FLORENCIO L. ADVINCULA, PETITIONER, VS. ROMEO DICEN, RESPONDENT.

G.R. NO. 162403. May 16, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a petition for review on certiorari under Rule 45 of the Revised Rules of Court of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP. No. 76350, which affirmed the Decision[2] of the Office of the Ombudsman-Visayas in OMB-VIS-ADM-2000-0963 adjudging the petitioner guilty of misconduct and penalizing him with suspension from office for six (6) months without pay.

The Factual Antecedents

On July 27, 2000, the Office of the Governor of Samar, through Acting Provincial Administrator, Engineer Leo N. Dacaynos, issued a Memorandum[3] to all Provincial Chiefs of Offices, requiring all personnel of the province to submit one copy of an updated Personal Data Sheet (PDS), otherwise known as Civil Service Commission Form 212, to the Personnel Section on or before August 31, 2000. In compliance therewith, petitioner Florencio L. Advincula, the Provincial Agriculturist, submitted his PDS,[4] declaring therein that there were no pending administrative and criminal cases against him and that he had not been convicted of any administrative offense. However, the records reveal that at that time, the following cases against the petitioner were pending: (a) Criminal Case No. 25446 entitled "People of the Philippines v. Florencio L. Advincula" filed with the First Division of the Sandiganbayan, Quezon City; and (b) OMB-VIS-ADM-2000-0465 entitled "Dominador Garalza v. Florencio L. Advincula," an administrative case pending before the Office of the Ombudsman-Visayas. Moreover, it was later on discovered that the petitioner had already been convicted[5] of an administrative offense for simple misconduct on August 16, 1999, the penalty for which was a month's suspension from office without pay.

Thereafter, Romeo Dicen, an Agricultural Technologist in the Office of the Provincial Agriculturist, filed a Letter-Complaint[6] on December 28, 2000 before the Office of the Ombudsman in Visayas, charging the petitioner with violation of the pertinent provisions of the Anti-Graft and Corrupt Practices Act. The respondent, likewise, requested that the corresponding charges for the criminal offense of falsification of public or official document, and the administrative offense of misconduct in office or dishonesty be filed against the petitioner.

In a Counter-Affidavit[7] filed on April 11, 2001, the petitioner averred that (a) the complaint was filed in retaliation to the administrative case for falsification he filed against the respondent; (b) the omission to disclose his pending cases and prior conviction was an oversight on his part due to his numerous daily tasks; (c) the PDS was accomplished by Personnel Officer Micaela M. Rosales, a regular employee of the Office of the Provincial Agriculturist, in her intention to submit the PDS of the petitioner before the scheduled deadline; (d) the document was not executed under oath, therefore, eliminating the basis for criminal and administrative prosecution; and (e) the complaint was not accompanied by a certification against forum shopping, thereby warranting the dismissal of the case.

In her Affidavit[8] dated March 28, 2001, Rosales claimed that she was the one who accomplished the petitioner's PDS in her honest intention to submit the same before the given deadline. According to Rosales, after completing the PDS form, she immediately gave it to the petitioner for his signature. The petitioner, she added, signed the accomplished PDS without scrutinizing and reading the same, for he was very busy at that time.

On April 20, 2001, the respondent filed his Reply-Affidavit,[9] contending that the petitioner's omission could not be considered as a mere oversight; as the head of his office, he was charged by law to review all the documents for his signature and to exercise prudence and caution in the signing thereof. Furthermore, the respondent argued that the PDS is an official document required for all government employees. He averred that the PDS must be individually prepared by the employee, whose personal history is known only to him. Furthermore, assuming that the petitioner's PDS was prepared by the personnel officer, it was still the petitioner's obligation to review the entries therein before submitting the same to the Office of the Provincial Governor, to ascertain that it contained only the factual truths as required by law.

During the formal investigation of OMB-VIS-ADM-2000-0963 on August 29, 2001, it was specified that the criminal case against the petitioner was perjury, docketed as OMB-VIS-ADM-2000-1162, while the administrative offense was for dishonesty. On cross-examination, the respondent admitted that he was able to obtain the PDS of the petitioner from the Personnel Officer of the Provincial Government of Samar, and that the petitioner was suspended from office from September 1 to 30, 1999.

