

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. ULDARICO P. ANDUTAN, JR., RESPONDENT.

G.R. No. 164679. July 27, 2011

Ponente: BRION, J.

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BRION, J.:

Through a petition for review on certiorari, [1] the petitioner Office of the Ombudsman (Ombudsman) seeks the reversal of the decision [2] of the Court of Appeals (CA), dated July 28, 2004, in "Uldarico P. Andutan, Jr. v. Office of the Ombudsman and Fact Finding and Intelligence Bureau (FFIB), etc.," docketed as CA-G.R. SP No. 68893. The assailed decision annulled and set aside the decision of the Ombudsman dated July 30, 2001, [3] finding Uldarico P. Andutan, Jr. guilty of Gross Neglect of Duty.

THE FACTUAL ANTECEDENTS

Andutan was formerly the Deputy Director of the One-Stop Shop Tax Credit and Duty Drawback Center of the Department of Finance (DOF). On June 30, 1998, then Executive Secretary Ronaldo Zamora issued a Memorandum directing all non-career officials or those occupying political positions to vacate their positions effective July 1, 1998. [4] On July 1, 1998, pursuant to the Memorandum, Andutan resigned from the DOF. [5]

On September 1, 1999, Andutan, together with Antonio P. Belicena, former Undersecretary, DOF; Rowena P. Malonzo, Tax Specialist I, DOF; Benjamin O. Yao, Chairman and Executive Officer, Steel Asia Manufacturing Corporation (Steel Asia); Augustus S. Lapid, Vice-President, Steel Asia; Antonio M. Lorenzana, President and Chief Operating Officer, Steel Asia; and Eulogio L. Reyes, General Manager, Devmark Textiles Ind. Inc., was criminally charged by the Fact Finding and Intelligence Bureau (FFIB) of the Ombudsman with Estafa through Falsification of Public Documents, and violations of Section 3(a), (e) and (j) of Republic Act No. (R.A.) 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. [6] As government employees, Andutan, Belicena and Malonzo were likewise administratively charged of Grave Misconduct, Dishonesty, Falsification of Official Documents and Conduct Prejudicial to the Best Interest of the Service. [7]

The criminal and administrative charges arose from anomalies in the illegal transfer of Tax Credit Certificates (TCCs) to Steel Asia, among others. [8]

During the investigation, the FFIB found that Steel Asia fraudulently obtained TCCs worth Two Hundred Forty-Two Million, Four Hundred Thirty-Three Thousand, Five Hundred Thirty-Four Pesos (P242,433,534.00). [9] The FFIB concluded that Belicena, Malonzo and Andutan - in their respective capacities - irregularly approved the "issuance of the TCCs to several garment/textile companies and allowing their subsequent illegal transfer" to Steel Asia. [10]

On November 11, 1999, the Ombudsman ordered the respondents therein (respondents) to submit their counter-affidavits. Only Malonzo complied with the order, prompting the Ombudsman to set a Preliminary Conference on March 13, 2000.

Upon the respondents' failure to appear at the March 20, 2000 hearing, the Ombudsman deemed the case submitted for resolution.

On July 30, 2001, the Ombudsman found the respondents guilty of Gross Neglect of Duty. [11] Having been separated from the service, Andutan was imposed the penalty of forfeiture of all leaves, retirement and other benefits and privileges, and perpetual disqualification from reinstatement and/or reemployment in any branch or instrumentality of the government, including government owned and controlled agencies or corporations. [12]

After failing to obtain a reconsideration of the decision, [13] Andutan filed a petition for review on certiorari before the CA.

