



Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

CONRADO B. NICART, JR., as
Provincial Governor of LGU-
Eastern Samar,

Petitioner,

- versus -

MA. JOSEFINA C. TITONG and
JOSELITO M. ABRUGAR, SR.,
Respondents.

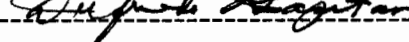
G.R. No. 207682

Present:

VELASCO, JR., J., Chairperson,
PERALTA,
VILLARAMA, JR.,
MENDOZA,* and
REYES, JJ.

Promulgated:

December 10, 2014

X----------X

DECISION

VELASCO, JR., J.:


The Case

Before Us is a Petition for Review under Rule 45 of the Rules of Court, seeking the: (a) issuance of a temporary restraining order on the implementation of the writ of mandamus dated April 16, 2013, issued by the Regional Trial Court, (RTC) Branch 2 of Borongan City, Eastern Samar in Civil Case No. 4236, entitled *Ma. Josefina M. Titong, et al. v. Hon. Conrado B. Nicart, Jr., et al.*; and (b) the annulment and setting aside of the RTC's Decision dated April 11, 2013 as well as its June 20, 2013 Order, in said case.

The Facts

A few days prior to the end of his term, then Governor of Eastern Samar Ben P. Evardone (Evardone) issued ninety-three (93) appointments between May 11, 2010 and June 29, 2010, including that of herein respondents Ma. Josefina Titong (Titong) and Joselito Abrugar, Sr. (Abrugar), which appointments were later confirmed by the *Sangguniang Panlalawigan*. Consequently, the appointees immediately assumed their respective positions.

* Acting member per Special Order No. 1896 dated November 28, 2014.



Upon submission, however, of the appointments to the Civil Service Commission (CSC) Regional Office (CSCRO) No. VIII, all 93 appointments were disapproved for having been made in violation of Section 2.1 of CSC Memorandum Circular No. 16, series of 2007.¹

Evardone appealed the disapproval but it was dismissed for non-payment of the requisite filing fee and the appointments having been issued in violation of said circular. Respondents, for their part, individually moved for reconsideration of the disapproval of their respective appointments but later withdrew their motions via an Omnibus Joint Motion and separately converted the same to an Appeal by means of a petition for review with the CSC proper.

Meanwhile, on August 10, 2010, Titong and Abrugar requested the assistance of the CSC with their claim for payment of their first salary which was denied by the Commission on Audit (COA) Provincial Office and by petitioner, who at that time was already the incumbent Governor.

Acting on the appeal, the CSC rendered Decision No. 10-0242² dated December 13, 2010, granting the petition, modifying the CSCRO's ruling, and declaring the appointment of Titong and Abrugar valid on the ground that the two are qualified for the positions to which they were appointed. The *fallo* of the Decision reads:

WHEREFORE, the Petition for Review of Ma. Josefina C. Titong and Joselito M. Abrugar, Sr., both Provincial Government Department Heads (Human Resource [M]anagement Office and [P]rovincial Planning and Development Office, respectively), Provincial Government of Eastern Samar, is **GRANTED**. Accordingly, the Order No. 100360 dated July 26, 2010 of the Civil Service Commission Regional Office (CSCRO) No. VIII, Palo, Leyte, disapproving the appointment of [93] employees, including the appointments of petitioners, for failure to pay the appeal fee, and violation of CSC Memorandum Circular Nos. 3, s. 2011 and 16, s. 2007 is **MODIFIED** insofar as the appointment of Ma. Josefina C. Titong and Joselito M. Abrugar, Sr. which are **APPROVED**.

Petitioner moved for reconsideration of said Decision, but it was denied by the CSC, through Resolution No. 1100653³ dated May 27, 2011, the dispositive portion of which reads:

WHEREFORE, the Motion for Reconsideration of Governor Conrado B. Nicart, Jr., Provincial Government of Eastern Samar, is **DENIED**. Accordingly, CSC Decision No. 10-0242 dated December 13, 2010 which approved the appointments of Ma. Josefina C. Titong and Joselito M. Abrugar, Sr. as Provincial Government Department Heads (Human Resource Management Office and Planning and Development Office, respectively), **STANDS**. The Provincial Government of Eastern

¹ "All appointment (sic) issued after elections up to June 30 by outgoing elective appointing officials shall be disapproved."

² *Rollo*, pp. 97-102

³ *Id.* at 91-95.

Samar is directed to pay the salaries and benefits of Titong and Abrugar from the time that they have assumed their respective positions.

Undaunted, petitioner filed before the Court of Appeals (CA) a petition for review of the above CSC Decision and Resolution, docketed as CA-G.R. SP No. 119975, entitled *Conrado B. Nicart, Jr. v. Ma. Josefina C. Titong and Joselito M. Abrugar, Sr.*, presenting the sole issue of whether or not the appointments of herein respondents are valid.

There, petitioner, in the main, argues that the appointments were in violation of said Section 21 of CSC Memorandum Circular No. 16, s. 2007 and that the exemptions laid down in *Nazareno v City of Dumaguete*⁴ were not met for the following reasons: (a) there was no need to fill up the vacancies immediately; and (b) the appointments were made *en masse*.

Respondents, for their part, maintain that their appointments were a valid exercise by Evardone of his power of appointment.

Pending resolution thereof by the CA, the CSC, upon respondents' motion, issued a writ of execution under CSC Resolution No. 1101319 dated October 6, 2011, ordering petitioner and the Provincial Government to pay the salaries and other emoluments due to respondents from the time of their assumption of office on June 21, 2010 up to the present.

In view of petitioner's continued refusal to pay their salaries, among others, despite the service of the writ of execution upon him and with CA-G.R. SP No. 119975 still pending resolution, respondents filed before the RTC a Petition for Mandamus with Unspecified Damages against herein petitioner, the Vice Governor, and the members of the *Sangguniang Panlalawigan*, docketed as in Civil Case No. 4236.⁵ In it, they prayed that therein respondents be directed to: (a) pay Titong and Abrugar their salaries and other emoluments or benefits due them from their assumption of office on June 21, 2010 up to the present; (b) incorporate their salaries in the annual budget of the Province; (c) pay herein respondents damages and attorney's fees; and (d) recognize their appointments as valid, among others.⁶

Respondents, in their Comment, maintain that the petition should be dismissed on any of the following grounds, viz: (a) mandamus is not the proper remedy; (b) *litis pendentia*, since there is another action pending between the same parties and for the same cause of action; (c) wilful and

⁴ G.R. No. 181559, October 2, 2009,

⁵ Entitled *Ma. Josefina M. Titong, Et Al., v. Hon. Conrado B. Nicart, Jr., Provincial Governor, Hon. Sheen P. Gonzales, Vice Governor and Sangguniang Panlalawigan Members: Hon. Jojie N. Montallana, Hon. Aldwin U. Aklao, Hon. Celestino A. Cabato, Hon. Floro Balato, Sr., Hon. Byron M. Suyot, Hon. Gorgonio B. Cabacaba, Hon. Jonas B. Abuda, Hon. Enerio M. Sabulao, Hon. Jenny Baldono, Hon. Beatriz Lopez-Reyes, Ex-officio Members: Hon. Sol Angelie E. Libanan, Hon. Mark Pol P. Gonzales, Hon. Welgielyn A. Acol, Provincial Budget Officer or OIC/ICO, Provincial Accountant, Provincial Treasurer or ICO, All of the Province of Eastern Samar*.

