

EN BANC

[G.R. No. 166547, September 12, 2007]

UMBRA M. TOMAWIS, PETITIONER, VS. ATTY. NORA M. TABAO-CAUDANG, RESPONDENT.

DECISION

NACHURA, J.:

This is a Petition for Review on *Certiorari* of the Decision^[1] of the Court of Appeals (CA), dated September 8, 2004, in CA-G.R. SP No. 84424, and its Resolution^[2] dated December 20, 2004. The assailed Decision annulled and set aside the Decision^[3] of the Regional Trial Court (RTC) of Lanao del Sur, Branch 8, Marawi City, dated September 15, 2003 in Special Civil Action No. 820-02, as well as its Order^[4] and Writ of Execution^[5] dated April 23, 2004.

Factual and Procedural Antecedents

On September 1, 1987, then Office of Muslim Affairs (OMA) Executive Director Jiamil I.M. Dianalan (Dianalan) appointed^[6] Atty. Nora M. Tabao-Caudang (Caudang) as Regional Director of Region XII-B, pursuant to Section 8 of Executive Order (E.O.) No. 122-A, as amended by E.O. No. 295. At that time, the OMA staff and Regional Directors were not yet classified as Career Executive Service (CES) positions. Hence, the Civil Service Commission (CSC) approved Caudang's appointment as permanent.

On February 18, 1991, the directorship positions in the OMA, including those of Regional Directors, were classified as CES positions thereby requiring CES eligibility for permanent appointments. Said reclassification was embodied in CSC Resolution No. 94-2925 and CSC Memorandum Circular No. 21, both dated May 13, 1994.

On February 4, 1993, Caudang received a notice^[7] that she had been replaced by Mr. Umbra Tomawis (Tomawis), the latter having been appointed by then President Fidel V. Ramos. Aggrieved, Caudang requested a ruling from the CSC on her status (of appointment) as Regional Director. Before the CSC could resolve the matter, on April 29, 1993, Caudang filed a petition for *quo warranto* against Tomawis before this Court, but the same was dismissed for lack of certification of non-forum shopping and verified statement of material dates, as required by Revised Circular No. 1-88 and Circular No. 28-91.^[8]

On January 4, 1994, the CSC promulgated Resolution No. 94-0014^[9] declaring Caudang's appointment as permanent. She was declared as the lawful incumbent, giving her the right to recover the position through a petition for *quo warranto* before the appropriate court.

On the basis of the above resolution, on February 4, 1994, Caudang filed a petition for *quo warranto* docketed as CA-G.R. SP No. 33246. On June 30, 1994, the CA granted Caudang's petition reinstating her to the position and ordering Tomawis to vacate and relinquish the same.^[10] However, on motion for reconsideration filed by the Solicitor General, the CA reversed itself in an Amended Decision^[11] dated October 17, 1994, ruling that the petition should not have been entertained in the first place for being violative of the procedural rules on non-forum shopping, given the identical petition Caudang earlier filed with this Court. On appeal before this Court *via* a petition for review on *certiorari*, we denied the petition for failure to show that a reversible error had been committed by the appellate court. The said denial had become final and executory and the same was subsequently entered in the Book of Entries of Judgments.^[12]

Left with no other recourse, Caudang went to the CSC and moved for the issuance of a writ of execution of CSC Resolution No. 94-0014. In Resolution No. 966231^[13] dated September 23, 1996, the CSC denied Caudang's motion. The CSC noted that Caudang's petition for *quo warranto* was dismissed by the CA, thus, the motion for execution must necessarily fail. The CSC likewise held that the services of Caudang were terminated by the Chief Executive prior to the filing of the petition for *quo warranto*, thus, preventing the Commission from an inquiry into the said separation from service effected by the President as the issue is reviewable only by the High Court.^[14] The CSC later denied Caudang's motion for reconsideration.

On July 3, 1998, then OMA Executive Director Acmad Tomawis removed Tomawis from the contested position and appointed Engr. Dardagan Maruhom in his stead. Tomawis did not challenge his removal and, instead, claimed terminal pay equivalent to his earned leave credits. He was re-appointed to the same position on July 31, 2000 by then OMA Executive Director Ismael Naga, Jr. but his appointment was characterized as *temporary*, because he did not possess the appropriate CES eligibility.

