

Republic of the Philippines  
Supreme Court  
Baguio City

FIRST DIVISION

CIVIL SERVICE COMMISSION,  
Petitioner,

G.R. No. 197571

Present:

- versus -

SERENO, CJ.,  
Chairperson,  
LEONARDO-DE CASTRO,  
DEL CASTILLO,  
PERLAS-BERNABE,\* and  
CAGUIOA, JJ.

CRISOSTOMO M. PLOPINIO,  
Respondent.

Promulgated:

APR 03 2017

X -----  
*[Signature]* X

DECISION

LEONARDO-DE CASTRO, J.:

Assailed before the Court under Rule 45 of the Rules of Court is the Decision<sup>1</sup> dated July 12, 2011 of the Court of Appeals in CA-G.R. SP No. 99906, which (a) reversed and set aside Resolution No. 070560<sup>2</sup> dated March 19, 2007 and Resolution No. 071241<sup>3</sup> dated June 22, 2007 of petitioner Civil Service Commission (CSC); and (b) ordered the reinstatement of respondent Crisostomo M. Plopinio to his former position at the Commission on Elections (COMELEC) and payment of his back salaries for a maximum period of five years. The CSC earlier affirmed COMELEC Resolution No. 03-0278<sup>4</sup> dated September 11, 2003 and Resolution No. 04-0019<sup>5</sup> dated February 10, 2004 dropping respondent from the rolls of employees of the COMELEC for his absences without official leave (AWOL) for a continuous period of at least 30 days.

\* On official leave.  
1 Rollo, pp. 28-40; penned by Associate Justice Florito S. Macalino with Associate Justices Juan Q. Enriquez, Jr. and Ramon M. Bato, Jr. concurring.  
2 CA rollo, pp. 53-62.  
3 Id. at 64-70.  
4 Rollo, pp. 57-59.  
5 Id. at 44-49.

*mtu*

***COMELEC Proceedings***

Respondent served as a COMELEC Election Officer III of Sipocot, Camarines Sur, prior to his separation from the service. A certain Alberto G. Adan (Adan) filed a letter-complaint against respondent alleging that because of respondent's frequent absences, respondent failed to act on Adan's petition for disqualification of a barangay candidate named Jessie V. Sanchez.

Acting Director IV Adolfo A. Ibañez (Dir. Ibañez), Personnel Department, COMELEC, conducted an investigation into Adan's letter-complaint against respondent and submitted a Memorandum dated August 20, 2003 to Commissioner Florentino A. Tuason, Jr. (Com. Tuason), COMELEC, who, in turn, forwarded the same to the COMELEC *en banc* for appropriate action. In its Resolution No. 03-0278 dated September 11, 2003, the COMELEC *en banc* adopted *in toto* Atty. Ibañez's findings and recommendation, thus:

This pertains to the Memorandum dated August 29, 2003 of Commissioner Florentino A. Tuason, Jr., forwarding the Memorandum of Atty. Adolfo A. Ibañez, Acting Director IV, Personnel Department, relative to the letter-complaint of Mr. Alberto G. Adan against Election Officer [respondent], Sipocot, Camarines Sur, to act upon his petition for the disqualification of candidate Jessie V. Sanchez due to [respondent's] frequent absences and dropping of [respondent] from the rolls of Comelec employees.

Memorandum of [Com.] Tuason -

*"Respectfully forwarded is the attached Memorandum of Atty. Adolfo A. Ibañez, Acting Director IV, Personnel Department relative to the letter-complaint of Mr. Alberto G. Adan against [respondent] of Sipocot, Camarines Sur and the failure of [respondent] to act upon his petition for the disqualification of candidate Jessie V. Sanchez due to [respondent's] frequent absences.*

*For consideration of the Commission En Banc."*

Memorandum of Director Adolfo A. Ibañez -

*"This pertains to the letter-complaint of Mr. Alberto G. Adan against Election Officer [respondent] of Sipocot, Camarines Sur alleging the latter's failure to act on his petition to disqualify candidate Jessie V. Sanchez due to frequent absences.*

*Upon receipt of the complaint by the Office of the Chairman, Atty. Jaime Z. Paz, Head Executive Assistant of the same office gave [respondent] fifteen (15) days within which to submit his comment on the allegations as part of due process.*



*In his Answer dated July 30, 2003, [respondent] dismissed the instant complaint as baseless and unfounded. According to him, the issue had already been thoroughly explained before the Director of the Law Department and that pertinent documents had already been submitted to that department. Nonetheless, he reiterated in the said answer his comment to give clarity to the allegations of Mr. Adan.*

*Considering that it is no longer within the jurisdiction of his office to tackle the merits of the petition filed by Mr. Adan to disqualify a certain candidate, we will simply limit the issue on whether or not the alleged failure of [respondent] to act on the petition is due to his frequent unauthorized absences.*

#### COMMENT/RECOMMENDATION

*An update of [respondent's] records with the Personnel Department showed that he failed to file his daily time records for the months of January, February, March, and April 2002, although he managed to submit his May-December 2002 dtrs duly signed by the [Provincial Election Supervisor (PES)] of Camarines Sur. However, [respondent] again deliberately failed to file his daily time records beginning January until present of the current year. Although he was notified to submit his dtrs immediately to avoid withholding of his salaries and other benefits, he has not complied to date. As a result thereof, his salaries were withheld effective July of this year. Copy of the memorandum issued to [respondent] is hereto attached and made an integral part hereof.*

*As the best evidence of his presence in his official work station, he should submit his daily time records to monitor the attendance in his workplace. Hence, if he failed to file his dtrs for a certain period, he is presumed to be absent during such time since there is no record evidencing that he reported for work during that period.*

