

THIRD DIVISION

[G.R. No. 120704, March 03, 1997]

HON. BARTOLOME C. CARALE, CHAIRMAN, NATIONAL LABOR RELATIONS COMMISSION (NLRC), HON. IRENEA A. CENIZA, PRESIDING COMMISSIONER, FOURTH DIVISION, NLRC, AND HON. REYNOSO A. BELARMINO, EXECUTIVE LABOR ARBITER, REGIONAL ARBITRATION BRANCH, REGION VII, PETITIONERS, VS. HON. PAMPPIO A. ABARINTOS, PRESIDING JUDGE, REGIONAL TRIAL COURT, BRANCH 22, CEBU CITY, AND FERDINAND V. PONTEJOS, RESPONDENTS.

DECISION

DAVIDE, JR., J.:

Did respondent Judge Pampio A. Abarintos commit grave abuse of discretion amounting to lack or excess of jurisdiction when he: (1) *denied* the petitioners' motions to dismiss the complaint filed by respondent Ferdinand V. Pontejos (hereinafter PONTEJOS) to declare null and void an Administrative Order of petitioner Carale, as Chairman of the National Labor Relations Commission (NLRC) (hereinafter CARALE), detailing Pontejos to the Fourth Division of the NLRC in Cebu City; and the motion to reconsider the order of denial; and then (2) *granted* the application for a writ of preliminary injunction?

This is the key issue raised in this petition.

The relevant factual antecedents summarized in the petition are as follows:

9. Private respondent Pontejos was issued an original and permanent appointment dated January 10, 1989 as "Labor and Employment Development Officer (RAB VII)" in the National Labor Relations Commission with a salary of P36,864.00 per annum under Title No. 211-10 of the Appropriations Act R.A. 6642. In 1992, the aforesaid position was reclassified as "Labor Arbitration Associate" with compensation of P99,000.00 per annum or rank at salary grade 22, retroactive to June 30, 1989. Private respondent holds this position up to the present.

10. On 03 October 1994, petitioner Chairman of the NLRC, issued Administrative Order No. 10-03 series of 1994, detailing/reassigning private respondent to the NLRC, Fourth Division, Cebu City, effective October 17, 1994. Said Order reads:

ADMINISTRATIVE ORDER NO. 10-03

(Series of 1994)

In the interest of the service, Mr. Ferdinand Pontejos, Labor Arbitration Branch No. VII, is hereby detailed to the Fourth Division, Cebu City,

effective October 17, 1994, until further orders from the undersigned.

Mr. Pontejos is directed to wind up his pending work and thereafter report to the Presiding Commissioner Irene E. Ceniza for instruction regarding his new assignment.

Manila, October 3, 1994.

(SGD) BARTOLOME S. CARALE

Chairman

11. Similar personnel actions, prior to and after Pontejos' reassignment to NLRC, Cebu City, were also effected by petitioner Carale pursuant to his exercise of administrative authority and supervision over all NLRC officials and employees....

12. On 24 October 1994, private respondent filed a complaint before the Regional Trial Court of Cebu City against herein petitioners for Illegal Transfer Tantamount To Removal Without Cause In Gross Violation Of The Security Of Tenure Afforded Under The Constitution And In Utter Disregard Of The Civil Service Rules and Regulations, Republic Act 6715, with Prayer For The Issuance Of A Writ Of Preliminary Injunction and/or Preliminary Mandatory Injunction With Damages. The case was docketed as Civil Case No. CEB-16671....

13. Motions to dismiss dated November 8, 1994 and November 15, 1994, were respectively filed by petitioner Ceniza and Carale, arguing that it is the Civil Service Commission which has exclusive jurisdiction over any question concerning personnel movement....

14. A Supplemental Motion to Dismiss dated November 21, 1994 was filed by petitioner Belarmino arguing that the questioned administrative order is in the nature of a detail and the civil service employee who is not satisfied with or aggrieved by such detail may appeal the matter before the Civil Service Commission....

15. On December 20, 1994, respondent judge issued the first questioned order denying petitioners' Motions to Dismiss holding that alleged non-exhaustion of administrative remedies before "where the surrounding circumstances of the matter before this Court indicate an urgency of judicial intervention"....

16. In the same Order, respondent judge also granted the prayer for preliminary injunction restraining petitioners from implementing the transfer order....

17. A motion for reconsideration dated January 9, 1995 was filed by petitioner Belarmino which was denied in the second questioned order dated February 7, 1995....

18. On 06 March 1995, Jeoffrey S. Joaquino, Clerk of Court VII, pursuant to respondent judge's order dated December 20, 1994, issued a writ of injunction enjoining herein petitioners from unduly interfering with and/or obstructing private respondent Pontejos' lawful discharge of his duties and functions as such Labor Arbitration Associate, until further orders from respondent judge. The writ of

injunction was received by petitioner Carale on March 21, 1995....^[1]

