

NORBERTO DE LA REA, PETITIONER-APPELLEE VS. HON. ABELARDO SUBIDO, IN HIS CAPACITY AS CIVIL SERVICE COMMISSIONER, AND HON. JOSE D. CALDERON, GENERAL MANAGER, NATIONAL MARKETING C...*G.R. Nos. L-26082, L-27246 & L-27248. March 01, 1968*

Ponente: DIZON, J.

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The origin and cause of the three cases subject of this joint decision was a subpoena duces tecum issued by the Commissioner of Civil Service and served upon Norberto de la Rea — at the time Auditor of Pasay City — in connection with the investigation of the irregular payment of salaries to some city policemen whose appointments had already lapsed. As De la Rea refused or otherwise failed to comply with the process, on September 9, 1963 Atty. Felimon U. Fernandez, Jr., of the Civil Service Commission, filed administrative charges against him (Administrative Case No. R-28684) for (a) gross misconduct in office (disobedience to the subpoena duces tecum) and (b) willful violation of the Civil Service Act and Rules. The committee appointed by the Auditor General to make a formal investigation of the charges submitted on June 4, 1965 its report recommending De la Rea's exoneration. On July 5 of the same year, the Deputy Auditor General transmitted the report, with his indorsement concurring with the findings and recommendations therein contained, to the Commissioner of Civil Service, but on November 16, 1965, the latter rendered his decision finding De la Rea guilty of gross-misconduct in office, and ordering his suspension, without pay, for six months effective upon notice of the decision. De la Rea did not appeal, as he could have done, to the Civil Service Board of Appeals (Sees. 18 and 36, Civil Service Law, R. A. 2260).

On June 30, 1964, that is, while the administrative charges mentioned heretofore were still pending investigation, Auditor General Jimenez extended a promotional appointment in favor of De la Rea as Auditor of the National Marketing Corporation (NAMARCO), at P15,600 per annum, effective August 1, 1964, by way of promotion from City Auditor of Pasay City at P11,400 per annum. Although the appointment was not submitted to the Commissioner of Civil Service for approval and/or attestation, De la Rea assumed office and received the corresponding salary.

On January 25, 1965, the same Auditor General extended another promotional appointment in favor of De la Rea as Corporate Auditor of NAMARCO, this time with a compensation of P26,400 per annum, to take effect retroactively as of August 1, 1964 - like the previous appointment - as an exception to the provisions of Section 256 of the Revised Administrative Code, by way of adjustment of salary from - P15,600 per annum for the same position.

On June 22, 1965, the Commissioner of Civil Service disapproved the last promotional appointment just mentioned, mainly on these grounds: firstly, because the promotion from Pasay City Auditor at P11,400 [or P15,600 per annum] to Corporate Auditor of NAMARCO at P26,400 per annum violated the Civil Service Law

and Rules in that it bypassed the Assistant Auditor of the NAMARCO and other ranking corporate auditors and the salary for the position exceeded that of the Assistant Manager of NAMARCO - P15,600 per annum - in contravention of the provisions of Republic Act No. 2260; and secondly, because De la Rea was still facing administrative charges.

Correlating his decision of November 16, 1965 finding De la Rea guilty of gross misconduct in office, with the disapproval of De la Rea's appointment as Auditor of NAMARCO contained in his decision of June 22 of the same year, the Commissioner of Civil Service said the following, *inter alia*, in the dispositive portion of the former:

“Since respondent De la Rea continues to render service in the NAMARCO and has been paid his salary despite the disapproval of his appointment by this Office, the General Manager and the Disbursing Officer of said corporation are hereby enjoined not to allow respondent to discharge the duties of Auditor of NAMARCO and to stop payment of his salary, upon receipt of this decision.” (Annex D, Petition, p. 23, rec.)

