



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

MAREY BETH D. MARZAN,  
Petitioner,

G.R. No. 232769

Present:

- versus -

PERALTA, C.J., *Chairperson*,  
CAGUIOA,  
CARANDANG,  
ZALAMEDA, and  
GAERLAN, JJ.

CITY GOVERNMENT OF  
OLONGAPO, HON. ROLEN  
C. PAULINO, ANGIE  
SOCORRO S. BARROGA,  
and ARCHITECT TONY  
KAR BALDE III,  
Respondents.

Promulgated:

NOV 03 2020 *withheld*

X -----X

DECISION

CAGUIOA, J.:

*The Case*

This is a Petition for Review on *Certiorari*<sup>1</sup> (Petition) filed under Rule 45 of the Rules of Court against the Decision<sup>2</sup> dated October 26, 2016 (assailed Decision) and Resolution<sup>3</sup> dated July 4, 2017 (assailed Resolution) in CA G.R. SP No. 139549 rendered by the Court of Appeals<sup>4</sup> (CA).

The assailed Decision and Resolution affirmed the following issuances of the Regional Trial Court (RTC) of Olongapo City, Branch 72 in Civil Case No. 113-0-2013:

1. Decision dated October 2, 2014 which dismissed the “Petition for *Mandamus* with Prayer for Writ of Preliminary Mandatory Injunction, Damages, and Attorney’s Fees” (Petition for *Mandamus* or RTC Petition) filed by petitioner Marey Beth D. Marzan (Marzan); and

<sup>1</sup> *Rollo*, pp. 6-29, excluding Annexes.

<sup>2</sup> *Id.* at 31-53. Penned by Associate Justice Maria Elisa Sempio Diy, with the concurrence of Associate Justices Ramon M. Bato, Jr. and Pedro B. Corales.

<sup>3</sup> *Id.* at 55-56.

<sup>4</sup> Special Twelfth Division and Former Special Twelfth Division, respectively.

2. Order dated January 15, 2015 denying Marzan's motion for reconsideration.

*The Facts*

The facts, as narrated by the CA, are as follows:

On January 16, 2008, [Marzan] was appointed as City Government Department Head II [of] the City Planning and Development Office of Olongapo City [(CPDO)]. The appointment was issued by then City Mayor James Gordon, Jr. [(Mayor Gordon)] and approved by the Civil Service Commission [(CSC)] on June 7, 2011.

**On December 1, 2011, Mayor Gordon issued a Memorandum appointing [Marzan] as City Budget Officer (City Government Department Head II) of the City Budget Office [(CBO)]. [Marzan] was to discharge said functions concurrently with her functions as Zoning Administrator/Zoning Officer. According to [Marzan], Mayor Gordon directed [respondent Angie Socorro S. Barroga (Barroga), as Acting Chief Administrative Officer of the Human Resource Management Office of Olongapo City,<sup>5</sup>] to facilitate [Marzan's] lateral transfer to her concurrent position as Budget Officer.**

[On May 6, 2013, Rolen C. Paulino (Mayor Paulino) was elected as mayor of Olongapo City.<sup>6</sup> Upon assumption into office, Mayor Paulino appointed respondent Tony Kar Balde, III (Balde) to Marzan's former position as Department Head II of the CPDO.]<sup>7</sup>

On August 16, 2013, however, the [CSC], through Director Carlos P. Rabang [(Director Rabang)], wrote [Mayor Paulino] informing the latter of the disapproval of [Marzan's] appointment as City Government Department Head II of the [CBO]. **The ground for the disapproval of [Marzan's] appointment was the discrepancy between the date the appointment was signed by Mayor Gordon [(November 16, 2012)<sup>8</sup>] and [its] approval by the Sangguniang Panglungsod [(December 21, 2011)<sup>9</sup>].**

**On August 29, 2013, [Barroga] wrote a letter [(City Termination Letter)] to [Marzan] informing [her] that the City Government of Olongapo would be terminating her services effective September 14, 2013 on the basis of the August 16, 2013 letter of [Director Rabang] [(August 2013 CSC Letter)]. The [City Termination Letter] was noted by Mayor Paulino.**

On even date, [Marzan] wrote a letter to the [CSC] Regional Office III inquiring as to the effect of the disapproval of her appointment as City Government Department Head II of the [CBO]. [Marzan] sought clarification on the following matters:

1. Who is the accountable officer responsible in ensuring compliance [with] the CSC [r]ules on [a]ppointment

<sup>5</sup> *Rollo*, p. 8.

<sup>6</sup> *Id.* at 9.

<sup>7</sup> See Reply, *id.* at 109.

<sup>8</sup> Petition, *id.* at 22.

<sup>9</sup> *Id.*



relative to the documentary requirements of my appointment?

2. x x x x

a. x x x

b. Does the [d]isapproval of a [t]ransfer [a]ppointment of a permanent employee result [in] termination of services?

c. What is my status following such disapproval? Am I deemed separated from service as alleged or shall I revert x x x to my [previous] CSC-approved position as per CSC [r]ules? x x x

x x x x

On September 4, 2013, [Marzan] wrote back to [Barroga stating that] nowhere in the [August 2013 CSC Letter] was it mentioned that her services were being terminated. [Marzan] further explained that [said letter] merely stated that while [Marzan] met the minimum qualifications for the position of City Government Department Head II for the [CBO], the reason for the disapproval of her appointment was the accountable officer's failure to perform the latter's ministerial duty of facilitating [her] appointment. [Marzan] thus inquired as to [which] specific [term of] service was being referred to in [the City Termination Letter] considering that prior to [the disapproval of her] appointment as City Government Head II for the [CBO], she was holding the permanent position of City Government Department Head II of the [CPDO]. [Marzan] further cited the provision in the Civil Service Law which allegedly provides that a disapproved permanent appointment results in automatic reversion [to] the previously approved appointment x x x. On September 6, 2013, [Barroga replied to [Marzan's letter, reiterating that her] service to the [C]ity [G]overnment of Olongapo would only be until September 14, 2013.

[Marzan], in the meantime, continued to report for work. On September 13, 2013, [Marzan] wrote a letter addressed to Mayor Paulino and [Barroga] informing them of her letter to the [CSC] Regional Office x x x. [Marzan] also informed [them] that [CSC] Provincial Director Cristina Gonzales advised [her] to await the Regional Office's reply x x x. [Marzan] likewise informed [Mayor Paulino and Barroga] that status quo will have to be observed in the meantime while the [CSC] Regional Office resolves [her query]. Consequently, [Marzan] informed [Mayor Paulino and Barroga] that x x x she cannot heed [the latter's] directive for her to cease working for the [C]ity [G]overnment. x x x The records show that [Marzan's] letter was received by the Office of the City Mayor of Olongapo at 4:00 o'clock in the afternoon. x x x [T]he records likewise show that [Barroga] received a copy of said letter on the same date.

At about 5:00 o'clock in the afternoon of the same date, [Marzan] was shocked and surprised when upon opening the door of her office, she saw six (6) men from the Civil Security Service Unit and [Balde] in her office. x x x [Balde] x x x insisted that [Marzan] remove her things immediately [and] further instructed his men to forthwith evict [Marzan from her office]. x x x



On September 16, 2013, [Marzan] wanted to report for work. However, she received a text message x x x informing her that men were manning her work area with instruction[s] to prevent her from coming to work. x x x To avoid embarrassment, [Marzan] decided not to work on that day. x x x

On September 24, 2013, [Marzan] received a letter dated September 18, 2013 [(September 2013 CSC Letter)] from Director Rabang [informing her] that as a matter of policy, his office does not render opinions or give categorical answers to queries which may later be brought before it on appeal. However, Director Rabang answered [Marzan's] queries in accordance with the Civil Service laws, rules and regulations x x x[.]<sup>10</sup>

On September 30, 2013, [Marzan], accompanied by her sister, met with Mayor Paulino to inquire if the latter was aware of the cessation order issued to [Marzan]. Mayor Paulino allegedly admitted that while the order was his own decision, [it] was based on [Barroga's recommendation].<sup>11</sup> (Emphasis and underscoring supplied)

### *RTC Proceedings*

Aggrieved, Marzan filed with the RTC a Petition for *Mandamus* against the City Government of Olongapo, Mayor Paulino, Barroga and Balde (collectively, respondents).<sup>12</sup>

The RTC Petition prayed for the following reliefs:

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<sup>10</sup> Pertinent portions of the September 2013 CSC Letter read:

On the 1<sup>st</sup> issue, your agency Human Resource Management Office [(HRMO)] shall be responsible that all documentary requirements to support the appointments issued have been complied with and found to be in order as provided for under Section 1, Rule VII of the Omnibus Rules on Appointments and Other Personnel Actions. This is evidenced by the certification of the HRMO at the back of the appointment. x x x

On the 2<sup>nd</sup> issue, the services of a permanent employee in the government may be terminated only after the final disapproval of his/her appointment and/or upon the order of a competent court/authority that has become final and executory.

On the 3<sup>rd</sup> issue, Section 13, Rule V of the Omnibus Civil Service Rules and Regulations provides as follows:

Section 13. All appointments involved in a chain of promotions must be submitted simultaneously for approval by the [CSC]. The disapproval of the appointment of a person proposed to a higher position invalidates the promotion of those in lower positions and automatically restores them to their former positions. x x x.

On the 4<sup>th</sup> issue, the appointing authority being the disciplining person is the authorized person to terminate your services in accordance with the Civil Service Law, rules and regulations.

x x x x

On the last issue, your allegation that you were not allowed by your Office to be restored to your former position as City Government Department Head [CPDO] after the disapproval of your transfer appointment is a legal matter that may be brought to the [CSC] in the form of an appeal pursuant to Section 110, Rule 23 of the Revised Rules on Administrative Cases in the Civil Service. *Rollo*, pp. 36-37.

<sup>11</sup> *Rollo*, pp. 32-38.

<sup>12</sup> *Id.* at 38.

1. The issuance of a writ of preliminary mandatory injunction directing respondents to immediately reinstate Marzan as Department Head of the CPDO;
2. The issuance of a writ of *mandamus* commanding respondents to respect Marzan's rights and allow her to perform her functions as Department Head of the CPDO;
3. Payment of: (i) moral damages amounting to ₱250,000.00; (ii) exemplary damages amounting to ₱100,000.00; (iii) attorney's fees and expenses of litigation amounting to ₱100,000.00; and (iv) costs of suit.<sup>13</sup>

Respondents filed their Joint Answer to the RTC Petition.

First, respondents alleged that when Marzan was appointed as Department Head of the CBO, she vacated her position as Department Head of the CPDO. Thus, Mayor Paulino acted within his authority as local chief executive when he appointed Balde to fill the vacant position. According to respondents, Marzan's reinstatement would effectively impair Mayor Paulino's power to appoint.<sup>14</sup>

In addition, respondents argued that Marzan's reliance on Section 13 of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws (Omnibus Rules) is misplaced. Respondents averred that in order for Section 13 to apply, there must be a series of promotions which are simultaneously submitted to the CSC for approval. Respondents stressed that these circumstances do not obtain in this case.<sup>15</sup>

Finally, respondents asserted that Marzan's resort to *mandamus* is premature. According to respondents, Marzan should have exhausted available administrative remedies by seeking reconsideration of her termination before the Office of the City Mayor, and subsequently, by filing an appeal with the CSC Regional Office.<sup>16</sup>

On January 6, 2014, the RTC denied Marzan's prayer for injunctive relief. Marzan's subsequent motion for reconsideration was also denied.<sup>17</sup>

Thereafter, the RTC directed the parties to file their respective memoranda on the substantive issues.<sup>18</sup>

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<sup>13</sup> Id.

<sup>14</sup> Id. at 38-39.

<sup>15</sup> Id. at 39.

<sup>16</sup> See id.

<sup>17</sup> Id. at 39-40.

<sup>18</sup> Id. at 39.



On October 2, 2014, the RTC issued a Decision dismissing the Petition for *Mandamus*.<sup>19</sup>

On the procedural aspect, the RTC held that Marzan failed to exhaust available administrative remedies.<sup>20</sup>

On the substantive issues, the RTC agreed with respondents' assertion that Marzan vacated her position as Department Head of the CPDO upon acceptance of her appointment as Department Head of the CBO. As basis, the RTC cited the Appropriations Act of Olongapo City<sup>21</sup> which tagged Marzan's old position as vacant. The RTC noted that Marzan must have been aware of such fact, as she was a member of the finance committee that was tasked to prepare the city's budget.<sup>22</sup>

Finally, the RTC ruled that *mandamus* cannot issue to compel Marzan's reinstatement, such act being discretionary on the part of Mayor Paulino as appointing authority.<sup>23</sup>

Marzan filed a motion for reconsideration which the RTC also denied in its Order dated January 15, 2015.<sup>24</sup>

#### *CA Proceedings*

Unsatisfied, Marzan filed an appeal with the CA *via* Rule 42 of the Rules of Court. Therein, Marzan questioned the dismissal of the Petition for *Mandamus* without having undergone a full-blown trial. As well, she maintained that her immediate resort to *mandamus* was proper.

On October 26, 2016, the CA issued the assailed Decision, the dispositive portion of which reads:

**WHEREFORE**, in view of the foregoing, the appeal is **DENIED**.  
The October 2, 2014 Decision and the January 15, 2015 Order of [the RTC] are **AFFIRMED**.

**SO ORDERED.**<sup>25</sup>

Foremost, the CA held that under Rule 65, a full-blown hearing is not required prior to the resolution of a petition for *mandamus*.<sup>26</sup>

Further, the CA echoed the RTC's findings with respect to Marzan's failure to exhaust all available administrative remedies. However, the nature

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<sup>19</sup> Id. at 40.

<sup>20</sup> Id.

<sup>21</sup> Ordinance No. 27, series of 2012.

<sup>22</sup> *Rollo*, p. 40.

<sup>23</sup> Id. at 41.

<sup>24</sup> Id.

<sup>25</sup> Id. at 52.

<sup>26</sup> Id. at 43.



of the issues raised by Marzan precludes outright dismissal on procedural grounds, inasmuch as these issues relate to her right to security of tenure.<sup>27</sup>

Nonetheless, the CA held that Marzan's action fails on the merits.

Citing *Divinagracia, Jr. v. Sto. Tomas*<sup>28</sup> (*Divinagracia*), the CA held that Section 13 of the Omnibus Rules does not apply, as Marzan's movement from the CPDO to the CBO was a lateral transfer, and not a promotion contemplated under the Omnibus Rules.<sup>29</sup> Thus, contrary to Marzan's claims, her reinstatement as Department Head of the CPDO is *not* automatic, but rather discretionary on the part of the appointing authority. For this reason, Marzan's prayer for issuance of a writ of *mandamus* cannot prosper.<sup>30</sup>

The CA also denied Marzan's subsequent motion for reconsideration through the assailed Resolution.<sup>31</sup>

Marzan, through counsel, received a copy of the assailed Resolution on July 18, 2017.<sup>32</sup>

On August 1, 2017, Marzan filed a Motion for Extension of Time to File Petition for Review,<sup>33</sup> praying for an additional period of thirty (30) days from August 1, 2017, or until August 31, 2017 to file her petition for review.

On August 31, 2017, Marzan filed this Petition.

In compliance with the Court's Resolution dated June 6, 2018, respondents filed their Joint Comment on the Petition,<sup>34</sup> to which Marzan filed her Reply.<sup>35</sup>

In this Petition, Marzan insists that she was unlawfully removed from a permanent government position in violation of "pertinent Civil Service Laws".<sup>36</sup> Hence, Marzan prays that she be reinstated to her former position as Department Head of the CPDO. As well, Marzan reiterates her claim for moral and exemplary damages, attorney's fees, litigation expenses, and costs of suit.<sup>37</sup>

### *The Issues*

The issues presented for the Court's resolution are:

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<sup>27</sup> See *id.* at 46-48.

<sup>28</sup> 314 Phil. 550 (1995).

<sup>29</sup> See *rollo*, pp. 48-49.

<sup>30</sup> *Id.* at 51-52.

<sup>31</sup> *Id.* at 55-56.

<sup>32</sup> *Id.* at 8.

<sup>33</sup> *Id.* at 3-4.

<sup>34</sup> *Id.* at 75-81.

<sup>35</sup> *Id.* at 107-114.

<sup>36</sup> See *id.* at 23.

<sup>37</sup> *Id.* at 110-111.



1. Whether Marzan's immediate resort to judicial remedies was proper; and
2. Whether *mandamus* will lie to compel respondents to reinstate Marzan as Department Head of the CPDO.

### *The Court's Ruling*

The Court rules in favor of respondents.

*As an exception to the rule on exhaustion of administrative remedies, immediate resort to judicial remedies may be allowed if the issue involved presents a pure question of law.*

The Administrative Code of 1987<sup>38</sup> (Administrative Code) constitutes the CSC as the central personnel agency of the government.<sup>39</sup> As such, the CSC is authorized to “[p]rescribe, amend and enforce rules and regulations [to carry] into effect the provisions of the Civil Service Law and other pertinent laws.”<sup>40</sup> The CSC is also empowered to “[h]ear and decide administrative cases instituted by or brought before it directly or on appeal x x x.”<sup>41</sup>

Prevailing at the time of the disapproval of Marzan's appointment as Department Head of the CBO and her consequent termination from service was CSC Memorandum Circular No. 40-98<sup>42</sup> (CSC MC No. 40-98) or the Revised Omnibus Rules on Appointments and Other Personnel Actions.

Rule VI of CSC MC No. 40-98 governs the submission, approval and disapproval of civil service appointments. Its relevant provisions state:

SEC. 1. An appointment shall be submitted to the [CSC] within thirty (30) calendar days from the date of issuance, which shall be the date indicated below the signature of the appointing authority. Otherwise it shall be made effective thirty (30) days prior to date of submission to CSC.

In case of appointments issued by accredited agencies, the Report of Personnel Actions (ROPA) together with photocopies of appointments issued during the month shall be submitted within [fifteen (15)] days of the succeeding month. Appointments not submitted within the prescribed period shall be made effective [thirty (30)] days prior to date of submission.

If the appointee does not assume office within thirty (30) calendar days from receipt of the approved appointment, the same may be cancelled

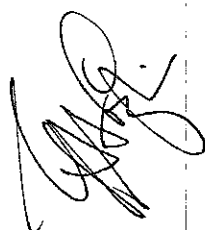
<sup>38</sup> Executive Order No. 292, INSTITUTING THE “ADMINISTRATIVE CODE OF 1987,” July 25, 1987.

<sup>39</sup> ADMINISTRATIVE CODE OF 1987, Book V, Title I, Subtitle A, Chapter 1, Sec. 1.

<sup>40</sup> Id., Chapter 3, Sec. 12(2).

<sup>41</sup> Id., Chapter 3, Sec. 12(11).

<sup>42</sup> Issued on December 14, 1998.





by the appointing authority and reported to the [CSC] for record purposes. The position is automatically deemed vacant without the need for an approval or declaration by the [CSC].

If the appointee is not allowed to assume office by the appointing authority despite of the [CSC's] approval of the appointment, said official shall be held administratively liable therefor.

SEC. 2. Request for reconsideration of, or appeal from, the disapproval of an appointment may be made by the appointing authority and submitted to the Commission within fifteen (15) calendar days from receipt of the disapproved appointment.

**SEC. 3. When an appointment is disapproved, the services of the appointee shall be immediately terminated, unless a motion for reconsideration or appeal is seasonably filed.**

Services rendered by a person for the duration of his disapproved appointment shall not be credited as government service for whatever purpose.

**If the appointment was disapproved on grounds which do not constitute a violation of civil service law, such as failure of the appointee to meet the Qualification Standards (QS) prescribed for the position, the same is considered effective until disapproved by the [CSC] or any of its regional or field offices.** The appointee is meanwhile entitled to payment of salaries from the government.

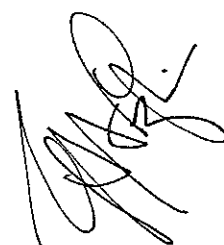
**If a motion for reconsideration or an appeal from the disapproval is seasonably filed with the proper office, the appointment is still considered to be effective. The disapproval becomes final only after the same is affirmed by the [CSC].** (Emphasis and underscoring supplied)

In turn, the procedure on appeals involving personnel actions, *including* disapproval of appointments and termination of services, is set forth under Rule 23 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), the set of rules prevailing during the relevant period. Sections 110 to 114 thereof state:

**Section 110. Appeal from Decisions on Other Personnel Actions.**

– Other personnel actions, such as, but not limited to, separation from the service due to unsatisfactory conduct or want of capacity during probationary period, dropping from the rolls due to Absence Without Official Leave (AWOL), physical and mental unfitness, and unsatisfactory poor performance, protest, **action on appointments**, reassignment, transfer, reappointment, detail, secondment, demotion, or **termination of services**, may be brought to the [CSC Regional Office], by way of an appeal.

**Section 111. When and Where to File. – A decision or ruling of an agency head may be appealed within fifteen (15) days from receipt thereof by the party adversely affected to the [CSC Regional Office] and finally, to the [CSC] within the same period.**



However, if the decision is made by the Department Secretary, the same shall be appealable to the [CSC] within fifteen (15) days from receipt thereof.

**A motion for reconsideration may be filed with the same office which rendered the decision or ruling within fifteen (15) days from receipt thereof.**

**Section 112. *When deemed filed.*** – An appeal sent by registered mail shall be deemed filed on the date shown by the postmark on the envelope which shall be attached to the records of the case. In case of personal delivery, it is deemed filed on the date stamped thereon by the proper office.

**Section 113. *Appeal Fee.*** – The appellant shall pay an appeal fee and a copy of the official receipt thereof shall be attached to the appeal.

**Section 114. *Perfection of an Appeal.*** – To perfect an appeal, the appellant shall submit three (3) copies of the following documents:

- a. Appeal memorandum containing the grounds relied upon for the appeal, together with the certified true copy of the decision, resolution or order appealed from, and certified copies of the documents or evidence. The appeal memorandum shall be filed with the appellate authority, copy furnished the appointing authority. The latter shall submit the records of the case, which shall be systematically and chronologically arranged, paged and securely bound to prevent loss, with its comment, within fifteen (15) days from receipt, to the appellate authority.
- b. Proof of service of a copy of the appeal memorandum to the appointing authority;
- c. Proof of payment of the appeal fee; and
- d. A statement or certificate of non-forum shopping.

When an appellant fails to comply with any of the above requirements within the reglementary period, the [CSC] shall direct compliance within a period of ten (10) days from receipt thereof, with a warning that failure to comply shall be construed as failure to perfect an appeal and shall cause the dismissal of the appeal with prejudice to its refiling. (Emphasis and underscoring supplied)

Accordingly, Marzan should have questioned her termination by filing an appeal before the CSC Regional Office. However, instead of doing so, Marzan wrote a letter to Regional Director Rabang seeking an advisory opinion on matters relating to the disapproval of her appointment as Department Head of the CBO, and her consequent termination from service. Thus, in the September 2013 CSC Letter, the CSC Regional Office refrained from categorically responding to Marzan's queries, and advised Marzan to file an appeal in accordance with Section 110 of the RRACCS. The relevant portion of said letter reads:



On the last issue, your allegation that you were not allowed by your Office to be restored to your former position as City Government Department Head [(CPDO)] after the disapproval of your transfer appointment is a legal matter that may be brought to the [CSC] in the form of an appeal pursuant to Section 110, Rule 23 of the [RRACCS].<sup>43</sup>

By failing to perfect an appeal with the CSC Regional Office and observing the procedure set forth under the RRACCS, Marzan violated the well-established rule on exhaustion of administrative remedies:

x x x Where the enabling statute indicates a procedure for administrative review and provides a system of administrative appeal or reconsideration, the courts — for reasons of law, comity, and convenience — will not entertain a case unless the available administrative remedies have been resorted to and the appropriate authorities have been given an opportunity to act and correct the errors committed in the administrative forum.<sup>44</sup>

Nonetheless, the rule on exhaustion of administrative remedies admits of exceptions:

x x x A party may directly resort to judicial remedies if any of the following is present:

1. when there is a violation of due process;
2. **when the issue involved is purely a legal question;**
3. when the administrative action is patently illegal amounting to lack or excess of jurisdiction;
4. when there is estoppel on the part of the administrative agency concerned;
5. when there is irreparable injury;
6. when the respondent is a department secretary whose acts as an alter ego of the President bear the implied and assumed approval of the latter;
7. when to require exhaustion of administrative remedies would be unreasonable;
8. when it would amount to a nullification of a claim;
9. when the subject matter is a private land in land case proceedings;
10. when the rule does not provide a plain, speedy and adequate remedy; and
11. when there are circumstances indicating the urgency of judicial intervention.<sup>45</sup> (Emphasis supplied)

<sup>43</sup> *Rollo*, p. 37.

<sup>44</sup> *Mohammad v. Belgado-Saqueton*, 789 Phil. 651, 658-659 (2016).

<sup>45</sup> *Buena, Jr. v. Benito*, 745 Phil. 399, 416-417 (2014).



Here, Marzan does not assail the disapproval of her appointment as Department Head of the CBO. What Marzan questions is respondents' refusal to reinstate her to her former position as Department Head of the CPDO, claiming that such reinstatement is mandated by Section 13, Rule VI of the Omnibus Rules.

Clearly, Marzan seeks judicial intervention in order to determine whether Section 13, Rule VI of the Omnibus Rules applies. This question is one that is purely legal, and thus constitutes an exception to the rule on exhaustion of administrative remedies. In this light, the Court finds that Marzan's direct resort to the courts may be permitted.

Be that as it may, the Petition fails on the merits.

*Section 13, Rule VI of the Omnibus Rules does not apply.*

Foremost, Marzan insists that her reinstatement as Department Head of the CPDO is mandatory under Section 13, Rule VI of the Omnibus Rules. The provision states:

SECTION 13. All appointments involved in a chain of promotions must be submitted simultaneously for approval by the Commission. The disapproval of the appointment of a person proposed to a higher position invalidates the promotion of those in lower positions and automatically restores them to their former positions. However, the affected persons are entitled to the payment of salaries for services actually rendered at a rate fixed in their promotional appointments.

In *Divinagracia*, the Court summarized the requirements for the application of Section 13, Rule VI, thus:

x x x [B]efore a public official or employee can be automatically restored to her former position, there must first be a **series of promotions**; second, **all appointments are simultaneously submitted to the CSC for approval**; and third, the **CSC disapproves the appointment of a person proposed to a higher position.**<sup>46</sup> (Emphasis supplied)

It is thus clear that Section 13, Rule VI presupposes that the appointment of the official or employee concerned constitutes a promotion.

CSC MC No. 40-98 defines promotion as "the advancement of an employee from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary."<sup>47</sup> In contrast, a transfer contemplates "the movement of [an]

<sup>46</sup> *Divinagracia, Jr. v. Sto. Tomas*, supra note 28, at 563.

<sup>47</sup> CSC MC No. 40-98, Rule III, Sec. 4(c).

employee from one position to another which is of equivalent rank, level or salary without break in the service involving the issuance of an appointment.”<sup>48</sup>

Keeping these distinctions in mind, the Court echoes the findings of the CA:

x x x A comparison between the two (2) appointments issued to [Marzan] for the two (2) positions shows that these are of the same rank and salary grade level. Both positions even have the same appellation — City Government Department Head II — only that each belongs to different offices albeit under the same local government unit. x x x<sup>49</sup>

Marzan does not dispute these findings. Moreover, as respondents correctly point out, Marzan herself conceded in her Judicial Affidavit that her appointment to the CBO was not a promotion, but rather a “lateral transfer”.<sup>50</sup>

Assuming *arguendo* that Marzan’s appointment qualifies as a promotion, all three requisites for the application of Section 13, Rule VI are still lacking, considering that said appointment was not part of a series of promotions simultaneously submitted to the CSC for approval.

Evidently, Section 13, Rule VI of the Omnibus Rules does not apply.

*The circumstances which impelled the Court to reinstate respondent in Divinagracia are not present in this case.*

Further, Marzan claims that the Court’s ruling in *Divinagracia* should be adopted in this case. Marzan stresses that in *Divinagracia*, the Court correctly directed the reinstatement of respondent therein on the basis of the latter’s right to security of tenure.

However, a scrutiny of said ruling reveals that *Divinagracia* is not on all fours.

In *Divinagracia*, Filomena Mancita (Mancita) was appointed as Municipal Development Coordinator (MDC) of the Municipality of Pili (Pili) on August 1, 1980. Mancita was terminated on July 1, 1985 due to the reorganization of the municipal government of Pili.

Following said reorganization, private respondent Prescila Nacario (Nacario), who was then the Municipal Budget Officer (MBO) of Pili, was appointed to the position of Municipal Planning and Development Coordinator (MPDC) on June 10, 1985.

<sup>48</sup> Id., Sec. 4(d).

<sup>49</sup> *Rollo*, p. 49.

<sup>50</sup> Id. at 78.

In 1988, the Local Government Officers Services was nationalized and placed under the supervision of the Department of Budget and Management (DBM). Under this nationalized regime, the power to appoint local budget officers was transferred to the DBM Secretary.

Accordingly, petitioner Alexis San Luis (San Luis) was temporarily appointed by the DBM Secretary as MBO of Pili, the position previously held by Nacario before she was appointed as MPDC. When control over the Local Government Officers Services was returned to the local government units by virtue of the Local Government Code of 1991, San Luis was reappointed to the same position by Mayor Delfin N. Divinagracia (Mayor Divinagracia) on June 22, 1992, this time, in a permanent capacity.

Meanwhile, Mancita assailed her termination before the Merit Systems and Protection Board (Merit Board). The Merit Board declared Mancita's termination illegal, inasmuch as she was qualified to hold the newly created position of MPDC, as it was equivalent to the position she held prior to the re-organization of the municipal government of Pili. Accordingly, the Merit Board directed Mayor Divinagracia to reinstate Mancita to the position of MPDC. On appeal, the CSC affirmed the Merit Board's findings through CSC Resolution No. 90-657.

Hence, on October 15, 1990, Mayor Divinagracia informed Nacario that she was being relieved of her position as MPDC effective November 16, 1990 in compliance with the Merit Board's directives.

Nacario eventually sent a query to the CSC, asking about her status as a permanent employee after she had accepted the position of MPDC. In a letter dated December 8, 1992 (December 1992 Opinion), the CSC opined that the reinstatement of Mancita to the position of MPDC was not a valid cause for Nacario's termination, and that Nacario had the right to return to the position of MBO, the position already occupied by San Luis.

Mayor Divinagracia sought reconsideration of the December 1992 Opinion. However, such reconsideration was denied through CSC Resolution No. 93-1996. This prompted Mayor Divinagracia and San Luis to file a Petition for *Certiorari* before the Court, claiming that CSC Resolution No. 93-1996 had been issued with grave abuse of discretion. Mayor Divinagracia and San Luis raised, among others, that Nacario could no longer be reinstated to her former position as MBO as she was deemed to have vacated said position when she accepted her new appointment as MPDC.

The Court denied the Petition for *Certiorari*, and ordered the reinstatement of Nacario to her former position as MBO. What impelled the Court to rule as it did was its finding that Nacario's movement from the position of MBO to MPDC constituted an "unconsented lateral transfer" which was tantamount to removal without cause. Hence, the Court held:



Let us now examine whether the lateral transfer of private respondent was validly made in accordance with Sec. 5, par. 3, Rule VII, Omnibus Rules Implementing Book V of E.O. 292. If not, then private respondent is entitled to be protected in her security of tenure.

Sec. 5, par. 3, of Rule VII provides that –

Transfer shall not be considered disciplinary when made in the interest of public service, in which case, the employee concerned shall *be informed of the reasons therefor*. If the employee believes that there is no justification for the transfer, he may appeal his case to the [CSC]. x x x

According to Nacario[,] she never applied or sought appointment by transfer to the position of MPDC since she even had no prior knowledge of her appointment. She assumed the new position *only* in order to comply with the move of Mayor Prila to supposedly “reorganize” the municipal government of Pili. Nacario did not question her transfer because she revered the mayor and did not in any way intend to displease him.

The submissive attitude displayed by private respondent towards her transfer is understandable. Although Nacario was not informed of the reasons therefor she did not complain to the mayor or appeal her case to the CSC if in fact the same was not made in the interest of public service. For it is not common among local officials, even those permanent appointees who are more secured and protected in their tenurial right, to oppose or question the incumbent local executive on his policies and decisions no matter how improper they may seem.

x x x x

**Private respondent was the Budget Officer of Pili for almost eight (8) years from August 1980 until her transfer in July, 1988. Nacario appeared to be satisfied with her work and felt fulfilled as Budget Officer until Mayor Prila appointed her MPDC to fill up the position, which was not even vacant at that time. It was only seven (7) days after Nacario’s appointment when Mayor Prila informed Mancita that her services were being terminated. Simply put, Mayor Prila was so determined in terminating Mancita that he conveniently pre-arranged her replacement by Nacario.** Although Nacario continued to discharge her duties, this did not discourage her from trying to regain her former position. Undaunted, she applied with the Office of the Budget Secretary for the position of Budget Officer upon learning that it was placed under the Department of Budget and Management. She was not however successful.

In *Sta. Maria v. Lopez* we distinguished between a transfer and a promotion and laid down the prerequisites of a valid transfer thus –

A transfer is a ‘movement from one position to another which is of equivalent rank, level and salary, without break in service.’ Promotion is the ‘advancement from one position to another with an increase in duties and responsibilities as authorized by law, and is usually accompanied by an increase in salary’ x x x A transfer that results in promotion or demotion, advancement or

reduction or a transfer that aims to 'lure the employee away from his permanent position,' cannot be done without the employees' consent. For that would constitute removal from office. Indeed, no permanent transfer can take place unless the officer or employee is first removed from the position held, and then appointed to another position x x x


The rule that unconsented transfers amount to removal is not however without exception. As we further said in *Sta. Maria*,

Concededly there are transfers which do not amount to removal. Some such transfers can be effected without the need for charges being proffered, without trial or hearing, and even without the consent of the employee x x x The clue to such transfers may be found in the 'nature of the appointment.' Where the appointment does not indicate a specific station, an employee may be transferred or assigned provided the transfer affects no substantial change in title, rank and salary x x x. Such a rule does not proscribe a transfer carried out under a specific statute that empowers the head of an agency to periodically reassign the employees and officers in order to improve the service of the agency x x x. Neither does illegality attach to the transfer or reassignment of an officer pending the determination of an administrative charge against him; or to the transfer of an employee from his assigned alleged station to the main office, effected in good faith and in the interest of the service pursuant to Sec. 32 of the Civil Service Act.

**Clearly then, the unconsented lateral transfer of Nacario from the Budget Office to the Office of MPDC was arbitrary for it amounted to removal without cause, hence, invalid as it is anathema to security of tenure. When Nacario was extended a permanent appointment on [August 1, 1980] and she assumed the position, she acquired a legal, not merely an equitable, right to the position. Such right to security of tenure is protected not only by statute, but also by the Constitution, and cannot be taken away from her either by removal, transfer or by revocation of appointment, except for cause, and after prior notice.**

The guarantee of security of tenure is an important object of the civil service system because it affords a faithful employee permanence of employment, at least for the period prescribed by law, and frees the employee from the fear of political and personal prejudicial reprisal.

**Consequently, it could not be said that Nacario vacated her former position as Budget Officer or abdicated her right to hold the office when she accepted the position of MPDC since, in contemplation of law, she could not be deemed to have been separated from her former position or to have terminated her official relations therewith notwithstanding that she was actually discharging the functions and exercising the powers of MPDC. The principle of estoppel, unlike in *Manalo v. Gloria*, cannot bar her from returning to her former position because of the indubitable fact that private respondent reluctantly and hesitantly accepted the second office. The element of involuntariness tainted her lateral transfer and invalidated her separation from her former position.**





For another thing, the appointment of San Luis as Budget Officer carried with it a condition. At the back of his appointment is inscribed the notation *Sa kondisyon nasa ayos ang pagkakatiwalag sa tungkulin ng dating nanunungkulan* which when translated means "Provided that the separation of the former incumbent is in order." Considering that the separation of Nacario who was the former incumbent was not in order, San Luis should relinquish his position in favor of private respondent Nacario. This is, of course, without prejudice to San Luis' right to be reinstated to his former position as Cashier II of the DENR, he being also a permanent appointee equally guaranteed security of tenure.<sup>51</sup> (Emphasis and underscoring supplied; citations omitted)

The factual circumstances in this case do not warrant a similar ruling.

To recall, Mayor Gordon appointed Marzan as Department Head of the CPDO on January 16, 2008. On June 7, 2011, the CSC approved said appointment and accorded Marzan permanent status. Subsequently, on December 1, 2011, Mayor Gordon appointed Marzan as Department Head of the CBO. Marzan never assailed the validity of her lateral transfer. As well, she never once claimed that such transfer was without her consent.

On the contrary, the records show that Marzan had been fully aware that her former position had been declared vacant following acceptance of her new appointment. As correctly observed by the lower courts, in the Appropriations Act of Olongapo City for 2012, which she, as member of the finance committee helped prepare, the position of Department Head of the CPDO was tagged vacant.

Moreover, unlike in *Divinagracia*, there are no circumstances which indicate that Marzan's lateral transfer from the CPDO to the CBO was part of a ploy to ease her out of her permanent position. It bears stressing that: (i) Marzan's appointment to the CBO was effected by Mayor Gordon, *not* Mayor Paulino; and (ii) Marzan vacated her former position as Department Head of the CPDO *before* Mayor Paulino assumed office. Thus, when Mayor Paulino assumed office following his victory in the May 2013 local elections, he merely appointed Balde to fill in a position that had become vacant prior to his term. Unlike San Luis' appointment in *Divinagracia*, Balde's appointment does not appear to be subject to the condition that the separation of the previous holder of the office be in order. Thus, Marzan's reinstatement at Balde's expense would effectively violate the very right which she now invokes.

*Mandamus will not lie to compel  
Marzan's reinstatement.*

Section 3, Rule 65 of the Rules of Court sets forth the circumstances which warrant the issuance of a writ of mandamus:

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<sup>51</sup> *Divinagracia, Jr. v. Sto. Tomas*, supra note 28, at 565-570.



SEC. 3. *Petition for mandamus.* — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent. (Emphasis supplied)

The writ of mandamus shall only issue to compel the performance of a ministerial act, or “one in which an officer or tribunal performs in a given state of facts, in a prescribed manner, *in obedience to a mandate of legal authority*, without regard to or the exercise of his own judgment upon the propriety or impropriety of an act done.”<sup>52</sup> Thus, mandamus will not lie to compel the performance of a discretionary act. To stress:

*Mandamus* is never issued in doubtful cases. It cannot be availed against an official or government agency whose duty requires the exercise of discretion or judgment. For a writ to issue, petitioners should have a clear legal right to the thing demanded, and there should be an imperative duty on the part of respondents to perform the act sought to be mandated. In the absence of a clear and unmistakable provision of a law, a *mandamus* petition does not lie to require anyone to a specific course of conduct or to control or review the exercise of discretion; it will not issue to compel an official to do anything which is not his duty to do or which is his duty not to do or give to the applicant anything to which he is not entitled by law.<sup>53</sup>

Considering that Section 13, Rule VI of the Omnibus Rules does not apply, and that Marzan freely and knowingly vacated her former position as Department Head of the CPDO, Marzan’s reinstatement thereto constitutes a discretionary act which cannot be compelled through a writ of *mandamus*. In this light, the Court finds no basis to grant Marzan’s prayer for moral and exemplary damages, litigation expenses and costs of suit.

In closing, it must be emphasized that Balde’s silence with respect to the alleged hostilities which took place on Marzan’s last day in office does not escape the Court’s attention. Moreover, the fact that the duty to review all requirements and supporting documents relating to personnel appointments of the City Government of Olongapo falls on respondent Barroga as Acting Chief Administrative Officer of the Human Resource Management Office is not lost on the Court.<sup>54</sup>

<sup>52</sup> *I-Popefrancis v. Department of Budget and Management*, G.R. No. 206689, August 24, 2016 (Unsigned Resolution). Italics supplied.

<sup>53</sup> *Id.*

<sup>54</sup> CSC MC No. 40-98, Rule VII, Sec. 1 states:

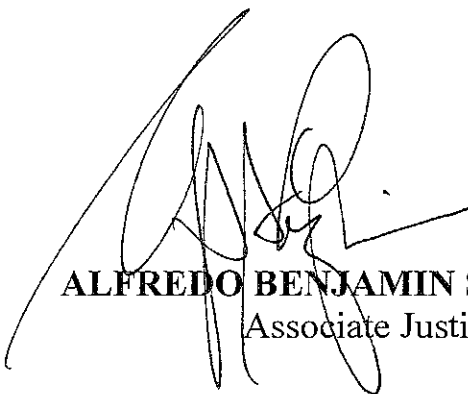
SEC. 1. The Human Resource Management Officer (HRMO), Personnel Officer (PO) or the duly authorized personnel in charge of personnel matters shall:



However, the Court necessarily limits the scope of this Decision to the resolution of the sole substantive issue raised therein, that is, whether or not *mandamus* will lie to compel the reinstatement of Marzan to her former position as Department Head of the CPDO. Nevertheless, the denial of the present Petition and the concomitant dismissal of Marzan's plea for *mandamus* shall be without prejudice to any administrative liability which may be determined in appropriate proceedings.

**WHEREFORE**, premises considered, the Petition is **DENIED**. The Decision and Resolution respectively dated October 26, 2016 and July 4, 2017 rendered by the Court of Appeals in CA G.R. SP No. 139549 are **AFFIRMED**.

**SO ORDERED.**



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

- 
- a. Review thoroughly and check the completeness of all the requirements and supporting papers in connection with all cases of appointments before submission to the Commission.
  - b. Sign the following certifications at the back of the appointment.
    - i. Certification as to the completeness of the requirements
    - ii. Certification that the vacant position to be filled has been duly published
  - c. Ensure that the Chairman of the Personnel Selection Board (PSB) has signed the certification at the back of the appointment, when applicable. The Human Resource Management Officer shall be a regular member of the PSB.
  - d. Ensure that all questions in the Personal Data Sheet (CS Form 212) of the appointee are answered properly and completely with his recent photograph attached, his right thumbmark affixed and his current Community Tax Certificate indicated therein.
  - e. Furnish appointee with a photocopy of his appointment for submission to the Commission. Ensure that appointee acknowledges receipt of a photocopy of said appointment by signing on the duplicate and other copies thereof.
  - f. Submit appointments with the prescribed transmittal form indicating the names of the appointees, their position and the corresponding date of issuance.
  - g. Officially transmit to the appointee original copy of his appointment acted upon by the Commission.
  - h. Submit a quarterly report of employee accession and separation to the Commission.

x x x x

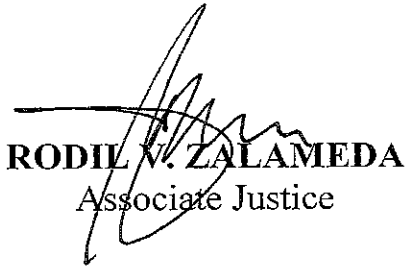
WE CONCUR:



**DIOSDADO M. PERALTA**  
Chief Justice  
Chairperson



**ROSMARI D. CARANDANG**  
Associate Justice



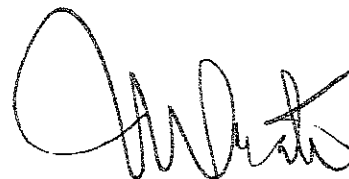
**RODIL N. ZALAMEDA**  
Associate Justice



**SAMUEL H. GAERLAN**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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.



**DIOSDADO M. PERALTA**  
Chief Justice

