

MANUEL O. LOPEZ, PETITIONER, VS. TERESITA T. PERALTA, RESPONDENT.

Ponente: SALANDANAN-MANAHAN, J.

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SALANDANAN-MANAHAN, J.:

The Case

Before us is a Petition For Review under Rule 43 of the Rules of Court,[1] assailing the following issuances of the Office of the Deputy Ombudsman (OMB) for Luzon in OMB-L-A-10-0734-K:

- The February 6, 2013 Decision[2] finding the petitioner guilty of Simple Misconduct and meting him the penalty of three (3) months suspension; and
- The November 6, 2013 Resolution[3] denying the petitioner's Motion for Reconsideration.[4]

The Facts

The facts of the instant case are simple.

On November 5, 2010, the respondent Peralta filed with the Office of the Ombudsman for Luzon, an administrative complaint[5] for abuse of authority, oppression, serious misconduct, discourtesy in the conduct of official duties, and conduct prejudicial to the best interest of the service, docketed as OMB-L-A-10-0734-K.

In her Complaint-Affidavit,[6] the respondent alleged that she works as a teacher at the Malasin Elementary School, Brgy. Malasin, San Jose City, Province of Nueva Ecija, while the petitioner is the School Principal therein.

On September 24, 2010 at around 7:00 o'clock in the morning, the respondent reported to school to perform her regular duties. While the respondent was supervising the cleaning of her classroom, petitioner Lopez saw her. During that time, the respondent was then holding a video camera because she was then taking a video of the back portion of her classroom. Thereafter, the respondent went to the office of the petitioner to sign in the logbook. The petitioner followed her.

After signing in the logbook, the respondent saw some of the parents of her students who were then standing near the gate of the school. The respondent approached and conversed with them. The petitioner followed the respondent and when he was almost near her, he uttered the following words:

"Mrs. Peralta, yong mga plywood sa loob ng kuwarta mo, ilabas mo. Alam mong kinukuha ng Engineering, sinabayan mo ng absent. Ilang plywood ba ang kinana mo?"

The respondent claimed that the said utterances made by the petitioner was heard by the parents of her students and she was deeply humiliated by the questioned posed by the petitioner.

The respondent alleged that although she was shocked and humiliated, she tried to explain to the petitioner that she asked the prior permission of the City Engineering's Office of the City of San Jose if she could keep the old pieces of plywood when the latter was hauling the remaining materials used in repairing some classrooms.

However, he did not listen to her explanation and in a loud voice and in the presence of the parents of the students, the petitioner again asked the respondent this question:

"Ilang plywood ba ang ninakaw mo?"

The respondent's account of the incident in the morning of September 24, 2010 was corroborated by the Sworn Statement[7] of Bernardo D. Del Rosario and Amorsolo T. Tejano who claimed that on the said date, while they were in front of the Malasin Elementary School together with the respondent, the petitioner approached the latter and told her, thus:

"Mrs. Peralta, yong mga plywood sa loob ng kuwarto mo, ilabas mo. Alam mong kinukuha ng Engineering, sinabayan mo ng absent. Ilang plywood ba ang kinana mo?"

Witnesses Bernardo D. Del Rosario and Amorsolo T. Tejano likewise narrated in their Sworn Statement that despite being deeply humiliated, the respondent tried to explain her side to the petitioner but he refused to listen to her but instead asked her again this question:

"Ilang plywood ba ang ninakaw mo?"

In the petitioner's Counter-Affidavit dated April 19, 2011,[8] he denied the charges filed against him. He claimed that repairs were conducted in the school and there were unused old pieces of plywood and some materials which were retrieved by the City Engineering's Office. On September 24, 2010, the petitioner was surprised to see that there were still some pieces of used plywood in the classroom of the respondent which were not turned over to the City Engineering's Office. The petitioner argued that he was not aware that the respondent and the City Engineering's Office had a previous agreement with regard to the used pieces of plywood because the respondent did not report for work in the afternoon of September 23, 2010 when the City Engineering's Office hauled the old pieces of plywood and some materials used in the repairs.

Hence, when the petitioner saw the pieces of plywood in the respondent's classroom, he approached the respondent who was standing near the gate of the School at that time. The petitioner denied having uttered the words "Ilang plywood ba ang kinana mo?" or "Ilang plywood ba ang ninakaw mo?" The petitioner said that he merely asked the respondent to surrender the used pieces of plywood in her classroom to the City Engineering's Office to be included in the inventory and advised the respondent to just ask for them from the said Office.

The petitioner further averred that granting arguendo that he indeed posed those questions to the respondent, he insisted that they were not violative of her rights. Moreover, the petitioner claimed that he cannot remember having asked those questions in the presence of the parents of the students contrary to the claim of the respondent.

In a Manifestation[9] dated July 13, 2012, the petitioner stated that he is adopting his Sworn Statement as his Position Paper to the Administrative Case filed against him and he attached thereto a copy of the CD to prove what really transpired on September 24, 2010.

On February 6, 2013, Expedito O. Allado, Jr., Graft Investigation and Prosecution Officer I, rendered his Decision, the dispositive portion of which reads:

"WHEREFORE, PREMISES CONSIDERED, this Office finds respondent MANUEL O. LOPEZ GUILTY of Simple Misconduct and is hereby meted the penalty of Suspension from Office for a period of three (3) months.

The complaint for Oppression and Violation of R.A. No. 6713 against respondent MANUEL O. LOPEZ is hereby DISMISSED for lack of substantial evidence.

The Secretary, Department of Education is hereby directed to implement this DECISION immediately upon

receipt hereof pursuant to Section 7, Rule III of Administrative Order No. 07, as amended by Administrative Order No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1, Series of 2006, dated 11 April 2006 and to promptly inform this Office of the action taken thereon.

SO DECIDED."[10]

The petitioner sought a reconsideration of the Decision but to no avail, as the OMB denied the Motion for Reconsideration[11] in the Resolution dated November 6, 2013.[12]

Undaunted, the petitioner filed the instant Petition for Review, raising the following errors, to wit:

"I.

THE OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON GRAVELY ERRED WHEN IT FAILED TO STAY THE EXECUTION OF THE ORDER PENDING APPEAL.[13]

II.

THE OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON GRAVELY MISAPPRECIATED THE FACTS AND EVIDENCE PRESENTED.[14]

III.

THE OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON GROSSLY ERRED IN FINDING THE PETITIONER GUILTY OF SIMPLE MISCONDUCT AND FOR DENYING THE PETITIONER'S MOTION FOR RECONSIDERATION."[15]

The Issue

The sole issue for our resolution is WHETHER THE OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON ERRED IN FINDING THE PETITIONER GUILTY OF SIMPLE MISCONDUCT AND IN IMPOSING UPON HIM THE PENALTY OF THREE (3) MONTHS SUSPENSION.

The Court's Ruling

The Petition is NOT MERITORIOUS.

On the First Assignment of Error

The petitioner's claim that the Office of the Deputy Ombudsman for Luzon erred when it failed to stay the execution of the Decision during the pendency of the appeal.

The petitioner's contention is BEREFT OF MERIT.

Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17 dated September 15, 2003, provides:

"SEC. 7. Finality and execution of decision. — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the motion for reconsideration.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against such officer." (Emphasis supplied)

The Ombudsman's Decision imposing the penalty of suspension for three (3) months is immediately executory pending appeal.[16] It cannot be stayed by the mere filing of an appeal to this Court. This rule is similar to that provided under Section 47 of the Uniform Rules on Administrative Cases in the Civil Service.[17]

In the case of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of the DPWH*,[18] the Highest Tribunal held:

"The Rules of Procedure of the Office of the Ombudsman are clearly procedural and no vested right of the petitioner is violated as he is considered preventively suspended while his case is on appeal. Moreover, in the event he wins on appeal, he shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. Besides, there is no such thing as a vested interest in an office, or even an absolute right to hold office. Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office."

Following the ruling in the above cited case, the Supreme Court, in *Buencamino v. Court of Appeals*,[19] upheld the Resolution of the Court of Appeals denying Buencamino's application for preliminary injunction against the immediate implementation of the suspension order against him. The Supreme Court stated therein that this Court did not commit grave abuse of discretion in denying petitioner's application for injunctive relief because Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman was amended by Administrative Order No. 17 dated September 15, 2003.

Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended, is categorical, an appeal shall not stop the decision from being executory.

Moreover, Section 13 (8), Article XI of the Constitution[20] authorizes the Office of the Ombudsman to promulgate its own rules of procedure. In this connection, Sections 18[21] and 27[22] of the Republic Act 6770 otherwise known as the Ombudsman Act of 1989 also provide that the Office of the Ombudsman has the power to "promulgate its rules of procedure for the effective exercise or performance of its powers, functions and duties" and to amend or modify its rules as the interest of justice may require.

For this Court to stay the penalty imposed by the Ombudsman in an administrative case would be to encroach on the rule-making powers of the Office of the Ombudsman under the Constitution and RA 6770, in fact an issuance of an injunctive writ is not necessary as it will render nugatory the provisions of Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman.

Furthermore, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman supersedes the discretion given to the Court of Appeals in Section 12,[23] Rule 43 of the Revised Rules of Court when a decision of the Ombudsman in an administrative case is appealed to the Court of Appeals. The provision in the Rules of Procedure of the Office of the Ombudsman that a decision is immediately executory is a special rule that prevails over the provisions of the Rules of Court. *Specialis derogat generali*. When two rules apply to a particular case, that which was specially designed for the said case must prevail over the other.[24]

Second and Third Assignment of Errors

Misconduct is "a transgression of some established and definite rule of action, more particularly, unlawful

behavior or gross negligence by a public officer." [25] It means intentional wrongdoing or deliberate violation of a rule of law or standard of behavior. [26]

The petitioner contends that the Ombudsman's conclusion that he publicly humiliated the respondent does not conform to the evidence presented. He adds that even on the assumption that he uttered the words complained of, it was not shown that he did so with malice.

Contrary to the contention of the petitioner, we find sufficient evidence on record tending to prove that his imputation against the respondent was made with malice and in bad faith.

The petitioner's evidence is bereft of substance and consists mainly of denials. He claimed not to have uttered the words imputing the crime of theft to respondent. Well-settled is the rule that denial, if unsubstantiated by clear and convincing evidence, are negative and self-serving which merit no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters. [27]

On the other hand, we agree with the findings of the Ombudsman that the respondent has successfully refuted the petitioner's allegations. Quite credibly, she has narrated in great detail her distressing experience on that fateful day. She stated in her Complaint-Affidavit how rudely she was treated by petitioner in the presence of the parents of the students and within the hearing distance of the latter.

The petitioner confronted her and uttered the following words:

"Mrs. Peralta, yong mga plywood sa loob ng kuwarta mo, ilabas mo. Alam mong kinukuha ng Engineering, sinabayan mo ng absent. Ilang plywood ba ang kinana mo?"

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"Ilang plywood ba ang ninakaw mo?"

Eyewitnesses Bernardo D. Del Rosario and Amorsolo T. Tejano likewise corroborated in their Sworn Statement the respondent's version of what truly transpired on September 24, 2010. They testified that the petitioner uttered the aforementioned statements to the respondent in the presence of the students and parents suggesting that the respondent is a thief or "magnanakaw". They added that the respondent was embarrassed because the petitioner uttered the defamatory words in their presence.

In this case, the petitioner's verbal reproach against the respondent was certainly uncalled for considering that he is the School Principal and the utterances were made in public in the presence and within the hearing distance of the students and some parents.

Moreover, we find that the petitioner had no right to attack the respondent with his innuendos which were not merely inquisitive but outrightly accusatory. By openly accusing the respondent of having taken some pieces of plywood, the petitioner virtually branded the respondent as a "thief". True, the petitioner as the School Principal had the right to ascertain the presence of the pieces of plywood inside the respondent's classroom, but to malign the latter without an iota of proof that she actually stole the said pieces of plywood, is an act which, by any standard or principle of law is impermissible.

The petitioner had willfully caused injury to respondent in a manner which is contrary to morals and established rule of law or standard of behavior.

The petitioner's allegation that he merely adhered to the standard operating procedure when he asked the respondent about the pieces of plywood in her classroom in order to avoid or preclude suspicion of any anomaly in school cannot justify his acts toward the respondent. He did not act with justice and good faith for apparently,

he had no other purpose in mind but to prejudice the respondent. Certainly, the petitioner transgressed some established and definite rule of action, more particularly, unlawful behavior, which constitutes a misconduct in office.

As a public school principal, the petitioner is bound by a high standard of work ethic. The Code of Conduct and Ethical Standards for Public Officials and Employees (RA 6713), enunciates inter alia, the State policy of promoting a high standard of ethics and utmost responsibility in the public service. Section 4 of the Code commands that "(p)ublic officials and employees at all times respect the rights of others, and refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest." [28] By uttering the defamatory words, the petitioner failed to live up to such standard.

The Supreme Court has emphasized that when an officer or employee is disciplined, the object sought is not the punishment of that officer or employee, but the improvement of the public service and the preservation of the public's faith and confidence in the government. [29]

One final word. The law does not tolerate misconduct by a civil servant. The petitioner's acts in question undoubtedly violate the norm of decency and may diminish or tend to diminish the people's respect for those in the government service.

WHEREFORE, in view of the foregoing, the Petition for Review is DISMISSED. The assailed February 6, 2013 Decision [30] and November 6, 2013 Resolution [31] issued by the Office of the Ombudsman of Luzon in OMB-L-A-10-0734-K are AFFIRMED.

SO ORDERED.

Dimaampao, (Chairperson), and Ybañez, JJ., concur.

[1] Rollo, pp. 3-16.

[2] Rollo, pp. 22-30.

[3] Rollo, pp. 17-21.

[4] Rollo, pp. 51-57.

[5] Rollo, pp. 37-38.

[6] Id.

[7] Rollo, p. 39.

[8] Rollo, pp. 48-49.

[9] Rollo, p. 50.

[10] Rollo, p. 29.

[11] Rollo, pp. 51-57.

[12] Rollo, pp. 17-21.

[13] Rollo, p. 6.

[14] Rollo, p. 7.

[15] Id.

[16] Buencamino v. CA, G.R. No. 175895, 12 April 2007, 520 SCRA 797.

[17] "SECTION 47. Effect of Filing. — An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal, in the event he wins the appeal."

[18] G.R. No. 150274, 4 August 2006, 497 SCRA 626, 636-637.

[19] Administrative Order No. 7, dated April 10, 1990.

[20] "SECTION 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

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(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law."

[21] "SECTION 18. Rules of Procedure. — (1) The Office of the Ombudsman shall promulgate its rules of procedure for the effective exercise or performance of its powers, functions, and duties.

(2) The rules of procedure shall include a provision whereby the Rules of Court are made suppletory.

(3) The rules shall take effect after fifteen (15) days following the completion of their publication in the Official Gazette or in three (3) newspapers of general circulation in the Philippines, one of which is printed in the national language."

[22] "SECTION 27. Effectivity and Finality of Decisions. — (1) All provisional orders of the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:

(1) New evidence has been discovered which materially affects the order, directive or decision;

(2) Errors of law or irregularities have been committed prejudicial to the interest of the movant.

The motion for reconsideration shall be resolved within three (3) days from filing: Provided, That only one motion for reconsideration shall be entertained.

Findings of fact by the Officer of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.

In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require."

[23] SEC. 12. Effect of appeal. — The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just.

[24] Buencamino v. CA, G.R. No. 175895, 12 April 2007, 520 SCRA 797.

[25] *Estarija v. Ranada*, G.R. No. 159314, June 26, 2006, 492 SCRA 652, 663; *Bureau of Internal Revenue v. Organo*, G.R. No. 149549, February 26, 2004, 424 SCRA 9, 16.

[26] *Salazar v. Barriga*, A.M. No. P-05-2016, 19 April 2007.

[27] *People v. Sernadilla*, G.R. No. 137696, January 24, 2001, 350 SCRA 243; *People v. Preciados*, G.R. No. 122934, January 5, 2001, 349 SCRA 1; *People v. Baway*, G.R. No. 130406, January 22, 2001, 350 SCRA 29.

[28] *Alawi v. Alauya*, 268 SCRA 628, 637, February 24, 1997, per Narvasa, CJ.

[29] *Civil Service Commission v. Cortez*, G.R. No. 155732, June 3, 2004, 430 SCRA 593, citing *Bautista v. Negado*, etc., and *NWSA*, 108 Phil. 283, 289 (1960).

[30] *Rollo*, pp. 22-30.

[31] *Rollo*, pp. 17-21.

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