Civil Case No. 63551 (G. R. L-26082)

As a result, on December 7, 1965 De la Rea filed with the Court of First Instance of Manila an action for prohibition (Civil Case No. 63551) against the Commissioner of Civil Service and the General Manager of NAMARCO, to secure judgment declaring: (a) that the Commissioner of Civil Service had no disciplinary jurisdiction over him; (2) that said respondent's decision of November 16, 1965 suspending him from office was null and void; and (3) prohibiting the respondents named in the complaint from taking any further proceeding in the administrative complaint against him and ordering them to pay the sum of P5,000 as attorney's fees, with costs.

On December 8 of the same year, deciding De la Rea's motion for the issuance of a writ of preliminary injunction, the Court ordered the respondents in the case to maintain the status quo and to refrain from executing the questioned decision of the Commissioner of Civil Service until further orders from the court, and they were further required to answer the petition within ten days. This they did.

The answer filed by the Commissioner of Civil Service alleged that: (a) De la Rea had failed to exhaust all available administrative remedies, such as an appeal to the Civil Service Board of Appeals, before going to court; (b) the Commissioner of Civil Service had authority to decide the administrative charges against De la Rea, pursuant to the provisions of Sections 16 (i) and 33 of the Civil Service Law, and to order the immediate execution of his decision; and (c) De la Rea was not entitled to the remedies prayed for because there was no showing made that he would suffer irreparable injury.

At the hearing of the case, the parties submitted it for decision on the pleadings after the filing of their respective memorandum.

On March 7, 1966 the Court - through respondent judge Area — rendered its decision declaring, *inter alia*, that De la Rea was the rightful and legal Corporate Auditor of the NAMARCO; that the decision of respondent Commissioner of Civil Service was null and void for lack of jurisdiction and abuse of discretion, and permanently restraining him and his co-respondent from enforcing the same.

Respondents appealed and the case is now before Us as G. R. No. L-26082, the brief submitted by the General Manager of NAMARCO submitting the following as errors of the trial court:

"I. The lower court erred in not holding that it does not have jurisdiction or authority to adjudicate or decide on the validity or legality of De la Rea's appointment at P26,400 per annum as it was not pleaded or raised as an issue.

"II. Assuming *arguendo* that the lower court had jurisdiction and authority to decide on the legality of the appointment at the rate of P26,400 per annum the lower court erred in not holding that the appointment was void in the light of Rep. Act No. 2260."

On the other hand, the brief submitted by the Solicitor General on behalf of the respondent Commissioner of Civil Service alleges that the trial court committed the following errors:

"I. The lower court erred in ruling that the 'facts charged and proven in the administrative case against the herein petitioner does not constitute misconduct warranting his suspension from office.'

"II. The lower court erred in ruling that the decision of the Commissioner of Civil Service-suspending petitioner from office without pay for six (6) months-for the offense of gross misconduct in office as Pasay City Auditor, is null and void.

"III. The trial court erred in ruling that petitioner's appointment as Corporate Auditor, National Marketing Corporation, is valid and legal notwithstanding that this suit is limited to petitioner's administrative liability in his capacity as Pasay City Auditor.

"IV. The lower court erred in declaring that petitioner is the rightful and legal Corporate Auditor, National Marketing Corporation, a declaration outside the issue raised by the instant suit, hence, irrelevant here.

"V. The lower court erred in ruling that the Commissioner of Civil Service 'has no authority to disapprove appointments extended by the Auditor General.'

"VI. The lower court erred in ruling that the Commissioner of Civil Service has no disciplinary jurisdiction over petitioner as Corporate Auditor, National Marketing Corporation, 'because Section 14(f), Republic Act 1345, as amended (NAMARCO Charter), confers such jurisdiction upon the Auditor General.'

"VII. The lower court erred in granting the petition and permanently restraining the respondents from enforcing said decision."

