

ATTY. ALFONSO PAA, PETITIONER, VS. THE HONORABLE COURT OF APPEALS, CIVIL SERVICE COMMISSION AND DIRECTOR BARTOLOME C. AMOGUIS, RESPONDENTS.*G.R. No. 126560. December 04, 1997*

Ponente: DAVIDE, JR., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-126560/>**DAVIDE, JR., J.:**

Petitioner urges us to set aside, on ground of grave abuse of discretion, the resolution of respondent Court of Appeals of 30 April 1996 in CA-G.R. SP No. 40341 denying petitioner's "Motion for Extension of Time to File Petition for Certiorari under Rule 45 of the Rules of Court," and its resolution of 19 September 1996 denying the motion for reconsideration.

Petitioner was the Administrative Officer of Regional Office No. XI of the Department of Labor and Employment (DOLE). In an Order dated 4 September 1992, then DOLE Secretary Ma. Nieves R. Confesor ordered petitioner "DISMISSED from the service with forfeiture of leave credits and retirement benefits and disqualification for (sic) reemployment in the government service," for conduct grossly prejudicial to the best interest of the service, frequent absences from duty during office hours, and violation of reasonable office rules and regulations. Unsuccessful in his bid for reconsideration, petitioner appealed to the Civil Service Commission.

In its Resolution No. 95-0230 of 12 January 1995, [1] the Civil Service Commission "found [petitioner] guilty of being Notoriously Undesirable" and imposed upon him "the penalty of dismissal from the service with all its accessories." Petitioner moved for reconsideration, which, however, was denied by the Civil Service Commission in its Resolution No. 960987 of 13 February 1996. [2]

On 12 April 1996, petitioner filed with the Court of Appeals a Motion for Extension of Time to File Petition for Certiorari Under Rule 45 of the Rules of Court, [3] docketed by the Court of Appeals as CA-G.R. SP No. 40341. He alleged that he received a copy of the 13 February 1996 Civil Service Commission resolution on 29 March 1996 and he had then "until 13 April 1996 within which to file a petition for review under Rule 45 of the Rules of Court as amended;" and that he needed three (3) weeks to secure "certified true copies of the resolutions and other pertinent documents [from] the Civil Service Commission, Quezon City," which were to be attached to the petition. He thus asked for an extension of 30 days from 13 April 1996 within which to file the petition.

On 30 April 1996, the Court of Appeals promulgated a Resolution[4] denying petitioner's aforementioned Motion for Extension of Time to File Petition, decreeing:

The instant "Motion for Extension of Time to File Petition for Certiorari under Rule 45 of the Rules of Court" filed on 12 April 1996 is hereby DENIED it being the wrong mode of appeal.

It is to be noted that the questioned resolution was rendered by the Civil Service Commission; that the Supreme Court Revised Administrative Circular No. 1-95 (Revised Circular No. 1-91) specifically provides that appeals from judgments or final orders or resolutions of the quasi-judicial agencies (which includes the Civil Service Commission) is Petition for Review. (Pars. 1 and 5, *supra*.)

Since the Court of Appeals denied his motion for reconsideration on 19 September 1996, [5] petitioner filed the instant petition, designating it in both the caption and the body as one for “certiorari under Rule 65 or Rule 45 of the Rules of Court as amended.” Petitioner alleges:

I THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO MYOPIC OR SHORT SIGHTEDNESS IN JUDGMENT IN ADHERING AND LIMITING ITSELF ONLY TO APPEAL BY A PETITION FOR REVIEW UNDER SUPREME COURT REVISED ADMINISTRATIVE CIRCULAR NO. 1-95 (REVISED CIRCULAR NO. 1-91) GROSSLY IGNORING THAT AUTHORITY/POWER 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 AS GRANTED UNDER PAR. (1), SEC. 9 OF REPUBLIC ACT NO. 7902 IN CASES WHERE THE QUASI-JUDICIAL BODY COMMITS ULTRAVIREZ [sic] ACTS TANTAMOUNT TO GRAVE ABUSE OF DISCRETION OR LACK/IN EXCESS OF JURISDICTION AS IN THE INSTANT CASE WHERE THE CIVIL SERVICE COMMISSION FOR THE FIRST TIME ON APPEAL CONSIDERED DOCUMENTS/EVIDENCE WHICH WERE NEVER INTRODUCED/PRESENTED NOR ADMITTED DURING THE FORMAL HEARING OF THE ADMINISTRATIVE CASE.

