

## EN BANC

[ G.R. No. 159696, November 17, 2005 ]

**CIVIL SERVICE COMMISSION, PETITIONER, VS. COURT OF  
APPEALS AND RIMANDO A. GANNAPAO, \*\* RESPONDENTS.**

### D E C I S I O N

**PANGANIBAN, J.:**

Certiorari will issue only to strike down acts done without or in excess of jurisdiction; or those executed with grave abuse of discretion amounting to lack or excess of jurisdiction. Alleged errors committed in the exercise of jurisdiction are reviewable by timely appeal and cannot, as a rule, be deemed fit subjects of this extraordinary writ.

#### The Case

Before us is a Petition for Certiorari<sup>[1]</sup> under Rule 65 of the Rules of Court, seeking to reverse the January 14, 2003 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-GR SP No. 70605, granting respondent's Motion for the Issuance of a Writ of Preliminary Injunction. Also assailed is the July 29, 2003 Resolution<sup>[3]</sup> of the CA denying petitioner's Motion for Reconsideration. The first assailed Resolution states in full:

"This treats of the Urgent Motion for Issuance of Preliminary Injunction dated December 2, 2002 filed by [respondent] through counsel with this Court.

"No Comment on the same was ever filed by the Office of the Solicitor General which is handling this case for and in behalf of the [Petitioner] Civil Service Commission despite opportunity given it, per Resolution dated November 8, 2002.

"This Court, after taking into consideration the allegations and the arguments set forth in this motion filed by [respondent] to support his stand, opted to grant [respondent's] application for the issuance of a Writ of Preliminary Injunction at this stage of the proceedings considering that he is entitled to the relief demanded and that the implementation of the assailed Resolution dated April 3, 2002 of x x x Civil Service Commission and the Order implementing it issued pursuant thereto, would probably work injustice and would cause irreparable damage to [respondent].

**"WHEREFORE**, foregoing premises considered, the Motion for the Issuance of the Writ of Preliminary Injunction filed by [herein respondent] is hereby **GRANTED**. Let [the] Writ of Preliminary Injunction be issued enjoining, restraining and prohibiting public respondents

[herein petitioner], their representatives and/or anybody acting in their behalf, from implementing CSC Resolution dated April 3, 2002 and to recall the order implementing it, if any issued pursuant thereto, upon the posting of a bond in the amount of One Hundred Thousand (P100,000.00) Pesos, to be executed to the [petitioner] or parties enjoined, to the effect that [herein respondent] will pay to [herein petitioner] or parties all damages which he or they may sustain by reason of the injunction if the Court should finally decide that [herein respondent] is not entitled thereto."<sup>[4]</sup>

### **The Facts**

The factual antecedents are narrated by the Office of the Solicitor General (OSG), as follows:

"On December 22, 1995, a Complaint for Grave Misconduct and Moonlighting with Urgent Prayer for Preventive Suspension and Disarming was filed by the stockholders and board members of United Workers Transport Corp. (UWTC) against SPO1 Rimando Gannapao before the Philippine National Police, Inspectorate Division, Camp Crame, Quezon City.

"Pursuant to NAPOLCOM Memorandum Circular No. 96-010 dated July 21 1996, a Summary Hearing was conducted by the Office of the Legal Service of the National Headquarters PNP against [respondent] for the alleged moonlighting. [Court's comment: Records show that prior to the investigation conducted by the Office of Legal Service, however, another pre-charge investigation had been held for the same case by the Headquarters Support Services also of the National Headquarters of the PNP. The investigation appears to have been dismissed upon the recommendation of Atty. Joselito Casugbu, who found the complaint to be one of pure harassment.<sup>[5]</sup>

"On November 26, 1997, the Philippine National Police Chief Recaredo A. Sarmiento II rendered a Decision imposing the three (3) months suspension of [respondent], the dispositive part of which reads:

"WHEREFORE, premises considered, this Headquarters finds respondent SPO1 RIMANDO A. GANNAPAO GUILTY of the charge of serious irregularities in the performance of duties, thus, he is hereby sentenced to suffer the penalty of three (3) months suspension from the police service without pay."

"On February 6, 1998, [respondent] filed an 'Urgent Motion for Reconsideration' which was denied by the PNP Director General Santiago L. Aliño in [a] Resolution dated April 14, 1998.

"[Respondent] appealed the PNP Resolution to the National Appellate Board (NAB), National Police Commission (NAPOLCOM). The appeal was dismissed in a Resolution dated December 29, 1999.

"On February 10, 2000, [respondent] filed a Petition for Appeal with the Department of Interior and Local Government (DILG). The appeal was

denied and the penalty of three (3) months suspension of petitioner was affirmed in a Resolution dated July 18, 2000.

