

ROBIN M. CANO, PETITIONER, VS. THE CHIEF, PHILIPPINE NATIONAL POLICE, EDGAR C. GALVANTE, AS POLICE DIRECTOR FOR PERSONNEL AND RECORDS MANAGEMENT, PNP, AND THE DEPARTMENT OF INTE...

G.R. No. 139368. November 21, 2002

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review on certiorari assails (a) the order[1] dated May 17, 1999 of the Regional Trial Court of Quezon City, Branch 224, in Civil Case No. Q-98-36370, dismissing the complaint filed on December 21, 1998 by petitioner against respondents for payment of back salaries and allowances amounting to P301,018; and (b) the order of said court denying on July 15, 1999, his motion for reconsideration.

The factual background of the instant petition, as culled from the records of the case, is as follows:

For the alleged bungled investigation of the Eileen Sarmenta and Allan Gomez rape-slay, a complaint for grave misconduct was filed with the National Police Commission under the Department of Interior and Local Government against petitioner, then Police Chief Inspector of the Calauan Police Station. The Chief of the Philippine National Police (PNP) found petitioner guilty and ordered his summary dismissal from the service, in a decision[2] dated July 12, 1995. Petitioner appealed his dismissal to the National Appellate Board of the National Police Commission (NAPOLCOM). On May 15, 1997, the NAPOLCOM reversed the decision of the PNP Chief:

WHEREFORE, premises considered, we find respondent appellant, Chief Inspector ROBIN M. CANO administratively culpable for Simple Misconduct and hereby orders (sic) his suspension for a period of three (3) months. Considering, however, that said respondent had been under suspension since August 7, 1995, pursuant to Special Order No. 1690 dated August 8, 1995, the penalty imposed is considered deemed served. Respondent-Appellant is strongly warned to be more prudent and responsible in the exercise of his duties as a member of the PNP.[3]

The NAPOLCOM decision having been allowed by both parties to become final and executory, petitioner was restored to full duty status effective May 15, 1997. He also received all benefits and emoluments pertaining to his post pursuant to PNP Special Order No. 1341. With the modification of his penalty to three (3) months suspension, petitioner filed a claim for payment of back salaries and other allowances corresponding to the period he was allegedly unjustly discharged from service until he was restored to full duty status, or from August 7, 1995 to May 15, 1997. However, this claim, computed by the PNP Regional Police Comptrollership and Finance Division to be Three Hundred One Thousand Eighteen Pesos (P301,018.00), was denied by respondent Police Director Edgar C. Galvante of the PNP Directorate for Personnel and Records Management (DPRM) on the strength of a Memorandum/Opinion from the PNP Legal Service. Petitioner forthwith asked for a reconsideration of the denial but the same was rejected.

On account of said denial, petitioner filed on December 23, 1998 a complaint[4] before the Regional Trial Court

of Quezon City for the recovery of his back salaries and other allowances for the said period. The court a quo dismissed the complaint in an order dated May 17, 1999. Said the trial court:

The Court is prone to agree with the stand and position of the defendants that plaintiff's claim should not be granted because plaintiff has not shown any clear and legal right which would entitle him to back salaries, allowances and other benefits and besides, plaintiff has failed to exhaust administrative remedies no[t] discounting the fact that his claim against defendants is actually a suit against the state.

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This complaint is actually a suit against the government because the ultimate liability for payment of back salaries, etc. will fall on the government. This being so, this case should be dismissed because the government cannot be sued without its consent.

Accordingly, therefore, the Court has to dismiss this case without costs against the plaintiff.

IT IS SO ORDERED.[5]

On May 31, 1999, petitioner moved for the reconsideration of the trial court's decision, but his motion was denied in an order dated July 15, 1999.

Accordingly, petitioner filed the instant appeal via petition for review on certiorari, raising only one issue:

Whether or not the petitioner is entitled to his claim for back salaries and allowances under the terms of the decision of the NAPOLCOM Appellate Board.[6]

Mainly involved in this controversy is petitioner's entitlement to back salaries and other allowances upon the reduction of his penalty of dismissal to mere suspension for three months. But secondarily, it should be asked whether petitioner failed to exhaust the administrative remedies available to him so as to render the filing of the complaint with the trial court premature?

At the outset, we note that the principal issue raised before us is a mixed question of fact and law. There is a question of fact when doubt or difference arises as to the truth or falsehood of the alleged facts,[7] and there is a question of law where the doubt or difference arises as to what the law is on a certain state of facts.[8] Here, petitioner seeks to recover back salaries and allowances allegedly due him from August 7, 1995, when he was unjustly discharged from the service, to May 15, 1997, when he was restored to full duty status. The determination of petitioner's entitlement to said back salaries and allowances is a mixed question as it involves the determination of his duty status for the period of his claim and the resolution of whether the petitioner was acquitted by the NAPOLCOM Appellate Board in its decision finding him liable only for simple misconduct, not gross misconduct.

Under Section 1 of Rule 45 of the Rules of Court, an appeal by certiorari to this Court should raise only questions of law which must be distinctly set forth in the petition. It is elementary that a review is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons therefor.[9] As the error raised herein includes one of fact and law, and not a proper subject for a petition for review on certiorari, we are constrained to decline exercise of our equity jurisdiction in this case.

At any rate, petitioner also failed without justifiable cause to observe due regard for the hierarchy of courts. Even on this reason alone, we are constrained to deny the petition. The policy of this Court respecting the hierarchy of courts and, consequently, prohibiting the filing of a petition in this Court in view of the concurrent jurisdiction with the lower courts has been consistently observed in the absence of any compelling reason for departing from such policy.[10] Pursuant to Section 2, Rule 41 of the Rules of Court,[11] petitioner should have taken his appeal

to the Court of Appeals.

Having ruled for the denial of the petition, we need not tarry on the other issues that may have been raised in the petition.

WHEREFORE, the instant petition is DENIED. The order of the Regional Trial Court, Branch 224, Quezon City, in Civil Case No. Q-98-36370 is AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Bellosillo (Chairman), Mendoza, and Callejo, Sr., JJ., concur.
Austria-Martinez, J., on leave.

[1] Rollo, pp. 16-18.

[2] Records, pp. 9-11.

[3] Id. at 19.

[4] Id. at 2-8.

[5] Rollo, pp. 17-18

[6] Id. at 8.

[7] J. Feria, CIVIL PROCEDURE ANNOTATED, VOL. 2, 206-207 (2001).

[8] Feria, loc. cit. 206.

[9] Rule 45, Sec. 6, 1997 Rules of Civil Procedure.

[10] Executive Secretary vs. Gordon, 298 SCRA 736, 742 (1998).

[11] SEC. 2. Modes of Appeal-

(a) Ordinary appeal.- The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. x x x

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