

**HON. ISIDRO CARIÑO, IN HIS CAPACITY AS SECRETARY OF THE
DEPARTMENT OF EDUCATION, CULTURE AND SPORTS AND HON.
BERNARDO REYES, REGIONAL DIRECTOR, DECS, REGION III,
PETITIONERS, VS...**

G.R. No. 102836. January 18, 1993

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This is a special civil action for certiorari, prohibition and mandamus under Rule 65 of the Rules of Court to set aside, for having been issued without or in excess of jurisdiction or with grave abuse of discretion, the 29 October 1991 Order of respondent Judge in Civil Case No. 210-M-91 entitled "Priscilla Ramos, et al.[1] vs. Hon. Isidro Cariño, et al.," which allowed the Petition in Intervention of Ananias Dicdican, et al.[2] and granted the application for a writ of preliminary mandatory injunction for the reinstatement of the intervenors and the payment of their back salaries.

In the Resolution of 13 December 1991,[3] We required the respondents to comment on the petition and issued a temporary restraining order directing the respondent Judge to cease and desist from enforcing the challenged order. Respondents Priscilla Ramos, et al. (hereinafter referred to as the Private Respondents) filed their Comment on 20 January 1992.[4] Respondents Ananias Dicdican and the others (hereinafter referred to as Private Respondents-Intervenors) filed their Comment on 16 January 1992.[5]

In Our Resolution of 13 February 1992,[6] We considered the Comments as the Answers, gave due course to the petition and required the parties to submit their respective Memoranda. Private Respondents filed their Memorandum only on 6 October 1992.

The facts which gave rise to this petition are not disputed.

Private Respondents are among those who allegedly staged, on 21 September 1990, a "mass action" in Bulacan to demonstrate their solidarity with the public school teachers who were then engaged in a strike in the National Capital Region.

For their failure to comply with the 24 September 1990 and 1 October 1990 return-to-work orders, petitioner Bernardo Reyes, DECS Regional Director for Region III, filed administrative complaints against them and created an investigation committee.

On 6 February 1991, petitioner Reyes rendered separate decisions in two (2) administrative cases, to wit:

- a) Case No. DECSRO-III-91-001 wherein he imposed the penalty of immediate dismissal from the service on respondents Priscilla Ramos and twenty-seven (27) others;[7] and
- b) Case No. DECSRO-III-91-002 wherein he imposed the penalty of suspension from the service for a period of one (1) year, effective upon receipt of the decision, on respondents Benilda Sarmiento and eleven (11)

others.[8]

Both decisions were "confirmed" by petitioner Cariño.

Private Respondents-Intervenors Ananias Dicdican, Reynaldo Antonio, Potenciano dela Cruz, Lorena Sotto, Corazon Ajero and Julio Mendoza are among the twenty-eight (28) respondents in Case No. DECSRO-III-91-001. The rest of the Private Respondents-Intervenors, with the exception of Aurelio Pacuiligan, Angelina Ortega, Nestor Lazaro and Milagros Peres, are the respondents in Case No. DECSRO-III-91-002. While the names of these last four (4) parties are included in the Petition in Intervention,[9] they do not appear in either of the two (2) decisions.

On 4 March 1991, Private Respondents filed with petitioner Reyes a motion or petition to recall or reconsider the decision in Case No. DECSRO-III-91-001. Thereafter, on 9 April 1991, they filed with the court a quo a petition for mandamus wherein they alleged that the said decision was rendered without any hearing and was not supported by evidence; it was further averred that the petitioners failed to act on the motion for reconsideration within the period prescribed by P.D. No. 807, as amended. They prayed therein that the petitioners be required to recall or reconsider the decision. The petition was docketed as Civil Case No. 210-M-91. On 7 June 1991, respondent Judge issued an order directing herein petitioners to reinstate the Private Respondents.

Petitioners challenged the said order in a petition for certiorari, prohibition and mandamus filed with this Court and docketed as G.R. No. 100206.

