

ISABELITA VITAL-GOZON, PETITIONER, VS. HONORABLE COURT OF APPEALS AND ALEJANDRO DE LA FUENTE, RESPONDENTS.*G.R. No. 129132. July 08, 1998*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-129132/>**DAVIDE, JR., J.:***

This is a sequel to our decision[1] of 5 August 1992 in G.R. No. 101428, entitled *Isabelita Vital-Gozon v. The Honorable Court of Appeals, et al.*, which held that the Court of Appeals had jurisdiction, in a special civil action for mandamus against a public officer (docketed therein as CA-G.R. SP No. 16438 and entitled *Dr. Alejandro S. de la Fuente v. Dr. Isabelita Vital-Gozon, et al.*), to take cognizance of the claim for damages against respondent public officer.

Specifically, the instant petition seeks to reverse the Resolution of 7 May 1997[2] of respondent Court of Appeals in CA-G.R. SP No. 16438 awarding to petitioner below, now private respondent, moral and exemplary damages and attorney's fees after hearing the evidence thereon sometime after this Court's decision in G.R. No. 101428 became final.

The factual antecedents then, as found by us in G.R. No. 101428, must be restated, thus:

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."

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:

"xxx (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. 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, 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 xxx (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.” 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 xxx (his) salary and allowances on the pretext that he has as yet no ‘approved’ appointment even as ‘Medical Specialist II’ x x x.”

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.”

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) xxx 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.

x x x

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, “did not bother to indicate his address, thus notice was sent to him through the individual respondents xxx (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.

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 [by] 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.

xxx.”

Copy of the “Supplemental/Amended Petition” was sent to “Atty. Jose A. Favia, 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).”

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. 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 –

“xxx respondents, particularly Dr. Isabelita Vital-Gozon, xxx to forthwith comply with, obey and implement the resolution in CSC Case No. 4 (and) xxx Dr. Jose D. Merencilla, Jr., who is not entitled to the office, xx 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 xxx (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. Respondent de la Fuente acknowledged receipt of his own copy on June 15, 1989. 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. 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. His motion was granted by the Court of Appeals in a Resolution dated July 7, 1989, reading as follows:

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

The corresponding writ of execution issued on July 13, 1989, on the invoked authority of Section 9, Rule 39. 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."

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." 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 xxx 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.

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. 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.” This was done in reliance on Section 3, Rule 65 of the Rules of Court, invoked by de la Fuente, which reads as follows:

“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. At his instance, the Court gave him an “opportunity to xxx file a motion for reconsideration” of the Resolution of September 27, 1989. That motion he filed by registered mail on November 10, 1989. 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.”

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 xx (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).

Notice of this Resolution of January 11, 1991 was served on the Solicitor General’s Office on January 18, 1991. Again the Solicitor General sought reconsideration, by motion dated January 25, 1991 and filed on January 30, 1991. Again it was rebuffed. In a Resolution rendered on August 7, 1991, served on the Solicitor General’s Office on August 20, 1991, 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 xxx (had already) been extensively discussed,” and that its “jurisdiction xxx 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. xxx[3]

On 5 May 1993, the Court of Appeals issued a Resolution[4] which noted that our decision in G.R. No. 101428

had become final and left the option to reopen the case to de la Fuente.

In its resolution of 26 October 1995,[5] the Court of Appeals, inter alia, set the hearing for reception of evidence on the matter of damages on 7 December 1995.

After de la Fuente presented his evidence, the Court of Appeals set reception of Vital-Gozon's evidence on 16 and 17 January 1996.[6]

At the scheduled hearing on 16 January 1996, Conrado M. Dela Fuente sought to block the presentation of Vital-Gozon's evidence on the ground that the former had not filed an answer, which the latter refuted. The hearing was then reset to other dates for the parties to prove their respective claims. Vital-Gozon submitted, on 18 January 1996, copies of a "Manifestation and Motion" dated 10 September 1992 to which was attached an Answer likewise dated 10 September 1992. It was claimed in the Manifestation that the answer to the claim for damages could not have been filed earlier as the jurisdiction of the Court of Appeals over de la Fuente's claim for damages had been questioned before the Supreme Court. Vital-Gozon likewise claimed that copies of the Manifestation and Motion were received by the Court of Appeals on 18 September 1992 at 3:40 p.m. and sent by registered mail to counsel for dela Fuente.[7] The filing of the Manifestation and Motion with the Court of Appeals was confirmed by Remigio M. Escalada, Jr., Division Clerk of Court of the Fifth Division of the Court of Appeals in an undated Report.[8] He further disclosed that the pleading was transmitted to the Archives Section on 19 September 1992.

