ZENAIDA F. LANTING, PETITIONER, VS. HONORABLE OMBUDSMAN, ANTI-GRAFT INVESTIGATOR OSCAR RAMOS, MAYOR LITO ATIENZA, EMMANUEL SISON, VIRGILIO FORBES, CHARITO RUMBO, DIRECTOR ERLIND...

G.R. NO. 141426. May 06, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our resolution is the petition for review on certiorari assailing the Resolutions dated September 9, 1999[1] and January 6, 2000 of the Court of Appeals dismissing petitioner's petition for certiorari and mandamus in CA-G.R. SP No. 54724.

The facts of the case are as follows:

Zenaida F. Lanting, petitioner, was the Administrative Officer IV of the City Council of Manila. She filed with the Office of the Ombudsman an affidavit-complaint [2] dated May 12, 1998, docketed as Case No. OMB-0-98-0965, charging then Manila Vice-Mayor Jose Atienza, Jr., now City Mayor, Emmanuel Sison, Secretary to the City Council, and Charito Rumbo, Human Resource Management Officer III, herein respondents, with violation of Republic Act No. 3019 (the Anti-Graft and Corrupt Practices Act). She alleged that these city officials unlawfully and feloniously appointed Ernesto Saw, Jr., a Chinese citizen working in Taiwan, and brother-in-law of Charito Rumbo, to the position of Researcher in the City Council.

In the same complaint, petitioner further alleged that respondents fraudulently effected the publication of a vacant position (Administrative Officer V) in the City Council, in violation of Republic Act No. 7041.[3] Petitioner also questioned the appointments of Percival Magalong as Utility I; Atty. Flora Aquino-Togonon as Administrative Officer V; and three relatives of Charito Rumbo, namely: Eduardo Antolin, Arlyn M. Rumbo and Maricar V. Antolin as Researchers/Consultants. Petitioner likewise denounced Erlinda Magalong, Civil Service Commission (CSC) Director II, for "employing" Percival Magalong, her brother, in her office at the Civil Service Field Office, GSIS Building, Manila.

Petitioner characterized respondents' acts as unlawful, odious and "despicable criminal activities"[4] and prayed that the Office of the Ombudsman proceed with the preliminary investigation with dispatch."[5]

On August 4, 1998, respondents city officials filed their joint counter-affidavit[6] denying petitioner's charges. They averred that Ernesto Saw, Jr. is a Filipino citizen as shown by his birth certificate and Personnel Data Sheet. Assuming arguendo that he is a Chinese citizen, such fact alone would not disqualify him from being employed in the City of Manila, there being no law prohibiting a foreigner from being employed as researcher or consultant in the government.

For her part, CSC Director Magalong also denied the charge against her, contending that she was not the one who appointed Percival Magalong.

Ernesto Saw, Jr. did not file his counter-affidavit.

On April 8, 1999, Oscar P. Ramos, Graft Investigator Officer I, issued a Resolution recommending that petitioner's complaint be dismissed. The Resolution[7] was reviewed by Assistant Ombudsman Abelardo L. Aportadera, Jr. and approved by then Ombudsman Aniano A. Desierto on June 25, 1999. The Resolution partly reads:

> x x x
>
> "All told, we are convinced that the evidence does not warrant the filing of Anti-Graft and Corrupt Practices, among others, charges against respondents.
>
> The appointment of researcher/consultant is governed by CSC Memorandum Circular No. 27, s. 1993, which states that "
>
> - x x x
>
> (c) The duties enumerated in the consultancy contract are mainly advisory in nature.
>
> - Services rendered pursuant to a consultancy contract shall not be considered government services and, therefore, not covered by the Civil Service Law, rules and regulations (Folder 1, page 42, Record, underlining supplied).
>
> The matter of alleged "ghost employee" Mr. Saw for the charge of Estafa thru Falsification of Public Documents cannot be pursued. COA and City Accountant's silence and its allowance of the prepared and approved payrolls of City Council, which include the salaries and benefits of Mr. Saw and other consultants, breathes with it the presumption of regularity.
>
> Saw's employment x x x must not prejudice respondents. His 201 file reflects Filipino citizenship. x x x.
>
> As to the (charge of) fraud and deception in the publication of a vacant position allegedly in violation of R.A. 7041, the law reads:
> 'Sec. 5. Jurisdiction – The Civil Service Commission shall have original and exclusive jurisdiction to investigate and recommend for prosecution all cases of violation of this Act; provided, however, that in case the violation is alleged to have been committed by the Chairman, and/or any of the Commissioners of the Civil Service Commission, the Ombudsman shall have original and exclusive jurisdiction over the investigation and prosecution of said alleged violation.' (underlining supplied)

The Office of the Ombudsman, therefore, has no jurisdiction on the issue. It is the CSC that has exclusive and original jurisdiction.

The issue over Percival Magalong's appointment and detail at CSC Field Office also stands on weak grounds. Record shows that Percival was not detailed by Atty. Sison but rather "required as part of x x x regular work assignment to perform messengerial work" (Memorandum dated 02 January 1997 of Atty. Sison). The non-entry of said Memorandum to the City Council Record Book is not illegal per se inasmuch as the matter of recording is not strictly observed as an internal office regulation.

"There is no evidence on record that CSC Director Magalong appointed her brother. She was not the one who appointed Percival. It was the Vice-Mayor who appointed him.

The appointment of Atty. Togonon to the position of Administrative Officer V has been upheld by the CSC in its Letter dated 14 July 1998. All doubts as to the legality of actions taken by the appointing authority, therefore, have been erased. We could do no less than to conform to the ruling of the CSC.

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Record is also bereft of any evidence of Usurpation of Official Function. The charge is a mere allegation.

WHEREFORE, premises considered, it is respectfully recommended that all the charges against respondents herein be dismissed."

On July 14, 1999, petitioner filed a motion for reconsideration of the above Resolution on the ground that Investigator Oscar Ramos "conveniently and intentionally skirted the issue of falsification of public documents which are crystal clear in my complaint."[8] She then prayed for a re-investigation of her complaint by a Special Prosecutor.[9]

On July 26, 1999, the Ombudsman denied petitioner's motion for lack of merit.

Dissatisfied, petitioner filed with the Court of Appeals a petition for certiorari and mandamus, docketed as CA-G.R. SP No. 54724.

On September 9, 1999, the Court of Appeals issued a Resolution dismissing the petition on the ground that it has no jurisdiction over the subject matter of the assailed Ombudsman's Resolution. The Appellate Court held:

> "Considering the mandate of the second paragraph of Section 14 of Republic Act No. 6770, otherwise known as "The Ombudsman Act of 1989," which provides that "No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court on pure question of law," the Court resolved to DISMISS the petition for lack of jurisdiction. And, even from the standpoint of procedure, the petition should be dismissed for suffering some procedural errors, to wit:
>
> - Non-submission of the proof of service (Sec. 13, Rule 13; Sec. 2 (c), Rule 56; Sec. 3, par. 2, Rule 46 x x x, 1997 Rules of Civil Procedure);
>
> - Failure to state the material dates showing that the petition was filed on time, i.e., the date when the assailed resolution dated April 8, 1999 was received (Sec. 4, Rule 65, as amended by Supreme Court Circular No. 39-98 in Bar Matter No. 803); and,
>
> - Insufficient verification of the petition x x x.
>
> SO ORDERED."[10]

Petitioner seasonably filed a motion for reconsideration but was denied by the Court of Appeals in its Resolution of January 5, 2000, thus:

> "Although petitioner had seasonably corrected the procedural errors the original petition suffered, as pointed out in the Resolution of September 9, 1999, through the motion for reconsideration, still the petition for certiorari and mandamus could not be given due course by this court for lack of concurrent jurisdiction with the Supreme Court over the subject matter of the petition for the issuance of the writ of certiorari and mandamus against the Office of the Ombudsman for dismissing petitioner's criminal complaint for anti-graft and falsification of public documents. Except in administrative cases, as ruled in Fabian vs. Desierto (295 SCRA 470), the Congress, in Republic Act No. 6770, Section 14, 2nd par., designated only the Supreme Court as the appellate authority in Ombudsman decisions in criminal cases. Under the said law, the jurisdiction of the Supreme Court is original and exclusive. As further restriction, the law also provides that "No writ of injunction shall be issued by any court to delay an investigation being conducted by the Ombudsman under this Act, unless there is a prima facie evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman" (Section 14, 1st par., R.A. No. 6770).
>
> For the jurisdictional reason stated above, the motion for reconsideration must be, as it is hereby, DENIED.
>
> SO ORDERED."[11] (underscoring supplied)

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Hence, the instant recourse raising this sole issue:

> "WHETHER OR NOT THE COURT OF APPEALS GRIEVOUSLY ERRED IN DISMISSING PETITIONER'S PETITION FOR CERTIORARI AND MANDAMUS ON THE GROUND OF LACK OF JURISDICTION BY INVOKING SECTION 14, PARAGRAPH 2, OF REPUBLIC ACT NO. 6770."

Petitioner contends that her complaint before the Ombudsman was not limited to violation of the Anti-Graft and Corrupt Practices Act, but likewise includes "acts constituting ground for administrative complaint under Sec. 1, Rule III of Administrative Order No. 07 of the Ombudsman."[12] Thus, the Court of Appeals should have taken cognizance of her petition, applying this Court's ruling in Fabian vs. Desierto.[13]

The instant petition is bereft of merit.

Petitioner's complaint-affidavit before the Office of the Ombudsman is for violation of the Anti-Graft and Corrupt Practices Acts. It is not an administrative complaint. Nowhere in her complaint did she allege administrative offenses, such as dishonesty or misconduct on the part of respondents.

It bears stressing that the allegations in petitioner's complaint describe respondents' actuations as "willful, felonious, unlawful, odious and despicable criminal activities." In her motion for reconsideration of the Ombudsman's Resolution, petitioner claimed that Graft Investigator Ramos "skirted the issue of falsification of public documents which is crystal clear in my complaint."[14] Likewise, in her petition in CA-G.R. SP No. 54274, petitioner sought "to nullify the resolution of the Honorable Ombudsman dated April 8, 1999 dismissing petitioner's complaint for anti-graft and falsification of public documents and to direct respondent Ombudsman to give due course to the complaint."[15]

Considering that petitioner's complaint is criminal in nature, this Court has the sole authority to review the Ombudsman's Resolutions on pure question of law as expressly mandated in Section 14, 2nd paragraph of R.A. 6770,[16] which provides:

> "Sec. 14. Restrictions. – x x x.
>
> No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court on pure question of law."

In Fabian vs. Desierto,[17] we held that only "appeals from the decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals under the provisions of Rule 43 (of the 1997 Revised Rules of Civil Procedure)." We reiterated this ruling in Namuhe vs. Ombudsman[18] and recently in Barata vs. Abalos, Jr.[19] and Coronel vs. Aniano Desierto, as Ombudsman, and Pedro Sausal, Jr.[20]

Therefore, the Court of Appeals, in issuing its questioned Resolutions, did not commit grave abuse of discretion. Clearly, it has no jurisdiction over petitioner's criminal action. As earlier mentioned, jurisdiction lies with this Court.

WHEREFORE, the petition for review on certiorari is hereby DENIED. Costs against petitioner.

SO ORDERED.

Panganiban, (Chairman), Corona, Carpio-Morales, and Garcia, JJ., concur.

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[1] Rollo at 28-29. Per Associate Justice Teodoro P. Regino, retired, with Associate Justice Salome A. Montoya, retired, and Justice Conrado M. Vasquez, Jr., concurring.

[2] Id. at 33.

[3] Entitled "An Act Requiring Regular Publication of Existing Vacant Positions in Government Offices".

[4] Rollo at 38.

[5] Id. at 39.

[6] Id. at 51.

[7] Id. at 58.

[8] Id. at 68.

[9] Id. at 66.

[10] Id. at 28-29.

[11] Id. at 31-32.

[12] Id. at 20-21.

[13] G.R. No. 129742, September 16, 1998, 295 SCRA 470.

[14] Rollo at 63.

[15] Id. at 73-74.

[16] The Ombudsman Act of 1989.

[17] G.R. No. 129742, September 16, 1998, 295 SCRA 470.

[18] G.R. No. 124965, October 29, 1998, 298 SCRA 298 – consolidated with G.R. Nos. 124932 & 124913.

[19] G.R. No. 142888, June 6, 2001, 358 SCRA 575.

[20] G.R. No. 149022, April 8, 2003.

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