

MAYOR JULIUS CESAR VERGARA, PETITIONER, VS. THE HONORABLE OFFICE OF THE OMBUDSMAN, REPRESENTED BY THE HON. OMBUDSMAN CONCHITA CARPIO-MORALES, THE DEPARTMENT OF INTERIOR AND LOCA...

Ponente: LOPEZ, J.

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LOPEZ, J.:

Petitioner Mayor Julius Cesar Vergara was found guilty by Graft Investigation and Prosecution Officer II Ismaela B. Boco for violating Section 5(a)[1] of RA 6713[2] penalizing him as follows:

xxx Accordingly, he is meted the penalty of Suspension for six (6) months from the government service pursuant to Section 10, Rule III of the Administrative Order No. 07, this Office, in relation to Section 25 of Republic Act No. 6770.

It is further recommended that both respondents, JULIUS CESAR VERGARA and RAUL P. MENDOZA be administratively liable for NEGLIGENCE OF DUTY for failing to implement RA 9003. Accordingly, each of them is meted the penalty of Suspension for six (6) months from the government service pursuant to Section 10, Rule III of the Administrative Order No. 07, this Office, in relation to Section 25 of Republic Act No. 6770.[3]

On respondent's motion for reconsideration,[4] the Office of the Ombudsman modified the penalty imposed as follows:

PREMISES CONSIDERED, the Decision dated 7 February 2006 is hereby AFFIRMED with modification. The penalty imposed on respondent-movant Julius Cesar V. Vergara for failure to act promptly on letters and requests is reduced from six-month suspension to reprimand in light of the foregoing disquisition.[5]

Dissatisfied, petitioner filed the instant petition for review[6] raising the following errors:

I. WHETHER THE RESPONDENT OFFICE OF THE OMBUDSMAN COMMITTED GRAVE ERROR OF FACT AND LAW AND WITH GRAVE ABUSE OF AUTHORITY IN FINDING PETITIONER GUILTY OF (1) VIOLATION OF SECTION 5(a) of REPUBLIC ACT NO. 6713 AND (2) NEGLIGENCE OF DUTY FOR FAILING TO IMPLEMENT REPUBLIC ACT NO. 9003 DESPITE SUBSTANTIVE COUNTER EVIDENCE ADDUCED BY PETITIONER;

II. 1) ASSUMING WITHOUT ADMITTING THAT THE PETITIONER IS ADMINISTRATIVELY LIABLE, xxx WHETHER CASE AGAINST PETITIONER SHOULD BE DISMISSED FOR BEING MOOT AND ACADEMIC BASED ON THE DOCTRINE OF CONDONATION;

2) xxx WHETHER THE ASSAILED DECISION xxx MAY STILL BE IMPLEMENTED AGAINST THE PETITIONER WHO IS PRESENTLY SERVING A SEPARATE AND DISTINCT TERM (YEARS 2010-2013) FROM THE PETITIONER'S IMMEDIATELY PRECEDING TERM (YEARS 2004-2007) DURING WHICH THE ALLEGED WRONGFUL ACTS WERE COMMITTED;

3) WHETHER THE RESPONDENT OFFICE OF THE OMBUDSMAN COMMITTED GRAVE ERROR OF FACT AND LAW AND WITH GRAVE ABUSE [OF] AUTHORITY IN FINDING THAT THE DOCTRINE OF CONDONATION DOES NOT APPLY IN THE INSTANT CASE xxx TAKING INTO CONSIDERATION THAT PETITIONER WAS LAWFULLY BARRED TO RUN FOR THE SAME POSITION AS MAYOR OF CABANATUAN CITY IN THE 2007 SENATORIAL AND LOCAL ELECTIONS IN VIEW OF THE THREE (3) TERM RULE AND AGAIN IN THE 2010 NATIONAL ELECTIONS FOR THE TERM 2010-2013 FROM HIS IMMEDIATELY PRECEDING TERM;

III. WHETHER THE RESPONDENT OFFICE OF THE OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION AND AUTHORITY IN RESOLVING AND DISPOSING THE CASE AGAINST THE PETITIONER ONLY AFTER SIX (6) LONG YEARS FROM THE DATE OF THE LAST SUBMISSION OF PLEADINGS OF THE PARTIES, TAKING INTO CONSIDERATION SUSPICIOUS TIMING OF THE RELEASE OF THE ASSAILED REVIEW ORDER xxx WHEN THE 2013 SENATORIAL AND LOCAL ELECTIONS ARE ONLY SEVERAL MONTHS AWAY, THEREBY UNDULY PREJUDICING AND IRREPARABLY DAMAGING PETITIONER'S POLITICAL CAREER, AND FRUSTRATING EVEN MOMENTARILY THE WILL OF THE PEOPLE OF CABANATUAN CITY WHO BY OVERWHELMING PERCENT OF VOTES RE-ELECTED PETITIONER AS MAYOR OF CABANATUAN CITY DURING THE 2010 NATIONAL ELECTIONS.[7]

Petitioner contends that the subject letters, which he failed to answer, did not bear a stamp mark of receipt by the Office of the City Mayor and he was on official leave when the letters were sent; thus, it was the Acting Mayor who was obliged to reply. Also, petitioner is not guilty of simple neglect of duty because he took steps to implement the provisions of RA 9003. Lastly, the doctrine of condonation applies to him.

We grant the petition.

Section 27 of RA 6770[8] provides that any order, directive, or decision of the Office of the Ombudsman imposing the penalty of public censure or reprimand, and suspension of not more than one month's salary, shall be final and unappealable, thus:

xxx 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 month's salary shall be final and unappealable. (Emphasis Ours.)

This is supported by Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman (Administrative Order No. 07), which provides:

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. (Emphasis Ours.)

Here, the penalty imposed by the Graft Investigation and Prosecution Officer was suspension of six (6) months.[9] On appeal, the penalty was modified by the Office of the Ombudsman into reprimand, considering that failure to act promptly on letters and requests is classified only as a light offense and is petitioner's first infraction.[10] Since the penalty imposed is reprimand, petitioner cannot appeal.

We stress, however, that the decisions of administrative agencies which are declared final and unappealable by law are still subject to judicial review if they fail the test of arbitrariness, or upon proof of gross abuse of discretion, fraud or error of law. When such administrative or quasi-judicial bodies grossly misappreciate

evidence of such nature as to compel a contrary conclusion, the Court will not hesitate to reverse the factual findings.[11] Verily, petitioner's remedy would have been a petition for certiorari under Rule 65 of the Rules of Court, instead of a petition for review under Rule 43. But considering that the issues raised in the petition alleged grave abuse of discretion on the part of the Office of the Ombudsman, this Court will treat the petition as one for certiorari under Rule 65.

Petitioner was found guilty of violation of Section 5(a) of RA 6713 which provides that:

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.

Apparently, he offered a flimsy excuse that he was on official leave on the dates the letters were sent. The application for leave, which petitioner attached in his Supplemental Motion for Reconsideration,[12] showed that his official leave began only on February 14, 2005 while the letters that he failed to answer were dated April 21 and 27, 2004, and September 29, 2004. Indeed, the law enjoins public officials to extend prompt, courteous, and adequate service to the public, and, at all times, to respect the rights of others and refrain from doing acts contrary to law, good morals, good customs, public order, public policy, public safety, and public interest.[13] On this regard, We find that petitioner had been remiss.

We rule, however, that Vergara may no longer be held administratively liable for misconduct committed during his previous term of office based on the doctrine of condonation. The rationale for this ruling is enunciated by the Supreme Court in *Mayor Alvin B. Garcia v. Hon. Arturo C. Mojica, et al.*, to wit: [14]

xxx when the electorate put him back into office, it is presumed that it did so with full knowledge of his life and character, including his past misconduct. If, armed with such knowledge, it still reelects him, then such reelection is considered a condonation of his past misdeeds.

Romeo R. Salalima, et al. v. Hon. Teofisto Guingona, Jr.[15] adds, to wit:

The rule adopted in *Pascual*, qualified in *Aguinaldo* insofar as criminal cases are concerned, is still a good law. Such a rule is not only founded on the theory that an official's reelection expresses the sovereign will of the electorate to forgive or condone any act or omission constituting a ground for administrative discipline which was committed during his previous term. We may add that sound policy dictates it. To rule otherwise would open the floodgates to exacerbating endless partisan contests between the reelected official and his political enemies, who may not stop to hound the former during his new term with administrative cases for acts alleged to have been committed during his previous term. His second term may thus be devoted to defending himself in the said cases to the detriment of public service..."

Contrary to the ratiocination of the Office of the Ombudsman, the application of the doctrine does not require that the official must be reelected to the same position in the immediately succeeding election. The Supreme Court's rulings on the matter do not distinguish the precise timing or period when the misconduct was committed, reckoned from the date of the official's reelection, except that it must be prior to said date.[16] Thus, when the law does not distinguish, the courts must not distinguish.

FOR THESE REASONS, the petition is GRANTED.

SO ORDERED.

Reyes, Jr., (Chairperson) and Inting, JJ., concur.

[1] 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.

[2] Code of Conduct and Ethical Standards for Public Officials and Employees.

[3] Rollo, pp. 44-50. Decision dated February 7, 2006.

[4] Id., pp. 56-61. Motion and Manifestation; id., pp. 67-77. Supplemental Motion for Reconsideration.

[5] Id., pp. 51-55. Review Order dated June 29, 2012.

[6] Id., pp. 3-39.

[7] Id., pp. 9-11.

[8] The Ombudsman Act of 1989

[9] Rollo, p. 49.

[10] Id., pp. 53-54.

[11] Republic of the Philippines, represented by Hon. Simeon V. Marcelo, et al. v. Woodrow Canastillo and Allan G. Valenciano, G.R. No. 172729, June 8, 2007.

[12] Rollo, pp. 67-83.

[13] Antonio A. Arroyo v. Sancho L. Alcantara, A.M. No. P-01-1518, November 14, 2001.

[14] G.R. No. 139043, September 10, 1999.

[15] G.R. Nos. 117589-92, May 22, 1996.

[16] Ibid.

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