

## FIRST DIVISION

[ G.R. No. 163109, January 22, 2014 ]

**MARICHU G. EJERA, PETITIONER, VS. BEAU HENRY L. MERTO  
AND ERWIN VERGARA, RESPONDENTS.**

### D E C I S I O N

#### **BERSAMIN, J.:**

A public servant who has an issue against a directive for her re-assignment must exhaust her available administrative remedies before resorting to judicial action. The non-exhaustion of available administrative remedies is fatal to the resort to judicial action.

This appeal by petition for review on *certiorari* assails the decision promulgated on July 23, 2003,<sup>[1]</sup> whereby the Court of Appeals (CA) affirmed the order issued on October 22, 2001 by the Regional Trial Court, Branch 33, in Dumaguete City (RTC) dismissing the petitioner's suit for injunction and damages on the ground of non-exhaustion of administrative remedies.<sup>[2]</sup> She had commenced the suit to restrain the respondents from investigating her refusal to comply with the office orders re-assigning her to a station other than her current place of work.

#### **Antecedents**

The petitioner held the position of Agricultural Center Chief I in the Office of the Provincial Agriculturist in Negros Oriental.<sup>[3]</sup> Her position was equivalent to the position of Senior Agriculturist, the next-in-rank to the position of Supervising Agriculturist. Upon the retirement of the Supervising Agriculturist, she applied for that position, but one Daisy Kirit was eventually appointed. She filed a protest against the appointment of Kirit before the Civil Service Commission (CSC) Regional Office in Cebu City,<sup>[4]</sup> but that said office dismissed her protest on May 24, 2000.<sup>[5]</sup> The Central CSC Office affirmed the dismissal on July 25, 2001 under its Resolution No. 011253.<sup>[6]</sup>

Meanwhile, on September 11, 2000, respondent Provincial Agriculturist Beau Henry L. Merto issued Office Order No. 008 (*Amending Office Order No. 008, Series of 2000, Re: Assignment/Re-assignment of BADC Area Coordinators and Development Team Members*)<sup>[7]</sup> "[i]n the interest of the service and to provide intensive agricultural extension services to residents of interior barangays under the Barangay Agricultural Development Center (BADC) Program in the province, which is aimed at achieving Food Security and Poverty Alleviation." Provincial Governor George P. Arnaiz of Negros Oriental was furnished a copy of Office Order No. 008.

To take effect on October 2, 2000, Office Order No. 008 stated:

All Fishery Technologists presently assigned in the coastal areas, and in further pursuant to Special Order No. 001, Series of 2000 approved by the Provincial Governor, shall now radiate and devote 60% of their official time to their respective assigned BADC sites to provide technical assistance to participants in freshwater fish production. However, they shall maintain their present station as their official duty station.

It has been an established policy of the present provincial administration to provide regular and adequate agricultural extension services to residents of remote interior barangays which are economically depressed but with potentials for agricultural development. The deployment of Agricultural and Fishery Technologists in the above mentioned barangays/sitios will improve farming activities of the residents in the long term and eventually trigger other developments that will improve their quality of life.<sup>[8]</sup>

The petitioner was one of the personnel re-assigned under Office Order No. 008. She was designated therein as the team leader in Lake Balanan and Sandulot in the Municipality of Siaton. When she refused to obey the office order, Merto ordered her on March 12, 2001 to explain in writing within 72 hours why no administrative disciplinary action should be taken against her.<sup>[9]</sup> After she did not submit her explanation, Merto and respondent Atty. Erwin B. Vergara, the Provincial Legal Officer, summoned her to a conference. She and her counsel, Atty. Lenin R. Victoriano, attended the conference, but later on walked out allegedly because Vergara refused to record her objections to the questions she was being asked to answer.