II A QUESTION OF LAW AS TO WHETHER DECISIONS OR RESOLUTIONS OF THE CIVIL SERVICE COMMISSION ISSUED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION CAN NO LONGER BE REVIEWED BY THE HONORABLE COURT OF APPEALS BY A PETITION FOR REVIEW UNDER RULE 45 OR 65 OF THE NEW RULES OF COURT AS AMENDED DESPITE THE PATENT GRAVE ABUSE OF DISCRETION ON THE PART OF THE CIVIL SERVICE COMMISSION IN DECIDING A CASE BASED ON DOCUMENTS/EVIDENCE INTRODUCED FOR THE FIRST TIME ON APPEAL, ORDINARY APPEAL BOT [sic] BEING THE PLAIN, SPEEDY AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW.

III A QUESTION OF LAW AS TO WHETHER A PETITION FOR CERTIORARI UNDER RULE 45 OR 65 OF THE RULES OF COURT AS AMENDED CAN BE CONSIDERED A MODE OF APPEAL AND IF SO CONSIDERED AS A MODE OF APPEAL WHETHER IT IS THE PROPER REMEDY TO CORRECT SUPER [sic] GRAVE ABUSE OF DISCRETION OF THE CIVIL SERVICE COMMISSION IN DECIDING A CASE BASED ON AN [sic] EVIDENCE NOT INTRODUCED DURING THE FORMAL HEARING OF THE CASE IT APPEARING UNDER SUCH CIRCUMSTANCE THERE IS NO APPEAL, NOR ANY PLAIN, SPEEDY, AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW THAT CAN BE MADE AVAILABLE TO THE PETITIONER EXCEPT THE SAID PETITION FOR CERTIORARI UNDER RULE 45 OR 65 OF THE RULES OF COURT AS AMENDED.

In its Comment,[6] the Office of the Solicitor General submits that the Court of Appeals did not commit grave abuse of discretion as the petition which petitioner actually filed with the Court of Appeals in CA-G.R. SP No. 40341 on 10 May 1996 was one for certiorari under Rule 65 of the Rules of Court, as clearly shown by the grounds petitioner relied upon, to wit:

I. THE HONORABLE PUBLIC RESPONDENT NIEVES CONFESSOR IN HER CAPACITY AS SECRETARY OF LABOR AND EMPLOYMENT AND REVIEWING OFFICER OF THE ADMINISTRATIVE COMPLAINT AGAINST THE PETITIONER COMMITTED SUPER [sic] GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION [sic] WHEN THE COMPLAINANTS IN SAID ADMINISTRATIVE CASE MERELY PETITIONED FOR THE DEMOTION OF PETITIONER IN POSITION FROM CHIEF OF THE ADMINISTRATIVE SERVICES TO SUPERVISING OFFICER OF THE INDUSTRIAL RELATIONS DIVISION OF THE SAME REGIONAL OFFICE NO. XI, DAVAO CITY, DEPARTMENT OF LABOR AND EMPLOYMENT BUT THE HONORABLE NIEVES CONFESSOR CAPRICIOUSLY, WHIMSICALLY, ARROGANTLY,

