

**EX-C1C JIMMY B. SANCHEZ AND EX-C2C SALVADOR A. METEORO,
PETITIONERS, VS. ROBERTO T. LASTIMOSO, IN HIS CAPACITY AS
DIRECTOR GENERAL OF THE PHILIPPINE NATIONAL POLICE,
RESPONDENT.**

G.R. No. 161735. September 25, 2007

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the June 18, 2003 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 68989 and the January 15, 2004 Resolution[3] denying the motion for reconsideration thereof.

In 1989, petitioner Sanchez, a constable in the Philippine Constabulary (PC), was discharged from the service for allegedly losing his service firearm. Petitioner Meteoro, also a constable, was likewise discharged from the service in 1990 for being absent without leave. On appeal, they were both cleared of all charges. They then applied for reinstatement but their applications were not acted upon even up to the integration of the PC into the Philippine National Police (PNP).[4]

On January 27, 1998, the National Police Commission (NAPOLCOM) issued Resolution No. 98-037 considering as absorbed into the police force, among others, those who had been discharged by virtue of pending administrative or criminal cases but who were later acquitted or had their cases dismissed, and who subsequently filed petitions for reinstatement that were not acted upon by the PNP.[5] Then, on April 3, 1998, NAPOLCOM issued Resolution No. 98-105 affirming and confirming the absorption into the PNP, effective on January 27, 1998, of the 126 ex-PC constables named in the list submitted by Director Edgar C. Galvante of the PNP Directorate for Personnel and Records Management (DPRM).[6] Petitioners Sanchez and Meteoro are in numbers 90 and 122, respectively, of the Galvante list.[7]

Subsequently, on May 28, 1998, NAPOLCOM Commissioner Rogelio A. Pureza issued a Memorandum to then Chief of the PNP Santiago Alino for the issuance of absorption orders to the 45 PC constables included in the initial batch of those covered by the PNP Board Resolutions.[8] Petitioner Sanchez is in number 45 of that list.[9]

As no absorption order had yet been issued by the Chief of the PNP, the constables in the list requested the assistance of the Secretary of the Department of Interior and Local Government (DILG). On July 29, 1998, the Office of the Secretary of the DILG sent a memorandum to respondent Roberto T. Lastimoso, then the Chief of the PNP, endorsing the constables' entreaties and requesting for a feedback thereon.[10]

Without any response from the Chief of the PNP, and their pleas for the issuance of the absorption orders still unacted upon, petitioners instituted, on September 30, 1998, a petition for mandamus docketed as Civil Case No. Q-98-35659 in the Regional Trial Court (RTC) of Quezon City.[11]

During the pendency of the said petition, NAPOLCOM issued Resolution No. 99-061 on April 19, 1999 recalling

the earlier Resolution No. 98-105.[12] The recall was based on the Commission's finding that the list submitted by Galvante was not actually of the constables whose applications for absorption were indorsed for approval, but of those whose applications were still to be reviewed, evaluated and disposed of. In other words, the 126 named in the list were still to be interviewed and their applications to be deliberated upon by the PNP Special Committee.[13]

On November 15, 2001, however, the RTC rendered its Decision[14] in the mandamus case declaring as void ab initio NAPOLCOM Resolution No. 99-061 and ruling in favor of the petitioners. The dispositive portion of the Decision reads:

Accordingly, therefore, the petition is hereby granted. The Director-General of the Philippine National Police is hereby directed to immediately issue absorption orders to the petitioners.

Resolution No. 99-061 is declared void ab initio.

IT IS SO ORDERED.[15]

On appeal, the CA, in the assailed June 18, 2003 Decision,[16] reversed the ruling of the trial court and ruled that a writ of mandamus could not be issued because petitioners had not established with distinct clarity their right to be absorbed into the PNP. The CA disposed of the appeal as follows:

WHEREFORE, the appeal is GRANTED. The decision of the trial court dated November 15, 2001 is hereby REVERSED and SET ASIDE.

SO ORDERED.[17]

The appellate court later denied petitioners' motion for reconsideration in the likewise assailed January 15, 2004 Resolution.[18]

Aggrieved, petitioners brought the case before us via a petition for review on certiorari, raising for our disposition the following issues:

I

WHETHER OR NOT PETITIONERS HAVE A CLEAR LEGAL RIGHT TO BE ABSORBED IN THE PHILIPPINE NATIONAL POLICE.

II.

