

**LAUREANO Q. TOLENTINO, GLEN BERDIN, AMELIA HERRERA,
MINDA BULA, DOMINADOR ESGUERRA, JR., EDITH M. CALDERON,
ROMEO CORPUZ, PETITIONERS, VS. REMEDIOS A. ASPRER,
RESPONDENT.**

Ponente: ZALAMEDA, R.V., J.

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ZALAMEDA, R.V., J.:

This is a Petition for Review[2] of the Order[3] dated 21 February 2012 and Order[4] dated 15 November 2012, both issued by the Office of the Ombudsman[5] in an administrative case for Grave Misconduct, Conduct Prejudicial to the Best Interest of the Service and Dishonesty, docketed as OMB-C-A-07-0391-H, entitled "Laureano Q. Tolentino, Glen Berdin, Amelia Herrera, Minda Bula, Dominador Esguerra, Jr., Edith M. Calderon, Romeo Corpuz vs. Remedios A. Asprer."

The facts are as follows —

Sometime in 2007, an anonymous letter from a certain Quezon City taxpayer dated 28 February 2007, prompted the Field Investigation Office of the Ombudsman to file a complaint against respondent Remedios A. Asprer[6] for Grave Misconduct, Dishonesty and Falsification of Official Documents docketed as OMB-C-A-08-0420-H.[7] Apparently, respondent used her position as Chief, Personnel Section and concurrently as Acting Chief, Administrative Division of the City Secretary's Office, to issue falsified "certified true copy of certificates of employment" to certain individuals to make it appear that the latter were employees of the City Hall of Quezon City. These falsified documents were then used as requirements for loan applications with the Government Mutual Benefit Association, Inc.[8] The first complaint was later dismissed by the Ombudsman for lack of substantial evidence to hold respondent liable therefor.[9]

After three (3) months, petitioners Laureano Q. Tolentino, Glen Berdin, Amelia Herrera, Minda Bula, Dominador Esguerra, Jr., Edith M. Calderon, Romeo Corpuz[10] filed the subject administrative complaint for Grave Misconduct, Dishonesty and Violation of the Code of Conduct and Ethical Standards for Public Officials and Employees against respondent, now docketed as OMB-C-A-07-0391-H,[11] ostensibly based on the same facts and evidence as those submitted in the first complaint.

In the second complaint, petitioners asserted that respondent was in cahoots with the loan applicants and other individuals to obtain a huge loan amount through fraudulent means. According to petitioners, respondent cannot deny her participation on the falsity of the employment documents as her name and signature appears thereon. Further, respondent even certified the documents as true copies of the original in her custody. In addition, petitioners argued that respondent cannot free herself from liability by passing the blame on other people who supposedly perpetuated the forgery.

Respondent, through her Counter-Affidavit,[12] denied the accusations, asking for the dismissal of the second complaint based on res judicata and lack of cause of action. Respondent argued that the allegations against her had already been decided with finality, as she was already exonerated by the Ombudsman in the first complaint,

OMB-C-A-08-0420-H. Like in the previous case, respondent denied being the author of the forgery; insisted the real authors thereof to be her co-employees, Ma. Teresa A. De Belen and Emma U. Flores, who even offered to pay the balance of the loan acquired therefrom. Respondent likewise argued that the pieces of evidence submitted by petitioners against her cannot be given probative value being mere photocopies; further, that GEMBA had already admitted not having in its possession the original of the alleged falsified certificates of employment.

After hearing, the Office of the Ombudsman, through Graft Investigation and Prosecution Officer II Joseph L. Licudan, rendered a Decision[13] dated 30 May 2011, finding respondent liable for Violation of Republic Act 6713, Dishonesty and Grave Misconduct and dismissing her from the service as a penalty. The fallo of the Decision reads —

"X x x

FOREGOING CONSIDERED, pursuant to Section 52 (A-1) and (A-3), Rule IV of the Uniform Rules on Administrative Cases (CSC Resolution No. 991936), dated August 31, 1999, respondent REMEDIOS A. ASPRER is hereby found guilty of Violation of R.A. 6713, DISHONESTY and GRAVE MISCONDUCT and is meted the corresponding penalty of DISMISSAL FROM THE SERVICE including all its accessory penalties and without prejudice to criminal prosecution.