G. R. No. L-27246

On February 21, 1967, Auditor General Ismael Mathay, Sr., the Board of Directors and General Manager of NAMARCO, Abelardo Subido, as Civil Service Commissioner, Paulino T. del Mundo, and the Solicitor General filed with this Court an original action for certiorari and prohibition, with a petition for the issuance of a writ of preliminary injunction, against the Honorable Francisco Area, as Judge of the Court of First Instance of Manila, Branch I, Jose San Agustin, in his capacity as Clerk of said Court and Sheriff of the City of Manila, Amando Cuaderno and Norberto de la Rea, praying —

"... that pending determination of the merits of this petition, a writ of preliminary injunction be issued, *ex parte* and without bond:

"(1) Restraining respondent Judge and his successors in office or any other Judge or Court inferior to this Honorable Court, from executing, enforcing, and/or implementing the decision dated January 16, 1967, the order dated February 6, 1967, and the writ of execution dated February 6, 1967 issued pursuant thereto, and otherwise taking any further cognizance of or in any manner assuming jurisdiction or further proceedings over Civil Case No. 67663 of the Court of First Instance of Manila, entitled "NORBERTO DE LA REA, ET AL., Petitioners vs. HON. ISMAEL MATHAY, SR., etc., ET AL, Respondents';

"(2) Enjoining respondent Norberto de la Rea from usurping the position of Corporate Auditor of the National Marketing Corporation and receiving the salaries, allowances and other emoluments appertaining thereto or exercising in any manner the powers and functions of the position, until further orders from the Supreme Court; and

"(3) After due proceedings, to render judgment declaring null and void and setting aside the above-mentioned orders, making the preliminary injunction permanent, with costs to respondents (except respondent Judge).

"Petitioners likewise pray this Honorable Court for such other and further relief as may be deemed just and equitable under the premises."

Main allegations of the petition are: that on June 30, 1964 the Auditor General appointed Norberto de la Rea as Auditor of NAMARCO with an annual salary of P15,600, effective as of August 1, 1964, by way of promotion from Auditor of Pasay City with an annual salary of P11,400; that although said appointment was never submitted to the Commissioner of Civil Service for approval and/or attestation, as required by law (Civil Service Law and Sec. 1, Republic Act No. 2716), De la Rea assumed office and received the salary already mentioned; that on January 25, 1965, the Auditor General again appointed De la Rea as Corporate Auditor of NAMARCO, this time with an annual compensation of P26,400, with retroactive effect from August 1, 1964, as an exception to the provisions of Section 256 of the Revised Administrative Code; that upon submission of this second appointment to the Civil Service Commission, the same was disapproved on June 22 of the same year; that to clear doubts as to whether with De la Rea's appointment of January 25, 1965 his previous appointment of June 30, 1964 for the same position had become *functus officio*, the Commissioner of Civil Service, in a letter dated December 15, 1965, also disapproved the latter; that notwithstanding the disapproval of both appointments, De la Rea continued discharging the functions of the Office of Corporate Auditor of NAMARCO and collected the salary and allowances appertaining thereto, first at the rate of P15,600 per annum and later at the rate of P26,400 per annum retroactive to August 1, 1964, notwithstanding an order issued by said Commissioner dated September 21, 1966 (Annex E of the petition); that on October 18, 1966, the Auditor General, at that time the now petitioner Ismael Mathay, Sr., appointed his co-petitioner, Paulino T. del Mundo, at that time the Assistant Auditor of the NAMARCO, as Corporate Auditor thereof, with an annual compensation of P16,200, effective upon assumption of office, in place of Norberto de la Rea, who was considered as out of the government service as of August 1, 1964, and forthwith del Mundo assumed said position; that on October 21, 1966 De la Rea filed in the Court of First Instance of Manila an action for prohibition, with a petition for the issuance of a writ of preliminary injunction, against Paulino T. del Mundo, the Civil Service Commissioner, the Auditor General, and the Solicitor General (Civil Case No. 67253) for the annulment of the following: the appointment of Paulino T. del Mundo as Corporate Auditor dated October 18, 1966; the order (letter) of respondent Mathay, as Auditor General, notifying De la Rea that he was considered "as having ceased to be connected, in one way or another, with the General Auditing Office," and the order of respondent Subido as Commissioner of Civil Service of September 21, 1966 that De la Rea be not allowed to perform the duties and to receive the salary corresponding to the position of Auditor of NAMARCO; that in said case the Court of First Instance of Manila issued an order directing the respondents to refrain from effecting De la Rea's ouster from office as Auditor of NAMARCO etc. until further orders from the Court; that aside from this action Civil Case No. 67253), on November 23, 1966 De la Rea, together with Amando Cuaderno, filed another action for prohibition, with a petition for preliminary injunction, in the same Court of First Instance of Manila against Ismael Mathay, Sr. as Auditor General, the members of the Board of Directors and the General Manager of NAMARCO, Abelardo Subido as Commissioner of Civil Service, the Solicitor General, and Paulino T. del Mundo (Civil Case No. 67663, now on appeal before Us as G. R. No. L-27248) mainly to secure judgment prohibiting said respondents from removing Cuaderno from office and from reducing De la Rea's salary, as fixed in his last promotional appointment of "P26,400, to -P16,200 per annum; that their petition in Civil Case No. 67663 for a restraining order or a writ of preliminary injunction was denied by the Court on November 24, 1966, and said Court likewise set aside the temporary or restraining order issued in the previous case, namely Civil Case No. 67253; that thereupon the petitioners in Civil Case No. 67253 caused it to be dismissed, but De la Rea at the same time filed an amended petition in Civil Case No. 67663 to include as second cause of action therein exactly the same cause of action which he had caused to be dismissed in Civil Case

