

DIRECTOR CELSO PASCUAL OF THE TELECOMMUNICATIONS OFFICE, LEGASPI CITY, PETITIONER, VS. HON. ORLANDO D. BELTRAN, AS JUDGE, RTC OF TUGUEGARAO, BRANCH 4, AND MRS. MONSERAT RAYMUNDO...

G.R. NO. 129318. October 27, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This Petition for Review on Certiorari under Rule 45 of the Rules of Court seeks to nullify the Resolution[1] dated 27 January 1997 of the Court of Appeals in CA-G.R. SP No. 41488, dismissing the petition, and the subsequent Resolution dated 21 May 1997 denying[2] the Motion for Reconsideration.

Petitioner Celso Pascual was then the Regional Director, while, private respondent Monserat Raymundo was the Human Resource Management Officer of the Telecommunications Office of the Department of Transportation and Communications (DOTC), Region II, Tuguegarao City.

On 25 April 1990, private respondent was charged before the DOTC, Region II, Tuguegarao City, with Conduct Grossly Prejudicial to the Best Interest of the Service/Gross Insubordination/Violation of Reasonable Office Rules and Regulations, Gross Discourtesy in the Course of Official Functions and Gross Dishonesty Through Falsification of Official Document, by petitioner, as Regional Director of the Telecommunications Office, Region II, Tuguegarao, Cagayan. The acts which gave rise to the charges are as follows:

That on March 13, 1990, February 22, 1990, February 20, 1990, February 16, 1990, February 13, 1990, July 10, 1989, you have deliberately arrogated unto yourself the authority vested in the Regional Director by signing official communications/correspondences despite the posting of Regional Office Order No. 87-01 S. October 6, 1987 notifying all concerned that all official correspondences shall be signed by the Regional Director; that on similar instances, on matters relating to the functions of implementing policies and without being officially issued the delegated authority to sign for and on behalf of the head of office, had signed communications thereof as an OIC but on the pretext as a HRMO of the office which is a clear manifestation of open disobedience/hostility to authority and wanton disregard of reasonable office rules and regulations and additionally, a conduct prejudicial to the interest of the service;

That on or about 9:30 AM of March 16, 1990 and some other occasions, while in the office performing the functions of your position as HRMO of the office and therefore a pro-people oriented officer, you descended down to the level of an "unschooled/unlearned" by shouting to the top of your voice and making discourteous remarks against management you ought to serve openly before everybody by roaming around entering every room in the office not only making a mockery of your oath of office but also disturbing the other employees of their day's work aside from creating an unwholesome/unpleasant environment within the office;

That on September 5, 1989, you went on undertime for two (2) hours as appearing in the report of the official timekeeper whereas in your DTR, the entry thereof shows that you went out of the office at about 5:00 PM and that on January 27, 1989, February 23 and 24, 1989, March 8, 1989, June 20, 1989, July 14, 1989 and

September 14, 1989 you went on unauthorized absences during regular office hours whereas in your DTR, the entries thereof (Time in and Time out) are complete, hence, the discrepancy and conclusion that you have stolen government time (theft of government time) and had falsified official documents which constitute gross dishonesty.[3]

On 2 August 1993, DOTC Assistant Secretary Pacifico F. Maghacot, Jr., exonerated private respondent of the offenses charged. The Order exonerating the private respondent in part reads:

On charges of conduct grossly prejudicial to the to the best interest of the service, gross insubordination and violation of reasonable office rules and regulations, the prosecution miserably failed to present substantial evidence, both testimonial and documentary, to warrant the findings of guilt against the respondent. It was alleged that respondent has committed the acts by deliberately arrogating herself the authority vested in the Regional Director by signing official communications/correspondence supposedly to be signed by the latter. However, not a single evidence or communications relative thereto had been presented during the hearing that would substantiate such imputation. Witness Felisa D. Suyo even testified to the effect that there are specific functions in the job description of an employee which can be performed without prior authority from the Regional Director. Moreover, the Regional Office Order No. 87-01 dated October 6, 1987 which was allegedly violated by the herein respondent is quite vague, as [is] clearly shown in its text, to wit:

Republic of the Philippines
Department of Transportation and Communications
TELECOMMUNICATIONS OFFICE
Regional Office No. IX
Tuguegarao, Cagayan

October 6, 1987

REGIONAL OFFICE ORDER NO. 87-01

SUBJECT: MR. CELSO PASCUAL, DOTC Regional Director,
Telecommunications Office, Assumption to Duty:

Effective today, the undersigned is assuming the duties as DOTC Director of the Telecommunications Office, Region II.

As such, all official correspondence shall be prepared for the signature of the undersigned.

(SGD) CELSO V. PASCUAL

Regional Director

The logical interpretation of this order as it should be, is that all official correspondence usually signed by the Regional Director shall be prepared for his signature. Routinary correspondence such that within, the scope and function of an employee as provided in their respective job description are definitely not included. These conclusion finds support in no less than the testimony of prosecution witness, Ms. Felisa D. Suyo, during cross examination, thus:

Q -

Do you agree with me that this memorandum of the Director is contrary to the job description?

A -

Yes sir

(TSN, p. 17, October 8, 1991)

x x x x

Q-

In short Miss Witness, this official order is in conflict with some of your functions specified under the job description because it limits what has been written in the job description, is it not?

A-

Yes, sir.

(TSN, pp. 25-26 October 8, 1991)

On charges of gross dishonesty in the course of official function, the prosecution has not proven the same. In fact, it has not presented a single proof on the matter.

The same is true on the charge of dishonesty through falsification of official document. The official document being referred to here is the daily time record or CSC Form No. 48 of the respondent for the month of September, 1989 which she allegedly falsified the time entry on the 5th day by entering her TIME OUT at 5:00 pm, when she reportedly went undertime at 3:00 pm. Verification of the original copy of the DTR revealed that there was indeed an alteration or superimposition thereon. The time entry of 3:00 pm appeared to have been superimposed over the time entry of 5:00 p.m. or vice versa.

In the direct examination of prosecution witness Mina Flor Talay, she made a clarification on the matter by testifying to the fact that the correct TIME OUT of the correspondent was 3:00 p.m., thus:

Q -

According to your report, this is Civil Service Form No. 48 which shows that respondent was out during September 5, 1989 which shows that she went out at 3:00 O'clock, is that right?

A -

Yes sir.

Q -

And according to this form it was written here that her time out is 5:00 O'clock.

A -

No, sir, that is 3:00 O'clock"

(TSN, pp. 32-33, October 8 1991)

She affirmed said testimonies during cross examination. She said:

Q-

You stated [a] while ago that Mrs. Raymundo went undertime for two hours on September 5, 1989. What was your basis in saying that Mrs. Raymundo went undertime for two hours?

A -

It is specified in her DTR on September 5, 1989 that she went out at 3:00 O'clock, sir.

Q -

So, this is suppose to be 3:00 O'clock?

A -

Yes sir.

Q -

So the actual time is actually reflected in her DTR?

A -

Yes sir.

(TSN, pp. 34-35, October 8, 1991).

Apparently, the prosecution's evidence itself belies the charge of dishonesty and falsification of official documents against the respondent. As to the tampering on the DTR, the same was not clarified and the person supposedly liable thereto was not identified too.

x x x x

Needless to say, the guilt of the respondent on all charges was never established. Therefore, there's no option but to exonerate her.[4]

On 22 October 1993, private respondent, assisted by her husband Domiciano Raymundo, filed an action[5] for damages arising from Malicious Administrative Suit against petitioner, in the Regional Trial Court (RTC) of Tuguegarao, Cagayan, Branch IV, docketed as Civil Case No. 4693, primarily on the basis of the administrative complaint for Conduct Grossly Prejudicial to the Best Interest of the Service/Gross Insubordination/Violation of Reasonable Office Rules and Regulations, Gross Discourtesy in the Course of Official Functions and Gross Dishonesty, filed by petitioner against private respondent.

During the trial, petitioner was represented by the Office of the Solicitor General (OSG).

On 27 September 1995, private respondent filed a motion[6] to disqualify the OSG from representing petitioner on the following grounds: that no right or interest of the government is involved, that petitioner is sued in his private capacity, and that petitioner had retired from the government since July 1995.

