

**HENRY R. GIRON, PETITIONER, VS. HON. EXECUTIVE SECRETARY
PAQUITO N. OCHOA, JR., HON. SANGGUNIANG PANLUNGSOD OF
QUEZON CITY AND HON. KAGAWAD ARNALDO A. CANDO,
RESPONDENTS.**

G.R. No. 218463. March 01, 2017

Ponente: MENDOZA, J.

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MENDOZA, J.:

This petition for review on certiorari under Rule 45 of the Rules of Court seeks the review of the May 13, 2015 Decision[1] of the Office of the President (OP) in OP-DC Case No. 15-A-007, which dismissed the appeal of petitioner Henry R. Giron (Giron) from the March 13, 2014 Resolution[2] of the City Council of Quezon City (City Council), dismissing the administrative complaint against respondent Arnaldo A. Cando (Cando), then the Barangay Chairman of Capri, Novaliches, Quezon City.

The Antecedents

On November 6, 2012, Giron, together with Marcelo B. Macasinag, Eliseo M. Cruz, Benjamin Q. Osi and Crisanto A. Canciller, filed before the Ombudsman a complaint for Dishonesty, Grave Abuse of Authority and Violation of Section 389 (b) of Republic Act (R.A.) No. 7160[3] against Cando, then the Barangay Chairman of Capri, for illegally using electricity in three (3) of his computer shops.

On November 8, 2012, the case was referred to the Office of the Vice Mayor of Quezon City and was calendared for the January 14, 2013 session of the City Council. The case was later endorsed to the Special Investigation Committee on Administrative Cases Against Elective Barangay Officials (Committee) for a hearing. On a scheduled hearing on June 30, 2013, only Giron appeared.

The investigation, however, was suspended because of the coming October 2013 Barangay Elections. During the said elections, Cando vied for the position of Barangay Kagawad and won. He assumed office on December 1, 2013.

On March 13, 2014, the City Council adopted the Resolution[4] of the Committee, dated January 24, 2014, recommending the dismissal of the case against Cando for being moot and academic. It cited as basis the doctrine first enunciated in *Pascual v. Provincial Board of Nueva Ecija (Pascual)*[5] and reiterated in *Aguinaldo v. Santos (Aguinaldo)*,[6] where the Court stated that "a public official cannot be removed for administrative misconduct committed during a prior term, since his re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor." [7]

Giron moved for reconsideration, arguing that the doctrine of condonation was only applicable when the re-election of the public official was to the same position. On October 27, 2014, the City Council adopted the recommendation of the Committee to deny Giron's motion for reconsideration.[8]

On November 18, 2014, Giron appealed to the OP, where it was docketed as OP-DC Case No. 15-A-007. On May 13, 2015, the OP, through respondent Executive Secretary Pacquito N. Ochoa, Jr., dismissed the appeal for lack of merit. The OP opined that the "condonation rule applied even if [Cando] runs for a different position as long as the wrongdoing that gave rise to his culpability was committed prior to the date of election." [9]

Giron did not move for reconsideration. Instead, he directly filed this petition before this Court. His justification for his disregard of the rule on exhaustion of administrative remedies was that the issues being raised in this petition were purely questions of law or of public interest.

ISSUES

- WHETHER OR NOT G.R. NO. L-11959 (Pascual Case) STILL LEGAL AND RELEVANT UNDER THE 1987 CONSTITUTION.

- WHETHER OR NOT G.R. NO. 94115 (Aguinaldo Doctrine) IS UNCONSTITUTIONAL INsofar AS IT VIOLATES PUBLIC ACCOUNTABILITY OF 1987 CONSTITUTION AND REPUBLIC ACT 6713 THE CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES.

- WHETHER OR NOT THE DOCTRINE OF CONDONATION APPLIES TO PUBLIC OFFICIALS REELECTED TO OTHER POSITION[S]. [10]

Basically, petitioner Giron wants this Court to revisit the condonation doctrine and prays for the Court:

"1.

To declare that G.R. No. L-11959 (Pascual case) is irrelevant under the present 1987 Constitution;

2.

To nullify G.R. No. 94115 (Aguinaldo doctrine) as it contravenes the Public Accountability [provisions] of 1987 Constitution and violates Republic Act [No.] 6713 and Republic Act [No.] 7160; and

3.

If [it would be] ruled that the condonation doctrine [would] still [be] valid, it does not apply to reelection to other position." [11]

Respondent Cando disagrees. On procedural grounds, he seeks the dismissal of the petition grounded on Giron's failure to exhaust administrative remedies as no motion for reconsideration was filed with the OP. As to the merits, the respondent asserts that the Aguinaldo condonation doctrine applies in his case and that the re-election to office, contemplated under the said doctrine, includes election to a different post.

The OSG, on the other hand, insists that the petition should be dismissed on the ground of violation of the rule on exhaustion of administrative remedies. It points out that the issues raised by Giron have been rendered moot and academic by the Court's ruling in *Conchita Carpio-Morales v. Court of Appeals and Jejomar Erwin S. Binay, Jr.*, (Carpio-Morales), [12] wherein the Aguinaldo doctrine was abandoned but its application was made prospective. Thus, its reliance on the ruling should be respected.

The Ruling of the Court

Procedural Issues

Plain is the rule that before a party is allowed to seek intervention of the courts, exhaustion of available administrative remedies, like filing a motion for reconsideration, is a pre-condition. As held in a catena of cases, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of

administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case. This availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies.[13] Generally, absent any finding of waiver or estoppel, the case is susceptible of dismissal for lack of cause of action.[14]

In this case, petitioner Giron raises the issue of whether the condonation doctrine still applies if the public official is elected to a new position. As he has raised a pure question of law, his failure to seek further administrative remedy may be excused. It has been held that the requirement of a motion for reconsideration may be dispensed with in the following instances: (1) when the issue raised is one purely of law; (2) where public interest is involved; (3) in cases of urgency; and (4) where special circumstances warrant immediate or more direct action.[15]

For the same reason, the Court glosses over the failure of the petitioner to properly observe the hierarchy of courts. Under the rules, he should have first brought this to the Court of Appeals through a petition for review under Rule 43. Section 1 thereof reads:

Section 1. Scope. - This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. [Emphasis supplied]

As a rule, direct resort to this Court is frowned upon in line with the principle that the Court is the court of last resort, and must remain to be so if it is to satisfactorily perform the functions conferred to it by the Constitution. The rule, however, admits of exceptions, namely: "(a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively so small as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) where the application of the doctrine may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) where the issue of non-exhaustion of administrative remedies has been rendered moot; (j) where there is no other plain, speedy and adequate remedy; (k) where strong public interest is involved; and (l) in quo warranto proceedings." [16]

Substantive Issue

The OSG is correct that the condonation doctrine has been abandoned by the Court in *Carpio-Morales*. [17] In the said case, the Court declared the doctrine as unconstitutional, but stressed that its application should only be prospective. Thus:

It should, however, be clarified that this Court's abandonment of the condonation doctrine should be prospective in application for the reason that judicial decisions applying or interpreting the laws or the Constitution, until reversed, shall form part of the legal system of the Philippines. Unto this Court devolves the sole authority to interpret what the Constitution means, and all persons are bound to follow its interpretation. As explained in *De Castro v. Judicial Bar Council*,

Judicial decisions assume the same authority as a statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable, the criteria that must control the actuations, not only of those called upon to abide by them, but also of those duty-bound to enforce obedience to them.

Hence, while the future may ultimately uncover a doctrine's error, it should be, as a general rule, recognized as "good law" prior to its abandonment. Xxx [Emphasis supplied]

In this case, however, Giron insists that although the abandonment is prospective, it does not apply to public officials elected to a different position.

On this issue, considering the ratio decidendi behind the doctrine, the Court agrees with the interpretation of the administrative tribunals below that the condonation doctrine applies to a public official elected to another office. The underlying theory is that each term is separate from other terms. Thus, in Carpio-Morales, the basic considerations are the following: first, the penalty of removal may not be extended beyond the term in which the public officer was elected for each term is separate and distinct;^[18] second, an elective official's re-election serves as a condonation of previous misconduct, thereby cutting the right to remove him therefor;^[19] and third, courts may not deprive the electorate, who are assumed to have known the life and character of candidates, of their right to elect officers. In this case, it is a given fact that the body politic, who elected him to another office, was the same.

It should be stressed, however, that the doctrine is now abandoned. As concluded in the said case,

Xxx. In consequence, it is high time for this Court to abandon the condonation doctrine that originated from Pascual, and affirmed in the cases following the same, such as Aguinaldo, Salalima, Mayor Garcia, and Governor Garcia, Jr. which were all relied upon by the CA.^[20]

WHEREFORE, the petition is DENIED. The May 13, 2015 Decision of the Office of the President in OP-DC Case No. 15-A-007, adopting the March 13, 2014 Resolution of the City Council of Quezon City is AFFIRMED.

This disposition is, however, without prejudice to any criminal case filed, or may be filed, against Arnaldo A. Cando for theft of electricity.

SO ORDERED.

Carpio (Chairperson), Peralta, and Jardeleza, JJ., concur.
Leonen, J., on official leave.

[1] Rollo, pp. 49-50.

[2] Id. at 22.

[3] The Local Government Code of 1991. SECTION 389. Chief Executive: Powers, Duties, and Functions. -

(a) The punong barangay, as the chief executive of the barangay government, shall exercise such powers and perform such duties and functions, as provided by this Code and other laws.

(b) For efficient, effective and economical governance, the purpose of which is the general welfare of the barangay and its inhabitants pursuant to Section 16 of this Code, the punong barangay shall:

(1) Enforce all laws and ordinances which are applicable within the barangay;

(2) Negotiate, enter into, and sign contracts for and in behalf of the barangay, upon authorization of the

sangguniang barangay;

- (3) Maintain public order in the barangay and, in pursuance thereof, assist the city or municipal mayor and the sanggunian members in the performance of their duties and functions;
 - (4) Call and preside over the sessions of the sangguniang barangay and the barangay assembly, and vote only to break a tie;
 - (5) Upon approval by a majority of all the members of the sangguniang barangay, appoint or replace the barangay treasurer, the barangay secretary, and other appointive barangay officials;
 - (6) Organize and lead an emergency group whenever the same may be necessary for the maintenance of peace and order or on occasions of emergency or calamity within the barangay;
 - (7) In coordination with the barangay development council, prepare the annual executive and supplemental budgets of the barangay;
 - (8) Approve vouchers relating to the disbursement of barangay funds;
 - (9) Enforce laws and regulations relating to pollution control and protection of the environment;
 - (10) Administer the operation of the katarungang pambarangay in accordance with the provisions of this Code;
 - (11) Exercise general supervision over the activities of the sangguniang kabataan;
 - (12) Ensure the delivery of basic services as mandated under Section 17 of this Code;
 - (13) Conduct an annual palarong barangay which shall feature traditional sports and disciplines included in national and international games, in coordination with the Department of Education, Culture and Sports;
 - (14) Promote the general welfare of the barangay; and
 - (15) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.
- (b) In the performance of his peace and order functions, the punong barangay shall be entitled to possess and carry the necessary firearm within his territorial jurisdiction, subject to appropriate rules and regulations.

[4] Rollo, pp. 23-28.

[5] 106 Phil. 466 (1959).

[6] 287 Phil. 851 (1992).

[7] Rollo, p. 26.

[8] Id. at 29-35.

[9] Id. at 50.

[10] Id. at 17.

[11] Id. at 18.

[12] G.R. Nos. 217126-27, November 10, 2015.

[13] *Paat v. Court of Appeals*, 334 Phil. 146, 152 (1997). See also 63C Am. Jur. 2d, 58 which states: Where an administrative remedy is provided by the statute and is intended to be exclusive, a court has no authority to oust

the administrative agency of its jurisdiction by hearing the case; therefore, a court that hears such case is acting without jurisdiction, rather than merely committing an error of law, and is subject to prohibition.

An agency may seek prohibition preventing court interference with cases pending before it, and the hardship the agency faces caused by a court order halting its proceedings is sufficient to justify the granting of the writ. (Citations omitted)

[14] *Montanez v. PARAD*, Negros Occidental, 616 Phil. 203 (2009), citing *Paat v. Court of Appeals*, 334 Phil. 146 (2007).

[15] *Alindao v. Hon. Joson*, 332 Phil. 239, 251 (1996).

[16] *United Overseas Bank of the Phils., Inc. v. Board of Commissioners-HLURB*, G.R. No. 182133, June 23, 2015, 760 SCRA 300, 317 (2015).

[17] G.R. Nos. 217126-27, November 10, 2015.

[18] Offenses committed, or acts done, during previous term are generally held not to furnish cause for removal and this is especially true where the constitution provides that the penalty in proceedings for removal shall not extend beyond the removal from office, and disqualification from holding office for the term for which the officer was elected or appointed. (67 C.J.S. p. 248, citing *Rice vs. State*, 161 S.W. 2d. 401; *Montgomery v. Nowell*, 40 S.W. 2d. 418; *People ex rel. Bagshaw v. Thompson*, 130 P. 2d. 237; *Board of Com'rs of Kingfisher County vs. Shutler*, 281 P. 222; *State vs. Blake*, 280 P. 388; *In re Fudula*, 147 A. 67; *State vs. Ward*, 43 S.W. 2d. 217).

[19] That the reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor. (43 Am. Jur. p. 45, citing *Atty. Gen. vs. Hasty*, 184 Ala. 121, 63 So. 559, 50 L.R.A. (NS) 553. 273.

[20] *Carpio-Morales v. Court of Appeals*, G.R. Nos. 217126-27, November 10, 2015; citing *Conant v. Grogan* (1887) 6 N.Y.S.R. 322.

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