

MARK JEROME S. MAGLALANG, PETITIONER, VS. PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), AS REPRESENTED BY ITS INCUMBENT CHAIRMAN EFRAIM GENUINO, RESPONDENT.

G.R. No. 190566. December 11, 2013

Ponente: VILLARAMA, JR., J.

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VILLARAMA, JR., J.:

Before this Court is a petition^[1] for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeking the reversal of the Resolution^[2] dated September 30, 2009 issued by the Court of Appeals (CA) in CA-G.R. SP No. 110048, which outrightly dismissed the petition for certiorari filed by herein petitioner Mark Jerome S. Maglalang (petitioner). Also assailed is the appellate court's Resolution^[3] dated November 26, 2009 which denied petitioner's motion for reconsideration.

The facts follow.

Petitioner was a teller at the Casino Filipino, Angeles City Branch, Angeles City, which was operated by respondent Philippine Amusement and Gaming Corporation (PAGCOR), a government-owned or controlled corporation existing by virtue of Presidential Decree (P.D.) No. 1869.^[4]

Petitioner alleged that in the afternoon of December 13, 2008, while he was performing his functions as teller, a lady customer identified later as one Cecilia Nakasato^[5] (Cecilia) approached him in his booth and handed to him an undetermined amount of cash consisting of mixed P1,000.00 and P500.00 bills. There were 45 P1,000.00 and ten P500.00 bills for the total amount of P50,000.00. Following casino procedure, petitioner laid the bills on the spreading board. However, he erroneously spread the bills into only four clusters instead of five clusters worth P10,000.00 per cluster. He then placed markers for P10,000.00 each cluster of cash and declared the total amount of P40,000.00 to Cecilia. Perplexed, Cecilia asked petitioner why the latter only dished out P40,000.00. She then pointed to the first cluster of bills and requested petitioner to check the first cluster which she observed to be thicker than the others. Petitioner performed a recount and found that the said cluster contained 20 pieces of P1,000.00 bills. Petitioner apologized to Cecilia and rectified the error by declaring the full and correct amount handed to him by the latter. Petitioner, however, averred that Cecilia accused him of trying to shortchange her and that petitioner tried to deliberately fool her of her money. Petitioner tried to explain, but Cecilia allegedly continued to berate and curse him. To ease the tension, petitioner was asked to take a break. After ten minutes, petitioner returned to his booth. However, Cecilia allegedly showed up and continued to berate petitioner. As a result, the two of them were invited to the casino's Internal Security Office in order to air their respective sides. Thereafter, petitioner was required to file an Incident Report which he submitted on the same day of the incident.^[6]

On January 8, 2009, petitioner received a Memorandum^[7] issued by the casino's Branch Manager, Alexander Ozaeta, informing him that he was being charged with Discourtesy towards a casino customer and directing him

to explain within 72 hours upon receipt of the memorandum why he should not be sanctioned or dismissed. Incompliance therewith, petitioner submitted a letter-explanation[8] dated January 10, 2009.

On March 31, 2009, petitioner received another Memorandum[9] dated March 19, 2009, stating that the Board of Directors of PAGCOR found him guilty of Discourtesy towards a casino customer and imposed on him a 30-day suspension for this first offense. Aggrieved, on April 2, 2009, petitioner filed a Motion for Reconsideration[10] seeking a reversal of the board's decision and further prayed in the alternative that if he is indeed found guilty as charged, the penalty be only a reprimand as it is the appropriate penalty. During the pendency of said motion, petitioner also filed a Motion for Production[11] dated April 20, 2009, praying that he be furnished with copies of documents relative to the case including the recommendation of the investigating committee and the Decision/Resolution of the Board supposedly containing the latter's factual findings. In a letter-reply[12] dated June 2, 2009, one Atty. Carlos R. Bautista, Jr. who did not indicate his authority therein to represent PAGCOR, denied the said motion. Petitioner received said letter-reply on June 17, 2009.