The Court of Appeals then ordered the parties to submit their respective memoranda,[9] after which, the Court of Appeals promulgated, on 20 March 1997, a resolution denying petitioner's motion to admit her Answer to the petition and supplemental/amended petition for mandamus with damages, on the ground that the period to file the answer had long prescribed, thus:

It was too late that the answer was filed in this Court on September 18, 1992, after promulgation on August 5, 1992, of the decision of the Supreme Court in G.R. No. 101428. The prescribed period to file such answer as well as the extended period had long expired on January 24, 1989 (pp. 35, 37, 55, Rollo) by the time respondent's answer was filed in this Court on September 18, 1992. She had another opportunity to answer when petitioner filed a supplemental/amended petition. (pp. 57, 72, Rollo). Still, she filed none. It is evident respondent just ignored the case filed against her or gave no importance to the petitions and the notices sent to her by this Court. The delay in filing her answer is inexcusable.

After promulgation and upon finality of this Court's decision granting the principal relief sought by the petitioner, the instant case for mandamus was virtually disposed of with the exception of the incidental damages that petitioner has claimed. It was uncontested in view of respondent's failure to answer the petition setting up her defenses. Consequently, the allegations in the petition and supplemental petition were deemed admitted; unpleaded defenses were deemed waived and any counterclaim not set up, barred (Sections 1, 2 and 4, Rule 9, Revised Rules of Court). Such procedural rules would become meaningless unless strictly complied with by litigants. As clearly indicated in the proposed answer, respondent's purpose is to set up a counterclaim already barred and to plead defenses already waived.

Besides, the parties as well as this Court are bound by the comprehensive findings and conclusions of the Supreme Court in its final decision in G.R. No. 101428, based on the uncontroverted allegations of the verified petitions. So are they bound thereby in this proceeding which deals with the lone issue of incidental damages claimed by petitioner. What remains to be done by this Court is but the determination of whether respondent's wrongful act or refusal/failure to perform an official duty caused injury to the claimant and the amount of the damages that may be awarded in his favor.[10]

Respondent court then set the hearing of the case on 22-23 April 1997 "for the presentation of [Vital-Gozon's]

evidence to controvert or rebut that of [de la Fuente] which he has adduced in support of his claim for damages.”

In its resolution[11] of 21 April 1997, the Court of Appeals denied petitioner’s motion to reconsider[12] the 20 March 1997 resolution.

Petitioner then opted not to present her evidence, as she intended to file a petition with the Supreme Court questioning the validity of the 20 March 1997 resolution and 21 April 1997 order of the Court of Appeals.[13]

On 7 May 1997, the Court of Appeals promulgated a Resolution[14] finding petitioner liable for damages and ordered her to pay private respondent P50,000.00 as moral damages, P20,000.00 as exemplary damages and P10,000.00 as attorney’s fees. In support thereof, respondent court quoted our finding in G.R. No. 101428,[15] to wit:

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

- 1) the proceeding 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.

The Court of Appeals then considered the evidence for private respondent and the applicable law, thus:

Upon respondent’s continued refusal without justifiable cause to implement the final resolution of the Civil Service Commission upholding petitioner’s right to the position he has been claiming with back salaries, transportation, representation and housing allowances and other benefits withheld from him, petitioner is entitled to the damages he claims. Testifying in his own behalf petitioner declared that he was greatly disturbed, shocked and frustrated during the three months preceding the filing of his petition; that he had sleepless nights and suffered from mental anxiety, mental anguish, worry, tension and humiliation when respondent ignored and disregarded the final resolution of the Civil Service Commission; that he felt harassed by her refusal because he had to go to court to obtain relief and had to incur additional expenses for litigation

which he could hardly afford; and that he had to spend no less than P5,000 for court fees and incidental expenses and to pay his counsel P10,000 at the end of the litigation (pp. 6, 7, 12, 13, t.s.n., Dec. 7, 1995). All these respondent has not successfully rebutted by her evidence since she adduced none in her behalf.

Petitioner, therefore, is entitled to recover moral damages from respondent for her refusal and neglect without just cause to perform her official duty to reinstate petitioner to the position he was entitled, as ordered by the Civil Service Commission in its decision. While he was reinstated to his position, petitioner had to seek the aid of the courts for that purpose. In point is the case of *San Luis vs. Court of Appeals*, decided by the Supreme Court on June 26, 1989 (174 SCRA 258, 276), which involves the unlawful suspension and dismissal by a Provincial Governor of a quarry superintendent and the Governor's obstinate refusal to comply with the final decisions of the Civil Service Commission and the Office of the President which declared said suspension and dismissal unlawful or without just cause. The Supreme Court held that the Governor (who was sued both in his official and private capacities) was personally liable for the damages claimed and awarded in favor of the offended party P50,000 as moral damages and P20,000 for attorney's fees and litigation expenses. *Tan Kapoe vs. Masa*, decided January 21, 1985 (134 SCRA 231), is also pertinent. There the Supreme Court upheld the award of moral damages although it was "made on the basis of documentary evidence x x x without supporting oral testimonies." And the award of exemplary damages, in addition to moral damages, was also deemed proper "even if not expressly pleaded in the complaint nor proved." Such award of exemplary damages is by way of example or correction for the public good, in addition to moral damages (Article 2229, Civil Code). Inasmuch as petitioner is entitled to exemplary damages, he should be awarded attorney's fees. The award in favor of petitioner of moral and exemplary damages are attorney's fees in the amounts of P50,000, P20,000 and P10,000, respectively, is but fair and just and not excessive.[16]

Unsatisfied, petitioner forthwith filed the instant petition for review on certiorari under Rule 45 of the Rules of Court. She prays that we reverse and set aside the challenged Resolution on the following grounds:

1. There is absolutely no ground for the award of moral and exemplary damages, as well as attorney's fees.
2. Petitioner's right to due process was violated.

Anent the first ground, petitioner asserts there is no factual basis for the award of moral damages for, concretely, private respondent was unable to show any causal connection between his supposed injury and petitioner's alleged actionable wrong. Petitioner argues that while testifying, private respondent simply made generalized statements that he had sleepless nights and suffered mental anxiety, mental anguish, worry, tension and humiliation. Petitioner next reiterates her stand that she had nothing to do with the Civil Service case relative to respondent's original position, as she was not yet connected with the NCH when said case was filed. Moreover, the failure to immediately reinstate private respondent was caused by the directive of the Legal Department of the Department of Health, to which office she forwarded the decision of the Civil Service Commission for guidance, pursuant to standard procedure. Petitioner, therefore, acted in good faith. She likewise faults the Court of Appeals for considering our observations in G.R. No. 101428 as factual findings which bound respondent court.

As to exemplary damages, petitioner asserts that she did not act with vindictiveness nor wantonness, hence the award of said damages was unwarranted,[17] as such, there could likewise be no basis for the award of attorney's fees.[18]

Anent the second ground, petitioner contends that she was sued in her official capacity, hence could not be held liable for damages, and to hold otherwise would violate her right to due process as a private individual, citing *Cariño v. Agricultural Credit and Cooperative Financing Administration*[19] and *Animos v. Philippine Veterans Affairs Office*. [20]

Petitioner further argues that the Court of Appeals denied her due process by refusing to admit her answer,

considering that: (a) she personally attended each and every hearing of the mandamus case; (b) in its decision of 9 June 1989, the Court of Appeals explicitly declared that it was not the proper forum for the claim for damages, at which point then the necessity of an answer had become moot; (c) it was only on 27 September 1989 that the Court of Appeals reconsidered its decision of 9 June 1989 thereby upholding its jurisdiction to hear the claims for damages; (d) but then, consistent with her stand that the Court of Appeals had no jurisdiction over the claims for damages, she assailed such ruling before this Court, hence she could not have been expected to file an answer; (e) nonetheless, upon receipt of the adverse decision of this Court of 4 August 1992 in G.R. No. 101428, she immediately filed her answer with a corresponding motion for its admission; and (f) while her motion for admission of the answer had been pending since 18 October 1992, the Court of Appeals did not act on it until it was already her turn to present her evidence on the claim for damages.

In his comment on the petition submitted in compliance with the Resolution of 21 July 1997, private respondent contends that: (a) petitioner's incomplete and slanted version of the facts of the case cannot be relied upon; (b) the factual findings of this Court in G.R. No. 101428 are conclusive and binding, hence the Court of Appeals did not err nor abuse its discretion in relying on said findings; (c) petitioner's invocation of state immunity is untenable as she was sued not in her official capacity, and assuming otherwise, petitioner could nevertheless be held liable for damages under Articles 20, 27 and 2176 of the Civil Code and Section 3, Rule 65 of the Rules of Court; (d) the Court of Appeals did not err in denying petitioner's motion to admit her answer; and (e) the Court of Appeals' awards of moral and exemplary damages and attorney's fees were proper, fair, reasonable, justified and in accord with the law and precedent.

Two principal issues thus confront us, viz: (a) whether petitioner was denied due process when her answer to the petition was not admitted; and (b) whether the awards of moral and exemplary damages and attorney's fees were proper. These will be resolved in seriatim.

I

We do not hesitate to rule that petitioner was not denied due process. The record of CA-G.R. SP No. 16438 shows that in the resolution of 29 December 1998, the Court of Appeals gave due course to private respondent's petition and required herein petitioner and the other respondents to answer the petition within 10 days from notice of the resolution.[21] On 9 January 1988, petitioner and the other respondents, represented by Atty. Jose Fabia, filed a motion for an extension of 15 days from said date within which to file their answer, which respondent court granted in its resolution of 17 January 1989.[22] Likewise, on 17 January 1989, private respondent, as petitioner below, was granted leave to file a supplemental/amended petition.[23]

The Supplemental/Amended Petition was filed on 3 February 1989,[24] and in the resolution of 9 February 1989,[25] the Court of Appeals required petitioner herein and her co-respondents in CA-G.R. SP No. 16438 to file their answer thereto within 10 days from notice. However, no such answer was filed, and on 9 June 1989, the Court of Appeals rendered its decision.[26] De la Fuente seasonably filed a motion for reconsideration,[27] principally as regards the holding that "the petitions are not the vehicle nor is the Court the forum for the claim of damages." A copy of this motion was furnished counsel for respondents. Respondents therein were then required, in the resolution of 5 July 1989,[28] to comment within 10 days from notice. However, respondents below once more failed to comply. Thus, on 27 September 1989, the Court of Appeals promulgated a resolution[29] granting the motion for reconsideration by deleting therefrom the challenged portion of its decision of 9 June 1989. Respondent court then set reception of evidence on the claims for damages on 9 and 11 of October 1989.

Respondents below, represented by new counsel, Atty. Pedro Martinez, and the rest by the Office of the Solicitor General, filed motions to reconsider the resolution of 27 September 1989, primarily on the ground that the Court

of Appeals had no jurisdiction over the claim for damages in the petition for mandamus. The incidental issue of the authority of the Solicitor General to appear for herein petitioner in respect of the claim for damages against her in her personal capacity was also raised. These matters became the subject of various pleadings.

Eventually, on 11 January 1991, the Court of Appeals promulgated a resolution[30] which gave rise to G.R. No. 101428, after the Court of Appeals denied herein petitioner's motion for reconsideration.

