

**ROQUE C. FACURA AND EDUARDO F. TUASON, PETITIONERS, VS.
COURT OF APPEALS, RODOLFO S. DE JESUS AND EDELWINA DG.
PARUNGAO, RESPONDENTS.**

G.R. No. 166495. February 16, 2011

Ponente: MENDOZA, J.

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MENDOZA, J.:

For resolution before this Court are the following:

G.R. No. 166495 is a petition for certiorari filed by Roque Facura (Facura) and Eduardo Tuason (Tuason) assailing the Resolutions[1] dated September 22, 2004 and January 4, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 84902, which granted the applications for preliminary mandatory injunction filed by Atty. Rodolfo De Jesus (De Jesus) and Atty. Edelwina Parungao (Parungao) by ordering their reinstatement to their former positions despite the standing order of dismissal issued by the Office of the Ombudsman (Ombudsman) against them.

G.R. No. 184129 is an appeal, by way of Petition for Review on Certiorari under Rule 45 of the Rules of Court, filed by De Jesus, from the Decision[2] dated May 26, 2005 and Resolution[3] dated August 6, 2008 of the CA, in CA-G.R. SP No. 84902, which affirmed the Review and Recommendation[4] dated January 26, 2004 and Order[5] dated April 20, 2004 issued by the Ombudsman in OMB-C-A-02-0496-J, which dismissed De Jesus from the government service with prejudice to re-entry thereto.

G.R. 184263 is another appeal, by way of Petition for Review on Certiorari under Rule 45 of the Rules of Court, filed by the Ombudsman, from the Decision dated May 26, 2005 and Resolution dated August 6, 2008 of the CA, in CA-G.R. SP No. 84902, for ordering the reinstatement of Parungao as Manager of the Human Resources Management Department (HRMD) of the Local Water Utilities Administration (LWUA), thereby modifying the Review and Recommendation[6] dated January 26, 2004 and Order[7] dated April 20, 2004, issued by the Ombudsman in OMB-C-A-02-0496-J, which dismissed Parungao from the government service with prejudice to re-entry thereto.

These consolidated cases arose from a Joint Complaint-Affidavit filed with the Ombudsman by Facura and Tuason against De Jesus and Parungao for violation of Republic Act (R.A.) No. 3019 (the Anti-Graft and Corrupt Practices Act), dishonesty, gross neglect of duty, grave misconduct, falsification of official documents, being notoriously undesirable, and conduct prejudicial to the best interest of the service.

The Facts

The LWUA is a government-owned and controlled corporation chartered under Presidential Decree (P.D) No. 198, as amended. De Jesus was the Deputy Administrator for Administrative Services of LWUA, while Parungao was its HRMD Manager for Administrative Services.

De Jesus was dismissed from the service per LWUA Board Resolution No. 061[8] dated March 28, 2001.

Through Board Resolution No. 069 dated April 17, 2001, the Board denied his motion for reconsideration and prohibited De Jesus from acting on any matter as head of Administrative Services. On April 18, 2001, De Jesus appealed to the Civil Service Commission (CSC) to nullify Board Resolution Nos. 061 and 069.

On August 20, 2001, pending resolution of his petition with the CSC, De Jesus filed a petition for reinstatement with a newly-reconstituted LWUA Board, which granted it on September 4, 2001 through Board Resolution No. 172.[9] De Jesus then withdrew his petition with the CSC on September 5, 2001.

Under the CSC Accreditation Program, particularly under CSC Resolution No. 967701[10] dated December 3, 1996, LWUA has been granted the authority to take final action on appointment papers effective January 1, 1997. Under LWUA Officer Order No. 205.01[11] dated September 25, 2001, LWUA Administrator Lorenzo Jamora (Administrator Jamora) granted De Jesus the authority to sign/approve and issue appointment papers of appointees to vacant plantilla positions in LWUA which have been previously cleared or approved in writing by the Administrator or the Board of Trustees.

Prior to the grant of authority to De Jesus to sign appointment papers, in a letter[12] dated August 27, 2001 signed by Administrator Jamora, LWUA requested the Department of Budget and Management (DBM) for authority to hire confidential staff for the LWUA Board of Trustees. The request was to seek exemption for LWUA from Administrative Order No. 5 which prohibited the hiring of new personnel in order to generate savings.

