

**DR. ISABELITA VITAL-GOZON, IN HER OFFICIAL CAPACITY AS
MEDICAL CENTER CHIEF OF THE NATIONAL CHILDREN'S
HOSPITAL, PETITIONER, VS. THE HONORABLE COURT OF APPEALS
AND DR. ALEJANDRO...**

G.R. No. 101428. August 05, 1992

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

Whether or not the Court of Appeals has jurisdiction, in a special civil action of mandamus against a public officer, to take cognizance of the matter of damages sought to be recovered from the defendant officer, is the chief issue raised in the certiorari action at bar. Also put at issue is whether or not the Solicitor General may represent the defendant public officer in the mandamus suit, in so far as the claim for damages is concerned, in light of this Court's rulings in *Urbano, et al. v. Chavez, et al.*, and *Co v. Regional Trial Court of Pasig, et al.*[1]

There is no dispute about the facts from which these issues arise.

In the early months of 1987 -- and pursuant to Executive Order No. 119 issued on January 30, 1987 by President Corazon C. Aquino -- reorganization of the various offices of the Ministry of Health commenced; existing offices were abolished, transfers of personnel effected.

At the time of the reorganization, Dr. Alejandro S. de la Fuente was the Chief of Clinics of the National Children's Hospital, having been appointed to that position on December 20, 1978. Prior thereto, he occupied the post of Medical Specialist II, a position to which he was promoted in 1977 after serving as Medical Specialist I of the same hospital for six (6) years (since 1971).

On February 4, 1988 Dr. de la Fuente received notice from the Department of Health that he would be re-appointed "Medical Specialist II." Considering this to be a demotion by no less than two ranks from his post as Chief of Clinics, Dr. de la Fuente filed a protest with the DOH Reorganization Board. When his protest was ignored, he brought his case to the Civil Service Commission where it was docketed as CSC Case No. 4. In the meantime "the duties and responsibilities pertaining to the position of Chief of Clinics were turned over to and were allowed to be exercised by Dr. Jose D. Merencilla, Jr."[2]

Dr. de la Fuente's case was decided by the Civil Service Commission in a Resolution dated August 9, 1988. In that Resolution, the Commission made the following conclusion and disposition, to wit:

" ** (The Commission) declares the demotion/transfer of appellant dela Fuente, Jr. from Chief of Clinics to Medical Specialist II as null and void: hence, illegal. Considering further that since the National Children's Hospital was not abolished and the positions therein remained intact although the title or the position of Chief of Clinics was changed to Chief of Medical Professional Staff' with substantially the same functions and responsibilities, the Commission hereby orders that:

1. Appellant dela Fuente, Jr. be retained or considered as never having relinquished his position of Chief of

Clinics (now Chief of Medical Professional Staff) without loss of seniority rights; and

2. He be paid back salaries, transportation, representation and housing allowances and such other benefits withheld from him from the date of his illegal demotion/transfer."

No motion for reconsideration of this Resolution was ever submitted nor appeal therefrom essayed to the Supreme Court, within the thirty-day period prescribed therefor by the Constitution.[3] Consequently, the resolution became final, on September 21, 1988.

De la Fuente thereupon sent two (2) letters to Dr. Vital--Gozon, the Medical Center Chief of the National Children's Hospital,[4] demanding implementation of the Commission's decision. Dr. Vital--Gozon referred "de la Fuente's claims to the Department of Health Assistant Secretary for Legal Affairs for appropriate advice and/or action * * (She did this allegedly because, according to the Solicitor General, she was) unaware when and how a CSC Resolution becomes final and executory, whether such Resolution had in fact become final and executory and whether the DOH Legal Department would officially assail the mentioned Resolution." [5] But she did not answer Dr. de la Fuente's letters, not even to inform him of the referral thereof to the Assistant Secretary. She chose simply to await "legal guidance from the DOH Legal Department." On the other hand, no one in the DOH Legal Department bothered to reply to Dr. de la Fuente, or to take steps to comply or otherwise advise compliance, with the final and executory Resolution of the Civil Service Commission. In fact, de la Fuente claims that Vital-Gozon had "actually threatened to stop paying * * (his) salary and allowances on the pretext that he has as yet no 'approved' appointment even as 'Medical Specialist II' * * ." [6]

Three months having elapsed without any word from Vital--Gozon or anyone in her behalf, or any indication whatever that the CSC Resolution of August 9, 1988 would be obeyed, and apprehensive that the funds to cover the salaries and allowances otherwise due him would revert to the General Fund, Dr. de la Fuente repaired to the Civil Service Commission and asked it to enforce its judgment. He was however "told to file in court a petition for mandamus because of the belief that the Commission had no coercive powers -- unlike a court -- to enforce its final decisions/resolutions." [7]

So he instituted in the Court of Appeals on December 28, 1988 an action of "mandamus and damages with preliminary injunction" to compel Vital-Gozon, and the Administrative Officer, Budget Officer and Cashier of the NCH to comply with the final and executory resolution of the Civil Service Commission. He prayed for the following specific reliefs:

"(1) (That) * * a temporary restraining order be issued immediately, ordering the principal and other respondents to revert the funds of the NCH corresponding to the amounts necessary to implement the final resolution of the CSC in CSC Case No. 4 in favor of herein petitioner, Dr. Alejandro S. de la Fuente, Jr., and to pay such sums which have accrued and due and payable as of the date of said order;

(2) After hearing on the prayer for preliminary injunction, that the restraining order be converted to a writ of preliminary injunction; and that a writ of preliminary mandatory injunction be issued ordering principal respondent and the other respondents to implement in full the said final resolution; and

(3) That, after hearing on the merits of the petition, that judgment be rendered seeking (sic) permanent writs issued and that principal respondent be ordered and commanded to comply with and implement the said final resolution without further delay; and, furthermore, that the principal respondent be ordered to pay to the petitioner the sums of P100,000.00 and P20,000.00 as moral and exemplary damages, and P10,000.00 for litigation expenses and attorney's fees.