ULTRAVIREZLY [sic] WITHOUT REGARD TO THE CARDINAL RULES OF PROCEDURE AND EVIDENCE RULED AND DECREED IN ANNEX "A" TO ANNEX "A-10" LIKE AN EMPRESS THAT PETITIONER SHOULD BE DISMISSED FROM THE SERVICE WHERE THE SAID PETITIONER SPENT THE BEST 23 YEARS OF HIS LIFE HONESTLY, FAITHFULLY AND SINCERELY WITHOUT BEING CHARGED OF [sic] ANY SINGLE CASE, ADMINISTRATIVE OR OTHERWISE, EXCEPT THE PRESENT HARASSMENT CASE UNLIKE THE AFOREMENTIONED NIEVES CONFESSOR WHO IN HER SHORT STINT AS SECRETARY [OF] LABOR AND EMPLOYMENT WAS CHARGED IN THE OFFICE OF THE OMBUDSMAN OF [sic] SEVERAL CRIMINAL AND ADMINISTRATIVE CASES RANGING FROM CORRUPTION TO ALL SORTS OF CASES INCLUDING HER INEXCUSABLE NEGLIGENCE OF [sic] THE FLOR CONTEMPLACION AND OTHER SIMILAR CASES INVOLVING OVERSEAS CONTRACT WORKERS ABROAD.

II. THE HONORABLE PUBLIC RESPONDENT NIEVES CONFESSOR ACTED WITH SUPER [sic] GRAVE ABUSE OF DISCRETION AMOUNTING TO FALSE NARRATION OF FACTS OR UNTRUTHFUL STATEMENT IN THE NARRATION OF FACTS IN VIOLATION OF ART. 171 OF THE REVISED PENAL CODE TANTAMOUNT TO FALSIFICATION OF QUASI JUDICIAL PUBLIC DOCUMENTS WHEN IN THE QUESTIONED ORDER (ANNEX "A" TO "A-10") SHE ALTERED, SUBSTITUTED AND CHANGED THE FINDINGS OF THE DEPARTMENT OF LABOR INVESTIGATOR ATTY. JOEL MARTINEZ BY MAKING IT APPEAR THAT PETITIONER WAS FOUND TO BE FREQUENTLY ABSENT, WAS DRUNK OR SLEEPING DURING REGULAR OFFICE HOURS WHEN THE AFOREMENTIONED INVESTIGATING OFFICER HAS [sic] NOT MADE ANY OF THOSE FINDINGS.

III THE HONORABLE NIEVES CONFESSOR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION OR GROSS IGNORANCE OF THE LAW WHEN SHE ISSUED THE SEPTEMBER 4, 1992 ORDER (ANNEX A TO ANNEX A-10) WHEREIN SHE IMPOSED THE SUPREME PENALTY OF DISMISSAL WITH FORFEITURE OF RETIREMENT BENEFITS AND LEAVE CREDITS ON THE PETITIONER WHICH IS GROSSLY DISPROPORTIONATE TO PETITIONER'S ALLEGED FINDINGS OF GUILT FOR VIOLATION OF REASONABLE OFFICE RULES AND REGULATIONS, FREQUENT ABSENCES FROM DUTY DURING REGULAR OFFICE HOURS [sic] AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE AND PETITIONER FOR THE FIRST TIME IN HIS 23 YEARS OF SERVICE WITH THE DEPARTMENT OF LABOR AND EMPLOYMENT WAS CONFRONTED WITH AN ADMINISTRATIVE HARASSMENT CASE IN A PLACE SEVERAL HUNDRED KILOMETERS FROM HIS FAMILY WHEN UNDER THE CIVIL SERVICE LAW (PRESIDENTIAL DECREE NO. 807) AND CODE OF CONDUCT OF GOVERNMENT OFFICIALS AND EMPLOYEES (R.A. 6713) THE MAXIMUM PENALTY FOR FREQUENT UNAUTHORIZED ABSENCES WHICH IS CONSIDERED A GRAVE OFFENSE IS ONLY SUSPENSION FROM THE SERVICE FOR SIX MONTHS AND ONE DAY AND THE PENALTY FOR CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE IS SIX MONTHS AND ONE DAY TO ONE YEAR WHILE THE PENALTY FOR VIOLATION OF REASONABLE OFFICE RULES AND REGULATIONS WHICH IS A LIGHT OFFENSE, IS ONLY A REPRIMAND.

