Republic of the Philippines
Supreme Court
Baguio City

EN BANC

FERDINAND R. VILLANUEVA, Presiding Judge, MCTC, Compostela-New Bataan, Compostela Valley Province, Petitioner,	**G.R. No. 211833** Present: SERENO, *C.J.*,* CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, BRION, PERALTA, BERSAMIN, DEL CASTILLO, VILLARAMA, JR.,** PEREZ, MENDOZA, REYES, PERLAS-BERNABE,*** LEONEN, and JARDELEZA, *JJ.**
- versus -	
JUDICIAL AND BAR COUNCIL, Respondent.	Promulgated: April 7, 2015

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DECISION

REYES, *J.*:

Presiding Judge Ferdinand R. Villanueva (petitioner) directly came to this Court *via* a Petition for Prohibition, Mandamus, and *Certiorari*, and Declaratory Relief[1] under Rules 65 and 63 of the Rules of Court, respectively, with prayer for the issuance of a temporary restraining order

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* No part.
** On Official Leave.
*** On Leave.
1 *Rollo*, pp. 3-19.

and/or writ of preliminary injunction, to assail the policy of the Judicial and Bar Council (JBC), requiring five years of service as judges of first-level courts before they can qualify as applicant to second-level courts, on the ground that it is unconstitutional, and was issued with grave abuse of discretion.

The Facts

The petitioner was appointed on September 18, 2012 as the Presiding Judge of the Municipal Circuit Trial Court, Compostela-New Bataan, Poblacion, Compostela Valley Province, Region XI, which is a first-level court. On September 27, 2013, he applied for the vacant position of Presiding Judge in the following Regional Trial Courts (RTCs): Branch 31, Tagum City; Branch 13, Davao City; and Branch 6, Prosperidad, Agusan Del Sur.

In a letter[2] dated December 18, 2013, JBC's Office of Recruitment, Selection and Nomination, informed the petitioner that he was not included in the list of candidates for the said stations. On the same date, the petitioner sent a letter, through electronic mail, seeking reconsideration of his non-inclusion in the list of considered applicants and protesting the inclusion of applicants who did not pass the prejudicature examination.

The petitioner was informed by the JBC Executive Officer, through a letter[3] dated February 3, 2014, that his protest and reconsideration was duly noted by the JBC *en banc*. However, its decision not to include his name in the list of applicants was upheld due to the JBC's long-standing policy of opening the chance for promotion to second-level courts to, among others, incumbent judges who have served in their current position for at least five years, and since the petitioner has been a judge only for more than a year, he was excluded from the list. This caused the petitioner to take recourse to this Court.

In his petition, he argued that: (1) the Constitution already prescribed the qualifications of an RTC judge, and the JBC could add no more; (2) the JBC's five-year requirement violates the equal protection and due process clauses of the Constitution; and (3) the JBC's five-year requirement violates the constitutional provision on Social Justice and Human Rights for Equal Opportunity of Employment. The petitioner also asserted that the requirement of the Prejudicature Program mandated by Section 10[4] of

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2 Id. at 70.

3 Id. at 6.

4 Section 10. As soon as PHILJA shall have been fully organized with the composition of its Corps of Professorial Lecturers and other personnel, only participants who have completed the programs prescribed by the Academy and have satisfactorily complied with all the requirements incident thereto may be appointed or promoted to any position or vacancy in the Judiciary.

Republic Act (R.A.) No. 8557[5] should not be merely directory and should be fully implemented. He further alleged that he has all the qualifications for the position prescribed by the Constitution and by Congress, since he has already complied with the requirement of 10 years of practice of law.

In compliance with the Court's Resolution[6] dated April 22, 2014, the JBC[7] and the Office of the Solicitor General (OSG)[8] separately submitted their Comments. Summing up the arguments of the JBC and the OSG, they essentially stated that the petition is procedurally infirm and that the assailed policy does not violate the equal protection and due process clauses. They posited that: (1) the writ of *certiorari* and prohibition cannot issue to prevent the JBC from performing its principal function under the Constitution to recommend appointees to the Judiciary because the JBC is not a tribunal exercising judicial or quasi-judicial function; (2) the remedy of mandamus and declaratory relief will not lie because the petitioner has no clear legal right that needs to be protected; (3) the equal protection clause is not violated because the classification of lower court judges who have served at least five years and those who have served less than five years is valid as it is performance and experience based; and (4) there is no violation of due process as the policy is merely internal in nature.

