

HON. LOURDES R. QUISUMBING, IN HER OFFICIAL CAPACITY AS SECRETARY OF EDUCATION, CULTURE AND SPORTS (DECS), HON. TEOFILO GOMEZ AND CRISANTO B. DELAMIN, PETITIONERS, VS. HON. MANU...

G.R. No. 85156. February 05, 1991

Ponente: PARAS, J.

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PARAS, J.:

This petition seeks to annul and set aside: the order[*] dated August 17, 1987 of the Regional Trial Court, Branch 23, General Santos City, in a Special Civil Case No. 230 for prohibition, entitled "Esther B. YAP vs. Hon. Lourdes Quisumbing, et al.", denying the Omnibus Motion to Dismiss filed by the petitioners herein; the order dated August 25, 1987, granting the Writ of Preliminary Injunction: and, the order dated April 15, 1988, denying the petitioners' Motion for Reconsideration.

On or before 1979, private respondent Esther B. Yap was appointed District Supervisor of the Bureau of Public Schools and assigned to the District of Glan, South Cotabato (Rollo, p. 2).

On February 11, 1987, in view of the agitation of teachers and concerned citizens of Glan, then Secretary Lourdes Quisumbing issued a Memorandum Order, directing Regional Director Teofilo E. Gomez to reassign or transfer Esther B. Yap to another district (Rollo, p. 24), which was effected by Director Teofilo E. Gomez in his Memorandum Order dated February 12, 1987, ordering the transfer of private respondent Esther B. Yap as public school district supervisor from Glan District to Malapatan District and for Crisanto B. Delamin, another public school district supervisor, to assume that of respondent's position at Glan (Rollo, p. 25). The latter in turn issued a Memorandum Order to the principals and head teachers of different public schools at Glan informing them of his assumption of office (Rollo, p. 26).

However, private respondent Esther B. Yap defied the orders of her superiors and she continued to perform the functions of public school district supervisor of Glan (Rollo, p. 5).

On February 20, 1987, Yap filed a petition (docketed as Special Civil Case No. 230) for prohibition with prayer for preliminary injunction/restraining order with the Regional Trial Court, Branch 23, General Santos City, against the Hon. Lourdes R. Quisumbing, et al. (Rollo, pp. 27-33) who filed an Omnibus Motion to Dismiss (Rollo, pp. 45-47), which was denied by respondent Judge Manuel Luis Gumban in his order dated August 17, 1987. On August 25, 1987, said Judge issued another order granting the Writ of Preliminary injunction (Rollo, p. 57) and denied Quisumbing et al.'s motion for reconsideration (Rollo, p. 65).

Quisumbing, et al. assailed the aforesaid orders on three (3) counts: (a) that the transfer of respondent Yap is not violative of law, since it was made in the interest of public service (Rollo, pp. 8-13); (b) that it was done outside the election ban period (Rollo, pp. 14-17); and (c) that Esther B. Yap failed to exhaust all available administrative remedies (Rollo, pp. 17-19).

On the other hand, Yap argued that: (a) the assailed orders are plainly interlocutory in nature, hence, not correctible by certiorari (Rollo, pp. 74-75-b); (b) the order to transfer Mrs. Esther B. Yap is a clear and open violation of the election law and was done as a political accommodation (Rollo, pp. 76-81) and (c) that the doctrine of non-exhaustion of administrative remedies is not applicable to the case at bar as the Memorandum Order issued by the petitioners, Lourdes Quisumbing and Teofilo Gomez dated February 11, 1987 and February 12, 1987, respectively, would readily show that the basis for the issuance of the orders are the unverified demands of alleged concerned citizens without the benefit of investigation (Rollo, pp. 81-82).

After a careful scrutiny of the records, it is to be underscored that the appointment of private respondent Yap is simply that of a District Supervisor of the Bureau of Public Schools which does not indicate a specific station (Rollo, p. 13). As such, she could be assigned to any station and she is not entitled to stay permanently at any specific station (*Bongbong v. Parado*, 57 SCRA 623 [1974]; *Department of Education, Culture and Sports v. Court of Appeals*. (G.R. 81032, March 22, 1990), citing *Brillante v. Guevarra* (27 SCRA 138 [1969])).

Since the election period for the May 11, 1987 election had already elapsed, the issue whether or not the transfer of private respondent is in violation of the election ban has become moot and academic (Rollo, p. 17).

Finally, the lower court did not err in taking cognizance of the case. The doctrine of exhaustion of administrative remedies is not a hard and fast rule. It has been repeatedly held that the principle requiring previous exhaustion of administrative remedies is not applicable where the question in dispute is purely a legal one: where the controverted act is patently illegal or was performed without jurisdiction or in excess of jurisdiction; where the respondent is a department secretary, whose acts as an alter ego of the President, bear the implied or assumed approval of the latter; where there are circumstances indicating the urgency of judicial intervention; or where the respondent has acted in utter disregard of due process. The rule does not also apply where insistence on its observance would result in nullification of the claim being asserted: and when the rule does not provided plain, speedy and adequate remedy (*Laganapan v. Asedillo*, 154 SCRA 377 [1987]).

While generally, an order denying a motion to dismiss is interlocutory and cannot be the subject of a petition for certiorari unless the court acts without or in excess of jurisdiction or with grave abuse of discretion (*Cojuangco v. Romillo, Jr.*, 167 SCRA 751 [1988]), still in the instant case We deem it more felicitous and expedient to resolve the same on the merits to avoid multiplicity of suits since after all the circumstances warrant a final disposition of this petition, namely the granting thereof because private respondent had previously been appointed as district supervisor, without indicating any specific place as her permanent station. Her status was therefore akin to that of a district supervisor at large. Her transfer was neither whimsical, arbitrary, or capricious.

Accordingly, this petition is hereby GRANTED, and all the Orders complained of are SET ASIDE and REVERSED. SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Grino-Aquino, Medialdea, and Regalado, JJ., concur.

[*] Issued by Judge Manuel Luis Gumban

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