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SECOND DIVISION

[G.R. No. L-33367. January 31, 1978]

RODOLFO A. PAET, VICENTE BENEDICTO, ARTEMIO VILORIA, FELICISIMA CASTAÑEDA, NORA BUENVIAJE and GERVACIO NACALABAN, *petitioners, vs.* **COURT OF FIRST INSTANCE OF RIZAL (BRANCH XVI), BONIFACIO G. PRUDENTE, LEOPOLDO FALCIS and ARTEMIO ASIA,** *respondents.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DISMISSAL; MOOT AND ACADEMIC. — Where as a result of an intramural labor union dispute, a case was filed in the Supreme Court to set aside an *ex-parte* order of the trial court but during the pendency thereof the Court of Industrial Relations was abolished when the new Labor Code took effect and likewise the tenure of office of the Union officers object of the controversy has been terminated, while the others have retired from employment and/or left the country, the case will be dismissed for being moot and academic.

R E S O L U T I O N

FERNANDO, *J.*:

This is a petition for *certiorari* to set aside an *ex parte* order of the Court of First Instance of Rizal, Branch XVI granting the writ of preliminary injunction prayed for by private respondents,[1] lifting the order of their suspension as officers and members of the National Directorate of the DBP Employees Union-NATU, such suspension being a result of an intramural labor union dispute between the other groups of officers led by petitioners. The basic theory of the petition was that a case of

[1] The private respondents are Bonifacio G. Prudente, being executive vice-president, Leopoldo Falcis, 3rd vice-president and Artemio T. Asia, director.

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labor dispute was beyond the jurisdiction of an ordinary court and was cognizable by the then existing Court of Industrial Relations. Respondents were required to answer; private respondents sought to sustain the jurisdiction of such court, alleging that the complaint was for moral damages and not unfair labor practice suit. The case was set for oral argument by this Court, but the parties instead prayed that they be allowed to file their respective memoranda.

This petition was among the labor controversies not decided when the Court of Industrial Relations was abolished and the present Labor Code issued. On May 6, 1977, this Court issued the following resolution: "Considering that the issue raised by petitioners in this petition for *certiorari*, injunction and/or restraining order is whether respondent Court possesses jurisdiction over an intramural labor dispute which arose from the suspension of respondents as officers and members of the DBP Employees Union-NATU for refusing to strike, the Court Resolved to require the parties in this case to [state], within ten (10) days from notice, whether the issue in this case has become moot and academic."[2] Such resolution was prompted by the undisputed fact that the tenure of office of the officers in the controversy has been terminated. Moreover, in the absence of a restraining order in this case, no obstacle thus being interposed on the enforcement of the mandatory injunction, the officers of the labor union of both factions must have continued in their respective positions.

As of July 19, 1977, there was a compliance of the above resolution by private respondents who filed the following manifestation. "That in compliance with the resolution of this Honorable Court dated May 6, 1977, copy of which was received on May 23, 1977, it is most respectfully stated that the issue in the aforesaid petition has become moot and academic considering the fact that the principal petitioners namely Messrs. Rodolfo Paet, Benedicto and Francisco Angeles have already retired from the Development Bank of the Philippines and the

[2] Resolution dated May 6, 1977.

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first mentioned petitioner who was the former union president is already in the United States."[3] Petitioners, notwithstanding the fact that such manifestation was furnished their counsel, did not file any objection.

WHEREFORE, this case is dismissed for being moot and academic. No costs.

Barredo, Antonio, Aquino, and *Concepcion, Jr., JJ.*, concur.

Santos, J., on leave.

FIRST DIVISION

[G.R. No. L-33549. January 31, 1978]

BANCO ATLANTICO, *petitioner*, *vs.* **AUDITOR GENERAL**, *respondent.*

SYLLABUS

1. **COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS; ASSUMPTION OF RISK; A BANK WHICH ENCASHES A CHECK WITHOUT FIRST CLEARING THE SAME WITH DRAWEE BANK ASSUMES THE RISK.** — Where a bank to which a check was negotiated encashes the same without first clearing it with the drawee bank, contrary to normal banking practice, and the check is dishonored by the drawee bank on the ground that the drawer had ordered payment to be stopped because the check was fraudulently altered, the encashing bank assumes the risk and no right of payment could be acquired by the latter against any party thereto.

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[3] Compliance/Manifestation dated May 23, 1977.