

**G.R. No. 197762 — CAREER EXECUTIVE SERVICE BOARD, REPRESENTED BY CHAIRPERSON BERNARDO P. ABESAMIS; EXECUTIVE DIRECTOR MA. ANTHONETTE VELASCO-ALLONES; and DEPUTY EXECUTIVE DIRECTOR ARTURO M. LACHICA, Petitioners, v. CIVIL SERVICE COMMISSION, REPRESENTED BY CHAIRMAN FRANCISCO T. DUQUE III; and PUBLIC ATTORNEY'S OFFICE CHIEF PUBLIC ATTORNEY PERSIDA V. RUEDA-ACOSTA; DEPUTY CHIEF PUBLIC ATTORNEYS MACAPANGCAT A. MAMA; SYLVESTRE A. MOSING, REGIONAL PUBLIC ATTORNEYS CYNTHIA M. VARGAS, FRISCO F. DOMALSIN, TOMAS B. PADILLA, RENATO T. CABRIDO, SALVADOR S. HIPOLITO, ELPIDIO C. BACUYAG, DIOSDADO S. SAVELLANO, RAMON N. GOMEZ, MARIE G-REE R. CALINAWAN, FLORENCIO M. DILOY, EDGARDO D. GONZALEZ, NUNILA P. GARCIA, FRANCIS A. CALATRAVA, DATUMANONG A. DUMAMBA, EDGAR Q. BALANSAG; PUBLIC ATTORNEY IV MARVIN R. OSIAS; PUBLIC ATTORNEY IV HOWARD B. AREZA; and PUBLIC ATTORNEY IV IMELDA C. ALFORTE-GANANCIAL, Respondents.**

Promulgated

March 7, 2017

X-----X

**CONCURRING & DISSENTING OPINION**

**BERSAMIN, J.:**

I **CONCUR** in the result, but I have to tender a different view concerning the procedural aspect of the case.

The case was commenced by petition for *certiorari* and prohibition in order to assail the decision of the Civil Service Commission (CSC): (a) assuming jurisdiction over the appeal from the decision of petitioner Career Executive Service Board (CESB); and (b) ruling that certain positions within the Public Attorney's Office (PAO) do not require third-level eligibility.

The main opinion holds that the petitioner's choice of the special civil actions for *certiorari* and prohibition was inappropriate. It reminds that Section 1 and Section 2 of Rule 65 of the *Rules of Court* require the concurrence of a showing: (a) of grave abuse of discretion on the part of the respondent; and (b) that there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law. It holds that the absence of one of the requirements will render the resort to the remedies of the special civil actions for *certiorari* and prohibition inappropriate. Citing *Mahinay v. Court*

of Appeals,<sup>1</sup> it declares that because the decisions of the CSC could be appealed by petition for review in accordance with Rule 43 of the *Rules of Court*, the petitioner should not have resorted to *certiorari* and prohibition, even if grave abuse of discretion was alleged.

It is in respect of this holding that I offer a contrary view.

Section 1 and Section 2 of Rule 65, indeed, require that “there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.” Yet, the requirement does not necessarily mean that the availability of the appeal immediately bars the resort to *certiorari* and prohibition. My understanding is that Rule 65 also contemplates a situation in which appeal or another remedy in the ordinary course of law is available but such appeal or other remedy is not plain, speedy and adequate to address the petitioner’s grievance. The petitioner is then called upon to so allege in the petition for *certiorari* or prohibition and to prove that there is no plain, speedy, and adequate remedy in the ordinary course of law available to him, thus:

[I]t is incumbent upon an applicant for a writ of *certiorari* to allege with certainty in his verified petition facts showing that “there is no appeal, nor any plain, speedy and adequate remedy in the ordinary course of law,” because this is an indispensable ingredient of a valid petition for *certiorari*. “Being a special civil action, petitioner-appellant must allege and prove that he has no other speedy and adequate remedy.” **“Where the existence of a remedy by appeal or some other plain, speedy and adequate remedy precludes the granting of the writ, the petitioner must allege facts showing that any existing remedy is impossible or unavailing, or that excuse petitioner for not having availed himself of such remedy.** A petition for *certiorari* which does not comply with the requirements of the rules may be dismissed.<sup>2</sup> (Bold underscoring is supplied for emphasis)

The phrase *no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law* in Section 1 and Section 2 of Rule 65 simply means that the appeal or other remedy available in the ordinary course of law is not equally beneficial, speedy and adequate. The appropriate remedy should not be merely one that at some time in the future will bring about a revival of the judgment complained of in the *certiorari* proceeding, but one that will promptly relieve the petitioner from the injurious effects of that judgment and the acts of the inferior court or tribunal concerned.<sup>3</sup>

<sup>1</sup> G.R. No. 152457, April 30, 2008, 553 SCRA 171.

<sup>2</sup> *Candelaria v. Regional Trial Court, Branch 42, City of San Fernando, Pampanga*, G.R. No. 173861, July 14, 2014, 730 SCRA 1, 7; citing *Visca v. Secretary of Agriculture and Natural Resources*, G.R. No. 40464, May 9, 1989, 173 SCRA 222, 225.

<sup>3</sup> *A.L. Ang Network, Inc. v. Mondejar*, G.R. No. 200804, January 22, 2014, 714 SCRA 514, 521; citing *Conti v. Court of Appeals*, G.R. No. 134441, May 19, 1999, 307 SCRA 486, 495.

Consequently, the availability of the appeal under Rule 43 as a recourse from the adverse decision of the CSC should not immediately preclude the petitioner's resort to the special civil actions for *certiorari* and prohibition provided the petitioner could sufficiently show that such remedy would not be beneficial, speedy and adequate to address its grievance.

We need to mention, too, that the requirement that there be no other available remedy in the ordinary course of law is not an iron-clad rule. The petition for *certiorari* or prohibition may still prosper despite the availability of such other remedy in certain exceptional circumstances, like: (a) when public welfare and the advancement of public policy so dictate; (b) when the interests of substantial justice so require; or (c) when the questioned order amounts to an oppressive exercise of judicial authority.<sup>4</sup>

As I see it, the petitioner has made out a case that falls under the third exceptional circumstance. The CSC has been alleged to have unduly exercised its jurisdiction over the appeal filed by the Public Attorney's Office (PAO). The petitioner vigorously expressed its opposition to the CSC's jurisdiction over the case. The majority opinion even cites the *Motion for Clarification* of the petitioner made in the CSC to argue against the CSC's jurisdiction because: (a) the appeal by the PAO involved a controversy between two government agencies regarding questions of law; and (b) the petitioner was an autonomous agency whose decisions were appealable to the Office of the President.

The petition for *certiorari* and prohibition laid down the issue of which between the petitioner and the CSC had jurisdiction to resolve the question of eligibility for certain officials of the PAO. On one hand, the CSC asserted its constitutional mandate to exercise jurisdiction over all personnel matters involving government employees; on the other, the petitioner claimed it had jurisdiction over civil service eligibility concerns. Accordingly, the Court should hold instead that the petition for *certiorari* and prohibition was an appropriate remedy for the petitioner because of its allegation that the CSC committed grave abuse of discretion in rendering the assailed decision.<sup>5</sup> It was of no significance that questions of law or of fact, or mixed questions of law or fact may be raised through the petition for review under Rule 43.<sup>6</sup>

The majority opinion cites *Mahinay v. Court of Appeals*,<sup>7</sup> where the Court opined that the remedy against the decision of the CSC was an appeal

---

<sup>4</sup> *Philippine Basketball Association v. Gaité*, G.R. No. 170312, June 26, 2009, 591 SCRA 149, 157-158.

<sup>5</sup> See *Laurel v. Social Security System*, G.R. No. 168707, September 15, 2010, 630 SCRA 464.

<sup>6</sup> Section 3, Rule 43 of the *Rules of Court* states:

Section 3. *Where to appeal.* — An appeal under this Rule may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law. (n)

<sup>7</sup> *Supra* note 1.

by petition for review under Rule 43; hence, *certiorari* did not avail even if the stated ground was grave abuse of discretion.

In my humble view, *Mahinay* is not an apt authority for the case at bar. *Mahinay* involved the bringing of a motion for extension of time to file a petition for *certiorari* in the Court of Appeals (CA) preparatory to assailing the adverse decision rendered by the CSC affirming the petitioner's dismissal from the service. The CA denied the motion on the basis that *certiorari* was the wrong mode to challenge the decision of the CSC and because the motion for extension of time had been filed late. The CA pointed out that the proper mode of appeal was the petition for review under Rule 43 to be filed within 15 days from notice of the resolution considering that the resolution to be assailed was one issued by a quasi-judicial body. The CA later dismissed the petition for *certiorari* ultimately filed by the petitioner to annul the decision of the CSC.

This brings me to my other point for this separate opinion.

Section 1 of Rule 43 provides:

Section 1. *Scope.* — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from **awards, judgments, final orders or resolutions** of or authorized by any quasi-judicial agency **in the exercise of its quasi-judicial functions**. Among these agencies are the **Civil Service Commission**, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (n)

The assailed decision of the CSC was not within the purview of the coverage of Section 1, *supra*, because it was not in the category of the “*awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions*” that were reviewable under Rule 43. It related to the CSC's determination of the strictly legal question of which between the petitioner and CSC had jurisdiction over the question in dispute. The awards, judgments, final orders or resolutions of the CSC reviewable under Rule 43 concern actions and disciplinary measures by or against civil service officers and employees. Consequently, the assailed decision of the CSC could be challenged by

petition for *certiorari* and prohibition provided the requisites for the challenge were properly alleged and duly established.

Nonetheless, I **VOTE TO DISMISS** the petition because the main opinion is otherwise correct.



LUCAS P. BERSAMIN  
Associate Justice