On July 28, 2004, [14] the CA annulled and set aside the decision of the Ombudsman, ruling that the latter "should not have considered the administrative complaints" because: first, Section 20 of R.A. 6770 provides that the Ombudsman "may not conduct the necessary investigation of any administrative act or omission complained of if it believes that x x x [t]he complaint was filed after one year from the occurrence of the act or omission complained of"; [15] and second, the administrative case was filed after Andutan's forced resignation. [16]

THE PETITIONER'S ARGUMENTS

In this petition for review on certiorari, the Ombudsman asks the Court to overturn the decision of the CA. It submits, first, that contrary to the CA's findings, administrative offenses do not prescribe after one year from their commission, [17] and second, that in cases of "capital" administrative offenses, resignation or optional retirement cannot render administrative proceedings moot and academic, since accessory penalties such as perpetual disqualification and the forfeiture of retirement benefits may still be imposed. [18]

The Ombudsman argues that Section 20 of R.A. 6770 is not mandatory. Consistent with existing jurisprudence, the use of the word "may" indicates that Section 20 is merely directory or permissive. [19] Thus, it is not ministerial upon it to dismiss the administrative complaint, as long as any of the circumstances under Section 20 is present. [20] In any case, the Ombudsman urges the Court to examine its mandate under Section 13, Article XI of the 1987 Constitution, and hold that an imposition of a one (1) year prescriptive period on the filing of cases unconstitutionally restricts its mandate. [21]

Further, the Ombudsman submits that Andutan's resignation from office does not render moot the administrative proceedings lodged against him, even after his resignation. Relying on Section VI(1) of Civil Service Commission (CSC) Memorandum Circular No. 38, [22] the Ombudsman argues that "[a]s long as the breach of conduct was committed while the public official or employee was still in the service x x x a public servant's resignation is not a bar to his administrative investigation, prosecution and adjudication." [23] It is irrelevant that Andutan had already resigned from office when the administrative case was filed since he was charged for "acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public." [24] Furthermore, even if Andutan had already resigned, there is a need to "determine whether or not there remains penalties capable of imposition, like bar from reentering the (sic) public service and forfeiture of benefits." [25] Finally, the Ombudsman reiterates that its findings against Andutan are supported by substantial evidence.

THE RESPONDENT'S ARGUMENTS

Andutan raises three (3) counterarguments to the Ombudsman's petition.

First, Andutan submits that the CA did not consider Section 20(5) of R.A. 6770 as a prescriptive period; rather, the CA merely held that the Ombudsman should not have considered the administrative complaint. According to Andutan, Section 20(5) "does not purport to impose a prescriptive period x x x but simply prohibits the Office of

the Ombudsman from conducting an investigation where the complaint [was] filed more than one (1) year from the occurrence of the act or omission complained of." [26] Andutan believes that the Ombudsman should have referred the complaint to another government agency. [27] Further, Andutan disagrees with the Ombudsman's interpretation of Section 20(5). Andutan suggests that the phrase "may not conduct the necessary investigation" means that the Ombudsman is prohibited to act on cases that fall under those enumerated in Section 20(5). [28]

Second, Andutan reiterates that the administrative case against him was moot because he was no longer in the public service at the time the case was commenced. [29] According to Andutan, Atty. Perez v. Judge Abiera [30] and similar cases cited by the Ombudsman do not apply since the administrative investigations against the respondents in those cases were commenced prior to their resignation. Here, Andutan urges the Court to rule otherwise since unlike the cases cited, he had already resigned before the administrative case was initiated. He further notes that his resignation from office cannot be characterized as "preemptive, i.e. made under an atmosphere of fear for the imminence of formal charges" [31] because it was done pursuant to the Memorandum issued by then Executive Secretary Ronaldo Zamora.

Having established the propriety of his resignation, Andutan asks the Court to uphold the mootness of the administrative case against him since the cardinal issue in administrative cases is the "officer's fitness to remain in office, the principal penalty imposable being either suspension or removal." [32] The Ombudsman's opinion - that accessory penalties may still be imposed - is untenable since it is a fundamental legal principle that "accessory follows the principal, and the former cannot exist independently of the latter." [33]

Third, the Ombudsman's findings were void because procedural and substantive due process were not observed. Likewise, Andutan submits that the Ombudsman's findings lacked legal and factual bases.

ISSUES

Based on the submissions made, we see the following as the issues for our resolution:

- Does Section 20(5) of R.A. 6770 prohibit the Ombudsman from conducting an administrative investigation a year after the act was committed?
- Does Andutan's resignation render moot the administrative case filed against him?
- Assuming that the administrative case is not moot, are the Ombudsman's findings supported by substantial evidence?