No. 67253, such amended petition having been subsequently admitted by the Court; that after the respondents in Civil Case No. 67663 had filed the answer to the amended petition just referred to, the case was set for hearing in connection with the petition for the issuance of a writ of preliminary injunction on December 10, 1966, on which occasion the parties agreed to submit the case for decision on the pleadings and whatever documentary evidence they would attach to the respective memoranda to be subsequently filed; that on January 16, 1967, decision was rendered by the Honorable Francisco Area, finding as illegal and null and void ab initio the acts of respondents towards: (a) the removal of the petitioners from their respective positions; (2) the decrease in the salary of De la Rea from -P26,400 to P15,600 per annum; (3) the appointment of respondent del Mundo to De la Rea's position which, the latter had never vacated; and (4) the withholding of the petitioner's salary; and the Court, as a consequence, ordered

“The respondents are hereby permanently prohibited from:

“1. Removing the petitioners from their respective positions; and

“2. Reducing petitioner Norberto de la Rea's salary from P26,400.00 to P15,600.00 per annum.

“The Court hereby declares null and void ab initio the appointment of respondent Paulino del Mundo, and all respondents are hereby ordered not to obstruct in any manner whatsoever the peaceful resumption by petitioners of their respective offices and the performance of their duties; and finally, it is hereby ordered that all the back salaries, salary differentials, allowances and bonuses of the petitioners which were withheld in relation to this case be immediately paid to them,

“No pronouncement as to attorney's fees and costs.

“SO ORDERED.”

that notice of said decision was received by the Solicitor General on January 19, 1967, but the following day De la Rea and Cuaderno immediately filed a motion for execution pending appeal, which motion was supplemented the following day with a statement of the back and differential salaries claimed by De la Rea; that on January 24, 1967 the respondents in said Civil Case No. 67663 not only filed their opposition to the aforesaid motion for execution pending appeal but also filed a notice of appeal from the decision rendered; that on February 6, 1967 respondent Judge Area issued an order in Civil Case No. 67663 directing the issuance of a writ of execution "for the satisfaction of the judgment pending appeal, with respect only to the back salaries of the petitioner (respondent De la Rea), his salary differentials, allowances and bonuses withheld in relation to this case, upon De la Rea's posting a bond in the amount of P20,000 to be approved by the Court"; that on the same date, February 16, 1967, the respondent Judge Area having approved a P20,000 bond submitted by De la Rea, the Clerk of Court issued the corresponding writ of execution; that no motion for reconsideration of the orders abovementioned was filed it being obvious that the same would have been futile.

On March 3, 1967 We issued simultaneously an order requiring the respondents in the action for prohibition abovementioned (G. R. No. L-27246) to answer the petition, and a writ of preliminary injunction restraining all the respondents from executing the decision and orders complained of. On March 21 of the same year, the respondents filed their answer to the petition.

Civil Case No. 67663

As stated hereinbefore, on November 23, 1966 De la Rea and Cuaderno filed an action for prohibition against the Auditor General, the Directors and General Manager of NAMARCO, the Commissioner of Civil Service, the Solicitor General, and Paulino T. del Mundo in the Court of First Instance of Manila where it was docketed as Civil Case No. 67663. It is now unnecessary to set forth here the proceedings had therein, the same having been

correctly alleged in the original petition for certiorari and prohibition filed with this Court by Ismael Mathay, Sr., et al., against the Honorable Francisco Area, Norberto de la Rea, Amando Cuaderno, et al. (G. R. No. L-27246) summarized in the previous paragraphs. Suffice it to say that, as stated heretofore, on January 16, 1967 the respondent Judge Area rendered decision therein, from which all the respondents in said case perfected an appeal in due time (G. R. L-27248). In their brief they make a summary statement of the issues to be decided as follows:

"1. Is the promotional appointment issued by the then Auditor General to petitioner Norberto de la Rea as Auditor, and later Corporate Auditor of the National Marketing Corporation subject to the approval and/or disapproval of the Commissioner of Civil Service?

"2. Is the said appointment valid and effective even if not attested by the Commissioner of Civil Service?

"3. Is the Commissioner's attestation of the appointment merely a ministerial function of recording?

"4. Is the Auditor General estopped from questioning the appointment of the petitioner as Corporate Auditor of the National Marketing Corporation simply because the Auditor General was assigning him on detail to the National Power Corporation or the Central office, General Auditing Office?

"5. Can the lower Court issue a writ of execution pending appeal with respect to petitioner's back salaries, salary differentials, allowances and bonuses withheld in relation to this case, after the Solicitor General had already perfected appeal from the decision of the lower Court?"

While a good number of questions are raised in the multiple litigations involving the same parties now before Us, the following are, in our opinion, the decisive issues to be resolved: (1) Was the decision rendered by the Commissioner of Civil Service in Administrative Case No. R-28684 finding De la Rea guilty of misconduct in office valid, and if so, was it reviewable by the courts through prohibition? (Civil Case No. 63551, now before Us on appeal as G.R. No. L-26082); (2) Did the Commissioner of Civil Service have jurisdiction to approve or disapprove the promotional appointments extended by the Auditor General in favor of De la Rea? ; and (3) Assuming that De la Rea's appointment as Corporate Auditor of NAMARCO was valid, did the respondent judge (Area) gravely abuse his discretion in ordering the issuance of a writ of execution pending appeal in Civil Case No. 67663?

(1) There is no serious dispute as to the fact that De la Rea did not take an appeal to the Civil Service Board of Appeals from the decision of the Commissioner of Civil Service in Administrative Case No. R-28684; in other words, he did not exhaust all administrative remedies available to him under the law to question either the validity or the correctness of said decision. Instead, he sought to nullify it and prevent its enforcement by resorting to prohibition proceedings (Civil Case No. 63551). In this connection, We deem it firmly settled in this jurisdiction that prohibition and other extraordinary legal remedies are not mere substitutes for remedies — judicial or administrative-available to the aggrieved party in the ordinary course of the law; that if through his own fault the aggrieved party failed to avail himself of the latter remedies, he may resort to the proper extraordinary legal remedy only if the judgment or order complained of is an absolute nullity.

But De la Rea contends that the aforesaid decision is void because the Commissioner of Civil Service has no disciplinary power and authority over him in his capacity as auditor of Pasay City. In this connection it is to be observed that the Commissioner of Civil Service has the final authority to pass upon the removal, separation, or suspension of officers and employees in the competitive service - which the auditor of Pasay City undoubtedly is -and upon all matters relating to the conduct, discipline, and efficiency of said officers and employees (Sections 16(i) and 33, Republic Act No. 2260). The office of the Auditor General itself agrees with this, for otherwise it would not have transmitted the report of its investigating committee to the office of the Commissioner of Civil Service; instead, the Auditor General would have considered its duty to consider such report; render a final

judgment in the case and consider the matter closed.

In view of the above considerations, We hold that the Commissioner of Civil Service had jurisdiction to render — as he did render — a final judgment in Administrative Case No. R-28684; that De la Rea having failed to appeal therefrom to the Civil Service Board of Appeals, the same became executory; and finally, that said decision not being void ab initio, it is not reviewable by prohibition nor certiorari.

Anent the second question, namely, whether the Commissioner of Civil Service had authority to approve or disapprove the promotional appointments extended by the Auditor General in favor of De la Rea, the following are pertinent considerations:

Under the charter of NAMARCO (R. A. No. 1345) the Auditor General is its ex-officio auditor, but instead of acting as such personally, he may appoint a representative (Section 15(f), as amended). Upon the other hand, under R.A. 2260, Section 1, the Auditor General acts as the ex-officio Auditor of all government owned or controlled corporations — such as NAMARCO — and is authorized to appoint a representative, known as the Auditor, in each of said corporations and fix the salary of such Auditor in an amount equal to the salary authorized for the assistant or next ranking managing head of the corporation concerned.

With respect to the appointment of subordinate officials and employees of the General Auditing Office, including the auditing personnel in provinces, cities, government owned or controlled corporations, or other self-governing board, commission, or agency of the government, Section 1 of R.A. 2716 provides that they shall be made by the Auditor General in accordance with the Civil Service Law, albeit they shall not be subject to the approval or review of any other officials board, commission or executive office as a pre-requisite for the payment of their salaries; and provided further that such appointments shall be submitted to the Bureau of Civil Service for attestation, except those extended to auditing personnel assigned to government owned or controlled corporations where the Civil Service Law is not made applicable to their officials and employees by express provisions of their respective charters.

It was obviously pursuant to his powers under the laws mentioned above that Auditor General Jimenez extended promotional appointments to De la Rea, first, as Auditor of NAMARCO with compensation at the rate of "PI 5,600 per annum effective August 1, 1964, by way of promotion from City Auditor, Pasay City, at an annual compensation of P11,400, and later, as Corporate Auditor of the same entity but with an increased compensation at the rate of "P26,400 per annum, the appointment to take effect as of August 1, 1964.

It is the contention of De la Rea that the above-mentioned appointments in his favor were final; that they were not subject to approval or review of any other official, board, commission, or executive office; and that they were transmitted to the office of the Commissioner of Civil Service exclusively for attestation which, he contends, consists merely in said office taking note of the fact that said appointments had been made.

We do not believe that the legal provisions mentioned heretofore — nor any other law for that matter — give the Auditor General such an absolute and unlimited power. Our government, as organized by the Constitution, is essentially one of limited powers. No official occupying any office created by the Constitution or by law subsequently enacted exercises absolute powers. While it cannot be denied that the Constitution intended to make the office of the Auditor General independent so that the Auditor General may be entirely free from pressure in the exercise of his official duties, still We believe that his powers — particularly on the matter of appointments — are not absolute and unlimited; nor is the enjoyment of absolute and unlimited powers essential to the independence of his office.

