

**RAYMUNDO ACENA, PETITIONER, VS. CIVIL SERVICE COMMISSION
AND JOSEFINA ESTOLAS, RESPONDENTS.***G.R. No. 90780. February 06, 1991*

Ponente: PARAS, J.

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This is a petition for certiorari to annul resolution No. 89-748[*] dated October 9, 1989 of the Civil Service Commission which set aside the order[**] dated March 23, 1988 of the Merit Systems Protection Board declaring the herein petitioner as the legitimate Administrative Officer of Rizal Technological Colleges.

It appears on record that petitioner Raymundo T. Acena was appointed on October 18, 1982 as an Administrative Officer of Rizal Technological Colleges (RTC). He was appointed to the said position by Dr. Lydia Profeta, then the President of Rizal Technological Colleges, a State College located at Boni Avenue, Mandaluyong, Metro Manila. His appointment as Administrative Officer of Rizal Technological Colleges was approved as permanent by the Civil Service Commission (Annex "B"; Rollo, p. 34). Later on December 9, 1985, Dr. Lydia Profeta extended to petitioner Acena a promotional appointment as Associate Professor of Rizal Technological Colleges effective November 1, 1985. Despite his appointment as Associate Professor he was also designated as Acting Administrative Officer in a memorandum dated October 30, 1985, issued by Dr. Lydia Profeta.

On March 21, 1986, then Secretary of Education Lourdes Quisumbing, designated Dr. Josefina V. Estolas as RTC Officer-in-Charge in lieu of Dr. Lydia Profeta.

On April 4, 1986, the RTC Board of Trustees approved the designation of twenty two (22) employees of the College to various positions including the designation of Ricardo Salvador as Acting Administrative Officer vice petitioner Acena (Rollo, p. 42). Subsequently, on May 23, 1986, the RTC Board of Trustees confirmed said designation in its regular meeting subject to the submission of supporting documents and/or the certification of the selection and promotion board (Rollo, p. 116).

In a memorandum No. 30, series of 1986, Dr. Estolas revoked effective April 8, 1986, the designation of petitioner Acena as Acting Administrative Officer. She also requested the latter to effect a smooth turn-over of the said office to Ricardo Salvador.

On April 8, 1986, the Civil Service Commission - National Capital Region, received two letters dated January 9, 1986 and January 13, 1986. In the letter dated January 9, 1986 addressed to Dr. Profeta, petitioner Acena manifested to the latter his desire to remain as Administrative Officer as his appointment as Associate Professor could be approved only as temporary until such time that he could prepare a thesis and obtain a master's degree. In her reply letter dated January 13, 1986, Dr. Profeta withdrew the appointment of petitioner Acena.

Also on April 8, 1986, petitioner Acena filed a complaint for injunction with damages against Dr. Estolas and Ricardo Salvador. The case was docketed as Civil Case No. 53327, assigned to Branch CLXVII, Regional Trial Court, Pasig, Metro Manila. In his complaint he assailed the validity of Memorandum No. 30 as violative of his

security of tenure.

On May 9, 1986, petitioner Acena filed a letter complaint dated April 17, 1986 with the Merit Systems Protection Board (MSPB) against Dr. Estolas for illegal termination (Rollo, p. 28).

On May 20, 1986, Adelina B. Sarmiento, Assistant Regional Director, CSC-NCR, approved as temporary the appointment of petitioner Acena as Associate Professor because he lacks the master's degree required for the position pursuant to CSC MC No. 4, series of 1985.

Despite the filing of the injunction case and the pendency of the case before the MSPB, petitioner Acena sought on July 7, 1986, the opinion of the CSC Chairman Celerina G. Gotladera who opined in her letter dated March 23, 1987, addressed to the RTC Officer-in-Charge (Dr. Estolas) that petitioner Acena is still the Administrative Officer of RTC because his appointment as Associate Professor had been withdrawn. Dr. Estolas filed on May 18, 1987 a motion for reconsideration, but then CSC Chairman Gotladera denied it in her letter dated July 8, 1987.

On May 15, 1987, the Pasig Court granted petitioner Acena's application for a writ of preliminary injunction enjoining Dr. Estolas from enforcing Memorandum No. 30. The Court of Appeals likewise sustained the issuance of injunction when it dismissed on September 4, 1987 the petition for certiorari filed by Dr. Estolas and Ricardo Salvador.

On February 3, 1988, the MSPB issued an order dismissing petitioner Acena's complaint for illegal termination. The dismissal was anchored on the findings that petitioner Acena was validly appointed to the position of Associate Professor and he was merely designated as Administrative Officer which designation could be revoked anytime by the appointing authority. However, on March 23, 1988, acting on petitioner Acena's letter dated February 12, 1988 informing the MSPB of the opinion of CSC Chairman Gotladera, the MSPB reversed itself and set aside its order dated February 3, 1988.

On July 16, 1988, Dr. Estolas and Ricardo Salvador filed a petition for review with the Office of the President. The case was entitled "Dr. Josefina Estolas and Ricardo Salvador (Rizal Technological Colleges), petitioners v. the Honorable Civil Service Commission, the Honorable Merit Systems and Protection Board and Raymundo T. Acena, respondents." In his 1st Indorsement dated July 20, 1988, Vicente Galang, Presidential Staff Director, Office of the President referred the said petition to the Civil Service Commission (Rollo, p. 159).

On October 9, 1989, the CSC promulgated Resolution No. 89-748, the dispositive portion of which reads:

"WHEREFORE, foregoing premises considered, the commission resolved to rule, as it hereby rules that the action taken by the then Officer-in-Charge (now President) of the Rizal Technological Colleges (RTC) Dr. Josefina V. Estolas, in revoking the designation of Raymundo T. Acena as Acting Administrative Officer, is in order. Accordingly, the Order dated March 23, 1988 of the Merit Systems Protection Board and the letter-opinions of the Commission dated March 23, 1987 and July 8, 1987, are set aside."

Petitioner Acena received a copy of the above resolution on October 24, 1989. He filed a petition for review on certiorari on November 15, 1989.

The proper remedy which petitioner should have taken from the resolution of public respondent Civil Service Commission is a petition for certiorari under Rule 65 of the Rules of Court and not a petition for review on certiorari under Rule 45 of said rules. Although Rule 65 does not provide for a period, the petition for certiorari assailing the resolution of the Civil Service Commission should be filed within thirty (30) days from receipt of the resolution as provided under Section 7, Article IX of the 1987 Constitution (*Pacis v. Secretary of Science and Technology*, G.R. No. 89165, August 10, 1989). Error in the title of the petition is a defect in form that may be disregarded as it does not affect the merits of the case. Considering the jurisdictional issue raised in this petition,

we consider the same as a special civil action under Rule 65.

The jurisdictional issue for resolution is whether or not the public respondent Civil Service Commission acted without or in excess of jurisdiction or with grave abuse of discretion when it set aside the order dated March 23, 1988 of the MSPB.

It is a settled rule, that a respondent tribunal, board or officer exercising judicial functions acts without jurisdiction if he does not have the authority conferred by law to hear and decide the case (*Banco Espanol Filipino v. Palanca*, 37 Phil. 921 [1918]). There is excess of jurisdiction where the respondent has the legal power to decide the case but oversteps his authority (*Rocha & Co. v. Crossfield*, 6 Phil. 355 [1906]; *Blanco v. Ambler*, 3 Phil. 358 [1904]). And there is grave abuse of discretion where the respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of his judgment amounting to lack of jurisdiction (*Alafriz v. Noble*, 72 Phil. 728 [1941]; *People v. Vallarta*, 77 SCRA 476; *F.S. Divinagracia Agno Commercial, Inc. v. Court of Appeals*, 104 SCRA 180; *Young v. Sulit*, 162 SCRA 639; *Filinvest Credit Corporation v. IAC*, 166 SCRA 155; *Carson et al. v. Judge Pantanosa, Jr.*, G.R. No. 75934, December 15, 1989).

In the case at bar, it is an admitted fact by no less than the public respondent Civil Service Commission that private respondent Estolas petition for review filed on June 16, 1988, with the Office of the President was filed out of time and with the wrong forum (pp. 7-11, Comment, dated February 20, 1990, Civil Service Commission).

Section 8 of Presidential Decree No. 1409 dated June 8, 1978, provides that:

"SEC. 8. Relationship with the Civil Service Commission. - Decision of the Board involving the removal of officers and employees from the service shall be subject to automatic review by the Commission. The Commission shall likewise hear and decide appeals from other decisions of the Board, provided that the decisions of the Commission shall be subject to review only by the Courts."

Implementing the above provisions, Section 7 of CSC Resolution No. 81-1329 dated November 23, 1981 likewise provides that:

"SEC. 7. Cases appealable to the Commission. Decision of the Merit Systems Board on contested appointments and other non-disciplinary cases are appealable to the Commission by the party adversely affected within fifteen (15) days from receipt of a copy thereof." (Underscoring supplied).

Based on the above provisions of law, the decision of the MSPB is appealable to the Civil Service Commission within fifteen (15) days from receipt of the copy thereof. Perfection of the appeal within the prescribed period is jurisdictional so that the failure to perfect an appeal within the reglementary period has the effect of rendering the judgment final and executory (*De Los Santos v. NLRC*, G.R. No. 83927, June 28, 1989; *Andaya et al. v. NLRC*, G.R. Nos. 73726-28, August 2, 1990). Moreover, the right to appeal is a statutory right and the party who seeks to avail himself of the same must comply with the requirements of the law. Failure to do so, the right to appeal is lost (*Ozaeta v. Court of Appeals*, G.R. No. 83281, December 4, 1989).

Ostensibly, public respondent Civil Service Commission has the jurisdiction to review the decision of the MSPB. However, said authority to review can only be exercised if the party adversely affected by the decision of the MSPB has filed an appeal with the Commission within the reglementary period.

Here, it is admitted by public respondent Commission and not disputed by private respondent Estolas that the petition for review which can be considered as an appeal from the decision of the MSPB dated March 23, 1988 was filed outside the reglementary period. This being so, the public respondent exceeded its jurisdiction when it entertained the petition that was erroneously filed with the Office of the President. Having exceeded its jurisdiction public respondent committed a reversible error when it set aside the order dated March 23, 1988 of

the MSPB which had long become final and executory. Final decision or orders of the MSPB is an adjudication on the merits conclusive on the parties, hence, it can no longer be subject to review (San Luis, et al. v. Court of Appeals, et al., G.R. No. 80160, June 26, 1989).

While it is true that under exceptional circumstances, delay in the filing of an appeal may be excused on grounds of substantial justice and equity, the delay must, however, be excusable and the appeal must be impressed with merit (Legasto v. Court of Appeals, G.R. Nos. 76834-60, April 25, 1989).

In the instant case, private respondent Estolas has not even bothered to offer an explanation why she incurred delay and why she filed a petition for review with the Office of the President. Such being the case, the public respondent Civil Service Commission cannot legally invoke and justify the assumption of jurisdiction on grounds of equity and substantial justice.

The issue of jurisdiction having been resolved, it appears unnecessary to discuss the other issues raised in the petition.

PREMISES CONSIDERED, the petition is hereby GRANTED and resolution No. 89-0748 dated October 9, 1987 of the Civil Service Commission is hereby NULLIFIED and SET ASIDE.

SO ORDERED.

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

Gutierrez, Jr., J., separate concurring opinion.

[*] Issued by Chairman Patricia A. Sto. Tomas and concurred by Commissioner Samilo Barlongag and Vicente Ramos.

[**] Rendered by Raymundo Villones, concurred by Bella Amilhasan and Vicente Ramos.

CONCURRING OPINION

GUTIERREZ, JR., J.:

I concur with the Court's decision that the questioned resolution of the Civil Service Commission must be set aside. However, I go further than deciding it purely on the respondent's error in going to Malacañang and failing to act on time in raising the appeal within the reglementary period. On the basic issues, the petitioner is correct.

The records show that after petitioner Acena was appointed Associate Professor and Acting Administrative Officer, he never formally accepted the appointment because he lacked an essential qualification for the fulltime Associate Professor's position. He continued to work as a fulltime Administrative Officer, teaching a few hours part time to augment his income, as he had been doing in the preceding years.

More important, he wrote the College President on January 9, 1986 that he thanked the President but preferred to remain as Administrative Officer. On January 13, 1986 President Profeta withdrew the appointment. Acena, therefore, retained and continued to discharge his existing job as Administrative Officer. This January 9 letter of Acena and the January 13 letter of President Profeta were received by the Civil Service Commission on April 8, 1986. The withdrawal was sustained by the Civil Service Commission itself as explained in Chairman Gotladera's July 8, 1987 letter to Dr. Estolas.

On March 21, 1986 respondent Dr. Estolas took over as O-I-C of the Rizal Technological Colleges. She could not have revoked the appointment of Acena as Acting Administrative Officer because this appointment never became effective. It was rejected by the appointee and withdrawn by the appointing power. The full time teaching job was never assumed.

The receipt of increased salaries for sometime after the proffered appointment is of no consequence. It is common practise among government employees to pocket their salaries without making too many inquiries about salary deductions, honoraria from part time assignments, etc. It appears, however, that when the withdrawal of the appointment by Dr. Profeta became a subject of controversy, the salaries were received "under protest" and the difference was later refunded. It would be asking too much to have Acena reject the entire salaries because he was being overpaid. It is enough to refund the overpayment. The acts of Dr. Estolas in renewing the appointments as Associate Professor are superfluous. The appointment having been withdrawn, there was nothing to renew. Besides, any renewal or reappointment against the will of the appointee is invalid.

There is, likewise, evidence that the questioned resolution was based on one-sided documentary evidence submitted by the respondent without the petitioner having been given a chance to refute or counter it. There was a violation of due process.

CONSIDERING all the foregoing, I see no factual or legal basis for the questioned resolution of the Civil Service Commission. I join the rest of the Court in granting the petition.

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