*His non-filing of daily time records during the aforementioned period is construed as absence without official leave (AWOL) for at least thirty (30) calendar days warranting his separation from the service in consonance with the provision of Section 2 (2.1a), Rule XII of the Omnibus Rules on Appointment and other Personnel Actions.*

*Foregoing considerations, the undersigned respectfully recommends that [respondent] be dropped from the rolls of Comelec Employees effective January 1, 2003 and the salaries paid until June 30, 2003 be charged against his leave credits. However, the same shall be without prejudice to the filing of formal charge for violating reasonable office rules and regulations in view of his deliberate failure to submit his daily time records for*



*the months of January to April 2002 and from January until present of the current year.*

*Respectfully submitted."*

Considering the foregoing, the Commission RESOLVED, as it hereby RESOLVES, to approve the recommendation of Director Adolfo A. Ibañez to drop [respondent] from the rolls of Comelec employees effective January 1, 2003 and the salaries paid to him until June 30, 2003 be charged against his leave credits. However, the same shall be without prejudice to the filing of formal charge for violating reasonable office rules and regulations in view of his deliberate failure to submit his daily time records for the months of January to April 2002 and from January until present of the current year.<sup>6</sup>

Com. Tuason then issued a Memorandum<sup>7</sup> dated October 7, 2003, directing respondent to immediately cease and desist from performing his official duties, based, among other grounds, on his unauthorized absences; and appointing an Acting Election Officer to serve the Municipality of Sipocot, Camarines Sur, in order not to jeopardize the voters' registration process at said Municipality.

Meanwhile, Dir. Ibañez also issued a Memorandum dated October 7, 2003<sup>8</sup> for the COMELEC *en banc*, withdrawing his earlier recommendation to drop respondent from the rolls of employees. Dir. Ibañez justified the change in his findings and recommendation, thus:

This pertains to our previous recommendation to drop from the roll of Comelec employees [respondent], Sipocot, Camarines Sur, as embodied in our memorandum dated 20 August 2003, received by the Office of Commissioner Florentino A. Tuason, Jr., CIC for Region V, on 27 August 2003.

The above recommendation stemmed from a complaint filed by a certain Alberto G. Adan alleging [respondent's] failure to act on his petition to disqualify barangay candidate Jessie V. Sanchez due to frequent absences.

Considering that it is no longer within our jurisdiction to tackle the merits of the petition for the disqualification of a certain barangay candidate, we limited our investigation on whether or not the alleged failure of [respondent] to act on the petition was due to frequent unauthorized absences.

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<sup>6</sup> Id. at 57-59.

<sup>7</sup> CA *rollo*, p. 131. Com. Tuason also cited as other grounds respondent's consistent failure to implement and carry out fully the mandate of the COMELEC as contained in Resolution No. 6294 dated August 13, 2003 on the Continuing System of Registration, and Minute Resolution No. 02-0103 in the Matter of Memorandum of Com. Luzviminda G. Tancango dated 23 July 2002 on the Resumption of Precinct Mapping Project, and other various resolutions related thereto; respondent's failure to submit various proper reports as required by the COMELEC; and respondent's refusal to honor the police clearances issued by the Philippine National Police Sipocot to serve as the basis of identification of voters, thereby causing difficulties and deprivation of residents/voters to register at the municipality of Sipocot, Camarines Sur.

<sup>8</sup> CA *rollo*, pp. 215-218.

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Later verification from the records disclosed that [respondent] has no daily time record submitted with the Leave Section beginning January 2003 until present, thus, prompting Director Fe G. Campos to issue her 13 August 2003 memorandum reminding [respondent] to update his daily time records, otherwise his salary and other benefits will be withheld.

In the absence then of [respondent's] timely reply, we recommended for his dropping considering that under Civil Service Rules, his non-submission of daily time records for the said period is already construed as absence without official leave (AWOL) for at least thirty (30) days warranting his separation from the service.

Subsequently, or on August 29, 2003, we received Atty. Liza D. Zabala-Cariño's memorandum submitting therewith the unverified daily time records of [respondent] for the months of June and July 2003 with the justification why she refused to sign the daily time records. According to her, the daily time records revealed that [respondent] was out of his station on certain dates but the same reflected that he was on OB either to the Regional Trial Court or to the Comelec, Manila. These travels on OB, however, although not known to PES Cariño, are being contested by the latter allegedly for being unauthorized considering that the purpose for the said appearances were personal in nature.

On the other hand, [respondent], in answer to the 13 August 2003 memorandum of Director Fe Campos asserted that his duly accomplished daily time records from January 2003 to present were already submitted to the Office of the Provincial Election Supervisor with the corresponding date of receipt by the OPES.

**Because of the foregoing superseding events, it appears that [respondent] was reporting, as he did report to office on certain days per his daily time records submitted to the OPES. One key issue however is that many DTR entries were being questioned by [respondent's] supervisor for being invalid or unauthorized considering his reported absences.**

**Consequently, because of the inability to fully establish a successive thirty-day absence without approved leave (AWOL) on the part of [respondent], the undersigned withdraws his former recommendation to drop from the rolls.**

However, considering that [respondent] incurred a series of unauthorized or questioned absences, it is recommended that PES Cariño file an administrative complaint against [respondent] for absenteeism and other administrative disciplinary cases as warranted.

Finally, considering the problem that is now obtaining in the Office of the Election Officer of Sipocot, Camarines Sur and in the exigency of the service, it is recommended that [respondent] be immediately reassigned pursuant to the provisions of R.A. 8189. (Emphases supplied.)

Through his Memorandum<sup>9</sup> dated October 16, 2003 for the COMELEC *en banc*, respondent sought reconsideration of COMELEC Resolution No. 03-0278, as well as Com. Tuason's Memorandum dated October 7, 2003. Respondent lamented that the COMELEC *en banc* was misled by Dir. Ibañez's initial recommendation to drop him from the rolls of employees, which lacked factual and legal bases; and that he was not afforded due process as he was never confronted with any formal charge regarding his alleged absenteeism prior to COMELEC Resolution No. 03-0278. Respondent invited attention to the following documents attached to his Memorandum:

1. Memorandum For Atty. ADOLFO A. IBAÑEZ, Acting Director IV, Personnel Department This Commission, thru Atty. PIO JOSE S. JOSON, Deputy Executive Director for Operations, This Commission, and Hon. LUZVIMINDA G. TANCANGCO, Commissioner-In-Charge, Personnel Department, This Commission dated 04 August 2003, re SUBMISSION OF ALL OFFICE COMMUNICATION (INCOMING/OUTGOING) AND OTHER PERTINENT DOCUMENTS FOR THE PERIOD OF JANUARY TO MAY 2003 ESTABLISHING AND DELINEATING PARTICULAR OFFICE TRANSACTIONS WHICH CONSTITUTE CLARIFICATION AND THOROUGH EXPLANATION AGAINST THE MATTER OF WITHHOLDING THE SALARIES OF [respondent] BY THE PERSONNEL DEPARTMENT (Annex A);
2. Memorandum for Atty. LIZA ZABALA-CARIÑO, Acting Provincial Election Supervisor for Camarines Sur, dated March 5, 2002 re: SUBMISSION OF DAILY TIME RECORDS of [respondent] for the MONTHS OF JANUARY and FEBRUARY 2002 which was received on March 8, 2002 by Mrs. ROSITA NIEVES, Election Assistant, OPES, Camarines Sur (Annex B);
3. Memorandum for Atty. LIZA ZABALA-CARIÑO, Acting Provincial Election Supervisor For Camarines Sur, dated May 14, 2002 re: SUBMISSION OF DAILY TIME RECORDS of [respondent] for the MONTHS OF MARCH and APRIL 2002 which was received on May 17, 2002 by Mrs. ROSITA NIEVES, Election Assistant OPES, Camarines Sur (Annex C);
4. Certified true copy of the Daily Time Records (DTRs) of [respondent] for the months of March and April 2002 issued on January 1, 2003 by JESSICA M. VILLANUEVA, Personnel Department, COMELEC, Manila. (Annex D)<sup>10</sup>

According to respondent, the aforementioned documents proved:

1. that [respondent] had submitted his DTRs to Acting Provincial Elections Supervisor Atty. Liza Zabala-Cariño;

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<sup>9</sup> Id. at 106-112.

<sup>10</sup> Id. at 106-107.

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2. that it was Atty. Cariño who unjustifiably REFUSED to forward said DTRs to the Personnel Department of Director Ibañez;
3. that [respondent] had made several official communications both to Atty. Cariño and to Director Ibañez, copy furnished the concerned Commissioners, of the fact of [respondent's] submission of DTRs to Atty. Cariño and the unjustifiable refusal of Atty. Cariño to submit the same to the Personnel Department;
4. that the withholding of salaries of [respondent] is unreasonable and unfair;
5. and that despite those several communications, [respondent] was NEVER replied to by Atty. Cariño or the Personnel Department, and no action was ever done on his official requests.<sup>11</sup>

Respondent also pointed out that Com. Tuason's Memorandum dated October 7, 2003 was contrary to the Constitution, the Omnibus Election Code, and the COMELEC Rules of Procedure which provide that only the COMELEC, sitting *en banc* or by division, may relieve an officer or employee who, after due process, was found guilty of violating election laws or failing to comply with instructions, orders, decisions, or rulings of the Commission.

Respondent filed another Memorandum<sup>12</sup> dated January 6, 2004, for the COMELEC *en banc*, as his Supplemental Motion for Reconsideration of COMELEC Resolution No. 03-0278. Respondent argued that COMELEC Resolution No. 03-0278 had lost ground since it was based solely on Dir. Ibañez's recommendation to drop respondent from the rolls of employees effective January 1, 2003; but then Dir. Ibañez already issued his Memorandum dated October 7, 2003 withdrawing such recommendation. Respondent also reiterated that there was complete absence of due process in his case, both substantive and procedural, and that there was a grand scheme to illegally oust him from office. Hence, respondent moved that:

Whoever might be liable for this injustice to [respondent], the memo of Dir. Ibañez withdrawing his prior recommendation that [respondent] be dropped from the rolls, effectively binds this Commission to IMMEDIATELY recall its September 11, 2003 Resolution No. 03-0278. This Commission is now duty-bound to reinstate [respondent] to the plantilla position, with full backwages from July 2003 up to the present when his salaries were withheld, including all benefits and privileges that should have accrued in [respondent's] favor had [respondent] not been dropped from the rolls. I and my family had suffered more that, and gravely enough.<sup>13</sup>

Acting on respondent's Supplemental Motion for Reconsideration, Atty. Pio Jose S. Joson (Joson), Deputy Executive Director for Operations

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<sup>11</sup> Id. at 107-108.

<sup>12</sup> Id. at 113-114.

<sup>13</sup> Id. at 113.