* * * * *

The Court of Appeals required the respondents to answer. It also issued a temporary restraining order as prayed for, and required the respondents to show cause why it should not be converted to a writ of preliminary injunction. The record shows that the respondents prayed for and were granted an extension of fifteen (15) days to file their answer "through counsel, who," as the Court of Appeals was later to point out,[8] "did not bother to indicate his address, thus notice was sent to him through the individual respondents. * * (However, no) answer was filed; neither was there any show cause (sic) against a writ of preliminary injunction." It was a certain Atty. Jose Fabia who appeared in Vital-Gozon's behalf.[9]

About a month afterwards, de la Fuente filed with the same Court a "Supplemental/Amended Petition" dated February 2, 1989. The second petition described as one for "quo warranto" aside from "mandamus," added three respondents including Dr. Jose Merencilla, Jr.; and alleged inter alia that he (de la Fuente) had "clear title" to the position in question in virtue of the final and executory judgment of the Civil Service Commission; that even after the Commission's judgment had become final and executory and been communicated to Vital-Gozon, the latter allowed "Dr. Merencilla, Jr. as 'OIC Professional Service' to further usurp, intrude into and unlawfully hold and exercise the public office/position of petitioner (under a duly approved permanent appointment as 'Chief of Clinics' since 1978). De la Fuente thus prayed, additionally, for judgment:

"(a) Declaring that principal respondent Dr. Jose D. Merencilla, Jr. is not legally entitled to the office of 'Chief of Clinics' (now retitled/known as 'Chief of Medical Professional Staff,' NCH), ousting him therefrom and ordering said respondent to immediately cease and desist from further performing as 'OIC Professional Service' any and all duties and responsibilities of the said office; (and)

(b) Declaring that the petitioner, Dr. Alejandro S. de la Fuente, Jr., is the lawful or de jure Chief of Clinics (now known as 'Chief of the Medical Professional Staff') and placing him in the possession of said office/position, without the need of reappointment or new appointment as held by the Civil Service Commission in its resolution of August 9, 1988, in CSC Case No. 4.

* * * * *

Copy of the "Supplemental/Amended Petition" was sent to "Atty. Jose A. Fabia, Counsel for Respondents c/o Dr. Ma. Isabelita Vital-Gozon, etc., National Children's Hospital, E. Rodriguez Ave., Quezon City (Atty. Fabia's address not being indicated or mentioned in his motion for Extension of Time)."[10]

Again the Court of Appeals required answer of the respondents. Again, none was filed. The petitions were consequently "resolved on the basis of their allegations and the annexes." The Appellate Court promulgated its judgment on June 9, 1989.[11] It held that --

"The question of whether petitioner may be divested of his position as Chief of Clinics by the expedient of having him appointed to another, lower position is no longer an issue. It ceased to be such when the resolution in CSC Case No. 4 became final. The said resolution is explicit in its mandate; petitioner was declared the lawful and de jure Chief of Clinics (Chief of the Medical Professional Staff) of the National Children's Hospital, and by this token, respondent Dr. Jose D. Merencilla, Jr. is not legally entitled to the office. Respondents, particularly Dr. Isabelita Vital-Gozon, had no discretion or choice on the matter; the resolution had to be complied with. It was ill-advised of principal respondent, and violative of the rule of law, that the resolution has not been obeyed or implemented.",

and accordingly ordered --

" * * respondents, particularly Dr. Isabelita Vital-Gozon, * * to forthwith comply with, obey and implement the resolution in CSC Case No. 4 (and) * * Dr. Jose D. Merencilla, Jr., who is not entitled to the office, * * to immediately cease and desist from further performing and acting as OIC Professional Service."

But de la Fuente's prayer for damages -- founded essentially on the refusal of Gozon, et al. to obey the final and executory judgment of the Civil Service Commission, which thus compelled him to litigate anew in a different forum -- was denied by the Court of Appeals on the ground that the "petitions (for mandamus) are not the vehicle nor is the Court the forum for ** (said) claim of damages."

Gozon acknowledged in writing that she received a copy of the Appellate Tribunal's Decision of June 9, 1989 on June 15, 1989.[12] Respondent de la Fuente acknowledged receipt of his own copy on June 15, 1989.[13] Neither Vital-Gozon nor her co-party, Dr. Merencilla, Jr., moved for reconsideration of, or attempted to appeal the decision.

