

VICTOR R. REYES, ASSISTANT CITY ASSESSOR, DEPARTMENT OF ASSESSMENT, CITY OF MANILA, PETITIONER, VS. HON. JOSE L. ATIENZA, MAYOR, CITY OF MANILA, ATTY. EMMANUEL R. SISON, SECRETAR...

G.R. NO. 152243. September 23, 2005

Ponente: TINGA, J.

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TINGA, J.

The petitioner in this case, Victor R. Reyes ("Reyes"), identifies himself as the Assistant City Assessor of the City of Manila. The very appropriateness of the nomenclature is crucial to the present petition. Petitioner ultimately hinges the favorable action on his cause on the recognition that he still is the Assistant City Assessor of Manila, a post to which he was appointed in 1989, but which function he has not effectively held since 1994.

The case originated from a complaint filed by petitioner Reyes before the Office of the Ombudsman against respondents Jose L. Atienza, the Mayor of the City of Manila, and Atty. Emmanuel R. Sison, Secretary to the City Mayor. The respondents were charged with violation of Sections 3(a) and (e) of the Anti-Graft and Corruption Practices Act.[1] The particular act complained of was the appointment by Mayor Atienza of Hernando B. Garcia as Assistant City Assessor on 1 July 1998. According to Reyes, such appointment was illegal, for as of even date, he remained the incumbent Assistant City Assessor of Manila, by virtue of his appointment to the office, on a permanent status, on 3 August 1989.

Reyes had originally been designated as Officer-in-Charge of the Office of the City Assessor on 16 January 1987 by then acting Mayor Gemiliano Lopez, Jr.[2] Upon the recommendation of Mayor Lopez, Reyes was appointed on a permanent status as Assistant City Assessor effective 3 August 1989 by then Acting Secretary of Finance Victor C. Macalincag.[3] He remained in office upon assumption of office by then Manila Mayor Alfredo C. Lim[4] in 1992.

In a letter dated 1 October 1993, Reyes requested Mayor Lim for "a transfer in Quezon City Hall." [5] In the said letter, Reyes further stated "[i]f I ever could not transfer until December 31, 1993, then eventually, I would be applying for a retirement effective January 1, 1994." [6] He also requested therein for the approval of sick leave for the months of August and September of 1993, and such request was duly approved.[7]

It appears from the record that since then, Reyes has never been able to actually reassume the functions of Assistant City Assessor. By his own admission, Reyes "was prevented from reporting back to work" [8] due to the pendency of three complaints [9] filed against him before the Office of the Ombudsman. Notably, an administrative complaint was also pending with the Office of the City Legal Officer against Reyes. [10] The complaints against Reyes filed with the Office of the Ombudsman were all dismissed by March of 1994.

There is no certainty as to the status of Reyes's appointment as Assistant City Assessor after 1994. However, the following facts from the record are telling.

In a letter dated 8 April 1994 addressed to Carlos C. Antonio, City Assessor of Manila, Reyes stated as follows:

I would like to request for Clearances needed for my Retirement, be [sic] informed that last October 1993 upon my request to his Honor Mayor ALFREDO S. LIM approved my retirement effective January 1, 1994 including my clearances [sic], but to my surprise the Legal Department of Manila file [sic] a case which was dismissed by the Ombudsman.

Hoping for your kind consideration on this matter.[11]

Moreover, it is also undisputed that Mayor Lim made two subsequent appointments to the post of Assistant City Assessor. Angel R. Purisima was appointed to the position on 26 July 1995, and his appointment was approved by the Civil Service Commission (CSC) on 18 September 1995. Purisima resigned on 31 October 1996, and in his stead, Mayor Lim appointed Senen D. Tomada on 26 March 1998. However, the CSC disapproved the appointment of Tomada, it having been made in violation of the Commission on Elections ban on appointments during the election period.[12] Interestingly, the CSC disapproval was made only on 27 July 1998, or 26 days after the appointment of Garcia to the same post by the newly elected Mayor Atienza.