The petitioner presented Rosales as his witness. On cross-examination, she testified that in the morning of August 31, 2000, she filled up the entries on the petitioner's PDS, gathering the information from the latter's previous personal file. The petitioner was out of the office at the time. She then left the PDS with his secretary that same afternoon for signature. Rosales also admitted that she had known of the petitioner's suspension from office even prior to the submission of the PDS.[10]

On the witness stand, the petitioner admitted that before he affixed his signature on the PDS, he did not review the entries thereon, nor checked the accuracy thereof. He likewise admitted that at the time he signed the PDS, he had pending cases, both criminal and administrative, before the Sandiganbayan and Ombudsman. Finally, he divulged that he had been convicted of an administrative offense prior to August 31, 2000, the penalty for which was suspension from office for one month without pay.[11]

On May 29, 2002, the Office of the Ombudsman-Visayas rendered judgment finding the petitioner guilty of misconduct. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, respondent FLORENCIO L. ADVINCULA, Provincial Agriculturist of the Province of Samar, Catbalogan, Samar, is guilty of MISCONDUCT and hereby meted the penalty of SUSPENSION FROM OFFICE FOR SIX (6) MONTHS WITHOUT PAY, this being the second time he had been imposed administrative penalty by this Office.
>
> SO DECIDED.[12]

On the same date, the Deputy Ombudsman for the Visayas approved a Resolution[13] finding probable cause for perjury against the petitioner. However, in a Resolution[14] dated January 24, 2003, the Ombudsman found probable cause against the petitioner for falsification under paragraph 4, Article 171 of the Revised Penal Code.

Aggrieved, the petitioner elevated the administrative case to the CA via a petition for review on certiorari under Rule 43 of the 1997 Revised Rules of Civil Procedure, with a prayer for temporary restraining order, injunction, and prohibition.

Meantime, on May 15, 2003, the Deputy Ombudsman for the Visayas issued an Order[15] to the Provincial

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Governor of Samar, directing the latter to immediately implement the penalty of suspension from office for six months without pay, and to inform the Office of the Ombudsman of her compliance within five days from receipt thereof.

On June 2, 2003, the Office of the Governor of Samar issued a Memorandum[16] to the petitioner, directing him to cease and desist from the performance of the functions and responsibilities of his office for six months without pay from receipt thereof.

As a consequence, the petitioner filed a motion to implead the Office of the Governor of Samar and the Office of the Ombudsman in the petition before the CA on June 18, 2003.

In his comment to the petition, the respondent averred that the petitioner's sole recourse was to file a petition for certiorari before the Supreme Court, which exercises exclusive jurisdiction to review orders and decisions of the Office of the Ombudsman, as mandated by Section 27 of Republic Act (R.A.) No. 6770, otherwise known as The Ombudsman Act of 1989. The respondent added that the petitioner was convicted on the basis of preponderant evidence found against him during the clarificatory hearing conducted by the graft investigation officer assigned to the case.

On September 29, 2003, the CA affirmed the decision of the Office of the Ombudsman-Visayas. The fallo of the decision reads:

> Foregoing premises considered, the assailed Decision dated 29 May 2002 issued by the Office of the Ombudsman-Visayas in OMB-VIS-ADM-2000-0963 is hereby AFFIRMED.
>
> SO ORDERED.[17]

In finding for the respondent, the CA concluded that the accomplishment of the PDS, being a requirement under the Civil Service Rules and Regulations in connection with employment in the government, the making of untruthful statement therein was, therefore, intimately connected with such employment. Accordingly, the petitioner was under the obligation to reveal the fact that he had pending administrative and criminal

cases and a previous administrative conviction. The PDS is an official document; hence, the concealment of a previous charge, albeit dismissed, constituted dishonesty amounting to misconduct. However, the CA held that the judgment of the Office of the Ombudsman-Visayas was not immediately executory because the penalty of suspension for six months without pay is not among those listed under Section 27 of R.A. No. 6770 and Section 7, Rule III of Administrative Order No. 07 of the Office of the Ombudsman. As to the issue of jurisdiction, the CA affirmed its jurisdiction in the instant case on the strength of the case of Fabian v. Desierto[18] wherein it was stated that "[a]ppeals from judgments and final orders of quasi-judicial agencies are now required to be brought to the Court of Appeals on a verified petition for review, under the requirements and conditions of Rule 43 which was precisely formulated and adopted to provide a uniform rule of appellate procedure for quasi-judicial agencies."

