



Republic of the Philippines  
**Supreme Court**  
 Manila

**SECOND DIVISION**

**ENGR. JUAN B. BERCES,**  
 Petitioner,

**G.R. No. 222557**

Present:

- versus -

**PERLAS-BERNABE, S.A.J.,**  
*Chairperson,*  
**HERNANDO,**  
**INTING,**  
**GAERLAN, and**  
**DIMAAMPAO, JJ.**

**CIVIL SERVICE COMMISSION**  
**AND THE MAYOR OF TABACO**  
**CITY,**

Respondents.

Promulgated:

**SEP 29 2021**

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**DECISION**

**GAERLAN, J.:**

This is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court, as amended, assailing the Resolutions dated May 28, 2014<sup>2</sup> and January 20, 2016<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 131772.

**Antecedents**

Petitioner Engr. Juan B. Berces (petitioner) was the City Planning and Development Officer and Head of the City Planning and Development Office of the Local Government Unit of Tabaco City (LGU-Tabaco City).

On August 5, 2011, at around 8:30 p.m., petitioner, along with two other employees of LGU-Tabaco City, was caught by Police Superintendent Joel T. Tada (P/Supt. Tada), Chief of Police of Tabaco City, having a drinking session inside the City Planning and Development Office.

<sup>1</sup> *Rollo*, pp. 9-34.

<sup>2</sup> *Id.* at 35-38. Penned by Associate Justice Normandie B. Pizarro with Presiding Justice Andres B. Reyes, Jr. (now a retired Member of this Court) and Associate Justice Manuel M. Barrios concurring.

<sup>3</sup> *Id.* at 97-98.

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It appears that the incident reached Tabaco City Mayor Cielo Krisel Lagman-Luistro (Mayor Lagman-Luistro). Thus, in a letter<sup>4</sup> dated August 8, 2011, petitioner apologized to Mayor Lagman-Luistro, explaining that he was celebrating his 15<sup>th</sup> anniversary as a public officer. Nevertheless, on August 31, 2011, Mayor Lagman-Luistro filed a Complaint<sup>5</sup> against petitioner and his two companions for violation of LGU-Tabaco City's Memorandum Order (M.O.) No. 01<sup>6</sup> dated January 6, 2009 and M.O. No. 02<sup>7</sup> dated January 5, 2009.

In his Counter-Affidavit,<sup>8</sup> petitioner admitted that he committed a lapse of judgment, but nevertheless stressed that he had no intention of violating the foregoing directives of the LGU. Petitioner explained that his mistake was caused by the fragility of human emotions, as he was overwhelmed by the occasion. Petitioner expressed that this solitary error should not dampen his 15 years of honest and unquestioned service in the government.

Thereafter, in a Formal Charge<sup>9</sup> dated September 9, 2011, Mayor Lagman-Luistro accused petitioner of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service. In his Position Paper,<sup>10</sup> petitioner denied that his acts were tantamount to the offenses charged. He also bewailed the absence of any preliminary investigation on the part of the administrative investigation committee of LGU-Tabaco City.

On February 13, 2012, Mayor Lagman-Luistro issued an Order dismissing petitioner from the service, disposing as follows:

ACCORDINGLY, the respondent Engr. Juan Berces, Department Head of the City Planning and Development Office (CPDO) is found culpable of the offense of "GRAVE MISCONDUCT" punishable under Section 52 (A-3 of the Revised Uniform Rules on Administrative Cases in the Civil Service URACCS) and is meted the penalty of DISMISSAL FROM THE SERVICE with the administrative disabilities of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for [sic] reemployment in the government service.<sup>11</sup>

Aggrieved, petitioner interposed an appeal with the Civil Service Commission (CSC).

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<sup>4</sup> CA *rollo*, p. 304.

<sup>5</sup> Id. at 299-301.

<sup>6</sup> Id. at 296. Subject: REITERATION OF THE PROHIBITION AGAINST SMOKING, DRINKING OF LIQUOR AND PEDDLING OF GOODS, FOODSTUFF AND SERVICES INSIDE THE CITY HALL.

<sup>7</sup> Id. at 297. Subject: Power Cost Cutting Measure.

<sup>8</sup> Id. at 305-309.

<sup>9</sup> Id. at 302-303.

<sup>10</sup> Id. at 310-319.

<sup>11</sup> Id. at 45.

### The CSC's Rulings

On February 14, 2013, the CSC issued Decision No. 130159<sup>12</sup> which downgraded petitioner's liability to Simple Misconduct. It ruled that petitioner's transgression had no direct relation to the performance of his duties. Moreover, evidence on record showed no indication that petitioner's acts were inspired by a corrupt or wrongful motive. Thus:

**WHEREFORE**, the appeal of Engr. Juan B. Berces is **PARTLY GRANTED**. The Order dated February 13, 2012 issued by Mayor Cielo Krisel Lagman-Luistro is **AFFIRMED with MODIFICATION** that Berces is found guilty of Simple Misconduct only and meted the penalty of six (6) months suspension from the service. Berces should thus be reinstated in the service without payment of backwages.<sup>13</sup>

Dissatisfied, Mayor Lagman-Luistro filed a Motion for Reconsideration<sup>14</sup> with the CSC, praying that it reinstate petitioner's original penalty of dismissal from the service.

Following the May 2013 midterm elections, Mayor Lagman-Luistro was replaced by Mayor Maria Josefa V. Demetriou (Mayor Demetriou) as chief executive of LGU-Tabaco City.

In a letter July 1, 2013, Mayor Demetriou sent a letter<sup>15</sup> addressed to CSC Chairperson Francisco T. Duque III (Chairperson Duque) to inform the latter that she was withdrawing the Motion for Reconsideration which was filed by Mayor Lagman-Luistro. Thereafter, Mayor Demetriou formally filed a Motion to Withdraw Motion for Reconsideration<sup>16</sup> which was dated July 3, 2013.

On July 15, 2013, the CSC rendered Resolution No. 1301575<sup>17</sup> granting Mayor Lagman-Luistro's Motion for Reconsideration. The CSC ruled that petitioner's act of holding a drinking session inside his office necessitated the use of government property and funds. This is a serious offense that warranted his dismissal from the service.

The CSC disposed as follows:

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<sup>12</sup> Id. at 45-49. Penned by Commissioner Robert S. Martinez and concurred in by Chairperson Francisco T. Duque III.

<sup>13</sup> Id. at 49.

<sup>14</sup> Id. at 51-85.

<sup>15</sup> Id. at 41.

<sup>16</sup> Id. at 42.

<sup>17</sup> Id. at 34-40. Penned by Commissioner Robert S. Martinez and concurred in by Chairperson Francisco T. Duque III and Commissioner Nieves L. Osorio.

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**WHEREFORE**, the Motion for Reconsideration of Mayor Cielo Krisel Lagman-Luistro is hereby **GRANTED**. Accordingly, Decision No. 13-0159 dated February 14, 2013 issued by Civil Service Commission (CSC), Quezon City, partly granting the appeal of Juan B. Berces, Department Head, City Planning and Development Office, City Government of Tabaco, Albay, is hereby **VACATED**. Consequently, the Order dated February 13, 2012 issued by Mayor Cielo Krisel [Lagman]-Luistro finding Juan B. Berces guilty of Grave Misconduct and meting him the penalty of dismissal is **AFFIRMED**. The accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from holding public office and bar from taking civil service examinations are deemed imposed.

Let copies of this resolution be furnished to the Office of the Ombudsman, Commission on Audit, Government Service Insurance System, Integrated Records Management Office, this Commission, and Civil Service Commission-National Capital Region.<sup>18</sup>

Resolute in his conviction that he was wrongly found guilty of grave misconduct, petitioner filed a Rule 65 Petition for *Certiorari*<sup>19</sup> with the CA.

In the course of the proceedings before the appellate court, Mayor Lagman-Luistro filed Urgent Motion for Leave to Declare or Consider Former Tabaco City Mayor Krisel Lagman-Luistro as the Real Private Respondent<sup>20</sup> alleging, *inter alia*, that petitioner was conniving with Mayor Demetriou so that he may be reinstated to his former position. This motion was duly opposed by petitioner<sup>21</sup> and the CSC.<sup>22</sup>

### The CA Ruling

On May 28, 2014, the CA issued the first assailed Resolution dismissing the petition for being the wrong mode or remedy. It ruled that petitioner should have filed a petition for review under Rule 43. Thus:

**WHEREFORE**, the petition is **DISMISSED**. The urgent motion for leave to declare or consider former Tabaco City Mayor Krisel Lagman-Luistro as the real private respondent is **NOTED** without action in view of herein dismissal.

**SO ORDERED.**<sup>23</sup>

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<sup>18</sup> Id. at 40.

<sup>19</sup> Id. at 3-31.

<sup>20</sup> Id. at 124-137.

<sup>21</sup> Id. at 321-330.

<sup>22</sup> Id. at 394-399.

<sup>23</sup> *Rollo*, p. 37.

Petitioner's motion for reconsideration was denied by the CA in the second assailed Resolution dated January 20, 2016.

Hence, the present recourse.

In its Comment,<sup>24</sup> the Office of the Solicitor General (OSG) faulted petitioner for filing the wrong remedy with the CA, as well as for his failure to file a motion for reconsideration of CSC Resolution No. 1301575 before filing a Rule 65 petition for *certiorari* with the CA. Nevertheless, the OSG noted that petitioner's procedural lapses cannot shroud the fact that based on the facts and the law, petitioner should only be held liable for simple misconduct. In the greater interest of justice, the OSG as tribune of the People alternatively prayed that the CSC's Decision No. 130159 be reinstated.

In her Comment,<sup>25</sup> Mayor Lagman-Luistro maintained her stance that the correct penalty was imposed against petitioner.

### Issue

Whether or not petitioner was correctly found guilty of grave misconduct and meted the penalty of dismissal from the service along with the accessory penalties appurtenant thereto.

### Ruling of the Court

There is merit in the petition.

#### *Procedural considerations*

Under Section 5, Rule 43 of the Rules of Court, final orders or resolutions of the CSC are appealable to the CA through a petition for review.<sup>26</sup> Rule 13, Section 70<sup>27</sup> of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) also echoes this directive. A Rule 65 petition for *certiorari* is not the proper mode or remedy to assail an adverse order or resolution of the CSC.

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<sup>24</sup> Id. at 73-86.

<sup>25</sup> Id. at 136-172.

<sup>26</sup> *Tuazon, Jr. v. Godoy*, 442 Phil. 130, 136 (2002).

<sup>27</sup> Section 70. *Petition for Review with the Court of Appeals*. – A party may elevate a decision of the Commission before the Court of Appeals by way of a petition for review under Rule 43 of the 1997 Revised Rules of Court.

An appeal and a special civil action for *certiorari* are two different remedies.<sup>28</sup> They are not interchangeable.<sup>29</sup> Remedies of appeal, including petitions for review under Rule 43 of the Rules of Court, and *certiorari* are mutually exclusive, not alternative or successive.<sup>30</sup> In *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*,<sup>31</sup> the Court discussed in detail the differences between appeal and *certiorari*, viz.:

Between an appeal and a petition for *certiorari*, there are substantial distinctions which shall be explained below.

*As to the Purpose.* *Certiorari* is a remedy designed for the correction of errors of jurisdiction, not errors of judgment. In *Pure Foods Corporation v. NLRC*, we explained the simple reason for the rule in this light:

“When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed. The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correct[a]ble through the original civil action of *certiorari*.”

The supervisory jurisdiction of a court over the issuance of a writ of *certiorari* cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court — on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision. Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of *certiorari*. Where the error is not one of jurisdiction, but of an error of law or fact — a mistake of judgment — appeal is the remedy.

*As to the Manner of Filing.* Over an appeal, the CA exercises its appellate jurisdiction and power of review. Over a *certiorari*, the higher court uses its original jurisdiction in accordance with its power of control and supervision over the proceedings of lower courts. An appeal is thus a continuation of the original suit, while a petition for *certiorari* is an original and independent action that was not part of the trial that had resulted in the rendition of the judgment or order complained of. The parties to an appeal are the original parties to the action. In contrast, the parties to a petition for *certiorari* are the aggrieved party (who thereby becomes the petitioner) against the lower court or quasi-judicial agency, and the prevailing parties (the public and the private respondents, respectively).

*As to the Subject Matter.* Only judgments or final orders and those that the Rules of Court so declare are appealable. Since the issue is jurisdiction, an

<sup>28</sup> *Punongbayan-Visitacion v. People*, 823 Phil. 212, 220 (2018).

<sup>29</sup> *G.V. Florida Transport, Inc. v. Tiara Commercial Corporation*, 820 Phil. 235, 248 (2017).

<sup>30</sup> *Butuan Development Corporation v. Court of Appeals (Mindanao Station)*, 808 Phil. 443, 451 (2017).

<sup>31</sup> 479 Phil. 768 (2004).

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original action for *certiorari* may be directed against an interlocutory order of the lower court prior to an appeal from the judgment; or where there is no appeal or any plain, speedy or adequate remedy.

*As to the Period of Filing.* Ordinary appeals should be filed within fifteen days from the notice of judgment or final order appealed from. Where a record on appeal is required, the appellant must file a notice of appeal and a record on appeal within thirty days from the said notice of judgment or final order. A petition for review should be filed and served within fifteen days from the notice of denial of the decision, or of the petitioner's timely filed motion for new trial or motion for reconsideration. In an appeal by *certiorari*, the petition should be filed also within fifteen days from the notice of judgment or final order, or of the denial of the petitioner's motion for new trial or motion for reconsideration.

On the other hand, a petition for *certiorari* should be filed not later than sixty days from the notice of judgment, order, or resolution. If a motion for new trial or motion for reconsideration was timely filed, the period shall be counted from the denial of the motion.

*As to the Need for a Motion for Reconsideration.* A motion for reconsideration is generally required prior to the filing of a petition for *certiorari*, in order to afford the tribunal an opportunity to correct the alleged errors. Note also that this motion is a plain and adequate remedy expressly available under the law. Such motion is not required before appealing a judgment or final order.<sup>32</sup> (Citations omitted)

Time and again the Court has reminded members of the bench and bar that the special civil action of *certiorari* cannot be used as a substitute for a lost appeal.<sup>33</sup> As the Court declared in *Butuan Development Corporation v. Court of Appeals*:<sup>34</sup>

A party cannot substitute the special civil action of *certiorari* under Rule 65 of the Rules of Court for the remedy of appeal. The existence and availability of the right of appeal are antithetical to the availability of the special civil action of *certiorari*. Remedies of appeal (including petitions for review) and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion. (Citations omitted)

Nevertheless, there have been instances when the Court has relaxed this rule. This is in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice and that strict and rigid application

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<sup>32</sup> Id. at 779-782.

<sup>33</sup> *Tagle v. Equitable PCI Bank*, 575 Phil. 384, 399 (2008).

<sup>34</sup> *Supra* note 30 at 451.

of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided.<sup>35</sup> After all, the acceptance of a petition for *certiorari*, as well as the grant of due course thereto is, in general, addressed to the sound discretion of the court.<sup>36</sup>

In *Tanenglian v. Lorenzo*,<sup>37</sup> members of the Indigenous Cultural Minority of the Cordillera Administrative Region filed a Petition for Redemption against Mariano Tanenglian (Tanenglian) before the Regional Adjudicator of the Department of Agrarian Reform Adjudication Board (DARAB). The Regional Adjudicator granted the said petition and declared Tanenglian's properties, which were registered under the Torrens system, as ancestral lands.

Tanenglian elevated the case before the DARAB proper, but his appeal was denied outright. The DARAB reasoned that Tanenglian's payment of the appeal fee was made one day beyond the 15-day reglementary period. Undaunted, he filed a Rule 65 petition for *certiorari* with the CA. Ratiocinating that Tanenglian should have interposed a Rule 43 petition for review, the appellate court dismissed his petition for *certiorari* outright.

Taking into account the importance of the issues raised in Tanenglian's petition for *certiorari* and what the properties at stake are, We ruled that the CA should have given due course to the said petition and treated it as a petition for review. Thus:

All things considered, however, we do not agree in the conclusion of the Court of Appeals dismissing petitioner's Petition based on a procedural *faux pax*. While a petition for *certiorari* is dismissible for being the wrong remedy, there are exceptions to this rule, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority.

In *Sebastian v. Morales*, we ruled that rules of procedure must be faithfully followed except only when, for persuasive reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure, thus:

[C]onsidering that the petitioner has presented a good cause for the proper and just determination of his case, the appellate court should have relaxed the stringent application of technical rules of procedure and yielded to consideration of substantial justice.<sup>38</sup> (Citations omitted)

<sup>35</sup> *Vallejo v. Court of Appeals*, 471 Phil. 670, 684 (2004).

<sup>36</sup> *Garcia, Jr. v. Court of Appeals*, 570 Phil. 188, 193 (2008).

<sup>37</sup> 573 Phil. 472 (2008).

<sup>38</sup> *Id.* at 488-489.



Similarly, in *Department of Education v. Cuanan*,<sup>39</sup> two separate administrative cases for Sexual Harassment and Conduct Unbecoming a Public Officer were filed against Godofredo G. Cuanan (Cuanan), who was then Principal of Lawang Kupang Elementary School in San Antonio, Nueva Ecija. Following an investigation, the Regional Director found Cuanan guilty as charged, recommending his forced resignation without prejudice to benefits. The Secretary of the Department of Education (DepEd) affirmed these findings.

When Cuanan elevated the case to the CSC, the said agency issued Resolution No. 030069 dated January 20, 2003, exonerating him from all charges. The DepEd filed a Petition for Review/Reconsideration with the CSC, followed by a Supplemental Petition for Review/Reconsideration. However, the said pleadings were not served upon Cuanan.

On October 22, 2004, the CSC rendered Resolution No. 041147 reversing its earlier ruling and ordering Cuanan's dismissal from the service. Cuanan immediately sought recourse to the CA through a Rule 65 petition for *certiorari*.

The CA granted Cuanan's petition, explaining that while a motion for reconsideration and a petition for review under Rule 43 were available remedies, Cuanan's recourse to a petition for *certiorari* was warranted because the CSC's acts were patently illegal.

On appeal, this Court affirmed the ruling of the CA. Thus:

The remedy of an aggrieved party from a resolution issued by the CSC is to file a petition for review thereof under Rule 43 of the Rules of Court within fifteen days from notice of the resolution. Recourse to a petition for *certiorari* under Rule 65 renders the petition dismissible for being the wrong remedy. Nonetheless, there are exceptions to this rule, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; **(c) when the writs issued are null and void**; or (d) when the questioned order amounts to an oppressive exercise of judicial authority. As will be shown forthwith, exception (c) applies to the present case.

Furthermore, while a motion for reconsideration is a condition precedent to the filing of a petition for *certiorari*, immediate recourse to the extraordinary remedy of *certiorari* is warranted where the order is a patent nullity, as where the court *a quo* has no jurisdiction; where petitioner was deprived of due process and there is extreme urgency for relief; where the proceedings in the lower court are a nullity for lack of due process; where the proceeding was *ex parte* or one in which the petitioner had no opportunity to

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<sup>39</sup> 594 Phil. 451 (2008).

object. These exceptions find application to Cuanan's petition for *certiorari* in the CA.<sup>40</sup> (Citations omitted)

In the case at bar, the CA's outright dismissal of petitioner's petition for *certiorari* was improper. Because petitioner's 15-year tenure in the government service was at stake, the appellate court should have decided the case on the merits. Moreover, as discussed below, CSC Resolution No. 1301575 is null and void, thereby warranting petitioner's recourse to the extraordinary writ of *certiorari*.

*Mayor Lagman-Luistro's motion for reconsideration of CSC Decision No. 130159 dated February 14, 2013 was validly withdrawn by her successor, Mayor Demetriou*

At the outset, Rule 3, Section 17 of the Rules of Court provides:

SEC. 17. *Death or separation of a party who is a public officer.* - When a public officer is a party in an action in his official capacity and during its pendency dies, resigns, or otherwise ceases to hold office, the action may be continued and maintained by or against his successor, if within thirty (30) days after the successor takes office or such time as may be granted by the court, it is satisfactorily shown to the court by any party that there is a substantial need for continuing or maintaining it and that the successor adopts or continues or threatens to adopt or continue the action of his predecessor. Before a substitution is made, the party or officer to be affected, unless expressly assenting thereto, shall be given reasonable notice of the application therefor and accorded an opportunity to be heard.

When a public officer ceases to hold his or her office, the successor to such office enjoys the prerogative of continuing or withdrawing from any action that may have been instituted by his or her predecessor.

In *Miranda v. Carreon*,<sup>41</sup> Acting Mayor Amelita Navarro (Mayor Navarro) of the City of Santiago appointed several personnel to various positions in the local government. When suspended Mayor Jose Miranda (Mayor Miranda) reassumed his post, he terminated the said personnel. The dispute reached the CSC and, thereafter, the CA. The appellate court ultimately decided in favor of the LGU personnel. Joel G. Miranda (Joel), son of Mayor Miranda who was proclaimed winner in the mayoral race, filed a motion for reconsideration of the adverse CA Decision.

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<sup>40</sup> Id. at 459-460.

<sup>41</sup> 449 Phil. 285 (2003).

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Meanwhile, the Commission on Elections set aside Joel's proclamation and declared Mayor Navarro as the new mayor of the City of Santiago. Mayor Navarro immediately filed a Motion to Withdraw the Motion for Reconsideration with the CA. The appellate court granted the same.

We ruled that the CA did not commit any reversible error in allowing Mayor Navarro to desist from pursuing the case before it. Citing Rule 3, Section 27, We explained:

It is clear from the above Rule that when petitioner ceased to be mayor of Santiago City, the action may be continued and maintained by his successor, Mayor Amelita Navarro, if there is substantial need to do so.

Mayor Navarro, however, found no substantial need to continue and maintain the action of her predecessor in light of the CSC Resolution declaring that respondents' services were illegally terminated by former Mayor Jose Miranda. In fact, she filed with the Court of Appeals a "Motion to Withdraw the Motion for Reconsideration" (lodged by petitioner). She likewise reinstated all the respondents to their respective positions and approved the payment of their salaries.<sup>42</sup>

A similar set of facts obtains in the instant case.

When Mayor Demetriou assumed as mayor of Tabaco City, she obtained all of the powers appurtenant thereto. This includes the power to continue and maintain pending suits involving the said office, or to abandon the same. Thus, Mayor Demetriou acted well within her authority when she withdrew Mayor Lagman-Luistro's Motion for Reconsideration of the CSC's Decision No. 130159 dated February 14, 2013 upon her assumption as mayor of Tabaco City. It bears stressing that in her July 1, 2013 letter and July 3, 2013 Motion to Withdraw Information, Mayor Demetriou even intimated to the CSC her intention to reinstate petitioner to his former position.

Accordingly, it was a grave error on the part of the CSC to even consider Mayor Lagman-Luistro's Motion for Reconsideration as she had already ceased to be mayor of Tabaco City, and the same was withdrawn by her successor. Mayor Lagman-Luistro's argument that she remained the real party in interest in the case simply has no leg to stand on, no matter the intensity of her vendetta against petitioner.

It was, therefore, incumbent upon the CSC to declare the case closed, there being no motion for reconsideration to speak of. Mayor Lagman-Luistro's Motion for Reconsideration was nothing but mere scraps of paper.

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<sup>42</sup> Id. at 293.

*Accordingly, CSC Decision No. 130159 dated February 14, 2013 had already attained finality; CSC Resolution No. 1301575 dated July 15, 2013 is void*

A judgment becomes “final and executory” by operation of law.<sup>43</sup> The finality of a judgment becomes a fact upon the lapse of the reglementary period of appeal if no appeal is perfected or no motion for reconsideration or new trial is filed.<sup>44</sup>

The Court proclaimed in *Mocorro, Jr. v. Ramirez*<sup>45</sup> that:

A decision that has acquired finality becomes immutable and unalterable. This quality of immutability precludes the modification of a final judgment, even if the modification is meant to correct erroneous conclusions of fact and law. And this postulate holds true whether the modification is made by the court that rendered it or by the highest court in the land. The orderly administration of justice requires that, at the risk of occasional errors, the judgments/resolutions of a court must reach a point of finality set by the law. The noble purpose is to write *finis* to dispute once and for all. This is a fundamental principle in our justice system, without which there would be no end to litigations. Utmost respect and adherence to this principle must always be maintained by those who exercise the power of adjudication. Any act, which violates such principle, must immediately be struck down. Indeed, the principle of conclusiveness of prior adjudications is not confined in its operation to the judgments of what are ordinarily known as courts, but extends to all bodies upon which judicial powers had been conferred.<sup>46</sup>

A final judgment is no longer subject to change or revision,<sup>47</sup> regardless of any claim that it is erroneous.<sup>48</sup> It may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and whether made by the highest court of the land.<sup>49</sup> Any amendment or alteration which substantially affects a final and executory judgment is null and void for lack of jurisdiction, including the entire proceedings held for that purpose.<sup>50</sup>

In the case at bench, Mayor Demetriou’s withdrawal of Mayor Lagman-Luistro’s Motion for Reconsideration of CSC Decision No. 130159 means that

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<sup>43</sup> *Social Security System v. Isip*, 549 Phil. 112, 116 (2007).

<sup>44</sup> *Philippine Savings Bank v. Papa*, 823 Phil. 725, 736 (2018).

<sup>45</sup> 582 Phil. 357 (2008).

<sup>46</sup> *Id.* at 366-367.

<sup>47</sup> *Id.* at 366.

<sup>48</sup> 825 Phil. 30, 38 (2018).

<sup>49</sup> *Nacuray v. National Labor Relations Commission*, 336 Phil. 749, 757-758 (1997).

<sup>50</sup> *Vargas v. Cajucom*, 761 Phil. 43, 54 (2015).

no such motion for reconsideration was filed within the proper reglementary period. As a result, CSC Decision No. 130159 had already attained finality. CSC Resolution No. 1301575, vacating CSC Decision No. 130159, runs afoul of the doctrine of immutability of judgment. It is null and void as it was rendered with grave abuse of discretion.

*While petitioner's act does not constitute misconduct as defined by civil service laws, the finding of simple misconduct against him stands*

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer.<sup>51</sup> It is the intentional wrongdoing or deliberate violation of a rule of law or standard of behavior.<sup>52</sup> To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer.<sup>53</sup>

Under civil service rules, misconduct can be classified as grave or simple.

The misconduct is considered as grave if it involves additional elements such as corruption or willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence.<sup>54</sup> Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others.<sup>55</sup>

On the other hand, a person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the additional elements to qualify the misconduct as grave.<sup>56</sup>

In the present case, the CSC, in its Decision No. 130159, held petitioner liable for simple misconduct based on its Resolution No. 1100039 issued on January 10, 2011, classifying the act of consuming alcoholic drinks during office hours as simple misconduct:

**Section 5. Penalties. Officials and employees who consume intoxicating liquor and other alcoholic beverages during office hours**

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<sup>51</sup> *Sabio v. Field Investigation Office*, 825 Phil. 848, 858 (2018).

<sup>52</sup> *Ganzon v. Arlos*, 720 Phil. 104, 113 (2013).

<sup>53</sup> *Office of the Ombudsman-Visayas v. Castro*, 759 Phil. 68, 79 (2015).

<sup>54</sup> *Office of the Ombudsman v. Mallari*, 749 Phil. 224, 249 (2014).

<sup>55</sup> *Bagaoisan v. Office of the Ombudsman for Mindanao*, G.R. No. 242005, June 26, 2019.

<sup>56</sup> *Civil Service Commission v. Ledesma*, 508 Phil. 569, 579 (2005).

outside the afore-mentioned instances where consumption is allowed, as well as those reporting for work while under the influence of alcohol, shall be liable for Simple Misconduct and shall be imposed the penalties provided under existing rules, as follows:

- 1<sup>st</sup> Offense – Suspension 1 month, 1 day to 6 months
- 2<sup>nd</sup> Offense – Dismissal

The resolution, however, is inapplicable to the factual antecedents of the case considering that petitioner and his companions drank liquor **outside office hours**, albeit the same was done inside their own office.

But more than this, it is discerned that petitioner's act cannot be considered as amounting to misconduct, whether simple or gross, since the act committed must have a direct relation to and be connected with the performance of his official duties amounting either to maladministration or willful, intentional neglect or failure to discharge the duties of the office,<sup>57</sup> which is not the case here.

If anything, petitioner's act is more related to Conduct Prejudicial to the Best Interest of the Service, an administrative offense which need not be connected with<sup>58</sup> or related to a person's official functions,<sup>59</sup> but is so inclusive as to put within its ambit any conduct of a public officer that tarnishes the image and integrity of his/her public office.<sup>60</sup>

Nevertheless, the finding of Simple Misconduct against petitioner, despite being inaccurate, stands by virtue of the doctrine of immutability and finality of judgments.

All told, CSC Resolution No. 1301575 is devoid of any factual or legal basis. It cannot be allowed to stand, lest it result in a miscarriage of justice against one who has dedicated fifteen (15) years of his life in the government service. The CA committed a reversible error when it relied on technicalities to dismiss outright petitioner's petition.

**WHEREFORE**, the petition is **GRANTED**. The Resolutions dated May 28, 2014 and January 20, 2016 of the Court of Appeals in CA-G.R. SP No. 131772 are **REVERSED** and **SET ASIDE**. Resolution No. 1301575 dated July 15, 2013, issued by the Civil Service Commission, is declared **VOID**. The Civil

<sup>57</sup> *Recto-Sambajon v. Public Attorney's Office*, 817 Phil. 879, 892 (2017).

<sup>58</sup> *Villanueva v. Reodique*, G.R. Nos. 221647 & 222003, November 27, 2018.


<sup>59</sup> *Office of the Ombudsman-Visayas v. Castro*, supra note 53 at 79.

<sup>60</sup> *Civil Service Commission v. Catacutan*, G.R. Nos. 224651 & 224656, July 3, 2019.

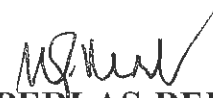
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Service Commission's Decision No. 130159 dated February 14, 2013 is hereby **REINSTATED.**


**SO ORDERED.**


  
**SAMUEL H. GAERLAN**  
Associate Justice

WE CONCUR:

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice

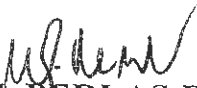
  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**JAPAR B. DIMAAMPAO**  
Associate Justice

**A T T E S T A T I O N**

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

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice  
Chairperson, Second Division

**C E R T I F I C A T I O N**

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

  
**ALEXANDER G. GESMUNDO**  
Chief Justice

2