

MELECIO ALCALA, PERLA ALCALA, ROQUE BORINAGA, DIOSDADA BORINAGA, HELEN LENDIO, AND MARY BABETH MAGNO, PETITIONERS, VS. JOVENCIO VILLAR, RESPONDENT.

G.R. No. 156063. November 18, 2003

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This is a petition for review on certiorari under Rule 45 of the 1997 Rules of Civil Procedure assailing the July 31, 2002 Decision[1] of the Court of Appeals in CA-G.R. SP No. 57391 which nullified and set aside the June 22, 1999 Resolution of the Office of the Ombudsman in OMB-VIS-ADM-98-0103, as well as the Resolution[2] dated October 25, 2002 denying petitioner's motion for reconsideration.

Respondent Jovencio D. Villar is the School Principal of Lanao National High School, Pilar, Cebu City. In February 1998, Rolando Torceno and petitioners, Melecio Alcala, Perla Alcala, Roque Borinaga, Helen Lendio, Emma Labaniego and Mary Babeth Mano, all teachers of Lanao National High School, as well as Asterio Villarante and petitioner Diosdada Borinaga, teachers of Dapdap National High School, Pilar, Dapdap, Cebu City (herein collectively referred to as complainants), filed with the Office of the Ombudsman an administrative complaint against respondent for dishonesty.[3]

Complainants alleged that on August 18-22, 1997, they attended a mass training/seminar at the Consolacion National High School, Consolacion, Cebu. Respondent asked them to submit their respective Certificates of Appearance for the preparation of the vouchers for the refund of their expenses during the said training/seminar. Thereafter, they received from respondent the following amounts as refund:

- Perla Alcala - P280.00
- Roque Borinaga - 310.00
- Mary Babeth Magno - 160.00
- Emma Labaniego - 130.00
- Asterio Villarante - 130.00
- Melecio Alcala - 280.00
- Diosdado Borinaga - 310.00
- Rolando Torceno - 130.00
- Helen Lendio - 130.00[4]

Upon verification with the Department of Education Culture and Sports (DECS) Division Office, complainants discovered that each of them were issued checks in the amount of P312.00 as reimbursement, and that respondent

received the same by forging their signature.

Complainants further alleged that sometime in November 1997, Melecio Alcala, Diosdada Borinaga, Helen Lendio, and Rolando Torceno received from respondent P1,500.00 each representing Loyalty Benefits. They learned, however, from the DECS Division Office that they were entitled to receive P2,000.00 each.[5]

Respondent, on the other hand, claimed that he was in fact authorized by the complainants to claim and encash their checks at the E and E Lending Investors where most of them have existing loans. He contended that their school is located in the rural area where no banks are operating, such that it has been the practice of teachers to authorize the principal to claim, receive and encash the checks in their behalf. He explained that complainants did not receive the entire amount of P312.00 because they authorized the E and E Lending Investors to deduct certain amounts from their checks as payment for their respective loans.[6] As for the Loyalty Benefits, respondent alleged that complainants received the entire amount due them and that he deducted nothing therefrom.[7] He asserted that the real reason behind the filing of the complaint was to force him to resign so that one of the complainants could apply for his post. [8]

On June 22, 1999, the Office of the Ombudsman issued a resolution finding respondent guilty of dishonesty and dismissing him from service. The dispositive portion thereof reads:

WHEREFORE, in view of the foregoing, respondent is meted the penalty of DISMISSAL FROM SERVICE WITH FORFEITURE OF ALL BENEFITS AND DISQUALIFICATION TO HOLD PUBLIC OFFICE.