The petitioner filed a motion for reconsideration, which the CA denied in its Resolution dated February 16, 2004.

Meanwhile, on October 2, 2003, the petitioner wrote a Letter addressed to Ombudsman Simeon Marcelo, asserting that his right to appeal was violated with the immediate implementation of the decision of the Office of the Ombudsman-Visayas.

In an Order[19] dated October 29, 2003, the Office of the Ombudsman denied the petitioner's request for the deferment of the execution of his suspension order.

Expectedly, the petitioner filed a motion for reconsideration which was denied in an Order dated December 16,

2003.

Hence, the instant petition for review raising the following grounds:

> - The Honorable Court of Appeals erred in applying doctrines from Supreme Court cases with different facts from the case at bar.
>
> - The Honorable Court of Appeals failed to consider the failure of the Honorable Ombudsman to afford due process to Petitioner.[20]

Anent the first issue, while recognizing the fact that the accomplishment of the PDS is closely connected with his employment, the petitioner likewise asserts that this rule could not be the basis of a finding of misconduct on his part. According to him, the evidence is clear that it was not the petitioner who accomplished the PDS. Thus, he adds that his good faith in signing the PDS cannot be a ground to find him guilty of misconduct.

The respondent, on the other hand, asseverates that the petitioner has been in the government service for a long period of time; hence, he is presumed to have already accomplished several such forms. It can be safely assumed, therefore, that he has gained familiarity with the questions therein. Granting that it was his subordinate who accomplished the PDS, the respondent contends that the petitioner's cavalier attitude in signing the same shows that he is either incompetent or grossly negligent. The respondent further argues that the petitioner's defense of good faith would not absolve him from administrative liability, since he placed his signature directly under the statement declaring that "the answers given herein are true and correct." He adds that the petitioner's wanton disregard for the statement shows that his defense of good faith is anchored on barren ground.

The petition is devoid of merit.

The CA dismissed the petition for review of the petitioner with the following findings and ratiocinations:

> ... Petitioner postulates that his non-disclosure in his updated PDS of his pending cases and previous administrative conviction only calls for a reprimand and not suspension. We disagree. Section 1(i), Rule III of Civil Service Commission (CSC) Memorandum Circular No. 40, Series of 1998, otherwise known as the "Omnibus Rules on Appointments and Other Personnel Actions," as amended by CSC Resolution No. 99-1907, provides in part, "(t)he appointee's Personal Data Sheet (CS Form 212, Revised 1998) which should be properly and completely accomplished by the appointee, shall be attached to the appointment. Said PDS shall contain an authorization from the job applicant/employee that the agency head or his authorized representative can verify/validate the contents therein." As regular member of the career service, petitioner is bound by the Civil Service Law and Rules. In Inting vs. Tanodbayan, 97 SCRA 494, the Supreme Court ruled that "the accomplishment of the Personal Data Sheet being a requirement under the Civil Service Rules and Regulations in connection with employment in the government, the making of untruthful statement therein was, therefore, intimately connected with such employment." Petitioner, therefore, was under the obligation to reveal the fact that he has pending administrative and criminal cases and that he had a previous administrative conviction. Under Section 27 of RA 6770, "(f)indings of fact by the Officer of the Ombudsman when supported by substantial evidence are conclusive." A similar provision appears in Section 10, Rule 43 of the 1997 Rules of Civil Procedure, to wit, "(t)he findings of fact of the court or agency concerned, when supported by substantial evidence, shall be binding on the Court of Appeals." Substantial evidence, is "the amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion." Petitioner himself does not dispute the fact of his pending cases and his previous administrative conviction. In Bautista vs. Navarro, 114 SCRA 794 (1982), the Supreme Court declared that the Personal Data Sheet is an official document required by the Civil Service Commission. As such, the concealment of a previous charge, albeit, dismissed, constitutes a mental dishonesty amounting to misconduct. The conviction of petitioner for misconduct must therefore be affirmed.[21]

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Time and again, we have emphasized that the Personal Data Sheet is an official document required of a government employee and official by the Civil Service Commission.[22] It is the repository of all information about any government employee and official regarding his personal background, qualification, and eligibility. Concealment of any information in the PDS, therefore, warrants a penalty from the erring official.

The liability of the petitioner stems from the Revised Administrative Code of 1987, specifically, the provisions on the Civil Service Commission. Section 46(b)(4) of Chapter 6, Subtitle A, Title I, Book V of the said Code makes misconduct a ground for disciplinary action.

Misconduct, by uniform legal definition, is a transgression of some established and definite rule of action, more particularly, unlawful behavior as well as gross negligence by the public officer.[23] The word misconduct implies a wrongful intention, and not a mere error of judgment.[24] Misconduct, on the other hand, is wrongful and improper conduct.[25]

We are not swayed by the petitioner's insistence that he did not bother to review the contents of his PDS before signing the same. The petitioner was a provincial agriculturist, no less, and occupied a very responsible position in the government, albeit on the provincial level. As such, it was incumbent on him to scrutinize each and every document he signed. It is hard to believe that the petitioner affixed his signature on his PDS without bothering to scrutinize, and correct the same if erroneous.

Even assuming that the petitioner had indeed signed his PDS without bothering to review the same, he cannot escape administrative liability therefor. Such an omission is considered as gross negligence on his part. The petitioner acknowledged the fact that he had a pending administrative case before the Ombudsman for the Visayas and a criminal case before the Sandiganbayan. He likewise confessed that at the time he affixed his signature to the PDS, he had already been convicted of an administrative offense for simple misconduct. Such acts constitute misconduct, as they are considered voluntary wrongdoing characterized by behavior unbecoming of an official of the government. The fact that no bad faith can be attributed to the petitioner because it was his personnel officer who prepared the PDS is not a valid defense; the fact that he failed to read the entries made by the personnel officer before finally affixing his signature on the PDS makes him guilty of negligence of duty. It must likewise be stressed that the petitioner is expected to set a good example to his subordinates in the office. By being remiss in his duties, the petitioner willfully transgressed the criterion of behavior expected of him as a government official.[26]

Moreover, the failure of the petitioner to divulge that he had pending cases, both criminal and administrative, and that he had already been previously adjudged guilty of simple misconduct is a form of concealment, which is regarded as dishonesty amounting to misconduct.[27] Petitioner was under legal obligation to reveal those facts in his PDS and his inadvertence was no excuse. The Court cannot condone nor close its eyes to transgressions of duty on the part of the petitioner which could have been avoided with the exercise of requisite care. The Ombudsman for the Visayas is thus correct in holding that:

> ... Complainant rightly argued that it was incumbent upon respondent to have read thoroughly and carefully his PDS, more especially so that it was partially prepared by another person. Being a senior officer, he is charged with the knowledge that a PDS is supposed to be truly reflective of the personal circumstances of the one who prepared and submitted it. By not making any corrections in the entries made by Mrs. Rosales, he had in effect considered them to be his own and the truths as far as he is concerned.[28]

Besides, no less than the 1987 Constitution provides that "[p]ublic office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."[29]

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This central tenet in a government official's career is more than just a moral imploration. It is a legal imperative. The law may vest in a public official certain rights. It does so only to enable him to perform his functions and fulfill his responsibilities more efficiently.[30] But that does not mean that the public official may dispense with the requirements of the law. The public office is created for the interest and the benefit of the people. As such, the holder thereof "is subject to such regulations and conditions as the law may impose."[31] There is a constant need to maintain the faith and confidence of the people in the government and its agencies and instrumentalities. A public servant must exhibit at all times the highest sense of honesty and integrity.[32]

Anent the second issue, the petitioner declares that he was denied due process because the decisions of the Office of the Ombudsman and the CA failed to comply with the requirement of substantial evidence in administrative cases. He further avers that the allegations in the respondent's complaint charge a case of falsification or dishonesty while the decision of the Ombudsman, as affirmed by the CA, was for a finding of misconduct. As a consequence, the petitioner declares that he was not able to defend himself because he was not given the opportunity to prepare and present his defense.

The respondent, however, posits that the petitioner's arguments are misleading because he was thoroughly apprised of the charge against him.

We agree with the respondent.

