JUAN LORENZO B. BORDALLO, RESTITUTO G. DE CASTRO AND NOEL G. OLARTE, PETITIONERS, VS. THE PROFESSIONAL REGULATIONS COMMISSION AND THE BOARD OF MARINE DECK OFFICERS, RESPONDENTS.

G.R. No. 140920. November 19, 2001

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

On February 24, 1998, President Fidel V. Ramos approved Republic Act No. 8544, entitled "An Act Regulating the Practice of the Merchant Marine Profession in the Philippines," otherwise known as the "Philippine Merchant Marine Officers Act of 1998." The law took effect on March 25, 1998, after fifteen (15) days following its publication in the Malaya.[1]

Section 2 of R.A. No. 8544 declares it the policy of the State to "institutionalize radical changes as required by international and national standards to insure that only qualified, competent and globally competitive Marine Deck/Engineer Officers as determined through licensure examinations shall be allowed entry to the practice of the Merchant Marine profession." The law provides for, and governs, among others, "the examination, registration and issuance of Certificate of Competency to Merchant Marine Officers."[2] Article V (Examination, Registration and Certificate of Competency) of the law contains provisions requiring examinations (Section 13), prescribing qualifications of applicants for examination (Section 14) and defining the scope of the examination (Section 15). In addition, Section 17 lays down the requirements for an examinee to be qualified as having passed the examination:

> Rating in the Board Examinations. -- To be qualified as having passed the board examination for Marine Deck/Engineer Officer, a candidate must obtain a weighted general average of seventy percent (70%), with no grade lower than sixty percent (60%) in any given subject. An examinee who obtains a weighted general average rating of seventy (70%) but obtains a rating below sixty percent (60%) in any given subject must take the examination in the subject or subjects where he obtained a grade below sixty percent (60%).

Significantly, the passing rating prescribed by the above provision (70%) is lower than that prescribed by Presidential Decree No. 97 (Regulating the Practice of the Marine Professions in the Philippines), otherwise known as the Philippine Merchant Marine Officers Law. Section 9 thereof sets a passing rating of seventy-five percent (75%) thus:

> Examination rating. - An examinee having obtained a general weighted average of seventy-five per cent or above with no rating below 60% in any subject; Provided, however, any examinee failing to get the general weighted average of seventy-five per cent shall be required to take a re-examination in all the subjects prescribed by the Board.

R.A. No. 8544 also provides for the creation of the Board of Marine Desk Officers. Among the Board's powers and duties, as set forth in Section 10, are:

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> (k) In accordance with the STCW '78 Convention and its amendments, to prepare, adopt and issue the syllabi of the subjects for examinations by determining and preparing the questions which shall strictly be within the scope of the syllabus of the subjects for examination;
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> (l) To promulgate, administer and enforce rules and regulations necessary for carrying out the provisions of this Act, in accordance with the charter of the Professional Regulation Commission and the STCW '78 Convention, as amended: Provided, That in case of subsequent or future amendments to any international convention(s)/conference of which the Philippines is a signatory, the Board is empowered to amend/revise its rules and regulations to conform with the amendments of said convention(s) without the need of amending this enabling Act;
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The Board is also empowered to adopt and promulgate the law's Implementing Rules and Regulations:

> SEC. 34. Implementing Rules and Regulations. - Subject to the approval of the commission, the Board shall adopt and promulgate such rules and regulations, including the Code of Ethics for Marine Deck/Engineer Officers, to carry out the provisions of this Act, which shall be effective after thirty (30) days following their publication in the Official Gazette or in a major daily newspaper of general circulation.

On April 25, 26 and 27, 1998, respondent Board of Marine Deck Officers conducted the examination for deck officers. Petitioner Juan Lorenzo Bordallo took the examination for Chief Mate, petitioner Restituto de Castro for Second Mate, and petitioner Noel Olarte for Third Mate. At that time, the Board had not yet issued the syllabi and the rules and regulations pursuant to Republic Act No. 8455.

Subsequently, petitioners received notices from respondent Professional Regulatory Commission (PRC) that they failed in their respective examinations. Petitioners secured certifications from the PRC their respective ratings. None of the petitioners obtained a general weighted average of 75%, although all of them had general weighted averages of more than 70%. None of them had a rating of less than 60% in any of the subjects.

On May 21, 1998, petitioners filed a petition before the Board of Marine Deck Officers claiming that, in accordance with Section 17 of R.A. No. 8544, they should be considered as having passed the April 1998 Examination for Deck Officers.

In the meantime, the PRC issued in relation to the July 1998 examinations PRC Resolution No. 569, Series of 1998, stating:

> Considering that the "syllabi of the subjects for examination" have not as yet been prepared, adopted and issued pursuant to Section 10(k) in relation to Section 16 of R.A. No. 8544, the Boards for Marine Deck and Engine Officers shall issue programs of examinations which shall contain the subjects for examination and considering, further, that the weights of the subjects for examination remain the same, the grading system adopted by the Boards under P.D. No. 97 shall continue to be used in the said examinations.

The Board, on June 9, 1998, promulgated Board Resolution No. 1, Series of 1998 (the Rules and Regulations Implementing Republic Act No. 8544).[3]

On January 22, 1999, the Board of Marine Deck Officers issued an Order denying the petition, ratiocinating:

> The Board is guided by a directive issued by the Professional Regulation Commission under PRC Resolution No. 569, Series of 1998, x x x.
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> x x x

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> While, admittedly, the above-quoted Resolution was issued for the licensure examinations given in July 1998, subsequent to the licensure examination taken by petitioners, it undoubtedly applies to the previous examination given in April 1998.
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> Republic Act No. 8455 may have been given effect, under its own provisions, "after fifteen [15] days following its publication in the Official Gazette or in any major newspaper of general circulation, whichever comes earlier." However, the same law allows time for transition between the former Philippine Merchant Marine Officers Law (Presidential Decree No. 97), and the current Philippine Merchant Marine Officers Act of 1998 (Republic Act No. 8544). This is the tenor of PRC Resolution No. 569, which also states that ["](t)he present Boards for Marine Deck and Engine Officers which where created under P.D. No. 97 are allowed to [`]continue to function in the interim until such time as the new Boards shall be duly constituted['] under Section 33 (2) of R.A. 8544.["]
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> Aside from the directive given under PRC Resolution No. 569, the non-adoption of the new rating was also premised on the fact that the Implementing Rules and Regulations promulgated by the Board was not yet effective during the licensure examinations given in April 1998 and July 1998. The new rating system under the new law was only implemented in the licensure examinations given in October 1998.[4]

Petitioners received a copy of the Board's Order on February 9, 1999. On February 25, 1999, petitioners filed before the Court of Appeals a petition for mandamus, naming the PRC and the Board of Marine Deck Officers as respondents. The Court of Appeals, however, denied the petition, prompting petitioners to seek relief in this Court.

The Court of Appeals denied the petition on two grounds. First, petitioners did not appeal from the adverse order of the Board of Marine Deck Officers to the PRC but went straight to the Court of Appeals on mandamus, in contravention of Section 10 of R.A. No. 8544, which states:

> The policies, resolutions, rules and regulations, issued or promulgated by the Board shall be subject to review and approval of the Commission. The decisions, resolutions or orders rendered by the Board shall be final and executory unless appealed to the Commission within fifteen (15) days from receipt of the decision.

The Court of Appeals ruled that the 15-day period within which petitioners could appeal to the PRC had already lapsed and that the petition for mandamus could not be used as a substitute for the lost appeal.

We do not agree that the resort to mandamus in the Court of Appeals was unwarranted. As a rule, where the law provides for the remedies against the action of an administrative board, body, or officer, relief to courts can be sought only after exhausting all remedies provided.[5] The rule on exhaustion of administrative remedies is not absolute but admits of exceptions. One of these exceptions is when the question is purely legal,[6] such as the one presented in the case at bar. The failure of petitioners to appeal to the PRC, therefore, is not fatal to petitioners' cause.

Second, the Court of Appeals held that even if it disregarded "the inappropriateness of Petitioners' recourse," "the ratings provided for in [Section 17 of] Republic Act 8544 cannot be applied." According to said court, "[t]he approval of the Rules and Regulations implementing Republic Act 8544 [pursuant to Section 10 (l)] and the requisite syllabi [under Section 10 (k)] are conditions sine qua non" for the application of Section 17. As these conditions were not satisfied at the time petitioners took the examination, they cannot be deemed to have passed the same.