In the meantime, it appears that Reyes's application for retirement could not be cleared due to the pending administrative complaint filed with the Office of the City Legal Officer. In April of 1994, Reyes filed a demurrer to the evidence in the said administrative proceeding. Despite repeated urgings, the demurrer remained unresolved by October of 1995, thus causing Reyes to file a petition for mandamus with the Regional Trial Court of Manila, praying that the demurrer be acted upon by the Office of the City Legal Officer. Pertinently, Reyes alleged the following under oath in his petition:

13. Meanwhile petitioner [Reyes], who retired from the service as City Assessor of Manila, cannot get his retirement pay because he cannot submit a clearance from the office of the public respondent.[13]

The petition for mandamus was dismissed in an Order dated 29 October 1996.[14]

It was only on 28 August 1998 when the administrative complaint against Reyes was dismissed in a decision penned by Mayor Atienza. Still, Reyes alleged that he was never furnished a copy of the decision and that he learned of the dismissal of the complaint only on 5 May 1999. He likewise claimed that his requests for a certified copy of the decision from Manila City Hall have been ignored.[15]

Then, on 20 March 2000, Reyes filed the aforementioned criminal complaint against Mayor Atienza and Sison before the Ombudsman. In the complaint, Reyes characterized as illegal the appointment of Garcia as Assistant City Assessor, noting that he was then and still is actually occupying the said position on the premise that his retirement was never approved or cleared due to the pending administrative case. Reyes also alleged that the appointment smacked of nepotism, as Garcia was the brother-in-law of Sison, the Secretary to Mayor Atienza.

From the record, the allegation also appears that Reyes had filed charges against Atienza and Sison before the CSC,[16] although there is no indication as to the actual nature of the complaint, or its present status.

In a Resolution[17] dated 10 October 2000, the Office of the Ombudsman ordered the dismissal of the complaint for insufficiency of evidence. The Ombudsman concluded that the inferences made by Reyes did not suffice to establish clearly and convincingly that there was a deliberate action on the part of respondents to violate existing rules and regulations duly promulgated by competent authority or an offense in the conduct of their official duties by reason of the inducement, persuasion or influence by another or allowing themselves to be persuaded, induced or influenced to commit such offense or violation, in contravention of Section 3(a) of the Anti-Graft and Corrupt Practices.[18]

The Ombudsman likewise ruled that the requisites for liability under Section 3(e) of the same law had not been established. It was noted that the element of causing undue injury in the discharge of respondents' official and/or administrative functions through manifest partiality, evident bad faith, or gross inexcusable negligence was not sufficiently established. This conclusion was derived from the fact that there were two prior appointments made by Mayor Lim to the position of Assistant City Assessor, which fact refutes the claim of Reyes that he had not yet vacated the post.[19] Finally, the Ombudsman concluded that the allegation of nepotism was without merit.[20]

A Motion for Reconsideration filed by Reyes was denied for lack of merit by the Ombudsman in a Resolution dated 23 November 2000, which also noted that the motion was not timely filed.[21]

The rulings of the Ombudsman were assailed by Reyes in a Petition for Review under Rule 43 of the Rules of Civil Procedure filed with the Court of Appeals. The Court of Appeals Fourteenth Division dismissed the petition in a Decision[22] rendered on 21 August 2001. The appellate court again reiterated the finding that Mayor Lim had made two appointments to the position of Assistant City Assessor prior to the designation of Garcia to the same post by Mayor Atienza in 1998. Thus, it was concluded that Reyes had been terminated or separated from his position as of 26 July 1995, or when Mayor Lim appointed Purisima to the position, as the CSC would not have approved the said appointment had there actually been no vacancy.

The Court of Appeals further noted that Garcia's appointment was approved by the CSC on 31 August 1998, and that nothing in the record indicated that said appointment was recalled or subsequently declared void and set aside.

A few days prior to the promulgation of the Court of Appeals' Decision, Reyes filed a Supplement to Reply with two documents attached thereto. The first was a letter from former Mayor Alfredo Lim, wherein Lim averred that he had not approved any formal retirement application of Reyes. The second document was a certification from the Integrated Records Management Office of the CSC, which noted that there was no record with that office of any notice of separation of service for Reyes. The conclusiveness of these documents was espoused by Reyes in his Motion for Reconsideration before the Court of Appeals, but for naught. In its Resolution[23] denying Reyes' motion for reconsideration, the appellate court reiterated its finding that the position of Assistant City Assessor was vacant as of 26 July 1995, when Purisima was appointed to the position.