While awaiting the reply of DBM on his request, Jamora, in an inter-office memorandum[13] dated October 23, 2001, directed the Office of Administrative Services (OAS), headed by De Jesus, and the Investment and Financial Services, to process the payment of the salaries and allowances of his two (2) newly appointed confidential staff who reported to him effective October 10, 2001. Upon receipt of the said inter-office memorandum, the OAS forwarded it to the HRMD headed by Parungao for appropriate action.

On December 11, 2001, LWUA received a reply letter[14] from DBM granting the request to fill positions for the LWUA Board's confidential staff. On the same day, on the strength of said letter of approval, LWUA board members issued their respective inter-office memoranda[15] and letter[16] containing the retroactive appointments of their confidential staff, as follows: Board Chairman Francisco Dumpit appointed Michael M. Raval and Ma. Geraldine Rose D. Buenaflor effective August 20, 2001; Trustee Bayani Dato, Sr. appointed Albino G. Valenciano, Jr. effective August 20, 2001; and Trustee Solomon Badoy appointed Kristina Joy T. Badoy and Noelle Stephanie R. Badoy effective June 19, 2001. On December 18, 2001, Trustee Normando Toledo also issued an inter-office memorandum[17] appointing, effective August 20, 2001, Marc Anthony S. Verzosa and Ma. Lourdes M. Manaloto. These inter-office memoranda and letter directed De Jesus to prepare their appointment papers. They bore the written concurrence of Administrator Jamora as agency head and mandated appointing authority of LWUA employees under the LWUA charter. Upon his receipt of the aforesaid inter-office memoranda and letter, De Jesus forwarded them to the HRMD for the preparation and processing of the corresponding appointment papers.

As HRMD head, Parungao forwarded the said documents to the Personnel Division to have them transformed into formal appointment papers, otherwise known as CSC Standard Form No. 33. The encoded standard forms indicated the names and positions of the confidential staff and the dates of signing and issuance of the appointments, which were the retroactive effectivity dates appearing in the inter-office memoranda and letter issued by the Board member. The concerned HRMD staff and Parungao affixed their initials below the printed name of De Jesus who, in turn, signed the formal appointment papers as representative of the appointing authority. The nine (9) appointment papers[18] bore Serial Nos. 168207, 168210, 168213, 168214, 168215, 168216, 168217, 168287, and 168288.

In Office Order No. 286.01 dated December 13, 2001 and Office Order No. 001.02 dated December 20, 2001 issued by De Jesus and Parungao, it was stated therein that the following nine (9) personnel were appointed retroactively to the dates indicated below:

Ma. Geraldine Rose D. Buenaflor

-

August 20, 2001

Michael M. Raval

-

August 20, 2001

Albino G. Valenciano, Jr.

-

August 20, 2001

Noelle Stephanie R. Badoy

-

June 19, 2001

Kristina Joy T. Badoy

-

June 19, 2001

Jesusito R. Toren

-

October 15, 2001

Ma. Susan G. Facto

-

October 10, 2001

Ma. Lourdes M. Manaloto

-

August 20, 2001

Marc Anthony S. Versoza

-

August 20, 2001

On December 20, 2001, Administrator Jamora issued an inter-office memorandum[19] to the accounting department on the matter of payment of back salaries of the said confidential staff, stating therein that as approved

by the DBM in its letter, the hiring of such personnel was authorized retroactive to their employment date, thus, ordering the immediate payment of their back salaries and other remunerations. On the same day, a LWUA disbursement voucher[20] was prepared and processed by the Accounting Department, and Administrator Jamora thereafter approved the release of a Land Bank check amounting to P624,570.00 as part of the cash advance amounting to P692,657.31, for the payment of the back salaries.

The appointments of the subject confidential staff were reflected in the Supplemental Quarterly Report on Accession for June and August 2001 and Quarterly Report on Accession and Separation for October to December 2001 which were submitted to the CSC on January 8, 2002.

On January 25, 2002, HRMD and OAS issued a Memorandum[21] for Administrator Jamora on the subject of the appointment papers of the nine (9) confidential staff of the Board. De Jesus and Parungao called his attention to the requirements under CSC Resolution No. 967701[22] of the submission to the CSC of two (2) copies of the Report on Personnel Actions (ROPA) within the first fifteen (15) days of the ensuing month together with the certified true copies of the appointments acted on, and appointments not submitted within the prescribed period would be made effective thirty (30) days prior to the date of submission to the CSC. It was explained that the appointment papers with retroactive effectivity dates violated the provisions of CSC Res. No. 967701 and Rule 7, Section 11 of the CSC Omnibus Rules on Appointments. For said reason, LWUA accreditation could be cancelled and the Administrator be held personally liable for the invalidated appointments. It was suggested instead that the appointments be re-issued effective December 12, 2001, the ROPA be dated January 15, 2002, and the earlier retroactive appointments be cancelled, as advised by a CSC Field Director in a previous informal consultation. It was also proposed that the salaries and benefits already paid be made on quantum meruit basis, based on actual services rendered as certified by the Board members.