WHETHER OR NOT RESOLUTION NO. 99-061 IS VOID FOR BEING VIOLATIVE OF THE PROVISIONS OF R.A. 7965 AND ITS IMPLEMENTING RESOLUTIONS NO. 98-037 AND 98-105.

III.

WHETHER OR NOT PETITIONERS HAVE A CAUSE OF ACTION FOR MANDAMUS TO COMPEL THE RESPONDENT TO ABSORB THE PETITIONERS IN THE PHILIPPINE NATIONAL POLICE.[19]

The petition has no merit.

We have repeatedly stressed in our prior decisions that the remedy of mandamus is employed only to compel the performance, when refused, of a ministerial duty, but not to require anyone to fulfill a discretionary one. The issuance of the writ is simply a command to exercise a power already possessed and to perform a duty already imposed.[20] In *Manila International Airport Authority v. Rivera Village Lessee Homeowners Association, Inc.*,[21] we emphasized, through the erudite and eloquent ponencia of Justice Dante O. Tinga, that the writ can be issued only when the applicant's legal right to the performance of a particular act sought to be compelled is

clear and complete, one which is indubitably granted by law or is inferable as a matter of law, thus:

In order that a writ of mandamus may aptly issue, it is essential that, on the one hand, petitioner has a clear legal right to the claim that is sought and that, on the other hand, respondent has an imperative duty to perform that which is demanded of him. Mandamus will not issue to enforce a right, or to compel compliance with a duty, which is questionable or over which a substantial doubt exists. The principal function of the writ of mandamus is to command and to expedite, not to inquire and to adjudicate. Thus, it is neither the office nor the aim of the writ to secure a legal right but to implement that which is already established. Unless the right to relief sought is unclouded, mandamus will not issue.[22]

Viewed in light of the said guideposts, the PNP Chief's issuance of the orders for the absorption of herein petitioners in the police force is not compellable by a writ of mandamus precisely because the same does not involve a performance of a ministerial duty. Let it be noted that petitioners were discharged from the PC service, subsequently cleared of the charges against them, applied for reinstatement but their applications were not acted upon until the integration of the PC into the PNP in 1990 when R.A. No. 6975[23] was enacted. Thus, we no longer speak of the reinstatement of the petitioners to the service because the Philippine Constabulary no longer exists, but of their employment in the PNP which is, as we held in *Gloria v. De Guzman*, [24] technically an issuance of a new appointment. The power to appoint is essentially discretionary to be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should possess the qualifications required by law.[25] Consequently, it cannot be the subject of an application for a writ of mandamus.[26]

Furthermore, the petitioners do not have a clear legal right over the issuance of the absorption orders. They cannot claim the right to be issued an appointment based on the NAPOLCOM issuances, specifically Resolution Nos. 98-037 and 98-105. Suffice it to state that R.A. No. 6975 clearly provides that the power to appoint PNP personnel with the rank of "Police Officer I" to "Senior Police Officer IV" to which petitioners may be appointed[27] is vested in the PNP regional director or in the Chief of the PNP as the case may be, and not in the NAPOLCOM, thus:

Section 31. Appointment of PNP Officers and Members.--The appointment of the officers and members of the PNP shall be effected in the following manner:

(a) Police Officer I to Senior Police Officer IV.--Appointed by the PNP regional director for regional personnel or by the Chief of the PNP for the national headquarters personnel and attested by the Civil Service Commission.

x x x[28]

Even if, for the sake of argument, petitioners can derive a right from NAPOLCOM Resolution Nos. 98-037 and 98-105, still their right collapses and their mandamus petition becomes moot with the issuance by NAPOLCOM of Resolution No. 99-061 recalling the approval of their absorption. The trial court should then have immediately dismissed the mandamus petition when the OSG submitted a copy of Resolution No. 99-061 because well-settled is the rule that courts will not resolve a moot question.[29]

Also improper is the trial court's declaration that NAPOLCOM Resolution No. 99-061 is void ab initio. In the petition filed below, only the Chief of the PNP is impleaded as the party-defendant.[30] NAPOLCOM was never impleaded. As it was the latter, a separate entity, which had issued Resolution No. 99-061, NAPOLCOM was an indispensable party over which the trial court should have acquired jurisdiction. Since it was not impleaded, NAPOLCOM remains a stranger to the case, and strangers are not bound by the judgment rendered by the court.[31] The absence of an indispensable party renders all subsequent actions of the court null and void for want

of authority to act, not only as to the absent parties but even as to those present.[32]

WHEREFORE, premises considered, the petition is DENIED. The June 18, 2003 Decision and the January 15, 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 68989 are AFFIRMED.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.

[1] Under Section 29 of Republic Act (R.A.) No. 6975 (approved on December 13, 1990), as amended by R.A. No. 8551 (approved on February 25, 1998), the head of the PNP with the rank of director general shall have the position title of Chief of the PNP.

[2] Penned by Associate Justice Oswaldo D. Agcaoili (retired), with Associate Justices Perlita J. Tria Tirona (retired) and Edgardo F. Sundiam, concurring; rollo, pp. 27-36.

[3] Penned by Associate Justice Edgardo F. Sundiam, with Associate Justices Perlita J. Tria Tirona (retired) and Eubulo G. Verzola (deceased), concurring; id. at 37-38.

[4] Rollo, p. 44.

[5] Id. at 47-48. The pertinent portions of NAPOLCOM Resolution No. 98-037 are as follows:

x x x

RESOLUTION NO. 98-037

AMENDING NAPOLCOM RESOLUTIONS NOS. 97-111 AND 97-112, WHICH ESTABLISHED GUIDELINES IN THE DISPOSITION OF PETITIONS OF FORMER PC-INP PERSONNEL WHO ARE SEEKING REAPPOINTMENT IN THE PNP

WHEREAS, Resolution No. 97-111 provides, inter alia, that ex-PC personnel who were acquitted/exonerated from the criminal/administrative case for which they were earlier discharged or separated from the military service, (sic) shall be reemployed in the PNP if they are qualified under Sec. 30 of RA 6975 as implemented by existing pertinent rules and regulations relative thereto: Provided, however, that formal concurrence of the CSC shall be sought in the projected move of the NAPOLCOM to allow grant of (1) exemption from age requirement for new applicant under Sec. 30 (j) of RA 6975; (2) [t]estimonial eligibility; and (3) accreditation of service training, length of service and other relevant experiences to compensate for deficiency in formal education;

WHEREAS, Resolution No. 97-112 provides that ex-PC personnel who were granted amnesty under Proclamations Nos. 347, 348, 723 and 724 shall be reemployed in the PNP if they are qualified under Sec. 30 of RA 6975 as implemented by existing pertinent rules and regulations relative thereto: Provided, however, That formal concurrence of the CSC shall be sought in the projected move of the NAPOLCOM to allow grant of (1) exemption from age requirement for new applicant under Sec. 30 (j) of RA 6975; (2) testimonial eligibility; and (3) accreditation of service and other relevant experiences to compensate for deficiency in formal education;

WHEREAS, the Secretary, DILG and Chairman, (sic) National Police Commission (NAPOLCOM) in a letter, dated August 20, 1997, addressed to the Chairman, (sic) Civil Service Commission (CSC) requested for the concurrence of the (CSC) (sic) on the aforementioned resolutions;

WHEREAS, a dialogue relative thereto was subsequently held at the PNP Conference Room on December 8,

1997 between the Civil Service Commission (CSC) headed by Assistant Commissioner Adelina Sarmiento and the Philippine National Police (PNP) headed by Police Director EDGAR C. GALVANTE wherein it was agreed upon, on recommendation of the CSC, that the absorption process under R.A. No. 6975 shall be applied in the implementation of the aforementioned NAPOLCOM Resolutions, the effectivity of which shall however be upon the promulgation of this Resolution;

NOW THEREFORE, be it RESOLVED, as it does (sic) hereby RESOLVED, to consider as ABSORBED into the Philippine National Police (PNP) upon the promulgation of this Resolution the following members of the defunct Philippine Constabulary (PC): (a) who were discharged by virtue of pending administrative or criminal cases but who were later acquitted or their cases dismissed (sic) and have filed (sic) petitions for reinstatement but which were not acted upon by the PNP; (b) who were already absorbed (sic) and had in fact rendered (sic) duty but whose absorptions were later revoked or cancelled unless such absorptions were found to be fraudulent; (c) whose Expiration of Term of Enlistment (ETE) had expired before the effectivity of R.A. 6975 on January 2, 1991 and have applied (sic) for reenlistment but whose applications have not yet been acted upon.

It is further RESOLVED, as it is hereby RESOLVED to direct the Chief, PNP to submit within thirty (30) days from the date of this Resolution a list of all those who have qualified for confirmation and approval of this Commission.

ADOPTED this 27 (sic) day of January 1998 at (sic) the City of Makati, Philippines.

xxx

[6] Id. at 49-52. Resolution No. 98-105 pertinently reads:

x x x

RESOLUTION NO. 98-105

APPROVAL AND CONFIRMATION OF THE ABSORPTION INTO THE PHILIPPINE NATIONAL POLICE (PNP) OF EX-PHILIPPINE CONSTABULARY (PC) OFFICERS CONTAINED IN THE LIST ENDORSED BY DIRECTOR EDGAR C. GALVANTE ON JANUARY 12, 1998.

WHEREAS, under the resolutory portion of Resolution No. 98-037, the Chief, PNP, was directed to submit within thirty (30) days from the promulgation thereof (January 27, 1998) the list of those who have qualified thereunder for approval and confirmation of the Commission;

WHEREAS, the thirty (30)-day period (sic) has already expired on February 27, 1998 but to date, no such list was submitted;

WHEREAS, on January 12, 1998 (prior to the promulgation of Resolution No. 98-037), Director Edgar C. Galvante of DPRM, PNP, endorsed to this Commission the appeal of ex-Philippine Constabulary (PC) officers (sic) ex-TSG Genaro C. Sanchez and 125 others;

WHEREAS, in the Memorandum to the Chief, PNP dated March 27, 1998, this Commission, through Commissioner Rogelio A. Pureza, in No. (6) thereof, specifically stated inter alia, (sic) x x x, you are directed to immediately transmit the list of all those ex-PC to be absorbed into the PNP, while the list headed by ex-TSG GENARO C. SANCHEZ and 125 others, having been previously forwarded by the PBP DPRM since 12 January 1998 x x x, shall be considered as having been resubmitted for confirmation and approval of the Commission en banc."

NOW THEREFORE, the One Hundred Twenty-Six (126) ex-PC members contained in the list headed by ex-TSG GENARO C. SANCHEZ, hereto attached and made integral part hereof, as previously endorsed by Director Edgar C. Galvante, DPRM, PNP, is hereby considered resubmitted for absorption into the PNP, and

their qualification and absorption into the PNP are hereby APPROVED and CONFIRMED effective 27 January 1998.

ADOPTED this 3[rd] day of April, in the year of Our Lord Nineteen Hundred and Ninety-Eight.

x x x

[7] Id. at 51-52.

[8] Id. at 53. The relevant portions of the May 28, 1998 Memorandum are as follows:

x x x

- As discussed with you over the telephone, there is an imperative necessity to implement NAPOLCOM Resolution No. 98-105 dated 03 April 1998 concerning the absorption of 126 Ex-PC personnel as previously recommended by the PNP which was confirmed and approved by this Commission.

- However, it was pointed out that some PNP Reinstatement Board records are missing and could not yet be retrieved. Hence, we agreed that those with PNP Board Resolutions would have to be initially issued absorption orders, while the others would have to be acted upon later.

- Hence, attached are (sic) the initial list of forty-five (45) personnel with their individual/group Resolutions for issuance of appropriate absorption orders.

Please give this priority/immediate action and furnish this office copies of implementing orders.

x x x

[9] Id. at 55.

[10] Id. at 57.

[11] Id. at 44-46.

[12] Id. at 30.

[13] Id. at 33.

[14] Id. at 58-60.

[15] Id. at 60.

[16] Supra note 2.

[17] Rollo, p. 35.

[18] Supra note 3.

[19] Rollo, pp. 143-144.

[20] Pefianco v. Moral, 379 Phil. 468, 479 (2000).

[21] G.R. No. 143870, September 30, 2005, 471 SCRA 358, 375.

[22] Manila International Airport Authority v. Rivera Village Lessee Homeowners Association, Inc., supra note 21, id.

[23] The law is entitled "An Act Establishing the Philippine National Police Under A Reorganized Department of the Interior and Local Government, and For Other Purposes." This has been amended by R.A. 8551 or the

Philippine National Police Reform and Reorganization Act of 1998. See note 1.

[24] 319 Phil. 217 (1995).

[25] Gloria v. De Guzman, *supra* note 24, at 229.

[26] Gloria v. De Guzman, *id.*

[27] Rollo, pp. 51-52.

[28] See Carpio v. Executive Secretary, G.R. No. 96409, February 14, 1992, 206 SCRA 290, 300.

[29] Espiras v. Court of Appeals, 395 Phil. 803, 811-812 (2000).

[30] Rollo, p. 44.

[31] Domingo v. Scheer, 466 Phil. 235, 265 (2004).

[32] Lotte Phil. Co., Inc. v. Dela Cruz, G.R. No. 166302, July 28, 2005, 464 SCRA 591, 596.

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