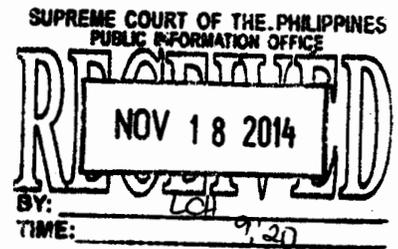




Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION



NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **October 13, 2014** which reads as follows:*

“G.R. No. 213861 (Allen Kenneth U. Nuyda, *petitioner* v. Court of Appeals and Civil Service Commission, *respondents*). -Petitioner Allen Kenneth Nuyda (Nuyda) was a Human Resource Management Officer I (HRMO I), Bureau of Internal Revenue (BIR) who was charged with Dishonesty and Grave Misconduct before respondent Civil Service Commission- National Capital Region (CSC-NCR) for allegedly causing another person to take the 14 July 1999 Career Service Professional Examination-Computer Assisted Test (CSPE-CAT) at Kaliraya, Quezon City, thereby fraudulently obtaining a career service professional eligibility. Nuyda claimed to have scored 83.51% in the test. Nuyda was promoted to that position of HRMO I after questionably passing the CSPE-CAT.¹ The case before the CSC-NCR was numbered 07-05-020.

Evidence against Nuyda showed that the picture and signature appearing on Nuyda’s Personal Data Sheet (PDS) were different from the submitted photo and signature of the examinee appearing in the seat plan of the 14 July 1999 CSP-CAT. Nuyda claimed to have simply inadvertently, due to stress, taken another’s photograph and pasted it on the seat plan. When Nuyda was called into the examination room, his physical appearance was not verified and matched with the photograph on the seat plan. However, he maintains that he was the one who took the 14 July 1999 CSP-CAT and who obtained a grade of 83.51% and, thus, became a career service professional eligible. As for the discrepant signatures, Nuyda claims to have changed signature after the examination. Hence, the discrepancy.²

¹ Rollo, p. 37.

² Id. at 42-43.

The CSC-NCR found Nuyda guilty of Dishonesty and Grave Misconduct and imposed on him the penalty of dismissal from the service with accessory penalties of forfeiture of retirement benefits, perpetual disqualification from reemployment in government service, cancellation of civil service eligibility and bar from taking any civil service examination.³

Nuyda appealed the CSC-NCR decision to the Civil Service Commission proper numbered as 120742. The CSC affirmed the ruling of the CSC-NCR and dismissed Nuyda's appeal.

Gaining no reprieve, Nuyda appealed to the Court of Appeals docketed as CA-G.R. SP No. 131609-UDK. The appellate court perfunctorily dismissed the appeal of Nuyda for failure to pay docket and other lawful fees as required under Section 5, Rule 43 of the 1997 Rules of Civil Procedure. Nuyda moved for reconsideration claiming negligence of his counsel's employee who had filed the appeal, but absconded with the payment for the docket and other lawful fees. Apparently, as claimed by Nuyda, his counsel only found out that the fees had not been paid when counsel received a copy of the Court of Appeals' Resolution dismissing his appeal. The appellate court denied the motion for reconsideration and ruled that the negligence of Nuyda's counsel in not ascertaining whether his employee indeed followed proper procedure cannot excuse Nuyda from non-compliance with the Rules.

Hence, this petition for *certiorari* under Rule 65 of the Rules of Court alleging grave abuse of discretion against the Court of Appeals' twin Resolutions dated 18 September 2013⁴ and 28 January 2014.⁵

We first dispose of the procedural issue: the propriety of Nuyda's remedy against the Resolutions of the Court of Appeals.

The present petition for *certiorari* under Rule 65 of the Rules of Court is the wrong remedy against the Resolutions of the Court of Appeals. Nuyda should have filed a petition for review on *certiorari* under Rule 45 of the Rules of Court raising grave error in the Court of Appeals' rulings.

In any event, we do not find reversible error in the Court of Appeals' Resolutions dismissing outright Nuyda's appeal for failure to pay docket fees. As held by the appellate court, to appeal is not a right, but a mere privilege. The payment of the docket fees is not only mandatory, but jurisdictional.⁶

³ Id. at 36-40.

⁴ Id. at 18-19.

⁵ Id. at 20-21.

⁶ *Gonzales v. Pe*, G.R. No. 167398, 8 August 2011, 655 SCRA 176, 187.

Moreover, Nuyda was likewise negligent as his counsel in not ascertaining whether their appeal before the Court of Appeals was properly filed. Nuyda and his counsel, upon the return of counsel's messenger or employee, could have asked for a receipt evidencing full payment of the docket fees. A blanket claim of counsel's negligence or counsel's staff's negligence does not exempt Nuyda from payment of the docket and other lawful fees.

Lastly, we likewise do not find error in the Civil Service Commission's Decision finding Nuyda guilty of Dishonesty and Grave Misconduct. The factual finding of the Civil Service Commission stands: the photo and signature of Nuyda on the seat plan did not correspond with his photo and signature on his Personal Data Sheet. We quote with favor the ruling of the CSC:

[T]he person who actually took the examination cannot be said to be petitioner Nuyda. This is so because as a matter of procedure, the room examiners assigned to supervise the conduct of the examination closely examine the pictures submitted by the examinees. An examinee is not allowed by the examiners to take the examination if he/she does not look like the person in the picture he submitted and affixed in the PSP. x x x Obviously, the person whose picture is pasted on the PSP was the one who actually took the examination for and in behalf of Nuyda. In the offense of impersonation, there are always two persons involved. The offense cannot prosper without the active participation of both persons. x x x Further by engaging or colluding with another person to take the test on behalf of another and thereafter claiming the resultant passing rate as his/hers, clinches the case against him/her. In cases of impersonation, the Commission has consistently rejected claims of good faith, for "it is contrary to human nature that a person will do it (impersonation) without the consent of the person being impersonated."⁷ x x x

x x x

[Nuyda] insists that he is entitled to the mitigating circumstances of good faith and length of service. He claimed that he acted in good faith inasmuch as the CS-NCR failed to establish his intent to defraud the government, and that he has been with the BIR for more than five (5) years. The insistence is misplaced. Obviously, as previously discussed, his act of allowing another person to take the CSPE given on July 14, 1999 for and on his behalf is an act of fraud. As a matter of fact, by virtue of said fraud and its perpetuation, he was promoted under permanent status and received salaries to the prejudice of others who are genuinely qualified to the position. He cannot similarly claim as mitigating circumstance his length of service.⁸ x x x.

- over -

17

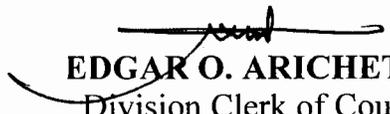
⁷ *Rollo*, p. 70.

⁸ *Id.* at 71.

WHEREFORE, there being no reversible error in the Court of Appeals' Resolutions dated 18 September 2013 and 28 January 2014, the petition is **DENIED**.

SO ORDERED."

Very truly yours,


EDGAR O. ARICHETA

Division Clerk of Court

17

JIGLAW & ASSOCIATES
Counsel for Petitioner
2/F, N.D. Quimpo Bldg.
No. 24 P. Burgos St., 10th Ave.
1400 Caloocan City

Court of Appeals (x)
Manila
(CA-G.R. SP No. 131609-UDK)

Civil Service Commission
Respondent
CSC Bldg., IBP Road
Constitution Hills, Quezon City 1226
(Decision No. 120742; Adm. Case No.
07-12-003)

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