

GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS), PETITIONER, VS. ALBERT M. VELASCO, RESPONDENT.

G.R. No. 196564. August 07, 2017

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

A government employer must exercise its management prerogatives and its authority to discipline employees in good faith and in accordance with the principles of fair play as expected of all employers.

Shortly after having been perpetually restrained by the Court of Appeals[1] from hearing and investigating the pending administrative cases against union president Albert M. Velasco (Velasco) and his colleague Mario I. Molina (Molina), then Government Service Insurance System (GSIS) President and General Manager Winston F. Garcia (PGM Garcia) dropped respondent Velasco from the roll of employees anyway following a new set of formal charges: the first charging him for Gross Discourtesy for doing his duty as president of the employee's union of asserting a contractual right under the Collective Negotiation Agreement (CNA), and second for Insubordination for seeking clarification with regard to two conflicting memoranda: one declaring him ineligible to remain as GSIS Attorney during his term as union president and another reassigning him as GSIS Attorney to the GSIS Zamboanga, Iligan and Cotabato field offices (where he clearly cannot perform his duties as union president). Velasco was dropped from the roll of employees neither for the charge of Gross Discourtesy nor the charge of Insubordination but for a different basis altogether, i.e., being supposedly absent without approved leave for more than thirty (30) days despite his reporting for work in the Head Office instead of the Zamboanga, Iligan and Cotabato field offices.

In this Petition for Review on Certiorari, petitioner GSIS assails the Court of Appeals Decision[2] in CA-G.R. SP No. 86365 dated November 30, 2010. The Court of Appeals, acting on a Petition for Certiorari and Prohibition (with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction) filed by herein respondent Velasco against the officers of petitioner GSIS, declared the following void:

- 1) GSIS OSVP Office Order No. 04-04 dated July 1, 2004 reassigning Velasco from the head office of the GSIS in Pasay City to its field offices in Zamboanga, Iligan and Cotabato;
- 2) The Formal Charge docketed as Adm. Case No. 04-010 against Velasco for Insubordination;
- 3) The Formal Charge docketed as Adm. Case No. 04-009 against Velasco for Gross Discourtesy in the Course of Official Duty; and
- 4) The dropping of Velasco from the GSIS roll of employees.

The Court of Appeals also directed the GSIS to effect the reinstatement of Velasco to his former position or, if it is no longer feasible, to another position of equivalent rank and compensation. The GSIS was likewise ordered to pay Velasco his back salaries pertaining to the period during which he was unlawfully dropped from the roll of employees.

FACTUAL AND PROCEDURAL ANTECEDENTS

(1) Our Ruling in G.R. Nos. 157383 and 174137 mentioned by the Court of Appeals in its Decision

PGM Garcia filed administrative charges against Velasco and Molina, who both held the position of Attorney V in the GSIS. Velasco and Molina allegedly committed grave misconduct for helping disgruntled employees to conduct concerted protest actions against PGM Garcia and the GSIS management. PGM Garcia ordered the immediate preventive suspension of Velasco and Molina for a period of ninety (90) days without pay. A committee was constituted to investigate the charges against Velasco and Molina.

Velasco and Molina filed with the Civil Service Commission (CSC) a "Petition to Transfer Investigation to [the] Commission, with an Urgent Motion to Lift Preventive Suspension Order."

The CSC failed to resolve Velasco and Molina's Urgent Motion, leading them to file with the Court of Appeals on October 10, 2002 a Petition for Certiorari and Prohibition with prayer for a Temporary Restraining Order (TRO). The Petition, docketed as CA-G.R. SP No. 73170, sought to set aside the order of PGM Garcia directing them to submit to the jurisdiction of the committee created to investigate the administrative cases filed against them.

On January 2, 2003, the Court of Appeals rendered its Decision granting Velasco and Molina's petition. The dispositive portion of the Decision reads:

ACCORDINGLY, the petition is hereby GRANTED. Public respondents are hereby PERPETUALLY RESTRAINED from hearing and investigating the administrative case against petitioners, without prejudice to pursuing the same with the Civil Service Commission or any other agency of government as may be allowed x x by law.[3]

PGM Garcia filed with this Court a Petition for Review on Certiorari assailing the Decision of the Court of Appeals. The Petition was docketed as G.R. No. 157383.

Finally, acting on Velasco and Molina's Petition to Transfer Investigation to the Commission, the CSC issued its Resolution No. 03-0278 on February 27, 2003, the dispositive portion of which states:

WHEREFORE, the Commission hereby rules that:

- The Urgent Petition to Lift the Order of Preventive Suspension is hereby DENIED for having become moot and academic.
- The Petition to Transfer Investigation to the Commission is likewise DENIED for lack of merit. Accordingly, GSIS President and General Manager Winston F. Garcia is directed to continue the conduct of the formal investigation of the charges against respondents-petitioners Albert Velasco and Mario I. Molina.[4]

The CSC ruled that since the period of the preventive suspension has lapsed, the issue has become moot. The Petition to Transfer Investigation to the Commission was denied on the ground that the fact that the GSIS acted as complainant, prosecutor, and judge in the administrative cases does not necessarily mean that it will not be impartial.

Velasco and Molina assailed the CSC Resolution in a Petition for Review with the Court of Appeals, which was docketed as CA-G.R. SP No. 75973. On December 7, 2005, the Court of Appeals rendered its Decision reversing the CSC Resolution, and holding that the lack of the requisite preliminary investigation rendered the formal charges against Velasco and Molina void. The Court of Appeals likewise ruled that the propriety of the preventive suspension has not become moot. Since the preventive suspension emanated from void formal charges, Velasco

and Molina are entitled to back salaries. The dispositive portion of the Decision reads:

PREMISES CONSIDERED, the petition is hereby GRANTED. The formal charges filed by the President and General Manager of the GSIS against petitioners, and necessarily, the order of preventive suspension emanating therefrom, are declared NULL AND VOID. The GSIS is hereby directed to pay petitioners' back salaries pertaining to the period during which they were unlawfully suspended. x x x.[5]

PGM Garcia filed a Petition for Certiorari with this Court assailing the Decision of the Court of Appeals in CA-G.R. SP No. 75973. The petition was docketed as G.R. No. 174137, which was consolidated with G.R. No. 157383.

This Court rendered its Decision on the consolidated petitions on August 10, 2010. The dispositive portion of this Court's Decision reads:

WHEREFORE, premises considered, the petition in G.R. No. 157383 is DENIED while the petition in G.R. No. 174137 is DISMISSED, for lack of merit.[6]

This Court held that although the President and General Manager of the GSIS is vested with authority and responsibility to remove, suspend or otherwise discipline GSIS personnel for cause, such power is not without limitations and must be exercised in accordance with Civil Service Rules, which PGM Garcia neglected to do. This Court explained:

Indeed, the CSC Rules does not specifically provide that a formal charge without the requisite preliminary investigation is null and void. However, as clearly outlined above, upon receipt of a complaint which is sufficient in form and substance, the disciplining authority shall require the person complained of to submit a Counter-Affidavit/Comment under oath within three days from receipt. The use of the word "shall" quite obviously indicates that it is mandatory for the disciplining authority to conduct a preliminary investigation or at least respondent should be given the opportunity to comment and explain his side. As can be gleaned from the procedure set forth above, this is done prior to the issuance of the formal charge and the comment required therein is different from the answer that may later be filed by respondents. Contrary to petitioner's claim, no exception is provided for in the CSC Rules. Not even an indictment in flagrante as claimed by petitioner.

This is true even if the complainant is the disciplining authority himself, as in the present case. To comply with such requirement, he could have issued a memorandum requiring respondents to explain why no disciplinary action should be taken against them instead of immediately issuing formal charges. With respondents' comments, petitioner would have properly evaluated both sides of the controversy before making a conclusion that there was a prima facie case against respondents, leading to the issuance of the questioned formal charges. It is noteworthy that the very acts subject of the administrative cases stemmed from an event that took place the day before the formal charges were issued. It appears, therefore, that the formal charges were issued after the sole determination by the petitioner as the disciplining authority that there was a prima facie case against respondents.

To condone this would give the disciplining authority an unrestricted power to judge by himself the nature of the act complained of as well as the gravity of the charges. We, therefore, conclude that respondents were denied due process of law. Not even the fact that the charges against them are serious and evidence of their guilt is — in the opinion of their superior — strong can compensate for the procedural shortcut undertaken by petitioner which is evident in the record of this case. The filing by petitioner of formal charges against the respondents without complying with the mandated preliminary investigation or at least give the respondents the opportunity to comment violated the latter's right to due process. Hence, the formal charges are void ab initio and may be assailed directly or indirectly at anytime.[7] (Emphasis supplied; citations omitted.)

On PGM Garcia's argument that Velasco and Molina waived their right to a preliminary investigation for failure

to raise the matter before the GSIS, this Court ruled that a decision held without due process is void ab initio and may be attacked anytime directly or collaterally by means of a separate action, or by resisting such decision in any action or proceeding where it is invoked. Moreover, Velasco and Molina questioned the validity of their preventive suspension in the CSC on the ground of lack of preliminary investigation.

This Court concluded that since Velasco and Molina were preventively suspended in the same formal charges that were declared void, their preventive suspension is likewise invalid.

(2) Two Conflicting Memoranda

In the meantime, after the January 2, 2003 Decision of the Court of Appeals in CA-G.R. SP No. 73170 perpetually restraining PGM Garcia and the GSIS from hearing and investigating the administrative cases against Velasco and Molina, but before said restraining order was affirmed by this Court on August 10, 2010, the GSIS issued two conflicting Memoranda to Velasco:

(a) On June 29, 2004, GSIS Senior Vice-President-Administration Group Concepcion L. Madarang issued a Memorandum informing Velasco (who was elected President of the Kapisanan ng mga Manggagawa sa GSIS or KMG in May 2004) that he could no longer hold the position of GSIS Attorney because of conflict of interest and he should either seek a transfer to another position or go on extended leave of absence for the duration of his term as union president; and

(b) A mere two days later or on July 1, 2004, the GSIS Chief Legal Counsel issued OSVP Office Order No. 04-04, which provided:

Upon request by the SVP, FOG, as required by the exigencies of the service, and in view of the technical supervision and control of the Chief Legal Counsel over Field Operations Attorneys and Lawyers of the System, ATTY. ALBERT M. VELASCO, considering his legal expertise on the System's operations, is temporarily assigned for a period of ninety (90) days to the Zamboanga, Iligan and Cotabato FODs to augment the legal officers in the said FODs due to the surmounting number of legal cases therein and shall conduct legal due diligence of cases pertaining to the System's operating concerns specifically involving housing loan defaults, collection of arrearages, foreclosure proceedings, and other matters requiring legal attention.

He shall submit written reports, with proper recommendation/s, if needed, to the Field Office Manager concerned to whom he shall report directly and who shall sign his Daily Attendance Record (DAR).

Atty. Velasco is allowed cash advances, as needed, subject to reimbursement in accordance with existing auditing and office rules and regulations.

This Order shall take effect immediately and shall remain effective until further notice.[8] (Emphases supplied.)

This second Memorandum did not state that the transfer was because of conflict of interest. On the contrary, it specified Velasco's legal expertise as the reason for the transfer. The Memorandum likewise stated that "(t)his Order shall take effect immediately and shall remain effective until further notice" which contradicts the statement in the very same memorandum that the reassignment is for a fixed period of ninety (90) days.[9] In other words, the duration of the reassignment cannot be said to be definite.

Velasco wrote the GSIS informing the latter of the unmistakable conflict between the two memoranda he received: unless the Memorandum disqualifying him as GSIS Legal Counsel is withdrawn, he cannot assume the Mindanao posting as GSIS Legal Counsel.

In response to Velasco's request for clarification, Lutgardo B. Barbo[10] issued a Memorandum[11] to him on

July 9, 2004 stating that "Your reply appears to stonewall or countermand [OSVP Office Order No. 04-04]. It may also show in no uncertain terms your defiance, refusal and deliberate failure to comply with an otherwise lawful order." The Memorandum required Velasco to explain why he should not be administratively dealt with for Insubordination, Misconduct, Conduct Prejudicial to the Best Interest of the Service and/or Refusal to Perform Official Duty. Without clarifying the commencement and the term of Velasco's reassignment other than the vague statement in the July 1, 2004 Order that it "shall take effect immediately and shall remain effective until further notice," the GSIS immediately treated the letter as a defiance warranting an administrative charge.

Notably, the reassignment order was issued despite the fact that the GSIS chief legal counsel had earlier issued a Memorandum^[12] dated June 7, 2004 urgently requesting PGM Garcia for the appointment of litigation lawyers in the Legal Services Group (LSG) since three lawyers at the Head Office had either resigned or were promoted. To quote from said Memorandum which was issued less than a month prior to Velasco's reassignment:

We respectfully refer to your kind attention the above-captioned request for the appointment of litigation lawyers for the Legal Services Group (LSG). As you are of course aware, the Litigation Department of the LSG had been operating shorthanded since the resignation of two (2) lawyers handling a substantial amount of litigation work. These are Attys. Michael Miranda, of the Litigation Department, and Gabriel Silvera, of the Corporate Business Department, who resigned at different times last year.

Since the resignation of the said lawyers, the remaining lawyers of [the] Litigation Department have had to bear all the work of these resigned lawyers on top of their already overburdened workload. Please allow me to say sir that the remaining litigation lawyers superbly performed their work, despite their being overworked, without rancor or reproach.

However, with the impending transfer of one of the lawyers of the Litigation Department, Atty. Douglas Marigomen, to the Tagbilaran Branch where he has been appointed as Branch Manager, the Litigation Department will be unable to function to the point of being crippled. The remaining litigation lawyers will, to be sure, be unable to cope with the workload of Atty. Marigomen, which will be apportioned among them. Moreover, there has been an influx of new cases filed against GSIS which require immediate and urgent attention.

In view of the foregoing, we respectfully entreat you to accede to our request for the immediate appointment of two (2) lawyers for the Litigation Department to fill up the slot or item of Atty. Miranda and that to be vacated by Atty. Marigomen. We sincerely hope for your kind attention on this matter. (Emphases supplied.)

Even further highlighting the fact that Velasco's July 1, 2004 reassignment to the Mindanao field offices was effected despite a continued shortage of lawyers in the GSIS main office is OSVP Order No. 05-04^[13] issued on July 5, 2004 by the chief legal counsel detailing one of the field lawyers to the main office. The pertinent portion of said Order reads:

In the exigency of the service arising from the extreme lack of manpower in the LSG due to the resignation of Attys. Michael Miranda and Gabriel Silvera, as well as the promotion of Attys. Douglas Marigomen and Lourdes Dorado as Branch Managers of the Tagbilaran and Batangas Branches, respectively, and the impending retirement of Atty. Julita Aningat, ATTY. PEACHY ANNE V. TIONGSON-DUMLAO, is hereby temporarily detailed at the Litigation Department in order to perform the duties and responsibilities appurtenant to the position of the abovementioned lawyers.

The Order shall take effect immediately and shall remain effective until the permanent litigation lawyers are duly appointed by the President and General Manager. (Underscoring supplied.)

(3) Velasco's allegedly Grossly Discourteous Memorandum

Velasco, acting as president of the KMG, issued a memorandum dated June 28, 2004 to GSIS SVP Leticia P. Sagcal with reference to her memorandum prohibiting employees from participating in any "UNION ACTIVITIES during office hours." Citing the Collective Negotiation Agreement between the GSIS and the KMG which provides that "(t)he GSIS Management agrees and hereby authorizes the duly elected executive and legislative assembly officers of the KMG, including the chairpersons of KMG standing committees to perform the functions related to KMG activities on official time," Velasco demanded the recall of the Memorandum of SVP Sagcal.

In response, the GSIS issued a memorandum requiring Velasco to "submit your Counter-Affidavit/Comment under Oath within three (3) days from receipt hereof explaining why you should not be administratively dealt with for misconduct, discourtesy, insubordination and/or conduct prejudicial to the best interest of the service." [14] Velasco issued his reply stressing that he wrote the letter as a duly elected union representative asserting a contractual right.

(4) RTC Case / Formal Charges / Removal from the Rolls

In connection with the two conflicting memoranda disqualifying Velasco as GSIS Legal Counsel and assigning him as GSIS Legal Counsel in Mindanao, Velasco filed with the Regional Trial Court (RTC) of Manila a Petition for Certiorari and Prohibition seeking to prohibit the GSIS from enforcing the following: (1) OSVP Order No. 04-04 dated July 1, 2004 assigning him to the Zamboanga, Iligan, Cotabato field offices; (2) July 7, 2004 Memorandum directing him to explain his letter-reply to SVP Sagcal; and (3) July 9, 2004 Memorandum directing him to explain his failure to comply with the Reassignment Order.

The RTC of Manila initially issued a 72-hour TRO which was later extended to twenty days. However, the Petition was eventually dismissed by the RTC of Manila on the ground of improper venue, said court ratiocinating that the case should be filed with the RTC of Pasay City where the principal office of the GSIS is located. During the pendency of said case, the GSIS nonetheless initiated the two assailed Formal Charges against Velasco:

(1) The Formal Charge dated August 10, 2004 signed by PGM Garcia, docketed as ADM. Case No. 04-009 for Gross Discourtesy in the Course of Official Duty in connection with Velasco's letter to SVP Sagcal; [15] and

(2) The Formal Charge dated August 13, 2004 signed by PGM Garcia, docketed as ADM. Case No. 04-010 for Refusal to Perform Official Duty; Insubordination; Misconduct; Conduct Prejudicial to the Best Interest of the Service in connection with the two conflicting Memoranda. [16]

During the pendency of Velasco's Motion for Reconsideration of the RTC Resolution dismissing the Petition for improper venue, and while Velasco continued to report to his post in the Head Office, the GSIS issued the assailed September 1, 2004 letter [17] to Velasco dropping him from the rolls of the GSIS on the claim that allegedly he has been continuously absent without leave (AWOL) for thirty (30) days.

(5) Petition for Certiorari with the Court of Appeals

On September 13, 2004, Velasco withdrew his Motion for Reconsideration before the RTC of Manila which favorably acted on said withdrawal in an Order [18] dated September 14, 2004. On September 15, 2004, Velasco thereafter filed a Petition for Certiorari and Prohibition with Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction with the Court of Appeals, assailing GSIS OSVP Office Order No. 04-04 reassigning him to Zamboanga City; the Formal Charge docketed as Adm. Case No. 04-010 for Insubordination; the Formal Charge docketed as Adm. Case No. 04-009 for Gross Discourtesy in the Course of Official Duty; and the letter dated September 1, 2004 dropping Velasco from the GSIS roll of employees.

On September 17, 2004, the Court of Appeals issued a Resolution[19] granting Velasco's prayer for a 60-day TRO enjoining the GSIS from further implementing the assailed acts. Petitioner GSIS however refused to implement the TRO and asserted that, with Velasco's dropping from the rolls, injunction was improper to restrain acts that had become *fait accompli*.

On November 30, 2010, the Court of Appeals issued the assailed Decision, the dispositive portion of which read:

WHEREFORE, premises considered, the petition is hereby GRANTED. The Order issued reassigning petitioner to Zamboanga; the administrative charges filed against petitioner docketed as Adm. Case No. 04-010 for Refusal to Perform Official Duty, etc. and Adm. Case No. 04-009 for Gross Discourtesy in the Course of Official Duty; and the dropping of petitioner from the GSIS roll of employees are hereby declared void. Accordingly, the GSIS is hereby directed to effect the reinstatement of petitioner to his former position or, if it is no longer feasible, to another position of equivalent rank and compensation. It is likewise ordered to pay petitioner his back salaries pertaining to the period during which he was unlawfully dropped from employees' roll.[20]

The GSIS filed a Motion for Reconsideration, which was denied by the Court of Appeals in its Resolution dated April 1, 2011.

The GSIS then filed the present Petition for Review on Certiorari, raising the following grounds for the allowance of the same: (a) that Velasco is guilty of forum shopping; (b) that the non-exhaustion of administrative remedies is fatal to Velasco's Petition for Certiorari before the Court of Appeals; and (c) that petitioner is allegedly justified in its actions against Velasco since GSIS lawyers are precluded from joining the employees' organization or union according to a ruling issued by the Public Sector Labor-Management Council (PSL-MC).[21]

THIS COURT'S RULING

Forum Shopping

Petitioner alleged that Velasco is guilty of forum shopping for filing a Petition for Certiorari with the Court of Appeals (a) while his motion for reconsideration in Civil Case No. 04110451 was still pending before the RTC of Manila, Branch 22; and (b) during the pendency of CA-G.R. SP No. 86130 with another division of the appellate court.

According to jurisprudence, forum shopping is the act of a party against whom an adverse judgment has been rendered in one forum, of seeking another (and possibly favorable) opinion in another forum other than by appeal or special civil action of certiorari, or the institution of two (2) or more actions or proceedings grounded on the same cause on the supposition that one or the other court might look with favor upon the party. Where the elements of *litis pendencia* are not present or where a final judgment in one case will not amount to *res judicata* in the other, there is no forum shopping.[22]

Based on the facts on record, we see no reason to disturb the Court of Appeals' ruling that respondent Velasco was not guilty of forum shopping as succinctly explained in its November 30, 2010 Decision:

In the case at bar, although petitioner filed a petition for prohibition before the RTC and, thereafter, filed substantially the same petition before this Court, the fact remains that before filing the instant petition, he first filed a notice of withdrawal of his Motion for Reconsideration with the RTC which was granted. It is also worthy to note that while both petitions filed by petitioner before the RTC and this Court assail his reassignment Order to Zamboanga, the petition before US differs because petitioner is, in addition, assailing the formal charges against him as well as his severance from employment. Hence, petitioner could not be said to have resorted to two different courts for the purpose of obtaining the same relief.