SO RESOLVED.[9]

A motion for reconsideration was filed by respondent; however, the same was denied on October 13, 1999.[10]

On appeal, the Court of Appeals nullified and set aside the decision of the Office of the Ombudsman on the ground that the latter was without jurisdiction over administrative complaints against public school teachers. It ruled that the governing law is Republic Act No. 4670, otherwise known as the Magna Carta for Public School Teachers, and not Republic Act No. 6770, the Ombudsman Act of 1989. Thus -

WHEREFORE, the Ombudsman's Resolution dated June 22, 1999 and Order dated October 13, 1999 are hereby NULLIFIED and SET ASIDE, without prejudice to the ventilation of the charges against respondent-appellant before the proper forum.

SO ORDERED.[11]

Petitioners' motion for reconsideration was denied on October 25, 2002.[12]

Hence, the instant petition.

Republic Act No. 6770, the Ombudsman Act of 1989, provides that the Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries except over officials who may be removed by impeachment or over Members of Congress, and the Judiciary.[13] However, in *Fabella v. Court of Appeals*,[14] it was held that R.A. No. 4670, the Magna Carta for Public School Teachers, specifically covers and governs administrative proceedings involving public school teachers. Section 9 of said law expressly provides that -

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 would 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 teacher's

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.

The foregoing provision implements the Declaration of Policy of the statute, that is, to promote the "terms of employment and career prospects" of schoolteachers.

Likewise, in *Emin v. De Leon*,^[15] the Court ruled that although under Presidential Decree No. 807 (Civil Service Law), the civil service embraces every branch, agency, subdivision, and instrumentality of the government, including government-owned or controlled corporations whether performing governmental or proprietary function, the Civil Service Commission does not have original jurisdiction over an administrative case against a public school teacher. It was stressed therein that jurisdiction over administrative cases of public school teachers is lodged with the Investigating Committee created pursuant to Section 9 of R.A. No. 4670, now being implemented by Section 2, Chapter VII of DECS Order No. 33, S. 1999, otherwise known as the DECS Rules of Procedure.^[16]

The foregoing notwithstanding, the Court of Appeals erred when it nullified the proceedings before the Office of the Ombudsman. Indeed, the question of jurisdiction may be tackled *motu proprio* on appeal even if none of the parties raised the same.^[17] This rule, however, is not absolute. In *Emin v. De Leon*,^[18] a public school teacher was administratively charged with and found guilty of dishonesty under P.D. No. 807 (Civil Service Law). The Supreme Court ruled that R.A. No. 4670, the Magna Carta for Public School Teachers, is the applicable law and that the Civil Service Commission does not have jurisdiction over the administrative case. Nevertheless, the Court affirmed the dismissal from service of the public school teacher as the latter was found to have been sufficiently afforded due process. It was held that what is crucial is that the respondent be given sufficient opportunity to be heard and defend himself. Thus -

However, at this late hour, the proceedings conducted by the public respondent CSC can no longer be nullified on procedural grounds. Under the principle of estoppel by laches, petitioner is now barred from impugning the CSC's jurisdiction over his case.

But we must stress that nothing herein should be deemed as overriding the provision in the Magna Carta for Teachers on the jurisdiction of the Committee to investigate public school teachers as such, and the observance of due process in administrative proceedings involving them, nor modifying prior decided cases of teachers on the observance of the said Magna Carta such as *Fabella vs. Court of Appeals*.

Here what is crucial, in our view, is that the Civil Service Commission had afforded petitioner sufficient opportunity to be heard and defend himself against charges of participation in faking civil service eligibilities of certain teachers for a fee. Not only did he answer the charges before the CSC Regional Office but he participated in the hearings of the charges against him to the extent that we are left with no doubt that his participation in its proceedings was willful and voluntary.

As held previously, participation by parties in the administrative proceedings without raising any objection thereto bars them from raising any jurisdictional infirmity after an adverse decision is rendered against them. In the case at bar, petitioner raised the issue of lack of jurisdiction for the first time in his amended petition for review before the CA. He did not raise this matter in his Motion to Dismiss filed before the CSC Regional Office. Notably, in his Counter-Affidavit, he himself invoked the jurisdiction of the Commission by stating that he was "open to further investigation by the CSC to bring light to the matter" and by further praying for "any remedy or judgment which under the premises are just and equitable." It is an undesirable practice of a party participating in the proceedings, submitting his case for decision, and then accepting the judgment only if

favorable, but attacking it for lack of jurisdiction, when adverse.[19]

In the case at bar, respondent was amply afforded due process in an administrative proceeding, the essence of which is an opportunity to explain one's side or an opportunity to seek reconsideration of the action or ruling complained of.[20] Not only did respondent file a counter-affidavit and a motion for reconsideration, he also participated in the hearings conducted by the Office of the Ombudsman and was given the opportunity to cross-examine the witnesses against him. Verily, participation in the administrative proceedings without raising any objection thereto amounts to a waiver of jurisdictional infirmities.[21]

In the same vein, respondent in this case should be barred under the principle of estoppel by laches from assailing the jurisdiction of the Ombudsman. Therefore, the Court of Appeals should have resolved the appeal on its merits, considering that respondent's right to procedural due process was properly observed.

WHEREFORE, in view of all the foregoing, the July 31, 2002 Decision of the Court of Appeals in CA-G.R. SP No. 57391 which nullified the Resolution dated June 22, 1999 and Order dated October 13, 1999 of the Office of the Ombudsman, is REVERSED and SET ASIDE. Let this case be REMANDED to the Court of Appeals for determination of the appeal on its merits.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, Carpio, and Azcuna, JJ., concur.

[1] Rollo, p. 65, penned by Associate Justice Conchita Carpio Morales and concurred in by Associate Justices Martin S. Villarama, Jr. and Mariano C. Del Castillo.

[2] Rollo, p. 70.

[3] CA Rollo, p. 32.

[4] Resolution, Rollo, p. 33.

[5] Complainants' Comment/Opposition To Respondent's Motion for Reconsideration, CA Rollo, pp. 24-26.

[6] Counter Affidavit, CA Rollo, p. 37.

[7] Petition for Review and/or Appeal with the Court of Appeals, CA Rollo, p. 8.

[8] Counter Affidavit, CA Rollo, p. 37.

[9] Rollo, p. 36.

[10] CA Rollo, p. 31.

[11] Rollo, p. 69.

[12] Rollo, p. 70.

[13] R.A. 6770, Section 21.

[14] 346 Phil. 940, 953-954 (1997).

[15] G.R. No. 139794, 27 February 2002, 378 SCRA 143, 150-152.

[16] Section 2. Investigating Committee. - The Formal Investigation shall commence after the investigating Committee has been duly constituted. The Investigating Committee shall be composed as follows, in accordance

with Rep. Act. No. 4670, otherwise known as the Magna Carta of Public School Teachers:

- When the respondent is an elementary or secondary school teacher, head teacher, principal, district supervisor/chair/coordinator of Education Supervisor 1 -

(1) The schools division superintendent or his duly authorized representative, as chairperson;

(2) The duly authorized representative of the school, district, or division teacher's organization, as member; and

(3) The division supervisor for elementary or secondary education where the respondent belongs, as member

- When the respondent is an Assistant Schools Division Superintendent, Schools Division Superintendent or Education Supervisor II -

x x x x x x x x

d. When the respondent is a DECS employee or official not enumerated above - The Disciplining Authority shall have full discretion as to the composition of the Investigating Committee.

[17] Dy v. National Labor Relations Commission, 229 Phil. 234, 244 (1986).

[18] Supra.

[19] Emin v. De Leon, supra.

[20] Emin v. De Leon, supra, pp. 154-155, citing Pizza Hut/Progressive Development Corporation v. National Labor Relations Commission, G.R. No. 117059, 29 January 1996, 252 SCRA 531.

[21] Supra, p. 153, citing Centeno v. Centeno, G.R. No. 140824, 13 October 2000, 343 SCRA 153; Fortich v. Corona, G.R. No. 131457, 24 April 1998, 289 SCRA 624.

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