THE COURT'S RULING

We rule to deny the petition.

The provisions of Section 20(5) are merely directory; the Ombudsman is not prohibited from conducting an investigation a year after the supposed act was committed.

The issue of whether Section 20(5) of R.A. 6770 is mandatory or discretionary has been settled by jurisprudence. [34] In *Office of the Ombudsman v. De Sahagun*, [35] the Court, speaking through Justice Austria-Martinez, held:

[W]ell-entrenched is the rule that administrative offenses do not prescribe [*Concerned Taxpayer v. Doblada, Jr.*, A.M. No. P-99-1342, September 20, 2005, 470 SCRA 218; *Melchor v. Gironella*, G.R. No. 151138, February 16, 2005, 451 SCRA 476; *Heck v. Judge Santos*, 467 Phil. 798, 824 (2004); *Floria v. Sunga*, 420 Phil. 637, 648-649 (2001)]. Administrative offenses by their very nature pertain to the character of public officers

and employees. In disciplining public officers and employees, the object sought is not the punishment of the officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in our government [Melchor v. Gironella, G.R. No. 151138, February 16, 2005, 451 SCRA 476, 481; Remolona v. Civil Service Commission, 414 Phil. 590, 601 (2001)].

Respondents insist that Section 20 (5) of R.A. No. 6770, to wit:

SEC. 20. Exceptions. - The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

x x x x

(5) The complaint was filed after one year from the occurrence of the act or omission complained of. (Emphasis supplied)

proscribes the investigation of any administrative act or omission if the complaint was filed after one year from the occurrence of the complained act or omission.

In *Melchor v. Gironella* [G.R. No. 151138, February 16, 2005, 451 SCRA 476], the Court held that the period stated in Section 20(5) of R.A. No. 6770 does not refer to the prescription of the offense but to the discretion given to the Ombudsman on whether it would investigate a particular administrative offense. The use of the word "may" in the provision is construed as permissive and operating to confer discretion [Melchor v. Gironella, G.R. No. 151138, February 16, 2005, 451 SCRA 476, 481; *Jaramilla v. Comelec*, 460 Phil. 507, 514 (2003)]. Where the words of a statute are clear, plain and free from ambiguity, they must be given their literal meaning and applied without attempted interpretation [Melchor v. Gironella, G.R. No. 151138, February 16, 2005, 451 SCRA 476, 481; *National Federation of Labor v. National Labor Relations Commission*, 383 Phil. 910, 918 (2000)].

In *Filipino v. Macabuhay* [G.R. No. 158960, November 24, 2006, 508 SCRA 50], the Court interpreted Section 20 (5) of R.A. No. 6770 in this manner:

Petitioner argues that based on the abovementioned provision [Section 20(5) of RA 6770], respondent's complaint is barred by prescription considering that it was filed more than one year after the alleged commission of the acts complained of.

Petitioner's argument is without merit.

The use of the word "may" clearly shows that it is directory in nature and not mandatory as petitioner contends. When used in a statute, it is permissive only and operates to confer discretion; while the word "shall" is imperative, operating to impose a duty which may be enforced. Applying Section 20(5), therefore, it is discretionary upon the Ombudsman whether or not to conduct an investigation on a complaint even if it was filed after one year from the occurrence of the act or omission complained of. In fine, the complaint is not barred by prescription. (Emphasis supplied)

The declaration of the CA in its assailed decision that while as a general rule the word "may" is directory, the negative phrase "may not" is mandatory in tenor; that a directory word, when qualified by the word "not," becomes prohibitory and therefore becomes mandatory in character, is not plausible. It is not supported by jurisprudence on statutory construction. [emphases and underscoring supplied]

Clearly, Section 20 of R.A. 6770 does not prohibit the Ombudsman from conducting an administrative investigation after the lapse of one year, reckoned from the time the alleged act was committed. Without doubt, even if the administrative case was filed beyond the one (1) year period stated in Section 20(5), the Ombudsman was well within its discretion to conduct the administrative investigation.

