

MARICHU G. EJERA, PETITIONER, VS. BEAU HENRY L. MERTO AND ERWIN VERGARA, RESPONDENTS.*G.R. No. 163109. January 22, 2014*

Ponente: BERSAMIN, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-163109/>**BERSAMIN, J.:**

A public servant who has an issue against a directive for her re-assignment must exhaust her available administrative remedies before resorting to judicial action. The non-exhaustion of available administrative remedies is fatal to the resort to judicial action.

This appeal by petition for review on certiorari assails the decision promulgated on July 23, 2003,[1] whereby the Court of Appeals (CA) affirmed the order issued on October 22, 2001 by the Regional Trial Court, Branch 33, in Dumaguete City (RTC) dismissing the petitioner's suit for injunction and damages on the ground of non-exhaustion of administrative remedies.[2] She had commenced the suit to restrain the respondents from investigating her refusal to comply with the office orders re-assigning her to a station other than her current place of work.

Antecedents

The petitioner held the position of Agricultural Center Chief I in the Office of the Provincial Agriculturist in Negros Oriental.[3] Her position was equivalent to the position of Senior Agriculturist, the next-in-rank to the position of Supervising Agriculturist. Upon the retirement of the Supervising Agriculturist, she applied for that position, but one Daisy Kirit was eventually appointed. She filed a protest against the appointment of Kirit before the Civil Service Commission (CSC) Regional Office in Cebu City,[4] but that said office dismissed her protest on May 24, 2000.[5] The Central CSC Office affirmed the dismissal on July 25, 2001 under its Resolution No. 011253.[6]

Meanwhile, on September 11, 2000, respondent Provincial Agriculturist Beau Henry L. Merto issued Office Order No. 008 (Amending Office Order No. 008, Series of 2000, Re: Assignment/Re-assignment of BADC Area Coordinators and Development Team Members)[7] "[i]n the interest of the service and to provide intensive agricultural extension services to residents of interior barangays under the Barangay Agricultural Development Center (BADC) Program in the province, which is aimed at achieving Food Security and Poverty Alleviation." Provincial Governor George P. Arnaiz of Negros Oriental was furnished a copy of Office Order No. 008.

To take effect on October 2, 2000, Office Order No. 008 stated:

All Fishery Technologists presently assigned in the coastal areas, and in further pursuant to Special Order No. 001, Series of 2000 approved by the Provincial Governor, shall now radiate and devote 60% of their official time to their respective assigned BADC sites to provide technical assistance to participants in freshwater fish production. However, they shall maintain their present station as their official duty station.

It has been an established policy of the present provincial administration to provide regular and adequate

agricultural extension services to residents of remote interior barangays which are economically depressed but with potentials for agricultural development. The deployment of Agricultural and Fishery Technologists in the above mentioned barangays/sitios will improve farming activities of the residents in the long term and eventually trigger other developments that will improve their quality of life.[8]

The petitioner was one of the personnel re-assigned under Office Order No. 008. She was designated therein as the team leader in Lake Balanan and Sandulot in the Municipality of Siaton. When she refused to obey the office order, Merto ordered her on March 12, 2001 to explain in writing within 72 hours why no administrative disciplinary action should be taken against her.[9] After she did not submit her explanation, Merto and respondent Atty. Erwin B. Vergara, the Provincial Legal Officer, summoned her to a conference. She and her counsel, Atty. Lenin R. Victoriano, attended the conference, but later on walked out allegedly because Vergara refused to record her objections to the questions she was being asked to answer.

On April 16, 2001,[10] the petitioner filed in the RTC her complaint for “final injunction with temporary restraining order and/or preliminary injunction, and damages,” averring that Merto had issued Office Order No. 008 because he had so bitterly resented her attacks against him before the CSC Regional Office; that her reassignment was a virtual “banishment” because her position required her to stay in Dumaguete City; that the re-assignment was a “gross and blatant violation of the ‘Omnibus Rules on Appointments and Other Personnel Actions’” prohibiting whimsical and indiscriminate reassignments; that on account of her refusal to obey Office Order No. 008, Merto had charged her administratively; that Merto had no power to investigate, because the Provincial Governor was the proper disciplining authority; that the letter of Merto requiring her to explain violated Rule II, Section B of CSC Memorandum Circular No. 19, Series of 1999 requiring complaints to be under oath; that Merto connived with Vergara, who had issued a “Notice of Conference” on March 30, 2001 setting the preliminary conference on April 5, 2001; and that the conference could not be terminated when she and her counsel walked out due to the refusal of Vergara to allow the recording of the objections of her counsel.