It was de la Fuente who sought reconsideration of the judgment, by motion filed through new counsel, Atty. Ceferino Gaddi.[14] He insisted that the Appellate Court had competence to award damages in a mandamus action. He argued that while such a claim for damages might not have been proper in a mandamus proceeding in the Appellate Court "before the enactment of B.P. Blg. 129 because the Court of Appeals had authority to issue such writs only 'in aid of its appellate jurisdiction,'" the situation was changed by said BP 129 in virtue of which three levels of courts -- the Supreme Court, the Regional Trial Court, and the Court of Appeals -- were conferred concurrent original jurisdiction to issue said writs, and the Court of Appeals was given power to conduct hearings and receive evidence to resolve factual issues. To require him to separately litigate the matter of damages, he continued, would lead to that multiplicity of suits which is abhorred by the law.

While his motion for reconsideration was pending, de la Fuente sought to enforce the judgment of the Court of Appeals of June 9, 1989 -- directing his reinstatement pursuant to the Civil Service Commission's Resolution of August 9, 1988, *supra*. He filed on July 4, 1989 a "Motion for Execution," alleging that the judgment of June 9, 1989 had become final and executory for failure of Gozon, et al. -- served with notice thereof on June 16, 1989 -- to move for its reconsideration or elevate the same to the Supreme Court.[15] His motion was granted by the Court of Appeals in a Resolution dated July 7, 1989,[16] reading as follows:

"The decision of June 9, 1989 having become final and executory, as played for, let the writ of execution issue forthwith."

The corresponding writ of execution issued on July 13, 1989,[17] on the invoked authority of Section 9, Rule 39.[18] The writ quoted the dispositive portion of the judgment of June 9, 1989, including, as the Solicitor General's Office points out, the second paragraph to the effect that the petitions "are not the vehicle nor is the Court the forum for the claim of damages; (hence,) the prayer therefor is denied."

The writ of execution notwithstanding, compliance with the June 9, 1989 judgment was not effected. Consequently, de la Fuente filed, on July 20, 1989, an "Urgent Ex Parte Manifestation with Prayer to Cite Respondents for Contempt," complaining that although Gozon and her co-parties had been served with the writ of execution on July 14, they had not complied therewith. By Resolution dated July 26, 1989, the Court required Gozon and Merencilla to appear before it on August 3, 1989 to answer the charge and show cause "why they should not be adjudged in contempt for disobeying and/or resisting the judgment." [19]

At the hearing Gozon and Merencilla duly presented themselves, accompanied by their individual private lawyers -- one for Gozon (Felipe Hidalgo, Jr.), two for Merencilla (Bernardo S. Nera and Moises S. Rimando). One other lawyer appeared in their behalf, from the Health Department, Artemio Manalo, who stated that he was there "in behalf of Jose A. Fabia." [20] They explained that they had no intention to defy the Court, they had simply referred the matter to their superiors in good faith; and they were perfectly willing to comply with the judgment, undertaking to do so "even in the afternoon" of that same day. The Court consequently ordered them "to comply with their undertaking ** without any further delay," and report the action taken towards this end, within five (5)

days.

On August 9, 1989, Gozon, as "Medical Center Chief," sent a letter to Associate Justice Pedro A. Ramirez, advising that under Hospital Special Order No. 31 dated August 3, 1989, de la Fuente had been directed to assume the position of Chief of the Medical Professional Staff, and that a voucher for the payment of his allowances had been prepared and was being processed.[21]

More than a month later, or more precisely on September 27 1989, the Court of Appeals promulgated another Resolution, this time resolving de la Fuente's motion for reconsideration of June 29, 1989.[22] It modified the Decision of June 9, 1989 by (a) deleting its last paragraph (disallowing the claim of damages, *supra*), (b) consequently describing and treating it as a "PARTIAL DECISION," and (c) scheduling "further proceedings for the purpose of receiving evidence (of damages)," since said question "cannot be resolved by mere reference to the pleadings." [23] This was done in reliance on Section 3, Rule 65 of the Rules of Court, invoked by de la Fuente, which reads as follows:[24]

"SEC. 3. Mandamus. -- When any tribunal, corporation, board, or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that judgment be rendered commanding the defendant, immediately or at some other specified time, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the defendant."

At about this time, yet another lawyer, Atty. Pedro F. Martinez entered his appearance for Isabelita Gozon.[25] At his instance, the Court gave him an "opportunity to ** file a motion for reconsideration" of the Resolution of September 27, 1989.[26] That motion he filed by registered mail on November, 10, 1989.[27] His basic contentions were (a) that the decision of June 9, 1989 could no longer be altered, having become final and executory and having in fact been executed, and (b) that under BP 129, the Appellate Court had no jurisdiction over the question of damages in a mandamus action.

