VI, Isabel State University (ISU), Echague, Isabela, appeals from the decision dated May 24, 2000, of the Civil Service Commission Regional Office (CSCRO) No. II, Tuguegarao City, finding her guilty of Insubordination for which she was imposed the penalty of fine equivalent to one (1) month of her salary; and the decision dated September 13, 2000, denying her motion for reconsideration.

Said May 24, 2000, decision reads, in part, as follows:

“Let it be emphasized that the authority to travel, the authority to attend meetings and conferences and the grant to go on vacation leave are subjected (sic) to the discretion of the head of the agency/institution.

*“The disapproval of the travel necessarily means that the employee is not allowed to travel or to leave the workplace. Such is an order for the employee to stay at the workplace.*

*“To travel on official Business (sic) and to travel on official time have the same effect. as when one does on*

*leave. That is, one necessarily leaves the workplace. When one's travel is disapproved then he applies for a forced leave, is it not circumventing the very purpose of not allowing one to travel.*

*"When Ms. Garcia's authority to travel was disapproved she opted to file an application for leave. Necessarily, because to go on travel and to go on leave have the same effect of leaving the workplace, such will also be disapproved. Conclusively, Ms. Garcia refused to obey the order for her to stay at the workplace.*

*"WHEREFORE, MS. DELIA GARCIA is hereby held liable with (sic) the administrative offense of Insubordination. Thus, she is meted the penalty of fine equivalent to one month salary."*

Garcia anchors her appeal on the following grounds:

- "1. The Decision was (sic) not supported by sufficient evidence to support (sic) a finding of guilt;*
- "2. The testimony of the witnesses (sic) for the complainant is tainted with bias;*
- "3. Errors of law have been committed prejudicial to the interests (sic) of Respondent-Appellant; and*
- "4. Failure to appreciate the mitigating circumstances in favor of herein Respondent-Appellant."*

At the outset, it must be pointed out that under Section 52 (B) 5 of the Uniform Rules on Administrative Cases in the Civil Service, the offense of Insubordination is punishable by suspension from the service for a period of one (1) month and one (1) day to six (6) months for the first offense and dismissal from the service for the second offense. Obviously then, the CSCRO No. II erred, among other errors, when it imposed upon Garcia the penalty of fine in an amount equivalent to her one (1) month salary after supposedly finding her guilty of Insubordination.

It may be relevant to mention that Garcia's appeal is utterly wanting as it does not raise any plausible and persuasive argument/s in her favor. The discussion and arguments advanced are irrelevant, immaterial and not in any way

determinative of the issue whether she is culpable for Insubordination, the offense of which she was found guilty. Be that as it may, the Commission disregarded such an infirmity and instead assiduously studied and evaluated the entire records of the case so that justice be done to whom it is due. This is so because, as a rule, whenever a decision is subjected to an appeal, the entire case is thrown open to review by the appellate body which, in the instant case, is the Commission.

The salient facts, as borne out by the records, may be summarized as follows:

Sometime in May 1997, Garcia, who was then the President of the Isabela State University—Echague Faculty Association (ISUEFA), received an invitation dated May 10, 1997, from Florie B. Gapido, Secretary of the National Federation of Faculty Association in State Universities and Colleges (NFFASUC) for the former to attend the “*General Assembly*” of the members of the “*SUC Faculty Federation*” to be held in Cebu City on June 9-11, 1997. Said invitation reads, in part, as follows:

*“TO: ALL SUC FACULTY ASSOCIATION PRESIDENTS*

*“There shall be a General Assembly of all SUC Faculty Federation members on June 9-11, 1997 (re: CHED’s and PASUC President’s Memo dated April 30 and May 5, 1997 respectively) at Cebu Grand Hotel, Cebu City.*

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*“Your utmost cooperation and participation is hereby enjoined.”*

Garcia also received a memorandum dated May 5, 1997, from Frederick SO. Pada, President of the Philippine Association of State Universities and Colleges, the relevant portions of which read, as follows:

*“1. The 1997 PASUC General Assembly will be held at Cebu Grand Hotel, Cebu City with Cebu State College and the Cebu State College of Science and Technology as host institutions on June 9-11, 1997 with the theme ‘SUC Response to the Challenges of the World Congress on Higher Education.’*

*“2. Each SUC is authorized to send five (5) delegates, composed of President, Vice-President, Presidents of Faculty and Administrative Associations and Director of Research and Development.*

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*“4. Registration fees, transportation expenses of participants and other necessary expenses shall be charged against the respective funds of SUCs, subject to the usual accounting and auditing rules and regulations.”*

On account of the aforementioned invitations, Garcia prepared a *“Travel Order”* to enable her to proceed to Cebu City on official time and to receive travelling expenses from the Isabela State University (ISU). The immediate supervisor of Garcia recommended approval of the said Travel Order to then ISU President Rodolfo C. Nayga but the latter disapproved the same. The disapproval of the Travel Order of Garcia prompted her to file on June 6, 1997, an application for leave (forced leave) for a period of four days—June 7, 8, 9, and 13, 1997. This application for leave was also signed by Garcia’s immediate supervisor but the same was again disapproved by Nayga although the exact date of disapproval is not clearly indicated in the records.

In the meantime, or on June 5, 1997, the officers and members of the ISUEFA issued an *“Authorization/Resolution”* which partly reads, as follows:

*“In line with the goals and objectives of the ISUE Faculty Association, we do hereby authorize the ISUEFA President, Dr. Delia G. Garcia, to attend the General Assembly of the SUC Faculty Association Presidents to be held at Cebu Grand Hotel, Cebu City on June 9-11, 1997.*

*“Herein request of Dr. Delia Garcia for her attendance to said Assembly Meeting (sic) was earlier forwarded to the ISU Management for approval. Unfortunately, her travel was disapproved . . . Therefore, all expenses incidental to said travel will be shouldered by the ISU Faculty Association, Echague, Isabela. (P8620.00 plus P500.00 for membership or affiliation fee to the National Federation).”*

Accordingly, despite the disapproval of her travel order and application for leave of absence (forced leave), Garcia was able to attend the General Assembly of the State Universities and Colleges Faculty Association Presidents held in Cebu City on June 9-11, 1997.

On June 19, 1997, Garcia received a memorandum from then ISU President Nayga, directing her to explain within 72 hours from receipt of the same why no administrative “*action*” shall be instituted against her for having been absent on June 9-11, 1997, without any approved application for leave.

On August 5, 1997, the Commission received a complaint of Nayga against Garcia for Grave Misconduct, Gross Neglect of Duty, Gross Insubordination, and Conduct Grossly Prejudicial to the Best Interest of the Service. The complaint, however, was subsequently referred to the CSCRO No. II for investigation and appropriate action.

After conducting a fact-finding investigation, the CSCRO No. II issued a Formal Charge dated January 22, 1998, charging Garcia with Insubordination. Said Formal Charge reads, in part, as follows:

*“The foregoing facts and circumstances indicate that Dr. Garcia defied the disapproval of her travel order and her application for vacation leave. Thus, there exists a prima facie evidence against her for a less grave offense of Insubordination. However, there is no prima facie evidence against her for Gross Neglect of Duty since she designated Professor Pacita L. Perez as the Officer-In-Charge of the Social Science Department to oversee the faculty members under her department.”*

The formal investigation thereafter ensued, and on May 24, 2000, the CSCRO No. II issued a decision finding Garcia guilty of Insubordination and imposed upon her the penalty of fine equivalent to her one month salary. Garcia moved for a reconsideration but the same was denied by the CSCRO No. II in a decision dated September 12, 2000.

Hence, this appeal where the crucial issue to be resolved is whether there is legal basis to find Garcia guilty of Insubordination warranting the imposition upon her of the penalty of fine equivalent to her one (1) month salary.

There is no dispute that at the inception of the present case, Garcia was the President of the association of the faculty members of ISU-Echague, Isabela. Said association was registered as the Isabela State University-Echague Faculty Association (ISUEFA) with the primary objective of representing the faculty members in collective negotiations beneficial to its members. As its President, Garcia was expected to attend to the association's (union's) activities, such as meetings and the like. Thus, when Garcia attended the General Assembly of SUC Faculty Association Presidents held in Cebu City on June 9-11, 1997, upon the invitation of the National Federation of Faculty Association in State Universities and Colleges (NFFASUC), she was merely exercising her constitutional and statutory right to self-organization. This is notwithstanding the fact that her travel order and application for forced leave were disapproved by then ISU President Nayga.

As a general rule, approval of leave applications is addressed to the sound discretion of the head of office who, in the present case, was Nayga. The exercise of such discretion, however, should not be used as an instrument to abridge or suppress a subordinate's right to self-organization. The protection accorded employees to exercise their right to self-organization is specifically provided for in **Section 40, Subtitle A, Title I, Book V of the Administrative Code of 1987**, to wit:

*“Sec. 40. Protection of the Right to Organize.—(1) Government employees shall not be discriminated against in respect of their employment by reason of their membership in employees’ organization or participation in the normal activities of their organizations. Their employment shall not be subject to the condition that they shall not join or shall relinquish their membership in the employees’ organizations.*”

*“(2) Government authorities shall not interfere in the establishment, functioning or administration of government employees’ organization through acts designed to place such organization under the control of government authority.”*

The right of a government employee to self-organization cannot simply be ignored and disregarded. In the case of **Pamantasan ng Lungsod ng Maynila vs. CSC, 241 SCRA 506**, the Supreme Court recognized the superiority of the right to self-organization of the faculty members whose appointments were on temporary status over the discretion of the appointing authority to renew or not to renew their respective expired appointments. In said case, the appointing authority of PLM refused to renew the expired temporary appointments of certain faculty members of PLM supposedly for various reasons such as inefficiency and lack of appropriate qualifications. It was, however, subsequently established that the real reason for the non-renewal of their appointments was their being active and vocal members of their union which made the management uneasy and insecure. In ruling in favor of the faculty members, the High Tribunal succinctly held:

*“. . . The non-renewal of an employment contract with a term, it is true, is ordinarily a valid mode of removal at the end of each period. This rule, however, must yield to the superior constitutional right of employees, permanent or temporary, to self-organization. While, a temporary employment may be ended with or without cause, it certainly may not, however, be terminated for an illegal cause.”*

Even on the most important aspect of renewal of expired appointments, the superiority of the right to self-organization was upheld by no less than the Highest Court of the land; what more in a situation involving a few days of leave, as what is at issue in the present case?

Moreover, the Commission has noted that the disapproval of the travel order and application for forced leave of Garcia was not for the best interest of the service. As stated by then ISU President Nayga himself in his memorandum dated June 13, 1997, classes in all ISU campuses shall start only on June 16, 1997, or several days after the termination of the

General Assembly of SUC Presidents in Cebu City. This being so, it is not difficult to perceive that Garcia's services are not yet of utmost necessity requiring her physical presence at ISU-Echague campus on June 7-9, 1997.

Besides, there are ample pieces of evidence in the records to establish that the disapproval of Garcia's travel order and application for forced leave was not based on the perception that her absence would be prejudicial to the best interest of the service. Rather, Nayga disapproved Garcia's travel order and application for forced leave as an act of reprisal for the latter's being instrumental, as President of the ISUEFA, in the filing of several graft cases against the former with the Office of the Ombudsman and the Office of the President (Presidential Commission Against Graft and Corruption). In the latter case, then President Joseph E. Estrada issued Administrative Order No. 93 apparently dated November 29, 1999, dismissing Nayga from the service after finding him guilty of violating **Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act**. Said Administrative Order reads, in part, as follows:

*"The antecedents relevant to this case show that in a resolution dated August 12, 1993, the Isabela State University Employees and Faculty Association (ISUEFA) charged Nayga and several other officials/employees of ISU for graft and corruption for entering into anomalous transactions. . .*

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*"After a review of the facts in the light of the evidence presented, this Office is inclined to agree with the recommendation of the PCAGC. As it were, the public bidding was supposed to be held for the protection of the ISU and to secure for itself the best possible advantages by means of an open competition between and/or among bidders. The aim of public bidding is basically to secure the lowest price, to curtail favoritism in the award, to avoid suspicion or anomalies and to foster fairness among the bidders. But, as disclosed, the facts and circumstances surrounding the transactions in question betrayed these ideals. To that extent, I concur with the PCAGC's conclusion. If there are meaningful words to express the same, these are aptly said in pertinent portions of its report, thus:*



*'xxx it is ironic that the subject matter of the complaint is termite extermination and soil poisoning. The dreaded termites are those who prey on public funds and gobble them up. It is this specie (sic) of termites that should be exterminated. As to soil poisoning, it is the University grounds that should be scorched, not with chemicals, but with torch of truth and justice so that the leaders that will emerge therefrom are men and women who can impart to young minds the gift of learning and true meaning of integrity.'*

*"WHEREFORE, all the foregoing considered, and as recommended by the Presidential Commission against (sic) Graft and Corruption, respondent Rodolfo C. Nayga is hereby found guilty as charged and is hereby DISMISSED from the service with forfeiture of benefits that may be due him, effective upon receipt of this order."*

It must also be stressed that no public funds were spent or wasted as a consequence of the travel of Garcia to Cebu City as her travel expenses were paid by the ISUEFA. But what is despicable in the instant case is the fact that Nayga allowed and approved the travel, on official business, of several faculty and staff members of ISU to Cebu City supposedly to attend the General Assembly held on June 7-9, 1997, and that all their travel expenses were shouldered by ISU funds. Specifically, these faculty and staff members are Mariano Balawag, Fernando Ibarra, Purita Dychitan, Miguel Ramos, Andres Karganilla, Thelma Lanuza, Marjorie Sunga, Estrella Mendoza, Olivia Karganilla, Matea Balauag, Flavia Nayga, Perlita Babaran, and Avelino Manaay. Vouchers and other pieces of evidence presented by Garcia clearly showed that Nayga allowed and approved the travel of these persons despite the fact that they are not among those who are qualified to attend said general assembly.

*In fine*, it is indubitable that then ISU President Nayga gravely abused his discretion when he disapproved the travel order and application for forced leave of Garcia. As such, Garcia cannot be faulted if she proceeded to attend the General Assembly of SUC Faculty Association Presidents in Cebu City despite the disapproval of her travel order and/or application for forced leave. With all of the foregoing disquisition, the Commission finds no factual and legal basis to find Garcia guilty of Insubordination.

**WHEREFORE**, the appeal of Delia G. Garcia is hereby **GRANTED**. Accordingly, the Decisions dated May 24, 2000,

and September 13, 2000, of the Civil Service Commission Regional Office No. II are REVERSED and SET ASIDE, and Delia G. Garcia is EXONERATED of the charge of Insubordination. If Garcia was made to pay a fine equivalent to her one (1) month salary, it is ordered that she be restituted said amount.

Quezon City,

(Original Signed)  
**J. WALDEMAR V. VALMORES**  
Commissioner

(Original Signed)  
**KARINA CONSTANTINO-DAVID**  
Chairman

(Original Signed)  
**JOSE F. ERESTAIN, JR.**  
Commissioner

Attested by:

(Original Signed)  
**REBECCA A. FERNANDEZ**  
Director IV  
Commission Secretariat and Liaison Office

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