However, the crux of the present controversy is not on the issue of prescription, but on the issue of the Ombudsman's authority to institute an administrative complaint against a government employee who had already resigned. On this issue, we rule in Andutan's favor.

Andutan's resignation divests the Ombudsman of its right to institute an administrative complaint against him.

Although the Ombudsman is not precluded by Section 20(5) of R.A. 6770 from conducting the investigation, the Ombudsman can no longer institute an administrative case against Andutan because the latter was not a public servant at the time the case was filed.

The Ombudsman argued - in both the present petition and in the petition it filed with the CA - that Andutan's retirement from office does not render moot any administrative case, as long as he is charged with an offense he committed while in office. It is irrelevant, according to the Ombudsman, that Andutan had already resigned prior to the filing of the administrative case since the operative fact that determines its jurisdiction is the commission of an offense while in the public service.

The Ombudsman relies on Section VI(1) of Civil Service Commission Memorandum Circular No. 38 for this proposition, viz.:

Section VI.

1. x x x

An officer or employee under administrative investigation may be allowed to resign pending decision of his case but it shall be without prejudice to the continuation of the proceeding against him. It shall also be without prejudice to the filing of any administrative, criminal case against him for any act committed while still in the service. (emphasis and underscoring supplied)

The CA refused to give credence to this argument, holding that the provision "refers to cases where the officers or employees were already charged before they were allowed to resign or were separated from service." [36] In this case, the CA noted that "the administrative cases were filed only after Andutan was retired, hence the Ombudsman was already divested of jurisdiction and could no longer prosecute the cases." [37]

Challenging the CA's interpretation, the Ombudsman argues that the CA "limited the scope of the cited Civil Service Memorandum Circular to the first sentence." [38] Further, according to the Ombudsman, "the court a quo ignored the second statement in the said circular that contemplates a situation where previous to the institution of the administrative investigation or charge, the public official or employee subject of the investigation has resigned." [39]

To recall, we have held in the past that a public official's resignation does not render moot an administrative case that was filed prior to the official's resignation. In *Pagano v. Nazarro, Jr.*, [40] we held that:

In *Office of the Court Administrator v. Juan* [A.M. No. P-03-1726, 22 July 2004, 434 SCRA 654, 658], this Court categorically ruled that the precipitate resignation of a government employee charged with an offense punishable by dismissal from the service does not render moot the administrative case against him. Resignation is not a way out to evade administrative liability when facing administrative sanction. The resignation of a public servant does not preclude the finding of any administrative liability to which he or she shall still be answerable [*Baquerfo v. Sanchez*, A.M. No. P-05-1974, 6 April 2005, 455 SCRA 13, 19-20]. [emphasis and underscoring supplied]

Likewise, in *Baquerfo v. Sanchez*, [41] we held:

Cessation from office of respondent by resignation [*Reyes v. Cristi*, A.M. No. P-04-1801, 2 April 2004, 427 SCRA 8] or retirement [Re: Complaint Filed by Atty. Francis Allan A. Rubio on the Alleged Falsification of Public Documents and Malversation of Public Funds, A.M. No. 2004-17-SC, 27 September 2004; *Caja v. Nanquil*, A.M. No. P-04-1885, 13 September 2004] neither warrants the dismissal of the administrative complaint filed against him while he was still in the service [*Tuliao v. Ramos*, A.M. No. MTJ-95-1065, 348 Phil. 404, 416 (1998), citing *Perez v. Abiera*, A.C. No. 223-J, 11 June 1975, 64 SCRA 302; *Secretary of Justice v. Marcos*, A.C. No. 207-J, 22 April 1977, 76 SCRA 301] nor does it render said administrative case moot and academic [*Sy Bang v. Mendez*, 350 Phil. 524, 533 (1998)]. The jurisdiction that was this Court's at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case [*Flores v. Sumaljag*, 353 Phil. 10, 21 (1998)]. Respondent's resignation does not preclude the finding of any administrative liability to which he shall still be answerable [*OCA v. Fernandez*, A.M. No. MTJ-03-1511, 20 August 2004]. [emphases and underscoring supplied]

However, the facts of those cases are not entirely applicable to the present case. In the above-cited cases, the Court found that the public officials - subject of the administrative cases - resigned, either to prevent the continuation of a case already filed [42] or to pre-empt the imminent filing of one. [43] Here, neither situation obtains.

