

**JOAQUIN M. TEOTICO, PETITIONER, VS. DEMOCRITO O. AGDA, SR.,
AND HON. JUDGE IGNACIO M. CAPULONG, REGIONAL TRIAL COURT,
BRANCH NO. 134, MAKATI, METRO MANILA, RESPONDENTS.**

G.R. No. 87437. May 29, 1991

Ponente: DAVIDE, JR., J.

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DAVIDE, JR., J.:

Petitioner, Administrator of the Fiber Industry Development Authority, assisted by the Office of the Solicitor General, filed this original petition for certiorari and prohibition, with a prayer for a writ of preliminary injunction and for temporary restraining order. He urges Us to annul the Orders of 16 and 29 December 1988 and 14 February 1989, and the writ of injunction dated 11 May 1988 issued by respondent Judge of Branch 134 (Makati, Metro Manila) of the Regional Trial Court, National Capital Judicial Region, in Civil Case No. 88-577;[1] to prohibit respondent Judge from hearing said case; and to order the dismissal thereof for lack of cause of action as private respondent (petitioner therein, and who shall hereafter be referred to as Agda) has not exhausted all administrative remedies available to him.

In Our resolution of 12 April 1989[2] We required respondents to comment on the petition and issued a Temporary Restraining Order effective as of that date and continuing until otherwise ordered by the Court.

The factual antecedents as culled from the Petition in this case and the Amended Petition of Agda in Civil Case No. 88-577 are as follows:

On 2 January 1984, Honorable Cesar Lanuza, then Administrator of the Fiber Development Authority (FIDA for short), an agency attached to the Department of Agriculture, appointed Agda as CHIEF FIBER DEVELOPMENT OFFICER (Range 73) of the FIDA effective upon assumption of office.[3]

This appointment does not indicate any specific station or place of assignment.

Under Special Order No. 29, series of 1984, dated 2 January 1984, which was to take effect immediately and to "remain in force until revoked," Administrator Lanuza designated Agda as "Acting Regional Administrator for FIDA Regions I and II." [4]

In Special Order No. 219 dated 13 November 1987, series of 1987, Administrator Lanuza "temporarily re-assigned" Agda, "in the interest of the service," at the main office of the Administrator to perform special functions which may be assigned to him, and one Mr. Eptacio Lanuza, Jr., Assistant Fiber Regional Administrator, was designated Officer in Charge of FIDA Region I.[5]

On 9 December 1987 Agda prepared for filing with the Civil Service Commission, the Secretary of the Department of Agriculture, and the Commission on Audit an Urgent Petition To Stop Implementation and Nullify Special Order No. 219, s. '87, alleging therein that the Special Order is (a) devoid of legal basis as it does not preserve and maintain a status quo before the controversy, (b) against the interest of public service considering that Eptacio Lanuza has been cited for two cases both involving dishonesty, abuse of privileges and character

unbecoming a government official, (c) improper, inappropriate and devoid of moral justification, and (d) a violation of Civil Service rules and regulation considering that it violates the rule on nepotism since Eпитacio Lanuza and Administrator Lanuza are cousins.[6] The copy for the Civil Service Commission was personally indorsed to it by Agda on 14 December 1987 for its "proper resolution, perusal and appropriate action." The Merit Systems Protection Board indorsed it on 21 January 1988 to the Secretary of the Department of Agriculture for comment and/or appropriate action.[7]

Earlier however, or on 11 December 1987, by Special Order No. 239, series of 1987, Administrator Lanuza designated Mr. Wilfredo Seguritan, Supervising Fiber Development Officer, as Officer in Charge of FIDA Region I vice Mr. Eпитacio Lanuza, Jr., who was ordered relieved as such pending the final determination of the case filed against him by the Board of Personnel Inquiry of the Department of Agriculture.[8]

On 7 January 1988, herein petitioner (hereafter referred to as Teotico), as Acting Administrator of FIDA, issued a Memorandum to Agda directing him to immediately submit his development programs for Region I for the years 1988 to 1993 and his proposals concerning the potentials for sericulture and the maguey industry in the Region.[9]

In his 1st indorsement of 12 January 1988, Agda returned the aforesaid Memorandum to Teotico with the comment that it is in the best interest of the service that submission of the required proposals be deferred since Special Order No. 219 had re-assigned him to FIDA Central Office where "he now reports up to the present," while Wilfredo Seguritan, per Special Order No. 239, is the OIC of FIDA for the Region. He suggested, however, that if compliance is imperative, Special Order No. 219 should be reconsidered and set aside.[10]

On 2 March 1988 Teotico issued a Memorandum to Agda informing him that although Special Order No. 219 instructed him to report to the Office of the Administrator, he has neither been seen nor officially heard from during the past several weeks and directing him to submit not later than 4 March 1988 an official clarification on his whereabouts and accomplishments for the past three weeks.[11]

