

SECOND DIVISION

[G.R. No. 181643, November 17, 2010]

**MICHELLE I. PINEDA, PETITIONER, VS. COURT OF APPEALS
(FORMER NINTH DIVISION) AND THE DEPARTMENT OF
EDUCATION, REPRESENTED BY ASSISTANT SECRETARY CAMILO
MIGUEL M. MONTESA, RESPONDENTS.**

D E C I S I O N

MENDOZA, J.:

This is a petition for *certiorari* under Rule 65 filed by petitioner Michelle I. Pineda (*Pineda*) seeking to annul and set aside the June 15, 2007 Decision of the Court of Appeals^[1] (*CA*), which reversed the March 14, 2005 Order of the Regional Trial Court, Branch 153, Pasig City (*RTC*) directing the issuance of a Writ of Preliminary Mandatory Injunction enjoining respondent Department of Education (*DepEd*) from enforcing its decision to cancel a 5-year lease of the school canteen.

It appears from the records that on May 14, 2004, Pineda entered into a Memorandum of Agreement (*May-MOA*)^[2] with Lakandula High School (*LHS*) represented by its principal, Dr. Alice B. Blas (*Dr. Blas*), for a five-year lease of the school canteen with a monthly rental of P20,000.00 and an additional P4,000.00 monthly for the school's feeding program as well as medicines for the school clinic. Thereafter, Pineda renovated the canteen and equipped it with new utensils, tables, chairs, and electric fans.^[3]

On August 5, 2004, the faculty and personnel of LHS sent a letter to the Division School Superintendent, Dr. Ma. Luisa Quiñones (*Dr. Quiñones*), questioning the validity of the May-MOA.^[4] Dr. Blas sent a letter-reply on September 17, 2004 and an exchange of correspondence followed.^[5] Meanwhile, on August 14, 2004, Pineda and Dr. Blas executed another MOA (*August-MOA*)^[6] superseding the May-MOA. This time, the August-MOA followed the standard form under Department Order No. 95, Series of 1998^[7] or the "Revised Implementing Guidelines for the Turnover of School Canteens to Teachers Cooperatives."

In this regard, on October 20, 2004, Assistant Schools Division Superintendent Isabelita M. Santos (*Ms. Santos*) and Administrative Officer Vicente N. Macarubbo (*Mr. Macarubbo*) wrote a letter to Dr. Quiñones relaying their observations on the controversy and recommending that their findings "be submitted to the DepEd - Central Office for its final word on the matter."^[8] Ms. Santos and Mr. Macarubbo were of the view that Dr. Blas did not violate any rule in executing the August-MOA. They even found the lease to Pineda beneficial to the school. Thus, Dr. Quiñones wrote the DepEd seeking its decision on the matter.

On February 11, 2005, respondent DepEd, through Undersecretary Jose Luis Martin

C. Gascon (*Usec. Gascon*), declared the August-MOA "*null and void ab initio*" and ordered it "cancelled." Pineda was also ordered to "cease and desist" from further managing and operating the canteen. DepEd made clear that the management and operation of the canteen should revert to the Home Economics Department of the School.^[9] This prompted Pineda to file a petition for certiorari with prayer for temporary restraining order (*TRO*) and/or writ of preliminary injunction before the RTC.

On March 14, 2005, the RTC ordered the issuance of a Writ of Preliminary Mandatory Injunction enjoining the enforcement of Usec. Gascon's decision.^[10] DepEd, represented by Usec. Gascon, Dr. Quiñones and Ms. Olympiada Camilo (*Ms. Camilo*), who succeeded Dr. Blas as School Principal, sought the dismissal of Pineda's petition before the RTC on the ground that the latter failed to state a cause of action. On June 7, 2005, the trial court denied its motion.^[11] For said reason, DepEd, this time represented by Assistant Secretary Camilo Miguel M. Montesa (*Asec. Montesa*), filed a petition for certiorari before the CA seeking to set aside the March 14, 2005 and June 7, 2005 orders of the RTC.

The CA affirmed the June 7, 2005 order of the RTC denying DepEd's motion to dismiss but reversed its March 14, 2005 order granting the issuance of the Writ of Preliminary Mandatory Injunction. According to the CA, DepEd's order cancelling the August-MOA had already been partially implemented as Pineda herself recognized such fact in her amended petition before the RTC. In effect, this was the status quo. In addition, the CA held that Pineda appeared to have no clear or unmistakable right to be protected since the MOA that granted her the right to operate the school canteen was, in fact, invalidated by the DepEd for not being sanctioned by its existing rules and regulations. Finally, the CA also held that there was no pressing necessity to avoid injurious consequences which would warrant the issuance of the injunctive writ as the purported damage to Pineda, if she would not able to operate the canteen, was readily quantifiable.^[12]

Hence, Pineda filed this petition for *certiorari* relying on the following

GROUND:

I

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN INSTEAD OF DISMISSING THE PETITION FILED BY RESPONDENT DEPARTMENT OF EDUCATION THROUGH ASSISTANT SECRETARY CAMILO MIGUEL M. MONTESA, IT GAVE DUE COURSE TO IT, NOTWITHSTANDING THE GLARING FACT THAT IT WAS NOT A PARTY AT ALL IN SCA NO. 2797, HENCE, WITH NO LOCUS STANDI.

II

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF

JURISDICTION WHEN IT DID NOT DISMISS OUTRIGHT THE PETITION SINCE NO MOTION FOR RECONSIDERATION WAS FILED FROM THE ORDERS DATED MARCH 14, 2005, GRANTING THE WRIT OF INJUNCTION IN FAVOR OF HEREIN PETITIONER AND THE ORDER DATED JUNE 7, 2005, DENYING RESPONDENTS' (USEC JOSE LUIS MARTIN C. GASCON, SUPT. MA. LUISA QUINONES AND OLYMPIADA CAMILO) MOTION TO DISMISS, IN MANIFEST VIOLATION OF SECTION 4, RULE 65 OF THE 1997 RULES OF CIVIL PROCEDURE.

III

THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT DISSOLVED THE WRIT OF INJUNCTION ISSUED BY THE REGIONAL TRIAL COURT BRANCH 153, PASIG CITY, IN SCA NO. 2797, THEREBY UNJUSTIFIABLY INTERFERING WITH THE LOWER COURT'S DISCRETION IN ISSUING THE WRIT OF INJUNCTION IN FAVOR OF HEREIN PETITIONER WHO HAS A CLEAR AND UNMISTAKABLE LEGAL RIGHT TO BE AFFORDED THIS REMEDY AND CONSIDERING THAT RESPONDENTS DID NOT FILE A MOTION TO DISSOLVE BOND WITH THE TRIAL COURT OR AT LEAST FILED AFFIDAVITS IN SUPPORT OF THEIR OPPOSITION.

[13]

On November 18, 2009, after the parties had filed their respective pleadings, the Court gave due course to the petition and ordered the parties to submit their respective memoranda.^[14]

On the first ground, Pineda argues that the CA gravely abused its discretion in entertaining the petition for certiorari of DepEd considering that Asec. Montesa was not the proper party to file the petition. She adds that, even assuming that DepEd had the *locus standi* to file said petition before the CA, Asec. Montesa was not duly authorized to do so.

The Court cannot accommodate the view of Pineda.

In her petition for certiorari before the RTC, Pineda impleaded Usec. Gascon, Dr. Quiñones and Ms. Camilo in their official capacities as Undersecretary of DepEd, Division Superintendent and Principal of Lakandula High School, respectively. Although the petition mentioned that Usec. Gascon was merely a nominal party, it stated therein that Dr. Quiñones and Ms. Camilo were being sued for "having been tasked to immediately carry out" his order of February 11, 2005. The Court is of the view that DepEd was the proper party and Usec. Gascon, Dr. Quiñones and Ms. Camilo were just its representatives. Thus, they were sued in their official capacities.

A review of Usec. Gascon's order discloses that the cancellation of Pineda's August-MOA was pursuant to DepEd's existing guidelines on the turn over of school canteens to teachers' cooperatives, laid out in Department Order No. 95, series of 1998. He was simply applying a DepEd policy when he ordered the August-MOA