

**UNITED CLAIMANTS ASSOCIATION OF NEA (UNICAN), REPRESENTED
BY ITS REPRESENTATIVE BIENVENIDO R. LEAL, IN HIS OFFICIAL
CAPACITY AS ITS PRESIDENT AND IN HIS OWN INDIVIDUAL
CAPACITY,...**

G.R. No. 187107. January 31, 2012

Ponente: VELASCO JR., J.

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VELASCO JR., J.:

The Case

This is an original action for Injunction to restrain and/or prevent the implementation of Resolution Nos. 46 and 59, dated July 10, 2003 and September 3, 2003, respectively, otherwise known as the National Electrification Administration (NEA) Termination Pay Plan, issued by respondent NEA Board of Administrators (NEA Board).

The Facts

Petitioners are former employees of NEA who were terminated from their employment with the implementation of the assailed resolutions.

Respondent NEA is a government-owned and/or controlled corporation created in accordance with Presidential Decree No. (PD) 269 issued on August 6, 1973. Under PD 269, Section 5(a)(5), the NEA Board is empowered to organize or reorganize NEA's staffing structure, as follows:

Section 5. National Electrification Administration; Board of Administrators; Administrator.

(a) For the purpose of administering the provisions of this Decree, there is hereby established a public corporation to be known as the National Electrification Administration. All of the powers of the corporation shall be vested in and exercised by a Board of Administrators, which shall be composed of a Chairman and four (4) members, one of whom shall be the Administrator as ex-officio member. The Chairman and the three other members shall be appointed by the President of the Philippines to serve for a term of six years. x x x

x x x x

The Board shall, without limiting the generality of the foregoing, have the following specific powers and duties.

1. To implement the provisions and purposes of this Decree;

x x x x

5. To establish policies and guidelines for employment on the basis of merit, technical competence and moral character, and, upon the recommendation of the Administrator to organize or reorganize NEA's staffing structure, to fix the salaries of personnel and to define their powers and duties. (Emphasis supplied.)

Thereafter, in order to enhance and accelerate the electrification of the whole country, including the privatization

of the National Power Corporation, Republic Act No. (RA) 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA Law), was enacted, taking effect on June 26, 2001. The law imposed upon NEA additional mandates in relation to the promotion of the role of rural electric cooperatives to achieve national electrification. Correlatively, Sec. 3 of the law provides:

Section 3. Scope. - This Act shall provide a framework for the restructuring of the electric power industry, including the privatization of the assets of NPC, the transition to the desired competitive structure, and the definition of the responsibilities of the various government agencies and private entities. (Emphasis supplied.)

Sec. 77 of RA 9136 also provides:

Section 77. Implementing Rules and Regulations. - The DOE shall, in consultation with the electric power industry participants and end-users, promulgate the Implementing Rules and Regulations (IRR) of this Act within six (6) months from the effectivity of this Act, subject to the approval by the Power Commission.

Thus, the Rules and Regulations to implement RA 9136 were issued on February 27, 2002. Under Sec. 3(b)(ii), Rule 33 of the Rules and Regulations, all the NEA employees and officers are considered terminated and the 965 plantilla positions of NEA vacant, to wit:

Section 3. Separation and Other Benefits.

(a) x x x

(b) The following shall govern the application of Section 3(a) of this Rule:

x x x x

(ii) With respect to NEA officials and employees, they shall be considered legally terminated and shall be entitled to the benefits or separation pay provided in Section 3(a) herein when a restructuring of NEA is implemented pursuant to a law enacted by Congress or pursuant to Section 5(a)(5) of Presidential Decree No. 269. (Emphasis supplied.)

Meanwhile, on August 28, 2002, former President Gloria Macapagal- Arroyo issued Executive Order No. 119 directing the NEA Board to submit a reorganization plan. Thus, the NEA Board issued the assailed resolutions.

On September 17, 2003, the Department of Budget and Management approved the NEA Termination Pay Plan.

Thereafter, the NEA implemented an early retirement program denominated as the "Early Leavers Program," giving incentives to those who availed of it and left NEA before the effectivity of the reorganization plan. The other employees of NEA were terminated effective December 31, 2003.

Hence, We have this petition.

The Issues

Petitioners raise the following issues:

- The NEA Board has no power to terminate all the NEA employees;
- Executive Order No. 119 did not grant the NEA Board the power to terminate all NEA employees; and
- Resolution Nos. 46 and 59 were carried out in bad faith.

On the other hand, respondents argue in their Comment dated August 20, 2009 that:

1. The Court has no jurisdiction over the petition;

2. Injunction is improper in this case given that the assailed resolutions of the NEA Board have long been implemented; and

3. The assailed NEA Board resolutions were issued in good faith.

The Court's Ruling

This petition must be dismissed.

The procedural issues raised by respondents shall first be discussed.

This Court Has Jurisdiction over the Case

Respondents essentially argue that petitioners violated the principle of hierarchy of courts, pursuant to which the instant petition should have been filed with the Regional Trial Court first rather than with this Court directly.

We explained the principle of hierarchy of courts in *Mendoza v. Villas*,^[1] stating:

In *Chamber of Real Estate and Builders Associations, Inc. (CREBA) v. Secretary of Agrarian Reform*, a petition for certiorari filed under Rule 65 was dismissed for having been filed directly with the Court, violating the principle of hierarchy of courts, to wit:

Primarily, although this Court, the Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue writs of certiorari, prohibition, mandamus, quo warranto, habeas corpus and injunction, such concurrence does not give the petitioner unrestricted freedom of choice of court forum. In *Heirs of Bertuldo Hinog v. Melicor*, citing *People v. Cuasmas*, this Court made the following pronouncements:

This Court's original jurisdiction to issue writs of certiorari is not exclusive. It is shared by this Court with Regional Trial Courts and with the Court of Appeals. This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. There is after all a hierarchy of courts. That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is [an] established policy. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket. (Emphasis supplied.)

Evidently, the instant petition should have been filed with the RTC. However, as an exception to this general rule, the principle of hierarchy of courts may be set aside for special and important reasons. Such reason exists in the instant case involving as it does the employment of the entire plantilla of NEA, more than 700 employees all told, who were effectively dismissed from employment in one swift stroke. This to the mind of the Court entails its attention.

Moreover, the Court has made a similar ruling in *National Power Corporation Drivers and Mechanics Association (NPC-DAMA) v. National Power Corporation (NPC)*.^[2] In that case, the NPC-DAMA also filed a petition for injunction directly with this Court assailing NPC Board Resolution Nos. 2002-124 and 2002-125, both dated November 18, 2002, directing the termination of all employees of the NPC on January 31, 2003. Despite such apparent disregard of the principle of hierarchy of courts, the petition was given due course. We perceive no compelling reason to treat the instant case differently.

The Remedy of Injunction Is still Available

Respondents allege that the remedy of injunction is no longer available to petitioners inasmuch as the assailed NEA Board resolutions have long been implemented.

Taking respondents' above posture as an argument on the untenability of the petition on the ground of mootness, petitioners contend that the principle of mootness is subject to exceptions, such as when the case is of transcendental importance.

In *Funa v. Executive Secretary*,^[3] the Court passed upon the seeming moot issue of the appointment of Maria Elena H. Bautista (Bautista) as Officer-in-Charge (OIC) of the Maritime Industry Authority (MARINA) while concurrently serving as Undersecretary of the Department of Transportation and Communications. There, even though Bautista later on was appointed as Administrator of MARINA, the Court ruled that the case was an exception to the principle of mootness and that the remedy of injunction was still available, explaining thus:

A moot and academic case is one that ceases to present a justiciable controversy by virtue of supervening events, so that a declaration thereon would be of no practical use or value. Generally, courts decline jurisdiction over such case or dismiss it on ground of mootness. However, as we held in *Public Interest Center, Inc. v. Elma*, supervening events, whether intended or accidental, cannot prevent the Court from rendering a decision if there is a grave violation of the Constitution. Even in cases where supervening events had made the cases moot, this Court did not hesitate to resolve the legal or constitutional issues raised to formulate controlling principles to guide the bench, bar, and public.

As a rule, the writ of prohibition will not lie to enjoin acts already done. However, as an exception to the rule on mootness, courts will decide a question otherwise moot if it is capable of repetition yet evading review. (Emphasis supplied.)

Similarly, in the instant case, while the assailed resolutions of the NEA Board may have long been implemented, such acts of the NEA Board may well be repeated by other government agencies in the reorganization of their offices. Petitioners have not lost their remedy of injunction.

The Power to Reorganize Includes the Power to Terminate

The meat of the controversy in the instant case is the issue of whether the NEA Board had the power to pass Resolution Nos. 46 and 59 terminating all of its employees.

This must be answered in the affirmative.

Under Rule 33, Section 3(b)(ii) of the Implementing Rules and Regulations of the EPIRA Law, all NEA employees shall be considered legally terminated with the implementation of a reorganization program pursuant to a law enacted by Congress or pursuant to Sec. 5(a)(5) of PD 269 through which the reorganization was carried out, viz:

Section 5. National Electrification Administration; Board of Administrators; Administrator.

(a) For the purpose of administering the provisions of this Decree, there is hereby established a public corporation to be known as the National Electrification Administration. x x x

x x x x

The Board shall, without limiting the generality of the foregoing, have the following specific powers and duties.

x x x x

5. To establish policies and guidelines for employment on the basis of merit, technical competence and moral

character, and, upon the recommendation of the Administrator to organize or reorganize NEA's staffing structure, to fix the salaries of personnel and to define their powers and duties. (Emphasis supplied.)

Thus, petitioners argue that the power granted unto the NEA Board to organize or reorganize does not include the power to terminate employees but only to reduce NEA's manpower complement.

Such contention is erroneous.

In *Betoy v. The Board of Directors, National Power Corporation*,^[4] the Court upheld the dismissal of all the employees of the NPC pursuant to the EPIRA Law. In ruling that the power of reorganization includes the power of removal, the Court explained:

[R]eorganization involves the reduction of personnel, consolidation of offices, or abolition thereof by reason of economy or redundancy of functions. It could result in the loss of one's position through removal or abolition of an office. However, for a reorganization for the purpose of economy or to make the bureaucracy more efficient to be valid, it must pass the test of good faith; otherwise, it is void ab initio. (Emphasis supplied.)

Evidently, the termination of all the employees of NEA was within the NEA Board's powers and may not successfully be impugned absent proof of bad faith.

Petitioners Failed to Prove that the NEA Board Acted in Bad Faith

Next, petitioners challenge the reorganization claiming bad faith on the part of the NEA Board.

Congress itself laid down the indicators of bad faith in the reorganization of government offices in Sec. 2 of RA 6656, an Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization, to wit:

Section 2. No officer or employee in the career service shall be removed except for a valid cause and after due notice and hearing. A valid cause for removal exists when, pursuant to a bona fide reorganization, a position has been abolished or rendered redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service, or other lawful causes allowed by the Civil Service Law. The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party:

- (a) Where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned;
- (b) Where an office is abolished and other performing substantially the same functions is created;
- (c) Where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit;
- (d) Where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same function as the original offices;
- (e) Where the removal violates the order of separation provided in Section 3 hereof. (Emphasis supplied.)

It must be noted that the burden of proving bad faith rests on the one alleging it. As the Court ruled in *Culili v. Eastern Telecommunications, Inc.*,^[5] "According to jurisprudence, 'basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same.' " Moreover, in *Spouses Palada v. Solidbank Corporation*,^[6] the Court stated, "Allegations of bad faith and fraud must be proved by clear and convincing evidence."

Here, petitioners have failed to discharge such burden of proof.

In alleging bad faith, petitioners cite RA 6656, particularly its Sec. 2, subparagraphs (b) and (c). Petitioners have the burden to show that: (1) the abolished offices were replaced by substantially the same units performing the same functions; and (2) incumbents are replaced by less qualified personnel.

Petitioners failed to prove such facts. Mere allegations without hard evidence cannot be considered as clear and convincing proof.

Next, petitioners state that the NEA Board should not have abolished all the offices of NEA and instead made a selective termination of its employees while retaining the other employees.

Petitioners argue that for the reorganization to be valid, it is necessary to only abolish the offices or terminate the employees that would not be retained and the retention of the employees that were tasked to carry out the continuing mandate of NEA. Petitioners argue in their Memorandum dated July 27, 2010:

A valid reorganization, pursued in good faith, would have resulted to: (1) the abolition of old positions in the NEA's table of organization that pertain to the granting of franchises and rate fixing functions as these were all abolished by Congress (2) the creation of new positions that pertain to the additional mandates of the EPIRA Law and (3) maintaining the old positions that were not affected by the EPIRA Law.

The Court already had the occasion to pass upon the validity of the similar reorganization in the NPC. In the aforecited case of *Betoy*,^[7] the Court upheld the policy of the Executive to terminate all the employees of the office before rehiring those necessary for its operation. We ruled in *Betoy* that such policy is not tainted with bad faith:

It is undisputed that NPC was in financial distress and the solution found by Congress was to pursue a policy towards its privatization. The privatization of NPC necessarily demanded the restructuring of its operations. To carry out the purpose, there was a need to terminate employees and re-hire some depending on the manpower requirements of the privatized companies. The privatization and restructuring of the NPC was, therefore, done in good faith as its primary purpose was for economy and to make the bureaucracy more efficient. (Emphasis supplied.)

Evidently, the fact that the NEA Board resorted to terminating all the incumbent employees of NPC and, later on, rehiring some of them, cannot, on that ground alone, vitiate the bona fides of the reorganization.

WHEREFORE, the instant petition is hereby DISMISSED. Resolution Nos. 46 and 59, dated July 10, 2003 and September 3, 2003, respectively, issued by the NEA Board of Directors are hereby UPHOLD.

No costs.

SO ORDERED.

Corona, C.J., Carpio, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, Reyes, and Perlas-Bernabe, JJ., concur.

Abad, and Sereno, JJ., on leave.

Mendoza, J., no part.

[1] G.R. No. 187256, February 23, 2011.

[2] G.R. No. 156208, September 26, 2006, 503 SCRA 138.

[3] G.R. No. 184740, February 11, 2010, 612 SCRA 308, 319; citations omitted.

[4] G.R. Nos. 156556-57, October 4, 2011.

[5] G.R. No. 165381, February 9, 2011, 642 SCRA 338, 361.

[6] G.R. No. 172227, June 29, 2011.

[7] Supra note 4.

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