

## EN BANC

[ G.R. No. 150792, March 03, 2004 ]

**HON. REMEDIOS L. PETILLA, PETITIONER, VS. COURT OF  
APPEALS (FORMER THIRTEENTH DIVISION), CIVIL SERVICE  
COMMISSION AND JERIEL L. ARDIENTE, RESPONDENTS.**

### DECISION

**CARPIO, J.:**

#### The Case

Before this Court is a petition for certiorari<sup>[1]</sup> to nullify the Court of Appeals' Resolutions<sup>[2]</sup> in CA-G.R. SP No. 65192 dated 22 June 2001 ("First Resolution") and 29 October 2001 ("Second Resolution"). The First Resolution denied due course and dismissed the petition for review<sup>[3]</sup> of petitioner Governor Remedios L. Petilla ("petitioner") while the Second Resolution denied the motion for reconsideration.

#### The Antecedents

On 1 July 1999, respondent Jeriel L. Ardiente ("respondent"), Nurse I of the Hilongos District Hospital, Hilongos, Leyte, filed a letter-protest before the Civil Service Commission ("CSC"), Region 8 Office. Respondent assailed his transfers to the Provincial Health Office, Government Center, Palo, Leyte, effective 6 May 1999, and to the Northwestern Leyte District Hospital, Calubian, Leyte, effective 21 May 1999.

Meanwhile, respondent applied for sick and vacation leave from 1 June to 31 August 1999. In a letter dated 7 September 1999,<sup>[4]</sup> the Provincial Health Office returned and disapproved respondent's leave applications based on Section 23(q), Rule XIV of the CSC Rules.<sup>[5]</sup> During the same period until 4 October 1999, respondent continuously failed to report to his new workstation at the Northwestern Leyte District Hospital.

On 4 October 1999, petitioner issued Memorandum No. 99-255 dropping respondent from the roll of employees of the Leyte Provincial Government for unauthorized absences. Petitioner based her action on Section 35, Rule XVI<sup>[6]</sup> of the CSC Rules.

On 8 October 1999, respondent received Memorandum No. 99-255. Respondent did not appeal or challenge the memorandum in the appropriate forum.

On 14 February 2000, the CSC<sup>[7]</sup> issued Resolution No. 00-0441 declaring respondent's reassignments void. The dispositive portion of the Resolution reads:

WHEREFORE, the Orders issued by Governor Remedios L. Petilla, Province of Leyte, reassigning Jeriel L. Ardiente are hereby declared void. Accordingly, Governor Petilla is hereby directed to restore Ardiente to his former workstation at the Hilongos District Hospital, Hilongos, Leyte.<sup>[8]</sup>

Petitioner filed a Motion for Reconsideration of CSC Resolution No. 00-0441.<sup>[9]</sup> The CSC<sup>[10]</sup> denied the motion for lack of merit in its Resolution No. 01-0726 dated 2 April 2001.<sup>[11]</sup>

Subsequently, petitioner filed with the Court of Appeals a Motion for Extension of Time to File Petition for Review dated 29 May 2001 to question CSC Resolutions Nos. 00-0441 and 01-0726. Petitioner attached to her motion for extension the joint affidavit of Celia Maria dela Cruz ("Celia") and Ruth A. Loreto ("Ruth").<sup>[12]</sup> At the time, Celia was the Executive Assistant while Ruth was the Receiving Clerk of the Governor's Office. In their joint affidavit, Ruth stated that she received CSC Resolution No. 01-0726 on 24 April 2001 and forwarded the same to Celia on the same date. Celia did not give CSC Resolution No. 01-0726 to petitioner because the latter was then in the west coast of Leyte attending to election matters. Meanwhile, Celia kept CSC Resolution No. 01-0726 inside the office's filing cabinet. It was only on 29 May 2001 that Celia and Ruth gave CSC Resolution No. 01-0726 to petitioner.

On 31 May 2001, without awaiting the Court of Appeals' resolution of the motion for extension, petitioner filed with the Court of Appeals a Petition for Review assailing CSC Resolutions Nos. 00-0441 and 01-0726, docketed as CA-G.R. SP No. 65192.

On 22 June 2001, the Court of Appeals issued the First Resolution denying due course and dismissing CA-G.R. SP No. 65192 for petitioner's failure to comply with the requirements of Section 6, Rule 43 of the Rules of Court.

On 19 September 2001, respondent filed a Motion for Execution<sup>[13]</sup> of CSC Resolution No. 00-0441 with the Court of Appeals to which petitioner filed a Comment on 21 October 2001.

On 12 October 2001, petitioner filed a Motion for Reconsideration of the First Resolution attaching the certified true copies of the documents enumerated in the First Resolution. The appellate court denied the motion for reconsideration in the Second Resolution dated 29 October 2001.

Hence, this petition.

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

The First Resolution denied due course and dismissed petitioner's petition for review for failure to append clearly legible duplicate originals or certified true copies of the following:

- (a) CSC Resolution No. 00-0441 declaring respondent's transfer and reassignment as void;
- (b) Petitioner's Motion for Reconsideration of CSC Resolution No. 00-

0441;

(c) Respondent's letter-protest with the CSC, Region 8 Office, protesting his reassignments; and

(d) Petitioner's answer, if any, to respondent's letter-protest.

The Court of Appeals stated that this failure violates Section 6, Rule 43 of the Rules of Court which provides:

SEC. 6. Contents of the petition. – The petition for review shall (a) xxx (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified copies of such material portions of the record referred to therein and other supporting papers; xxx

Citing Section 7 of Rule 43,<sup>[14]</sup> the appellate court held that petitioner's failure to comply with any of the requirements under Section 6, Rule 43 justifies dismissal of the petition for review.

The Second Resolution denied petitioner's motion for reconsideration on the ground that petitioner filed the motion beyond the fifteen-day reglementary period. The pertinent portion of the Second Resolution reads:

Contrary to petitioner's claim, as purportedly shown in her Annex A, that it was allegedly only on Sept. 28, 2001 that she received a copy of this Court's Resolution of June 22, 2001, outrightly dismissing her petition for review for the reasons therein stated: Registry Return Receipt No. 89778, dated June 22, 2001, clearly shows that a copy of our June 22, 2001 Resolution addressed to the Hon. Remedios L. Petilla, petitioner in CA-G.R. SP No. 65192, was sent to Purisima Street, Palo, Leyte, which could either be the petitioner's official residence or her private abode, and was received thereat on the same date by a certain Jaime Santos. This means that the last day of the 15-day reglementary period within which to file a Motion for Reconsideration of the aforesaid resolution under Sec. 1, Rule 52 of the Rules of Court, or to appeal therefrom to the Supreme Court expired on July 14, 2001. Inexorably, therefore, the Motion for Reconsideration which was filed (posted) at the Hilongos, Leyte Post Office on Sept. 20, 2001, was filed more than two (2) months after the expiry date of the reglementary period within which to file a Motion for Reconsideration of the said Resolution of June 22, 2001, xxx

### **The Issue**

The sole issue in this case is whether the Court of Appeals erred in issuing the assailed resolutions. The First Resolution denied due course and dismissed outright the petition for review for failure to comply with Section 6, Rule 43 of the Rules of Court. The Second Resolution denied the motion for reconsideration for being filed out of time.

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

The petition lacks merit.

The Court of Appeals correctly denied due course and dismissed the petition for review but the denial should be on an entirely different ground.

The Court of Appeals should have denied due course and dismissed outright the petition for review for being filed out of time. Petitioner herself admits that the petition for review was "filed after the lapse of the 15-day period to appeal."<sup>[15]</sup> Petitioner reasons that her employees, namely Ruth and Celia, gave her a copy of CSC Resolution No. 01-0726 only on 29 May 2001 because before that she was "at the West Coast of Leyte busy on election matters."

Petitioner's justification for the late filing of the petition for review is not meritorious. Indisputably, Ruth and Celia received on 24 April 2001 a copy of CSC Resolution No. 01-0726 denying petitioner's motion for reconsideration of CSC Resolution No. 00-0441. There is also no question that Celia as Executive Assistant and Ruth as Receiving Clerk of the Office of the Governor had authority to receive on behalf of petitioner notices or court processes including CSC Resolution No. 01-0726. While petitioner physically received CSC Resolution No. 01-0726 only on 29 May 2001, or **35 days from 24 April 2001**,<sup>[16]</sup> the date of receipt of CSC Resolution No. 01-0726 should be 24 April 2001 for computing the period to appeal. This is precisely because Ruth and Celia, absent any showing that petitioner did not authorize them to receive CSC Resolution No. 01-0726, received the resolution on 24 April 2001. In short, receipt by Ruth and Celia of CSC Resolution No. 01-0726 on 24 April 2001 is deemed receipt by petitioner. In **Laza v. Court of Appeals**,<sup>[17]</sup> where the petitioners claimed that the person who received the trial court's decision had no authority to receive mails for Laza, we ruled:

xxx As to Leticia Ramos who had signed for the receipt of the said copy caused to be delivered by the Postmaster at Benjamin's given address, there was no showing, at all, from the records of the case, that Leticia was not a person of sufficient discretion to receive the mail at the proper address appearing on the envelope which contained the registered mail. *Petitioners' claim was that she was not Benjamin's agent or authorized representative to receive mails in his behalf. To follow petitioners' stand would render nugatory the provisions on service by registered mail. Every house maid or house boy or any other person other than the addressee of registered mail would have to have a special power-of-attorney to receive such mail in behalf of the addressee.* We agree with the respondent Court of Appeals' finding that petitioners' excuse for the late filing of their motion for reconsideration was rather flimsy and unrealistic. (Emphasis supplied)

In the present case, petitioner does not even claim that she did not authorize Ruth and Celia to receive CSC Resolution No. 01-0726. Moreover, the record is barren as to any explanation why Ruth and Celia did not immediately inform petitioner about the resolution. There is also absolutely no evidence showing that petitioner could not be reached or located when Ruth and Celia received the resolution. Furthermore, there is no showing that petitioner could not possibly have a copy of CSC Resolution No. 01-0726 before the period to appeal expired. Absent in the record is any proof that petitioner did not report for work or drop by her office for 35 days, from 24 April to 29 May 2001. Thus, petitioner's excuse for the late filing of the petition for review is clearly flimsy.

Perfecting an appeal within the prescribed period is not only **mandatory** but also **jurisdictional** as held in **Videogram Regulatory Board v. Court of Appeals**,<sup>[18]</sup> thus:

xxx There are certain procedural rules that must remain inviolable, like those setting the periods for perfecting an appeal or filing a petition for review, for it is doctrinally entrenched that the right to appeal is a statutory right and one who seeks to avail of that right must comply with the statute or rules. The rules, particularly the requirements for perfecting an appeal within the reglementary period specified in the law, must be strictly followed as they are considered indispensable interdictions against needless delays and for orderly discharge of judicial business. Furthermore, **the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional and the failure to perfect the appeal renders the judgment of the court final and executory.** Just as a losing party has the right to file an appeal within the prescribed period, the winning party also has the correlative right to enjoy the finality of the resolution of his/her case.

These periods are carefully guarded and lawyers are well-advised to keep track of their applications. After all, a denial of a petition for being time-barred is a decision on the merits. (Emphasis supplied)

Since petitioner received CSC Resolution No. 01-0726 on 24 April 2001, she had until 9 May 2001 to file with the Court of Appeals her appeal or motion for extension.<sup>[19]</sup> However, the motion for extension to file petition for review and petition for review were both filed only on 31 May 2001. Clearly, petitioner filed the motion for extension and the petition for review beyond the prescribed period. In **Ditching v. Court of Appeals**,<sup>[20]</sup> we ruled that if a motion for extension is filed after the lapse of the period sought to be extended, then there is no longer any period to extend. In such event, the judgment or order is already final and executory.

Petitioner cannot correctly argue that "the Court of Appeals accepted the reasons and explanations on the circumstances why the Petition for Review was filed only on May 31, 2001."<sup>[21]</sup> Otherwise, petitioner continues, the appellate court would have stated the late filing as another ground for dismissing the petition for review.<sup>[22]</sup>

To reiterate, perfection of an appeal in the manner and within the period prescribed by law is mandatory and jurisdictional.<sup>[23]</sup> Failure to interpose a timely appeal renders the assailed decision or order final and executory and deprives the appellate body of any jurisdiction to alter the final judgment.<sup>[24]</sup> The appellate court has power only to dismiss the appeal.<sup>[25]</sup> To rule that the appellate court accepted petitioner's reason for the late filing of the petition for review, absent any exceptional circumstances to warrant such delay, is patently against settled jurisprudential rules.<sup>[26]</sup>

Thus, we hold that petitioner clearly failed to perfect her appeal in the Court of Appeals. The Court of Appeals correctly denied due course and dismissed the