

MERCEDES B. GONZALES, PETITIONER, VS. NILO L. ROSAS AND RICARDO P. NAGPACAN, RESPONDENTS.

G.R. No. 145363. February 23, 2004

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

For review on certiorari is the decision[1] dated October 2, 2000, in CA-G.R. SP No. 56251 of the Court of Appeals, which dismissed the special civil action for certiorari, charging the Ombudsman with grave abuse of discretion.

The antecedent facts, as culled from the records, are as follows:

Petitioner Mercedes B. Gonzales was a public school teacher from 1965 until her forced resignation in 1994. One Purita Avila filed before the Department of Education, Culture and Sports (DECS), Division of City Schools, 3rd District, Caloocan City, sometime in 1993, an administrative complaint for grave misconduct, dishonesty, and estafa against petitioner who was then the Assistant Principal of Caloocan Elementary School, Unit II. Included in the complaint were her co-teachers, Fe Padilla and Milagros Zablan. Petitioner herein and her co-teachers allegedly mortgaged a parcel of land owned by Avila, and covered by Torrens Certificate of Title (TCT) No. 260609,[2] without Avila's consent.

Respondent Ricardo Nagpacan, Administrative Officer III of City Schools, 3rd District, Caloocan City, on his own, initially heard the aforesaid administrative case, contrary to the provisions of Section 9 of Rep. Act No. 4670,[3] to wit:

SEC. 9. Administrative Charges. — Administrative charges against a teacher shall be heard initially by a committee composed of the corresponding School Superintendent of the Division or a duly authorized representative who should at least have the rank of a division supervisor, where the teacher belongs, as chairman, a representative of the local or, in its absence, any existing provincial or national teachers' organization and a supervisor of the Division, the last two to be designated by the Director of Public Schools. The committee shall submit its findings and recommendations to the Director of Public Schools within thirty days from the termination of the hearings: Provided, however, That where the school superintendent is the complainant or an interested party, all the members of the committee shall be appointed by the Secretary of Education. (Emphasis supplied)

After the initial hearing, Nagpacan issued a Report of Investigation,[4] dated April 22, 1994, recommending the dismissal of petitioner from the service. Forthwith, then Schools Division Superintendent Norma Abracia, in a 1st Indorsement[5] dated June 8, 1994, recommended that petitioner be suspended for thirty (30) days effective immediately. Subsequently, then DECS-National Capital Region Director, respondent Nilo Rosas, rendered a decision,[6] dated July 22, 1994, dismissing petitioner from the service. Finally, then DECS Secretary Ricardo Gloria issued the following:

(1) 2nd Indorsement,[7] dated September 19, 1994, affirming the decision of respondent Rosas;

(2) Resolution,[8] dated October 9, 1996 modifying the 2nd Indorsement by considering petitioner as resigned from the service without prejudice to whatever benefits she is entitled under existing laws as well as reinstatement in the government service except in the DECS; and

(3) Resolution,[9] dated October 27, 1997, denying petitioner's plea for reconsideration, which was considered as a petition for relief from judgment.

Meanwhile, upon Avila's complaint, petitioner and Padilla were also criminally charged with estafa before the Regional Trial Court of Caloocan City, Branch 131, on the very same facts alleged in the administrative complaint lodged with the DECS.

The Information reads:

That on or about the 14th day of June 1993 in Kalookan City, M.M. and within the jurisdiction of this Honorable Court, the above-named accused, Fe Padilla, conspiring together with accused Mercedes Gonzales and with intent to deceive and defraud complainant Adriana Presas, the former purporting to be and assuming the identity of one Purita Avila, a registered owner of house and lot covered by TCT No. 260609, Kalookan City, and the latter cooperating and acting convincingly to affirm that accused Fe Padilla is the person of Purita Avila, well knowing said representation to be false and fraudulent, the truth being that the true owner of the said house and lot is Purita Avila, and by said act of deception and pretension accused were able to obtain from complainant Adriana Presas a mortgage covering the said house and lot of Purita Avila in the amount of P30,000.00, thus completely deceiving Presas as to who is the true owner of the property, to the damage and prejudice of the latter in the aforementioned amount of P30,000.00.

CONTRARY TO LAW. [10]

On May 30, 1995, the trial court convicted petitioner as follows:

WHEREFORE, accused MERCEDES GONZALES is hereby convicted of the crime for ESTAFA as charged in the Information and, applying the Indeterminate Sentence Law, is hereby sentenced to suffer the penalty of TWO YEARS, ELEVEN (11) MONTHS and ELEVEN (11) DAYS TO FOUR (4) YEARS and TWO (2) MONTHS and to pay to private complainant ADRIANA PRESAS the amount of THIRTY THOUSAND (P30,000.00) PESOS plus twelve percent (12%) per annum commencing from September 21, 1994 when the Information was filed in Court and until fully paid.

SO ORDERED.[11]

However, the Court of Appeals in a decision,[12] dated August 28, 1997, in CA-G.R. CR No. 18268, acquitted petitioner on appeal, absent any proof beyond reasonable doubt that petitioner conspired with co-accused Padilla or that she benefited from the amount given to Padilla.

All the while, petitioner never applied for judicial relief for resolution of the jurisdictional issue and declaration of nullity of the administrative proceedings conducted by respondent Nagpacan. Instead, she filed on February 25, 1999 an administrative complaint docketed as OMB-ADM-0-99-0177 for violation of Sec. 9 of the Magna Carta for Public School Teachers against Abracia, Gloria and herein respondents Nagpacan and Rosas before the Office of the Ombudsman.

Graft Investigation Officer Plaridel Oscar Bohol found the complaint sufficient in form and substance and recommended that an administrative adjudication be conducted against Abracia, Nagpacan, and Rosas.

On August 4, 1999, Bohol handed down his decision[13] in OMB-ADM 0-99-0177, which disposed as follows:

1. Respondents RICARDO P. NAGPACAN (Administrative Officer III) and NILO L. ROSAS (Undersecretary) both of the Department of Education, Culture and Sports, are hereby suspended without pay

for Six (6) Months, for Simple Neglect of Duty.

2. The Secretary of the Department of Education, Culture and Sports is hereby directed to reopen ADM. CASE NO. DECS-NCR-001-94 entitled PURITA AVILA v. FE PADILLA and MERCEDES GONZALES, and cause its adjudication pursuant to R.A. No. 4670 otherwise known as the Magna Carta for Public School Teachers and other existing laws.

SO ORDERED.[14]

However, Administrative Adjudication Bureau Director Evelyn Baliton disapproved Bohol's findings and dismissed petitioner's administrative complaint against respondents. Baliton noted that the administrative complaint was filed five (5) years after the occurrence of the act complained of, a ground for outright dismissal of the complaint under Sec. 4(a), Rule III of the Rules of Procedure[15] of the Office of the Ombudsman. Baliton also found that complainant had an adequate remedy in another judicial or quasi-judicial body, also a ground for dismissal under Sec. 20[16] of the Ombudsman Act of 1989. The proper remedy, Baliton maintained, was to seek judicial relief from the proper court for resolution of the jurisdictional issue and for declaration of nullity of the administrative proceedings. Finally, according to Baliton, petitioner failed to adduce substantial evidence showing respondents willfully violated Sec. 9 of the Magna Carta for Public School Teachers[17] resulting in the denial of petitioner's right to due process.

Hence, in a memorandum[18] dated September 23, 1999 addressed to and approved by Asst. Ombudsman Abelardo Aportadera, Jr., Baliton disposed of the administrative complaint thus:

In view of all the foregoing premises, it is respectfully recommended that the Decision under review be DISAPPROVED, instead, the complaint against the respondents be DISMISSED for insufficiency of evidence and that the recommendation of Atty. Bohol to direct the DECS Secretary to re-open DECS-NCR-001-94 be likewise DISAPPROVED.[19]

Undeterred, petitioner filed with the Court of Appeals a special civil action for certiorari on the ground that the Ombudsman acted with grave abuse of discretion in adopting Director Evelyn Baliton's memorandum of September 23, 1999 recommending the dismissal of her complaint. The case was docketed as CA-G.R. SP No. 56251.

On October 2, 2000, the appellate court dismissed CA-G.R. SP No. 56251 for want of merit. It held that the petition should have been dismissed outright as the proper remedy was a petition for review under Rule 43 of the 1997 Rules of Civil Procedure.[20] However, assuming certiorari was available, the same should have been filed not later than ten (10) days from notice of the assailed memorandum. Nonetheless, the petition would fail anyway because a motion for reconsideration should have been filed in order to enable the Ombudsman to correct his mistake without the intervention of the courts. The Court of Appeals also found the Ombudsman correctly relied upon Sec. 20 of the Ombudsman Act of 1989,[21] when it dismissed petitioner's administrative complaint against respondent DECS officials.

Anent herein petitioner's reliance upon the findings of Graft Investigation Officer Bohol, the appellate court deemed the same to be misplaced as said findings are subject to the approval of Director Baliton and hence, do not carry immediate, final, nor binding effect. Finally, the Court of Appeals ruled that assuming there was a violation of Sec. 9 of the Magna Carta for Public School Teachers, petitioner's remedy is to seek judicial relief from the proper court for resolution of the jurisdictional issue and for declaration of nullity of the administrative proceedings.

Before us, petitioner ascribes to the appellate court, the sole error,

. .THAT THE COURT OF APPEALS GRAVELY ERRED IN DISMISSING PETITIONER’S PETITION FOR CERTIORARI.[22]

First, the petitioner argues that a petition for certiorari under Rule 65 is the proper remedy because a motion for reconsideration is no longer available as the administrative decision had become final and unappealable. Neither could she file a petition for review under Rule 43 as it only pertains to appeals from the Court of Tax Appeals and quasi-judicial agencies to the Court of Appeals, thus implying that the Office of the Ombudsman is not a quasi-judicial agency.

Petitioner’s contentions are untenable. The Office of the Ombudsman is a quasi-judicial agency covered by the procedure outlined in Rule 43 of the 1997 Rules of Civil Procedure.[23] As a rule, appeals from decisions of quasi-judicial agencies, such as the Office of the Ombudsman, in administrative disciplinary cases, should be taken to the Court of Appeals under Rule 43. The rule was formulated precisely to provide for a uniform rule of appellate procedure for quasi-judicial agencies.[24] Thus, certiorari under Rule 65 will not lie, as appeal under Rule 43 is an adequate remedy in the ordinary course of law.[25] Unfortunately, petitioner failed to appeal within fifteen (15) days from notice of the assailed decision. Certiorari under Rule 65 cannot be resorted to as a substitute for the lost remedy of appeal, especially if such lapse was occasioned by petitioner’s neglect or error in the choice of remedies, for the remedies of appeal and certiorari are mutually exclusive and not alternative or successive.[26]

Second, petitioner claims that the Ombudsman acted with grave abuse of discretion when it dismissed petitioner’s administrative complaint against respondents. Her claim, however, is far from meritorious, as hereafter elucidated.

The Ombudsman dismissed the administrative complaint on the ground that it was filed out of time, pursuant to Sec. 20 of the Ombudsman Act of 1989. Petitioner herself admits that the administrative complaint was filed only on February 25, 1999, or almost five years after the act complained of, which was her forced resignation from the service on September 19, 1994. Hence, in dismissing the belated administrative complaint, the Ombudsman, far from acting with grave abuse of discretion, was simply following what the law has mandated.

Petitioner belabors the point that Sec. 20 merely uses the word may and not shall, which means that the provision is only directory and not mandatory in nature. But, at the risk of sounding rhetorical, no grave abuse of discretion attaches in following what the law directs any less than in following what the law mandates. No doubt, in dismissing the complaint for having been filed out of time, as directed by Sec. 20 of the Ombudsman Act of 1989, the Ombudsman did not act with grave abuse of discretion. In fact, he exercised sound discretion in full accord with law.

Finally, in a desperate bid to reopen the administrative case, petitioner cries estoppel. She argues that Director Baliton was estopped from dismissing the administrative complaint because Graft Investigation Officer Bohol had already conducted the necessary investigation in connection therewith. The theory is seriously flawed. The findings, conclusions and recommendations of Bohol are, by the nature of his position as Graft Investigation Officer I, necessarily subject to the review and approval of Baliton as Administrative Adjudication Bureau Director. Hence, Director Baliton, in reviewing the findings of Bohol, is not estopped thereby, for the investigator’s findings do not possess conclusive effect. On the contrary, the Director is empowered to modify, reverse, or even supplant said findings with her own.

The proper remedy for petitioner, as suggested by the appellate court, is to seek judicial relief from the proper court for resolution of the jurisdictional issue and for declaration of nullity of the administrative proceeding resulting in her forced resignation, allegedly in violation of Sec. 9 of the Magna Carta for Public School Teachers. Unfortunately, petitioner chose to pursue another remedy not warranted by the circumstances of her case.

It is now indubitable that the Court of Appeals did not err when it dismissed her petition for certiorari under Rule 65 of the Rules of Court.

WHEREFORE, the instant petition for review is DENIED for lack of merit. The decision of the Court of Appeals, dated October 2, 2000, in CA-G.R. SP No. 56251 is AFFIRMED. Costs against petitioner.

SO ORDERED.

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

Austria-Martinez, J., no part.

[1] Rollo, pp. 47-57. Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Ma. Alicia Austria-Martinez (now a member of this Court) and Hilarion L. Aquino, concurring.

[2] Id. at 71-76.

[3] Otherwise known as The Magna Carta for Public School Teachers.

[4] Rollo, pp. 64-69.

[5] Id. at 70.

[6] Id. at 71-76.

[7] Id. at 77.

[8] Id. at 78.

[9] Id. at 79-83.

[10] Id. at 86.

[11] Id. at 85.

[12] Id. at 85-94.

[13] Id. at 138-151.

[14] Id. at 149.

[15] SEC. 4. Evaluation. — Upon receipt of the complaint, the same shall be evaluated to determine whether the same may be:

(a) dismissed outright for any of the grounds stated under Section 20 of RA 6770;

...

[16] SEC. 20. Exceptions.— The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

1) The complainant has an adequate remedy in another judicial or quasi-judicial body;

...

5) The complaint was filed after one year from the occurrence of the act or omission complained of.

[17] Supra, note 3.

[18] Rollo, pp. 135-137.

[19] Id. at 136-137.

[20] Rule 43. SEC. 1. Scope. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

[21] Supra, note 16.

[22] Rollo, p. 19.

[23] *Namuhe v. The Ombudsman*, 358 Phil. 781, 789 (1998) citing *Fabian v. Hon. Desierto*, 356 Phil. 787, 806 (1998).

[24] Id. at 788-789.

[25] SEC. 1, Rule 65, 1997 RULES OF CIVIL PROCEDURE.

[26] *Cano-Gutierrez v. Gutierrez*, G.R. No. 138584, 2 October 2000, 341 SCRA 670, 678.

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