

JOSE LITO F. LAMBOJON, PETITIONER, VS. ENGR. DIOSDADO A. ROSALES, ACTING REGIONAL MANAGER (SG-24) NATIONAL IRRIGATION ADMINISTRATION OFFICE NO. 7 DAO DISTRICT, TAGBILARAN CITY (...)

Ponente: QUIJANO-PADILLA, J.

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QUIJANO-PADILLA, J.:

Before Us is a petition for certiorari assailing the Decision[1] dated June 22, 2012 of the Office of the Ombudsman (Visayas) in OMB-V-A-11-0865-L for Misconduct pursuant to Section 5 (a) of R.A. 6713 or Code of Conduct and Ethical Standards for Public Officials and Employees.

The Facts

On September 13, 2010, the National Irrigation Administration-Regional Irrigation Office No. 7 [NIA Region 7] through Regional Manager Modesto G. Membreve [Membreve] made a request for an authority to fill up the vacancy for the position of Administrative Services Chief A (Item No. 36-16).[2] After obtaining an authority, Membreve sent a letter to the Civil Service Commission Bohol Field Office [CSC-BFO] on April 4, 2011 informing the said office to cause the publication in the Civil Service Bulletin of the vacant position of Administrative Services Chief A, Item No. 36-16, SG-20 with a salary of P29,052 per month.[3] The period of posting of this notice was from April 19- May 4, 2011. Petitioner Jose Lito F. Lambojon [Lambojon] applied for the position. He was then the Administrative Services Chief A on casual status of the NIA Region 7 since June 2009.[4]

On June 29, 2004, the Personnel Selection Board [PSB] was convened and it conducted a screening process among the applicants. On July 4, 2011, the PSB-Executive issued a Certification that three [3] candidates namely: Pacifico Alfarero, Jr., Ailene C. Garcia and Jose Lito F. Lambojon were eligible for the appointment/promotion.[5] Prior to that, on July 1, 2011, Lambojon was appointed as Administrative Services Chief A (SG-20) by Membreve certified to by private respondent Diosdado A. Rosales [Rosales], who was then the Division Manager, Administrative and Finance Division as well as Dexter G. Patrocinio [Patrocinio], the Chairman of the PSB.[6]

However, on August 8, 2011, Membreve received a letter from CSC Director Nissi Cherith V. Asis informing him that the vacant position was item 36-16 for Administrative Services Officer V and not Administrative Services Chief A. So that the correct vacant position not being published, the appointment of Lambojon was nullified and was returned for non-compliance of R.A. 7041 or the Publication Law.

On August 10, 2011, the correct vacant position which is Administrative Services Officer V was published on the CSC Bulletin[7] from August 11-25, 2011.[8] Thereafter, Rufinita E. Ada and Ma. Higinia P. Castillon submitted their respective applications.[9]

It is now Lambojon's stand that the application of the two [2] applicants were only submitted on August 26, 2011

or a day after the posting, hence, it was not anymore considered by the PSB, so the latter issued another appointment paper to Lambojon on September 1, 2011, now with the correct title of the position.[10] This subsequent appointment was not certified by Rosales and Patrocinio. Thus, on September 12, 2011 a memorandum from Membreve was sent to both directing them to explain why they did not sign the subsequent appointment when previously they did.[11] Patrocinio signed the appointment certifying that Lambojon was screened and found to be qualified by the PSB as reflected on the June 29, 2011 screening when the PSB convened.[12] With Patrocinio's signature, the memorandum was revised and addressed to Rosales only.[13]

On September 15, 2011, Rosales sent a letter of query to the CSC Regional Director, Atty. Judith D. Chicano, pertaining to the appointment of Lambojon. In said communication, Rosales posits that with the nullification of the July 1, 2011 appointment of Lambojon and following the publication, two [2] more applicants submitted their applications for the position. To his mind, the proper recourse was for PSB to start anew the screening process to include the new applicants so that he could not just affix his signature on the said appointment in accordance with the directive of Membreve.[14]

On the same day, Rosales answered Membreve's memorandum stating the reasons for his refusal to affix his signature. In said answer he also informed Membreve that he was waiting for CSC's response to his query.

On November 8, 2011, the CSC replied[15] to Rosales' query stating:

"It bears stressing that as a matter of practice that has since evolved into an operating policy, the Commission and its constituent units refrain from rendering definitive opinion on queries, which involved issues and questions that are based on actual facts and which may later on be elevated to it by way of a complaint of an appeal. This is to avoid a situation where the Commission shall be pre-empting the resolution of actual and justiciable cases, without affording all the parties their day in court, which can happen in the event of legal opinions.

At any rate, we wish to stress that the Commission on June 23, 2009 promulgated CSC Resolution No. 090917 declaring null and void any appointment that has failed to comply with the publication law. The aforesaid Resolution is circularized in CSC MC No. 28, s. 2009, which provides in parts, as follows:

2. If the appointment failed to comply with the requisite publication, the CSCRO/CSCFO shall:

2.1 Return the appointment to the appointing authority (or agency head, as the case may be) with a Notice that the appointment is declared null and void for having been issued in violation of Publication Law.

xxxxx

3. The appointee whose appointment was declared null and void shall receive compensation for actual services rendered as a de facto officer from the time he/she assumed the functions of the position up to the time he/she received a copy of the notice.

4. The Notice should advise about the following conditions/guidelines:

xxxxx

4. After compliance with the publication/posting requirements, the appointing authority may issue an appointment immediately. He/she will not be precluded from appointing the previous appointee provided the appointment process prescribed under the Civil Service rules and regulations was properly observed."[16]

Despite that, on September 16, 2011 Membreve forwarded the second appointment of Lambojon to the CSC without the signature of Rosales. Necessarily, the said appointment was returned because of the lacking signature which certifies the completeness of the requirements and lacking certification from the Human Resource

Management Officer that the vacant position was duly published.[17]

In the meantime, with the reassignment of Membreve at Region 13-CARAGA, Butuan City, Rosales was designated Acting Regional Manager for Region 7, Tagbilaran City effective on October 17, 2011.[18]

Hence, on December 1, 2011 Rosales requested that the vacancy of the position of Administrative Services Officer V 36-16 (SG-20), among others to be published in the Civil Service Bulletin[19] which was duly published on December 6-19, 2011.[20]

On December 21, 2011, the PSB convened and conducted the screening and evaluation of the applicants but Lambojon did not participate in the selection process because he considered it to be highly irregular.[21]

Thereafter, Ma. Higinia P. Castillon was appointed as Administrative Services Officer V (SG-20) on January 2, 2012. Prior thereto and in anticipation of the appointment, Rosales issued Office Memorandum No. 11-20, dated December 27, 2011 to Lambojon informing the latter of the termination of his services on December 31, 2011 as the said position was already filled up.[22]

Aggrieved therefrom, he filed a complaint for violation of Section 5(a) of R.A. 6713 or Code of Conduct and Ethical Standards for Public Officials and Employees before the Office of the Ombudsman. In his complaint, he alleged that on September 19, 2011, Rosales phoned him telling him that he did not sign his appointment because of the threat of the two [2] new applicants who will file a protest over his appointment and in order to appease the two, Rosales asked for the amount of P100,000.00 in order to give to the two [2]. This conversation was heard by Emmanuel Lagura and Zenaida Rama because his phone was on speaker mode.[23] Lambojon likewise, filed a letter-complaint which was treated as an appeal for the disallowance of his appointment before the CSC-BFO on January 11, 2012.[24]

The Ombudsman in exonerating Rosales explained in its Decision[25] dated June 22, 2012, that:

“Rosales could not also be guilty of Misconduct. Misconduct is defined as a transgression of some established or definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. No such transgression was committed.

WHEREFORE, foregoing considered, the instant case against ENGR. DIOSDADO A. ROSALES is hereby DISMISSED for lack of merit.

SO DECIDED.”

Lambojon's motion for reconsideration[26] was denied[27], thus via a petition for certiorari Lambojon raised the following assignment of errors, to wit:

“I. WITH ALL DUE RESPECT, THE DECISION (ANNEX “F”) OF THE HONORABLE OFFICE OF THE OMBUDSMAN (VISAYAS) DISMISSING THIS INSTANT CASE AGAINST (PRIVATE) RESPONDENT AND THE SUBSEQUENT ORDER (ANNEX “H”) DENYING THE MOTION FOR RECONSIDERAION ARE CONTRARY TO LAW AND EVIDENCE CONSIDERING THAT THERE IS SUBSTANTIAL EVIDENCE AGAINST (PRIVATE) RESPONDENT DIOSDADO A. ROSALES FOR VIOLATION OF SECTION 5(a) OF R.A. 6713 OR MISCONDUCT FOR HIS REFUSAL TO SIGN THE CERTIFICATION IN PETITIONER JOSE LITO F. LAMBOJON'S SECOND APPOINTMENT; AND

II. (PRIVATE) RESPONDENT'S REFUSAL TO SIGN THE SECOND APPOINTMENT OF PETITIONER JOSE LITO F. LAMBOJON HAS NO BASIS IN LAW AND IN FACT BUT MERELY WAS DUE TO MANIFEST PARTIALITY, EVIDENT BAD FAITH, GROSS INEXCUSABLE NEGLIGENCE OR MISCONDUCT.”[28]

In the meantime, the CSC in its Decision dated November 22, 2012 ruled that the appointment of Jose Lito F. Lombojon as Administrative Services Officer V of the National Irrigation Administration (NIA) Regional Irrigation Office No. 7, Tagbilaran City, Bohol issued on September 1, 2011 is acted anew and approved as proposed. The CSC directed Rosales to immediately reinstate Lambojon to the position of Administrative Services Officer V. The appointment of Ma. Higinia P. Castillon as Administrative Officer V is recalled and she is reverted back to her previous position prior to her promotion.[29]

Our Ruling

In his petition for certiorari, petitioner asserts that Rosales was guilty of misconduct. Accordingly, after the invalidation of his first appointment and after the correct vacant position was duly published, he was still the one appointed by their Regional Manager. Pursuant to R.A. 7041 or the Publication Law, the appointing power is not precluded from appointing the previous appointee so long as the prescribed Civil Service rules and regulations was properly observed. Thus, the second appointment having been issued, Rosales' failure to sign the same despite the mandate of their then Regional Manager Membreve, constitutes a violation of Section 5(a) of R.A. 6713, which reads:

“Section 5. Duties of Public Officials and Employees. - In the performance of their duties, all public officials and employees are under obligation to:

(a) Act promptly on letters and requests. - All public officials and employees shall, within fifteen (15) working days from receipt thereof, respond to letters, telegrams or other means of communications sent by the public. The reply must contain the action taken on the request.

xxxxx”

In deciding the instant case, We are guided by the pronouncement of the Supreme Court in *Vergara v. Ombudsman*[30] that reads:

“We reiterate the rule that courts do not interfere in the Ombudsman’s exercise of discretion in determining probable cause unless there are compelling reasons. The Ombudsman’s finding of probable cause, or lack of it, is entitled to great respect absent a showing of grave abuse of discretion. Besides, to justify the issuance of the writ of certiorari on the ground of abuse of discretion, the abuse must be grave, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.”

Grave abuse of discretion is defined as capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. Mere abuse of discretion is not enough. It must be grave abuse of discretion as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and must be so patent and so gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[31]

We hold that the Office of the Ombudsman did not act with grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the case against Rosales.

As with the Office of the Ombudsman, We find that there was no substantial evidence to hold Rosales administratively liable under Section 5(a) of R.A. 6713.

In reiteration, petitioner asserts that Rosales in refusing to affix his signature on his second appointment dated September 1, 2011 was without basis in fact and in law. Even after the directive of their former Regional Manager Membreve for Rosales to sign thereto, the latter still refused.

The records reveal that Rosales had a good reason not to sign the second appointment. After the nullification of the first appointment of Lambojon, the correct vacant position was published which resulted to two [2] more applicants applying for the position. The said applications were no longer entertained because they were filed a day after the posting of the position which resulted to the reappointment of Lambojon. In refusing to sign the certification, a memorandum was sent by Membreve to Rosales on September 12, 2011 asking the latter to explain why he did not affix his signature to the second appointment when in fact they signed the previous appointment. The reason given by Rosales in his response dated September 15, 2011 was that:

- “1. Although it was stated in the pro-forma letter of Director Nissi Cherith V. Asis that after compliance with the publication/posting requirements you may issue an appointment immediately, it is further and clearly stated in the next sentence that provided the appointment process prescribed under the Civil service rules and regulations are properly observed;
2. Since as a result of the new publication, two (2) new applicants responded, it is deemed proper that conduct of screening process be undertaken to include the new applicants.
3. Initially, the undersigned seek the opinion of the CSC and was advised to go back to the screening process.
4. The certification to be signed at the back of the appointment states that all requirements and supporting papers pursuant to MC #40, S. 1998 have been complied with, reviewed and found to be in order, which the undersigned believes otherwise.”[32]

Candidly, the CSC opinion on the matter was not too helpful of the issue presented by Rosales. It did not address squarely the issue at hand such as what is the consequence of the nullification of the appointment of Lambojon, after the publication when there are other applicants who would be applying for the position, should the PSB convene and screen the said applicants and more importantly should the applicants tender their application during the period of posting only?

With that in hand, it could not be gainsaid that Rosales committed a misconduct. Misconduct has a legal and uniform definition. Misconduct has been defined as an intentional wrongdoing or a deliberate violation of a rule of law or standard of behavior, especially by a government official. A misconduct is grave where the elements of corruption, clear intent to violate the law or flagrant disregard of established rule are present. Otherwise, a misconduct is only simple.[33]

At this point it is well worth to quote with approval the factual findings of the Office of the Ombudsman, thus:

“Thirdly, it is not correct to say that Rosales failed to act on Lambojon's appointment. Documentary evidence shows that upon receipt of the Memorandum of Membreve, Rosales immediately referred the same to the CSC and informed the former accordingly. Thus, he acted on the same but unfortunately, not in accordance with the wishes of Lambojon.

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The legislative intent behind Section 5(a) of R.A. 6713 is to compel public officials and employees to act with dispatch on pending requests or inquiries addressed to them in connection with their official functions. Rosales had acted on the request. And to penalize him on the solitary ground that he failed to respond favorably to the request would result to an iniquitous if not absurd interpretation and application of the law.”[34]

WHEREFORE, in view of the foregoing, the instant petition for certiorari is hereby **DISMISSED**. The Decision dated June 22, 2012 of the Office of the Ombudsman (Visayas) in OMB-V-A-11-0865-L for Misconduct pursuant to Section 5 (a) of R.A. 6713 or Code of Conduct and Ethical Standards for Public Officials and Employees is hereby **AFFIRMED** in toto.

SO ORDERED.

Hernando, J., Chairperson, and [*]Lopez, JJ., concur.

[*] Vice Justice Marie Christine Azcarraga-Jacob, Office Order No. 01-15-GTI, January 22, 2015

[1] Rollo, pp. 113-123, penned by the Graft Investigation & Prosecution Officer Jane Aguilar

[2] Rollo, p. 53

[3] Rollo, p. 30

[4] Rollo, p. 32

[5] Rollo, p. 33

[6] Rollo, p. 34

[7] Rollo, p. 37

[8] Rollo, p. 33

[9] Rollo, p. 8

[10] Rollo, p. 39

[11] Rollo, p. 67

[12] Rollo, p. 9

[13] Rollo, p. 68

[14] Rollo, pp. 69-70

[15] Rollo, pp. 77-78

[16] Rollo, p. 73

[17] Rollo, pp. 75-76

[18] Rollo, p. 74

[19] Rollo, pp. 79-80

[20] Rollo, pp. 81-82

[21] Rollo, p. 11

[22] Rollo, p. 83

[23] Rollo, pp. 22-23

[24] Rollo, p. 133-143

[25] Rollo, pp. 113-123

[26] Rollo, pp. 124-132

[27] Rollo, pp. 135-137

[28] Rollo, pp. 5-6

[29] Rollo, pp. 150-160

[30] G.R. No. 174567, March 12, 2009

[31] Ganaden, et al. v. Office of the Ombudsman, et al., G.R. Nos.169359-61, June 1, 2011

[32] Rollo, p. 214

[33] Imperial v. GSIS, G.R. No. 191224, October 4, 2011

[34] Rollo, pp. 121-122

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