Therefore, for the purpose of meeting the monitoring and reportorial requirements of the CSC in relation to the accreditation given to LWUA to take final action on its appointments, De Jesus and Parungao, with the prior approval of Administrator Jamora, re-issued the appointments of the Board's nine (9) confidential staff. The appointment papers[23] were now all dated December 12, 2001, with Serial Nos. 168292, 168293, 168294, 168295, 168297, 168298, 168299, 168301, and 168304 and were transmitted to the CSC.

On February 28, 2002, Administrator Jamora again wrote a letter[24] to the DBM clarifying whether its December 11, 2001 letter, approving the hiring of the confidential staff of the LWUA Board, had retroactive effect. It was explained that the said confidential staff had started rendering services as early as August 20, 2001, when the Board assumed office because their services were urgently needed by the trustees.

Meanwhile, the LWUA Accounting Department, in a Brief to the Legal Department dated March 2, 2002, sought its legal opinion on the subject of the first payment of salary of the confidential staff. The Legal Department replied that a letter had been sent to the DBM seeking clarification on whether the previous DBM approval retroacted to the actual service of the confidential staff.

Thereafter, the Internal Control Office (ICO) of LWUA issued a memorandum dated May 10, 2002, questioning the issuance of the retroactive appointment papers. It pointed out that since the appointment papers submitted to the CSC indicated December 12, 2001 as effective date, the appointment of the involved personnel to the government service should be considered effective only on said date, with their salaries and other compensation computed only from December 12, 2001. Thus, there was an overpayment made as follows:

Ma. Geraldine Rose D. Buenaflor

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P107,730.09

Michael M. Raval

-

P111,303.16

Albino G. Valenciano, Jr.

-

P107, 730.09

Noelle Stephanie R. Badoy

-

P157, 210.34

Kristina Joy T. Badoy

-

P163, 130.69

It was further recommended that the Legal Department conduct an investigation to identify the person liable to refund to LWUA the overpayments made to the subject personnel and that the Accounting Department take appropriate actions to recover the overpayment.

On June 5, 2002, LWUA received DBM's reply letter[25] on June 5, 2002, informing Administrator Jamora that the previously granted authority on the hiring of the confidential staff to the LWUA Board may be implemented retroactive to the date of actual service rendered by the employees involved.

In a Brief to Administrator Jamora dated July 26, 2002, signed by De Jesus and initialed by Parungao, the issues raised by ICO in its Memorandum on the retroactive appointments of the concerned confidential staff and overpayments were deemed clarified with the reply letter of the DBM on the retroactive implementation of the authority granted to LWUA in the previous letter of approval.

Meanwhile, on November 20, 2001, in relation to the earlier appeal of De Jesus (which he withdrew upon his reinstatement by the newly reconstituted LWUA Board), the CSC issued Resolution No. 011811,[26] which remanded the case to LWUA for the conduct of an investigation regarding De Jesus' dismissal, to be finished within three (3) calendar months, failure of which would result in the dismissal of the case against De Jesus.

On August 15, 2002, the CSC issued Resolution No. 021090[27] ruling that CSC Resolution No. 011811 had not been rendered moot and academic by the reinstatement of De Jesus by the LWUA Board. It further declared the reinstatement as illegal, null and void. The Board was directed to recall the reinstatement of De Jesus, and LWUA was ordered to continue the conduct of the investigation on De Jesus as earlier directed, within three (3) calendar months from receipt of the resolution. For failure of LWUA to conduct an investigation within the required period, CSC Resolution No. 030504[28] was issued dated May 5, 2003 considering the dismissal case closed and terminated.

Complaint of Facura and Tuason

On October 18, 2002, Facura and Tuason filed a Joint Affidavit-Complaint[29] before the Evaluation and

Preliminary Investigation Bureau of the Ombudsman against De Jesus and Parungao charging them with: 1) violation of Section 3(e) of R.A. No. 3019; and 2) dishonesty, gross neglect of duty, grave misconduct, falsification of official documents, being notoriously undesirable, and conduct prejudicial to the best interest of the service, for the fabrication of fraudulent appointments of nine (9) coterminous employees of LWUA.

Facura and Tuason alleged that the retroactive appointment papers were fabricated and fraudulent as they were made to appear to have been signed/approved on the dates stated, and not on the date of their actual issuance. They further alleged that with malice and bad faith, De Jesus and Parungao willfully and feloniously conspired not to submit the fraudulent appointment papers to the CSC, and to submit instead the valid set of appointment papers bearing the December 12, 2001 issuance date.

They questioned the issuance of the fraudulent appointments in favor of the nine (9) confidential staff, to the prejudice of the government in the amount of P692,657.31, as these were used as basis for the payment of their back salaries. They also alleged that De Jesus' reinstatement was illegal and that he had lost authority to sign any LWUA documents effective upon the issuance of LWUA Board Resolution Nos. 061 and 069. Thus, the actions undertaken by him in signing the fraudulent appointments were all misrepresented and, therefore, unlawful. They further alleged that contrary to law, De Jesus continued to receive his salary and benefits as Deputy Administrator of LWUA despite having already been dismissed. They cited the string of criminal and administrative cases against De Jesus before the trial courts and the Ombudsman.

In their Joint Counter-Affidavit,[30] De Jesus and Parungao alleged that they were mere rank-and-file employees who had no knowledge of or participation in personnel matters; that their actions in issuing the two sets of appointments were all documented and above-board; that as subordinate employees, they had no discretion on the matter of the retroactive appointments of the nine confidential staff specifically requested by the Board members; and that the re-issuance of the second set of appointments effective December 12, 2001 was duly approved by Administrator Jamora. They denied any financial damage on the part of LWUA since the retroactive payment of salaries was justified under the DBM letter approving the hiring of personnel retroactive to the date of actual services rendered by them.

The Ruling of the Ombudsman

The complaint was originally referred to the Ombudsman's Preliminary Investigation and Administrative Adjudication Bureau - B, and assigned to Graft Investigation and Prosecution Officer I Vivian Magsino-Gonzales (Pros. Magsino-Gonzales). After evaluating the documents on file, Pros. Magsino-Gonzales dispensed with the preliminary conference and preliminary investigation of the case. In her Decision dated September 30, 2003, she recommended the outright dismissal of the case, ratiocinating that the Ombudsman did not have the jurisdiction to resolve the issues of fraudulent appointments of the nine confidential staff and their alleged overpayment to the damage of LWUA and the government and to decide on the status of De Jesus as a dismissed employee which, in her view, belonged to the primary jurisdiction and technical expertise of the CSC.

Said recommendation was disapproved by the Ombudsman and the case was referred for review to Special Prosecution Officer Roberto Agagon (Special Pros. Agagon) of the Preliminary Investigation and Administrative Adjudication Bureau - A. Without conducting a preliminary conference or investigation, Special Pros. Agagon came up with the assailed Review and Recommendation finding De Jesus and Parungao guilty of grave misconduct, dishonesty, gross neglect of duty, and falsification, the dispositive portion of which reads:

WHEREFORE, respondents Rodolfo S. De Jesus and Edelwina DG. Parungao are meted out the penalty of Dismissal from the service with prejudice to re-entry into the government service.

On March 24, 2004, Facura and Tuason filed their Motion for Reconsideration but the same was denied in the

assailed Order dated April 20, 2004.

The Ombudsman found that during De Jesus' dismissal from the service at the LWUA, and despite the advice of the CSC to await the final resolution of his appeal, De Jesus illegally issued appointments to several co-terminous employees in June and August 2001. The appointments were found to have been prepared and issued by De Jesus and Parungao after the former had been terminated from LWUA, therefore, without authority to sign/act on any official LWUA document/official matter, which fact he was fully aware of, thereby making the solemnity of the documents questionable. All said appointments were, thus, found to be fraudulent, illegal, and of no legal force and effect. Since these were also prepared and initialed by Parungao, a conspiracy to commit falsification through dishonesty was found to have been present.

It was also found that the DBM approved the LWUA request on retroactivity of payment of back salaries because not all facts attendant to the illegal appointments had been disclosed to said office. The deliberate concealment of the illegal appointment papers was dishonest. The attachment of the illegal appointments to the LWUA Disbursement Voucher for payment of backsalaries, to the prejudice and damage of the government, was also cited as another deliberate concealment and distortion with false narration of facts.

