LEAH M. NAZARENO, CARLO M. CUAL, ROGELIO B. CLAMONTE, FLORECITA M. LLOSA, ROGELIO S. VILLARUBIA, RICARDO M. GONZALES, JR., ROSSEL MARIE G. GUTIERREZ, NICANOR F. VILLAROSA, JR., ...

G.R. NO. 168484. July 12, 2007

Ponente: NACHURA, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-168484/

NACHURA, J.:

Before this Court is a Petition for Review on Certiorari of the Decision[1] of the Court of Appeals (CA) dated January 30, 2004 in CA-G.R. SP No. 70254, and its Resolution[2] dated May 6, 2005. The assailed Decision affirmed with modification the Orders[3] issued by the Regional Trial Court (RTC), Dumaguete City, Branch 41, dated September 26, 2001 and January 17, 2001, in Civil Case No. 13013.

The facts of the case are as follows:

Then incumbent Mayor Felipe Antonio B. Remollo (Remollo) and Agustin R. Perdices (Perdices) were among the candidates for mayor in Dumaguete City during the May 14, 2001 elections. Perdices won over Remollo and the former was to assume office on June 30, 2001.

After the elections but before Perdices' assumption, Remollo made fifteen (15) promotional appointments and seventy-four (74) original appointments for various positions in the city government. Said appointments were reflected in the June 2001 Report of Personnel Actions (ROPA) of the city, that was submitted to the Civil Service Commission Field Office (CSCFO)-Dumaguete.[4]

Soon after Perdices assumed office, or on July 2, 2001, during the flag ceremony for city hall employees, Perdices announced that he was not honoring or recognizing the appointments made by Remollo.[5] Anxious that their services would be terminated, Leah Nazareno, et al., as petitioners, filed with the RTC of Dumaguete City, a Petition for Mandamus, Injunction and Damages, with an Application for Temporary Restraining Order and Preliminary Injunction,[6] against the City of Dumaguete, represented by then Mayor Perdices, Dominador Dumalag, Jr., Erlinda C. Tumongha, Josephine Mae Flores, and Araceli Campos, as respondents. The case was docketed as Special Proceedings Case No. 13013, and was raffled to Branch 41.

Petitioners averred that the appointments made by Remollo were valid, as they were issued pursuant to CSC Resolution No. 992411 of the CSC Accreditation Program, which granted the City of Dumaguete the authority to take final action on its appointments subject to the terms and conditions enumerated therein.[7] In view of the city government's act of withholding the salaries and salary differentials of the appointees, as well as preventing them from reporting for work, the petitioners prayed that an injunctive writ be issued enjoining the respondents from doing any act or issuing any order, which would result in the actual or constructive dismissal of the petitioners.

In a letter[8] dated August 1, 2001, Director Fabio R. Abucejo (Director Abucejo), of the CSCFO, invalidated and revoked the questioned appointments as they were issued in violation of the guidelines set forth by the CSC.[9]

On August 3, 2001, the RTC issued a writ of preliminary injunction ordering and commanding the city government to refrain from doing any act, or issuing any order, dismissing/terminating/demoting the petitioners either actually or constructively, pending the final adjudication of the case.[10] The court found the action of Director Abucejo irregular because the questioned appointments may only be invalidated by the CSC Regional Office upon the recommendation by the CSCFO. As such, the finding of Director Abucejo was not yet final.[11] Respondents' Motion for Reconsideration[12] was denied[13] by the court.

On August 20, 2001, respondents moved for the dismissal of the injunction case on the ground that Director Abucejo's ruling, invalidating petitioners' appointments, attained finality when the "appointing authority" failed to move for its reconsideration.

However, it appears that petitioners timely appealed Director Abucejo's action to the CSC Regional Office No. VII, Cebu City which denied the same in a Decision[14] dated February 14, 2002. The latter decision was likewise affirmed by the CSC in Resolution No. 040932[15] on August 23, 2004. Said resolution is now the subject of a Petition for Review under Rule 43, pending before the Court of Appeals, Cebu City.[16]

In September 2001, Reginaldo Manolo Cordova and Omar P. Serion separately filed complaints-in-intervention against respondents predicated on causes of action similar to those of petitioners.[17]

On September 26, 2001, the RTC denied petitioners' motion to dismiss but permanently lifted the writ of preliminary injunction earlier issued.[18] The court agreed with the respondents that Director Abucejo's action was already final and executory for failure of the appointing authority to appeal the same or move for its reconsideration. As such, the action for injunction had become moot and academic but the action for mandamus and damages filed by petitioners for the payment of salaries due them should proceed.[19] Petitioners' motion for reconsideration[20] was denied on January 17, 2002.[21]

Aggrieved, petitioners elevated the case to the CA via a Petition for Certiorari under Rule 65 assailing the September 26, 2001 and January 17, 2002 Orders of the RTC. On January 30, 2004, the CA denied the petition and accordingly dismissed the same.[22] The court held that by express provision of Section 2,[23] Rule VI of the CSC Omnibus Rules on Appointments and Other Personnel Actions, it was Mayor Perdices who had the locus standi to elevate the matter to the CSC.[24] Their motion for reconsideration was likewise denied in a Resolution[25] dated May 6, 2005.

Petitioners now come before this Court in this petition for review on certiorari raising the sole error:

> Error of Law: The January 30, 2004 decision of the Court of Appeals (formerly 7[th] Division) and its May 6, 2005 Resolution, grievously erred in effectively supporting the September 26, 2001 order of the Regional Trial Court Branch No. 41 in Civil Case No. 13013 declaring as final and executory the ruling of the then CSC Field Office Director Abucejo invalidating Petitioners' and Intervenors' appointments, which supposed final and executory ruling served as the trial court's basis in permanently lifting the writ of preliminary injunction and rendering the main case for injunction in Civil Case No. 13013 moot and academic. This is contrary to law and justice, to evidence and facts.[26]

Petitioners insist that they have the legal standing to appeal to the CSC themselves since they are the ones who would suffer or benefit from the invalidation or validation of their appointments. To further support their claim, petitioners cite CSC Resolution No. 011812 entitled In the Matter of the Invalidation of the Appointment of Liza Quirog, and CSC Resolution No. 00-2205 concerning the invalidation of the appointments of Ulysses T. Jonggoy, et al., where the CSC allowed the appointees themselves to take relief from the disapproval of their appointments as an exception to the rule that only the appointing authority has the discretion to file appeals or motions for reconsiderations.[27] In view of the foregoing and considering that the CSC allowed the appeal made by the

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

petitioners themselves, the injunctive writ issued by the RTC should have remained, pending the determination of the validity of their appointment.[28]

In their Comment,[29] respondents contend that petitioners' act of seeking relief from the regular court and the CSC is a clear indication of forum shopping which is abhorred by this Court.[30] A perusal of the pleadings filed by petitioners before this Court on the one hand, and the CA, on the other, showed that though they question different orders/decisions of different tribunals, petitioners were just playing with words but their real intention was to get a favorable decision on the same issue to suit their designs.[31] Respondents further assert that petitioners are not entitled to damages in view of the illegality of their appointment. Considering the earlier ruling of the CSC invalidating their appointment, the courts cannot order them to return to work for to do so would mean creating new employment which is beyond its power to perform.

On the basis of the petitioners' arguments and the respondents' counter-arguments, the issues for resolution are as follows: 1) whether or not the petitioners have the legal personality to appeal the invalidation of their appointment; and 2) whether or not petitioners are entitled to the writ of injunction pending the final determination of the validity of their appointment.

The right to appeal is not a natural right or a part of due process, but a mere statutory privilege that may be exercised only in the manner prescribed by law.[32] It is necessary that the same be instituted by the party who is given such authority. At this point, the concepts of "legal standing" and "real party-in-interest" become relevant.

The difference between "real party-in-interest" and "legal standing" has been thoroughly explained by this Court in the cases of Abella, Jr. v. Civil Service Commission[33] and Francisco, Jr. v. The House of Representatives,[34] in this wise:

> Standing is a special concern in constitutional law because in some cases, suits are brought not by parties who have been personally injured by the operation of a law or by official action taken, but by concerned citizens, taxpayers or voters who actually sue in the public interest. Hence, the question in standing is whether such parties have "alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."
>
> x x x x
>
> On the other hand, the question as to "real party-in-interest" is whether he is "the party who would be benefited or injured by the judgment," or the "party entitled to the avails of the suit."

If legal standing is granted to challenge the constitutionality or validity of a law or governmental act despite the lack of personal injury on the challenger's part, then more so should petitioners be allowed to contest the nullification of their appointment. Thus, petitioners have the legal standing to challenge the act of the CSC.

Real party-in-interest, on the other hand, is a concept in civil procedure and is expressly defined in the Rules of Court[35] as the one who would be benefited or injured by the judgment, or one entitled to the avails of the suit. "Interest" within the meaning of the rule means material interest or an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved or a mere incidental interest. Otherwise stated, the rule refers to a real or present substantial interest as distinguished from a mere expectancy; or from a future, contingent, subordinate, or consequential interest.[36]

The question on who the real party-in-interest is to challenge the invalidation of one's appointment has been settled in the case of Abella,[37] where the Court held that both the "appointing authority" and the appointee may question the disapproval of an appointment.

The appointing authority stands to be adversely affected when the CSC disapproves an appointment. The CSC's disapproval of an appointment is a challenge to the exercise of the appointing authority's discretion. He must, therefore, have the right to contest the disapproval. Thus, Section 2,[38] Rule VI of CSC Memorandum Circular 40, Series of 1998, or the Omnibus Rules on Appointment and Other Personnel Actions, is justified insofar as it allows the appointing authority to request reconsideration or appeal. [39]

Petitioners in the instant case, would like this Court to settle who the "appointing authority" is " is it the former mayor, who made the questioned appointments, or the incumbent mayor, who at the time of the invalidation of the appointment was the one holding the position? The appointing power of the mayor or the local chief executive is set forth in Republic Act (RA) 7160 or the Local Government Code.[40] The power to appoint is vested in the office of the chief executive and not in the person occupying the position. The local chief executive exercises such power in his official capacity. Applying it in the present case, the appointing authority who had the right to assail the invalidation of the appointment is the mayor occupying the position at the time of the institution of the appeal and not the former mayor who made the assailed appointment.

Although the earlier discussion demonstrates that the appointing authority is the real party-in-interest to institute an appeal or motion to reconsider the invalidation of an appointment, there is nothing to preclude the appointee from taking the same course of action.[41] Aggrieved parties, including the Civil Service Commission, should be given the right to file motions for reconsideration or to appeal. The appointee is also injured by the CSC disapproval, because he is prevented from assuming the office in a permanent capacity. Moreover, he would necessarily benefit if a favorable judgment is obtained, as an approved appointment would confer on him all the rights and privileges of a permanent appointee.[42]

Clearly, petitioners timely appealed the action of Director Abucejo to the CSC Regional Office, to the CSC Proper and ultimately to the CA. In fact, the CSC, in Resolution 040932 (on the appeal made by petitioners herein) recognized the right of the appointees to assail the nullification of their appointment. The CSC pronounced[43] that the appointees themselves may appeal the disapproval of their appointments as when, at the time of the disapproval of their appointments, there is already a new appointing authority.[44] Therefore, at the time of the issuance of the RTC Order dismissing the petition for injunction, Director Abucejo's action had not yet become final and executory in view of the timely appeal made by petitioners. It is thus error for the CA to affirm the finding of the trial court that petitioners' appeal did not prevent the earlier decision from attaining finality because of lack of legal personality on the part of the petitioners to institute the same.

This notwithstanding, we affirm the lifting of the writ of preliminary injunction earlier issued, and consequently, denying the issuance of a permanent writ of injunction, but on grounds different from those relied upon by the RTC and the CA.

The Court notes that the petition for injunction filed by petitioners before the RTC was premature. Petitioners initiated the instant case prior to the "invalidation" of their appointment by the CSC. Records show that it was the act of then incumbent Mayor Perdices when he announced that he would not recognize the questioned appointments, that prompted the petitioners to file the petition below. At that time, there was yet no action taken by the CSC. It was only after the filing of the petition that Director Abucejo invalidated the appointments. After the invalidation, still, petitioners could appeal, and in fact so appealed, to the CSC Regional Office and to the CSC Proper. Clearly then, petitioners had ample administrative remedies under the law to protect their rights. Perforce, it was premature for them to commence an action for injunction before the regular courts.

Moreover, in their petition before the CA Cebu City, assailing CSC Resolution Nos. 040932 and 050472, petitioners specifically prayed that the implementation of said resolutions be stayed pending appeal in the interest

of justice and equity.[45] In that case, petitioners sought to enjoin the execution of the CSC decision invalidating their appointment, which is the same subject matter in the instant case. In effect, we have a situation where a party is seeking the same relief from two different fora. This is proscribed by the Rules.

An injunctive writ may be issued when the following requisites are established:

- The invasion of the right is material and substantial;

- The right of complainant is clear and unmistakable;

- There is an urgent and permanent necessity for the writ to prevent serious damage.[46]

It must be stressed that injunction is not designed to protect contingent or future rights, and as such, the possibility of irreparable damage without proof of actual existing right is no ground for an injunction. A clear and positive right especially calling for judicial protection must be established.[47]

It is beyond this Court's authority to rule on the validity of petitioners' appointment as it is now the subject of a petition for review before the CA, Cebu City. Suffice it to state that while the appointing authority has the discretion to choose whom to appoint, the choice is subject to the caveat that the appointee possesses the required qualifications. To make it fully effective, an appointment to a civil service position must comply with all legal requirements.[48]

Lastly, the Court would like to emphasize the pronouncement made in the cases of Almeida v. Court of Appeals[49] and Gov. Garcia v. Hon. Burgos:[50]

> [T]here is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuance of an injunction. It is the strong arm of equity that should never be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages.
>
> Every court should remember that an injunction is a limitation upon the freedom of action of the defendant and should not be granted lightly or precipitately. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it.[51] [Emphasis supplied.]

As earlier discussed, petitioners are given by law and related rules adequate remedies to protect their rights and interests. They have in fact made use of such remedies and there is thus no need to pursue the separate case of injunction. The law does not permit it and no emergency demands it.

WHEREFORE, the petition is hereby DENIED. The January 30, 2004 Decision and May 6, 2005 Resolution of the Court of Appeals are AFFIRMED.

SO ORDERED.

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

[1] Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Ruben T. Reyes and Noel G. Tijam, concurring; rollo, pp. 48-54.

[2] Rollo, p. 71.

[3] Penned by Judge Araceli S. Alafriz, CA rollo, pp. 270-271, 294-295.

[4] Rollo, p. 74.

[5] Id. at 14.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

[6] CA rollo, pp. 20-32.

[7] The authority of the Mayor to issue said appointments was embodied in a letter dated October 14, 1999, sent by then CSC Chairman Corazon Alma G. de Leon, to then City Mayor Felipe Antonio B. Remollo (CA rollo, pp. 33-34); and in CSC Resolution No. 992411 (CA rollo, pp. 35-37).

[8] CA rollo, pp. 214-215.

[9] Specifically, the action of Director Abucejo was based on the following findings of facts:

- There were a total 15 promotional appointments and 74 original appointments issued as reflected in the submitted ROPA for the month of June 2001,

- There was only one (1) en banc meeting of the City Personnel Selection Board (PSB) held on June 5, 2001 to consider the number of appointments thus issued and there was no other call for PSB meeting certified by the City HRMO.

- There were no minutes available on the deliberation of the PSB of the 89 appointments listed in the ROPA as certified by the City HRMO.

- There were no PSB statements certifying that there was actual screening and evaluation done on all candidates for each position.

- The appointing officer of the 89 appointments was an outgoing local official who lost during the May 14, 2001 elections for City Mayor of Dumaguete City.

- The 89 appointments were all issued after the elections and when the new city mayor was about to assume office (Id. at 214-215).

[10] The dispositive portion of the Order reads:

WHEREFORE, pending the hearing of the main case, and pursuant to Rule 58 of the 1997 Rules of Civil Procedure, let a writ of preliminary injunction issue ordering and commanding respondent City of Dumaguete, represented by Hon. Mayor Agustin R. Perdices from doing any acts or issuing any orders dismissing/terminating/demoting herein petitioners either actually or constructively, pending the final adjudication of this case.

Plaintiffs are each required to put up a bond equivalent to their one month salary basic pay under their new appointments.

SO ORDERED. (CA rollo, pp. 194-195).

[11] CA rollo, p. 194.

[12] Id. at 196-205.

[13] Id. at 221-224.

[14] Rollo, pp. 118-119.