The Office of the Solicitor General also put in an appearance in Gozon's behalf at this juncture, saying that the case had been referred to it only on November 14, 1989. It, too, sought reconsideration of the Resolution of September 27, 1989. It filed on November 16, 1989 an "Omnibus Motion: I. For Reconsideration Of Resolution dated September 27, 1989; and II. To defer hearing on petitioner's claims for damages." [28]

Both motions were denied by the Court of Appeals in a Resolution dated January 11, 1991. In that Resolution, the Court –

- 1) Declared that the amended decision had already become final and could no longer be re-opened because, although "a copy of the amendatory resolution was received by counsel who was representing Gozon on October 3, 1989," the first motion for reconsideration was not mailed until November 10, 1989 and the Solicitor General's "Omnibus Motion" was not filed until November 16, 1989; and
- 2) Prohibited the Solicitor General from representing Gozon "in connection with ** (de la Fuente's) claim for damages," on the authority of this Court's ruling promulgated on March 19, 1990 in G.R. No. 87977 (Urbano, et al. v. Chavez, et al.) and G.R. No. 88578 (Co v. Regional Trial Court of Pasig).[29]

Notice of this Resolution of January 11, 1991 was served on the Solicitor General's Office on January 18, 1991.[30] Again the Solicitor General sought reconsideration, by motion dated January 25, 1991 and filed on January 30, 1991.[31] Again it was rebuffed. In a Resolution rendered on August 7, 1991,[32] served on the

Solicitor General's Office on August 20, 1991,[33] the Court of Appeals denied the motion. It ruled that the "question of the authority of the Solicitor General to appear as counsel for respondent Gozon ** (had already) been extensively discussed," and that its "jurisdiction ** to hear and determine issues on damages proceeds from Sec. 9, Batas Pambansa 129 as amended."

In an attempt to nullify the adverse dispositions of the Court of Appeals -- and obtain "the ultimate and corollary relief of dismissing respondent de la Fuente's claim for damages" -- the Solicitor General's Office has instituted the special civil action of certiorari at bar. It contends that the Court of Appeals is not legally competent to take cognizance of and decide the question of damages in a mandamus suit. It argues that -

- 1) B.P. Blg. 129 does not confer jurisdiction upon the Court of Appeals to hear, as a trial court, claims for moral and exemplary damages;
- 2) assuming that the Court of Appeals does have jurisdiction over the claims for damages, it lost the power to take cognizance thereof after the Decision of June 9, 1989 had, by its own pronouncement, become final and executory; and
- 3) the Urbano and Co doctrines cited by the Appellate Tribunal do not disqualify the Solicitor General's Office from representing government officials sued in their official capacities and in damage claims not arising from a felony.

It is in light of these facts, just narrated, that this Court will now proceed to deal with the legal issues raised in this action. But first, a few brief observations respecting the proceedings in the Civil Service Commission.

I

The record demonstrates that Vital-Gozon was fully aware of the following acts and events:[34]

- 1) the proceedings commenced by de la Fuente in the Civil Service Commission in protest against his demotion;
- 2) the Commission's Resolution of August 9, 1988 as well, particularly, as the direction therein that de la Fuente be reinstated and paid all his back salaries and other monetary benefits otherwise due him, this being couched in fairly simple language obviously understandable to persons of ordinary or normal intelligence;
- 3) no less than two (2) written demands of de la Fuente for implementation of the CSC's aforesaid Resolution of August 9, 1988;
- 4) the petition filed by de la Fuente in the Court of Appeals for enforcement of the CSC Resolution of August 9, 1988;
- 5) the extension granted by said Court of Appeals within which to file answer, notice thereof having been sent directly to her and her co-respondents since the attorney who sought the extension in their behalf (Atty. Fabia) did not set out his address in his motion for extension;
- 6) the "supplemental/amended petition" subsequently presented by de la Fuente, copy of which was sent to Atty. Fabia, c/o Dr. Vital-Gozon; and
- 7) the Decision and Amendatory Decision sent to her counsel on October 3, 1989.

To all these, her reaction, and that of the officials of the Department of Health concerned, was a regrettably cavalier one, to say the least. Neither she nor the Health officials concerned accorded said acts and events any importance. She never bothered to find out what was being done to contest or negate de la Fuente's petitions and actions, notwithstanding that as time went by, de la Fuente's efforts were being met with success.

Nothing in the record even remotely suggests that Vital--Gozon merits relief from the final and executory Resolution of the Civil Service Commission. This Court will not disturb that Resolution. It is satisfied that no procedural or substantive errors taint that Resolution, or its becoming final and executory.

II

Now, final and executory judgments are enforced by writ of execution and not by another, separate action, whether of mandamus or otherwise. Hence, execution of the Civil Service Commission's decision of August 9, 1988 should have been ordered and effected by the Commission itself, when de la Fuente filed a motion therefor. It declined to do so, however, on the alleged ground, as de la Fuente claims he was told, that it "had no coercive powers -- unlike a court -- to enforce its final decisions/resolutions." [35] That proposition, communicated to de la Fuente, of the Commission's supposed lack of coercive power to enforce its final judgments, is incorrect. It is inconsistent with previous acts of the Commission of actually directing execution of its decisions and resolutions, which this Court has sanctioned in several cases; [36] and it is not in truth a correct assessment of its powers under the Constitution and the relevant laws.

In an En Banc Decision promulgated on October 15, 1991 in G.R. No. 96938 entitled "Government Service Insurance System (GSIS) versus Civil Service Commission, et al.," [37] this Court declared that in light of the pertinent provisions of the Constitution and relevant statutes -

" ** it would appear absurd to deny to the Civil Service Commission the power or authority to enforce or order execution of its decisions, resolutions or orders which, it should be stressed, it has been exercising through the years. It would seem quite obvious that the authority to decide cases is inutile unless accompanied by the authority to see that what has been decided is carried out. Hence, the grant to a tribunal or agency of adjudicatory power, or the authority to hear and adjudge cases, should normally and logically be deemed to include be grant of authority to enforce or execute the judgments it thus renders, unless the law otherwise provides.

