Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

REPUBLIC OF THE PHILIPPINES, represented by the HONORABLE SECRETARY OF LABOR AND EMPLOYMENT (DOLE),
Petitioner,

-versus-

NAMBOKU PEAK, INC.,
Respondent.
x----------x

G.R. No. 169745

PHIL-JAPAN WORKERS UNION-SOLIDARITY OF UNIONS IN THE PHILIPPINES FOR EMPOWERMENT AND REFORMS (PJWU-SUPER), MED-ARBITER CLARISSA G. BELTRAN-LERIOS and SECRETARY PATRICIA A. STO. TOMAS OF THE DEPARTMENT OF LABOR AND EMPLOYMENT,
Petitioners,

-versus-

PHIL-JAPAN INDUSTRIAL MANUFACTURING CORPORATION,
Respondent.
x----------x

G.R. No. 170091

Present:

CARPIO, *Chairperson,*
DEL CASTILLO,
PEREZ,
PERLAS-BERNABE, *and*
LEONEN,* *JJ.*

Promulgated:
JUL 18 2014

DECISION

DEL CASTILLO, *J.:*

The court or tribunal exercising quasi-judicial functions is bereft of any right or personality to question the decision of an appellate court reversing its decision.[1]

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* Per Raffle dated June 30, 2014.

1 *Government Service Insurance System v. The Hon. Court of Appeals (8th Div.)*, 603 Phil. 676, 696 (2009).

These consolidated Petitions for Review on *Certiorari*[2] assail the Decisions of the Court of Appeals (CA) issued in two separate petitions, but involving the same issue of whether Section 17, Rule VIII of Department Order No. 40-03 is unconstitutional. The first is the Decision[3] dated March 18, 2005 in CA-G.R. SP No. 80603, which granted the Petition for *Certiorari*[4] filed by herein respondent Namboku Peak, Inc. (Namboku) challenging the October 22, 2003 letter-resolution[5] of Secretary of Labor and Employment Patricia A. Sto. Tomas. Said letter-resolution affirmed the Med-Arbiter's Order[6] dated June 17, 2003 denying Namboku's motion to defer the conduct of certification election pending resolution of its appeal.

The second is the Decision[7] dated January 19, 2005 in CA-G.R. SP. No. 80106, which granted the Petition for *Certiorari*[8] filed by herein respondent Phil-Japan Industrial Manufacturing Corporation (Phil-Japan) seeking to declare Section 17, Rule VIII of Department Order No. 40-03 unconstitutional for unduly depriving it of its right to appeal the August 25, 2003 Decision[9] of the Med-Arbiter. Said Decision of the Med-Arbiter, in turn, granted the Petition[10] of Phil-Japan Workers Union-Solidarity of Unions in the Philippines for Empowerment and Reforms (PJWU-SUPER) seeking to determine the exclusive bargaining representative in Phil-Japan and ordered the conduct of certification election.

Factual Antecedents

The facts, insofar as G.R. No. 169745 is concerned and as culled from the records, are as follows:

Namboku is a domestic corporation engaged in the business of providing manpower services to various clients, mainly airline companies. On April 28, 2003, the Philippine Aircraft Loaders and Cargo Employees Association-Solidarity of Unions in the Philippines for Empowerment and Reforms (PALCEA-SUPER) filed a Petition[11] for direct certification election before the Med-Arbiter seeking to represent the rank-and-file employees of Namboku assigned at the Cargo and Loading Station of the Philippine Airlines (PAL) in Ninoy Aquino International Airport. In support of its Petition, PALCEA-SUPER

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2 *Rollo* (G.R. No. 169745), pp. 18-41; *rollo* (G.R. No. 170091), pp. 7-18.
3 CA *rollo* (CA-G.R. SP. No. 80603), pp. 666-677; penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Ruben T. Reyes and Fernanda Lampas Peralta.
4 Id. at 2-23.
5 Id. at 211-212.
6 Id. at 187-191; penned by Med-Arbiter Zosima C. Lameyra.
7 CA *rollo* (CA-G.R. SP No. 80106), pp. 231-242; penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Eugenio S. Labitoria and Jose C. Mendoza (now a Member of this Court).
8 Id. at 2-25.
9 Id. at 26-29; penned by Med-Arbiter Clarissa G. Beltran-Lerios.
10 Id. at 30-33.
11 CA *rollo* (CA-G.R. SP No. 80603), pp. 214-217.

alleged that it is a local chapter affiliate of Solidarity of Unions in the Philippines for Empowerment and Reforms; that its members are composed of regular rank-and-file employees of Namboku assigned at said Cargo and Loading Station of PAL; that out of the 155 regular rank-and-file employees of Namboku, 122 or 78% are its members; and, that Namboku is an unorganized establishment.

