

**RODOLFO S. DE JESUS, JULIAN Q. TAJOLOSA, HERMILO S. BALUCAN
AND AVELINO C. CASTILLO, PETITIONERS, VS. OFFICE OF THE
OMBUDSMAN AND CARLOS E. INFANTE, RESPONDENTS.**

G.R. NO. 140240. October 18, 2007

Ponente: CORONA, J.

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CORONA, J.:

This is a petition for certiorari and/or prohibition[1] assailing the resolution[2] dated November 20, 1998 of the Office of the Ombudsman in OMB-VIS-ADM-96-0460 and the order[3] dated August 20, 1999 denying reconsideration.

The resolution dated November 20, 1998 found petitioners Rodolfo S. de Jesus, Julian Q. TajoLosa, Hermilo S. Balucan and Avelino C. Castillo, members of the interim board of directors of the Kabankalan Water District (KWD), guilty of simple misconduct for enacting and approving resolution no. 5, s. 1992 and resolution no. 8, s. 1993 granting the interim manager of KWD a housing allowance, a representation and travel allowance (RATA) and an extraordinary and miscellaneous expense (EME) allowance. In holding petitioners liable, the Office of the Ombudsman cited Civil Service Commission resolution no. 95-4073 dated July 11, 1995 and resolution no. 96-2079[4] dated March 21, 1996 declaring as illegal the receipt and collection of any additional, double or indirect compensation (including RATA and EME) from a water district, except per diems, by any officer or employee of the LWUA[5] who sits as member of the board of directors of a water district, pursuant to Section 13 of PD 198.[6] Thus, petitioners were suspended for one month.

Petitioners sought reconsideration but it was denied in an order dated August 20, 1999. Hence, this petition.

Petitioners contend that the Office of the Ombudsman committed grave abuse of discretion in finding them guilty of simple misconduct and suspending them for one month. They claimed that the enactment and approval of resolution no. 5, s. 1992 and resolution no. 8, s. 1993 were authorized under paragraph 2.4 of LWUA resolution no. 21, s. 1991 (Policy Guidelines Regarding Defaulting Water Districts):

2.4

The Interim General Manager shall be designated/appointed by the Administrator from within LWUA or within the [water district] locality whose qualifications shall at least be the same as that of Grade 20 LWUA employee. His compensation and other allowances shall be as determined by the [water district] Board of Directors.

Ordinarily, this petition which was filed on October 19, 1999 should have been dismissed outright. In *Fabian v. Desierto*,[7] we ruled that appeals from the decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals by way of a petition for review under the provisions of Rule 43 of the Rules of Court. Pursuant to this ruling, the Court promulgated its February 9, 1999 resolution in A.M. No. 99-2-02-SC:

In light of the decision in *Fabian v. Ombudsman* (G.R. No. 129742, 16 September 1998), any appeal by way of petition for review from a decision or final resolution or order of the Ombudsman in administrative cases, or special civil action relative to such decision, resolution or order filed with the Court after 15 March 1999 shall no longer be referred to the Court of Appeals, but must be forthwith DENIED or DISMISSED, respectively.

Moreover, Section 7, Rule III of Administrative Order No. 07 also known as the Rules of Procedure of the Office of the Ombudsman provides:[8]

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 not equivalent to one month salary, the decision shall be final and unappealable. (emphasis supplied)

In *Coronel v. Desierto*,[9] however, this Court suspended the application of A.M. No. 99-2-02-SC on the following grounds:

Indeed, where as here, there is a strong showing that grave miscarriage of justice would result from the strict application of the [r]ules, we will not hesitate to relax the same in the interest of substantial justice. It bears stressing that the rules of procedure are merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat against substantive rights, and not the other way around. Thus, if the application of the Rules would tend to frustrate rather than promote justice, it is always within our power to suspend the rules, or except a particular case from its operation. (emphasis supplied)

In *Herrera v. Bohol*,[10] this Court stated that decisions of the Ombudsman in administrative cases imposing the penalty of public censure, reprimand, suspension of not more than one month or a fine equivalent to one month salary shall be final and unappealable. However, this rule is not without exception. In *Republic v. Canastillo*,[11] the Court declared that 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.

Moreover, in *Baylon v. Fact-Finding Intelligence Bureau*,[12] while the Court found that the Court of Appeals correctly dismissed Baylon's petition for review of a decision of the Ombudsman in an administrative case for having been filed beyond the reglementary period, it nonetheless considered the merits of the petition in the interest of substantial justice. The following pronouncement in *Baylon* is instructive:

The correctness of the Court of Appeals' dismissal of petitioner's petition for review notwithstanding, this Court cannot write finis to the case at bar by the strict application of the rules of procedure governing appeals. For judicial cases do not come and go through the portals of a court of law by the mere mandate of technicalities.

After going over all the pleadings, evidence, and all other documents bearing on this case, this Court has resolved to spare the present petition from dismissal to which it should have been consigned as a matter of procedure.

xxx xxx xxx

Suspension from public office is a serious incident that definitely blemishes a person's record in government service. It is an injury to one's reputation and honor which produces irreversible effects on one's career and private life. If only to assure the judicial mind that no injustice is allowed to take place due to a blind adherence to rules of procedure, the dismissal on technicality of petitioner's action, which is aimed at establishing not just her innocence but the truth, cannot stand. That the Ombudsman's Memorandum Reviews

may have attained finality due to petitioner's belated appeal therefrom to the Court of Appeals does not preclude a modification or an alteration thereof, for if the execution of a decision becomes impossible or unjust, it may be modified or altered to harmonize it with justice and the facts.[13] (emphasis supplied)

Here, there are circumstances which justify the suspension of A.M. No. 99-2-02-SC. In view of the decisions of the Court in several cases intimately related to this case, the suspension of petitioners for simple misconduct constitutes an error of law. Thus, in the interest of substantial justice, the Court is not precluded from exercising its power of judicial review.

In *de Jesus v. Commission on Audit*,^[14] petitioners therein (including herein petitioners *de Jesus*, *Balucan* and *Castillo*) were deemed to have received the additional allowances and bonuses between May to December 1997 and April to June 1998 as members of the interim board of directors of the Catbalogan Water District in good faith. Their receipt of such allowances happened before *Baybay Water District v. Commission on Audit*^[15] was decided. This ruling was reiterated in two other *de Jesus v. Commission on Audit* cases.^[16]

Petitioners, as members of the interim board of directors of the KWD, enacted and approved resolution no. 5, s. 1992 and resolution no. 8, s. 1993 granting a housing allowance and RATA and EME allowances to the water district's interim general manager pursuant to paragraph 2.4 of LWUA resolution no. 21, s. 1991 and prior to the decision in *Baybay Water District*. Thus, following the three earlier *de Jesus v. Commission on Audit* cases, they acted in good faith.

Misconduct means intentional wrongdoing or deliberate violation of a rule of law or standard of behavior.^[17] It is incompatible with good faith. Since petitioners were in good faith, they could not be held liable for simple misconduct.

WHEREFORE, pro hac vice, the petition is hereby GRANTED. The resolution dated November 20, 1998 and order dated August 20, 1999 of the Office of the Ombudsman in OMB-VIS-ADM-96-0460 are REVERSED and SET ASIDE. Petitioners *Rodolfo S. de Jesus*, *Julian Q. Tajolosa*, *Hermilo S. Balucan* and *Avelino C. Castillo* are hereby ABSOLVED from any administrative liability in connection with the enactment and approval of resolution no. 5, s. 1992 and resolution no. 8, s. 1993.

SO ORDERED.

Puno, C.J. (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

[1] Under Rule 65 of the Rules of Court.

[2] *Rollo*, pp. 27-33.

[3] *Id.*, pp. 34-36.

[4] The Court upheld the validity of Civil Service Commission resolution no. 95-4073 dated July 11, 1995 and resolution no. 96-2079 in *Cabili v. Civil Service Commission*, G.R. Nos. 156503/156481, 22 June 2006, 492 SCRA 252.

[5] *Local Water Utilities Administration*.

[6] *Provincial Water Utilities Act of 1973*.

[7] 356 Phil. 787 (1998).

[8] Section 7, Rule III of Administrative Order No. 07 has been amended by Administrative Order No. 17, thus:

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 not 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 said officer.

[9] 448 Phil. 894 (2003).

[10] 466 Phil. 905 (2004), citing *Lopez v. Court of Appeals*, 438 Phil. 351 (2002).

[11] G.R. No. 172729, 08 June 2007 citing *Herrera v. Bohol* supra.

[12] 442 Phil. 217 (2002).

[13] Id.

[14] 451 Phil. 812 (2003).

[15] 425 Phil. 326 (2002). The decision in this case was promulgated on January 23, 2002. We ruled that PD 198 expressly prohibits the grant of RATA, EME, other allowances and bonuses to members of the board of water districts.

[16] G.R. No. 156641 promulgated on February 5, 2004 (466 Phil. 912) and G.R. Nos. 127515 and 127544 promulgated on May 10, 2005 (458 SCRA 368).

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

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