The petitioner further averred that the RTC could rule on the basic ground that the respondents had no power to banish her to the far-flung areas of Municipality of Siaton through the “illegal, whimsical and malicious” Office Order No. 008; and that they acted in bad faith and with malice in violation of Article 19 and Article 20 of the Civil Code, thereby entitling her to damages. For reliefs, she prayed:

WHEREFORE, it is respectfully prayed:

- (1) That, pending trial, a temporary restraining order and/or preliminary injunction be immediately issued, ordering the defendants to cease and desist from investigating plaintiff for refusal to obey Office Order No. 008, Series of 2000, issued by defendant Beau Henry L. Merto, and to refrain from committing any and all acts which might impair the efficacy of said temporary restraining order and/or preliminary injunction;
- (2) That, after trial, judgment issue, declaring said Office Order No. 008, Series of 2000, as a violation of the Administrative Code of 1987, as implemented by the “Omnibus Rules on Appointments and Other Personnel Actions” issued by the Civil Service Commission, therefore, null and void;
- (3) That, after trial, the preliminary injunction be made permanent;
- (4) That, likewise after trial, defendants be ordered jointly and severally to pay plaintiff P500,000.00 moral damages, P200,000.00 exemplary damages, and P50,000.00 attorney’s fees and litigation expenses, plus the costs.

Plaintiff respectfully prays for such other relief just and equitable.[11]

At the hearing on the issuance of the temporary restraining order, the RTC proposed the possible reconsideration of Office Order No. 008 especially because the petitioner complained of ill-health. The respondents expressed

willingness to consider the proposal of the RTC, and promised to confer with the Provincial Governor. Later on, however, they manifested that they had apprised the Provincial Governor about the proposal but, with the Provincial Governor running for re-election, they could submit an approved written proposal only after the elections.[12] The RTC granted their prayer for an extension of time to submit their written proposal for an amicable settlement.[13]

Shortly after the elections, the petitioner filed a motion to declare the respondents in default for failing to answer the complaint.[14] The RTC held in abeyance the resolution of the motion in view of the proposals and counterproposals regarding a compromise.[15] Later on, however, the respondents manifested that because the possible compromise would involve an order for a transfer or detail of the petitioner to another place, they and the Provincial Governor could not act because the Omnibus Election Code prohibited the appointment, promotion, and transfer of civil servants during the campaign period from January 2, 2001 to June 13, 2001 pursuant to COMELEC Resolution No. 3401.[16] Accordingly, the RTC declared the respondents in default.[17]

Prior to the ex parte hearing of the case on the merits, the petitioner moved for the admission of a supplemental complaint in order to implead Gregorio P. Paltinca, the Officer-in-Charge of the Office of the Provincial Agriculturist, for issuing on June 29, 2001 Office Order No. 005, Series of 2001, to amend Office Order No. 008.[18] Office Order No. 005 was re-assigning her to Barangays Balanan, Sandulot, and Jumalon in the Municipality of Siaton as her official duty stations.[19]

The supplemental complaint stated that Office Order No. 005, to take effect on July 2, 2001, had not been posted in the bulletin board of the Office of the Provincial Agriculturist; that she had not been furnished a copy of the order; that OIC Paltinca had acted with malice and evident bad faith by his failure to notify her of the re-assignment, which was “worse than the original re-assignment” by Merto, as it constituted her “banishment” from her office in Dumaguete City; that the re-assignment had violated Book V, Section 12 (2) and (3) of the Administrative Code of 1987 prohibiting re-assignments that were indiscriminately and whimsically done; that although the appointing and disciplining authority was the Provincial Governor, who had approved Office Order No. 005, Paltinca should be impleaded because it was he who had thereby violated the Administrative Code of 1987; and that she had refused to obey the two office orders for justifiable reasons because both were null and void ab initio as far as she was concerned.[20]

Paltinca moved to dismiss the supplemental complaint on the ground that the admission of the petitioner that the Provincial Governor, not he, was her appointing and disciplining authority exposed her lack of cause of action; that the non-inclusion of the Provincial Governor as the real party in interest was a fatal error; and that the failure of the petitioner to exhaust administrative remedies before going to court was also a ground for the dismissal of the case.[21]

The petitioner opposed Paltinca’s motion to dismiss, contending that the Provincial Governor was neither an indispensable nor a necessary party inasmuch as Office Order No. 005 could be declared null and void without impleading the Provincial Governor, who could always intervene if he so desired; that there was no need for the exhaustion of administrative remedies because the issue was a purely legal one, i.e., the nullity of the office orders in question; and that the motion to dismiss was premature because the trial court had not yet admitted the supplemental complaint.[22]

After the RTC deemed the motion to dismiss submitted for resolution,[23] Vergara filed a manifestation informing the RTC of the dismissal by the CSC Central Office of the petitioner’s appeal (CSC Resolution No. 011253). Vergara argued that she had utilized the pendency of the appeal as her legal excuse in disobeying Office Order No. 008, which her affected co-employees had dutifully obeyed; and that the dismissal of her appeal

removed any valid reason or legal ground for her to disobey the office orders that the Provincial Governor had issued “for the good of the service and to promote our food security.”[24]

