Supreme Court E-Library

Anent this second contention, it must be clarified that Section 6 of Rule 41 does not require that the record on appeal should state that it has been approved. Indeed, it would be absurd to so require because the approval has to come only after its filing. In this connection, it is in the transmittal and certification of the records ordained by Section 11 of the same rule that the fact of approval of the record on appeal is supposed to be included. We have examined the transmittal in this case and it appears therein that the court issued the order of approval on March 27, 1971.

Now, although literally speaking, the record on appeal in question does not really state when the same was filed, in the light of all the foregoing circumstances, the conclusion is inescapable that it must have been filed before March 27, 1971. It would be purely technical and contrary to the irrefutable cogent logic of the extant facts to even speculate on the possibility that it could have been filed later.

Premises considered, the Court cannot hold that the Court of Appeals gravely abused its discretion in giving due course to respondents' appeal. Certiorari denied. Costs against petitioner.

Makalintal, Acting C.J., Zaldivar, Fernando, Teehankee, Antonio, and *Esguerra, JJ.,* concur.

Ruiz Castro and *Makasiar, JJ.,* took no part.

[G.R. No. L-30137. June 25, 1973]

PHILNABANK EMPLOYEES ASSOCIATION (PEMA)-ABUP-COLU, *petitioners, vs.* AUDITOR GENERAL and PHILIPPINE NATIONAL BANK, *respondents.*

SYLLABUS

ADMINISTRATIVE LAW; PUBLIC CORPORATIONS; PHILIPPINE NATIONAL BANK; UNION FORMED BY EMPLOYEES OF SAID BANK, NOT A PRIVATE ENTITY WHO CAN APPEAL AUDITOR GENERAL'S RULING

Supreme Court E-Library

DIRECTLY TO THE SUPREME COURT.— Whatever else the Philippine National Bank may be - whether as a corporation its functions are purely governmental or proprietary - it is a government-owned and controlled corporation, created by statute and the existence of which is subject to the law-making body. The employees of the Bank are government employees, although not in the political sense, that is, as occupants of public offices through which the functions of sovereignty are exercised. Indeed, the very fact that for auditing purposes the Bank is under the Auditor General, who audits its finances and accounts and keeps a representative there for the purpose (Sec. 584, Admistrative Code as amended by Rep. Act No. 2266), demonstrates beyond doubt that its employees - and hence the union formed by them - are not "a private party or entity" who may appeal from his ruling directly to the Supreme Court instead of to the President. The Leave Law itself places employees of government-owned or controlled corporations together with the national, provincial, municipal and city governments with respect to the grant of vacation leave privileges (Sec. 284, Revised Admistrative Code).

APPEARANCES OF COUNSEL

Oliver B. Gesmundo for petitioners.

Conrado E. Medina & Edgardo M. Magtalos for respondent PNB.

The Solicitor General for respondent Auditor General.

DECISION

MAKALINTAL, ***Acting C.J.:***

Petitioner-union, composed of employees of the Philippine National Bank, signed a collective bargaining agreement with the latter on December 1, 1967. Among its provisions was one authorizing conversion of leave credits in excess of 200 days to cash, as follows:

"ARTICLE XVI - COMMUTATION OF LEAVE CREDITS

All employees of the Bank shall be allowed to convert their leave credits in excess of 200 days to its corresponding money value, based on the pay of the employee at the time of commutation. Provided,

Supreme Court E-Library

however that in no instance shall this 200 days margin be impaired; and provided further that in case of extreme emergencies, such as those arising from flood, earthquake, lightning, volcanic eruptions and/or major calamities or fortuitous events, causing damage or injury to the employee, an employee whose leave credit is below 200 days, may still avail of this benefit, but in no case shall the commutation to its money value be more than the equivalent of two months leave."

On September 17, 1968 the Auditor General ruled that the conversion of leave credits to cash as provided in the bargaining agreement above quoted "may not be allowed in audit," and directed the refund of amounts already received thereunder. Petitioner-union appealed to this Court and prays that the said ruling be set aside.

Respondent Bank in effect makes common cause with petitioner, alleging that before the bargaining agreement was signed both parties had studied the legality of the particular provision in question and had come to the conclusion that it was legally justifiable. The Solicitor General filed an answer to the petition in behalf of respondent Auditor General, and among the special and affirmative defenses raised by him is that under the Constitution (Sec. 3, Art. XI) and Commonwealth Act No. 327, only a "private party or entity" may appeal from the said respondent's decision directly to the Supreme Court; otherwise the appeal should be taken to the President, whose action shall be final. It is pointed out that since the members of petitioner-union are employees of the Philippine National Bank, which is a government-owned and controlled corporation, they are government employees and not private persons or entities.

The parties have discussed quite lengthily the different issues involved on their merits: petitioner-appellant in its brief and respondent Auditor General, although no brief has been filed for him, in his basic opinion of September 17, 1968, from which the present appeal has been taken. However, the threshold question which is interposed is the procedural one referred to above, namely, whether or not petitioner is a "private party or entity" within the meaning of Section 3 of Article XI of the Constitution (of 1935) and of Commonwealth Act No. 327.

Supreme Court E-Library

Whatever else the Philippine National Bank may be - whether as a corporation its functions are purely governmental or proprietary - it is a government-owned and controlled corporation, created by statute and the existence of which is subject to the law-making body. The employees of the Bank are government employees, although not in the political sense, that is, as occupants of public offices through which the functions of sovereignty are exercised. Indeed, the very fact that for auditing purposes the Bank is under the Auditor General, who audits its finances and accounts and keeps a representative there for the purpose (Sec. 584, Ad. Code as amended by Rep. Act No. 2266), demonstrates beyond doubt that its employees - and hence the union formed by them - are not "a private party or entity"who may appeal from his ruling directly to the Supreme Court instead of to the President. The Leave Law itself places employees of government-owned or controlled corporations together with the national, provincial, municipal and city governments with respect to the grant of vacation leave privileges (Sec. 284, Rev. Ad. Code).

In view of the foregoing, the petition is dismissed, the decision of respondent Auditor General in this case being appealable to the President and not to this Court. No pronouncement as to costs.

Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Antonio, and *Esguerra, JJ.*, concur.

Makasiar, J., took no part.

[G.R. No. L-32047. June 25, 1973]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* INOCENCIO BUSA *alias* INO, *defendant-appellant.*

SYLLABUS

1. **CRIMINAL PROCEDURE; PLEA OF GUILTY; COURTS MUST EXERCISE GUARDED CARE IN CONSIDERING SAID PLEA OF AN ACCUSED; INSTANT CASE.**— We have examined