

ERLINDA F. SANTOS, PETITIONER, VS. MA. CAREST A. RASALAN, RESPONDENT.

G.R. No. 155749. February 08, 2007

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

For our Resolution is the instant Petition for Review on Certiorari [1] assailing the Decision [2] dated June 29, 2001 and Resolution dated October 17, 2002 of the Court of Appeals in CA-G.R. SP No. 59241 affirming the Decision dated March 24, 2000 of the Ombudsman in OMB-ADM-0-99-0679.

Erlinda F. Santos, petitioner, and Ma. Carest A. Rasalan, respondent, are both employed as government nurses at the Tondo Medical Center, Balut, Tondo, Manila. On August 18, 1999, respondent filed with the Office of the Ombudsman an administrative complaint for grave misconduct and conduct unbecoming of a public official against petitioner, docketed as ADM-0-99-0679. Respondent alleged that when she reported for work after her maternity leave, she came to know that petitioner had been spreading untruthful and malicious statements against her, thus:

On June 03, 1999, respondent (Erlinda F. Santos) was talking to Ma. Rosalinda Ilasin, a Nursing Attendant of Tondo Medical Center, and respondent said, "Nanganak na pala si Carest," to which Ilasin responded, "Oo, sa Gat Andres siya nanganak." Further, respondent said, "Akala ko ba mayaman, bakit diyan siya nanganak?" wherein Ilasin answered, "Ang service naman ni Dr. Angtuaco and habol nila, at puede ba Lyn, tigilan mo na yan, kinausap ka na nuong tao siya manganak, kaya tumigil ka na."

Despite those words of caution of Ilasin, respondent continued telling stories about me and then continued by maliciously saying, "Di ba Baby, only the mother can tell who is the father of her child?"

That because of these malicious remarks, Ilasin asked the respondent to stop saying innuendoes against me, and she said, "Please lang, Lyn, tumigil ka na."

On November 25, 1999, petitioner filed a motion to dismiss [3] the administrative complaint for lack of jurisdiction. In an Order dated December 2, 1999, the Office of the Ombudsman denied the motion.

On March 24, 2000, the Office of the Ombudsman rendered its Decision, the dispositive portion of which reads:

WHEREFORE, premises considered, it is respectfully recommended that the respondent be held GUILTY as charged, with a mitigating penalty of SUSPENSION FROM THE SERVICE for SEVEN (7) MONTHS WITHOUT PAY.

It is hereby ordered that the Chief of Tondo Medical Center should carry out the implementation of the suspension from the service of respondent Erlinda F. Santos, Staff Nurse of the said hospital, informing this Office of the action taken thereon within ten (10) days from receipt hereof. [4]

Petitioner filed a motion for reconsideration, but it was denied in an Order [5] dated May 10, 2000.

On appeal, the Court of Appeals rendered its Decision affirming the Decision of the Office of the Ombudsman. On October 17, 2002, petitioner's motion for reconsideration was denied. [6]

Forthwith, petitioner filed the instant petition alleging that: (1) the Office of the Ombudsman has no jurisdiction over respondent's administrative complaint considering that the acts complained of are not work-related and are purely personal between the parties; and (2) the facts do not establish the charge against her.

For her part, respondent prays that the petition be denied for lack of merit.

The petition is bereft of merit.

The authority of the Ombudsman to act on respondent's administrative complaint is anchored on Section 13(1), Article XI of the 1987 Constitution, which provides:

Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient. x x x

(Underscoring supplied)

Section 19 of Republic Act (R.A.) No. 6770, otherwise known as the Ombudsman Act of 1989, [7] likewise provides:

SEC. 19. Administrative Complaints. - The Ombudsman shall act on all complaints relating, but not limited to acts or omissions which:

(1) Are contrary to law or regulation;

(2) Are unreasonable, unfair, oppressive or discriminatory;

(3) Are inconsistent with the general course of an agency's functions, though in accordance with law;

(4) Proceed from a mistake of law or an arbitrary ascertainment of facts;

(5) Are in the exercise of discretionary powers but for an improper purpose; or

(6) Are otherwise irregular, immoral or devoid of justification. (Underscoring supplied)

The Office of the Ombudsman and the Court of Appeals found that the acts committed by petitioner as a public employee are unreasonable, unfair, oppressive, irregular, immoral and devoid of justification, thus falling within the purview of the above-quoted constitutional and statutory provisions. We find no cogent reason to deviate from their findings.

Pursuant to Section 16 of R.A. No. 6770, the jurisdiction of the Ombudsman encompasses all kinds of malfeasance, misfeasance, and nonfeasance committed by any public officer or employee during his/her tenure of office, thus:

SEC. 16. Applicability. - The provisions of this Act shall apply to all kinds of malfeasance, misfeasance, and nonfeasance that have been committed by any officer or employee as mentioned in Section 13 hereof, during his tenure of office.

Moreover, in *Vasquez v. Hobilla-Alinio*, [8] we held that even if the act or omission complained of is not service-connected, still it falls within the jurisdiction of the Ombudsman, thus:

The law does not qualify the nature of the illegal act or omission of the public official or employee that the Ombudsman may investigate. It does not require that the act or omission be related to or be connected with or arise from the performance of official duty. Since the law does not distinguish, neither should we.

Having settled the issue of jurisdiction, we shall now determine whether the Court of Appeals erred when it sustained the findings of the Ombudsman and concluded that petitioner is liable for grave misconduct and conduct prejudicial to the best interest of the service.

The Ombudsman also found that:

Rightly so, when the complainant got back to work at the hospital after her maternity leave, she was ashamed and offended to know that the malicious and slanderous words alluded to her by the respondent were like wild fire that reverberated through the walls of the hospital and seeped through and lingered in every ear of the employee.

For who could not feel the shame of these slanderous remarks?

"Erlinda F. Santos: Di ba Baby, only the mother can tell who is the father of her child."

The foregoing words imply that the father of the newborn baby is other than complainant's husband. But, of course, the respondent very well knew the husband of the complainant, who is the brother of her boyfriend. To ask who the father of the child of the complainant is to impute that the father of the child is other than Ramon Rasalan, the husband of the complainant. No other meaning could be inferred from the foregoing words.

The defamatory imputation of unchastity to the complainant is slanderous as it was maliciously intended to cause dishonor, discredit or contempt. x x x. [9]

We shall not disturb the above findings. Under Section 27 of R.A. No. 6770, findings of fact by the Ombudsman are conclusive as long as these are supported by substantial evidence, [10] as in this case.

However, under the same set of facts, we do not agree that petitioner's offense can be categorized as "grave misconduct and conduct prejudicial to the best interest of the service." Her offense merely constitutes simple misconduct.

In *Civil Service Commission v. Ledesma*, [11] we held that misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be proved by substantial evidence. [12] Otherwise, the misconduct is only simple. A person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the additional elements to qualify the misconduct as grave. Grave misconduct necessarily includes the lesser offense of simple misconduct. [13]

In the present case, there is no substantial evidence to show that any of those additional elements exist to qualify petitioner's misconduct as grave. Thus, to our mind, the penalty of suspension for seven (7) months without pay is too harsh.

Section 52, B-2, Rule IV of the Revised Uniform Rules On Administrative Cases In the Civil Service [14] provides that the offense of simple misconduct is classified as less grave, punishable as follows:

2. Simple Misconduct

1[st] Offense - Suspension

1 mo. 1 day to 6 mos.

2[nd] Offense - Dismissal

Under the circumstances obtaining in this case, we hold that the penalty of suspension of two (2) months without

pay is in order.

One final word. The law does not tolerate misconduct by a civil servant. Petitioner's acts in question undoubtedly violate the norm of decency and diminish or tend to diminish the people's respect for those in the government service. When an officer or employee is disciplined, the object is the improvement of the public service and the preservation of the public's faith and confidence in the government. [15]

WHEREFORE, we DENY the petition. The challenged Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 59241 are AFFIRMED with MODIFICATION in the sense that petitioner is found guilty of simple misconduct and is suspended from the service for two (2) months without pay.

SO ORDERED.

Puno, C.J., (Chairperson), Azcuna, and Garcia, JJ., concur.
Corona, J., on leave.

[1] Filed under Rule 45, 1997 Rules of Civil Procedure, as amended.

[2] Penned by Associate Ramon Mabutas, Jr. (retired) and concurred in by Associate Justice Roberto A. Barrios and Associate Justice Edgardo P. Cruz.

[3] Annex "H" of the petition, Rollo, pp. 107-109.

[4] See Decision of the Court of Appeals, id., pp. 61-82.

[5] Annex "L" of the petition, id., pp. 119-121.

[6] See Resolution of the Court of Appeals, id., pp. 83-84.

[7] Its full title reads, "AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES."

[8] G.R. Nos. 118813-14, April 8, 1997, 271, SCRA 67, citing *Deloso v. Domingo*, 191 SCRA 545 (1990).

[9] Annex "K" of the petition, Rollo, pp. 112-121.

[10] *Almanzor v. Felix*, G.R. No. 144935, January 15, 2004, 419 SCRA 641.

[11] G.R. No. 154521, September 30, 2005, 471 SCRA 589, citing *Bureau of Internal Revenue v. Organo*, 424 SCRA 9 (2004); *Castelo v. Florendo*, 413 SCRA 219 (2003).

[12] *Civil Service Commission v. Ledesma*, id., citing *Civil Service Commission v. Lucas*, 361 Phil. 486; 301 SCRA 560 (1999); *Landrito v. Civil Service Commission*, 223 SCRA 564 (1993).

[13] *Civil Service Commission v. Ledesma*, id.

[14] Memorandum Circular No. 19, s. 1999 of the Civil Service Commission.

[15] *Civil Service Commission v. Cortez*, G.R. No. 155732, June 3, 2004, 430 SCRA 593, citing *Bautista v. Negado*, 108 Phil. 283, 289 (1960).

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