[15] The CSC upheld the right of petitioners, as appointees, to appeal the disapproval of their appointments if their appointing authority is no longer in a position to appeal the same. The CSC nevertheless affirmed the invalidation of the questioned appointments on the ground that they were "mass appointments" which is prohibited by CSC Resolution No. 01-0988. The dispositive portion of the resolution reads:

Study hands-free: podcast-style lessons with read-along highlighting - batas.org

WHEREFORE, the appeal of Leah Medina-Nazareno, et al. is hereby DISMISSED. Accordingly, the assailed Civil Service Commission Regional Office No. VII Decision dated February 14, 2002, affirming the action of the Civil Service Commission Field Office-Dumaguete in invalidating the appointments reflected in the June 2001 Report of Personnel Action of Dumaguete City, which include those of Medina-Nazareno, et al., is AFFIRMED. However, those appointees involved in a chain of promotions shall be automatically restored to their former positions.

The Civil Service Commission Regional Office No. VII is directed to monitor the implementation of this Resolution. (Id. at 72-81).

[16] The case is docketed as CA-G.R. SP No. 00665; id. at 134-149.

[17] Rollo, p. 51.

[18] CA rollo, pp. 270-271.

[19] Id. at 271.

[20] Id. at 272-286.

[21] Id. at 294-295.

[22] The fallo reads:

WHEREFORE, for lack of merit, the instant petition is DENIED due course and, accordingly, DISMISSED. Consequently, the orders dated September 26, 2001 and January 17, 2002 of the Regional Trial Court of Dumaguete City (Branch 41) are AFFIRMED.

SO ORDERED. (Rollo, pp. 53-54.)

[23] Section 2. Request for reconsideration of, or appeal from, the disapproval of an appointment may be made by the appointing authority and submitted to the Commission within fifteen (15) calendar days from receipt of the disapproved appointment.

[24] Rollo, p. 53.

[25] Id. at 71.

[26] Id. at 16.

[27] Id. at 23-24.

[28] Id. at 24.

[29] Id. at 95-115.

[30] Id. at 109.

[31] Id. at 111.

[32] Philippine National Bank v. Garcia, Jr., 437 Phil. 289, 293 (2002), citing University of the Philippines v. Civil Service Commission, 228 SCRA 207 (1993).

[33] G.R. No. 152574, November 17, 2004, 442 SCRA 507, 519-520.

[34] 460 Phil. 830, 895 (2003).

[35] Specifically Section 2, Rule 3 thereof; Miranda v. Carreon, 449 Phil. 285, 293 (2003).

[36] Dagadag v. Tongnawa, G.R. Nos. 161166-67, February 3, 2005, 450 SCRA 437, 443-444; Abella, Jr. v. Civil Service Commission, supra note 33, at 521; Mathay, Jr. v. Court of Appeals, 378 Phil 466, 482 (1999).

[37] Abella, Jr. v. Civil Service Commission, supra, at 521-522.

[38] See note 23.

[39] Abella, Jr. v. Civil Service Commission, supra, at 518.

[40] Specifically Section 444 (v) which provides:

Section 444. The Chief Executive: Powers, Duties, Functions and Compensation.

x x x x

(v) Appoint all officials and employees whose salaries and wages are wholly or mainly paid out of municipal funds and whose appointments are not otherwise provided for in this Code, as well as those he may be authorized by law to appoint;

[41] Hon. Constantino-David v. Pangandaman-Gania, 456 Phil. 273, 291-292 (2003).

[42] Abella, Jr. v. Civil Service Commission, supra note 33, at 521-522.

[43] Rollo, pp. 127-128.

[44] Citing CSC Resolution No. 01-1812 dated November 20, 2001, Re: Quirog, Liza M. citing CSC Resolution No. 00-22056 dated September 27, 2000 Re: Jonggoy, Ulysses T., et al. and CSC Resolution No. 98-0105 dated May 8, 1998 Re: Lena, Bolynn Faith.

[45] Rollo, p. 147.

[46] Almeida v. Court of Appeals, G.R. No. 159124, January 17, 2005, 448 SCRA 681, 694.

[47] Id. (Emphasis ours.)

[48] Civil Service Commission v. Tinaya, G.R. No. 154898, February 16, 2005, 451 SCRA 560, 566; Abella, Jr. v. Civil Service Commission, supra note 33, at 515.

[49] Supra note 46, at 695-696.

[50] 353 Phil 740, 774 (1998).

[51] Citations omitted.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.