Subsequently, on June 18, 2009, PAGCOR issued a Memorandum[13] dated June 18, 2009 practically reiterating the contents of its March 19, 2009 Memorandum. Attached therewith is another Memorandum[14] dated June 8, 2009 issued by PAGCOR's Assistant Vice President for Human Resource and Development, Atty. Lizette F. Mortel, informing petitioner that the Board of Directors in its meeting on May 13, 2009 resolved to deny his appeal for reconsideration for lack of merit. Petitioner received said memoranda on the same date of June 18, 2009.

On August 17, 2009, petitioner filed a petition[15] for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, before the CA, averring that there is no evidence, much less factual and legal basis to support the finding of guilt against him. Moreover, petitioner ascribed grave abuse of discretion amounting to lack or excess of jurisdiction to the acts of PAGCOR in adjudging him guilty of the charge, in failing to observe the proper procedure in the rendition of its decision and in imposing the harsh penalty of a 30-day suspension. Justifying his recourse to the CA, petitioner explained that he did not appeal to the Civil Service Commission (CSC) because the penalty imposed on him was only a 30-day suspension which is not within the CSC's appellate jurisdiction. He also claimed that discourtesy in the performance of official duties is classified as a light offense which is punishable only by reprimand.

In its assailed Resolution[16] dated September 30, 2009, the CA outrightly dismissed the petition for certiorari for being premature as petitioner failed to exhaust administrative remedies before seeking recourse from the CA. Invoking Section 2(1), Article IX-B of the 1987 Constitution,[17] the CA held that the CSC has jurisdiction over issues involving the employer-employee relationship in all branches, subdivisions, instrumentalities and agencies of the Government, including government-owned or controlled corporations with original charters such as PAGCOR. Petitioner filed his Motion for Reconsideration[18] which the CA denied in the assailed Resolution[19] dated November 26, 2009. In denying the said motion, the CA relied on this Court's ruling in *Duty Free Philippines v. Mojica*[20] citing *Philippine Amusement and Gaming Corp. v. CA*,[21] where this Court held as follows:

It is now settled that, conformably to Article IX-B, Section 2(1), [of the 1987 Constitution] government-owned or controlled corporations shall be considered part of the Civil Service only if they have original charters, as distinguished from those created under general law.

PAGCOR belongs to the Civil Service because it was created directly by PD 1869 on July 11, 1983. Consequently, controversies concerning the relations of the employee with the management of PAGCOR should come under the jurisdiction of the Merit System Protection Board and the Civil Service Commission, conformably to the Administrative Code of 1987.

Section 16(2) of the said Code vest[s] in the Merit System Protection Board the power inter alia to:

a) Hear and decide on appeal administrative cases involving officials and employees of the Civil Service. Its decision shall be final except those involving dismissal or separation from the service which may be appealed to the Commission.

Hence, this petition where petitioner argues that the CA committed grave and substantial error of judgment

- IN OUTRIGHTLY DISMISSING THE PETITION FOR CERTIORARI FILED BY PETITIONER AND IN DENYING THE LATTER'S MOTION FOR RECONSIDERATION[;]
- IN RULING THAT THE CIVIL SERVICE COMMISSION HAS APPELLATE JURISDICTION OVER THE SUSPENSION OF THE PETITIONER DESPITE THE FACT THAT THE PENALTY INVOLVED IS NOT MORE THAN THIRTY (30) DAYS[;]
- IN RESOLVING THE PETITION FOR CERTIORARI FILED BY PETITIONER IN A MANNER WHICH IS UTTERLY CONTRARY TO LAW AND JURISPRUDENCE[;]
- IN UNJUSTIFIABLY REFUSING TO RENDER A DECISION AS TO THE PROPRIETY OR VALIDITY OF THE SUSPENSION OF THE PETITIONER BY THE RESPONDENT[;]
- IN UNDULY REFUSING TO RENDER A DECISION DECLARING THAT THE ASSAILED DECISIONS/RESOLUTIONS OF THE RESPONDENT ARE NOT SUPPORTED BY THE EVIDENCE ON RECORD[; AND]
- IN UNJUSTIFIABLY REFUSING TO RENDER A DECISION DECLARING THAT THE ASSAILED DECISIONS/RESOLUTIONS OF RESPONDENT WERE ISSUED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION.[22]