IV. THE HONORABLE NIEVES CONFESSOR COMMITTED GRAVE ABUSE OF DISCRETION IN ISSUING THE SEPTEMBER 4, 1992 ORDER (ANNEX A TO ANNEX A-10) DISMISSING FROM THE SERVICE THE HEREIN PETITIONER WITH FORFEITURE OF RETIREMENT BENEFITS AND LEAVE CREDITS AMOUNTING TO CAPRICIOUS, WHIMSICAL, ARROGANT AND ULTRAVIREZ [sic] EXERCISE OF FUNCTIONS WHEN THE CHIEF OF THE LEGAL SERVICES, THE ASSISTANT SECRETARY OF LABOR AND THE UNDERSECRETARY OF LABOR HAVE ALREADY INDORSED TO HER FOR HER APPROVAL THE ORDER DISMISSING THE INSTANT ADMINISTRATIVE CASE AND AT THE SAME TIME RECOMMENDED THE APPROVAL OF PETITIONER'S APPLICATION FOR RETIREMENT.

V. THE HONORABLE NIEVES CONFESSOR COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO VIOLATION OF PARAGRAPH (c), SEC. 4 OF R.A. 6713 WHICH IS THE CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES CONSISTING OF HER DELIBERATE MALICIOUS REFUSAL TO ACT WITH JUSTNESS AND SINCEREITY [sic] TOWARDS PETITIONER WHEN UNDER FALSE PRETEPSES [sic] SHE MISLEAD PETITIONER INTO FILING OF [sic] HIS APPLICATION FOR RETIREMENT TO TAKE EFFECT ON APRIL 15, 1993 AND AFTER PETITIONER FILED SUCH APPLICATION FOR RETIREMENT AND ACTUALLY STOPPED WORKING IN [THE] OFFICE ON APRIL 15, 1993, THE SAID HONORABLE NIEVES CONFESSOR DENIED PETITIONER'S MOTION FOR RECONSIDERATION (ANNEXES F, F-1, F-2, F-3, F-4 AND F-5) AND RETIREMENT APPLICATION.

VI. PUBLIC RESPONDENT CIVIL SERVICE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING LIKEWISE TO FALSIFICATION OF QUASI JUDICIAL PUBLIC DOCUMENTS WHEN IT ISSUED RESOLUTION NO. 95-0230 (ANNEX "B" TO "B-8" DATED JANUARY 12, 1995) AFFIRMING THE ORDER OF HONORABLE PUBLIC RESPONDENT NIEVES CONFESSOR WHEN THE SAID CIVIL SERVICE COMMISSION MADE IT APPEAR IN SAID RESOLUTION THAT CERTAIN LETTERS AND MEMORANDA WERE PRESENTED DURING THE FORMAL HEARING OF THE CASE SUCH AS THOSE LETTERS AND MEMORANDA ENUMERATED FROM NO. 1 TO 19 OF PAGES 7 AND 8 OF THE QUESTIONED RESOLUTION NO. 95-0230 WHEN NO SUCH LETTERS AND MEMORANDA WERE EVER PRESENTED IN THE FORMAL HEARING OF THE ADMINISTRATIVE CASE AND HOW THE SAID DOCUMENTS FOUND THEIR WAY INTO THE RECORDS OF THE CASE AND FOR THE FIRST TIME CONSIDERED ON APPEAL BY PUBLIC RESPONDENT CIVIL SERVICE COMMISSION WHICH WAS THE BASIS OF AFFIRMING THE QUESTIONED ORDER OF HON. NIEVES CONFESSOR (ANNEX "A" TO ANNEX "A-10") AS WELL AS IN DECLARING PETITIONER NOTORIOUSLY UNDESIRABLE IS A "MIRACLE" WHICH HAS NEVER BEEN DISCUSSED NOR EXPLAINED BY PUBLIC RESPONDENT IN THE QUESTIONED RESOLUTION NO. 95-0230.