To further bolster their allegation that petitioner is guilty of forum shopping, respondents aver that a similar case was also filed by [Velasco] against respondent Garcia in this Court docketed as CA-G.R. SP No. 86130 which was already dismissed on September 17, 2004.

WE perused the September 17, 2004 Resolution of this Court in CA-G.R. SP No. 86130 and found that the cause of action and relief prayed for by herein petitioner in that case were not the same as in this petition. In this case, petitioner prays to declare OSVP Order No. 04-04 transferring petitioner to Zamboanga; the formal charges against petitioner dated August 10, 2004 and August 13, 2004; and the letter informing petitioner that he is already dropped from GSIS roll of employment as void and illegal. On the other hand, the objective of the action in CA-G.R. SP No. 86130 was to declare as illegal and void respondent Garcia's Office Order dated June 25, 2004 by which the respondent allegedly usurped the petitioner's power under the law and the collective negotiation agreement to choose a representative to the GSIS Personnel Selection and Promotion Board and to prohibit the respondent from convening said Boards from transacting business without the legitimate union representative.[23] (Emphases supplied.)

We have held that what is truly important to consider in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by different fora upon the same issues.[24] In this instance, there was no danger that two different fora might render conflicting decisions as the petition before the Court of Appeals was the only case pending which involved the specific issues raised therein.

Exhaustion of Administrative Remedies and the Alleged Illegality of Velasco's Union Involvement

We discuss the second and third issues raised by petitioner jointly as the resolution of the procedural issue of exhaustion of administrative remedies hinges on the substantive issue of whether or not petitioner's actions and issuances involving respondent Velasco were patently illegal and/or tainted with bad faith.

Petitioner claims that Velasco violated the doctrine of exhaustion of administrative remedies by filing a Petition for Certiorari and Prohibition with the Court of Appeals instead of assailing his dismissal with the CSC. The Court of Appeals ruled that the assailed GSIS issuances were patently illegal and, hence, the case falls within at least one of several exceptions to the doctrine on exhaustion of administrative remedies. The exceptions, according to *Province of Zamboanga del Norte v. Court of Appeals*,^[25] are: (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; (11) when there are circumstances indicating the urgency of judicial intervention, and unreasonable delay would greatly prejudice the complainant; (12) when no administrative review is provided by law; (13) where the rule of qualified political agency applies; and (14) when the issue of non-exhaustion of administrative remedies has been rendered moot.

After a judicious examination of the records, we uphold the Court of Appeals' ruling that the present case falls within the recognized exceptions to the rule regarding exhaustion of administrative remedies. Before going into the merits of the case, we dispel the procedural concerns raised in the dissent.

The Dissenting Opinion submits, citing *Merida Water District v. Bacarro*,^[26] that the test to determine whether or not there is patent illegality is "whether there exists a factual issue to be resolved to arrive at the conclusion of illegality."^[27] Accordingly, the notion of patent illegality in the case at bar is negated by the presumption of good faith on the part of the GSIS officers involved, and the presumption of regularity of official acts. Determination of bad faith and irregularity are questions of fact, which should allegedly bar direct recourse before the courts in a special civil action.

The Court's decision in *Republic of the Philippines v. Lacap*^[28] explained the rationale behind the doctrine of exhaustion of administrative remedies in this wise:

The general rule is that before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes. The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to a court without first giving such administrative agency the opportunity to dispose of the same after due deliberation.

Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact. (Emphasis supplied, citations omitted.)

In *Merida*, the factual question involved was the determination of the current water rate from which the allowable 60% increase can be computed in accordance with existing rules and regulations. Obviously, that was a highly technical matter that required the special knowledge and expertise of the proper administrative agency to resolve. The issue of whether petitioner GSIS's memoranda and issuances against respondent Velasco were attended by bad faith is hardly the kind of "technical and intricate" factual matter that requires prior resolution by an administrative body with special expertise or knowledge. To be sure, in *Department of Finance v. Dela Cruz, Jr.*,^[29] we held that a case that assails the mass detail and reassignment of DOF employees as "patently illegal, arbitrary, and oppressive" falls among the exceptions to the doctrine of exhaustion of administrative remedies and thus, we upheld said employees' direct recourse to the courts as there was no need to resort to remedies with the CSC. In another example of bitterly contested litigation between the parties in the case at bar, *The Board of Trustees of the Government Service Insurance System v. Velasco*,^[30] we held that the RTC, not the CSC, had jurisdiction over a petition for prohibition with prayer for writ of preliminary injunction even if it involved a civil service matter. Verily, the principle that all personnel actions must first be referred to the CSC is not an iron-clad rule.

The dissent's reliance on *Corsiga v. Defensor*^[31] is misplaced as no court therein issued a judgment on the merits. What was appealed to the Court was a preliminary order denying a motion to dismiss on jurisdictional grounds. Even more importantly, the Court in *Corsiga* expressly stated that the employee failed to present evidence of the invalidity of his reassignment and for that reason the reassignment was presumed regular. In the present case, the Court of Appeals found, after due proceedings, that respondent duly proved his factual allegations while petitioner failed to refute the evidence presented against it. There is no cause for the dissent to assert that petitioner was denied due process for it had every opportunity before the Court of Appeals to submit its countervailing evidence but petitioner chose to present purely technical objections to respondent's petition and pinned its defense on the presumptions of good faith and of regularity in the performance of official duty which are both rebuttable by proof.

This Court cannot accept the proposition that a mere allegation of good faith by the issuers of the assailed official

acts automatically takes the disputed action out of its being patently illegal and thereby necessitates the application of the doctrine of exhaustion of administrative remedies. Bad faith and irregularities can be evident from the assailed acts themselves, in which case the courts should not simply turn a blind eye on the ground that it is the administrative agencies which must take the first look. It is precisely in cases when the bad faith and irregularity are so blatant that immediate recourse to the courts is necessary in order to nullify a capricious and whimsical exercise of authority.

This Court finds no reversible error on the part of the Court of Appeals in making a finding of illegality and bad faith in the GSIS's actions against Velasco based on the undisputed facts on record.

Petitioner alleged that "the Court of Appeals failed to consider that in all the cases filed by respondent, his basic allegation stemmed from just one single act, i.e., his illegal activities as union president of the KMG which led to the GSIS's taking of necessary measures to protect its interest." [32]

Interestingly, in the decision of the Court of Appeals in CA-G.R. SP No. 73170, which was affirmed by this Court in the consolidated cases, G.R. Nos. 157383 and 174137, the GSIS's officers were perpetually restrained from hearing and investigating the administrative case against Velasco and Molina for acts allegedly in betrayal of the confidential nature of their positions and in defiance of the Rules and Regulations on Public Sector Unionism, without prejudice to pursuing the same with the CSC or any other agency of the government as may be allowed by law. Even then the appellate court recognized that the investigation should not be done by the GSIS but by the CSC or any other impartial and disinterested tribunal. Yet, the GSIS undertook to investigate Velasco on new formal charges in this case, springing from essentially similar grounds of breach of confidentiality of position and union activities. We now examine these new formal charges.

On the issue of the validity of the reassignment order, upon which the charge of Insubordination depends, we sustain the Court of Appeals' factual finding that the GSIS never denied, much less refuted, the various memoranda presented by Velasco proving that there was a dire shortage of lawyers in the Manila Head Office at the time of his reassignment to the Mindanao field offices. There is nothing in the records to show that other lawyers from the Head Office were also sent out to augment the legal staff in the field offices. On the contrary, Velasco demonstrated that due to the extreme lack of manpower in the Head Office a lawyer from the one of the field offices was temporarily detailed in the Head Office until the vacancies therein were filled. Although the first paragraph of the reassignment order stated that it was for a period of ninety (90) days, the last paragraph states that the order shall take effect immediately and shall remain effective until further notice. What is indubitable from the records was that Velasco was being singled out for indefinite reassignment due to his election as union president. In all, this Court concurs with the appellate court that there was "no valid cause for the reassignment" and "the reassignment order was issued to prevent [Velasco] from actually and aggressively leading the union[s] activities and in the process weaken unionism in [the] GSIS main office." [33] As Velasco's reassignment is invalid, there was no cause to charge him with Insubordination.

As for the second formal charge, the difficulty of finding an actionable case of gross discourtesy from the following letter can be considered by the courts in determining whether there is gross abuse of authority on the part of petitioner:

1 July 2004

SVP LETICIA P. SAGCAL
GSIS Social Insurance Group

Re: Memorandum dated 28 June 2004.

Dear SVP Sagcal,

In behalf of the Kapisanan ng mga Manggagawa sa GSIS (KMG), we bring to your attention the above subject memorandum which prohibits employees from "participation in any UNION ACTIVITIES".

Please be reminded that under Section 3 of the GSIS-KMG Collective Negotiation Agreement for 2002-2005 it is provided as follows:

Section 3. Authorized KMG Activities on Official Time. The GSIS Management agrees and hereby authorizes the duly elected executive and legislative assembly officers of the KMG, including the chairpersons of KMG standing committees to perform the functions related to KMG activities on official time, subject to the following conditions:

- Only those authorized in writing from time to time by the KMG President or his duly authorized representatives shall enjoy the privilege; and
- The GSIS Management likewise agrees that attendance by duly authorized union representatives to workers' education, seminars, meetings, conventions, conferences shall be allowed on Official Time, subject also to the said two (2) conditions. x x x

Additionally, our CNA likewise states, and we quote the pertinent part:

ARTICLE V

NO STRIKE NO LOCKOUT

GSIS Management shall also respect the rights of the employees to air out their sentiments through peaceful concerted activities during allowable hours, subject to reasonable office rules and regulations on the use of office premises.

Clearly, your memorandum absolutely prohibiting participation of union members, including duly elected executive, legislative officers, and chairpersons of standing committees, from participating in union activities is a gross and patent violation of our CNA. Peaceful concerted activities is also [permissible], subject only to reasonable office rules and regulations, and is not absolutely prohibited by law, and neither can you prohibit the same.

We demand that your (sic) recall within two (2) days your unlawful memorandum dated 28 June 2004. Your failure to do so will compel us to file the corresponding administrative and criminal complaints against you before the appropriate body.[34]

Even without the presentation of evidence before an administrative body, the existence of bad faith and the arbitrary and despotic abuse of power can easily be gleaned from an administrative case of gross discourtesy ensuing from the mere issuance of the above letter by a union president. The exercise of even a statutorily enshrined power when done in a whimsical and capricious manner amounting to lack of jurisdiction is properly assailed in a special civil action under Rule 65 before the courts.

