

**BEATRIZ C. ARAGONES, ET AL, PETITIONERS-APPELLANTS, VS.
ABELARDO SUBIDO, ACTING CIVIL SERVICE COMMISSIONER,
RESPONDENT-APPELLEE.**

G.R. No. L-24303. September 23, 1968

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Revolving around this appeal are the following facts:

Petitioners, 63 in number,[1] are first-grade civil service eligibles under Republic Act 1080, as amended by Republic Act 1844, duly accredited as such. They are certified public accountants except for four[2] who are both certified public accountants and members of the Philippine Bar.

Petitioners were, sometime in 1963, extended permanent appointments by the Auditor General, some as auditors, others as supervising auditors. These appointments were either original or promotional.

Petitioners' appointment papers were forwarded to respondent Acting Civil Service Commissioner for attestation. The hitch came when the latter refused to so attest. Instead, he declared that he was willing to approve the appointments as "provisional" only under Section 24(c) of the Civil Service Act.

The controversy actually started with the question as to whether lawyers are eligible to the positions of auditors and supervising auditors. Respondent Commissioner opined that they are not. Contending that they are, the Auditor General sent a communication dated May 3, 1963 to respondent Commissioner. The former submitted therewith his memorandum of April 25, 1963 setting forth at length the justification for his view that lawyers are eligible. Respondent Commissioner, on September 2, 1963, disagreed.[3] On October 8, 1963, the Auditor General elevated the matter to the President of the Philippines for resolution. The Office of the President referred back the question to the Commissioner, who, by his 2nd indorsement of July 31, 1964, not only reiterated the opinion he expressed on September 2, 1963 but added:

"It is clear from the above that the appropriate examination for the position of Auditor is the Auditor examination and no other. This is also borne out by the actual survey and evaluation of functions of the said position. In view thereof, this Office will no longer recognize the first grade, senior teacher, junior teacher, CPA or any other eligibility appropriate for the position of Auditor. For supervising positions in the Auditing service, the supervising auditor's eligibility shall be considered the appropriate eligibility."[4]

Then came respondent Commissioner's announcement of September 8, 1964 that there would be qualifying examinations for auditing examiner and auditor on January 16, 1965, with the deadline for filing applications on November 27, 1964.

On November 25, 1964, two days before the aforesaid dead-line for filing applications, petitioners went to the Court of First Instance of Manila on mandamus and prohibition with preliminary injunction, naming the Commissioner as respondent.[5] They there alleged, amongst others, that by Republic Act 2716, appoint-ments

by the Auditor General are not to be subject to approval or review by any one, except that such appointments should be attested only by respondent Commissioner; and that the acts of said re-spondent in reference to their appointments were "not only illegal and arbitrary, but also done in bad faith in direct violation of petitioners rights." [6] The reliefs specifically sought by petitioners were: (1) to declare respondent Commissioner without authority to act as he did or to do the threatened acts complained of; (2) to nullify their provisional appointments and compel re-spondent Commissioner to attest to their permanent appointments; (3) to hold that lawyers and certified public accountants are eligible to petitioners' positions; (4) to enjoin respondent Commissioner from forcing petitioners and all those similarly situated to take the qualifying examinations scheduled on January 16, 1965; and (5) to order respondent Commissioner to pay petitioners the sum of P10,000.00 as damages by way of attorneys' fees.

On December 18, 1964, the Solicitor General, for and in behalf of respondent Commissioner filed, instead of an answer to the petition, a "Manifestation and Motion to Declare Case as Moot". Basis therefor was respondent Commissioner's Memorandum Circular dated December 14, 1964. It reads in pertinent part:

"In view thereof and as there is no register of auditor eligibles available, the Bar, CPA and First Grade eligibilities are hereby considered as the most nearly appropriate eligibilities for the position of auditor and supervising auditor.

Wherefore, incumbent auditors and supervising auditors and those who may be appointed as auditors and supervising auditors prior to the establishment of the civil service register for auditors, and who possess any of the said eligibilities (Bar, CPA and First Grade) may receive permanent appointments as auditors or supervising auditors, as the case may be, subject to the provisions of the Civil Service Law and rules on appointments.

However, upon the establishment of an appropriate register of auditor eligibles, no appointment or promotion as auditor or super-vinging auditor may be allowed as permanent unless the appointee concerned is an auditor eligible. In other words, while the permanent status of those who hold the most nearly appropriate eligibility will be respected as regards their positions as of the date prior to the estab-lishment of the register, they may no longer be promoted as auditor or supervising auditor, either in salary or position thereafter unless they have qualified in the Auditor examination.