⁶ Rollo, p. 44.

deliberate act of forum shopping is punishable by summary dismissal of the actions filed; and (d) the action is already moot and academic as regards petitioner's co-respondents thereat since they are being compelled to do an act that has already been done.⁷

CA Ruling in CA-G.R. SP No. 119975

On July 3, 2012, with Civil Case No. 4236 still pending, the CA rendered a Decision⁸ in CA-G.R. SP No. 119975 granting the petition and ruling that respondents' appointments are not valid for having been issued in violation of CSC Rules and for failure to comply with the requisites set forth by jurisprudence.⁹ Consequently, the CA held, respondents can no longer claim entitlement to the payment of their salaries from the government and that it is the appointing authority who shall be personally liable for their salaries, as directed by Section 4, Rule VI of the Revised Omnibus Rules on Appointments and Other Personnel Actions which states:

Sec. 4. The appointing authority shall be personally liable for the salary of the appointees whose appointments have been disapproved for violation of pertinent laws such as the publication requirement pursuant to RA 7041.

The *fallo* of the Decision reads:

WHEREFORE, in view of the foregoing, the petition is hereby **GRANTED** and the assailed Resolution No. 1100653 dated May 27, 2011 is set aside.

SO ORDERED.

Aggrieved, respondents sought recourse from this Court via a Rule 45 Petition docketed as G.R. No. 203835.¹⁰

The Court's Resolution in G.R. No. 203835

Prior to the RTC's resolution of the petition for mandamus, We denied the petition for review of the CA Decision via Our Resolution of February 27, 2013, ruling that there is no reversible error in the challenged decision to warrant the exercise of the Court's discretionary appellate jurisdiction, thereby affirming the CA's finding that respondents' appointments are invalid. Aggrieved, respondents sought reconsideration thereof.

⁷ Id. at 44-45.

⁸ Penned by Associate Justice Danton Q. Bueser, with the concurrence of Associate Justices Rosmari D. Carandang and Ricardo R. Rosario.

⁹ *Rollo*, p. 87

¹⁰ Entitled *Ma. Josefina C. Titong, et al. v. Conrado B. Nicart, Jr.*

RTC Decision in Civil Case No. 4236

Pending this Court's action on respondents' motion for reconsideration in G.R. No. 203835, the RTC, on April 11, 2013, rendered the assailed Decision¹¹ in Civil Case No. 4236 in favor of Titong and Abrugar, disposing of the case in this wise:

WHEREFORE, all the foregoing premises considered, the herein Petition for Mandamus is hereby GRANTED. The prayer of respondents in their Comment asking for the dismissal of this petition is hereby DENIED for lack of merit.

Accordingly, judgment is hereby rendered COMMANDING herein RESPONDENTS and the persons, officials or subordinates under their respective authorities, TO:

1. PAY IMMEDIATELY the salaries and other emoluments or benefits due to herein Petitioners MA. JOSEFINA C. TITONG and JOSELITO M. ABRUGAR, JR., as Human Resource Management Officer (HRMO), and Provincial Planning and Development Coordinator (PDDC), respectively, both Provincial Government Department Head (PGDH) of the Provincial Government of Eastern Samar, from their assumption to office on June 21, 2010 up to the present as they are both entitled to, now and in the future;
2. APPROPRIATE IMMEDIATELY the necessary funds therefore (sic), in case the appropriated funds therefore (sic) have either been reverted, realigned or otherwise exhausted or spent;
3. INCORPORATE IMMEDIATELY such funds if none, in the Annual Budget of the Province for now, and/or in the future as they may be entitled to;
4. GIVE IMMEDIATELY due or rightful recognition to [Titong and Abrugar] as the duly appointed [HRMO] and [PPDC], respectively, both [PPDH] and accord them and repose in them their corresponding duties, responsibilities, rights and privileges as such Department Heads or Officers per Civil Service Commission proper decision;
5. IMMEDIATELY, for nominal respondents, to allot, allocate, pass in audit or internal control and disburse the funds above-mentioned;
6. PAY IMMEDIATELY, for respondent [Nicart], in his personal capacity, the amount of ONE HUNDRED FIFTY (Php 150,000.00) PESOS each petitioner as nominal damages; the amount of FIFTY THOUSAND (Php 50,000.00) as attorneys fees; and the COSTS of suit.

x x x x

SO ORDERED.¹²

According to the RTC, the non-issuance by the CA of a restraining order or injunction restraining it from proceeding with Civil Case No. 4236, coupled with respondents' filing of a Rule 45 petition before this Court

¹¹ By Acting Presiding Judge Elvie P. Lim.