The Issue

The crux of this petition is whether or not the policy of JBC requiring five years of service as judges of first-level courts before they can qualify as applicant to second-level courts is constitutional.

Ruling of the Court

Procedural Issues:

Before resolving the substantive issues, the Court considers it necessary to first determine whether or not the action for *certiorari*, prohibition and mandamus, and declaratory relief commenced by the petitioner was proper.

One. The remedies of *certiorari* and prohibition are tenable. "The present Rules of Court uses two special civil actions for determining and correcting grave abuse of discretion amounting to lack or excess of jurisdiction. These are the special civil actions for *certiorari* and

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5 AN ACT ESTABLISHING THE PHILIPPINE JUDICIAL ACADEMY, DEFINING ITS POWERS AND FUNCTIONS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES

6 *Rollo*, p. 28.

7 Id. at 40-60.

8 Id. at 68-95.

prohibition, and both are governed by Rule 65."[9] As discussed in the case of *Maria Carolina P. Araullo, etc., et al. v. Benigno Simeon C. Aquino III, etc., et al.*,[10] this Court explained that:

> With respect to the Court, however, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. This application is expressly authorized by the text of the second paragraph of Section 1, supra.
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> Thus, petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.[11] (Citation omitted)

In this case, it is clear that the JBC does not fall within the scope of a tribunal, board, or officer exercising judicial or quasi-judicial functions. In the process of selecting and screening applicants, the JBC neither acted in any judicial or quasi-judicial capacity nor assumed unto itself any performance of judicial or quasi-judicial prerogative. However, since the formulation of guidelines and criteria, including the policy that the petitioner now assails, is necessary and incidental to the exercise of the JBC's constitutional mandate, a determination must be made on whether the JBC has acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing and enforcing the said policy.

Besides, the Court can appropriately take cognizance of this case by virtue of the Court's power of supervision over the JBC. Jurisprudence provides that the power of supervision is the power of oversight, or the authority to see that subordinate officers perform their duties. It ensures that the laws and the rules governing the conduct of a government entity are observed and complied with. Supervising officials see to it that rules are followed, but they themselves do not lay down such rules, nor do they have the discretion to modify or replace them. If the rules are not observed, they may order the work done or redone, but only to conform to such rules. They may not prescribe their own manner of execution of the act. They have no discretion on this matter except to see to it that the rules are followed.[12]

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9 *Maria Carolina P. Araullo, etc., et al. v. Benigno Simeon C. Aquino III, etc., et al.*, G.R. No. 209287, July 1, 2014.

10 G.R. No. 209287, July 1, 2014.

11 Id.

12 *Francis H. Jardeleza v. Chief Justice Maria Lourdes P. A. Sereno, the Judicial and Bar Council and Executive Secretary Paquito N. Ochoa, Jr.*, G.R. No. 213181, August 19, 2014.

Following this definition, the supervisory authority of the Court over the JBC is to see to it that the JBC complies with its own rules and procedures. Thus, when the policies of the JBC are being attacked, then the Court, through its supervisory authority over the JBC, has the duty to inquire about the matter and ensure that the JBC complies with its own rules.

Two. The remedy of mandamus cannot be availed of by the petitioner in assailing JBC's policy. The petitioner insisted that mandamus is proper because his right was violated when he was not included in the list of candidates for the RTC courts he applied for. He said that his non-inclusion in the list of candidates for these stations has caused him direct injury.