Petitioner claims that the CA clearly overlooked the applicable laws and jurisprudence that provide that when the penalty involved in an administrative case is suspension for not more than 30 days, the CSC has no appellate jurisdiction over the said administrative case. As authority, petitioner invokes our ruling in *Geronga v. Hon. Varela*[23] which cited Section 47,[24] Chapter 1, Subtitle A, Title I, Book V of Executive Order (E.O.) No. 292 otherwise known as The Administrative Code of 1987. Said Section 47 provides that the CSC may entertain appeals only, among others, from a penalty of suspension of more than 30 days. Petitioner asserts that his case, involving a 30-day suspension penalty, is not appealable to the CSC. Thus, he submits that his case was properly brought before the CA via a petition for certiorari.[25]

On the other hand, PAGCOR alleges that petitioner intentionally omitted relevant matters in his statement of facts. PAGCOR essentially claims that petitioner refused to apologize to Cecilia; that he treated Cecilia's complaint with arrogance; and that before taking the aforementioned 10-minute break, petitioner slammed the cash to the counter window in giving it back to the customer. PAGCOR argues that the instant petition raises questions of fact which are not reviewable in a petition for review on certiorari. PAGCOR maintains that the CA's ruling was in accordance with law and jurisprudence. Moreover, PAGCOR counters that petitioner's remedy of appeal is limited as Section 37 of the Revised Uniform Rules on Administrative Cases in the Civil Service provides that a decision rendered by heads of agencies whereby a penalty of suspension for not more than 30 days is imposed shall be final and executory. PAGCOR opines that such intent of limiting appeals over such minor offenses is elucidated in the Concurring Opinion of former Chief Justice Reynato S. Puno in *CSC v. Dacoycoy*[26] and based on the basic premise that appeal is merely a statutory privilege. Lastly, PAGCOR submits that the 30-day suspension meted on petitioner is justified under its own Code of Discipline.[27]

Prescinding from the foregoing, the sole question for resolution is: Was the CA correct in outrightly dismissing

the petition for certiorari filed before it on the ground of non-exhaustion of administrative remedies?

We resolve the question in the negative.

Our ruling in *Public Hearing Committee of the Laguna Lake Development Authority v. SM Prime Holdings, Inc.*[28] on the doctrine of exhaustion of administrative remedies is instructive, to wit:

Under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her. Hence, if resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case.

However, the doctrine of exhaustion of administrative remedies is not absolute as it admits of the following exceptions:

(1) when there is a violation of due process; (2) when the issue involved is purely a legal question; (3) when the administrative action is patently illegal amounting to lack or excess of jurisdiction; (4) when there is estoppel on the part of the administrative agency concerned; (5) when there is irreparable injury; (6) when the respondent is a department secretary whose acts as an alter ego of the President bears the implied and assumed approval of the latter; (7) when to require exhaustion of administrative remedies would be unreasonable; (8) when it would amount to a nullification of a claim; (9) when the subject matter is a private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy, and (11) when there are circumstances indicating the urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant; (12) where no administrative review is provided by law; (13) where the rule of qualified political agency applies and (14) where the issue of non-exhaustion of administrative remedies has been rendered moot.[29]

The case before us falls squarely under exception number 12 since the law per se provides no administrative review for administrative cases whereby an employee like petitioner is covered by Civil Service law, rules and regulations and penalized with a suspension for not more than 30 days.

Section 37 (a) and (b) of P.D. No. 807, otherwise known as the Civil Service Decree of the Philippines, provides for the unavailability of any appeal:

Section 37. Disciplinary Jurisdiction.

(a) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from Office. A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may deputize any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.

