

**INDALICIO P. CONTI, PETITIONER, VS. HON. COURT OF APPEALS,
CIVIL SERVICE COMMISSION AND POLYTECHNIC UNIVERSITY OF
THE PHILIPPINES, RESPONDENTS.***G.R. No. 134441. May 19, 1999*

Ponente: VITUG, J.

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Petitioner Indalicio Conti would seek to nullify in this petition for certiorari and mandamus the resolution, dated 13 May 1998, of the Court of Appeals which dismissed his petition thereat for certiorari, prohibition and mandamus assailing the resolution, dated 02 November 1995, of the Civil Service Commission ("CSC"). In its aforesaid resolution, CSC dismissed petitioner Conti from the service.

Gathered from the pleadings, along with the annexes, and the assailed decision of the appellate court, the following sequence of events would appear to have taken place.

Sometime in 1989, the Polytechnic University of the Philippines ("PUP") appointed petitioner Indalicio P. Conti, Assistant Professor IV, under National Compensation Circular ("NCC") 33. The circular, intended to be the criteria in ranking the faculty members in state universities and colleges, was issued by the Philippine Association of State Universities and Colleges ("PASUC").

On 05 November 1992, Conti was one of the faculty members who filed with the Human Resource Management Division ("HRMD") of PUP a personal data sheet required of members of the faculty who were reclassified or promoted under NCC 68 which amended NCC 33. Conti, on the basis of points previously earned, was reclassified from Assistant Professor IV to Professor I under NCC 68. For his "points" to be formally recognized that would earn his promotion to Professor I, he had to submit himself to written and oral examinations conducted by the PASUC evaluators who were tasked to make the due accreditation. The evaluation by the PASUC evaluators took place the following year.

On 05 March 1993, Conti received a memorandum from the chairman of the Accreditors/Evaluators, directing him to present himself for IAC Evaluation. He was also required to submit a personal data sheet which he forthwith did. Conti undertook the tests conducted by the accreditation/evaluation committee. The result of the accreditation/evaluation showed that Conti placed eight ("8th") among the candidates and was thereby reclassified from Assistant Professor IV to Professor I. On 01 July 1993, Dr. Zenaida A. Olonan, President of PUP, issued an appointment paper to Conti, confirming his promotional appointment with Dionisia P. Pingol, Director II of CSFO-NCR, signing below the name of Dr. Olonan for the CSC.

During the first week of December 1993, Miss Dionisia P. Pingol sent a letter, dated 02 December 1993, to Dr. Zenaida Olonan asking for a copy of Conti's MBA diploma or transcript of records in order to verify an "information" she had received to the effect that Mr. Conti was not a masteral degree holder. When furnished with a copy of the letter of Ms. Pingol, Conti sent a written reply, dated 11 December 1993, contending that a masteral degree was not a requisite for the position of Professor I under NCC 68.

On 25 April 1994, Ms. Benita O. Santos, Director IV of CSC-NCR, formally charged Conti with dishonesty which, in part, read:

"That in support of your promotional appointment to the position of Professor I, Polytechnic University of the Philippines (PUP), you represented in your Personal Data Sheet that you finished Masteral degree in Business Administration (MBA), however, after verification and evaluation of your transcript of records, it was found out that you are not a graduate of MBA as you alleged. It would appear then that you misrepresented yourself to be an MBA degree holder. Such act is contrary to Civil Service law and rules." [1]

Upon his receipt of a copy of the charge, Conti filed an answer with an explanation that since a masteral degree was not necessary for the promotion of a faculty member to professorial level under PASUC Evaluation Guidelines used in NCC 33, as amended by NCC 68, he had not benefited nor gained an undue advantage over other faculty members. He averred that it was given the limited time in the preparation of supporting papers for his reclassification, an honest mistake on his part.

The CSC conducted a hearing and after the parties had submitted their respective pieces of evidence, a resolution, [2] dated 02 November 1995, was issued by the CSC, certain pertinent portions of which read:

"By writing 'MBA' in his Personal Data Sheet (PDS), respondent intended to impress upon the reader, without further qualifications like for a number of units only or without thesis, especially the evaluators of his appointment papers that he is a graduate of MBA. The defense that he did not claim completion of the aforesaid degree but only for 'units' of the same deserves no consideration. No proof was ever presented to substantiate his defense. At most, it was a mere afterthought, for otherwise he would have written the number of units he earned leading to said Masteral degree. Failing to do so, one cannot help but conclude that the omission is intentional, deliberate and adopted by the respondent to support his appointment as Professor I.

