



LEGAL SERVICE
GENERAL ADMINISTRATION AND SUPPORT
SERVICES GROUP
 DSWD-GF-004 | REV 03 | 22 SEP 2023

DRN: LS-L-LO-25-01-04936-C

MEMORANDUM

FOR : ATTY. MICHAEL JOSEPH J. LORICO
 Regional Director, DSWD Field Office – National Capital Region

FROM : THE ASSISTANT SECRETARY UNDER GENERAL ADMINISTRATION AND SUPPORT SERVICES GROUP AND CONCURRENT OFFICER-IN-CHARGE (OIC) OF THE LEGAL SERVICE

SUBJECT : LEGAL OPINION ON THE NECESSITY OF SECURING THE APPROVAL/CONFORME OF PUBLIC SOCIAL WORKERS PRIOR TO REASSIGNMENT

This is in relation to the Memorandum of Atty. Thapten V. Tello, then Officer-in-Charge of the Human Resource Management Development Division (HRMDD) of the DSWD Field Office – National Capital Region (NCR), requesting for the Legal Service's (LS) legal opinion on the necessity of securing the approval or conforme of Public Social Workers (PSWs) prior to reassignment.

In the Memorandum, there was a request for the following clarifications, thus:

1. Is it necessary to secure the subject PSW's approval/conforme before reassignment can be made?
2. If the PSW refuses to sign the said Reassignment Agreement, will this prevent the Field Office (FO) from effecting the reassignment? If in the affirmative, what other remedies are available to the FO in order to effect the reassignment?

This level will address the concerns one by one.

Our Opinion:

To the first query, we answer in the negative. The approval or conformity of the PSW is not necessary prior to reassignment of a PSW.

Republic Act (R.A.) No. 9433 otherwise known as the "Magna Carta for Public Social Workers" explicitly states:

SEC. 18. Reassignment of Public Social Workers. Except in the interest of public service, no transfer or geographical reassignment shall be made or effected without written notice to a public social worker. Provided, That said written notice, stating the reasons for the reassignment, shall be made at least thirty (30) days prior to the date of transfer or reassignment: Provided, further, That, if the public social worker believes that there is no justification for the transfer and/or reassignment, he/she may appeal his/her case to the CSC, which shall cause his/her transfer and/or reassignment to be held in

abeyance: Provided, furthermore, That reassignment coinciding with any local or national election shall be made in compliance with Election Code and other existing laws and rules: Provided, finally, That the necessary expenses of the transfer and/or reassignment of the public social worker and his/her immediate family shall be paid for by the agency concerned. [Emphasis supplied]

Under the law, the **general rule** is that a PSW may be transferred or reassigned upon written notice which should [i] contain the reasons for the intended transfer or reassignment, and [ii] it must be given at least thirty (30) days prior to the said transfer or reassignment. An **exception to the general rule** is that a PSW may be transferred or reassigned without notice in the exigency of the service.

Under the **general rule**, there is nothing in the law that requires the approval, consent or conformity of the PSW before effecting the reassignment. The requirement is a written notice to the PSW before effecting the transfer or reassignment. It neither mentioned that the PSW who will be transferred or reassigned should be duly consulted nor their consent be obtained. Thus, applying the plain-meaning rule or *verba legis* doctrine, when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation, only application.¹

In this case, we opine that there is neither a need for an approval or conforme, nor consent of, the affected PSW when transferring or reassigning them, as a written notice to the PSW to be transferred or reassigned will suffice.

Meanwhile, under the **exception to the general rule**, the prior written notice requirement may be abandoned, provided, that the reassignment is in the interest of public service. This exception can be read in conjunction with the Career Executive Service Board Circular No. 6 Series of 2006², which provides for the definition of the phrase "in exigency of the service", thus:

"1. DEFINITION OF TERMS. The terms provided hereunder shall be construed as follows:

xxx

c. Exigency of public service refers to a situation where service is urgently needed and where any delay in its execution and delivery will adversely affect the outcome of the service to clients and its effective and efficient delivery;

xxx"

Further, the 2017 Omnibus Rules on Appointments and Other Human Resource Actions (ORAOHRA) also provides the definition of "exigency of public service" on the footnote of page 26 which states that:

"Situations wherein there will be disruption in the delivery of basic or vital services or emergency/crisis situation or there is a need to respond to the demands of public service"

In this context, "exigency of service" refers to situations where immediate action is required to ensure the uninterrupted delivery of essential services. This arises when delays in actions would negatively impact the department's ability to fulfill its mandate.

Therefore, rationalizing the **exception** provided in R.A. No. 9433 and the definition of "exigency of service", a PSW can be reassigned anytime and without the usual 30-

¹ Bolos v. Bolos, G.R. No. 186400, 20 October 2010

² Annex B - Career Executive Service Board Circular No. 6 Series of 2006

day prior written notice if there is an urgent need for the reassignment to ensure the proper delivery of public services.

However, said exception does not entail the requirement for approval, consent, or conformity prior the transfer or reassignment. A PSW's consent or conformity, either with the provision of a prior written notice or none due to the interest of public service, **is not necessary for his transfer or reassignment to take effect.**

To further support this opinion, Section 26 (7) of the Administrative Code³ allows any government department or agency that is embraced in the civil service prerogative to reassign employees, to wit:

SECTION 26. Personnel Actions.—

As used in this Title, any action denoting the movement or progress of personnel in the civil service shall be known as personnel action. Such action shall include appointment through certification, promotion, transfer, reinstatement, re-employment, detail, reassignment, demotion, and separation. All personnel actions shall be in accordance with such rules, standards, and regulations as may be promulgated by the Commission.

xxx xxx xxx

(7) Reassignment.— An employee may be reassigned from one organizational unit to another in the same agency; Provided, That such reassignment shall not involve a reduction in rank, status or salary. (Emphasis supplied)

In fact, Justice Florentino P. Feliciano discussed in the case of *Fernandez vs. Sto. Tomas*⁴ that reassignments by virtue of this provision⁵ are neither deemed as removals without lawful cause nor seen as violations of the right to security of tenure:

"It follows that the reassignment of petitioners had been effected with express statutory authority and did not constitute removals without lawful cause. It also follows that such reassignment did not involve any violation of the constitutional right of petitioners to security of tenure considering that they retained their positions of Director IV and would continue to enjoy the same rank, status and salary at their new assigned stations which they had enjoyed at the Head Office of the Commission in Metropolitan Manila. Petitioners had not, in other words, acquired a vested right to serve at the Commission's Head Office."⁶

Now, given the essence of public service, and then relating it to the case at hand, this level opines that a PSW in a government agency like the DSWD may be transferred or reassigned anytime when public service is urgently needed or to respond to situations requiring uninterrupted or continuous delivery of public service.

Reassignment as one of the personnel movement recognized under the civil service rules, is a management prerogative that carries with it a presumption of regularity.

The ORAOHRA provision on reassignment⁷ reads, as follows:

"Reassignment is presumed to be regular and made in the interest or exigency of public service unless proven otherwise or if it constitutes constructive dismissal. Constructive

³ Executive Order (E.O.) No. 297

⁴ G.R. No. 116418 March 7, 1995

⁵ Section 26(7) of E.O. 297

⁶ *Yangson v. Department of Education*, G.R. No. 200170, 03 June 2019

⁷ Page 27 of 2017 Omnibus Rules on Appointments and Other Human Resource Actions, Revised 2018

dismissal exists when an official or employee quits his/her work because of the agency head's unreasonable, humiliating, or demeaning actuations, which render continued work impossible because of geographic location, financial dislocation and performance of other duties and responsibilities inconsistent with those attached to the position. Hence, the employee is deemed illegally dismissed. This may occur although there is no diminution or reduction in rank, status or salary of the employee."

Based on the ORAHRA, it is presumed that reassignments are "regular and made in the interest of public service."⁸ The party questioning its regularity or asserting bad faith carries the burden to prove his or her allegations.⁹

In conclusion, harmonizing R.A. No. 9433 and the ORAOHRA, this level is of the view that the approval/conformity/consent of PSW is not required before a reassignment is made. Except in the exigency of the service, a 30-day written notice prior to the date of transfer or reassignment is sufficient.

Hence, we agree with the opinion of the Legal Unit of FO NCR that the PSW's approval/consent/conformity is not required prior to the transfer or reassignment. However, in the interest of public service, no transfer or geographical reassignment shall be made or effected without written notice to a public social worker.

To the second query, we are of the considered view that refusal by the PSW to the reassignment will not prevent the FO from implementing the reassignment because it is a lawful order which must be heeded to. "It is axiomatic that a public official enjoys the presumption of regularity in the discharge of one's official duties and functions."¹⁰ Thus, when a public official, with prior thirty (30)-day notice or in the exigency of the service, reassigns a PSW from one station to another station, even without the latter's approval/consent/conformity, such discharge of official functions is presumed to be regular. "To successfully overcome such presumption of regularity, case law demands that the evidence against it must be clear and convincing; absent the requisite quantum of proof to the contrary, the presumption stands deserving of faith and credit."¹¹

Further, the principle of exigency of the service prevails. This means that public interest is superior over any personal interest.

As clearly enunciated in Section 4(a) of the Code of Conduct and Ethical Standards for Public Officials and Employees, it provides that:

"Public officials and employees shall always uphold the public interest over and above personal interest. xxx"

To enforce the Reassignment Order, it may be served upon the PSW, either personally or via official work email, to inform said personnel of the reassignment. On the other hand, refusal to obey a lawful order may constitute an administrative offense under the 2017 Rules on Administrative Cases in the Civil Service.

⁸ Nieves v. Blanco, 688 Phil. 282, 292 (2012) [Per J. Reyes, En Banc] citing CSC Resolution No. 1800692 (2018), sec. 13 (a) (3)

⁹ Andrade v. Court of Appeals, 423 Phil. 30, 43 (2001)

¹⁰ Gatmaitan v. Gonzales, 525 Phil. 658, 671 (2006)

¹¹ Guanzon v. Arradaza, 539 Phil. 367, 375 (2006)

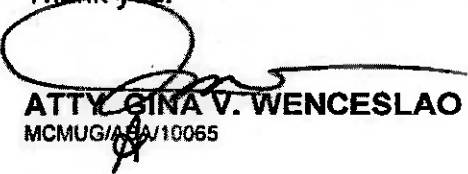
Additionally, in cases where the PSW believes that the transfer and/or reassignment is unjustifiable, he/she may file an appeal with the Civil Service Commission (CSC). Consequently, the implementation of the order of reassignment, will be automatically held in abeyance.¹²

Please be informed that the foregoing legal opinion is based solely on the information provided by your office, and may vary based on additional information or document/s or when the facts are changed or elaborated.

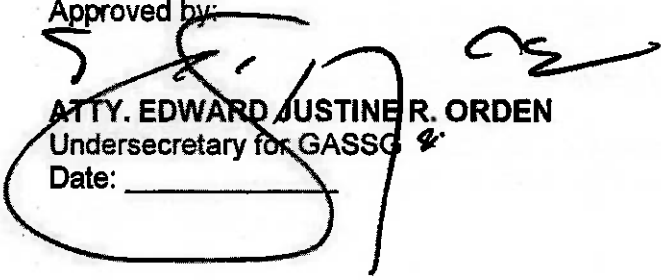
For your consideration.

Kindly fill out the attached Customer Feedback Form and return the same to the Legal Service.

Thank you.


ATTY. GINA V. WENCESLAO
MCMUG/MSA/10065

Approved by:


ATTY. EDWARD JUSTINE R. ORDEN
Undersecretary for GASSG
Date: _____

¹² Section 18 of Republic Act No. 9433 or the "Magna Carta for Public Social Workers"