In any event, the merits of the formal charges of Insubordination and Gross Discourtesy against Velasco need not even be scrutinized by the Court. Despite initiating administrative investigations in relation to the Formal Charge docketed as Adm. Case No. 04-010 (for Insubordination, etc.) and the Formal Charge docketed as 04-009 (for Gross Discourtesy), the GSIS never issued a decision or ruling in these administrative cases. In the end, Velasco was dropped from the rolls for his purported 30 days continuous absence without authorized leave, a separate and distinct matter, not included in the charges stated in the two formal charges pending investigation.

The Court cannot fault respondent for claiming that his separation from the service was without valid ground and done without due process. Furthermore, this Court fully agrees with the Court of Appeals that Velasco's dropping

from the rolls was unwarranted when he did not abandon his post.

Petitioner GSIS did not dispute the fact that Velasco continued to report at the Head Office while he was seeking clarification from the GSIS regarding its conflicting memoranda and while various contentious issues between the parties were pending before the courts and the PSL-MC. The records bear out that correspondence and memoranda were personally served on Velasco by the GSIS, including the notice of his dropping from the rolls, since he could be readily found at his work station in the Head Office. On the other hand, the records are bereft of proof that the GSIS in good faith gave notice to Velasco that he would be considered absent without authorized leave for his failure to report for duty in the Mindanao field offices. Significantly, the GSIS itself narrated in the petition that Velasco was able to secure from the RTC a 72-hour TRO on July 20, 2004 that was extended for another 20 days, giving him additional justification to defer taking up his Mindanao posting while his standing disputes with management were pending litigation.

In *Batangas State University v. Bonifacio*,^[35] a teacher was dropped from the rolls by the petitioner state university for failure to immediately report to his new detail at the office of the university president and instead he continued to fulfill his duties as a teacher and coach of the basketball team. We held that where there is no abandonment or clear proof of the intention to sever the employer-employee relationship, an employee cannot be dropped from the rolls. Furthermore, despite the proviso in Section 63, Rule XVI of the Omnibus Civil Service Rules and Regulations that an employee continuously absent without approved leave for at least thirty (30) days may be dropped from the rolls without prior notice, we ruled that there was bad faith on the part of the employer and a violation of an employee's rights to security of tenure and due process when the employer ignored the employee's presence in the school, did not give him the opportunity to explain his purported absences and thereafter peremptorily dropped him from the rolls.

Certainly, the gross violation of Velasco's due process rights in the matter of his dropping from the rolls not only contribute to the patent illegality of his separation from the service but is in itself a recognized exception to the rule on exhaustion of administrative remedies.^[36]

The Dissenting Opinion rejects the applicability of *Batangas State University*, and argued, echoing the words of petitioner, that while there was good faith on the part of the employee in BSU to report to his new detail, Velasco showed bad faith when he "wrote a letter conveying his resistance to the assignment order." The Court should not adopt petitioner's arrogant stance of treating a mere clarificatory letter as an act of defiance and gross discourtesy. The despotic notion that an employee may not even ask for clarification of inconsistent orders precisely manifests the grave abuse of discretion on the part of petitioner. It shows very clearly that petitioner is bent on dismissing Velasco for whatever imagined wrong it can throw at him, and force him to file a case for each new accusation.

Be that as it may, the Dissenting Opinion misreads the significance of BSU, which is cited to emphasize that an employee who reports for work cannot be summarily dropped from the rolls for being "continuously absent without approved leave for at least 30 calendar days." BSU held that ignoring said employee instead of summoning him to explain his alleged absences does not only show bad faith, but is itself a violation of the constitutional guarantees of security of tenure and due process. Violation of due process is the first and foremost exception to the doctrine of exhaustion of administrative remedies in settled jurisprudence other than BSU, making it entirely irrelevant that there was prior resort to the CSC in BSU.

The dissent asserts that bad faith is never presumed; it is a conclusion to be drawn from the facts.^[37] However, intent, being a state of mind, is rarely susceptible of direct proof, but must ordinarily be inferred from the facts.^[38] Consequently, when the facts – namely the acts from which bad faith can be inferred – already appears on record and are uncontroverted, the legal consequence of such acts becomes a question of law which falls under

the exceptions to the rule on exhaustion of administrative remedies as well. A question of law exists when the doubt or controversy concerns the correct application of law or jurisprudence to a certain set of facts; or when the issue does not call for an examination of the probative value of the evidence presented, the truth or falsehood of facts being admitted.[39]

Petitioner's improper motive in its actions and issuances against respondent is plainly apparent even in its submissions to this Court. In the petition, the GSIS averred it "lost all faith and confidence in respondent when he ran for and was elected KMG President"[40] and that it was Velasco's purported "illegal activities as union president of the KMG which led to the GSIS's taking of necessary measures to protect its interest." [41] Indeed, this history of antagonism between Velasco and the GSIS's previous leadership is a matter of record not only in this case but also in G.R. Nos. 157383 and 174137, which arose from the charges of misconduct against Velasco for participating and/or leading protests against management and former GSIS President Winston F. Garcia for alleged corruption.

As the GSIS admits in the petition, it was Velasco himself who submitted the issue of his eligibility to hold the position of union president for resolution by the PSL-MC to settle his dispute with management.[42] However, the GSIS pre-empted the ruling of the PSL-MC and issued the reassignment order, the formal charges of Insubordination and Gross Discourtesy and the order dropping Velasco from the rolls long before the PSL-MC could dispose of the matter in its Resolution No. 02, s. 2005 dated May 4, 2005, now being cited by the GSIS as its main basis for the legality of its actions against Velasco. It is the height of injustice and absurdity to allow the GSIS to now rely on this issuance when it did not even exist in 2004 when the GSIS issued the assailed memoranda and orders that are the subject matter of this case.

It bears repeating as well that the PSL-MC merely ruled that lawyers of the GSIS Legal Services Group are ineligible to join and hold elective positions in the union.[43] There was no statement in PSL-MC Resolution No. 02, s. 2005 that the holding of a position in the union was a ground to discipline or dismiss Velasco. Even in the GSIS's Memorandum dated June 29, 2004 advising Velasco of his ineligibility to hold the position of GSIS Attorney while serving as union president on the ground of conflict of interest, there was no mention of any disciplinary action to be taken but only that Velasco was given the options to either (a) seek a transfer to another position not covered by the prohibition or (b) go on extended leave of absence for the term of his office, subject to existing office rules and regulations. Yet, despite the fact that the GSIS did not see fit to discipline or sanction Velasco for his union activities in the June 29, 2004 Memorandum, it nonetheless engaged in a series of actions to harass Velasco, to keep him away from the Head Office (by inducing him to seek a transfer or to take a leave and, failing in that, reassigning him) and to eventually cause Velasco's separation from the service on whatever ground and by whatever means it could conceive.

Petitioner's assertion that the new formal charges against Velasco and his dismissal from the service are measures to protect the interests of the GSIS from Velasco's purportedly illegal activities as union president likewise violate Velasco's right to due process as he is being indirectly charged for something not mentioned in the Formal Charges. To reiterate, Velasco was never administratively charged for what the GSIS termed as his "illegal" service as union president and therefore, Velasco could not have been validly dismissed from the service on that ground. Moreover, the GSIS could not have possibly relied on the aforementioned PSL-MC Resolution to justify Velasco's dismissal or separation from the service as the same was issued more than eight (8) months after Velasco had already been dropped from the rolls.

Prior to the resolution by the PSL-MC of the question of Velasco's eligibility to join the union and serve as union president, the GSIS had no basis to act against Velasco on that ground other than the opinion of its own chief legal counsel. For this reason, the GSIS was bound to respect in good faith Velasco's election as union president of the

KMG until the PSL-MC could issue its opinion on the grievance raised by Velasco. As the Court of Appeals correctly emphasized, "[t]he right to unionize or to form organizations is now explicitly recognized and granted to employees in both the governmental and private sectors"[44] and that the Bill of Rights itself demands that such right shall not be abridged.[45]

In the private sector, the Court has held that the reassignment of an employee is illegal if it is used as a subterfuge by the employer to rid himself of an undesirable worker or when the real reason is to penalize an employee for his union activities and when there is no genuine business urgency that necessitated the transfer.[46] Neither does the Court condone a reassignment done by a private employer on the pretext of eventually removing an employee with whom the employer felt "uncomfortable" because it doubted the employee's loyalty.[47] This Court will not be induced into setting a precedent that a government employer can hide behind the presumption of regularity in the performance of official duty in spite of evidence of illegal, discriminatory and oppressive acts against labor extant in the records.

In closing, it is worth recalling that the non-exhaustion of administrative remedies is a procedural matter that, time and again, this Court has held should be set aside in the interest of substantial justice.[48] This is particularly true in this case when the application of said doctrine would in effect deny respondent reliefs despite his meritorious claim. The insistence in the Dissenting Opinion that the Court of Appeals should have ignored petitioner's manifest display of arrogance and disregard of court orders on the ground that bad faith is a factual issue misses the basic principle that the Court of Appeals, unlike this Court, is mandated to rule on questions of fact.[49] The Dissenting Opinion's proposed reversal of the factual findings and the judgment on the merits of the Court of Appeals on the ground of a supposed procedural misstep is unjust and unduly burdens a party already aggrieved by a whimsical, capricious, and despotic abuse of power with a circuitous and ineffectual remedy. Accordingly, this Court holds that the Court of Appeals properly decided the substantive issues when the evidence it needed to resolve the same was already before it.

WHEREFORE, the Petition for Review on Certiorari is DENIED. The Court of Appeals Decision dated November 30, 2010 and Resolution dated April 1, 2011 in CA-G.R. SP No. 86365 are AFFIRMED.

SO ORDERED.

Sereno, C.J., (Chairperson), Del Castillo, Perlas-Bernabe, and Caguioa, JJ., concur.

[1] Later affirmed by this Court with finality; *Garcia v. Molina*, 642 Phil. 6 (2010).

[2] *Rollo*, pp. 34-60; penned by Associate Justice Priscilla J. Baltazar-Padilla with Associate Justices Fernanda Lampas Peralta and Manuel M. Barrios concurring.

[3] *Garcia v. Molina*, *supra* note 1 at 14.

[4] *Id.* at 15.

[5] *Id.* at 16.

[6] *Id.* at 24.

[7] *Id.* at 21-22.

[8] *CA rollo*, p. 24.

[9] *Id.*

[10] Manager, Investigation Unit, Office of the President and General Manager.

[11] Rollo, p. 67.

[12] CA rollo, pp. 44-45.

[13] Id. at 43.

[14] Rollo, p. 68.

[15] CA rollo, pp. 28-29.

[16] Id. at 25-26.

[17] Id. at 27.

[18] Id. at 117.

[19] Id. at 47-48.

[20] Rollo, p. 60.

[21] The Public Sector Labor-Management Council (PSL-MC) was created by virtue of Executive Order No. 180 (June 1, 1987) and is composed of the Chairperson of the Civil Service Commission and the Secretaries of the Department of Labor and Employment, the Department of Finance, the Department of Justice, and the Department of Budget and Management.

[22] *Bangko Silangan Development Bank v. Court of Appeals*, 412 Phil. 755, 770-771 (2001).

[23] Rollo, pp. 48-49.

[24] *Kapisanang Pangkaunlaran ng Kababaihang Potrero, Inc. v. Barreno*, 710 Phil. 654, 660 (2013).

[25] 396 Phil. 709, 718-719 (2000).

[26] 588 Phil. 505 (2008).

[27] Dissenting Opinion, p. 4.

[28] 546 Phil. 87, 96-97 (2007).

[29] 767 Phil. 611, 619-620 (2015).

[30] 656 Phil. 385, 395-396 (2011). In said case, Velasco and Molina assailed before the RTC the resolutions of the GSIS disqualifying them from receiving their step increment benefits during the pendency of their administrative cases beyond the period of their preventive suspension (which arose from the same incident that was the subject matter of G.R. Nos. 157383 and 174137). The Court affirmed the RTC decision declaring these resolutions null and void.

[31] 439 Phil. 875 (2002); Dissenting Opinion, p. 7.

[32] Rollo, p. 17.

[33] Id. at 56.

[34] CA rollo, pp. 39-40.

[35] 514 Phil. 335 (2005).

[36] *Province of Zamboanga del Norte v. Court of Appeals*, supra note 25.

[37] Dissenting Opinion, p. 4.

[38] *Feeder International Line, Pte., Ltd. v. Court of Appeals*, 274 Phil. 1143, 1152-1153 (1991).

[39] *Alforon v. Delos Santos*, G.R. No. 203657, July 11, 2016, 796 SCRA 194, 201; *Bukidnon Doctors' Hospital, Inc. v. Metropolitan Bank & Trust Co.*, 501 Phil. 516, 526 (2005), citing *Republic v. Sandiganbayan*, 425 Phil. 752, 765 (2002).

[40] Rollo, p. 29.

[41] *Id.* at 17.

[42] *Id.* at 23; See also PSL-MC Resolution No. 02, s. 2005.

[43] Parenthetically, in the early case of *GSIS v. GSIS Supervisor's Union* (160-A Phil. 1066, 1083-1084 [1975]), the Court held that the legal staff of different government owned or controlled corporations although under the Government Corporate Counsel and embraced within the Civil Service Law are not absolutely prohibited from membership in labor unions as long as such labor unions do not impose the obligation to strike or join strikes on its members. However, as the validity of PSL-MC Resolution No. 02, s. 2005 is not an issue in this case, we refrain from passing upon the correctness of its legal reasoning in declaring lawyers of the GSIS Legal Services Group as ineligible to join the union.

[44] Rollo, p. 56, citing *Trade Unions of the Philippines and Allied Services v. National Housing Corporation*, 255 Phil. 33, 39 (1989).

[45] *Id.*, citing Section 8, Article III of the 1987 Constitution which provides that "[t]he right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged."

[46] See *Yuco Chemical Industries, Inc. v. Ministry of Labor and Employment*, 264 Phil. 338, 341-342 (1990).

[47] See *Pocketbell Philippines, Inc. v. National Labor Relations Commission*, 310 Phil. 379, 390 (1995).

[48] See, for example, *Paje v. Casiño*, 752 Phil. 498, 544 (2015); *Silva v. Mationg*, 531 Phil. 324, 336 (2006).

[49] *Carpio v. Sulu Resources Development Corp.*, 435 Phil. 836, 845 (2002).

DISSENTING OPINION

SERENO, CJ:

Considering the records and pleadings in this case, I register my dissent from the ponencia. Contrary to the ponencia's conclusion, I find that respondent violated the doctrine of exhaustion of administrative remedies.

In sum, my objection to the majority opinion is impelled by at least two doctrinal and policy considerations:

- The ponencia goes against the jurisprudential grain by unduly expanding the concept of patent illegality as an exception to the doctrine of exhaustion of administrative remedies. The notion of patent illegality now covers what is not patent, as the ponencia permits fact-intensive analysis through a consideration of the documents presented, their relation to each other, and the surrounding circumstances.
- The ponencia denies efficacy to the exercise of a management prerogative in that a reassignment order valid on its face is stripped of the presumption of regularity otherwise accorded to it.

I.

Since respondent was making a case for illegal dismissal, his remedy was to appeal to the CSC, as required by the doctrine of exhaustion of administrative remedies.

Notably, when respondent was dropped from the GSIS roll of employees for being AWOL, he proceeded to the CA on a Rule 65 petition claiming that his dropping, as well as the reassignment order and formal charges, were null and void. His thesis was that the GSIS officials, under the leadership of then GSIS President and General Manager Winston Garcia, prompted by respondent's having been elected president of a union, resorted to a scheme to pave the way for his dismissal from the GSIS, starting with the re-assignment order and ending in his being dropped from the GSIS roll of employees. It can be seen from this theory that respondent was actually

making a case for constructive dismissal, a situation in which an employee quits work because of the agency head's unreasonable, humiliating, or demeaning actuations that render continued work impossible.[1]

Considering that his cause of action is constructive dismissal, respondent should have initially filed an appeal with the Civil Service Commission (CSC).[2] Section 71 of the Uniform Rules on Administrative Cases in the Civil Service[3] (the Uniform Rules) specifically provides that appeal is the proper remedy in cases involving personnel actions, such as reassignment and dropping an employee from the rolls for being AWOL.[4] Section 4 of the Uniform Rules also allows the CSC to review decisions and actions of the offices and agencies falling under its jurisdiction.[5]

Hence, after receiving notice that he was dropped from the GSIS roll of employees, respondent should have initially filed an appeal with the CSC as required by the doctrine of exhaustion of administrative remedies. In contravention of the doctrine, respondent proceeded immediately and directly to the CA by way of certiorari under Rule 65.

This doctrine holds that when the law provides for a remedy against a certain administrative action, the litigant can seek relief from the courts only after exhaustion of the remedy; otherwise, when there is a failure to exhaust administrative remedies, a complaint is dismissible for lack of cause of action.[6]

There was no patent illegality that would take the case out of the ambit of the doctrine of exhaustion of administrative remedies.

True, the rule is not absolute.[7] One of the recognized exceptions to the doctrine is when the administrative action is patently illegal.[8] In this case, the CA justified respondent's failure to exhaust administrative remedies on the ground of the patent illegality of the assailed GSIS actions.

For reasons to be discussed below, I find no patent illegality in the assailed acts of petitioner that would justify a relaxation of the doctrine of exhaustion of administrative remedies.

In *Merida Water District v. Bacarro*,[9] this Court had occasion to expound on the concept of patent illegality of an assailed action. In that case, this Court faced the issue of whether or not the rate increase implemented by the Merida Water District was patently illegal and, therefore, the doctrine of exhaustion of administrative remedies need not be observed.

This Court reasoned as follows:

The argument of patent illegality is without merit. The first paragraph of LOI No. 700 provides that the LWUA shall:

(f) Ensure that the water rates are not abruptly increased beyond the water users' ability to pay, seeing to it that each increase if warranted, does not exceed 60% of the current rate.

The non-observance of the doctrine of exhaustion has been upheld in cases when the patent illegality of the assailed act is clear, undisputed, and more importantly, evident outright. In these cases, the assailed act did not require the consideration of the existence and relevancy of specific surrounding circumstances and their relation to each other for the Court to conclude that the act was indeed patently illegal. In the case at bar, certain facts need to be resolved first, to determine whether petitioner's increase of the water rate is [a] patently illegal act.

The determination of the current rate from which to compute the allowable increase of 60% is a question of fact that cannot be properly threshed out before this Court. The NWRB must be given an opportunity to make a factual finding with respect to this question. This Court accords the factual findings of administrative agencies with utmost consideration because of the special knowledge and expertise gained by these quasi-judicial tribunals from handling specific matters falling under their jurisdiction. Considering that the LWUA confirmed the Rate Schedule of Approved Water Rates for Merida Water District, a schedule that contains different rates that gradually increase, the determination of whether the computation of the percentage increase complies with the 60% limitation is a factual matter best left to the competence of the NWRB.[10]

Hence, the test is whether there exists a factual issue to be resolved in order to arrive at a conclusion of illegality. In other words, the illegality must be patent on the face of the assailed act.

In the case at bench, the CA failed to reckon with the fact that there was a factual matter requiring resolution to get to the conclusion that the assailed acts of petitioner constituted constructive dismissal.

By its nature, constructive dismissal involves an imputation of bad faith on the part of the administrative officer performing the assailed act. The default rule, however, is the presumption of good faith. Bad faith is never presumed; it is a conclusion to be drawn from facts. In this light, determination is a question of fact and is evidentiary.[11]

Indeed, to counter the theory of constructive dismissal, petitioner claimed that the assailed reassignment order was a good-faith exercise of management prerogative. It further said that it was merely performing its duty when it instituted formal charges against respondent and subsequently dropped him from the GSIS roll of employees for being AWOL.

Consequently, contrary to the ruling of the CA, there is a factual issue that must be resolved in order to reach the conclusion that the assailed acts were illegal.

From the foregoing, it is clear that neither factual nor legal basis was established for the ruling of patent illegality issued by the CA. Indeed, in making that ruling, it made a determination of bad faith to arrive at the conclusion that the assailed reassignment order, formal charges, and the dropping of respondent from the rolls were all intended to harass him and eventually force him out of the GSIS.

Notably, the CA held that the alleged exigencies of the service as reason for respondent's reassignment was belied by Legal Counsel Bautista's Memorandum dated 7 June 2004. That Memorandum urgently requested the appointment by PGM Garcia of litigation lawyers in the LSG.

The CA also considered the failure of Chief Legal Counsel Bautista to refute the assertion of respondent. The latter had argued that since three of their lawyers at the Head Office resigned or were promoted, he was needed there more than in Zamboanga.[12] Clearly, the CA was already venturing into factual issues by taking those circumstances into consideration.

The ponencia states that bad faith and irregularities may be evident in the disputed act per se[13] based on the following "undisputed facts on record":[14]

(1)

The GSIS had been perpetually restrained from hearing and investigating administrative cases against Velasco.[15] (The ponente refers to administrative charges of grave misconduct allegedly committed by respondent Velasco and Mario Molina, also an Attorney V of the GSIS, when they helped disgruntled employees stage concerted protest actions against Garcia and the GSIS management. These are charges based on events occurring prior to the incidents subject of this case. It was the CA that had perpetually restrained the GSIS from hearing the administrative cases. The charges were subsequently declared void by this Court for lack of preliminary investigation.)