VII. THE HONORABLE PUBLIC RESPONDENT CIVIL SERVICE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO FALSIFICATION PUNISHABLE UNDER ART. 171 OF THE REVISED PENAL CODE WHEN IT DENIED PETITIONER'S MOTION FOR RECONSIDERATION BY ISSUING RESOLUTION NO. 96-0987 DATED FEBRUARY 13, 1996 WHEN IT CONSIDERED FOR THE FIRST TIME ON APPEAL THE QUESTIONED LETTERS AND MEMORANDA WHICH WERE NEVER INTRODUCED DURING THE FORMAL HEARING OF THE INSTANT ADMINISTRATIVE CASE.

VIII. THE HONORABLE CIVIL SERVICE COMMISSION ACTED WITH GRAVE ABUSE OF DISCRETION IN ISSUING RESOLUTION NO. 95-0230 AND RESOLUTION NO. 96-0987 DECLARING PETITIONER AS NOTORIOUSLY UNDESIRABLE ON THE BASIS OF DOCUMENTS NOT ADMITTED IN EVIDENCE NOR PASSED UPON IN THE FORMAL HEARING OF THE ADMINISTRATIVE CASE BUT WHICH FOR THE FIRST TIME ON APPEAL WAS [sic] MIRACULOUSLY INSERTED INTO THE RECORDS OF THE CASE IN THE CIVIL SERVICE COMMISSION AND THESE CONSIST OF THE LETTERS AND MEMORANDA MENTIONED IN PAGES 7 AND 8 OF THE QUESTIONED RESOLUTION NO. 95-0230 ENUMERATED AS NO. 1 TO 19.

IX. THE HONORABLE CIVIL SERVICE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO KNOWINGLY RENDERING [AN] UNJUST JUDGMENT WHEN INSTEAD OF REVIEWING THE FINDINGS AND ORDER OF HONORABLE NIEVES CONFESSOR (ANNEXES A TO A-10) DATED SEPTEMBER 4, 1992 IT PROCEEDED TO CONDUCT ITS OWN EX-PARTE INFORMAL INQUIRY BY CONSIDERING DOCUMENTS OR SCRAP[S] OF PAPERS [sic] MIRACULOUSLY INSERTED INTO THE RECORDS OF THE CASE IN THE CIVIL SERVICE

COMMISSION WHICH WERE FOR THE FIRST TIME TREATED ON APPEAL THEREBY ISSUING A NEW FINDING THAT THE PETITIONER WAS NOTORIOUSLY UNDESIRABLE WHICH FINDING WAS NEVER DREAMED NOR CONCEIVED OF BY ANY PARTY IN THE FORMAL HEARING OF THE ADMINISTRATIVE CASE AND NOT EVEN BY THE OVER ZEALOUS, OVER VIGILANT, OVER ACTING, OVERSPEEDING, OVER HONEST AND OVER INCORRUPTIBLE PUBLIC RESPONDENT NIEVES CONFESSOR. [7]

The Solicitor General then concluded that since under Revised Administrative Circular No. 1-95 of this Court appeals from judgments of quasi-judicial agencies such as the Civil Service Commission should be by verified petition for review, and considering further that Circular No. 2-90 of this Court provides that appeals taken to either this Court or the Court of Appeals by the wrong or inappropriate mode of appeal shall be dismissed, then petitioner's motion for extension of time to file petition for certiorari was correctly denied by the Court of Appeals.

In its Comment[8] filed by its Office for Legal Affairs, respondent Civil Service Commission claims as misplaced petitioner's reliance on Section 9(1) of B.P. Blg. 129 which vests upon the Court of Appeals exclusive original jurisdiction to issue writs of mandamus, prohibition, certiorari, habeas corpus, and quo warranto, whether or not in aid of its appellate jurisdiction. Respondent Commission contends that the only mode of appeal from its decisions is a petition for review, in accordance with Revised Circular No. 1-95 of this Court and Section 9(3) of B.P. Blg. 129, as amended by R.A. No. 7902. The latter provides:

Sec. 9. Jurisdiction. -- The Court of Appeals shall exercise:

(3) Exclusive appellate jurisdiction over all final judgments, decisions, resolutions, orders or awards of Regional Trial Courts and quasi-judicial agencies, instrumentalities, boards or commissions, including the Securities and Exchange Commission, the Social Security Commission, the Employees Compensation Commission and the Civil Service Commission, except those falling within the appellate jurisdiction of the Supreme Court in accordance with the Constitution, the Labor Code of the Philippines under Presidential Decree No. 442, as amended, the provisions of this Act, and of subparagraph (1) of the third paragraph and subparagraph (4) of the fourth paragraph of Section 17 of the Judiciary Act of 1948.

x x x

In his Consolidated Reply,[9] petitioner justified his filing a petition for certiorari under Rule 65 of the Rules of Court in light of the "super-grave abuse of discretion on the part of the ... Civil Service Commission" in issuing the challenged resolution, and that an ordinary appeal was "not appropriate and sufficient to seek redress [sic] ... for the reason that it would in effect impliedly give credence to the unlawful acts of the Civil Service Commission thus admitting its despotic, arrogant exercise of authority..."

We rule against petitioner.

The Court of Appeals committed no error in denying petitioner's "Motion for Extension of Time to File Petition for Certiorari under Rule 45 of the Rules of Court."

Prior to the effectivity of R.A. No. 7902, a party aggrieved by any decision, final order or resolution of the Civil Service Commission had only one remedy, namely, a special civil action for certiorari under Rule 65 of the Rules of Court[10] to be filed with this Court pursuant to Section 7 of Article IX-A of the Constitution, which reads, in part:

SEC. 7. ...Unless otherwise provided by law this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from

receipt of a copy thereof.

Conformably with its implied authority in this Section, Congress passed R.A. No. 7902 vesting upon the Court of Appeals appellate jurisdiction over cases decided or resolved by the Civil Service Commission, but not the other two Constitutional Commissions treated under Article IX. Pursuant to Revised Administrative Circular No. 1-95, the mode of appeal from a decision of the Civil Service Commission, to bring it within the appellate jurisdiction of the Court of Appeals, is a petition for review to be filed within the period therein fixed. This petition for review is the same as that contemplated in Section 29 of the Judiciary Act of 1948 (R.A. No. 269), as amended, and in Circular No. 2-90, but not that treated in Rule 45 of the Rules of Court which refers to petitions filed in the Supreme Court for the review of decisions or final orders of the Court of Appeals.

Under the 1997 Rules of Civil Procedure, which took effect on 1 July 1997, a petition for review as a mode of appeal to the Court of Appeals from decisions, final orders or resolutions of the Court of Tax Appeals and quasi-judicial bodies, including the Civil Service Commission, is governed by Rule 43 thereof.

Considering that petitioner announced in his motion for extension of time that he would be filing a petition for review under Rule 45 of the Rules of Court, the Court of Appeals cannot be faulted for peremptorily denying the motion.

Petitioner claims, however, that a petition for review was not his exclusive remedy, as he could also avail of a special civil action for certiorari under Rule 65. There are, of course, settled distinctions between a petition for review as a mode of appeal and a special civil action for certiorari, thus:

- a. In appeal by certiorari, the petition is based on questions of law which the appellant desires the appellate court to resolve. In certiorari as an original action, the petition raises the issue as to whether the lower court acted without or in excess of jurisdiction or with grave abuse of discretion.
- b. Certiorari, as a mode of appeal, involves the review of the judgment, award or final order on the merits. The original action for certiorari may be directed against an interlocutory order of the court prior to appeal from the judgment or where there is no appeal or any other plain, speedy or adequate remedy.
- c. Appeal by certiorari must be made within the reglementary period for appeal. An original action for certiorari may be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed.
- d. Appeal by certiorari stays the judgment, award or order appealed from. An original action for certiorari, unless a writ of preliminary injunction or a temporary restraining order shall have been issued, does not stay the challenged proceeding.
- e. In appeal by certiorari, the petitioner and respondent are the original parties to the action, and the lower court or quasi-judicial agency is not to be impleaded. In certiorari as an original action, the parties are the aggrieved, party against the lower court or quasi-judicial agency and the prevailing parties, who thereby respectively become the petitioner and respondents.
- f. In certiorari for purposes of appeal, the prior filing of a motion for reconsideration is not required (Sec. 1, Rule 45); while in certiorari as an original action, a motion for reconsideration is a condition precedent (*Villa-Rey Transit vs. Bello*, L-18957, April 23, 1963), subject to certain exceptions.
- g. In appeal by certiorari, the appellate court is in the exercise of its appellate jurisdiction and power of review, while in certiorari as an original action, the higher court exercises original jurisdiction under its power of control and supervision over the proceedings of lower courts. [11]

