

SECOND DIVISION

**G.R. No. 209331 – DEPARTMENT OF FINANCE, represented by Hon. Cesar V. Purisima, in his official capacity as Secretary, and the BUREAU OF CUSTOMS, represented by Hon. Rozzano Rufino B. Biazon, in his official capacity as Commissioner of Customs, Petitioners, v. HON. MARINO M. DELA CRUZ, JR., in his capacity as Executive Judge, Regional Trial Court, Manila, HON. FELICITAS O. LARON-CACANINDIN, in her capacity as Presiding Judge, Regional Trial Court, Manila, Branch 17, RONNIE C. SILVESTRE, EDWARD P. DELA CUESTA, ROGEL C. GATCHALIAN, IMELDA D. CRUZ, LILIBETH S. SANDAG, RAYMOND P. VENTURA, MA. LIZA S. TORRES, ARNEL C. ALCARAZ, MA. LOURDES V. MANGAOANG, FRANCIS AGUSTIN Y. ERPE, CARLOS T. SO, MARIETTA D. ZAMORANOS, CARMELITA M. TALUSAN,<sup>1</sup> AREFILES H. CARREON,<sup>2</sup> and ROMALINO G. VALDEZ, Respondents.**

Promulgated:

24 AUG 2015

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*Att. Cabal... Perfecto*

DISSENTING OPINION

**LEONEN, J.:**

Respectfully, I dissent.

The Civil Service Commission has exclusive jurisdiction over questions regarding personnel actions affecting civil service employees.<sup>3</sup> It is the sole arbiter that decides controversies regarding the civil service at first instance.<sup>4</sup> Courts should not directly assume jurisdiction based on allegations of unconstitutionality and invalidity of government regulations when the question, in essence, involves a personnel action.

This is a Petition for certiorari and prohibition with very urgent prayer for the immediate issuance of a temporary restraining order and/or writ of preliminary mandatory injunction<sup>5</sup> filed by the Department of Finance and the Bureau of Customs before this court, assailing the Manila Regional Trial

<sup>1</sup> *Rollo*, p. 58. Carmelita M. Talusan withdrew as petitioner in Civil Case No. 13-130820. The withdrawal was noted by the trial court in its Order dated October 4, 2013.

<sup>2</sup> *Id.* at 119. Arefiles H. Carreon manifested his intent to withdraw as petitioner in Civil Case No. 13-130820 per letter to counsel dated October 16, 2013.

<sup>3</sup> *Olanda v. Bugayong*, 459 Phil. 626, 632 (2003) [Per J. Carpio Morales, Third Division].

<sup>4</sup> *Id.*

<sup>5</sup> *Rollo*, pp. 10–50.

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Court's Order<sup>6</sup> dated October 1, 2013 issued by Executive Judge Marino M. Dela Cruz, Jr., the Order<sup>7</sup> dated October 4, 2013 issued by Presiding Judge Felicitas O. Laron-Cacanindin, and all other subsequent Orders preventing the implementation of Customs Personnel Order No. B-189-2013.<sup>8</sup> The Department of Finance and Bureau of Customs also pray for the dismissal of the Petition for declaratory relief filed by private respondents before the Regional Trial Court of Manila.<sup>9</sup>

On September 2, 2013, President Benigno Aquino III issued Executive Order No. 140<sup>10</sup> creating the Customs Policy Research Office in the Department of Finance.<sup>11</sup> The Customs Policy Research Office shall review the Bureau of Customs' administration policies, rules, and procedures, and provide recommendations for their improvement.<sup>12</sup> Section 3 of Executive Order No. 140 provides for the composition of the Customs Policy Research Office:

**SECTION 3. Personnel and Staffing Complement.** The [Customs Policy Research Office] shall be composed of its organic personnel, as approved by the Department of Budget and Management (DBM) upon recommendation of the [Department of Finance] Secretary, augmented and reinforced by [Department of Finance] and [Bureau of Customs] personnel as well as those detailed or seconded from other agencies, whether attached to the [Department of Finance] or not. In addition, the [Customs Policy Research Office], upon approval of the [Department of Finance] Secretary, may hire or engage technical consultants to provide necessary support in the performance of its mandate.<sup>13</sup>

Executive Order No. 140 was published on September 17, 2013 in Manila Bulletin and Philippine Star.<sup>14</sup> Section 9 of Executive Order No. 140 provides:

**SECTION 9. Effectivity.** This Order shall take effect immediately upon publication in two (2) newspapers of general circulation.<sup>15</sup>

On September 17, 2013, or on the same day of publication of Executive Order No. 140, Bureau of Customs Commissioner Rozzano Rufino B. Biazon issued Customs Personnel Order No. B-189-2013,<sup>16</sup> with

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<sup>6</sup> Id. at 54–56.

<sup>7</sup> Id. at 57–63.

<sup>8</sup> Id. at 44.

<sup>9</sup> Id.

<sup>10</sup> Id. at 64–67.

<sup>11</sup> Id. at 14.

<sup>12</sup> Id. at 65; Exec. Order No. 140 (2013), sec. 1.

<sup>13</sup> *Rollo*, p. 66.

<sup>14</sup> Id. at 14.

<sup>15</sup> Id. at 67.

<sup>16</sup> Id. at 69–70.

the approval of Department of Finance Secretary Cesar V. Purisima.<sup>17</sup> Customs Personnel Order No. B-189-2013 detailed 27 Bureau of Customs personnel to the Customs Policy Research Office under the Department of Finance.<sup>18</sup> Thus:

September 17, 2013

**CUSTOMS PERSONNEL ORDER**  
No. B-189-2013

Under Section 3 of Executive Order No. 140, series of 2013, the Customs Policy Research Office (“the CPRO”) shall be composed of its organic personnel, augmented and reinforced by personnel from the Department of Finance and Bureau of Customs as well [as] those detailed or seconded from other agencies. Pursuant to the foregoing, the following personnel are detailed from the Bureau of Customs to [Customs Policy Research Office] under the Department of Finance:

<b>FULL NAME (Surname, First Name)</b>	<b>POSITION TITLE AND SALARY GRADE</b>
1. GATCHALIAN, ROGEL CRUZ	Collector of Customs VI (26)
2. SO, CARLOS TAN	Collector of Customs VI (26)
3. DELA CUESTA, EDUARD PALAFOX	Collector of Customs VI (26)
4. BELMONTE, RICARDO RACIMO	Collector of Customs VI (26)
5. MOLINA, ADELINA SANTOS ESTRELLA	Collector of Customs VI (26)
6. SILVESTRE, RONNIE CRUZ	Collector of Customs VI (26)
7. MANDANGAN, MACABANTUG DIMAPUNTUG	Collector of Customs V (25)
8. BAUZON, PRISCILLA DE VERA	Collector of Customs V (25)
9. CRUZ, IMELDA DE JESUS	Collector of Customs V (25)
10. TOGONON, MA. SONIA IRINEA CALUYO	Collector of Customs V (25)
11. SANDAG, LILIBETH SUMBILLA	Collector of Customs V (25)
12. VENTURA, RAYMOND P.	Collector of Customs V (25)
13. ROQUE, TERESITA SIOSON	Collector of Customs V (25)
14. TORRES, MA. LIZA SEBASTIAN	Collector of Customs V (25)
15. MARTIN, MARITESS THEODOSSIS	Collector of Customs V (25)
16. ALCARAZ, ARNEL CRUZ	Collector of Customs V (25)
17. ALCID, TOMAS LADERA	Collector of Customs V (25)
18. MANGAOANG, MA. LOURDES VILLAMAR	Collector of Customs V (25)
19. ERPE, FRANCIS AGUSTIN YANCHA	Collector of Customs V (25)
20. VILLAGARCIA, ROGELIO VELACRUZ	Collector of Customs V (25)
21. ZAMORANOS, MARIETTA DANTE	Collector of Customs V (25)
22. TAN, JUAN NATIVIDAD	Collector of Customs V (25)
23. TALUSAN, CARMELITA MANAHAN	Collector of Customs V (25)

<sup>17</sup> Id. at 14.

<sup>18</sup> Id. at 69; BOC Customs Personnel Order No. B-189-2013, par. 1.

24. CARREON, AREFILES HAMOY	Collector of Customs V (25)
25. PACARDO, RUSTUM LANUEVO	Collector of Customs V (25)
26. VALDEZ, ROMALINO GABRIEL	Collector of Customs V (25)
27. PABLO, TALEK J.	Collector of Customs V (25)

All orders, circulars, memoranda, issuances contrary to or inconsistent herewith are hereby revoked and/or modified, and all concerned shall be guided accordingly.

This Order shall be effective immediately and valid until sooner revoked.

For strict compliance.

(signed)  
ROZZANO RUFINO B. BIAZON  
Commissioner of Customs

APPROVED:

(signed)  
CESAR V. PURISIMA  
Secretary  
Department of Finance  
Date: \_\_\_\_\_<sup>19</sup>

Only 12<sup>20</sup> of the affected employees complied with the directive in Customs Personnel Order No. B-189-2013 and reported to the Customs Policy Research Office after its effectivity on September 17, 2014.<sup>21</sup>

The other 15<sup>22</sup> affected employees refused to comply with the Order<sup>23</sup> and instead filed on September 30, 2013 a Petition<sup>24</sup> for declaratory relief with an application for a temporary restraining order and/or a writ of preliminary injunction before the Regional Trial Court of Manila.<sup>25</sup>

The 15 employees assailed the validity of Customs Personnel Order No. B-189-2013.<sup>26</sup> They argued that Customs Personnel Order No. B-189-2013 violated (a) Section 703<sup>27</sup> of Republic Act No. 1937 or the Tariff and

<sup>19</sup> *Rollo*, pp. 69–70.

<sup>20</sup> *Id.* at 71. 12 out of the 27 affected employees did not file for a Petition for declaratory relief.

<sup>21</sup> *Id.* at 400.

<sup>22</sup> *Id.* at 71.

<sup>23</sup> *Id.* at 400.

<sup>24</sup> *Id.* at 71–93. The Petition was docketed as Civil Case No. 13-130820.

<sup>25</sup> *Id.* at 15.

<sup>26</sup> *Id.* at 72.

<sup>27</sup> Rep. Act No. 1937 (1957), sec. 703, as amended, provides:

SECTION 703. Assignment of Customs Officers and Employees to Other Duties. — The Commissioner of Customs may, with the approval of the Secretary of Finance, assign any employee of the Bureau of Customs to any port, service, division or office *within* the Bureau or assign him duties as the best interest of the service may require, in accordance with the staffing pattern or organizational set-up as may be prescribed by the Commissioner of Customs with the approval of the Secretary of Finance: Provided, That such assignment shall not affect the tenure of office of the employees nor result in the change of status, demotion in rank and/or deduction in salary. (Emphasis supplied)

Customs Code;<sup>28</sup> (b) their right to security of tenure as career service officers defined under Book V, Title I, Subtitle A, Chapter 2, Section 7 of Executive Order No. 292;<sup>29</sup> and (c) Section 3 of Executive Order No. 140.<sup>30</sup> They further argued that Customs Personnel Order No. B-189-2013 was invalid for having been issued prior to the effectivity of Executive Order No. 140.<sup>31</sup> They relied on Article 2<sup>32</sup> of the Civil Code that provides that laws become effective 15 days after complete publication.<sup>33</sup>

On October 1, 2013, Executive Judge Marino M. Dela Cruz, Jr. granted a 72-hour temporary restraining order to stop the implementation of Customs Personnel Order No. B-189-2013.<sup>34</sup> The case was then raffled to Branch 17 presided by Judge Felicitas O. Laron-Cacanindin (Judge Laron-Cacanindin).<sup>35</sup>

On October 4, 2013,<sup>36</sup> the Department of Finance and the Bureau of Customs filed a Motion to Dismiss.<sup>37</sup> They argued that the Regional Trial Court had no jurisdiction over the employees' Petition for declaratory relief and that the requisites for the filing of a Petition for declaratory relief were lacking.<sup>38</sup>

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<sup>28</sup> *Rollo*, pp. 76–77.

<sup>29</sup> *Id.* at 77; Exec. Order No. 292 (1987), Book V, Title I, subtitle A, chap. 2, sec. 7 provides:  
SECTION 7. Career Service. — The Career Service shall be characterized by (1) entrance based on merit and fitness to be determined as far as practicable by competitive examination, or based on highly technical qualifications; (2) opportunity for advancement to higher career positions; and (3) security of tenure.

The Career Service shall include:

- (1) Open Career positions for appointment to which prior qualification in an appropriate examination is required;
- (2) Closed Career positions which are scientific, or highly technical in nature; these include the faculty and academic staff of state colleges and universities, and scientific and technical positions in scientific or research institutions which shall establish and maintain their own merit systems;
- (3) Positions in the Career Executive Service; namely, Undersecretary, Assistant Secretary, Bureau Director, Assistant Bureau Director, Regional Director, Assistant Regional Director, Chief of Department Service and other officers of equivalent rank as may be identified by the Career Executive Service Board, all of whom are appointed by the President;
- (4) Career officers, other than those in the Career Executive Service, who are appointed by the President, such as the Foreign Service Officers in the Department of Foreign Affairs;
- (5) Commissioned officers and enlisted men of the Armed Forces which shall maintain a separate merit system;
- (6) Personnel of government-owned or controlled corporations, whether performing governmental or proprietary functions, who do not fall under the non-career service; and
- (7) Permanent laborers, whether skilled, semi-skilled, or unskilled.

<sup>30</sup> *Rollo*, pp. 80–81.

<sup>31</sup> *Id.* at 80 and 84.

<sup>32</sup> CIVIL CODE, art. 2, as amended by Exec. Order No. 200 (1987), provides:

ART. 2. Laws shall take effect after fifteen days following the completion of their publication either in the Official Gazette or in a newspaper of general circulation in the Philippines, unless it is otherwise provided.

<sup>33</sup> *Rollo*, p. 84.

<sup>34</sup> *Id.* at 15–16.

<sup>35</sup> *Id.* at 16.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 94–115.

<sup>38</sup> *Id.* at 98–99.

In the Order dated October 4, 2013, Judge Laron-Cacanindin extended the temporary restraining order to 20 days after finding that Customs Personnel Order No. B-189-2013 had “violate[d] the rules on detail because it failed to provide the duration of the detail.”<sup>39</sup> In the same Order, Judge Laron-Cacanindin stated that the Order was without prejudice to further findings of the court after trial on the merits of the main case for declaratory relief.<sup>40</sup>

In the Order<sup>41</sup> dated October 21, 2013, Judge Laron-Cacanindin denied the employees’ application for a writ of preliminary injunction.<sup>42</sup> The denial of their application for a writ of preliminary injunction prompted six (6) of the employees who filed the Petition to report to the Customs Policy Research Office.<sup>43</sup> The returning employees reasoned that they reported for work so they would not be charged with insubordination.<sup>44</sup>

On October 21, 2013, the Department of Finance and Bureau of Customs filed this Petition for certiorari and prohibition.<sup>45</sup>

This court required the 15 employees to file a Comment on the Petition.<sup>46</sup> After filing the Comment,<sup>47</sup> the Department of Finance and Bureau of Customs were ordered to file a Reply.<sup>48</sup>

In their Petition for certiorari, the Department of Finance and Bureau of Customs argued that the Civil Service Commission, not the Regional Trial Court, had jurisdiction over the subject matter of this case and that the 15 employees failed to exhaust all available administrative remedies before filing their Petition for declaratory relief.<sup>49</sup> According to the Department of Finance and Bureau of Customs, Customs Personnel Order No. B-189-2013 was a personnel action, and questions involving personnel actions in the civil service should be lodged before the Civil Service Commission.<sup>50</sup>

Further, the Department of Finance and Bureau of Customs argued that some of the requirements for filing a Petition for declaratory relief were absent.<sup>51</sup> First, a declaratory relief is available only when the government

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

<sup>40</sup> Id. at 62.

<sup>41</sup> Id. at 323–326.

<sup>42</sup> Id. at 326.

<sup>43</sup> Id. at 351. The employees were Arnel C. Alcaraz, Ma. Lourdes V. Mangaoang, Romalino G. Valdez, Lilibeth S. Sandag, Ma. Liza S. Torres, and Raymond P. Ventura.

<sup>44</sup> Id.

<sup>45</sup> Id. at 9.

<sup>46</sup> Id. at 125.

<sup>47</sup> Id. at 127–154.

<sup>48</sup> Id. at 359.

<sup>49</sup> Id. at 24–25.

<sup>50</sup> Id. at 28.

<sup>51</sup> Id. at 24.

issuance being questioned is a national law or an ordinance of general application.<sup>52</sup> Since Customs Personnel Order No. B-189-2013 was an internal personnel order whose application was limited within the Bureau of Customs, it cannot be a subject of a Petition for declaratory relief.<sup>53</sup> Second, the declaratory relief was no longer available because Customs Personnel Order No. B-189-2013 had been breached prior to the filing of the Petition.<sup>54</sup> The 15 employees allegedly committed a breach when they failed to report to the Customs Policy Research Office upon the effectivity of Customs Personnel Order No. B-189-2013 on September 17, 2013.<sup>55</sup> Third, a declaratory relief was not available to the 15 employees because they had an adequate remedy with the Civil Service Commission.<sup>56</sup>

Regarding the duration of the detail, the Department of Finance and Bureau of Customs argued that the detail was not indefinite and that pursuant to Civil Service Commission Resolution No. 021181<sup>57</sup> or the Policies on Detail, the detail shall only last for at most, one (1) year.<sup>58</sup>

In their Comment dated January 8, 2014, the 15 employees countered that the Regional Trial Court had jurisdiction as the main issue was the validity and constitutionality of Customs Personnel Order No. B-189-2013.<sup>59</sup> The resolution of this issue required the exercise of judicial review, which was beyond the competence of the Civil Service Commission.<sup>60</sup>

Since the 15 employees' Petition for declaratory relief alleges that Customs Personnel Order No. B-189-2013 is unconstitutional and invalid, those allegations should suffice for the Regional Trial Court to assume jurisdiction.<sup>61</sup>

According to the 15 employees, Customs Personnel Order No. B-189-2013 is unconstitutional for violating their right to security of tenure.<sup>62</sup> Their detail to the Customs Policy and Research Office amounts to constructive dismissal<sup>63</sup> as they are now "mere researchers[.]"<sup>64</sup>

The 15 employees argue that all the requisites for the filing of a

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<sup>52</sup> Id. at 33.

<sup>53</sup> Id.

<sup>54</sup> Id. at 35.

<sup>55</sup> Id.

<sup>56</sup> Id. at 37.

<sup>57</sup> Id. at 116–118.

<sup>58</sup> Id. at 39–40.

<sup>59</sup> Id. at 135.

<sup>60</sup> Id. at 140.

<sup>61</sup> Id. at 143.

<sup>62</sup> Id. at 137–140.

<sup>63</sup> Id. at 149–150.

<sup>64</sup> Id. at 142.

Petition for declaratory relief are present.<sup>65</sup> They claim that Customs Personnel Order No. B-189-2013 is a government regulation, affecting their rights, duties, rank, and status.<sup>66</sup> Hence, Customs Personnel Order No. B-189-2013 is a proper subject of a Petition for declaratory relief.<sup>67</sup> They also argue that Customs Personnel Order No. B-189-2013 is void, producing no effect.<sup>68</sup> According to them, a void or unconstitutional law or issuance cannot be a source of an obligation so it cannot be breached.<sup>69</sup>

This case should consider the following issues:

First, whether the Regional Trial Court has jurisdiction over private respondents' Petition for declaratory relief;

Second, whether all the requisites for the filing of a Petition for declaratory relief are present; and

Finally, whether Customs Personnel Order No. B-189-2013 is void because of its indefinite term.

#### I.

The Constitution confers jurisdiction over the Civil Service Commission for cases involving the civil service. Article IX(B), Section 1(1) of the Constitution provides:

SECTION 1. (1) *The Civil Service shall be administered by the Civil Service Commission composed of a Chairman and two Commissioners who shall be natural-born citizens of the Philippines and, at the time of their appointment, at least thirty-five years of age, with proven capacity for public administration, and must not have been candidates for any elective position in the elections immediately preceding their appointment. (Emphasis supplied)*

As part of the Civil Service Commission's mandate to administer the civil service, Article IX(B), Section 3 of the Constitution provides:

SECTION 3. The Civil Service Commission, as the *central personnel agency of the Government*, shall establish a career service and adopt measures to promote morale, efficiency, integrity, responsiveness, progressiveness, and courtesy in the civil

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<sup>65</sup> Id. at 141–144.

<sup>66</sup> Id. at 141–143.

<sup>67</sup> Id. at 143.

<sup>68</sup> Id.

<sup>69</sup> Id.



service. It shall strengthen the merit and rewards system, integrate all human resources development programs for all levels and ranks, and institutionalize a management climate conducive to public accountability. It shall submit to the President and the Congress an annual report on its personnel programs. (Emphasis supplied)

The Constitution gives the Civil Service Commission quasi-judicial powers through Article IX(A), Sections 6 and 7, which provide:

SECTION 6. Each Commission en banc may promulgate its own rules concerning *pleadings and practice before it or before any of its offices*. Such rules, however, shall not diminish, increase, or modify substantive rights.

SECTION 7. Each Commission shall decide by a majority vote of all its Members any *case or matter* brought before it within sixty days from the date of its submission for decision or resolution. A case or matter is deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the rules of the Commission or by the Commission itself. Unless otherwise provided by this Constitution or by law, any decision, order, or ruling of each Commission may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof. (Emphasis supplied)

As the “central personnel agency of the Government,”<sup>70</sup> Book V, Title I, Subtitle A, Chapter 3, Section 12(11) of Executive Order No. 292 or the Administrative Code of 1987 provides:

SECTION 12. Powers and Functions. — The [Civil Service] Commission shall have the following powers and functions:

. . . .

- (11) *Hear and decide administrative cases* instituted by or brought before it directly or on appeal, *including contested appointments*, and review decisions and actions of its offices and of the agencies attached to it. Officials and employees who fail to comply with such decisions, orders, or rulings shall be liable for contempt of the Commission. Its decisions, orders, or rulings shall be final and executory. Such decisions, orders, or rulings may be brought to the Supreme Court on certiorari by the aggrieved party within thirty (30) days from receipt of a copy thereof[.] (Emphasis supplied)

Further, for the implementation of Book V, Title I, Subtitle A, Chapter

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<sup>70</sup> CONST., art. IX(B), sec. 3.

3, Section 12(11) of Executive Order No. 292,<sup>71</sup> Sections 5(B)(3), 6(B)(3), and 7(B)(2) of Civil Service Commission Memorandum Circular No. 19-99 or the Revised Uniform Rules on Administrative Cases in the Civil Service lay down the different offices of the civil service where complaints involving personnel actions should be filed. Hence:

SECTION 5. *Jurisdiction of the Civil Service Commission Proper.*<sup>72</sup> — The Civil Service Commission Proper shall have jurisdiction over the following cases:

....

B. *Non-Disciplinary*

....

3. Protests against the appointment, or other *personnel actions*, involving third level officials;<sup>73</sup> and

....

SECTION 6. *Jurisdiction of Civil Service Regional Offices.* — The Civil Service Commission Regional Offices shall have jurisdiction over the following cases:

....

B. *Non-Disciplinary*

....

3. Decisions of national agencies and local government units within their geographical boundaries relative to *personnel actions* and non-disciplinary cases brought before it on appeal; and

....

SECTION 7. *Jurisdiction of Heads of Agencies.* — Heads of Departments, agencies, provinces, cities, municipalities and other instrumentalities shall have original concurrent jurisdiction, with the Commission,<sup>74</sup> over their respective officers and employees.

<sup>71</sup> CSC Memorandum Circular No. 19-99 (1999), second Whereas clause.

<sup>72</sup> CSC Memorandum Circular No. 19-99 (1999), Rule I, sec. 2(c) provides:  
SECTION 2. Coverage and Definition of Terms. — . . .

c. COMMISSION PROPER refers to the Civil Service Commission-Central Office.

<sup>73</sup> CSC Memorandum Circular No. 19-99 (1999), Rule I, sec. 2(o) provides:  
SECTION 2. Coverage and Definition of Terms. — . . .

o. THIRD LEVEL refers to positions in the Career Executive Service (CES) which include Undersecretary, Assistant Secretary, Bureau Director, Regional Director, Assistant Regional Director and other officers of equivalent rank.

<sup>74</sup> CSC Memorandum Circular No. 19-99 (1999), Rule 1, sec. 2(b) provides:  
SECTION 2. Coverage and Definition of Terms. — . . .

....

B. *Non-Disciplinary*

....

2. Complaints on *personnel actions* and other non-disciplinary actions of their respective personnel. (Emphasis supplied)

As the “central personnel agency of the Government”<sup>75</sup> with quasi-judicial powers<sup>76</sup> and as the body tasked to administer the civil service,<sup>77</sup> the Civil Service Commission is the “sole arbiter of controversies relating to the civil service[,]”<sup>78</sup> including personnel actions, as this court has ruled.<sup>79</sup>

The material allegations in the Complaint or Petition and the character of the relief sought determine which court has jurisdiction.<sup>80</sup> In private respondents’ 44 paragraphs in their Petition for declaratory relief filed before the Regional Trial Court, they alleged:

8. On 17 September 2013, without waiting for [Executive Order] No. 140’s effectivity on 2 October 2013, the [Bureau of Customs] issued [Customs Personnel Order] No. B-189-2013, signed by [Bureau of Customs] Commissioner Rozzano Rufino B. Biazon and approved by [Department of Finance] Secretary, Cesar V. Purisima on even date. [Customs Personnel Order] No. B-189-2013 states:

Under Section 3 of Executive Order No. 140, series of 2013, the Customs Policy Research Office (the “CPRO”) shall be composed of its organic personnel, augmented and reinforced by personnel from the Department of Finance and Bureau of Customs as well as those (sic) detailed or seconded from other agencies. Pursuant to the foregoing, the following personnel are detailed from the Bureau of Customs to [the Customs Policy Research Office] under the Department of Finance:

....

9. Thus, [private respondents’] original and permanent appointments in plantilla positions as Collectors of Customs VI and V were effectively and constructively revoked even before the effectivity of [Executive Order] No. 140 creating the [Customs Policy Research Office].

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b. COMMISSION refers to the Civil Service Commission (Central Office and Regional Offices).

<sup>75</sup> CONST., art. IX(B), sec. 3.

<sup>76</sup> CONST., art. IX(A), sec. 6 and 7.

<sup>77</sup> CONST., art. IX(B), sec. 1(1).

<sup>78</sup> *Corsiga v. Judge Defensor*, 439 Phil. 875, 883 (2002) [Per J. Quisumbing, Second Division].

<sup>79</sup> *Mantala v. Salvador*, G.R. No. 101646, February 13, 1992, 206 SCRA 264, 267 [Per C.J. Narvasa, En Banc].

<sup>80</sup> *Department of Agrarian Reform v. Cuenca*, 482 Phil. 208, 216 (2004) [Per J. Panganiban, Third Division].

They are all “*detailed*” to the [Customs Policy Research Office] *without any appointment papers* providing for their specific functions, status, salary grades, ranks, and designation. By virtue of the assailed issuance, [*private respondents*] were all removed from their respective permanent positions as Collectors of Customs to form a supposed “research body.”

10. The Department of Budget and Management (DBM), pursuant to [Executive Order] No. 140 has not even approved the composition of the organic personnel of the [Customs Policy Research Office]. Neither has the [Department of Finance] appeared to have made the requisite recommendation for that purpose, as mandated by [Executive Order] No. 140.

11. While they have not been officially notified thereof, [*private respondents*] were reliably informed of the issuance of [Customs Personnel Order] No. B-189-2013 and [*petitioners*] attempt to *unlawfully “detail”* them to the [Customs Policy Research Office].

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13. While the [Bureau of Customs] Commissioner’s authority to reorganize is recognized, it is neither absolute nor unbridled. The exercise thereof should not violate the law and the 1987 Constitution. The Constitution clearly mandates that “no officer or employee of the civil service shall be *removed or suspended* except for cause provided by law.”

14. Section 703 of [Republic Act] No. 1937, as amended, provides that:

*Assignment of Customs Officers and Employees to other duties.* – The Commissioner of Customs may, with the approval of the Secretary of Finance, assign any employee of the Bureau of Customs to any port, service, division or office *within* the Bureau or assign him duties as the best interest of the service may require, in accordance with the staffing pattern or organizational set-up as may be prescribed by the Commissioner of Customs with the approval of the Secretary of Finance: Provided, that such assignment shall not affect the tenure of office of the employees nor result in the change of status, demotion in rank and/or deduction of salary.

15. Section 2 of [Republic Act] No. 6656 [or An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization] further provides that due notice and hearing are required to *remove* a public officer or employee pursuant to a bona fide *reorganization*, viz:

No officer or employee in the career service shall be *removed* except for a valid cause and after due notice and hearing. A valid cause for *removal* exists when, pursuant to a bona fide *reorganization*, a position has been abolished or rendered redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service, or other lawful causes allowed by the Civil Service Law.

16. Thus, while the necessity and indispensability of reorganization when public interest demands may be justified, civil service employees, much more career service officers with permanent appointments like [private respondents], cannot be *removed, suspended, or demoted* from office except for cause provided by law.

.....

18. In this case, [Customs Personnel Order] No. B-189-2013 allegedly “*detailed*” all 15 [private respondents], together with 12 other Collectors of Customs, to an advisory capacity of a policy coordinating body (CPRO) under the guise of reorganization, thus effectively rendering vacant the 27 positions of collector of customs throughout the country.

19. Section 8, Rule VII of Civil Service Commission (CSC) Resolution No. 91-1631, otherwise known as the “Omnibus Civil Service Rules and Regulations,” provides that a “*detail*” is “*the movement of an employee from one department or agency to another which is temporary in nature, which does not involve a reduction in rank, status or salary and does not require the issuance of another appointment.*”

20. The patent nullity of [Customs Personnel Order] No. B-189-2013 is readily apparent since Section 703 of [the Tariff and Customs Code] merely authorizes the [Bureau of Customs] Commissioner to *assign or move* [Bureau of Customs] personnel only within the Bureau. Since the [Customs Policy Research Office] is a newly created “office” outside of the [Bureau of Customs], the [Bureau of Customs] Commissioner’s issuance of [Customs Personnel Order] No. B-189-2013 which “*details*” [private respondents] to the [Customs Policy Research Office] is clearly an ultra vires act, and is therefore invalid. In fact, the [Bureau of Customs] Commissioner’s own admission proves this ultra vires and invalid issuance, thus:

“It is more than a reshuffle because [private respondents] have actually been *transferred* to the [Department of Finance], *out of the Bureau of Customs.*” Biazon said in an ANC interview, confirming news first reported by the Philippine Daily Inquirer. “Instead of just reassignment [to] another port, they’re basically *reassigned to another office.*”

“After their transfer out of the [Bureau of Customs], the next-in-rank collectors or division heads are *taking over* as officers-in-charge of the different ports,” he said.

21. There is no bona fide reorganization that took place. [Private respondents’] *mass “detail”* to the [Customs Policy Research Office] was without any clear or definite direction as to their career status and functions. As a consequence, [private respondents] were intentionally and effectively placed on a “floating status.”

22. Furthermore, [Executive Order] No. 140 clearly provides that the [Customs Policy Research Office] shall be composed of its organic personnel, and that said policy research body – after the organization of its own organic personnel – shall merely be augmented and reinforced by

Department of Finance and Bureau of Customs personnel. Despite the absence of any organic personnel, much less approval from the Department of Budget and Management or even a recommendation from the [Department of Finance], [private respondents] have, in speed haste, already been ordered to be “*detailed*” by the [Bureau of Customs] to the [Customs Policy Research Office], and thus, effectively *removed* from their current respective permanent positions.

23. The landmark case of *Dario v. Mison, et al.*, where the Supreme Court voided the personnel reorganization within the [Bureau of Customs], is highly instructive in this case, thus:

*Reorganizations in this jurisdiction have been regarded as valid provided they are pursued in good faith. .*

..

....

24. By no stretch of the imagination can the issuance of [Customs Personnel Order] No. B-189-2013 be said to have been carried out in good faith. The undue haste in issuing [Customs Personnel Order] No. B-189-2013 clearly shows that respondents are attempting to beat the deadline on the COMELEC election ban on *personnel movement* from 28 September 2013 to 28 October 2013 due to the forthcoming Barangay Elections. It cannot be denied that [Executive Order] No. 140, which was signed by the President on 2 September 2013, has yet to take effect on 2 October 2013, which is 15 days after its publication in two (2) newspapers of general circulation. On 17 September 2013, however, the [Bureau of Customs] already issued [Customs Personnel Order] No. B-189-2013, which is based on [Executive Order] No. 140, and attempted to serve copies thereof to [respondents] on 26 to 27 September 2013 supposedly just in time before the COMELEC election ban on personnel movement takes effect on 28 September 2013.

25. More importantly, [Executive Order] No. 140 mandates that the transfer of [Bureau of Customs] personnel should merely augment or reinforce the organic personnel of the [Customs Policy Research Office]. Obviously, without any organic personnel, there is still nothing to augment or reinforce. . . . Hence, [private respondents]’ “detail” to the [Customs Policy Research Office] absent any compliance with the requirements under [Executive Order] No. 140, was surely carried out in bad faith, and was meant to *illegally remove [private respondents] from their respective permanent positions*, in blatant violation of the law and the Constitution.

26. It should also be stressed that [private respondents] were appointed as Collectors of Customs with Position Titles VI and V, with specific functions, duties, titles, and ranks clearly provided for in their respective appointment papers. In contrast, their supposed “*detail*” to the [Customs Policy Research Office] under [Customs Personnel Order] No. B-189-2013 does not even provide for a definite period of duty, their titles, new functions, or ranks.

27. Moreover, under CSC Memorandum Circular No. 06-05, otherwise known as the “*Guidelines on Designation*,” it is clear that:

....

B. Designees can only be designated to positions within the level they are currently occupying. However, Division Chiefs may be designated to perform the duties of third level positions

First level personnel cannot be designated to perform the duties of second level positions.

....

29. The basis of [private respondents'] *reassignment* or the exigency necessary to *remove* them from their positions is likewise inexistent. Such blanket "detail" relinquishes [private respondents'] permanent positions as Collectors of Customs without due process and is contrary to their Constitutional right to security of tenure. Clearly, the disparity between the positions of a Collector of Customs and a mere researcher is blatant. Therefore, the transfer from the former to the latter unmistakably denotes *demotion*. . . .

....

30. In the case of *Pastor v. City of Pasig*, the Supreme Court held that a reassignment or even detail which is indefinite and which results in a reduction of rank and status is effectively a *constructive dismissal from the service*. . . .

....

31. The principles on *constructive dismissal* clearly find analogous application to [private respondents]. By definition, constructive dismissal is a quitting because continued employment is rendered impossible, unreasonable or unlikely; when there is a demotion in rank or a diminution of pay. The test of constructive dismissal is whether a reasonable person in the employee's position would have felt compelled to give up his position under the circumstances. It is an act amounting to dismissal but is made to appear as if it were not. Constructive dismissal is therefore a *dismissal in disguise*. The law recognizes and resolves this situation in favor of employees in order to protect their rights and interests from the coercive acts of the employer. Thus, the Supreme Court has ruled that the management prerogative to transfer an employee "cannot be used as a subterfuge by the employer to rid himself of an undesirable worker."

32. Evidently, [private respondents'] "detail" to the [Customs Policy Research Office] operated as a blanket and forced relinquishment of their permanent positions as Collectors of Customs in violation of their right to security of tenure. In view thereof, it behooves upon this Honorable Court to correct such abuse of powers and retain [private respondents] to their rightful ranks.

....

35. . . . in accordance with the Supreme Court's ruling in *Tañada v. Tuvera*, laws and executive issuances shall take effect after fifteen (15) days following the completion of their publication in the Official Gazette, or in a newspaper of general circulation.

36. In this case, [Executive Order] No. 140 was published in the 17 September 2013 issue of the broadsheet newspaper, *Manila Bulletin*. Thus, following the above legal standards, it is clear that [Executive Order] No. 140 has yet to take legal effect on 2 October 2013. In other words, the [Bureau of Customs'] issuance of [Customs Personnel Order] No. B-189-2013 on 17 September 2013 simply has no legal basis, and is therefore premature and patently invalid. To deprive [private respondents] of their permanent positions as Collectors of Customs and to "detail" all 15 of them indefinitely as members of a research body on the basis of an invalid [Bureau of Customs] and [Department of Finance] order are not only illegal but also unconstitutional for being violative of [private respondents'] right to security of tenure.

37. An unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, inoperative, as if it had not been passed. . . . For these reasons, [Customs Personnel Order] No. B-189-2013 should be nullified and set aside, and its enforcement enjoined.

38. . . . The consequence [of implementing Customs Personnel Order No. B-189-2013] that is also readily obvious is the chaos entailed in port operations, the collection of much needed Government revenues and public service as [private respondents] perform functions either as District Collectors of all the 17 Collection Districts in the country, or as Deputy Collectors for administration, assessment and operation in those different ports.

....

41. It cannot be overemphasized that the issuance of [Customs Personnel Order] No. B-189-2013 is illegal, and blatantly violates existing law and the Constitution. As above mentioned, respondents intend to have [Customs Personnel Order] No. B-189-2013 immediately effective. Thus, there is a manifest urgency for this Honorable Court to immediately restrain [petitioners] from implementing [Customs Personnel Order] No. B-189-2013 upon receipt of this petition and before the matter can be heard on notice. Otherwise, grave injustice and irreparable injury would be suffered by [private respondents], in that:

- (a) [Executive Order] No. 140, on which [Customs Personnel Order] No. B-189-2013 is based, has yet to take effect upon publication in two (2) newspapers of general circulation. [Executive Order] No. 140 was published in the 17 September 2013 issue of the *Manila Bulletin*, hence, it will only take effect on 2 October 2013. [Customs Personnel Order] No. B-189-2013 cannot be given any effectivity as it is invalid for being blatantly premature and without legal basis;
- (b) [Customs Personnel Order] No. B-189-2013 violates [Executive Order] No. 140, as the latter mandates that the [Department of Finance], with the approval of the [Department of Budget and Management], has to recommend the composition of the organic



personnel of the [Customs Policy Research Office]. No such recommendation by the [Department of Finance], much less the approval of the [Department of Budget and Management], has been made. In fact, [Executive Order] No. 140 provides that the transfer of [Bureau of Customs] personnel should merely augment or reinforce the organic personnel of the [Customs Policy Research Office]. Obviously, without any organic personnel, there is still nothing to augment or reinforce. The [Customs Policy Research Office] is thus in limbo, as there is yet no organic personnel in place;

- (c) [Customs Personnel Order] No. B-189-2013 is also contrary to Section 703 of [Republic Act] No. 1937, as amended, which provides that “(t)he Commissioner of Customs may, with the approval of the Secretary of Finance, assign any employee of the Bureau of Customs to any port, service, division or office *within* the Bureau or assign him duties as the best interest of the service may require.” Even Commissioner Biazon, in an interview with [the ABS-CBN News Channel] admitted that “it is more than a reshuffle because they have actually been transferred to the [Department of Finance], out of the Bureau of Customs.” The Commissioner of Customs thus committed an illegal and *ultra vires* act in “detailing” [private respondents] to the [Customs Policy Research Office], an office admittedly outside the [Bureau of Customs]; and
- (d) [private respondents’] “detail” to the [Customs Policy Research Office] is [petitioners’] scheme to constructively dismiss and demote [private respondents]. [Customs Personnel Order] No. B-189-2013 operates as a blanket and forced relinquishment of [private respondents’] permanent positions as Collectors of Customs in violation of their constitutional right to security of tenure. [Private respondents] are all “detailed” to the [Customs Policy Research Office] without any appointment papers providing for their specific functions, status, salary grades, ranks, and designation, thereby intentionally and effectively placing them on “floating status.”
- (e) [Private respondents] would be unduly displaced from their permanent positions with the appointment and/or designation by the [Bureau of Customs] of new Collectors of Customs.<sup>81</sup> (Emphasis supplied, citations omitted)

An examination of the text of the Petition for declaratory relief readily

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<sup>81</sup> *Rollo*, pp. 75–88.

shows that private respondents originally questioned a *personnel action*. They essentially questioned their detail to the Customs Policy and Research Office.

Book V, Title I, Subtitle A, Chapter 5, Section 26 of Executive Order No. 292 defines a personnel action:

SECTION 26. Personnel Actions. — . . .

As used in this Title, any action *denoting the movement or progress of personnel* in the civil service shall be known as personnel action. Such action shall include appointment through certification, promotion, transfer, reinstatement, re-employment, *detail*, reassignment, demotion, and separation. (Emphasis supplied)

The assailed Customs Personnel Order No. B-189-2013 is a personnel action because it details 27 employees from the Bureau of Customs to the Customs Policy Research Office. It is a movement of personnel in the civil service.

Cases involving personnel actions are within the exclusive jurisdiction of the Civil Service Commission and not within the trial courts' jurisdiction.<sup>82</sup>

The issue is not novel.

In *Olanda v. Bugayong*,<sup>83</sup> respondent Leonardo G. Bugayong (Bugayong), as President of the Philippine Merchant Marine Academy, relieved petitioner Menelieto A. Olanda (Olanda) from his post as the Dean of the College of Marine Engineering of the Philippine Merchant Marine Academy<sup>84</sup> and imposed a three (3)-month suspension<sup>85</sup> on the latter for allegedly “misusing classified information.”<sup>86</sup> Olanda filed before the Regional Trial Court of Iba, Zambales a Petition for “quo warranto, mandamus, and prohibition with prayer for the issuance of a writ of preliminary injunction and damages, claiming that there was *no valid cause* to deprive him of his position[.]”<sup>87</sup>

This court ruled that the trial court had no jurisdiction.<sup>88</sup> Hence:

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<sup>82</sup> *Olanda v. Bugayong*, 459 Phil. 626, 632–633 (2003) [Per J. Carpio Morales, Third Division]; *Mantala v. Salvador*, G.R. No. 101646, February 13, 1992, 206 SCRA 264, 267 [Per C.J. Narvasa, En Banc]; and *Corsiga v. Judge Defensor*, 439 Phil. 875, 883–884 (2002) [Per J. Quisumbing, Second Division].

<sup>83</sup> 459 Phil. 626 (2003) [Per J. Carpio Morales, Third Division].

<sup>84</sup> Id. at 629.

<sup>85</sup> Id. at 630.

<sup>86</sup> Id. at 629.

<sup>87</sup> Id. at 630.

<sup>88</sup> Id. at 633.

Disciplinary cases and cases involving “personnel actions” affecting employees in the civil service including “appointment through certification, promotion, transfer, reinstatement, reemployment, detail, reassignment, demotion and separation” are within the *exclusive* jurisdiction of the Civil Service Commission which is the sole arbiter of controversies relating to the civil service.

....

It was thus error for the trial court, *which does not have jurisdiction*, to, in the first, [sic] place take cognizance of the petition of petitioner assailing his relief as Dean and his designation to another position. This leaves it unnecessary to dwell on the issues herein raised by petitioner.

WHEREFORE, the petition is, upon the ground of *lack of jurisdiction* of the trial court, hereby DENIED.

SO ORDERED.<sup>89</sup> (Emphasis supplied, citation omitted)

In *Casimina v. Judge Legaspi*,<sup>90</sup> petitioner Pablo B. Casimina (Casimina), General Manager of the Philippine Fisheries Development Authority, issued Special Order No. 82, which reassigned private respondent Emmanuel T. Illera (Illera), Port Manager of the Iloilo Fishing Port Complex, from Iloilo to the central office in Quezon City.<sup>91</sup> After the denial of his request for reconsideration,<sup>92</sup> Illera filed for injunction with a prayer for temporary restraining order and a writ of preliminary injunction against Casimina before the Regional Trial Court of Iloilo “to restrain [Casimina] from transferring him to the central office in Quezon City.”<sup>93</sup>

Casimina filed an Omnibus Motion to dismiss the Complaint on the ground of, among others, lack of jurisdiction.<sup>94</sup> This court ruled that the trial court has no jurisdiction over the Petition.<sup>95</sup> “[T]his case falls within the jurisdiction of the Civil Service Commission (CSC) because it involves the *movement of government personnel* to promote order and efficiency in public service.”<sup>96</sup>

In *Mantala v. Salvador*,<sup>97</sup> Dr. Julia P. Regino (Regino) filed a formal protest before the Committee on Evaluation and Protest of the Department of Health questioning the appointment of Dr. Mariquita J. Mantala (Dr.

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<sup>89</sup> Id. at 632–633.

<sup>90</sup> 500 Phil. 560 (2005) [Per J. Corona, Third Division].

<sup>91</sup> Id. at 563.

<sup>92</sup> Id. at 565–566.

<sup>93</sup> Id. at 566.

<sup>94</sup> Id.

<sup>95</sup> Id. at 570.

<sup>96</sup> Id.

<sup>97</sup> G.R. No. 101646, February 13, 1992, 206 SCRA 264 [Per C.J. Narvasa, En Banc].

Mantala).<sup>98</sup> The Committee on Evaluation and Protest upheld Dr. Mantala's appointment.<sup>99</sup> Upon appeal and reconsideration, the Civil Service Commission also upheld Dr. Mantala's appointment.<sup>100</sup> The Resolution of the Civil Service Commission became final and executory.<sup>101</sup> Regino then filed an action for quo warranto and mandamus before the Regional Trial Court in Quezon City.<sup>102</sup> The trial court annulled and set aside Dr. Mantala's appointment and directed the Secretary of Health to withdraw Dr. Mantala's appointment and to issue another for Regino.<sup>103</sup> Dr. Mantala then filed a Petition for Review on certiorari before this court.<sup>104</sup> This court granted the Petition and annulled the Decision of the trial court.<sup>105</sup>

Disciplinary cases, and cases involving "personnel actions" affecting employees in the civil service—including "appointment through certification, promotion, transfer, reinstatement, reemployment, detail, reassignment, demotion and separation," and, of course, employment status and qualification standards—are within the exclusive jurisdiction of the Civil Service Commission. The Constitution declares the Commission to be "the central personnel agency of the Government," having power and authority to administer the civil service; to promulgate its own rules concerning pleadings and practice before it or before any of its offices; and to render decision in "any case or matter brought before it within sixty days from the date of its submission for decision or resolution," which decision, or order or ruling "may be brought to the Supreme Court on certiorari by the aggrieved party within thirty days from receipt of a copy thereof."

....

It was thus error, *because beyond its competence*, for the respondent Trial Court to take cognizance of the quo warranto and mandamus action instituted by Dr. Regino which was in essence a protest against the appointment of Dr. Mantala.<sup>106</sup> (Emphasis supplied, citations omitted)

In all these cases, this court upheld the jurisdiction of the Civil Service Commission over complaints involving the movement of personnel in the civil service.

## II.

The doctrine of primary administrative jurisdiction precludes trial courts from resolving a controversy involving a question that is within the

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<sup>98</sup> Id. at 265.

<sup>99</sup> Id.

<sup>100</sup> Id. at 266.

<sup>101</sup> Id.

<sup>102</sup> Id.

<sup>103</sup> Id.

<sup>104</sup> Id. at 267.

<sup>105</sup> Id. at 269.

<sup>106</sup> Id. at 267–268.

exclusive jurisdiction of an administrative tribunal.<sup>107</sup> The doctrine disallows courts “to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence.”<sup>108</sup>

In *Pambujan Sur United Mine Workers v. Samar Mining Company, Inc.*,<sup>109</sup> the plaintiff Pambujan Sur United Mine Workers filed a Complaint before the Court of First Instance (now Regional Trial Court) against the Samar Mining Company, Inc. (Samar Mining) alleging breach of their closed-shop agreement.<sup>110</sup> Samar Mining filed a Motion to Dismiss arguing that the regular courts had no jurisdiction over the subject matter of the Complaint.<sup>111</sup> Samar Mining argued that the Court of Industrial Relations (now National Labor Relations Commission) had jurisdiction over cases involving conditions of employment.<sup>112</sup> The Court of First Instance granted the Motion to Dismiss.<sup>113</sup>

Upon appeal, this court applied the “exclusion theory,”<sup>114</sup> i.e., “where jurisdiction is conferred in express terms upon one court, and not upon another [and where] it has been held that it is the intention that the jurisdiction conferred shall be exclusive”<sup>115</sup> and upheld the exclusive jurisdiction of the Court of Industrial Relations (now National Labor Relations Commission).<sup>116</sup> Hence:

But judicial wisdom in this particular matter would seem to favor adherence to the exclusion theory, what with the litigant’s ordinary duty to exhaust administrative remedies and the “doctrine of primary administrative jurisdiction,” sense-making and expedient,

“That the courts cannot or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal prior to the decision 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, and a uniformity of ruling is essential to comply with the

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<sup>107</sup> *Javier v. Court of Appeals*, G.R. No. 96617, October 14, 1992, 214 SCRA 572, 576 [Per J. Nocon, Second Division].

<sup>108</sup> *Catipon, Jr. v. Japson*, G.R. No. 191787, June 22, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/june2015/191787.pdf>> 10 [Per J. Del Castillo, Second Division].

<sup>109</sup> 94 Phil. 932 (1954) [Per J. Bengzon, En Banc].

<sup>110</sup> *Id.* at 933.

<sup>111</sup> *Id.* at 934.

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.* at 941.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.* at 941–942.

purposes of the regulatory statute administered.”  
(42 Am. Jur., 698.)<sup>117</sup>

This court also made a similar ruling in *Javier v. Court of Appeals*.<sup>118</sup> In *Javier*, Normito Javier (Normito) was “employed by private respondent Jebsens Maritime, Inc. as a boatswain[.]”<sup>119</sup> Normito, however, died at sea.<sup>120</sup> Upon learning of her husband’s death, Lolita Javier (Lolita) went to the office of Jebsens Maritime, Inc. and the latter “promised to give the corresponding death benefits[.]”<sup>121</sup> After Jebsens Maritime, Inc. had failed to pay the promised death benefits, Lolita filed a Complaint before the Regional Trial Court of Makati for a sum of money for herself and on behalf of her six (6) minor children against Jebsens Maritime, Inc. and its shipmaster.<sup>122</sup>

This court ruled that under Section 3(d)<sup>123</sup> of Executive Order No. 247 or the Reorganization Act of the Philippine Overseas Employment Administration, it was the Philippine Overseas Employment Administration that had original and exclusive jurisdiction over Lolita’s Complaint and that the trial court had no jurisdiction over the subject matter of her Complaint.<sup>124</sup> Hence, under the doctrine of primary administrative jurisdiction, the trial court cannot resolve the controversy.<sup>125</sup> This court ordered the Regional Trial Court to dismiss the case for lack of jurisdiction.<sup>126</sup>

In *Catipon, Jr. v. Japson*,<sup>127</sup> respondent Jerome Japson (Japson), “a former Senior Member Services Representative of [the] [Social Security System,] Bangued, filed a letter-complaint [before] the Civil Service Commission-[Cordillera Administrative Region] Regional Director[.]”<sup>128</sup> He alleged that petitioner Macario U. Catipon, Jr. (Catipon) made deliberate false entries in his application to take the Civil Service Professional Examination.<sup>129</sup> The Civil Service Commission-Cordillera Administrative Region Regional Director found Catipon guilty of conduct prejudicial to the

<sup>117</sup> Id. at 941.

<sup>118</sup> G.R. No. 96617, October 14, 1992, 214 SCRA 572 [Per J. Nocon, Second Division].

<sup>119</sup> Id. at 573.

<sup>120</sup> Id. at 574.

<sup>121</sup> Id.

<sup>122</sup> Id.

<sup>123</sup> Exec. Order No. 247 (1987), sec. 3(d) provides:

SECTION 3. Powers and Functions. —

(d) Exercise original and exclusive jurisdiction to hear and decide all claims arising out of an employer-employee relationship or by virtue of any law or contract involving Filipino workers for overseas employment including the disciplinary cases[.]

<sup>124</sup> *Javier v. Court of Appeals*, G.R. No. 96617, October 14, 1992, 214 SCRA 572, 575–576 [Per J. Nocon, Second Division].

<sup>125</sup> Id. at 576.

<sup>126</sup> Id. at 575 and 577.

<sup>127</sup> G.R. No. 191787, June 22, 2015  
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/june2015/191787.pdf>> [Per J. Del Castillo, Second Division].

<sup>128</sup> Id. at 2.

<sup>129</sup> Id.

best interest of the service.<sup>130</sup>

Catipon appealed to the Court of Appeals, which dismissed the appeal.<sup>131</sup> The Court of Appeals held that instead of filing the appeal before the Court of Appeals, Catipon should have appealed to the Civil Service Commission, based on Sections 5(A)(1),<sup>132</sup> 43,<sup>133</sup> and 49<sup>134</sup> of the Civil Service Commission Uniform Rules on Administrative Cases.<sup>135</sup>

This court affirmed the Decision of the Court of Appeals<sup>136</sup> and held:

The [Court of Appeals] is further justified in refusing to take cognizance of the petition for review, as “[t]he doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence.” When petitioner’s recourse lies in an appeal to the Commission Proper in accordance with the procedure prescribed in [Revised Uniform Rules on Administrative Cases in the Civil Service], the [Court of Appeals] may not be faulted for refusing to acknowledge petitioner before it.<sup>137</sup> (Emphasis supplied)

Hence, considering the exclusive jurisdiction of the Civil Service Commission to hear and decide administrative cases, including those involving personnel actions, as granted by the Constitution, the Regional Trial Court cannot assume jurisdiction based on the doctrine of primary administrative jurisdiction.

<sup>130</sup> Id.

<sup>131</sup> Id. at 5.

<sup>132</sup> CSC Memorandum Circular No. 19-99 (1999), Rule I, sec. 5(A)(1) provides:  
SECTION 5. Jurisdiction of the Civil Service Commission Proper. — The Civil Service Commission Proper shall have jurisdiction over the following cases:

A. Disciplinary

1. Decisions of Civil Service Regional Offices brought before it on petition for review[.]

<sup>133</sup> CSC Memorandum Circular No. 19-99 (1999), Rule III, sec. 43 provides:  
SECTION 43. Filing of Appeals. — Decisions of heads of departments, agencies, provinces, cities, municipalities and other instrumentalities imposing a penalty exceeding thirty (30) days suspension or fine in an amount exceeding thirty days salary, may be appealed to the Commission Proper within a period of fifteen (15) days from receipt thereof.

In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department head and finally to the Commission Proper. Pending appeal, the same shall be executory except where the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.

A notice of appeal including the appeal memorandum shall be filed with the appellate authority, copy furnished the disciplining office. 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, to the appellate authority.

<sup>134</sup> CSC Memorandum Circular No. 19-99 (1999), Rule III, sec. 49 provides:  
SECTION 49. Petition for Review. — A complainant may elevate the decision of the Civil Service Regional Office dismissing a complaint for lack of a prima facie case before the Commission Proper through a Petition for Review within fifteen (15) days from the receipt of said decision.

<sup>135</sup> *Catipon, Jr. v. Japson*, G.R. No. 191787, June 22, 2015 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/june2015/191787.pdf>> 5 [Per J. Del Castillo, Second Division].

<sup>136</sup> Id. at 12.

<sup>137</sup> Id. at 10, citing *Vidad v. Regional Trial Court of Negros Oriental, Branch 42*, G.R. No. 98084, October 18, 1993, 227 SCRA 271, 276 [Per J. Vitug, En Banc].

In sustaining the trial court's assumption of jurisdiction over the Petition for declaratory relief, the ponencia held that the case falls under an exception to the doctrine of exhaustion of administrative remedies.<sup>138</sup> The ponencia states:

In this case, respondents allege that [Customs Personnel Order No. B-189-2013] is contrary to law and unconstitutional. Respondents assail [Customs Personnel Order No. B-189-2013] as patently illegal, arbitrary, and oppressive. This case clearly falls within the exceptions where exhaustion of administrative remedies need not be resorted to by respondents.<sup>139</sup>

Private respondents, citing *Kilusang Bayan sa Paglilingkod ng mga Magtitinda ng Bagong Pamilihing Bayan ng Muntinlupa, Inc. (KBMBPM) v. Dominguez*,<sup>140</sup> likewise argue that exceptions to the doctrine of exhaustion of administrative remedies apply.<sup>141</sup> Hence:

Moreover, the doctrine of exhaustion of administrative remedies also yields to other exceptions, such as when the question involved is purely legal, as in the instant case, or where the questioned act is patently illegal, arbitrary or oppressive.<sup>142</sup>

The doctrine of exhaustion of administrative remedies does not apply and, consequently, its exceptions.

The doctrine of primary administrative jurisdiction is different from the doctrine of exhaustion of administrative remedies.

Under the doctrine of primary administrative jurisdiction, when an administrative agency is granted primary jurisdiction over the subject matter, the courts "cannot or will not determine a controversy involving a question which is within the jurisdiction of an administrative tribunal prior to the decision of that question by the administrative tribunal[.]"<sup>143</sup> The doctrine of primary administrative jurisdiction presupposes that the administrative agency has jurisdiction over the subject matter while the court does not. The Complaint or Petition, therefore, cannot be filed before the court. As the issue is jurisdictional, there should be *no exception* to the doctrine of primary administrative jurisdiction. When the complaint or petition is filed before a court with no subject matter jurisdiction, the court has no other

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<sup>138</sup> Ponencia, p. 6.

<sup>139</sup> Id.

<sup>140</sup> G.R. No. 85439, January 13, 1992, 205 SCRA 92, 110 [Per J. Davide, Jr., En Banc].

<sup>141</sup> *Rollo*, p. 140.

<sup>142</sup> Id.

<sup>143</sup> *Javier v. Court of Appeals*, G.R. No. 96617, October 14, 1992, 214 SCRA 572, 576 [Per J. Nocon, Second Division].



option but to dismiss the case.<sup>144</sup>

On the other hand, under the doctrine of exhaustion of administrative remedies, before a party may seek intervention from the court, he or she should have already exhausted all the remedies in the administrative level.<sup>145</sup> If there is still a remedy available within the administrative machinery, “then such remedy should be exhausted first before [the] court’s judicial power can be sought.”<sup>146</sup> The doctrine of exhaustion of administrative remedies presupposes that *both* the courts and the administrative agency have concurrent jurisdiction. This is because non-observance of the doctrine of exhaustion of administrative remedies does not affect the court’s jurisdiction.<sup>147</sup> In *Soto v. Jareno*,<sup>148</sup> this court ruled:

*Failure to observe the doctrine of exhaustion of administrative remedies does not affect the jurisdiction of the court. We have repeatedly stressed this in a long line of decisions. The only effect of non-compliance with this rule is that it will deprive the complainant of a cause of action, which is a ground for a motion to dismiss. If not invoked at the proper time, this ground is deemed waived and the court can then take cognizance of the case and try it.*<sup>149</sup> (Emphasis supplied)

Hence, the doctrine of exhaustion of administrative remedies presupposes that the court has jurisdiction over the subject matter of the complaint or petition. Otherwise, it can never have the power to take cognizance of the case as contemplated by *Soto*.

While both the court and the administrative agency have jurisdiction over the subject matter, the general rule is that the courts, because of comity, practicality, and convenience, will not interfere with the administrative process until the process comes to an end.<sup>150</sup> This is because availing administrative remedies entails lesser expenses and results in a speedier resolution of controversies.<sup>151</sup> On the other hand, since the court and the administrative agency have concurrent jurisdiction, exceptions may be warranted by the circumstances,<sup>152</sup> and the court may choose to assume

<sup>144</sup> See *Katon v. Palanca, Jr.*, 481 Phil. 168, 183 (2004) [Per J. Panganiban, Third Division].

<sup>145</sup> *Rosales v. Court of Appeals*, 247-A Phil. 437, 443–444 (1988) [Per J. Bidin, Third Division].

<sup>146</sup> *Paat v. Court of Appeals*, 334 Phil. 146, 152 (1997) [Per J. Torres, Jr., Second Division].

<sup>147</sup> *Soto v. Jareno*, 228 Phil. 117, 119 (1986) [Per J. Cruz, First Division].

<sup>148</sup> 228 Phil. 117 (1986) [Per J. Cruz, First Division].

<sup>149</sup> *Id.* at 119, citing *C. N. Hodges v. Municipal Board of Iloilo City, et al.*, 125 Phil. 442, 447–448 [Per J. Ruiz Castro, En Banc], *Municipality of La Trinidad, Benguet v. Court of First Instance of Baguio-Benguet, et al.*, 208 Phil. 78, 83 (1983) [Per J. Escolin, Second Division], *Pineda v. Court of First Instance of Davao*, 111 Phil. 643, 650 (1961) [Per J. Concepcion, En Banc], and *Atlas Consolidated Mining and Development Corporation v. Hon. Mendoza, et al.*, 112 Phil. 960, 965 (1961) [Per J. Concepcion, En Banc].

<sup>150</sup> *Paat v. Court of Appeals*, 334 Phil. 146, 153 (1997) [Per J. Torres, Jr., Second Division].

<sup>151</sup> *Id.*

<sup>152</sup> *Id.* This court held: “However, we are not amiss to reiterate that the principle of exhaustion of administrative remedies as tested by a battery of cases is not an ironclad rule. This doctrine is a relative one and its flexibility is called upon by the peculiarity and uniqueness of the factual and circumstantial settings of a case. Hence, it is disregarded (1) when there is a violation of due process, (2) when the

jurisdiction over the controversy.

Hence, when jurisdiction is *exclusively* granted to an administrative agency, the doctrine of exhaustion of administrative remedies does not apply. Here, considering that the Civil Service Commission is granted exclusive jurisdiction over cases involving personnel actions, the doctrine of primary administrative jurisdiction, not the doctrine of exhaustion of administrative remedies, applies.

The exceptions to the doctrine of exhaustion of administrative remedies likewise do not apply because the Regional Trial Court has no jurisdiction to resolve the dispute in the first place. In order for the exceptions to apply, the court to which the petition was prematurely filed should have jurisdiction; otherwise, the orders of the court would be null and void for lack of jurisdiction. Decisions or orders rendered by tribunals and agencies that do not have subject matter jurisdiction are null and void.<sup>153</sup> Hence, the exceptions to the doctrine of exhaustion of administrative remedies should not be applicable since the Regional Trial Court, the court to which the Petition for declaratory relief was filed, lacks subject matter jurisdiction, and any order or decision rendered by it would be null and void.

*Kilusang Bayan sa Paglilingkod ng mga Magtitinda ng Bagong Pamilihing Bayan ng Muntinlupa, Inc. (KBMBPM)* cited by private respondents finds no application here. In *KBMBPM*, petitioners questioned the takeover by the Department of Agriculture of the management of petitioner KBMBPM, a service cooperative organized by and composed of vendors of the New Muntinlupa Public Market.<sup>154</sup> There is no personnel action involved in *KBMBPM*. Hence, private respondents' reliance on the case is misplaced.

The ponencia held that “[w]hen respondents raised the issue of validity and constitutionality of [Customs Personnel Order No. B-189-2013], the issue took the case beyond the scope of the [Civil Service Commission’s] jurisdiction because the matter is no longer limited to personnel action. Thus, the [Regional Trial Court] did not abuse its discretion in taking cognizance of the action.”<sup>155</sup>

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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 bears 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.” (Citations omitted)

<sup>153</sup> *Spouses Atuel v. Spouses Valdez*, 451 Phil. 631, 646 (2003) [Per J. Carpio, First Division].

<sup>154</sup> *Kilusang Bayan sa Paglilingkod ng mga Magtitinda ng Bagong Pamilihing Bayan ng Muntinlupa, Inc. (KBMBPM) v. Dominguez*, G.R. No. 85439, January 13, 1992, 205 SCRA 92, 95–96 [Per J. Davide, Jr., En Banc].

<sup>155</sup> Ponencia, p. 5.

The constitutional issues alleged in the Petition for declaratory relief do not suffice for the Regional Trial Court to assume jurisdiction.

The Civil Service Commission cannot be ousted from its jurisdiction “by the simple expediency of appending an allegedly constitutional or legal dimension to an issue”<sup>156</sup> that clearly involves a personnel action.<sup>157</sup>

In *Corsiga v. Judge Defensor*,<sup>158</sup> petitioner Eduardo Corsiga (Corsiga), “then Regional Irrigation Manager of the [National Irrigation Administration], Region VI, issued Regional Office Memorandum (ROM) No. 52, reassigning private respondent [Romeo Ortizo (Ortizo)] to [the] Aganan-Sta. Barbara River Irrigation System[.]”<sup>159</sup> Ortizo filed before the “Regional Trial Court of Iloilo City a complaint for prohibition and injunction, with prayer for issuance of [a] Temporary Restraining Order and/or Writ of Preliminary Injunction.”<sup>160</sup> He argued that the transfer or assignment without his consent is a violation of his *constitutional right* to security of tenure.<sup>161</sup> Corsiga moved to dismiss the Petition for lack of jurisdiction.<sup>162</sup>

This court ruled that the Regional Trial Court had no jurisdiction over Ortizo’s Complaint.<sup>163</sup> Hence:

It is the intent of the Civil Service Law, in requiring the establishment of a grievance procedure in Rule XII, Section 6 of the same rules, that decisions of lower level officials be appealed to the agency head, then to the Civil Service Commission. Decisions of the Civil Service Commission, in turn, may be elevated to the Court of Appeals. Under this set up, ***the trial court does not have jurisdiction over personnel actions and, thus, committed an error in taking jurisdiction over Civil Case No. 22462. The trial court should have dismissed the case on motion of petitioner and let private respondent question RMO [sic] No. 52 before the NIA Administrator, and then the Civil Service Commission.*** As held in *Mantala vs. Salvador, cases involving personnel actions, reassignment included, affecting civil service employees, are within the exclusive jurisdiction of the Civil Service Commission.*<sup>164</sup> (Emphasis supplied, citations omitted)

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<sup>156</sup> *Department of Agrarian Reform v. Trinidad Valley Realty & Development Corporation*, G.R. No. 173386, February 11, 2014, 715 SCRA 650, 670 [Per J. Villarama, Jr., En Banc].

<sup>157</sup> *See Department of Agrarian Reform v. Trinidad Valley Realty & Development Corporation*, G.R. No. 173386, February 11, 2014, 715 SCRA 650, 670 [Per J. Villarama, Jr., En Banc].

<sup>158</sup> 439 Phil. 875 (2002) [Per J. Quisumbing, Second Division].

<sup>159</sup> *Id.* at 879.

<sup>160</sup> *Id.* at 880.

<sup>161</sup> *Id.* at 882.

<sup>162</sup> *Id.* at 881.

<sup>163</sup> *Id.* at 883–884.

<sup>164</sup> *Id.* at 883–884.

Despite allegations of Regional Office Memorandum No. 52's constitutional infirmities, this court still upheld the exclusive jurisdiction of the Civil Service Commission over cases involving personnel actions.

In *Department of Agrarian Reform v. Trinidad Valley Realty & Development Corporation*,<sup>165</sup> Trinidad Valley Realty & Development Corporation and the other respondents (Trinidad Valley Realty & Development Corporation, et al.) are registered owners of a parcel of land in Negros Oriental.<sup>166</sup> The Department of Agrarian Reform placed a substantial portion of the land under the coverage of the Comprehensive Agrarian Reform Law of 1988 or Republic Act No. 6657.<sup>167</sup> Administrative Order No. 10, Series of 1989, Administrative Orders No. 12, Series of 1989, No. 9, Series of 1990, and No. 2, Series of 1996, Administrative Order No. 10, Series of 1990, Joint DAR-LRA Memorandum Circular No. 20, Series of 1997, and Executive Order No. 405, among others, (collectively, Orders) were then issued.<sup>168</sup>

Private respondents Trinidad Valley Realty & Development Corporation, et al. filed before the Regional Trial Court a Petition for declaration of unconstitutionality through certiorari, prohibition and mandamus against the Land Registration Authority, the Department of Agrarian Reform, and the beneficiaries under the Comprehensive Agrarian Reform Program questioning the Orders.<sup>169</sup> This was later amended to an ordinary action of annulment of land titles.<sup>170</sup> In its Answer, the Department of Agrarian Reform asserted that “jurisdiction over all agrarian reform matters is exclusively vested in the [Department of Agrarian Reform,]”<sup>171</sup> not in the regular courts. This court ruled that the Regional Trial Court had no jurisdiction.<sup>172</sup>

The Court likewise ruled in the similar case of [*Department of Agrarian Reform*] v. *Cuenca* that “[a]ll controversies on the implementation of the Comprehensive Agrarian Reform Program (CARP) fall under the jurisdiction of the Department of Agrarian Reform (DAR), **even though they raise questions that are also legal or constitutional in nature.**” In said case, it was noted that the main thrust of the allegations in the Complaint was the propriety of the Notice of Coverage and “not x x x the ‘pure question of law’ spawned by the alleged unconstitutionality of EO 405 — but x x x the annulment of the DAR’s Notice of Coverage.” The Court thus held that:

To be sure, the issuance of the Notice of Coverage constitutes the first necessary step towards the acquisition

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<sup>165</sup> G.R. No. 173386, February 11, 2014, 715 SCRA 650 [Per J. Villarama, Jr., En Banc].

<sup>166</sup> Id. at 653–654.

<sup>167</sup> Id. at 654.

<sup>168</sup> Id. at 661–662.

<sup>169</sup> Id. at 654.

<sup>170</sup> Id. at 656.

<sup>171</sup> Id. at 655.

<sup>172</sup> Id. at 671.

of private land under the CARP. Plainly then, the propriety of the Notice relates to the implementation of the CARP, which is under the quasi-judicial jurisdiction of the DAR. ***Thus, the DAR could not be ousted from its authority by the simple expediency of appending an allegedly constitutional or legal dimension to an issue that is clearly agrarian.***

The legal recourse undertaken by Trinidad Valley Realty and Development Corporation, et al. is on all-fours with the remedy adopted by the private respondents in *Cuenca*. In this case, Trinidad Valley Realty and Development Corporation, et al. *cloaked the issue as a constitutional question — assailing the constitutionality of administrative issuances promulgated to implement the agrarian reform law — in order to annul the titles issued therein.* In *Cuenca*, private respondents assailed the constitutionality of EO 45 in order to annul the Notice of Coverage issued therein. The only difference is that in *Cuenca*, private respondents directly filed with the RTC their complaint to obtain the aforesaid reliefs while in this case, Trinidad Valley Realty and Development Corporation, et al. filed their original petition for *certiorari* with the RTC *after* the protest of Trinidad Valley Realty and Development Corporation against the coverage of its landholding under CARP was dismissed by the DAR Regional Director and such dismissal was affirmed by DAR OIC Secretary Jose Mari B. Ponce. *But in both cases, it is evident that the constitutional angle was an attempt to exclude the cases from the ambit of the jurisdictional prescriptions under RA 6657.*<sup>173</sup> (Emphasis supplied, citations omitted)

Invocations of issues of validity and constitutionality of Customs Personnel Order No. B-189-2013 will not suffice for the courts to assume jurisdiction, if the order sought to be declared invalid is a personnel action. Since the questioned order is a personnel action, the exclusive jurisdiction of the Civil Service Commission as the sole arbiter of controversies relating to the civil service must be upheld.

In any case, detail of government personnel to other offices does not involve and violate the employees' security of tenure in the absence of any grave abuse of discretion or improper motive or purpose.<sup>174</sup>

Hence, the Regional Trial Court has no jurisdiction over private respondents' Petition for declaratory relief.

#### IV.

Private respondents rely on *Commissioner of Customs, et al. v. Hypermix Feeds Corporation*.<sup>175</sup> They argue that based on *Hypermix*, “[t]he

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<sup>173</sup> Id. at 670–671.

<sup>174</sup> *Borres v. Hon. Canonoy, etc., et al.*, 195 Phil. 81, 92–93 (1981) [Per J. De Castro, First Division].

<sup>175</sup> 680 Phil. 681 (2012) [Per J. Sereno, Second Division].

determination of whether a specific rule or set of rules issued by an administrative agency contravenes the law or the [C]onstitution is within the jurisdiction of the regular courts.”<sup>176</sup> They add that the “Constitution vests the power of judicial review or the power to declare a law, treaty, international or executive agreement, presidential decree, order, instruction, ordinance, or regulation in the courts, including the regional trial courts.”<sup>177</sup>

In *Hypermix*, Hypermix Feeds Corporation filed a Petition for declaratory relief before the Regional Trial Court, with the Petition challenging the validity and constitutionality of Customs Memorandum Order (CMO) 27-2003.<sup>178</sup> CMO 27-2003 classified wheat according to (1) importer or consignee; (2) country of origin; and (3) port of discharge, and imposed different tariff rates depending on such classification.<sup>179</sup> This court concluded that “a petition for declaratory relief is the right remedy *given the circumstances of the case*.”<sup>180</sup> *Hypermix* cannot be applied because the circumstances in that case differ from the circumstances here as *Hypermix* does not involve a personnel action.

## V.

A petition for declaratory relief may prosper only if there is no breach or violation yet of the assailed government regulation, and adequate relief is not available through other means or other forms of action or proceeding.

Rule 63, Section 1 of the Rules of Court provides:

SECTION 1. Who may file petition. – Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, *before breach or violation thereof*, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder. (Emphasis supplied)

In *Republic v. Roque*,<sup>181</sup> this court enumerated the requisites for a petition for declaratory relief to prosper:

Case law states that the following are the requisites for an action for declaratory relief: *first*, the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or

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<sup>176</sup> *Rollo*, p. 141.

<sup>177</sup> *Id.*

<sup>178</sup> *Commissioner of Customs, et al. v. Hypermix Feeds Corporation*, 680 Phil. 681, 686 (2012) [Per J. Sereno, Second Division].

<sup>179</sup> *Id.* at 684–685.

<sup>180</sup> *Id.* at 691.

<sup>181</sup> G.R. No. 204603, September 24, 2013, 706 SCRA 273 [Per J. Perlas-Bernabe, En Banc].

regulation, or ordinance; *second*, the terms of said documents and the validity thereof are doubtful and require judicial construction; *third*, there must have been no breach of the documents in question; *fourth*, there must be an actual justiciable controversy or the “ripening seeds” of one between persons whose interests are adverse; *fifth*, the issue must be ripe for judicial determination; and *sixth*, adequate relief is not available through other means or other forms of action or proceeding.<sup>182</sup> (Emphasis in the original, citation omitted)

The third and sixth requisites are absent. The Complaint before the lower court did not simply ask for a declaration of a hypothetical breach. Adequate relief through the Civil Service Commission was also available.

Executive Order No. 140 was published on September 17, 2013. According to Section 9, Executive Order No. 140 shall take effect immediately. On September 17, 2013, Bureau of Customs Commissioner Rozzano Rufino B. Biazon issued Customs Personnel Order No. B-189-2013. On September 30, 2013, private respondents filed their Petition for declaratory relief. There was no denial by private respondents that they did not report for work upon Custom Personnel Order No B-189-2013’s effectivity.<sup>183</sup> Private respondents Arnel C. Alcaraz, Ma. Lourdes V. Mangaoang, Romalino G. Valdez, Lilibeth S. Sandag, Ma. Liza S. Torres, and Raymond P. Ventura only reported for work after the trial court’s denial of their application for a writ of preliminary injunction.<sup>184</sup>

By not reporting for work upon the issuance of Customs Personnel Order No. B-189-2013 on September 17, 2015, private respondents committed a breach of the Order. Since they committed the breach prior to the filing of their Petition for declaratory relief, the petition is no longer available.

In *Martelino, et al. v. National Home Mortgage Finance Corporation, et al.*,<sup>185</sup> petitioners (Martelino, et al.) obtained housing loans from respondents National Home Mortgage Finance Corporation and Home Development Mutual Fund.<sup>186</sup> National Home Mortgage Finance Corporation and Home Development Mutual Fund directly released the proceeds of the housing loans to the subdivision developer, Shelter Philippines, Inc. (Shelter).<sup>187</sup>

Shelter did not complete the subdivision pursuant to its subdivision

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<sup>182</sup> Id. at 283.

<sup>183</sup> *Rollo*, pp. 400–401.

<sup>184</sup> Id. at 351.

<sup>185</sup> 579 Phil. 145 (2008) [Per J. Quisumbing, Second Division].

<sup>186</sup> Id. at 148.

<sup>187</sup> Id.

plan.<sup>188</sup> Martelino, et al. then filed a Petition for declaratory relief to determine whether they can suspend payment to National Home Mortgage Finance Corporation and Home Development Mutual Fund because of Shelter's failure to complete the subdivision and whether interests and penalties should also be suspended.<sup>189</sup>

This court found that at the time of the filing of their Petition for declaratory relief, Martelino, et al. already suspended payment of their amortizations to National Home Mortgage Finance Corporation and Home Development Mutual Fund.<sup>190</sup> Hence, this court concluded that the Regional Trial Court cannot assume jurisdiction over the Petition for declaratory relief.<sup>191</sup> Hence:

Indeed, under Section 1, Rule 63, a person must file a petition for declaratory relief before breach or violation of a deed, will, contract, other written instrument, statute, executive order, regulation, ordinance or any other governmental regulation. In this case, the petitioners had stated in their petition that respondents assessed them interest and penalties on their *outstanding loans*, initiated foreclosure proceedings against petitioner Rafael Martelino as evidenced by the notice of extra-judicial sale and threatened to foreclose the mortgages of the other petitioners, all in disregard of their right to suspend payment to Shelter for its failure to complete the subdivision. *Said statements clearly mean one thing: petitioners had already suspended paying their amortization payments.* Unfortunately, their actual suspension of payments defeated the purpose of the action to secure an authoritative declaration of their supposed right to suspend payment, for their guidance. Thus, *the RTC could no longer assume jurisdiction over the action for declaratory relief* because its subject initially unspecified, now identified as P.D. No. 957 and relied upon — correctly or otherwise — by petitioners, and assumed by the RTC to be Rep. Act No. 8501, was *breached* before filing the action. As we said in *Tambunting, Jr. v. Sumabat*:

. . . The purpose of the action [for declaratory relief] 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. It may be entertained only before the breach or violation of the statute, deed, contract, *etc.* to which it refers. *Where the law or contract has already been contravened prior to the filing of an action for declaratory relief, the court can no longer assume jurisdiction over the action....* Under such circumstances, inasmuch as a cause of action has already accrued in favor of one or the

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<sup>188</sup> Id.

<sup>189</sup> Id. at 148–149.

<sup>190</sup> Id. at 155.

<sup>191</sup> Id.



other party, there is nothing more for the court to explain or clarify short of a judgment or final order.<sup>192</sup> (Emphasis supplied, citations omitted)

In *Aquino v. Municipality of Malay, Aklan*,<sup>193</sup> petitioner Crisostomo B. Aquino (Aquino) is “the president and chief executive officer of Boracay Island West Cove Management Philippines, Inc. (Boracay West Cove).”<sup>194</sup> The Office of the Mayor of Malay, Aklan issued Executive Order No. 10, Series of 2011, ordering the closure and demolition of a hotel owned by Boracay West Cove.<sup>195</sup> On June 10, 2011, Executive Order No. 10 was implemented partially.<sup>196</sup>

To stop the implementation of Executive Order No. 10, Aquino filed a Petition for certiorari with prayer for injunctive relief before the Court of Appeals.<sup>197</sup> The Court of Appeals dismissed the Petition on the ground that the correct remedy was for Aquino “to file a petition for declaratory relief with the Regional Trial Court.”<sup>198</sup>

This court disagreed with the Court of Appeals and stated:

An action for declaratory relief presupposes that *there has been no actual breach of the instruments involved or of the rights arising thereunder*. Since the purpose of an action for declaratory relief is to secure an authoritative statement of the rights and obligations of the parties under a statute, deed, or contract for their guidance in the enforcement thereof, or compliance therewith, and not to settle issues arising from an alleged breach thereof, it may be entertained before the breach or violation of the statute, deed or contract to which it refers. A petition for declaratory relief gives a practical remedy for ending controversies that have not reached the state where another relief is immediately available; and supplies the need for a form of action that will set controversies at rest before they lead to a repudiation of obligations, an invasion of rights, and a commission of wrongs.

In the case at bar, *the petition for declaratory relief became unavailable by [Executive Order No. 10's] enforcement and implementation*. The closure and demolition of the hotel rendered futile any possible guidelines that may be issued by the trial court for carrying out the directives in the challenged [Executive Order No. 10]. Indubitably, the CA erred when it ruled that declaratory relief is the proper remedy given such a situation.<sup>199</sup> (Emphasis supplied, citation omitted)

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<sup>192</sup> Id. at 155–156.

<sup>193</sup> G.R. No. 211356, September 29, 2014, 737 SCRA 145 [Per J. Velasco, Jr., Third Division].

<sup>194</sup> Id. at 152.

<sup>195</sup> Id. at 154.

<sup>196</sup> Id.

<sup>197</sup> Id.

<sup>198</sup> Id. at 155.

<sup>199</sup> Id. at 157.

In *City of Lapu-Lapu v. Philippine Economic Zone Authority*,<sup>200</sup> the City of Lapu-Lapu and the Province of Bataan demanded from the Philippine Economic Zone Authority payment of real property taxes.<sup>201</sup> The Philippine Economic Zone Authority filed a Petition for declaratory relief before the Regional Trial Court, “praying that the trial court declare it exempt from payment of real property taxes.”<sup>202</sup> This court ruled that the Regional Trial Court had no jurisdiction to decide Philippine Economic Zone Authority’s Petition for declaratory relief.<sup>203</sup> This court explained:

We rule that the [Philippine Economic Zone Authority] erred in availing itself of a petition for declaratory relief against the City. *The City had already issued demand letters and real property tax assessment against the [Philippine Economic Zone Authority], in violation of the [Philippine Economic Zone Authority’s] alleged tax-exempt status under its charter.* The Special Economic Zone Act of 1995, the subject matter of [Philippine Economic Zone Authority’s] petition for declaratory relief, *had already been breached.* The trial court, therefore, had **no jurisdiction** over the petition for declaratory relief.

There are several aspects of jurisdiction. Jurisdiction over the subject matter is “the power to hear and determine cases of the general class to which the proceedings in question belong.” It is conferred by law, which may either be the Constitution or a statute. Jurisdiction over the subject matter means “the nature of the cause of action and the relief sought.” Thus, the cause of action and character of the relief sought as alleged in the complaint are examined to determine whether a court had jurisdiction over the subject matter. Any decision rendered by a court without jurisdiction over the subject matter of the action is void.<sup>204</sup> (Emphasis supplied, citations omitted)

Further, *Tambunting, Jr. v. Spouses Sumabat*<sup>205</sup> declared that when a court assumed jurisdiction over a Petition for declaratory relief when there was already a breach of the subject instrument or government regulation, the orders made by that court would be null and void for want of jurisdiction.<sup>206</sup> Hence:

In other words, ***a court has no more jurisdiction over an action for declaratory relief if its subject, i.e., the statute, deed, contract, etc., has already been infringed or transgressed before the institution of the action.*** Under such circumstances, inasmuch as a cause of action has already accrued in favor of one or the other party, there is nothing more for the court to explain or clarify short of a judgment or final order.

<sup>200</sup> G.R. No. 184203, November 26, 2014  
<<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/november2014/184203.pdf>>  
[Per J. Leonen, Second Division].

<sup>201</sup> Id. at 8.

<sup>202</sup> Id. at 4.

<sup>203</sup> Id. at 21.

<sup>204</sup> Id.

<sup>205</sup> *Tambunting, Jr. v. Spouses Sumabat*, 507 Phil. 94 (2005) [Per J. Corona, Third Division].

<sup>206</sup> Id. at 98–99.

Here, an infraction of the mortgage terms had already taken place before the filing of Civil Case No. C-7496. Thus, the CFI lacked jurisdiction when it took cognizance of the case in 1979. And *in the absence of jurisdiction, its decision was void and without legal effect*. As this Court held in *Arevalo v. Benedicto*:

Furthermore, the want of jurisdiction by a court over the subject-matter renders its judgment void and a mere nullity, and considering that a void judgment is in legal effect no judgment, by which no rights are divested, from which no rights can be obtained, which neither binds nor bars any one, and under which all acts performed and all claims flowing out of are void, and considering further, that the decision, for want of jurisdiction of the court, is not a decision in contemplation of law, and, hence, can never become executory, it follows that such a void judgment cannot constitute a bar to another case by reason of *res judicata*.<sup>207</sup> (Emphasis supplied, citations omitted)

This was reiterated in *Malana, et al. v. Tappa, et al.*<sup>208</sup> where this court declared:

Where the law or contract has already been contravened prior to the filing of an action for declaratory relief, the courts can no longer assume jurisdiction over the action. In other words, a court has no more jurisdiction over an action for declaratory relief if its subject has already been infringed or transgressed before the institution of the action.<sup>209</sup>

Private respondents argue that Customs Personnel Order No. B-189-2013 is void, producing no effect. Hence, “there is actually no breach, real or imaginary, to speak of in this case.”<sup>210</sup>

Subscribing to petitioners’ theory will render ineffective the phrase “before breach or violation thereof” found in Section 1 of Rule 63 of the Rules of Court when a petitioner questions the validity of a written instrument or governmental regulation. By arguing that the instrument or regulation questioned is void at the onset, a petitioner may file any time a petition for declaratory relief with no regard to whether he or she violated the “void” instrument or regulation.

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<sup>207</sup> Id. at 99.

<sup>208</sup> 616 Phil. 177 (2009) [Per J. Chico-Nazario, Third Division].

<sup>209</sup> Id. at 189.

<sup>210</sup> *Rollo*, p. 143.

Private respondents' belated compliance with Customs Personnel Order No. B-189-2013 cannot cure the defect of want of jurisdiction. In *Gomez v. Palomar, etc., et al.*,<sup>211</sup> this court declared:

The prime specification of an action for declaratory relief is that it must be brought "before breach or violation" of the statute has been committed. Rule 64, section 1 so provides. *Section 6 of the same rule, which allows the court to treat an action for declaratory relief as an ordinary action, applies only if the breach or violation occurs after the filing of the action but before the termination thereof.*

Hence, *if, as the trial court itself admitted, there had been a breach of the statute before the filing of this action, then indeed the remedy of declaratory relief cannot be availed of, much less can the suit be converted into an ordinary action.*<sup>212</sup> (Emphasis supplied, citation omitted)

Considering that there was already a breach of Customs Personnel Order No. B-189-2013 when private respondents filed their Petition for declaratory relief, the Regional Trial Court can no longer act on the Petition for want of jurisdiction.

For a Petition for declaratory relief to prosper, there should be no other adequate relief available to petitioners.<sup>213</sup> "If adequate relief is available through another form of action or proceeding, the other action must be preferred over an action for declaratory relief."<sup>214</sup>

In *Ferrer, Jr., et al. v. Mayor Roco, Jr., et al.*,<sup>215</sup> this court affirmed the dismissal of a Petition for declaratory relief where the doctrine of primary administrative jurisdiction applied because it meant that there was another adequate remedy available to petitioners.<sup>216</sup>

Here, private respondents' correct remedy was to file a Complaint or Petition before the Civil Service Commission to assail their detail to the Customs Policy Research Office. Since they have another adequate remedy available to them, their Petition for declaratory relief must fail.

All told, a Petition for declaratory relief was not an available remedy for private respondents. It was, therefore, error for the Regional Trial Court

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<sup>211</sup> 134 Phil. 771 (1968) [Per J. Castro, En Banc].

<sup>212</sup> Id. at 779.

<sup>213</sup> *Republic v. Roque*, G.R. No. 204603, September 24, 2013, 706 SCRA 273, 283 [Per J. Perlas-Bernabe, En Banc].

<sup>214</sup> G.R. No. 184203, November 26, 2014 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/november2014/184203.pdf>> 18 [Per J. Leonen, Second Division].

<sup>215</sup> 637 Phil. 310 (2010) [Per J. Mendoza, Second Division].

<sup>216</sup> Id. at 318-319.

to assume jurisdiction over private respondents' Petition for declaratory relief. The Orders of the Regional Trial Court dated October 1, 2013, October 4, 2013, and October 21, 2013 are declared void for want of jurisdiction. All other Orders of the Regional Trial Court pursuant to private respondents' Petition for declaratory relief are also void for lack of jurisdiction.

The Regional Trial Court should be directed to dismiss private respondents' Petition for declaratory relief.

## VI.

Customs Personnel Order No. B-189-2013 provides that it "shall be effective immediately and valid until sooner revoked."<sup>217</sup>

Civil Service Commission Resolution No. 021181 entitled Policies on Detail and dated September 13, 2002 "govern[s] the detail of employees in all agencies of the government."<sup>218</sup> Section 2 of Policies on Detail provides:

**Section 2. Duration of the Detail-** the detail shall be allowed only for a *maximum period of one year*. Details beyond one year may be allowed provided it is with the consent of the detailed employee. The extension or renewal of the period of the detail shall be within the authority of the mother agency.

If the employee believes that there is no justification for the detail, he/she may appeal his/her case to the proper Civil Service Commission Regional Office. *Pending appeal, the detail shall be executory unless otherwise ordered by said regional office.* Decision of said regional office may be further appealed to the Commission *en banc*.<sup>219</sup> (Emphasis supplied)

Customs Personnel Order No. B-189-2013's provision stating that "[t]his Order shall be effective immediately and valid until sooner revoked" appears contrary to Section 2 of Resolution No. 02-1181. Pursuant, however, to Section 2 of Civil Service Commission Resolution No. 02-1181, Customs Personnel Order No. B-189-2013 should be read as valid only for a period of one (1) year. Consistency in executive issuances is of utmost importance.<sup>220</sup> As much as possible, it is the duty of the courts to harmonize and reconcile them.<sup>221</sup>

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<sup>217</sup> *Rollo*, p. 70; BOC Customs Personnel Order No. B-189-2013, penultimate paragraph.

<sup>218</sup> CSC Memorandum Circular No. 21, Series of 2002.

<sup>219</sup> *Rollo*, p. 117.

<sup>220</sup> *Philippine International Trading Corporation v. Presiding Judge Angeles*, 331 Phil. 723, 747 (1996) [Per J. Torres, Jr., Second Division].

<sup>221</sup> *Id.* at 748.

In *Philippine International Trading Corporation v. Presiding Judge Angeles*,<sup>222</sup> this court ruled:

Thus, there is no real inconsistency between LOI 444 and EO 133. There is, admittedly, a rearranging of the administrative functions among the administrative bodies affected by the edict, but not an abolition of executive power. Consistency in statutes *as in executive issuances*, is of prime importance, and, in the absence of a showing to the contrary, all laws are presumed to be consistent with each other. Where it is possible to do so, it is the duty of courts, in the construction of statutes, *to harmonize and reconcile them*, and to adopt a construction of a statutory provision which harmonizes and reconciles it with other statutory provisions. The fact that a later enactment may relate to the same subject matter as that of an earlier statute is not of itself sufficient to cause an implied repeal of the latter, since the law may be cumulative or a continuation of the old one.<sup>223</sup> (Emphasis supplied, citations omitted)

Similarly, this court should also uphold as much as possible the validity of Customs Personnel Order No. B-189-2013 as a valid exercise of executive power to conform to the Policies on Detail.

“Every inten[t] of the law should lean towards its validity, not its invalidity.”<sup>224</sup> Hence, the duration of Customs Personnel Order No. B-189-2013, being independent and severable from the order of detail itself, should be the only provision declared void.

Since there is no record that private respondents consented to be detailed for more than one (1) year from September 17, 2013, Customs Personnel Order No. B-189-2013, while effective for the duration of one (1) year from enactment, already ceased to take effect.

The ponencia ruled that Customs Personnel Order No. B-189-2013 violates Section 3 of Executive Order No. 140 because at the time of its issuance, the Customs Policy Research Office had no organic personnel yet.<sup>225</sup> The ponencia also ruled that the Department of Finance Secretary had not yet issued rules and regulations for the Customs Policy Research Office.<sup>226</sup>

There is nothing in Executive Order No. 140 that requires that the organic personnel of the Customs Policy Research Office must first be organized and that rules must first be issued by the Department of Finance Secretary before the Bureau of Customs can start forming its team that will

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<sup>222</sup> 331 Phil. 723 (1996) [Per J. Torres, Jr., Second Division].

<sup>223</sup> Id. at 747–748.

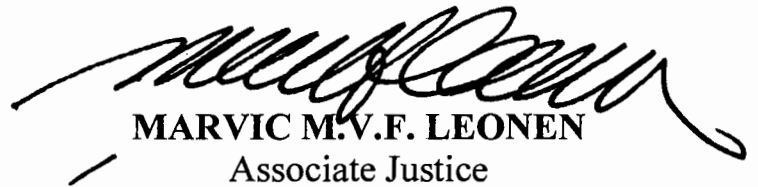
<sup>224</sup> *San Miguel Corporation v. Judge Avelino*, 178 Phil. 47, 53 (1979) [Per J. Fernando, Second Division].

<sup>225</sup> Ponencia, p. 7.

<sup>226</sup> Id.

augment and reinforce the organic personnel of the Customs Policy Research Office. Courts should avoid as much as possible any construction invalidating administrative issuances.<sup>227</sup> Unless there is a clear violation of Executive Order No. 140, Customs Personnel Order No. B-189-2013 should remain valid.

ACCORDINGLY, the Petition should be **GRANTED**. Private respondents' Petition for declaratory relief filed before the Regional Trial Court should be **DISMISSED** for lack of jurisdiction.



MARVIC M.V.F. LEONEN  
Associate Justice

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<sup>227</sup> *Philippine International Trading Corporation v. Presiding Judge Angeles*, 331 Phil. 723, 748 (1996) [Per J. Torres, Jr., Second Division].