

**PACITA J. BAGUIORO, PETITIONER, VS. HON. MARIANO Y. BASA, JR.
PRESIDING JUDGE, BRANCH 56, REGIONAL TRIAL COURT OF
NEGROS OCCIDENTAL, SAN CARLOS CITY, AND ROMEO ESPINOSA,
RESPOND...**

G.R. No. 83369. October 02, 1992

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

This case involves the application of the principle of res judicata and the rule on exhaustion of administrative remedies by a party contesting the promotion to a higher position of a co-employee in the Department of Education, Culture and Sports (DECS).

The pleadings disclose the following facts:

Prior to April 1982, petitioner and private respondent were the Elementary Head Teacher and Elementary School Principal I, respectively in the Schools Division of San Carlos City, Negros Occidental. They were both considered for promotion to the position of General Education Supervisor I (Music and Arts) in the said Division when the same became vacant sometime in April 1982. On 12 April 1982, the Division Promotion Board decided in favor of the petitioner and recommended her appointment to the said vacancy. In September of 1982, the Regional Promotion Board of Region VI of the then Ministry of Education, Culture and Sports (MECS), now Department of Education, Culture and Sports (DECS), to which the Schools Division of San Carlos City belongs, ruled in favor of the petitioner; hence, the Regional Director decreed the petitioner's appointment to the contested position. Private respondent moved for its reconsideration.

On 21 November 1983, the Regional Director reversed himself and declared the private respondent better qualified; consequently, the latter was appointed to the contested position. Petitioner appealed this adverse decision to the then Minister of the MECS. Because of the delay in the disposition of her appeal, petitioner filed a petition for Quo Warranto with Mandamus and Damages against the MECS Director of Region VI, the Schools Division Superintendent of San Carlos City and the private respondent with Branch 57 of the Regional Trial Court (RTC) of San Carlos City. The same was docketed as Civil Case No. 076. Upon motion of the defendants, the court dismissed the case on the ground of prescription. Petitioner moved for its reconsideration. During its pendency, then Minister Jaime C. Laya of MECS wrote a letter, dated 17 April 1985, to the Regional Director of Region VI transmitting to the latter the Memorandum-Report of the Complaints Committee of the Ministry, dated 17 April 1985, which found the decision of 21 November 1983 to be irregular and which recommended the affirmance of the 23 September 1982 regional decision favoring the petitioner. Minister Laya also informed said Regional Director therein of his (Laya's) concurrence with said findings and recommendation.

On 16 May 1985, the MECS Regional Director, via a 1st indorsement, directed the Schools Division Superintendent of San Carlos City, Negros Occidental to prepare the appointment and other supporting papers of the petitioner.

On 23 October 1985, the trial court issued an Order denying petitioner's 11 June 1985 motion for reconsideration on the ground that the case had already become moot and academic in view of the aforementioned letter of Minister Laya and the fact that pursuant thereto, the appointment of petitioner had been prepared and that she had actually assumed the position.

In the meantime, however, private respondent filed with this Court a petition for certiorari and prohibition with preliminary injunction against Minister Laya, the Regional Director of MECS, Region VI, the Schools Division Superintendent of San Carlos City and the petitioner. The case was docketed as G.R. No. 73915. Private respondent prayed therein as follows:

“WHEREFORE, petitioner most respectfully prays of the Honorable Court to render judgment in his favor and against respondents, by declaring the Memorandum-Report of MECS Complaints Committee, dated April 17, 1985, to the Honorable MECS Minister (Annex ‘N’); the letter also dated April 17, 1985 (Annex ‘N-1’) of the Honorable MECS Minister to the MECS Regional Director, Region VI, wherein the former concurred in the contents of Annex ‘N’; and the letter of the Honorable MECS Minister, dated January 8, 1986 (Annex ‘X’), addressed to the petitioner wherein the latter is informed that his motion for reconsideration (Annex ‘Q’) of the Memorandum-Report (Annex ‘N’), was denied, as null and void ab initio and without any legal force and effects (sic).”[1]

In the Resolution of 11 June 1986, this Court dismissed the petition for lack of merit. This resolution reads:

“Considering the allegations, issues and arguments adduced in the petition for certiorari and prohibition, the Court resolved to DISMISS the petition for lack of merit.”[2]

A motion to reconsider it was denied with finality in the Resolution of 8 April 1987.[3]

