CORAZON C. BALBASTRO PETITIONER, VS. NESTOR JUNIO, BRIAN CASASOLA, KENT HUERGULA, JASON MARTIN JARDINIANO, CYRIL PONCLARA, EDILZAR AMALLER, MELVIN MONDEJAR, AND FRANCIS SORON, R...

G.R. NO. 154678. July 17, 2007

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before this Court is a petition for review under Rule 45 of the Rules of Court seeking the reversal of the Resolution[2] of the Court of Appeals (CA) dated May 2, 2002[3] which dismissed Corazon C. Balbastro's petition for certiorari on the ground that certiorari cannot be used as a substitute for a lapsed appeal; and its Resolution dated July 16, 2002[4] denying her motion for reconsideration.

The factual antecedents are as follows:

Ten former students of Iloilo City National High School, namely: Nestor Junio, Brian Casasola, Kent Huergula, Jason Martin Jardiniano, Joebert Espulgar, Prudencio Macalalag, Cyril Ponclara, Edilzar Amaller, Melvin Mondejar and Francis Soron (respondents) filed on April 24, 2000, criminal and administrative cases against Corazon C. Balbastro, Principal III (petitioner), Gilda C. Gulmatico, Administrative Officer II (Gulmatico), Rudy T. Carbonera, Bookkeeper (Carbonera), and Lydia E. Ocate, Acting Disbursing Officer (Ocate), for Falsification of Public Documents, Falsification by Public Officer or Employee and Malversation of Public Funds. Respondents claim that the said school officials prepared and used several Daily Wage Payrolls where it was made to appear that they (respondents) worked on several undertakings[5] for P120 a day. The truth however was that they were never hired by the school, neither did they sign and receive the amounts stated in the subject payrolls.[6] The administrative cases, subject of the present petition, were docketed as OMB-VIS-ADM-2000-0382 to 0391.[7]

Petitioner denied the charges and maintained that: as head of the school, she signed documents that were already prepared by the accounting department and which were merely presented to her for signature; their school had been participating in the Dinagyang Festival since 1998 and they had 180 participants who were provided with necessities; for the years 1998 to 1999 they had no sponsors and they only received token amounts from the city government; since they could no longer withdraw their participation in the festival, she instructed Gulmatico to ask the accounting office if there were funds available to finance their group; she was then told that there were savings from the Personnel Services Fund which could be used, by making the students work on their costumes and props for which they would be paid; Gulmatico presented to her payrolls prepared by the accounting office for her signature; the payees therein had not yet signed the same and she was of the impression that the payees were students who were members of the group; except for signing, she had no participation in the preparation of the payrolls and vouchers and merely relied on the regularity of performance of duties of the employees concerned; after she signed the payrolls, these were returned to the accounting department for payment and

disbursement; the payrolls were covered by vouchers which she also signed together with the bookkeeper, the administrative officer and the disbursing officer; as head of the school, she does not personally handle the finances thereof and until this case was filed against her, she never knew there was anything wrong in the preparation of the said payrolls, neither did she know who signed for the payees and received their pay from the disbursing officer; she did not receive a single centavo from the transaction, neither did she benefit personally therefrom; the complainants were also not damaged by the transactions because they were not entitled to the disbursed amount, moreover, the Commission on Audit had duly audited the disbursements in question pursuant to law.[8]

Carbonera and Gulmatico for their part averred that the payrolls did not bear their signatures and they had no knowledge of the allegations in the complaint.[9] Ocate meanwhile claimed that she never received anything from the transactions; that she signed the payrolls in good faith and in compliance with the instruction of petitioner who assured her that she (petitioner) would answer for whatever problem might arise in connection with the payrolls; and that Carbonera told her that the signatures appearing therein were genuine.[10]

At the hearing conducted by the Ombudsman on October 26, 2000, petitioner, Carbonera and Gulmatico walked out and refused to present evidence which prompted the Ombudsman to consider them as having waived their right to do so.[11]

On March 12, 2001, the Office of the Ombudsman (Visayas) rendered its Decision in OMB-VIS-ADM-2000-0382 to 0391 thus:

> WHEREFORE, for all the foregoing, and finding them guilty of Dishonesty for making it appear in the above-mentioned payrolls that the complainants had received the amount indicated therein opposite their names, respondents Corazon C. Balbastro, Rudy T. Carbonera and Gilda C. Gulmatico are hereby meted the penalty of Dismissal from the service with all its accessory penalties. Lydia E. Ocate, on the other hand, is hereby Suspended for one month without salary and other benefits for being inefficient and incompetent in the performance of her duties as Acting Disbursing Officer.
>
> SO DECIDED.[12]

Petitioner's motion for reconsideration was denied by the Ombudsman on July 20, 2001.[13]

On April 12, 2002, petitioner filed a special civil action for certiorari before the CA, docketed as CA-G.R. No. SP. No. 70249 claiming that the Ombudsman acted without or in excess of its jurisdiction, or gravely abused its discretion amounting to lack of jurisdiction in rendering its decision despite the absence of an administrative complaint;[14] and in ruling that petitioner waived her right to adduce evidence.[15] She also alleged that the prosecutor was not impartial;[16] that the Ombudsman's decision violates par. 3, Sec. 13, Art. XI of the Constitution which grants the Ombudsman only the power to recommend sanctions against erring officials;[17] and that it is not supported by facts and evidence,[18] contravenes basic principles in criminal law[19] and violates petitioner's right to due process.[20]

On May 2, 2002, the CA rendered the herein assailed Resolution dismissing her petition, thus:

> x x x [I]nstead of appealing the decision by filing a petition for review within the reglementary period, petitioner instituted this special civil action for certiorari fifty-two (52) days from receipt of the denial of her motion for reconsideration below.
>
> The instant petition is not allowed to proceed under the applicable rules, as the proper remedy from the decision of the Ombudsman in an administrative case is appeal by petition for review under Rule 43 of the 1997 Civil Procedure. Such petition for review should be filed within fifteen (15) days from receipt of the appealed decision, resolution, or final order, or denial of the motion for reconsideration.

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> Replacing the remedy of appeal with a petition for certiorari, as done here by the petitioner, is not a proper recourse, considering that the special civil action for certiorari cannot be made a substitute for appeal or lapsed appeal.
>
> Be it remembered that the right to appeal is not a constitutional or inherent right – it is a statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of the law.[21]

Petitioner filed a motion for reconsideration which was denied by the CA in its Resolution dated July 16, 2002, ruling as follows:[22]

> A review of the records vis-a-vis the arguments on motion for reconsideration offer no cogent reason to reverse our earlier ruling. The complaints filed against the petitioner clearly, and in no uncertain terms aimed to criminally and administratively charge the petitioner for improprieties committed by her in the performance of her duties as Principal III of the Iloilo City National High School. Records also show that petitioner was given the opportunity to answer these charges, and in fact, she did so in due course. Petitioner was even able to present witnesses and evidence to defend herself against such criminal and administrative charges.
>
> Clearly, the ruling of the Office of the Ombudsman finding the petitioner administratively liable was rendered within its powers and duties, as provided for under Republic Act No. 6770.
>
> The proper remedy to appeal said decision of the Ombudsman, therefore, is a petition for review under Rule 43 of the 1997 Rules of Civil Procedure, and not the petition for certiorari chosen by petitioner. All other arguments raised by petitioner are without merit.
>
> ACCORDINGLY, the instant motion for reconsideration is hereby DENIED.[23]

Petitioner now comes before this Court arguing that the dismissal of her petition by the CA upheld, in effect, the decision of the Ombudsman which was null and void since the Ombudsman does not have the authority to directly discipline her; that the powers and authority of the Ombudsman are limited by the 1987 Constitution, and Republic Act (R.A.) No. 6770[24] cannot go higher than the fundamental law of the land; that the Court in Tapiador v. Office of the Ombudsman[25] ruled that the Ombudsman can only recommend the removal of the public official or employee found to be at fault; and that the Ombudsman erroneously meted different penalties to petitioner and her co-respondents despite the finding of conspiracy.[26] Parenthetically, petitioner also mentions, in the prefatory statement of her petition, that she was "furnished with, and made to answer only, the criminal complaints, but she was never furnished with copies of the administrative complaints."[27]