Clearly, therefore, petitioner's failure to file the answer to the petition was due to her fault or negligence. She was, by formal resolutions of the Court of Appeals, required to file answers to both the original petition and the Supplemental/Amended Petition; yet, she failed to heed both resolutions. As regards the resolution to answer the Supplemental/Amended Petition, herein petitioner totally disregarded the same. And if only to further evince that herein petitioner had no one to blame but herself for her plight, as regards the resolution to answer the original petition, this she spurned despite the fact that she asked for and was granted an extension of 15 days within which to do so. That she questioned the jurisdiction of the Court of Appeals over the claims for damages is entirely irrelevant, considering that she did so only after the Court of Appeals promulgated its Resolution of 27 September 1989. Up to that time, petitioner had absolutely no responsive pleading setting forth her defense.

It may likewise be stressed that under Section 2.c.(4) of the Revised Internal Rules of the Court of Appeals then in force, after the expiration of the period for filing the answer or the reply in special civil actions, a case is deemed submitted for resolution. Thus, after the expiration of the 10-day period granted to herein petitioner to file her Answer to the Supplemental/Amended Petition, and in light of her failure to file her answer to the original petition despite the grant of her motion for extension of time to file it, then the case was automatically deemed submitted for decision. After the decision was rendered, she could then no longer be heard to raise a defense which, by her inaction, she indubitably expressed no desire to raise.

It cannot then be successfully maintained that the Court of Appeals committed reversible error, much less, grave abuse of discretion, when it denied admission to an answer that was filed only after this Court's decision in G.R. No. 101428 had long become final and immutable.

What further militates against petitioner's advocacy is that the Court of Appeals, aside from affording petitioner an opportunity to be heard through the filing of pleadings, likewise sustained petitioner's right to due process at the hearing. What petitioner neglects to mention is that respondent court did not deprive her the right to cross-examine private respondent when the latter testified as to the matter of damages. Through the exercise of the right, petitioner could have negated private respondent's claims by showing the absence of legal or factual basis therefor. Moreover, the Court of Appeals explicitly allowed petitioner to present her evidence against the claim for damages. However, petitioner again failed to take the opportunity to have herself heard.

It may be pointed out that in her Answer,[31] she interposed the following defenses against the claim for moral and exemplary damages and attorney's fees, namely: (1) the claim was effectively and exclusively a suit against the State, but without its consent; (2) she had not committed any actionable wrong as she acted in good faith and without malice or negligence; and (3) whatever injury private respondent may have suffered were mere consequences of his indiscretion, negligence and/or ignorance of the law which, at best, constituted *damnum absque injuria*. From the nature of these defenses, they could very well have been taken up, even indirectly, on cross-examination of private respondent or in the course of petitioner's testimony had she chosen to present her evidence. All told, the above discussion should readily refute petitioner's claim of a denial of due process.

II

Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. They may be recovered if they are the proximate result of the defendant's wrongful act or omission.[32] The instances when moral damages may be recovered are, *inter alia*, "acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34 and 35 of the Civil Code,"[33] which, in turn, are found in the Chapter on Human Relations of the Preliminary Title of the Civil Code. Relevant to the instant case, which involves public officers, is Article 27,[34] which provides:

ART. 27. Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken.

Article 27 must then be read in conjunction with Section 1 of Article XI (Accountability of Public Officers) of the Constitution,[35] which provides:

Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

It is thus evident that under Article 27, in relation to Articles 2219 and 2217 of the Civil Code, a public officer, like petitioner herein, may be liable for moral damages for as long as the moral damages suffered by private respondent were the proximate result of petitioner's wrongful act or omission, i.e., refusal to perform an official duty or neglect in the performance thereof. In fact, if only to underscore the vulnerability of public officials and employees to suits for damages to answer for any form or degree of misfeasance, malfeasance or nonfeasance, this Court has had occasion to rule that under Articles 19 and 27 of the Civil Code, a public official may be made to pay damages for performing a perfectly legal act, albeit with bad faith or in violation of the "abuse of right" doctrine embodied in the preliminary articles of the Civil Code concerning Human Relations.[36]

Exemplary damages may be imposed by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.[37]