On April 16, 2001,<sup>[10]</sup> the petitioner filed in the RTC her complaint for "final injunction with temporary restraining order and/or preliminary injunction, and damages," averring that Merto had issued Office Order No. 008 because he had so bitterly resented her attacks against him before the CSC Regional Office; that her reassignment was a virtual "banishment" because her position required her to stay in Dumaguete City; that the re-assignment was a "gross and blatant violation of the '*Omnibus Rules on Appointments and Other Personnel Actions*'" prohibiting whimsical and indiscriminate reassignments; that on account of her refusal to obey Office Order No. 008, Merto had charged her administratively; that Merto had no power to investigate, because the Provincial Governor was the proper disciplining authority; that the letter of Merto requiring her to explain violated Rule II, Section B of CSC Memorandum Circular No. 19, Series of 1999 requiring complaints to be under oath; that Merto connived with Vergara, who had issued a "Notice of Conference" on March 30, 2001 setting the preliminary conference on April 5, 2001; and that the conference could not be terminated when she and her counsel walked out due to the refusal of Vergara to allow the recording of the objections of her counsel.

The petitioner further averred that the RTC could rule on the basic ground that the respondents had no power to banish her to the far-flung areas of Municipality of Siaton through the "illegal, whimsical and malicious" Office Order No. 008; and that

they acted in bad faith and with malice in violation of Article 19 and Article 20 of the *Civil Code*, thereby entitling her to damages. For reliefs, she prayed:

WHEREFORE, it is respectfully prayed:

(1) That, pending trial, a temporary restraining order and/or preliminary injunction be immediately issued, ordering the defendants to cease and desist from investigating plaintiff for refusal to obey Office Order No. 008, Series of 2000, issued by defendant Beau Henry L. Merto, and to refrain from committing any and all acts which might impair the efficacy of said temporary restraining order and/or preliminary injunction;

(2) That, after trial, judgment issue, declaring said Office Order No. 008, Series of 2000, as a violation of the Administrative Code of 1987, as implemented by the "Omnibus Rules on Appointments and Other Personnel Actions" issued by the Civil Service Commission, therefore, null and void;

(3) That, after trial, the preliminary injunction be made permanent;

(4) That, likewise after trial, defendants be ordered jointly and severally to pay plaintiff P500,000.00 moral damages, P200,000.00 exemplary damages, and P50,000.00 attorney's fees and litigation expenses, plus the costs.

Plaintiff respectfully prays for such other relief just and equitable.<sup>[11]</sup>

At the hearing on the issuance of the temporary restraining order, the RTC proposed the possible reconsideration of Office Order No. 008 especially because the petitioner complained of ill-health. The respondents expressed willingness to consider the proposal of the RTC, and promised to confer with the Provincial Governor. Later on, however, they manifested that they had apprised the Provincial Governor about the proposal but, with the Provincial Governor running for re-election, they could submit an approved written proposal only after the elections.<sup>[12]</sup> The RTC granted their prayer for an extension of time to submit their written proposal for an amicable settlement.<sup>[13]</sup>

Shortly after the elections, the petitioner filed a motion to declare the respondents in default for failing to answer the complaint.<sup>[14]</sup> The RTC held in abeyance the resolution of the motion in view of the proposals and counterproposals regarding a compromise.<sup>[15]</sup> Later on, however, the respondents manifested that because the possible compromise would involve an order for a transfer or detail of the petitioner to another place, they and the Provincial Governor could not act because the *Omnibus Election Code* prohibited the appointment, promotion, and transfer of civil servants during the campaign period from January 2, 2001 to June 13, 2001 pursuant to COMELEC Resolution No. 3401.<sup>[16]</sup> Accordingly, the RTC declared the respondents in default.<sup>[17]</sup>

Prior to the *ex parte* hearing of the case on the merits, the petitioner moved for the

admission of a supplemental complaint in order to implead Gregorio P. Paltinca, the Officer-in-Charge of the Office of the Provincial Agriculturist, for issuing on June 29, 2001 Office Order No. 005, Series of 2001, to amend Office Order No. 008.<sup>[18]</sup> Office Order No. 005 was re-assigning her to Barangays Balanan, Sandulot, and Jumalon in the Municipality of Siaton as her official duty stations.<sup>[19]</sup>

The supplemental complaint stated that Office Order No. 005, to take effect on July 2, 2001, had not been posted in the bulletin board of the Office of the Provincial Agriculturist; that she had not been furnished a copy of the order; that OIC Paltinca had acted with malice and evident bad faith by his failure to notify her of the re-assignment, which was "worse than the original re-assignment" by Merto, as it constituted her "banishment" from her office in Dumaguete City; that the re-assignment had violated Book V, Section 12 (2) and (3) of the *Administrative Code of 1987* prohibiting re-assignments that were indiscriminately and whimsically done; that although the appointing and disciplining authority was the Provincial Governor, who had approved Office Order No. 005, Paltinca should be impleaded because it was he who had thereby violated the *Administrative Code of 1987*; and that she had refused to obey the two office orders for justifiable reasons because both were null and void *ab initio* as far as she was concerned.<sup>[20]</sup>

Paltinca moved to dismiss the supplemental complaint on the ground that the admission of the petitioner that the Provincial Governor, not he, was her appointing and disciplining authority exposed her lack of cause of action; that the non-inclusion of the Provincial Governor as the real party in interest was a fatal error; and that the failure of the petitioner to exhaust administrative remedies before going to court was also a ground for the dismissal of the case.<sup>[21]</sup>

The petitioner opposed Paltinca's motion to dismiss, contending that the Provincial Governor was neither an indispensable nor a necessary party inasmuch as Office Order No. 005 could be declared null and void without impleading the Provincial Governor, who could always intervene if he so desired; that there was no need for the exhaustion of administrative remedies because the issue was a purely legal one, *i.e.*, the nullity of the office orders in question; and that the motion to dismiss was premature because the trial court had not yet admitted the supplemental complaint.<sup>[22]</sup>

After the RTC deemed the motion to dismiss submitted for resolution,<sup>[23]</sup> Vergara filed a manifestation informing the RTC of the dismissal by the CSC Central Office of the petitioner's appeal (CSC Resolution No. 011253). Vergara argued that she had utilized the pendency of the appeal as her legal excuse in disobeying Office Order No. 008, which her affected co-employees had dutifully obeyed; and that the dismissal of her appeal removed any valid reason or legal ground for her to disobey the office orders that the Provincial Governor had issued "for the good of the service and to promote our food security."<sup>[24]</sup>

The petitioner responded to the manifestation of Vergara, stating that she had moved for the reconsideration of CSC Resolution No. 011253, and that the outcome of her appeal in the CSC did not affect the case because the issue involved was the legality of her re-assignment.<sup>[25]</sup>

## **Ruling of the RTC**

On October 22, 2001, the RTC dismissed the case, holding on the legality of Office Order No. 008 and Office Order No. 005 as follows:

Section 7, Rule 1 of the Memorandum Circular No. 19, series of 1999 provides: Heads of departments, agencies, provinces, cities, municipalities and other instrumentalities shall have concurrent jurisdiction with the Commission, over their respective officers and employees. In the case at bar, it is the Chief Executive who has the power of disciplining over his subordinates. But issuance of Office Order No. 008 is not a penalty. Section 5, paragraph 3, Rule VII of the Omnibus Rules Implementing Book V of Executive Order No. 292, provides: Transfer shall not be considered disciplinary when made in the interest of public service, in which case, the employee concerned shall be informed of the reasons therefor. If the employee (sic) believes that there is no justification for the transfer, he may appeal his case to the Commission.

[26]

On the allegation of the petitioner that the "complaint" of Merto asking her to explain why she should not be disciplined for her refusal to obey Office Order No. 008, the RTC declared:

This Court agrees with the plaintiff that a complaint against a civil servant shall not be given due course unless it is in writing and subscribed and sworn to by the complainant. However, in cases initiated by the proper disciplining authority, the complaint need not be under oath (Section 8, Rule 11, Memorandum Circular No. 19, series of 1999). This is explained in Maloga v. Gella, 15 SCRA 370, which held that head or chief of office of the bureau or office is deemed to be acting in his official capacity and under his oath of office.

Lastly, the RTC opined that the petitioner should have first gone to the CSC to challenge the legality of Office Order No. 008 and Office Order No. 005 prior to her resort to the courts; and that, therefore, she had not exhausted all her administrative remedies considering that her case did not fall under any of the exceptions to the application of the doctrine on the exhaustion of administrative remedies.

## **Decision of the CA**

Not satisfied, the petitioner appealed to the CA, contending that:

### **I.**

THE LOWER COURT ERRED IN DISMISSING THE CASE AGAINST DEFENDANTS-APPELLEES BEAU HENRY L. MERTO AND ERWIN VERGARA FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES WHEN SAID