Petitioner opposed[7] the motion on the following grounds: First, petitioner is being sued for acts arising from and related to his official position and function as Regional Director of the Telecommunications Office. Second, even if there is an allegation that petitioner is sued in his private capacity, the same could not defeat the protection accorded to public officials who are sued for acts related to or arising from their office. Third, the acts complained of arose from petitioner's actions while in the performance of his official duties as Regional Director, thus, he is entitled to be represented by the OSG under Presidential Decree No. 478 (Defining the Powers and Functions of the Office of the Solicitor General), and reproduced in Section 35(1), Title 3, Book 4 of the Administrative Code of 1987. Fourth, the presumption is that petitioner acted in the performance of his official duties, thus, it is preposterous to argue that since petitioner had retired from public office, he is no longer allowed to be represented by the Solicitor General. Fifth, there is no law which supports private respondent's claim that he is no longer allowed to be represented by the OSG.

On 19 January 1996, the public respondent, Hon. Orlando D. Beltran, as Judge of the RTC of Tuguegarao, Cagayan, issued an order,[8] granting the motion to disqualify. The ratio of the Order reads:

The Court finds the motion to be meritorious. It may be granted, arguendo that herein defendant is being sued

for acts which he committed in his official capacity but it is also true that the cause of action is for torts, for which he may be held personally answerable. Otherwise stated, since it is alleged that defendant acted with malice and [bad] faith and, thus, he should be made to pay damages to the plaintiff, the interest of the Government is in no way involved so that further appearance by the Solicitor General in his defense is unjustified.

A Motion for Reconsideration was filed but the same was denied in an Order dated 27 March 1996 wherein public respondent ruminated thus:

The order disqualifying the Office of the Solicitor General (herein referred to as SOLGEN) from continuing to appear as counsel for the defendant Celso Pascual after the latter had retired from the government service was anchored upon the fact that, as the cause of action of the plaintiff is for damages based on tort, the defendant may be held personally liable for his acts and, therefore, the interests of the Government, the protection of which appears to be the sole justification of SOLGEN's appearing as defendant's counsel, is not adversely affected. The Court, as the movants mistakenly construe the order, did not yet make any finding that defendant is already liable for the acts complained of as tortuous. It could not yet have made such findings as no trial has been held nor evidence presented. Thus, the contention of the movants, on this point at least, has no factual basis. It could very well be that the plaintiff may not be able to substantiate her complaint and the Court will dismiss it.

The Court is in full agreement with the movant's submission that plaintiff has yet to establish by competent proof her cause of action. On this there can be no dispute.

The Court is not persuaded by the allegations of the movants that to disqualify the SOLGEN from this case would result in a "disregard of the importance of the presumption of regularity of performance of public officers" which in turn "would throw the door wide open and expose public officials acting within the scope of their functions and authorities (sic) to private litigations." However this case may turn out, whether for or against the plaintiff, will not result in a disregard of the presumption enjoyed by public officials that they have regularly performed their duty. Neither will an adverse decision against herein defendant mean that the presumption of regularity of performance of official duty has been disregarded by this Court to the detriment of the State.[9]

On 16 May 1996, the OSG filed a manifestation and motion[10] stating, among other things, that they intend to elevate the issue to the Supreme Court;[11] consequently, they pray that the case be held in abeyance pending resolution of its petition before the higher court. The RTC in an Order[12] dated 28 May 1996 granted the motion and held in abeyance the case for sixty days in order to afford the OSG adequate time to file its intended petition with the Supreme Court. The RTC further ruled that if no petition is filed with the Supreme Court, the case shall be set for hearing.

On 6 August 1996, petitioner filed a Petition for Certiorari[13] with the Court of Appeals by petitioner. Petitioner contends that the trial court acted with grave abuse of discretion amounting to lack of or in excess of authority in issuing the Order dated 19 January 1996, granting private respondent's Motion to Disqualify the OSG from appearing in behalf of petitioner and the Order dated 27 March 1996, denying the motion for reconsideration thereof.

On 27 January 1997, the Court of Appeals dismissed[14] the Petition on two grounds: 1) that the case is barred by laches as the Petition was filed 118 days after receipt of the denial of the motion for reconsideration; and 2) violation of Circular No. 28-91, as the Petition was signed by petitioner's counsel.