¹² *Rollo*, pp. 61-62.

(G.R. No. 203835) thereby staying the Decision of the CA which reversed the ruling of the CSC and declared respondents' appointment as invalid, results in the continued effectivity of the CSC Decision in respondents' favor.¹³ Furthermore, the RTC held that this is consistent with Section 82 of the Uniform Rules on Administrative Cases in Civil Service (CSC Memorandum Circular No. 19, s. 1999; CSC Resolution No. 99-1936 dated August 31, 1999), which states that "[t]he filing and pendency of a petition for review with the [CA] or certiorari with the [SC] shall not stop the execution of the final decision of the Commission, unless the Court issues a restraining order or an injunction."¹⁴

Their motion for reconsideration¹⁵ having been denied,¹⁶ petitioner now seeks recourse from this Court by way of the instant petition presenting the following issues:

- I. The Court of Appeals Sixth Division ruled that herein respondents' appointment are (sic) not valid and they are not entitled to claim salaries from the government. The Supreme Court affirmed the Court of Appeals Decision. Did the court a quo gravely err in granting herein respondents' petition for mandamus?
- II. Having been made aware of the Court of Appeals' Decision reversing the Civil Service Commission Resolution, did the court a quo gravely err in enforcing the Decision of the Civil Service Commission?
- III. With the recent Resolution of the Supreme Court which affirmed the Decision of the Court of Appeals, can the petition validly refuse to comply with the court a quo's writ of mandamus? Will such refusal constitute contempt?¹⁷

The Court's Resolution in G.R. No. 203835 denying Reconsideration of the February 27, 2013 Resolution

Meanwhile, on February 10, 2014, We issued a Resolution affirming our February 27, 2013 Resolution where We upheld the finding of the CA that the appointments of herein respondents are invalid, thereby resolving with finality G.R. No. 203835 and writing finis to the question on the status of their appointment.

The Issue

The core issue for the Court's resolution is whether or not the enforcement of the Decision of the CSC upholding the legality of respondents' appointment remains to be proper considering Our affirmation of the invalidity thereof in Our Resolutions of February 27, 2013 and February 10, 2014.

¹³ Id. at 50.

¹⁴ Id. at 50-51.

¹⁵ Dated April 26, 2013.

¹⁶ Per Omnibus Order dated June 20, 2013.

¹⁷ *Rollo*, p. 11.

Our Ruling

The petition is meritorious.

The central foundation for the RTC's continuation of the proceedings in Civil Case No. 4236 and the rendering of the assailed Decision, among others, is Section 82 of CSC Memorandum Circular No. 19, s. 1999.¹⁸ Said provision states that the filing and pendency of a petition for review with the [CA] or certiorari with the Supreme Court shall not stop the execution of the final decision of the Commission unless the Court issues a restraining order or an injunction. This, coupled with the non-issuance by the CA of an injunction or restraining order upon CSC Resolution No. 1100653, and its opinion that the CA's decision in CA-G.R. SP No. 119975 will not constitute *res judicata* or in any way affect the petition for mandamus considering that the reliefs sought were allegedly not founded on the same facts, convinced the trial court that there is sufficient basis to grant the petition and issue a writ of mandamus compelling petitioner, among others, to acknowledge respondents' appointment and to pay the salaries and emoluments due them.