Hence, the present petition for certiorari under Rule 65, imputing grave abuse of discretion on the part of the Court of Appeals in denying Reyes's petition and motion for reconsideration. The Court notes that the resort to the special civil action is patently erroneous, the plain speedy and adequate remedy of a petition for review under Rule 45 being clearly available to Reyes. On this score alone, the present petition is dismissible. Nonetheless, the Court resolves to examine the petition on the merits, with due regard to the precedential value a full-length decision would provide.

Before this Court, Reyes reiterates that his complaint filed with the Ombudsman sufficiently establishes the liability of respondents under Section 3(a) and (e) of the Anti-Graft and Corrupt Practices Act. The violation of Section 3(a) was established by the appointment of Garcia as Assistant City Assessor, despite the fact that there was no vacancy by reason of Reyes's continuous holding of the position. Reyes also claims that his repeated attempts to follow up the status of his administrative cases were ignored. Even though he was subsequently exonerated of the administrative charges, his requests for a copy of the decision have been ignored. Reyes argues that the acts/omissions and nonfeasance committed by the respondents directly violate Section 5(a) of the Code of Conduct and Ethical Standards for Public Officials and Employees.

Reyes also claims that the elements of the offense defined in Section 3(e) of the Anti-Graft and Corrupt Practices Act have likewise been established. In that regard, he claims that he had not known of the appointment of

Purisima in 1995, and had he known, he would have filed the appropriate case for usurpation. Reyes imputes that the real reason behind Purisima's resignation in 1996 was the knowledge that his appointment was irregular and illegal. Reyes also claims that Garcia's appointment by Atienza was made on 1 July 1998, or twenty-six (26) days before the CSC had disapproved Tomada's appointment to the same post.

The precise issue to be resolved by this Court is whether the Ombudsman was correct in concluding there was no probable cause to charge respondents with violation of the Anti-Graft and Corrupt Practices Act.

As a general rule, the Court does not interfere with the Ombudsman's determination of the existence or absence of probable cause.[24] As the Court is not a trier of facts, it reposes immense respect to the factual determination and appreciation made by the Ombudsman. In this case, the Ombudsman characterized Reyes's claims as mostly inferential.

Many of the allegations now before us are unsubstantiated by evidence and cannot be accorded merit by this Court. These would include the imputations of malice on the part of respondents in impeding Reyes' attempts in following up his clearance for retirement, in refusing to release a certified copy of the decision exonerating him from administrative charges, that nepotism attended the appointment of Garcia to the post of Assistant City Assessor, or that Garcia's appointment under re-employment status violated the Rules on Appointment of the Civil Service Commission since he was previously a contractual and not a permanent employee. Even assuming that there is truth to any of these charges, they have not been substantiated to the extent of convincing the Ombudsman that there is probable cause to file criminal cases against respondents. Owing to this paucity in substantiation, we have no reason to disturb the Ombudsman's refusal to lodge a criminal case arising from these premises.

Any possible culpability on the part of respondents hinges on a finding of probable cause that Garcia was appointed with the knowledge that such appointment was illegal, given that there was no vacancy in the post of

Assistant City Assessor. Both the Ombudsman and the Court of Appeals upheld respondents' argument that the post was indeed vacant at the time of Garcia's appointment, and supreme reliance was placed on the fact that Atienza's predecessor had made two appointments to the post after Reyes's presumed retirement.

There is wrinkle, however, to the unhesitating dismissal of this case. There is no definitive proof or "smoking gun" which decisively establishes when Reyes vacated his position, as concluded by the Ombudsman and the Court of Appeals. Assuming that Reyes had resigned his position, acceptance is necessary for resignation of a public officer to be operative and effective. Without acceptance, resignation is nothing and the officer remains in office.[25] The Omnibus Rules on Appointments and Other Personnel Actions promulgated by the CSC requires that in case of resignation, the voluntary written notice of resignation by the employee and the acceptance of resignation in writing by the appointing authority be submitted to the CSC.[26]

If, on the other hand, Reyes had "retired" from his position as he had previously claimed, such retirement must be understood as in concordance with the GSIS Law, which provides for either compulsory retirement at the age of sixty-five (65)[27] or optional retirement for employees over sixty (60) years of age and with more than fifteen (15) years of government service.[28] In such a case, there is no general demand that retirement meet the approval of the appointing authority, although retirement may be precluded under other circumstances provided by law.[29] However, the applicable Civil Service rules require that a notice stating the date of such retirement be submitted to the Commission.