Pontejos' complaint in Civil Case No. CEB-16671 suggested that the uncordial relationship between himself, as president of the Unified Employees Union of the NLRC, RAB VII, and Chairman of the NLRC-RAB-VII Multi-Purpose Cooperative, and petitioners Presiding Commissioner Ceniza and Executive Labor Arbiter Belarmino, against whom the petitioner had earlier filed a petition for certiorari with this Court and a complaint for harassment and intimidation, respectively, had something to do with his detail to the Fourth Division of the NLRC. Pontejos alleged as there was no position of Labor Arbitration Associate in that Division, the detail order "was maliciously resorted to as a scheme to lure [him] away from his permanent position," thereby violating his security of tenure; and described it as "an act of vindictiveness" against him and was "patently illegal, malicious, arbitrary and an exercise of grave abuse of discretion in excess of jurisdiction."^[2] To justify his direct resort to the court, Pontejos alleged that "[t]here is no other available and speedy remedy in order to protect [his] interest than to resort to this Honorable Court; that the urgency of judicial intervention is an exception to the rule of exhaustion of administrative remedies,^[3] not to mention the fact that the administrative act in question is patently illegal."^[4] To support his application for a writ of "preliminary injunction and/or restraining [order]," Pontejos alleged that:

11.[He] is entitled to the relief demanded and the whole or part of such relief consists in RESTRAINING OR PREVENTING the defendants, their agents and all persons acting for or in their behalf, from enforcing and implementing the questioned Administrative Order No. 10-03, Series of 1994;

12.The commission of the continuance of the acts complained of during the litigation or the non-performance thereof, could probably work grave injustice to the plaintiff ... so that the defendants ... must be enjoined by a restraining order from implementing and/or enforcing the ... questioned Administrative Order;

13.[He] is willing to post a bond executed to he defendants enjoined, in an amount to be fixed by the court, to the effect that [he] will pay to such party all damages which they [sic] may sustain by reason of the injunction if the court should finally decide that the plaintiff is not entitled thereto.^[5]

Pontejos further asserted that the petitioners had acted with "gross and evident bad faith," and by their conduct, "have violated all forms of good human conduct and dealings and did not exhibit any degree of good faith, honesty and propriety," as a consequence of which he "has suffered mental anxiety, sleepless nights, wounded feelings and moral shock"; and had "displayed" "anti-social" acts and conduct, "contrary to the tenents [sic] enunciated in the Preliminary Title in Human relations found in Articles 19 and 20 of the Civil Code of the Philippines." On account thereof, he prayed for the award of P100,000.00 as moral damages; P50,000.00 as exemplary damages; P30,000.00 as attorney's fees; and P5,000.00 as litigation expenses.^[6]

In the challenged order of 20 December 1994, the trial court, in dismissing the petitioners' motions to dismiss, ruled that the only effect of non-compliance with the rule on exhaustion of administrative remedies "is that it will deprive the complainant of a cause of action"; it does not affect the jurisdiction of the court. Since "the

factual allegations of the complaint satisfactorily meet” the test of sufficiency of the complaint insofar as cause of action is concerned, the complaint was not dismissible.

In the challenged resolution of 7 February 1995 denying the petitioners’ motion to reconsider the order of 20 December 1994, the trial court further held that the case before it fell within one of the exceptions to the rule on exhaustion of administrative remedies, namely, where the question to be settled “is whether the controverted act of respondent Commissioner Carale was performed with grave abuse of discretion.”

[7]

In this special civil action for certiorari, the petitioners assert that:

I

RESPONDENT JUDGE HAS NO JURISDICTION TO REVIEW THE VALIDITY OF THE TRANSFER ORDER ISSUED BY PETITIONER CHAIRMAN OF THE NATIONAL LABOR RELATIONS COMMISSION SINCE THE CONTROVERSY IS WITHIN THE ORIGINAL AND EXCLUSIVE JURISDICTION OF THE CIVIL SERVICE COMMISSION.

II

THE RESPONDENT JUDGE HAS NO JURISDICTION TO TAKE COGNIZANCE OF THE COMPLAINT FILED AGAINST PETITIONERS AS IT CONSTITUTES A SUIT AGAINST THE STATE WITHOUT ITS CONSENT.

III

THE PETITIONERS WERE NOT REPRESENTED IN THE TRIAL COURT BY THEIR STATUTORY COUNSEL, THE OFFICE OF THE SOLICITOR GENERAL, HENCE THE PROCEEDINGS HAD THEREIN IS A NULLITY.

As to the first ground, the petitioners maintain that being a permanent civil service employee, Pontejos is subject to civil service laws and regulations pursuant to Subsection 1(1), Section 8-B, Article IX-A of the Constitution. His grievance concerning Carale’s administrative order detailing him to the Fourth Division of the NLRC should have been raised in an appropriate complaint before the Merit Systems and Protection Board (MSPB) created under P.D. No. 1409, whose functions, pursuant to Civil Service Commission (CSC) Resolution No. 93-2387, have been transferred directly to the CSC itself. The petitioners further claim that there is no factual or legal basis indicative of the urgency of judicial intervention to justify the trial court’s assumption of jurisdiction over this case and to order the issuance of the questioned writ of preliminary injunction.

Anent the second ground, the petitioners, citing *Veterans Manpower and Protective Service, Inc. v. Court of Appeals*, [8] submit that Pontejos’ complaint, which asked for a writ of injunction and damages, is in effect a suit against the State without its consent, hence, the petitioners, who are all public officials, are immune from such suit.

In support of the third ground, the petitioners alleged that all throughout the proceedings before the trial court, the petitioners were not represented “by their statutory counsel, the Solicitor General,” whose authority is mandated under P.D.