

**REBECCA T. ARQUERO, PETITIONER, VS. COURT OF APPEALS
(FORMER THIRTEENTH DIVISION); EDILBERTO C. DE JESUS, IN HIS
CAPACITY AS SECRETARY OF THE DEPARTMENT OF EDUCATION;
DR. PARALU...**

G.R. No. 168053. September 21, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court filed by petitioner Rebecca T. Arquero against public respondents Edilberto C. De Jesus (De Jesus), in his capacity as Secretary of Education, Dr. Paraluman Giron (Dr. Giron), Department of Education (DepEd) Director, Regional Office IV-MIMAROPA, Dr. Eduardo Lopez (Lopez), Schools Division Superintendent, Puerto Princesa City, and private respondent Norma Brillantes. Petitioner assails the Court of Appeals (CA) Decision[1] dated December 15, 2004 and Resolution[2] dated May 3, 2005 in CA-G.R. SP No. 85899. The assailed decision reversed and set aside the Judgment by Default[3] of the Regional Trial Court (RTC), Branch 95, Puerto Princesa City, while the assailed resolution denied petitioner's motion for reconsideration.

The facts of the case are as follows:

On October 13, 1989, Congress approved Republic Act (RA) No. 6765, or "An Act Integrating Certain High Schools in the City of Puerto Princesa and in the Province of Palawan with the Palawan National School and Appropriating Funds Therefor." Under the law, the following schools were converted into national schools and integrated with the Palawan National School (PNS) in the City of Puerto Princesa, Province of Palawan, as branches thereof: (1) Puerto Princesa School of Philippine Craftsmen; (2) San Jose Barangay High School; (3) Inagawan Barangay High School; (4) Puerto Princesa Rural High School; all in the City of Puerto Princesa and (5) Plaridel Barangay High School in the Municipality of Aborlan; (6) Narra Barangay High School in the Municipality of Narra; (7) Quezon Municipal High School in the Municipality of Quezon; (8) Pulot Barangay High School in the Municipality of Brooke's Point; (9) Bataraza Barangay High School in the Municipality of Bataraza; and (10) Balabac Barangay High School in the Municipality of Balabac; all in the Province of Palawan.[4]

Section 2 of the law provides that the PNS shall, in addition to general secondary education program, offer post-secondary technical-vocational and other relevant courses to carry out its objectives. The PNS shall thus be considered the "mother unit" and the integrated schools should benefit from a centralized curriculum planning to eliminate duplication of functions and efforts relative to human resource development for the province.[5] The law also provides that the Palawan Integrated National Schools (PINS) shall be headed by a Vocational School Superintendent (VSS) who shall be chosen and appointed by the Secretary of the Department of Education, Culture, and Sports (now the DepEd).[6] Except for Puerto Princesa School of Philippine Craftsmen, which shall be headed by the Home Industries Training Supervisor, the PNS and each of its units or branches shall be headed

either by a Principal or Secondary School Head Teacher to be chosen in accordance with the DepEd Rules and Regulations.[7]

However, no VSS was appointed. Instead, then DECS Region IV Office designated then PNS Principal Eugenio J. dela Cuesta in a concurrent capacity as Officer-in-Charge (OIC) of the PINS. After the retirement of Dela Cuesta, petitioner took over as Secondary School Principal of the PNS.[8] On March 18, 1993, then DECS-Region IV Director IV Desideria Rex (Director Rex) designated petitioner as OIC of the PINS.[9]

On December 1, 1994, Director Rex's successor, Pedro B. Trinidad placed all satellite schools of the PINS under the direct supervision of the Schools Division Superintendent for Palawan effective January 1, 1995.[10] This directive was later approved by the DepEd in September 1996. Petitioner was instructed to turn over the administration and supervision of the PINS branches or units.[11] In another memorandum, Schools Division Superintendent Portia Gesilva was designated as OIC of the PINS. These events prompted different parties to institute various actions restraining the enforcement of the DepEd orders.

Pursuant to RA 8204, separate City Schools Division Offices were established for the City of Puerto Princesa and the Province of Palawan. [12]

On March 14, 2000, Regional Director Belen H. Magsino issued an Order addressed to the Schools Division Superintendent of Palawan and Puerto Princesa City, and petitioner stating that the PINS satellite schools shall be under the supervision of the division schools superintendents concerned, while petitioner should concentrate on the supervision and administration of the PNS.[13] Again, this prompted the filing of various court actions.

On May 14, 2002, then DECS Undersecretary Jaime D. Jacob issued an Order[14] addressed to Dr. Giron, OIC, DepEd Regional Office No. 4, stating that there being no more legal impediment to the integration, he ordered that the secondary schools integrated with the PNS be under the direct administrative management and supervision of the schools division superintendents of the divisions of Palawan and Puerto Princesa City, as the case may be, according to their geographical and political boundaries. Consequently, Dr. Giron instructed the secondary schools' principals concerned of the assumption of jurisdiction by the superintendent of the schools division offices of the city and province, and that their fiscal and financial transaction as turned over will be effected in July 1, 2002. However, then DepEd Undersecretary Ramon C. Bacani (Bacani) ordered that the status quo be maintained and that no turn over of schools be made.[15] In the meantime, petitioner remained as the OIC of the PINS.

On September 19, 2002, Dr. Giron withdrew the designation of petitioner as OIC of the PINS, enjoining her from submitting to the Regional Office all appointments and personnel movement involving the PNS and the satellite schools. On November 7, 2002, petitioner appealed to the Civil Service Commission assailing the withdrawal of her designation as OIC of the PINS.[16]

On March 28, 2003, then DepEd Secretary Edilberto C. De Jesus designated Assistant Schools Division Superintendent Norma B. Brillantes (hereafter referred to as private respondent) in concurrent capacity as OIC of the PINS entitled to representation and transportation allowance, except the salary of the position.[17] Petitioner filed a Motion for Reconsideration and/or Clarification[18] before the Office of the DepEd Secretary as to the designation of private respondent.

On September 18, 2003, Dr. Giron filed a formal charge[19] against petitioner who continued to defy the orders issued by the Regional Office relative to the exercise of her functions as OIC of the PINS despite the designation of private respondent as such. The administrative complaint charged petitioner with grave misconduct, gross insubordination and conduct prejudicial to the best interest of the service. Petitioner was also preventively

suspended for ninety (90) days.[20]

On October 2, 2003, petitioner filed the Petition for Quo Warranto with Prayer for Issuance of Temporary Restraining Order and/or Injunctive Writ[21] before the RTC of Palawan[22] against public and private respondents. The case was docketed as Civil Case No. 3854. Petitioner argued that the designation of private respondent deprived her of her right to exercise her function and perform her duties in violation of her right to security of tenure. Considering that petitioner was appointed in a permanent capacity, she insisted that private respondent's designation as OIC of the PNS is null and void there being no vacancy to the position. Petitioner thus prayed that the RTC issue an order granting the writ of quo warranto enjoining private respondent from assuming the position of OIC of the PNS, declaring the questioned designation null and void and without operative effect, and declaring petitioner to be entitled to the office of the principal of the PNS.[23]

On October 6, 2003, the Executive Judge issued a 72-Hour TRO[24] enjoining and restraining private respondent from assuming the position of OIC and performing the functions of the Office of the Principal of the PNS; and restraining public respondents from giving due course or recognizing the assailed designation of private respondent. The RTC later issued the writ of preliminary injunction.[25]

Respondents failed to file their Answer. Hence, on motion[26] of petitioner, the Court declared respondents in default in an Order[27] dated December 15, 2003. In the same order, petitioner was allowed to present her evidence ex parte.

On June 14, 2004, the RTC rendered a Judgment by Default,[28] the dispositive portion of which reads:

WHEREFORE, premises considered and by preponderance of evidence, judgment is hereby rendered:

- Declaring petitioner Rebecca T. Arquero as the lawful Principal and Head of the Palawan Integrated National High School who is lawfully entitled to manage the operation and finances of the school subject to existing laws;
- Declaring the formal charge against petitioner, the preventive suspension, the investigating committee, the proceedings therein and any orders, rulings, judgments and decisions that would arise therefrom as null, void and of no effect;
- Ordering respondent Norma Brillantes, or any person acting in her behalf, to cease and desist from assuming and exercising the functions of the Office of the Principal of Palawan Integrated National High School, and respondents Edilberto C. De Jesus, Paraluman R. Giron and Eduardo V. Lopez, or any person acting in their behalf, from giving due course or recognizing the same; and
- Making the writ of preliminary injunction issued in this case permanent.

IT IS SO ORDERED.[29]

The RTC held that considering that the integrated school failed to offer post-secondary technical-vocational courses, the VSS position became *functus officio*. The PNS, therefore, remains to be a general secondary school under the jurisdiction of the DepEd.[30] Consequently, supervision of the integrated school was automatically vested with the principal of the PNS without the necessity of appointment or designation. As to the administrative case filed against petitioner, the RTC opined that the formal charge and preventive suspension are illegal for lack of due process.[31]

On appeal, the CA reversed and set aside the RTC decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the present appeal is hereby GRANTED. The appealed decision of the court a quo in Civil Case No. 3854 is hereby REVERSED and SET ASIDE. A new judgment is hereby entered

DISMISSING the petition for quo warranto filed by appellee Rebecca T. Arquero.

No pronouncement as to costs.

SO ORDERED.[32]

Applying the rules on statutory construction, the appellate court emphasized the need to harmonize the laws. The CA held that the PINS and its satellite schools remain under the complete administrative jurisdiction of the DepEd and not transferred to the Technical Education and Skills Development Authority (TESDA). It also explained that by providing for a distinct position of VSS with a higher qualification, specifically chosen and appointed by the DepEd Secretary that is separate from the school head of the PNS offering general secondary education program, RA 6765 intended that the functions of a VSS and School Principal of PNS be discharged by two separate persons.[33] The CA added that if we follow the RTC conclusion, petitioner would assume the responsibilities and exercise the functions of a division schools superintendent without appointment and compliance with the qualifications required by law.[34] The appellate court likewise held that petitioner failed to establish her clear legal right to the position of OIC of the PINS as she was not appointed but merely designated to the position in addition to her functions as incumbent school principal of the PNS.[35] Clearly, there was no violation of her right to due process and security of tenure when private respondent replaced her. As to the validity of filing the administrative charge against her and the subsequent imposition of preventive suspension, the CA refused to rule on the matter due to the pendency of the administrative case which is within the jurisdiction of the DepEd.

Hence, this petition raising the following issues:

- A. THE COURT OF APPEALS' DECISION DATED THE 15[TH] DECEMBER 2004, AND THE RESOLUTION OF 3[RD] MAY 2005, HAVE DECIDED A QUESTION OF SUBSTANCE, NOT THERETOFORE DETERMINED BY THE SUPREME COURT, OR THE APPELLATE COURT HAS DECIDED IT IN A WAY PROBABLY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE HIGHEST COURT; OR THE RESPONDENT COURT OF APPEALS HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THE POWER OF SUPERVISION.

- THE CHALLENGED DECISION WAS RENDERED ON THE BASIS OF MERE UNSUBSTANTIATED "ARGUMENTATIONS" OF THE INDIVIDUAL RESPONDENTS.

NO IOTA OF EVIDENCE, TESTIMONIAL OR DOCUMENTARY, WERE PRESENTED AND OFFERED FOR A SPECIFIC PURPOSE BY THE RESPONDENTS (WHO WERE DECLARED IN DEFAULT).

THEREFORE, THE CONCLUSION OF THE IMPUGNED DECISION IS NOT SUPPORTED BY RECORDED EVIDENCE.[36]

The petition is without merit.

Petitioner insists that respondents could not have appealed the RTC decision having been declared in default. She explains that the only issue that could have been raised is a purely legal question, therefore, the appeal should have been filed with the Court and not with the CA.

In *Martinez v. Republic*,[37] the Court has clearly discussed the remedies of a party declared in default in light of the 1964 and 1997 Rules of Court and a number of jurisprudence applying and interpreting said rules. Citing *Lina v. Court of Appeals*,[38] the Court enumerated the above-mentioned remedies, to wit:

a) The defendant in default may, at any time after discovery thereof and before judgment, file a motion, under oath, to set aside the order of default on the ground that his failure to answer was due to fraud, accident, mistake or excusable neglect, and that he has meritorious defenses; (Sec. 3, Rule 18)

- b) If the judgment has already been rendered when the defendant discovered the default, but before the same has become final and executory, he may file a motion for new trial under Section 1 (a) of Rule 37;
- c) If the defendant discovered the default after the judgment has become final and executory, he may file a petition for relief under Section 2 of Rule 38; and
- d) He may also appeal from the judgment rendered against him as contrary to the evidence or to the law, even if no petition to set aside the order of default has been presented by him. (Sec. 2, Rule 41)[39]

The Court explained in *Martinez* that the fourth remedy, that of appeal, is anchored on Section 2, Rule 41 of the 1964 Rules. Even after the deletion of that provision under the 1997 Rules, the Court did not hesitate to expressly rely on the *Lina* doctrine, including the pronouncement that a defaulted defendant may appeal from the judgment rendered against him. Moreover, in *Rural Bank of Sta. Catalina v. Land Bank of the Philippines*,^[40] the Court provided a comprehensive restatement of the remedies of the defending party declared in default:

It bears stressing that a defending party declared in default loses his standing in court and his right to adduce evidence and to present his defense. He, however, has the right to appeal from the judgment by default and assail said judgment on the ground, inter alia, that the amount of the judgment is excessive or is different in kind from that prayed for, or that the plaintiff failed to prove the material allegations of his complaint, or that the decision is contrary to law. Such party declared in default is proscribed from seeking a modification or reversal of the assailed decision on the basis of the evidence submitted by him in the Court of Appeals, for if it were otherwise, he would thereby be allowed to regain his right to adduce evidence, a right which he lost in the trial court when he was declared in default, and which he failed to have vacated. In this case, the petitioner sought the modification of the decision of the trial court based on the evidence submitted by it only in the Court of Appeals.^[41]

Undoubtedly, a defendant declared in default retains the right to appeal from the judgment by default on the ground that the plaintiff failed to prove the material allegations of the complaint, or that the decision is contrary to law, even without need of the prior filing of a motion to set aside the order of default except that he does not regain his right to adduce evidence.^[42] The appellate court, in turn, can review the assailed decision and is not precluded from reversing the same based solely on the evidence submitted by the plaintiff.

The next question to be resolved is whether petitioner has the right to the contested public office and to oust private respondent from its enjoyment. We answer in the negative.

A quo warranto proceeding is the proper legal remedy to determine the right or title to the contested public office and to oust the holder from its enjoyment.^[43] It is brought against the person who is alleged to have usurped, intruded into, or unlawfully held or exercised the public office.^[44] It may be brought by the Republic of the Philippines or by the person claiming to be entitled to such office.^[45]

In quo warranto, the petitioner who files the action in his name must prove that he is entitled to the subject public office. In other words, the private person suing must show a clear right to the contested position.^[46] Otherwise, the person who holds the same has a right to undisturbed possession and the action for quo warranto may be dismissed.^[47] It is not even necessary to pass upon the right of the defendant who, by virtue of his appointment, continues in the undisturbed possession of his office.^[48]

On the basis of the evidence presented solely by petitioner and without considering the arguments and attachments made by respondents to rebut petitioner's claims, we find that petitioner failed to prove that she is entitled to the contested position.

It is undisputed that petitioner was appointed as the principal of the PNS. In addition, she was designated as the OIC of the PINS. Said designation was, however, withdrawn. Private respondent was, thereafter, designated as the

new OIC. This prompted petitioner to file the quo warranto petition before the court a quo.

The contested position was created by RA 6765. Section 3 of the law provides:

Section 3. The school shall be headed by a Vocational School Superintendent. He shall be chosen and appointed by the Secretary of Education, Culture and Sports [now Secretary of Education].

Moreover, Section 4 thereof states:

Section 4. The Home Industries Training Supervisor of the Puerto Princesa School of Philippine Craftsmen shall continue to serve as such. The main school and each of its units or branches shall be headed either by a Principal or Secondary School Head Teacher to be chosen in accordance with the rules and regulations of the Department of Education, Culture and Sports [now the Department of Education].

As aptly observed by the CA, the law created two positions -- the VSS and the principal or secondary school head teacher of each of the units or branches of the integrated school. The legislators clearly intended that the integrated schools shall be headed by a superintendent. Admittedly, petitioner did not possess the qualifications to hold the position and she was merely designated by the DepEd as the OIC of the PINS. At that time, she held in a concurrent capacity, the permanent position of principal of the PNS. Having been appointed as OIC without the necessary qualifications, petitioner held the position only in a temporary capacity. The purpose of an acting or temporary appointment is to prevent a hiatus in the discharge of official functions by authorizing a person to discharge those functions pending the selection of a permanent or another appointee. An acting appointee accepts the position on the condition that he shall surrender the office once he is called to do so by the appointing authority. Therefore, his term of office is not fixed, but endures at the pleasure of the appointing authority.[49] The essence of an acting appointment is its temporariness and its consequent revocability at any time by the appointing authority.[50]

Thus, under RA 6765, petitioner can only insist on her security of tenure as principal of the PNS but not as OIC of the integrated school. Upon the withdrawal of her designation, her right to the contested position ceased to exist.

Petitioner also bases her right to the contested position on the enactment of RA 7796, or "An Act Creating the Technical Education and Skills Development Authority, Providing for its Powers, Structure and for Other Purposes," and RA 9155, or "An Act Instituting a Framework of Governance for Basic Education, Establishing Authority and Accountability, Renaming the Department of Education Culture and Sports as the Department of Education, and for Other Purposes." She contends that under RA 7796, the position of VSS could no longer be filled up by the DepEd having been absorbed by TESDA. As such, the right to manage the operation and finances of the integrated schools is automatically vested with petitioner being the principal of the PNS without further appointment or designation.

Again, we do not agree.

As found by the RTC and affirmed by the CA, the PINS failed to implement its technical-vocational education program. Consequently, the PNS and the other satellite schools never came under the jurisdiction of the Bureau of Technical and Vocational Education of the DepEd nor the technical-vocational education in DepEd's regional offices. Thus, except for the Puerto Princesa School of Philippine Craftsmen, which is now within the jurisdiction of the TESDA, the PNS and the other units remained under the complete administrative jurisdiction of the DepEd. Although the technical-vocational education program was not implemented, it does not alter the law's intent that the main school, which is the PNS and the other units integrated with it, shall be headed either by a principal or secondary school head teacher; while the PINS or the integrated school shall be headed by another. We cannot subscribe to petitioner's insistence that the principal automatically heads the PINS without appointment or

designation. As clearly explained by the CA, "by providing for a distinct position with a higher qualification (that of a superintendent), specifically chosen and appointed by the DepEd Secretary, separate from the school head of the PNS offering general secondary education program, the law clearly intended the functions of a VSS and school principal of the PNS to be discharged and performed by two different individuals." [51]

Neither can petitioner rely on the enactment of RA 9155. The law, in fact, weakens petitioner's claim. RA 9155 provides the framework for the governance of basic education. It also emphasizes the principle of shared governance which recognizes that every unit (which includes the national, regional, division, school district, and school levels) in the education bureaucracy has a particular role, task and responsibility. The school shall be headed by a [principal] or school head; a school district by a schools district supervisor; a division by a schools division superintendent; a region by a director; and the national level by the Secretary of Education. It must be recalled that the integration under RA 6765 involved certain high schools in different municipalities of the Province of Palawan and the City of Puerto Princesa. We also note that RA 6765 intended that the integrated school shall be headed by a superintendent. Nowhere in the above laws can we find justification for petitioner's insistence that she, and not private respondent, has a better right to hold the contested position.

Clearly, petitioner failed to establish her right to the contested position. Therefore, the dismissal of her quo warranto petition is in order. It must be emphasized, however, that this declaration only involves the position of petitioner as OIC of the PINS. It does not in any way affect her position as principal of the PNS which she holds in a permanent capacity.

WHEREFORE, premises considered, the petition is DENIED for lack of merit. The Court of Appeals Decision dated December 15, 2004 and Resolution dated May 3, 2005 in CA-G.R. SP No. 85899, are AFFIRMED.

SO ORDERED.

Velasco, Jr., (Chairperson), Abad, Mendoza, and Perlas-Bernabe, JJ., concur.

[1] Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court), with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring; rollo, pp. 132-162.

[2] Id. at 180.

[3] Penned by Judge Bienvenido C. Blancaflor; records, pp. 1158-1163.

[4] R.A. 6765, Sec. 1.

[5] Rollo, p. 134, citing the Explanatory Note of House Bill No. 919, Exhibit "C1," records, pp. 275-276.

[6] R.A. 6765, Sec. 3.

[7] R.A. 6765, Sec. 4.

[8] Exhibit "D," records, p. 277.

[9] Exhibit "D-1," id. at 278.

[10] Exhibit "E," id. at 280.

[11] Id.

[12] Rollo, p. 136.

- [13] Exhibit "M," records, p. 292.
- [14] Exhibit "R," id. at 310.
- [15] Exhibit "3," id. at 313.
- [16] Rollo, p. 139.
- [17] Exhibit "A," records, p. 270.
- [18] Exhibit "X," id. at 325-335.
- [19] Exhibit "AA," id. at 348-351.
- [20] Rollo, p. 140.
- [21] Records, pp. 2-48.
- [22] Branch 95, Puerto Princesa City.
- [23] Records, pp. 43-44.
- [24] Id. at 144-145.
- [25] Id. at 900.
- [26] Id. at 825-827.
- [27] Id. at 832-833.
- [28] Id. at 1158-1163.
- [29] Id. at 1163.
- [30] Id. at 1161.
- [31] Id. at 1162.
- [32] Rollo, pp. 161-162.
- [33] Id. at 157.
- [34] Id. at 158-159.
- [35] Id. at 159.
- [36] Id. at 276.
- [37] G.R. No. 160895, October 30, 2006, 506 SCRA 134.
- [38] No. L-63397, April 9, 1985, 135 SCRA 637.
- [39] *Martinez v. Republic*, supra note 37, at 147. (Emphasis supplied.)
- [40] 479 Phil. 43 (2004).
- [41] Id. at 52.
- [42] *Martinez v. Republic*, supra note 37, at 150-151.
- [43] *Topacio v. Ong*, G.R. No. 179895, December 18, 2008, 574 SCRA 817, 827.

[44] Id. at 827-828.

[45] Danilo Moro v. Generoso Reyes Del Castillo, Jr., G.R. No. 184980, March 30, 2011.

[46] Topacio v. Ong, *supra* note 43, at 828.

[47] Danilo Moro v. Generoso Reyes Del Castillo, Jr., *supra* note 45.

[48] Hon. Luis Mario M. General, Commissioner, National Police Commission, v. Hon. Alejandro S. Urro, in his capacity as the new appointee vice herein petitioner Hon. Luis Mario M. General, National Police Commission, G.R. No. 191560, March 29, 2011.

[49] Id.

[50] Id.

[51] Rollo, p. 157.

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