

**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. 177795. June 19, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This Petition assails the Decision[1] dated 27 March 2007 and Order dated 26 April 2007 of Branch 41 of the Regional Trial Court (RTC) of Dumaguete City, Negros Oriental, dismissing Civil Case No. 13013.

Petitioners were all bona fide employees of the City Government of Dumaguete. They were appointed to various positions by City Mayor Felipe Antonio B. Remollo, Jr. (Remollo) sometime in June 2001, shortly before the end of his term. The details on petitioners' appointments are summarized below[2]:

Name of Appointee	Previous Position	Present Position	Date of Appointment
1. Leah M. Nazareno	Legal Researcher	Asst. Dept. Head I	June 7, 2001
2. Carlo M. Cual	Legislative Staff Officer I	Legislative Staff Officer III	June 5, 2001
3. Rogelio B. Clamonte	Public Services Supply Officer IV		June 5, 2001
4. Florecita Llosa	Supply Officer I	Records Officer II	June 11, 2001
5. Rogelio S. Villarubia	Agriculturist II	Agriculturist III	June 5, 2001
6. Rossel Marie G. Gutierrez	Casual/Plantilla	Supervising Environmental Management Specialist	June 5, 2001
7. Nicanor F. Villarosa, Jr.	Casual/Plantilla	Dentist II	June 5, 2001
8. Marie Sue Cual	Casual/Plantilla	Social Welfare Officer I	June 7, 2001
9. Miramichi Majella B. Mariot	Casual/Plantilla	Records Officer II	June 7, 2001
10. Alma F. Ramirez	Casual/Plantilla	Clerk IV	June 7, 2001
11. Antolin D. Zamar, Jr.	Casual/Plantilla	Metro Aide II	June 11, 2001
12. Mario S. Aliling	Casual/Plantilla	Driver II	June 5, 2001
13. Teodulo Salvoro, Jr.	Casual/Plantilla	Metro Aide II	June 5, 2001
14. Philip Janson Altamarino	Casual/Plantilla	Clerk I	June 5, 2001
15. Antonieta Padura	Casual/Plantilla	Metro Aide II	June 11, 2001

16. Adolfo Cornelia Casual/Plantilla Metro Aide II June 11, 2001
17. Ian Ryan Patula Casual/Plantilla Metro Aide II June 7, 2001
18. William Tanoy Casual/Plantilla Metro Aide II June 5, 2001
19. Victor Arbas Casual/Plantilla Public Services Foreman June 7, 2001
20. Jeanith Cual Casual/Plantilla Utility Worker II June 5, 2001
21. Braulio Sayson Casual/Plantilla Mechanical Plant Supervisor June 7, 2001
22. Dawn Villarosa Casual/Plantilla Clerk I June 7, 2001
23. Agustin Rendoque Casual/Plantilla Utility Worker I June 7, 2001
24. Enriqueta Tumongha Casual/Plantilla Utility Worker II June 5, 2001
25. Lionel Banogon Casual/Plantilla Clerk II June 5, 2001
26. Rosalito Vergantinos Casual/Plantilla Pest Control Worker II June 5, 2001
27. Mario Cual, Jr. Casual/Plantilla Utility Foreman June 7, 2001
28. Elaine Tumongha Casual/Plantilla Registration Officer I June 11, 2001
29. Norman Villarosa Casual/Plantilla Utility Worker I June 5, 2001
30. Ricardo C. Patula Casual/Plantilla Revenue Collection Clerk I June 5, 2001
31. Rachel Banagua Casual/Plantilla Utility Worker I June 5, 2001
32. Rodolfo Calugcugan Job Order Driver I June 7, 2001
33. Pergentino Cual Job Order Metro Aide II June 11, 2001
34. Bernard Ozoa Job Order Utility Worker I June 7, 2001
35. Roger J. Aromin Job Order Utility Worker I June 7, 2001
36. Cheryl Nocete Job Order Utility Worker I June 11, 2001
37. Marivic Sanchez Job Order Utility Worker I June 11, 2001
38. Crispin Duran Job Order Metro Aide II June 11, 2001
39. Rebeco Lingcong Job Order Metro Aide II June 5, 2001
40. Anna Lee Estrabela Job Order Cash Clerk III June 5, 2001
41. Melchor Maquiling Job Order Engineer I June 7, 2001
42. Raul Molas Job Order Construction and Maintenance Foreman June 7, 2001
43. Oscar Kinikito Job Order Electrician II June 7, 2001
44. Darwin Conejos Job Order Engineering Aide June 7, 2001
45. Romel Cual Job Order Metro Aide II June 11, 2001
46. Roqueta Amor Job Order Dental Aide June 5, 2001

47. Diosdado Lajato Job Order Pest Control Worker II June 5, 2001
48. Paul Pino Job Order Utility Worker II June 5, 2001
49. Lito Piñero Job Order Metro Aide II June 11, 2001
50. Rodulfo Zosa, Jr. Job Order Metro Aide II June 11, 2001
51. Jorge Arbolado Job Order Traffic Aide I June 5, 2001
52. Ricardo M. Gonzales, Jr. OIC-General Services Officer Asst. Dept. Head I June 5, 2001

On 2 July 2001, newly elected City Mayor Agustin Perdices (Perdices) announced during the flag ceremony held at the City Hall that he was not recognizing the appointments made by former Mayor Remollo. Thereafter, (1) City Administrator Dominador Dumalag, Jr. (Dumalag) issued a Memorandum dated 2 July 2001 directing Assistant City Treasurer Erlinda Tumongha (Tumongha) to "refrain from making any disbursements, particularly payments for salary differential[s]" to those given promotional appointments by former Mayor Remollo, which included several of the petitioners; (2) several of the petitioners, who were engaged on "casual basis" or "job order basis," prior to their appointment to permanent positions by former Mayor Remollo, were not given salary differentials and salaries for June and July 2001, respectively; (3) several of the petitioners who were assigned to the slaughterhouse were told not to report for work effective 1 August 2001; and (4) petitioners' names were deleted from the list of employees of the City Government of Dumaguete.

Thus, petitioners were constrained to file with the RTC on 1 August 2001 a Petition for Mandamus with Injunction and Damages with Prayer for a Temporary Restraining Order and Preliminary Injunction against respondents City Mayor Perdices and City Officers Dumalag, Tumongha, Josephine Mae Flores (Flores), and Araceli Campos (Campos), representing the City of Dumaguete.[3] The Petition was docketed as Civil Case No. 13013.

Also on 1 August 2001, the same day petitioners instituted Civil Case No. 13013, Director II Fabio Abucejo (Abucejo) of the Civil Service Commission Field Office (CSC-FO), pursuant to CSC Memorandum No. 001374, invalidated and revoked the appointments made by former Mayor Remollo in June 2001. He relayed his findings to Mayor Perdices in a letter dated 1 August 2001. Pertinent portions of the 1 August 2001 letter of CSC-FO Director Abucejo reads[4]:

- There was a total of 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 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 election and when the new mayor was about to assume office.

In view of all the foregoing and since all the appointments involved indicated in the attached ROPA Audit

Results, were issued in clear violation of the guidelines of CSC MC No. 010988, this CSC Field Office has decided to invalidate as it hereby invalidates and revokes these appointments mentioned therein led by Ms. Dolores Buncalan, Rev. Collection Clerk I and 14 others for the promotional appointments and Ms. Donna P. Aguilar as Clerk I and 73 others for the original appointments.

From the foregoing facts, several different cases arose.

The 1 August 2001 letter of CSC-FO Director II Abucejo

When petitioners were furnished with a copy of CSC-FO Director Abucejo's letter dated 1 August 2001, they filed on 4 September 2001 with the CSC Regional Office (CSC-RO) No. VII, Cebu City, a Motion for Reconsideration of the same. The CSC-RO promulgated a Decision on 21 September 2001 dismissing petitioners' Motion on the grounds that it should have been filed with the CSC-FO, which rendered the judgment sought to be reconsidered. Petitioners filed a Motion for Reconsideration of the Decision dated 21 September 2001 of the CSC-RO, requesting that petitioners' earlier Motion for Reconsideration be treated as an appeal of CSC-FO Director Abucejo's letter dated 1 August 2001. In a Decision dated 14 February 2002, the CSC-RO dismissed petitioners' appeal and affirmed the invalidation of petitioners' appointments. [5]

Petitioners elevated their case to the CSC Proper. On 23 August 2004, the CSC issued Resolution No. 040932 dismissing petitioners' appeal. The CSC acknowledged that generally, appeal of invalidated appointments should be made by the appointing authority. However, since the term of Mayor Repollo, who actually appointed petitioners, already ended, and there was a new incumbent Mayor, there could be no other person to file such an appeal except the appointees themselves. The CSC held that a relaxation of the rules was proper in this case. Nevertheless, the CSC considered petitioners' appointments as "mass appointments" unnecessarily made by an outgoing chief executive, which should be disapproved or invalidated, under Item No. 3 of CSC Resolution No. 010988. Petitioners filed a Motion for Reconsideration of CSC Resolution No. 040932, but the same was denied by the CSC in Resolution No. 050473 issued on 11 April 2005.[6]

Thereafter, petitioners filed with the Court of Appeals a Petition for Review under Rule 43 of the Revised Rules of Court, docketed as CA-G.R. CEB-S.P. No. 00665.[7] In a Decision dated 28 August 2007, the Court of Appeals affirmed CSC Resolutions No. 040932 and No. 050473, dated 23 August 2004 and 11 April 2005, respectively, being in accordance with CSC Resolution No. 010988, which provided rules and guidelines geared to prevent the nefarious practices of outgoing chief executives in making appointments before, during, and/or after the regular local elections for ulterior partisan motives. The Court of Appeals found that petitioners were appointed by outgoing Mayor Remollo after the results of the May 2001 elections were already known, without any showing that there was a need for the issuance of these appointments. Thus, the appellate court agreed with the CSC that Mayor Remollo approved the questioned appointments in bad faith and in violation of CSC Resolution No. 010988.[8]

Petitioners next filed an appeal before this Court, docketed as G.R. No. 181559, raising the issue of whether petitioners' appointments were valid.[9]

Writ of preliminary injunction

In their Petition in Civil Case No. 13013, petitioners applied for the issuance by the RTC of a writ of preliminary injunction to enjoin respondents from further doing acts or issuing orders nullifying petitioners' appointments. [10]

After hearing the parties, the RTC issued an Order[11] dated 3 August 2001 granting the issuance of a writ of preliminary injunction against respondents.

Respondents filed an Urgent Motion for Reconsideration of the 3 August 2001 Order of the RTC, invoking CSC-FO Director Abucejo's letter dated 1 August 2001 which invalidated and revoked petitioners' appointments.

On 15 August 2001, the RTC denied respondents' Urgent Motion for Reconsideration of its 3 August 2001 Order, granting the writ of preliminary injunction in petitioners' favor. The RTC upheld petitioners' position that their appointments should continue to remain effective since the afore-mentioned letter dated 1 August 2001 of CSC-FO Director Abucejo had not yet become final and executory. Mayor Perdices, the appointing authority, still had 15 days to file a motion for reconsideration of the said letter.[12]

Subsequently, respondents filed with the RTC an Urgent Motion to Dismiss Civil Case No. 13013, asserting that CSC-FO Director Abucejo's letter dated 1 August 2001, which invalidated and revoked petitioners' appointments, already attained finality on 16 August 2001, without Mayor Perdices filing any motion for reconsideration of the same.[13]

Petitioners vehemently opposed respondents' Urgent Motion to Dismiss, arguing that former Mayor Remollo should be considered the appointing authority, and since he had not received a copy of the 1 August 2001 letter of CSC-FO Director Abucejo, the 15-day reglementary period for filing a motion for reconsideration of the same did not commence. They also contended that CSC-FO Director Abucejo's recommendations on the appointments in question have not been approved by the CSC Proper.[14]

On 26 September 2001, the RTC issued an Order permanently lifting the writ of preliminary injunction it earlier issued against the respondents. It held that the "appointing power" who had personality to file a motion for reconsideration of the 1 August 2001 letter of CSC-FO Director Abucejo was incumbent Mayor Perdices. Since Mayor Perdices did not file any such motion for reconsideration, CSC-FO Director Abucejo's letter dated 1 August 2001, invalidating and revoking petitioners' appointments, had become final and executory, thus, rendering the writ of preliminary injunction moot. Petitioners' Motion for Reconsideration of the RTC Order dated 26 September 2001 was denied by the said trial court in another Order dated 17 January 2002.[15]

Petitioners assailed RTC Orders dated 26 September 2001 and 17 January 2002 before the Court of Appeals, in a Petition for Certiorari under Rule 65 of the Revised Rules of Court, docketed as CA-G.R. SP No. 70254.

In the meantime, on 18 January 2002, the RTC ordered a contingent suspension of the proceedings in Civil Case No. 13013 until after the Court of Appeals has resolved CA-G.R. SP No. 70254.

In a Decision dated 30 January 2004, the Court of Appeals denied petitioners' Petition in CA-G.R. SP No. 70254 and affirmed that Mayor Perdices alone had the locus standi to elevate the matter of petitioners' appointment to the CSC Proper. Since he failed to exercise this prerogative by 16 August 2001, or 15 days after he received a copy of CSC-FO Director Abucejo's letter dated 1 August 2001, the said letter became final and executory. Thus, the RTC did not act with grave abuse of discretion when it permanently lifted the writ of injunction against the respondents.[16] The appellate court denied petitioners' Motion for Reconsideration in a Resolution dated 6 May 2005.

Unsatisfied, petitioners filed with this Court a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court, questioning the Decision and Resolution dated 30 January 2004 and 6 May 2005, respectively, of the Court of Appeals in CA-G.R. SP No. 70254. The Petition was docketed as G.R. No. 168484. In a Decision dated 12 July 2007, the Court also affirmed the lifting by the RTC of the writ of preliminary injunction, but on grounds different from those relied upon by the Court of Appeals. The Court ruled that petitioners, as the appointees, are real parties-in-interest who can appeal the invalidation of their appointments. The Court noted that petitioners had, in fact, availed themselves of this remedy by successively appealing the invalidation and

revocation of their appointments by CSC-FO Director Abucejo to the CSC-RO, the CSC Proper, and the Court of Appeals in CA-G.R. CEB-S.P. No. 00665. Thus, petitioners were given by law adequate remedies to protect their interests without need for the remedy of injunction. Petitioners specifically prayed for in their Petition in CA-G.R. CEB-S.P. No. 00665 that the invalidation of their appointments be stayed in the interest of justice and equity, which was the same purpose to be served by the writ of preliminary injunction sought by petitioners in Civil Case No. 13013. The Court cannot allow petitioners to seek the same relief in two forums, for it would constitute forum shopping which is proscribed by the Rules of Court. [17]

Motion to declare respondents in default

On 2 October 2002, petitioners filed with the RTC in Civil Case No. 13013, a Manifestation and Motion Ad Cautelam seeking the resumption of the trial on their main Petition and the declaration that respondents were already in default for failure to file an Answer. On 5 November 2002, respondents finally filed their Answer to the Petition in Civil Case No. 13013. In an Order dated 19 November 2002, the RTC denied petitioners' motion to declare respondents in default and admitted respondents' Answer. Petitioners' Motion for Reconsideration of said Order was denied by the RTC in the subsequent Order dated 10 February 2003.[18]

Petitioners again sought recourse with the Court of Appeals by filing a Petition for Certiorari under Rule 65 of the Revised Rules of Court, docketed as CA-G.R. SP No. 77133. In a Decision dated 18 November 2003, the appellate court reversed the RTC Orders dated 19 November 2002 and 10 February 2003, and declared respondents in default since their Answer was filed 15 months after the issuance by the RTC of summons.[19]

Main Case for Mandamus, Injunction, and Damages

Given that the Court of Appeals, in its Decision dated 18 November 2003 in CA-G.R. SP No. 77133, found respondents to be in default in Civil Case No. 13013, the RTC allowed petitioners, in the proceedings a quo, to present their evidence ex-parte on the issues of mandamus and damages which, petitioners insisted, were not covered by their appeals in the other cases.

Petitioners adduced evidence to prove that former Mayor Remollo appointed them only after a list of vacant positions in the City Government of Dumaguete was published in the Negros News on 4 March 2001. The Personnel Selection Board held a meeting on 14 May 2001, during which, a CSC representative, together with various city officials, were present to assess the qualifications of the applicants. Only after these requirements were complied with, were petitioners appointed sometime in June 2001.[20] Current Mayor Perdices' announcement during the flag ceremony on 2 July 2001 that he refused to recognize petitioners' appointments resulted in the latter's humiliation before their peers. Petitioners' termination from work resulted in hardship and their inability to support their families. It also caused petitioners psychological depression. Therefore, petitioners should be entitled to their unpaid salaries, as well as the award of moral and exemplary damages.[21]

In a Manifestation dated 22 February 2005, Atty. Neil Ray M. Lagahit, counsel for the respondents, informed the RTC that petitioners were paid their salaries for the period covered by 1 July 2001 to 27 September 2001.[22] Still, petitioners sought the issuance by the RTC of an order directing respondents to release petitioners' salaries, salary differentials, and/or other legal emoluments from 28 September 2001 until present, since petitioners' appointments were to be considered valid until the Supreme Court has finally resolved otherwise.

As regards their claims for damages, petitioners originally sought the award of P300,000.00 as moral damages, P200,000.00 as exemplary damages, P15,000.00 as costs of litigation, and attorneys fees of P50,000.00 and an additional P3,000.00 for every appearance in court. However, during the hearing of Civil Case No. 13013, petitioners asserted that, as the case was pending for three years, they were already entitled to P1,500,000.00 as

moral damages and P1,000,000.00 as exemplary damages.[23]

In a Decision dated 27 March 2007 in Civil Case No. 13013, the RTC dismissed petitioners' Petition insofar as it concerns their prayers for the issuance of a writ of mandamus and for the award of damages, without prejudice to a hearing on their prayers in the same Petition for the issuance of a writ of injunction and for payment of their salaries, if warranted. The RTC took note that the invalidation of petitioners' appointments by the CSC Proper was then a pending appeal before the Court of Appeals in CA-G.R. CEB-S.P. No. 00665, and unless it was reversed, petitioners' right to the salaries, salary adjustments, and other emoluments claimed, were doubtful. Thus, mandamus would not lie against respondents when petitioners' rights to the positions and the corresponding benefits thereof remained unclear. The RTC further reasoned that damages could only be recovered when a termination constituted an act oppressive to labor, or was attended by bad faith or fraud, or was done in a manner contrary to morals, good customs, or policy;[24] and since the Decision of the CSC Proper invalidating petitioners' appointments has not yet become final and executory, their claims for damages were premature.[25]

On 10 April 2007, petitioners filed a Motion for Reconsideration of the foregoing Decision, which the RTC denied in an Order dated 26 April 2007.[26]

Unsatisfied with the judgment of the RTC, petitioners filed this "Petition for Certiorari under Rule 45 of the Rules of Court, as amended" raising the following issues[27]:

I

WHETHER OR NOT THE MARCH 27, 2007 DECISION (AND THE APRIL 24, 2007 [sic] ORDER) OF THE HONORABLE RTC BRANCH 41 THAT PETITIONERS' "RIGHT TO THEIR RESPECTIVE POSITIONS IS STILL UNCLEAR", IS CONTRARY TO LAW, JUSTICE AND THE RULES OF COURT, ESPECIALLY BECAUSE AT THAT TIME (UNTIL THIS DATE), THE ISSUE OF THE INVALIDITY OR VALIDITY OF THE APPOINTMENTS REMAINS UNRESOLVED;

II

WHETHER OR NOT THE APPEALED DECISION AND ORDER OF THE HONORABLE RTC BRANCH 41 ARE CONTRARY TO LAW AND JURISPRUDENCE FOR HOLDING THAT PETITIONERS ARE NOT ENTITLED TO THEIR CLAIM FOR DAMAGES AND FOR THEIR FAILURE TO PROVE "BAD FAITH" ON THE PART OF RESPONDENT CITY MAYOR PERDICES; and

III

WHETHER OR NOT THE PETITIONERS ARE FORUM-SHOPPING IN INSTITUTING THE PRESENT PETITION.

Before proceeding to resolve the issues raised in the instant Petition, the Court shall first address several procedural matters that caught its notice.

The Petition was confusingly denominated as a "Petition for Certiorari under Rule 45 of the Rules of Court, as amended." Rule 45 of the Revised Rules of Court governs petitions for review on certiorari, while Rule 65 of the same covers petitions for ceritorari. These are two distinct remedies. A petition for review under Rule 45 of the Revised Rules of Court is generally limited only to questions of law or errors of judgment. On the other hand, the petition for certiorari under Rule 65 may be availed of to correct errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction.[28] Considering that the instant Petition (1) raises supposed errors of judgment committed by the RTC; (2) does not contain any categorical assertion of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC which rendered the assailed judgment; and (3) states that it is a Petition under Rule 45 of the Revised Rules of Court, the Court shall treat the present Petition as a Petition for Review. Counsel for petitioners, however, is cautioned to be more

circumspect in properly identifying the remedy his clients are availing themselves of so as to avoid confusion.

Even if it is settled that the Court shall treat this as a Petition for Review under Rule 45 of the Revised Rules of Court, it faces another obstacle in giving the same due course since petitioners erroneously filed the appeal directly with this Court.

In *Five Star Marketing, Co., Inc. v. Booc*,^[29] this Court distinguished the different modes of appealing RTC decisions, to wit:

The Court, in *Murillo v. Consul*, *Suarez v. Villarama, Jr.* and *Velayo-Fong v. Velayo*, had the occasion to clarify the three modes of appeal from decisions of the RTC, namely: a) ordinary appeal or appeal by writ of error, where judgment was rendered in a civil or criminal action by the RTC in the exercise of its original jurisdiction; b) petition for review, where judgment was rendered by the RTC in the exercise of its appellate jurisdiction; and c) petition for review to this Court. The first mode of appeal is governed by Rule 41, and is taken to the CA on questions of fact or mixed questions of fact and law. The second mode, covered by Rule 42, is brought to the CA on questions of fact, of law, or mixed questions of fact and law. The third mode, provided for by Rule 45, is elevated to this Court only on questions of law.

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a questions (sic) to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances.

x x x x

Section 4 of Circular 2-90 in effect provides that an appeal taken either to this Court or to the CA by the wrong mode or inappropriate mode shall be dismissed. This rule is now incorporated in Section 5, Rule 56 of the Rules of Court. Moreover, the filing of the case directly with this Court departs from the hierarchy of courts. Normally, direct resort from the lower courts to this Court will not be entertained unless the appropriate remedy cannot be obtained in the lower tribunals.

Thus, when a party appeals from a decision of the RTC directly to this Court via a Petition for Review under Rule 45, it must only raise questions of law; otherwise, its appeal shall be dismissed.

A cursory reading of the three issues raised by petitioners herein, would readily reveal that the second one - on whether the RTC erred in holding that petitioners are not entitled to their claim for damages since they failed to prove bad faith on the part of Mayor Perdices - is a question of fact, since it involves an examination of the probative value of the evidence presented by the parties.^[30] Petitioners, therefore, availed themselves of the wrong or inappropriate mode of appeal. On this score alone, the present Petition could have been outrightly dismissed. However, the procedural flaws notwithstanding, the Court deems it judicious to take cognizance of the substantive questions herein, if only to put petitioners' mind to rest.^[31]

This Petition raises two main issues: (1) whether petitioners are entitled to the issuance of a writ of mandamus ordering respondents to pay petitioners' salaries, salary adjustments, and other emoluments, from 28 September 2001 until this Court finally resolves the issue of the validity of petitioners' appointments; and (2) whether petitioners are entitled to an award for damages resulting from the invalidation of their appointments.

The Court answers both in the negative.

Mandamus is a command issuing from a court of competent jurisdiction, in the name of the state or the sovereign, directed to some inferior court, tribunal or board, or to some corporation or person requiring the performance of a

particular duty therein specified, which duty results from the official station of the party to whom the writ is directed, or from operation of law. A writ of mandamus may issue when any tribunal, corporation board, officer or person unlawfully: (1) neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station; or (2) excludes another from the use and enjoyment of a right or office to which the other is entitled. [32]

Petitioners insist that they are entitled to salaries, salary adjustments, and other emoluments, arising from their June 2001 appointments by former Mayor Remollo, despite the invalidation of the same by the CSC-FO. They cite an unnumbered CSC Memorandum Circular, issued on 6 December 2001, with the subject matter: "Reiteration of the Strict Implementation of Section 1, Rule IV and Section 3, Rules VI, both of Memorandum Circular No. 40, s. 1998, otherwise known as the Revised Omnibus Rules on Appointments and Other Personnel Actions."

The CSC Memorandum Circular dated 6 December 2001 referred to Section 1, Rule IV of the Revised Omnibus Rules on Appointments and Other Personnel Actions, which reads:

Section 1. An appointment issued in accordance with pertinent laws and rules shall take effect immediately upon its issuance by the appointing authority, and if the appointee has assumed the duties of the position, he shall be entitled to receive his salary at once without awaiting the approval of his appointment by the Commission. The appointment shall remain effective until disapproved by the Commission. x x x.

The same CSC Memorandum Circular recited Section 3, Rule VI, also of the Revised Omnibus Rules on Appointments and Other Personnel Actions, which provides:

Section 3. When an appointment is disapproved, the services of the appointee shall be immediately terminated, unless a motion for reconsideration or appeal is seasonably filed.

Services rendered by a person for the duration of his disapproved appointment shall not be credited as government service for whatever purpose.

If the appointment was disapproved on grounds which do not constitute a violation of civil service law, such as failure of the appointee to meet the Qualification Standards (QS) prescribed for the position, the same is considered effective until disapproved by the Commission or any of its regional or field offices. The appointee is meanwhile entitled to payment of salaries from the government.