In any event, the Commission's exercise of that power of execution has been sanctioned by this Court in several cases."

Be this as it may, the fact is that by reason of the Commission's mistaken refusal to execute its final and executory Resolution of August 9, 1988, extended proceedings have taken place in the Court of Appeals and certain issues have been expressly raised in relation thereto, supra. Those issues appear to the Court to be important enough to deserve serious treatment and resolution, instead of simply being given short shrift by a terse ruling that the proceedings in the Court of Appeals were totally unnecessary because the Civil Service Commission actually had the power to execute its final and executory Resolution.

III

The first such issue is whether or not the Court of Appeals has jurisdiction to take cognizance of the matter of damages in a special civil action of mandamus. The Solicitor General's Office argues that since jurisdiction is conferred only by law, not by agreement of the parties, or acquiescence of the court, and since the law conferring jurisdiction on the Court of Appeals, Section 9 of B.P. Blg. 129, makes no reference to "actions for moral and exemplary damages, as those claimed by ** (de la Fuente)," it follows that the Court of Appeals has no competence to act on said claim of damages. And Section 3 of Rule 65, which authorizes the petitioner in a mandamus suit to pray for judgment commanding the defendant inter alia "to pay the damages sustained by the petitioner by reason of the wrongful acts of the defendant," is "nothing more than a procedural rule allowing joinder of causes of action, i.e., mandamus and damages," and such an award of damages is allowable only in

actions commenced in Regional Trial Courts but not in the Court of Appeals or this Court.

The argument is specious. It cannot be sustained.

The Solicitor General's Office correctly identifies Section 9, B.P. 129 as the legal provision specifying the original and appellate jurisdiction of the Court of Appeals. The section pertinently declares that the "Intermediate Appellate Court (now the Court of Appeals) shall exercise . . .," among others:

" ** Original jurisdiction to issue writs of mandamus, prohibition, certiorari, habeas corpus, and quo warranto, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction ** ." [38]

The Solicitor General's Office evidently searched said Section 9 for an explicit and specific statement regarding "actions for moral and exemplary damages," and finding none, concluded that the Court of Appeals had not been granted competence to assume cognizance of claims for such damages. The conclusion is incorrect. Section 19, governing the exclusive original jurisdiction of Regional Trial Courts in civil cases, contains no reference whatever to claims "for moral and exemplary damages," and indeed does not use the word "damages" at all; yet it is indisputable that said courts have power to try and decide claims for moral, exemplary and other classes of damages accompanying any of the types or kinds of cases falling within their specified jurisdiction. The Solicitor General's theory that the rule in question is a mere procedural one allowing joinder of an action of mandamus and another for damages, is untenable, for it implies that a claim for damages arising from the omission or failure to do an act subject of a mandamus suit may be litigated separately from the latter, the matter of damages not being inextricably linked to the cause of action for mandamus, which is certainly not the case.

Now, at the time of the enactment of B.P. 129, the issuance of the extraordinary writs above mentioned was controlled by the Rules of Court of 1964, as they continue to date to be so controlled. More particularly, the principal writs of mandamus, prohibition and certiorari were (and continue to be) governed by Rule 65; the writ of habeas corpus, by Rule 102; and the writ of quo warranto, by Rule 66. The so-called auxiliary writs were (and continue to be) also governed by the same code -- e.g., preliminary attachment, by Rule 57; preliminary injunction, by Rule 58, receivership, by Rule 59; writ of seizure or delivery in a replevin suit, by Rule 60.

At that time, Section 3 of Rule 65 authorized (as it continues to authorize to date) rendition of judgment in a mandamus action "commanding the defendant, immediately or at some other specified time, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the defendant." [39] The provision makes plain that the damages are an incident, or the result of, the defendant's wrongful act in failing and refusing to do the act required to be done. It is noteworthy that the Rules of 1940 had an identical counterpart provision. [40]

Moreover, Section 4 of the same Rule 65 authorized, as it continues to authorize to date, the filing of the petition "in the Supreme Court, or, if it relates to the acts or omissions of an inferior court, or of a corporation, board, officer or person, in a Court of First Instance (now Regional Trial Court) having jurisdiction thereof," as well as "in the Court of Appeals (whether or not) [41] in aid of its appellate jurisdiction."

Worthy of note, too, is that Rule 66 of the Rules of Court similarly authorizes the recovery of damages in a quo warranto action against a corporate officer -- an action within the concurrent jurisdiction of the Court of Appeals -- as follows: [42]

"SEC. 14. Liability of officer neglecting to deliver property of corporation to receiver. -- An officer of such corporation who refuses or neglects, upon demand, to deliver over to the receiver all money, property, books, deeds, notes, bills, obligations, and papers of every description within his power or control, belonging to the corporation, or in any wise necessary for the settlement of its affairs, or the discharge of its debts and liabilities, may be punished for contempt as having disobeyed a lawful order of the court, and shall be liable to

the receiver for the value of all money or other things so refused or neglected to be surrendered, together with all damages that may have been sustained by the stockholders and creditors of the corporation, or any of them, in consequence of such neglect or refusal."