The Ombudsman's general assertion that Andutan pre-empted the filing of a case against him by resigning, since he "knew for certain that the investigative and disciplinary arms of the State would eventually reach him" [44] is unfounded. First, Andutan's resignation was neither his choice nor of his own doing; he was forced to resign. Second, Andutan resigned from his DOF post on July 1, 1998, while the administrative case was filed on September 1, 1999, exactly one (1) year and two (2) months after his resignation. The Court struggles to find reason in the Ombudsman's sweeping assertions in light of these facts.

What is clear from the records is that Andutan was forced to resign more than a year before the Ombudsman filed the administrative case against him. Additionally, even if we were to accept the Ombudsman's position that Andutan foresaw the filing of the case against him, his forced resignation negates the claim that he tried to prevent the filing of the administrative case.

Having established the inapplicability of prevailing jurisprudence, we turn our attention to the provisions of Section VI of CSC Memorandum Circular No. 38. We disagree with the Ombudsman's interpretation that "[a]s long as the breach of conduct was committed while the public official or employee was still in the service x x x a public servant's resignation is not a bar to his administrative investigation, prosecution and adjudication." [45] If we agree with this interpretation, any official - even if he has been separated from the service for a long time - may still be subject to the disciplinary authority of his superiors, ad infinitum. We believe that this interpretation is inconsistent with the principal motivation of the law - which is to improve public service and to preserve the public's faith and confidence in the government, and not the punishment of the public official concerned. [46] Likewise, if the act committed by the public official is indeed inimical to the interests of the State, other legal mechanisms are available to redress the same.

The possibility of imposing
accessory penalties does not
negate the Ombudsman's lack
of jurisdiction.

The Ombudsman suggests that although the issue of Andutan's removal from the service is moot, there is an

"irresistible justification" to "determine whether or not there remains penalties capable of imposition, like bar from re-entering the public service and forfeiture of benefits." [47] Otherwise stated, since accessory penalties may still be imposed against Andutan, the administrative case itself is not moot and may proceed despite the inapplicability of the principal penalty of removal from office.

We find several reasons that militate against this position.

First, although we have held that the resignation of an official does not render an administrative case moot and academic because accessory penalties may still be imposed, this holding must be read in its proper context. In *Pagano v. Nazarro, Jr.*, [48] indeed, we held:

A case becomes moot and academic only when there is no more actual controversy between the parties or no useful purpose can be served in passing upon the merits of the case [*Tantoy, Sr. v. Abrogar*, G.R. No. 156128, 9 May 2005, 458 SCRA 301, 305]. The instant case is not moot and academic, despite the petitioner's separation from government service. Even if the most severe of administrative sanctions - that of separation from service - may no longer be imposed on the petitioner, there are other penalties which may be imposed on her if she is later found guilty of administrative offenses charged against her, namely, the disqualification to hold any government office and the forfeiture of benefits. [emphasis and underscoring supplied]

Reading the quoted passage in a vacuum, one could be led to the conclusion that the mere availability of accessory penalties justifies the continuation of an administrative case. This is a misplaced reading of the case and its ruling.

Esther S. Pagano - who was serving as Cashier IV at the Office of the Provincial Treasurer of Benguet - filed her certificate of candidacy for councilor four days after the Provincial Treasurer directed her to explain why no administrative case should be filed against her. The directive arose from allegations that her accountabilities included a cash shortage of P1,424,289.99. She filed her certificate of candidacy under the pretext that since she was deemed ipso facto resigned from office, she was no longer under the administrative jurisdiction of her superiors. Thus, according to Pagano, the administrative complaint had become moot.