(2)

There is a history of antagonism between the parties.[16]

(3)

Despite the injunction, and after the election of respondent as union president, the GSIS let loose two more formal charges against the latter: one charging respondent for gross discourtesy for writing a letter asserting a contractual right under a CNA and insubordination for writing a letter seeking a clarification of two supposedly conflicting Memoranda.[17]

(4)

The GSIS never denied that there was a shortage of lawyers in the Manila Office at the time of the reassignment of respondent to Zamboanga.[18]

(5)

Respondent continued to report to the head office while seeking a clarification from the GSIS regarding its conflicting memoranda. In fact, he was in the GSIS premises when he personally received the letter removing him from the rolls.[19]

(6)

The records do not bear out the fact that other lawyers from the head office were also sent out to augment the legal staff in the field offices.[20]

(7)

Respondent demonstrated that a lawyer from a field office had been sent to augment the head office.[21]

(8)

The GSIS never issued a decision on the administrative cases that became the subject of this case.[22]

(9)

Petitioner's improper motive is "plainly apparent even in its submissions to this Court. In the petition, the GSIS averred it 'lost all faith and confidence in respondent when he ran for and was elected KMG President' and that it was Velasco's purported 'illegal activities as union president of the KMG which led to the GSIS's taking of necessary measures to protect its interest.'"[23]

The ponencia then concludes that respondent was singled out for reassignment due to his participation as union president; that the reassignment order, as well as the subsequent dropping of respondent from the rolls, was invalid; that since the charge of insubordination depended on the validity of the reassignment order, the former was likewise invalid; that there is no actionable case of gross discourtesy given the letter of respondent to SVP Sagcal, which shows gross abuse of authority on the part of the GSIS; and that in any event, the formal charges of Insubordination and Gross discourtesy need not even be scrutinized because the GSIS never issued a decision or ruling in these cases.

The analysis, however, is what Merida precisely prohibits, as it involves a consideration of the documents presented and their relation to each other and the surrounding circumstances. To reach the conclusion that petitioner resorted to a ploy to undermine the leadership of respondent as president of the KMG and ultimately to weaken unionism in the GSIS, the ponente had to piece together the issuance of the two formal charges, the reassignment order, and the dropping of respondent's name from the rolls of the GSIS. She linked them with surrounding circumstances, such as dismissal of administrative charges, distinct from the charges involved in the present case, that were previously filed and were subsequently declared void by this Court for lack of preliminary investigation. Undoubtedly, to reach the conclusion of patent illegality, the ponencia had to launch a fact-intensive analysis, which has become absurd. The very fact that it had to go to a fact-heavy interpretation only shows that the supposed illegality involved in this case is not patent at all.

Ultimately, the ponencia's stand violates the Merida doctrine, and consequently clashes with the principle of stare decisis. [24] The doctrine requires that, for purposes of judicial stability and consistency, we must stand by the decisions already promulgated and not unsettle what is already established.[25]

The ponencia next relies on Republic v. Lacap,[26] in which the Court states that courts do not have primary jurisdiction over an issue that is within the jurisdiction of an administrative tribunal and the question demands the exercise of sound discretion requiring special knowledge to resolve technical and intricate matters of fact. The ponencia then refers to Merida, which it says figures in the determination of the current water rate, from which the allowable 60% increase can be computed in accordance with existing regulations. According to the ponencia, the question in Merida was a highly technical matter, while that in the present case – whether the issuances of the GSIS were attended by bad faith – can hardly qualify as highly technical.

Suffice it to state that this Court has repeatedly ruled that prior resort to the CSC is mandatory when it comes to cases of dismissal alleged to have been made in bad faith.[27]

Take the case of Corsiga v. Defensor,[28] the Regional Irrigation Manager of the National Irrigation Administration (NIA), Region VI, issued a Regional Office Memorandum reassigning respondent to Aganan-Sta. Barbara River Irrigation System. Respondent sought exemption from the Memorandum Circular, but his request was denied. He then filed with the regional trial court a Complaint for prohibition and injunction with a prayer for the issuance of a temporary restraining order and/or a writ of preliminary injunction. He claimed that the Regional Irrigation Manager was guilty of bad faith, as the latter's real objective was to assign someone close to him to replace private respondent.[29]

The Court held that respondent should have first complained to the NIA Administrator and, if necessary, appeal to the CSC; otherwise, the doctrine of exhaustion of administrative remedies would be violated. The Court also stressed that he had failed to reckon with the fact that the issue involved factual questions.[30]

The ponencia states, however, that there is a substantial distinction between the two cases: there was no judgment on the merits in Corsiga. What was brought to the Court was a preliminary order denying a motion to dismiss on jurisdictional grounds; in this case, however, the CA found after due proceedings that respondent had proved his

factual allegations.

The distinction offered by the ponencia is not real. It must be pointed out that in this case, the CA made an exception by utilizing the doctrine of patent illegality, which took the case out of the general rule on the doctrine of exhaustion of administrative remedies. But for reasons already discussed, there is no patent illegality in this case. Accordingly, it cannot be said that the CA properly found that respondent proved his factual allegations. In other words, there was no "due proceedings" to speak of.

As it stands, the Corsiga doctrine is good case law and may be properly invoked in this case. On the other hand, the ponencia's stance sets a dangerous precedent – direct resort to the courts in cases of illegal dismissal involving a question of bad faith opens the floodgates to an avalanche of cases that would unnecessarily clog our court dockets.

Bad faith or irregularity cannot be inferred from the documents presented.

Further, the ponencia refers to the letter-reply of respondent to the Memorandum issued by SVP Sagcal on 28 June 2004. It supposedly shows the difficulty "of finding an actionable case of gross discourtesy." [31] The Memorandum dated 28 June 2004 prohibited GSIS employees from participation in union activities during office hours on the ground of "exigency of the service." [32]

The pertinent portions of the letter state:

1 July 2004

SVP LETICIA P. SAGCAL
GSIS Social Insurance Group
Re: Memorandum dated 28 June 2004

Dear SVP Sagcal,

In behalf of the Kapisanan ng mga Manggagawa sa GSIS (KMG), we bring to your attention the above subject memorandum which prohibits employees from "participation in any UNION ACTIVITIES".

Please be reminded that under Section 3 of the GSIS-KMG Collective Negotiation Agreement for 2002-2005 it is provided as follows:

Section 3. Authorized KMG Activities on Official Time. The GSIS Management agrees and hereby authorizes the duly elected executive and legislative assembly officers of the KMG, including the chairpersons of KMG standing committees to perform the functions related to KMG activities on official time, subject to the following conditions.

x x x x

Clearly, your memorandum absolutely prohibiting participation of union members, including duly elected executive, legislative officers, and chairpersons of standing committees, from participating in union activities is a gross and patent violation of our CNA. Peaceful concerted activities is also permissible, subject only to reasonable office rules and regulations, and is not absolutely prohibited by law, and neither can you prohibit the same.

We demand that your recall within two (2) days your unlawful memorandum dated 28 June 2004. Your failure to do so will compel us to file the corresponding administrative and criminal complaints against you before the appropriate body. (Emphasis in the Original) [33]

The alleged patent illegality cannot be inferred from the above letter, which was annexed to the formal charge for gross discourtesy.[34] It is noteworthy that the letter is practically a demand letter written by respondent on behalf of the KMG as its president.

What stands out is the fact that respondent is an Attorney V at the GSIS at the LSG, in-house counsel of the GSIS.[35] It must be remembered that an attorney-client relationship imposes upon the lawyer the fiduciary duty of loyalty to the principal.[36] His letter, however, clearly indicates that he assumed a position inconsistent with his duties to the GSIS: he assailed the legality of the Memorandum when he had the duty to defend its validity.[37] This is a clear case of disloyalty and, consequently, gross discourtesy against respondent. As a public officer, he is expected to observe courtesy, civility, and self-restraint in his dealings with others.[38]

On the formal charge for insubordination, misconduct, and conduct prejudicial to the best interest of the service against respondent, the letter sent by respondent to Chief Legal Counsel Elmer Bautista reveals respondent's refusal to accede to the reassignment order on the ground that there is no real urgency for his transfer to Zamboanga. He cited the following as reasons for the refusal: that there was a GSIS Memorandum urgently requesting the appointment of litigation lawyers in the LSG; and that since three of their lawyers at the Head Office resigned or were promoted, he was needed in the Head Office more than in Zamboanga.[39] Respondent also stated that he could not assume the Zamboanga post, unless the memorandum disqualifying him to be GSIS legal counsel in view of his election as union president was withdrawn.[40]

It is clear from the foregoing that the letters provide ground for insubordination. The term "insubordination" signifies "a willful or intentional disregard of the lawful and reasonable instructions of the employer." [41] In this case, the letters unequivocally express respondent's refusal to abide by the reassignment order, which, as will be discussed later, appears to be a valid exercise of management prerogative. He even provided reasons for the refusal. It must be stressed that respondent had a remedy at this juncture, which was to file an appeal to the CSC.[42] He, however, did not immediately pursue this recourse. Instead, he chose to write a letter conveying his resistance to the reassignment order.

Therefore, it cannot be said that bad faith on the part of the GSIS can be inferred from the letters. On the other hand, it all the more shows that the GSIS had reasonable grounds to support the charges it filed against Velasco.

The presumption of regularity and the concept of management prerogative negate the notion of patent illegality.

Petitioner's acts are clothed with presumptive regularity. Under Section 3(m), Rule 131 of the Rules of Court, it is disputably presumed that an official duty has been regularly performed, absent any contradiction or other evidence to the contrary. We have held that "[t]he presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty." [43]

In the case at bench, petitioner's acts of reassigning respondent, filing the formal charges against him, and dropping him from the roll of employees were all done in the performance of official duties.

With respect to the assailed formal charges, these were instituted by PGM Garcia, who, as president and general manager, was duly authorized to do so under Section 45, Republic Act No. 8291, otherwise known as the GSIS Act of 1997.[44] This legal provision expressly grants the president and general manager of GSIS powers of administration, among others, and specifically vests the latter with authority and responsibility to remove, suspend or otherwise discipline GSIS personnel. Moreover, Section 15 of the Uniform Rules grants to the disciplining

authority – who, in this case, is the GSIS president and general manager, the power to issue a formal charge.[45]

As for GSIS Human Resources Vice-President Campana who dropped respondent from the rolls on the ground of AWOL, and Chief Legal Counsel and SVP Bautista who issued the assailed Reassignment Order, they derive their authority from Section 44 of the GSIS Act of 1997.[46]

Hence, considering that these acts were done in the performance of official duties, the presumption of regularity attaches to them, thereby defeating the claim of patent illegality. Of course, the presumption of regularity, much like that of the presumption of good faith, is merely prima facie and can be rebutted by clear and convincing evidence. One must present proof before the CSC prior to seeking relief from the courts.

Further, Section 26(7), Book V, Title I, Subtitle A of the 1987 Revised Administrative Code recognizes reassignment as a management prerogative, provided it does not involve a reduction in rank, status and salary.[47] In this case, OSVP Office Order No. 04-04 reassigning respondent to Zamboanga appears on its face to be a valid exercise of a management prerogative:

Upon request by the SVP, FOG, as required by the exigencies of the service, and in view of the technical supervision and control of the Chief Legal Counsel over Field Operations Attorneys and Lawyers of the System, ATTY. ALBERT M. VELASCO, considering his legal expertise on the System's Operations, is temporarily assigned for a period of ninety (90) days to the Zamboanga, Iligan and Cotabato FODs to augment the legal officers in the said FODs due to the surmounting number of legal cases therein and shall conduct legal due diligence of cases pertaining to the System's operating concerns specifically involving housing loan defaults, collection of arrearages, foreclosure proceedings, and other matters requiring legal attention."