After his defeat in this Court, private respondent filed on 28 January 1988 with the RTC of San Carlos City a complaint for Quo Warranto with Injunction and Damages[4] against the DECS Regional Director of Region VI, the Civil Service Commission Regional Director of Region VI, the Schools Division Superintendent of San Carlos City (Negros Occidental), the Administrative Officer of DECS, Region VII and the petitioner. Private respondent prayed for judgment (a) annulling the 17 April 1985 Memorandum-Report of the Complaints Committee of DECS, the letter of Minister Laya of the same date expressing concurrence with the findings and recommendation therein and the letter of the MECS Regional Director of 17 September 1985 directing the Schools Division Superintendent to issue to the private respondent an appointment back to his former position as Elementary School Principal I and (b) ordering defendants therein to pay him P10,000.00 as attorney's fees, litigation expenses and costs of the suit. He also sought the issuance of a restraining order or preliminary injunction to prevent the enforcement of the abovementioned rulings and directives. The case was docketed as Civil Case No. 162 and was assigned to Branch 57 of the court below.

On 1 February 1988, petitioner filed a motion to dismiss said Civil Case No. 162 on grounds of (1) res judicata, invoking the said court's order of 23 October 1985 in Civil Case No. 076 denying her motion for reconsideration of the dismissal thereof on the ground that the same was rendered moot by the abovementioned Memorandum-Report and letter of Minister Laya both dated 17 April 1985, the subsequent appointment of the petitioner to the contested position, her having assumed the same and the dismissal of G.R. No. 73915; (2) prescription; and (3) lack of cause of action.[5]

On 26 April 1988, respondent Judge Mariano Basa, Jr. of Branch 58 of the court below handed down an Order denying the motion to dismiss. Insofar as the first ground is concerned, said court did not take into account G.R. No. 73915, but only Civil Case No. 076. In disposing of the issue, it ruled that the third requisite for res judicata -- i.e., a judgment or order on the merits in the first case -- is not present because Civil Case No. 076 was dismissed

on the ground of prescription; the same was not decided on the merits. As to the second ground, the trial court held that the private respondent's cause of action accrued only after 23 September 1987 when the Schools Division Superintendent received the MECS Regional Director's letter of 17 September 1987. Anent the third ground, it ruled that the cause of action is very clear from a reading of the complaint.[6]

Unable to accept the order, which she impugns to have been issued without jurisdiction or with grave abuse of discretion, petitioner filed this special civil action for certiorari under Rule 65 of the Rules of Court on 10 May 1988.

This Court gave due course to the petition after the filing of the Comment by the private respondent, the Reply thereto by the petitioner and the rejoinder to the latter by the private respondent. Both parties were then required to submit their respective Memoranda,[7] which they subsequently complied with.

The petition is impressed with merit.

1. Respondent Court could not have avoided the application of the principle of res judicata if it did not disregard this Court's 11 June 1986 Resolution in G.R. No. 73915 denying the petition and the 8 April 1987 Resolution denying the motion for reconsideration with finality. Although the former came in the form of a minute resolution, it is an adjudication on the merits of the petition because it was arrived at after a thorough evaluation of the facts alleged in the petition, an incisive determination of the issues involved and an exhaustive consideration of the arguments adduced therein. This is a settled rule[8] which the trial court should not have disregarded or ignored. Accordingly, it may be pleaded, under the principle of res judicata, to bar Civil Case No. 162 provided that the other requisites therefor are present.

The essential requisites of res judicata are: (1) the former judgment must be final; (2) it must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) it must be a judgment on the merits; and (4) there must be between the first and second actions identity of parties, identity of subject matter and identity of causes of action.[9]

The parties agree in their pleadings that the resolution of this Court in G.R. No. 73915 had long attained finality before the institution of Civil Case No. 162. There can, as well, be no doubt that this Court acquired jurisdiction over the former case, and that the identities required under the fourth requisite of res judicata obtain between said G.R. No. 73915 and Civil Case No. 162. Accordingly, private respondent cannot be allowed to re-litigate the causes of action or the issues he had raised in G.R. No. 73915. In *Legarda vs. Savellano*,[10] this Court ruled:

“As we have repeatedly enunciated, public policy and sound practice enshrine the fundamental principle upon which the doctrine of res judicata rests that parties ought not to be permitted to litigate the same issues more than once. It is a general rule common to all civilized system (sic) of jurisprudence, that the solemn and deliberate sentence of the law, pronounced by its appointed organs, upon a disputed fact or a state of facts, should be regarded as a final and conclusive determination of the question litigated, and should forever set the controversy at rest. Indeed, it has been well said that this maxim is more than a mere rule of law; more even than an important principle of public policy; and that it is not too much to say that it is a fundamental concept in the organization of every jural system. Public policy and sound practice demand that, at the risk of occasional errors, judgments of courts should become final at some definite date fixed by law. The very object for which courts were constituted was to put an end to controversies. (*Zambales Academy, Inc. vs. Ciriaco Villanueva*, 28 SCRA 1; *Peñalosa vs. Tuason*, 22 Phil. 303)”

Private respondent and his counsel are equally guilty of forum-shopping. They tried to test what appears to be the friendly waters of the trial court full of hope that they could obtain a favorable verdict after having been spurned by this Court. This is malpractice on the part of counsel.[11]

2. It is equally clear that private respondent had not exhausted the administrative remedies provided by law to set aside the promotion extended to the petitioner. In this regard, therefore, the complaint in Civil Case No. 162 fails to state a cause of action. A dismissal on the ground of failure to exhaust administrative remedies is tantamount to a dismissal based on lack of cause of action.[12] What private respondent should have done was to appeal the 17 April 1985 decision of the then MECS Minister Jaime Laya to the Merit Systems Board (now Merit System Protection Board). Section 5 of P.D. No. 1409 creating said Board provides as follows:

“SEC. 5. Powers and Functions of the Board. -- The Board shall have the following powers and functions, among others:

X X X

(2) Hear and decide cases brought before it by officers and employees who feel aggrieved by the determination of appointing authorities involving appointment, promotion, transfer, detail, reassignment and other personnel actions, as well as complaints against any officers in the government arising from abuses arising from personnel actions of these officers or from violations of the merit system.”

X X X

Pursuant to Section 8 thereof, the Board's decision thereon may be appealed to the Civil Service Commission.[13]

Under present procedure, a next-in-rank employee who is competent and qualified and feels aggrieved by the promotion of another may file a protest with the department or agency head who shall render a decision thereon within thirty (30) days from receipt of the protest. Such decision may be appealed by an aggrieved party within fifteen (15) days from receipt thereof to the Merit Systems Protection Board which, in turn, shall render its decision thereon within sixty (60) days from the time the case is submitted for decision. The decision of the Board is final unless it involves a division chief or an official of higher rank; in such a situation, the decision may be appealed to the Civil Service Commission. On the other hand, decisions involving positions below division chief may be reviewed by the Commission.[14]

WHEREFORE, the instant Petition is GRANTED. The Order of respondent Judge of 26 April 1988 in Civil Case No. 162 of Branch 58 of the Regional Trial Court of San Carlos City (Negros Occidental) is SET ASIDE and said case is hereby ordered DISMISSED.

SO ORDERED.

Bidin, Romero, and Melo, JJ., concur.

Gutierrez, Jr., J., (Chairman), on official leave.

[1] Rollo, 7.

[2] Id., 5.

[3] Id., 101.

[4] Id., 18-28.

[5] Rollo, 29-34.

[6] Rollo, 35-36.

[7] Id., 76.

[8] Commercial Union Assurance Co. vs. Lepanto Consolidated Mining Co., 86 SCRA 79 [1978]; Sy vs. Tuvera, 152 SCRA 103 [1987]; Heirs of Santiago Maningo vs. Intermediate Appellate Court, 183 SCRA 691 [1990]; Smith Bell and Company (Phils.), Inc. vs. Court of Appeals, 197 SCRA 201 [1991].

[9] Philippine Farming Corp. Ltd. vs. Llanos, 14 SCRA 949 [1965]; Abes vs. Rodil, 17 SCRA 822 [1966]; Viray vs. Mariñas, 49 SCRA 44 [1973]; Philippine Commercial and Industrial Bank vs. Pfeider, 65 SCRA 13 [1975]; Legarda vs. Savellano, 158 SCRA 194 [1988]; Republic vs. Sebastian, 166 SCRA 140 [1988]; Pacific Banking Corp. vs. Mendoza, 168 SCRA 709 [1988]; Filipinas Investment and Finance Corp. vs. Intermediate Appellate Court, 179 SCRA 728 [1989].

[10] Supra., at page 200.

[11] Villanueva vs. Adre, 172 SCRA 876 [1989]; Alonto vs. Memoracion, 185 SCRA 73 [1990].

[12] Sarabia vs. Secretary of Agriculture and Natural Resources, 2 SCRA 54 [1961].

[13] See GSIS vs. Civil Service Commission, 204 SCRA 826 [1991].

[14] Section 15, Rule VI, Omnibus Rules Implementing Book V of Executive Order No. 292 known as the Administrative Code of 1987 and Other Pertinent Civil Service Laws promulgated by the Civil Service Commission on 27 December 1991.

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