On December 18, 2001, then OMA Executive Director Habib Mujahab A. Hashim (Hashim) issued a Memorandum^[15] to Tomawis clarifying that his appointment was merely temporary and that a new appointment may be issued either in his favor or to another qualified individual. He was directed to start clearing himself of money, property and all other office accountabilities. On March 8, 2002, Hashim issued Office Order No. 0079, series of 2002^[16] reinstating Caudang to the contested position. Consequently, Tomawis was directed to vacate and formally relinquish the position and turn over the office, along with its funds and properties, to Caudang.

Caudang then requested the CSC to issue an order affirming the continuity of her service from the time she was separated from service on February 8, 1993 until her reinstatement in 2002. On July 29, 2002, the CSC denied Caudang's request in Resolution No. 021000.^[17] The CSC held that Caudang's request had no legal basis because CSC Resolution No. 94-0014 (which was ostensibly the basis of Hashim's Office Order) was, in effect, reversed by the Court of Appeals in its October 17, 1994 Amended Decision.^[18]

Aggrieved by Hashim's order requiring him to vacate his position, Tomawis instituted an action for injunction and prohibition^[19] against Caudang and Hashim before the

RTC. The case was docketed as Special Civil Action No. 820-02.

Tomawis likewise filed a verified complaint against Hashim for alleged violation of the "Anti-Graft Law" for issuing Office Order No. 0079. The Presidential Anti-Graft Commission conducted a fact-finding inquiry and, acting on its recommendation, the Office of the President (OP) dismissed the complaint on the ground that the reinstatement of Caudang was just and lawful pursuant to CSC Resolution No. 94-0014.^[20]

Meanwhile, on September 15, 2003, the RTC rendered a Decision in favor of Tomawis, the dispositive portion of which reads:

WHEREFORE, foregoing premises considered, the instant petition for Injunction and Prohibition is hereby granted for being highly meritorious. Respondent OMA Executive Director Hon. HABIB MUJAHAB A. HASHIM or any person acting in his behalf is hereby directed to cease, desist and refrain from enforcing office Order No. 0079, Series of 2002 dated March 8, 2002. Respondent Atty. Nora T. Caudang is likewise ordered to cease, desist and refrain from further assuming the powers and functions of OMA Regional Director, Region XII-B, Marawi City.

SO ORDERED.^[21]

A copy of the decision was served on Caudang on September 24, 2003. The following day, Caudang filed a motion for reconsideration^[22] which was denied^[23] on December 15, 2003. However, it appears from the records that Caudang never received a copy of the December 15 Order.^[24]

On December 18, 2003, Caudang filed a Manifestation^[25] praying for the immediate dismissal of the case, attaching thereto a copy of the Decision of the Office of the President in OP Case No. 2-J-523 and a Certification issued by the OMA Director for Administrative Services that Caudang is the incumbent Regional Director of Region XII.^[26] However, this Manifestation (which was really a motion for the dismissal of the pending case) was not set for hearing. Thereafter, the RTC issued an Order^[27] dated January 7, 2004 setting aside its September 15 and December 15, decision and resolution, respectively, on the ground that the legal authority of Caudang as Regional Director was administratively upheld by the OMA and the OP.

On January 16, 2004, Tomawis filed an Urgent *Ex-Parte* Motion for Execution of the September 15 decision and December 15 order of the RTC averring that they had become final and executory for failure of Caudang to appeal the same within the reglementary period. Caudang, however, opposed the motion claiming that she had not been served a copy of the order denying her motion for reconsideration.

On April 23, 2004, the court granted^[28] the motion and the corresponding writ of execution^[29] was accordingly issued. On May 7, 2004, Caudang moved^[30] to quash the writ which the court denied in an Order^[31] dated May 19, 2004.

Pursuant to the above writ of execution, then Undersecretary/OMA Executive Director Datu Zamzamin L. Ampatuan issued Office Order No. 04-270^[32] dated June

3, 2004 re-installing Tomawis to the contested position until the issuance of a new appointment either in his favor or to other qualified applicant.

On June 9, 2004, Caudang elevated the matter to the CA *via* a special civil action for *certiorari* and prohibition assailing the validity of the writ of execution issued by the RTC on the ground that the decision sought to be executed did not attain finality. Caudang claimed that it was the January 7^[33] Order of the RTC that had, instead, become final and executory.

On September 8, 2004, the CA rendered the assailed Decision in favor of Caudang, the pertinent portion of which reads:

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision of the Regional Trial Court, Branch 8, Marawi City in Spl. Cvl. Action No. 820-02 dated 15 September 2003, the Order dated 23 April 2004 and the Writ of Execution dated 23 April 2004 are hereby **ANNULLED and SET ASIDE**. Office Order No. 04-270, Series of 2004, issued by OMA Executive Director Zamzamin Ampatuan directing the re-installation of respondent Umbra Tomawis as OMA Regional Director, Region XII-B, Marawi City is hereby declared **NULL and VOID**. Director Ampatuan is further directed to recognize petitioner ATTY. NORA TABAO-CAUDANG as the legitimate holder/occupant of the office. Land Bank of the Philippines, Marawi Branch, through its bank officials, is directed to desist from honoring checks and withdrawals signed/issued by respondent Tomawis. Respondent Umbra Tomawis is hereby ordered to cease and desist from performing the functions of OMA Regional Director, Region XII-B, Marawi City and to surrender said office to petitioner Caudang. No pronouncement as to costs.

SO ORDERED.^[34]

The appellate court held that in both procedural and substantive aspects of the case, the RTC committed grave abuse of discretion: *first*, the September 15 Decision of the RTC never attained finality because Caudang had not received a copy of the resolution denying her motion for reconsideration; the rule on constructive receipt of mails is not applicable because the envelope containing said resolution was marked "return to sender"; *second*, the January 7 Order of the RTC is null and void for failure to comply with the procedural requirement of a valid hearing; and *third*, the petition for injunction commenced by Tomawis is a disguised petition for *quo warranto* which should never have been entertained because Tomawis had no legal standing to file the same since he held the contested position merely in a temporary capacity.

Tomawis' motion for reconsideration was denied in a Resolution^[35] dated December 20, 2004. Tomawis, now the petitioner, filed the instant petition, and in his Memorandum,^[36] he raises the following issues:

(1).

DID NOT THE COURT OF APPEALS COMMIT GRAVE ABUSE OF DISCRETION AND ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION WHEN IT ANNULLED AND SET ASIDE THE DECISION OF

JUDGE ADIONG DATED SEPTEMBER 15, 2003.

(2).

DID NOT THE COURT OF APPEALS ERR IN RULING THAT THE PETITIONER HAD NO LEGAL RIG[H]T TO FILE SPL. CIVIL ACTION NO. 802-02.

(3).

DID NOT THE RESPONDENT COMMIT MULTIPLE FORUM SHOPPING.^[37]

In his memorandum, Tomawis claims that the CA erred in reviewing the merits of the RTC decision, as it was never raised as an issue before the appellate court. He claims that the only issue elevated to the appellate court was whether or not the decision sought to be executed attained finality in order to warrant the issuance of a writ of execution.^[38] Tomawis also insists that he has the legal personality to commence the injunction case being the occupant of the contested position, albeit in a temporary capacity.^[39] He further avers that the CA should not have relied on the decision of the OP in OP Case No. 2-J-523 because it was in the nature of a forgotten evidence since the respondent failed to present the same in her evidence-in-chief.^[40] Lastly, the petitioner argues that respondent is guilty of multiple forum shopping in litigating her claim before the CSC, the CA and this Court.^[41]

The petition is without merit.

The first and second issues, being interrelated, shall be discussed together.

It must be understood that there are two RTC decisions involved in the present case, the second (January 7) entirely incompatible with the first (September 15). From the factual circumstances surrounding this case, and as correctly held by the CA, the January 7 Order is null and void because of an incurable procedural defect,^[42] i.e., it was never set for hearing. Thus, the only decision material to our consideration is the September 15 Decision. Did the aforesaid decision attain finality to justify the issuance of a writ of execution? We answer in the negative.

Section 9, Rule 13 of the Rules of Court provides:

Service of judgments, final orders or resolutions. - Judgments, final orders or resolutions shall be served either personally or by registered mail. x x x.

Section 10 of the same Rule provides:

Completeness of service. - Personal service is complete upon actual delivery. Service by ordinary mail is complete upon the expiration of ten (10) days after mailing, unless the court otherwise provides. Service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever date is earlier.

The rule on service by registered mail contemplates two situations: (1) actual service, the completeness of which is determined upon receipt by the addressee of