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WILFREDO V. LAPITAN
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Third Division
SEP 2 ? 2016

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

LOCAL WATER UTILITIES ADMINISTRATION EMPLOYEES ASSOCIATION FOR PROGRESS (LEAP), MELANIO B. CUCHAPIN II, GREARDO[*] G. PERU, ROLAND S. CABAHUG, GLORIA P. VELASQUEZ, ERLINDA G. VILLANUEVA, TEODORO M. REYNOSO, FERNANDO L. NICANDRO, JOSEPHINE P. SIMENE, LAMBERTO R. RIVERA, REYNALDO M. VIDA, and RUCTICO[**] B. TUTOL,
Petitioners,

- *versus* -

LOCAL WATER UTILITIES ADMINISTRATION (LWUA) and DEPARTMENT OF BUDGET AND MANAGEMENT,
Respondents.

G.R. No. 206808-09

Present:

VELASCO, JR., *J.*, *Chairperson*,
PERALTA,
PEREZ,
REYES,[***] and
LEONEN,[****] *JJ.*

Promulgated:

September 7, 2016

x - x

D E C I S I O N

PERALTA, *J.*:

Challenged in the present petition for *certiorari* under Rule 65 of the Rules of Court are the Decision[1] and Resolution[2] of the Court of Appeals (*CA*), dated August 28, 2012 and January 15, 2013, respectively, in two (2) consolidated cases docketed as CA-G.R. SP Nos. 100482 and 100662. The assailed CA Decision reversed and set aside the: (1) December 7, 2006

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* Spelled as "Gerardo" in other parts of the *rollo* and records.

** Spelled as "Rustico" in other parts of the *rollo* and records.

*** On wellness leave.

**** Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 1, 2014.

1 Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Japar B. Dimaampao and Victoria Isabel A. Paredes, concurring; Annex "B" to "B-1" to Petition, *rollo*, pp. 37-64.

2 Annex "A" to Petition, *id.* at 34-36.

Order[3] of the Regional Trial Court (*RTC*) of Quezon City, Branch 92 in SP. Proc. No. Q-06-59047, which granted petitioners' prayer for the issuance of a writ of preliminary injunction; and (2) the June 6, 2007 Resolution[4] of the RTC which denied respondents' Motion for Reconsideration. The questioned CA Resolution denied herein petitioners' Motion for Reconsideration.

The facts of the case are as follows:

On February 2, 2004, former President Gloria Macapagal-Arroyo enacted Executive Order (*E.O.*) No. 279[5] for the purpose of reviewing and rationalizing the then existing financing policies for the Philippine water supply and sewerage sector to allow for the efficient flow of resources thereto. Under the said E.O., all concerned government agencies and instrumentalities of the water supply and sewerage sector, which includes, among others, the Local Water Utilities Administration (*LWUA*), were directed to pursue and implement reform objectives and policies. The said E.O. particularly provided for the rationalization of LWUA's organizational structure and operations.

On October 4, 2004, President Arroyo issued E.O. No. 366 directing all departments of the executive branch and their component units/bureaus including government-owned and controlled corporations, boards, task forces, councils, commissions and all other agencies attached thereto or under the administrative supervision of a Department, to conduct a strategic review of the operations and organization of the Executive Branch and to prepare a rationalization plan which includes the phasing of activities and availment of incentives by affected employees.

On April 13, 2005, President Arroyo issued E.O No. 421,[6] specifying LWUA's core functions and providing for shifts in its policy direction, functions, programs, activities and strategies. Cognizant of the effect of the rationalization of the functions of LWUA, the E.O. gave affected LWUA personnel the option to either remain or retire, or be separated from government service.

Pursuant to the provisions of E.O. No. 421, then LWUA Administrator Lorenzo Zamora came up with Office Order No. 077-05 creating Task Force 421 and its Action Team. The said Task Force was charged, among others,

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3 Annex "C" to Petition, *id.* at 65-67.

4 Annex "D" to Petition, *id.* at 68-70.

5 Entitled, *Instituting Reforms in the Financing Policies for the Water Supply and Sewerage Sector and Water Service Providers and Providing for the Rationalization of the Local Water Utilities Administration's Organizational Structure and Operations in Support Thereof.*

6 Entitled *Implementing the Refocusing of Functions and Organizational Structure of the Local Water Utilities Administration under E.O. No. 279 and Providing Options and Benefits for Employees Who May Be Affected Thereon.*

with the duty of preparing the LWUA's staffing pattern and the corresponding plantilla positions therein as directed by E.O. No. 421. The Action Team, on the other hand, was given the responsibility of reporting to the Task Force and assisting it in the execution of its duties and responsibilities. Among the appointed members of the Action Team was herein petitioner Melanio Cuchapin II, who was then the Chairperson of petitioner LWUA Employees' Association for Progress (*LEAP*). Subsequently, Task Force 421 was able to come up with a staffing pattern, consisting of 467 plantilla positions which it submitted to the LWUA Board of Trustees for approval.

On April 18, 2006, the LWUA Board of Trustees issued Board Resolution No. 69 which approved the staffing pattern proposed by Task Force 421. Thereafter, the approved staffing pattern was submitted to the Department of Budget and Management (*DBM*) for review and approval.

In its letter dated September 27, 2006, the DBM approved 447 plantilla positions out of the 467 proposed positions. Twenty (20) positions were excluded from the plantilla because they were classified as co-terminous with the members of the LWUA Board of Trustees and are not considered critical in the agency's operations.

On October 18, 2006, LWUA issued Office Order No. 168-06 requiring the immediate implementation of the following: (a) posting of the DBM-approved staffing pattern; (b) finalization by the Staffing Committee of the staffing guidelines to be submitted to the Management and the Board of Trustees for approval; and (c) finalization by the Task Analysis Committee of the job descriptions under the rationalized LWUA structure. The said Office Order also provided that the guidelines for the implementation of the approved staffing pattern shall include a general provision declaring that all employees may apply for a maximum of five positions in the rationalized structure where they may qualify.

On October 19, 2006, petitioners filed a petition for *certiorari*, prohibition and *mandamus* with prayer for temporary restraining order (*TRO*) and preliminary injunction with the RTC of Quezon City. Alleging that LWUA and DBM acted with grave abuse of discretion in adopting and implementing the reorganization plan of LWUA, petitioners prayed that LWUA and DBM be restrained from implementing the following: (1) DBM-approved staffing pattern; (2) Resolution No. 69 of the LWUA Board of Trustees, and (3) E.O. Nos. 279, 366 and 421, on the ground that petitioners will suffer injustice and sustain irreparable injury as 233 LWUA employees face immediate and outright dismissal from service.

Respondents filed their respective Oppositions to the petitioners' prayer for TRO and/or preliminary injunction.

After hearing, the RTC issued its assailed Order[7] granting petitioners' prayer for the issuance of a writ of preliminary injunction, disposing as follows:

> **WHEREFORE**, let a writ of preliminary injunction be issued, restraining the respondents from enforcing and effecting the assailed questioned DBM-Approved Staffing Pattern dated 27 September 2006, LWUA Board Resolution No. 69, series of 2006, and Executive Order Nos. 279, 366 and 421, including the issuance of any orders, resolutions and/or decisions relating to the same, upon the filing of a bond in the amount of one hundred thousand (₱100,000.00) pesos for any damage that may be sustained by the respondents by reason of the injunction if the Court will finally decide that the petitioners are not entitled thereto.
>
> **SO ORDERED**.[8]

LWUA and DBM filed separate Motions for Reconsideration, but these were denied in the RTC's questioned Resolution[9] dated June 6, 2007.

LWUA and DBM then filed separate special civil actions for *certiorari* with the CA questioning the subject RTC Order and Resolution. These petitions were subsequently consolidated.

On August 28, 2012, the CA promulgated its presently disputed Decision, with the following dispositive portion:

> **WHEREFORE**, the instant petitions are **GRANTED**. Accordingly, the Order dated 07 December 2006 and the Resolution dated 06 June 2007 issued by Branch 92 of the Regional Trial Court in Quezon City in SP Proc. No. Q-06-59047 are **REVERSED** and **SET ASIDE**. The Writ of Preliminary Injunction issued by the said court pursuant to its Order dated 07 December 2006 is **LIFTED** and **SET ASIDE**.
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> **SO ORDERED**.[10]

Petitioners filed a Motion for Reconsideration, but the CA denied it in its Resolution dated January 15, 2013.

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7 Annex "C" to Petition, *rollo*, pp. 65-67.
8 *Id.* at 67. (Emphasis in the original)
9 Annex "D" to Petition, *id.* at 68-70.
10 *Rollo*, p. 63. (Emphasis in the original)

Hence, the instant petition based on the following grounds:

> 6.1 THE HONORABLE FOURTEENTH DIVISION OF THE COURT OF APPEALS ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN ISSUING THE RESOLUTION DATED 15 JANUARY 2013, DENYING THE INSTANT MOTION FOR RECONSIDERATION FILED BY THE PETITIONERS AND AFFIRMING THE DECISION PROMULGATED ON 28 AUGUST 2012, AND REVERSING THE DECISION OF THE TRIAL COURT.
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> 6.2 THE RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION IN HOLDING THAT THE PETITIONERS ARE NOT ENTITLED TO THE [INJUNCTIVE] WRIT.
>
> 6.3 THERE IS NO APPEAL, OR ANY PLAIN AND SPEEDY REMEDY IN THE ORDINARY COURSE OF LAW OTHER THA[N] THE INSTANT PETITION.[11]

At the outset, the Court notes that in its Decision[12] dated December 27, 2012, the RTC dismissed the petition for *certiorari*, *mandamus* and prohibition which was filed by petitioners on the ground of lack of justiciable controversy and resort to a wrong remedy.

On this basis, the Court deems it proper to address the procedural matters raised by respondents as it finds the instant petition dismissible for reasons to be discussed hereunder.

First, is the propriety of the remedy availed of by petitioners. Petitioners come to this Court questioning the Decision and Resolution of the CA via a special civil action for *certiorari* contending that there is "a very urgent need to resolve the issues presented herein and considering that public respondents are hell-bent on proceeding with [the] removal and deprivation of economic benefits, causing great injury to petitioners and LWUA employees, and having no other plain, speedy and adequate remedy in the ordinary course of the law x x x."[13]

It is settled that a petition for *certiorari* under Rule 65 of the Rules of Court is a pleading limited to correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. Its principal office is to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to

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11 *Id.* at 16.
12 *Id.* at 105-121.
13 *Id.* at 9.

lack or excess of jurisdiction. It may issue only when the following requirements are alleged in and established by the petition: (1) that the writ is directed against a tribunal, a board or any officer exercising judicial or quasi-judicial functions; (2) that such tribunal, board or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) that there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law.[14]

This Court has repeatedly held that a special civil action for *certiorari* under Rule 65 of the Rules of Court is proper only when there is neither appeal nor plain, speedy and adequate remedy in the ordinary course of law. The extraordinary remedy of *certiorari* is not a substitute for a lost appeal; it is not allowed when a party to a case fails to appeal a judgment to the proper forum, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse.[15]

On the other hand, Section 1, Rule 45 of the Rules of Court provides that the proper remedy to question a judgment, final order or resolution of the CA, as in the present case, is a petition for review on *certiorari* regardless of the nature of the action or proceeding involved.[16] The petition must be filed within fifteen (15) days from notice of the judgment, final order or resolution appealed from; or of the denial of petitioner's motion for reconsideration filed in due time after notice of the judgment.[17]

This Court has ruled that because an appeal was available to the aggrieved party, the action for *certiorari* would not be entertained. We emphasized in that case that the remedies of appeal and *certiorari* are mutually exclusive, not alternative or successive.[18] Where an appeal is available, *certiorari* will not prosper, even if the ground is grave abuse of discretion.[19]

By filing the present special civil action for *certiorari* under Rule 65, petitioners, therefore, clearly availed themselves of the wrong remedy. Under Supreme Court Circular 2-90, an appeal taken to this Court or to the CA by a wrong or an inappropriate mode merits outright dismissal. On this score alone, the instant petition is dismissible.

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14 *Tan v. Spouses Antazo*, 659 Phil. 400, 403-404 (2011).

15 *Leonardo L. Villalon v. Renato E. Lirio*, G.R. No. 183869, August 3, 2015.

16 *Indoyon, Jr. v. Court of Appeals*, 706 Phil. 200, 208 (2013); *Spouses Leynes v. Former Tenth Division of the Court of Appeals, et al.*, 655 Phil. 25, 44-45 (2011)

17 *Indoyon , Jr. v. Court of Appeals, supra* note 16.

18 *Leonardo L. Villalon v. Renato E. Lirio, supra* note 15.

19 *Id.*

The second issue raised by respondents that the dismissal of petitioners' principal action for *certiorari*, prohibition and *mandamus* filed with the RTC results in the automatic dissolution of the ancillary writ of preliminary injunction issued by the same court.

The Court agrees with respondents.

A writ of preliminary injunction is an order granted at any stage of an action or proceeding prior to the judgment or final order, requiring a party or a court, agency or a person to refrain from a particular act or acts.[20] It is merely a provisional remedy, adjunct to the main case subject to the latter's outcome. It is not a cause of action in itself. The writ is provisional because it constitutes a temporary measure availed of during the pendency of the action and it is ancillary because it is a mere incident in and is dependent upon the result of the main action.[21] Being an ancillary or auxiliary remedy, it is available during the pendency of the action which may be resorted to by a litigant to preserve and protect certain rights and interests therein pending rendition, and for purposes of the ultimate effects, of a final judgment in the case.[22]

It is well settled that the sole object of a preliminary injunction, whether prohibitory or mandatory, is to preserve the *status quo* until the merits of the case can be heard.[23] It is usually granted when it is made to appear that there is a substantial controversy between the parties and one of them is committing an act or threatening the immediate commission of an act that will cause irreparable injury or destroy the *status quo* of the controversy before a full hearing can be had on the merits of the case.[24] It persists until it is dissolved or until the termination of the action without the court issuing a final injunction.[25]

Indubitably, in the present case, the writ of preliminary injunction was granted by the RTC based on its finding that there was a need to protect petitioners' rights to security of tenure during the pendency of the principal action. After trial, however, the lower court found, among others, that, in questioning the constitutionality of E.O. Nos. 279, 366 and 421 as well as Resolution No. 69 of the LWUA Board of Trustees, petitioners failed to establish the existence of an actual case or controversy which is ripe for judicial determination. Thus, the RTC dismissed the principal action for *certiorari*, prohibition and *mandamus*.

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20 *Buyco v. Baraquia*, 623 Phil. 596, 600 (2009).
21 *Id.* at 601.
22 *Id.* at 600-601.
23 *Id.* at 601.
24 *Id.*
25 *United Alloy Philippines Corporation v. United Coconut Planters Bank, et al.*, G.R. No. 179257, November 23, 2015.

The principal action having been heard and found dismissible as it was in fact dismissed, the writ of preliminary injunction issued by the RTC is deemed lifted, its purpose as a provisional remedy having been served, the appeal from the main case notwithstanding.[26] In this regard, this Court's ruling in the case of *Unionbank of the Philippines v. Court of Appeals*[27] is instructive, to wit:

> x x x "a dismissal, discontinuance or non-suit of an action in which a restraining order or temporary injunction has been granted operates as a dissolution of the restraining order or temporary injunction," regardless of whether the period for filing a motion for reconsideration of the order dismissing the case or appeal therefrom has expired. The rationale therefor is that even in cases where an appeal is taken from a judgment dismissing an action on the merits, the appeal does not suspend the judgment, hence the general rule applies that a temporary injunction terminates automatically on the dismissal of the action.[28]

Finally, the Court agrees with the RTC and the CA that even assuming that petitioners have a valid cause of action, in that their security of tenure may be violated as a result of their transfer or termination from service, the law, particularly Republic Act No. 6656[29] (*RA 6656*), provides them with ample remedies to address their alleged predicament, prior to filing an action in court. Sections 7 and 8 of RA 6656 provide, thus:

> **Section 7.** A list of the personnel appointed to the authorized positions in the approved staffing pattern shall be made known to all the officers and employees of the department or agency. **Any of such officers and employees aggrieved by the appointments made may file an appeal with the appointing authority who shall make a decision within thirty (30) days from the filling thereof.**
>
> **Section 8. An officer or employee who is still not satisfied with the decision of the appointing authority may further appeal within ten (10) days from the receipt thereof to the Civil Service Commission which shall render a decision thereon within thirty (30) days and whose decision shall be final and executory.**[30]

Under the doctrine of exhaustion of administrative remedies, before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her.[31] Hence, if resort to a remedy within the administrative

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[26] *Buyco v. Baraquia, supra* note 20, at 601; *Spouses Arevalo v. Planters Development Bank, et al.*, 686 Phil. 236, 246-247 (2012).

[27] 370 Phil. 837 (1999).

[28] *Id.* at 845-846. (Citations omitted)

[29] *An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization.*

[30] Emphasis supplied.

[31] *Maglalang v. Philippine Amusement and Gaming Corporation*, 723 Phil. 546, 556 (2013).

machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought.[32] The premature invocation of the intervention of the court is fatal to one's cause of action.[33] The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies.[34] Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case.[35]

Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact.[36]

Thus, petitioners should have first brought their case to the appointing authority, which in this case, is the LWUA Board of Trustees, and, thereafter, to the Civil Service Commission, which has primary jurisdiction over the case. On the basis of the abovequoted provisions, it is clear that petitioners failed to exhaust the administrative remedies given them by law before resorting to the filing of a petition for *certiorari,* prohibition and *mandamus*.

WHEREFORE, the instant petition is **DISMISSED**. The Decision and Resolution of the Court of Appeals, dated August 28, 2012 and January 15, 2013, respectively, in CA-G.R. SP Nos. 100482 and 100662 are **AFFIRMED**.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

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32 *Id.*
33 *Id.*
34 *Id.* at 556-557.
35 *Id.* at 557.
36 *Addition Hills Mandaluyong Civic & Social Organization, Inc. v. Megaworld Properties & Holdings, Inc., et al.*, 686 Phil. 76, 82 (2012).

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

JOSE PORTUGAL PEREZ
Associate Justice

On wellness leave
BIENVENIDO L. REYES
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice

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Third Division
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