

## SECOND DIVISION

[ G.R. No. 126337, February 12, 1998 ]

**FELIX P. UY, PETITIONER, VS. COURT OF APPEALS, THE CIVIL SERVICE COMMISSION AND ARTURO T. MILLANA, RESPONDENT.**

### DECISION

**MARTINEZ, J.:**

This is a petition for review on certiorari filed by Engineer Felix P. Uy from the decision of the Court of Appeals dated July 10, 1996<sup>[1]</sup> which affirmed the decision of the Civil Service Commission.<sup>[2]</sup>

The facts which gave rise to the instant petition are as follows:

On September 27, 1982, petitioner was promoted by then Governor Valentina G. Plaza as Supervising Mechanical Engineer, Equipment Pool Division, Provincial Engineering Office of Agusan del Sur.<sup>[3]</sup>

On February 26, 1988, then Governor Ceferino Paredes, issued Administrative Order No. 88-01 scaling down the operations of the Provincial Engineering Office (PEO for brevity) by reducing the number of its personnel. Sixty-two employees of the PEO, including petitioner were affected by this order.

On May 11, 1988, petitioner received his notice of termination effective on May 16, 1988 signed by Governor Ceferino Paredes.<sup>[4]</sup> However, private respondent who holds the position of Mechanical Engineer<sup>[5]</sup> (a position two (2) steps below that of petitioner) was retained by Governor Paredes.

Thereafter, petitioner and the sixty-one (61) other dismissed employees, filed a complaint/ petition before the Merit System Protection Board (MSPB for brevity), Civil Service Commission, assailing the legality of their termination from office.

While the petition was pending before the MSPB, Governor Paredes reorganized the Equipment Pool Division, PEO and renamed the same as Motor Pool Division, PEO. He abolished the position of Supervising Mechanical Engineer and upgraded instead the next ranking position, Senior Mechanical Engineer as the Chief of Division.<sup>[6]</sup> Thereafter, he appointed private respondent to the said position while designating another, Engineer Carlito Capol, to the position of Mechanical Engineer left vacant by private respondent.<sup>[7]</sup>

On July 1, 1989, Republic Act 6758, otherwise known as the Salary Standardization Law (SSL for brevity) took effect. The positions at the PEO, Motor Pool Division were reclassified: the Chief, Motor Pool Division was designated as Head Mechanical Engineer with the equivalent rank of Engineer IV; Supervising Mechanical Engineer (previously abolished by Governor Paredes) as Engineer III; and Senior Mechanical Engineer as Engineer II. Private respondent being the

current Chief, Motor Pool Division, was designated by Governor Paredes to the position of Head Mechanical Engineer. On January 29, 1993, the Merit System Protection Board, Civil Service Commission, rendered its decision in MSPB Case No. 91-1739 declaring petitioner's termination from the service including that of the other employees assigned with the PEO illegal. The dispositive portion thereof reads, to wit;

"WHEREFORE, in the light of the foregoing, the board finds the petition of Emmie Hurbada, *et al.*, meritorious. Accordingly, the Petitioners who were illegally separated are hereby ordered reinstated."<sup>[8]</sup>

On May 24, 1993, the petitioners in MSPB Case No. 91-1739 filed a motion praying for the Board to issue an order directing the Provincial Governor of Agusan del Sur ( who was then Governor Democrito Plaza) to reinstate petitioners in the service and to declare invalid the appointments of personnel who were then appointed by Governor Paredes in their respective positions.<sup>[9]</sup>

On June 24, 1993, the MSPB issued an order directing the Provincial Governor of Agusan del Sur to immediately implement the subject decision in the interest of justice.<sup>[10]</sup>

On August 27, 1993, Governor Plaza issued Memorandum Order No. 028-92 reinstating petitioner to the Provincial Engineering Office, Motor Pool Division as Engineer IV while revoking that of private respondent. On September 1, 1993, petitioner's appointment as Engineer IV was issued by the said governor.<sup>[11]</sup>

For failure of Governor Plaza to reinstate the rest of the petitioners despite the issuance of several orders by MSPB, the case was elevated to the Civil Service Commission (CSC for brevity).<sup>[12]</sup>

On March 21, 1994, the CSC issued Resolution No. 94-1567 declaring MSPB order dated January 29, 1993 final and executory and formally charging Governor Plaza with indirect contempt pursuant to the provisions of the 1987 Administrative Code for continued refusal to reinstate the other petitioners in MSPB case No. 91-1739.<sup>[13]</sup>

Private respondent raised the legality of the order of Governor Plaza terminating his services as Engineer IV, Motor Pool Division before the CSC. On March 21, 1995, the CSC issued Resolution No. 95-2104, the dispositive portion of which reads, to wit:

"WHEREFORE, the appeal of Arturo Millana is hereby granted. Accordingly, the Provincial Government of Agusan del Sur is directed to cause the reinstatement of Arturo J. Millana to the position of Engineer IV. He is entitled to the payment of back salaries and other benefits for the period that he had been out of the service. Felix P. Uy should be reinstated to a position comparable with that which he was holding at the time of his illegal termination."<sup>[14]</sup>

Governor Plaza and petitioner herein filed their separate motions for reconsideration<sup>[15]</sup> but the same were denied by the CSC in its Resolution No. 955591 dated September 5, 1995, the dispositive portion of which reads, to wit:

"WHEREFORE, the instant Motions for Reconsideration of Governor Democrito O. Plaza and Engineer Felix P. Uy are hereby dismissed. Accordingly, CSC Resolution No. 95-2104 dated 21

March 1995 stands and the Provincial Government of Agusan del Sur is directed to implement the same immediately."<sup>[16]</sup>

On November 17, 1995, petitioner filed a petition for review before the respondent court assigning two errors committed by the respondent CSC:<sup>[17]</sup>

(1) that public respondent erred in ruling as improper his reinstatement as Engineer IV in the provincial engineering office of the province of Agusan del Sur and by directing that he be reinstated to a position comparable with that he was holding at the time of his dismissal;

(2) that public respondent erred and failed to appreciate the fact that his former Supervising Mechanical Engineer position which was abolished and replaced with a Senior Mechanical Engineer and later classified as Engineer IV pursuant to RA 6758 are the same and similar positions provided for in the plantilla of personnel, Provincial Engineering Office, province of Agusan del Sur.

On July 10, 1996, the respondent court rendered its decision denying the petition for lack of merit.<sup>[18]</sup> It ruled that petitioner did not question the qualification of Millana to the contested position and that the position of private respondent at the time of his termination, Engineer IV, could not be that which was previously occupied by the petitioner, which was Supervising Mechanical Engineer or Engineer III. The respondent court further stressed that an appointment whether to a vacancy or to a newly created position is essentially within the discretionary power of whomsoever it is vested. A copy of the said decision was received by petitioner's counsel on July 17, 1996.

On July 26, 1996, petitioner's counsel filed a motion for extension of time to file a motion for reconsideration which was denied by the respondent court in its Resolution dated August 7, 1996. The order likewise declared the finality of the decision of the respondent court.

On August 20, 1996, petitioner's counsel filed his motion for reconsideration<sup>[19]</sup> which was later denied by the respondent court in its Resolution dated September 4, 1996.<sup>[20]</sup>

Hence, this petition.

Petitioner reiterated the assigned errors in his petition for review before the respondent court in addition to the claim that the said court erred in applying the rulings of this Court in *Panis vs. CSC*, 229 SCRA 509(1994); *Mendilla vs. CSC*; *Central Bank vs. CSC*; *Rimonte vs. CSC*, and *Lapinid vs. CSC*.

Public respondent, on the other hand, maintains that the issue left for this court to consider is whether or not petitioner's motion for reconsideration was filed before the Court of Appeals within the reglementary period. It argued that the respondent court acted correctly in denying petitioner's motion for reconsideration for having been filed out of time, citing the rulings of this court in *Habaluyas Enterprises v. Japzon*; *Lacsamana v. Second Special Cases Division of the Intermediate Appellate Court*; *Rollogue v. Court of Appeals*; and *Caltex (Phil), Inc. v. Intermediate Appellate Court*. It also added that the respondent court acted correctly in upholding the CSC's ruling that petitioner may not be reinstated to the new position of Engineer IV at the expense of Millana who enjoys the status of a permanent employee and is entitled to security of tenure.

We find for the respondent.

The failure of a party to perfect his appeal in the manner and within the period fixed by law renders the decision sought to be appealed final, with the result that no court can exercise appellate jurisdiction to review the decision. For it is more important that a case be settled than it be settled right. It is only in exceptional cases when we have allowed a relaxation of the rules governing the periods of appeal.<sup>[21]</sup>

A careful perusal of this case reveals that the decision of the respondent court had become final and executory due to the failure of petitioner to file his motion for reconsideration within the reglementary period. Since petitioner's counsel received a copy of the decision on July 17, 1996, the aforesaid motion should have been filed not later than August 1, 1996. Petitioner's filing of a motion for extension of time to file a motion for reconsideration on July 26, 1996 and the motion for reconsideration only on August 20, 1996, was a procedural lapse fatal to his cause.

Not only was the said motion for extension of time to file a motion for reconsideration declared prohibited by several rulings of this Court but the Interim Rules of the respondent court likewise provides that the period for filing a motion for reconsideration is non-extendible.<sup>[22]</sup> The denial of aforesaid motions by the respondent court is therefore correct. In fact, the filing of said motion for extension of time to file a motion for reconsideration did not suspend/toll the running of the reglementary period which in effect renders the assailed decision final and beyond the jurisdiction of this court

This Court has ruled as early as 1986 in the case of *Habaluyas Enterprises v. Japzon*<sup>[23]</sup> and reiterated in *Lacsamana v. Second Special Cases Division of the Intermediate Appellate Court*<sup>[24]</sup> that no motion for extension of time to file a motion for new trial or reconsideration may be filed with the Metropolitan or Municipal Trial Courts, the Regional Trial Courts, and the Intermediate Appellate Court. In fact, the court has time and again consistently upheld strict adherence to aforesaid rule.<sup>[25]</sup> In *Rollique, et al., vs. CA, et al.*, this Court said:

"The filing by petitioners of a motion for extension of time to file motion for reconsideration did not toll the fifteen (15) days period before a judgment becomes final and executory.

Since the decision of respondent Court of Appeals dated November 28, 1986 has long become final and executory at the time of the filing of this petition, this Court can no longer alter or modify the same."<sup>[26]</sup>

We find no reason for counsel of petitioner to be unaware of the aforesaid rulings of this court. As counsel for petitioner, he failed to observe the responsibility imposed on him as a member of the bar to keep abreast with the latest developments of the law.<sup>[27]</sup> Counsel's failure or negligence cannot be sanctioned considering that it has been ten (10) years since the decision in the *Habaluyas* case and reiterated in subsequent cases was promulgated. Indeed, negligence or mistake of counsel necessarily binds the client.<sup>[28]</sup>

Moreover, a review of the decision of the respondent court will show that no reversible error has been made. As aptly observed by that court: