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for review under Rule 45 of the Rules of Court. In general, the jurisdiction of this Court in cases brought before it from the Court of Appeals is limited to a review of errors of law allegedly committed by the court *a quo*.[29]

WHEREFORE, the Petition is hereby *DENIED*, and the assailed Decision and Resolution *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Puno (Chairman), Sandoval-Gutierrez, Corona, and *Carpio Morales, JJ.,* concur.

EN BANC

[G.R. No. 143540. April 11, 2003]

JOEL G. MIRANDA, *petitioner, vs.* **ANTONIO C. CARREON, MILAGROS B. CASCO, ELSIE S. ESTARES, JULIUS N. MALLARI, ELINORA A. DANAO, JOVELYN G. RETAMAL, MARIFE S. ALMAZAN, JONALD R. DALMACIO, JENNIFER C. PLAZA, RIZALDY B. AGGABAO, VILMA T. VENTURA, BENEDICT B. PANGANIBAN, JOSE L. GOMBIO, MELCHOR E. SORIANO, ZARINA C. PANGANIBAN, EMELITA D. TAUYA, EVANGELINE A. SICAM, MATABAI AQUARIOUS Q. CULANG, MELVIN L. GARCIA, JOHNNY N. YU, JR., LOIDA J. PURUGGANAN, EDUARDO S. VALENCIA, EDITHA A. REGLOS, HENRY P. MAPALAD, RAMIL C. GALANG, JUSTINA M. MACASO, MARTHA B. ALLAM, and ARSENIA A. CATAINA,** *respondents*.

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[29] *Ibid.*

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SYNOPSIS

Respondents were appointed by then Acting MayorAmelita Navarro of the City of Santiago, to various positions in the city government. Three months after suspended Mayor Jose Miranda reassumed his post, however, he issued an Order terminating the services of respondents on the ground of poor performance during the probationary period. A CSC Resolution reversed this Order, and the same was affirmed by the Court of Appeals. Later, when Navarro became Mayor, she filed a motion to withdraw the Motion for Reconsideration filed by petitioner in the CA. Here, petitioner insists on the error of the CA for affirming the CSC Resolution.

The Court ruled the petition as without merit. Mayor Navarro, who has the prerogative to continue the action of her predecessor, found no substantial need to do so. And while petitioner insists on his right as taxpayer to continue the suit, the Court stressed that it does not involve illegal disbursement of public funds. Further, respondents' poor performance were not only prematurely evaluated, they were also denied due process for receiving only the termination order.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; RULE IN CASE OF DEATH OR SEPARATION OF A PARTY WHO IS A PUBLIC OFFICER.**— Section 17, Rule 3 of the 1997 Rules of Civil Procedure, as amended, 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 by any party that there is substantial need for continuing or maintaining it and the successor adopts or continues or threatens to adopt or continue the action of his predecessor." 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.

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2. ID.; ID.; ID.; PARTIES IN INTEREST; TAXPAYER'S SUIT.— Section 2, Rule 3 of the same Rules provides: "Section 2. *Parties in interest.* — *A* real party in interest is the party who *stands to be benefited or injured by the judgment in the suit,* or the party entitled to the avails of the suit. *Unless otherwise authorized by law or these Rules,* every action must be prosecuted or defended in the name of the real party in interest." Even as a taxpayer, petitioner does not stand "to be benefited or injured by the judgment of the suit." Not every action filed by a taxpayer can qualify to challenge the legality of official acts done by the government. It bears stressing that "a taxpayer's suit refers to a case where the *act complained of directly* involves the *illegal disbursement of public funds from taxation.*" The issue in this case is whether respondents' services were illegally terminated. Clearly, it does not involve the *illegal disbursement of public funds*, hence, petitioner's action cannot be considered a taxpayer's suit.

3. POLITICAL LAW; ADMINISTRATIVE LAW; REMOVAL OF GOVERNMENT EMPLOYEE; GROUNDS; INEFFICIENCY.— The 1987 Constitution provides that "no officer or employee of the civil service shall be removed or suspended *except for cause provided by law.*" Under the Revised Administrative Code of 1987, a government officer or employee may be removed from the service on two (2) grounds: (1) unsatisfactory conduct and (2) want of capacity. While the Code does not define and delineate the concepts of these two grounds, however, the Civil Service Law (Presidential Decree No. 807, as amended) provides specific grounds for dismissing a government officer or employee from the service. Among these grounds are inefficiency and incompetence in the performance of official duties. In the case at bar, respondents were dismissed on the ground of *poor performance*. Poor performance falls within the concept of inefficiency and incompetence in the performance of official duties which, as earlier mentioned, are grounds for dismissing a government official or employee from the service.

4. ID.; ID.; ID.; ID.; DETERMINATION THEREOF REQUIRES 6-MONTH PROBATIONARY PERIOD.— Inefficiency or incompetence can only be determined after the passage of sufficient time, hence, the probationary period of six (6) months for the respondents. Indeed, to be able to gauge whether a

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subordinate is inefficient or incompetent requires enough time on the part of his immediate superior within which to observe his performance. This condition, however, was not observed in this case. As aptly stated by the CSC, it is quite improbable that Mayor Jose Miranda could finally determine the performance of respondents for only the first three months of the probationary period.

5. ID.; ADMINISTRATIVE LAW; CAREER SERVICE; TENURE MUST NOT BE SUBJECT TO THE WHIM OF PARTISAN POLITICS.— The Constitution has envisioned the civil service to be a career service based on merit and rewards system that will truly be accountable and responsive to the people and deserving of their trust and support. These noble objectives will be frustrated if the tenure of its members is subject to the whim of partisan politics. A civil servant who lives in ceaseless fear of being capriciously removed from office every time a new political figure assumes power will strive to do anything that pleases the latter. In this way, he will hardly develop efficiency, accountability and a sense of loyalty to the public service. Such a climate will only breed opportunistic, inefficient and irresponsible civil servants to the detriment of the public. This should not be countenanced.

APPEARANCES OF COUNSEL

Michael S. Navarro for private respondents.

D E C I S I O N

SANDOVAL-GUTIERREZ, *J.*:

Before us is a petition for review on *certiorari*[1] assailing the Decision[2] dated May 21, 1999 and the Resolution dated June 5, 2000 of the Court of Appeals in CA-G.R. SP No. 36997.

In the early part of 1988, Vice Mayor Amelita Navarro, while serving as Acting Mayor of the City of Santiago because

[1] Filed under Rule 45 of the 1997 Rules of Civil Procedure, as amended.

[2] Penned by Justice Artemio G. Tuquero, retired, and concurred in by Justice Eubulo G. Verzola and Justice Candido V. Rivera, retired.

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of the suspension of Mayor Jose Miranda, appointed the above named respondents to various positions in the city government. Their appointments were with permanent status and based on the evaluation made by the City Personnel Selection and Promotion Board (PSPB) created pursuant to Republic Act No. 7160.[3] The Civil Service Commission (CSC) approved the appointments.

When Mayor Jose Miranda reassumed his post on March 5, 1998 after his suspension, he considered the composition of the PSPB irregular since the majority party, to which he belongs, was not properly represented.[4] He then formed a three-man special performance audit team composed of Roberto C. Bayaua, Antonio AL. Martinez and Antonio L. Santos, to conduct a personnel evaluation audit of those who were previously screened by the PSPB and those on probation. After conducting the evaluation, the audit team submitted to him a report dated June 8, 1998 stating that the respondents were found "wanting in (their) performance."

On June 10, 1998, or three months after Mayor Miranda reassumed his post, he issued an order terminating respondents' services effective June 15, 1998 because they "performed poorly" during the probationary period.

Respondents appealed to the CSC, contending that being employees on probation,[5] they can be dismissed from the service

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[3] Otherwise known as The Local Government Code of 1991.

[4] Former Mayor Jose Miranda's preferred Councilor, a partymate, was substituted by another Councilor through the intervention of Acting Mayor Navarro.

[5] Although respondents' original appointments were with *permanent* status, they must serve a *probationary period of six (6) months* as provided in Section 2, Rule VII of the Omnibus Civil Service Rules and Regulations, which reads:

"SEC. 2. Original appointment refers to initial entry into the career service under a permanent status of a person who meets all the requirements of the position including the civil service eligibility.

(a) All such persons must serve a probationary period of six (6) months following their original appointment and shall undergo a

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on the ground of poor performance only *after their probationary period of six months,* not after three (3) months. They also denied that an evaluation on their performance was conducted, hence, their dismissal from the service violated their right to due process.

On October 19, 1998, the CSC issued Resolution No. 982717 reversing the order of Mayor Miranda and ordering that respondents be reinstated to their former positions with payment of backwages, thus:

x x x x x x x x x

"Granting that the complainant-employees (now respondents) indeed *rated poorly*, the question that remains is whether they can be terminated from the service on that ground.

x x x x x x x x x

"x x x, at the time of their termination the complainants have not finished the six (6) months probationary period. x x x, they may be terminated even before the expiration of the probationary period pursuant to Section 26, par. 1, Chapter 5, Book V, Title I-A of the Revised Administrative Code of 1987. Said Section provides:

> 'All such persons (appointees who meet all the requirements of the position) must serve a *probationary period* of six months following their original appointment and shall undergo a thorough character investigation in order to acquire a permanent civil service status. *A probationer may be dropped from the service for* unsatisfactory conduct *or for* want of capacity

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thorough character investigation. A probationer may be dropped from the service for *unsatisfactory* conduct or *want* of capacity any time before the expiration of the probationary period: Provided, That such action is appealable to the Commission.

(b) All original appointments of qualified persons to the position in the career service shall henceforth be proposed as permanent. It is understood that the first six (6) months of service will be probationary in nature. However, if no notice of termination or unsatisfactory conduct or want of capacity is given by the appointing authority to the employee before the expiration of the six-month probationary period, the appointment automatically becomes permanent."

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anytime before *the expiration of the probationary period: Provided, that such action is appealable to the Commission.'*

"It is, however, clear from the foregoing quoted provision that an employee on probation status may be terminated only for unsatisfactory conduct or want of capacity. *In this case, the services of the complainants were terminated on the ground of poor performance x x x Although poor performance may come near the concept of want of capacity, the latter, as held by this Commission, 'implies opportunity on the part of the head of office to observe the performance and demeanor of the employee concerned' (Charito Pandes,* CSC Resolution No. 965592*). At this point, considering that Mayor Jose Miranda reassumed his post only on March 5, 1998 after serving his suspension, it is quite improbable that he can already gauge the performance of the complainants through the mere lapse of three months considering that the date of the letter of termination is June 10, 1998 and its effectivity date June 15, 1998.*"[6] (italics supplied)

Meanwhile, the COMELEC disqualified Mayor Jose Miranda as a mayoralty candidate in the 1998 May elections. His son Joel G. Miranda, herein petitioner, substituted for him and was proclaimed Mayor of Santiago City. He then filed a motion for reconsideration of the CSC Resolution No. 982717 (in favor of respondents) but it was denied in the CSC Resolution No. 990557 dated March 3, 1999.

Petitioner then filed with the Court of Appeals a petition for review on *certiorari*, docketed as CA-G.R. SP No. 36997. On May 21, 1999, the Court of Appeals rendered a Decision affirming *in toto* the CSC Resolution No. 982717. Forthwith, petitioner filed a motion for reconsideration, but before it could be resolved by the Court of Appeals, several events supervened. This Court, in G.R. No. 136351, "*Joel G. Miranda vs. Antonio M. Abaya and the COMELEC*," set aside the proclamation of petitioner as Mayor of Santiago City for lack of a certificate of candidacy and declared Vice Mayor Amelita Navarro as City Mayor by operation of law.[7]

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[6] *Rollo* at 6.

[7] 370 Phil. 642 (1999).

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On December 20, 1999, Mayor Navarro filed with the Court of Appeals a "Motion to Withdraw the Motion for Reconsideration" (previously submitted by former Mayor Joel G. Miranda).

On June 5, 2000, the Court of Appeals denied petitioner's motion for reconsideration of its Decision.

On June 11, 2000, the Court of Appeals granted Mayor Navarro's "Motion to Withdraw the Motion for Reconsideration." In effect, the CSC Resolution reinstating respondents to their positions stays.

In this petition, petitioner Joel G. Miranda contends that the Court of Appeals erred in affirming the CSC Resolution declaring that the termination of respondents' services is illegal and ordering their reinstatement to their former positions with payment of backwages.

In their comment, respondents claim that since petitioner ceased to be Mayor of Santiago City, he has no legal personality to file the instant petition and, therefore, the same should be dismissed. They insist that they were not actually evaluated on their performance. But assuming there was indeed such an evaluation, it should have been done by their immediate supervisors, not by those appointed by former Mayor Jose Miranda.

In his reply, petitioner contends that as a taxpayer, he has a legal interest in the case at bar, hence, can lawfully file this petition.

Section 17, Rule 3 of the 1997 Rules of Civil Procedure, as amended, 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 by any party that there is substantial need for continuing or

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maintaining it and the successor adopts or continues or threatens to adopt or continue the action of his predecessor."

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.

Petitioner insists though that as a *taxpayer*, he is a real party-in-interest and, therefore, should continue and maintain this suit. Such contention is misplaced. Section 2, Rule 3 of the same Rules provides:

"Section 2. *Parties in interest.* — A real party in interest is the party who *stands to be benefited or injured by the judgment in the suit,* or the party entitled to the avails of the suit. *Unless otherwise authorized by law or these Rules*, every action must be prosecuted or defended in the name of the real party in interest." (italics supplied)

Even as a taxpayer, petitioner does not stand "to be benefited or injured by the judgment of the suit." Not every action filed by a taxpayer can qualify to challenge the legality of official acts done by the government. [8] It bears stressing that "a taxpayer's suit refers to a case where the *act complained of directly* involves the *illegal disbursement of public funds from taxation.*"[9] The issue in this case is whether respondents'

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[8] *Joya vs. Presidential Commission on Good Government*, 225 SCRA 568 (1993).

[9] *Bayan (Bagong Alyansang Makabayan) vs. Zamora*, G.R. No. 138570, October 10, 2000, 342 SCRA 449, citing *Pascual vs. Secretary of Public Works*, 110 Phil. 331 (1960); *Maceda vs. Macaraig*, 197 SCRA 771 (1991);

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services were illegally terminated. Clearly, it does not involve the *illegal disbursement of public funds,* hence, petitioner's action cannot be considered a taxpayer's suit.

At any rate, to put to rest the controversy at hand, we shall resolve the issue of whether respondents' services were illegally terminated by former Mayor Jose Miranda.

The 1987 Constitution provides that "no officer or employee of the civil service shall be removed or suspended *except for cause provided by law.*"[10] Under the Revised Administrative Code of 1987, a government officer or employee may be removed from the service on two (2) grounds: (1) unsatisfactory conduct and (2) want of capacity. While the Code does not define and delineate the concepts of these two grounds, however, the Civil Service Law (Presidential Decree No. 807, as amended) provides specific grounds for dismissing a government officer or employee from the service. Among these grounds are inefficiency and incompetence in the performance of official duties. In the case at bar, respondents were dismissed on the ground of *poor performance*. Poor performance falls within the concept of inefficiency and incompetence in the performance of official duties which, as earlier mentioned, are grounds for dismissing a government official or employee from the service.

But inefficiency or incompetence can only be determined after the passage of sufficient time, hence, the probationary period of six (6) months for the respondents. Indeed, to be able to gauge whether a subordinate is inefficient or incompetent requires enough time on the part of his immediate superior within which to observe his performance. This condition, however, was not observed in this case. As aptly stated by the CSC, it is quite improbable that Mayor Jose Miranda could finally determine the performance of respondents for only the first three months of the probationary period.

Lozada vs. COMELEC, 120 SCRA 337 (1983); *Dumlao vs. COMELEC*, 95 SCRA 392 (1980); *Gonzales vs. Marcos*, 65 SCRA 624 (1975).

[10] Section 2(3), Article IX-B, 1987 Constitution.

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Not only that, we find merit in respondents' claim that they were denied due process. They cited Item 2.2 (b), Section VI of the Omnibus Guidelines on Appointments and Other Personnel Actions (CSC Memorandum Circular No. 38, Series of 1993, as amended by CSC Memorandum Circular No. 12, Series of 1994) which provides:

> "2.2. Unsatisfactory or Poor Performance
>
> x x x x x x x x x
>
> b. An official or employee who, for one evaluation period, is rated poor in performance, may be dropped from the rolls *after due notice.* Due notice shall mean that the officer or employee is *informed in writing of the status of his performance not later than the fourth month of that rating period with sufficient warning that failure to improve his performance within the remaining period of the semester shall warrant his separation from the service.* Such notice shall also contain sufficient information which shall enable the employee to prepare an explanation."[11] (italics supplied)

Respondents vehemently assert that they were never notified in writing regarding the status of their performance, neither were they warned that they will be dismissed from the service should they fail to improve their performance. Significantly, petitioner did not refute respondents' assertion. The records show that what respondents received was only the termination order from Mayor Jose Miranda. Obviously, respondents' right to due process was violated.

Moreover, respondents contend that the only reason behind their arbitrary dismissal was Mayor Jose Miranda's perception that they were not loyal to him, being appointees of then Acting Mayor Navarro. This contention appears to be true considering that all those who were accepted and screened by the PSPB during the incumbency of Acting Mayor Navarro were rated to have performed poorly by an audit team whose three members were personally picked by Mayor Jose Miranda.

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[11] CA Records at 260-261.

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The Constitution has envisioned the civil service to be a career service based on merit and rewards system that will truly be accountable and responsive to the people and deserving of their trust and support.[12] These noble objectives will be frustrated if the tenure of its members is subject to the whim of partisan politics. A civil servant who lives in ceaseless fear of being capriciously removed from office every time a new political figure assumes power will strive to do anything that pleases the latter. In this way, he will hardly develop efficiency, accountability and a sense of loyalty to the public service. Such a climate will only breed opportunistic, inefficient and irresponsible civil servants to the detriment of the public. This should not be countenanced.

In fine, we hold that petitioner, not being a real party in interest, has no legal personality to file this petition. Besides, his motion for reconsideration was validly withdrawn by the incumbent Mayor. Even assuming he is a real party in interest, we see no reason to disturb the findings of both the CSC and the Court of Appeals. The reinstatement of respondents who, unfortunately, were victims of political bickerings, is in order.

WHEREFORE, the petition is *DENIED*. The assailed Decision dated May 21, 1999 of the Court of Appeals in CA-G.R. SP No. 36997 is *AFFIRMED*.

Treble costs against petitioner.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Carpio Morales, Callejo, Sr., and *Azcuna, JJ.*, concur.

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[12] Section 3, Article IX-B of the 1987 Constitution.