

**PAULINO M. ALECHA AND PRECIOSO M. TAPITAN, PETITIONERS, VS.
ELMER BEN V. PASION, RODOLFO M. ELMAN, ANTONIO E.
VALENZUELA, MAYOR ULYSSES D. PEREZ, VICE MAYOR STEWART
R. PADAYHAG,...**

G.R. No. 164506. January 19, 2010

Ponente: CORONA, J.

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CORONA, J.:

On September 12, 2003, petitioners Paulino M. Alecha and Precioso M. Tapitan filed before the Ombudsman (Mindanao) a criminal complaint against respondent municipal officials of the Municipality of Midsalip, Zamboanga del Sur for violation of Section 3(e) of Republic Act (RA) 3019,[5] Section 81 of RA 7160,[6] Section 10 of RA 6758[7] and RA 9137.[8]

In their letter-complaint,[9] petitioners averred that respondent municipal officials conspired in unlawfully adopting and actually collecting the salaries, representation and travel allowances (RATA) and personnel economic relief assistance (PERA) of public officials for special cities and/or first class provinces or cities, notwithstanding the fact that the Municipality of Midsalip had no financial capacity to cover such expenditures, thus seriously affecting the delivery of basic services within its jurisdiction.

In a joint resolution[10] dated January 27, 2004, the Ombudsman (Mindanao) dismissed the complaint against respondent municipal officials. Petitioners' motion for reconsideration[11] was likewise denied in a joint order[12] dated April 15, 2004.

Hence, the present recourse,[13] where petitioners impute grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Ombudsman (Mindanao) in dismissing their letter-complaint against respondent municipal officials. To buttress their stance, petitioners cite the admission made by respondent municipal officials that they had been receiving salaries for special cities even though the Municipality of Midsalip was a fifth-class municipality.

The petition has no merit.

Grave abuse of discretion is present when there is a capricious and whimsical exercise of judgment which is equivalent to lack or excess of jurisdiction. The abuse of discretion must be grave, i.e., it must be so patent and gross as to amount to an evasion of a positive duty or virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[14] We find nothing of that sort here.

A fifth-class municipality like Midsalip is not absolutely prohibited from adopting a salary schedule equivalent to that of a special city or a first-class province. Local Budget Circular No. 64 dated January 1, 1997, in conjunction with paragraph 11 of Local Budget No. 56, allows local government units (LGUs) lower than special cities and first-class provinces and cities to adopt a salary scheme for special cities and first-class provinces. The adoption of

a higher salary schedule needs only to comply with the following requirements:

- (1) the LGU is financially capable;
- (2) the salary schedule to be adopted shall be uniformly applied to all positions in the in the LGU concerned;
- (3) the salary schedule for the special and highly urbanized cities and first class provinces and cities shall not be higher than that being adopted by the national government;
- (4) in implementing a new and higher salary schedule, the salary grade allocation of positions and the salary steps of personnel shall be retained;
- (5) the adoption of the higher salary schedule shall be subject to the budgetary and general limitations on personal services expenditures mandated under Sections 324 and 325 of RA 7160;
- (6) in the case of component cities and municipalities, the salary schedule to be adopted shall not be higher than that of the province or city in the case of some municipalities, where they belong and
- (7) the adoption of a higher salary schedule shall not in any manner alter the existing classification of the LGU concerned.

It is beyond cavil that the Municipality of Midsalip has complied with the above conditions.

Petitioners aver that the Municipality of Midsalip was financially incapable of implementing a higher salary schedule but the evidence showed otherwise. Five years into the implementation of the higher salary schedule, the Municipality of Midsalip had savings of P 14,913,554.68 in its bank account.[15] Not only that. The financial capability of the Municipality of Midsalip, as shown by the certified statement of savings of unobligated balances for the years 2002 and 2003 issued by the Midsalip municipal treasurer and accountant, revealed repeated surplus accounts in the amounts of P7,709,311.64 and P 5,070,913.23 for the said years, respectively.[16] The certification of the Midsalip municipal accountant dated January 14, 2003 also stated that there was no realignment or disbursement of the 20% municipal development project for personal services expenditures from 1998 to 2002.[17]

Petitioners themselves do not deny that the local budget ordinance of the Municipality of Midsalip (which adopted the salary schedule of special cities) was duly approved by the Sangguniang Panlalawigan of Zamboanga del Sur (thus becoming part of the provincial budget ordinance of said province) and later, by the Department of Budget and Management. The Commission on Audit, in turn, after reviewing and auditing the expenditures of the Municipality of Midsalip (including the assailed salaries and allowances) did not disallow or suspend the foregoing disbursements and/or expenditures.

In sum, we find no grave abuse of discretion on the part of the Ombudsman (Mindanao) in dismissing the letter-complaint of petitioners against respondent municipal officials. Settled is the rule that the findings of fact of the Ombudsman, when duly supported by evidence, are conclusive.[18] Findings of fact of administrative bodies (which are equipped with expertise as far as their jurisdiction is concerned) should be accorded not only respect but even finality when supported by substantial evidence, even if not overwhelming or preponderant.[19]

We have time and again refrained from interfering with the Ombudsman's exercise of its constitutionally mandated investigatory and prosecutory powers.[20] This is in recognition of the Office of the Ombudsman's independence and initiative in prosecuting or dismissing a complaint filed before it.[21]

One last word. Public 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.[22] Corollary to this heavy burden, however, is the right of public officials to be protected from unfounded suits.

WHEREFORE, the petition is hereby DISMISSED.

Costs against petitioners.

SO ORDERED.

Velasco, Jr., Nachura, Peralta and Mendoza, JJ., concur.

[1] Sangguniang Bayan.

[2] Association of Barangay Chairpersons.

[3] Sangguniang Kabataan Federation.

[4] Department of Social Welfare and Development.

[5] Anti-Graft and Corrupt Practices Act.

[6] The Local Government Code.

[7] The Salary Standardization Law.

[8] An Act Appropriating the Sum of Ten Billion Nine Hundred Million Pesos as Supplement Appropriation for Fiscal Year 2001 and for Other Purposes.

[9] Annex "A" of the petition; rollo, pp. 26-32.

[10] Annex "H" of the petition; id., pp. 122-131.

[11] Annex "I" of the petition; id., pp. 201-212.

[12] Annex "J" of the petition; id., pp. 223-226.

[13] Under Rule 65 of the Rules of Court; id., pp. 4-23.

[14] *Duero v. Court of Appeals*, G.R. No. 131282, 4 January 2002, 373 SCRA 11.

[15] Rollo, p. 58.

[16] *Id.*, p. 59.

[17] *Id.*, p. 60.

[18] Section 27, RA No. 6770.

[19] *Casa Filipina Realty Corporation v. Office of the President*, G.R. No. 99346, 7 February 1995, 241 SCRA 165.

[20] *Alba v. Nitoreda*, G.R. No. 120223, 13 March 1996, 254 SCRA 753, 765.

[21] *Id.*, pp. 765-766. The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman, but upon practicality as well. Otherwise, the functions of the courts would be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in

much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant. (Ocampo IV v. Ombudsman, G.R. Nos. 103446-47, 30 August 1993, 225 SCRA 725, 730).

[22] CONSTITUTION, Article XI, Section 1.

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