If a motion for reconsideration or an appeal from the disapproval is seasonably filed with the proper office, the appointment is still considered to be effective. The disapproval becomes final only after the same is affirmed by the Commission.

In relation to the afore-quoted provisions, the CSC Memorandum Circular dated 6 December 2001 gives the following reminder:

The Commission observed that there are some appointing authorities/heads of agencies in the government who immediately replace their predecessors' appointees after the appointments of the latter have been disapproved by the Field Office or Regional Office of this Commission, notwithstanding the pendency of an appeal with the Collegial Commission. Said appointing authorities/heads of agencies construe the disapproval by the CSCFO or CSCRO of the subject appointments as final and executory.

x x x x

In this regard, it is hereby emphasized that the aforequoted provisions of CSC MC No. 40, s. 1998 should be strictly observed such that the disapproval by either the CSCFO or CSCRO of the appointments issued by the predecessor of the incumbent appointing authority/head of agency shall not be considered as final and

executory unless and until the Collegial Commission has finally decided on the matter. It is only after the Collegial Commission has finally affirmed the disapproval of the appointment that the new appointing authority/head of agency could issue appointments to replace appointees whose appointments were disapproved. Hence, the appointment of the replacement of the incumbent whose appointment has been disapproved shall also be disapproved by the CSCFO or CSCRO unless the appeal has been finally resolved by the Collegial Commission.

The general rule, therefore, is that appointments shall take effect immediately; and should the appointees already assume the duties of their positions, they shall be entitled to receive their salary at once. There is no need to wait for the approval of the appointments by the CSC. The appointments shall be effective until disapproved by the CSC.

The CSC, in carrying out its powers and functions, has a three-tiered organizational structure, i.e., the CSC-FO, the CSC-RO, and the CSC Proper acting as a collegial body. The appointing authority[33] or the appointees themselves[34] may file a motion for reconsideration or an appeal of the disapproval of appointments by the CSC-FO to the CSC-RO, and by the CSC-RO to the CSC Proper. Until the disapproval of the appointments by the CSC-FO and CSC-RO is affirmed by the CSC Proper, it shall not be considered final and executory. Stated differently, the appointments shall remain effective until they are disapproved by the CSC Proper. In the meantime, there shall be no obstacle to the concerned appointees continuing to render public service; and to receiving salary for the actual services they have rendered during the period, based on the "no work, no pay" policy.[35]

Nevertheless, the aforementioned general rules cannot be simply applied to the case at bar given its peculiar circumstances.

The Court stresses that Section 3, Rule VI of the Revised Omnibus Rules on Appointments and Other Personnel Actions only categorically recognizes the right of the appointee to payment of salaries from the government, during the pendency of his motion for reconsideration or appeal of the disapproval of his appointment by the CSC-FO and/or CSC-RO before the CSC Proper, "[i]f the appointment was disapproved on grounds which do not constitute a violation of civil service law, such as failure of the appointee to meet the Qualification Standards (QS) prescribed for the position."

What happens then if the appointment was disapproved for violation of civil service law? In such a situation, Section 4, Rule VI of the Revised Omnibus Rules on Appointments and Other Personnel Action applies. It states:

Sec. 4. The appointing authority shall be personally liable for the salary of appointees whose appointments have been disapproved for violation of pertinent laws such as the publication requirement pursuant to RA 7041.

It is clear from the afore-quoted provision that when the appointment was disapproved for violation of pertinent laws, the appointing authority shall be personally liable for the salary of the appointee. This is in complete accord with the Section 65, Chapter 10, Book V, of Executive Order No. 292, otherwise known as the Administrative Code of 1987, to wit:

Section 65. Liability of appointing authority. - No person employed in the Civil Service in violation of Civil Service law and rules shall be entitled to receive pay from the government, but the appointing authority responsible for such unlawful employment shall be personally liable for the pay that would have accrued had the employment been lawful, and the disbursing officials shall make payment to the employee of such amount from the salary of the officers so liable.

To recall, petitioners' appointments were invalidated and revoked by CSC-FO Director Abucejo, in a letter dated

1 August 2001, on the ground that said appointments were made by former Mayor Remollo in violation of Items No. 3(d) and 4 of CSC Resolution No. 010988 dated 4 June 2001, which prohibit the outgoing chief executive from making mass appointments^[36] after elections. The rules laid down by the CSC in CSC Resolution No. 010988, dated 4 June 2001, are deemed included in what is the "civil service law," it having the force and effect of law.^[37]

Upon disapproval by CSC-FO Director Abucejo of petitioners' appointments on 1 August 2001, for being in violation of civil service law, petitioners may no longer claim entitlement to the payment of their salaries from the government. There is no doubt that, pending their appeals before the CSC-RO, then the CSC Proper, petitioners' appointments remained effective and they could still continue reporting to work and rendering service, but there already arose the question as to who shall be liable for their salaries during the period, i.e., whether it is the City Government of Dumaguete (under Section 3, Rule VI of the Revised Omnibus Rules on Appointments and Other Personnel Action) or former Mayor Remollo who appointed them (under Section 4, Rule VI of the same Revised Omnibus Rules). Hence, petitioners' right to salary cannot be firmly anchored as of yet on Section 3, Rule VI of the Revised Omnibus Rules on Appointments and Other Personnel Action.

Neither can the unnumbered CSC Memorandum Circular dated 6 December 2001 invoked by petitioners support their case. Its avowed intention is to put a stop to the practice of some appointing authorities/heads of agencies in the government of immediately replacing their predecessors' appointees after the latter's appointments have been disapproved by the CSC-FO or CSC-RO, notwithstanding the pendency of an appeal with the CSC Proper. The CSC issuance requires the strict observance of the rule that until the disapproval of the appointment by the CSC-FO or CSC-RO is affirmed by the CSC Proper, the new appointing authority/head of agency cannot issue appointments to replace the appointees whose appointments were disapproved by the CSC-FO or CSC-RO; and any appointment in violation of this rule should be disapproved by the CSC-FO or CSC-RO. There is nothing in the CSC Memorandum Circular dated 6 December 2001 providing for the payment of the salaries of the appointees whose appointments were disapproved by the CSC-FO or the CSC-RO, while their appeals are pending before the CSC Proper.

Since petitioners' right to the payment of their salaries by the City Government of Dumaguete is still unsettled at this point, the Court cannot issue a writ of mandamus against respondents to make such payment. Mandamus applies only where the petitioner's right is founded clearly in law and not when it is doubtful.^[38] The writ will not issue to compel an official to give to the applicant anything to which he is not entitled by law.^[39] Mandamus will not issue to establish a right, but only to enforce one that is already established.^[40]

The recent case of *Bunsay v. Civil Service Commission*^[41] is not on all fours with this case. In *Bunsay*, the Court readily recognized the right of therein petitioners to be paid compensation by the government for services actually rendered by them while the disapproval of their appointments by the CSC-FO and CSC-RO was pending appeal before the CSC Proper. It must be emphasized, however, that in said case, the CSC Proper had already reversed the initial disapproval and, instead, upheld the validity of therein petitioners' appointments. The approval by the CSC Proper of therein petitioners' appointments was no longer in dispute; and since such appointments were already deemed made in accordance with law, then there was no question that therein petitioners' backwages, if they indeed continued to report to work during the pendency of their appeal before the CSC Proper,^[42] should be paid by the government.

In contrast, CSC-FO Director Abucejo's letter dated 1 August 2001 disapproving herein petitioners' appointments for being in violation of CSC Resolution No. 010988 dated 4 June 2001, was affirmed not only by the CSC-RO in a Decision dated 14 February 2002; but, more importantly, by the CSC Proper in CSC Resolutions No. 040932 and No. 050473, dated 23 August 2004 and 11 April 2005, respectively. To stress, the CSC Proper itself already

disapproved petitioners' appointments since they violated civil service law. Petitioners then challenged the aforementioned CSC Resolutions before the Court of Appeals in CA-G.R. CEB-S.P. No. 00665, but the appellate court affirmed the same in its Decision dated 28 August 2007. Petitioners' appeal of the judgment of the appellate court in CA-G.R. CEB-S.P. No. 00665 is now pending before this Court in G.R. No. 181559.

It is irrefragable that the issue of whether the City Government of Dumaguete or former Mayor Repollo is liable to pay for petitioners' salaries, during the pendency of their appeal with the CSC-RO, and then the CSC Proper, of the disapproval of their appointments by CSC-FO Director Abucejo is inextricably intertwined with the issue in G.R. No. 181559 of whether petitioners' appointments should be disapproved for having been made in violation of CSC Resolution No. 010988 dated 4 June 2001. Only if this Court finally rules in G.R. No. 181559 that petitioners' appointments did not violate any civil service law, is petitioners' right to payment of their salaries by the City Government of Dumaguete, during the given period, indisputably established.

The remedy of mandamus is available only to compel the performance of a ministerial duty.[43] The distinction between a ministerial and discretionary act is well delineated. A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.[44]

While it is true that it is the ministerial duty of the government to pay for the appointees' salaries while the latter's appeal of the disapproval of their appointments by CSC-FO and/or CSC-RO is still pending before the CSC Proper, however, this applies only when the said appointments have been disapproved on grounds which do not constitute a violation of civil service law. Such is clearly not the case in the instant Petition. The factual circumstances which would have made it the ministerial duty of the City Government of Dumaguete to pay petitioners' salaries have not yet been established. Until this Court resolves the Petition in G.R. No. 181559, reversing the disapproval of petitioners' appointments or, at the very least, declaring that the disapproval of the same was not on grounds which constitute violation of civil service law, this Court cannot rule in the instant Petition that it is the ministerial duty of the City Government of Dumaguete to pay petitioners' salaries during the pendency, before the CSC-RO, then the CSC Proper, of petitioners' appeal of the disapproval of their appointments by CSC-FO Director Abucejo. Thus, there is yet no ministerial duty compellable by a writ of mandamus.

Respondents manifested, and petitioners did not controvert, that the City Government of Dumaguete had already paid petitioners their salaries, salary adjustments, and other emoluments from June 2001, when they assumed office immediately upon their appointment; until 27 September 2001, almost two months after 1 August 2001, when their appointments were disapproved by CSC-FO Director Abucejo for being in violation of CSC Resolution No. 010988 dated 4 June 2001. Petitioners, however, still want this Court to compel by mandamus the payment, by the City Government of Dumaguete, of their salaries, salary adjustments, and other emoluments from 28 September 2001 until the Court finally resolves the issue on the validity of petitioners' appointments in G.R. No. 181559. Given that the Court already ruled herein that petitioners do not have a clear and established right to the payment of their salaries by the City Government of Dumaguete while their appeal of CSC-FO Director Abucejo's disapproval of their appointments was pending before the CSC-RO and the CSC Proper; then there is even less reason or justification for the payment by the City Government of Dumaguete of petitioners' salaries after the CSC Proper already affirmed the disapproval of petitioners' appointments.

Furthermore, Section 3, Rule 65 of the Revised Rules of Court also prescribes that a petition for mandamus can be

given due course only if there is no other plain, speedy and adequate remedy available in the course of law.[45] In this case, petitioners already availed themselves of administrative remedies by appealing CSC-FO Director Abucejo's disapproval of their appointments to the CSC-RO, and thereafter, to the CSC Proper. When even the CSC Proper disapproved their appointments, petitioners appealed to the Court of Appeals in CEB-S.P. No. 00665, and when they were again unsuccessful in the latter recourse, they appealed once more to this Court in G.R. No. 181559. After all the administrative, as well as judicial remedies which petitioners actually availed themselves of, they cannot persuade this Court that there is no other plain, speedy and adequate remedy available to them in the course of law, to justify the issuance herein of a writ of mandamus in their favor.

Similarly unfounded is petitioners' claims for moral and exemplary damages, as well as attorney's fees and costs of suit.

Moral damages are awarded if the following elements exist in the case: (1) an injury clearly sustained by the claimant; (2) a culpable act or omission factually established; (3) a wrongful act or omission by the defendant as the proximate cause of the injury sustained by the claimant; and (4) the award of damages predicated on any of the cases stated Article 2219 of the Civil Code.[46] In addition, the person claiming moral damages must prove the existence of bad faith by clear and convincing evidence for the law always presumes good faith. It is not enough that one merely suffered sleepless nights, mental anguish, and serious anxiety as the result of the actuations of the other party. Invariably such action must be shown to have been willfully done in bad faith or with ill motive.[47] Bad faith, under the law, does not simply connote bad judgment or negligence. It imports a dishonest purpose or some moral obliquity and conscious doing of a wrong, a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud.[48]

Petitioners enucleate that Mayor Perdices' act of announcing during the flag ceremony at the City Hall on 2 July 2001 that he will not honor the mass appointments made by his predecessor, former Mayor Remollo, even before CSC-FO Director Abucejo invalidated and revoked petitioners' appointments in a letter dated 1 August 2001, evidenced bad faith, especially since Mayor Perdices himself made 36 appointments at the end of his term in 1998. Mayor Perdices' subsequent appointments to fill four of the contested positions sometime in 2001 to 2006 likewise amounted to bad faith. As a result of these acts, petitioners purportedly endured economic difficulties and humiliation among their peers. These arguments are untenable.

The announcement made by Mayor Perdices on 2 July 2001 cannot be deemed the proximate cause for petitioners' financial and emotional suffering. The validity of petitioners' appointments did not depend on Mayor Perdices honoring or rejecting said appointments but on the CSC approving or disapproving of the same. CSC-FO Director Abucejo did release a letter dated 1 August 2001 invalidating and revoking petitioners' appointments on the ground that they were "mass appointments" in violation of CSC Resolution No. 010988 dated 4 June 2001. Said letter was subsequently affirmed by the CSC-RO and the CSC Proper. Therefore, the invalidation and revocation of petitioners' appointments, as well as the non-payment of their salaries, salary adjustments, and emoluments, did not result from Mayor Perdices' announcement, but from the official acts of the CSC on petitioners' appointments.

Although Mayor Perdices could have re-appointed petitioners despite the disapproval by the CSC of petitioners' appointments, he chose not to do so. Mayor Perdices' previous announcement that he will not honor petitioners' appointments already indirectly revealed his lack of intention to re-appoint petitioners. Mayor Perdices' refusal to re-appoint petitioners is merely in exercise of the former's discretion and cannot be construed as illegal or, by itself, proof of bad faith or ill-motive. While petitioners might have been embarrassed by Mayor Perdices' announcement before the other city employees on 2 July 2001, they did not adduce any evidence that said announcement was made with the specific and malicious design to humiliate petitioners, rather than the expression by Mayor Perdices of an earnest intent to right a perceived wrong committed by his predecessor. The

fact that Mayor Perdices publicly announced his course of action as regards petitioners' appointments is not conclusive of any malevolent intent on his part in doing so.

The "mass appointments" made by Mayor Perdices himself by the end of his term in 1998 are likewise insufficient proof of bad faith or ill motive on his part. CSC Resolution No. 010988 providing the guidelines on appointments by local chief executives immediately before and after elections was issued only on 4 June 2001. It cannot be applied retroactively.[49] Moreover, even assuming *arguendo* that CSC Resolution No. 010988 could be applied to the appointments made by Mayor Perdices in 1998, these appointments were not necessarily in violation of said CSC issuance. CSC Resolution No. 010988 does not totally proscribe the local chief executive from making any appointments immediately before and after elections. The same Resolution provides that the validity of an appointment issued immediately before and after elections by an outgoing local chief executive is to be determined on the basis of the nature, character, and merit of the individual appointment and the particular circumstances surrounding the same. The Court cannot simply assume that the appointments made by Mayor Perdices in 1998 and those made by Mayor Remollo in 2001 (which included those of petitioners) were identical in their natures, characters, merits, and surrounding circumstances, so that they should have been dealt with in the same manner. And even if this Court does make such an assumption, Mayor Perdices' refusal to honor the appointments made in 2001 by then outgoing Mayor Remollo, after the former made similar appointments by the end of his mayoralty term in 1998, may expose Mayor Perdices' hypocrisy, but, again, not necessarily his malice, bad faith, or ill-motive against petitioners.

Mayor Perdices' appointments, made between 2001 to 2006, to fill four out of the 52 posts to which petitioners herein were appointed by former Mayor Remollo, may indeed constitute a violation of the Revised Omnibus Rules on Appointments and Other Personnel Action and the unnumbered CSC Memorandum Circular dated 6 December 2001. Thus, petitioners could have sought from the CSC the disapproval of said appointments. However, any challenge to Mayor Perdices' appointments to fill in the contested posts, grounded on petitioners' pending appeal before the CSC Proper, had been rendered moot, given that the CSC Proper already denied petitioners' appeal and affirmed the disapproval of their appointments. Furthermore, petitioners fail to convince this Court that Mayor Perdices' appointments to four of the 52 contested posts, made from 2001 to 2006, was not only made in bad faith or with ill-motive, but that it was the proximate cause of their financial difficulties and humiliation. The number of the appointments (filling in only four out of the 52 contested posts) and the length of period in which such appointments were made (spread between 2001 to 2006, or a period of five years) are inconsistent with any supposed malicious motive on the part of Mayor Perdices to immediately replace petitioners with his own people. Additionally, as the Court previously ruled herein, the alleged financial difficulties and humiliation petitioners have suffered, for which they now claim moral damages, resulted from the disapproval by the CSC of their appointments, not from the afore-mentioned appointments made by Mayor Perdices.

For the same reasons discussed above, there is no basis to award petitioners exemplary damages. Similar to moral damages, exemplary damages may only be awarded if it has been shown that the wrongful act was accompanied by bad faith or done in a wanton, fraudulent and reckless or malevolent manner. Exemplary damages are allowed only in addition to moral damages such that no exemplary damage can be awarded unless the claimant first establishes his clear right to moral damages. As the moral damages are improper in the present case, so is the award of exemplary damages.[50]

Finally, petitioners have failed to state the ground on which they base their claim for attorney's fees and legal costs, much less submitted evidence in support thereof. Article 2208 of the Civil Code[51] identifies specific circumstances when attorney's fees and expenses of litigation may be recovered. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal and equitable justification. Its basis

cannot be left to speculation or conjecture.[52] Given the dearth of petitioners' allegations, arguments, and most importantly, evidence, on the matter, the Court does not find any basis to award petitioners attorney's fees and legal costs.

Considering the foregoing procedural and substantive reasons for dismissing/denying the instant Petition, the Court is addressing the third issue on forum shopping succinctly.

For forum-shopping to exist, both actions should involve a common transaction with essentially the same facts and circumstances and raise identical causes of action, subject matter and issues. Although much of the factual antecedents of the Petition herein and that in G.R. No. 168484 are the same, closer study would disclose that they involve different subject matters and issues.

It must be borne in mind that petitioners filed with the RTC their Petition for Mandamus with Injunction and Damages, docketed as Civil Case No. 13013, on 1 August 2001, to challenge respondents' refusal to recognize petitioners' appointments and to pay petitioners' salaries, salary adjustments, and other emoluments. It is the judgment of the RTC therein, dismissing petitioners' Petition insofar as it concerns their applications for the issuance of a writ of mandamus and for the award of damages, which is assailed in the Petition at bar.

G.R. No. 181559, meanwhile, involves petitioners' appeal of the invalidation and revocation of their appointments by CSC-FO Director Abucejo in his letter dated 1 August 2001, affirmed by the CSC-RO, CSC Proper, and the Court of Appeals. Since CSC-FO Director Abucejo ruled on the validity of petitioners' appointments only in his letter dated 1 August 2001, and petitioners had yet to receive notice of said letter, it could not be expected that the same was already included in and made the subject of Civil Case No. 13013, which petitioners instituted also on 1 August 2001. Even though Mayor Perdices later invoked CSC-FO Director Abucejo's letter dated 1 August 2001 in seeking the dismissal of Civil Case No. 13013, it cannot be denied that said letter was drafted and issued only subsequent to Mayor Perdices' announcement on 2 July 2001 that he would not honor petitioners' appointments.

