

DR. MARCELO M. ALMANZOR AND VIENNA NANNY L. ALMANZOR, PETITIONERS, VS. DR. BENITO S. FELIX, RESPONDENT.

G.R. No. 144935. January 15, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review assails the decision[1] of the Court of Appeals, in CA-G.R. SP No. 56936, dated July 26, 2000, affirming the decision[2] of the Ombudsman, in OMB-ADM-0-99-0533, dated November 10, 1999. Both decisions declared the petitioners guilty of simple misconduct and ordered their suspension for 6 months without pay.

The facts, as found by the Court of Appeals, are as follows:

The petitioners-spouses are officials of the Technological University of the Philippines (TUP) in Taguig, Metro Manila. Dr. Marcelo Almanzor is the Program Director and Civil Security Officer of the school, while Vienna Nanny Almanzor holds the position of Administrative Officer V. Both their signatures are needed as a prerequisite to the collection by TUP employees of their proportionate vacation pay (PVP).

The respondent, Dr. Benito Felix, is a Professor III in the same institution. He filed a complaint-affidavit[3] before the Office of the Ombudsman for violation of Sec. 3(e) of the Anti-Graft and Corrupt Practices Law[4] against the petitioners. Dr. Felix alleged that they maliciously refused to sign his clearance, which was necessary to collect his PVP for the months of April and May 1999. He claimed that because of their unjustified refusal, he was able to receive his PVP only on June 9, 1999, thereby delaying his pay for one month. He said that he even sought the assistance of Director Federico Ramos to expedite his case, to no avail. Allegedly, the petitioners released his clearance only after he sought the intervention of Dr. Frederick So Pada, the TUP president, on June 7, 1999, and only after the latter issued a memorandum on June 9 directing the petitioners to sign his clearance. Dr. Felix averred that the delay of the release of his PVP seriously dislocated his family expenses, constraining him to borrow money from friends in order to defray those expenses.

In their counter-affidavit, the petitioners denied refusing to sign his clearance. Dr. Almanzor claimed he merely requested respondent to first meet him to clarify a security report, to the effect that respondent supposedly entered the campus on March 24, 1999 at around 11:17 p.m. in an inebriated state and uttered threatening words addressed to the guards as well as the petitioners. Dr. Almanzor honestly believed that, as Chairman of the Security Committee, a clarificatory meeting was necessary before he could act upon the respondent's clearance for PVP. However, the respondent twice ignored the request for a dialogue. Also, although the respondent had sought the intervention of Director Federico Ramos to release the clearance of his PVP as early as April 30, 1999, it was only on June 8, 1999 that Director Ramos dispensed with the required signature of Dr. Almanzor. Hence, the delay in signing the clearance was not petitioners' fault.[5]

For her part, co-petitioner Vienna Nanny Almanzor claimed that her signature was merely ministerial and the PVP in question might be released even without it. This was pursuant to a verbal agreement with the institution's

Human Resource Management Office, which had been in force for the past eight years.[6]

The Ombudsman found the petitioners guilty of slight misconduct. He held that the evidence adduced from the records clearly showed their refusal to sign the clearance. The petitioners refused to sign it when it was first presented on April 5, 1999. On May 3, 1999, after the respondent sought Director Ramos's intervention and the latter returned the clearance for petitioners to sign, the petitioners wrote separate notes, maintaining that the issue of the security report should first be resolved. On June 1, 1999, Director Ramos again ordered the petitioners to sign the clearance, which they again ignored. The Ombudsman concluded that:

On the bases [sic] of all the foregoing, the inescapable conclusion is that the respondents [herein petitioners] acted in bad faith in not signing the complainant's clearance for which we find them guilty of Simple Misconduct.

WHEREFORE, in the light of the foregoing considerations and pursuant to the Civil Service Rules, respondents Marcelo Almanzor and Vienna Almanzor are hereby meted the penalty of suspension for six (6) months without pay.

Pursuant to law and the policy of the Office as enunciated in the case of Felipe Melchor vs. Gerty R. Gironella, et al. in OMB-ADM-1-97-0075, this Decision is immediately executory.

The TUP President is hereby tasked to implement this Decision informing this Office of the action taken thereon strictly within ten (10) days upon receipt hereof.

SO ORDERED.[7]

The petitioners appealed the decision to the Court of Appeals via Rule 43 of the 1997 Rules on Civil Procedure, with an ex-parte application for the issuance of a temporary restraining order. The Court of Appeals granted the application for a restraining order, but later affirmed the decision of the Ombudsman, to wit:

IN VIEW WHEREOF, the petition is dismissed and the assailed decision is hereby AFFIRMED. The temporary restraining order previously issued is lifted.

SO ORDERED.[8]

The petitioners' motion for reconsideration was denied.[9] Hence, this petition for review on certiorari, which poses the following issues:

1)

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT RESOLVING THE ISSUE OF WHETHER OR NOT THE DECISION OF THE OFFICE OF THE OMBUDSMAN IS IMMEDIATELY EXECUTORY PENDING APPEAL

2)

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT APPRECIATING THE FACTS AND EVIDENCE SHOWING EXTENUATING CIRCUMSTANCES IN FAVOR OF THE PETITIONERS

3)

WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE CONVICTION OF THE PETITIONERS FOR SIMPLE MISCONDUCT.[10]

Two issues are for resolution: first, whether the Court of Appeals erred when it affirmed the finding that the

petitioners are liable for simple misconduct; and second, whether the decision of the Ombudsman in administrative cases is immediately executory pending appeal.

On the first issue, the petitioners contend that the Court of Appeals erred in affirming the decision of the Ombudsman. They stress that they did not refuse to sign the clearance. They merely wished to clarify the security report through a dialogue with the respondent, but the latter snubbed the opportunity twice. They deny harassing the respondent, and assert it is really the respondent who harassed them. They cite an occurrence on August 13, 1999 at about 10:30 in the evening, where respondent accosted petitioner Vienna Almanzor while thrusting a dirty finger sign at her, uttering, “Putang ina, ano gusto mong mangyari? (Daughter of a whore, what do you want to happen?)” Petitioner Vienna Almanzor could have fallen on the concrete three-step stairs during the occurrence had not co-petitioner Dr. Marcelo Almanzor supported her on her back. In fact, it was the cause for the filing of a case for grave threats against the respondent.

Respondent argues that the CA and the Ombudsman both found substantial evidence showing both petitioners liable for the offense. He stresses that factual findings of administrative bodies should be accorded not only respect but even finality even if not overwhelming or preponderant. He asserts that the petitioners’ open defiance of higher authority clearly demonstrate unwarranted arrogance and disrespect against their lawful superior. Their persistent disregard of the pertinent instruction prejudiced his right to an early payment of PVP.

Contrary to petitioners’ assertions, the Ombudsman found that petitioners refused to sign the clearance report not once but three times. They did not sign the clearance on April 5, when it was first presented to them, on May 3, after respondent sought Director Ramos’ intervention, and on June 1, 1999 when Director Ramos again ordered the petitioners to sign it but they adamantly refused. Finally Director Ramos just decided to dispense with their signatures on June 8, and on June 9, TUP President Frederick So Pada issued a memorandum directing Director Ramos to immediately release the PVP.[11] The Ombudsman found that petitioners took this stance even if they had been informed that the resolution of any personal conflict or the administrative complaint is not a pre-requisite to the issuance of a PVP clearance.[12] The claimed harassment of the petitioners, which happened on August 13, or two months after the acts complained of constituting slight misconduct, is obviously irrelevant to the present case.

The Court of Appeals agreed with the findings of the Ombudsman. Absent a clear showing of grave abuse of discretion, we shall not disturb such findings.[13] The Supreme Court cannot weigh once more the evidence submitted not only before the Ombudsman but also before the Court of Appeals. Under Sec. 27 of Republic Act 6770, findings of fact by the Ombudsman are conclusive as long as it is supported by substantial evidence. No error has been committed by the appellate court in sustaining the penalty of suspension imposed on petitioners.

The issue on improper execution of the penalty consisting of petitioners’ suspension is moot. There is sufficient basis for the penalty, which we sustain. Considering the fact that the petitioners are indeed liable for simple misconduct, and that they have served out the penalty as affirmed by TUP Office Order No. 452, s.2000,[14] this Court is constrained from considering an issue that has become academic.[15] Suffice it to stress that no temporary restraining order (TRO) has been issued by this Court, while the appellate court itself had lifted the TRO it issued earlier, paving the way for compliance with the suspension order. As a general rule, courts should not take cognizance of moot and academic questions.[16]

WHEREFORE, the decision of the Court of Appeals dated July 26, 2000, and resolution dated September 15, 2000, in CA-G.R. SP No. 56936, are AFFIRMED. No pronouncement as to costs.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Callejo, Sr., and Tinga, JJ., concur.

[1] Rollo, pp. 85-91. Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Martin S. Villarama, Jr., and Remedios Salazar-Fernando, concurring.

[2] Id. at 46-51.

[3] Id. at 25-27.

[4] Rep. Act No. 3019, Sec. 3. Corrupt practices of public officers.—In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[5] Rollo, pp. 29-32.

[6] Id. at 32.

[7] Id. at 50-51.

[8] Id. at 91.

[9] Id. at 102-103.

[10] Id. at 8-9.

[11] See Rollo, pp. 49-50.

[12] See Rollo, pp. 90-91.

[13] See *Espinosa v. Office of the Ombudsman*, G.R. No. 135775, 19 October 2000, 343 SCRA 744, 754.

[14] Rollo, p. 123, Annex “A.”

[15] *Gonzales v. Narvasa*, G.R. No. 140835, 14 August 2000, 337 SCRA 733, 739-740.

[16] *Ticzon v. Video Post Manila, Inc.*, G.R. No. 136342, 15 June 2000, 333 SCRA 472, 482-483.

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