It is uncertain from the record whether Reyes is entitled under the law to apply for retirement, which would generally not require any approval from the appointing authority in order to become effective. Respondents do not

make any allegations that Reyes has reached the age of compulsory retirement.

The record is similarly bereft of any proof that Reyes had equivocally resigned his position, or that said resignation was accepted by the appointing authority. Before this Court, respondents rely, as proof of Reyes' separation from service, on the letter dated 1 October 1993, wherein Reyes informed Mayor Lim that "[i]f I ever could not transfer [to Quezon City Hall] until December 31, 1993, then eventually, I would be applying for a retirement effective January 1, 1994." [30] Respondents narrate in their Comment, "[E]ffective January 1, 1994, the petitioner has finally retired from the service because the then Mayor Alfredo S. Lim approved his retirement on October 1993." [31] Yet it is clear from the letter that the option of retirement was not actually exercised then, but merely mentioned as a possibility, requiring further action on the part of Reyes. What Reyes had sought approval in the said letter was his application for sick leave and it was only such sick leave, and not retirement, which was approved by then Mayor Lim in October of 1993.

In essence, if indeed Reyes had applied for retirement or submitted his resignation following the normal processes, it would have been easy for respondents to present the countervailing documents which would have conclusively refuted Reyes's claims that he still was the incumbent Assistant City Assessor. The fact that no such documents were presented makes us refrain from concluding that the legal processes pertaining to resignation or retirement were observed in this case.

Still, the vitality of Reyes's claim of incumbency, crucial to the cause of action in his complaint, is severely undercut by his prior statements, which are not disputed and even at times averred under oath, that indicate that starting 1994, he had considered himself as having been separated from service as Assistant City Assessor. To recapitulate, Reyes had informed the City Assessor of Manila as early as 8 April 1994 that Mayor Lim "approved my retirement effective January 1, 1994." [32] Reyes also averred under oath in his petition for mandamus filed in 1995 that he "retired from the service as City Assessor of Manila." [33] Reyes had even spent considerable energy since 1994 following up on his clearances for retirement. There is no showing that he has attempted to perform the functions of Assistant City Assessor since 1994. It is extremely disingenuous on the part of Reyes to suddenly claim that all this time, he actually still was the Assistant City Assessor, a position whose functions has since been assumed by three other persons, the appointments of the first two never having been challenged by him. [34]

Still, it must be kept in mind that the central issue in this case is not the viability of Reyes's claim to continued incumbency, but the existence of probable cause for respondents' criminal culpability by reason of the appointment of Garcia. On that point, we certainly are unable to attribute any malice aforethought or criminal intent of respondents on account of the appointment of Garcia. As the Ombudsman and the Court of Appeals noted, Atienza's predecessor, Mayor Lim, had issued two appointments to the position of the CSC. The first was approved by the CSC, and while the second was disapproved, it was due to the violation of the COMELEC ban on appointments, and not because of any finding that Reyes had not been validly separated from the office. [35] The fact that the appointment of Purisima in 1995 was approved by the CSC gives rise to a presumption that the body was aware that the position was vacant and that the appointment was valid. We are unable to share the absolute belief of the Court of Appeals that this approval of Purisima's appointment is ipso facto conclusive that the position had already been vacated by Reyes. However, given that nobody appears to have challenged the validity of that appointment or of the subsequent appointment of Tomada on the grounds now alleged by Reyes, we can conclude that Mayor Atienza had every right to assume in good faith that Reyes no longer held the post of Assistant City Assessor.

Section 3(a) of the Anti-Graft and Corrupt Practices Act requires a deliberate intent on the part of the public official concerned to violate those rules and regulations duly promulgated by competent authority, or to commit an offense in connection with official duties. On the other hand, Section 3(e) poses the standard of manifest

partiality, evident bad faith, or gross inexcusable negligence before liability can be had on that paragraph. Manifest partiality has been characterized as "a clear, notorious or plain inclination or predilection to favor one side rather than the other." [36] Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage. [37] Gross inexcusable negligence has been defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. [38] Clearly, the standard of culpability imposed by Section 3 of the Anti-Graft and Corrupt Practices Act is quite high, and in this case, insufficiently quantified by the evidence presented by Reyes. Moreover, the conduct of respondents in this case hardly meets these standards, guided as it was, in presumptive good faith by the two previous unchallenged appointments made by Mayor Lim to the same post.

