ANDABAI T. ARIMAO, PETITIONER, VS. SAADEA P. TAHER, RESPONDENT.

G.R. NO. 152651. August 07, 2006

Ponente: TINGA, J.

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TINGA, J.:

Before us is a petition for review of the Decision and Order dated 16 October 2001 and 31 January 2002, respectively, of Branch 14 of the Regional Trial Court, 12[th] Judicial Region, Cotabato City, in SPL. Civil Case No. 660, entitled "Saadea P. Taher v. Gov. Nur Misuari, in his capacity as ARMM Regional Governor, Andabai T. Arimao and Bajunaid Kamaludin, Acting Director of TESDA-ARMM," which enjoined respondents therein, including petitioner Andabai T. Arimao, from carrying out the effects of the Memorandum dated 04 August 2000 issued by then Autonomous Region in Muslim Mindanao (ARMM) Governor Nur P. Misuari.

The facts of the case, as culled from the records, follow:

On 22 March 1995, petitioner was appointed as Director II, Bureau of Non-formal Education, Department of Education, Culture and Sports (DECS-ARMM). Thereafter, on 17 July 1995, respondent was appointed Education Supervisor II. Petitioner's appointment, however, was protested by a certain Alibai T. Benito, who claimed that said appointment did not pass through any evaluation by the personnel selection board.[1] Petitioner's appointment was eventually disapproved by the Civil Service Commission-Field Office (CSC-FO), Cotabato City, for failure to meet the experience required for the position. On 02 May 1996, the CSC, through Resolution No. 96- 3101, affirmed the findings of the CSC-FO and ordered petitioner to be reverted to her former position of Education Supervisor II.[2] Petitioner sought reconsideration of the decision.

In the interim, petitioner applied for and was granted by the DECS-ARMM an academic scholarship with pay effective 30 October 1996 in her capacity as Education Supervisor II. The scholarship was limited to a period of one year.[3]

Meanwhile, petitioner's motion for reconsideration of CSC Resolution No. 96-3101 was denied.[4] Subsequently, she filed a petition for review of the two CSC Resolutions before the Court of Appeals[5] which, however, denied due course to the petition on 10 June 1998.[6] On 17 October 1998, the Court of Appeals issued an Entry of Judgment declaring the denial of the petition to be final and executory.[7]

In the meantime, the position of Education Supervisor II being occupied by respondent was devolved from DECS-ARMM to the Technical Education and Skills Development Authority (TESDA)- ARMM.

On 2 December 1998, petitioner informed the CSC Regional Office in Cotabato City that she was already allowed by the Director of TESDA-ARMM to report for duty, only that she and respondent are reporting to the same position.[8] On 10 December 1998, the CSC Regional Director enjoined respondent from reporting to the TESDA-ARMM.[9] It appears, however, that respondent continued to report as Education Supervisor II.

On 7 December 1998, respondent, unaware that petitioner was granted a study leave from October 1996 to

October 1997, filed a complaint before the Regional Director, ARMM, relative to petitioner's continued absence. On 24 December 1998, upon the complaint filed by respondent, the Executive Secretary of ARMM, by authority of the ARMM Regional Governor and per his Memorandum of even date, declared petitioner to have been Absent Without Leave (AWOL) by reason of her failure to report to her office for at least a year after the expiration of her study leave and directed that she be dropped from the payroll.[10] Petitioner appealed the said Memorandum to the Office of the ARMM Regional Governor. In Resolution No. 001-99 dated 17 March 1999, the said office denied the appeal, finding that from 30 October 1996 up to the opening of school year 1997-1998, first semester, petitioner failed to report to office despite the fact that she was not able to enroll immediately upon the approval of her study leave.[11] Further, petitioner's act of enrolling in the second semester of school year 1997-1998 in the absence of an approved extension of her study leave is a clear violation of the implementing guidelines of Republic Act No. 4670, or the Magna Carta for Public School Teachers. The dispositive portion of the Resolution reads:

> WHEREFORE, [p]remises considered, the instant letter of Mrs. Arimao to reconsider the action of the Executive Secretary in dropping her from the roll is hereby DENIED and is accordingly DISMISSED for lack of merit. Thus, the Memorandum Ordered [sic] of the Executive Secretary on Authority of the Regional Governor dated December 24, 1998 is hereby affirmed and remained [sic] undisturbed. Nonetheless, since the act of dropping one from the roll is non[-]disciplinary action on the ground of being guilty of the charge of Absence Without Approved Leave (AWOL) the respondent may be appointed to other position[s] in the Government service at the discretion of the appointing authority.
>
> SO ORDERED.[12]

On 20 July 2000, Datu Guimid P. Matalam, Regional Vice Governor/Acting Regional Governor, ordered petitioner to reassume her former position as Education Supervisor II, and revoked the ARMM Executive Secretary's Resolution dated 24 December 1998.[13] However, on 1 August 2000, the same Acting Regional Governor issued the following order:

> In the interest of the service and considering the need to observe fairness and justice in dealing with our personnel, you are hereby directed to implement the above mentioned resolution rendered by the Regional Solicitor General on March 17, 1999.
>
> As such, you are likewise directed to maintain STATUS QUO on the part of Ms. SAADEA P. TAHER, Education Supervisor II with permanent status duly approved by the Civil Service Commission.
>
> This Memorandum Order takes effective [sic] immediately and superscede/ revokes all previous order inconsistent herewith.[14]

However, on 4 August 2000, ARMM Regional Governor Misuari issued a Memorandum[15] to the TESDA-ARMM, ordering petitioner's reinstatement, presumably in accordance with CSC Resolution No. 96-3101 and CSC-ARMM directive dated 26 July 2000.

Respondent thus filed a Petition for Prohibition before the Regional Trial Court of Cotabato City, claiming that she has no other plain, speedy and adequate remedy, as she stands to suffer grave injustice and irreparable injury if she is removed from the office which she has held for more than five years.[16] On 21 August 2000, the trial court issued a writ of preliminary injunction commanding ARMM Regional Governor Misuari and the TESDA-ARMM to desist from carrying out the said Memorandum.[17]

On 16 October 2001, the trial court rendered the assailed Decision,[18] holding that the 04 August 2000 Memorandum of the ARMM Regional Governor could no longer be implemented because the CSC resolutions ordering petitioner's reinstatement, relied upon by ARMM Regional Governor Misuari, were superseded by the

CSC resolutions finding petitioner on AWOL and dropping her from the payroll. According to the trial court, this controversy has to be resolved by the CSC, which has the exclusive jurisdiction over disciplinary cases and cases involving personnel actions affecting employees in the public service. The trial court thus ordered:

> WHEREFORE, as prayed for, the respondents are ordered to cease and desist in prosecuting or carrying out the effects of the August 4, 2000 [M]emorandum and for respondents to cease and desist from continuance of any act which will be in violation of the right of petitioner with respect to the subject matter of the action or proceeding so as not to render the judgment ineffectual.
>
> SO ORDERED.[19]

Petitioner filed a motion for reconsideration but the motion was denied on 31 January 2002.[20]

On 31 October 2000, petitioner moved for the issuance of a writ of execution of CSC Resolution No. 96-3101 (ordering her reinstatement to her former office). CSC issued Resolution No. 01-0132,[21] dated 15 January 2001, ordering the concerned officials of the DECS-ARMM to implement CSC Resolution No. 96-3101.

Meanwhile, on 22 May 2002, the CSC, acting on the letter of the Regional Solicitor General of the ARMM regarding the implementation of CSC Resolution No. 96-3101, issued Resolution No. 020743.[22] According to the CSC, it issued Resolution No. 01-0132 because petitioner did not inform the Commission that she had been declared on AWOL and dropped from the rolls since 24 December 1998.[23] ARMM Regional Governor Misuari's Memorandum dated 04 August 2000 ordering petitioner's reinstatement is rendered moot and academic because prior to the said date she was already separated from the service, the CSC added.[24]

