IN THE MATTER TO DECLARE IN CONTEMPT OF COURT HON. SIMEON A. DATUMANONG IN THE LATTER'”S CAPACITY AS SECRETARY OF THE DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS.

G.R. NO. 150274. August 06, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Petitioner Jimmie F. Tel-Equen, District Engineer of Mountain Province, DPWH Cordillera Administrative Region, filed this present petition to cite the former Secretary Simeon A. Datumanong of the Department of Public Works and Highways (DPWH) in contempt of court for issuing Memorandum Order dated October 5, 2001 dismissing him from the service.

The facts of the case are as follows:

The Ombudsman Task Force on Public Works and Highways filed with the Office of the Ombudsman an administrative complaint for dishonesty, falsification of official documents, grave misconduct, gross neglect of duty, violation of office rules and regulations, and conduct prejudicial to the service against petitioner Tel-Equen and several others, relative to the anomalous payment of P553,900.00 of the bailey bridge components owned by the government. The case was docketed as OMB-ADM-0-91-0430.[1]On March 28, 1994, the Administrative Adjudication Bureau of the Office of the Ombudsman found respondents guilty of dishonesty, falsification of public documents, misconduct and conduct prejudicial to the best interest of the service and ordered their dismissal from the service with accessory penalties pursuant to Section 23 of Rule XIV, Book V of Executive Order No. 292, otherwise known as the Revised Administrative Code of 1987.[2]After the denial of the motions for reconsideration, three petitions were filed before this Court which were consolidated and referred to the Court of Appeals in light of the ruling in Fabian v. Desierto[3] where appeals from decisions of the Office of the Ombudsman in administrative cases should be referred to the appellate court under Rule 43 of the Rules of Court.[4]

On March 2, 2000, the Court of Appeals affirmed with modification the decision of the Administrative Adjudication Bureau of the Office of the Ombudsman finding petitioner and two co-accused guilty as charged and dismissed them from the service while the other two respondents were exonerated from administrative liability for lack of evidence.[5]

Petitioner, together with his two co-accused, appealed from the decision of the Court of Appeals which was docketed as G.R. No. 144694.[6] Meanwhile, while appeal was still pending, Secretary Datumanong issued the assailed Memorandum Order,[7] which reads:

> October 5, 2001
>
> MEMORANDUM TO:

> Messrs:
>
> JIMMIE F. TEL-EQUEN
> District Engineer
>
> RUDY P. ANTONIO
> Chief, Construction Section
>
> All of Mountain Province Engineering District
> This Department
>
> This is with reference to the Order of the Ombudsman dated December 11, 1995 in OMB ADM. 0-91-0430 entitled "OMB TASK FORCE ON DPWH versus JIMMIE F. TEL-EQUEN, ET AL." (Annex "A"), affirming the March 28, 1994 Resolution (Annex "B") in the same case finding you guilty of having committed acts of dishonesty, falsification of public documents, misconduct and conduct prejudicial to the best interest of the service and recommending that you be DISMISSED from the service together with its accessory penalties pursuant to Sec. 23, Rule XIV, Book V of Executive Order No. 292.
>
> The Order was affirmed by the Court of Appeals (Eight Division) in its Decision (Annex "C") promulgated on March 02, 2000 in CA-G.R. SP No. 50324 entitled "ROMULO H. MABUNGA, ET AL. versus THE OMBUDSMAND, ET AL."
>
> Inasmuch as the Order dismissing you from the service is not a subject of any injunction or restraining order from the Supreme Court, the same is immediately executory. Wherefore, you are hereby ordered DROPPED/DISMISSED from the service effective upon receipt hereof.
>
> (Sgd.) SIMEON A. DATUMANONG
> Secretary

Hence, the instant petition to cite Secretary Datumanong in contempt of court.

Petitioner contends that in issuing the Memorandum Order despite knowledge of the pendency of G.R. No. 144694, Secretary Datumanong committed a contumacious act, a gross and blatant display of abuse of discretion and an unlawful interference with the proceedings before the Court, thereby directly or indirectly impeding, obstructing and degrading the administration of justice, and pre-empting the Court's sole right to make a decision in accord with the evidence and law.[8]

Petition lacks merit.

The power to declare a person in contempt of court and in dealing with him accordingly is an inherent power lodged in courts of justice, to be used as a means to protect and preserve the dignity of the court, the solemnity of the proceedings therein, and the administration of justice from callous misbehavior, offensive personalities, and contumacious refusal to comply with court orders.[9] This contempt power, however plenary it may seem, must be exercised judiciously and sparingly with utmost self-restraint with the end in view of utilizing the same for correction and preservation of the dignity of the court, not for retaliation or vindication.[10] It should not be availed of unless necessary in the interest of justice.[11]

After careful consideration of the facts and circumstances of the case, we find that the issuance of the Memorandum Order by Secretary Datumanong was not a contumacious conduct tending, directly or indirectly, to impede, obstruct or degrade the administration of justice. A conduct, to be contumacious, implies willfulness, bad faith or with deliberate intent to cause injustice, which is not so in the case at bar. If it were otherwise, petitioner should have been dismissed immediately after the Administrative Adjudication Bureau of the Office of the Ombudsman rendered its decision on March 28, 1994. It was only after the Court of Appeals rendered its decision

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on March 2, 2000 affirming the dismissal that Secretary Datumanong issued the memorandum and after ascertaining that no injunction or restraining order was issued by the Court.

At most, it may be considered only an error of judgment or a result of confusion considering the different rules regarding execution of decisions pending appeal.

Decisions of the Civil Service Commission under the Administrative Code of 1987[12] are immediately executory even pending appeal because the pertinent laws[13] under which the decisions were rendered mandate them to be so.[14] Thus, "where the legislature has seen fit to declare that the decision of the quasi-judicial agency is immediately final and executory pending appeal, the law expressly so provides."[15] Otherwise, execution of decisions takes place only when they become final and executory, like decisions rendered by the Office of the Ombudsman.

Thus, in Lapid v. Court of Appeals,[16] the Court held:

> Petitioner was administratively charged for misconduct under the provisions of R.A. 6770, the Ombudsman Act of 1989. Section 27 of the said Act provides as follows:
> "Section 27. Effectivity and Finality of Decisions. — All provisionary orders of the Office of the Ombudsman are immediately effective and executory.
>
> A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on the following grounds:
>
> x x x x x x x x x
>
> Findings of fact of 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.
>
> In all administrative disciplinary cases, orders, directives or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court."

The Rules of Procedure of the Office of the Ombudsman likewise contain a similar provision. Section 7, Rule III of the said Rules provides as follows:

> "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. 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 R.A. 6770."

It is clear from the above provisions that the punishment imposed upon petitioner, i.e. suspension without pay for one year, is not among those listed as final and unappealable, hence, immediately executory. Section 27 states that all provisionary orders of the Office of the Ombudsman are immediately effective and executory; and that any order, directive or decision of the said Office imposing the penalty of censure or reprimand or suspension of not more than one month's salary is final and unappealable. As such the legal maxim "inclusio[n] unius est exclusio alterius" finds application. The express mention of the things included excludes those that are not included. The clear import of these statements taken together is that all other decisions of the Office of the Ombudsman which impose penalties that are not enumerated in the said Section 27 are not final, unappealable and immediately

executory. An appeal timely filed, such as the one filed in the instant case, will stay the immediate implementation of the decision. This finds support in the Rules of Procedure issued by the Ombudsman itself which states that "(I)n 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 (should now be petition for review under Rule 43) shall have been filed by him as prescribed in Section 27 of R.A. 6770."

x x x x

A judgment becomes "final and executory" by operation of law. Section 27 of the Ombudsman Act provides that any order, directive or decision of the Office of the Ombudsman imposing a penalty of public censure or reprimand, or suspension of not more than one month's salary shall be final and unappealable. In all other cases, the respondent therein has the right to appeal to the Court of Appeals within ten (10) days from receipt of the written notice of the order, directive or decision. In all these other cases therefore, the judgment imposed therein will become final after the lapse of the reglementary period of appeal if no appeal is perfected or, an appeal therefrom having been taken, the judgment in the appellate tribunal becomes final. It is this final judgment which is then correctly categorized as a "final and executory judgment" in respect to which execution shall issue as a matter of right. In other words, the fact that the Ombudsman Act gives parties the right to appeal from its decisions should generally carry with it the stay of these decisions pending appeal. Otherwise, the essential nature of these judgments as being appealable would be rendered nugatory. (Emphasis supplied)

Petitioner was charged administratively before the Office of the Ombudsman. Accordingly, the provisions of the Ombudsman Act and its Rules of Procedure should apply in his case. It is a principle in statutory construction that where there are two statutes that apply to a particular case, that which was specially designed for the said case must prevail over the other.[17]

In fine, Secretary Datumanong cannot be held in contempt of court for issuing the Memorandum Order in the absence of malice or wrongful conduct in issuing it. The remedy of the petitioner is not to file a petition to cite him in contempt of court but to elevate the error to the higher court for review and correction.

However, two events supervened since the filing of this petition that would support its dismissal. First, on March 28, 2005, the Court in G.R. No. 144694 affirmed the decisions of the Court of Appeals and Administrative Adjudication Bureau of the Office of the Ombudsman ordering petitioner dismissed from the service for dishonesty, falsification of public documents, misconduct, and conduct prejudicial to the best interest of the service. Second, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman was amended by Administrative Order No. 17[18] wherein the pertinent provision on the execution of decisions pending appeal is now essentially similar to Section 47 of the Uniform Rules on Administrative Cases in the Civil Service and other related laws, thus:

> Rule III
>
> PROCEDURE IN ADMINISTRATIVE CASES
>
> Section 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 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.

Well-settled is the rule that procedural laws are construed to be applicable to actions pending and undetermined at the time of their passage, and are deemed retroactive in that sense and to that extent. As a general rule, the retroactive application of procedural laws cannot be considered violative of any personal rights because no vested right may attach to nor arise therefrom.[19]

In the case at bar, the Rules of Procedure of the Office of the Ombudsman are clearly procedural and no vested right of the petitioner is violated as he is considered preventively suspended while his case is on appeal. Moreover, in the event he wins on appeal, he shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. Besides, there is no such thing as a vested interest in an office, or even an absolute right to hold office. Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office.[20]

WHEREFORE, in view of the foregoing, the petition to cite former Secretary Simeon A. Datumanong of the Department of Public Works and Highways in contempt of court for issuing Memorandum Order dated October 5, 2001 dismissing petitioner Jimmie F. Tel-Equen from the service is DISMISSED for lack of merit.

SO ORDERED.

Panganiban, C.J., (Chairperson), Austria-Martinez, Callejo, Sr. and Chico-Nazario, JJ., concur.

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[1] Antonio v. Villa, G.R. No. 144694, March 28, 2005, 454 SCRA 84, 91.

[2] Id. at 95.

[3] 356 Phil. 787, 808 (1998).

[4] Antonio v. Villa, supra at 96.

[5] Id. at 96-97.

[6] Id. at 97.

[7] Rollo, p. 12.

[8] Id. at 6.

[9] Office of the Court Administrator v. Paderanga, A.M. No. RTJ-01-1660, August 25, 2005, 468 SCRA 21, 34.

[10] Rodriguez v. Bonifacio, 398 Phil. 441, 468 (2000).

[11] Quinio v. Court of Appeals, 390 Phil. 852, 861 (2000).

[12] Section 47(4), Chapter 6, Title I of Book V of Executive Order No. 292 (1987), reads:

> Sec. 47. Disciplinary Jurisdiction. —
>
> x x x x

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> (4) An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under the preventive suspension during the pendency of the appeal in the event he wins an appeal.

[13] Section 37(d) of Article IX of P.D. No. 807 (1975), otherwise known as Civil Service Decree of the Philippines, reads:

> Sec. 37. Disciplinary Jurisdiction. —
>
> x x x x
>
> (d) An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under the preventive suspension during the pendency of the appeal in the event he wins an appeal.

And, Section 47 of CSC Memorandum Circular No. 19-99, otherwise known as the Uniform Rules on Administrative Cases in the Civil Service (1999), reads:

> Section 47. Effect of Filing. - An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal, in the event he wins an appeal.

[14] Lapid v. Court of Appeals, 390 Phil. 236, 251 (2000).

[15] Neeland v. Villanueva, Jr., 416 Phil. 580, 592 (2001).

[16] Supra at 246-247, 249.

[17] Id. at 251.

[18] Signed by Ombudsman Simeon V. Marcelo on September 15, 2003.

[19] Calacala v. Republic, G.R. No. 154415, July 28, 2005, 464 SCRA 438, 446.

[20] Sangguniang Bayan of San Andres, Catanduanes v. Court of Appeals, 348 Phil. 303, 321 (1998).

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