In his Reply of 9 March 1988 Agda reminded Teotico that his urgent petition to stop the implementation of Special Order No. 219 is still unresolved; consequently, its implementation should be held in abeyance; and, as regards his whereabouts, he referred Teotico to the logbook kept by the FIDA guard and certificates of appearance "attached from the respective offices during the past three (3) weeks." [12]

On 9 March 1988 FIDA Region I OIC, Mr. Seguritan, requested Teotico to require Agda to turn over to him (Seguritan) the keys of the vault in FIDA Region I "for the safekeeping of our blank checks, official receipts, approved checks but not yet issued to payee creditors, salaries and other vital official documents of the Region";[13] in a routing slip dated 11 March 1988, Teotico referred the request to Agda with the note: "For immediate compliance pls. so as not to hamper the conduct of our operations and service in Region I." [14]

On 16 March 1988 Agda indorsed the above routing slip request to the Secretary of the Department of Agriculture wherein he admits that he has the key of the safety vault, but impliedly asserts that he will not yield it to anybody alleging that his petition to stop the implementation of Special Order No. 219 and to nullify it is still unresolved and, besides, the intended re-assignment is merely temporary; hence, it would be in keeping with substantial justice if a status quo of things be maintained. He also asks that the urgent petition be resolved and that meanwhile the directive to turn over the keys be held in abeyance.[15]

On 23 March 1988 Teotico formally charged Agda for insubordination and conduct prejudicial to the best interest of the service for, among others, his failure to comply with the memorandum of January 7, 1988 and with the routing slip request of 11 March 1988.[16]

On 4 April 1988 Teotico placed Agda under preventive suspension pursuant to his Special Order No. 74, to wit:

"Pursuant to Section (sic) 41 and 42 of P.D. 807, Mr. Democrito Agda, Sr. is placed under preventive suspension for the following reasons:

"a) grave misconduct and gross insubordination - for refusal to turn over the keys to the safe in Region I. With the considerable amount of cash advances being handled in the region, Mr. Agda's refusal to turn over said keys has become prejudicial to the best interests of the service;

"b) neglect in the performance of duty - for his refusal to report to the office of the Administrator and his refusal to accept assignment claiming that it is a form of harassment since he still has a pending unresolved petition; and

"c) pending an investigation in some instances involving falsification of public documents and instances of possible malversation of funds for services and maintenance and operating expenses in Region I as per results of the recent FIDA Management Audit.

In this regard, the cashier is instructed to withhold the salary of Mr. Agda.

This order takes effect upon receipt of this memorandum and shall remain in force unless earlier revoked or until the cases involving Mr. Agda are resolved."[17]

On 8 April 1988 Agda asked Teotico for an extension of twenty days from 11 April 1988 within which to submit his answer to the formal charge;[18] however, in his memorandum of 11 April 1988, Teotico granted him an extension of only five days from receipt thereof.[19] Also on 11 April, Teotico issued Special Order No. 26 reconstituting the Committee on Adjudication of Cases (FIDA-AC) headed by Senior State Prosecutor Hipolita Ordinario of the Department of Justice.[20]

On 13 April 1988 counsel for Agda, Atty. Ramon Miranda, submitted a letter requesting for an extension of fifteen days to file the answer.[21] In the letter of Senior State Prosecutor Ordinario of 14 April 1988, Agda, through his counsel, was given until 21 April 1988 within which to file the answer.[22]

It likewise appears that on 13 April 1988 Agda sent a letter to the Commission on Elections[23] inquiring if Special Order No. 219, series of 1987, of Administrator Lanuza was referred and submitted to it for approval three days before its implementation. In a letter dated 14 April 1988, Atty. Horacio SJ Apostol, Manager of the Law Department of the Commission, informed private respondent that "as of this date, records of the Department do not show that aforesaid Special Order was submitted or referred to this Commission for approval." [24]

On 18 April 1988 Agda filed with the court below in Civil Case No. 88-577 his Amended Petition[25] for Certiorari, Prohibition and Injunction with preliminary injunction and restraining order against Teotico and the three (3) members of the FIDA-AC alleging, in substance, that Special Order No. 219 of 13 November 1987 issued by then FIDA Administrator Lanuza is null and void for having been issued in violation of Section 48 of P.D. No. 807 (Civil Service Decree) which prohibits the detail or re-assignment of civil service personnel within three months before an election and Section 261(h) of Batas Pambansa Blg. 881 (The Omnibus Election Code) which prohibits transfer or detail of officers and employees in the civil service within the election period except upon prior approval of the Commission on Elections, and that all succeeding orders or memoranda issued in connection with or by reason of such Special Order or in implementation thereof are likewise null and void. The election referred to was the January 18, 1988 local election. He further alleges therein that he "is filing" with the COMELEC criminal charges for violation of Sections 3, 261(h) and 264 of B.P. No. 881 against former Administrator Lanuza and Teotico. He prays inter alia, that the court declare null and void and set aside Special Order No. 219, Teotico's Memoranda of 7 January, 2 March, and 11 March, 1988, the Formal Charges of 23 March, the preventive suspension of 4 April, Special Order No. 86, the Memorandum of 11 April 1988, and Ordinario's letter of 14 April 1988, and the formal investigation to be conducted on the charge against him.

On 18 April 1988 respondent Judge issued a restraining order directing respondents therein to refrain from enforcing Annexes "E", "I", "K", "M", "O", "R", "S", and "Z" of the amended petition until further orders of the court and setting the hearing of the application for a writ of preliminary injunction on 26 April 1988.[26]

On 2 May 1988 Teotico and his co-respondents in the court below filed, through the office of the Solicitor General, a motion to dismiss the case and opposition to the issuance of a writ of preliminary injunction[27] alleging that the petition is premature for failure to exhaust administrative remedies and patently lacks merit and is merely intended to derail the administrative investigation against Agda. Movants set the hearing thereof on 5 May 1988.

On 4 May 1988 Agda filed an opposition to the motion to dismiss and memorandum in support of his application for a writ of preliminary injunction.[28]

On 11 May 1988 respondent Judge issued an Order granting the application for a writ of preliminary injunction upon the filing of a bond of P50,000.00[29] on the basis of the following findings:

.....

"After careful consideration of the pleadings and their annexes filed by the parties, this Court finds, to wit: the petitioner was appointed on June 16, 1984, as Chief, Fiber Industry Development Authority by Cesar C. Lanuza, former Administrator of FIDA, and was assigned in Regions 1 and 2 with office at San Fernando, La Union; that on November 13, 1987, three months before the local elections, which was held on January 18, 1987, the petitioner was reassigned by former FIDA Administrator Lanuza to the FIDA main office and designated Eпитacio E. Lanuza, Jr. as officer-in-charge (OIC) of FIDA Region 1; that on December 15, 1987, petitioner requested the Civil Service Commission (CSC) to stay the implementation of Special Order No. 219; that on January 7, 1988, respondent Teotico implemented said Special Order 219, despite the fact that petitioner requested the Civil Service Commission to stay implementation of the said Special Order 219; that on January 12, 1988, petitioner requested the respondent Teotico to defer the implementation of said Special Order No. 219; that on March 2, 1988, respondent Teotico again implemented Special Order 219, requiring petitioner to submit his accomplishment report; that on March 9, 1988, petitioner requested respondent Teotico to defer the implementation of said special order, considering that the same has not yet been resolved by the Secretary of Agriculture; that on December 11, 1987, former FIDA Administrator designated Wilfredo G. Siguritan as officer-in-charge of FIDA Region 1; that on March 9, 1988, FIDA Region 1 administrator Siguritan requested the petitioner through respondent Teotico to require petitioner to turn over to him the keys of the vault in FIDA Region 1; that on March 14, 1988, respondent Teotico implemented Special Order No. 219, requiring petitioner to turn over said keys to OIC Seguritan; that on March 16, 1988, petitioner requested the Secretary of Agriculture to defer the implementation of said special order pending resolution of said office; that on March 23, 1988, respondent Teotico implemented Special Order 219 by instituting administrative charges against petitioner for insubordination prejudicial to the best interest of the service; that on April 4, 1988, respondent Teotico placed the petitioner under preventive suspension, effective April 6, 1988; that on April 8, 1988, petitioner requested respondent Teotico to give him twenty (20) days from April 11, 1988, within which to submit his explanation to the formal administrative charges.

.....

After careful consideration of the allegations of the facts in this case, this Court believes that petitioner was denied due process of law. The fact that petitioner informed respondent Teotico to stay and/or defer the implementation of Special Order No. 219, considering that the same is still pending before the Secretary of Agriculture, despite of which, respondents, more particularly, Teotico, in grave abuse of discretion whimsical and capricious, tantamounting (sic) to the denial of due process of law to the petitioner, implemented the same and aggravated by the fact that respondents Teotico filed insubordination charges against the petitioner, This Court believes, that actuations of the respondents in railroading the request of the petitioner to stay the

implementation of Special Order No. 219 tantamounts to the denial of due process of law as mandated by the new (C)onstitution, which falls under one of the principle of exhaustion of administrative remedies. (New Filipino Maritime Agencies, Inc. vs. Rivera, L-5359-60, June 15, 1978) (De Lara, et al. vs. Cloribin, et al., G.R. No. L-21763, May 31, 1965)."

It does not appear from the records that Agda presented evidence at a hearing on the application for a writ of preliminary injunction. On the contrary, as reflected in the above-quoted order of respondent Judge, the writ was issued on the basis of his "consideration of the pleadings and their annexes filed by the parties."

On 17 May 1988, respondent Judge issued a Writ of Preliminary Preventive or Prohibitory Injunction[30] restraining Teotico and his co-respondents from enforcing Annexes "E", "I", "K", "M", "O", "R","S", and "Z" of the amended petition.

On 2 June 1988 Teotico and his co-respondents below filed a motion, dated 31 May 1988, to reconsider the 11 May Order alleging therein that the bases of the findings of denial of due process are not supported by facts; they set the motion for hearing on 10 June 1988.[31]

On 2 June 1988 Agda filed a motion to declare respondents below in contempt for refusing to comply with the writ.[32] Then on 17 June 1988 he filed his opposition[33] to the motion for reconsideration.

Teotico and his co-respondents filed on 17 June 1988 their opposition to the motion to declare them in contempt of court.[34]

The motion for contempt was ultimately denied in the Order of respondent Judge of 8 September 1988.[35]

On September 23, 1988 Agda filed a motion to reconsider the 8 September Order.[36]

In his Order of 16 December 1988,[37] respondent Judge held that Teotico and his co-respondents cannot beheld for contempt; however they were directed to comply with the Order of 11 May 1988 and Teotico was specifically ordered "to immediately reinstate the petitioner, Democrito O. Agda, Sr., from (sic) his previous position as Fiber Regional Administrator, FIDA Region I, with full back wages and allowances mandated by law."

On 22 December 1988 Teotico and his co-respondents filed a motion to reconsider the above 16 December 1988 Order stating therein that it would be premature for the court to order them to comply with the 11 May Order before their motion for reconsideration is finally resolved and they pray that the motion for reconsideration dated 2 June 1988 be resolved and that further action on its 16 December Order be deferred until resolution of the motion.[38]

On 29 December 1988 respondent Judge issued an Order[39] denying the motion for reconsideration filed on 2 June and the motion of 22 December 1988 and directing Teotico to comply with the Order of 16 December 1988 immediately upon receipt of said Order of 29 December.

On 5 January 1989 Teotico and his co-respondents filed a motion for reconsideration/clarification, alleging, inter alia, that there is no basis for ordering Teotico to reinstate Agda with full back wages and allowances since not even the Order of 11 May granting the motion for preliminary injunction ordains the same.[40] But respondent Judge also denied this motion in his Order of 14 February 1989.[41]

Finding no other avenue of relief in the court below, petitioner filed this petition on 27 March 1989 submitting to Us the following grounds:

"I.

Respondent Judge acted with grave abuse of discretion when he ordered petitioner, allegedly in compliance

with the writ of injunction issued, to reinstate respondent Agda to his previous position as Fiber Regional Administrator FIDA Region I with full backwages and allowances notwithstanding that such act was not mandated or even mentioned in the prohibitory injunctive writ.

II.

Respondent Judge acted with grave abuse of discretion when he refused to dismiss respondent's petition in Civil Case No. 88-577 despite his finding that respondent has already availed of an administrative remedy which is pending resolution by the Civil Service Commission.

III.

Respondent Judge acted with grave abuse of discretion when he issued a writ of preliminary injunction dated May 11, 1988 without hearing on the merits.

In compliance with Our resolution of 12 April 1989, herein respondents filed their Comment on 2 May 1989.

As We stated in the introductory portion of this Decision, in the resolution of 29 May 1989 We gave due course to the petition and required the parties to submit their Memoranda, which they complied with.

The petition is impressed with merit.

Respondent Judge clearly acted with grave abuse of discretion in taking cognizance of Civil Case No. 88-577, in deliberately failing to act on the motion to dismiss, in issuing a writ of preliminary injunction, and in ordering the "reinstatement" of Agda, "as Fiber Regional Administrator, FIDA Region I, with full back wages and allowances mandated by law."

Agda was not appointed as Fiber Regional Administrator, FIDA Region I, but as CHIEF FIBER DEVELOPMENT OFFICER; he was not appointed to any specific station.[42] He was merely designated as Acting Regional Administrator For FIDA Regions I and II.[43]

Not having been appointed to any specific station, he could be transferred or assigned to any other place by the head of office where in the opinion of the latter his services may be utilized more effectively.[44]

In *Ibañez vs. COMELEC*,[45] We held:

"Assayed upon the foregoing legal crucible, the petitioner's case suffers an initial set back. The appointments upon which they respectively anchor their claim state that they were merely appointed as "Election Registrars in the Commission on Elections. . . ." Therefore, there can be no gainsaying the fact that the petitioners were not appointed to, and consequently, not entitled to any security of tenure or permanence in, any specific station. On general principle, they may be transferred as the exigencies of the service require. They ordinarily have no right to complain against any change of assignment."[46]

In the latest case of *Department of Education, Culture and Sports, et al. vs. The Honorable Court of Appeals, et al.*, 183 SCRA 555, 562, We held:

"The appointment of Navarro as principal does not refer to any particular station or school. As such, she could be assigned to any station and she is not entitled to stay permanently at any specific school. (*Bongbong vs. Parado*, 57 SCRA 623). When she was assigned to the Carlos Albert High School, it would not have been with the intention to let her stay in said school permanently. Otherwise, her appointment would have so stated. Consequently, she may be assigned to any station or school in Quezon City as the exigencies of public service require even without her consent."

Moreover, it should be borne in mind that Special Order No. 29 of 2 January 1984 merely designated Agda as Acting Regional Administrator for Regions I and II. Such being the case, the rule enunciated in *Cuadra vs.*

Cordova, etc., 103 Phil. 391, on temporary appointments or appointments in an acting capacity that they are terminable at the pleasure of the appointing authority, is applicable to Agda. He can neither claim a vested right to the station to which he was assigned nor to security of tenure thereat.

Accordingly, private respondent could be re-assigned to any place and Special Order No. 219 dated 13 November 1987 reassigning private respondent at the Office of the Administrator of the FIDA "in the interest of the service" was in order. Although denominated as "reassignment", it was in fact a mere detail in that office.

The Civil Service Decree, P.D. No. 807, allows transfer, detail and re-assignment.[47] If the employee concerned believes that there is no justification therefore, he "may appeal his case to" the Civil Service Commission. Unless otherwise ordered by the Commission, the decision to detail an employee shall be executory. Agda invoked the appellate jurisdiction of the Commission when he filed his Urgent Petition To Stay Implementation And Nullify the Special Order in question with the Civil Service Commission.[48] It does not, however, appear to Us that he exerted genuine and sincere efforts to obtain an expeditious resolution thereof. What appears to be clear is that he used its pendency as an excuse for his refusal to comply with the memorandum of Teotico of 7 January 1988 and the routing slip request of 11 March 1988 for the key to the safety vault.

We are not persuaded by Agda's claim that the questioned detail was done in violation of Section 261(h) of Batas Pambansa Blg. 881 (Omnibus Election Code) considering that (a) he raised this matter for the first time only in his Amended Petition, or five (5) months after the issuance of the Special Order. No evidence has been presented, or at least strongly and convincingly suggested, to prove or show that no prior approval was obtained by Administrator Lanuza from the COMELEC for such detail, or that a case for violation of Section 261(h) was in fact filed against Lanuza or Teotico. All that Agda can show are his alleged letter to the COMELEC to inquire if Special Order No. 219 had been referred to it and an alleged answer dated 14 April 1988 of Atty. Horacio SJ Apostol, Manager of the Law Department of the Commission, to the effect that the records of the Department do not show, as of that date, that the Special Order was submitted or referred to the Commission. The latter is not conclusive proof that no prior authority was in fact obtained by Administrator Lanuza for the reassignment or detail of Agda. No law requires the submission to the COMELEC of special orders reassigning or detailing employees within the prohibited period. What is needed is "prior authority," the request for which and its approval may be in separate documents or papers.

Moreover, although Agda alleges in his amended petition that:

"11.20. Petitioner is filing criminal charges for violations of Secs. 3, 261(h) and 264 of B.P. 881 against former FIDA Administrator Lanuza and respondent Teotico in the COMELEC." (Italics supplied).

none of his subsequent pleadings both before the lower court and before Us disclose that he had in fact filed such charges. Obviously, said allegation was a clever attempt to show a semblance of a valid grievance.

Furthermore, even in the cases of transfer or detail within the prohibited period prior to an election, an aggrieved party is provided an appropriate administrative remedy. Section 6 of Rule VI of the Civil Service Rules on Personnel Actions and Policies provides:

"SECTION 6. Except when the exigencies of the service require, an official or employee of the government may not be ordered detailed or reassigned during the three-month period before any local or national election, and if he believes that the order for his detail or reassignment is due to harassment, coercion, intimidation, or other personal reasons, he may appeal the order to the Commission. Until this is proven, however, the order is presumed to be in the interest of the service and notwithstanding the appeal, the decision to detail or reassign him shall be executory, but the Commission may order deferment or suspension of the detail or reassignment *ex parte*."

Agda made no attempt to avail of this remedy. In his Urgent Petition To Stay Implementation and Nullify Special Order No. 219, nothing is mentioned about a violation of the ban on transfer or detail. The reason seems too obvious. Until he filed the Amended Petition before the court below he did not consider his re-assignment per Special Order No. 219 as a violation of the ban on transfer or detail during the three-month period before the election.

Not having yet fully exhausted the existing adequate administrative remedy which he already took advantage of, Agda cannot be permitted to abandon it at his chosen time and leisure and invoke the jurisdiction of regular courts. As aptly summarized:

"Within the administrative forum the law may provide for review of decisions by higher authorities. Before a party can be allowed to invoke the jurisdiction of the courts of justice, he is expected to have exhausted all means of administrative redress afforded him. There are both legal and practical reasons for this. The administrative process is intended to provide less expensive and more speedy solutions to disputes. Where the enabling statute indicates a procedure for administrative review, and provides a system of administrative appeal, or reconsideration, the courts for reasons of law, comity and convenience, will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given opportunity to act and correct the errors committed in the administrative forum." [49]

The doctrine of exhaustion of administrative remedies is well-entrenched in this jurisdiction and a host of cases has buttressed its stability.[50] There are, of course, recognized exceptions thereto, but, unfortunately, private respondent cannot seek safe refuge under their protective mantle, for in respect to the remedy provided for in Section 24(c) of P.D. No. 807, which is also the remedy provided for in Section 24(f), availment thereof is indispensable for the viability of any judicial action. As We held in *Department of Education, Culture and Sports, et al. vs. The Honorable Court of Appeals, et al.*, supra.:

"Finally, respondent Navarro has not exhausted administrative remedies as she did not elevate the matter of her transfer to the Civil Service Commission in accordance with Section 24(c), P.D. No. 807, otherwise known as the Civil Service Decree, which provides:

.....

By not appealing her case to the Civil Service Commission before filing Special Civil Action No. Q-37025, respondent Navarro is indubitably without cause of action."

Respondent Judge, as clearly shown in his Order of 11 May 1988, was fully aware of Agda's urgent petition before the Civil Service Commission to suspend its implementation of Special Order No. 219 and to nullify the same. He had, therefore, no other business to do except to grant the motion to dismiss. He should have, forthwith, stayed his hands until the administrative processes had been completed.[51] Yet, for reasons only known to him, which We cannot divine at, he did not do so. On the contrary, he granted the application for a writ of preliminary injunction and issued the writ on 17 May 1988.

The writ was improvidently and capriciously issued. The issuance of the writ, although addressed to the sound discretion of the court, is conditioned on the existence of a clear and positive right which should be protected.[52] Considering that the amended petition should have been dismissed outright because Agda prematurely invoked the jurisdiction of the court in view of his appeal to the Civil Service Commission, it follows that, even if he had a right, no protection was available from the court below. But even if We disregard for the moment the above weakness of the amended petition and consider, as the respondent Judge did, "the pleadings and their annexes," the inescapable action that should follow would be denial of the application for the issuance of the writ. The pleadings and the annexes do not at all demonstrate a clear and positive right for Agda, for as discussed above, by

the very nature of his appointment he had no security of tenure in the station to where he was assigned on 2 January 1984; besides, his designation as acting Regional Administrator for FIDA Regions I and II was terminable at any time at the pleasure of the head of office. Moreover, as could be gleaned from the annexes of the Amended Petition, Agda impliedly accepted his re-assignment to the Control Office of FIDA. To Teotico's Memorandum of January 1988 addressed to Agda as "Regional Administrator" which required him to submit his development programs for Region I (1988-1993) and his proposals for sericulture and the maguey industry in said Region, Agda, in his indorsement of 12 January 1988 claims and admits that "this representation was reassigned to FIDA Central Office where he now reports up to the present" and that "Mr. Wilfredo Seguritan . . . remains up to the present as the OIC of FIDA for the said Region." In this indorsement Agda wrote below his signature the following: (Detailed to Central Office). To Teotico's Memorandum of 2 March 1988 requiring him to submit an official clarification on his whereabouts and his accomplishments for the past three weeks since he had not been seen or officially heard from, Agda referred the former to the record (log book) kept by the FIDA Guard and certificates of appearance. Clearly then, as of the filing of the Amended Petition, Special Order No. 219 was a fait accompli. Acts already consummated cannot be enjoined by preliminary injunction.[53]

The respondent Judge did not stop there. As complained by Teotico, on 16 December 1988 the former issued an Order wherein although he denied the motion for the reconsideration of his 8 September 1988 Order denying the motion for contempt, he ordered Teotico to immediately reinstate Agda "from (sic) his previous position as Fiber Regional Administrator, FIDA Region I, with full back wages and allowances mandated by law." This, in effect, amounted to a mandatory injunction, issued without a hearing and in violation of Section 5 of Rule 58 of the Rules of Court. There was no basis for its issuance. A mandatory injunction may only be issued upon a showing that the invasion of the right is material and substantial; the right of complainant is clear and unmistakable; and there is an urgent and permanent necessity for the writ to prevent serious damage.[54] They have not been shown to exist in this case.

Even if the 16 December reinstatement order should be construed to be directed against the preventive suspension order issued by Teotico on 4 April 1988, respondent Judge clearly capriciously breached the limits of his discretion for nowhere in his amended petition has Agda attacked its validity or legality on any other ground than its being issued to implement Special Order No. 219,[55] which he claims was issued in violation of the pertinent provisions of the Omnibus Election Code and the Civil Service Decree prohibiting transfer or reassignment of civil service officials and employees within three months before the local election of January 18, 1988. He assailed the suspension order not on the ground that Teotico does not have the authority to file the formal charge and to preventively suspend him, but solely on the basis of his self-serving claim that both were issued without or in excess of jurisdiction or with grave abuse of discretion because they were meant to implement Special Order No. 219.

Preventive suspension is allowed under Section 41 of P.D. No. 807 which reads:

"SECTION 41. Preventive Suspension. - The proper disciplining authority may preventively suspend any subordinate officer or employee under his authority pending an investigation, if the charge against such officer or employee involves dishonesty, oppression or grave misconduct, or neglect in the performance of duty, or if there are reasons to believe that the respondent is guilty of charges which would warrant his removal from the service."

However, per Section 42 of the same decree, if the administrative cases against the suspended officer or employee, who is not a Presidential appointee, is not finally decided by the disciplining authority within ninety days after date of suspension, he shall be automatically reinstated in the service provided that when the delay in the disposition of the case is due to the fault, negligence or petition of the respondent, the period of delay shall not

be counted in computing the period of suspension.

In the instant case, by Agda's own act and the cooperation of respondent Judge, the administrative case against the former is not yet even ready for hearing. He has not filed his Answer, although he was given until 21 April 1988 within which to do so.

Lastly, We hold that both the preliminary injunction and the reinstatement order issued by respondent Judge practically granted the main relief prayed for by Agda even before the hearing on the case on the merits. In *Obias, et al. vs. Hon. Borja, et al.*, 136 SCRA 687, We ruled that respondent judge acted with grave abuse of discretion in issuing a writ of preliminary injunction which in effect practically granted the principal relief sought in the *Mandamus* case. The reason for this is that such issuance "would, in effect, be a prejudgment of the main case and a reversal of the rule on the burden of proof since it would assume the proposition which the petitioner is ineptively bound to prove."^[56]

The foregoing conclusions render unnecessary a discussion on other matters raised in this case.

WHEREFORE, the Petition is GRANTED. The Orders of respondent Judge of 11 May 1988, 16 December 1988, 29 December 1988 and 14 February 1989 and the Writ of Injunction issued on 17 May 1987 in Civil Case No. 88-577 entitled *Democrito D. Agda, Sr., vs. Joaquin M. Teotico, et al.*, are SET ASIDE and said Civil Case is hereby ordered DISMISSED.

With costs against private respondent.

SO ORDERED.

Fernan, C.J., Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

[1] Entitled *Democrito Agda, Sr. vs. Joaquin M. Teotico, et al.*

[2] *Rollo*, 102.

[3] Amended Petition of Agda in Civil Case No. 88-577, Annex "A"; *Id.*, 44.

[4] *Id.*, Annex "B"; *Id.*, 45.

[5] Amended Petition of Agda in Civil Case No. 88-577, Annex "E"; *Rollo*, 49.

[6] *Id.*, Annex "F"; *Id.*, 50-54.

[7] *Id.*, Annex "G" and Annex "H"; *Id.*, 55-56.

[8] Amended Petition of Agda in Civil Case No. 88-577, Annex "M"; *Rollo*, 62.

[9] *Id.*, Annex "I"; *Id.*, 57.

[10] *Id.*, Annex "J"; *Id.*, 58-59.

[11] Amended Petition of Agda in Civil Case No. 88-577, Annex "K"; *Rollo*, 60.

[12] *Id.*, Annex "L"; *Id.*, 61.

[13] *Id.*, Annex "N"; *Id.*, 63.

[14] *Id.*, Annex "O"; *Id.*, 64.

- [15] Amended Petition of Agda in Civil Case No. 88-577, Annex "P"; Rollo, 65.
- [16] Id., Annex "R"; Id., 67-69.
- [17] Amended Petition of Agda in Civil Case No. 88-577, Annex "S"; Rollo, 70.
- [18] Id., Annex "T"; Id., 71.
- [19] Id., Annex "X"; Id., 77.
- [20] Id., Annex "W"; Id., 75.
- [21] Amended Petition of Agda in Civil Case No. 88-577, Annex "Y"; Rollo, 78.
- [22] Id., Annex "Z"; Id., 79.
- [23] Id., Annex "AA"; Id., 80.
- [24] Id., Annex "BB"; Id., 81.
- [25] Annex "A" of Petition; Id., 30-43.
- [26] Annex "2" of Agda's Comment; Rollo, 140.
- [27] Annex "B" of Petition; Id., 82-94.
- [28] Annex "1" of Agda's Comment; Rollo, 117-139.
- [29] Annex "C" of Petition; Id., 95-97.
- [30] Annex "10" of Agda's Comment; Rollo, 149.
- [31] Id., Annex "11"; Id., 150-166.
- [32] Id., Annex "13"; Id., 168-174.
- [33] Id., Annex "14"; Id., 175-182.
- [34] Id., Annex "15"; Id., 183-188.
- [35] Annex "16" of Agda's Comment; Rollo, 189.
- [36] Id., Annex "17"; Id., 190-194.
- [37] Annex "D" of Petition; Id., 98.
- [38] Annex "20" of Agda's Comment; Id., 199-201.
- [39] Annex "E" of Petition; Id., 99.
- [40] Annex "25" of Agda's Comment; Rollo, 206-210.
- [41] Annex "F" of Petition; Id., 100.
- [42] See copy of Agda's appointment, Annex "A" to Amended Petition in Civil Case No. 88-577; Rollo, 44.
- [43] Special Order No. 29 of then FIDA Administrator Lanuza of 2 January 1984; Id., 45.
- [44] Jaro vs. Valencia, et al., 8 SCRA 729; Miclat vs. Ganaden, L-14459, 30 May 1960; Brilliantes vs. Guevarra, 27 SCRA 138.

[45] 19 SCRA 1002.

[46] This ruling was reiterated in *Co vs. COMELEC, et al.*, 20 SCRA 757; *Salazar, et al. vs. COMELEC, et al.*, 20 SCRA 761; and *Braganza vs. COMELEC, et al.*, 20 SCRA 1023.

[47] Section 24 (c), (f) and (g), respectively.

[48] *Rollo*, 51-54.

[49] *CORTES, Irene, R., Philippine Administrative Law, Cases and Materials, Revised Second Ed., 1984, p. 394.*

[50] *Secretary of Agriculture and Natural Resources, et al. vs. de los Angeles, et al.*, 43 SCRA 494, and the long line of cases enumerated therein, to wit: *Ang Tuan Kai vs. Import Control Commission*, 91 Phil. 143; *Coloso vs. Board of Accountancy*, 92 Phil 938; *Miguel vs. Reyes*, 93 Phil. 542; *De la Paz vs. Alcaraz*, 99 Phil. 130; *Policarpio vs. Philippines Veterans Board*, 99 Phil. 797; *Peralta vs. Salcedo*, 101 Phil. 452; *Montes vs. Civil Service Board of Appeals*, 101 Phil. 490; *Lachica vs. Ducusin*, 102 Phil. 551; *Gaukeko vs. Araneta*, 102 Phil. 706; *Vda. de Villanueva vs. Ortiz*, 107 Phil. 875; *Nebrada vs. Heirs of Alivio*, 104 Phil. 126; *Tan vs. Veterans Backpay Commission*, 105 Phil. 377; *Yap vs. Salcedo*, 106 Phil. 742; *Panti vs. Provincial Board*, 106 Phil. 1093; *Soriano vs. Galang*, 107 Phil. 1026; and several other cases.

[51] *Madariñan, et al. vs. Sinco, et al.*, 110 Phil. 160.

[52] *Valley Trading Co., Inc. vs. Court of First Instance of Isabela, et al.*, 171 SCRA 501, 507; *Ortigas and Co., Ltd. Partnership vs. Hon. Ruiz, et al.*, 148 SCRA 326.

[53] *MORAN, Comments on the Rules of Court, Vol. III, 1980 ed., p. 83; Remonte, et al. vs. Bonto, et al.*, 16 SCRA 257; *Aragones, et al. vs. Subido, et al.*, 25 SCRA 95; *Romulo, et al. vs. Yñiguez, et al.*, 141 SCRA 263.

[54] *Rivera, et al. vs. Hon. Florendo, et al.*, 144 SCRA 643.

[55] Paragraphs 9, 11.1, 11.16.

[56] *Valley Trading Co., Inc. vs. Court of First Instance of Isabela, et al.*, *supra*.

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