Petitioner now comes before us, arguing that a writ of prohibition does not lie to enjoin the implementation of the directive of the ARMM Governor implementing the CSC Resolution reinstating her to her former position.[25] She claims that the trial court gravely erred in taking cognizance of the petition for prohibition filed by respondent, and failed to observe the doctrine of primary jurisdiction, considering that the case, as declared by the trial court itself, involved personnel actions which are within the CSC's exclusive jurisdiction.[26] In addition, petitioner contends that by virtue of the disapproval of her appointment, respondent's appointment to Education Supervisor II was invalidated, and thus both of them are automatically restored to the their former positions by operation of law. She further claims that the AWOL Order of the CSC was previously revoked on 20 July 2000 by then Acting Regional Governor Matalam, and that the same Memorandum revoked the 24 December 1998 Memorandum of the Executive Secretary, Atty. Randolph C. Parcasio.[27] Finally, petitioner argues that it is not known which position she was being declared AWOL—when she was declared on AWOL, she was ordered to revert to her former position as Education Supervisor II, which position was already occupied by respondent who refused to yield the position, and she was also prevented from functioning as Director II.[28]

In her Comment,[29] respondent claims that since no appeal was taken from the AWOL order, it has become final and executory and thus cannot be revoked by mere issuance of a Memorandum.[30] She argues that the doctrine of primary jurisdiction does not apply to the case a quo because it raises a purely legal question, that is, the propriety of petitioner's assumption of her former position despite having been declared on AWOL and dropped from the rolls. Due to the urgency of the situation and the immediacy of the problem, recourse through the same officials who issued the assailed memoranda would be futile.[31]

The Court is thus tasked to resolve the following issues:

- Whether a writ of prohibition lies to enjoin the directive of the ARMM Governor to reinstate petitioner to the position of Education Supervisor II despite petitioner's having been declared on AWOL and dropped from the roll;

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- Whether the trial court erred in taking cognizance of the petition for prohibition and whether the filing of the petition for prohibition violated the doctrine of primary jurisdiction;

- Whether the AWOL order against petitioner validated respondent's occupancy of the position of Education Supervisor II;

- Who, as between petitioner and respondent, is entitled to the position of Education Supervisor II.

The petition must be denied.

Petitioner cannot be reinstated by mere
directive of the ARMM Regional Governor

The assailed Memorandum issued by ARMM Regional Governor is reproduced in full, thus:

> TO
>
> :
>
> TESDA - ARMM
> Cotabato City
>
> SUBJECT
>
> :
>
> Implementation of CSC Resolution No. 96-3101, and CSC-ARMM Directive Order Dated July 26, 2000
>
> DATE
>
> :
>
> August 4, 2000
>
> In the highest interest of public service and consistent with the legal and constitutional precept of promoting social justice, the above-captioned resolutions are hereby implemented.
>
> As such, you are hereby directed to re-instate ANDABAI T. ARIMAO to her former position as Education Supervisor II pursuant to the foregoing resolution and the provisions of Sec. 13, Rule VI, Book V of E.O. No, 292 which are further buttressed by the series of communication of CSC Regional Office No. XII dated September 10, 1998, October 20, 1998, November 03, 1998 and December This [M]emorandum shall take effect immediately and shall take precedence over all memoranda, orders and other issuances [sic] inconsistent herewith.
>
> (Signed)
> PROF. NUR P. MISUARI
> Regional Governor[32]

Even a cursory look at the Memorandum shows that the order of petitioner's reinstatement was made in reliance on, or in implementation of, CSC Resolution No. 96-3101 and CSC-ARMM Directive Order dated 26 July 2000, both of which ordained her reinstatement. However, these directives relied upon by ARMM Regional Governor Misuari were rendered functus officio by no less than the CSC itself per its Resolution No. 020743, which, as previously noted, ruled that the TESDA-ARMM is not under legal obligation to reinstate petitioner because she was already dropped from the rolls effective 24 December 1998. CSC Resolution No. 01-0132, ordering the implementation of CSC Resolution No. 96-3101, was issued because petitioner purposely concealed and withheld from the CSC the information that she had been declared AWOL and dropped from the rolls.[33] With Resolution

No. 020743, CSC Resolution No. 01-0132 was effectively revoked.

Likewise, with the finality of the AWOL order and her having been dropped from the rolls, petitioner legally lost her right to the position of Education Supervisor II. In any case, she has already received from the DECS-ARMM her salaries as Education Supervisor II for the period October 1996 to 1997, or the period corresponding to the time the position was still with the said department.[34]

Petitioner argues that the 24 December 1998 Memorandum finding her to be on AWOL was revoked and rendered moot by subsequent issuances. We are not persuaded. While it is true that then Acting Regional Governor Matalam revoked the 24 December 1998 order of the ARMM Executive Secretary, he recalled the revocation via his Memorandum dated 01 August 2006. Thus, the AWOL order dated 24 December 1998 was in full force and effect when ARMM Regional Governor Misuari issued the assailed 04 August 2000 Memorandum.

Propriety of the Petition for Prohibition

The trial court did not err in taking cognizance of the petition for prohibition.

The principal purpose for the writ of prohibition is to prevent an encroachment, excess, usurpation or assumption of jurisdiction on the part of an inferior court or quasi-judicial tribunal. It is granted when it is necessary for the orderly administration of justice, or to prevent the use of the strong arm of the law in an oppressive or vindictive manner, or to put a stop to multiplicity of actions. Thus, for a party to be entitled to a writ of prohibition, he must establish the following requisites: (a) it must be directed against a tribunal, corporation, board or person exercising functions, judicial or ministerial; (b) the tribunal, corporation, board or person has acted without or in excess of its jurisdiction, or with grave abuse of discretion; and (c) there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[35]

Under Republic Act No. 6734, [36] executive power in the ARMM is vested in the Regional Governor, who has control of all the regional executive commissions, boards, bureaus and offices, and exercises general supervision over the local government units within the Autonomous Region.[37] The assailed Memorandum of ARMM Regional Governor Misuari was presumably issued in the exercise of his power of control and supervision. However, by ordering the reinstatement of petitioner to her former position based upon an outdated CSC Resolution, despite the AWOL order and her being dropped from the rolls, ARMM Regional Governor Misuari acted with grave abuse of discretion, amounting to excess of jurisdiction.

Neither is the petition for prohibition before the trial court violative of the doctrine of primary jurisdiction. Said doctrine precludes a court from arrogating unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence.[38] An exception to this rule is when the issue raised is a purely legal question, well within the competence and the jurisdiction of the court and not the administrative agency.[39] In the instant case, the legal question of whether a memorandum of the ARMM Governor, ordering the reinstatement of an employee declared AWOL and dropped from the rolls, was issued in excess of jurisdiction is a legal question which should be resolved by the courts. For the same reason that the issues to be resolved in this case are purely legal in nature, respondent need not abide by the doctrine of exhaustion of administrative remedies.[40] Besides, to allow the matter to remain with the Office of the ARMM Governor for resolution would be self-defeating and useless and cause unnecessary delay since it was the same office which gave the conflicting issuances on petitioner's reinstatement.

Neither petitioner nor respondentis entitled to the position of EducationSupervisor II

The finality of the disapproval of petitioner's promotion, as well as that of the Order declaring petitioner on AWOL and dropping her from the rolls, is no longer disputed. Thus, as found by the CSC in its Resolution No.

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020743, TESDA has no legal obligation to reinstate petitioner to the position of Education Supervisor II. This, however, should not be construed as a declaration that respondent is entitled to the position of Education Supervisor II.

Section 13, Rule 6 of the Omnibus Rules Implementing Book V, E.O. 292, provides:

> All appointments involved in a chain of promotions must be submitted simultaneously for approval by the Commission. The disapproval of the appointment of a person proposed to a higher position invalidates the promotion of those in lower positions and automatically restores them to their former positions. However, the affected persons are entitled to the payment of salaries for services actually rendered at a rate fixed in their promotional appointments.