Ordinarily, the non-issuance by the CA of an injunction or restraining order would make the CSC Resolution executory pending appeal per Section 82 of CSC Memorandum Circular No. 19, s. 1999, making it a proper subject of a petition for mandamus. However, what the RTC failed to take into account is the fact that the propriety of the very directives under the writ of mandamus sought is wholly reliant on the CA's resolution of CA-G.R. SP No. 119975 and that judicial courtesy dictates that it suspend its proceedings and await the CA's resolution of the petition for review.

When the RTC rendered the assailed Decision, it was well aware of the pendency of CA-G.R. SP No. 119975 the subject of which is the reversal and setting aside of the CSC's affirmation of respondents' appointments, embodied in the very Resolution which respondents seek to be enforced in the petition for mandamus. Nevertheless, the trial court, implying that the petition for review pending before the CA will not, in any way, affect or be affected by the petition for mandamus, held that "such review of the [CA] deals primarily with the validity or invalidity of the alleged midnight appointments x x x,"¹⁹ as opposed to the petition before it which only seeks the enforcement of the CSC's Resolution. It then went on to state that "the ground relied upon by [petitioner] is the mere fact that [respondents'] appointments were allegedly a 'midnight appointments' (sic) which the [CSC], however, ruled out to be devoid with (sic) merit. The prohibition under Article VII, Section 15 of the Constitution, it must be noted, applies only to presidential appointments, but not to local appointments, like in this case. This is true even if the grounds relied [upon] by [petitioner] are with

¹⁸ Uniform Rules on Administrative Cases in Civil Service.

¹⁹ *Rollo*, p. 51.

respect to CSC Circulars and/or Memorandum, Resolutions, Laws, Rules, and Regulations relative to the civil service.”²⁰

Furthermore, the trial court held that it is an accepted principle that “quasi-judicial bodies like the Civil Service Commission are better-equipped in handling cases involving the employment status of employees as those in the Civil Service since it is within the field of their expertise”²¹ and that “the appointments of [respondents] having been accepted by them and in fact assumed office[,] shall remain in force and in effect until disapproved by the [CSC], the only office who has the authority to recall such appointments by [respondents].”²²

To cap it all off, the trial court issued the writ of mandamus and directed petitioner, among others, to immediately pay respondents’ salaries, emoluments, and other benefits due them *by virtue of the positions to which they were appointed to*, and to *recognize the validity of their appointments*, among others.

In this regard, the Court has, in several cases, held that there are instances where, even if there is no writ of preliminary injunction or temporary restraining order issued by a higher court, it would be proper for a lower court or court of origin to **suspend its proceedings on the precept of judicial courtesy**.²³ Unfortunately, the RTC did not find the said principle applicable in Civil Case No. 4236 as it disregarded the fact that there is an intimate correlation between the two proceedings—though technically no prejudicial question exists as it properly pertains to civil and criminal cases.²⁴

To Our mind, considering that the mandamus petition heavily relies on the validity or invalidity of the appointments which issue is to be resolved by the CA, the court a quo incorrectly concluded that it may take cognizance of the petition without erroneously disregarding the principle of judicial courtesy. What is more, the RTC went beyond the issues of the case when it affirmed the validity of respondents’ appointments, considering that the only issue presented before it is the propriety of executing CSC Resolution No. 1100653 through a writ of mandamus despite the pendency of CA-G.R. SP No. 119975.²⁵ By making said findings, conclusions, and directives, the RTC, in effect, affirmed the CSC’s finding that the disputed appointments were valid, pre-empted the CA’s Resolution of the appeal, and made its own

²⁰ Id. at 51-52.

²¹ Id. at 53.

²² Id. at 54.

²³ *De Leon v. Public Estates Authority*, G.R. No. 181970, August 3, 2010, 626 SCRA 547, 562.

²⁴ See *Quiambao v. Osorio*, No. L-48157, March 16, 1988, 158 SCRA 674, 678. [The actions involved in the case at bar being respectively civil and administrative in character, it is obvious that technically, there is no prejudicial question to speak of. Equally apparent, however, is the intimate correlation between said two [2] proceedings, stemming from the fact that the right of private respondents to eject petitioner from the disputed portion depends primarily on the resolution of the pending administrative case. x x x Whether or not private respondents can continue to exercise their right of possession is but a necessary, logical consequence of the issue involved in the pending administrative case x x x.]

