

EN BANC

[G.R. No. 123561, July 31, 1997]

**DELIA R. NERVES, PETITIONER, VS. CIVIL SERVICE
COMMISSION, AND COURT OF APPEALS DEPARTMENT OF
EDUCATION CULTURE AND SPORTS, RESPONDENTS.**

D E C I S I O N

BELLOSILLO, J.:

This petition for review on *certiorari* under Rule 45 seeks to set aside the 27 November 1995 and 22 January 1996 Resolutions of the Court of Appeals dismissing the petition for certiorari of Delia R. Nerves filed pursuant to Art. IX-A, Sec. 7, of the Constitution, and Rule 65 of the Rules of Court, for being an inappropriate remedy or wrong mode of appeal.

Petitioner Delia R. Nerves, a teacher of Torres High School, was among the twenty (20) public school teachers who were administratively charged and subsequently dismissed by then Secretary Isidro D. Carino of the Department of Education, Culture and Sports (DECS) for allegedly participating in the mass action/illegal strike of teachers on 19-21 September 1990 at Liwasang Bonifacio and for defying a Return-to-Work Order issued by DECS, which acts constituted grave misconduct, gross neglect of duty, gross violation of Civil Service Law, Rules and Regulations, refusal to perform official duty, gross insubordination, conduct prejudicial to the best interest of the service, and absence without official leave (AWOL), in violation of P.D. No. 807 otherwise known as The Civil Service Decree of the Philippines.^[1]

Petitioner Nerves appealed the DECS Decision to the Merit Systems Protection Board (MSPB) and later, "after a complicated procedure," to the Civil Service Commission (CSC). The CSC set aside the Decision and rendered a new one the dispositive portion of which reads

WHEREFORE, the Commission hereby finds Delia R. Nerves guilty of Conduct Prejudicial to the Best Interest of the Service for which she is meted the penalty of six (6) months suspension. Considering the period of time that she has been out of the service, the penalty of suspension is already deemed served. Accordingly, she is automatically reinstated in the service without back salaries.^[2]

Nerves elevated the CSC Decision to the Court of Appeals in a 26-paged petition filed 21 November 1995 stating among others:

1. This is a petition for certiorari filed pursuant to Article IX-A, Section 7 of the Constitution of the Philippines and under Rule 65 of the Rules of Court.
2. But per Supreme Court Revised Administrative Circular No. 1-95 (Revised Circular

No. 1-91) petitioner is filing the instant petition with this Honorable Court instead of the Supreme Court.^[3]

However, in a Resolution dated 27 November 1995, the Court of Appeals summarily dismissed the petition -

The instant petition for certiorari filed on 21 November 1995 is hereby ordered dismissed outright for being the wrong or inappropriate mode of appeal. (par. 4, Supreme Court Circular No. 2-90, dated 9 March 1990.)

Under Supreme Court Revised Administrative Circular No. 1-95 (Revised Circular No. 1-91) appeals from judgments or final orders or resolutions of the Civil Service Commission is by petition for review (par. 1 and 5, supra.). Petition for certiorari dismissed.^[4]

On 22 January 1996 the motion for reconsideration of the resolution was denied.^[5] Hence the instant petition.

The issue before us is whether respondent Court of Appeals was correct in dismissing outright the petition of 21 November 1995.

Revised Administrative Circular 1-95 (Revised Circular No. 1-91) prescribing the rules governing appeals to the Court of Appeals from judgments or final orders of the Court of Tax Appeals and quasi-judicial agencies pertinently provides -

(4) *Period to appeal.* - The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration filed in due time after judgment x x x x

(5) *How appeal taken.* - Appeal shall be taken by filing a verified petition for review in seven (7) legible copies with the Court of Appeals, a copy of which shall be served on the adverse party and on the court or agency a quo. Proof of service of the petition on the adverse party and on the court or agency a quo shall be attached to the petition. The original copy of the petition intended for the Court of Appeals shall be indicated as such by the petitioner.

Upon filing the petition for review, the petitioner shall pay to the Clerk of Court of the Court of Appeals the docketing and other lawful fees and deposit the sum of P500.00 for costs x x x x

(6) *Contents of the petition.* - The petition for review shall (a) state the full names of the parties to the case, without impleading the lower courts or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record as are referred to therein and other supporting