The original jurisdiction of the Court of Appeals over special civil actions for, inter alia, certiorari, is vested upon

it in Section 9(1) of B.P. Blg. 129. This jurisdiction is concurrent with the Supreme Court [12] and the Regional Trial Court. [13]

If, indeed, petitioner initially believed that he had the alternative remedy of a special civil action for certiorari which would have been more effective and adequate, then it was not necessary for him to ask for an extension of time to file the petition. Under Rule 65 then, he had a reasonable period from receipt of a copy of the Civil Service Commission resolution denying his motion for reconsideration within which to file the petition. That reasonable period has been interpreted to be ninety (90) days. [14] We are not, however, persuaded that petitioner initially thought of filing a special civil action. All along, what he had in mind was a petition for review, as evidenced by his express reference in his motion to a petition for review under Rule 45 and his indication of the date he received a copy of the resolution, viz., 29 March 1996, and the last day to file the petition, viz., 13 April 1996, which coincided with the last day prescribed under Rule 45.

If petitioner then filed a special civil action for certiorari on 10 May 1996, it was only because he had lost his right to appeal by way of the intended petition for review. The proffered justification then for his belated filing of a special action for certiorari was nothing but a crude attempt to circumvent standing rules of procedure, which we cannot tolerate.

It is settled that a special civil action for certiorari will not lie as a substitute for the lost remedy of appeal,[15] and we find no special nor compelling reasons why we should make out an exception here.

In any case, even if we were to sympathize with petitioner and permit his recourse under Rule 65, the end result would remain unchanged since a perusal of the challenged resolutions of the Civil Service Commission fails to disclose any grave abuse of discretion on its part.

WHEREFORE, the instant petition is DISMISSED.

Costs against petitioner.

SO ORDERED.

Regalado, Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Francisco, and Panganiban, JJ., concur.

Narvasa, C.J., no part, no participation in deliberations, on official leave at the time.

Martinez, J., no part.

Mendoza official leave.

[1] Rollo, 29-37.

[2] Id., 38-44.

[3] Id., 45-46.

[4] Id., 24; Per Cañizares-Nye, P., J., and Ramirez, P. and Callejo, R., JJ., concurring.

[5] Rollo, 27.

[6] Rollo, 109-114.

[7] Annex "A" of the Comment of the Office of the Solicitor General, Rollo, 116-118.

[8] Id., 119-125.

[9] Rollo, 131-133.

[10] Dario v. Mison, 176 SCRA 84, 111 [1989].

[11] Florenz D. Regalado, Remedial Law Compendium 543-544 (6th ed. 1997).

[12] Section 5(1), Article VIII, Constitution; Section 17, Judiciary Act of 1948, as amended.

[13] Section 21(1), B.P. Blg. 129.

[14] Paderanga v. Court of Appeals, 247 SCRA 741, 759 [1995], People v. Magallanes, 249 SCRA 212, 229 [1995].

[15] Vda. De Espina v. Abaya, 196 SCRA 312, 321 [1991]; Sy v. Romero, 214 SCRA 187, 193 [1992]; Hipolito v. Court of Appeals, 230 SCRA 191, 204 [1994]; Fajardo v. Bautista, 232 SCRA 291, 298 1994; De la Paz v. Panis, 245 SCRA 242, 250 1995.

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