

ARTEMIO B. PACANA, PETITIONER, VS. THE HONORABLE DAVID M. CONSUNJI, IN HIS CAPACITY AS SECRETARY OF PUBLIC WORKS, TRANSPORTATION AND COMMUNICATIONS, AND THE HONORABLE POSTMASTER...*G.R. No. L-41088. October 30, 1981*

Ponente: FERNANDO, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/6bc1b8181939/>**FERNANDO, C.J.:**

The authoritative force of *Antonio v. Tanco, Jr.*[1] calls for application in this certiorari and mandamus petition. It is essentially the latter proceeding as what is sought is the reinstatement of petitioner Artemio B. Pacana who, by virtue of a decision of the then respondent Secretary of Public Works, Transportation and Communications, David M. Consunji, was dismissed from the service on March 11, 1974. The allegations on their face more than suggested that petitioner was not on the best of terms with the then Postmaster General Enrico Palomar, resulting in the audit examinations not once but three times of his accountability as Acting Postmaster of Cagayan de Oro City.[2] On a charge of dishonesty for using a mail car personally, he was cleared by the then Secretary Baltazar Aquino.[3] He was, however, found guilty of the charge arising from the shortage in the funds, resulting in the order of dismissal.[4] He filed a motion for reconsideration but it was denied.[5] That led him to devote the matter through an appeal to the Civil Service Commission, and which appeal is still pending for consideration.[6] As was pointed out in the Comment of Solicitor General Estelito Mendoza, considered as the Answer, with the availability to petitioner of an adequate administrative remedy such as the appeal taken by him, this "civil action for certiorari and mandamus certainly will not lie." [7] The admission of the pendency of the appeal is thus fatal to petitioner's invocation of a judicial remedy at this stage. So the above-cited case of *Antonio v. Tanco, Jr.* ruled in language explicit and categorical: "As correctly observed by the Solicitor General, Antonio, by requesting the President to revoke Secretary Tanco's suspension order, precluded judicial intervention in his case while his request is pending consideration." [8]

It needs only to be pointed out that the formulation in the ponencia of Justice Aquino is a restatement of a well-settled doctrine. The reason is quite evident. It is true that the judiciary could be appealed to set aside or nullify official action that runs counter to a legal norm. So the rule of law prescribes. At the same time if a remedy may be afforded by the executive branch, with respect to matters peculiarly within its competence, it should be given the opportunity to correct the error or deficiency in the order or determination thus assailed. For one thing, it is in a much better position to set matters right. For another, it is likely to develop an orderly and efficient procedure as to such matters. The Antonio opinion thus finds support in a number of cases.[9] In the traditional administrative law terminology, the stage of ripeness for adjudication has not been reached.

An attempt, albeit unsuccessful, is made by petitioner to blunt the authoritative force of the Antonio ruling by alleging a procedural due process question. *Reyes v. Subido*[10] could then be relied upon to seek judicial relief without resorting to exhausting an obvious administrative remedy. As was made clear in *Reyes* from *Lacson v. Romero*[11] to *Cornejo v. Secretary of Justice*,[12] there are at least ten such decisions. It is not to be ignored,

however, that in Reyes, there was no appeal taken, the matter being brought to this Court immediately. There is another consideration that argues against a favorable outcome of this petition. In the decision of respondent Consunji dated March 11, 1974, it was specifically stated: "Formally charged with the aforecited offenses, respondent in each individual case elected a formal hearing which was granted. During the formal hearing, involving the amount of P58,681.72, it was established that respondent incurred the shortage." [13] In his motion for reconsideration dated April 26, 1974, he pointed out that the investigation had not as yet been terminated primarily because of the denial of the opportunity to him to confront the witnesses against him. When the said motion for reconsideration was denied on March 4, 1975, it was stated categorically by respondent Consunji "that facts and evidences on record undoubtedly indicate that he incurred the shortage of P58,681.72." [14] In the dispositive portion of such resolution, it was explicitly stated "that petitioner Artemio Pacana failed to submit any new and material evidence to warrant a modification of the decision sought to be reconsidered, [hence] the instant petition is hereby denied for lack of merit." [15] Such motion for reconsideration afforded him the opportunity to submit the evidence that would clear him of the charges of the shortage of funds but he failed to do so. Under the circumstances, and with the pendency of his appeal, this Court is of the opinion, as stated at the outset, that the petition cannot prosper.

WHEREFORE, the petition is dismissed for lack of merit.

Barredo, Aquino, Concepcion, Jr., Abad Santos, and De Castro, JJ., concur.

[1] L-38135, July 25, 1975, 65 SCRA 448.

[2] Amended Petition, pars. 6-8, 10-11.

[3] Ibid, pars. 5 and 12.

[4] Ibid, par. 14.

[5] Ibid, pars. 15 and 16.

[6] Ibid, par. 17. The paragraph reads in full: "On April 26, 1975, your petitioner filed his appeal to the Civil Service Com-mission, and which appeal is still pending for consideration. A copy of the said appeal is hereto attached, marked as Annex 'F' and made an integral part hereof but notwithstanding this pending appeal, your petitioner comes before this Honorable Tribunal to rest his cause."

[7] Comment of Solicitor General, 11. He was assisted by Assistant Solicitor General Alicia V. Sempio-Diy and Solicitor Edgardo L. Kilayko.

[8] 65 SCRA 448, 455.

[9] Cf. Ang Tuan Kai v. Import Control Commission, 91 Phil. 143 (1952); Santiago v. Cruz, 98 Phil. 168 (1955); Peralta v. Salcedo, 101 Phil. 452 (1957); Montes v. Civil Service Board of Appeals, 101 Phil. 490 (1957); Cruz v. Del Rosario, 119 Phil. 63 (1963); Gonzales v. Provincial Auditor of Iloilo, 120 Phil. 1508 (1964). These are the decisions cited by Justice Aquino.

[10] L-27916, August 21, 1975, 66 SCRA 203.

[11] 84 Phil. 740 (1949).

[12] L-32818, June 28, 1974, 57 SCRA 663.

[13] Annex C to Petition, 1.

[14] Annex E to Petition, 2.

[15] Ibid.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.