

## THIRD DIVISION

[ G.R. No. 161735, September 25, 2007 ]

**EX-C1C JIMMY B. SANCHEZ AND EX-C2C SALVADOR A. METEORO,  
PETITIONERS, VS. ROBERTO T. LASTIMOSO, IN HIS CAPACITY  
AS DIRECTOR GENERAL OF THE PHILIPPINE NATIONAL POLICE,  
RESPONDENT.**

### D E C I S I O N

**NACHURA, J.:**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the June 18, 2003 Decision<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 68989 and the January 15, 2004 Resolution<sup>[3]</sup> denying the motion for reconsideration thereof.

In 1989, petitioner Sanchez, a constable in the Philippine Constabulary (PC), was discharged from the service for allegedly losing his service firearm. Petitioner Meteoro, also a constable, was likewise discharged from the service in 1990 for being absent without leave. On appeal, they were both cleared of all charges. They then applied for reinstatement but their applications were not acted upon even up to the integration of the PC into the Philippine National Police (PNP).<sup>[4]</sup>

On January 27, 1998, the National Police Commission (NAPOLCOM) issued Resolution No. 98-037 considering as absorbed into the police force, among others, those who had been discharged by virtue of pending administrative or criminal cases but who were later acquitted or had their cases dismissed, and who subsequently filed petitions for reinstatement that were not acted upon by the PNP.<sup>[5]</sup> Then, on April 3, 1998, NAPOLCOM issued Resolution No. 98-105 affirming and confirming the absorption into the PNP, effective on January 27, 1998, of the 126 ex-PC constables named in the list submitted by Director Edgar C. Galvante of the PNP Directorate for Personnel and Records Management (DPRM).<sup>[6]</sup> Petitioners Sanchez and Meteoro are in numbers 90 and 122, respectively, of the Galvante list.<sup>[7]</sup>

Subsequently, on May 28, 1998, NAPOLCOM Commissioner Rogelio A. Pureza issued a Memorandum to then Chief of the PNP Santiago Alino for the issuance of absorption orders to the 45 PC constables included in the initial batch of those covered by the PNP Board Resolutions.<sup>[8]</sup> Petitioner Sanchez is in number 45 of that list.<sup>[9]</sup>

As no absorption order had yet been issued by the Chief of the PNP, the constables in the list requested the assistance of the Secretary of the Department of Interior and Local Government (DILG). On July 29, 1998, the Office of the Secretary of the DILG sent a memorandum to respondent Roberto T. Lastimoso, then the Chief of the PNP, endorsing the constables' entreaties and requesting for a feedback thereon.<sup>[10]</sup>

Without any response from the Chief of the PNP, and their pleas for the issuance of the absorption orders still unacted upon, petitioners instituted, on September 30, 1998, a petition for mandamus docketed as Civil Case No. Q-98-35659 in the Regional Trial Court (RTC) of Quezon City.<sup>[11]</sup>

During the pendency of the said petition, NAPOLCOM issued Resolution No. 99-061 on April 19, 1999 recalling the earlier Resolution No. 98-105.<sup>[12]</sup> The recall was based on the Commission's finding that the list submitted by Galvante was not actually of the constables whose applications for absorption were indorsed for approval, but of those whose applications were still to be reviewed, evaluated and disposed of. In other words, the 126 named in the list were still to be interviewed and their applications to be deliberated upon by the PNP Special Committee.<sup>[13]</sup>

On November 15, 2001, however, the RTC rendered its Decision<sup>[14]</sup> in the mandamus case declaring as void *ab initio* NAPOLCOM Resolution No. 99-061 and ruling in favor of the petitioners. The dispositive portion of the Decision reads:

Accordingly, therefore, the petition is hereby granted. The Director-General of the Philippine National Police is hereby directed to immediately issue absorption orders to the petitioners.

Resolution No. 99-061 is declared void ab initio.

IT IS SO ORDERED.<sup>[15]</sup>

On appeal, the CA, in the assailed June 18, 2003 Decision,<sup>[16]</sup> reversed the ruling of the trial court and ruled that a writ of mandamus could not be issued because petitioners had not established with distinct clarity their right to be absorbed into the PNP. The CA disposed of the appeal as follows:

WHEREFORE, the appeal is GRANTED. The decision of the trial court dated November 15, 2001 is hereby REVERSED and SET ASIDE.

SO ORDERED.<sup>[17]</sup>

The appellate court later denied petitioners' motion for reconsideration in the likewise assailed January 15, 2004 Resolution.<sup>[18]</sup>

Aggrieved, petitioners brought the case before us via a petition for review on *certiorari*, raising for our disposition the following issues:

I

WHETHER OR NOT PETITIONERS HAVE A CLEAR LEGAL RIGHT TO BE ABSORBED IN THE PHILIPPINE NATIONAL POLICE.

II.

WHETHER OR NOT RESOLUTION NO. 99-061 IS VOID FOR BEING VIOLATIVE OF THE PROVISIONS OF R.A. 7965 AND ITS IMPLEMENTING

III.

WHETHER OR NOT PETITIONERS HAVE A CAUSE OF ACTION FOR MANDAMUS TO COMPEL THE RESPONDENT TO ABSORB THE PETITIONERS IN THE PHILIPPINE NATIONAL POLICE.<sup>[19]</sup>

The petition has no merit.

We have repeatedly stressed in our prior decisions that the remedy of *mandamus* is employed only to compel the performance, when refused, of a ministerial duty, but not to require anyone to fulfill a discretionary one. The issuance of the writ is simply a command to exercise a power already possessed and to perform a duty already imposed.<sup>[20]</sup> In *Manila International Airport Authority v. Rivera Village Lessee Homeowners Association, Inc.*,<sup>[21]</sup> we emphasized, through the erudite and eloquent *ponencia* of Justice Dante O. Tinga, that the writ can be issued only when the applicant's legal right to the performance of a particular act sought to be compelled is clear and complete, one which is indubitably granted by law or is inferable as a matter of law, thus:

In order that a writ of mandamus may aptly issue, it is essential that, on the one hand, petitioner has a clear legal right to the claim that is sought and that, on the other hand, respondent has an imperative duty to perform that which is demanded of him. Mandamus will not issue to enforce a right, or to compel compliance with a duty, which is questionable or over which a substantial doubt exists. The principal function of the writ of mandamus is to command and to expedite, not to inquire and to adjudicate. Thus, it is neither the office nor the aim of the writ to secure a legal right but to implement that which is already established. Unless the right to relief sought is unclouded, mandamus will not issue.<sup>[22]</sup>

Viewed in light of the said guideposts, the PNP Chief's issuance of the orders for the absorption of herein petitioners in the police force is not compellable by a writ of mandamus precisely because the same does not involve a performance of a ministerial duty. Let it be noted that petitioners were discharged from the PC service, subsequently cleared of the charges against them, applied for reinstatement but their applications were not acted upon until the integration of the PC into the PNP in 1990 when R.A. No. 6975<sup>[23]</sup> was enacted. Thus, we no longer speak of the reinstatement of the petitioners to the service because the Philippine Constabulary no longer exists, but of their employment in the PNP which is, as we held in *Gloria v. De Guzman*,<sup>[24]</sup> technically an issuance of a new appointment. The power to appoint is essentially discretionary to be performed by the officer in which it is vested according to his best lights, the only condition being that the appointee should possess the qualifications required by law.<sup>[25]</sup> Consequently, it cannot be the subject of an application for a writ of mandamus.<sup>[26]</sup>

Furthermore, the petitioners do not have a clear legal right over the issuance of the absorption orders. They cannot claim the right to be issued an appointment based on the NAPOLCOM issuances, specifically Resolution Nos. 98-037 and 98-105.

Suffice it to state that R.A. No. 6975 clearly provides that the power to appoint PNP personnel with the rank of "Police Officer I" to "Senior Police Officer IV" to which petitioners may be appointed<sup>[27]</sup> is vested in the PNP regional director or in the Chief of the PNP as the case may be, and not in the NAPOLCOM, thus:

Section 31. *Appointment of PNP Officers and Members.*--The appointment of the officers and members of the PNP shall be effected in the following manner:

(a) *Police Officer I to Senior Police Officer IV.*--Appointed by the PNP regional director for regional personnel or by the Chief of the PNP for the national headquarters personnel and attested by the Civil Service Commission.

x x x<sup>[28]</sup>

Even if, for the sake of argument, petitioners can derive a right from NAPOLCOM Resolution Nos. 98-037 and 98-105, still their right collapses and their mandamus petition becomes moot with the issuance by NAPOLCOM of Resolution No. 99-061 recalling the approval of their absorption. The trial court should then have immediately dismissed the mandamus petition when the OSG submitted a copy of Resolution No. 99-061 because well-settled is the rule that courts will not resolve a moot question.<sup>[29]</sup>

Also improper is the trial court's declaration that NAPOLCOM Resolution No. 99-061 is void *ab initio*. In the petition filed below, only the Chief of the PNP is impleaded as the party-defendant.<sup>[30]</sup> NAPOLCOM was never impleaded. As it was the latter, a separate entity, which had issued Resolution No. 99-061, NAPOLCOM was an indispensable party over which the trial court should have acquired jurisdiction. Since it was not impleaded, NAPOLCOM remains a stranger to the case, and strangers are not bound by the judgment rendered by the court.<sup>[31]</sup> The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.<sup>[32]</sup>

**WHEREFORE**, premises considered, the petition is **DENIED**. The June 18, 2003 Decision and the January 15, 2004 Resolution of the Court of Appeals in CA-G.R. SP No. 68989 are **AFFIRMED**.

**SO ORDERED.**

*Ynares-Santiago, (Chairperson), Austria-Martinez, Chico-Nazario, and Reyes, JJ., concur.*

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<sup>[1]</sup> Under Section 29 of Republic Act (R.A.) No. 6975 (approved on December 13, 1990), as amended by R.A. No. 8551 (approved on February 25, 1998), the head of the PNP with the rank of director general shall have the position title of Chief of the PNP.