On 22 August 1991, We promulgated the following resolution in the said case:

"The Court considers that since no administrative hearings were actually held, private respondent teachers should have the fullest opportunity to present the facts in their individual cases before the respondent Regional Trial Court, and the Regional Trial Court given a chance to grant such corrective relief as it may regard warranted (sic). The Court is aware that DECS Regional Director Reyes has declined to show any 'magnanimity' and held private respondents summarily guilty in the administrative proceedings then on going before him, and that private respondents went directly to the Regional Trial Court. There is, of course, nothing to prevent DECS Regional Director Reyes from re-examining and withdrawing his 6 February 1991 decision, if he is minded to do so, so that the facts in the individual cases of private respondents might be brought out in the administrative proceedings, rather than ventilating them immediately before the Regional Trial Court; in such case, private respondents, if still adjudged guilty, could appeal to the Civil Service Commission.

In the meantime, the Court believes that private respondents should be reinstated pending determination by the Regional Trial Court of the issues presented to it.

ACCORDINGLY, the Court Resolved to DISMISS the Petition for Certiorari, Prohibition and Mandamus and to REMAND this case to respondent Regional Trial Judge for further proceedings consistent with this Resolution."

In view thereof, petitioner Reyes issued on 6 September 1991 an order, in Case No. DECSRO-III-91-001, setting aside and recalling the decision therein dated 6 February 1991, and directing that a formal investigation be conducted.[10] Private Respondents were thus reinstated and a general payroll for their backwages was prepared.[11]

Petitioners then filed a motion to dismiss Civil Case No. 210-M-91 which the Private Respondents opposed.

In the meantime, Private Respondents-Intervenors filed in Civil Case No. 210-M-91 a motion for leave to intervene, attaching thereto their Petition in Intervention[12] dated 6 September 1991. They prayed that:

"WHEREFORE, it is most respectfully prayed that the order of February 6, 1991 of the Regional Director

Region III (DECS) as confirmed by Hon. Isidro Cariño be declared null and void, that the petitioners/intervenors be exonerated and allowed them (sic) to return to their respective assignment (sic) of duties in order to perform and discharge their function as secondary public school teachers of Bulacan; the decision dated October 18, 1990 shall stand;

Petitioners/intervenors further prays (sic) for such other reliefs to (sic) which they are entitled in law and in equity."[13]

In the said petition, Private Respondents-Intervenors made a general reference to a 6 February 1991 decision by petitioner Reyes without specifying if they had been dismissed (Case No. DECSRO-III-91-001) or merely suspended from the service for one (1) year (Case No. DECSRO-III-91-002). They claimed that they had received a copy of the decision on 19 February 1991.

During the hearing on 15 October 1991, the respondent Judge declared that he was holding "in abeyance the ruling on the Motion to Dismiss pending compliance with the resolution of the Supreme Court,"[14] which he elaborated to mean reinstatement and the payment of backwages. When categorically asked if he would dismiss the case upon payment by the petitioners of the said backwages, respondent Judge declared:

"COURT:

Yes, if they will pay and the teachers . . . are reinstated, I will proceed to dismiss the case but they are also under the ruling, allowed to investigate the individual teacher (sic)."[15]

On the same occasion, petitioners herein, through Solicitor Hernandez, orally moved that they be granted a period of ten (10) days within which to file an opposition to the Petition in Intervention.[16] The trial court granted the motion.

As shown in the general payroll,[17] the Private Respondents had already received their backwages.

On 29 October 1991, the respondent Judge issued an order[18] resolving (a) the Petition for Intervention and (b) the Application for Preliminary Mandatory Injunction. Thus:

"Under the premises and applying the equal protection clause of the Constitution:

1. the aforementioned Petition in Intervention is allowed;
2. with the petitioners' posting of a bond in the amount of P20,000.00 each, a preliminary mandatory injunction is issued against the Secretary of Education, Hon. Isidro Cariño and Dr. Bernardo Reyes, Regional Director, Region III, ordering them:
 - a. to reinstate the 22 teachers, intervenors;
 - b. pay them back salaries from February 1991; and
 - c. to recall them from inactive duties considering the newspaper report (Headline-Manila Bulletin, May 26, 1991 issue) that the Nation needs 27,000 teachers; as there are so many teachers needed to fill the vacant slots."[19]

By way of a note to this order, two (2) teachers, namely Isabelita S. Paguiligan and Aurelio Mariano, were included as intervenors. The first could very well be Isabelita Paguiligan, one of the respondents in Case No. DECSRO-III-91-001. The second is also a respondent therein.

On 30 October 1991, the Respondent Judge issued the writ of preliminary mandatory injunction.[20]

In view of all these, the instant petition was filed. As grounds therefor, petitioners allege that:

"I

RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AND ACTED WITHOUT OR IN EXCESS OF JURISDICTION IN ALLOWING THE PETITION FOR INTERVENTION.

II

RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AND ACTED WITHOUT OR IN EXCESS OF JURISDICTION IN NOT DISMISSING THE CASE AFTER THE REINSTATEMENT AND PAYMENT OF BACKWAGES OF THE ORIGINAL EIGHTEEN RESPONDENT TEACHERS."[21]

The petition is impressed with merit. With respect to Civil Case No. 210-M-91, the respondent Court had nothing left to do except to dismiss it. For that and for the further reason that intervention was not proper in the premises, the trial court committed grave abuse of discretion amounting to lack or excess of jurisdiction in granting the motion to intervene, admitting the petition in intervention and issuing a preliminary mandatory injunction for the reinstatement of and the payment of back salaries to the intervenors -- herein Private Respondents-Intervenors. As thus formulated, the justification for the above conclusion logically requires a discussion of the second ground relied upon by the petitioners in their petition.

1. The parties do not dispute the fact that petitioner Reyes, taking into account the Resolution of this Court of 22 August 1991 in G.R. No. 100206, set aside, on 6 September 1991, his 6 February 1991 decision in Case No. DECSRO-III-91-001. By virtue thereof, the herein Private Respondents, who were among the respondents in the said case, were reinstated. The pertinent portion of the said Resolution upon which the recall order is based reads as follows:

"x x x There is, of course, nothing to prevent DECS Regional Director Reyes from re-examining and withdrawing his 6 February 1991 decision, if he is minded to do so, so that the facts in the individual cases of private respondents might be brought out in the administrative proceedings, rather than ventilating them immediately before the Regional Trial Court; in such case, private respondents, if still adjudged guilty, could appeal to the Civil Service Commission.

In the meantime, the Court believes that private respondents should be reinstated pending determination by the Regional Trial Court of the issues presented to it."

The petitioners even went a step further than reinstatement -- they paid the Private Respondents back salaries.

The petition for mandamus in Civil Case No. 210-M-91 sought for the recall or reconsideration of the 6 February 1991 decision on the ground that the said decision was rendered without any hearing and the petitioners were not able to act on the Private Respondents' motion for reconsideration within the period prescribed by P.D. No. 807.

With the 6 September 1991 Order recalling the said decision, the dismissal of Civil Case No. 210-M-91 should have followed as a matter of course "so that," as We stated in the 22 August 1991 Resolution, "the facts in the individual cases of private respondents might be brought out in the administrative proceedings, rather than ventilating them immediately before the Regional Trial Court."

The trial court was fully aware of the legal significance and consequence of the recall order, reinstatement and payment of back salaries, for which reason it committed itself during the hearing on 15 October 1991 to dismiss the case upon payment of the back salaries of the Private Respondents. Thus, in sitting on a case which had lost its reason to exist, the trial court acted with grave abuse of discretion.

2. Intervention may be allowed only in the instances provided for by law. Furthermore, the discretion of the court to allow the same is subject to certain limitations.

The basic law on intervention is Section 2, Rule 12 of the Rules of Court which provides:

"SEC. 2. Intervention. -- A person may, before or during a trial, be permitted by the court, in its discretion, to intervene in an action, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by a distribution or other disposition of property in the custody of the court or of an officer thereof."

This provision has its roots in Section 121 of the Code of Civil Procedure, which is a verbatim copy of Section 387 of the Code of Civil Procedure of the State of California:[22]

"Intervention is a proceeding in a suit or action by which a third person is permitted by the court to make himself a party, either joining plaintiff in claiming what is sought by the complaint, or uniting with defendant in resisting the claims of plaintiff, or demanding something adversely to both of them; the act or proceeding by which a third person becomes a party in a suit pending between others; the admission, by leave of court, of a person not an original party pending legal proceedings, by which such person becomes a party thereto for the protection of some right or interest alleged by him to be affected by such proceedings. (33 C.J., 477).

Fundamentally, therefore, intervention is never an independent action, but is ancillary and supplemental to the existing litigation. Its purpose is not to obstruct nor (sic) unnecessarily delay the placid operation of the machinery of trial, but merely to afford one not an original party, yet having a certain right or interest in the pending case, the opportunity to appear and be joined so he could assert or protect such right or interest." [23]

Otherwise stated, the right of an intervenor should only be in aid of the right of the original party. Where the right of the latter has ceased to exist, there is nothing to aid or fight for; hence, the right of intervention ceases.[24]

The interest contemplated by law must be actual and material, direct and immediate, and not simply contingent or expectant; it must be in the matter in litigation and of such direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment.[25] The words "an interest in the subject" mean a direct interest in the cause of action as pleaded, and which would put the intervenor in the legal position to litigate a fact averred in the complaint; without the establishment of which plaintiff could not recover.[26] Accordingly, intervention is improper and should be disallowed if the claim of the intervenor could be decided or fully protected in a separate proceeding.[27]

Finally, intervention may be allowed only before or during the trial. The term trial is used in its restricted sense, i.e., the period for the introduction of evidence by both parties. This period of trial terminates when the judgment begins.[28]

Applying the foregoing principles to this case, it is not at all difficult to rule against the intervention by the Private Respondents-Intervenors because they do not possess actual and material, direct and immediate legal interest in the matter in litigation or in the success of either of the parties. Their interest is exclusively personal to them and would not be affected by the proceedings. In fact, such interest could be completely decided and fully protected in a separate suit. As earlier observed, Private Respondents-Intervenors Ananias Dicdican, Reynaldo Antonio, Potenciano de la Cruz, Lorena Sotto, Corazon Ajero and Julio Mendoza, as well as one Aurelio Mariano and Isabelita Pacuiligan who are probably the parties referred to under the name Aurelio Pacuiligan in the Petition in Intervention, are among the respondents in Case No. DECSRO-91-001 who did not join the Private Respondents in the original petition for mandamus in Civil Case No. 210-M-91. The decision therein having been recalled on 6 September 1991, their cause of action as intervenors therein was extinguished as of the said date. As to the rest of the Private Respondents-Intervenors, with the exception of Angelina Ortega, Nestor Lazaro and Milagros Peres, their cause of action is based on the 6 February 1991 decision of petitioner Reyes in Case No. DECSRO-III-91-002 which ordered their suspension for one (1) year from the service. They likewise opted not to

join the Private Respondents in the original petition in Civil Case No. 210-M-91. As to why they initially distanced themselves from the Private Respondents has not been explained. But gauged from conduct, the possibility is not remote that they entertained doubts as to the ripeness of the said judicial action in view of the pendency of their motion to reconsider the DECS decision; in effect, they considered the Private Respondents' move as a test case which they could take advantage of if the outcome of the same would be favorable. In short, they were ready to share in the harvest but not in the task of sowing or planting.

Howsoever viewed, Private Respondents-Intervenors' principal cause of action is entirely distinct and separate from, and not ancillary or supplemental to, that involved in the petition of the Private Respondents. Considering that as earlier noted, the latter's cause of action was rendered moot and academic by the recall of the 6 February 1991 decision in Case No. DECSRO-III-91- 001 and that there remained nothing more to be done in Civil Case No. 210-M-91 except to dismiss it, neither the Rules of Court nor an appeal to reason could prop up the intervention. The life from which it intended to derive sustenance having been extinguished, it cannot be made to stand on its own in said Civil Case No. 210-M-91. The trial court then acted with grave abuse of discretion in allowing the intervention; it further compounded such indiscretion by arbitrarily issuing a writ of preliminary mandatory injunction without the notice and hearing required in Section 5, Rule 58 of the Rules of Court, as amended by B.P. Blg. 224. Since the trial court granted, during the hearing on 15 October 1991, a period of ten (10) days within which the petitioners could file an opposition to the motion to intervene, the subsequent application for the issuance of a writ of preliminary mandatory injunction cannot be properly granted ex-parte and simultaneously with the ruling on the motion.

The foregoing notwithstanding, since Director Reyes had in fact set aside and recalled the decision in Case No. DECSRO-III-91-001, and the one (1) year suspension from the service imposed in Case No. DECSRO-III-91-002 had already lapsed, Private Respondents-Intervenors are likewise entitled to reinstatement. It should be stressed here that although the suspension period had already expired, petitioner Reyes may also recall his decision in Case No. DECSRO-III-91-002, if he is so minded, bearing in mind Our Resolution of 22 August 1991 in G.R. No. 100206. Such revocation, however, should be without prejudice to the formal investigation of the administrative charges, unless a new policy which renders moot and academic the pursuit of such charges has, in the meantime, been adopted by the Department of Education, Culture and Sports.

WHEREFORE, the petition is GRANTED. The challenged order of respondent Judge of 29 October 1991 in Civil Case No. 210-M-91 is hereby SET ASIDE and respondent Judge is hereby directed to DISMISS said case.

However, petitioners should reinstate Private Respondents-Intervenors who are the respondents either in Case No. DECSRO-III-91-001 or Case No. DECSRO-III-91-002, taking into account the above observations.

No pronouncements as to costs.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Griño-Aquino, Regalado, Romero, Nocon, Bellosillo, Melo, and Campos, Jr., JJ., concur.

[1] And Wilfredo Espiritu, Carmelita Sarceno, Elvira Pengson, Amelita Restura, Remedios Rivera, Trinidad Angeles, Nida Angeles, Jose Santos, Cirila Pablo, Wilma Laguna, Cornelia Antonio, Remedios Balmes, Regino de Leon, Eleonor Velago, Rosario Magtalas, Pilar Caliwag and Pancracio Santos.

[2] The rest of the private respondents herein.

[3] Rollo, 61.

- [4] *Id.*, 78-94.
- [5] *Id.*, 102-118.
- [6] [*Id.*,] 197-198.
- [7] The first Annex "7" to Comments of Private Respondents-Intervenors; Rollo, 130-133.
- [8] The second Annex "7" of the Comment of Private Respondents-Intervenors; *Id.*, 134-137.
- [9] Annex "C" of Petition; Rollo, 30-37. In Case No. DECSRO-III-91-001, two (2) of the respondents are Aurelio Mariano and Isabelita Paguiligan. There must have some confusion somewhere. The name Aurelio Pacuiligan in the Petition in Intervention could refer to Aurelio Mariano and Isabelita Paguiligan.
- [10] Annex "D" of Petition; Rollo, 38.
- [11] Annexes "E" and "E-1", *Id.*; *Id.*, 39-40.
- [12] Annex "C", *Id.*; *Id.*, 30-37.
- [13] *Id.*, 36.
- [14] TSN, 15 October 1991, (Annex "F" of Petition), 11; Rollo, 51.
- [15] *Id.*; *Id.*, 52-53.
- [16] *Id.*, 56.
- [17] Annexes "E" and "E-1" of Petition; *Id.*, 39-40.
- [18] Annex "A", *Id.*; *Id.*, 24-27.
- [19] Rollo, 27.
- [20] Annex "B" of Petition; *Id.*, 28-29.
- [21] Rollo, 11.
- [22] *Garcia vs. David*, 67 Phil. 279, 283 [1939].
- [23] At page 282.
- [24] *Clareza vs. Rosales*, 2 SCRA 455 [1961].
- [25] *Garcia vs. David*, *supra.*, at page 284 citing several pertinent American cases.
- [26] *Magsaysay-Labrador vs. Court of Appeals*, 180 SCRA 266 [1989], citing authorities.
- [27] *Batama Farmers Cooperative Marketing Association, Inc. vs. Rosal*; 42 SCRA 408 [1971]; *Pfleider vs. De Britanico*, 12 SCRA 222 [1964].
- [28] FRANCISCO, V. J., *The Revised Rules of Court of the Philippines*, Vol. 1, 1973, ed., citing *Bool vs. Mendoza*, 92 Phil. 892 [1953]; *Felismino vs. Gloria*, 47 Phil, 967 [1924].

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