Finally, this Office does not compel incumbents of auditor and supervising auditor positions to take the Auditor examination. In view, however, of the mandatory provisions of the Civil Service Law and considering this Memorandum Circular, and the fact that those entitled to the qualifying examination for auditor are given a maximum rating of 50% for their satisfactory training and experience, it is urged that they take the said examination. For their benefit, the deadline for the submission of appli-cations for the Auditor examination is hereby extended up to December 29, 1964." [7]

Permanent appointments, as sought by petitioners, were then given to them.

On January 6, 1965, petitioners registered written opposition. Their legal prop is that said Memorandum Circular "has not resolved the legal issues raised in the instant case." The Solicitor General replied to the opposition.

On January 11, 1965, the court below dismissed the case as moot "since there is no more controversy between the parties."

Petitioners' attempt, by its February 1, 1965 motion, to have the court's decision of January 11 reconsidered was blocked by the Solicitor General's opposition of February 5. And the court, on February 12, refused reconsideration.

Petitioners now come to this Court on appeal.

1. Left unresolved, according to petitioners, is the scope and extent of the authority of the Auditor General to make appointments. For, while the Civil Service Act (Republic Act 2260) gives the Commissioner of Civil Service power to approve appointments, Republic Act 2716 (An Act to insure the Independence of the General Auditing Office) states in specific terms in its Section 1 that "[t]he appointments of the subordinate officials and employees of the General Auditing Office x x x shall be made by the Auditor General in accordance with the Civil Service Law but shall not be subject to the approval or review of any other official, board, commission or executive office as a prerequisite for the payment of their salaries: Provided, That such appointments shall be submitted to the Bureau of Civil Service for attestation x x x." [8] Petitioners would want to bring home the point that the memorandum circular itself is indicative of the fact that respondent Commissioner exercises acts of approval, not merely of attestation.

We find that the views just articulated are - at present - less than compelling. Whether respondent Commissioner attested or approved petitioners' permanent appointments, the unadulterated fact is that the Commissioner gave his nod to and recognized their appointments. He has removed the obstacle he first put up astride petitioners' route to secure permanent appointments. Petitioners now hold their positions in a permanent capacity. If, indeed, the Commissioner approved petitioners' appointments, rather than merely attest to them, we see no resulting prejudice to petitioners. We perceive of no further gripe on this point.

Any resolution of this issue is thus pure academic exercise. [9]

2. Another issue petitioners seek to keep alive is: "Should a CPA whose eligibility has been converted into first grade under Republic Act 1080, take an auditor examination for the position of auditor and supervising auditor?" [10]

Appropriately to be recalled is that the case now on appeal is one for mandamus and prohibition with preliminary injunction. Petitioners' purpose in seeking the extraordinary writs is to compel respondent Commissioner to allow their permanent appointments and to enjoin the latter from compelling them to take the qualifying examinations on January 16, 1965.

As heretofore stated, petitioners' appointments in question have already been made permanent without the prerequisite of petitioners' passing any examination. No justifiable controversy on this score exists.

Besides, any relevance now of the qualifying examinations would be with respect to future appointments of petitioners, which, for one reason or another, may not even happen at all.

Nonetheless, even if we close our eyes to this circumstance, one supervening event should deter us now from prohibiting or enjoining the holding of the examinations. And this is the fact that the qualifying examinations - for auditing examiner and auditor - sought to be enjoined were actually conducted by respondent Commissioner on February 28, 1965. This is of public knowledge, borne out by public records. [11] We are thus left under no doubt as to the applicability here of the principle that when the events sought to be prevented by injunction or prohibition have already happened, nothing more could be enjoined or prohibited. Because nothing more could be done in reference thereto. [12]

3. There remains for consideration petitioners' argument that the prayer in their petition for damages in the form of attorneys' fees saves the case below from summary dismissal.

The question of damages - by way of attorneys' fees - was brought by petitioners to the attention of the trial court in their opposition to the Solicitor General's motion to dismiss the case as moot. In granting the motion to dismiss, the court passed this question sub-silentio. And with reason. Bad faith was alleged in the petition herein merely in conclusionary terms. There were no specifications. [13] This on the one hand. On the other, the reason for the suit has ceased to exist. All incidents relative thereto including the prayer for attorneys' fees should be considered ipso

facto extinguished with it.[14] No compelling reason exists why we should hold the contrary.

In fine, we say that since the question of attorneys' fees was addressed to the sound discretion of the court we cannot so easily go forward with a declaration that the trial court was wrong.

