

THIRD DIVISION

[G.R. No. 144322, February 06, 2007]

**METROPOLITAN BANK AND TRUST COMPANY, INC., PETITIONER,
VS. NATIONAL WAGES AND PRODUCTIVITY COMMISSION AND
REGIONAL TRIPARTITE WAGES AND PRODUCTIVITY BOARD -
REGION II, RESPONDENTS.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court seeking the reversal of the Decision^[1] of the Court of Appeals (CA) dated July 19, 2000 in CA-G.R. SP No. 42240 which denied the petition for certiorari and prohibition of Metropolitan Bank and Trust Company, Inc. (petitioner).

The procedural antecedents and factual background of the case are as follows:

On October 17, 1995, the Regional Tripartite Wages and Productivity Board, Region II, Tuguegarao, Cagayan (RTWPB), by virtue of Republic Act No. 6727 (R.A. No. 6727), otherwise known as the Wage Rationalization Act,^[2] issued Wage Order No. R02-03 (Wage Order), as follows:

Section 1. Upon effectivity of this Wage Order, all employees/workers in the private sector throughout Region II, regardless of the status of employment are granted an across-the-board increase of P15.00 daily.^[3]

The Wage Order was published in a newspaper of general circulation on December 2, 1995^[4] and took effect on January 1, 1996.^[5] Its Implementing Rules^[6] were approved on February 14, 1996.^[7] Per Section 13 of the Wage Order, any party aggrieved by the Wage Order may file an appeal with the National Wages and Productivity Commission (NWPC) through the RTWPB within 10 calendar days from the publication of the Wage Order.

In a letter-inquiry to the NWPC dated May 7, 1996, the Bankers' Council for Personnel Management (BCPM), on behalf of its member-banks, requested for a ruling on the eligibility of establishments with head offices outside Region II to seek exemption from the coverage of the Wage Order since its member-banks are already paying more than the prevailing minimum wage rate in the National Capital Region (NCR), which is their principal place of business.^[8]

In a letter-reply dated July 16, 1996, the NWPC stated that the member-banks of BCPM are covered by the Wage Order and do not fall under the exemptible categories listed under the Wage Order.^[9]

In a letter-inquiry to the NWPC dated July 23, 1996, petitioner sought for interpretation of the applicability of said Wage Order.^[10] The NWPC referred petitioner's inquiry to the RTWPB.

In a letter-reply dated August 12, 1996, the RTWPB clarified that the Wage Order covers all private establishments situated in Region II, regardless of the voluntary adoption by said establishments of the wage orders established in Metro Manila and irrespective of the amounts already paid by the petitioner.^[11]

On October 15, 1996, the petitioner filed a Petition for *Certiorari* and Prohibition with the CA seeking nullification of the Wage Order on grounds that the RTWPB acted without authority when it issued the questioned Wage Order; that even assuming that the RTWPB was vested with the authority to prescribe an increase, it exceeded its authority when it did so without any ceiling or qualification; that the implementation of the Wage Order will cause the petitioner, and other similarly situated employers, to incur huge financial losses and suffer labor unrest.^[12]

On March 24, 1997, the Office of the Solicitor General (OSG) filed a Manifestation and Motion in lieu of Comment affirming the petitioner's claim that the RTWPB acted beyond its authority in issuing the Wage Order prescribing an across-the-board increase to all workers and employees in Region II, effectively granting additional or other benefits not contemplated by R.A. No. 6727.^[13]

In view of the OSG's manifestation, the CA directed respondents NWPC and RTWPB to file their comment.^[14]

On September 22, 1997, respondents filed their Comment praying that the petition should be dismissed outright for petitioner's procedural lapses; that *certiorari* and prohibition are unavailing since petitioner failed to avail of the remedy of appeal prescribed by the Wage Order; that the Wage Order has long been in effect; and that the issuance of the Wage Order was performed in the exercise of a purely administrative function.^[15]

