PABLO B. CASIMINA, THEN GENERAL MANAGER OF THE PHILIPPINE FISHERIES DEVELOPMENT AUTHORITY, PETITIONER, VS. HON. EMILIO B. LEGASPI, IN HIS CAPACITY AS PRESIDING JUDGE OF RTC OF I...

G.R. NO. 147530. June 29, 2005

Ponente: CORONA, J.

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CORONA, J.:

Before us is a petition for review under Rule 45 of the Rules of Civil Procedure for the nullification of the decision dated August 18, 2000 of Hon. Emilio B. Legaspi, presiding judge of the Regional Trial Court of Iloilo City, Branch 22 in Civil Case No. 00-26187, directing petitioner to desist from giving effect to the re-assignment of private respondent from his permanent station in Iloilo City to the Quezon City office.

The facts follow.

Private respondent Emmanuel T. Illera was the Port Manager of the Iloilo Fishing Port Complex (IFPC) while petitioner Pablo B. Casimina was the then General Manager of the Philippine Fisheries Development Authority (PFDA) with offices in Quezon City.

On March 17, 2000, petitioner Casimina issued Special Order No. 82[1] re-assigning private respondent from Iloilo to the central office in Quezon City:

17 March 2000

> SPECIAL ORDER
>
> No. 82
>
> Series of 2000
>
> Subject: REASSIGNMENT OF PERSONNEL
>
> In the exigency of the service, Mr. EMMANUEL T. ILLERA, Port Manager of the Iloilo Fish Port Complex (IFPC) is hereby reassigned to the Central Office of the General Manager effective 03 April 2000. To assume responsibility of over-all port administration, Engr. TITO C. COSEJO, Port Manager, Navotas Fish Port Complex (NFPC) is hereby re-assigned and designated as Acting Port Manager of the Iloilo Fish Port Complex.
>
> Mr. Illera and Engr. Cosejo should immediately clear themselves of their administrative accountabilities before proceeding to their new place of assignment.
>
> This Order shall remain effective until revoked in writing by the undersigned.

(SGD.) PABLO B. CASIMINA

General Manager

On March 22, 2000, private respondent sent a memorandum[2] to petitioner praying for a reconsideration of the above order. He wrote –

22 March 2000

M E M O R A N D U M

F O R: The General Manager, PFDA
T H R U: The Asst. General Manager, PFDA
F R O M: The Port Manager, PFDA-IFPC
SUBJECT: REASSIGNMENT

In the late afternoon of 21 March 2000, S.O. no. 82 s. 2000 was faxed to my office. I was surprised when my staff gave this communication to me the next day because considering my transfer or any employees transfers for that matter – would have far reaching official and personal consequences as well, I expected that this matter should have at least first been discussed with me. As it is I do not know for what reasons if any I am being reassigned or even what I am supposed to be doing in your office when I get there. The S.O. itself is silent on these matters.

My situation becomes quite ironic when we look at S.O. no. 81 s. 2000 which is dated 14 March 2000. Before this Order referring to Ms. Irma Catain's detail to Central Office was even prepared, Ms. Catain first talked to you, me and Atty. Paz to whose office she will be assigned. When we accepted her personal reasons for reassignment our offices worked out the details of her transfer and so the Special Order was issued. If you will recall, last 18 January 2000 an undated S.O. No. 024 was issued transferring Engr. P. Zapanta, the IFPC Acting EMD chief to General Santos and no prior consultation was also done. I thought with the procedure observed in Ms. Catain's case all that was behind us.

In view therefore of the above I am requesting that S.O. No. 82 s.2000 be reconsidered.

(SGD.) EMMANUEL T. ILLERA

On March 29, 2000, petitioner issued a memorandum[3] to private respondent stating therein the reason for the re-assignment. He explained –

29 March 2000

M E M O R A N D U M

T O: The Port Manager, IFPC
F R O M: The General Manager
SUBJECT: Reassignment to Central Office

Your response dated 22 March 2000 to Special Order No. 82 Series of 2000 regarding your reassignment to the Central Office is noted.

While in the Central Office, you are expected to help review and formulate credit and collection policies that would negate the accumulation of uncollected accounts receivables, in addition to the other duties that may be assigned to you in the interest of the service.

In this connection, you are hereby ordered to cease and desist from the further performance of your duties as Port Manager of the Iloilo Fish Port Complex effective 03 April 2000 and to assume duties and responsibilities as stated.

For strict compliance.

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(SGD.) PABLO B. CASIMINA

After receiving the memorandum, private respondent immediately filed a case for injunction with prayer for temporary restraining order and a writ of preliminary injunction against petitioner in the RTC of Iloilo, Branch 22 docketed as Civil Case No. 00-26187, to restrain petitioner from transferring him to the central office in Quezon City.