There are troubling circumstances that attend the facts of this case, and nothing in this decision should preclude Reyes from pursuing through the proper legal avenues, whatever rights and claims he may have under law, emanating from his permanent appointment as Assistant City Assessor of Manila and his possible separation from the service. Nonetheless, what the Court is called upon to adjudge is probable cause for criminal culpability of respondents, and under the circumstances, we cannot find such probable cause.

WHEREFORE, the Petition is DISMISSED, the assailed Decision not being tainted with grave abuse of discretion. No costs.

SO ORDERED.

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

[1] Republic Act No. 3019. The relevant portions of Section 3 thereof read:

"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:

(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

....

(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.

[2] Rollo, p. 121.

[3] Id. at 119.

[4] Since elected as Senator in 2004.

[5] Rollo, p. 131.

[6] Id.

[7] Id.

[8] Id. at 9.

[9] Docketed as OMB 0-92-2149, OMB 0-89-0870, and OMB-ADM. 0-93-0345.

[10] Docketed as CLO-AC 930026.

[11] Rollo, p. 157.

[12] See Section 261(g), Omnibus Election Code.

[13] Rollo, p. 162.

[14] Rollo, pp. 165-166. Order penned by Judge Zeus Abrogar. The dismissal was predicated on the observation that the more appropriate remedy was to bring the matter to the attention of the Office of the City Mayor.

[15] Rollo, p. 11.

[16] See Rollo, pp. 187, 188.

[17] Penned by Graft Investigation Officer I Rosano A. Oliva and approved by then Ombudsman Aniano Desierto.

[18] Rollo, p. 58.

[19] Rollo, p. 60.

[20] Ibid.

[21] Rollo, p. 63.

[22] Penned by Justice A. Reyes, Jr. and concurred in by Justices B. Adefuin-Dela Cruz and J. Guevara-Salonga.

[23] Dated 28 January 2002.

[24] *Cabrera v. Marcelo*, G.R. Nos. 157419-20, 13 December 2004, 446 SCRA 207 citing *Sistoza v. Desierto*, 487 Phil. 117 (2002); *Venus v. Desierto*, 358 Phil. 675, 694 (1998). "This principle of non-interference does not apply when there is a grave abuse of discretion which would authorize the aggrieved person to file a petition for certiorari and prohibition, such as when the Ombudsman does not take essential facts into consideration in the determination of probable cause, among others." Id.; citing *Sistoza v. Desierto*, supra at 129.

[25] See R. AGPALO, *THE LAW OF PUBLIC OFFICERS* (1st ed., 1998) at 462.

[26] See Rule XII, Section 1, Omnibus Rules on Appointments and Other Personnel Actions.

[27] See Section 13, Rep. Act No. 8921 (1997). Provided that if the employee has less than fifteen (15) years of service, he may be allowed to continue in the service in accordance with existing civil service rules and regulations.

[28] See Section 13-A, Rep. Act No. 8291.

[29] For example, Section 12 of the Anti-Graft and Corrupt Practices Act precludes a public officer from retirement pending an investigation or prosecution, criminal or administrative, for any offense under the said law or under the provisions of the Revised Penal Code on bribery.

[30] Supra note 6.

[31] Rollo, p. 240.

[32] Supra note 11.

[33] Supra note 13.

[34] Reyes claims that he had not known of the appointment of Purisima in 1995. This claim is incredulous, considering that by Reyes's own account, he had been a regular visitor to the Manila City Hall following up on his retirement clearances.

[35] Reyes points out that Garcia was appointed twenty-six (26) days prior to the Civil Service Commission's disapproval of Tomada's appointment. That discrepancy is not fatal, or cause for criminal action, due to the fact that Tomada's appointment is deemed as void ab initio, being in violation of Section 261(g) of the Omnibus Election Code.

[36] See *Marcelo v. Sandiganbayan*, G.R. No. 69983, 14 May 1990, 185 SCRA 346.

[37] See *Marcelo v. Sandiganbayan*, id. See also *Mendiola v. People*, G.R. Nos. 89983-84, 6 March 1992, 207 SCRA 85. "While one need not agree with all his acts or stated reasons therefore or the wisdom thereof, one cannot say that they were so obviously and palpably sham justifications for merely arbitrary and capricious acts as to warrant a finding of "evident bad faith.""

[38] *Fernando v. Sandiganbayan*, G.R. No. 96182-3, 19 August 1992, 212 SCRA 680.

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