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(DEDO), COMELEC, issued a Memorandum<sup>14</sup> dated January 26, 2004, finding as follows:

As averred in [respondent's] supplemental motion for reconsideration of subject Comelec resolution, he manifested that dropping him from the rolls of employees has lost ground considering that in Dir. Ibañez memorandum dated 07 October 2003, there was a withdrawal of his previous recommendation aforementioned because accordingly, it was not fully established that there was a successive 30-day absence without an approved application for leave on his part, attached as Annex "C." Truly, it could be said that on allegations alone of the mayor of Sipocot that [respondent] is rarely seen in his office at the Municipal building thus reneging in his duties as [Election Officer] thereat, PES Cariño deliberately left [respondent's] DTRs unsigned and undelivered to the Personnel Department, coupled with the fact that when the latter complained of such condition, the former forwarded some of his DTRs to the Personnel Department unsigned, claiming that she cannot attest to the fact that [respondent] did show up in his office on the time and date stated in his DTRs.

**Clearly, it was not [respondent's] fault that his DTRs never reached the Personnel. On allegations of his frequent absences, [respondent] was never summoned by his Supervisor nor by his director to clarify the matter and afford him to explain his side. Further, [respondent] was not furnished with any memorandum addressed to the Commission thru the Commissioner-In-Charge for Region V, Com. Florentino A. Tuason, Jr., forwarded by either [Regional Election Director (RED)] Zaragoza or PES Cariño regarding the status of his office in Sipocot, thus, leaving him helpless on what action to undertake to defend himself. In fact, neither this office was furnished with these memoranda recommending that [respondent] be dropped from the roll of employees which should not be the case considering that this office is in charge of, or if not recommendatory of any field personnel movement to the Commission thru the Commissioner-In-Charge of the region concerned. [Respondent] further averred that he was surprised upon learning that Resolution No. 5835 was promulgated on 14 November 2003 detailing him at the REDO in Albay, attached as Annex "D." Subsequently, when [respondent] sought reconsideration of the Commission's decision to detail him to the REDO, his office in Sipocot was padlocked which prevented him from discharging his duties as [Election Officer (EO)] thereat.**

He officially informed the Commission of all these circumstances as evidenced [by] the voluminous documents he submitted to the Commission thru the Office of Commissioner Tancangco, In-Charge of the Personnel Department thru Director Adolfo A. Ibañez and the Office of the Chairman, and copy furnished this office, but no definite and immediate action was undertaken by the offices mentioned nor same was forwarded to the Commission *En Banc* for proper disposition. Instead, Minute Resolution No. 03-0278 was promulgated on 11 September 2003 dropping him from the rolls.

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<sup>14</sup>

Id. at 219-224.

In the interest of justice and equity, this office submitted a memorandum dated 27 October 2003, recommending that [respondent] be given at least one more chance to be of public service and to rectify his purportedly committed inadvertent administrative misfeasance, considering his satisfactory performance during previous conduct of elections in the municipality of Sipocot, coupled with the fact that there are many field personnel with multiple pending more serious administrative and election offense cases, but who are still with the Commission, while others are patently manifesting partisan activities which are clear violations of the Omnibus Election Code, but no appropriate sanctions were meted out against them by the Commission. (Emphases supplied.)

In the end, DEDO Joson recommended that:

In view of the foregoing, this office most respectfully reiterate its previous recommendation in memorandum dated 27 October 2003 that [respondent] be given another chance to be of public service by recalling the effectivity of Comelec Resolution No. 03-0278 dated 11 September 2003 dropping him from the roll of Comelec employees and reinstating him to his position as Election Officer of Sipocot, and reassigning him to other municipalities of Camarines Sur where there is no Election Officer or swapping him with another Election Officer due for reassignment under Sec. 44 of R.A. 8189 as the 10 May 2004 elections is fast approaching, and considering the prejudice done to [respondent] drastically rendering him unemployed for several months now unduly leaving him and his family without any source of living.<sup>15</sup>

On February 10, 2004, the COMELEC *en banc* issued Resolution No. 04-0019. After quoting in full DEDO Joson's Memorandum dated January 26, 2004, which recommended the recall of COMELEC Resolution No. 03-0278, the COMELEC *en banc* still resolved to the contrary:

Considering the foregoing, the Commission RESOLVED, as it hereby RESOLVES, to DENY the Motion for Reconsideration of [respondent] and to reiterate Resolution No. 03-0278 dropping him from the rolls of Comelec employees.

However, the Director IV, Personnel Department is directed to further explain why and what is his position in withdrawing his recommendation dropping [respondent] from the rolls of Comelec employees.

Let the Personnel Department implement this resolution.<sup>16</sup>

### ***CSC Proceedings***

Respondent appealed COMELEC Resolution Nos. 03-0278 and 04-0019 before the CSC.<sup>17</sup>

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<sup>15</sup> Id. at 224.

<sup>16</sup> *Rollo*, p. 49.

<sup>17</sup> *CA rollo*, pp. 78-79.

The CSC issued its Resolution No. 070560 dated March 19, 2007 favoring the COMELEC *en banc*. Essentially, the CSC held that respondent failed to present evidence that he was reporting for work:

The COMELEC decided to drop [respondent] from the rolls after the Personnel Department found out that [respondent] failed to submit his daily time records (DTRs) for the months of January-April 2002 and from January-July 2003.

On the other hand, [respondent] claims that he was able to submit his DTRs to his immediate supervisor – Liza D. Zabala-Cariño, then Camarines Sur Acting Provincial Election Supervisor. However, he represented that these DTRs were not signed by his immediate supervisor as the latter claims that there were questionable entries showing that [respondent] was on official business either to the Regional Trial Court or to Comelec-Central Office and as a result did not submit the said DTRs to the Personnel Department.

**The Commission would have been convinced with the representation of [respondent] if he submitted documentary evidence showing that he indeed was reporting for work. Mere allegations and statements without any evidence to support it cannot overthrow the regularity in the performance of the Comelec in dropping him from the rolls.**

[Respondent] also claims that even prior to his dropping from the rolls by the Comelec on September 11, 2003, he had already explained to the Comelec's Personnel Department that he had been regularly submitting his DTRs to his immediate supervisor after the said department informed him, when he was in the Central Office on July 4, 2003, that his salaries cannot be released for his failure to submit his DTRs. He said that his explanation was embodied in his Memorandum to the Personnel Department dated August 4, 2003 and which was received by the said office and the Office of the Deputy of Executive Director for Operations on August 6, 2003. A machine copy of said memorandum shows that it was accompanied by certified machine copies of [respondent's] transmittals of his DTRs to the OPES-Camarines Sur for the following period: January-February 2003; March-April 2003; and May 2003. In the said memorandum, [respondent] claims that these DTRs were received either by Fe G. Campos (Acting PES, Camarines Sur) or Angelina Barias (Clerk) or Rosita P. Nieves (Election Assistant). Moreover, [respondent] in a Memorandum dated 1 September 2003 informed the Personnel Department that his DTRs for the months of June-July 2003 were submitted to OPES-Camarines Sur on August 14, 2003 and received by a staff named Lizardo Junio.

**However, these pieces of evidence that [respondent] submitted to the Comelec were not submitted to this Commission for our evaluation. Thus, basically [respondent] has no evidence to support his cause.**

**Moreover, granting that [respondent] was able to submit his DTRs to Cariño, the same cannot be considered official DTRs unless his immediate supervisor affixed her signatures on the DTRs. As these DTRs were not signed by his immediate supervisor due to**

**questionable entries, these DTRs, therefore, cannot be used to prove his attendance in his workstation.<sup>18</sup>**

Consequently, the CSC dismissed respondent's appeal and affirmed COMELEC Resolution Nos. 03-0278 and 04-0019.

Respondent filed an Appearance and Motion for Reconsideration.<sup>19</sup> Respondent had previously represented himself but The Ojastro Law Offices was now entering its appearance as his counsel. Respondent, through counsel, averred that he had already submitted voluminous evidence attached to his Memorandum of Appeal filed with the CSC, which included the following:

1. "x x x the transmittal letter of [respondent's] DTRs to Atty. Cariño for the months of January and February 2002, which letter is dated 5 March 2002 marked as **Annex "L"**. Also, attached as **Annex "M"** is the transmittal letter of the DTRs of [respondent] for the months of March and April 2002 addressed to Atty. Cariño, dated 14 May 2002."
2. "A Memorandum for Atty. Liza Zabala-Cariño, dated March 5, 2002, was filed by [respondent] re: "Submission of Daily Time Records" for the MONTHS OF JANUARY and FEBRUARY 2002 which was received on March 8, 2002 by Mrs. Teresita Nieves, Election Assistant, OPES, Camarines Sur. (**Annex "N"**)"
3. "Certified true copies of those DTRs as certified by the Personnel Department are attached as **Annex "O"**.
4. "Insofar as [respondent's] DTRs for the months of January to July 2003, all of those were submitted on time to Atty. Cariño, as shown by the attached Certified True Copy of the [respondent's] Memorandum to Ms. Fe Campos, Acting Director of COMELEC Personnel Department, dated 1 September 2003, marked as **Annex "P"**."
5. "On September 25, 2003, Atty. Cariño issued to [respondent] a Certificate of Appearance showing [respondent's] submission of his DTR for the month of August 2003, certified true copy of which is attached as **Annex "Q"**."
6. "Submission Of All Office Communication (Incoming/Outgoing) and Other Pertinent Documents For The Period Of January To May 2003 Establishing And Delineating Particular Office Transactions Which Constitute Clarification and Thorough Explanation Against The Matter Of Withholding the Salaries Of [respondent] By The Personnel Department". (**Annex "R"**).
7. "Atty. Cariño, on October 8, 2003, issued a Certificate of Appearance to [respondent], which is, among others, a proof of the transmittal of [respondent's] DTR for the month of September

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<sup>18</sup> Id. at 60-61.

<sup>19</sup> Id. at 71-77.

2003. It also mentions the transmittal of the duly accomplished reports in connection with the registration of voters for the period of September 20 to 26, 2003, and September 27 to October 3, 2003. (Annex "S")<sup>20</sup>

Despite having already submitted his documentary evidence to the CSC, respondent was again furnishing the said Commission copies of his Memorandum of Appeal, together with all the annexes mentioned in and attached to the same. However, respondent explained that he could not provide original copies of his DTRs because these were transmitted to his immediate superior, PES Liza D. Zabala-Cariño (Cariño), who, in turn, submitted them to the Personnel Department of the COMELEC main office.

Respondent further contended that the CSC confused dropping from the rolls on the ground of AWOL, a non-disciplinary action, with "questionable entries in the DTR," which pertained to falsification of the DTR and required disciplinary action. The CSC admitted that respondent submitted his DTRs to PES Cariño who did not sign the same because of alleged questionable entries therein, in which case, respondent's employment should have been terminated for falsification. For the CSC to recognize a superior's withholding of his/her signature on the DTR of a subordinate as sufficient cause for dropping from the rolls would send a chilling effect on the civil service, as what ought to be the subject of administrative due process would become a simple *ex parte* proceeding of dropping from the rolls, in violation of an employee's rights to security of tenure and due process. Respondent submitted that the only question the CSC should resolve was: "Was [respondent] absent for more than 30 days to give the COMELEC a ground to drop him from the rolls?"