The petitioner responded to the manifestation of Vergara, stating that she had moved for the reconsideration of CSC Resolution No. 011253, and that the outcome of her appeal in the CSC did not affect the case because the issue involved was the legality of her re-assignment.[25]

Ruling of the RTC

On October 22, 2001, the RTC dismissed the case, holding on the legality of Office Order No. 008 and Office Order No. 005 as follows:

Section 7, Rule 1 of the Memorandum Circular No. 19, series of 1999 provides: Heads of departments, agencies, provinces, cities, municipalities and other instrumentalities shall have concurrent jurisdiction with the Commission, over their respective officers and employees. In the case at bar, it is the Chief Executive who has the power of disciplining over his subordinates. But issuance of Office Order No. 008 is not a penalty. Section 5, paragraph 3, Rule VII of the Omnibus Rules Implementing Book V of Executive Order No. 292, provides: Transfer shall not be considered disciplinary when made in the interest of public service, in which case, the employee concerned shall be informed of the reasons therefor. If the employee (sic) believes that there is no justification for the transfer, he may appeal his case to the Commission.[26]

On the allegation of the petitioner that the “complaint” of Merto asking her to explain why she should not be disciplined for her refusal to obey Office Order No. 008, the RTC declared:

This Court agrees with the plaintiff that a complaint against a civil servant shall not be given due course unless it is in writing and subscribed and sworn to by the complainant. However, in cases initiated by the proper disciplining authority, the complaint need not be under oath (Section 8, Rule 11, Memorandum Circular No. 19, series of 1999). This is explained in *Maloga v. Gella*, 15 SCRA 370, which held that head or chief of office of the bureau or office is deemed to be acting in his official capacity and under his oath of office.

Lastly, the RTC opined that the petitioner should have first gone to the CSC to challenge the legality of Office Order No. 008 and Office Order No. 005 prior to her resort to the courts; and that, therefore, she had not exhausted all her administrative remedies considering that her case did not fall under any of the exceptions to the application of the doctrine on the exhaustion of administrative remedies.

Decision of the CA

Not satisfied, the petitioner appealed to the CA, contending that:

I.

THE LOWER COURT ERRED IN DISMISSING THE CASE AGAINST DEFENDANTS-APPELLEES BEAU HENRY L. MERTO AND ERWIN VERGARA FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES WHEN SAID DEFENDANTS-APPELLEES HAVE BEEN DECLARED IN DEFAULT. THUS, THEY NEVER RAISED THE ISSUE OF NON-EXHAUSTION OF ADMINISTRATIVE REMEDIES AND ARE, THEREFORE, DEEMED TO HAVE WAIVED SUCH DEFENSE;

II.

THE LOWER COURT ERRED IN DISMISSING THE CASE AS AGAINST DEFENDANT-APPELLEE GREGORIO P. PALTINCA FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES WHEN THE SAID COURT HAS NOT EVEN ACTED YET ON THE MOTION OF THE PLAINTIFF-APPELLANT TO ADMIT THE SUPPLEMENTAL COMPLAINT AGAINST HIM. THEREFORE, THE MOTION OF DEFENDANT-APPELLEE GREGORIO P. PALTINCA TO DISMISS THE CASE ON THE GROUND OF FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES IS PREMATURE. THE TRIAL COURT, FOR REASONS UNKNOWN, WAS TOO PRECIPITATE IN DISMISSING THE CASE; AND

III.

IN ANY EVENT, THE LOWER COURT ERRED IN DISMISSING THE CASE FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES BECAUSE THE ISSUE IS PURELY A LEGAL ONE AND NOTHING OF AN ADMINISTRATIVE NATURE IS TO BE AND CAN BE DONE. MOREOVER, THE CONTROVERTED ACT IS PATENTLY ILLEGAL.[27]

On July 23, 2003, the CA affirmed the RTC,[28] ruling that the legality of Office Order No. 008 and Office Order No. 005 could not be denied because they were “intended for public service.” It observed that:

x x x. The impugned Office Orders were issued by defendants-appellees Merto and Paltinca in their capacity as heads of the Office of the Provincial Agriculturist and were duly approved by the Provincial

Governor. More importantly, these Office Orders do not single out plaintiff-appellee for transfer to the interior localities of the province. They cannot therefore be considered as her personal banishment as a consequence of the protest she initiated for the appointment of Kirit.[29]

It pointed out that the petitioner should have appealed her transfer to the CSC conformably with the Omnibus Rules Implementing Book V of the Administrative Code of 1987 that mandated an administrative appeal or remedy before a resort to judicial action instead of directly resorting to the court action.

On the petitioner’s contention that the RTC precipitately acted on Paltinca’s motion to dismiss because it had yet to admit her supplemental complaint, the CA observed:

Indeed, the trial court did not explicitly resolve to admit, in a separate order, plaintiff-appellant’s Supplemental Complaint against defendant-appellee Paltinca prior to the latter’s filing of a Motion to Dismiss the said supplemental complaint against him. To Our mind, however, the procedural lapse did not prejudice plaintiff-appellant’s substantive rights. First, it must be noted that by filing the Supplemental Complaint against defendant-appellee Paltinca, plaintiff-appellant had intended it all along to be admitted by the trial court. Second, when plaintiff-appellant moved for the resolution of the Motion to Dismiss and her Opposition thereto, she, in effect, impliedly conceded the admission of the Supplemental Complaint subject of the pending incidents for, otherwise, what was there to dismiss and to oppose the dismissal of. Third, the trial court in fact indirectly admitted the Supplemental Complaint when it dismissed the case against all the defendants. Fourth and more importantly, even had the trial court decided to deny the Motion to Dismiss on the ground of prematurity, there was nothing to prevent the newly impleaded defendant from raising anew the defense of non-exhaustion of administrative remedies in his answer and the same would have been upheld and ultimately resulted in the dismissal of the case not only as against him but even as against the original defendants. Finally, jurisprudence dictates that departures from procedure may be forgiven where they do not appear to have impaired the substantive rights of the parties. As We have earlier noted, We perceive no impairment of plaintiff-appellant’s substantive rights with the non-issuance by the trial court of a separate order admitting the supplemental complaint.[30]

As regards the petitioner’s position that the respondents waived the defense of her non-exhaustion of administrative remedies by not filing their answer, the CA pronounced:

Under paragraph c, Section 3, Rule 9 of the 1997 Revised Rules on Civil Procedure, when a common cause of action is alleged against several defendants, some of whom filed an answer and the others failed to do so, thus, were declared in default, the court shall try the case against all defendants, defaulted and not defaulted, upon the answer thus filed and render judgment upon the evidence presented. Clearly, the answer of a non-defaulting defendant, such as that of the additional defendant Paltinca, inures to the benefit of those defaulted, like the original defendants Merto and Vergara, since they all share a common fate in the action commenced by plaintiff-appellee. The trial court, therefore, did not err in appreciating the defense of non-exhaustion of administrative remedies raised by defendant-appellee Paltinca in favor of his co-defendants-appellees Merto

and Vergara who had been declared in default by the trial court.

The petitioner moved for reconsideration, but the CA denied her motion.[31]

Hence, this appeal.

Issues

The petitioner submits that the CA erred in holding that: (a) her case did not constitute an exception to the rule on the exhaustion of administrative remedies; (b) a motion to dismiss could be acted upon even without an order admitting the supplemental complaint; and (c) the respondents as defaulted defendants could not benefit from the special defense of her non-exhaustion of administrative remedies raised by Paltinca, the non-defaulting defendant.[32]

Ruling of the Court

The appeal lacks merit.

I

Petitioner's non-exhaustion of her available administrative remedies was fatal to her cause

The petitioner alleges that Office Order No. 008 and Office Order No. 005 were illegal for violating the rule against indiscriminate and whimsical reassignment enunciated in the Administrative Code of 1987; that the issuances were really intended for her, who was based in Dumaguete City, "manifestly in the guise of assigning/reassigning her to the Barangay Agricultural Development Project to the far flung isolated mountainous areas in Sandulot and Jumalon, Siaton, Negros Oriental;" that the respondents could not issue the office orders because "the transfer of an employee without her consent is arbitrary for it is tantamount to removal without cause and therefore invalid as it is violative of her security of tenure;" that the transfer done without her consent amounted to her removal from office; that the legal issue she raised could be threshed out only by a court of justice, not by an administrative body; that her allegation that the office orders were "contrary to law and jurisprudence on the matter" only meant that she was raising a question of law, which ruled out administrative intervention; that in keeping with the broad discretion of courts in urgent matters, she would suffer an irreparable damage or injury unless there was judicial intervention; and that the fact that the office orders were intended for public service did not shield them from judicial scrutiny.

The petitioner argues that the declaration of the respondents in default resulted in the waiver of their defense of non-exhaustion of administrative remedies; and that the court had then no legal justification to dismiss the case on that ground inasmuch as the respondents did not file a motion to set aside the order of default.

In their comment, the respondents counter that the arguments of the petitioner had been thoroughly discussed and passed upon by the CA; and that she did not show that her appeal was one that the Court could take cognizance of.

In her reply, the petitioner insisted that the decision of the CA was rendered with grave abuse of discretion because the rule on exhaustion of administrative remedies was not absolute; that there were exceptions to the rule, such as when the question litigated was a purely legal one, or when applying the rule would not provide plain, speedy and adequate remedy, or when its application would cause great and irreparable damage; that a ground for judicial review would exist when an administrative determination was made without or in excess of authority; that Office Order No. 008 and Office Order No. 005 were issued without or in excess of authority; and that the CA overlooked that her right to security of tenure and right to due process of law would be violated unless she went to court.

We cannot uphold the position of the petitioner.

Firstly, Section 26, Chapter 5, Title I-A, Book V of the Administrative Code of 1987 lists the personnel actions that may be taken in the government service, namely: (1) appointment through certification; (2) promotion; (3) transfer; (4) reinstatement; (5) reemployment; (6) detail; and (7) reassignment.

The subject of the assailed office orders was a reassignment, which is not to be confused with a transfer. The office orders themselves indicated that the personnel action involved was a reassignment, not a transfer, for, indeed, the petitioner was being moved from the organizational unit of the Office of the Provincial Agriculturist in Dumaguete City to that in the barangays of the Municipality of Siaton.

Section 26, Chapter 5, Title I-A, Book V of the Administrative Code of 1987 defines transfer and reassignment thusly:

x x x x

(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 reasons therefor. If the employee believes that there is no justification for the transfer, he may appeal his case to the Commission.

The transfer may be from one department or agency to another or from one organizational unit to another in the same department or agency: Provided, however, That any movement from the non-career service to the career service shall not be considered a transfer. (Emphasis supplied.)

x x x x

(7) Reassignment. An employee may be reassigned from one organizational unit to another in the same agency: Provided, That such reassignment shall not involve a reduction in rank, status or salary. (Emphasis supplied.)

x x x x

The foregoing definition of reassignment has been adopted by the CSC in Section 10 of Rule VII (Other Personnel Action)[33] of the Omnibus Rules Implementing Book V of the Administrative Code of 1987 (Omnibus Rules), declaring that a reassignment “is the movement of an employee from one organizational unit to another in the same department or agency which does not involve a reduction in rank, status or salary and does not require the issuance of an appointment.”[34]

Rule III of CSC Memorandum Circular No. 40, Series of 1998 (Revised Omnibus Rules on Appointments and Other Personnel Actions) includes reassignment in the enumeration of personnel movements that do not require the issuance of a new appointment, to wit:

SEC. 6. Other Personnel Movements. The following personnel movements which will not require issuance of an appointment shall nevertheless require an office order by duly authorized official.

a. Reassignment – movement of an employee from one organizational unit to another in the same department or agency which does not involve a reduction in rank, status or salary. If reassignment is without the consent of the employee being reassigned, it shall be allowed only for a maximum period of one year. Reassignment is presumed to be regular and made in the interest of public service unless proven otherwise or if it constitutes constructive dismissal.

Constructive dismissal exists when an employee quits his work because of the agency head's unreasonable, humiliating, or demeaning actuations which render continued work impossible. Hence, the employee is deemed to have been illegally dismissed. This may occur although there is no diminution or reduction of salary of the employee. It may be a transfer from a position of dignity to a more servile or menial job.

No reassignment shall be undertaken if done indiscriminately or whimsically because the law is not intended as a convenient shield for the appointing/disciplining authority to harass or oppress a subordinate on the pretext of advancing and promoting public interest.

Reassignment of small salaried employees is not permissible if it causes significant financial dislocation.

Sufficient reasons to warrant the continued reassignment of the employee and performance of functions other than those attached to the position must be established. (Emphasis in the original; bold italics supplied.)

That the reassignment was made without the petitioner's consent can be deduced from her refusal to report to the station of her new assignment. Nonetheless, there is no record showing that she ever claimed that the reassignment involved a reduction in rank, status or salary. In addition, she was but one of several employees re-assigned pursuant to the questioned office orders. In view of these circumstances, she could not decline the reassignment unless she would have a valid personal reason to refuse to abide by the office orders. Yet, it was only during the trial that she revealed that her refusal to accept the re-assignment had been because of her poor health condition, i.e., due to her having had three caesarean sections and a myoma extraction, her obstetrician had advised her to refrain from extraneous activities including riding in the habal-habal (hired motorcycle) which was the only means of transportation to the barangays of the Municipality of Siaton.[35] But she lost the opportunity to ventilate her reason for refusing the reassignment by walking out of the conference instead of explaining her refusal to follow Office Order No. 008.

Secondly, under the Administrative Code of 1987, the CSC has the power and function to "[p]rescribe, amend and enforce rules and regulations for carrying into effect the provisions of the Civil Service Law and other pertinent laws." [36] It also has the complementing power to render opinions and rulings "on all personnel and other Civil Service matters which shall be binding on all heads of departments, offices and agencies and which may be brought to the Supreme Court (now Court of Appeals) on certiorari." [37]

Pursuant to its rule-making authority, the CSC promulgated the Omnibus Rules, whose Rule XII, governing complaints and grievances, defines a complaint as "an employee's expressed (written or spoken) feelings of dissatisfaction with some aspects of his working conditions, relationships or status which are outside his control. This does not include those involving disciplinary actions which are governed by separate rules." [38] The same rule characterizes grievance as "a complaint in writing which has, in the first instance and in the employee's opinion, been ignored, overridden or dropped without due consideration."

The reassignment of the petitioner was a "personnel" and "Civil Service" matter to be properly addressed in accordance with the rules and guidelines prescribed by the CSC. Her resort to judicial intervention could not take the place of the grievance procedure then available to her. Her having shrouded her complaint in the RTC with language that presented a legal issue against the assailed office order of Merto did not excuse her premature resort to judicial action.

For one, the petitioner was aware that Merto's superior was the Provincial Governor, an official who could competently redress her grievance. She could have then challenged both the wisdom and the legality of Office Order No. 008, as well as the propriety of her reassignment to a station outside of Dumaguete City, before the Provincial Governor himself. [39] For her to do so was appropriate because of the need to resolve a local problem like her reassignment "within the local government." [40]

The petitioner should also not ignore that Merto had issued Office Order No. 008 in his capacity as Provincial Agriculturist in order to implement the policy of the Provincial Government of Negros Oriental to provide regular and adequate agricultural extension services to residents of remote interior barangays that were economically depressed but with potentials for agricultural development. In that context, only the Provincial Governor could competently determine the soundness of Office Order No. 008 or the propriety of its implementation, for the Provincial Governor had the power to supervise and control “programs, projects, services, and activities” of the province pursuant to Section 465 of Republic Act No. 7160 (Local Government Code), which pertinently states:

Section 465. The Chief Executive: Powers, Duties, Functions, and Compensation.

(a) x x x x.

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the province and its inhabitants pursuant to Section 16 of this Code,[41] the provincial governor shall:

(1) Exercise general supervision and control over all programs, projects, services, and activities of the provincial government, and in this connection, shall:

(i) Determine the guidelines of provincial policies and be responsible to the Sangguniang Panlalawigan for the program of government;

(ii) Direct the formulation of the provincial development plan, with the assistance of the provincial development council, and upon approval thereof by the Sangguniang Panlalawigan, implement the same;

(iii) Present the program and propose policies and projects for the consideration of the Sangguniang Panlalawigan at the opening of the regular session of the Sangguniang Panlalawigan every calendar year and as often as may be deemed necessary as the general welfare of the inhabitants and the needs of the provincial government may require;

x x x x. (Bold emphasis supplied)

Thirdly, the rule requiring the exhaustion of administrative remedies rests on the principle that the administrative agency, if afforded a complete chance to pass upon the matter again, will decide the same correctly. There are both legal and practical reasons for the rule. The administrative process is intended to provide less expensive and speedier solutions to disputes. Where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, therefore, the courts – for reasons of law, comity and convenience – will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum. [42]

The importance and value of the exhaustion of administrative remedies as a condition before resorting to judicial action cannot be brushed aside. As the Court points out in *Universal Robina Corp. (Corn Division) v. Laguna Lake Development Authority*: [43]

The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed.

The petitioner contends, however, that her case came under the exceptions to the application of the rule for the exhaustion of administrative remedies considering that her judicial challenge in the RTC related to the legality of

Office Order No. 008 and Office Order No. 005.

The contention is untenable.

It is true that the doctrine of exhaustion of administrative remedies is not an ironclad rule, but recognizes exceptions, specifically: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively so small as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) where the application of the doctrines may cause great and irreparable damage; (h) where the controversial acts violate due process; (i) where the issue of non-exhaustion of administrative remedies has been rendered moot; (j) where strong public interest is involved; and (l) in quo warranto proceedings.[44]

The exceptions did not cover the petitioner's case. In her complaint, she assailed Office Order No. 008 on three basic legal grounds, namely: (a) the re-assignment, being "whimsical and indiscriminate," violated the Omnibus Rules on Appointments and Other Personnel Actions; (b) Merto had no power to investigate her, considering that the Provincial Governor was the "proper disciplining authority;" and (c) whether the letter of Merto requiring her to explain her refusal to follow Office Order No. 008 should be under oath. Still, her immediate resort to the RTC remained premature, because the legal issues she seemingly raised were admittedly interlaced with factual issues, like whether or not Merto had issued Office Order No. 008 because of her having attacked him in her protest against Kirit as the appointee to the position of Supervising Agriculturist, and whether or not her reassignment constituted banishment from her office in Dumaguete City. She further averred that the reassignment had been whimsical and indiscriminate, an averment that surely called for factual basis. It ought to be beyond question that the factual issues could only be settled by a higher policy-determining provincial official like the Provincial Governor by virtue of his authority, experience and expertise to deal with the issues. The Provincial Governor should have been given a very meaningful opportunity to resolve the matter and to exhaust all opportunities for its resolution before bringing the action in court.[45]

The rule is that judicial intervention should only be availed of after all administrative remedies had been exhausted. The Judiciary must not intervene because Office Order No. 008 and Office Order No. 005 both concerned the implementation of a provincial executive policy. According to *Dimson (Manila), Inc. v. Local Water Utilities Administration*: [46]

x x x. The doctrine of exhaustion of administrative remedies is a judicial recognition of certain matters that are peculiarly within the competence of the administrative agency to address. It operates as a shield that prevents the overarching use of judicial power and thus hinders courts from intervening in matters of policy infused with administrative character. The Court has always adhered to this precept, and it has no reason to depart from it now. (Bold emphasis supplied.)

Moreover, the non-observance of the doctrine of exhaustion of administrative remedies resulted in the complaint having no cause of action.[47] Hence, the RTC and the CA correctly dismissed the case.

Fourthly, the non-exhaustion by the petitioner had jurisdictional implications.

Verily, had the petitioner followed the grievance procedure under the CSC's Omnibus Rules, her next step would have been to elevate her case to the CSC itself,[48] the constitutional body charged with the exclusive jurisdiction not only over disciplinary actions against government officials and employees but also over cases involving personnel actions.

In *Corsiga v. Judge Defensor*,^[49] which concerned the reassignment of an engineer in the National Irrigation Authority, the Court ruled:

Section 13 Rule VII of the Rules Implementing Book V of Executive Order No. 292 (the Adm. Code of 1987) provides how appeal can be taken from a decision of a department or agency head. It states that such decision shall be brought to the Merit System Protection Board (now the CSC En Banc per CSC Resolution No. 93-2387 dated June 29, 1993). It is the intent of the Civil Service Law, in requiring the establishment of a grievance procedure in Rule XII, Section 6 of the same rules, that decisions of lower level officials be appealed to the agency head, then to the Civil Service Commission. Decisions of the Civil Service Commission, in turn, may be elevated to the Court of Appeals. Under this set up, the trial court does not have jurisdiction over personnel actions and, thus, committed an error in taking jurisdiction over Civil Case No. 22462. The trial court should have dismissed the case on motion of petitioner and let private respondent question RMO No. 52 before the NIA Administrator, and then the Civil Service Commission. As held in *Mantala v. Salvador*,^[50] cases involving personnel actions, reassignment included, affecting civil service employees, are within the exclusive jurisdiction of the Civil Service Commission. (Emphasis supplied.)

II.

Paltinca's motion to dismiss could be resolved
before the admission of the supplemental complaint

The petitioner insists that the RTC erroneously resolved Paltinca's motion to dismiss without first admitting her supplemental pleading.

The insistence is not correct. The petitioner filed her supplemental complaint to assail Office Order No. 005, and thereby raised issues identical to those raised in her original complaint involving Office Order No. 008. Hence, the RTC could already resolve Paltinca's motion to dismiss even without first admitting the supplemental complaint. Unlike an amended complaint, her supplemental complaint could "exist side-by-side" with the original complaint, because the supplemental complaint averred facts supervening from the filing of the complaint.^[51] Rule 10 of the 1997 Rules of Civil Procedure expressly provides:

Section 6. Supplemental pleadings. – Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented. The adverse party may plead thereto within ten (10) days from notice of the order admitting the supplemental pleading.

The defense of non-exhaustion of her administrative remedies raised by Paltinca as the non-defaulting defendant inured to the benefit of the respondents who had been declared in default. For one, there was a common cause of action against the respondents and Paltinca.^[52] The non-exhaustion was fatal to such common cause of action.^[53] Moreover, such benefit inuring to the respondents despite default was predicated on Section 3, Rule 9 of the 1997 Rules of Civil Procedure, to wit:

Section 3. Default; declaration of. – If the defending party fails to answer within the time allowed therefore, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court.

x x x x.

(c) Effect of partial default. – When a pleading asserting a claim states a common cause of action against several defending parties, some of whom answer and the others fail to do so, the court shall try the case against all upon the answers thus filed and render judgment upon the evidence presented.

X X X X.

WHEREFORE, the Court DENIES the petition for review on certiorari for its lack of merit; AFFIRMS the decision of the Court of Appeals promulgated on July 23, 2003; and ORDERS the petitioner to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-De Castro, Villarama, Jr, and Reyes, JJ., concur.

[1] Rollo, pp. 25-34; penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justice Marina L. Buzon (retired) and Associate Justice Jose C. Mendoza (now a Member of the Court) concurring.

[2] CA rollo, pp. 24-28.

[3] Records, p. 43.

[4] Id. at 26-32.

[5] Id. at 18.

[6] Id. at 93-96; penned by Commissioner J. Waldemar V. Valmores and concurred in by Chairperson Karina Constantino-David and Commissioner Jose F. Erestain, Jr.

[7] Id. at 36-39.

[8] Id. at 39.

[9] Id. at 40.

[10] Id. at 2-10.

[11] Id. at 8-9.

[12] Id. at 62.

[13] Id. at 63.

[14] Id. at 64.

[15] Id. at 67.

