

SECOND DIVISION

[G.R. No. 191691, January 16, 2013]

**ROMEO A. GONTANG, IN HIS OFFICIAL CAPACITY AS MAYOR OF
GAINZA, CAMARINES SUR, VS. PETITIONER, ENGR. CECILIA
ALAYAN, RESPONDENT.**

D E C I S I O N

PERLAS-BERNABE, J.:

Before the Court is a petition filed under Rule 45 of the Rules of Court seeking to set aside the May 26, 2009^[1] and March 22, 2010^[2] Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 107366 which dismissed the case due to the lack of legal authority of the private attorneys to represent the Municipality of Gainza, Camarines Sur.

The Facts

Respondent Engr. Cecilia Alayan (respondent) was appointed in 2000 as Municipal Government Department Head (Municipal Assessor) on temporary status. In May 2001, she applied for change of status from temporary to permanent, which the Civil Service Commission-Camarines Sur Field Office (CSC-CSFO) denied for lack of relevant experience. On appeal, the CSC-Regional Office in its August 13, 2001 Order approved her application effective May 22, 2001. Thus, she reported for work and sought recognition of her appointment and the grant of the emoluments of the position from petitioner, then incumbent Mayor Romeo A. Gontang (petitioner). Her requests having been denied, she filed before the Regional Trial Court (RTC) of Naga City on February 5, 2002 a petition for mandamus, docketed as Special Civil Action No. 2002-0019, against petitioner, in his official capacity as Municipal Mayor of Gainza, Camarines Sur. However, the RTC dismissed the petition for having been prematurely filed as the Order of the CSC-Regional Office had not attained finality due to the pendency of the appeal before the CSC. Respondent appealed to the CA which, in its June 20, 2003 decision,^[3] ruled in her favor holding that the pendency of an appeal is not a justification to prevent her from assuming office. Said decision attained finality on August 10, 2007^[4] with the denial of petitioner's petition before the Supreme Court.^[5] However, prior to the CA decision, the CSC set aside the August 13, 2001 Order of the CSC-Regional Office on May 8, 2003^[6] upon a finding that there was no permanent appointment as the concurrence of the local *Sanggunian* was not obtained. Respondent's appeal of the CSC decision was denied by the CA^[7] and such denial became final on October 6, 2006.^[8]

On March 17, 2008, respondent moved for the issuance of an alias writ of execution by the RTC in Special Civil Action No. 2002-0019 for the alleged unsatisfied judgment award in the amount of P837,022.50 representing her unpaid salaries and allowances from May 8, 2003 to October 6, 2006 during the pendency of her appeal

of the CSC Resolutions.^[9] Petitioner opposed the motion claiming full satisfaction of the judgment after having already paid respondent the net sum of P391,040.60^[10] covering all benefits for the period from the date the CSC-CSFO approved her request for change of status on August 13, 2001 to May 7, 2003, the day before the CSC denied her application for permanent appointment.

Ruling of the Regional Trial Court

Finding that the May 8, 2003 CSC Resolution became final and executory only on October 6, 2006 after respondent's appeal was resolved by the CA and with no appeal having been taken therefrom, the RTC ordered the issuance of an alias writ of execution in the order dated October 22, 2008.^[11] It also subsequently denied petitioner's motion for reconsideration.^[12]

Dissatisfied, petitioner, through Attorneys Joselito I. Fandiño (Atty. Fandiño) and Voltaire V. Saulon (Atty. Saulon), the counsels he had retained since the initial stage of the litigation, filed a petition for *certiorari* seeking to annul and set aside the two (2) Orders of the RTC.

Ruling of the Court of Appeals

The CA dismissed the petition on the ground of lack of legal authority on the part of Atty. Saulon, a private attorney, to represent the Municipality of Gainza, Camarines Sur. Petitioner's motion for reconsideration was denied in the assailed March 22, 2010 Resolution.

Issue Before the Court

Hence, the instant petition raising the issue of whether the CA erred in dismissing the petition for *certiorari* on the ground of unauthorized representation of petitioner by private lawyers.

The Ruling of the Court

The petition is meritorious.

The present case stemmed from Special Civil Action No. 2002-0019 for mandamus and damages.^[13] The damages sought therein could have resulted in personal liability, hence, petitioner cannot be deemed to have been improperly represented by private counsel.^[14] In *Alinsug v. RTC Br. 58, San Carlos City, Negros Occidental*,^[15] the Court ruled that in instances like the present case where personal liability on the part of local government officials is sought, they may properly secure the services of private counsel, explaining:

It can happen that a government official, ostensibly acting in his official capacity and sued in that capacity, is later held to have exceeded his authority. On the one hand, his defense would have then been underwritten by the people's money which ordinarily should have been his personal expense. On the other hand, personal liability can attach to him without, however, his having had the benefit of assistance of a