

**GREGORIO LOBETE, PETITIONER, VS. HON. CARLOS SUNDIAM,
COURT OF FIRST INSTANCE OF MANILA, BRANCH XXVIII, THE
CHAIRMAN AND BOARD OF ADMINISTRATORS, PHILIPPINE
VETERANS ADMINISTRATION...**

G.R. No. L-38278. June 28, 1983

Ponente: DE CASTRO, J.

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DE CASTRO, J.:

For failure of petitioner to perfect his appeal within the reglementary period, the present petition for certiorari was filed seeking nullification of respondent court's Order dated December 14, 1973 disapproving the record on appeal as well as the Order dated February 21, 1973 dismissing the complaint for recovery of a sum of money on ground of prescription.

Herein petitioner, Gregorio Lobete, a bona fide USAFFE Veteran of World War II filed a complaint with the former Court of First Instance of Manila seeking the payment to him by the Philippine Veterans Administration, of salary differential pursuant to Republic Act No. 65. On June 30, 1972, the respondent court rendered a decision in favor of petitioner. Upon a motion for reconsideration filed by private respondents, respondent court reconsidered and reversed its decision and dismissed the case. It held that the cause of action over the claim of the petitioner for his monthly pension of P100.00 from July, 1957 and the additional monthly pension at the rate of P10.00 for each of his seven unmarried minor children had legally and factually accrued as of the approval of the last amendment of RA 65 on July 22, 1957; and that it appearing that this instant action was filed before this Court on December 24, 1971, the ten (10) year period within which to file an action upon an obligation claimed under the law, pursuant to Article 144 of the New Civil Code has long prescribed.

On March 29, 1973 petitioner filed a notice of appeal and a record on appeal. Private respondents filed an opposition to the record on appeal on grounds that it was not afforded at least five (5) days from receipt within which to oppose the same in accordance with Section 7, Rule 41 of the Rules of Court, and that said record on appeal failed to include material parts of a pleading and orders of the court.

On March 31, 1973 respondent court issued an order approving the record on appeal prompting private respondents to file a motion for reconsideration. On May 5, 1973 respondent court reconsidered and set aside its previous order of March 31, 1973 and set the case for hearing on May 26, 1973. After hearing, the lower court issued an order dated May 26, 1973 requiring petitioner to amend the record on appeal and to incorporate therein certain pleadings and orders. Petitioner received the order on May 30, 1973.

On November 14, 1973 or five and a half (5 1/2) months later, petitioner filed a supplemental record on appeal to which private respondents filed an opposition. On December 14, 1973, respondent court, after hearing, disapproved the record on appeal as well as the supplemental record on appeal for having been filed out of time and for non-compliance with the court's order.

Petitioner's motion for reconsideration having been denied, the present case was instituted claiming that the trial court committed grave abuse of discretion:

"1. . . . in giving due course to, instead of denying, respondents' motion for reconsideration of the decision in the case in favor of the petitioner, which motion was fatally defective but later surreptitiously corrected under dubious circumstances;

"2. . . . in reversing its well-reasoned decision of June 20, 1972, and ordering the dismissal of the case on a different and surprising ground of prescription which issue was never seriously raised at the start, but as a matter of fact was deemed excluded or waived at the pre-trial;

"3. . . . in disapproving plaintiff-appellant's record on appeal on ground of sheer form and technicality at the expense of substantive justice;

"4. . . . in not upholding its decision of June 20, 1972, in the case which is in conformity with law and the evidence, and in accord with the applicable rulings of the Supreme Court in the similar veterans cases of Begosa vs. PVA, 32 SCRA 466 and Teoxon vs. PVA, 33 SCRA 585."

At the outset, it should be underscored that petitioner failed seasonably to perfect his appeal. In an order dated May 26, 1973, the court a quo required petitioner to amend the record on appeal which order was received by petitioner on May 30, 1973. No period was set by the lower court for the submission of an amended record on appeal. However, Section 7, Rule 141 of the Rules of Court is explicit on the period within which a party should submit an amended record on appeal. Thus, said section provides:

". . . If the trial judge orders the amendment of the record, the appellant, within the time limited in the order, or such extension thereof as may be granted, or if no time is fixed by the order within ten (10) days from receipt thereof, shall redraft the record by including therein, in their proper chronological sequence, such additional matters as the court may have directed him to incorporate, and shall thereupon submit the redraft record for approval, upon notice to the appellee, in like manner as the original draft."

Pursuant to the above provision, petitioner had only ten (10) days, or until June 9, 1973, to file an amended record on appeal. However, he filed a supplemental record on appeal only on November 4, 1973 or five and a half (5 1/2) months thereafter. Hence, the lower court properly disapproved the same in its order dated December 14, 1973, because petitioner's failure to take the necessary steps for the amendment of the record on appeal within the time prescribed by the rules is one of the grounds for the dismissal of an appeal.[1]

In the present petition, petitioner has dwelt at length into the merits of the case which is not in issue as this is a petition for certiorari and not an appeal, for which reason the same cannot be entertained. Settled is the rule that the writ of certiorari may not be availed of to make up for the loss, through omission or oversight, of the right to appeal.[2] Petitioner was not denied or deprived of the right to appeal as he was ordered by the court a quo to file an amended record on appeal. However, he complied with said order after a lapse of five and one half (5 1/2) months, hence he lost his right to appeal due to his own fault for which he alone is to blame. Time and again We have dismissed petitions for certiorari to annul decisions or orders which could have, but have not, been appealed.[3]

In view of the foregoing, the instant petition for certiorari is hereby dismissed. No costs.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., Guerrero, Abad Santos and Escolin, JJ., concur.

[1] Section 13, Rule 41, Rules of Court.

[2] Ago vs. Bushon, 10 SCRA 202.

[3] Republic vs. Maglanoc, 16 SCRA 724.

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