True, that the present Petition and the one in G.R. No. 181559 are interrelated, but they are not necessarily the same for this Court to adjudge that the filing of both by petitioners constitutes forum shopping. In G.R. No. 181559, the Court will resolve whether or not the petitioners' appointments are valid. On the present petitions, petitioners are claiming a right to the salaries, salary adjustments and other emoluments during the pendency of the administrative cases, regardless of how the CSC decided the validity of their appointments. It is only herein that the court has been able to settle that petitioners' right to salaries, salary adjustments and other emoluments require a finding in G.R. No. 181559 that (1) petitioners' appointments are valid or that (2) if the appointments are invalid, the reasons for the invalidity is not for a violation of civil service laws. The Court emphasizes that the Court herein only ruled that, at present, there is still no clear right for it to compel the respondents, by writ of mandamus, to pay petitioners' salaries, salary adjustments, and emoluments until the resolution of G.R. No. 181559. In fact, the RTC dismissed the Petition in Civil Case No. 13013 without prejudice to further hearings on the payment of petitioners' salaries, salary adjustments, and emoluments, if warranted by subsequent events.

IN VIEW OF THE FOREGOING, the instant Petition is DENIED and the Decision dated 27 March 2007 and Order dated 26 April 2007 of Branch 41 of the Regional Trial Court of Dumaguete City, Negros Oriental, in Civil Case No. 13013 are AFFIRMED. No costs.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta, and Bersamin, JJ., concur.
Carpio Morales, J., on official leave.

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- [1] Penned by Judge Araceli S. Alafritz; rollo, pp. 51-61.
- [2] Id. at 10-11.
- [3] Id. at 11.
- [4] Id. at 13 and 207-208.
- [5] Id. at 141-142.
- [6] Id. at 142.
- [7] Id. at 135.
- [8] Id. at 134-149.
- [9] Id. at 35.
- [10] Id. at 11.
- [11] Id. at 63-64.
- [12] Id.
- [13] Id.
- [14] Id. at 13-14
- [15] Id.
- [16] Id. at 76-82.
- [17] Id. at 112-126; *Nazareno v. City of Dumaguete*, G.R. No. 168484, 12 July 2007, 527 SCRA 508.
- [18] Rollo, p. 14.
- [19] Id. at 68-73.
- [20] Id. at 16.
- [21] Id. at 16-17.
- [22] Id. at 16.
- [23] Id. at 17.
- [24] Id. at 18. After making such statement, the RTC failed to discuss whether or not petitioners failed to prove these attendant circumstances and instead proceeded to discuss a different matter.
- [25] Id. at 17-19.
- [26] Id. at 62.
- [27] Id. at 188.
- [28] *Bacelonia v. Court of Appeals*, 445 Phil. 300, 307 (2003).
- [29] G.R. No. 143331, 5 October 2007, 535 SCRA 28, 41-43.

- [30] *Central Bank of the Philippines v. Court of Appeals*, 193 Phil. 338, 352 (1981).
- [31] *Metropolitan Manila Development Authority v. Jancom Environmental Corporation*, 452 Phil. 961, 974-975 (2002); *Añonuevo, Jr. v. Court of Appeals*, 458 Phil. 532, 540 (2003).
- [32] Section 3, Rule 65 of the Rules of Court; *Professional Regulation Commission v. De Guzman*, G.R. No. 144681, 21 June 2004, 432 SCRA 505, 518-519.
- [33] Section 2, Rule VI of the Revised Omnibus Rules on Appointments and Other Personnel Actions.
- [34] *Abella, Jr. v. Civil Service Commission*, G.R. No. 152574, 17 November 2004, 442 SCRA 507, 518.
- [35] *Bunsay v. Civil Service Commission*, G.R. No. 153188, 14 August 2007, 530 SCRA 68, 77-78.
- [36] The term "mass appointments" refers to those issued in bulk or in large number after the elections by an outgoing local chief executive and there is no apparent need for their immediate issuance.
- [37] See *Jardeleza v. People*, G.R. No. 165265, 6 February 2006, 481 SCRA 638, 661.
- [38] *Garces v. Court of Appeals*, 328 Phil. 403, 409 (1996).
- [39] *Lamb v. Phipps*, 22 Phil. 456, 488 (1912).
- [40] *Lim Tay v. Court of Appeals*, 355 Phil. 381, 397-398 (1998).
- [41] *Supra* note 35.
- [42] The Court, in *Bunsay*, ultimately remanded the case to the Court of Appeals for further proceedings with due regard to the rules on payment of backwages as defined in the text of said Decision, and to the factual questions noted by the Court therein.
- [43] *Torregozo v. Civil Service Commission*, G.R. No. 101526, 3 July 1992, 211 SCRA 230, 234.
- [44] *Codilla, Sr. v. Hon. De Venecia*, 442 Phil. 139, 189 (2002).
- [45] *Lamb v. Phipps*, *supra* note 39 at 490.
- [46] Articles 2217 and 2219 of the Civil Code provide that:
- Art. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act or omission.
- Art. 2219. Moral damages may be recovered in the following analogous cases:
- (1) A criminal offense resulting in physical injuries;
 - (2) Quasi-delicts causing physical injuries;
 - (3) Seduction, abduction, rape, or other lascivious act;
 - (4) Adultery or concubinage;
 - (5) Illegal or arbitrary detention or arrest;
 - (6) Illegal search;

(7) Libel, slander or any other form of defamation;

(8) Malicious prosecution;

(9) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

[47] *Capili v. Cardaña*, G.R. No. 157906, 2 November 2006, 506 SCRA 569, 578; *Ace Haulers Corporation v. Court of Appeals*, 393 Phil. 220, 230 (2000).

[48] *Bank of the Philippine Islands v. Casa Montessori Internationale*, G.R. Nos. 149454 and 149507, 28 May 2004, 430 SCRA 261, 294.

[49] *Quirog v. Aumentado*, G.R. No. 163443, 11 November 2008.

[50] *Trinidad v. Acapulco*, G.R. No. 147477, 27 June 2006, 493 SCRA 179, 194; *Bank of the Philippine Islands v. Casa Montessori Internationale*, supra note 48 at 295-296.

[51] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[52] *Pimentel v. Court of Appeals*, 366 Phil. 494, 503 (1999).

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