

BALTAZAR J. AUSA, PETITIONER, VS. HON. HERMOGENES E. EBDANE, JR.,/ HON. ROGELIO SINGZON, SECRETARY, DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS (DPWH), RESPONDENTS.

Ponente: GARCIA-FERNANDEZ, J.

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GARCIA-FERNANDEZ, J.:

This is a petition for review[1] under Rule 43 of the Revised Rules of Court, as amended, seeking to annul and set aside the following issuances of the Office of the Ombudsman, Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices in OMB-V-A-06-0346-F: 1) decision[2] dated March 26, 2008 which found petitioner Baltazar J. Ausa guilty of conduct prejudicial to the best interest of the service with penalty of six months suspension from the service without pay pursuant to Section 52 (A)(20) Rule IV of the Uniform Rules on Administrative Cases in the Civil Service; 2) order[3] dated January 12, 2009 which affirmed the penalty imposed on petitioner; and 3) order[4] dated February 4, 2011 which denied petitioner's motion to dismiss.

The facts of the case are as follows:

On June 9, 2006, Hermogenes E. Ebdane, Jr., the former Secretary of the Department of Public Works and Highways (DPWH) filed a complaint-affidavit for violation of Section 3, paragraphs (e) and (g) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act and for dishonesty, grave misconduct and conduct prejudicial to the best interest of the service against Jaime A. Pacanan, Regional Director, Region VIII, Celso Z. Lumanog, Retired Director III, petitioner Baltazar J. Ausa, District Engineer, Francisco B. Vinegas, Retired OIC District Engineer, Christine N. Buena, Engineer III, Eduardo B. Pelias, Engineer II, Erda P. Gabriela, Administrative Officer II, Ma. Regina B. Verzosa, Senior Bookkeeper, Tomas L. Fabillo, Jr., Special Agent I, designated as Acting Cashier, who are officers and employees of the Department of Public Works and Highways (DPWH) Tacloban City Sub-District Engineering Office (TCSDEO) and Domingo Fuentebella, owner/ proprietor of Dover Construction before the Office of the Ombudsman in connection with the Rehabilitation/ Improvement of Tigbao-Sta. Fe Road, Barangay Salvacion, Tacloban City.

On January 25, 2007, the Office of the Ombudsman, Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices issued an order finding the complaint-affidavit sufficient in form and substance and directed the respondents to file counter-affidavit/s and those of their witness/es, if any, within ten (10) days from receipt of the order; and ordered the complainant to file a reply-affidavit within ten (10) days from receipt of the counter-affidavits of the respondents.[5]

On November 17, 2006, petitioner filed his counter-affidavit[6] alleging the following:

"1. That I am at present the duly appointed District Engineer, First Leyte Engineering District, with salary grade 25, and with official address address at Brgy. Pawing, Palo, Leyte, effective September 04, 2004. But before said appointment, I was appointed as the District Engineer, Tacloban City Sub-District Engineering Office, with official address at Trece Martirez St., Tacloban City;

4. That as district Engineer, Tacloban City Sub-District Engineering Office, (before September 04, 2004) my

official duties were:

4.a. In charge of over-all supervision of all official functions of the Tacloban City Sub-District Engineering Office, including the payment of all official monetary claims and claims for payments of public works project within my said sub-district.

4.b. In the performance of above-duties, I have some support staff like engineers, accountant and other administrative support staff.

5. That in relation to the Complaint-Affidavit of the Hon. Hermogenes E. Ebdane, Jr., Secretary of the DPWH, dated June 09, 2006, vis-a-vis the project concerning the Rehabilitation/ Improvement of Tigbao-Sta. Fe, Brgy. Salvacion, Km. 903 + 552 to Km. 908 + 000 (with exceptions) project (herein referred to as the project) my only official acts therein were still the same as enumerated in paragraph 4 above which allegedly occurred between March 2004 to April 2004;

6. That in this particular case of the said project, I only sign the disbursement vouchers of the claims for partial payment to contractors concerned after the same are properly processed by lower-level employees and after all supporting papers/documents have been properly checked as in order. My indicator is when I see the initials of the Assistant District Engineer in the lower right portion below by printed name and another initial of the Administrative Officer II in the lower left portion of the same;

7. That in sum, when I sign my name, I have reasonable grounds to rely on the processing of the said claim by the employees concerned. I have no time to check and verify all the said papers/documents as I do not have that luxury of time and opportunity;

8. That in relation to the allegation of an anomalous situation why the date of the Contract Agreement is one day before (March 22, 2004) the date of the Special Allotment Release Order (SARO) is dated March 23, 2004) insinuating that the Contract Agreement was entered into even before funds were actually released and became available. The date of the Contract Agreement must logically be a clerical error only done in good faith. With all due respect, the project has long been known and announced to be within the jurisdiction of the Tacloban City Sub-District Office. As a matter of fact all the preparatory acts of the publication for bidding and the actual bidding process were done in September 2003 as shown by the Abstract of Bids dated September 18, 2003 (Annex "1" hereof). However, the Notice to Commence Work is exactly dated (March 23, 2004) at the time when the SARO was already released and funds were officially declared available. It is the Notice to Commence Work that officially executes the contract agreement. In sum, the discrepancy appearing in the Contract Agreement is purely a clerical error done in good faith and sans any malice at all. The amount of the project is immaterial in the usual practice. It is automatic that whenever a public work project is found in the territorial area of a district, we always have jurisdiction over the same;

9. That in this particular project, I have never conspired with anybody in allegedly violating Sections 3 (e) and (g), R.A. 3019, in either causing injury to the government, and giving a private party unwarranted benefit and advantage through manifest partiality, evident bad faith and gross inexcusable negligence; and that I never conspired with anybody in allegedly entering on behalf of the government into transaction manifestly and grossly disadvantageous to it as the same do not partake of any of my duties and responsibilities as enumerated in paragraph 4 above. I am not also expected to know the office fund code/s as such is the duty of another lower-level employee in the Office;

10. That I am performing the foregoing duties in our Office honestly and diligently as officially assigned to me to the best of my ability;

11. That my record in government service will show that in the performance of my official duties and responsibilities, I have never been involved in any violation of existing law, rules and regulations whatsoever;"[7]

On March 21, 2007, the Office of the Ombudsman, Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices issued an order mandating the respondents to submit their respective position papers.

The respondents submitted their position papers except for respondent Verzosa.

On March 26, 2008, the Office of the Ombudsman, Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices rendered a decision,[8] the dispositive portion of which reads:

"WHEREFORE, finding substantial evidence, respondents JAIME M. PACANAN and CELSO Z. LUMANIOG are hereby reprimanded. Moreover, respondents Baltazar J. Ausa, Francisco B. Vinegas, Jr., Christine Buena, Eduardo B. Pelias, Erda P. Gabriela, Ma. Regina R. Verzosa and Tomas Fabillo are found guilty of Conduct Prejudicial to the Best Interest of the Service and meted out the penalty of Six Months Suspension from the service without pay pursuant to Sec. 52 (A) (20) Rule IV of the Uniform Rules on Administrative Cases in the Civil Service.

Let the Secretary, Department of Public Works and Highways, be furnished copy of this Decision for implementation.

SO ORDERED."

On January 12, 2009, the Office of the Ombudsman issued an order[9] after review and consideration of the decision dated March 26, 2008, the dispositive portion of which reads:

"ACCORDINGLY, the Decision dated March 26, 2008 prepared by the panel of investigators composed of Attys. Kathryn Rose A. Hitalia, Marissa S. Bernal and Maria Teresa L. Lee Rafols is adopted except that instead of the penalty of reprimand for respondents Jaime A. Pacanan and Celso Z. Lumaniog, the penalty to be imposed against said respondents is suspension for six (6) months without pay for having found administratively liable for neglect of duty.

The finding that "respondents Baltazar J. Ausa, Francisco B. Vinegas, Jr., Christine Buena, Eduardo B. Pelias, Erda P. Gabriela, Ma. Regina R. Verzosa and Tomas Fabillo are found guilty of Conduct Prejudicial to the Best Interest of the Service and meted out a penalty of Six Months Suspension from the service without pay" is hereby maintained.

SO ORDERED."

On June 7, 2010, petitioner filed a motion to dismiss in lieu of position paper contending that the Office of the Ombudsman, Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices has no jurisdiction over him on the ground that he has compulsory retired from government service at age sixty-five (65) effective January 7, 2009 under Retirement No. AG-0021979.[10]

On February 4, 2011, the Office of the Ombudsman, Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices issued an order,[11] the dispositive portion of which reads:

"WHEREFORE, premises considered, it is respectfully recommended that:

1. The Motion for Reconsideration filed by respondent-movant Jaime A. Pacanan in OMB-V-A-06-0346-F be GRANTED; whereas
2. The Motion to Dismiss filed by respondent-movants Baltazar J. Ausa and Francisco B. Vinegas Jr., be DENIED.

Accordingly, the dispositive portion of the assailed Decision dated 26 March 2008, as amended by the Order dated 12 January 2009, is hereby modified to read as follows:

"WHEREFORE, premises considered, respondents Baltazar J. Ausa, Francisco B. Vinegas, Jr., Christine

Buena, Eduardo B. Pelias, Erda P. Gabriela, Ma. Regina R. Verzosa and Tomas Fabillo are hereby found GUILTY of Conduct prejudicial to the Best Interest of the Service and are meted the penalty of SUSPENSION for SIX (6) MONTHS WITHOUT PAY, pursuant to Section 52 (A) (20) Rule IV of the Uniform Rules on Administrative Cases in the Civil Service. However, in view of the compulsory retirement from the government service of respondent Baltazar J. Ausa, as well as the death of respondent Francisco B. Vinegas, the penalty of suspension against them is hereby MODIFIED to FINE in the amount equivalent to Six (6) Months Salary, to be deducted from their respective retirement and/or separation benefits. The charges against respondents Jaime M. Pacanan and Celso Z. Lumanig are hereby DISMISSED for insufficiency of evidence.

SO ORDERED."

On May 11, 2011, petitioner filed a petition for review under Rule 43 of the Revised Rules of Court, as amended before this Court.[12]

On May 24, 2011, this Court issued a resolution[13] directing the respondents to file comment (not a motion to dismiss) within ten (10) days from receipt of the petition and that petitioner may file a reply within five (5) days from receipt of the comment.

On July 28, 2011, respondents thru the Office of the Solicitor General (OSG) filed their comment.[14] On September 7, 2011, the Office of the Ombudsman filed an Omnibus Motion to Intervene and to Admit Attached Comment (Filed with Plea for Leave of Court).[15] On June 15, 2012, this Court 1) granted the Omnibus Motion to Intervene and to Admit Attached Comment (Filed with Plea for Leave of Court)[16] filed by counsel for the Office of the Ombudsman, and 2) noted the comment.[17]

On February 21, 2013, this Court required the parties to submit simultaneous memoranda of authorities.[18] Only respondents filed their memorandum.[19]

On July 9, 2013, in a Manifestation and Motion[20] dated June 17, 2013, counsel for the petitioner informed this Court of petitioner's death. A perusal of the death certificate shows that petitioner died of cardio respiratory arrest on April 30, 2013.[21]

The question as to whether an action survives or not depends on the nature of the action and the damage sued for. In the causes of action which survive, the wrong complained affects primarily and principally property and property rights, the injuries to the person being merely incidental, while in the causes of action which do not survive, the injury complained of is to the person, the property and rights of property affected being incidental.[22] Clearly, the administrative case against petitioner is a personal action which did not survive after he died. The supervening death of petitioner extinguished his civil personality. Consequently, this Court can no longer proceed with the petition.

Pertinent to this case is Civil Service Commission (CSC) Resolution No. 99-2113 dated September 17, 1999, which states:

"True, the respondent was formally charged prior to his demise and that he filed his answer to said charges. Nevertheless, to still proceed further with the instant case would be an exercise in futility. This precept was explained in the similar case of *GSIS vs. CSC*, 202 SCRA 799,[23] where the Supreme Court ruled, as follows:

'Death, however has already sealed that outcome, foreclosing the initiation of disciplinary administrative proceedings, or the continuation of any then pending, against the deceased employees. Whatever may be said of the binding force of the Resolution of July 4, 1988 so far as, to all intents and purposes, it makes exoneration in the administrative proceedings a condition precedent to payment of back salaries, it cannot exact an impossible performance or decree a useless exercise. Even in the case of crimes, the death of the offender extinguishes criminal liability, not only as to the personal, but also as to the pecuniary, penalties if it

occurs before final judgment. In this context, the subsequent disciplinary proceedings, even if not assailable on grounds of due process, would be an inutile, empty procedure in so far as the deceased employees are concerned: they could not possibly be bound by any substantiation in said proceedings of the original charges: irregularities in the canvass of supplies and materials. The questioned orders of the Civil Service Commission merely recognized the impossibility of complying with the Resolution of July 4, 1988 and the legal futility of attempting a post-mortem investigation of the character contemplated.'

In this case, the death of petitioner rendered the pending petition for review impossible. As such, the case should be dismissed because to proceed with the same would only be a waste of the time and resources of this Court.[24]

WHEREFORE, the petition for review is DENIED. The order dated February 4, 2011 of the Office of the Ombudsman, Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices in OMB-V-A-06-0346-F is AFFIRMED.

SO ORDERED.

Lampas Peralta, (Chairperson), and Acosta, JJ., concur.

[1] Rollo, pp. 24-54.

[2] Rollo, pp. 55-65.

[3] Rollo, pp. 66-68.

[4] Rollo, pp. 82-89.

[5] Rollo, pp. 100-101.

[6] Rollo, pp. 102-104.

[7] Rollo, pp. 102-104.

[8] Rollo, pp. 55-65.

[9] Rollo, pp. 66-68.

[10] Rollo, pp. 111-115.

[11] Rollo, pp. 82-89.

[12] Rollo, pp. 24-54.

[13] Rollo, p. 132.

[14] Rollo, pp. 137-166.

[15] Rollo, pp. 171-

[16] Rollo, pp. 171-

[17] Rollo, p. 197.

[18] Rollo, p. 206.

[19] Rollo, pp. 211-229.

[20] Rollo, pp. 230-232.

[21] Rollo, p. 233.

[22] Fabiana C. Vda. De Salazar vs. Court of Appeals, Primitivo Nepomuceno and Emerenciana Nepomuceno, G.R. No. 121510, November 23, 1995.

[23] G.R. No. 96938, October 15, 1991.

[24] See Resolution No. 02-0518, Lagao, Ricardo P., Re: Violation of Office Rules and Regulations; Grave Misconduct; Dishonesty, April 11, 2002.

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