It is worthy to note in this connection that the authority of the Auditor General under Section 1 of R.A. 2716 to

appoint the subordinate officials and employees of the General Auditing office etc. is subject to the condition that such appointments shall be made "in accordance with the Civil Service Law". Again, while according to the same legal provision said appointments "shall not be subject to the approval or review of any other official etc.", it makes it crystal clear nevertheless that the approval or review is dispensed with only "as a pre-requisite for the payment of their salaries". In other words, the appointee may receive his salary without the previous approval of his appointment by the Commissioner of Civil Service.

Now the question arises: Who is called upon to determine whether any given appointment of a subordinate official or employee of the General Auditing Office made by the Auditor General is "in accordance with the Civil Service Law"?

Relevant to this point is the fact that, under the Civil Service Law and Rules, the Commissioner of Civil Service has exclusive jurisdiction over the approval of all appointments, including promotions to positions in the competitive service (R.A. 2260, Sec. 16[h]).

The same legal provision exempts from the requirement of attestation by the Bureau of Civil Service only those appointments extended to auditing personnel assigned to government owned or controlled corporations to which the Civil Service Law is made not applicable by express provisions of their charters. In this connection, it is not disputed that the NAMARCO charter contains no provision expressly exempting its officers and employees from the operation of the Civil Service Law. On the other hand, it cannot be denied that the position of auditor or corporate auditor of NAMARCO is within the scope of the competitive or classified civil service (Section 4, R.A. 2260) not being among those enumerated in the law as falling under the non-competitive and exempt classes (Idem, Sections 5 and 6).

Implementing the legal provision under consideration is section 2(a) of the Civil Service Rules in force at the time the promotional appointments in question were made, to the effect that all appointments, including promotions to positions in the competitive or classified service, must be made in accordance with the Civil Service Act and Rules and the WAPCO plans, and shall be submitted to the Commissioner for approval.

In *Gorospe vs. Secretary of Public Works*, G. R. No. L-11090, January 31, 1959, and *Favis vs. Rupisan*, G.R. No. L-22823, May 19, 1966, resolving the point of when an appointment made by competent authority becomes final or complete, We held that it does not become final or complete "until after the Commissioner of Civil Service has certified that such appointment may be made" - that is, until it is approved by said Commissioner.

It is clear from the foregoing that appointments to positions under the General Auditing Office shall be made by the Auditor General but do not become final and complete until approved by the Commissioner of Civil Service; that upon their submission the Commissioner is called upon to determine whether the same are or are not in accordance with the Civil Service Law, rules and regulations, and decide them accordingly.

It is clear, of course, that the decision of the Commissioner of Civil Service is subject to review by the Civil Service Board of Appeals. But as De la Rea took no appeal to this Board, We feel that We have now no authority to decide in any one of the cases before Us whether the decisions of the Commissioner of Civil Service mentioned heretofore are correct. This matter should have been taken up by appeal — the remedy intended to correct errors of judgment — and not by certiorari or prohibition which deal only with questions of jurisdiction.

Having arrived at the above conclusions, We deem it unnecessary to render an extensive opinion on what the law means by the attestation to be made by the Commissioner of Civil Service. Suffice it to say that We do not consider meritorious the contention that such attestation means only that the Commissioner of Civil Service shall take note of the fact that the particular appointment submitted to him had been made by a competent officer. That

would make such responsible official a mere ministerial officer in connection with the matter. Rather it is our understanding that the authority to attest implies authority to determine whether the appointment under consideration was made in accordance with law — particularly the Civil Service Law (Villanueva vs. Balallio, G.R. No. L-17745, October 31, 1963), and if in his opinion the same is in violation of the Civil Service Law, rules and regulations, he may withhold the attestation.