Section 19 of the same rule states:

> SEC. 19. An appointment though contested shall take effect immediately upon its issuance if the appointee assumes the duties of the position and the appointee is entitled to receive the salary attached to the position. However, the appointment, together with the decision of the department head shall be submitted to the Commission for appropriate action within 30 days from the date of its issuance otherwise the appointment becomes ineffective thereafter. Likewise, such an appointment shall become ineffective in case the protest is finally resolved against the protestee, in which case he shall be reverted to his former position.

It must be noted that while respondent's appointment to the position of Education Supervisor II was approved as permanent and completed, it was nonetheless made subject to the outcome of the protest filed against petitioner's appointment.[41] At the back of the appointment, the following appears:

> This appointment is subject to the outcome of the protest of Alibai Benito in the appointment of Andabai Arimao former incumbent to the position.[42]

As a chain reaction of the disapproval of petitioner's promotional appointment as Director II, respondent's appointment to Education Supervisor II was likewise invalidated. The efficacy of respondent's appointment was dependent on the validity of petitioner's promotional appointment which in turn was subject to the outcome of the protest against it.

Thus, as of 17 October 1998—or the date of finality of the denial of the petition questioning the disapproval of petitioner's appointment as Director II—both petitioner and respondent were reverted to their former positions. Petitioner should have been allowed to re-assume her position of Education Supervisor II as of the said date, and thereafter remain in the said office until she was dropped from the rolls in 1999. Respondent, in turn, should have been made to return to her former position.

Indeed, for all intents and purposes, respondent became the Education Supervisor II by virtue of her appointment as such on 25 July 1995. However, her tenure ended when petitioner was reverted to the same position on 17 October 1998. Thus, during respondent's occupancy of the position of Education Supervisor II after petitioner's promotional appointment had been disapproved, respondent should be deemed a de facto officer only.[43] A de facto officer is "one who has the reputation of being the officer he assumes and yet is not a good officer in point of law." He is one who is in possession of the office and discharging its duties under color of authority, and by color of authority is meant that derived from an election or appointment, however irregular or informal, so that the incumbent is not a mere volunteer.[44] The difference between the basis of the authority of a de jure officer and that of a de facto officer is that one rests on right, the other on reputation.[45]In Monroy v. Court of Appeals, et al.,[46] this Court ruled that a rightful incumbent of a public office may recover from a de facto officer the salary received by the latter during the time of his wrongful tenure. A de facto officer, not having a good title, takes the salaries at his risk and must, therefore, account to the de jure officer for whatever salary he received during the

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period of his wrongful tenure.[47] In the instant case, respondent should account to petitioner for the salaries she received from the time the disapproval of petitioner's promotion became final, up to the time when petitioner was declared on AWOL and dropped from the rolls. However, respondent may be allowed to keep the emoluments she received during said period, there being no de jure officer at the time,[48] following our ruling in Civil Liberties Union v. Executive Secretary,[49] to wit:

> [I]n cases where there is no de jure officer, a de facto officer who, in good faith, has had possession of the office and has discharged the duties pertaining thereto, is legally entitled to the emoluments of the office, and may in an appropriate action recover the salary, fees and other compensations attached to the office.[50]

There is no question that respondent discharged the duties of Education Supervisor II from the time she was appointed to the position and even after her appointment was invalidated as a result of the invalidation of petitioner's promotional appointment. In view of the services respondent rendered to the TESDA and the people of the ARMM, it would be iniquitous to deny her the salary appertaining to the position corresponding to the period of her service.

All the same, however, respondent cannot continue her unauthorized occupancy, notwithstanding the fact that the position of Education Supervisor II has been vacant since 1999. Absent any showing that she has been reappointed to the position after petitioner was declared AWOL and dropped from the rolls, respondent cannot lay a valid claim thereto.

WHEREFORE, the petition is DENIEDand the Decision and Order dated 16 October 2001 and 31 January 2002, respectively, of the RTC, 12[th] Judicial Region, Branch 14 are AFFIRMED.

Respondent is ordered to VACATE the position of Education Supervisor II, TESDA-ARMM, and turn over to petitioner the emoluments she received for the position from 17 October 1998 to 17 March 1999.

Costs against petitioner.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio Morales and Velasco, Jr., JJ., concur.

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[1] Rollo, p. 42

[2] Id. at 41-50.

[3] Id. at 161-162.

[4] Id. at 31-32.

[5] The petition, as well as the subsequent motion for reconsideration was denied by the Court of Appeals, and Entry of Judgment issued, declaring that said decision became final and executory on 17 October 1998.

[6] Arimao moved for the reconsideration of the denial, but her motion was denied by the Court of Appeals.

[7] Rollo, p. 135.

[8] Records, p. 59.

[9] Id. at 60-61.

[10] Rollo, pp. 161-162. Civil Service Memorandum Circular No. 12, Series of 1994, states that officers and

employees who are absent for at least thirty (30) days without approved leave of absence are considered absent without leave and may be dropped from the service without prior notice.

[11] Id. at 164.

[12] Rollo, p. 165.

[13] Records, p. 15.

[14] Id. at 16.

[15] Rollo, p. 62.

[16] Records, pp. 1-10.

[17] Id. at 22.

[18] Rollo, pp. 89-97.

[19] Id. at 97.

[20] Id. at 106-107.

[21] Id. at 108-110.

[22] Id. at 130-138.

[23] Id. at 137.

[24] Id. at 136.

[25] Id. at 19.

[26] Id. at 27-31.

[27] Id. at 34.

[28] Id.

[29] Id. at 122-129.

[30] Id. at 123.

[31] Id. at 127-128.

[32] Id. at 62.

[33] Id. at 137.

[34] Id. at 135.

[35] Longino v. General, G.R. No. 147956, 16 February 2005, 451 SCRA 423, 436.

[36] AN ACT PROVIDING FOR AN ORGANIC ACT FOR THE AUTONOMOUS REGION IN MUSLIM MINDANAO (1989).

[37] Republic Act No. 6734, Art. VIII, Sec. 18, (1989).

[38] Gala v. Ellice Agro-Industrial Corporation, G.R. No. 156819, December 11, 2003, 418 SCRA 431.

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[39] Miriam College Foundation , Inc. v. Court of Appeals, 401 Phil. 431 (2000) citing Philippine Global Communications, Inc. v. Relova, 100 SCRA 254 (1980), which held:

> Absent such clarity as to the scope and coverage of its franchise, a legal question arises which is more appropriate for the judiciary than for an administrative agency to resolve. The doctrine of primary jurisdiction calls for application when there is such competence to act on the part of an administrative body. Petitioner assumes that such is the case. That is to beg the question. There is merit, therefore, to the approach taken by private respondents to seek judicial remedy as to whether or not the legislative franchise could be so interpreted as to enable the National Telecommunications Commission to act on the matter. A jurisdictional question thus arises and calls for an answer.

[40] Information Technology Foundation of the Philippines v. Commission on Elections,, G.R. No. 159139, 13 January 2004, 419 SCRA 141,162, citing Paat v. Court of Appeals, 334 Phil. 146 (1997).

[41] An appointment becomes complete when the last act required of the appointing power is performed. Corpuz v. Court of Appeals, 348 Phil. 801, 811 (1998).

[42] Rollo, p. 40.

[43] Corpuz v. Court of Appeals, supra note 41 at 813.

[44] Civil Service Commission v. Joson, Jr., G.R. No. 154674, 27 May 2004, 429 SCRA 773, 786, quoting the definition formulated by Lord Holt in Parker v. Kent (Ld. Raymond 652, 12 Mod. 467., and reiterated by Lord Ellenborough and full King's Bench in 1865 in Rex v. Bedford Level (6 East, 376).

[45] Id. at 786-787.

[46] 127 Phil. 1, 7 (1967).

[47] General Manager, Philippine Ports Authority (PPA) v. Monserate, 430 Phil. 832, 847 (2002).

[48] As per the records, no new appointment to the position of Education Supervisor II has been made up to the present.

[49] G.R. No. 83896, 22 February 1991, 194 SCRA 317, cited in General Manager, Philippine Ports Authority (PPA) v. Monserate, 430 Phil. 832, 847 (2002).

[50] Id. at 340, citing Patterson v. Benson, 112 Pac. 801, 32 L.R.A (NS) 949.

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