Pursuant to Section 7, Administrative Order No. 17 of the Office of the Ombudsman and the Ombudsman Circular No. 01, Series of 2006, the HONORABLE MAYOR OF QUEZON CITY is hereby directed to implement this Decision and to submit promptly a Compliance Report within five (5) days from receipt indicating the OMB case number, to this Office, thru the Central Records Division, 2nd Floor, Ombudsman Building, Agham Road, Government Center, North [T]riangle, Diliman, 1128 Quezon City.

Compliance is respectfully enjoined consistent with Sec. 3 (e) of RA 3019 (Anti-Graft and Corrupt Practices Act) and Section 15(3) of RA 6770 (Ombudsman Act of 1989).

SO ORDERED.

X x x"[14]

Subsequently, however, the Ombudsman made an about turn as it issued the now assailed Order, granting respondent's Motion for Reconsideration.[15]

The fallo of said Order reads —

"X x x

WHEREFORE, the motion for reconsideration of respondent Remedios A. Asprer is hereby GRANTED. The Decision 30 May 2011 dismissing the respondent from the service is hereby REVERSED and SET ASIDE.

SO ORDERED.

X x x"[16]

As petitioners' Motion for Reconsideration[17] was denied by the Office of the Ombudsman, they are now before Us through the instant recourse, with the following arguments, viz. —

"X x x

The Office of the Ombudsman erred in the appreciation of the Affidavits of Richard Astrologo, Luzviminda [Fernandez] and Reynaldo Dela Cruz.

X x x

The Office of the Ombudsman erred in stating that herein respondent had no personal knowledge of the falsifications.

X x x

The Office of the Ombudsman, in its [O]rder dated February 21, 2012, erred in holding that the photocopies of the appointment letters submitted by the petitioners are not enough to constitute substantial evidence and that the original documents are needed.

X x x"[18]

We dismiss the Petition.

Appropriately argued by the respondent, it bears pointing out at the outset that this Petition warrants dismissal for being an improper recourse to question the Orders of the Office of the Ombudsman.

Indeed, a dismissal by the Ombudsman of an administrative complaint is, under pertinent Ombudsman Rules, final and unappealable. This conclusion finds support in a slew of jurisprudence, including *Eloisa L. Tolentino vs. Atty. Roy M. Loyola, et al.*, [19] where the Supreme Court, ruling on the same issue, held in this wise —

"X x x

On a procedural note, the assailed ruling of the Ombudsman obviously possesses the character of finality and, thus, not subject to appeal. The pertinent provision in this case is the old Section 7, Rule III of Ombudsman Administrative Order No. 7, Series of 1990 (Rules of Procedure of the Office of the Ombudsman), before it was amended by Ombudsman Administrative Order No. 17, Series of 2003 (Amendment of Rule III, Administrative Order No. 7), which states that:

Sec. 7. FINALITY 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 and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for certiorari shall have been filed by him as prescribed in Section 27 of RA 6770.

The basis for the said rule of procedure is Section 27 of Republic Act No. 6770 (The Ombudsman Act), to wit:

Section 27. Effectivity and Finality of Decisions. — (1) All provisional orders of the Office of the Ombudsman are immediately effective and executory.

X x x x

Findings of fact by the Office 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.

As shown by the aforementioned regulation and statute, a decision of the Ombudsman absolving the respondent of an administrative charge is final and unappealable.

X x x"

But all is not lost for the complainant in case the Ombudsman decides to exonerate a government employee from an administrative charge filed against him or her, as in this case. As categorically held by the Supreme Court in *Tolentino*, the complainant, like the herein petitioners, may file a Petition for Certiorari under Rule 65 of the Rules of Court [20] and as further explained in other cases, petitioners can assail the decision or ruling of the

Ombudsman on the ground of grave abuse of discretion, thus —

"X x x

The absence of any statutory right to appeal the exoneration of the respondent in an administrative case does not mean, however, that the complainant is left with absolutely no remedy. Over and above our statutes is the Constitution whose Section 1, Article VIII empowers the courts of justice to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. This is an overriding authority that cuts across all branches and instrumentalities of government and is implemented through the petition for certiorari that Rule 65 of the Rules of Court provides. xxx The Rules of Court and its provisions and jurisprudence on writs of certiorari fully apply to the Office of the Ombudsman as these Rules are suppletory to the Ombudsman's Rules.

X x x[21]

As in the Tolentino case, though, herein petitioners did not file a Petition for Certiorari under Rule 65 of the Rules but a Petition for Review, which We only presume to have been filed under Rule 43 thereof. In any case, it has already been told that a petition for review under Rule 43 of the Rules is effectively an appeal to the Court of Appeals which R.A. No. 6770 and the Ombudsman Rules do not allow in an exoneration situation, as above discussed.[22] Clearly, the instant Petition is dismissible on this basis alone.

Technicality aside, and even if, on equitable consideration and for the sake of substantial justice, We consider this Petition as one filed under Rule 65 of the Rules, the Petition still is without merit.

Let it be stated that when a court has jurisdiction over the case, as it is here, a petition for certiorari will prosper only if grave abuse of discretion is alleged and proved to exist.[23] The use of a petition for certiorari is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void" and it can only strike an act down for having been done with grave abuse of discretion if the petitioner could manifestly show that such act was patent and gross.[24]

"X x x

'Grave abuse of discretion,' as contemplated by the Rules of Court, is 'the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power' that is so patent and gross that it 'amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law.' Such capricious, whimsical and arbitrary acts must be apparent on the face of the assailed order. X x x

X x x"[25]

As a well-settled rule in administrative cases, findings of fact of administrative bodies, if based on substantial evidence, are controlling on the reviewing authority.[26] Their findings must be respected as long as they are supported by substantial evidence, even if such evidence is not overwhelming or even preponderant. It is not the task of the appellate court to once again weigh the evidence submitted before and passed upon by the administrative body and to substitute its own judgment regarding sufficiency of evidence.[27] Said otherwise, "[a]dministrative decisions on matters within their jurisdiction are entitled to respect and can only be set aside on proof of grave abuse of discretion, fraud or error of law." [28]

In this case, after reviewing the records Ourselves, We are convinced that there is indeed the absence of substantial evidence on record to establish the charges against respondent. It is apropos to quote the elucidation by the Ombudsman in this respect —

"X x x

Here, respondent was charged because she certified the Certificates of Appointment of Alexander Vinoya, Aurelia Del Rosario, Pamela Peralta, Chyril Medina, Marivic Jabello, Ermelinda De Guzman, as well as the service record of Maricel Prudente as true copies of the original documents on file in her office, when in reality said employees were not really employed with them.

A close scrutiny of the evidence presented by the complainant reveals that the same consisted only of the Certification of Lagrada and the falsified Certificates of Appointment and Service Record of the purported employees. Considering that the respondent is disputing her signature in the questioned documents, the complainant should have presented proofs to rebut the respondent's claim of forgery or at least showed evidence that the respondent perhaps together with De Belen and Flores appropriated the loan proceeds from GEMBA. In other words, the complainant must prove that it was really the respondent who issued the falsified Certificates of Appointment because she benefited from it. However, as shown by the records, the complainants failed to prove the same.

The complainant alleged in their complaint that the respondent was in cahoots with some employees in falsifying the questioned documents for purpose of appropriating for themselves the proceeds of the loan that were obtained from GEMBA. However, allegation is not synonymous with proof. It cannot be equated with proof. Allegations must always be supported by evidence substantial enough to prove one's claim.

Likewise, respondent presented affidavits from a number of witnesses attesting that she was not aware of the falsification. The Affidavit of Richard Astrologo pointed to a certain Teresa De Belen and Emma Flores as the authors of the falsification. Astrologo said that he himself was a victim of the two when they used his name to obtain a loan from GEMBA. The Affidavits of Luzviminda Fernandez and Reynaldo Dela Cruz supported Astrologo's assertion that it was really De Belen and Flores who authored the falsification of the certificates of appointment for purposes of borrowing money from GEMBA. Apparently, these affidavits could not just be taken for granted. It may be the signature of the [respondent] which had appeared in the certification portion of the falsified documents; but as proved by the foregoing evidence, the signature was not hers. Thus, there was no reason for Us to hold the respondent liable for the administrative offenses of Falsification, Dishonesty and Grave Misconduct.

Further, the falsified documents that were presented were not certified or authenticated. In *Spouses Fige vs. Court of Appeals*, the Supreme Court sustained the ruling of the trial court in not giving probative value to uncertified documents submitted in evidence. The Court explained that since the authenticity of the said documents was not established, they cannot be given any consideration at all. [Emphasis supplied]

X x x"[29]

Indeed, although petitioners may have established the fact of forgery, they nonetheless failed to provide competent evidence to prove she was the author thereof. Neither did petitioners have substantial proof of respondent's participation in the commission of the loan scam.

All that petitioners have as link between respondent and the forgery or the fraudulent activities committed against GEMBA were the photocopies of the alleged falsified Certificates of Appointment and Service Record. But these are unauthenticated photocopies which, as the Rules mandate, are inadmissible or have no probative value, at the very least.[30] Petitioners fault the Ombudsman for not giving due consideration to the Certification issued by GEMBA that they have a copy thereof on file. However, even said Certification shows the copy on file to be with GEMBA, which were used in the processing of the loans, likewise are photocopies.[31] Thus, the Ombudsman said –

"X x x

X x x Considering that the respondent is disputing her signature in the questioned documents, the complainant should have presented proofs to rebut the respondent's claim of forgery or at least showed evidence that the

respondent perhaps together with De Belen and Flores appropriated the loan proceeds from GEMBA. In other words, the complainant must prove that it was really the respondent who issued the falsified Certificates of Appointment because she benefitted from it. However, as shown by the records, the complainants failed to prove the same. [Emphasis supplied]

X x x"[32]

Given the paucity of competent evidence of respondent's link to the commission of the falsification and further, considering the previous finding by the Office of the Ombudsman in a separate case involving the same evidence, i.e., that the purported signature of respondent in the falsified documents had a different stroke from her usual signature, as well as the other pieces of evidence in this case tending to establish respondent's innocence like the Affidavits of respondent's witnesses, the Ombudsman was correct to dismiss the Complaint against her.

Notably, petitioners still claim that respondent had personal knowledge as she did not even bother to file a case against the individuals who were the authors of the forgery, or at least report them to higher authorities. Such theory may be true but then again, a reasonable mind cannot and should not assume as true any speculation devoid of substantial proof. The courts cannot hold respondent liable, let alone dismiss her from service, on pure conjecture, however probable it may be. To follow such line of thinking would be the height of injustice and a clear case of grave abuse of discretion.

All told, We find no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Ombudsman in dismissing the complaint against respondent.

WHEREFORE, premises considered, the instant Petition is hereby DISMISSED and the assailed Orders stand.

SO ORDERED.

Bato, Jr., (Chairperson), and [1]Peralta, Jr., JJ., concur.

[1] Vice J. Maria Elisa Sempio Diy, per Office Order No. 405-14-RSF dated 30 September 2014.

[2] Rollo, pages 25 to 36.

[3] Id. at 131 to 137, Annex "X;" Penned by Graft Investigation and Prosecution Officer-II Russel C. Labor-Lay-at.

[4] Id. at 37 to 47, Annex "A." Penned by Overall Deputy Ombudsman Orlando C. Casimiro.

[5] "Ombudsman," for brevity.

[6] "Respondent," for brevity.

[7] "First complaint," for brevity.

[8] "GEMBA," for brevity.

[9] Rollo, pages 180 to 181.

[10] "Petitioners," for brevity.

[11] "Second Complaint," for brevity.

[12] Rollo, pages 198 to 204.

- [13] Id. at 83 to 101, Annex "V."
- [14] Id. at 99 to 100.
- [15] Id. at 102 to 130, Annex "W."
- [16] Id. at 136.
- [17] Id. at 138 to 146, Annex "Y."
- [18] Id. at 32 to 34.
- [19] G.R. No. 153809, 27 July 2011.
- [20] "Rules," for brevity.
- [21] Prudencio M. Reyes, Jr. vs. Simplicio C. Belisario, et al. G.R. No. 154652, 14 August 2009.
- [22] Id.
- [23] Rudolfo I. Beluso vs. Commission on Elections, et al., G.R. No. 180711, 22 June 2010.
- [24] Eric U. Yu vs. Hon. Judge Agnes Reyes-Carpio, et al., G.R. No. 189207, 15 June 2011.
- [25] Novateknika Land Corporation vs. Philippine National Bank, et al., G.R. No. 194104, 13 March 2013.
- [26] Lorna A. Medina vs. Commission on Audit, et al., G.R. No. 176478, 04 February 2008.
- [27] Spouses Ricardo Hipolito Jr. and Liza Hipolito vs. Teresita Cinco, et al., G.R. No. 174143, 28 November 2011.
- [28] Lorna A. Medina vs. Commission on Audit, et al., G.R. No. 176478, 04 February 2008.
- [29] Rollo, pages 133 to 135.
- [30] Office of the Ombudsman vs. Carmencita D. Coronel, G.R. No. 164460, 27 June 2006.
- [31] Rollo, page 53, Annex "E."
- [32] Id. at 42.

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