

THIRD DIVISION

[G.R. No. 207682, December 10, 2014]

**CONRADO B. NICART, JR., AS PROVINCIAL GOVERNOR OF LGU-
EASTERN SAMAR, PETITIONER, VS. MA. JOSEFINA C. TITONG
AND JOSELITO M. ABRUGAR, SR., RESPONDENTS.**

DECISION

VELASCO JR., J.:

The Case

Before Us is a Petition for Review under Rule 45 of the Rules of Court, seeking the: (a) issuance of a temporary restraining order on the implementation of the writ of mandamus dated April 16, 2013, issued by the Regional Trial Court, (RTC) Branch 2 of Borongan City, Eastern Samar in Civil Case No. 4236, entitled *Ma. Josefina M. Titong, et al. v. Hon. Conrado B. Nicart, Jr., et al.*; and (b) the annulment and setting aside of the RTC's Decision dated April 11, 2013 as well as its June 20, 2013 Order, in said case.

The Facts

A few days prior to the end of his term, then Governor of Eastern Samar Ben P. Evardone (Evardone) issued ninety-three (93) appointments between May 11, 2010 and June 29, 2010, including that of herein respondents Ma. Josefina Titong (Titong) and Joselito Abrugar, Sr. (Abrugar), which appointments were later confirmed by the *Sangguniang Panlalawigan*. Consequently, the appointees immediately assumed their respective positions.

Upon submission, however, of the appointments to the Civil Service Commission (CSC) Regional Office (CSCRO) No. VIII, all 93 appointments were disapproved for having been made in violation of Section 2.1 of CSC Memorandum Circular No. 16, series of 2007.^[1]

Evardone appealed the disapproval but it was dismissed for non-payment of the requisite filing fee and the appointments having been issued in violation of said circular. Respondents, for their part, individually moved for reconsideration of the disapproval of their respective appointments but later withdrew their motions via an Omnibus Joint Motion and separately converted the same to an Appeal by means of a petition for review with the CSC proper.

Meanwhile, on August 10, 2010, Titong and Abrugar requested the assistance of the CSC with their claim for payment of their first salary which was denied by the Commission on Audit (COA) Provincial Office and by petitioner, who at that time was already the incumbent Governor.

Acting on the appeal, the CSC rendered Decision No. 10-0242^[2] dated December 13, 2010, granting the petition, modifying the CSCRO's ruling, and declaring the appointment of Titong and Abrugar valid on the ground that the two are qualified for the positions to which they were appointed. The *fallo* of the Decision reads:

WHEREFORE, the Petition for Review of Ma. Josefina C. Titong and Joselito M. Abrugar, Sr., both Provincial Government Department Heads (Human Resource [M]anagement Office and [P]rovincial Planning and Development Office, respectively), Provincial Government of Eastern Samar, is **GRANTED**. Accordingly, the Order No. 100360 dated July 26, 2010 of the Civil Service Commission Regional Office (CSCRO) No. VIII, Palo, Leyte, disapproving the appointment of [93] employees, including the appointments of petitioners, for failure to pay the appeal fee, and violation of CSC Memorandum Circular Nos. 3, s. 2011 and 16, s. 2007 is **MODIFIED** insofar as the appointment of Ma. Josefina C. Titong and Joselito M. Abrugar, Sr. which are **APPROVED**.

Petitioner moved for reconsideration of said Decision, but it was denied by the CSC, through Resolution No. 1100653^[3] dated May 27, 2011, the dispositive portion of which reads:

WHEREFORE, the Motion for Reconsideration of Governor Conrado B. Nicart, Jr., Provincial Government of Eastern Samar, is **DENIED**. Accordingly, CSC Decision No. 10-0242 dated December 13, 2010 which approved the appointments of Ma. Josefina C. Titong and Joselito M. Abrugar, Sr. as Provincial Government Department Heads (Human Resource Management Office and Planning and Development Office, respectively), **STANDS**. The Provincial Government of Eastern Samar is directed to pay the salaries and benefits of Titong and Abrugar from the time that they have assumed their respective positions.

Undaunted, petitioner filed before the Court of Appeals (CA) a petition for review of the above CSC Decision and Resolution, docketed as CA-G.R. SP No. 119975, entitled *Conrado B. Nicart, Jr. v. Ma. Josefina C. Titong and Joselito M. Abrugar, Sr.*, presenting the sole issue of whether or not the appointments of herein respondents are valid.

There, petitioner, in the main, argues that the appointments were in violation of said Section 21 of CSC Memorandum Circular No. 16, s. 2007 and that the exemptions laid down in *Nazareno v City of Dumaguete*^[4] were not met for the following reasons: (a) there was no need to fill up the vacancies immediately; and (b) the appointments were made *en masse*.

Respondents, for their part, maintain that their appointments were a valid exercise by Evardone of his power of appointment.

Pending resolution thereof by the CA, the CSC, upon respondents' motion, issued a writ of execution under CSC Resolution No. 1101319 dated October 6, 2011, ordering petitioner and the Provincial Government to pay the salaries and other emoluments due to respondents from the time of their assumption of office on June 21, 2010 up to the present.

In view of petitioner's continued refusal to pay their salaries, among others, despite the service of the writ of execution upon him and with CA-G.R. SP No. 119975 still pending resolution, respondents filed before the RTC a Petition for Mandamus with Unspecified Damages against herein petitioner, the Vice Governor, and the members of the *Sangguniang Panlalawigan*, docketed as in Civil Case No. 4236.^[5] In it, they prayed that therein respondents be directed to: (a) pay Titong and Abrugar their salaries and other emoluments or benefits due them from their assumption of office on June 21, 2010 up to the present; (b) incorporate their salaries in the annual budget of the Province; (c) pay herein respondents damages and attorney's fees; and (d) recognize their appointments as valid, among others.^[6]

Respondents, in their Comment, maintain that the petition should be dismissed on any of the following grounds, viz: (a) mandamus is not the proper remedy; (b) *litis pendentia*, since there is another action pending between the same parties and for the same cause of action; (c) wilful and deliberate act of forum shopping is punishable by summary dismissal of the actions filed; and (d) the action is already moot and academic as regards petitioner's co-respondents thereat since they are being compelled to do an act that has already been done.^[7]

CA Ruling in CA-G.R. SP No. 119975

On July 3, 2012, with Civil Case No. 4236 still pending, the CA rendered a Decision^[8] in CA-G.R. SP No. 119975 granting the petition and ruling that respondents' appointments are not valid for having been issued in violation of CSC Rules and for failure to comply with the requisites set forth by jurisprudence.^[9] Consequently, the CA held, respondents can no longer claim entitlement to the payment of their salaries from the government and that it is the appointing authority who shall be personally liable for their salaries, as directed by Section 4, Rule VI of the Revised Omnibus Rules on Appointments and Other Personnel Actions which states:

Sec. 4. The appointing authority shall be personally liable for the salary of the appointees whose appointments have been disapproved for violation of pertinent laws such as the publication requirement pursuant to RA 7041.

The *fallo* of the Decision reads:

WHEREFORE, in view of the foregoing, the petition is hereby **GRANTED** and the assailed Resolution No. 1100653 dated May 27, 2011 is set aside.

SO ORDERED.

Aggrieved, respondents sought recourse from this Court via a Rule 45 Petition docketed as G.R. No. 203835.^[10]

The Court's Resolution in G.R.No. 203835

Prior to the RTC's resolution of the petition for mandamus, We denied the petition for review of the CA Decision via Our Resolution of February 27, 2013, ruling that there is no reversible error in the challenged decision to warrant the exercise of the

Court's discretionary appellate jurisdiction, thereby affirming the CA's finding that respondents' appointments are invalid. Aggrieved, respondents sought reconsideration thereof.

RTC Decision in Civil Case No. 4236

Pending this Court's action on respondents' motion for reconsideration in G.R. No. 203835, the RTC, on April 11, 2013, rendered the assailed Decision^[11] in Civil Case No. 4236 in favor of Titong and Abugar, disposing of the case in this wise:

WHEREFORE, all the foregoing premises considered, the herein Petition for Mandamus is hereby GRANTED. The prayer of respondents in their Comment asking for the dismissal of this petition is hereby DENIED for lack of merit.

Accordingly, judgment is hereby rendered COMMANDING herein RESPONDENTS and the persons, officials or subordinates under their respective authorities, TO:

1. PAY IMMEDIATELY the salaries and other emoluments or benefits due to herein Petitioners MA. JOSEFINA C. TITONG and JOSELITO M. ABRUGAR, JR., as Human Resource Management Officer (HRMO), and Provincial Planning and Development Coordinator (PDDC), respectively, both Provincial Government Department Head (PGDH) of the Provincial Government of Eastern Samar, from their assumption to office on June 21, 2010 up to the present as they are both entitled to, now and in the future;
2. APPROPRIATE IMMEDIATELY the necessary funds therefore (sic), in case the appropriated funds therefore (sic) have either been reverted, realigned or otherwise exhausted or spent;
3. INCORPORATE IMMEDIATELY such funds if none, in the Annual Budget of the Province for now, and/or in the future as they may be entitled to;
4. GIVE IMMEDIATELY due or rightful recognition to [Titong and Abugar] as the duly appointed [HRMO] and [PPDC], respectively, both [PPDH] and accord them and repose in them their corresponding duties, responsibilities, rights and privileges as such Department Heads or Officers per Civil Service Commission proper decision;
5. IMMEDIATELY, for nominal respondents, to allot, allocate, pass in audit or internal control and disburse the funds above-mentioned;
6. PAY IMMEDIATELY, for respondent [Nicart], in his personal capacity, the amount of ONE HUNDRED FIFTY (Php 150,000.00) PESOS each petitioner as nominal damages; the amount of FIFTY THOUSAND (Php 50,000.00) as attorneys fees; and the COSTS of suit.

SO ORDERED.^[12]

According to the RTC, the non-issuance by the CA of a restraining order or injunction restraining it from proceeding with Civil Case No. 4236, coupled with respondents' filing of a Rule 45 petition before this Court (G.R. No. 203835) thereby staying the Decision of the CA which reversed the ruling of the CSC and declared respondents' appointment as invalid, results in the continued effectivity of the CSC Decision in respondents' favor.^[13] Furthermore, the RTC held that this is consistent with Section 82 of the Uniform Rules on Administrative Cases in Civil Service (CSC Memorandum Circular No. 19, s. 1999; CSC Resolution No. 99-1936 dated August 31, 1999), which states that "[t]he filing and pendency of a petition for review with the [CA] or certiorari with the [SC] shall not stop the execution of the final decision of the Commission, unless the Court issues a restraining order or an injunction."^[14]

Their motion for reconsideration^[15] having been denied,^[16] petitioner now seeks recourse from this Court by way of the instant petition presenting the following issues:

- I. The Court of Appeals Sixth Division ruled that herein respondents' appointment are (sic) not valid and they are not entitled to claim salaries from the government. The Supreme Court affirmed the Court of Appeals Decision. Did the court a quo gravely err in granting herein respondents' petition for mandamus?
- II. Having been made aware of the Court of Appeals' Decision reversing the Civil Service Commission Resolution, did the court a quo gravely err in enforcing the Decision of the Civil Service Commission?
- III. With the recent Resolution of the Supreme Court which affirmed the Decision of the Court of Appeals, can the petition validly refuse to comply with the court a quo's writ of mandamus? Will such refusal constitute contempt?^[17]

The Court's Resolution in G.R. No. 203835 denying Reconsideration of the February 27, 2013 Resolution

Meanwhile, on February 10, 2014, We issued a Resolution affirming our February 27, 2013 Resolution where We upheld the finding of the CA that the appointments of herein respondents are invalid, thereby resolving with finality G.R. No. 203835 and writing finis to the question on the status of their appointment.

The Issue

The core issue for the Court's resolution is whether or not the enforcement of the Decision of the CSC upholding the legality of respondents' appointment remains to be proper considering Our affirmation of the invalidity thereof in Our Resolutions of February 27, 2013 and February 10, 2014.

Our Ruling

The petition is meritorious.