Namboku opposed the Petition[12] on the ground of inappropriateness. It claimed that the members of the PALCEA-SUPER are project employees. Hence, they cannot represent its regular rank-and-file employees. It emphasized that their individual Project Employee Contract clearly provides that their employment is for a fixed period of time and dependent upon its Services Agreement[13] with PAL. However, PALCEA-SUPER misrepresented the status of its members by claiming that they are regular employees of Namboku.

On June 17, 2003, the Med-Arbiter issued an Order[14] holding that the members of PALCEA-SUPER are regular employees of Namboku. She explained that while Namboku informed them at the time of their engagement that their employment is for a fixed period of time, it did not, however, apprise them that the same is for a specific activity, nor was the completion or termination made known to them at the time of their engagement. Also, as opposed to the nature of its business, the tasks for which Namboku engaged their services do not appear to be separate and independent activities with pre-determined duration or completion. The Med-Arbiter thus granted the Petition and ordered the conduct of certification election. The dispositive portion of the Order reads:

> WHEREFORE, premises considered, certification election is hereby ordered among the regular rank and file employees of NAMBOK[U] PEAK, INC., subject to pre-election conference, with the following choices:
>
> 1. Philippine Aircraft Loaders and Cargo Employees Association – Solidarity of Unions in the Philippines for Empowerment and Reforms (PALCEA-SUPER); and
> 2. No Union.
>
> Accordingly, Employer and Petitioner are hereby directed to submit within ten (10) days from receipt hereof, the certified list of employees in the bargaining unit, or where necessary, the payrolls covering the members of the bargaining unit for the last three months prior to this issuance.
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> SO ORDERED.[15]

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12 See Position Paper, id. at 298-310.
13 Id. at 487-493.
14 Id. at 187-191.
15 Id. at 191.

Namboku appealed[16] the Med-Arbiter's Order to the Secretary of the Labor, maintaining that the members of PALCEA-SUPER are mere project employees. It insisted that the combination of project and regular employees would render a bargaining unit inappropriate for lack of substantial-mutual interest.

In the meantime, on July 29, 2003, Namboku received a summons setting the pre-election conference on July 31, 2003 and stating that the Order granting the conduct of a certification election in an unorganized establishment is not appealable.[17]

Whereupon, Namboku filed a Manifestation and Motion,[18] as well as a Supplemental Motion and Manifestation,[19] seeking to suspend the conduct of certification election pending resolution of its appeal. It contended that Section 17,[20] Rule VIII of Department Order No. 40-03 prohibiting the filing of an appeal from an order granting the conduct of a certification election in an unorganized establishment is unconstitutional because it runs counter to Article 259[21] of the Labor Code.

In a letter-resolution[22] dated October 22, 2003, however, the Secretary of Labor denied the appeal and affirmed the Med-Arbiter's June 17, 2003 Order. In rejecting Namboku's contention that Section 17, Rule VIII of Department Order No. 40-03 is unconstitutional, the Secretary of Labor ratiocinated that unless said Department Order is declared by a competent court as unconstitutional, her office would treat the same as valid.

Undeterred, Namboku filed before the CA a Petition for *Certiorari*,[23] which was docketed as CA-G.R. SP No. 80630. Namboku imputed grave abuse of discretion on the part of the Secretary of Labor in (i) not resolving the issue of appropriateness and (ii) rejecting its appeal based on an invalid provision of Department Order 40-03.

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16 See Memorandum on Appeal dated August 12, 2003, id. at 192-201.

17 Per Namboku's allegations in its Manifestation and Motion, id. at 203-206.

18 Id.

19 Id. at 207-210.

20 Section 17. *Appeal.* – The order granting the conduct of a certification election in an unorganized establishment shall not be subject to appeal. Any issue arising therefrom may be raised by means of protest on the conduct and results of the certification election.
x x x x

21 Article 259. *Appeal from certification elections orders.* – Any party to an election may appeal the order or results of the election as determined by the Med-Arbiter directly to the Secretary of Labor and Employment on the ground that the rules and regulations or parts thereof established by the Secretary of Labor and Employment for the conduct of the election have been violated. Such appeal shall be decided within fifteen (15) calendar days.

22 CA *rollo* (CA-G.R. SP No. 80603), pp. 211-212.

23 Id. at 2-23.

With regard to G.R. No. 170091, an examination of the records reveals the following facts:

Phil-Japan is a domestic corporation engaged in manufacturing mufflers, chassis and other car accessories for local and international markets. On June 6, 2003, PJWU-SUPER filed before the Med-Arbiter a Petition[24] seeking to determine the sole and exclusive bargaining representative of rank-and-file employees in Phil-Japan. PJWU-SUPER alleged that it is a legitimate labor organization; that out of the 100 rank-and-file employees of Phil-Japan, 69 or 69% are members of PJWU-SUPER; that Phil-Japan is an unorganized establishment; and, that there has been no certification election conducted during the last 12 months prior to the filing of its Petition.

Phil-Japan opposed the Petition,[25] claiming that the members of PJWU-SUPER are not its employees. It alleged that the listed members of PJWU-SUPER have either resigned, finished their contracts, or are employees of its job contractors CMC Management and PEPC Management Services. It thus prayed for the dismissal of the Petition or, in the alternative, suspension of the proceedings pending determination of the existence of employer-employee relationship.

On August 25, 2003, the Med-Arbiter rendered a Decision[26] ordering the conduct of certification election. It held, among others, that the documents submitted are not sufficient to resolve the issue of the existence of employer-employee relationship. Considering, however, that Section 15, Rule VIII of the Rules Implementing Book V of the Labor Code prohibits the suspension of proceedings based on the pendency of such issue, she allowed the employees to vote. Their votes, however, shall be segregated, and the determination of whether the number of such segregated ballots is material to the outcome of the election shall be made after the conduct of the election. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, this petition for certification election is hereby GRANTED. Certification election is hereby ordered conducted among the regular rank-and-file workers of Phil-Japan Ind. Mfg. Corporation with the following choices:
>
> 1. Phil-Japan Workers Union-Solidarity of Unions in the Philippines for Empowerment and Reforms (PJWU-SUPER); and
>
> 2. No Union.

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24 CA *rollo* (CA-G.R. SP No. 80106), pp. 30-33.
25 See Position Paper dated July 18, 2003, id. at 41-48.
26 Id. at 26-29.

> Accordingly, Employer and Petitioner are hereby directed to submit within ten (10) days from receipt hereof, the certified list of employees in the bargaining unit, or where necessary, the payrolls covering the members of the bargaining unit for the last three months prior to this issuance.
>
> SO ORDERED.[27]

Aggrieved, Phil-Japan appealed[28] the Decision of the Med-Arbiter to the Office of the Secretary of Labor asserting that the Med-Arbiter gravely abused her discretion in not resolving the issue of whether employer-employee relationship existed between the parties.

In a hearing held on October 7, 2003, Hearing Officer Lourdes T. Ching informed Phil-Japan that its appeal will not be acted upon pursuant to Section 17, Rule VIII of Department Order No. 40-03 and that the certification election will proceed accordingly.

Undaunted, Phil-Japan filed before the CA a Petition for *Certiorari*,[29] which was docketed as CA-G.R. SP No. 80106. Phil-Japan ascribed grave abuse of discretion on the part of the Med-Arbiter in refusing to rule on the existence of employer-employee relationship despite the presence of sufficient evidence on the matter. It also claimed that the Secretary of Labor gravely abused her discretion in refusing to act on its appeal despite the existence of such right. As to the Secretary of Labor's reliance on Section 17, Rule VIII of Department Order No. 40-03, Phil-Japan asserted that the same cannot overturn the clear provision of Article 259 of the Labor Code.

Rulings of the Court of Appeals

On March 18, 2005, the CA issued its Decision[30] in CA-G.R. SP No. 80603 (now subject of G.R. No. 169745) granting Namboku's Petition and reversing the October 22, 2003 letter-resolution of the Secretary of Labor. It sustained Namboku's position that the members of PALCEA-SUPER are project employees and, hence, they are not similarly situated with the company's regular rank-and-file employees. The CA also nullified Section 17, Rule VIII of Department Order No. 40-03 for being in conflict with Article 259 of the Labor Code.

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27 Id. at 29.
28 Id. at 139-149.
29 Id. at 2-25.
30 CA *rollo* (CA-G.R. SP No. 80603), pp. 666-677.

The Secretary of Labor filed a Motion for Reconsideration.[31] This prompted Namboku to file a Motion to Expunge[32] on the ground that the Secretary of Labor is a mere nominal party who has no legal standing to participate or prosecute the case. It argued that the Secretary of Labor should have refrained from filing the said Motion for Reconsideration and should have maintained the cold neutrality of an impartial judge.

On September 15, 2005, the CA issued a Resolution[33] denying the Secretary of Labor's Motion for Reconsideration on the ground, among others, that she is merely a nominal party to the case and has no personal interest therein.

Anent CA-G.R. No. 80106 (now subject of G.R. 170091), the CA, in its January 19, 2005 Decision,[34] reversed and set aside the ruling of the Med-Arbiter. It likewise agreed with Phil-Japan that before extending labor benefits, the determination of whether an employer-employee relationship exists is a primordial consideration. And based on the documents submitted, the CA was convinced that out of the 69 members of PJWU-SUPER, 67 were not employees of Phil-Japan.

The CA further declared that for being violative of Article 259 of the Labor Code, Section 17, Rule VIII of Department Order No. 40-03 has no legal force and effect.

PJWU-SUPER and DOLE filed separate Motions for Reconsideration.[35] On September 12, 2005, the CA issued a Resolution[36] denying both motions and upholding its January 19, 2005 Decision.

Issues

On November 3, 2005, the Secretary of Labor filed before this Court a Petition for Review on *Certiorari* docketed as G.R. No. 170091 assailing the January 19, 2005 Decision in CA-G.R. SP No. 80106. She avers that:

> THE COURT OF APPEALS ERRED IN DECLARING AS OF NO LEGAL FORCE AND EFFECT SECTION 17, RULE VIII OF D.O. 40-03.[37]

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31 Id. at 683-692.
32 Id. at 698-704.
33 Id. at 721-723; penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Ruben T. Reyes and Fernanda Lampas Peralta.
34 CA *rollo* (CA-G.R. SP No. 80106), pp. 231-242.
35 Id. at 245-259; 320-331.
36 Id. at 396-399.
37 *Rollo* (G.R. No. 170091), p. 12.

Then on November 11, 2005, the Secretary of Labor filed another Petition for Review on *Certiorari* docketed as G.R. No. 169745 challenging the March 18, 2005 Decision in CA-G.R. SP No. 80603. She anchors her Petition on the following issues:

> I.
> WHETHER X X X THE COURT OF APPEALS COMMITTED GRAVE ERROR IN DECLARING SECTION 17, RULE VIII OF DEPARTMENT ORDER NO. 40-03 NULL AND VOID FOR BEING IN CONFLICT WITH ARTICLE 259 OF THE LABOR CODE, AS AMENDED.
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> II.
> WHETHER PROJECT EMPLOYEES MAY BE INCLUDED IN THE PETITION FOR CERTIFICATION ELECTION INVOLVING REGULAR EMPLOYEES.[38]

Since both Petitions seek to uphold the validity of Section 17, Rule VIII of Department Order No. 40-03, this Court ordered their consolidation.[39]

Secretary of Labor's Arguments

The Secretary of Labor insists that Section 17, Rule VIII of Department Order No. 40-03 is in harmony with Article 259 of the Labor Code for it does not deny the aggrieved party in an unorganized establishment the right to *appeal*. It merely defers the exercise of such right until after the certification election shall have been conducted. In the meantime, the aggrieved party may raise any issue arising therefrom as a *protest*. Such rule, according to the Secretary of Labor, is in consonance with the policy of the State to encourage the workers to organize and with the mandate of the Med-Arbiter to automatically conduct a certification election.

The Secretary of Labor likewise argues that Article 259 applies only when there is a violation of the rules and regulations in the conduct of the certification election. It does not cover the order of the Med-Arbiter granting the conduct of certification election. Moreover, the appeal contemplated under Article 259 must be filed by a party to the certification election proceedings, to which the employer, Namboku, is a mere stranger.

The Secretary of Labor further contends that the combination of regular rank-and-file employees and project employees in a certified bargaining unit does not pose any legal obstacle.

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38 *Rollo* (G.R. No. 169745), p. 25.
39 See Resolution dated February 13, 2006, id. at 80.

Namboku's Arguments

In opposing the Petition, Namboku questions the *locus standi* of the Secretary of Labor, insisting that she is merely a nominal party in the Petitions for *Certiorari* filed with the CA. Namboku strongly stresses that as a quasi-judicial officer, the Secretary of Labor should detach herself from cases where her decision is appealed to a higher court for review. Besides, her office never participated or defended the validity of Section 17 before the CA. It was only after the CA rendered its Decision nullifying the subject provision of Department Order No. 40-03 that the Secretary of Labor took an active stance to defend the validity thereof.

With respect to the substantive aspect, Namboku remains steadfast in its position that Section 17, Rule VIII of Department Order No. 40-03 is unconstitutional for it unduly restricts the statutory right of the management to appeal the decision of the Med-Arbiter to the Secretary of Labor in an unorganized establishment. It created a distinction that does not appear in Article 259 of the Labor Code that it seeks to implement.

Namboku likewise echoes the ruling of the CA that there exists a statutory difference between regular and project employees. They have divergent duties, responsibilities, and status and duration of employment. They do not receive the same benefits. Hence, they cannot unite into a homogenous or appropriate bargaining unit.

Phil-Japan's Arguments

In defending the Decision of the CA, Phil-Japan argues that Section 17, Rule VIII of Department Order No. 40-03 restricting the statutory right of the employer to appeal will not stand judicial scrutiny. It stresses that the authority of the Med-Arbiter to determine the existence of an employer-employee relationship and the right of a party to appeal the former's decision thereon to the Secretary of Labor are already settled. Phil-Japan insists that under Article 259 of the Labor Code the remedy of appeal is available to any party for the purpose of assailing the disposition of the Med-Arbiter allowing the conduct of certification election without any distinction whether the establishment concerned is organized or unorganized.

Our Ruling

The Petitions are denied. The Secretary of Labor is not the real party-in-interest vested with personality to file the present petitions. 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.[40] As thus defined, the real parties-in-interest in these cases would have been PALCEA-SUPER and PJWU-SUPER. It would have been their duty to appear and defend the ruling of the Secretary of Labor for they are the ones who were interested that the same be sustained. Of course, they had the option not to pursue the case before a higher court, as what they did in these cases. As to the Secretary of Labor, she was impleaded in the Petitions for *Certiorari* filed before the CA as a nominal party because one of the issues involved therein was whether she committed an error of jurisdiction. But that does not make her a real party-in-interest or vests her with authority to appeal the Decisions of the CA in case it reverses her ruling. Under Section 1,[41] Rule 45 of the Rules of Court, only real parties-in-interest who participated in the litigation of the case before the CA can avail of an appeal by *certiorari*. In *Judge Santiago v. Court of Appeals*,[42] Judge Pedro T. Santiago rejected the amicable settlement submitted by the parties in an expropriation proceeding pending before his sala for being manifestly iniquitous to the government. When the CA reversed his decision, Judge Santiago, apparently motivated by his sincere desire to protect the government, filed a petition before this Court seeking the reinstatement of his ruling. In denying his petition, this Court ruled that:

> x x x Section 1 of Rule 45 allows a party to appeal by *certiorari* from a judgment of the Court of Appeals by filing with this Court a petition for review on *certiorari*. But petitioner judge was not a party either in the expropriation proceedings or in the *certiorari* proceeding in the Court of Appeals. His being named as respondent in the Court of Appeals was merely to comply with the rule that in original petitions for *certiorari*, the court or the judge, in his capacity as such, should be named as party respondent because the question in such a proceeding is the jurisdiction of the court itself. (See *Mayol v. Blanco*, 61 Phil. 547 [1935], cited in Comments on the Rules of Court, Moran, Vol. II, 1979 ed., p. 471). "In special proceedings, the judge whose order is under attack is merely a nominal party; wherefore, a judge in his official capacity, should not be made to appear as a party seeking reversal of a decision that is unfavorable to the action taken by him. A decent regard for the judicial hierarchy bars a judge from suing against the adverse opinion of a higher court, x x x." (*Alcasid v. Samson*, 102 Phil. 735, 740 [1957]).[43]

A similar ruling was arrived at in *Government Service Insurance System v. The Hon. Court of Appeals (8th Div.)*.[44] In that case, upon petition of GSIS, the Securities and Exchange Commission (SEC) issued a cease and desist order restraining the use of proxies during the scheduled annual stockholders' meeting

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40 RULES OF COURT, Rule 3, Section 2.

41 Section 1. *Filing of petition with Supreme Court.* – A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition may include an application for a writ of preliminary injunction or other provisional remedies and shall raise only questions of law, which must be distinctly set forth. The petitioner may seek the same provisional remedies by verified motion filed in the same action or proceeding at any time during its pendency.

42 263 Phil. 643 (1990).

43 Id. at 645-646.

44 Supra note 1.

of Manila Electric Company. When the private respondents therein filed a petition for *certiorari* and prohibition, the CA invalidated the SEC's cease and desist order. Uncomfortable with the CA's ruling, SEC appealed to this Court. In denying SEC's appeal, this Court ratiocinated as follows:

> x x x Under Section 1 of Rule 45, which governs appeals by *certiorari*, the right to file the appeal is restricted to "a party," meaning that only the real parties-in-interest who litigated the petition for *certiorari* before the Court of Appeals are entitled to appeal the same under Rule 45. The SEC and its two officers may have been designated as respondents in the petition for *certiorari* filed with the Court of Appeals, but under Section 5 of Rule 65 they are not entitled to be classified as real parties-in-interest. Under the provision, the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person to whom grave abuse of discretion is imputed (the SEC and its two officers in this case) are denominated only as public respondents. The provision further states that "public respondents shall not appear in or file an answer or comment to the petition or any pleading therein." Justice Regalado explains:
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> > [R]ule 65 involves an original special civil action specifically directed against the person, court, agency or party *a quo* which had committed not only a mistake of judgment but an error of jurisdiction, hence should be made public respondents in that action brought to nullify their invalid acts. It shall, however be the duty of the party litigant, whether in an appeal under Rule 45 or in a special civil action in Rule 65, to defend in his behalf and the party whose adjudication is assailed, as he is the one interested in sustaining the correctness of the disposition or the validity of the proceedings.[45]

It does not escape the attention of this Court that G.R. No. 170091 was cleverly captioned as "*Phil-Japan Workers Union Solidarity of Unions in the Philippines for Empowerment and Reforms (PJWU-SUPER), Med-Arbiter Clarissa G. Beltran-Lerios and Secretary Patricia Sto. Tomas of the Department of Labor and Employment, petitioners, versus Court of Appeals*[46] *and Phil-Japan Industrial Manufacturing Corporation.*" But the same was actually filed by the Secretary of Labor all by herself. The body of the Petition does not include PJWU-SUPER as one of the parties. Neither did its agent or representative sign the verification and certification against forum-shopping. In other words, PJWU-SUPER had no participation in the preparation and filing of the Petition in G.R. No. 170091.

Another reason that heavily militates against entertaining these Petitions is that the Secretary of Labor should have remained impartial and detached from the cases she has decided even if the same are appealed to a higher court for review.

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45 Id. at 696-697.

46 Removed from the caption of G.R. No. 170091 pursuant to Section 4, Rule 45 of the Rules of Court which states that lower courts or judges thereof should not be impleaded either as petitioners or respondents in a Petition for Review on *Certiorari*.

In *Pleyto v. PNP-Criminal Investigation & Detection Group*,[47] the Ombudsman ordered the dismissal of Salvador A. Pleyto from the service. When Pleyto filed a Petition for Review questioning his dismissal before the CA, the Ombudsman intervened. The Ombudsman argued that as a competent disciplining body, it has the right "to defend its own findings of fact and law relative to the imposition of its decisions and ensure that its judgments in administrative disciplinary cases [are] upheld by the appellate court."[48] Further, as "the agency which rendered the assailed Decision, it is best equipped with the knowledge of the facts, laws and circumstances that led to the finding of guilt against petitioner."[49] The CA allowed the Ombudsman to intervene and admitted the latter's Comment and Memorandum.

In ruling that the CA erred in allowing the Ombudsman to actively participate in the case, this Court declared that:

> It is a well-known doctrine that a judge should detach himself from cases where his decision is appealed to a higher court for review. The *raison d'etre* for such doctrine is the fact that a judge is not an active combatant in such proceeding and must leave the opposing parties to contend their individual positions and the appellate court to decide the issues without his active participation. When a judge actively participates in the appeal of his judgment, he, in a way, ceases to be judicial and has become adversarial instead.
>
> The court or the quasi-judicial agency must be detached and impartial, not only when hearing and resolving the case before it, but even when its judgment is brought on appeal before a higher court. The judge of a court or the officer of a quasi-judicial agency must keep in mind that he is an adjudicator who must settle the controversies between parties in accordance with the evidence and the applicable laws, regulations, and/or jurisprudence. His judgment should already clearly and completely state his findings of fact and law. There must be no more need for him to justify further his judgment when it is appealed before appellate courts. When the court judge or the quasi-judicial officer intervenes as a party in the appealed case, he inevitably forsakes his detachment and impartiality, and his interest in the case becomes personal since his objective now is no longer only to settle the controversy between the original parties (which he had already accomplished by rendering his judgment), but more significantly, to refute the appellant's assignment of errors, defend his judgment, and prevent it from being overturned on appeal.[50]

But the Secretary of Labor next contends that with the nullification of Department Order No. 40-03, she has now become a party adversely affected by the CA ruling. In support of her contention, the Secretary of Labor poses the question: who may now appeal the Decisions of the CA to the Supreme Court? Certainly, neither Namboku nor Phil-Japan would appeal a favorable decision.

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47 563 Phil. 842 (2007).
48 Id. at 870.
49 Id.
50 Id. at 871-872.

The *National Appellate Board v. P/Insp. Mamauag*[51] provides the complete answer. Thus:

> However, the government party that can appeal is not the disciplining authority or tribunal which previously heard the case and imposed the penalty of demotion or dismissal from the service. The government party appealing must be one that is prosecuting the administrative case against the respondent. Otherwise, an anomalous situation will result where the disciplining authority or tribunal hearing the case, instead of being impartial and detached, becomes an active participant in prosecuting the respondent. Thus, in ***Mathay, Jr. v. Court of Appeals***, decided after ***Dacoycoy***, the Court declared:
>
> > To be sure, when the resolutions of the Civil Service Commission were brought before the Court of Appeals, the Civil Service Commission was included only as a nominal party. As a quasi-judicial body, the Civil Service Commission can be likened to a judge who should "detach himself from cases where his decision is appealed to a higher court for review."
> >
> > In instituting G.R. No. 126354, the Civil Service Commission dangerously departed from its role as adjudicator and became an advocate. Its mandated function is to "hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments and to review decisions and actions of its offices and agencies," not to litigate.[52]

Here, both cases emanated from the petitions for certification election filed with the Med-Arbiter and subsequently appealed to the Secretary of Labor. She had occasion to hear the parties' respective contentions and rule thereon. As the officer who rendered the decision now subject of these cases, the Secretary of Labor should have remained impartial and detached from the time the cases reached her until the same were being scrutinized on appeal.[53]

True, the issue of whether Section 17, Rule VIII of Department Order No. 40-03 is unconstitutional is a matter of great concern and deserves everyone's attention. But this Court cannot pass upon and resolve the same in these Petitions. Otherwise, it will countenance the objectionable actions of the Secretary of Labor and run afoul of the abovecited settled decisions.

WHEREFORE, for the foregoing reasons, the Petitions in G.R. Nos. 169745 and 170091 are **DENIED**.

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51 504 Phil. 186 (2005).

52 Id. at 200. emphasis in the original.

53 *Pleyto v. Philippine National Police Criminal Investigation and Detection Group (PNP-CIDG)*, supra note 47 at 872.

SO ORDERED.

MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice