

SECOND DIVISION

[G.R. NO. 157070, January 14, 2005]

**JOSEFINA ESTOLAS AND RICARDO SALVADOR, PETITIONERS,
VS. RAYMUNDO ACENA, RESPONDENT.**

D E C I S I O N

CHICO-NAZARIO, J.:

In this petition for review on *certiorari*, petitioners Josefina Estolas and Ricardo Salvador seek the reversal of the Court of Appeals Decision^[1] dated 30 May 2002 and the Resolution^[2] dated 22 January 2003 denying their motion for reconsideration. The assailed Court of Appeals Decision affirmed the Decision^[3] of the Regional Trial Court (RTC) of Pasig, Branch 168, adjudging petitioners herein (who were the defendants thereat) jointly and severally liable for damages in the amount of P75,000 as moral damages and P10,000 as exemplary damages.

The pertinent facts, as appreciated by the Court of Appeals, are as follows:

18 October 1982 -Plaintiff-appellee (now respondent) Raymundo Acena is appointed ADMINISTRATIVE OFFICER WITH PERMANENT STATUS, of the Rizal Technological College (RTC) by Dr. Lydia Profeta, President of said college. Such appointment is approved by the Civil Service Commission (CSC);

09 December 1985 -(1) Respondent Acena is extended a promotional appointment as ASSOCIATE PROFESSOR effective 01 November 1985;

(2) Effective 30 October 1985, and in view of his promotion to Associate Professor, respondent Acena is designated ACTING ADMINISTRATIVE OFFICER by President Profeta in an undated letter;^[4]

01 November 1985 -Respondent Acena assumes his position as Associate Professor and receives the salary for such position per certification of the personnel officer of RTC dated 04 November 1985;

09 January 1986 -Respondent Acena, thru a letter addressed to President Profeta, rejects his appointment as Associate Professor because of the provisions of Memorandum Circular No. 4 of the CSC which requires a masteral degree to qualify for permanent appointment as Associate Professor;

13 January 1986 - President Profeta accepts the "rejection";

26 March 1986 -Appellant-defendant Dr. Josefina Estolas (now petitioner) is designated as Officer-in-charge of RTC in place of Dr. Profeta;

08 April 1986 - (a) **Petitioner Estolas issues Memorandum Order No. 30, Series of 1986, revoking the designation of respondent Acena as Acting Administrative Officer effective on even date and designating appellant-defendant (now petitioner) Ricardo Salvador in his stead;**

(b) The CSC receives a copy of the 09 January 1986 letter of respondent Acena rejecting his appointment as Associate Professor;

(c) **Respondent Acena institutes Civil Case No. 53327 for Injunction and Damages enjoining petitioner Estolas from implementing and enforcing Memorandum Order No. 30 claiming that the same violated his rights to security of tenure;**

15 April 1986 - Respondent Acena amends his complaint;

17 April 1986 -Respondent Acena likewise files a letter-complaint with the Merit Systems Protection Board (MSPB) for alleged illegal termination of his services as Acting Administrative Officer;

20 May 1986 -Appointment of respondent Acena as Associate Professor is approved by the CSC as temporary on the ground that respondent Acena does not meet the educational requirement pursuant to CSC-Memorandum Circular Series of 1985;^[5]

07 July 1986 -Respondent Acena also seeks the opinion of the CSC regarding his appointment and status as Administrative Officer of the RTC;

23 March 1987 -Chairperson of the CSC, Celerina Gotladera, issues an opinion in favor of respondent Acena holding that the latter is still the administrative officer as he was appointed thereto under permanent status and as his appointment as Associate Professor had been withdrawn;

15 May 1987 - The trial court issues an Order for the issuance of a writ of preliminary mandatory injunction enjoining petitioner Estolas from implementing Memorandum Order No. 30. The basis for said Order is the 23 March 1987 opinion of CSC Chairperson Gotladera;

03 February 1988 -The MSPB dismisses respondent Acena's complaint for illegal termination;

12 February 1988 -Respondent Acena demands for the withdrawal of the MSPB order considering that Commissioner Gotladera had already ruled on the case;

23 March 1988 - The MSPB sets aside its 03 February 1988 order;

15 June 1988^[6] - Aggrieved by the 23 March 1988 MSPB Order, petitioner Estolas goes to the Office of the President on Petition for Review and the same is indorsed for disposition to the CSC;

09 October 1989 -CSC issues Resolution No. 89-748 declaring that the action of petitioner Estolas in revoking the designation of respondent Acena as Acting Administrative Officer is in order, thus setting aside the 23 March 1987 opinion of Commissioner Gotladera and the 23 March 1988 Order of the MSPB;^[7]

17 February 1993 -The trial court renders the assailed Decision, the decretal portion of which reads:

"Premises considered, defendants are hereby ordered to jointly and severally pay plaintiff the amount of P75,000.00 as moral damages and P10,000.00 as exemplary damages with costs against defendants."

As earlier stated, the Court of Appeals affirmed in toto the Decision of the trial court. Aggrieved therefrom, petitioners, as represented by the Office of the Solicitor General, filed the instant petition^[8] contending that the Court of Appeals erred:

I. IN HOLDING THAT PETITIONER ESTOLAS ACTED IN BAD FAITH WHEN SHE ISSUED MEMORANDUM ORDER NO. 30

II. IN AWARDING MORAL AND EXEMPLARY DAMAGES TO RESPONDENT ACENA

As a preliminary matter, it is vital to note that we are not at all unfamiliar with the factual milieu of this case. In *Acena v. Civil Service Commission*,^[9] a case anchored on the very same facts that gave rise to the present petition, petitioner thereat (respondent Acena herein) challenged the jurisdiction of the CSC in issuing Resolution No. 89-748 dated 09 October 1989 setting aside the 23 March 1988 Order of the Merit Systems Protection Board (MSPB). We pronounced in *Acena* that the CSC did not have jurisdiction to entertain the petition for review filed therewith as it was filed out of time. Thus –

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 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).

Now to the case at bar. Petitioners insist that Memorandum Order No. 30, relieving respondent Acena of his position as Acting Administrative Officer, was validly issued as respondent Acena was holding such position in an acting capacity only, as he had

previously accepted an appointment as Associate Professor. Moreover, Memorandum Order No. 30 was issued only after the RTC Board of Trustees, upon the recommendation of an Ad Hoc Committee on Reorganization composed of representatives of management, faculty and employees of the College, recommended the designation of petitioner Salvador vice respondent Acena. Finally, as petitioner Estolas acted rightfully in her official capacity in designating petitioner Salvador, neither she nor petitioner Salvador can be made liable for damages as damages can only be recovered if the acts complained of are themselves wrong.

Respondent Acena, on the other hand, maintains that his promotion to Associate Professor never took effect as he rejected said appointment, which rejection was accepted by the then President of the RTC, before the said appointment could be approved by the CSC. In his letter of rejection, respondent Acena specifically stated his preference to stay as Administrative Officer under permanent status as opposed to the temporary position of Associate Professor. Thus, as his promotion to Associate Professor never took effect, respondent Acena concluded that he never abandoned his position as Administrative Officer.

The law on damages prescribes that in order that one can have redress for an act which caused him damage, the act must not only be hurtful, it must also be wrongful.^[10] There must be *damnum et injuria*.^[11] All in all, in order to recover moral damages, the claimant must prove the following: (1) there must be an injury, whether physical, mental or psychological, clearly sustained by the claimant; (2) there must be a culpable act or omission factually established; (3) the wrongful act or omission of the defendant is the proximate cause of the injury sustained by the claimant; and (4) the award of damages is predicated on any of the cases stated in Article 2219 of the Civil Code.^[12] In herein case, the factual issue of whether or not the issuance by petitioner Estolas of Memorandum Order No. 30 was wrongful has been passed upon with finality by the MSPB way back in 1988 following our ruling in *Acena v. Civil Service Commission*.^[13] It should be recalled that the MSPB Order set aside its earlier order dismissing respondent Acena's complaint for illegal dismissal because the CSC "through the Chairman has already rendered its final determination on the matter."^[13] The relevant portions of the CSC resolution^[14] being adverted to by the MSPB are quoted hereunder:

Records show that then RTC President Lydia N. Profeta issued on December 9, 1985 an appointment to Mr. Acena as Associate Professor and the same was received in the Commission National Capital Region Office on January 6, 1986. Thereafter, on January 9, 1986, Mr. Acena wrote RTC President Profeta that he prefers to remain as Administrative Officer because this Commission might approve his appointment as temporary because he does not possess a masteral degree. He asked that his appointment as Associate Professor be withdrawn and that he will refund whatever he received as salary of Associate Professor in excess of his salary as Administrative Officer. In a letter dated January 13, 1986, RTC President Profeta wrote Mr. Acena that his appointment as Associate Professor was withdrawn. The letter of Mr. Acena and the letter of President Profeta were received on April 8, 1986 by the National Capital Region. On April 10, 1986 by way of a 1st indorsement, the said appointment of Mr. Acena as Associate Professor, together with other appointments, were returned without action by the National Capital

Region to the RTC.

Perhaps unaware of the withdrawal of the said appointment of Mr. Acena as Associate Professor by then President Profeta, as the new Officer-In-Charge of RTC, you resubmitted the said appointment to the National Capital Region on May 20, 1986 and the NCR approved the same as temporary because Mr. Acena does not meet the education requirements.

On the basis of the foregoing facts, this Commission holds that Mr. Raymundo T. Acena is still Administrative Officer of that College having been appointed thereto under permanent status and because his appointment as Associate Professor had been withdrawn. The Supreme Court, in the case of *Mitra vs. Subido*, G.R. No. L-21691, September 15, 1967, has ruled that the appointing authority is empowered in the exercise of his executive prerogative to withdraw an appointment he issued provided that the same has not been irrevocably approved by the Commission.

Although Mr. Acena was paid the salary of Associate Professor, he, however, refunded the salary differential as evidenced by OR#1609303 and 1608112. Moreover, Mr. Acena had timely expressed his desire to remain as Administrative Officer under permanent status instead of accepting the promotional appointment as Associate Professor under temporary status before this Commission inadvertently approved the same as temporary after it had been withdrawn. **On the same premise, the approval by this Commission of the appointment of Mr. Ricardo Salvador as Administrative Officer in that college is withdrawn inasmuch as Mr. Acena has not validly vacated the same.** Pertinent records of this Commission are hereby modified or corrected accordingly. (Emphases supplied)

The determination by the MSPB, which was based on the CSC opinion to the effect that respondent Acena still held the position of Administrative Officer in a permanent capacity at the time of the issuance of Memorandum Order No. 30 is conclusive upon us.^[15]

Having disposed of this preliminary matter, we now unravel the first of two issues posed in the instant petition, *i.e.*, whether or not petitioner Estolas, in conspiracy with petitioner Salvador, issued the said memorandum in bad faith.

Both the trial court and the Court of Appeals ruled that, indeed, petitioners acted in bad faith. Verily, such conclusion drawn from facts is a conclusion of law which this Court may review.^[16]

Insofar as petitioner Salvador is concerned, it is reversible error on the part of the trial court and the Court of Appeals to have concluded that petitioner Salvador acted in bad faith as such conclusion is completely bereft of any rational basis. The evidence before us simply does not support such valuation. Respondent Acena, grasping at straws, tried to establish during the direct examination of petitioner Salvador that despite the preliminary injunction issued by the trial court for the petitioners to refrain from enforcing Memorandum Order No. 30, petitioner Salvador continued to perform the duties of Acting Administrative Officer through the signing