In addition, respondent highlighted that Dir. Ibañez already withdrew his initial recommendation to drop respondent from the rolls "because of the inability to fully establish a successive thirty-day absence without approved leave." Dir. Ibañez, as COMELEC Personnel Director, was the most authoritative person in the COMELEC to determine the number of days an employee had been absent for purposes of dropping from the rolls. Since Dir. Ibañez's initial recommendation was the sole basis for the COMELEC *en banc* to drop respondent from the rolls, then the COMELEC *en banc* should have also given weight to Dir. Ibañez's withdrawal of such recommendation after realizing that his previous findings were erroneous. The COMELEC *en banc* had been stripped of the presumption of regularity in the performance of its functions given Dir. Ibañez's express admission of error and withdrawal of his recommendation to drop respondent from the rolls.

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<sup>20</sup> Id. at 72-73.

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On June 22, 2007, the CSC issued Resolution No. 071241 denying respondent's Motion for Reconsideration for being a mere rehash of his appeal which was already addressed in Resolution No. 070560. The CSC likewise ruled that:

If [respondent] and his counsel only took the time to evaluate the assailed Resolution they would realize that what the Commission wanted [respondent] to proffer are the documents that he enumerated in his Memorandum to the Comelec-Personnel Department dated August 4, 2003. Since he failed to submit these documents, [respondent] basically has no evidence to support his cause. At any rate, submission of such documentary evidence will not automatically free [respondent] from any liability for his absences without official leave as the Commission will still have to evaluate the said documents.

Finally, reliance by [respondent] on Memorandum dated October 7, 2003 of the Comelec-Personnel Department withdrawing its recommendation for the dropping from the rolls of [respondent] is erroneous as the same is not sufficient to prove that [respondent] was not guilty of absences without official leave (AWOL). It is important to emphasize that the Comelec decided to drop [respondent] from the rolls after the Personnel Department found out that [respondent] failed to submit his daily time records (DTRs) for the months of January-April 2002 and from January-July 2003. On the other hand, Memorandum dated October 7, 2003 of Comelec-Personnel Department only considered the submission by [respondent's] immediate supervisor (Liza D. Zabala-Cariño) of [respondent's] unverified June-July 2003 DTRs and the explanation of [respondent] that "his duly accomplished daily time records from January 2003 to present were already submitted to the Office of the Provincial Election Supervisor with the corresponding date of receipt by the OPES."<sup>21</sup>

### *Court of Appeals Proceedings*

Aggrieved, respondent appealed CSC Resolution Nos. 070560 and 071241 before the Court of Appeals under Rule 43 of the Rules of Court.<sup>22</sup>

In its Decision dated July 12, 2011, the Court of Appeals found merit in respondent's appeal and adjudged that:

Based on the records, it was established that [respondent] had in fact submitted his DTRs to his immediate supervisor Atty. Zabala-Cariño, who admitted receiving the same but refused to verify it for she was suspecting that the entries therein were falsified. Due to this fact, COMELEC Head of Personnel Department, Atty. Ibañez, sent a Memorandum to the COMELEC En Banc to withdraw the resolution dropping [respondent] from the rolls based on the fact that [respondent] did submit his DTRs, only that the same were questionable. Hence, he recommended that formal charges for Falsification of an official document instead be filed against [respondent]. However, no complaint was filed against [respondent], rather, the COMELEC En Banc affirmed its

<sup>21</sup> Id. at 69-70.

<sup>22</sup> Id. at 27-51.

resolution. It must be noted that the basis for the dropping of [respondent] from the rolls is the letter recommendation of the COMELEC Head of Personnel Department, Atty. Ibañez, stating therein that [respondent] failed to submit his DTR for the months of January-April 2002 and January up to the time of promulgation of questioned COMELEC resolution, which non-submission of DTR was construed to be Absences Without Official Leave (AWOL). **Thus, since it was established that the DTRs were submitted, the resolution of the COMELEC dropping [respondent] from the rolls is without basis.** Hence, a complaint should have been filed instead.

Falsification of an official document such as the DTR is considered a grave offense under the CSC Revised Uniform Rules and is penalized with dismissal for the first offense. It is also punishable as a criminal offense under Article 171 of the Revised Penal Code. Atty. Zabala-Cariño's accusation of Falsification of a DTR is a factual issue which must have been accorded with a proper administrative investigation to ascertain the truthfulness thereof.

Settled is the rule that in administrative proceedings, the burden of proof that the petitioner committed the act complained of rests on the complainant. The complainant must be able to show this by substantial evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Otherwise, the complaint must be dismissed.

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Hence, [respondent] having been accused of falsifying his DTRs should have been accorded due process to clear his name of such accusation and not the automatic dismissal from office through dropping of his name in the rolls of employees.

x x x x

Based on the foregoing, [respondent] holds an appointment under permanent status and thus enjoys security of tenure as guaranteed by law. As an employee in the civil service and as a civil service eligible, [respondent] is entitled to the benefits, rights, and privileges extended to those belonging to the service. [Respondent] could not be removed or dismissed from the service without just cause and without observing the requirements of due process as what happened in the present case. However, according to settled jurisprudence, an illegally terminated civil service employee is entitled to back salaries limited only to a maximum period of five years and not full back salaries from his illegal termination up to his reinstatement.<sup>23</sup>

The dispositive portion of the Court of Appeals Decision reads:

**IN VIEW WHEREOF**, the Petition is hereby **GRANTED**. The Resolution No. 07-0560 of the Civil Service Commission dated March 19, 2007 affirming COMELEC Resolution No. 03-0278 dated September 11, 2003 and COMELEC Resolution No. 04-0019 dated February 10, 2004

<sup>23</sup>

*Rollo*, pp. 37-39.

dropping [respondent] Crisostomo M. Plopinio from the rolls of employees is hereby **REVERSED** and **SET ASIDE**. Accordingly, Crisostomo M. Plopinio is hereby reinstated to his former position without loss of seniority rights and other privileges appurtenant to the position. Furthermore, he should be paid his back salaries limited only to a maximum period of five years and not full back salaries from his illegal termination up to his reinstatement.<sup>24</sup>

### *The Petition before this Court*

The CSC now comes before this Court via the instant Petition, anchored on the sole assignment of error, *viz.*:

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW IN FINDING THAT RESPONDENT WAS DEPRIVED OF DUE PROCESS.<sup>25</sup>

The Petition is bereft of merit.

There is no question that a public officer or employee who is AWOL may be separated from service or dropped from the rolls of employees without prior notice.

Rule VI, Section 63 of the Omnibus Rules on Leave in the Civil Service<sup>26</sup> provides:

**Sec. 63. *Effect of absences without approved leave.* – An official or employee who is continuously absent without approved leave for at least thirty (30) working days shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice.** However, when it is clear under the obtaining circumstances that the official or employee concerned, has established a scheme to circumvent the rule by incurring substantial absences though less than thirty working (30) days 3x in a semester, such that a pattern is already apparent, dropping from the rolls without notice may likewise be justified.

If the number of unauthorized absences incurred is less than thirty (30) working days, a written Return-to-Work Order shall be served to him at his last known address on records. Failure on his part to report for work within the period stated in the Order shall be a valid ground to drop him from the rolls. (Emphasis supplied.)

Rule 19, Sections 93 and 96 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS)<sup>27</sup> similarly state:

<sup>24</sup> Id. at 39-40.

<sup>25</sup> Id. at 16.

<sup>26</sup> As amended by CSC Memorandum Circular No. 41, series of 1998; CSC Memorandum Circular No. 14, series of 1999; and CSC Memorandum Circular No. 13, series of 2007.

<sup>27</sup> Superseding Section 2 of Rule XII of the Omnibus Rules on Appointments and Other Personnel Actions in the Civil Service (MC No. 40, Series of 1998, as amended by MC No. 15, Series of 1999).

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Rule 19  
DROPPING FROM THE ROLLS

Sec. 93. *Grounds and Procedure for Dropping from the Rolls.* – Officers and employees who are either habitually absent or have unsatisfactory or poor performance or have shown to be physically and mentally unfit to perform their duties may be dropped from the rolls subject to the following procedures:

a. Absence Without Approved Leave

1. **An officer or employee who is continuously absent without official leave (AWOL) for at least thirty (30) working days shall be separated from the service or dropped from the rolls without prior notice.** He/She shall, however, be informed of his/her separation not later than five (5) days from its effectivity which shall be sent to the address on his/her 201 files or to his/her last known address;
2. If the number of unauthorized absences incurred is less than thirty (30) working days, a written Return-to-Work order shall be served on the official or employee at his/her last known address on record. Failure on his/her part to report to work within the period stated in the order shall be a valid ground to drop him/her from the rolls;
3. If it is clear under the obtaining circumstances that the official or employee concerned, has established a scheme to circumvent the rule by incurring substantial absences though less than thirty (30) working days, three (3) times in a semester, such that a pattern is already apparent, dropping from the rolls without notice may likewise be justified.

Section 96. *Dropping from the Rolls; Non-Disciplinary in Nature.* – This mode of separation from the service for unauthorized absences or unsatisfactory or poor performance or physical or mental incapacity is **non-disciplinary in nature and shall not result in the forfeiture of any benefit on the part of the official or employee or in disqualification from reemployment in the government.** (Emphases supplied.)

Based on current rules, a public officer or employee may be dropped from the rolls for AWOL without prior notice, under any of the following circumstances: (1) the public officer or employee was continuously absent without approved leave for at least 30 working days; or (2) the public officer or employee had established a scheme to circumvent the rule by incurring

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substantial absences, though less than 30 working days, three times in a semester, such that a pattern was readily apparent.

Dropping from the rolls is not disciplinary in nature. It shall not result in the forfeiture of any benefit of the public official or employee concerned nor in said public official or employee's disqualification from reemployment in the government. Thus, the concerned public official or employee need not be notified or be heard.<sup>28</sup>

To recall, respondent was dropped by the COMELEC *en banc* from the rolls of employees for alleged AWOL, but respondent's circumstances did not constitute a clear-cut case of AWOL. Dir. Ibañez, of the COMELEC Personnel Department, initially reported in his Memorandum dated August 20, 2003 that respondent did not file his DTRs for the periods of January to April 2002 and January to July 2003, on the basis of which, Dir. Ibañez presumed that respondent had been AWOL during said periods and, thus, recommended that respondent be dropped from the rolls. The COMELEC *en banc*, in its Resolution No. 03-0278, fully adopted the findings and recommendation in Dir. Ibañez's Memorandum dated August 20, 2003 and dropped respondent from the rolls.

It is stressed though that in this case, there was no proof that respondent was actually absent or did not report for work for 30 days or more. Respondent's AWOL was merely presumed from the fact that his DTRs for the periods of January to April 2002 and January to July 2003 were not on file with the COMELEC Personnel Department.

However, as respondent consistently avowed, he had submitted his DTRs for the periods in question, presenting before the COMELEC his evidence, to wit: the transmittal letters for his DTRs for January to April 2002, duly received by the OPES; certified photocopies of his DTRs for March and April 2002; Memorandum dated September 1, 2003 to the COMELEC Personnel Department accounting for the dates of submission and the person/s at the OPES who received his DTRs for January to July 2003 and already reporting that PES Cariño was not submitting his said DTRs to the COMELEC Personnel Department; transmittal letters duly received by the OPES for his DTRs for March and April 2003; and photocopy of his DTR for August 2003. In contrast, PES Cariño, as respondent's immediate supervisor, had been glaringly silent all throughout the proceedings, unable to categorically deny that her office received respondent's DTRs for the periods in question. In fact, the only time PES Cariño spoke up in this case was to admit to Dir. Ibañez that respondent submitted his DTRs for June to July 2003 but she did not sign the same because she found some of respondent's entries in said DTRs questionable.

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<sup>28</sup> *Plaza II v. Cassion*, 479 Phil. 171, 181 (2004).

Taking into account the evidence submitted by respondent, together with PES Cariño's admission, Dir. Ibañez issued his Memorandum dated October 7, 2003, explicitly declaring that there was "the inability to fully establish a successive thirty-day absence without approved leave (AWOL) on the part of [respondent]" and withdrawing the recommendation in his earlier Memorandum dated August 20, 2003 to drop respondent from the rolls. Dir. Ibañez recommended instead that PES Cariño file an administrative complaint against respondent for absenteeism or other administrative disciplinary case as warranted. The COMELEC *en banc* cannot simply disregard Dir. Ibanez's Memorandum dated October 7, 2003 recalling his Memorandum dated August 20, 2003, when the COMELEC *en banc* entirely based its Resolution No. 03-0278, dropping respondent from the rolls, on Dir. Ibanez's Memorandum dated August 20, 2003. Notably, the COMELEC *en banc*, in denying respondent's Motion for Reconsideration in its Resolution No. 04-0019, did not proffer any explanation as to why it rejected the findings and recommendation in Dir. Ibañez's Memorandum dated October 7, 2003.

DEDO Josen, whose office was in charge of field personnel movement, also issued a Memorandum dated January 26, 2004, referring to the voluminous documents respondent submitted to various offices of the COMELEC, including his office and that of Dir. Ibañez, which established that respondent had actually submitted his DTRs to the Office of the Provincial Election Supervisor (OPES) for the periods in question but PES Cariño did not sign respondent's DTRs nor forwarded them to the COMELEC Personnel Department. DEDO Josen recommended the recall of COMELEC Resolution No. 03-0278 and the reinstatement of respondent to his position as Election Officer.

It was unreasonable to still require respondent to submit his DTRs, duly signed by PES Cariño, when the root cause of respondent's problem in the first place was PES Cariño's failure, if not outright refusal, to sign respondent's DTRs and forward the same to the COMELEC Personnel Division. Contrary to the averment of the CSC, respondent had essentially attached to his Appeal Memorandum, and again in his Motion for Reconsideration, filed with said Commission the relevant documentary evidence to substantiate his claim that he submitted his DTRs for January to April 2002 and January to July 2003.

In light of the foregoing circumstances, there is reasonable ground to believe that respondent did submit his DTRs for January to April 2002 and January to July 2003 to his immediate supervisor, PES Cariño, who did not sign and forward the same to the COMELEC Personnel Department. Therefore, there is no more factual basis for the presumption that respondent had been AWOL for the said time periods that would have, in turn, justified his being dropped from the rolls. Without such presumption, the COMELEC could only insist on the dropping of respondent from the rolls on the ground of AWOL if it could establish that respondent had been

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actually absent without approved leave for 30 days or more – which the COMELEC *en banc* utterly failed to do in this case.

In sum, there being no factual basis that respondent had been AWOL, he could not simply be dropped from the rolls. Any other allegation of wrongdoing on respondent's part, *i.e.*, falsification of entries in the DTRs or frequent absenteeism, does not warrant dropping from the rolls, but require the institution of any appropriate charge and/or administrative proceedings against respondent before any disciplinary action can be taken against him. The Court of Appeals, therefore, did not commit any reversible error in ordering respondent's reinstatement and payment of his back salaries.

**WHEREFORE**, in view of the foregoing, the Petition is **DENIED** for lack of merit and the Decision dated July 12, 2011 of the Court of Appeals in CA-G.R. SP No. 99906 is **AFFIRMED**.

**SO ORDERED.**

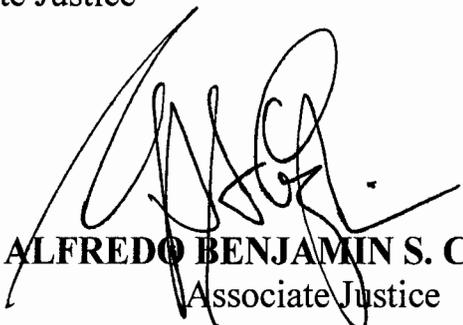
  
**TERESITA J. LEONARDO-DE CASTRO**  
 Associate Justice

WE CONCUR:

  
**MARIA LOURDES P. A. SERENO**  
 Chief Justice  
 Chairperson

  
**MARIANO D. DEL CASTILLO**  
 Associate Justice

On leave  
**ESTELA M. PERLAS-BERNABE**  
 Associate Justice

  
**ALFREDO BENJAMIN S. CAGUIOA**  
 Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice