415 Phil. 645

THIRD DIVISION

[G.R. No. 132174, August 20, 2001]

GUALBERTO CASTRO, PETITIONER, VS. HONORABLE SECRETARY RICARDO GLORIA IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF EDUCATION, CULTURE AND SPORTS, RESPONDENT.

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

The principle of non-exhaustion of administrative remedy is not an iron-clad rule. There are instances when it may be pierced and judicial action may be resorted to immediately.

The present case is one illustration.

Sought to be set aside in this petition for review on *certiorari* are the: **(a)** Decision[1] dated November 20, 1997 of the Regional Trial Court, Branch 60, Barili, Cebu dismissing Gualberto Castro's petition for *mandamus*; and **b)** Order[2] dated January 5, 1998 denying his motion for reconsideration.

The factual and legal antecedents are as follows:

Porfirio Gutang, Jr. filed with the Department of Education, Culture and Sports (DECS) a complaint for *disgraceful and immoral conduct* against petitioner Gualberto Castro, a teacher in Guibuangan Central School, Barili, Cebu. It was alleged that he has an illicit affair with Gutang's wife, petitioner's co-teacher at the same school.

After hearing or on August 28, 1984, the DECS Regional Office VII, through Assistant Superintendent Francisco B. Concillo, rendered a decision declaring petitioner guilty of the offense charged. He was meted the penalty of dismissal from the service.[3] The DECS Central Office affirmed Concillo's decision in an Indorsement dated March 25, 1986.[4]

On July 21, 1986, petitioner filed a motion for reconsideration. Instead of resolving the motion, the DECS Central Office directed the School Division of Cebu to comment on the motion.[5] The School Division Superintendent recommended that the motion be resolved favorably. However, the recommendation was opposed by the DECS Region VII.[6]

Thereafter, in his letters dated November 5, 1988 and July 19,1990, petitioner asked the incumbent DECS Secretary to resolve his motion for reconsideration. But his letters remained unheeded, thus, on October 4, 1995, petitioner filed with the DECS

Central Office a *"Motion for Review Setting Aside/Modifying the Decision of Regional Director of DECS Region VII."*[7] DECS Secretary Ricardo Gloria (*respondent*) referred the motion to the Regional Director of Region VII for comment. On January 3, 1996, Regional Director Eladio C. Dioko issued a 2nd Indorsement sustaining the decision of Assistant Superintendent Concillo, thus:

> "This Office sustains former Director Concillo's decision that respondent Castro is guilty of Disgraceful and Immoral Conduct but posits the belief that the proper penalty as provided by law be meted out for him. In the Honorable Secretary is vested by law the power to review, reaffirm, modify or reverse decisions of a lower office.[8]

In his 3rd Indorsement dated March 6, 1996, respondent Secretary denied petitioner' s motion for review.[9]

Thrice thwarted, petitioner filed a petition for mandamus with the Regional Trial Court, Branch 60, Barili, Cebu, imploring that judgment be rendered ordering respondent Secretary or anyone who may have assumed the duties and functions of his office **(1)** to reduce his penalty from dismissal to one (1) year suspension; **2)** to consider the one (1) year suspension as already served considering that he has been out of the service for more than ten (10) years; **3)** to reinstate him to his former position; and **4)** to pay is back salaries.[10] On November 20, 1997, the trial court rendered the herein assailed decision dismissing the petition on the ground of non-exhaustion of administrative remedies. It ruled that petitioner should have appealed to the Civil Service Commission before coming to court, thus:

> "Considering that the Civil Service Commission has the power to review on appeal the orders or acts of respondent, petitioner has failed to exhaust administrative remedies. Non-exhaustion of administrative remedies implies absence of cause of action. Where a remedy is available within the administrative machinery, this should be resorted to before recourse can be made to the courts. The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence. (Vidad v. RTC of Negros Oriental, Branch 42, 227 SCRA 271).
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> Mandamus - If appeal or some other equally adequate remedy is still available in the ordinary course of law, the action for MANDAMUS would be improper. Sherman Vs. Horilleno, 57 Phil. 13; Fajardo Vs. Llorente, 6 Phil, 426; Paquio Vs. Del Rosario, 46 Phil. 59; Manalo v. Paredes, 47,938; Castro Revilla Vs. Garduno, 53 Phil. 934; Rural Transit Co. Vs. Teodoro, 57 Phil. 11.
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> Special Civil Actions against administrative officers should not be entertained if superior administrative officers could grant relief. Cecilio vs. Belmonte, 48 Phil. 243, 255.
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> From the facts it is clear that the penalty of dismissal from the service

was erroneously imposed upon petitioner. However, certiorari is the remedy to correct errors of judgment which are grave and arbitrary and not mandamus.

Mandamus will not lie to order the reinstatement of the petitioner in his former position as Elementary Grades Teacher as it was not yet established that he is entitled to or has legal right to the office.

In the case of Manalo vs. Gloria, 236 SCRA 130, the petitioner's claim for "backwages" could be the appropriate subject of an ordinary civil action as mandamus applies when there is no other plain, speedy and adequate remedy in the ordinary course of law.

In the case at bench, the Court after a judicious study and analysis on the case, has no other alternative than to **DENY** the present petition for lack of merit.

SO ORDERED."[11]

Petitioner filed a motion for reconsideration but was denied.

Hence, the present petition for review on certiorari.

Petitioner insists that, "*when the question to be settled is purely a question of law, he may go directly to the proper court so that he can have proper redress.*" For its part, the Office of the Solicitor General (OSG) contends that petitioner's adequate remedy was to appeal the decision of respondent Secretary to the Civil Service Commission, pursuant to the provisions of Executive Order No. 292. Since petitioner failed to exhaust administrative remedies, his petition must be dismissed for lack of cause of action. Also, the OSG argues that the remedy of mandamus to compel payment of back salary does not lie unless petitioner's right thereto is well defined. This is based on the general proposition that a public official is not entitled to any compensation if he has not rendered any service.

The petition is impressed with merit.

The doctrine of exhaustion of administrative remedies calls for resort first to the appropriate administrative authorities in the resolution of a controversy falling under their jurisdiction before the same may be elevated to the courts of justice for review. It is settled that non-observance of the doctrine results in lack of a cause of action,[12] which is one of the grounds allowed by the Rules of Court for the dismissal of the complaint.[13]

The doctrine is not absolute. There are instances when it may be dispensed with and judicial action may be validly resorted to immediately. Among these exceptions are: **1)** *When the question raised is purely legal*; **2)** when the administrative body is in *estoppel*; **3)** when the act complained of is patently illegal; **4)** when there is urgent need for judicial intervention; **5)** when the claim involved is small; **6)** when irreparable damage will be suffered; **7)** when there is no other plain, speedy and adequate remedy; **8)** when strong public interest is involved; and **10)** in *quo*

warranto proceedings.[14]

Truly, a petition for mandamus is premature if there are administrative remedies available to petitioner.[15] But where the case involves only legal questions, the litigant need not exhaust all administrative remedies before such judicial relief can be sought.[16] In *Cortes v. Bartolome,*[17] a case involving a petition for mandamus, we ruled that "while it may be that non-judicial remedies could have been available to respondent in that he could have appealed to the then Secretary of Local Government and Community Development and thereafter to the Civil Service Commission, the principle of exhaustion of administrative remedies need not be adhered to when the question is purely legal." This is because issues of law cannot be resolved with finality by the administrative officer. Appeal to the administrative officer would only be an exercise in futility.[18]

Thus, in the ultimate, the resolution of this case hinges on whether or not the following is a question of law or a question of fact - *Is dismissal from the service the proper penalty for the 1st offense of disgraceful and immoral conduct?*

It is settled that for a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. And the distinction is well known. There is a *question of law* when the doubt or differences arise as to what the law is on a certain state of facts. There is a question of fact when the doubt or differences arise as to the truth or the falsehood of alleged facts.[19]

In the case at bench, petitioner no longer disputes the administrative finding of his guilt for the offense of disgraceful and immoral conduct. It is settled and final insofar as he is concerned. What petitioner only impugns is the correctness of the penalty of "dismissal from the service." He is convinced that the proper penalty for the first offense of disgraceful and immoral conduct is only suspension from the service. Undoubtedly, the issue here is a pure question of law. We need only to look at the applicable law or rule and we will be able to determine whether the penalty of dismissal is in order.

We find for petitioner.

Petitioner has all the reasons to seek the aid of this Court since it has been clearly established by evidence that he is a first time offender. Section 23, Rule XIV of the Rules Implementing Book V of Executive Order No. 292 (Otherwise known as the Administrative Code of 1987 and other Pertinent Civil Service Laws)[20] provides:

> "Sec. 23. Administrative offenses with its corresponding penalties are classified into grave, less grave, and light depending on the gravity of its nature and effects of said acts on the government service.
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> The following are grave offenses with its corresponding penalties:
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> x x x x x x
>
> (o) Disgraceful and immoral conduct **<1st Offense, Suspension for six**