Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

GOVERNMENT SERVICE INSURANCE SYSTEM BOARD OF TRUSTEES and CRISTINA V. ASTUDILLO,	**G.R. No. 230953**
Petitioners,	**Present:**
- *versus* -	CARPIO, *J.*, *Chairperson,* PERALTA, PERLAS-BERNABE, CAGUIOA, and REYES, JR., *JJ.*
THE HON. COURT OF APPEALS – CEBU CITY and FORMER JUDGE MA. LORNA P. DEMONTEVERDE,	**Promulgated:**
Respondents.	20 JUN 2018

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DECISION

PERALTA, *J.*:

This is a petition for *certiorari* filed under Rule 65 of the Rules on Court seeking the review and nullification of the Resolutions of the Court of Appeals *(CA)* dated February 17, 2016[1] and February 16, 2017[2] in CA-G.R. SP No. 08362, for allegedly having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

The facts are as follows:

Private respondent, retired Judge Ma. Lorna P. Demonteverde *(Demonteverde)* started her service in the government on July 1, 1963 with the National Electrification Administration *(NEA)* until her resignation on February 15, 1967.[3] She then transferred to the Development Bank of the

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1 Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Gabriel T. Ingles and Pablito A. Perez concurring; *rollo,* pp. 27-32.

2 *Rollo*, pp. 34-36A.

3 *Id.* at 39.

Philippines *(DBP)* – Bacolod and served until December 31, 1986. On January 29, 1987, she transferred to the Public Attorney's Office *(PAO)* where she served until June 29, 1995. All in all, Demonteverde served in the said government agencies for a total of 32 years, from 1963 to 1995.

On June 30, 1995, Demonteverde joined the Judiciary as Presiding Judge of the Municipal Trial Court in Cities *(MTCC)* of Bacolod City until her retirement on February 22, 2011.

In a letter dated July 28, 1995, Demonteverde requested from the Government Service Insurance System (*GSIS*) a refund of the retirement premiums she paid under Presidential Decree (*P.D.*) No. 1146[4] and Republic Act (*R.A.*) No. 660[5] in excess of the retirement premiums that she should pay under R.A. No. 910, as amended, the law on retirement benefits for Judges and Justices applicable to her when she joined the Judiciary on June 30, 1995.

However, instead of issuing a refund only of the excess of the contributions paid, the GSIS, on August 23, 1995, refunded to Demonteverde the amount of ₱16,836.60 representing her retirement premiums, or her total personal share with interest, under R.A. No. 660.

On February 11, 2011, Demonteverde filed with the Supreme Court her retirement application under R.A. No. 910,[6] as amended, for her service in the Judiciary from June 30, 1995 until her retirement on February 22, 2011.

On March 3, 2011, Demonteverde likewise filed an application with the GSIS for retirement benefits under R.A. No. 8291[7] covering her government service outside of the Judiciary from July 1, 1963 until June 29, 1995.

In a letter dated October 14, 2011, the manager of the GSIS Bacolod informed Demonteverde that the retirement laws covering her service in the government from July 1, 1963 to June 29, 1995 were P.D. No. 1146,[8] R.A. No. 660, and R.A. No. 1616. The GSIS thus returned the application of Demonteverde so that she may choose from the modes of retirement enumerated.

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4 *"Amending, Expanding, Increasing and Integrating the Social Security and Insurance Benefits of Government Employees and Facilitating the Payment Thereof Under Commonwealth Act No. 186, as Amended, and for Other Purposes."*

5 *"An Act to Amend Commonweallth Act Numbered One Hundred and Eighty-Six Entitled 'An Act to Create and Establish a Government Service Insurance System, to Provide for its Administration, and to Appropriate the Necessary Funds Therefor,' and to Provide Retirement Insurance for Other Purposes."*

6 *"An Act to Provide for the Retirement of Justices of the Supreme Court and of the Court of Appeals, for the Enforcement of the Provisions Hereof by the Government Service Insurance System, and to Repeal Commonwealth Act Number Five Hundred and Thirty-Six."*

7 *"An Act Amending Presidential Decree 1146 as Amended, Expanding and Increasing the Coverage and Benefits of the Government Service Insurance System, Instituting Reforms Therein and for Other Purposes."*

8 *"Amending, Expanding, Increasing and Integrating the Social Security and Insurance Benefits of Government Employees and Facilitating the Payment Thereof Under Commonwealth Act No. 186, as Amended, and for Other Purposes."*

On November 28, 2011, Demonteverde wrote a letter to the GSIS requesting a re-evaluation of her application for retirement under R.A. No. 8291.

Demonteverde's request was referred to the GSIS Committee on Claims *(COC)* for evaluation, and on May 18, 2012, GSIS Bacolod informed her of the COC's issuance of Resolution No. 021-2012 denying her request to retire under R.A. No. 8291. Demonteverde then appealed the COC's Resolution to the GSIS Board of Trustees *(GSIS BOT)*.

Given the issues raised in Demonteverde's case, the GSIS inquired with both the PAO and the Supreme Court as to whether Demonteverde received gratuity benefits and if her entire government service was covered in her retirement under R.A. No. 910, respectively.

In response to the inquiry, the PAO replied that Demonteverde did not apply for nor receive gratuity benefits from the said agency when she transferred to the Judiciary in 1995.[9]

On the other hand, the Supreme Court, through the Office of the Court Administrator *(OCA)*, advised the GSIS that pursuant to R.A. No. 910, as amended by R.A. No. 9946, and its implementing guidelines, judges who have rendered at least fifteen (15) years of service in the Judiciary or in any branch of the government, or both, and who retired compulsorily upon reaching the age of seventy (70) years, shall, upon retirement, be automatically entitled to a lump sum of five (5) years' gratuity computed on the basis of the highest monthly salary, plus the highest monthly Representation and Transportation Allowance and other allowances which they were receiving on the date of their retirement.[10]

The OCA confirmed that:

> 3. Judge Demonteverde was able to meet the minimum fifteen (15) years government service required to be entitled to full pension benefits under Section 1 of R.A. No. 910, as amended, and thus, her services rendered outside of the Judiciary is no longer needed in the determination/computation of her retirement benefits under R.A. No. 910, as amended.[11]

The OCA likewise clarified that the monetary value of the accrued terminal leave benefits that Demonteverde earned in her government service prior to joining the Judiciary was already included by this Court in the payment of her retirement benefits under R.A. No. 910. The OCA added that

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9 *Rollo*, p. 45.
10 *Id.*
11 *Id.*

this Court will request reimbursement from Demonteverde if the GSIS decides to grant retirement benefits.[12]

In a Decision dated October 10, 2013, the GSIS BOT granted Demonteverde's petition, to wit:

> Wherefore, all the foregoing considered, the Petition is **GRANTED.** The Petitioner is allowed to retire under R.A. No. 8291 for her period of services outside the judiciary from 01 July 1963 to 29 June 1995. The payment of her benefits shall be reckoned from 22 February 2011, the date when her actual separation from service took place.
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> SO ORDERED.[13]

On December 12, 2013, Demonteverde filed a Motion for Execution[14] of the Decision of the GSIS BOT, stating therein that she received a notice of the October 14, 2013 Decision on November 11, 2013; that more than 15 days had elapsed since her receipt of the copy of the decision; and that the same had become final and executory and ripe for implementation.[15] Said Motion for Execution was granted by the GSIS BOT on even date.

However, on January 6, 2014, Demonteverde filed a Motion for Reconsideration (*Partial MR*) and Withdrawal of Motion for Execution[16] of the October 10, 2013 GSIS BOT Decision. She questioned the accrual date of her retirement benefits under R.A No. 8291, arguing that the date of her retirement should be the date when she reached sixty (60) years of age, even when she was still in active government service at that time, and not on February 22, 2011, or the date of her actual retirement from government service. Demonteverde likewise denied receiving a copy of the GSIS BOT Decision, and denied that the later Notice of Decision dated November 19, 2013 contained a copy of the GSIS BOT Decision.

In its Resolution No. 12[17] dated February 13, 2014, the GSIS BOT denied Demonteverde's Partial MR and Withdrawal of Motion for Execution, for allegedly having been filed out of time.

Aggrieved, Demonteverde filed before the CA a Petition for *Certiorari*, Mandamus, and Prohibition under Rule 65 dated March 21, 2014, seeking to modify and set aside the October 10, 2013 Decision and Resolution No. 12 dated February 13, 2014 of the GSIS BOT.[18]

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12 *Id.* at 45-46.
13 *Id.* at 262.
14 *Id.* at 103.
15 *Id.* at 231.
16 *Id.* at 106-116.
17 *Id.* at 118-119.
18 *Id.* at 127-141.

In a Resolution[19] dated June 19, 2014, the CA dismissed the said petition, ratiocinating that the course of action taken by Demonteverde was erroneous as the proper mode of appeal from a decision of a quasi-judicial agency such as the GSIS is by filing a verified petition for review with the CA under Rule 43. The appellate court added that a perusal of Demonteverde's petition showed procedural defects, to wit:

> a. Petitioner failed to incorporate therein a written explanation why the preferred personal mode of filing the petition under Section 11, Rule 13 of the 1997 Rules of Court was not availed of.
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> b. Petitioner failed to attach a clearly legible duplicate original or certified true copy of the assailed October 10, 2013 Decision, December 12, 2013 Order and February 13, 2014 Resolution of the GSIS, in violation of Section 3, Rule 46 of the 1997 Rules of Civil Procedure. While petitioner appended to the Petition copy of the assailed October 10, 2013 Decision and February 13, 2014 Resolution of the GSIS they were mere photocopies. The assailed December 12, 2013 Order of the Hearing Officer of the GSIS appears also to be a mere photocopy.
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> c. Petitioner failed to properly verify the Petition in accordance with A.M. No. 00-2-10-SC amending Section 4, Rule 7 in relation to Section 1, Rule 65 of the 1997 Rules of Civil Procedure which now requires that a pleading must be verified by an affidavit that the affiant has read the pleading and the allegations therein are true and correct of his personal knowledge or based on authentic records. Petitioner did not to *(sic)* incorporate in the Verification and Certification of Non-Forum Shopping the phrase "or based on authentic records."
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> d. Petitioner failed to attach copies of all pleadings and documents, which are necessary for a thorough understanding and resolution of the instant Petition, such as, but not limited to, following:
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> 1. Petitioner's July 28, 1995 letter to the GSIS requesting for a refund of her retirement premiums.
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> 2. Petitioner's February 11, 2011 and March 3, 2011 applications for claim of retirement benefits field *(sic)* with the GSIS, Bacolod Branch.
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> 3. The October 14, 2011 letter of the GSIS' Bacolod Branch Manager, Ms. Vilma Fuentes.
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> 4. Petitioner's November 28, 2011 letter to the GSIS requesting for a re-evaluation of her application for retirement benefits.
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> 5. Petitioner's Petition filed with the GSIS [C]ommittee on Claims.
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> 6. The GSIS Committee on Claims' Answer to petitioner's Petition.

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[19] Penned by Associate Justice Marilyn B. Lagura-Yap, with Associate Justices Gabriel T. Ingles and Jhosep Y. Lopez concurring; *id.* at 143-147.

7. The March 26, 2013 letter of the Public Attorney's Office (PAO Chief Administrative Officer. *(sic)*

8. The July 23, 2013 and September 17, 2013 letters of the Office of the Court Administrator of the Supreme Court.

e. The Notarial Certificate in the Verification and Certification of Non-Forum Shopping and in the Affidavit of Service did not contain the province or city where the notary public was commissioned, the office address of the notary public, in violation of Section 2(c) and (d), Rule VIII of the 2004 Rules on Notarial Practice.[20]

Upon Demonteverde's motion for reconsideration, the CA, in the assailed February 17, 2016 Resolution, reversed itself and reinstated Demonteverde's Petition. It agreed with Demonteverde that the case may be classified as an exception to the general rule that *certiorari* is not a substitute for a lost appeal under any of the following grounds: where appeal does not constitute a speedy and adequate remedy, and for certain special considerations, such as public welfare or public policy.[21] Thus:

WHEREFORE, the Court resolves to:

1. **GRANT** the Motion for Extension to file Comment and the Second Motion for Extension of Time to File Comment filed by respondent Government Service Insurance System (GSIS).

2. **ADMIT** the Comment and Opposition (To the Motion for Reconsideration of the Resolution dated June 19, 2014) filed by the GSIS.

3. **GRANT** the Motion for Reconsideration of petitioner and **SET ASIDE** the June 19, 2014 Resolution.

4. **REINSTATE** the instant petition and **DIRECT** respondents to **FILE** their **COMMENT** (not a Motion to Dismiss) to the petition within **TEN (10) days** from receipt of this Resolution. Petitioner is given five (5) days from receipt of Comment within which to file a Reply, if petitioner so desires.

SO ORDERED.[22]

GSIS BOT moved for reconsideration and filed an Opposition to the Petition, but the CA, in its February 16, 2017 Resolution, denied the said motion for reconsideration and directed the GSIS BOT to file its comment to Demonteverde's petition.

Hence, this petition for *certiorari*, with the GSIS BOT raising the issue of whether the CA acted with grave abuse of discretion amounting to lack or

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20 *Id.* at 144-146.

21 *Id.* at 31.

22 *Id.* at 31-32.

excess of jurisdiction in issuing its February 17, 2016 Resolution reinstating Demonteverde's Petition for *Certiorari*, Prohibition, and Mandamus; and February 16, 2017 Resolution denying GSIS' Motion for Reconsideration of the February17, 2016 Resolution. It alleges the following issues in support of its petition:

> I.
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> THE ASSAILED GSIS BOT DECISION IS FINAL AND EXECUTORY AND NOT SUBJECT TO ANY MOTION FOR RECONSIDERATION OR APPEAL.
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> II.
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> A SPECIAL CIVIL ACTION FOR *CERTIORARI* UNDER RULE 65 IS NOT AN ALTERNATE REMEDY FOR LOST APPEALS UNDER RULE 43 AND THE TWO ACTIONS ARE MUTUALLY EXCLUSIVE.
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> III.
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> THE ISSUES RAISED IN FORMER JUDGE DEMONTEVERDE'S PETITION DO NOT AFFECT PUBLIC POLICY.
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> IV.
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> THE PETITION FOR *CERTIORARI* IS TAINTED WITH MANY PROCEDURAL INFIRMITIES WHICH ARE FATAL TO THE PETITION.[23]

The main issue for resolution is whether the CA acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing its Resolution dated February 17, 2016 reinstating Demonteverde's Petition for *Certiorari*, Prohibition and Mandamus; and Resolution dated February 16, 2017 denying GSIS BOT's Motion for Reconsideration of the February 17, 2016 Resolution.

This Court resolves to grant the instant petition.

A special civil action for *certiorari*, under Rule 65, is an independent action based on the specific grounds therein provided and will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[24] A petition for *certiorari* will prosper only if grave abuse of discretion is alleged and proved to exist.

"Grave abuse of discretion," under Rule 65, refers to the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in

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23 *Id.* at 9-16.

24 *Beluso v. COMELEC, et al.*, 635 Phil. 436, 442-443 (2010).

contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.[25]

Having said this, there is a preliminary need to address the GSIS-BOT's argument that Demonteverde should have filed an appeal under Rule 43 of the Rules of Court instead of filing the *certiorari* suit before the CA.

A special civil action under Rule 65 of the Rules of Court will not be a cure for failure to timely file an appeal under Rule 43 of the Rules of Court.[26] Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal, especially if such loss or lapse was occasioned by one's own neglect or error in the choice of remedies.[27] As this Court held in *Butuan Development Corporation v. CA*:[28]

> A party cannot substitute the special civil action of *certiorari* under Rule 65 of the Rules of Court for the remedy of appeal. The existence and availability of the right of appeal are antithetical to the availability of the special civil action of *certiorari.* Remedies of appeal (including petitions for review) and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.

Nonetheless, the general rule that an appeal and a *certiorari* are not interchangeable admits of exceptions. This Court has, before, treated a petition for *certiorari* as a petition for review on *certiorari*, particularly: (1) if the petition for *certiorari* was filed within the reglementary period within which to file a petition for review on *certiorari*; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of rules.[29]

Likewise, in *Department of Education v. Cuanan,*[30] where this Court exercised liberality and considered the petition for *certiorari* filed therein as an appeal, the Court identified exceptions to the general rule. Thus:

> The remedy of an aggrieved party from a resolution issued by the CSC is to file a petition for review thereof under Rule 43 of the Rules of Court within fifteen days from notice of the resolution. Recourse to a

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25 *Id.* at 443.

26 *China Banking Corporation v. Cebu Printing and Packaging Corporation,* 642 Phil. 308, 323 (2010).

27 *Id.* at 323-324.

28 G.R. No. 197358. April 5, 2017.

29 *China Banking Corporation v. Cebu Printing and Packaging Corporation, supra* note 26, at 322, citing *Tagle v. Equitable PCI Bank, et al.*, 575 Phil. 384, 403 (2008).

30 594 Phil. 451, 459-460 (2008).

> petition for *certiorari* under Rule 65 renders the petition dismissible for being the wrong remedy. Nonetheless, there are exceptions to this rule, to wit: (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority.

In the instant case, the CA itself, in its June 19, 2014 Resolution, initially dismissed Demonteverde's special civil action for *certiorari*, reasoning that Demonteverde had the remedy of appeal under Rule 43 of the Rules of Court. Citing the case of *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*,[31] the CA thus said:

> Where appeal is available to the aggrieved party, the action for *certiorari* will not be entertained. Remedies of appeal (including petitions for review) and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper, even if the ground therefore is grave abuse of discretion.

The CA even categorically ruled that the present circumstances in Demonteverde's case did not warrant the application of the exceptions to the general rule provided by Rule 43,[32] thereafter proceeding to identify the aforementioned procedural defects in the petition.

Yet, when the CA, upon Demonteverde's motion for reconsideration, reversed itself and reinstated the latter's Petition for *Certiorari*, Mandamus, and Prohibition in the assailed February 17, 2016 Resolution, it failed to substantiate its decision to grant the said motion and set aside its June 19, 2014 Resolution. Apart from Demonteverde's bare allegations in her pleadings and her own testimony that her case falls under the exception to the general rule that if appeal is available, *certiorari* is not a remedy, there is nothing on record that would warrant the grant of her motion for reconsideration and the setting aside of the CA's June 19, 2014 Resolution.

A reading of the CA's assailed February 16, 2017 Resolution reveals that Demonteverde's motion for resolution of the CA's June 19, 2014 Resolution was approved hastily. While the CA appears to have ruled on the merits of Demonteverde's motion, its ratiocination merely consists of two paragraphs and it summarily made a conclusion that Demonteverde's case may be classified as an exception to the general rule that *certiorari* is not a substitute for a lost appeal. In doing so, the CA did not clearly and distinctly explain how it reached such conclusion. To wit:

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31 479 Phil. 768, 782 (2004).

32 *Rollo*, p. 144.

> In the case of *Andrew James Mcburnie vs. Eulalio Ganzon, EGI-Managers, Inc. and E. Ganzon, Inc.*, the Supreme Court held that the Rules of Court was conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, court will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts in rendering real justice have always been, as they in fact ought to be, conscientiously guided by the norm that when on the balance, technicalities take a backseat against substantive rights, and not the other way around. Truly then, technicalities, in the appropriate language of Justice Makalintal, should give way to the realities of the situation.
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> Applying the above-cited jurisprudence in *Andrew James Mcburnie vs. Eulalio Ganzon, EGI-Managers, Inc. and E. Ganzon, Inc.*, and upon perusal of the arguments contained in the instant Motion for Reconsideration, there is basis to reconsider the dismissal of the instant Petition. The Court agrees with petitioner, that the instant case may be classified as an exception to the general rule that *certiorari* is not a substitute for a lost appeal under any of the following grounds: where appeal does not constitute a speedy and adequate remedy and for certain special considerations as public welfare or public policy. In this case, the filing of a Motion for Reconsideration on the assailed GSIS decision maybe [sic] dispensed with on the same cited grounds of public welfare and the advancement of public policy and in addition, in the broader interests of justice.[33]

"Public policy" has a specific definition in jurisprudence. It has been defined as that principle of the law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public of against public good.[34] It is the principle under which freedom of contract or private dealing is restricted for the good of the community.[35]

Demonteverde's claim of public policy as a justification of her inability to comply with the general rule on appeal is unacceptable in the absence of legal and factual bases for its invocation. The assumption of the appellate court that Demonteverde could possibly face *"a grim prospect of a lengthy appeal as it is very likely that the resolution will not happen during her lifetime as she is already seventy-three years old"* is inconsistent with the aforementioned definition of public policy. Demonteverde failed to substantiate through clear and well-established grounds exactly how her case warrants a deviation from the general rule that a writ of *certiorari* will not issue where the remedy of appeal is available to an aggrieved party.

Moreover, Demonteverde failed to overcome in her petition the presumption of regularity in the performance of official functions of public

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33 *Id.* at 31. (Citations omitted)

34 *Gonzalo v. Tarnate, Jr.*, 724 Phil. 198, 207 (2014), citing *Avon Cosmetics, Incorporated v. Luna*, 540 Phil. 389, 404 (2006).

35 *Power Sector Assets and Liabilities Management Corporation v. Pozzolanic Philippines Incorporated*, G.R. No. 183789, August 24, 2011, citing *Ollendorff v. Abrahamson*, 38 Phil. 585, 590-591 (1918).

officers. She failed to present clear and convincing evidence to corroborate her claim that the notice of decision as regards the October 10, 2013 Decision of the GSIS BOT failed to attach a copy of the written decision.[36] As petitioner GSIS BOT pointed out, Demonteverde could not have claimed in her Motion for Execution — which she ultimately attempted to withdraw — that the GSIS BOT October 10, 2013 Decision had attained finality if she indeed had not received a copy of it and read its full text.

In her Motion for Reconsideration[37] of the CA's June 19, 2014 Resolution, Demonteverde claims that the GSIS BOT Decision had not yet attained finality because the GSIS BOT "did not rule on the merits of the petitioner's motion for reconsideration."[38] To wit:

> Petitioner's mode of appeal via Rule 65 of the Rules was guided by the pronouncements of the court in the case of Page-Tenorio vs. Tenorio, G.R. No. 138490, November 24, 2004. Her motion for partial reconsideration and withdrawal of motion for execution dated 2 January 2014 was denied by respondents **on a dubious technical ground of having been filed out of time**, without resolving on the merits the reckoning period that were never taken up during the proceedings, thus denying her due process. **Petitioner was never given a chance to be heard on the matter.**[39]

While the CA gave credence to this claim and granted Demonteverde's motion, this Court cannot sustain the CA's resolution.

It should be emphasized that the resort to a liberal application, or suspension of the application of procedural rules, must remain as the exception to the well-settled principle that rules must be complied with for the orderly administration of justice. [40] While procedural rules may be relaxed in the interest of justice, it is well settled that these are tools designed to facilitate the adjudication of cases. The relaxation of procedural rules in the interest of justice was never intended to be a license for erring litigants to violate the rules with impunity. Liberality in the interpretation and application of the rules can be invoked only in proper cases and under justifiable causes and circumstances. While litigation is not a game of technicalities, every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice.[41]

Applying this to the instant case, there is nothing dubious about the GSIS BOT's denial of her Partial Motion for Reconsideration and Withdrawal of Motion for Execution on the ground that the said motion was filed out of

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36 *Rollo*, p. 132.
37 *Id.* at 179-189.
38 *Id.* at 184.
39 Emphasis ours.
40 *Building Care Corp. v. Macaraeg*, 700 Phil. 749, 759 (2012).
41 *Id.*

time. Demonteverde filed her Partial Motion for Reconsideration and Withdrawal of Motion for Execution only on January 6, 2014, fifty-six (56) days after November 11, 2013, which is the date of receipt of the GSIS BOT Decision indicated in her Motion for Execution, and forty-eight (48) days after November 19, 2013, when she officially received a copy of the GSIS BOT Decision. Clearly, Demonteverde had, by then, lost her right to question the Decision of the GSIS BOT through a motion for reconsideration or through any other form of appeal. Thus, the CA should have dismissed her petition outright on the ground of erroneous cause of action as the remedies of appeal and *certiorari* under Rule 65 are mutually exclusive and not alternative or cumulative.

This Court likewise rejects Demonteverde's assertion that she was never given a chance to be heard on the matter. On the contrary, the records show that she was given ample opportunity to present her retirement claims and her arguments before the GSIS COC, the GSIS BOT, and the CA. In fact, the GSIS BOT even approved her request to retire under R.A. No. 8291 for her period of services outside the Judiciary from July 1, 1963 to June 29, 1995. The only issue that protracted the instant case is Demonteverde's single-minded insistence that the accrual date of her retirement benefits under R.A. No. 8291 should be the date when she reached sixty (60) years of age, even when she was still in active government service at that time, and not on February 22, 2011, or the date of her actual retirement from government service.

To give merit to this argument would be preposterous.

The reason for providing retirement benefits is to compensate service to the government. Retirement benefits to government employees are part of emolument to encourage and retain qualified employees in the government service. These benefits are meant to reward them for giving the best years of their lives in the service of their country.[42]

However, the right to retirement benefits accrues only upon certain prerequisites. First, the conditions imposed by the applicable law must be fulfilled. Second, **there must be actual retirement.**[43] Prior to retirement, an employee who has served the requisite number of years, such as Demonteverde, is only eligible for, **but not yet entitled to**, retirement benefits.[44] Retirement means there is a bilateral act of the parties, a voluntary agreement between the employer and the employees whereby the latter after reaching a certain age agrees and/or consents to *sever his or her employment* with the former.[45]

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42 *Government Service Insurance System v. Montesclaros,* 478 Phil. 573, 591 (2004).
43 *Development Bank of the Philippines v. Commission on Audit,* 467 Phil. 62, 90 (2004).
44 *Id.*
45 *Id.*

Severance of employment is a condition *sine qua non* for the release of retirement benefits. Retirement benefits are not meant to recompense employees who are still in the employ of the government; that is the function of salaries and emoluments. Retirement benefits are in the nature of a reward granted by the State to a government employee who has given the best years of his life to the service of his country."

While Demonteverde met the two conditions for entitlement to benefits under R.A. No. 8291 in 2001, *i.e.*, she had rendered at least fifteen (15) years in government service as a regular member, and she turned sixty (60) years of age, she continued to serve the government and did not, at that time, sever her employment with the government. Thus, not having retired from service when she turned 60 on February 22, 2001, she cannot claim that her right to retirement benefits had already accrued then.

In fine, this Court finds it proper to emphasize that Demonteverde's filing of separate retirement claims for her government service outside of the Judiciary and in the Judiciary was unnecessary and unwarranted. Apart from the fact that she continued to serve the government as a trial court judge after serving the NEA, the DBP, and the PAO for a total of 32 years, her service in these government agencies is creditable as part of her overall government service for retirement purposes under R.A. No. 910, as amended.

Section 1 of R.A. No. 910, as amended by R.A. No. 9946, provides:

> SECTION 1. When a Justice of the Supreme Court, the Court of Appeals, the Sandiganbayan, or of the Court of Tax Appeals, or a Judge of the regional trial court, metropolitan trial court, municipal trial court, municipal circuit trial court, shari'a district court, shari'a circuit court, or any other court hereafter established **who has rendered at least fifteen (15) years service in the Judiciary or in any other branch of the Government, or in both,** (a) retires for having attained the age of seventy years x x x he/she shall receive during the residue of his/her natural life, in the manner hereinafter provided, the salary which plus the highest monthly aggregate of transportation, representation and other allowances such as personal economic relief allowance (PERA) and additional compensation allowance which he/she was receiving at the time of his/her retirement x x x

Considering the express wordings of R.A. No. 910, which include service *"in any other branch of the Government"* as creditable service in the computation of the retirement benefits of a justice or judge, Demonteverde's years of service as in the NEA, the DBP, and the PAO were already correctly credited by the OCA as part of her government service when it granted her retirement application for her service in the Judiciary from June 30, 1995 until her retirement on February 22, 2011.

WHEREFORE, in view of the foregoing, the Court **GRANTS** the petition and **NULLIFIES AND SETS ASIDE** the Resolutions dated February17, 2016 and February16, 2017 of the Court of Appeals in CA-G.R. SP No. 08362 for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction; and **DISMISSES** the Petition for *Certiorari*, Mandamus, and Prohibition under Rule 65 dated March 21, 2014 of private respondent Ma. Lorna P. Demonteverde, former Judge of the Municipal Trial Court in Cities, Bacolod City, which sought to set aside the October 10, 2013 Decision and Resolution No. 12 dated February 13, 2014 of the GSIS BOT.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Senior Associate Justice
Chairperson

ESTELA M. PERLAS-BERNABE
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ANDRES B. REYES, JR.
Associate Justice

CERTIFICATION

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

ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, as amended)