In accordance with the foregoing, it is clear that the promotional appointments extended to De la Rea by the Auditor General involved in the cases before Us were not final nor complete, and as both were disapproved by the Commissioner of Civil Service, they ceased to exist in law upon said disapproval becoming final and executory. Consequently, it is also clear that De la Rea should be deemed to have reverted to his position of Auditor of Pasay City; that he would be entitled to collect and receive the salary of Auditor or Corporate Auditor of NAMARCO during the period he acted as such, but only at the rate of P15,600 per year, this being the annual salary for the position of Assistant General Manager of the NAMARCO. This is in accordance with Republic Act No. 2260 which provides that the salary of corporate, auditors shall be equal to the salary authorized for the first assistant or next ranking managing head of the Corporation.

The remaining question to be resolved is whether the respondent judge (Area) gravely abused his discretion in issuing the writ of execution pending appeal in Civil Case No. 67663 (G.R. No. L-27248).

Executions pending appeal — for obvious reasons — are not favored. They constitute an exception to the general rule that execution may issue only after the decision in any particular case has become executory. To justify a premature execution the prevailing party must allege and prove the existence of a special reason therefor. In the case of the writ complained of, the impropriety of its issuance appears clear in the light of the circumstances under which the appointments of De la Rea, first, as Auditor and subsequently, as Corporate Auditor of NAMARCO were made, not to mention the further fact that when the writ of execution was issued, said appointments were in controversy, De la Rea's very status as a government official was being questioned by the Auditor General, and the respondents in the case had already filed a notice of appeal.

IN VIEW OF ALL THE FOREGOING, decision in the above-entitled cases is rendered as follows:

(1) In G. R. No. L-26082, the decision appealed from (Civil Case No. 63551) is hereby reversed and set aside, and judgment is rendered declaring valid the decisions of the respondent Commissioner of Civil Service Subido (1) finding De la Rea guilty of misconduct in office in Administrative Case No. 28684, and (2) disapproving the promotional appointments extended by Auditor General Jimenez in favor of petitioner Norberto de la Rea, first as Auditor and subsequently as Corporate Auditor of the National Marketing Corporation.

(2) In G. R. No. L-27248, the decision appealed from is likewise reversed and set aside together with the order and writ of execution pending appeal issued on February 6, 1967.

Furthermore, in consonance with the findings and conclusions set forth above with respect to G. R. No. L-26082 and G. R. No. L-27248, We hereby declare that upon the disapproval of De la Rea's appointments as Auditor and later as Corporate Auditor of NAMARCO, he reverted to his original position as Auditor of Pasay City. As a result, he is hereby sentenced to pay to the National Marketing Corporation whatever may be the difference between his salary as Auditor of Pasay City, on the one hand, and the salary that he had collected and received as Auditor or Corporate Auditor of NAMARCO from the time the decision disapproving his appointments for such positions became final. In this connection, the case (Civil Case No. 67663) is remanded below for further proceedings in connection with the accounting to be made.

(3) In G. R. No. 27246, the writs prayed for in the petition are hereby granted, and specific judgment is hereby

rendered as follows:

(1) Restraining respondent Judge and his successors in office or any other Judge or Court inferior to this Honorable Court, from executing, enforcing, and/or implementing the decision dated January 16, 1967, the order dated February 6, 1967, and the writ of execution dated February 6, 1967 issued pursuant thereto, and otherwise taking any further cognizance of or in any manner assuming jurisdiction or further proceedings over Civil Case No. 67663 of the Court of First Instance of Manila, entitled "NORBERTO DE LA REA, ET AL, Petitioners vs. HON. ISMAEL MATHAY, SR., ETC., ET AL., Respondents";

(2) Enjoining respondent Norberto de la Rea from usurping the position of Corporate Auditor of the National Marketing Corporation and receiving the salaries, allowances and other emoluments appertaining thereto or exercising in any manner the powers and functions of the position, until further orders from the Supreme Court; and

(3) Declaring null and void and setting aside the above-mentioned orders, with costs against respondents (except respondent Judge).

The preliminary injunction issued heretofore is made final and permanent.

With costs. It is so ordered.

Reyes, J.B.L., (Acting C.J.), Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, and Angeles, JJ., concur.

ABOUT BATAS.ORG

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