²⁵ *Rollo*, p. 47.

determination thereon, despite the non-presentation of said question before it and the pendency thereof before the CA. And all of this was made under the pretext of enforcing CSC Resolution No. 1100653 via a writ of mandamus.

Nevertheless, enforcement of the disputed CSC Resolution is no longer proper and necessary in light of Our Resolutions dated February 27, 2013 and February 10, 2014, affirming the CA's ruling that respondents' appointments were not valid, making the issue on the propriety of enforcing the CSC Resolution pending appeal, moot and academic.

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical value. As a rule, courts decline jurisdiction over such case, or dismiss it on ground of mootness.²⁶ Whatever judgment is reached, the same can no longer have any practical legal effect or, in the nature of things, can no longer be enforced.²⁷

Here, the supervening event contemplated is Our issuance of two minute resolutions—one denying the petition, and the second denying reconsideration thereof—thereby affirming CA's finding against the validity of respondents appointments and effectively reversing the RTC's affirmation of the CSC's findings. It is well to note that although contained in a minute resolution, Our dismissal of the petition in G.R. No. 203835 was definitely a disposition of the merits of the case and constituted a bar to a relitigation of the issues raised there under the doctrine of *res judicata*. When we dismissed the petition and denied reconsideration thereof, we effectively affirmed the CA ruling being questioned.²⁸

Having written *finis* to the issue of whether respondents' were validly appointed or not, the mandamus now has no basis upon which its issuance can be anchored under the principle of *res judicata* by conclusiveness of judgment.²⁹

WHEREFORE, premises considered, the instant petition is hereby **GRANTED**. The Decision dated April 11, 2013, the Order dated June 20, 2013, and the writ of mandamus dated April 16, 2013, all issued by the Regional Trial Court, (RTC) Branch 2 of Borongan City, Eastern Samar in Civil Case No. 4236, entitled *Ma. Josefina M. Titong, et al. v. Hon. Conrado B. Nicart, Jr., et al.* are hereby **ANNULLED** and **SET ASIDE**.

No pronouncement as to costs.

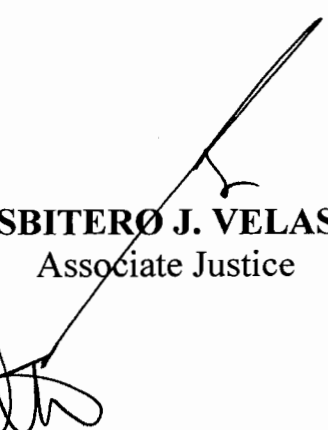
SO ORDERED.

²⁶ *Gunsi, Sr. v. Commissioners, The Commission on Elections*, G.R. No. 168792, February 23, 2009, cited in *Mendoza v. Villas*, G.R. No. 187256, February 23, 2011, 644 SCRA 347, 356-357.

²⁷ *Mendoza v. Villas*, G.R. No. 187256, February 23, 2011, 644 SCRA 347, 357, citing *Fernandez v. Comelec*, G.R. No. 176296, June 30, 2008.

²⁸ See *Del Rosario, Jr. v. People*, G.R. No. 143419, June 22, 2006, 492 SCRA 170, 177.

²⁹ *Sps. Rasdas v. Estenor*, G.R. No. 157605, December 13, 2005, 477 SCRA 538.


PRESBITERO J. VELASCO, JR.
Associate Justice

WE CONCUR:


DIOSDADO M. PERALTA
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


BIENVENIDO L. REYES
Associate Justice

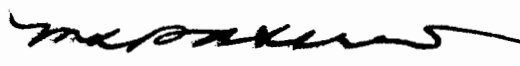
ATTESTATION

I attest 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.


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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