CASE NOTE: BRAZIL

CASE CITATION:
RMS-AgR-ED 24257 DF (Distrito Federal Interlocutory Appeal Relating to Writ of Mandamus)

NAME AND LEVEL OF COURT:
Supremo Tribunal Federal (Brazilian Supreme Court)

RELATER:
Judge Ellen Gracie

PANEL OF JUDGES:
First Panel

DATE OF DECISION:
12 March 2002

DATE OF PUBLICATION:
DJ 14 February 2003 p. 00062 digest v. 02098-01 p. 00178

APELLANT:
Thelma Sattamini Guimaràes De Moraes

ATTORNEY AT LAW:
Luiz Eduardo Sá Roriz

APPELLEE:
The Federal Union

ATTORNEY AT LAW:
The Attorney General

Summary

It is not possible to discuss a substantive matter again when requesting a clarification regarding a decision using the reason of a material error. A digitalized signature is not a hand written signature. It will be admitted in procedural documents only after its acceptance into law. It has been ascertained that a material error relating to the acceptance into law of the recent statute which admitted an e-mail into Court filings is not enough to alter the Court's decision in any way. Appeal dismissed.

THE APPEAL

APPEAL: **AGRMS 24.257-8/DF**

COURT: **Supremo Tribunal Federal**

RELATER: **Judge Ellen Gracie**

PANEL OF JUDGES: **First Panel**

DATE OF DECISION: **13 August 2002**

APELLANT:
Thelma Sattamini Guimaràes de Moraes

ATTORNEYS AT LAW:
Luiz Eduardo Sá Roriz and others

APPELLEE: **The Federal Union**

ATTORNEY AT LAW:
The Attorney General

Report of the Relator [1]

Mrs Justice Ellen Gracie

This is the full decision:

1. This is an appeal submitted by Thelma Sattamini Guimarães de Moraes against a decision of the 3rd Section of Superior Tribunal de Justiça, which denied a writ of mandamus against an act performed by a Minister - Ministro de Estado da Administração Federal e Reforma do Estado - regarding the refusal to extend the date of an open competitive examination to select labor inspectors; it was also argued that the appellant passed the preliminary examination and a new competitive examinations should be open by an administrative rule, in accordance with Portaria nº 2.498/98, of 08.11.1998 (p. 33).

The contested decision was summarized as follows (p. 128):

> Writ of Mandamus. Public Competitive Examination. Labor Inspectors. Administrative rule that opens new competitive examination. Time limit of competitive

[1] *A case before the Tribunals is sent to a single judge. The single judge is the relater. This judge writes the first opinion and the others either simply state that they agree, or write a concurring opinion or a dissenting opinion. If the relater confirms the decision and the two other judges dissent, the relater will be defeated and the case will be reformed.*

examination has expired.

An administrative rule that approves the establishment of new positions and opens new competitive examinations is not capable of producing rights to summon all candidates who passed the preliminary examination whose time has expired. Writ of mandamus dismissed.

In accordance with the opinion of Judge Sepúlveda Pertence on RMS nº 23.538, this situation is the same as regards the other candidates who submitted the same competitive examination. For this reason, he accepts the mandamus appeal.

In the Federal Union's brief of the respondent (p. 154/159) it is said that this Court has sustained that

> 'those candidates approved but ranked below the number of available positions and who were not appointed during the term of effectiveness of the public competitive examination are not entitled to the right to be appointed to the positions offered by a new public competitive examination thereof.'

I intend to dismiss this appeal.

Comments by the Vice Attorney General

Dr. Paulo de Tarso Braz Lucas offered the opinion that the appeal should be dismissed, as follows (p. 165):

> 'Appeal – Writ of Mandamus - Public Competitive Examination. Labor Inspectors – Notice nº 1/94 – A non-approved candidate in the preliminary examination who intends to take part in the second stage of the examination – The validity term has expired – Rights not claimed – Opinion regarding the dismissing of the appeal'.

This is the brief. I decide.

2. The fact that the appeal was submitted to the Court as a photocopied document is contrary to the appellant's argument (p. 137/147). The jurisprudence of this Court establishes that only a petition signed with a manuscript signature previously by an attorney at law is recognized as valid. Precedents by both Panels of this Court: Agravo Regimental no AGRAG nº 357.101, Rel. Judge Ellen Gracie, AGRAG nº 179.709, Rel. Judge Octavio Galloti, AGRRE nº 263.570, Rel. Judge Néri da Silveira and Embargos de Declaração nº AGRAG, Rel. Judge Néri da Silveira.

It is worthy of notice that the submission of an appeal as a photocopied document might occur only as set down by Statute nº 9.800, of 05.26.99, through facsimile, which is different from the present case.

On account of what was declared above and based on article 21, § 1st of RISTF, I dismiss this appeal.

The appellant argues succinctly that article 1st of Statut nº 9.800/99 allows the procedural practice through facsimile or a similar system. Differently from what is declared by the decision on appeal, the petition is not a copy of the original document, but a document with a digitalized signature that faces up to modernity. The digitalized signature has been used in all documents issued by the Brazilian public authorities.

This is the brief report.

Final decision

Opinion

Judge Ellen Gracie (Relater)

"Contrary to the appellant's argument on appeal, the authorization required by article 1st of Statute nº 9800/99 should not apply to the present proceedings, since they refer to the transmission of data and images in the same manner as facsimile ones or other means for procedural practice that depends upon a petition signed by hand. The irregularity noticed in the appeal concerns the fact that the petition was presented in the form of a copy and relates to a signature used improperly.

Besides the fact of not presenting a signature by hand – the appellant argues that it is a digitalized signature – the original petition was not submitted to the Court. In accordance with the jurisprudence of this Court, as cited on the appealed writ, only the petition originally signed by the attorney at law is recognized as valid.

I understand that, whenever possible, the provision of Justice should not only keep up with modern standards but also be on top of modernity. However, to promote judicial safeguards, some media relating to informatics and general automation should be legally ruled before being put into operation. This has not happened yet with the digitalized signature.

I dismiss the appeal.

Judge Sepúlveda Pertence

Mr. Chief Justice, as the recent statute that allows e-mail in procedural filings is not yet accepted into law, in accordance with the regulating requisites of authentication, it prevents me from being able to diverge with the opinion of the eminent Relater.

CASE NOTE: BRAZIL

CASE:
RMS 24257 AgR /DF Interlocutory Appeal Relating to Writ of Mandamus

RELATER:
Judge Ellen Gracie

PANEL OF JUDGES:
First Panel

The final decision as recorded

Supreme Court Note Nº 277 – (STF)

Complaint Brief Signed by Digitalized Signature

The Panel of Judges dismissed the appeal that intended to change the decision held by Judge Ellen Gracie, Relater, who dismissed the appeal requesting a writ of mandamus, because it was brought before the Court as a xerographic copy.

Summary

Only the petition signed with a manuscript signature by the attorney at law is recognized as valid. Precedents.

Appeal dismissed.

Judgment

Upon consideration of the procedural filings as a whole, the following findings and conclusions are made:

> The Judges of the First Panel of The Supremo Tribunal Federal, in accordance with the summary judgment and tachygraphic notes, unanimously decide to dismiss the appeal relating to Mandamus nº 24.257-8.
>
> Brasília, August 13, 2002.
> Sydney Saches, Chief Justice
> Ellen Gracie, Relater

Comments

It has been argued that the petition posted in the filings was not a xerographic copy, but a petition signed by a digitalized signature, in accordance with Article 1st of Statute nº 9.800/99 ("The use of data and image transmission by facsimile or similar process is permitted in Court filings that have to be signed by handwriting").

The Panel, emphasizing that the Court's decisions recognized that only a petition signed by hand is valid, refused to accept the disposition of article 1st of Statute nº 9.800/99, arguing that some modern media, such as a digitalized signature, should be addressed by a legal rule before put into practice. RMS (AgR) 24.257-DF, Relater, Judge Ellen Gracie, 08.13.2002 (RMS-24257).