An award of damages was and is also allowed in connection with the auxiliary writ of preliminary attachment, preliminary injunction or receivership which the Court of Appeals has the power to issue in common with the Supreme Court and the Regional Trial Courts,[43] payable by the sureties of the bond given in support of the writ, upon seasonable application and summary hearing.[44]

Since it cannot but be assumed that in formulating, and incorporating in BP 129, the provision governing the jurisdiction of the Intermediate Appellate Court, now Court of Appeals, the Batasang Pambansa was fully cognizant of the relevant provisions of the Rules of Court just cited, as well as the rule against multiplicity of actions, it follows that in conferring on the Court of Appeals original jurisdiction over the special civil action of mandamus, among others, as well as over the issuance of auxiliary writs or processes, the Batasang Pambansa clearly intended that said Court should exercise all the powers then possessed by it under the Rules of Court in relation to said action of mandamus and auxiliary writs, including the adjudication of damages to the petitioner in the action in appropriate cases.

IV

The next issue is whether or not the Solicitor General may properly represent a public official like Dr. Vital-Gozon, who is sued for damages for allegedly refusing to comply with a lawful and executory judgment of competent authority. The doctrine laid down in the Urbano and Co cases already adverted to,[45] is quite clear:

"*** (T)he Office of the Solicitor General is not authorized to represent a public official at any stage of a criminal case. ***.

This observation should apply as well to a public official who is haled to court on a civil suit for damages arising from a felony allegedly committed by him (Article 100, Revised Penal Code). Any pecuniary liability he may be held to account for on the occasion of such civil suit is for his own account. The State is not liable for the same. A fortiori, the Office of the Solicitor General likewise has no authority to represent him in such a civil suit for damages."

It being quite evident that Dr. Vital-Gozon is not here charged with a crime, or civilly prosecuted for damages arising from a crime, there is no legal obstacle to her being represented by the Office of the Solicitor General.

V

The last issue is whether or not the decision of the Court of Appeals of June 9, 1989 could still be modified after it was pronounced final and executory and was in fact executed with respect to de la Fuente's reinstatement to his position and the payment of the salaries and allowances due him.

There would seem to be no question about the timeliness of de la Fuente's motion for reconsideration of the June 9, 1989 decision. As already narrated, notice of said decision was served on him on the 15th of June, and his motion for reconsideration was presented on June 29, 1989, or fourteen (14) days after receiving a copy of the judgment, i.e., within the fifteen-day period prescribed by Section 1, Rule 37 of the Rules of Court for filing a motion for new trial or reconsideration.

This being so, it would certainly have been entirely within the authority of the Court of Appeals, under normal circumstances, to rule on that motion for reconsideration and, in its discretion, act favorably on it, as it did through its Resolution of September 27, 1991 -- by amending the decision of June 9, 1989, declaring it a partial

judgment, and setting a date for reception of evidence on de la Fuente's claim for damages.

It would also appear that the motions for reconsideration of said Resolution of September 27, 1991 separately submitted in Gozon's behalf, by her own private attorney and by the Solicitor General's Office, were filed way out of time. As also already pointed out, notice of that Resolution of September 27, 1991 was served on Gozon's counsel on October 3, 1989 and on Gozon herself on October 4, 1989; but the motion for reconsideration of Atty. Martinez (Gozon's private lawyer) was not filed until November 10, 1989, thirty-eight (38) days afterwards, and that of the Solicitor General, until November 16, 1989, or forty-four (44) days later. What is worse is that, its motion for reconsideration of November 16, 1989 having been denied by a Resolution dated January 11, 1991, notice of which it received on January 18, 1991, the Solicitor General's Office filed still another motion for reconsideration on January 30, 1991, ostensibly directed against that Resolution of January 11, 1991 but actually seeking the setting aside of the Resolution of September 17, 1989. In effect it filed a second motion for reconsideration which, of course, is prohibited by law.[46]

However, disposition of the question simply and solely on the foregoing premises is precluded by the fact that prior to the promulgation by the Appellate Court of its Resolution of September 27, 1989 -- granting de la Fuente's motion for reconsideration of June 29, 1989 -- de la Fuente had asked for and been granted by the Court of Appeals, authority to execute the decision of June 9, 1989 and had in fact succeeded in bringing about satisfaction thereof, in so far as concerned his reinstatement to the position from which he had been illegally ousted and the payment to him of his salaries and allowances.

It has therefore become essential to determine the effect of the execution of said decision of June 9, 1989 at de la Fuente's instance, on the power of the Court of Appeals to modify that judgment as earlier prayed for by de la Fuente in such a way as to concede the latter's capacity to claim damages in his mandamus action, and consequently authorize him to present evidence on the matter.

The general rule is that when a judgment has been satisfied, it passes beyond review, satisfaction being the last act and end of the proceedings, and payment or satisfaction of the obligation thereby established produces permanent and irrevocable discharge;[47] hence, a judgment debtor who acquiesces in and voluntarily complies with the judgment, is estopped from taking an appeal therefrom.[48]

On the other hand the question of whether or not a judgment creditor is estopped from appealing or seeking modification of a judgment which has been executed at his instance, is one dependent upon the nature of the judgment as being indivisible or not. This is the doctrine laid down by this Court in a case decided as early as 1925, *Verches v. Rios*.^[49] In that case this Court held that although "there are cases holding the contrary view," where the judgment is indivisible, "the weight of authority is to the effect that an acceptance of full satisfaction of the judgment annihilates the right to further prosecute the appeal; * * * that a party who has recovered judgment on a claim which cannot be split up and made the basis of several causes of action, and afterwards coerced full satisfaction by writ of execution or authority of the court, cannot maintain an appeal from the judgment against the objections of the judgment debtor;" and that even partial execution by compulsory legal process at the instance of a party in whose favor a judgment appealed from was rendered, places said party in estoppel to ask that the judgment be amended, either "by appeal or answer to his adversary's appeal, or otherwise."^[50]

A converso, where the judgment is divisible, estoppel should not operate against the judgment creditor who causes implementation of a part of the decision by writ of execution. This is the clear import of *Verches* and the precedents therein invoked. It is an aspect of the principle above mentioned that is fully consistent not only with the dissenting opinion that "(a) cceptance of payment of ** only the uncontroverted part of the claim ** should not preclude the plaintiff from prosecuting his appeal, to determine whether he should not have been allowed

more,"[51] but also with logic and common sense.

In this case, the amended judgment of the Court of Appeals is clearly divisible, satisfaction of which may be "split up." One part has reference to the enforcement of the final and executory judgment of the Civil Service Commission, that de la Fuente should be reinstated to the position of Chief of Clinics (now Chief of Medical Professional Staff) without loss of seniority rights and that he be paid his back salaries and all monetary benefits due him from the date of his illegal demotion. This part is no longer issuable, and has not in truth been controverted by Gozon herself. The other part has reference to the damages which de la Fuente contends he suffered as a result of the unjustified refusal of Gozon and her co-parties to comply with the final and executory judgment of the Civil Service Commission, and which the Appellate Tribunal has allowed him to prove. Obviously, the second part cannot possibly affect the first. Whether de la Fuente succeed or fail in his bid to recover damages against Gozon, et al. because of their refusal to obey the judgment of the Civil Service Commission, is a contingency that cannot affect the unalterable enforceability of that judgment. Similarly, the enforcement of the Commission's judgment (already accomplished by writ of execution of the Court of Appeals issued at de la Fuente's instance) cannot influence in any manner the question of whether or not there was culpable refusal on the part of Gozon, et al. to comply with said judgment when first required so to do, and whether de la Fuente did in fact suffer compensable injury thereby.

It bears stressing that the juridical situation in which de la Fuente finds himself is not of his making. It is a consequence of circumstances not attributable to any fault on his part, i.e., the unwarranted refusal or neglect of his superiors to obey the executory judgment of the Civil Service Commission; the erroneous refusal of the Commission to execute its own decision which made necessary, in de la Fuente's view, the filing of a mandamus action in the Court of Appeals; the initial refusal of the latter Court to acknowledge his right to damages in connection with the mandamus suit; and ultimately, the change of view by the Court of Appeals, on de la Fuente's motion, as regards its competence to take cognizance of the matter of damages in relation to the mandamus proceeding.

Under these circumstances, there was no reason whatsoever to defer concession to de la Fuente of the relief of reinstatement -- to which he was indisputably already entitled -- in the meantime that issues arising after finality of the Civil Service Commission's judgment were being ventilated and resolved -- these issues being, to repeat, whether or not the refusal by Gozon, et al. to obey said judgment of the Commission could be justified, and whether or not, by reason of that refusal to obey, de la Fuente did in fact suffer compensable injury.

It was therefore correct for the Court of Appeals, albeit by implication, to treat its judgment as divisible, or capable of being enforced by parts, and to consider de la Fuente as not having been placed in estoppel to pursue his claim for damages by seeking and obtaining authority for a partial execution of the judgment. De la Fuente not being in estoppel, it follows that his motion for reconsideration, timely filed, was not deemed abandoned or waived by the partial execution of the judgment, and jurisdiction of the Court of Appeals to amend the judgment was retained and not lost. It follows, too, that since no motion for reconsideration was filed against, or appeal attempted to be taken from, the Resolution of the Court of Appeals amending its original judgment, within the time prescribed therefore by law, said amendatory resolution has long since become final and immutable, particularly in so far as it holds itself competent to take cognizance of the matter of damages and authorizes the reception of evidence on de la Fuente's claim therefor.

WHEREFORE, the petition is DENIED, and the challenged Resolutions of September 27, 1989, January 11, 1991 and August 7, 1991 are AFFIRMED, without pronouncement as to costs.

SO ORDERED.

Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Medialdea, Regalado, Davide, Jr., Romero, Nocon, and Bellosillo, JJ., concur.

[1] Respectively, G.R. No. 87977 and G.R. No. 88578 (March 19, 1990): 183 SCRA 347, the ruling being to the effect that the Office of Solicitor General may not represent a public official in a criminal case against him or in a civil suit for damages arising from a felony, the doctrine in *Anti-Graft League v. Hon. Ortega, et al.*, 99 SCRA 644 (1980) and *Solicitor General v. Garrido*, 100 SCRA 276 (1980), being expressly abandoned.

[2] Rollo, p. 70

[3] Article IX-A, Sec. 7

[4] Dr. Vital-Gozon was appointed Medical Center Chief in April, 1988, succeeding Dr. C. Agregado, who retired

[5] Petition, par. 9; parenthetical insertion supplied

[6] Rollo, p. 52

[7] *Id.*, p. 85: emphasis, in original text

[8] Rollo, pp. 69, 71

[9] SEE footnotes 10 and 18, *infra*

[10] Rollo, p. 64

[11] *Id.*, pp. 69-72

[12] C.A. Record, p. 87. As regards Jose D. Merencilla, Jr., he too acknowledged receipt of notice of said judgment, as did Rizalina D. Pangan, Personnel Officer I, which letter bore the postscript, "Noted: s/t: Ma. Isabelita S. Vital--Gozon, M.D., F.P.P.S., Medical Center Chief" (CA Record, p. 90).

[13] *Id.*, p. 87

[14] C.A. Record, pp. 92 et seq.

[15] *Id.*, p. 101

[16] *Id.*, p. 73

[17] *Id.*, pp. 74-75

[18] "SEC. 9. Writ of execution of special judgment. -- When a judgment requires the performance of any other act than the payment of money, or the sale or delivery of real or personal property, a certified copy of the judgment shall be attached to the writ of execution and shall be served by the officer upon the party against whom the same is rendered, or upon any other person required thereby, or by law, to obey the same, and such party or person may be punished for contempt if he disobeys such judgment."

[19] C.A. Record, p. 112

[20] C.A. Record, pp. 125 et seq. SEE footnotes 9 and 10, *supra*

[21] *Id.*, p. 138

[22] *Id.*, p. 32, *supra*

[23] Rollo, pp. 36-37

[24] *Italics supplied*

[25] C.A. Record, p. 161

[26] *Id.*, p. 163

[27] *Id.*, pp. 178-183

[28] *Id.*, pp. 171-177

[29] Rollo, pp. 38-39; see footnote 1, *supra*

[30] Rollo, *id.*, *id.*, par. 3

[31] *Id.*, *id.*, par. 5

[32] *Id.*, p. 40

[33] *Id.*, pp. 38-39, par. 6

[34] A proposition as to which the record discloses no serious challenge.

[35] Rollo, p. 85: emphasis, in original text

[36] *SEE* *Cucharo v. Subido*, 37 SCRA 523, citing SEC. 35, Civil Service Act of 1959; *Yarcia v. City of Baguio*, 33 SCRA 419; *Trocio v. Subido*, 20 SCRA 354; *Cabigao v. del Rosario*, 6 SCRA 578 (1962); *Austria v. Auditor General*, 19 SCRA 79, 83-84; *Gonzales v. Hernandez*, 2 SCRA 228, 233-234, in turn cited in *GSIS v. Civil Service Commission, et al.*, G.R. No. 96938, Oct. 15, 1991

[37] 202 SCRA 799, 804-805

[38] This power is concurrent with this Court and the Regional Trial Court.

[39] *Italics supplied*; *SEE* footnote 16 and related text, *supra*

[40] Sec. 3, Rule 67

[41] The original requirement that the writ issue only "in aid of its appellate jurisdiction" was, as already pointed out, deleted by Sec. 9 of BP 129, *supra*

[42] *Italics supplied*

[43] Sec. 2, Rule 57; Sec. 2, Rule 58; and Sec. 1, Rule 59, respectively

[44] Sec. 20, Rule 57; Sec. 9, Rule 58; and Sec. 9, Rule 59, respectively

[45] 183 SCRA 347, 358; *SEE* footnote 1, *supra*

[46] Par. 4 of the Interim Rules promulgated by the Supreme Court on January 11, 1983 by authority of BP 129, provides that "No party shall be allowed a second motion for reconsideration of a final order or judgment."

[47] *Moran, Comments on the Rules*, 1979 ed., Vol. 2, p. 345, citing *Estate of Baby*, 87 Cal. 200, 202, 25 Pac. 405

[48] *Desbarats v. de Vera*, 83 Phil. 382; *Asian Surety & Insurance Co., Inc. v. Relucio*, 47 SCRA 225; *Robert Dollar Co. v. Tuvera*, 123 SCRA 354; *Tañada v. Court of Appeals*, 139 SCRA 419; SEE also *PVTA v. de los Angeles*, 61 SCRA 489; *IBA AEU v. Inciong*, 132 SCRA 663; cf, *Song Fo & Co. v. Veloso*, 26 Phil. 575, 576 where the judgment debtor was held not to be in estoppel to appeal because payment was made by him only because execution was issued by special order and he wished to avoid the costs, expense and damage which would necessarily result from the levy of the execution (cited in *Feria*, *Civil Procedure*, 1969 ed., p. 620, citing; and *Moran*, *op. cit.*, also at p. 345

[49] 48 Phil. 16

[50] Referring to American cases, e.g., *Paine v. Woolley*, 80 Ky., 568; *Wiemann's Succession*, 112 La. 293, 36 So., 354; *Harte v. Castetter*, 38 Neb., 571, 57 N.W., 381; *Holt v. Rees*, 46 Ill., 181; italics supplied

[51] Per *Malcolm, J.*, with whom concurred *Avanceña, C.J.*, *Villamor and Romualdez, JJ.*, 48 Phil. 25

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