On July 19, 2000, the CA rendered its Decision denying the petition. The appellate court held that a writ of prohibition can no longer be issued since implementation of the Wage Order had long become *fait accompli*, the Wage Order having taken effect on January 1, 1996 and its implementing rules approved on February 14, 1996; that a writ of *certiorari* is improper since the Wage Order was issued in the exercise of a purely administrative function, not judicial or quasi-judicial; that the letter-query did not present justiciable controversies ripe for consideration by the respondents in the exercise of their wage-fixing function, since no appeal from the Wage Order was filed; that petitioner never brought before the said bodies any formal and definite challenge to the Wage Order and it cannot pass off the letter-queries as actual applications for relief; that even if petitioner's procedural lapse is disregarded, a regional wage order prescribing a wage increase across-the-board applies to banks adopting a unified wage system and a disparity in wages between employees holding similar positions in different regions is not wage distortion.^[16]

Hence, the present petition anchored on the following grounds:

4.1 THE COURT OF APPEALS ERRED IN REFUSING TO DECLARE WAGE ORDER NO. R02-03 NULL AND VOID AND OF NO LEGAL EFFECT.

4.1.1 THE BOARD, IN ISSUING WAGE ORDER NO. R02-03, EXCEEDED THE AUTHORITY DELEGATED TO IT BY CONGRESS.

4.1.2 WAGE ORDER NO. R02-03 IS AN UNREASONABLE INTRUSION INTO THE PROPERTY RIGHTS OF PETITIONER.

4.1.3 WAGE ORDER NO. R02-03 UNDERMINES THE VERY ESSENCE OF COLLECTIVE BARGAINING.

4.1.4 WAGE ORDER NO. R02-03 FAILS TO TAKE INTO ACCOUNT THE VERY RATIONALE FOR A UNIFIED WAGE STRUCTURE.

4.2 PETITIONER'S RECOURSE TO A WRIT OF CERTIORARI AND PROHIBITION WAS PROPER.^[17]

Following the submission of the Comment^[18] and Reply^[19] thereto, the Court gave due course to the petition and required both parties to submit their respective memoranda.^[20] In compliance therewith, petitioner and respondents submitted their respective memoranda.^[21]

Petitioner poses two issues for resolution, to wit: (1) whether Wage Order No. R02-03 is void and of no legal effect; and (2) whether petitioner's recourse to a petition for *certiorari* and prohibition with the CA was proper.

Anent the first issue, petitioner maintains that the RTWPB, in issuing said Wage Order, exceeded the authority delegated to it under R.A. No. 6727, which is limited to determining and fixing the minimum wage rate within their respective territorial jurisdiction and with respect only to employees who do not earn the prescribed minimum wage rate; that the RTWPB is not authorized to grant a general across-the-board wage increase for non-minimum wage earners; that *Employers Confederation of the Philippines v. National Wages and Productivity Commission*^[22] (hereafter referred to as "*ECOP*") is not authority to rule that respondents have been empowered to fix wages other than the minimum wage since said case dealt with an across-the-board increase with a salary ceiling, where the wage adjustment is applied to employees receiving a certain denominated salary ceiling; that the Wage Order is an unreasonable intrusion into its property rights; that the Wage Order undermines the essence of collective bargaining; that the Wage Order fails to take into account the rationale for a unified wage structure.

As to the second issue, petitioner submits that *ultra vires* acts of administrative agencies are correctible by way of a writ of *certiorari* and prohibition; that even assuming that it did not observe the proper remedial procedure in challenging the Wage Order, the remedy of *certiorari* and prohibition remains available to it by way of an exception, on grounds of justice and equity; that its failure to observe procedural rules could not have validated the manner by which the disputed Wage Order was issued.

Respondents counter that the present petition is fatally defective from inception

since no appeal from the Wage Order was filed by petitioner; that the letter-query to the NWPC did not constitute the appeal contemplated by law; that the validity of the Wage Order was never raised before the respondents; that the implementation of the Wage Order had long become *fait accompli* for prohibition to prosper.

Respondents insist that, even if petitioner's procedural lapses are disregarded, the Wage Order was issued pursuant to the mandate of R.A. No. 6727 and in accordance with the Court's pronouncements in the *ECOP* case;^[23] that the Wage Order is not an intrusion on property rights since it was issued after the required public hearings; that the Wage Order does not undermine but in fact recognizes the right to collective bargaining; that the Wage Order did not result in wage distortion.

