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However, Gascor's complaint against Santos and Valdez for revelation of industrial secrets was dismissed by the provincial fiscal of Rizal in his resolution of June 30, 1976.

Under these facts, I am of the opinion that clearance should have been given for the dismissal of Santos and Valdez. prcd

Alternatively, I believe that the backpay should be limited to *two years* in case Valdez and Santos should be reinstated.

SECOND DIVISION

[G.R. No. L-49760. October 23, 1979]

PEDRO N. CALIMLIM, in his capacity as Regional Director, Region V, Bureau of Lands, *petitioner, vs.* **HON. ISIDORO A. VERA, as Presiding Judge, Branch II, Court of First Instance of Camarines Norte and JAIME R. ALEGRE,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; APPEAL; APPEAL BOND; EXEMPTION; CASE AT BAR.— The instant petition is devoid of merit. The exemption from the filing of an appeal bond applies only in cases where the action is brought by or against public officers impleaded merely as nominal representatives of the Government and sued purely in their official capacity, as in the cases cited by the Solicitor General. However, when a public officer is sued not only in his official capacity but also in his personal capacity, he is not exempted from the filing of an appeal bond. In the case at bar, the herein petitioner — like the respondent public officer in the Tabuena case — was sued not only in his official capacity as Regional Director, Region V of the Bureau of Lands, but also in his personal capacity. Thus,

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in his petition below, the private respondent Jaime Alegre alleged that the actuations of the petitioner Pedro Calimlim in depriving him of his right to assume his position as Hearing Officer I, subjected him to ridicule, humiliation and embarrassment, and as such, he suffered moral and consequential damages, and, accordingly, the court *a quo* in its decision made him personally liable for damages. Consequently, We hold that petitioner Pedro Calimlim is not exempted from the filing of an appeal bond to perfect his appeal.

D E C I S I O N

CONCEPCION JR., *J.*:

This is a petition for *certiorari*, prohibition and *mandamus* with a prayer for the issuance of a writ of preliminary injunction.

On January 9, 1976, private respondent Jaime R. Alegre, filed with the Court of First Instance of Camarines Norte, Branch II, presided over by respondent Judge, a petition for *mandamus* with damages against the petitioner Pedro Calimlim and Dionisio Belen, Regional Director and Administrative Officer of the Bureau of Lands, Region V, Legaspi City, respectively,[1] docketed therein as Civil Case No. 2728.

On September 8, 1978, respondent Judge rendered a decision,[2] the dispositive portion of which reads as follows:

"WHEREFORE, judgment is hereby rendered:

"(a) ordering the respondent Pedro Kalimlim to immediately make the assignment of petitioner as Hearing Officer I (R-48);

"(b) ordering respondent Pedro Kalimlim to pay, petitioner his unearned salary as Hearing Officer I (R-48) at the rate of ₱520.00 a month from December 2, 1975 up to the time he makes the assignment;

"(c) ordering the respondent Pedro Kalimlim to pay petitioner moral damages in the amount of ₱5,000.00;

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[1] Annex "D", p. 38, *rollo*.

[2] Annex "L", p. 69, *Id.*

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"(d) ordering the respondent Pedro Kalimlim to pay petitioner exemplary damages in the amount of ₱5,000.00;

"(e) ordering respondent Pedro Kalimlim to pay petitioner attorney's fees in the amount of ₱1,000.00;

"(f) and to pay the costs.

"SO ORDERED.[3]

a copy of which was received by petitioner, thru counsel, on October 19, 1978.

Thereafter, on November 7, 1978, petitioner, thru the Office of the Solicitor General, filed a notice of appeal[4] signifying his intention to appeal to the Court of Appeals, and alleging that "having been sued in his official capacity, is exempt from filing the appeal bond."

On November 29, 1978, respondent Judge issued an order,[5] reading as follows:

"The intended appeal by respondent Pedro Calimlim, will not be given due course unless he files an appeal bond within the reglementary period. His being sued in his official capacity does not exempt him from the filing of an appeal bond. Only the government of the Republic of the Philippines is exempt from the filing of an appeal bond since under Section 1 of Rule 142, the government of the Republic of the Philippines is not liable for costs, unless the law so provides. (*Government of the Philippines vs. The Judge of the Court of First Instance of Iloilo*, 34 Phil. 157; *Hongkong & Shanghai Banking Corp. vs. Rafferty*, 39 Phil. 145)

"The Rules of Court does not exempt a public official sued in his official capacity from paying the required appeal bond especially as in this case where respondent was made liable for damages in his private capacity.

"SO ORDERED."

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[3] p. 76, *rollo*.

[4] Annex "M", p. 77, *rollo*.

[5] Annex "N" p. 79, *Id*.

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The petitioner moved for reconsideration;[6] however, the same was denied by respondent Judge in his order dated January 3, 1979, with a warning that unless the appeal bond was filed within five (5) days from receipt of the order, he would issue a writ of execution as prayed by private respondent in his motion for execution.[7]

Hence, the petitioner, thru the Solicitor General, interposed the present petition.

As prayed for by the petitioner, this Court issued on February 2, 1979 a temporary restraining order "effective as of this date and continuing until otherwise ordered by the Court."[8]

The only issue to be resolved in the instant case is whether or not the petitioner is legally required to file an appeal bond for the perfection of his appeal from the decision of respondent Judge in Civil Case No. 2728 — a special civil action for *mandamus* with damages.

The Solicitor General contends that since the petitioner was sued in his official capacity as Regional Director of the Bureau of Lands, then it was not required of him to file an appeal bond. Only the notice of appeal was necessary for the perfection of his appeal, and in support thereof cited the cases of *Commissioner of Immigration vs. Romero*[9] and *Embroidery and Apparel Control and Inspection Board vs. Cloribel*.[10]

The instant petition is devoid of merit. The exemption from the filing of an appeal bond applies only in cases where the action is brought by or against public officers impleaded merely as nominal representatives of the Government and sued purely in their official capacity,[11] as in the cases cited by the Solicitor

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[6] Annex "O", p. 80, *Id.*

[7] Annex "P", p. 83, *Id.*

[8] p. 100, *rollo*.

[9] 10 SCRA 216 (1964).

[10] 20 SCRA 517 (1967).

[11] *Tabuena vs. Court of Appeals*, 3 SCRA 413 (1961).

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General. However, when a public officer is sued not only in his official capacity but also in his personal capacity, he is not exempted from the filing of an appeal bond. Thus, in the case of *Tabuena vs. Court of Appeals*,[12] which is also a case of *mandamus* with damages, this Court rejected the claim of the respondent Director of the Forest Research Institute that he was exempted from the filing of an appeal bond in the following tenor:

"We find this conclusion untenable. The general rule is that an appeal bond is required for the purpose of paying for the costs which the appellate court may award against the appellant (Sec. 5, Rule 41). As an exception, an appeal bond is not required of the Government when it is the unsuccessful party, because no costs are supposed to accrue against the Republic of the Philippines unless otherwise provided by law (Sec. 1, Rule 31). But exemption from the filing of bonds applies only where the action is brought by or against public officers impleaded merely as nominal representatives of the Government, and sued purely in their official capacity (*Tolentino vs. Carlos*, 66 Phil. 140; *Chan vs. Villanueva, et al.*, L-5420, April, 1952; *Araneta, et al. vs. Gatmaitan, et al.*, L-8895 & L-9191, April 30, 1957; *Hongkong & Shanghai Banking Corp. v. Rafferty*, 39 Phil. 145; *Gov't. of PI vs. Judge of the Court of First Instance*, 34 Phil. 157).

"It appears exceedingly clear in this case that respondent De la Cruz was sued not only in his official capacity as Director of the Forest Research Institute, but also in his personal capacity for having acted allegedly in manifest bad faith 'with the purpose of persecuting, discriminating against or committing injustice to the petitioner' (par. 13, Ann "F"); and accordingly, the judgment of the court of origin made him personally liable for damages in varying concepts. Whether or not the trial court committed error in awarding damages against De la Cruz in his personal capacity is immaterial here, this being more properly cognizable in an appeal from the main case. For our purpose, what is decisive is the dual character in which he was sued and the judgment rendered by the trial court. At least on principle, a public officer, by virtue of his office alone, is not immune from damages in his personal capacity arising from illegal

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[12] *supra*.

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acts done in bad faith (Art. 27, N. C. C.; 43 Am. Jur., 86, 89-90). A different rule would sanction the use of public office as a tool of oppression."

In the case at bar, the herein petitioner — like the respondent public officer in the *Tabuena* case — was sued not only in his official capacity as Regional Director, Region V of the Bureau of Lands, but also in his personal capacity. Thus, in his petition below, the private respondent Jaime Alegre alleged that the actuations of the petitioner Pedro Calimlim in depriving him of his right to assume his position as Hearing Officer I, subjected him to ridicule, humiliation and embarrassment, and as such, he suffered moral and consequential damages, and, accordingly, the court *a quo* in its decision made him personally liable for damages. Consequently, We hold that petitioner Pedro Calimlim is not exempted from the filing of an appeal bond to perfect his appeal.

ACCORDINGLY, the instant petition should be, as it is hereby, DISMISSED, and the petitioner is hereby given a period of ten (10) days from entry of our judgment within which to file his appeal bond in Civil Case No. 2728, and thereafter, the court *a quo* shall conduct further proceedings in accordance with this opinion. The restraining order heretofore issued is hereby dissolved. No costs.

SO ORDERED.

Antonio, Aquino, Santos, and *Abad Santos, JJ.*, concur.

Barredo, J., I concur, but were it not because the Solicitor General had agreed with petitioner as to his rights to exemption from filing an appeal bond, I would have voted to declare the judgment of the trial court final.