"On the basis of respondents misrepresentation, the Chief, Personnel Division, PUP, was led to believe that Conti is qualified for appointment to the subject position.

"Respondent ought to know the distinction between the word/phrase 'MBA' and 'MBA units.' Accomplishment or a filling up of public documents, such as the PDS must be done correctly and accurately. Any misrepresentation in a material fact made with deliberate intent to mislead and to take undue advantage is plain dishonesty." [3]

Concluding, the CSC, in the dispositive portion of its resolution, held Conti guilty of dishonesty; thus:

"WHEREFORE, Indalicio P. Conti is hereby found guilty of Dishonesty. Accordingly, he is meted out the penalty of dismissal from the service with all its accessory penalties. CSC-NCR, however, is thus directed to recall the approval of said appointment of Conti as Professor I, Polytechnic University of the Philippines." [4]

On 13 December 1995, Conti moved for a reconsideration of the CSC resolution.

Several letters were thereafter sent by Conti to CSC calling its attention to his pending motion for reconsideration. On 13 June 1995, Conti filed a formal motion for the resolution of his plea for reconsideration. Still, the CSC had not acted. On 23 February 1998, Conti finally filed with this Court a petition for certiorari, prohibition and mandamus, docketed G.R. No. 132531, in which he contended that -

"x x x (t)he CSC acted without jurisdiction when it heard, tried, and decided the instant case as a court of origin;

"x x x (t)he CSC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it found the petitioner guilty of dishonesty; and

"x x x (t)he CSC acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it has

not acted for more than a year on the petitioner's motion for reconsideration/new trial."[5]

In a resolution, dated 03 March 1998, the Court referred the petition to the Court of Appeals. In its now challenged resolution, the appellate court dismissed the petition for certiorari, prohibition and mandamus for having been filed out of time, thusly:

"For having been filed out of time, this petition for certiorari, prohibition and mandamus, which was originally filed with but referred to this Court by the Honorable Supreme Court, must have to be DENIED DUE COURSE.

"As no less admitted in the petition itself (at page one thereof), petitioner received copy of the assailed Resolution of the respondent Civil Service Commission (CSC) on '06 December 1995.' Under Supreme Court (SC) Revised Circular No. 1-91, as amended by SC Revised Administrative Circular No. 1-95, now incorporated in Rule 43 of the 1997 Rules of Civil Procedure, appeals from judgments, final orders or resolutions or quasi-judicial agencies, like the Civil Service Commission, shall be taken to the Court of Appeals by way of a petition for review within fifteen (15) days from notice of the assailed judgment, order or resolution (Mateo vs. Court of Appeals, 247 SCRA 284 [1995]).

"With the very admission by the petitioner himself that copy of the challenged CSC Resolution was received by him way back on December 6, 1995, it need no belaboring to understand that the present petition which was filed only on February 23, 1996,[6] was belatedly filed. In fact, it was filed almost three (3) months passed its due date.

"We may add that the mode of appeal resorted to - certiorari, instead of a petition for review - makes the recourse even doubly dismissible."[7]

Conti sought reconsideration but it was to no avail; hence, the instant recourse.

Conti explains that his petition before the appellate court for certiorari, prohibition and mandamus is an original action under Rule 65 of the Revised Rules on Civil Procedure and not an appeal under Rule 43 thereof. Accordingly, he insists, the petition has not been filed out of time. This stance of Conti is shared by the Solicitor General in his Manifestation in lieu of comment. PUP, upon the other hand, argues that appeal via a petition for review under Rule 43 of the Revised Rules on Civil Procedure, and not the special civil action of certiorari, prohibition and mandamus, is the proper remedy anent the final resolution of the CSC. Since Conti has received the CSC resolution as early as 06 December 1995, the filing of his petition only on 23 February 1998, PUP argues, has clearly been out of time inasmuch as the rules mandate that "appeal shall be taken within fifteen (15) days from notice of the . . . final order or resolution, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court of agency a quo."

The instant petition has merit, and it must be granted.

Before the advent of Revised Administrative Circular ("RAC") No. 1-95[8] and the eventual incorporation of its provisions in the 1997 Revised Civil Procedure under Rule 43[9] thereof, the established rule had been that a decision, order, or ruling of the CSC, the single arbiter of all contests relating to the civil service, was unappealable subject only to this Court's certiorari jurisdiction. In other words, no appeal could then lie from judgments of the CSC and that a party aggrieved thereby should proceed to the Supreme Court alone on certiorari under Rule 65 of the Rules of Court within thirty (30) days from receipt of a copy thereof.