On April 14, 2000, petitioner, through counsel, filed an omnibus motion for the dismissal of the complaint on the grounds of lack of jurisdiction over his person and the subject matter, and lack of cause of action. He averred that he never received any summons or copy of the complaint against him, hence, the court never acquired jurisdiction over his person. He further contended that the case involved personnel movement of a government employee in the public service and should have been appealed to the Civil Service Commission instead of the regular courts.

The trial court denied petitioner's motion to dismiss the complaint against him and granted the writ of preliminary injunction prayed for by private respondent ordering petitioner to "desist from giving effect to the re-assignment of plaintiff (herein private respondent) from his permanent station in Iloilo City to the Quezon City office."[4]

Petitioner moved for a reconsideration of the above decision but it was denied, hence, this appeal. He raises the following as the issues for our consideration:

A. Whether or not public respondent, Hon. Emilio B. Legaspi, in his capacity as Presiding Judge of the Regional Trial Court of Iloilo, Branch 22, exercised grave abuse of discretion which is tantamount to lack of or in excess of jurisdiction in deciding the case when the said trial court has not acquired jurisdiction over the person of the petitioner and the subject matter of the case;

B. Whether or not the instant case should be dismissed for lack of cause of action on the ground of private respondent's failure to exhaust administrative remedies.[5]

Petitioner contends that the court a quo did not acquire jurisdiction over his person because the summons, together with a copy of the complaint, was not personally served on him. He argues that the summons was served by the sheriff in the PFDA office in the Iloilo Fishing Port Complex while his office was in Quezon City. He further contends that when Assistant Government Corporate Counsel Reynaldo R. Tansioco, Government Corporate Attorney Ruben S. de la Paz and Government Corporate Attorney Mariano C. Alojado appeared in court during the hearing of the motion for the issuance of a preliminary injunction on April 18, 2000, they did so only to inform the court that they had filed an omnibus motion to dismiss the complaint against petitioner on the ground of lack of jurisdiction over his person and over the subject matter of the case.

We find the petition meritorious.

A court acquires jurisdiction over a person either through a valid service of summons or the person's voluntary appearance in court. A court must necessarily have jurisdiction over a party for the latter to be bound by a court decision.[6]

> Generally accepted is the principle that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by judgment rendered by the court.[7]

Summons is a writ by which the defendant is notified of the action brought against him. Service of such writ is the means by which the court may acquire jurisdiction over his person.[8] As a rule, summons should be personally served on the defendant.[9] It is only when summons cannot be served personally within a reasonable period of time that substituted service may be resorted to.[10] The Rules specify two modes for effecting substituted service

of summons, to wit:

a) by leaving copies of the summons at the defendant's residence with some person of suitable age and discretion then residing therein, or

b) by leaving the copies at defendant's office or regular place of business with some competent person in charge thereof.[11]

Here, petitioner never received the summons against him, whether personally or in his office. The records show that petitioner's official address as the General Manager of the Philippine Fisheries Development Authority (PFDA) was in Quezon City. Yet, the summons, together with a copy of the complaint, was served not in his Manila office but in PFDA's Iloilo branch office and received by the records receiving officer there. We have held that the failure to faithfully, strictly and fully comply with the requirements of substituted service renders the service ineffective.[12]

In ruling that there was a valid service of summons, respondent judge "presumed that the said Records Receiving Officer (was) authorized to receive the communication or court processes addressed to the defendant."[13] He further surmised and held that:

> One thing sure is, he forwarded it to their Manila, Quezon City Central Office. In fact, Engr. Tito Cosejo who briefly acted as the Department Manager of the Iloilo Fishing Port Complex, appeared in Court during the summary hearing on the plaintiff's prayer for the issuance of the TRO on April 4, 2000 and informed the Court that the summons was received by their Central Office when defendant was on his way to the province. There was therefore substantial compliance of the rule on service of summons.

We disagree.

The doctrine of substantial compliance requires that for there to be a valid service of summons, actual receipt of the summons by the defendant through the person served must be shown.[14] We further require that where there is substituted service, there should be a report indicating that the person who received the summons in the defendant's behalf was one with whom petitioner had a relation of confidence ensuring that the latter would receive or would be notified of the summons issued in his name.[15] None of these was observed in the case at bar.

We cannot infer actual receipt of summons by petitioner from the fact that the government corporate counsel filed a motion to dismiss the case against him and Mr. Cosejo appeared on his behalf during the summary hearing for the issuance of a temporary restraining order to ask for the postponement of the case. It is well-settled that a party who makes a special appearance in court challenging the jurisdiction of said court based on the ground of invalidity of summons, among others, cannot be considered to have submitted himself to the jurisdiction of the court.[16] Even the assertion of affirmative defenses, aside from lack of jurisdiction over the person of the defendant, cannot be considered a waiver of the defense of lack of jurisdiction over such person.[17]

Since the trial court did not acquire jurisdiction over the person of petitioner, he could not have been bound by the decision of respondent judge ordering him to desist from transferring private respondent from his station in Iloilo City to the central office in Quezon City. Any decision rendered without jurisdiction is a total nullity and may be struck down at any time, even on appeal, before this Court.

On the issue of lack of jurisdiction over the subject matter, we agree with petitioner that this case falls within the jurisdiction of the Civil Service Commission (CSC) because it involves the movement of government personnel to promote order and efficiency in public service. The 1987 Constitution specifically mandates that:

> Section 3. The Civil Service Commission, as the central personnel agency of the government, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil service. It shall strengthen the merits and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability. It shall submit to the President and the Congress an annual report on its personnel programs.[18] (emphasis ours)

Personnel actions, i.e., appointments, promotions, transfers, re-assignments, etc., are specifically provided for in Section 26 (3), Chapter 5, Book V, Subtitle A, of Executive Order No. 292, or the Administrative Code of 1987. Thus,

> Section 26. Personnel Actions. – xxx any action denoting the movement or progress of personnel in the civil service shall be known as personnel action. Such action shall include appointment through certification, promotion, transfer, reinstatement, re-employment, detail, reassignment, demotion, and separation. All personnel actions shall be in accordance with such rules, standards, and regulations as may be promulgated by the Commission.
>
> xxx xxx xxx
>
> (3) Transfer. A transfer is a movement from one position to another which is of equivalent rank, level, or salary without break in service involving the issuance of an appointment.
>
> It shall not be considered disciplinary when made in the interest of public service, in which case, the employee concerned shall be informed of the reason therefore. If the employee believes that there is no justification for the transfer, he may appeal his case to the Commission. (emphasis ours)

xxx xxx xxx

While we are aware that the power to transfer and re-assign government employees from one office to another can be abused by some unscrupulous government officials, not all transfers, however, amount to removal from office.[19]

> ... (N)either does illegality attach to the transfer of an employee from his assigned station to the main office, effected in good faith and in the interest of the service pursuant to Sec. 32 of the Civil Service Act.[20]

Here, petitioner ordered the transfer of private respondent from the Iloilo branch to the main office in Manila in the exigency of the service and in order to

> ... help review and formulate credit and collection policies that would negate the accumulation of uncollected accounts receivables, in addition to the other duties that may be assigned to (him) in the interest of the service.[21]

There is nothing to show from the facts presented to us that the order transferring private respondent to Manila was done in bad faith or motivated by ill will. We thus find his refusal to transfer to the main office to be without basis.

In any event, if private respondent believed that his transfer was unjustified, his remedy was to appeal to the Civil Service Commission.[22] It was therefore wrong for the trial court to take cognizance of the case without private respondent first exhausting the administrative remedies available to him.

WHEREFORE, foregoing premises considered, the petition is hereby GRANTED. The decision in Civil Case No. 00-26187, and the order denying the motion for its reconsideration, are hereby ANNULLED AND SET ASIDE.

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SO ORDERED.

Panganiban, (Chairman), Sandoval-Gutierrez, Carpio-Morales and Garcia, JJ., concur.

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[1] Rollo, p. 17.

[2] Rollo, pp. 17-18.

[3] Rollo, p. 18.

[4] RTC Decision, Rollo, p.40.

[5] Rollo, p. 21.

[6] Padilla v. Court of Appeals, 421 Phil. 883 (2001).

[7] Id.

[8] Cano-Gutierrez v. Gutierrez, G.R. No. 138584, 2 October 2000, 341 SCRA 670.

[9] Section 6, Rule 14, Rules of Civil Procedure, 1997 Rules of Court:

Sec. 6. Service in person on defendant. – Whenever practicable, the summons shall be served by handing a copy thereof to the defendant in person, or, if he refuses to receive and sign for it, by tendering it to him.

[10] Bank of Philippine Islands v. Sps. Willie and Julie L. Evangelista, et al., 441 Phil. 445 (2002).

[11] Section 7, Rule 14, Rules of Civil Procedure, 1987 Rules of Court.

[12] Miranda v. Court of Appeals, 383 Phil. 163 (2000).

[13] RTC Decision, Rollo, p. 36.

14 Millennium Industrial Commercial Corporation v. Tan, 383 Phil. 468 (2000).

[15] Ang Ping v. Court of Appeals, 369 Phil. 607 (1999).

[16] United Coconut Planters Bank v. Ongpin, 420 Phil. 538 (2001).

[17] Id.

[18] Section 3, Sub-article B, Article IX, 1987 Constitution.

[19] Sta. Maria v. Lopez, G.R. No. L-30773, 18 February 1970, 31 SCRA 637.

[20] Id.

[21] Memorandum, Rollo, p. 18.

[22] Section 26(3), Chapter 5, Book V, Subtitle A, Administrative Code of 1987.

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