4. Petitioners' final point is that, even if the case is moot and academic, public interest should justify a court ruling on the issues raised. And this, because they say that respondent Commissioner's acts are capable of repetition to the detriment of the smooth functioning of government. They cite authorities.[15]

We need but state here that under the circumstances, we find no element of pressing urgency; and, we have not been shown any, to induce a decision on the merits. The general rule has always been that courts cannot furnish answers to purposeless questions that do not exist.[16] Even in cases of declaratory relief, there must be an actual and justifiable, not merely theoretical, controversy.[17]

In the face of respondent Commissioner's decision to give petitioners permanent appointments at first refused, and the qualifying examinations sought to be enjoined having already taken place, we remain unwilling to go along with the suggestion that we should take this case out of the reach of the general rule just adverted to. For, it is not altogether clear whether there exists such a paralyzing friction between the government agencies here involved that demands the intervention of courts of justice. In fact, no act or conduct of respondent inimical to petitioners' present interests after he gave the examinations of February 28, 1965, was ever drawn to our attention.

For the reasons given, the lower court's orders of January 11, 1965 dismissing the case, and of February 12, 1965 denying reconsideration, are hereby affirmed.

No costs allowed.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Angeles, and Fernando, J.J., concur.

[1] Beatriz C. Aragonés, Florentino R. Arcega, Sergio A. Barot, Rafael G. Binaday, Asuncion M. Burgos, Amado C. Butawan, Charito C. Cacal, Leona T. Calantuan, Carmencita P. Carreon, Milagros H. Caliwag, Natividad L. Cleofe, Felisa S. Constantino, Ricardo V. Cortes, Leonardo M. Crisostomo, Edita A. de la Cruz, Felicitas G. Cruz, Ma. Lourdes G. de Leon, Melitona G. de Leon, Renato M. de Leon, Edna B. de Vera, Milagros M. del Castillo, Louisiana P. Diza, Estela V. Domantay, Alberto Ramon M. Dominguez, Soledad B. Donato, Alejandro C. Duzon, Romanita P. Ebro, Carmen T. Espiritu, Daria S. Fajardo, Eufrosina S. Fajardo, Ma. Athena C. Flores, Isagani A. Francisco, Elisa Gervasio, Edmundo V. Hernandez, Emmanuel J. Jaena, Efren L. Javier, Ernestina G. Job, Leticia S. Landas, Rafael B. Lawenko, Renato D. Leveriza, Salvador Lintag, Alfredo B. Lising, Bernardo L. Mendoza, Normita B. Nazaire, Nenita H. Olaz, Bonifacio M. Ona, Carmelita B. Orbeta, Oliva G. Panaligan, Ligaya D. Pereña, Querubin S. Regala, Mercedes C. Romana, Emma T. Sakay, Manuel C. Samson, Brigido G. Sanchez, Teodoro J. Santiago, Bienvenido B. Sebastian, Marcos S. Segarra, Fidelina G. Sunio, Lolita L. Tabano, Gloria C. Tablante, Jose B. Tambaoan, Jr., Efren E. Velasco, and Adelaida I. Villanueva.

[2] Record, pp. 30, 50, 58, 72.

[3] Civil Service Opinions and Rulings, Volume IV, 1964. Annex C of Petition.

[4] Emphasis supplied.

[5] Civil Case 59125, "Beatriz C. Aragonés, et al., Petitioners, versus Abelardo Subido, Acting Civil Service Commissioner, Respondent".

[6] Par. XV, Petition.

[7] Emphasis supplied.

[8] Emphasis supplied.

[9] Remonte vs. Bonto, L-19900, February 28, 1966; Auyong Hian vs. Commissioner, L-23395, October 31, 1967; Vivo vs. Morfe & Pitcock, L-24510, December 18, 1967; Agawin vs. Cabrera, L-23885, April 25, 1968, citing cases.

[10] Appellants' Brief, p. 15.

[11] 1965-1966 Annual Report, Civil Service Commission.

[12] Manila Railroad Company vs. Yatco, L-23056, May 27, 1968, citing Villaseñor vs. Abaño, 1967C Philid. 882, 885 and cases cited.

[13] Rodriguez vs. Tan, 91 Phil. 724, 726; Remonte vs. Bonto, supra; Llanto vs. Dimaporo, L-21905, March 31, 1966, citing cases.

[14] See: Urdaneta Rural Bank vs. San Juan, L-28346, June 29, 1968.

[15] E.g. Rivera vs. Villegas, L-17835, May 31, 1962.

[16] Remonte vs. Bonto, supra, citing cases.

[17] 2 Martin, Rules of Court in the Philippines, 1964 ed., p. 467, citing authorities.

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