It is essential to the issuance of a writ of mandamus that the applicant should have a clear legal right to the thing demanded and it must be the imperative duty of the respondent to perform the act required.[13] The petitioner bears the burden to show that there is such a clear legal right to the performance of the act, and a corresponding compelling duty on the part of the respondent to perform the act. The remedy of mandamus, as an extraordinary writ, lies only to compel an officer to perform a ministerial duty, not a discretionary one.[14] Clearly, the use of discretion and the performance of a ministerial act are mutually exclusive.

The writ of mandamus does not issue to control or review the exercise of discretion or to compel a course of conduct, which, it quickly seems to us, was what the petitioner would have the JBC do in his favor. The function of the JBC to select and recommend nominees for vacant judicial positions is discretionary, not ministerial. Moreso, the petitioner cannot claim any legal right to be included in the list of nominees for judicial vacancies. Possession of the constitutional and statutory qualifications for appointment to the judiciary may not be used to legally demand that one's name be included in the list of candidates for a judicial vacancy. One's inclusion in the list of the candidates depends on the discretion of the JBC, thus:

> The fact that an individual possesses the constitutional and statutory qualifications for appointment to the Judiciary does not create an entitlement or expectation that his or her name be included in the list of candidates for a judicial vacancy. By submitting an application or accepting a recommendation, one submits to the authority of the JBC to subject the former to the search, screening, and selection process, and to use its discretion in deciding whether or not one should be included in the list. Indeed, assuming that if one has the legal right to be included in the list of candidates simply because he or she possesses the constitutional and statutory qualifications, then the

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[13] *Star Special Watchman and Detective Agency, Inc., Celso A. Fernandez and Manuel V. Fernandez v. Puerto Princesa City, Mayor Edward Hagedorn and City Council of Puerto Princesa City*, G.R. No. 181792, April 21, 2014.

[14] *Special People, Inc. Foundation v. Canda*, G.R. No. 160932, January 14, 2013, 688 SCRA 403, 424.

> application process would then be reduced to a mere mechanical function of the JBC; and the search, screening, and selection process would not only be unnecessary, but also improper. However, this is clearly not the constitutional intent. **One's inclusion in the list of candidates is subject to the discretion of the JBC over the selection of nominees for a particular judicial post**. Such candidate's inclusion is not, therefore, a legally demandable right, but simply a privilege the conferment of which is subject to the JBC's sound discretion.
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> Moreover, petitioner is essentially seeking a promotional appointment, that is, a promotion from a first-level court to a second level court. **There is no law, however, that grants him the right to a promotion to second-level courts**.[15] (Emphasis in the original)

Clearly, to be included as an applicant to second-level judge is not properly compellable by mandamus inasmuch as it involves the exercise of sound discretion by the JBC.

Three. The petition for declaratory relief is improper. "An action for declaratory relief should be filed by a person interested under a deed, a will, a contract or other written instrument, and whose rights are affected by a statute, an executive order, a regulation or an ordinance. The relief sought under this remedy includes the interpretation and determination of the validity of the written instrument and the judicial declaration of the parties' rights or duties thereunder."[16] "[T]he purpose of the action is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, contract, *etc*., for their guidance in its enforcement or compliance and not to settle issues arising from its alleged breach."[17]

In this case, the petition for declaratory relief did not involve an unsound policy. Rather, the petition specifically sought a judicial declaration that the petitioner has the right to be included in the list of applicants although he failed to meet JBC's five-year requirement policy. Again, the Court reiterates that no person possesses a legal right under the Constitution to be included in the list of nominees for vacant judicial positions. The opportunity of appointment to judicial office is a mere privilege, and not a judicially enforceable right that may be properly claimed by any person. The inclusion in the list of candidates, which is one of the incidents of such appointment, is not a right either. Thus, the petitioner cannot claim any right that could have been affected by the assailed policy.

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15 *Rollo*, pp. 57-58.

16 *Malana, et al. v. Tappa, et al.*, 616 Phil. 177, 186 (2009).

17 *Hon. Quisumbing, et al. v. Gov. Garcia, et al.*, 593 Phil. 655, 674 (2008).