"Thereafter, [respondent] appealed to the Civil Service Commission praying the setting aside of the penalty of three (3) months suspension and/or for the Commission to conduct a hearing or a reinvestigation alleging lack of due process.

"On April 3, 2002, the Civil Service Commission rendered Resolution No. 020487, the dispositive part of which reads:

"WHEREFORE, the appeal of Rimando A. Gannapao is hereby DISMISSED. However, the order dated February 26, 2001 of then DILG Secretary Alfredo S. Lim affirming the suspension of Gannapao for a period of three (3) months is modified to dismissal from the service."

"On May 30, 2002, Gannapao filed a petition for review with the Court of Appeals assailing the Resolution of the Civil Service Commission.

"On January 8, 2003, CSC through the Office of the Solicitor General filed its Comment on the Petition specifically stating among others that Gannapao was not entitled to a preliminary injunction.

"On January 14, 2003, the Court of Appeals issued a Resolution granting Gannapao's motion for issuance of a writ of preliminary injunction enjoining, restraining and prohibiting CSC from implementing its assailed CSC Resolution No. 020487 dated April 3, 2002 dismissing [respondent].

"[Respondent] filed its motion for reconsideration which was denied in a Resolution dated July 29, 2003."<sup>[6]</sup>

### **Ruling of the Court of Appeals**

The Court of Appeals granted respondent's prayer for a preliminary injunction enjoining the CSC from enforcing the latter's assailed Decision pending appeal. The CA based its ruling on the probability that the immediate execution of the CSC Decision might cause injustice and irreparable damage to petitioner.

Hence, this Petition.<sup>[7]</sup>

### **Issue**

Petitioner submits this sole issue for our consideration:

"The Honorable Court of Appeals committed grave abuse of discretion in granting the Motion for the Issuance of the Writ of Preliminary Injunction in favor of Respondent Gannapao."<sup>[8]</sup>

### **The Court's Ruling**

The Petition has no merit.

**Sole Issue:**  
**Grave Abuse of Discretion**

As an extraordinary remedy, a writ of certiorari issues only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Absence of jurisdiction is the lack of legal power, right or authority to hear and determine a cause. On the other hand, excess of jurisdiction means that an act -- though within the general power of the tribunal, board or officer -- is not authorized. Hence, the act is invalid with regard to that particular proceeding, in respect of which the conditions that authorize the exercise of the general power are wanting.<sup>[9]</sup>

Petitioner attacks the CA for issuing the Writ of Preliminary Injunction despite the Commission's finding that private respondent was guilty of misconduct. The OSG adds that the injunctive relief violates the Administrative Code and the CSC rules stating that administrative disciplinary penalties shall be immediately executory, notwithstanding the pendency of an appeal.<sup>[10]</sup>

We hold, however, that neither the Administrative Code nor the CSC rules deprive courts of their power to grant restraining orders or preliminary injunctions to stay the execution of CSC decisions pending appeal.<sup>[11]</sup> Moreover, a court's issuance of a preliminary injunction, when proper, is expressly authorized by Section 2 of Rule 58 of the Rules of Court, which we quote:

"Sec. 2. *Who may grant preliminary injunction.* -- A preliminary injunction may be granted by the court where the action or proceeding is pending. If the action or proceeding is pending in the Court of Appeals or in the Supreme Court, it may be issued by said court or any member thereof."

Furthermore, Section 82 of Rule VI of CSC Memorandum Circular 19-99<sup>[12]</sup> recognizes the authority of the CA and the Supreme Court to issue restraining orders or injunctions, as follows:

"Section 82. *Effect of Pendency of Petition for Review/Certiorari with the Court.* -- The filing and pendency of a petition for review with the Court of Appeals or certiorari with the Supreme Court shall not stop the execution of the final decision of the Commission *unless the Court issues a restraining order or an injunction.* (Emphasis provided.)

Having appellate jurisdiction over decisions of the CSC,<sup>[13]</sup> the CA clearly has the discretion to issue an ancillary writ of preliminary injunction to secure the rights of private respondent pending appeal of his dismissal. Absent a clear showing of grave abuse of discretion, the exercise of judgment by the courts in injunctive matters should not be interfered with.<sup>[14]</sup>

Grave abuse of discretion in the issuance of writs of preliminary injunction implies a capricious and whimsical exercise of judgment equivalent to lack or excess of jurisdiction. Otherwise defined, grave abuse is the exercise of power in an arbitrary or a despotic manner by reason of passion, prejudice or personal aversion amounting to an evasion of a positive duty, or a refusal to perform the duty enjoined