(b) The heads of departments, agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees

under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the department head. (Emphasis supplied.)

Similar provisions are reiterated in the aforementioned Section 47[30] of E.O. No. 292 essentially providing that cases of this sort are not appealable to the CSC.

Correlatively, we are not unaware of the Concurring Opinion of then Chief Justice Puno in *CSC v. Dacoycoy*,[31] where he opined, to wit:

In truth, the doctrine barring appeal is not categorically sanctioned by the Civil Service Law. For what the law declares as "final" are decisions of heads of agencies involving suspension for not more than thirty (30) days or fine in an amount not exceeding thirty (30) days salary. But there is a clear policy reason for declaring these decisions final. These decisions involve minor offenses. They are numerous for they are the usual offenses committed by government officials and employees. To allow their multiple level appeal will doubtless overburden the quasi-judicial machinery of our administrative system and defeat the expectation of fast and efficient action from these administrative agencies. Nepotism, however, is not a petty offense. Its deleterious effect on government cannot be over-emphasized. And it is a stubborn evil. The objective should be to eliminate nepotism, hence, erroneous decisions allowing nepotism cannot be given immunity from review, especially judicial review. It is thus non sequitur to contend that since some decisions exonerating public officials from minor offenses can not be appealed, ergo, even a decision acquitting a government official from a major offense like nepotism cannot also be appealed.

Nevertheless, decisions of administrative agencies which are declared final and unappealable by law are still subject to judicial review. In *Republic of the Phils. v. Francisco*,[32] we held:

Since the decision of the Ombudsman suspending respondents for one (1) month is final and unappealable, it follows that the CA had no appellate jurisdiction to review, rectify or reverse the same. The Ombudsman was not estopped from asserting in this Court that the CA had no appellate jurisdiction to review and reverse the decision of the Ombudsman via petition for review under Rule 43 of the Rules of Court. This is not to say that decisions of the Ombudsman cannot be questioned. Decisions of administrative or quasi-administrative agencies which are declared by law final and unappealable are subject to judicial review if they fail the test of arbitrariness, or upon proof of gross abuse of discretion, fraud or error of law. When such administrative or quasi-judicial bodies grossly misappreciate evidence of such nature as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings. Thus, the decision of the Ombudsman may be reviewed, modified or reversed via petition for certiorari under Rule 65 of the Rules of Court, on a finding that it had no jurisdiction over the complaint, or of grave abuse of discretion amounting to excess or lack of jurisdiction.

It bears stressing that the judicial recourse petitioner availed of in this case before the CA is a special civil action for certiorari scribing grave abuse of discretion, amounting to lack or excess of jurisdiction on the part of PAGCOR, not an appeal. Suffice it to state that an appeal and a special civil action such as certiorari under Rule 65 are entirely distinct and separate from each other. One cannot file petition for certiorari under Rule 65 of the Rules where appeal is available, even if the ground availed of is grave abuse of discretion. A special civil action for certiorari under Rule 65 lies only when there is no appeal, or plain, speedy and adequate remedy in the ordinary course of law. Certiorari cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, as the same should not be a substitute for the lost remedy of appeal. The remedies of appeal and certiorari are mutually exclusive and not alternative or successive.[33]

In sum, there being no appeal or any plain, speedy, and adequate remedy in the ordinary course of law in view of petitioner's allegation that PAGCOR has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, the CA's outright dismissal of the petition for certiorari on the basis of non-exhaustion of administrative remedies is bereft of any legal standing and should therefore be set aside.

Finally, as a rule, a petition for certiorari under Rule 65 is valid only when the question involved is an error of jurisdiction, or when there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the court or tribunals exercising quasi-judicial functions. Hence, courts exercising certiorari jurisdiction should refrain from reviewing factual assessments of the respondent court or agency. Occasionally, however, they are constrained to wade into factual matters when the evidence on record does not support those factual findings; or when too much is concluded, inferred or deduced from the bare or incomplete facts appearing on record.[34] Considering the circumstances and since this Court is not a trier of facts,[35] remand of this case to the CA for its judicious resolution is in order.