Respondents for their part counter that: the authority of the Ombudsman to discipline appointed public officials is clearly embodied in R.A. No. 6770, particularly Sec. 21 thereof; the Ombudsman did not find conspiracy among all four respondents, but only among three, i.e., excluding Ocate; the administrative liability of petitioner, Carbonera and Gulmatico are much graver than that of Ocate who was only used as a tool by her superiors, thus while Ocate is not totally blameless, her liability is much lesser than that of her superiors; in dismissing the petition before the CA, said court merely adhered to the legal principle that the special civil action for certiorari cannot be made a substitute for a lapsed appeal and the right to appeal is not a constitutional or inherent right but a statutory privilege that may be exercised only in the manner prescribed by and in accordance with the provisions of law.[28]

Petitioner, in her Reply, counters that the Decision of the Ombudsman finding conspiracy among the respondents is not supported by substantial evidence, and that the investigating prosecutor gave weight to the uncorroborated and self-serving testimony of Ocate who was positively identified by the complainants as the one who prepared and initially signed the payrolls.[29]

Petitioner filed a Memorandum reiterating her arguments[30] while respondents no longer filed theirs.[31]

Preliminarily, the issue that must be resolved by this Court is whether the CA erred in dismissing the petition for certiorari filed before it by petitioner.

The answer is no.

Appeals from decisions in administrative disciplinary cases of the Office of the Ombudsman should be taken to the CA by way of petition for review under Rule 43 of the 1997 Rules of Civil Procedure, as amended.[32] Rule 43 which prescribes the manner of appeal from quasi-judicial agencies, such as the Ombudsman, was formulated precisely to provide for a uniform rule of appellate procedure for quasi-judicial agencies. Thus, certiorari under Rule 65 will not lie, as appeal under Rule 43 is an adequate remedy in the ordinary course of law.[33]

Petitioner failed to file an appeal with the CA within fifteen days from notice of the assailed decision. As noted by the CA, she filed her petition for certiorari only after 52 days from receiving the denial of her motion for reconsideration by the Ombudsman. Such remedy cannot prosper as certiorari under Rule 65 cannot be resorted to as a substitute for the lost remedy of appeal. The remedies of appeal and certiorari are mutually exclusive and not alternative or successive.[34]

As explained by the Court in David v. Cordova,[35]

> x x x a petition for certiorari cannot be a substitute for an appeal from a lower court decision. Where appeal is available to an aggrieved party, the action for certiorari will not be entertained. The remedies of appeal (including petitions for review) and certiorari are mutually exclusive, not alternative or successive. Hence, certiorari is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of certiorari is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, certiorari will not prosper, even if the ground therefore is grave abuse of discretion.[36] (Emphasis supplied)

Petitioner insists however, in her motion for reconsideration before the CA, that appeal has never been her choice of remedy and that she really intended using a petition for certiorari under Rule 65, since the Ombudsman never had jurisdiction over her case; that she had previously raised the issue of jurisdiction at the proceedings before the Deputy Ombudsman (Visayas) and had even moved for the inhibition of the prosecutor.[37]

It is true that petitioner averred in her petition for certiorari before the CA, that the Ombudsman lacked jurisdiction, and this according to her is because no administrative complaint was filed against her.[38] Such matter however was adequately addressed by the CA in its Resolution dated July 16, 2002 denying petitioner's motion for reconsideration when it held that:

> The complaints filed against the petitioner clearly, and in no uncertain terms aimed to criminally and administratively charge the petitioner for improprieties committed by her in the performance of her duties as Principal III of the Iloilo City National High School.[39]

This finding is well supported by the records as the complaints filed by respondents before the Ombudsman clearly stated in bold letters that they were instituting "criminal" and "administrative" cases against petitioner and the other school officials concerned.[40] The orders issued by the Ombudsman directing petitioner to file her counter-affidavit to the complaints against her also contained criminal as well as administrative case numbers.[41] Petitioner's allegations on this matter therefore have no basis.

Petitioner's argument that the Ombudsman does not have the authority to directly discipline her is not meritorious.[42]

It is settled that the Office of Ombudsman has the power to impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault, in the exercise of its

administrative disciplinary authority.[43]

R. A. No. 6770, which provides for the functional and structural organization of the Office of the Ombudsman, was passed by Congress to deliberately endow the Ombudsman with the power to prosecute offenses committed by public officers and employees to make him a more active and effective agent of the people in ensuring accountability in public office. Moreover, Congress has vested the Ombudsman with broad powers to enable him to implement his own actions.[44]

The Court has pronounced that R.A. No. 6770 is consistent with the intent of the framers of the 1987 Constitution, to accord Congress the discretion to give the Ombudsman powers that are not merely persuasive in character.[45]

The ruling referred to by petitioner in Tapiador is not applicable to the present case. The Court expounded in Ledesma v. Court of Appeals,[46] to wit:

> x x x. Firstly, a cursory reading of Tapiador reveals that the main point of the case was the failure of the complaint therein to present substantial evidence to prove the charges of the administrative case. The statement that made reference to the power of the Ombudsman is, at best, merely an obiter dictum and, as it is unsupported by sufficient explanation, is susceptible to varying interpretations, as what precisely is before us in this case. Hence, it cannot be cited as a doctrinal declaration of this Court nor is it safe from judicial examination.[47]

The Court explicitly held in Estarija v. Ranada:

> Thus, the Constitution does not restrict the powers of the Ombudsman in section 13, Article XI of the 1987 Constitution, but allows the Legislature to enact a law that would spell out the powers of the Ombudsman. Through the enactment of Rep. Act No. 6770, specifically Section 15, par. 3, the lawmakers gave the Ombudsman such powers to sanction erring officials and employees, except members of the Congress, and the Judiciary. To conclude, we hold that Sections 15, 21, 22 and 25 of Republic Act No. 6770 are constitutionally sound. The powers of the Ombudsman are not merely recommendatory. His office was given teeth to render this constitutional body not merely functional but also effective. Thus, we hold that under Republic Act No. 6770 and the 1987 Constitution, the Ombudsman has the constitutional power to directly remove from government service an erring public official other than a member of Congress and the Judiciary.[48] (Emphasis supplied)

Petitioner's further contentions that that the Ombudsman's finding of conspiracy is not supported by substantial evidence;[49] and that the Ombudsman erred in imposing different penalties on petitioner and her co-respondents in the administrative case,[50] have no leg to stand on for the following reasons:

First, they are properly subject of the appeal via a petition for review under Rule 43 of the Rules of Court which petitioner had lost for not having filed such petition with the CA within 15 days from the date of receipt of the Decision of the Ombudsman.

Second, as the Court had earlier ruled, the filing of a petition for certiorari 52 days after receipt is not a substitute for lost appeal, the findings of fact of the Ombudsman are based on substantial evidence which petitioner had to refute by competent evidence.

Third, there is no showing that the Ombudsman was capricious or arbitrary in the imposition of different penalties on petitioner and her co-respondents in the administrative case.

As to the findings of the Ombudsman, it is settled that in administrative proceedings, the quantum of proof required for a finding of guilt is only substantial evidence -- that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[51] Factual findings of administrative bodies, when

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supported by substantial evidence, are entitled to great weight and respect on appeal.[52] And a finding of guilt in an administrative case would also have to be sustained for as long as it is supported by substantial evidence that respondent has committed the acts stated in the complaint or formal charge.[53]

In this case, the Ombudsman found petitioner, together with Gulmatico and Carbonera, guilty of dishonesty for using payrolls in the names of private complainants in order to hide irregularities of the cash advances made by the school through Ocate. It also found Ocate liable, although for a lesser offense, as her culpability stems from following the orders of her superiors.

As aptly found by the Ombudsman:

> Th[e] testimony [of Ocate] has neither been contradicted nor denied by the other respondents. And absent any evidence to the contrary, these are sufficient to support a finding of guilt against the respondents.
>
> It appeared from the foregoing attestation that Rudy Carbonera, with the apparent connivance of Corazon Balbastro and Gilda Gulmatico, had prepared the above-mentioned payrolls in order to hide the irregularities of the cash advances of Lydia Ocate and justify their expenditures. And having prepared the same logic dictates that he should have been the one who listed the names of the herein complainants therein, even knowing fully well that they did not render the services to the school. And Corazon Balbastro and Gilda Gulmatico connived and confederated with him in this unlawful act when they told and assured Lydia Ocate that the signatures in the payrolls were genuine. Corazon Balbastro even signified her assurance by signing the payrolls. And Corazon Balbastro and Gilda Gulmatico had reason to conceal the irregular cash advances of Lydia Ocate because they had taken part in these transactions. As claimed by the latter, it was Balbastro who ordered her to make cash advances and it was Gulmatico who would receive the amount. Somehow or another they had knowledge of how this money had been spent, which was certainly not for the salaries of the complainants.
>
> And their malicious and fraudulent design was consummated when Lydia Ocate signed the payrolls thereby certifying that each person listed therein had been paid the amount opposite his name after identifying him. By her act (negligent or otherwise), without which the commission of the offense could not have been accomplished, she unwittingly cooperated with the dishonest design of the other respondents. Thus, even if Lydia Ocate only acted according to the assurance of the other respondents, she could not escape the operative effect of her act, which made the payrolls public documents and paved the way for the unlawful acts of Rudy Carbonera, Corazon Balbastro and Gilda Gulmatico. In other words, her inefficiency and incompetence in the performance of her official duties made possible the realization of the dishonest acts Carbonera, Balbastro and Gulmatico.[54] (Emphasis supplied)

In fine, the Court finds no error in the rulings of the CA and the Ombudsman.

WHEREFORE, the petition is hereby DENIED for lack of merit.

SO ORDERED.

Ynares-Santiago, (Chairperson), Chico-Nazario, and Nachura, JJ., concur.

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[1] Spelled as "Eldizar" in other parts of the records.

[2] Penned by Associate Justice Rodrigo V. Cosico and concurred in by Associate Justices Buenaventura J. Guerrero and Perlita J. Tria Tirona.

[3] Rollo, pp. 35-36.

[4] Id. at 55-57.

[5] "(1) preparation, labor for costume Ati-atihan 1999; (2) repair of toilet for student use; (3) labor for costume ati-atihan 1999; and (4) finishing of props, decorations, costume of participants ati-atihan 1999."

[6] CA rollo, pp. 72-91; See also CA rollo, pp. 103-112 and rollo, pp. 42-47.

[7] See rollo, pp. 37-41.

[8] CA rollo, pp. 113-117.

[9] Rollo, p. 49 (Ombudsman's Decision, p. 12).

[10] Id.

[11] Id. at 49.

[12] Id. at 51-52.

[13] CA rollo, pp. 120-126.

[14] Id. at 8, 11.

[15] Id. at 12.

[16] Id. at 17.

[17] Id. at 19-20.

[18] Id. at 20.

[19] Id. at 22.

[20] Id. at 25.

[21] Rollo, p. 36.

[22] Id. at 55-57.

[23] Id. at 56-57.

[24] "THE OMBUDSMAN ACT of 1989."

[25] 429 Phil. 47 (2002); See Reply, rollo, p. 113.

[26] Rollo, pp. 21-28.

[27] Id. at 14.

[28] Id. at 97-102.

[29] Id. at 113-117.

[30] Rollo, pp. 167-188.

[31] Id. at 181.

[32] Coronel v. Desierto, 448 Phil. 894, 902 (2003); Fabian v. Desierto, 356 Phil. 787, 804 (1998).

[33] Gonzales v. Rosas, G.R. No. 145363, February 23, 2004, 423 SCRA 488, 494.

[34] Id. at 495.

[35] G.R. No. 152992, July 28, 2005, 464 SCRA 384.

[36] Id. at 394-395.

[37] CA rollo, pp. 201-202.

[38] Id. at 8.

[39] Rollo, p. 56.

[40] Id. at 72-91.

[41] Id. at 92-101.

[42] Rollo, p. 21,

[43] Office of the Ombudsman v. Court of Appeals, G.R. No. 160675, June 16, 2006, 491 SCRA 92, 119.

[44] Estarija v. Ranada, G.R. No. 159314, June 26, 2006, 492 SCRA 652.

[45] Id.

[46] G.R. No. 161629, July 29, 2005, 465 SCRA 437, 448-449.

[47] Ledesma v. Court of Appeals, id. at 448-449.

[48] Estarija v. Ranada, supra note 44 at 673-674.

[49] Rollo, p. 157.

[50] Id. at 23.

[51] Office of the Ombudsman v. Santos, G.R. No. 166116, March 31, 2006, 486 SCRA 463, 470; Office of the Ombudsman v. Coronel, G.R. No. 164460, June 27, 2006, 493 SCRA 392, 406.

[52] Apolinario v. Flores, G.R. No. 152780, January 22, 2007; Office of the Ombudsman v. Santos, supra note 51, at 472.

[53] Laxina, Sr. v. Office of the Ombudsman, G.R. No. 153155, September 30, 2005, 471 SCRA 542, 555.

[54] Rollo, pp. 50-51.

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