[16] Id. at 68-69.

[17] Id. at 70.

[18] Id. at 76.

[19] Id. at 82-85.

[20] Id. at 78-81.

[21] Id. at 86-87.

[22] Id. at 88-89.

[23] Id. at 90.

[24] Id. at 91.

[25] Id. at 97-98.

[26] CA rollo, pp. 26-29.

[27] Rollo, pp. 30-31.

[28] Supra note 1.

[29] Rollo, p. 32.

[30] Id. at 32-33.

[31] Id. at 35.

[32] Id. at 14.

[33] The CSC enumerates in Section 1, Rule VII of the Omnibus Rules the personnel actions of (1) original appointment; (2) appointment through certification; (3) promotion; (4) transfer; (5) reinstatement; (6) reemployment; (7) detail; (8) secondment; (9) demotion; and (10) separation. It may be noted that items (1), (8), and (9) are not included in the enumeration of personnel actions in Book V, Title I A, Chapter 5, Sec. 26 of the Administrative Code of 1987.

[34] CSC Memorandum Circular No. 02-05, issued pursuant to CSC Resolution No. 041458 dated December 23, 2004, defines reassignment as the “movement of an employee across the organizational structure within the same department or agency, which does not involve a reduction in rank, status or salary.” It also provides that “personnel movements involving transfer or detail should not be confused with reassignment since they are governed by separate rules.” The reassignment of employees “with station-specific place of work indicated in their respective appointments shall be allowed only for a maximum period of one (1) year. An appointment is considered station-specific when the particular office or station where the position is located is specifically indicated on the face of the appointment paper. Station-specific appointment does not refer to a specified plantilla item number since it is used for purposes of identifying the particular position to be filled or occupied by the employee.” However, if the appointment is not station-specific, the one-year maximum period shall not apply. Thus, reassignment of employees whose appointments do not specifically indicate the particular office or place of work has no definite period unless otherwise revoked or recalled by the Head of Agency, the CSC, or a competent court.

[35] TSN, April 25, 2001, 34-35.

[36] Book V, Title I A, Chapter 3, Section 12 (2).

[37] Id. Section 12 (5).

[38] Section 1 (a).

[39] The Local Government Code provides:

Section 463. Officials of the Provincial Government. (a) There shall be in each province a governor, a vice governor, members of the Sangguniang Panlalawigan, a secretary to the Sangguniang Panlalawigan, a provincial treasurer, a provincial assessor, a provincial accountant, a provincial engineer, a provincial budget officer, a provincial planning and development coordinator, a provincial legal officer, a provincial social welfare and development officer, a provincial general services officer, a provincial agriculturist and a provincial veterinarian. (Bold emphasis supplied)

(b) In addition, the governor may appoint a provincial population officer, a provincial natural resources and environment officer, a provincial cooperative officer, a provincial architect and a provincial information officer.

x x x x.

[40] New Sun Valley Homeowners' Association, Inc. v. Sangguniang Barangay, Barangay Sun Valley, Parañaque City, G.R. No. 156686, July 27, 2011, 654 SCRA 438, 463.

[41] This provision of the Local Government Code states:

Section 16. General Welfare. Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

[42] Union Bank of the Philippines v. Court of Appeals, G.R. No. 131729, May 19, 1998, 290 SCRA 198, 219-220.

[43] G.R. No. 191427, May 30, 2011, 649 SCRA 506, 511.

[44] Vigilar v. Aquino, G.R. No. 180388, January 18, 2011, 639 SCRA 772, 777; Republic v. Lacap, G.R. No. 158253, March 2, 2007, 517 SCRA 255, 265-266.

[45] Teng v. Pahagac, G.R. No. 169704, November 17, 2010, 635 SCRA 173, 185.

[46] G.R. No. 168656, September 22, 2010, 631 SCRA 59, 72.

[47] Sison v. Tablang, G.R. No. 177011, June 5, 2009, 588 SCRA 727, 733.

[48] Section 8 (B) (2) of Rule 2 of the Revised Rules on Administrative Cases in the Civil Service, which the CSC issued on November 8, 2011 under CSC Resolution No. 1101502, provides that the CSC Regional Office shall "take cognizance" of "[d]ecisions of heads of agencies, except those of department secretaries and bureau heads within their geographical boundaries relative to protests and other personnel actions and other non-disciplinary actions brought before it on appeal."

[49] G.R. No. 139302, October 28, 2002, 391 SCRA 267, 272-273.

[50] G.R. No. 101646, February 13, 1992, 206 SCRA 264.

[51] Shoemart, Inc. v. Court of Appeals, G.R. No. 86956, October 1, 1990, 190 SCRA 189, 196.

[52] I Regalado, Remedial Law Compendium, 194.

[53] Sison v. Tablang, supra note 47; Paat v. Court of Appeals, G.R. No. 111107, January 10, 1997, 266 SCRA 167.

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