

**ALICIA D. TAGARO, PETITIONER, VS. ESTER A. GARCIA,
CHAIRPERSON COMMISSION ON HIGHER EDUCATION, ROGER
PEREZ, EXECUTIVE DIRECTOR, TERESITA BATERINA, AFS
DIRECTOR, COMMISSION ON HI...**

G.R. No. 158568. November 17, 2004

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

Being assailed in the present petition for certiorari is the February 27, 2003 Resolution of the Court of Appeals in C.A.-G.R. SP No. 66446, “Alicia Tagaro v. Ester Albano Garcia, et al.”

Petitioner Alicia D. Tagaro was on December 16, 1996 appointed by then President Fidel V. Ramos as Director II of the Higher Education Development Fund of the Commission on Higher Education (CHED).[1]

Sometime in 1997, then CHED Chairman Angel Alcala requested the Department of Budget and Management (DBM) for the creation of a Director III position to serve as head of the Higher Education Development Fund Staff (HEDFS).

Acting on the CHED Chairman’s request, DBM informed him by letter[2] dated June 6, 1997 that “in cognizance of the financial responsibility/accountability of the HEDFS head, the HEDFS may be headed by a Director III which may be effected by reclassifying the existing Director II position to Director III, SG-27, if the Commission so desires.” This suggestion was reiterated by then DBM Secretary Salvador M. Enriquez, Jr. by letter[3] of August 11, 1997 to the CHED Chairman.

The CHED Chairman thus requested the DBM Secretary, by letter[4] dated March 24, 1999, for the reclassification of the Director II positions of the CHED to Director III and the release of the corresponding Special Allotment Release Order and Notice of Cash Allocation. The request was favorably acted upon by the DBM which issued Notice of Organization, Staffing and Compensation Action Serial No. 0001999-04-044[5] showing the organization, staffing, position classification and/or compensation medications, effective not earlier than May 1, 1999.

Petitioner, along with the other CHED Directors affected by the reclassification, was thereupon requested, by December 14, 1999 Memorandum[6] of herein respondent CHED Executive Director Roger P. Perez, to submit the therein listed documentary requirements for the issuance of a new appointment by the President. Petitioner did not comply with the memorandum, however.

On December 29, 1999, respondent Perez issued to petitioner a Notice of Salary Adjustment[7] informing her that effective August 20, 1999, her salary was adjusted to that of Director III, SG-27.

The new CHED Chairperson, herein respondent Ester A. Garcia, later sought clarification from the Executive Secretary by Memorandum[8] of May 5, 2000 on the “[necessity of issuing] new appointments to the incumbents

of reclassified positions who were previously appointed by the President as Director II so that they may be properly guided for the grant of the corresponding salary and other emoluments to said incumbents.”

Atty. Rowena Turingan-Sanchez, acting for the Executive Secretary, informed respondent Garcia, by letter[9] of June 21, 2000, that “under existing Civil Service Rules and Regulations (MC #40, s. 1998), the issuance of a new appointment [was] necessary for incumbents of reclassified/upgraded positions.”

Respondent Perez later informed petitioner, by Memorandum[10] of July 25, 2000, of the clarification made by the Office of the Executive Secretary, and that since she was not issued a new appointment to the reclassified position of Director III, she “[had] to refund the salary differential [and RATA as well as Bonus and Cash Gift] from May 1, 1999 to July 31, 2000.” Petitioner was nevertheless advised that effective August 1, 2000, her salary would be rolled back to that of Director II “until such time that [her] appointment as Director III is issued by the President.” She was also advised to submit the therein listed supporting documents, to wit:

- CS Form 212 (Biodata/Curriculum Vitae)
- Clearance from the following:
 - Office of the Ombudsman
 - Civil Service Commission
 - National Bureau of Investigation
- Duly sworn statement of Assets and Liabilities
- Duly certified copy of latest Income Tax Return
- Certification that there is no pending administrative case filed against you.

for the issuance of her appointment to the reclassified/upgraded position. She still failed to submit the required documents.

Petitioner’s counsel later requested respondent Garcia, by letter[11] of October 2, 2000 which Garcia received on even date, requesting that petitioner’s salary be reinstituted “to that of Director III, effective May 1, 1999 without need of a new appointment” and that if the request was not heeded within 10 days from receipt of the letter, “recourse to appropriate legal measures” would be sought. Replying, respondent Garcia, by letter of October 10, 2000,[12] informed petitioner through her counsel that the CHED could not accede to the request as a new appointment of an incumbent to a reclassified position was needed.

Petitioner thus filed on December 18, 2000 with the Regional Trial Court (RTC) of Quezon City a petition for certiorari, prohibition and mandamus[13] with damages against respondents with the following prayer:

WHEREFORE, it is most respectfully prayed that respondents’ (1) requirement for petitioner to apply for the position of Director III in the Higher Education Development Fund of the Commission on Higher Education to which she had already been reclassified and upgraded, (2) order to hold back her salary, bonuses and other benefits as Director III, and (3) order and/or requirement that the petitioner refund the amount she had already received as Director III. x x x be ANNULLED AND SET ASIDE.

Petitioner further respectfully prays that respondents be ordered to cease and desist from holding the salaries, bonuses and other benefits due the petitioner as Director III, and that the respondents be commanded to comply with the provision of Section 28 of the (1987) Revised Administrative Code and to implement NOSCA Serial No. 0001999-04-044 effective May 1, 1999, and to release or authorize the release to the petitioner of her salaries and bonuses and other benefits as Director III.

It is furthermore respectfully prayed that, after hearing, judgment be rendered ordering the respondents, jointly and severally to pay the petitioner:

- The sum of P 1 million as moral damages;
- Attorney's fees in the amount of P100,000.00; and
- The costs of suit.

In the meantime, the CHED abolished the position of Director II by Resolution No. 008-2001[14] dated January 8, 2001.

To the petition for certiorari, prohibition and mandamus respondents filed on February 12, 2001 a Motion to Dismiss[15] on the following grounds:

- THIS HONORABLE COURT HAS NO JURISDICTION OVER THE INSTANT CASE.
- PETITIONER FAILED TO EXHAUST ADMINISTRATIVE REMEDIES.
- THE RECLASSIFICATION OF THE POSITION OF HEDF DIRECTOR NEEDS A NEW APPOINTMENT.
- THE INSTANT PETITION IS THE WRONG REMEDY.[16]

The Motion to Dismiss merited an opposition from petitioner.

It appears that petitioner appealed to the Civil Service Commission (CSC) her "illegal removal" and "non-appointment to the reclassified position of Director III." [17]

On June 7, 2001, respondent Garcia issued a Memorandum Order[18] directing that petitioner be refused entry into the CHED Main Office and premises for allegedly exhibiting acts "disruptive of CHED staff operations and consequently prejudicial to the public interest."

Petitioner thereupon filed on June 18, 2001 before Branch 223 of the RTC Quezon City where her petition for certiorari, prohibition and mandamus was raffled (the trial court) an URGENT MOTION FOR PRELIMINARY INJUNCTION[19] questioning the legality of the issuance by respondent Garcia of the June 7, 2001 Memorandum Order barring her from entering the CHED Main Office and premises and praying for the issuance of a temporary restraining order (TRO) and later a writ of preliminary injunction directing respondent Garcia to desist from implementing the memorandum. The trial court, by Order of July 17, 2001, dismissed the petition, however, for failure of exhaustion of administrative remedies.

Petitioner appealed[20] the trial court's order of dismissal to the Court of Appeals (CA).

In the meantime or on September 5, 2001, in a pleading entitled "Administrative Appeal,"[21] petitioner assailed before the CSC the same June 7, 2001 Memorandum Order of respondent Garcia barring her entry into the CHED premises, alleging that it was

arbitrary and illegal, without basis as it was contrary to the Constitution, the Civil Service Law and rules, the Code of Conduct and Ethical Standards, and the "unanimity" resolution of the Commission on Higher Education, and the elementary rules of justice and decency. (Underscoring supplied)

Upon the directive of the CA before which the appeal from the dismissal by the trial court of her petition was pending, petitioner filed a memorandum assigning to the trial court the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN RULING THAT THE PETITIONER DID NOT EXHAUST THE ADMINISTRATIVE REMEDIES, WHEN THE ISSUE AT BAR IS CLEARLY A QUESTION OF LAW, THUS, CONSTITUTES AN EXCEPTION TO THE DOCTRINE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES.

II

THE TRIAL COURT GRAVELY ERRED IN INVOKING THE EXHAUSTION OF ADMINISTRATIVE REMEDIES, WHEN IT IS CLEAR THAT THE NATURE OF THE PETITION INVOLVES ACTS OF THE RESPONDENTS WHICH ARE PATENTLY NULL AND VOID, THUS CONSTITUTING AN EXCEPTION TO THE RULE ON EXHAUSTION OF ADMINISTRATIVE REMEDIES. (Underscoring supplied)

Finding petitioner guilty of forum-shopping, the CA, by Decision[22] of February 27, 2003, dismissed her appeal, holding as follows:

x x x

Petitioner-appellant's appeal with the CSC is not confined merely to the order of respondents barring appellant's entry into her office because the CSC, in resolving the validity of said order, would have to resolve the validity of previous orders of respondents regarding the failure of appellant to secure a new appointment from the President for the reclassified position of Director III.

The issue of whether or not appellant has the right to hold office in the premises of the CHED can only be determined by resolving the issue of whether or not the issuance of a new appointment by the President of the Philippines for the reclassified position of Director III is necessary before appellant may assume her new office. The decision of the CSC on the appeal interposed by appellant may interfere with the decision of the regular courts since the administrative appeal to the CSC involves the same issues raised before the lower court which is presently the subject of appeal before this Court.

The essence of forum-shopping is the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively, for the purpose of obtaining a favorable judgment. Clearly, appellant is guilty of forum-shopping when she filed an appeal with the CSC during the pendency of the action before the lower court involving the same issues. Consequently, the instant appeal must have to be dismissed.[23]

x x x (Emphasis and underscoring supplied)

Hence, the present petition which should take only the issue of

Whether or not the Court of Appeals erred in ruling that petitioner engaged in forum-shopping.[24]

Petitioner contends that she is not guilty of forum-shopping as the issue raised before the trial court and that before the CSC are different. She proffers that the issue before the trial court is whether or not a new presidential appointment is required to upgrade the position of Director II to the position of Director III while that before the CSC is "whether or not the Memorandum issued by private respondent Garcia on June 7, 2001 should be declared illegal [for] having violated the Civil Service Law and rules, Code of Conduct and Ethical Standards of Public officials, and the 'unanimity' resolution of the Commission." [25]

Petitioner posits that "should the CSC rule that the Memorandum Order was illegal, the effect is merely to allow petitioner to report back to office and assume her lawful duties and functions." Conversely, petitioner goes on, should the CSC rule that the Memorandum Order was not contrary to Civil Service rules, or the Code of Conduct and Ethical Standards for public officials, "it will not undermine the authority of the [trial court] to rule on the

issue of the necessity to secure a new presidential appointment before petitioner could be upgraded.”[26]

The petition is bereft of merit.

As stated above, it appears that petitioner appealed her “non-appointment to the reclassified position of Director III.”[27] And while petitioner assailed before the trial court the June 7, 2001 Memorandum Order of respondent Garcia, she also subsequently assailed the same memorandum, by “Administrative Appeal,” before the CSC after the trial court dismissed her petition and after she had filed a Notice of Appeal of such dismissal to the Court of Appeals.

Forum-shopping is a deplorable practice of litigants in resorting to two different fora for the purpose of obtaining the same relief, to increase his or her chances of obtaining a favorable judgment. What is pivotal to consider in determining whether forum shopping exists or not is the vexation caused to courts and the parties-litigants by a person who asks appellate courts and/or administrative entities to rule on the same related causes and/or to grant the same or substantially the same relief, in the process creating the possibility of conflicting decisions by the different courts or fora upon the same issues.[28] (*Italics in the original, emphasis and underscoring supplied; citation omitted*).

Clearly, petitioner’s filing of the “Administrative Appeal” before the CSC while the trial court’s decision is on appeal before the CA, not to mention her separate appeal to the CSC from her “non-appointment to the reclassified position of Director III,” spawns the possibility of the two fora issuing conflicting decisions upon the same issues. For should the CA find the trial court’s dismissal of the complaint reversible and remand the case to the trial court, the trial court would still have to pass upon petitioner’s prayer for the issuance of a TRO or writ of preliminary injunction against the Memorandum Order of respondent Garcia by resolving the main issue raised by petitioner. And the CSC would, in resolving the legality of the Memorandum Order, would have to pass upon the main issue raised by petitioner before the trial court. What happens if conflicting decisions of the two fora are arrived at?

To avoid the resultant confusion then, this Court adheres strictly to the rules against forum-shopping, and for any violation thereof the case must be dismissed[29] as what the appellate court correctly did.

WHEREFORE, the petition is DISMISSED.

SO ORDERED.

Davide, Jr., C.J., Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Callejo, Sr., Azcuna, Chico-Nazario, and Garcia, JJ., concur.
Puno, and Tinga, JJ., on official leave.
Corona, J., on leave.

[1] Rollo at 65.

[2] *Id.* at 67-68.

[3] *Id.* at 69-70.

[4] *Id.* at 71.

[5] *Id.* at 72-82.

[6] *Id.* at 83.

[7] Id. at 84

[8] Id. at 86.

[9] Id. at 87.

[10] Id. at 91.

[11] Id. at 101.

[12] Id. at 102-103.

[13] Records at 1-12.

[14] Rollo at 154.

[15] Records at 60-70.

[16] Id.. at 60.

[17] Vide CSC Order of March 1, 2001, Records at 94.

[18] Rollo at 166-168.

[19] Records at 97-100.

[20] Id. at 110.

[21] CA Rollo at 21-68.

[22] Rollo at 48-57.

[23] Id. at 56-57.

[24] Id. at 28.

[25] Id. at 39.

[26] Id. at 40.

[27] Vide note 17.

[28] Atty. Bienvenido P. Jaban and Atty. Bienvenido Douglas Luke B. Jaban v. City of Cebu, et al., G.R. Nos. 138336-37, February 16, 2004.

[29] TF Ventures, Inc., et al. v. Yoshitsugu Matsuura, et al., G.R. No. 154177, June 9, 2004.

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