The Court shall first dispose of the procedural matter relating to the propriety of petitioner's recourse to the CA before proceeding with the substantive issue involving the validity of the Wage Order.

Certiorari as a special civil action is available only if the following essential requisites concur: (1) it must be directed against a tribunal, board, or officer exercising judicial or quasi-judicial functions; (2) the tribunal, board, or officer must have acted without or in excess of jurisdiction or with grave abuse of discretion amounting lack or excess of jurisdiction; and (3) there is no appeal nor any plain, speedy, and adequate remedy in the ordinary course of law.^[24]

On the other hand, prohibition as a special civil action is available only if the following essential requisites concur: (1) it must be directed against a tribunal, corporation, board, officer, or person exercising functions, judicial, quasi-judicial, or ministerial; (2) the tribunal, corporation, board or person has acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting lack or excess of jurisdiction; and (3) there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.^[25]

A respondent is said to be exercising judicial function where he has the power to determine what the law is and what the legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties.^[26] Quasi-judicial function is a term which applies to the action, discretion, etc., of public administrative officers or bodies, who are required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature.^[27] Ministerial function is one which an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and without regard to the exercise of his own judgment upon the propriety or impropriety of the act done.^[28]

In the issuance of the assailed Wage Order, respondent RTWPB did not act in any judicial, quasi-judicial capacity, or ministerial capacity. It was in the nature of subordinate legislation, promulgated by it in the exercise of delegated power under R.A. No. 6727. It was issued in the exercise of quasi-legislative power. Quasi-legislative or rule-making power is exercised by administrative agencies through the promulgation of rules and regulations within the confines of the granting statute and the doctrine of non-delegation of certain powers flowing from the separation of the great branches of the government.^[29]

Moreover, the rule on the special civil actions of *certiorari* and prohibition equally mandate that these extra-ordinary remedies are available only when "there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law." A remedy is considered plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of the judgment or rule, order or resolution of the lower court or agency.^[30]

Section 13 of the assailed Wage Order explicitly provides that any party aggrieved by the Wage Order may file an appeal with the NWPC through the RTWPB within 10 days from the publication of the wage order.^[31] The Wage Order was published in a newspaper of general circulation on December 2, 1995.^[32]

In this case, petitioner did not avail of the remedy provided by law. No appeal to the NWPC was filed by the petitioner within 10 calendar days from publication of the Wage Order on December 2, 1995. Petitioner was silent until seven months later, when it filed a letter-inquiry on July 24, 1996 with the NWPC seeking a clarification on the application of the Wage Order. Evidently, the letter-inquiry is not an appeal.

It must also be noted that the NWPC only referred petitioner's letter-inquiry to the RTWPB. Petitioner did not appeal the letter-reply dated August 12, 1996 of the RTWPB to the NWPC. No direct action was taken by the NWPC on the issuance or implementation of the Wage Order. Petitioner failed to invoke the power of the NWPC to review regional wage levels set by the RTWPB to determine if these are in accordance with prescribed guidelines. Thus, not only was it improper to implead the NWPC as party-respondent in the petition before the CA and this Court, but also petitioner failed to avail of the primary jurisdiction of the NWPC under Article 121 of the Labor Code, to wit:

ART. 121. *Powers and Functions of the Commission.* - The Commission shall have the following powers and functions:

x x x x

(d) To review regional wage levels set by the Regional Tripartite Wages and Productivity Boards to determine if these are in accordance with prescribed guidelines and national development plans;

x x x x

(f) To review plans and programs of the Regional Tripartite Wages and Productivity Boards to determine whether these are consistent with national development plans;

(g) To exercise technical and administrative supervision over the Regional Tripartite Wages and Productivity Boards;

x x x x

(Emphasis supplied)

Under the doctrine of primary jurisdiction, courts cannot and will not resolve a controversy involving a question which is within the jurisdiction of an administrative