He shall submit written reports, with proper recommendation/s, if needed, to the Field Office Manager concerned to whom he shall report directly and who shall sign his Daily Attendance Record (DAR).

Atty. Velasco is allowed cash advances, as needed, subject to reimbursement in accordance with existing auditing and office rules and regulations.

This Order shall take effect immediately and shall remain effective until further notice.[48] (Emphases Supplied)

There is nothing in the Order to indicate that respondent suffered a diminution in rank, status and salary. On the other hand, the Order stated that respondent was "allowed cash advances, as needed, subject to reimbursement in accordance with existing auditing and office rules and regulations." [49] Further, the Order specifically stated that the reassignment was temporary. It even contained a definite duration of reassignment – 90 days. Hence, on its face, the Order complies with the requisites of a valid re-assignment order and may not be considered a floating assignment resulting in a diminution in rank.[50]

The ponencia, however, makes much of the clause in the Order, which provides that it "shall take effect immediately and shall remain effective until further notice." Supposedly, the duration of the reassignment cannot be considered definite because of this clause. Plainly, the statement relates only to the effectivity of the Order. It clarifies that the Order will take effect immediately and not at a future time and that its effectivity can be withdrawn by notice. In other words, it is nothing but a mere effectivity clause that has nothing to do with the 90-day period.

Concededly, the rule on management prerogative is not absolute: it is limited by "law, collective bargaining agreements, and general principles of fair play and justice." [51] Nonetheless, in this case, the prerogative of management cannot be tainted with bad faith or any irregularity at this juncture. A reassignment is presumed to be regular as well as made in the interest of public service.[52]

The CA erred in concluding

that there was patent illegality
in the issuance of the assailed
orders.

It was therefore an error for the CA to conclude that there was patent illegality in the case at bench and to nullify the assailed acts on this ground. Respondent's theory of constructive dismissal is a mere conclusion not evident from the reassignment order, formal charges and the dropping of respondent from the rolls.

The ponencia, however, relies on *Department of Finance v. Dela Cruz, Jr.*[53] (DOF), which held that a case assailing the mass detail and reassignment of DOF employees for being "patently illegal, arbitrary, and oppressive" was among the exceptions to the doctrine of exhaustion of administrative remedies.[54] That case, however, involved an Order that did not provide for a definite period of reassignment, making the detail indefinite. Hence, the Order patently lacked a requisite for a valid reassignment. In this case, though, the reassignment order provided for a definite period. More important, the illegality in DOF can be seen from the reassignment order itself. In other words, DOF was a clear case of patent illegality. On the other hand, the reassignment order in this case appears to be perfectly legal on its face, for reasons previously discussed.

The foregoing considered, it is the general rule on the doctrine of exhaustion of administrative remedies, and not the exception, that should apply. Thus, the issue of constructive dismissal was a question that could not be properly threshed out before the CA. It should have been initially resolved by the CSC, which has the appropriate technical knowledge and experience, the central personnel agency of the government.[55]

For seeking judicial recourse without first exhausting proper administrative remedies, the Petition was dismissible for lack of cause of action. In this light, the CA erred in not dismissing the Petition filed before it by respondent.

The doctrine of exhaustion of administrative remedies should not be ignored. It is a cornerstone of our judicial system[56] founded on sound public policy and practical considerations. The theory is that administrative authorities are in a better position to resolve questions that properly belong to their particular expertise. This doctrine gives superiors an opportunity to review and rectify errors committed by their subordinates.[57] Likewise, it relieves the courts of a considerable number of cases, thereby decongesting their already heavily loaded dockets.[58]

Here, the doctrine assumes greater significance inasmuch as the CA ruling effectively violated petitioner's right to due process. The CA's finding of bad faith on the part of petitioner and the consequent nullification of the assailed acts denied petitioner's right to a hearing, which includes the right to present its case and submit evidence in support thereof.[59] In other words, the CA condemned petitioner without a full-blown hearing. It cannot be overemphasized that the violation of a party's right to due process raises a serious jurisdictional issue that cannot be disregarded.[60]

II.

There is no violation of the due process rights of Velasco
that would warrant the application of the exception
to the rule on exhaustion of administrative remedies.

The ponencia also relies on *Batangas State University v. Bonifacio*(BSU).[61] In that case, a teacher was dropped from the rolls by the petitioner state university for failure to immediately report to his new detail at the office of the university president; instead, he continued to fulfill his duties as teacher and coach of the basketball team.[62] The Court held that the right of the employee to due process was denied when he was not given the opportunity to explain his absences and was thereafter peremptorily dropped from the rolls.[63] Justice De Castro explains that

the due process rights of Velasco was grossly violated by the failure of GSIS to notify him that he would be considered absent without authorized leave for his failure to report to the Mindanao offices, as well as by its failure to give him an opportunity to be heard. For this reason, she considers the present case as falling under a recognized exception to the rule on exhaustion of administrative remedies.

I cannot subscribe to her point of view.

It must be understood that in BSU, the Court came to such conclusion because there was a finding of bad faith on the part of the school and its officials:

Our examination of the records tells us that the CSC did not give due consideration to the petitioner's detailed and credible explanations to the effect that he actually reported to Dr. De Chavez upon receiving the memorandum of reassignment from Dr. Lontok but Dr. De Chavez allowed him to report after October 17, 1994 so that he could finish his teaching duties for the term; that he later on reported to Dr. De Chavez but the latter treated him with condescension and hostility, making sure that the petitioner was aware that he would soon be dismissed; and that the petitioner went several more times to the Office of the President to inquire about his DTRs but he was given the run-around. PBMIT did not refute the petitioner's explanations about reporting to Dr. De Chavez and about the latter's harsh and angry attitude towards him on several occasions.

It is unfortunate that the CSC sided with PBMIT only because the DTRs were not signed and approved by the petitioner's immediate superior, who was the chief of staff of the Office of the President. In doing so, the CSC put a higher value to form rather than to substance. That, to us, is unacceptable for it goes against the clear equities of the situation. The CSC thereby committed serious reversible error, particularly since the records undeniably showed that the approval of the DTRs was deliberately withheld due to the hostility of Dr. De Chavez towards the petitioner. Without doubt, PBMIT and its officials, starting with Dr. De Chavez, were guilty of evident bad faith in dealing with the petitioner on the matter of his DTRs.

We agree with the Court of Appeals.

Petitioner's bad faith becomes more apparent when De Chavez ignored respondent's presence in the school, allowed 30 calendar days to lapse and thereafter immediately caused the termination, instead of summoning him to explain his alleged absences. Clearly, the detail of respondent in the office of the president was meant to embarrass him and the subsequent termination of employment was part of the dubious scheme to rid of respondent's presence in the school in direct violation of respondent's right to work and unduly dilutes the constitutional guarantees of security of tenure and due process. As held in *Bertain v. Court of Appeals*:

While a temporary transfer or assignment of personnel is permissible even without the employee's prior consent, it cannot be done when the transfer is a preliminary step toward his removal, or is a scheme to lure him away from his permanent position, or designed to indirectly terminate his service, or force his resignation. Such a transfer would in effect circumvent the provision which safeguards the tenure of office of those who are in the Civil Service....[64](Emphasis supplied, citations omitted)

The above-quoted discussion shows that there was a bona fide intent on the part of the employee to report to his new detail upon receiving the memorandum of reassignment, and that Dr. De Chavez, the president of the university, allowed the former to report to the Office of the President at a later time so that he could finish his teaching duties for the term. In this case, there was no intent at all on the part of respondent Velasco to immediately report to the Mindanao offices. It must be stressed that, as previously discussed, he even wrote a letter that conveyed his resistance to the reassignment order. On the other hand, the GSIS had in fact issued a Memorandum[65] on 9 July 2004 directing respondent to explain his refusal to comply with the reassignment order, which shows good faith on the part of the GSIS.

Also, in BSU, the Court arrived at the conclusion of bad faith on the part of the school and the latter's officials

only after the presentation of evidence by both parties before the CSC. In this case, there was no presentation of evidence at all before the CSC, precisely because Velasco skipped that agency and directly resorted to judicial remedies.

Respondent's direct resort to judicial remedies bring us to another important distinction. The legality of respondent's dismissal is tackled in relation to the question of whether there was a violation of the doctrine of exhaustion of administrative remedies. In, BSU, the doctrine of exhaustion of administrative remedies was not an issue at all since the CSC already had the opportunity to resolve that question.

However, the ponencia states that BSU is significant as it emphasizes that an employee who reports for work cannot be summarily dropped from the rolls for "being continuously absent without approved leave for at least 30 calendar days." It also relies on BSU's holding that ignoring, instead of summoning, the employee to explain his purported absences, is not only indicative of bad faith, but is by itself a violation of the constitutionally guaranteed security of tenure and due process.

The ponencia fails to appreciate BSU correctly. As can be seen from the previously quoted discussion therein, the Court considered other factors that showed bad faith on the part of the school and the latter's officials, such as the good-faith attempt of the employee to report for work at his new place of assignment. In other words, the fact that he reported for work, although not in the place to which he had been detailed, and that he was not summoned to explain his absences should not be the only points of comparison in order for BSU to apply to this case. Besides, as already mentioned, the GSIS in fact issued a Memorandum 66 on 9 July 2004 directing respondent to explain his refusal to comply with the reassignment order. No one can say, therefore, that it ignored respondent.

Moreover, the finding of violation of due process in BSU was a mere consequence of the finding of bad faith on the part of the school and its officials. Such bad faith indicated that the school had unduly employed Section 63, Rule XVI of the Omnibus Civil Service Rules and Regulations, to justify the dropping of the employee from the rolls without prior notice. In other words, the finding of bad faith triggered the non-application of the legal provision and, subsequently, the need for notice and the opportunity to be heard. In this case, there is nothing in the assailed issuances that would show that Section 63, Rule XVI of the Omnibus Civil Service Rules and Regulations, was used as a scheme to indirectly dismiss respondent.

Therefore, BSU may not be properly invoked in this case.

III.

Respondent could not properly avail of
Certiorari under Rule 65.

A special civil action for certiorari requires, among other things, that there be no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[67] As previously discussed, respondent had the remedy of appeal to the CSC from his dismissal. Certiorari was therefore not available to him. Undoubtedly, his bare allegation that an appeal to the CSC was not adequate did not justify an immediate resort to certiorari.

A writ of certiorari may be issued only if there is grave abuse of discretion tantamount to lack or excess of jurisdiction.[68] In this case, not only was an appeal available to respondent as a remedy from the dropping of his name from the GSIS roll of employees, he also failed to sufficiently establish grave abuse of discretion on the part of petitioner that would justify his immediate resort to certiorari in lieu of an appeal. As previously discussed, the assailed acts of petitioner are clothed with the presumption of regularity in the performance of official functions. The presumption stands in this case until the same is overcome by presentation of clear and convincing evidence at the CSC level.

IV.

There is no basis to excuse the non-exhaustion of administrative remedies on the ground of substantial justice.

According to the ponencia, the "Dissenting Opinion's proposed reversal of the factual findings and the judgment on the merits of the Court of Appeals on the ground of a supposed procedural misstep is unjust and unduly burdens a party already aggrieved by a whimsical, capricious, and despotic abuse of power with a circuitous and ineffectual remedy." [69]

This statement is inaccurate. The dissent did not make any finding of fact, but only analyzed the failure to apply the doctrine of exhaustion of administrative remedies. Indeed, it is an established rule that failure to exhaust administrative remedies is a procedural matter that may be dispensed with in the name of substantial justice, [70] I see no basis for the application of this doctrine, contrary to the ponencia's view that there is.

Worse, by accusing the GSIS of abusing its power as cited above, the ponencia effectively determined *motu proprio* that the former had resorted to a scheme to undermine the leadership of respondent as president of the KMG and ultimately to weaken unionism in the GSIS. In doing so, the ponencia went beyond the four corners of each of the assailed issuances. That determination clearly went beyond the parameters set by Merida. Lest it be forgotten, no less than the CSC remains a constitutionally created, independent, central personnel agency of the government. [71] As such, it is "the sole arbiter of controversies relating to the civil service." [72]

Therefore, at this juncture, we cannot validly make that premature conclusion.

WHEREFORE, I vote to GRANT the Petition.

[1] Civil Service Commission Memorandum Circular No. 40 (1998) Rule III, Section 6 (a).

[2] Article IX-B, Section 2(1) of the 1987 Constitution reads: "The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters." GSIS, which was created under Commonwealth Act No. 186, and passed on 14 November 1936, and later amended under R.A. No. 8291 dated 30 May 1997, is therefore a government-owned and controlled corporation (GOCC) with an original charter. As such, it is included in the civil service and, therefore, the provisions of the Civil Service Law and its Rules and Regulations apply.

[3] Civil Service Commission Resolution No. 99-1936 (1999).

[4] Section 71 reads:

Section 71. Complaint or Appeal to the Commission. – Other personnel actions, such as, but not limited to, separation from the service due to unsatisfactory conduct or want of capacity during probationary period, dropping from the rolls due to Absence Without Official Leave (AWOL), physically and mentally unfit, and unsatisfactory or poor performance, action on appointments (disapproval, invalidation, recall, and revocation), reassignment, transfer, detail, secondment, demotion, or termination of services, may be brought to the Commission, by way of an appeal.

[5] Section 4 reads:

Section 4. Jurisdiction of the Civil Service Commission. – The Civil Service Commission shall hear and decide administrative cases instituted by, or brought before it, directly or on appeal, including contested appointments, and shall review decisions and actions of its offices and of the agencies attached to it.

Except as otherwise provided by the Constitution or by law, the Civil Service Commission shall have the final

authority to pass upon the removal, separation and suspension of all officers and employees in the civil service and upon all matters relating to the conduct, discipline and efficiency of such officers and employees.

[6] Addition Hills Mandaluyong Civic & Social Organization, Inc. v. Megaworld Properties & Holdings, Inc., 686 Phil. 2012.

[7] Province of Zamboanga del Norte v. Court of Appeals, 396 Phil. 709 (2000), as cited in SSS v. CA, 482 Phil. 449 (2004). The case enumerated the following exceptions to the doctrine of exhaustion of administrative remedies: (1) when there is a violation of due process; (2) when the issue involved is a purely 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 bear the implied and assumed approval of the latter; (7) when requiring exhaustion of administrative remedies would be unreasonable; (8) when such remedies would amount to the nullification of a claim; (9) when the subject matter is private land in land case proceedings; (10) when the rule does not provide a plain, speedy and adequate remedy; (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) when the rule of qualified political agency applies; and (14) when the issue of non-exhaustion of administrative remedies has been rendered moot.

[8] Id.

[9] 588 Phil. 505 (2008).

[10] Id. at 512-513.

[11] Magaling v. Ong, 584 Phil. 151 (2008).

[12] Rollo, p. 58, CA Decision in CA-G.R. SP No. 86365, p. 25.

[13] Id. at 12.

[14] Ponencia, p. 14.

[15] Id. at 15.

[16] Id. at 19.

[17] Id. at 15.

[18] Id.

[19] Id. at 17.

[20] Id. at 15.

[21] Id.

[22] Id. at 17.

[23] Id. at 19.

[24] Commissioner of Internal Revenue v. Insular Life Assurance Co. Ltd., G.R. No. 197192, 4 June 2014. 725 SCRA 94.

[25] Commissioner of Internal Revenue v. Insular Life Assurance Co. Ltd., supra.

[26] 546 Phil. 87 (2007).

[27] *Ulup v. Angeles*, G.R. No. 157441, 11 February 2015; *Ejera v. Merto*, 725 Phil. 180 (2014); *Cabungcal v. Lorenzo*, 623 Phil. 329 (2009); *Carale v. Abarintos*, 336 Phil. 126 (1997); *Teotico v. Agda*, 274 Phil. 960 (1991); *Department of Education, Culture and Sports v. Court of Appeals*, 262 Phil. 608 (1990).

[28] 439 Phil. 875-887 (2002).

[29] *Id.* at 879-880, 885.

[30] *Id.* at 884-885.

[31] Ponencia, p. 15.

[32] Rollo, p. 64.

[33] CA rollo, pp. 39-40

[34] See Annex J, p. 2; Rollo, p. 73.

[35] Section 47 of R.A. No. 8291 states:

SEC. 47 – Legal Counsel.- The Government Corporate Counsel shall be the legal adviser and consultant of the GSIS, but the GSIS may assign to the Office of the Government Corporate Counsel (OGCC) cases for legal action or trial, issue for legal opinions, preparation and review of contracts/agreements and others, as the GSIS may decide or determine from time to time; Provided, however, That the present legal services group in the GSIS shall serve as its in-house legal counsel.

[36] *Heirs of Falame v. Baguio*, 571 Phil. 428 (2008). Canon 15 of the Code of Professional Responsibility states that "[a]ll lawyers shall observe candor, fairness and loyalty in all his dealings and transactions with his client. Canon 17 also provides that "[a] lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him."

[37] A conflict of interest arises when "a lawyer represents inconsistent interests of two opposing parties, like when the lawyer performs an act that will injuriously affect his first client in any matter in which he represented him, or when the lawyer uses any knowledge he previously acquired from his first client against the latter. (*Diongzon v. Mirano*, A.C. No. 2404, 17 August 2016)

[38] *Sison v. Morales-Malaca*, 571 Phil. 566 (2008)

[39] Rollo, p. 58, CA Decision in CA-G.R. SP No. 86365, p. 25.

[40] *Id.*

[41] *Civil Service Commission v. Arandia*, 731 Phil. 639 (2014).

[42] *Supra* note 4.

[43] *Bustillo v. People*, 634 Phil. 547, 556 (2010).

[44] This law specifies the powers and duties of the president and general manager, viz:

SECTION 45. Powers and Duties of the President and General Manager. — The President and General Manager of the GSIS shall among others, execute and administer the policies and resolutions approved by the board and direct and supervise the administration and operations of the GSIS. The President and General Manager, subject to the approval of the Board, shall appoint the personnel of the GSIS, remove, suspend or otherwise

discipline them for cause, in accordance with existing Civil Service rules and regulations, and prescribe their duties and qualifications to the end that only competent persons may be employed.

[45] Section 15, Uniform Rules on Administrative Cases in the Civil Service.

[46] The provision reads:

SECTION 44. Appointment, Qualifications, and Compensation of the President and General Manager and of Other Personnel. — The President and General Manager of the GSIS shall be its Chief Executive Officer and shall be appointed by the President of the Philippines. He shall be a person with management and investments expertise necessary for the effective performance of his duties and functions under this Act.

The GSIS President and General Manager shall be assisted by one or more executive vice-presidents, senior vice-presidents, vice-presidents and managers in addition to the usual supervisory and rank and file positions who shall be appointed and removed by the President and General Manager with the approval of the Board, in accordance with the existing Civil Service rules and regulations. (Emphasis Ours)

[47] The provision states:

Sec. 26. Personnel Actions. — . . .

x x x x

As used in this Title, any action denoting the movement or progress of personnel in the civil service shall be known as personnel action. Such action shall include appointment through certification, promotion, transfer, re-instatement, re-employment, detail, reassignment, demotion, and separation. All personnel actions shall be in accordance with such rules, standards, and regulations as may be promulgated by the Commission.

x x x x

(7) Reassignment. An employee: may be re-assigned from one organizational unit to another in the same agency; Provided, That such re-assignment shall not involve a reduction in rank status and salary. (Emphasis supplied)

See also *Fernandez v. Sto. Tomas*, 312 Phil. 235 (1995).

[48] *Rollo*, p. 66.

[49] *Id.*

[50] *Padolina v. Fernandez*, 396 Phil. 615(2000).

[51] *Coca-Cola Bottlers Philippines, Inc. v. Del Villar*, 646 Phil. 587, 608 (2010).

[52] *Nieves v. Blanco*, 688 Phil. 282 (2012).

[53] G.R. No. 209331, 24 August 2015, 768 SCRA 73.

[54] *Id.* at 86-87.

[55] *Civil Service Commission v. Court of Appeals*, 696 Phil. 230 (2012).

[56] *Go v. Distinction Properties Development*, 686 Phil. 160 (2012).

[57] *Merida Water District v. Bacarro*, *supra* note 36.

[58] *Id.* at 209.

[59] *Ang Tibay v. CIR*, 69 Phil. 635 (1940).

[60] *Garcia v. Molina*, 642 Phil. 6 (2010).

[61] 514 Phil. 335 (2005).

[62] *Id.* at 337-338.

[63] *Id.* at 342.

[64] *Id.* at 342-343.

[65] *Rollo*, p. 67.

[66] *Rollo*, p. 67.

[67] Pertinent portion of Sec. 1, Rule 65 of the 1997 Rules of Civil Procedure,[67] provides:

SECTION 1. Petition for certiorari. – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

[68] *Lagua v. CA*, 689 Phil. 452 (2012).

[69] *Ponencia*, p. 21.

[70] *R.P. Dinglasan Construction v. Atienza*, 477 Phil. 305 (2004).

[71] CONSTITUTION, Art. IX-A, Sec. 1.

[72] *Catipon, Jr. v. Japson*, G.R. No. 191787, 22 June 2015, 759 SCRA 557; *Cabungcal v. Lorenzo*, 623 Phil. 329 (2009).

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