

MA. LORNA P. DEMONTEVERDE, PETITIONER, VS. GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), BOARD OF TRUSTEES MA. CRISTINA V. ASTUDILLO, RESPONDENTS.

Ponente: LAGURA-YAP, J.

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LAGURA-YAP, J.:

This is a Petition for Certiorari, Mandamus, and Prohibition[1] under Rule 65 of the 1997 Rules of Civil Procedure seeking to modify and to set aside the Decision in GSIS Case No. 009-12 dated October 10, 2013 and the Resolution No. 12 dated February 13, 2014.

At the onset, We find that the course of action taken by petitioner was erroneous. The assailed decision and resolution was issued by the Government Service Insurance System (GSIS). As provided by Section 1[2], Rule 43 of the 1997 Rules of Civil Procedure, the proper mode of appeal from the decision of a quasi-judicial agency, like the GSIS, is a petition for review filed with the Court of Appeals. The special civil action of certiorari under Rule 65 of the Rules of Court may be resorted to only when any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.

In this case, petitioner had the remedy of appeal provided under Rule 43 thereof. In *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*[3] is quite instructive in that:

Where appeal is available to the aggrieved party, the action for certiorari will not be entertained. Remedies of appeal (including petitions for review) and certiorari are mutually exclusive, not alternative or successive. Hence, certiorari is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of certiorari is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, certiorari will not prosper, even if the ground therefor is grave abuse of discretion.

The Court is aware of instances when the special civil action of certiorari may be resorted to despite the availability of an appeal, such as when public welfare and the advancement of public policy dictate; when the broader interests of justice so require; when the writs issued are null; and when the questioned order amounts to an oppressive exercise of judicial authority.[4] Clearly, the present circumstances in this case do not warrant the application of these exceptions to the general rule provided by Rule 43.

A further perusal of the petition, the Court notes the procedural defects as follows:

- a. Petitioner failed to incorporate therein a written explanation why the preferred personal mode of filing of the petition under Section 11, Rule 13 of the 1997 Rules of Civil Procedure[5] was not availed of.
- b. Petitioner failed to attach a clearly legible duplicate original or certified true copy of the assailed October 10, 2013 Decision, December 12, 2013 Order and February 13, 2014 Resolution of the GSIS, in violation of Section

3, Rule 46 of the 1997 Rules of Civil Procedure. While petitioner appended to the Petition copy of the assailed October 10, 2013 Decision and February 13, 2014 Resolution of the GSIS, they were mere photocopies. The assailed December 12, 2013 Order of the Hearing Officer of the GSIS, appears also to be a mere photocopy.

c. Petitioner failed to properly verify the Petition in accordance with A.M. No. 00-2-10-SC amending Section 4, Rule 7 in relation to Section 1, Rule 65 of the 1997 Rules of Civil Procedure which now requires that a pleading must be verified by an affidavit that the affiant has read the pleading and the allegations therein are true and correct of his personal knowledge or based on authentic records. Petitioner did not to incorporate in the Verification and Certification of Non-Forum Shopping the phrase “or based on authentic records.”

d. Petitioner failed to attach copies of all pleadings and documents, which are necessary for a thorough understanding and resolution of the instant Petition, such as, but not limited to, following[6]:

- Petitioner's July 28, 1995 letter to the GSIS requesting for a refund of her retirement premiums.
- Petitioner's February 11, 2011 and March 3, 2011 applications for claim of retirement benefits filed with the GSIS, Bacolod Branch.
- The October 14, 2011 letter of GSIS' Bacolod Branch Manager, Ms. Vilma Fuentes.
- Petitioner's November 28, 2011 letter to the GSIS requesting for a re-evaluation of her application for retirement benefits.
- Petitioner's Petition filed with the GSIS committee on Claims.
- The GSIS Committee on Claims' Answer to petitioner's Petition.
- The March 26, 2013 letter of the Public Attorney's Office (PAO Chief Administrative Officer.
- The July 23, 2013 and September 17, 2013 letters of the Office of the Court Administrator of the Supreme Court.

e. The Notarial Certificate in the Verification and Certification of Non-Forum Shopping and in the Affidavit of Service did not contain the province or city where the notary public was commissioned, the office address of the notary public, in violation of Section 2(c) and (d), Rule VIII of the 2004 Rules on Notarial Practice.

We resolve to apply Section 5[7], Rule 46 of the 1997 Rules of Civil Procedure and dismiss the instant Petition.

WHEREFORE, for the foregoing reasons, the Petition is hereby DISMISSED.

SO ORDERED.

Ingles,[*] and Lopez, JJ., concur.

[*] In lieu of Justice Edgardo L. Delos Santos who is on wellness leave per Office Order No. 13-14-GTI.

[1] Rollo, pages 3-18.

[2] Section 1. Scope. - This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (emphasis supplied)

[3] G.R. No. 156067, August 11, 2004, 43 SCRA 123, 136-137.

[4] Jan-Dec Construction Corporation v. Court of Appeals, G.R. No. 146818, February 6, 2006, 481 SCRA 556, 564. See also Sanchez v. Court of Appeals, G.R. No. 108947, September 29, 1997, 279 SCRA 547, 671.

[5] Rule 13 of the 1997 Rules of Civil Procedure

Section 11. Priorities in modes of service and filing. - Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

[6] Iligan Concrete Products v. Magadan, 157 SCRA 525 (1988), See also Oscar M. Herrera, Remedial Law, 2007 Edition, page 259, Vol. III, Rule 65,

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The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

[7] “Sec. 5. Action by the Court. - The court may dismiss the petition outright with specific reasons for such dismissal xxx”

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