Attorney's fees and other expenses of litigation may be recovered as actual or compensatory damages when, *inter alia*, exemplary damages are awarded; when the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim, and in any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.[38]

There can be no question that private respondent was entitled to be restored to his position as Chief of Clinics by virtue of the final and executory decision of the Civil Service Commission. Petitioner, as head or chief of the National Children's Hospital, then had the duty to see to it that the decision be obeyed and implemented. This she failed to do and private respondent's two official demands for compliance with the Civil Service Commission's decision were merely referred by petitioner to the Legal Department of the Department of Health; and as further noted by this Court in its decision in G.R. No. 101428, "she did not answer [private respondent's] letters not even to inform him of the referral thereof to the Assistant Secretary [for Legal Affairs]. She chose simply to await 'legal guidance from the DOH Legal Department.'" This Court further noted:

To all these, [petitioner's] 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 Department officials concerned accorded said acts and events any importance. She never bothered to find out what was being done to contest or negate [private respondent's] petitions and actions, notwithstanding that as time went by, [private respondent's] efforts were being met with success.

That petitioner then committed an actionable wrong for unjustifiably refusing or neglecting to perform an official duty is undeniable. Private respondent testified on the moral damages which he suffered by reason of such misfeasance or malfeasance of petitioner, and the attorney's fees and litigation expenses he incurred to vindicate his rights and protect his interests. The Court of Appeals which heard him gave full faith and credit to his testimony. Private respondent declared that by reason of the "unjust action" or "refusal" of petitioner when she did not recognize, ignored and disregarded the final and executory Civil Service Resolution, he:

[W]as actually greatly disturbed, shocked and frustrated during those three ... months. [He] had sleepless nights and ... suffered from mental anxiety, worry, tension and humiliation...[39]

Private respondent's anguish even continued during the 5-month period while the case was pending with the Court of Appeals, thus:

During this period my sleepless nights and my moral sufferings continued. As a matter of fact, even worsened. I just could not understand, actually I could not understand the action here of Dr. Gozon for having not followed the decision of the Court of Appeals. And that is why I felt very much aggrieved during this period. I could not sleep at all and this has weakened me.[40]

Private respondent further testified that he "spent not less than P5,000.00 for court fees and as incidental expenses" and had committed himself to pay "P10,000.00 to his counsel at the end of the case." [41]

While private respondent did not quantify the extent of his moral damages, the Court of Appeals fixed the same at P50,000.00. Since moral damages are, in the language of Article 2217 of the Civil Code, "incapable of pecuniary estimation," courts have the discretion to fix the corresponding amount, not being bound by any self-serving assessment by the claimants. On the other hand, a claimant's failure to state the monetary value of moral damages suffered presents no legal obstacle to a court's determination thereof, as long as there is factual basis for the award such as the claimant's testimony as to his sufferings. As a matter of fact, it is not unusual for claimants to leave the determination of the amount of the award to the discretion of the court.

Under Article 2233 of the Civil Code, exemplary damages cannot be recovered as a matter of right; the court will decide whether or not they should be adjudicated. In the instant case, the Court of Appeals awarded exemplary damages in the amount of P20,000.00. Considering that a public official is the culprit here, the propriety of such an award cannot be questioned. It serve as an example or deterrent so that other public officials be always reminded that they are public servants bound to adhere faithfully to the constitutional injunction that a public office is a public trust. That the aggrieved party happened to be another public official will not serve to mitigate the effects of petitioner's having failed to observe the required degree of accountability and responsibility.

As to attorney's fees as actual damages, the Court of Appeals' determination of its propriety in this case and the extent thereof were well within its discretion. The agreement between private respondent and his counsel as to the amount does not control.