RAC No. 1-95, made effective as of 01 June 1995, now mandates, however, that an appeal from judgments, final orders or resolutions of quasi-judicial agencies, like the CSC, may be taken to the Court of Appeals by way of a petition for review within fifteen (15) days from notice of the assailed judgment, order or resolution. Regarding cases still pending with this Court via petitions for certiorari directed against CSC prior to the effectivity of RAC

1-95 and those that might have been filed soon thereafter, the Circular contains the following transitory provisions, viz:

"14. Transitory Provisions - All petitions for certiorari against the Civil Service Commission and the Central Board of Assessment Appeals filed and pending in the Supreme Court prior to the effectivity of this Revised Administrative Circular shall be treated as petitions for review hereunder and shall be transferred to the Court of Appeals for appropriate disposition. Petitions for certiorari against the aforesaid agencies which may be filed after the effectivity hereof and up to June 30, 1995 shall likewise be considered as petitions for review and shall be referred to the Court of Appeals for the same purpose." (Emphasis supplied.)

Conti's initial petition for certiorari, prohibition and mandamus against CSC which he filed before this Court on 23 February 1998 could have thus been outrightly dismissed had there not been the attendance of an exceptional circumstance, hereinafter explained, that justified his recourse to such special remedies.

Truly, an essential requisite for the availability of the extraordinary remedies under the Rules is an absence of an appeal nor any "plain, speedy and adequate remedy" in the ordinary course of law, one which has been so defined as a "remedy which (would) equally (be) beneficial, speedy and sufficient, not merely a remedy which at some time in the future will bring about a revival of the judgment x x x complained of in the certiorari proceeding, but a remedy which will promptly relieve the petitioner from the injurious effects of that judgment and the acts of the inferior court or tribunal" concerned.[10] Illustrative of such a plain, speedy and adequate remedy in the ordinary course of law is a motion for reconsideration[11] that has thus often been considered a condition sine qua non for the grant of certiorari.

PUP capitalizes on the admission of Conti that he has a pending motion for reconsideration on the adverse resolution of the CSC, contending that his petition for certiorari is thereby premature. Ironically, it is this very argument that militates against PUP. As the Solicitor General so aptly points out, the continuous failure of respondent CSC to resolve Conti's motion for reconsideration for so long a time has virtually amounted to a denial of his right to due process and right to the speedy disposition of his case. In fact, there is yet no indication on record that CSC has already resolved Conti's motion for reconsideration. It cannot be gainsaid that it is the inadequacy, not the total absence, of all other legal remedies, and the danger of the failure of justice without the writ, that should determine the propriety of certiorari.[12] This Court has ruled that a recourse to certiorari is proper not only where there is a clear deprivation of petitioner's fundamental right to due process;[13] but so also from where other special circumstances warrant immediate and more direct action.[14] Conti's motion for reconsideration has been pending with the CSC for more than two years since 13 December 1995 up until his petition with this Court on 28 February 1998.

Given the circumstances, it should behoove the appellate court to resolve the case on its merits.

WHEREFORE, the case is REMANDED to the Court of Appeals for further proceedings. No costs.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Gonzaga-Reyes, and Ynares-Santiago, JJ., concur.
Purisima, and Buena, JJ., on leave.

[1] Rollo, p. 54.

[2] Rollo, pp. 41-42.

[3] Rollo, p. 42.

[4] Ibid.

[5] Rollo, p. 29.

[6] Records show that petitioner filed his petition for certiorari, prohibition and mandamus before the Supreme Court on 23 February 1998 and not on 23 February 1996 (p. 5, Rollo).

[7] Rollo, pp. 13-14.

[8] "Rules Governing Appeals to the Court of Appeals from Judgments or Final Orders of the Court of Tax Appeals and Quasi-Judicial Agencies."

[9] "Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals."

[10] *Silvestre vs. Torres*, 57 Phil. 885.

[11] *Mayol vs. Blanco*, 61 Phil. 547.

[12] *Echaz vs. Court of Appeals*, 199 SCRA 381; *Jaca vs. Davao Lumber Co.*, 113 SCRA 107.

[13] *Detective & Protective Bureau vs. Cloribel*, 26 SCRA 255.

[14] *Matute vs. Court of Appeals*, 26 SCRA 768.

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