The flaw in both the rulings of the Board of Marine Deck Officers and the Court of Appeals is that they apply the passing rating decreed by P.D. No. 97 even when the latter had already lost its effectivity, having been expressly repealed by Section 38 of R.A. No. 8544, thus:

> SEC. 38. Repealing Clause. - Presidential Decree No. 97, as amended, and all other laws, decrees, executive orders, rules and regulations and other administrative issuances and parts thereof which are inconsistent with the provisions of this Act are hereby repealed.

Upon the effectivity of the repealing statute, R.A. No. 8544, the repealed statute, P.D. No. 97, in regard to its operative effect, is considered as if it had never existed. Courts, or administrative agencies for that matter, have no power to perpetuate a rule of law that the legislature has repealed.[7]

The Board rationalized its application of the 75% passing rating under P.D. No. 97 on the ground that the syllabi[8] of the subjects had not yet been "prepared, adopted and issued" and the implementing rules and regulations had not been promulgated. The Board's predicament is understandable, considering that the law had just taken effect on March 25, 1998 and the examination was scheduled to take place on April 25, 26 and 27, 1998. It would appear to us, however, that the solution was to postpone the examination rather than to apply a law that had already been rendered non-existent.[9]

Neither is there anything in Section 33 (2), R.A. No. 8544 that justifies the Board's action. Said provision simply reads:

> SEC. 33. Transitory Provision. -
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> (1) x x x
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> (2) The present Boards shall continue to function in the interim until such time as the new Board shall be duly constituted pursuant to this Act.

It does not provide for the continued application of Section 9, P.D. No. 97 pending the Board's adoption of the new syllabi and the rules and regulations.

It may be true that R.A. No. 8544, in its intent to raise the standards of the marine profession, prescribes a scope of examination different from that provided for under P.D. No. 97 and its implementing rules. It may also be true that the syllabi and the subsequent examination on April 25-27, 1998 do not conform to the standards laid down by the new law and its own implementing rules. The examinees, however, had a right to assume that respondents had performed their functions in accordance with the applicable law and they should not be prejudiced by the agencies' mistakes in its implementation.

WHEREFORE, the petition is GIVEN DUE COURSE and is GRANTED. Petitioners are held to be qualified as having passed the Board Examination for Marine Deck Officers conducted on April 25-27, 1998.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

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[1] Under Section 39 of the law, the "Act shall take effect after fifteen days following its publication in the Official Gazette or in any major newspaper of general circulation, whichever comes earlier." Publication in the Malaya took place on March 9, 1998 while publication in the Official Gazette was on July 3, 1998.

[2] REPUBLIC ACT NO. 8544, SECTION 3 (a).

[3] 94 O.G. No. 2, July 13, 1998, p. 4956. This was "superseded or repealed" by a Board Resolution No. 1, Series of 1999 (95 O.G. No. 22, May 31, 1999, p. 3699), which in turn, was also repealed by Board Resolution No. 21, Series of 1999 (95 O.G. No. 52, December 27, 1999, p. 9179).

[4] Rollo, pp. 55-56.

[5] Lopez vs. City of Manila, 303 SCRA 448 (1999).

[6] Salinas, Jr. vs. National Labor Relations Commission, 319 SCRA 54 (1999); Espina vs. Court of Appeals, 294 SCRA 525 (1998).

[7] 73 Am Jur 2d, Statutes §384.

[8] The syllabi contain the scope of the examination (Section 21, Board Resolution No. 21, Series of 1999). Test questions shall be strictly within the scope of the syllabus of the subject (Section 26, Id.; Section 10(k), R.A. No. 8544).

[9] Under Section 8, P.D. No. 97, "The Board of Examiners for Marine Officers shall conduct two examinations in a year, one in the City of Manila, on the last week of January, and another in Cebu or Iloilo alternately, on the last week of July: Provided, however, That if conditions warrant, the Board may, upon approval of the Office of the President consider conducting examination in other places." There is no corresponding provision in R.A. No. 8544, and it appears that the law leaves this matter to the administrative agencies' discretion. The Board of Marine Deck Officers subsequently enacted Board Resolution No. 21, Series of 1999 (Rules and Regulations Implementing Republic Act No. 8544, the "Philippine Merchant Marine Officers Act of 1998"), Section 18 of which provides:

> SEC. 18. Places and Dates of Examination. - The Marine Deck Officers Licensure Examination shall be held at least four times a year in the City of Manila and in such other places a determined by the Board and approved by the Commission. The places/venues and dates of examinations for the year shall be included in the Schedule of Professional Licensure Examinations issued by the Commission.

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