Petitioner's contention that she cannot be liable for damages since she was sued in her official capacity is without merit. Whether petitioner was impleaded as respondent in an official capacity, i.e., solely in her capacity as Chief of the National Children's Hospital, is best determined from the Petition as well as the Supplemental/Amended Petition. For one, in the captions in both, she is named as one of the respondents without any express mention that she was so sued in her "capacity, as Chief of the National Children's Hospital." For another, the allegations in the body of the Petition clearly show that she was sued in both her official and private capacities. As to the former, paragraphs 1 and 7 respectively allege petitioner's position as a public official, and specifically as "Head of the Children's Hospital;" her duty to restore private respondent to his position by virtue of the final decision of the Civil Service Commission; and her refusal to allow private respondent to perform and discharge his duties and

responsibilities as Chief of Clinics. As to the latter, paragraph 16 of the Petition explicitly speaks of petitioner's personal liability, thus:

16. For causing such mental suffering and anguish, etc.,[42] principal respondent [herein petitioner] ought to and must be, in accordance with the Civil Code, held personally answerable and liable to the petitioner in the sum of not less than P100,000.00 as moral damages, and another sum of P20,000.00 as exemplary damages, by way of example or correction for the public good.[43] (emphasis supplied)

In maintaining then that she was sued merely in her official capacity, petitioner has either overlooked paragraph 16 or sought to deliberately mislead this Court.

WHEREFORE, for utter failure to show that respondent Court of Appeals committed reversible error in the challenged resolutions, the instant petition is denied.

Costs against petitioner.

SO ORDERED.

Bellosillo, Vitug, Panganiban, and Quisumbing, JJ., concur.

Chairman, First Division.

[1] 212 SCRA 235.

[2] Annex "A" of Petition, Rollo, 39-52; Rollo, CA-G.R. SP No. 16438, 512-525. Per Ramirez, P., J., with the concurrence of Austria-Martinez, A., and Salas, B., JJ.

[3] Supra note 1 at 237-247.

[4] Rollo, CA-G.R. SP No. 16438, 334.

[5] Id., 342.

[6] Id., 364

[7] Id., 368-369.

[8] Id., 391-392.

[9] Id., 396.

[10] Id., 438-439.

[11] Id., 454-455.

[12] Id., 443-452.

[13] Fifth paragraph, p. 2, Court of Appeals' resolution of 7 May 1997, Id., 513.

[14] Id., 512-525.

[15] Supra note 1 at 248-249.

[16] Supra note 2 at 523-524.

[17] Citing *Octo[t] v. Ybañez*, 111 SCRA 79 [1982].

[18] Citing *Albenson Enterprises Corp. v. Court of Appeals*, 217 SCRA 16 [1993].

[19] 18 SCRA 184 [1966].

[20] 174 SCRA 214 [1989].

[21] Rollo, CA-G.R. SP No. 16438, 36.

[22] Id., 55.

[23] Id., 56.

[24] Id., 57-66. The pleading was more “supplemental” in character.

[25] Id., 72.

[26] Id., 81-84.

[27] Id., 92-100.

[28] Id., 103.

[29] Id., 148-149.

[30] Id., 234-235.

[31] Rollo, CA-G.R. SP No. 16438, 374-387.

[32] Article 2217, Civil Code.

[33] Article 2219(10), Civil Code.

[34] See also paragraph (1), Section 38, Chapter 9, Book I of the Administrative Code of 1987 which provides that a public officer may be liable for damages for acts done in the performance of his official duties if there is a clear showing of bad faith, malice or gross negligence.

[35] Parenthetically, it may be pointed that on 20 February 1989, her Excellency President Corazon C. Aquino approved R.A. No. 6713 entitled An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, to Uphold the Time-Honored Principle of Public Office Being a Public Trust, Granting Incentives and Rewards for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations Thereof and for Other Purposes.

[36] See *Llorente v. Sandiganbayan*, 202 SCRA 309, 318-319 [1991] (citations omitted).

[37] Article 2229, Civil Code.

[38] Article 2208, Civil Code.

[39] TSN, 7 December 1995, 6-7.

[40] Id., 12.

[41] Id., 13.

[42] The enumeration of moral damages is found in the preceding paragraph 15, to wit: “intense mental anguish, serious anxiety, besmirched reputation, wounded feelings, moral shock and social humiliation to petitioner as well as his family.”

[43] Rollo, CA-G.R. SP No. 16438, 11.

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