A motion for reconsideration was filed by petitioner but the same was denied by the Court of Appeals in an Order[15] dated 12 May 1997.

Hence, this Petition raising two issues for Resolution:

WHETHER THE OSG IS DISQUALIFIED FROM REPRESENTING A PUBLIC OFFICIAL SUED WHILE IN THE PERFORMANCE OF HIS OFFICIAL DUTIES AND HAD RETIRED DURING THE PENDENCY OF THE TRIAL

WHETHER THE TECHNICAL ISSUE SHOULD BE GIVEN PREFERENCE OVER THE MORE SUBSTANTIAL ISSUE INVOLVING PUBLIC POLICY AND GREATER INTEREST OF JUSTICE

A perusal of the foregoing issues readily reveals that petitioner raises two aspects of the case for consideration, both procedural and substantive.

We deny this petition for its procedural and substantive flaws.

As regards the procedural aspect, petitioner contends that the Court of Appeals should have given preference to the substantial issue of the case rather than the technical issue in the greater interest of justice, as it dismissed the Petition on the ground that it was the Solicitor General who signed the Certification of non-forum shopping and that the case was filed 118 days late.

We shall first discuss the appellate court's dismissal of the Petition for non-compliance with the requirements regarding certification of non-forum shopping.

Note that the certificate of non-forum shopping attached to the Petition for Certiorari filed with the Court of Appeals was signed by Solicitor Benilda Tejada.

It is settled that the requirement to file a certificate of non-forum shopping is mandatory and that failure to comply with this requirement cannot be excused. The certification is a peculiar and personal responsibility of the party, an assurance given to the court or other tribunal that there are no other pending cases involving basically the same parties, issues and causes of action. Hence, the certification must be accomplished by the party himself because he has actual knowledge of whether or not he has initiated similar actions or proceedings in different courts or tribunals. Even his counsel may be unaware of such facts. Thus, the requisite certification executed by the plaintiff's counsel will not suffice,[16] as in the case at bar.

On the issue of timeliness of the filing of the Petition for Certiorari before the Court of Appeals, the Petition was filed 118 days late as ruled by the Court of Appeals.

Since the Petition for Certiorari was filed with the Court of Appeals on 6 August 1996, the Revised Rules of Court should be applied. The Revised Rules of Court do not fix a specific time frame for the filing of a Special Civil Action for Certiorari under Rule 65 thereof. Jurisprudence at that time merely requires that the same be filed within a reasonable time from receipt of the questioned judgment or order. The period of three months (90 days) has been found as reasonable to file the Petition for Certiorari.[17] A Petition brought after 99 days is barred by laches.[18] Now, under the 1997 Rules of Civil Procedure, a Petition for Certiorari shall be filed not later than 60 days from notice of the judgment, order or resolution.[19]

As alleged by the petitioner, the Order dated 19 January 1996, issued by public respondent granting private respondent's Motion to Disqualify the OSG from appearing in behalf of the petitioner, was received by petitioner on 9 February 1996, and the Order dated 27 March 1996, denying the motion for reconsideration was received by petitioner on 10 April 1996. The Petition for Certiorari was filed with the Court of Appeals on 6 August 1996, or after the lapse of 118 days, from the receipt of the Order denying his motion for reconsideration. Thus, in either law, the Petition was barred by laches.

Procedural rules are not to be disdained as mere technicalities. They may not be ignored to suit the convenience of

a party. Adjective law ensures the effective enforcement of substantive rights through the orderly and speedy administration of justice. Rules are not to be intended to hamper litigants or complicate litigation. But they help provide for a vital system of justice where suitor's may be heard in the correct form and manner, at the prescribed time in a peaceful though adversarial confrontation before a judge whose authority litigants acknowledge. Public order and our system of justice are well served by a conscientious observance of the rules of procedure, particularly by government officials and agencies.[20]

Ordinarily, we would dismiss this case solely on procedural grounds as discussed above. However, considering the significance of the substantive issue, we deem it just and equitable to also resolve the same.

On matters of substance, what needs to be addressed is the issue of whether or not a public official is entitled to representation by the OSG in a civil action for damages arising from an administrative suit filed against him by another public official. This issue is best resolved by a close scrutiny of the nature and extent of the power and authority lodged by law on the Solicitor General.

The authority of the OSG to represent the Republic of the Philippines, its agencies and instrumentalities and its officials and agents, is embodied under Section 35(1), Chapter 12, Title III, Book IV of the Administrative Code of 1987 which provides that:

SEC. 35. Powers and Functions.-The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of lawyers. It shall have the following specific powers and functions:(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. (Emphasis supplied.)

The import of the above-quoted provision of the Administrative Code of 1987 is to impose upon the OSG the duty to appear as counsel for the Government, its agencies and instrumentalities and its officials and agents before the Supreme Court, the Court of Appeals, and all other courts and tribunals in any litigation, proceeding, investigation or matter requiring the services of a lawyer. We emphasized its mandatory character in the case of *Gonzales v. Chavez*,[21] thus:

It is patent that the intent of the lawmaker was to give the designated official, the Solicitor General, in this case, the unequivocal mandate to appear for the government in legal proceedings. Spread out in the laws creating the office is the discernible intent which may be gathered from the term "shall," which is invariably employed, from Act No. 136 (1901) to the more recent Executive Order No. 292 (1987).

x x x x

The decision of this Court as early as 1910 with respect to the duties of the Attorney-General well applies to the Solicitor General under the facts of the present case. The Court then declared:In this jurisdiction, it is the duty of the Attorney General 'to perform the duties imposed upon him by law' and 'he shall prosecute all causes, civil and criminal, to which the Government of the Philippine Islands, or any officer thereof, in his official capacity, is a party x x x.'

x x x x

The Court is firmly convinced that, considering the spirit and the letter of the law, there can be no other logical

interpretation of Sec. 35 of the Administrative Code than that it is, indeed, mandatory upon the OSG to "represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer." (Emphases supplied.)

The provision allows a public official to be represented by the Solicitor General in all civil, criminal and special proceedings, when such proceedings arise from the former's acts in his official capacity.

However, in the case at bar, petitioner is actually sued in his personal capacity inasmuch as his principal, the State, can never be the author of any wrongful act.[22] The Complaint filed by the private respondent with the RTC merely identified petitioner as Director of the Telecommunications Office, but did not categorically state that he was being sued in his official capacity. The mere mention in the Complaint of the petitioner's position as Regional Director of the Telecommunications Office does not transform the action into one against petitioner in his official capacity. What is determinative of the nature of the cause of action are the allegations in the complaint. It is settled that the nature of a cause of action is determined by the facts alleged in the complaint as constituting the cause of action.[23] The purpose of an action or suit and the law to govern it is to be determined not by the claim of the party filling the action, made in his argument or brief, but rather by the complaint itself, its allegations and prayer for relief.[24]

Also, it is evident from the Complaint filed by the private respondent before the RTC that she sued petitioner for allegedly having personal motives in filing the administrative case against her. The Complaint in part reads:

Sometime on April 25, 1990, the herein defendant (herein petitioner) in utter bad faith and in grave abuse of his authority and discretion as the Regional Director, and with the malicious intent of harassing, oppressing, vexing, embarrassing, molesting, and/or putting to ridicule the herein plaintiff (respondent herein), and with the further malicious intention of blemishing plaintiff's good name and reputation in the community, filed a baseless and unmeritorious administrative complaint against the herein plaintiff at the Telecommunications Office, Department of Transportation and Communication in Tuguegarao, Cagayan.[25] (Underscoring supplied.)

In fact, it can also be observed in the same Complaint that the reliefs sought by private respondent are directed against the petitioner personally and not his office. Respondent is claiming liability directly from petitioner. The relief sought by respondent is stated as follows:

As a consequence of the filing of the patently malicious, flimsy and baseless administrative complaint, plaintiff suffered from mental anguish, serious anxiety, torment, wounded feelings, sleepless nights, besmirched reputation and social humiliation, apart from the fact that she was exposed to ridicule by his friends and officemates including his relatives and neighbors not to mention that her credibility as a public government official, was put into a bad light, for which reasons she demands by way of moral damages from defendant the amount of ONE HUNDRED FIFTY THOUSAND PESOS (P150,000.00);

x x x x

Wherefore, it is respectfully prayed of this Honorable Court that after due proceedings, judgment be rendered in favor of the plaintiff and against the defendant by condemning the latter to pay to the former the following:

A)

P150,000.00 as and by way of moral damages;

B)

P50,000.00 as and by way of exemplary damages;

C)

P15,000.00 as and by way of actual expenses of litigation;

D)

P10,000.00 as and by way of Attorney's fees; and such sum of money representing litigation expenses as maybe proven during the trial on the merit, plus the cost of suit.[26] (Emphases supplied.)

The authority of the Solicitor General to represent a public official in a suit against the latter is discussed in the cases of *Anti-Graft League of the Philippines, Inc. v. Ortega*.^[27]

In *Anti-Graft League of the Philippines, Inc. v. Ortega*,^[28] this Court interpreted such an authority as to embrace "both civil and criminal investigation, proceeding or matter requiring the services of a lawyer."

However, in *Solicitor General v. Garrido*,^[29] the Court sustained the authority of the Solicitor General to enter his appearance on behalf of public officials charged with violating a penal statute for acts connected with the performance of his official duties.

In the case of *Urbano v. Chavez*,^[30] this Court clarified its pronouncements in the cases of *Anti-Graft League of the Philippines, Inc. v. Ortega* and *Solicitor General v. Garrido*. In the *Anti-Graft League of the Philippines, Inc. v. Ortega* and *Solicitor General v. Garrido* cases, the OSG was authorized to enter its appearance as counsel for any public official, against whom a criminal charge had been instituted, during the preliminary investigation stage thereof. Nevertheless, in the same case, this Court held that once an information is filed against the public official, the OSG can no longer represent the said official in the litigation. The anomaly in this paradigm becomes obvious when, in the event of a judgment of conviction, the case is brought on appeal to the appellate courts. The OSG, as the appellate counsel of the People of the Philippines, is expected to take a stand against the accused. Accordingly, there is a clear conflict of interest here, and one which smacks of ethical considerations, where the OSG, as counsel for the public official, defends the latter in the preliminary investigation stage of the criminal case, and where the same office, as appellate counsel of the People of the Philippines, represents the prosecution when the case is brought on appeal. This anomalous situation could not have been contemplated and allowed by the law, its unconditional terms and provisions notwithstanding. It is a situation which cannot be countenanced by the Court.

There is likewise another reason, as earlier discussed, why the OSG cannot represent an accused in a criminal case. Inasmuch as the State can speak and act only by law, whatever it does say and do must be lawful, and that which is unlawful is not the word or deed of the State, but is the mere wrong or trespass of those individual persons who falsely speak and act in its name. Therefore, the accused public official should not expect the State, through the OSG, to defend him for a wrongful act which cannot be attributed to the State itself. In the same light, a public official who is sued in a criminal case is actually sued in his personal capacity inasmuch as his principal, the State, can never be the author of a wrongful act, much less commit a crime. The Court further ruled that its observation should apply as well to a public official who is hailed to court in a civil suit for damages arising from a felony allegedly committed by him. Any pecuniary liability he may be held to account for on the occasion of such civil suit is for his own account. The State is not liable for the same. A fortiori, the Office of the Solicitor General likewise has no authority to represent him in such a civil suit for damages.

To repeat, the Solicitor General is the lawyer of the government, any of its agents and officials in any litigation, proceeding, investigation or matter requiring the services of a lawyer. The exception is when such officials or agents are being charged or are being civilly sued for damages arising from a felony.

This rationale must apply with greater force in the case at bar. Here, the private respondent filed an action for

damages arising from Malicious Administrative Suit against petitioner with the RTC of Tuguegarao, Cagayan, Branch IV. Petitioner was sued for damages arising from the administrative complaint he filed against respondent with the DOTC, for Conduct Grossly Prejudicial to the Best Interest of the Service/Gross Insubordination/Violation of Reasonable Office Rules and Regulations, Gross Discourtesy in the Course of Official functions and Gross Dishonesty. Private respondent was subsequently exonerated by the DOTC for failure of the petitioner to present substantial evidence to prove his charges against private respondent.

Also, an action for recovery of damages for the commission of an injury to a person is a personal action.[31] A personal action is one brought for the recovery of personal property, for the enforcement of some contract of recovery of damages for its breach, or for the recovery of damages for the commission of an injury to the person or property.

More so, any liability the petitioner may be held to account for on the occasion of such civil suit is for his own account and the State is not liable for the same. Thus, the OSG has no authority to represent him in such civil suit for damages.

Considering the foregoing, we rule that the trial court did not commit grave abuse of discretion amounting to excess of or lack of jurisdiction in issuing the assailed orders. By grave abuse of discretion is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, and it must be shown that the discretion was exercised arbitrarily or despotically. For certiorari to lie, there must be capricious, arbitrary and whimsical exercise of power, the very antithesis of the judicial prerogative in accordance with centuries of both civil law and common law traditions.[32] We do not find here a capricious, whimsical and arbitrary exercise of power by the Judge or by the Court of Appeals questioning the act of the lower court.

WHEREFORE, in view of the foregoing, the instant Petition is hereby DISMISSED and the Resolutions dated 27 January 1997 and 21 May 1997 of the Court of Appeals are hereby AFFIRMED. The Orders dated 19 January 1996 and 27 March 1996 of the RTC of Tuguegarao, Cagayan, Branch IV, in Civil Case No. 4693, disqualifying the Office of the Solicitor General from appearing as counsel of petitioner are likewise AFFIRMED. The Office of the Solicitor General is permanently prohibited from representing petitioner in said case. No pronouncement as to costs.

SO ORDERED.

Panganiban, C.J., (Chairperson), Ynares-Santiago, Austria-Martinez, and Callejo, Sr., JJ., concur.

[1] Rollo, pp. 42-43; penned by Associate Justice Quirino D. Abad Santos, Jr. with Associate Justices Delilah Vidallon-Magtolis and Demetrio G. Demetria.

[2] Id. at 45-46.

[3] Records, pp. 6-7.

[4] Records, pp. 12-15

[5] Id. at 1.

[6] Id. at 130-131.

[7] Rollo, pp. 140-145.

[8] Rollo, pp. 157-158.

- [9] Id. at 183-184.
- [10] Id. at 188-190.
- [11] But actually filed a Petition for Certiorari in the Court of Appeals.
- [12] Records, pp. 191-192.
- [13] CA rollo, pp. 1-20.
- [14] Id. at 109-110.
- [15] Rollo, pp. 131-132.
- [16] *Expertravel & Tours, Inc. v. Court of Appeals*, G.R. No. 152392, 26 May 2005, 459 SCRA 147, 157.
- [17] *Philgreen Trading Construction Corp. v. Court of Appeals*, 338 Phil. 433, 438 (1997).
- [18] *Claridad v. Santos*, G.R. No. L-29594, 27 January 1983, 120 SCRA 148, 153.
- [19] Section 4, Rule 65 of the 1997 Rules of Civil Procedure.
- [20] *United Pulp and Paper Co., Inc. v. United Pulp and Paper Chapter-Federation of Free Workers*, G.R. No. 141117, 25 March 2004, 428 SCRA 329, 335.
- [21] G.R. No. 97351, 4 February 1992, 205 SCRA 816, 836-837, 846.
- [22] *Urbano v. Chavez*, G.R. Nos. 87977 & 88578, 19 March 1990, 183 SCRA 347.
- [23] *Republic v. Estenzo*, G.R. No. L-35512, 29 February 1988, 158 SCRA 282, 285.
- [24] *De Tavera v. Philippine Tuberculosis Society, Inc.*, 197 Phil. 919, 926 (1982).
- [25] Records, p. 2
- [26] Id. at 2-4.
- [27] G.R. No. L-33912, 11 September 1980, 99 SCRA 644.
- [28] Id. at 648.
- [29] G.R. No. L-28535, 10 October 1980, 100 SCRA 276, 278.
- [30] *Supra* note 22.
- [31] *Hernandez v. Development Bank of the Philippines*, G.R. No. L-31095, 18 June 1976, 71 SCRA 292; *The Dial Corporation v. Soriano*, G.R. No. L-82330, 31 May 1988, 161 SCRA 737.
- [32] *Rodson Philippines, Inc. v Court of Appeals*, G.R. No. 141857, 9 June 2004, 431 SCRA 469, 480.

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