WHEREFORE, the petition is PARTLY GRANTED. The Resolutions dated September 30, 2009 and November 26, 2009 of the Court of Appeals in CA-G.R. SP No. 110048 are hereby REVERSED and SET ASIDE. The instant case is REMANDED to the Court of Appeals for further proceedings.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Reyes, JJ., concur.

[1] Rollo, pp. 9-34.

[2] Id. at 35. Penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Celia C. Librea-Leagogo and Priscilla J. Baltazar-Padilla concurring.

[3] Id. at 36-38.

[4] PRESIDENTIAL DECREE NO. 1869 - CONSOLIDATING AND AMENDING PRESIDENTIAL DECREE NOS. 1067-A, 1067-B, 1067-C, 1399 AND 1632, RELATIVE TO THE FRANCHISE AND POWERS OF THE PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR).

[5] Also referred to as Cecilia Alfonso in other pleadings and documents.

[6] Supra note 1, at 12-16.

[7] Id. at 91.

[8] Id. at 92-94.

[9] Id. at 95.

[10] Id. at 96-100.

[11] Id. at 106-107.

[12] Id. at 108-110.

[13] Id. at 104.

[14] Id. at 105.

[15] Id. at 39-56.

[16] Supra note 2.

[17] Sec. 2(1), Article IX-B of the 1987 Constitution provides:

Sec. 2. (1) The Civil Service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters.

[18] Rollo, pp. 82-87.

[19] Supra note 3.

[20] 508 Phil. 726, 732 (2005).

[21] 279 Phil. 203, 206-207 (1991).

[22] Supra note 1, at 20-21.

[23] 570 Phil. 39, 47 (2008).

[24] Section 47 (1), Title 1(A), Book V of E.O. No. 292, pertinently reads:

SEC. 47. Disciplinary Jurisdiction. — (1) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office.

...

[25] Petitioner's Memorandum dated December 29, 2011, rollo, pp. 204-223.

[26] 366 Phil. 86 (1999).

[27] PAGCOR's Memorandum dated November 8, 2011, rollo, pp. 144-165.

[28] G.R. No. 170599, September 22, 2010, 631 SCRA 73,79-80. Citations omitted.

[29] *Hongkong & Shanghai Banking Corp., Ltd. v. G.G. Sportswear Mfg. Corp.*, 523 Phil. 245, 253-254 (2006), citing *Province of Zamboanga Del Norte v. Court of Appeals*, 396 Phil. 709, 718-719 (2000). Emphasis supplied.

[30] Section 47 (1) and (2), Title 1(A), Book V of E.O. No. 292, provides:

SEC. 47. Disciplinary Jurisdiction. - (1) The Commission shall decide upon appeal all administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty days, or fine in an amount exceeding thirty days' salary, demotion in rank or salary or transfer, removal or dismissal from office. A complaint may be filed directly with the Commission by a private citizen against a government official or employee in which case it may hear and decide the case or it may depute any department or agency or official or group of officials to conduct the investigation. The results of the investigation shall be submitted to the Commission with recommendation as to the penalty to be imposed or other action to be taken.

(2) The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is

removal, in which case the same shall be executory only after confirmation by the Secretary concerned.
Emphasis supplied.

[31] Supra note 26, at 116-117.

[32] 539 Phil. 433, 450 (2006). Citations omitted; emphasis supplied.

[33] *Tejano, Jr. v. Sandiganbayan*, G.R. No. 161778, April 7, 2009, 584 SCRA 191, 211-212.

[34] *Lambert Pawnbrokers and Jewelry Corporation v. Binamira*, G.R. No. 170464, July 12, 2010, 624 SCRA 705, 714-715, citing *Pascua v. NLRC* (3rd Div.), 351 Phil. 48, 61 (1998).

[35] *LPBS Commercial, Inc. v. Hon. Amila, et al.*, 568 Phil. 182, 188 (2008).

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