Furthermore, the instant petition must necessarily fail because this Court does not have original jurisdiction over a petition for declaratory relief even if only questions of law are involved.[18] The special civil action of declaratory relief falls under the exclusive jurisdiction of the appropriate RTC pursuant to Section 19[19] of Batas Pambansa Blg. 129, as amended by R.A. No. 7691.[20]

Therefore, by virtue of the Court's supervisory duty over the JBC and in the exercise of its expanded judicial power, the Court assumes jurisdiction over the present petition. But in any event, even if the Court will set aside procedural infirmities, the instant petition should still be dismissed.

Substantive Issues

As an offspring of the 1987 Constitution, the JBC is mandated to recommend appointees to the judiciary and only those nominated by the JBC in a list officially transmitted to the President may be appointed by the latter as justice or judge in the judiciary. Thus, the JBC is burdened with a great responsibility that is imbued with public interest as it determines the men and women who will sit on the judicial bench. While the 1987 Constitution has provided the qualifications of members of the judiciary, this does not preclude the JBC from having its own set of rules and procedures and providing policies to effectively ensure its mandate.

The functions of searching, screening, and selecting are necessary and incidental to the JBC's principal function of choosing and recommending nominees for vacancies in the judiciary for appointment by the President. However, the Constitution did not lay down in precise terms the process that the JBC shall follow in determining applicants' qualifications. In carrying out its main function, the JBC has the authority to set the standards/criteria in choosing its nominees for every vacancy in the judiciary, subject only to the minimum qualifications required by the Constitution and law for every position. The search for these long held qualities necessarily requires a degree of flexibility in order to determine who is most fit among the

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[18] *See Bankers Association of the Philippines v. Commission on Elections*, G.R. No. 206794, November 27, 2013, 710 SCRA 608, 618.

[19] Section 19. Jurisdiction in civil cases. – Regional Trial Courts shall exercise exclusive original jurisdiction:

(1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;

x x x x

(6) In all cases not within the exclusive jurisdiction of any court, tribunal, person or body exercising jurisdiction of any court, tribunal, person or body exercising judicial or quasi-judicial functions;

x x x x

[20] AN ACT EXPANDING THE JURISDICTION OF THE METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS, AND MUNICIPAL CIRCUIT TRIAL COURTS, AMENDING FOR THE PURPOSE BATAS PAMBANSA, BLG. 129, OTHERWISE KNOWN AS THE "JUDICIARY REORGANIZATION ACT OF 1980". Approved on March 25, 1994.

applicants. Thus, the JBC has sufficient but not unbridled license to act in performing its duties.

JBC's ultimate goal is to recommend nominees and not simply to fill up judicial vacancies in order to promote an effective and efficient administration of justice. Given this pragmatic situation, the JBC had to establish a set of uniform criteria in order to ascertain whether an applicant meets the minimum constitutional qualifications and possesses the qualities expected of him and his office. Thus, the adoption of the five-year requirement policy applied by JBC to the petitioner's case is necessary and incidental to the function conferred by the Constitution to the JBC.

Equal Protection

There is no question that JBC employs standards to have a rational basis to screen applicants who cannot be all accommodated and appointed to a vacancy in the judiciary, to determine who is best qualified among the applicants, and not to discriminate against any particular individual or class.

The equal protection clause of the Constitution does not require the universal application of the laws to all persons or things without distinction; what it requires is simply equality among equals as determined according to a valid classification. Hence, the Court has affirmed that if a law neither burdens a fundamental right nor targets a suspect class, the classification stands as long as it bears a rational relationship to some legitimate government end.[21]

"The equal protection clause, therefore, does not preclude classification of individuals who may be accorded different treatment under the law as long as the classification is reasonable and not arbitrary."[22] "The mere fact that the legislative classification may result in actual inequality is not violative of the right to equal protection, for every classification of persons or things for regulation by law produces inequality in some degree, but the law is not thereby rendered invalid."[23]

That is the situation here. In issuing the assailed policy, the JBC merely exercised its discretion in accordance with the constitutional requirement and its rules that a member of the Judiciary must be of proven competence, integrity, probity and independence.[24] "To ensure the

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21 Supra note 10.

22 *National Power Corporation v. Pinatubo Commercial,* 630 Phil. 599, 609 (2010).

23 *Garcia v. Drilon,* G.R. No. 179267, June 25, 2013, 699 SCRA 352, 419.

24 CONSTITUTION, Article VIII, Section 7(3) states:

> 3. A Member of the Judiciary must be a person of proven competence, integrity, probity, and independence.

fulfillment of these standards in every member of the Judiciary, the JBC has been tasked to screen aspiring judges and justices, among others, making certain that the nominees submitted to the President are all qualified and suitably best for appointment. In this way, the appointing process itself is shielded from the possibility of extending judicial appointment to the undeserving and mediocre and, more importantly, to the ineligible or disqualified."[25]

Consideration of experience by JBC as one factor in choosing recommended appointees does not constitute a violation of the equal protection clause. The JBC does not discriminate when it employs number of years of service to screen and differentiate applicants from the competition. The number of years of service provides a relevant basis to determine proven competence which may be measured by experience, among other factors. The difference in treatment between lower court judges who have served at least five years and those who have served less than five years, on the other hand, was rationalized by JBC as follows:

> Formulating policies which streamline the selection process falls squarely under the purview of the JBC. No other constitutional body is bestowed with the mandate and competency to set criteria for applicants that refer to the more general categories of probity, integrity and independence.
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> The assailed criterion or consideration for promotion to a second-level court, which is five years experience as judge of a first-level court, is a direct adherence to the qualities prescribed by the Constitution. Placing a premium on many years of judicial experience, the JBC is merely applying one of the stringent constitutional standards requiring that a member of the judiciary be of "**proven competence**." In determining competence, the JBC considers, among other qualifications, **experience** and performance.
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> Based on the JBC's collective judgment, those who have been judges of first-level courts for five (5) years are better qualified for promotion to second-level courts. It deems length of experience as a judge as indicative of conversance with the law and court procedure. Five years is considered as a sufficient span of time for one to acquire professional skills for the next level court, declog the dockets, put in place improved procedures and an efficient case management system, adjust to the work environment, and gain extensive experience in the judicial process.
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> A five-year stint in the Judiciary can also provide evidence of the **integrity, probity**, and **independence** of judges seeking promotion. To merit JBC's nomination for their promotion, they must have had a "record of, and reputation for, honesty, integrity, incorruptibility, irreproachable conduct, and fidelity to sound moral and ethical standards." Likewise, their decisions must be reflective of the soundness of their judgment, courage, rectitude, cold neutrality and strength of character.

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[25] Supra note 12.

> Hence, for the purpose of determining whether judges are worthy of promotion to the next level court, it would be premature or difficult to assess their merit if they have had less than one year of service on the bench.[26] (Citations omitted and emphasis in the original)

At any rate, five years of service as a lower court judge is not the only factor that determines the selection of candidates for RTC judge to be appointed by the President. Persons with this qualification are neither automatically selected nor do they automatically become nominees. The applicants are chosen based on an array of factors and are evaluated based on their individual merits. Thus, it cannot be said that the questioned policy was arbitrary, capricious, or made without any basis.

Clearly, the classification created by the challenged policy satisfies the rational basis test. The foregoing shows that substantial distinctions do exist between lower court judges with five year experience and those with less than five years of experience, like the petitioner, and the classification enshrined in the assailed policy is reasonable and relevant to its legitimate purpose. The Court, thus, rules that the questioned policy does not infringe on the equal protection clause as it is based on reasonable classification intended to gauge the proven competence of the applicants. Therefore, the said policy is valid and constitutional.

Due Process

The petitioner averred that the assailed policy violates procedural due process for lack of publication and non-submission to the University of the Philippines Law Center Office of the National Administrative Register (ONAR). The petitioner said that the assailed policy will affect all applying judges, thus, the said policy should have been published.

Contrary to the petitioner's contention, the assailed JBC policy need not be filed in the ONAR because the publication requirement in the ONAR is confined to issuances of administrative agencies under the Executive branch of the government.[27] Since the JBC is a body under the supervision of the Supreme Court,[28] it is not covered by the publication requirements of the Administrative Code.

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[26] *Rollo*, pp. 48-49.

[27] Administrative Code, Book VII (Administrative Procedure) provides:

Section 1. Scope. – This Book shall be applicable to all agencies as defined in the next succeeding section, except the Congress, the Judiciary, the Constitutional Commissions, military establishments in all matters relating exclusively to Armed Forces personnel, the Board of Pardons and Parole, and state universities and colleges.

[28] 1987 CONSTITUTION, Article VIII, Judicial Department states:

Section 8. – A Judicial and Bar Council is hereby created under the supervision of the Supreme Court x x x.

Nevertheless, the assailed JBC policy requiring five years of service as judges of first-level courts before they can qualify as applicants to second-level courts should have been published. As a general rule, publication is indispensable in order that all statutes, including administrative rules that are intended to enforce or implement existing laws, attain binding force and effect. There are, however, several exceptions to the requirement of publication, such as interpretative regulations and those merely internal in nature, which regulate only the personnel of the administrative agency and not the public. Neither is publication required of the so-called letters of instructions issued by administrative superiors concerning the rules or guidelines to be followed by their subordinates in the performance of their duties.[29]

Here, the assailed JBC policy does not fall within the administrative rules and regulations exempted from the publication requirement. The assailed policy involves a qualification standard by which the JBC shall determine proven competence of an applicant. It is not an internal regulation, because if it were, it would regulate and affect only the members of the JBC and their staff. Notably, the selection process involves a call to lawyers who meet the qualifications in the Constitution and are willing to serve in the Judiciary to apply to these vacant positions. Thus, it is but a natural consequence thereof that potential applicants be informed of the requirements to the judicial positions, so that they would be able to prepare for and comply with them.

The Court also noted the fact that in JBC-009, otherwise known as the Rules of the Judicial and Bar Council, the JBC had put its criteria in writing and listed the guidelines in determining competence, independence, integrity and probity. Section 1, Paragraph 1 of Rule 9 expressly provides that applicants for the Court of Appeals and the *Sandiganbayan*, should, as a general rule, have at least five years of experience as an RTC judge, thus:

> RULE 9 – SPECIAL GUIDELINES FOR NOMINATION TO A VACANCY IN THE COURT OF APPEALS AND SANDIGANBAYAN
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> **Section 1.** *Additional criteria for nomination to the Court of Appeals and the Sandiganbayan*. – In addition to the foregoing guidelines the Council should consider the following in evaluating the merits of applicants for a vacancy in the Court of Appeals and *Sandiganbayan*:
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> 1. As a general rule, he must have at least **five years of experience as a judge of Regional Trial Court**, except when he has in his favor outstanding credentials, as evidenced by, *inter alia*, impressive scholastic or educational record and performance in the Bar examinations, excellent reputation for honesty, integrity, probity and independence of mind; at

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[29] *Tañada v. Hon. Tuvera*, 230 Phil. 528, 535 (1986).

> least very satisfactory performance rating for three (3) years preceding the filing of his application for nomination; and excellent potentials for appellate judgeship.
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> x x x x (Emphasis ours)

The express declaration of these guidelines in JBC-009, which have been duly published on the website of the JBC and in a newspaper of general circulation suggests that the JBC is aware that these are not mere internal rules, but are rules implementing the Constitution that should be published. Thus, if the JBC were so-minded to add special guidelines for determining competence of applicants for RTC judges, then it could and should have amended its rules and published the same. This, the JBC did not do as JBC-009 and its amendatory rule do not have special guidelines for applicants to the RTC.

Moreover, jurisprudence has held that rules implementing a statute should be published. Thus, by analogy, publication is also required for the five-year requirement because it seeks to implement a constitutional provision requiring proven competence from members of the judiciary.

Nonetheless, the JBC's failure to publish the assailed policy has not prejudiced the petitioner's private interest. At the risk of being repetitive, the petitioner has no legal right to be included in the list of nominees for judicial vacancies since the possession of the constitutional and statutory qualifications for appointment to the Judiciary may not be used to legally demand that one's name be included in the list of candidates for a judicial vacancy. One's inclusion in the shortlist is strictly within the discretion of the JBC.[30]

As to the issue that the JBC failed or refused to implement the completion of the prejudicature program as a requirement for appointment or promotion in the judiciary under R.A. No. 8557, this ground of the petition, being unsubstantiated, was unfounded. Clearly, it cannot be said that JBC unlawfully neglects the performance of a duty enjoined by law.

Finally, the petitioner argued but failed to establish that the assailed policy violates the constitutional provision under social justice and human rights for equal opportunity of employment. The OSG explained:

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[30] Supra note 12.

> [T]he questioned policy does not violate equality of employment opportunities. The constitutional provision does not call for appointment to the Judiciary of all who might, for any number of reasons, wish to apply. As with all professions, it is regulated by the State. The office of a judge is no ordinary office. It is imbued with public interest and is central in the administration of justice x x x. Applicants who meet the constitutional and legal qualifications must vie and withstand the competition and rigorous screening and selection process. They must submit themselves to the selection criteria, processes and discretion of respondent JBC, which has the constitutional mandate of screening and selecting candidates whose names will be in the list to be submitted to the President. So long as a fair opportunity is available for all applicants who are evaluated on the basis of their individual merits and abilities, the questioned policy cannot be struck down as unconstitutional.[31] (Citations omitted)

From the foregoing, it is apparent that the petitioner has not established a clear legal right to justify the issuance of a preliminary injunction. The petitioner has merely filed an application with the JBC for the position of RTC judge, and he has no clear legal right to be nominated for that office nor to be selected and included in the list to be submitted to the President which is subject to the discretion of the JBC. The JBC has the power to determine who shall be recommended to the judicial post. To be included in the list of applicants is a privilege as one can only be chosen under existing criteria imposed by the JBC itself. As such, prospective applicants, including the petitioner, cannot claim any demandable right to take part in it if they fail to meet these criteria. Hence, in the absence of a clear legal right, the issuance of an injunctive writ is not justified.

As the constitutional body granted with the power of searching for, screening, and selecting applicants relative to recommending appointees to the Judiciary, the JBC has the authority to determine how best to perform such constitutional mandate. Pursuant to this authority, the JBC issues various policies setting forth the guidelines to be observed in the evaluation of applicants, and formulates rules and guidelines in order to ensure that the rules are updated to respond to existing circumstances. Its discretion is freed from legislative, executive or judicial intervention to ensure that the JBC is shielded from any outside pressure and improper influence. Limiting qualified applicants in this case to those judges with five years of experience was an exercise of discretion by the JBC. The potential applicants, however, should have been informed of the requirements to the judicial positions, so that they could properly prepare for and comply with them. Hence, unless there are good and compelling reasons to do so, the Court will refrain from interfering with the exercise of JBC's powers, and will respect the initiative and independence inherent in the latter.

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31 *Rollo*, pp. 86-87.

WHEREFORE, premises considered, the petition is **DISMISSED**. The Court, however, **DIRECTS** that the Judicial and Bar Council comply with the publication requirement of (1) the assailed policy requiring five years of experience as judges of first-level courts before they can qualify as applicant to the Regional Trial Court, and (2) other special guidelines that the Judicial and Bar Council is or will be implementing.

SO ORDERED.

BIENVENIDO L. REYES
Associate Justice

WE CONCUR:

(No Part)
MARIA LOURDES P. A. SERENO
Chief Justice

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice
See: Concurring Opinion

I concur and also join the concurring opinion of Justice Brion: Teresita Leonardo de Castro

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

I join the opinion of J. Brion

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

(On official Leave)
MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

See separate concurring opinion

(On Leave)
ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC M.V.F. LEONEN
Associate Justice

(No Part)
FRANCIS H. JARDELEZA
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.

ANTONIO T. CARPIO
Associate Justice