

IN THE SUPREME COURT OF GUAM

EDWARD G. PEREZ,

Petitioner,

vs.

JUDICIAL COUNCIL OF GUAM,

Respondent.

and

SUPERIOR COURT OF GUAM,

Real-Party-in-Interest

Supreme Court Case No.: WRM02-002

OPINION

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Petition for Alternative Writ of Mandate
filed March 15, 2002
Hagåtña, Guam

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BEFORE: PETER C. SIGUENZA, JR., Chief Justice, F. PHILIP CARBULLIDO, Associate Justice, and JOHN A. MANGLONA, Designated Justice.

CARBULLIDO, J.:

[1] Petitioner Edward G. Perez (“Perez”) filed a Petition for Alternative Writ of Mandate seeking review of a Judicial Council personnel decision against him. Because Perez has a statutory right to judicial review of a Judicial Council decision, he has an adequate remedy at law. Thus, Perez is not entitled to an alternative writ of mandate, and his petition is denied. However, because the Superior Court Personnel Rules and Regulations do not provide classified judicial employees with a procedure to appeal a Judicial Council personnel decision to the Superior Court, Perez shall have thirty days from the filing of this Opinion to file a petition for judicial review in the Superior Court.

I.

[2] Perez, a classified employee of the Superior Court of Guam, was suspended and reprimanded by the Administrative Director of the Superior Court for alleged violations of the Superior Court’s Code of Conduct for Non-Judicial Employees and Personnel Rules and Regulations. Perez appealed the disciplinary actions to the Judicial Council (“Council”). The Council upheld the Administrative Director’s actions. Instead of appealing the Council’s decision to the Superior Court, Perez filed a Petition for Alternative Writ of Mandate in this court.

II.

[3] The Supreme Court of Guam has jurisdiction of original proceedings for mandamus. Title 7 GCA § 3107(b) (1994).

[4] The issuance of a writ is a drastic remedy and may only be used where there is "not a plain, speedy, and adequate remedy available in the ordinary course of law." Title 7 GCA § 31203 (1993); *see also Topasna v. Superior Court*, 1996 Guam 5, ¶ 5. The issuance of an alternative writ of mandate lies in the discretion of the court. *See Gray v. Superior Court*, 1999 Guam 26, ¶ 12.

III.

A. Petition for Alternative Writ of Mandate

[5] With all petitions for a writ of mandate, the threshold determination is whether Perez had no adequate remedy at law. A review of the Superior Court's Code of Conduct and Personnel Rules and Regulations provisions show that the appeal to the Council was the last administrative step available to Perez in the appeal of his reprimand and suspension. The rules do not provide a procedure for a classified employee to seek judicial review of a Council decision. However, Guam law provides Judicial Branch classified employees with the right to judicial review of a Council decision. Thus, review by mandamus is inappropriate.

[6] The personnel policy for the entire government of Guam is set forth in Chapter 4 of Title 4 Guam Code Annotated. For classified employees of the Superior Court, the Council is given authority to adopt personnel rules and hear personnel appeals. Title 4 GCA § 4105 (1996). Section 4106 provides that the personnel rules adopted by the Council must be consistent with section 4406. Title 4 GCA § 4106 (1996). Section 4406 states in part:

The employee within twenty (20) days of effective date of the action, may appeal to the Commission or appropriate entity by filing his written answer to the charges against him. . . . The Commission or appropriate entity may sustain, modify or revoke the action taken. **The decision of the Commission or appropriate entity shall be final but subject to judicial review.**

Title 4 GCA § 4406 (1996)(emphasis added).

[7] Section 4406 expressly provides that Judicial Branch classified employees have the right to seek judicial review of Council personnel decisions. Because Perez, as a classified employee, has the right to judicial review, he has an adequate remedy in the ordinary course of the law, and his Petition must be denied. *See* 7 GCA § 31203; *see also Topasna*, 1996 Guam 5 at ¶ 5.

[8] However, this court takes notice that the Superior Court Personnel Rules and Regulations fail to provide a procedure for judicial review of Council personnel decision. This deficiency is contrary to the mandates of sections 4105, 4106, and 4406, and is a glaring defect. Thus, the Council has not afforded Perez his right to judicial review, and we now address this issue.

B. Judicial Review of Judicial Council Personnel Decisions

[9] Section 7117 of Title 7 of the Guam Code Annotated provides:

When jurisdiction is by law conferred on a court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of the proceeding be not specifically pointed out by law or by rules of procedure adopted by the Supreme Court, any suitable process or mode of proceedings may be adopted which may appear most conformable to the spirit of this Title.

Title 7 GCA § 7117 (1996). Pursuant to this law and because the issue has been brought before this court, we now fashion procedures to correct the deficiency in the Superior Court Personnel Rules and Regulations in order to protect the right of classified judicial employees to seek judicial review of Council personnel decisions. *See Guam Power Auth. v. Civil Serv. Comm'n.*, Civ. No. 87-00072A, 1988 WL 242617, at *2 (D. Guam App. Div. Nov. 17, 1988) (“In the absence of procedures for a particular course of proceeding, the Guam Legislature has enacted a mechanism [Code of Civil Procedure § 187, now codified at 7 GCA § 7117] to allow the Superior Court to proceed where there are no clearly established procedures”). This court hesitatingly applies the authority granted by 7 GCA § 7117. The appropriate method for establishing judicial review procedures is by adoption of a formal rule by the

Council. Until such a rule is adopted and so that there is no further confusion on this issue, we hereby establish procedures for seeking judicial review of Council personnel decisions.

[10] We note two decisions of the District Court Appellate Division which addressed the failure of section 4406 to prescribe the precise judicial proceeding and time limit to seek judicial review of a Civil Service Commission (“CSC”) decision.¹ In the first of these decisions, *Guam Power Auth. v. Civil Serv. Comm’n.*, Civ. No. 87-00072A, 1988 WL 242617 (D. Guam App. Div. Nov. 17, 1988), the Guam Power Authority sought review of a CSC decision by a complaint for declaratory and injunctive relief in the Superior Court. The trial court offered GPA an opportunity to amend its complaint to a petition for judicial review. GPA declined to amend its complaint and the trial court dismissed the action. The Appellate Division upheld the dismissal, noting that “[s]ince 1952, California courts have consistently held that declaratory relief is not available for review of administrative orders.” *Id.* at * 2 (citing *Hostetter v. Alderson*, 241 P.2d 230 (Cal. 1952)). The Appellate Division also did not object to the petition for review format, noting that such petition was suggested in an administrative law text and was recognized by a Superior Court judge in a previous case. *Id.* at *4.

[11] In the second case, *Tyndzik v. Leon Guerrero*, Civ. Nos. 92-00023A, 92-00031A, 1992 WL 245889 (D. Guam App. Div. Sept. 11, 1992), the Appellate Division upheld the Superior Court’s promulgation of a time limit of thirty days to file a petition for review of a CSC decision, noting the absence of a statutory time limit and the authority of the Superior Court to promulgate rules of procedure when none exists. *Id.* at *1.

[12] While this court is not bound by Appellate Division decisions, we find that the *Guam Power Authority* and *Tyndzik* decisions are well-reasoned and supported in law, and we are guided accordingly. See *People v. Quenga*, 1997 Guam 6, ¶ 13 n.4. We hold that in order to seek judicial review of a Council

¹ Section 4406 makes no distinction between CSC and Judicial Council decisions.

personnel decision, a classified employee must file a petition for judicial review within thirty days of the Council's decision. However, due process prohibits the retroactive application of the thirty-day limit to *Perez. Tyndzik*, 1992 WL 245889, at *2. Thus, Perez shall have thirty days from the filing of this Opinion to file a petition for judicial review in the Superior Court.

IV.

[13] Because Perez has a statutory right to judicial review of the Judicial Council decision, he has an adequate remedy at law and his Petition for Alternative Writ of Mandate is **DENIED**. However, because the Superior Court Personnel Rules and Regulations, promulgated by the Council, fail to provide a procedure for judicial review of a Council personnel decision, this court orders that such judicial review shall be by petition for judicial review which must be filed in the Superior Court within thirty days of the Council's decision. Because this thirty-day limit cannot be applied retroactively, Perez shall have thirty days from the filing of this Opinion to file a petition for judicial review in the Superior Court.