The evidence presented by the respondent is substantial to support the finding that the petitioner is guilty of the offense charged against him. It bears stressing that in administrative proceedings, the quantum of evidence required is only substantial.[33] It is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine differently. The gauge of substantial evidence is satisfied where there is reasonable ground to believe that the petitioner is guilty of misconduct, even if the evidence might not be overwhelming.[34] After a careful review of the evidence on record, the Court adopts and concurs with the findings of the Ombudsman and the appellate court. Absent a clear showing of grave abuse of discretion, such findings need not be disturbed.[35] Section 27 of R.A. No. 6770 succinctly provides that "[f]indings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive." Moreover, such findings made by an administrative body which has acquired expertise are accorded not only respect but even finality. Thus, the appellate court committed no error in sustaining the penalty of suspension imposed on the petitioner.

As to the petitioner's contention that he was not properly apprised of the charges against him, suffice it to say that the records of the case clearly reveal that the respondent's letter-complaint indicated that the request was for the filing of an administrative offense for "Misconduct in Office and/or Dishonesty." Verily, the petitioner cannot now claim that he was not given the opportunity to defend and prepare his defense, and that he was denied due process because he was well informed of the charges against him.

The issue on the improper execution of the penalty involving the petitioner's suspension is moot. In view of the fact that the petitioner is indeed liable for misconduct and that he has served out the penalty, the Court finds no need to still resolve the same. As a general rule, courts should not take cognizance of moot and academic questions.[36] Further, Section 7 of the Ombudsman's Administrative Order No. 14-A, Series of 2000 states that:

> 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 and unappealable. In all other cases, the decision may be appealed within ten (10) 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.[37]

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals are AFFIRMED. No costs.

SO ORDERED.

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

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[1] Penned by Associate Justice Romeo A. Brawner (now Presiding Justice), with Associate Justices Rebecca De Guia-Salvador and Jose C. Reyes, Jr., concurring.

[2] Penned by Graft Investigation Officer I Cynthia C. Maturan-Sibi.

[3] Exhibit "B," Records, p. 4.

[4] Exhibit "C," id. at 5.

[5] Exhibit "E," id. at 9.

[6] Exhibit "A," id. at 2-3.

[7] Exhibit "5," Records, pp. 16-21.

[8] Exhibit "2," id. at 33.

[9] Records, p. 36-40.

[10] TSN, 29 August 2001, pp. 31-37.

[11] id. at 56, 62-63.

[12] Records, pp. 121-122.

[13] CA Rollo, pp. 179-182.

[14] id. at 183-185.

[15] id. at 205.

[16] id. at 225.

[17] CA Rollo, p. 244.

[18] G.R. No. 129742, 16 September 1998, 295 SCRA 470.

[19] Records, pp. 161-163.

[20] Rollo, p. 33.

[21] CA Rollo, pp. 242-243.

[22] Bautista v. Navarro, G.R. No. L-46199, 29 June 1982, 114 SCRA 794.

[23] Albior v. Auguis, A.M. No. P-01-1472, 26 June 2003, 405 SCRA 1.

[24] In Re: Impeachment of Horrilleno, 43 Phil 212 (1922); Suroza v. Honrado, Adm. Matter No. 2026-CFI, 19 December 1981, 110 SCRA 388.

[25] Camus v. Civil Service Board of Appeals, 112 Phil 306 (1961).

[26] In Re: Loss of the Records of G.R. No. 126468 Entitled Sonia Llamas-Tan v. Court of Appeals, et al., A.M. No. 01-1-01 SC, 23 May 2001, 358 SCRA 121.

[27] Records, pp. 161-163.

[28] Rollo, p. 93.

[29] SECTION 1, ARTICLE XI.

[30] Bengzon v. Drilon, G.R. No. 103524, 15 April 1992, 208 SCRA 133, citing De la Llana v. Alba, 112 SCRA 294 (1982).

[31] Adaza v. Pacana, Jr., G.R. No. 68159, 18 March 1985, 135 SCRA 431.

[32] Maharlika Publishing Corporation v. Tagle, G.R. No. L-65594, 9 July 1986, 142 SCRA 553, citing Ancheta v. Hilario, 96 SCRA 62 (1980).

[33] Añonuevo, Jr. v. Court of Appeals, G.R. No. 152998, 23 September 2003, 411 SCRA 621.

[34] Civil Service Commission v. Cayobit, G.R. No. 145737, 3 September 2003, 410 SCRA 357.

[35] Espinoza v. Office of the Ombudsman, G.R. No. 135775, 19 October 2000, 343 SCRA 744.

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

[37] Emphasis supplied.

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