

Unlawful Order to Assist Other Department in the Performance of Functions^{*}

Supreme Administrative Court Judgment No. A. 1551/2559, dated 25th July B.E. 2559 (2016)

Ms. P (P)

v.

Mayor of Yang Chum Noi Subdistrict Municipality (D)

A plan and policy analyst position was held to a higher performance standard than a government service officer position. The job description of the plan and policy analyst and the government service officer position were distinctly different in terms of knowledge and capabilities. The Mayor ordered a municipal officer, a policy and plan analyst, to assist other department in the performance of administration tasks without a specific job description or available position. The Mayor's order resulted in decreasing roles and responsibilities of the municipal officer and lacking opportunities to increase knowledge, capabilities and experience required for promotion to a higher-level position. The Plaintiff still held the plan and policy analysis position and received the same amount of salary, and was not deprived of either rights and benefits, or a status of a municipality officer; however, the Plaintiff who was ordered to assist other department in the performance of functions was inevitably aggrieved or injured. Thus, the Plaintiff was entitled to file a case with the Court, according to Section 42 paragraph one of the Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999). Although the Mayor shall have power to manage personnel in the Municipality so as to successfully provide public services, he must have justification to issue the order and shall comply with the prescribed laws, regulations and rules. If the Mayor did so, his discretion would be lawfully exercised. The job description and duties and responsibilities of the plan and policy analyst (Level 4) and the government service officer position were clearly different. In addition, there was no fact presented that any effect or injury would occur if the order was not issued. Accordingly, the Mayor's issuance of the order was the unlawful exercise of discretion.

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Legal Principles: *Administrative Act, Exercise of Discretion, Issuance of Order*

Administrative Court Procedure: *Act on Establishment of Administrative Courts and Administrative Court Procedure, B.E. 2542 (1999): Section 42 paragraph one*

Legal Provisions: *Announce of Municipality Committee on Criteria and Conditions of Municipality Personnel Management, dated 20th December B.E. 2545 (2002): Clause 282 paragraph two*

Judgment (Summary)

The Plaintiff was a municipality officer holding a plan and policy analyst position (Level 4) at the Municipality Office, the Directing Division. He was aggrieved or injured by an order issued by the Defendant on 31st October 2555 (2012). The Plaintiff was ordered to assist the Department of Public Works, the Technician Division, in the performance of functions. He was assigned to work as a government service officer in the Department while he was holding the plan and policy analyst position. The Plaintiff submitted an appeal to the Defendant and filed a complaint with the Governor, the District Chief, and the Chairman of Municipality Officer Committee. After considering the appeal, the District Chief sent a letter ordering the Defendant to consider whether tasks and duties that the Plaintiff was assigned to perform were appropriate for and consistent with a job specification of a municipality officer, or to order the Plaintiff to return to work at her previous position at the Municipality Office; however, the Defendant failed to do so. The Plaintiff asserted that there was no available position for the Plaintiff at the Department of Public Works, the work period was not specified in the order, and the Defendant failed to act in compliance with a material form, process, or procedure. The Defendant unfairly exercised his power and inappropriately discriminated against the Plaintiff since the Defendant did not take tasks that the Plaintiff was required to perform into consideration and the tasks were inconsistent with knowledge, capabilities, and a job specification of a plan and policy analyst position, which the Plaintiff currently held. The Plaintiff requested the Court to deliver a judgment or issue an order to the Defendant to revoke the order dated 31st October 2555 (2012) and to order the Plaintiff to return to work at her previous position.

The Supreme Administrative Court held that the Plaintiff did not lose his previous position and still receive the same amount of salary, and his rights and benefits or a status of a municipality officer were not deprived after the Defendant issued the order to assist other department in the performance of functions. However, a performance standard of the plan and policy analyst position was higher than a government service officer position and the plan and policy analyst was required to have distinctly different

knowledge and capabilities compared to the government service officer. The Plaintiff previously worked at the government service officer position and then she passed a test to change her job position to the plan and policy analyst (Level 4). It showed that the Plaintiff had knowledge, capabilities and competencies to perform duties. Moreover, the Defendant did not determine a specific job description and there was no specific position available for the Plaintiff. Thus, the Plaintiff was entitled to file a case with the Court, pursuant Section 42 of the Act on Establishment of Administrative Courts and Administrative Court Procedure B.E.2542 (1999).

The Defendant as a superior of the Municipality shall have power to order a municipality officer to temporarily assist the performance of other department or education institute's functions within the Municipality in any position; it was power to manage personnel so as to successfully provide public services and was the exercise of discretion of the Defendant. The exercise of discretion would be lawful if there was justification to issue the order and the order was issued in accordance with the prescribed laws, regulations, and rules. The Plaintiff was a municipality officer, a plan and policy analyst (Level 4), and had duties and responsibilities provided in a job specification as follows: to work as a head of a department who had high responsibilities and had to produce high quality works, or to work as an assistant of a head of a department who had the level of responsibilities and had to produce the quality of work equivalent to a plan and policy analyst position. The plan and policy analyst was also responsible for controlling and examining the performance of officers, supervising subordinates, performing plan and policy analysis tasks which were quite difficult under no supervision or under the supervision of the person who had the equivalent level of knowledge and expertise, and performing other tasks assigned. The analyst had to perform quite difficult plan and policy analysis tasks; such as study, analyse, research, coordinate on a plan, compile a plan, consider and make a recommendation to determine a policy, establish a plan or project, and monitor and evaluate the implementation of a plan or project, including a policy, an action plan and a project relating to economics, society, politics, national administration or national security. Moreover, the analyst also to give a consultation and make a recommendation to subordinates, answer questions related to assigned tasks, and perform other tasks assigned. The plan and policy analyst position started from Level 3, while the government service officer position started from Level 2. The government service officer was required to have technical and academic knowledge to perform general administration tasks – drafting, replying, recording, summarizing, proof reading documents, processing documents regarding a state property, monitoring for maintenance, selling damaged vehicles, disbursing technician's tools, examining, adding or changing records, storing important government documents, gathering information or preparing documents, writing a meeting report, and performing other related tasks. Therefore, the job description of the plan and policy analyst

(Level 4) and the government service officer were clearly different. In addition, the Department of Public Works, the Technician Division, had merely one position available for a government service officer, according to a 3-year manpower framework. When the Plaintiff was ordered to assist the Department's tasks, there was an officer working at the position. The Defendant did not assert that any effect or damage would occur to the Department if the order was not issued. The Defendant unlawfully exercised its discretion to issue the order assigning the Plaintiff to assist the Department in the performance of functions since there was no justification to issue the order and the Defendant did not consider whether assigned tasks were appropriate for or consistent with knowledge, capabilities, and a job specification of the Plaintiff's position, pursuant to Clause 282 paragraph two of the Announce of Municipality Committee on Criteria and Conditions of Municipality Personnel Management, dated 20th December B.E. 2545 (2002). The order issued by the Defendant was unlawful. Accordingly, the Supreme Administrative Court affirmed the decision of the Administrative Court of First Instance to revoke the order.