We rejected Pagano's position on the principal ground "that the precipitate resignation of a government employee charged with an offense punishable by dismissal from the service does not render moot the administrative case against him. Resignation is not a way out to evade administrative liability when facing administrative sanction." [49] Our position that accessory penalties are still imposable - thereby negating the mootness of the administrative complaint - merely flows from the fact that Pagano pre-empted the filing of the administrative case against her. It was neither intended to be a stand-alone argument nor would it have justified the continuation of the administrative complaint if Pagano's filing of candidacy/resignation did not reek of irregularities. Our factual findings in Pagano confirm this, viz.:

At the time petitioner filed her certificate of candidacy, petitioner was already notified by the Provincial Treasurer that she needed to explain why no administrative charge should be filed against her, after it discovered the cash shortage of P1,424,289.99 in her accountabilities. Moreover, she had already filed her answer. To all intents and purposes, the administrative proceedings had already been commenced at the time she was considered separated from service through her precipitate filing of her certificate of candidacy. Petitioner's bad faith was manifest when she filed it, fully knowing that administrative proceedings were being instituted against her as part of the procedural due process in laying the foundation for an administrative case. [50] (emphasis and underscoring supplied)

Plainly, our justification for the continuation of the administrative case - notwithstanding Pagano's resignation - was her "bad faith" in filing the certificate of candidacy, and not the availability of accessory penalties.

Second, we agree with the Ombudsman that "fitness to serve in public office x x x is a question of transcendental [importance] [51]" and that "preserving the inviolability of public office" compels the state to prevent the "re-entry [to] public service of persons who have x x x demonstrated their absolute lack of fitness to hold public office." [52] However, the State must perform this task within the limits set by law, particularly, the limits of jurisdiction. As earlier stated, under the Ombudsman's theory, the administrative authorities may exercise administrative jurisdiction over subordinates ad infinitum; thus, a public official who has validly severed his ties with the civil service may still be the subject of an administrative complaint up to his deathbed. This is contrary to the law and the public policy behind it.

Lastly, the State is not without remedy against Andutan or any public official who committed violations while in office, but had already resigned or retired therefrom. Under the "threefold liability rule," the wrongful acts or omissions of a public officer may give rise to civil, criminal and administrative liability. [53] Even if the Ombudsman may no longer file an administrative case against a public official who has already resigned or retired, the Ombudsman may still file criminal and civil cases to vindicate Andutan's alleged transgressions. In fact, here, the Ombudsman - through the FFIB - filed a criminal case for Estafa and violations of Section 3(a), (e) and (j) of the Anti-Graft and Corrupt Practices Act against Andutan. If found guilty, Andutan will not only be meted out the penalty of imprisonment, but also the penalties of perpetual disqualification from office, and confiscation or forfeiture of any prohibited interest. [54]

Conclusion

Public office is a public trust. No precept of administrative law is more basic than this statement of what assumption of public office involves. The stability of our public institutions relies on the ability of our civil servants to serve their constituencies well.

While we commend the Ombudsman's resolve in pursuing the present case for violations allegedly committed by Andutan, the Court is compelled to uphold the law and dismiss the petition. Consistent with our holding that Andutan is no longer the proper subject of an administrative complaint, we find no reason to delve on the Ombudsman's factual findings.

WHEREFORE, we DENY the Office of the Ombudsman's petition for review on certiorari, and AFFIRM the decision of the Court of Appeals in CA-G.R. SP No. 68893, promulgated on July 28, 2004, which annulled and set aside the July 30, 2001 decision of the Office of the Ombudsman, finding Uldarico P. Andutan, Jr. guilty of Gross Neglect of Duty.

No pronouncement as to costs.

SO ORDERED.

Carpio, (Chairperson), Leonardo-De Castro,[*] Peralta,**] and Perez, JJ., concur.

[*] Designated as Acting Member of the Second Division per Special Order No. 1006 dated June 10, 2011.

[**] Additional member in lieu of Associate Justice Maria Lourdes P. A. Sereno per Special Order No. 1040 dated July 6, 2011.

[1] Rollo, pp. 12-74; filed under Rule 45 of the Rules of Court.

[2] Id. at 76-83; penned by Associate Justice Roberto A. Barrios, and concurred in by Associate Justices Amelita G. Tolentino and Vicente S.E. Veloso.

[3] Id. at 173-188.

[4] Id. at 163.

[5] Id. at 164.

[6] Id. at 22.

[7] Ibid.

[8] Id. at 77.

[9] Id. at 78.

[10] Id. at 77-78.

[11] Supra note 3.

[12] Id. at 186.

[13] Rollo, pp. 189-202.

[14] Supra note 2.

[15] Id. at 81-82.

[16] Id. at 82.

[17] Rollo, p. 26.

[18] Id. at 63-65.

[19] Id. at 29.

[20] Id. at 29-30.

[21] Id. at 33-34.

[22] Section VI.

1. x x x

An officer or employee under administrative investigation may be allowed to resign pending decision of his case but it shall be without prejudice to the continuation of the proceeding against him. It shall also be without prejudice to the filing of any administrative, criminal case against him for any act committed while still in the service.

[23] Rollo, p. 57.

[24] Id. at 59, citing *Perez v. Abiera*, A.C. No. 223-J, June 11, 1975.

[25] Id. at 62-63.

[26] Id. at 255.

[27] Ibid.

[28] Id. at 256; relying on Ruben Agpalo, *Statutory Construction* 338 (4th ed., 1998):

The use by the legislature of negative, prohibitory or exclusive terms or words in a statute is indicative of the

legislative intent to make the statute mandatory. A statute or provision which contains words of positive prohibition, such as "shall not," "cannot," or "ought not," or which is couched in negative terms importing that the act shall not be done otherwise than designated is mandatory. Prohibitive or negative words can rarely, if ever, be directory, for there is but one way to obey the command, "thou shall not," and that is to completely refrain from doing the forbidden act.

[29] *Id.* at 257.

[30] 159-A Phil. 575 (1975).

[31] *Rollo*, p. 262.

[32] *Ibid.*

[33] *Id.* at 263.

[34] *Office of the Ombudsman v. De Sahagun*, G.R. No. 167982, August 13, 2008, 562 SCRA 122, 128.

[35] *Id.* at 128-130.

[36] *Rollo*, p. 82.

[37] *Ibid.*

[38] *Rollo*, p. 56.

[39] *Ibid.*

[40] G.R. No. 149072, September 21, 2007, 533 SCRA 622, 628.

[41] 495 Phil. 10, 16-17 (2005).

[42] See *Baquerfov. Sanchez*, *supra* note 41; and *Tuliao v. Judge Ramos*, 348 Phil. 404, 416 (1998), citing *Perez v. Abiera*, A.C. No. 223-J, 11 June 1975, 64 SCRA 302, *Secretary of Justice v. Marcos*, A.C. No. 207-J, 22 April 1997, 76 SCRA 301.

[43] See *Pagano v. Nazarro, Jr.*, *supra* note 40; and *OCA v. Juan*, 478 Phil. 823 (2004).

[44] *Rollo*, pp. 61-62.

An officer or employee under administrative investigation may be allowed to resign pending decision of his case but it shall be without prejudice to the continuation of the proceeding against him. It shall also be without prejudice to the filing of other administrative or criminal case against him for any act committed while still in the service.

[45] *Id.* at 57.

[46] *Office of the Ombudsman v. De Sahagun*, *supra* note 34, at 128, citing *Melchor v. Gironella*, G.R. No. 151138, February 16, 2005, 451 SCRA 476, 481; and *Remolona v. Civil Service Commission*, 414 Phil. 590, 601 (2001). See also *Bautista v. Negado*, 108 Phil. 283 (1960).

[47] *Rollo*, pp. 62-63.

[48] *Supra* note 40, at 628.

[49] *Pagano v. Nazarro, Jr.*, *supra* note 40, at 628, citing *Office of the Court Administrator v. Juan*, A.M. No. P-03-1726, 22 July 2004, 434 SCRA 654, 658.

[50] Id. at 631.

[51] Rollo, p. 63.

[52] Id. at 65.

[53] Antonio E.B. Nachura, Outline Reviewer in Political Law 478 (2009 ed.). See also Hector S. De Leon and Hector M. De Leon, Jr., The Law on Public Officers and Election Law 262 (6th ed., 2008).

[54] R.A. 3019. Sec. 9. Penalties for violations.- (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than one year nor more than ten years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

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