The Ombudsman also viewed the second set of appointment papers as to have been issued for no apparent reason and designed to legalize the illegal appointments issued in June and August 2001. Thus, dishonesty on the part of De Jesus was found to be present for acting against a series of orders issued by the CSC and for the falsification of the illegal appointment papers.

The Ruling of the Court of Appeals

Aggrieved, De Jesus and Parungao filed a petition for review with the CA on July 5, 2004 which was docketed as CA-G.R. SP No. 84902, praying, among others, for the issuance of a Temporary Restraining Order (TRO) and/or preliminary prohibitory injunction to enjoin the implementation of the order of dismissal against them. The CA, in its Resolution dated July 20, 2004, deferred action on the application for TRO and gave Facura and Tuason time to comment.

After the petition to the CA was filed, LWUA implemented the order of dismissal against De Jesus and Parungao. Administrator Jamora issued Office Order No. 151204 notifying De Jesus and Parungao of their dismissal from the LWUA effective at the close of office hours on July 23, 2004.

On August 12, 2004, the CA granted the application for TRO so as not to render the issues raised in the petition moot and academic. On August 24, 2004, Facura and Tuason filed their Manifestation with Extremely Urgent Motion for Dissolution of the issued TRO because the act to be enjoined, the implementation of the dismissal order, was *fait accompli*.

On September 22, 2004, the CA issued the assailed Resolution denying Facura and Tuason's motion to dissolve the TRO, and granting the issuance of a writ of preliminary mandatory injunction in favor of De Jesus and Parungao, which reads as follows:

WHEREFORE, the foregoing considered, the Motion to Dissolve TRO filed by respondents is hereby DENIED. Accordingly, let writ of preliminary mandatory injunction issue enjoining LWUA and the Office of the Ombudsman from enforcing the assailed Order and are thereby directed to maintain and/or restore the status quo existing at the time of the filing of the present petition by reinstating petitioners to their former positions pending the resolution of this case upon the filing of petitioner's bond in the amount of P40,000.00 each, which will answer for whatever damages respondents may sustain in the event that the petition is not granted.

The CA found that the right to appeal from decisions of the Ombudsman imposing a penalty other than public censure or reprimand, or a penalty of suspension of more than one month or a fine equivalent to more than one month's salary, granted to parties by Section 27 of R.A. No. 6770 (the Ombudsman Act) should generally carry with it the stay of these decisions pending appeal citing *Lopez v. Court of Appeals*.^[31] The right to a writ of preliminary mandatory injunction was deemed to be in order because De Jesus' and Parungao's right to be protected under R.A. No. 6770 was found to exist *prima facie*, and the acts sought to be enjoined are violative of such right.

On October 4, 2004, Facura, Tuason and LWUA moved for the reconsideration of the September 22, 2004 Resolution, which motion was opposed by De Jesus and Parungao. Their Motions for Reconsideration were denied by the CA on January 4, 2005, as follows:

WHEREFORE, the foregoing considered, the respondents' respective Motions for Reconsideration of the Resolution dated 22 September 2004 are hereby DENIED. Petitioner De Jesus' Most Urgent Motion to Deputize the Philippine National Police to Implement the Injunctive Writ dated 29 September 2004 is GRANTED and accordingly the said entity is hereby deputized to implement the injunctive relief issued by this Court.

Facura and Tuason then filed the present Petition for Certiorari with this Court questioning the above-mentioned Resolutions of the CA, docketed as G.R. No. 166495. Pending resolution of the said Petition, the CA rendered its decision in CA-G.R. SP No. 84902, dated May 26, 2005, the dispositive portion of which reads:

WHEREFORE, the foregoing considered, the petition is GRANTED and the assailed Review and Recommendation and Order are MODIFIED hereby ordering the reinstatement of petitioner Parungao as Manager of the Human Resource Management Department of LWUA with back pay and without loss of seniority. The dismissal of petitioner De Jesus from the government service with prejudice to re-entry thereto is AFFIRMED.

Facura, Tuazon and the Ombudsman filed their respective Motions for Partial Reconsideration, while De Jesus filed his Motion for Reconsideration. These were denied by the CA in its Resolution dated August 6, 2008.

The CA believed that at the time De Jesus signed the two sets of appointment papers, the CSC had not divested itself of jurisdiction and authority over his dismissal case. Thus, he misrepresented his authority to do so as his dismissal was still in effect and for resolution by the CSC. The CA agreed with De Jesus that it was his ministerial duty to comply with the request of the Board members. However, he failed to perform his ministerial duty, for if he had in fact done so, the second set of appointments would not have been issued as the first set of appointments with retroactive effectivity dates would have already been submitted to the CSC.

The CA further found the request for approval to the DBM to apply the earlier granted authority to hire retroactively as a disingenuous attempt to provide a semblance of legality to the intended retroactive appointments. It held that the approval or disapproval of appointment to the government was the sole office of the CSC, and not the DBM, as the LWUA authority to take final action on its appointments was by virtue of CSC's accreditation program. De Jesus' failure to submit the retroactive appointment papers as prescribed under the CSC accreditation was viewed by the CA as a concealment of such retroactivity and, thus, dishonesty. To its mind, the CSC was deliberately made unaware of what the DBM was doing, and vice versa.

Parungao was exonerated by the CA after having been found that she took steps to clarify the matter with the CSC, informed her superiors about her misgivings and the legal effects of the retroactive appointments, and published such retroactive appointments in the LWUA Quarterly Reports on Accession, thus, demonstrating her good faith.

In its Resolution denying the motions for reconsideration filed by Facura, Tuazon and De Jesus, the CA ruled, among others, that the case of *De Jesus v. Sandiganbayan*[32] could not be used as basis to absolve administrative liability, as the present case was not limited solely to falsification and preparation of the two sets of appointment papers. The CA found that De Jesus failed to comply with CSC rules due to his failure to submit the first set of appointment papers to the CSC. Dishonesty was found present when De Jesus submitted the first set of appointment papers to the DBM and the second set to CSC to comply with reportorial requirements, ensuring that the DBM was unaware of what the CSC was doing and vice versa. The CSC resolutions dismissing the complaint against De Jesus were found to have no bearing as the dismissal case was already before the CSC for resolution when De Jesus affixed his signature. Thus, De Jesus had no authority to sign the appointment papers and by doing so, he defied the CSC directive recalling his reinstatement. Violation of CSC rules on appointment was found to be distinct from misrepresentation of authority to sign appointment papers.

Hence, the present Petitions for Review on Certiorari separately filed by De Jesus and the Ombudsman, docketed as G.R. Nos. 185129 and 184263, respectively.

THE ISSUES

The issues presented for resolution by Facura (now deceased) and Tuason in G.R. No. 166495 are as follows:

- a. Whether or not an appeal of the Ombudsman's decision in administrative cases carries with it the suspension of the imposed penalty;
- b. Whether or not petitioners were heard before the issuance of the writ of preliminary mandatory injunction; and
- c. Whether or not private respondents are entitled to the writ of preliminary mandatory injunction.

The assignment of errors presented by De Jesus in G.R. No. 184129, are as follows:

I

THE COURT OF APPEALS GROSSLY ERRED IN NOT APPLYING THE DOCTRINE OF CONCLUSIVENESS OF JUDGMENT AND/OR RES JUDICATA ARISING FROM SC DECISION DATED OCTOBER 17, 2007 IN G.R. NOS. 164166 & 164173-80 AND CSC RES. NOS. 03-0504, 07-0146 & 07-0633.

II

THE COURT OF APPEALS GROSSLY ERRED IN NOT FINDING PETITIONER TO HAVE ACTED IN GOOD FAITH WHEN HE OBEYED THE PATENTLY LAWFUL ORDERS OF HIS SUPERIORS.

III

THE COURT OF APPEALS GROSSLY ERRED IN STILL RELYING ON CSC RES. NO. 01-1811 AND RES. NO. 02-1090 AFTER HAVING BEEN RENDERED MOOT AND ACADEMIC BY CSC RES. NO. 03-0405.

IV

THE COURT OF APPEALS GROSSLY ERRED IN FINDING PETITIONER TO HAVE COMMITTED AN ACT OF DISHONESTY IN RELATION TO THE CSC ACCREDITATION PROGRAM.

V

PUBLIC RESPONDENT OFFICE OF THE OMBUDSMAN AND THE COURT OF APPEALS DO NOT HAVE JURISDICTION TO COLLATERALLY RULE AGAINST PETITIONER'S TITLE AS DEPUTY ADMINISTRATOR OF LWUA.

VI

THE COURT OF APPEALS GROSSLY ERRED IN FAILING TO APPRECIATE AS MITIGATING CIRCUMSTANCES THE EDUCATION AND LENGTH OF SERVICE OF PETITIONER IN THE IMPOSITION OF SUPREME PENALTY OF DISMISSAL.

VII

THE COURT OF APPEALS GROSSLY ERRED IN STILL FINDING PETITIONER GUILTY OF MISREPRESENTATION OF AUTHORITY AFTER EXONERATING ATTY. EDELWINA DG. PARUNGAO.

The issue presented for resolution by the Ombudsman in G.R. No. 184263 is as follows:

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT NO SUBSTANTIAL EVIDENCE EXISTS AGAINST RESPONDENT PARUNGAO FOR THE ADMINISTRATIVE OFFENSE OF DISHONESTY WHICH WARRANTS HER DISMISSAL FROM THE SERVICE.

THE RULING OF THE COURT

G.R. No. 166495

The issue of whether or not an appeal of the Ombudsman decision in an administrative case carries with it the immediate suspension of the imposed penalty has been laid to rest in the recent resolution of the case of Ombudsman v. Samaniego,[33] where this Court held that the decision of the Ombudsman is immediately executory pending appeal and may not be stayed by the filing of an appeal or the issuance of an injunctive writ, to wit:

Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman,[34] as amended by Administrative Order No. 17 dated September 15, 2003, provides:

SEC. 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, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) 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.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against such officer. [Emphases supplied]

The Ombudsman's decision imposing the penalty of suspension for one year is immediately executory pending appeal.[35] It cannot be stayed by the mere filing of an appeal to the CA. This rule is similar to that provided

under Section 47 of the Uniform Rules on Administrative Cases in the Civil Service.

In the case of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of the DPWH*,^[36] we held:

The Rules of Procedure of the Office of the Ombudsman are clearly procedural and no vested right of the petitioner is violated as he is considered preventively suspended while his case is on appeal. Moreover, in the event he wins on appeal, he shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. Besides, there is no such thing as a vested interest in an office, or even an absolute right to hold office. Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office.

Following the ruling in the above cited case, this Court, in *Buencamino v. Court of Appeals*,^[37] upheld the resolution of the CA denying Buencamino's application for preliminary injunction against the immediate implementation of the suspension order against him. The Court stated therein that the CA did not commit grave abuse of discretion in denying petitioner's application for injunctive relief because Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman was amended by Administrative Order No. 17 dated September 15, 2003.

Respondent cannot successfully rely on Section 12, Rule 43 of the Rules of Court which provides:

SEC. 12. Effect of appeal – The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just.

In the first place, the Rules of Court may apply to cases in the Office of the Ombudsman suppletorily only when the procedural matter is not governed by any specific provision in the Rules of Procedure of the Office of the Ombudsman.^[38] Here, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended, is categorical, an appeal shall not stop the decision from being executory.

Moreover, Section 13 (8), Article XI of the Constitution authorizes the Office of the Ombudsman to promulgate its own rules of procedure. In this connection, Sections 18 and 27 of the Ombudsman Act of 1989^[39] also provide that the Office of the Ombudsman has the power to "promulgate its rules of procedure for the effective exercise or performance of its powers, functions and duties" and to amend or modify its rules as the interest of justice may require. For the CA to issue a preliminary injunction that will stay the penalty imposed by the Ombudsman in an administrative case would be to encroach on the rule-making powers of the Office of the Ombudsman under the Constitution and RA 6770 as the injunctive writ will render nugatory the provisions of Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman.

Clearly, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman supersedes the discretion given to the CA in Section 12,^[40] Rule 43 of the Rules of Court when a decision of the Ombudsman in an administrative case is appealed to the CA. The provision in the Rules of Procedure of the Office of the Ombudsman that a decision is immediately executory is a special rule that prevails over the provisions of the Rules of Court. *Specialis derogat generali*. When two rules apply to a particular case, that which was specially designed for the said case must prevail over the other.^[41] [Emphases supplied]

Thus, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order (A.O.) No. 17, is categorical in providing that an appeal shall not stop an Ombudsman decision from being executory. This rule applies to the appealable decisions of the Ombudsman, namely, those where the penalty imposed is other than public censure or reprimand, or a penalty of suspension of more than one month, or a fine equivalent to more than one month's salary. Hence, the dismissal of De Jesus and Parungao from the government service is immediately executory pending appeal.

The aforementioned Section 7 is also clear in providing that in case the penalty is removal and the respondent wins his 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 removal. As explained above, there is no such thing as a vested interest in an office, or an absolute right to hold office, except constitutional offices with special provisions on salary and tenure. The Rules of Procedure of the Ombudsman being procedural, no vested right of De Jesus and Parungao would be violated as they would be considered under preventive suspension, and entitled to the salary and emoluments they did not receive in the event that they would win their appeal.

The ratiocination above also clarifies the application of Rule 43 of the Rules of Court in relation to Section 7 of the Rules of Procedure of the Office of the Ombudsman. The CA, even on terms it may deem just, has no discretion to stay a decision of the Ombudsman, as such procedural matter is governed specifically by the Rules of Procedure of the Office of the Ombudsman.

The CA's issuance of a preliminary mandatory injunction, staying the penalty of dismissal imposed by the Ombudsman in this administrative case, is thus an encroachment on the rule-making powers of the Ombudsman under Section 13 (8), Article XI of the Constitution, and Sections 18 and 27 of R.A. No. 6770, which grants the Office of the Ombudsman the authority to promulgate its own rules of procedure. The issuance of an injunctive writ renders nugatory the provisions of Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman.

The CA, however, cannot be blamed for so ruling because at that time the Court's rulings were not definite and, thus, nebulous. There were no clear-cut guidelines yet. Even the initial ruling in Samaniego on September 11, 2008, stated in effect that the mere filing by a respondent of an appeal sufficed to stay the execution of the joint decision against him. The Samaniego initial ruling merely followed that in the case of *Office of the Ombudsman v. Laja*,^[42] where it was stated:

[O]nly orders, directives or decisions of the Office of the Ombudsman in administrative cases imposing the penalty of public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary shall be final and unappealable hence, immediately executory. In all other disciplinary cases where the penalty imposed is other than public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary, the law gives the respondent the right to appeal. In these cases, the order, directive or decision becomes final and executory only after the lapse of the period to appeal if no appeal is perfected, or after the denial of the appeal from the said order, directive or decision. It is only then that execution shall perforce issue as a matter of right. The fact that the Ombudsman Act gives parties the right to appeal from its decisions should generally carry with it the stay of these decisions pending appeal. Otherwise, the essential nature of these judgments as being appealable would be rendered nugatory. [Emphasis in the original].

Having ruled that the decisions of the Ombudsman are immediately executory pending appeal, The Court finds it unnecessary to determine whether or not Facura and Tuason were heard before the issuance of the writ of preliminary mandatory injunction.

G.R. Nos. 184129 & 184263

The Court now looks into the issue of whether De Jesus was rightfully dismissed from the government service, and whether Parungao was rightfully exonerated by the CA.

Conclusiveness of Judgment

De Jesus contends that under the doctrine of conclusiveness of judgment and/or *res judicata*, the present case is bound by the decision of this Court in *De Jesus v. Sandiganbayan*.^[43]

The original complaint filed with the Ombudsman by Facura and Tuason spawned two cases, an administrative proceeding docketed as OMB-C-A-0496-J, which is the subject of this present case, and a proceeding for the determination of probable cause for the filing of criminal charges docketed as OMB-C-C-02-0712-J.

As to the criminal charges, probable cause was found to be present by the Ombudsman, and nine (9) informations for falsification of public documents were separately filed against De Jesus and Parungao with the Sandiganbayan docketed as Criminal Case Nos. 27894-27902. After his Motion to Quash was denied, De Jesus filed a petition for certiorari with this Court docketed as G.R. Nos. 164166 & 164173-80, entitled *De Jesus v. Sandiganbayan*.^[44] This petition was resolved on October 17, 2007 in favor of De Jesus with the finding that the evidence could not sustain a *prima facie* case. His Motion to Quash was granted for lack of probable cause to form a sufficient belief as to the guilt of the accused. The Court stated that there was no reasonable ground to believe that the requisite criminal intent or *mens rea* was present, finding that nothing in the two sets of appointment papers constituted an absolutely false narration of facts.

As a result, the criminal cases filed with the Sandiganbayan were consequently dismissed on March 14, 2008.^[45] Copies of the decisions of this Court and the Sandiganbayan were submitted to the CA through a Manifestation with Most Urgent Ex-Parte Motion on April 24, 2008.

De Jesus cited the case of *Borlongan v. Buenaventura*^[46] to support his argument that this administrative case should be bound by the decision in *De Jesus v. Sandiganbayan*.^[47] In *Borlongan*, similar to the situation prevailing in this case, the complaint-affidavit filed with the Ombudsman also spawned two cases - a proceeding for the determination of probable cause for the filing of criminal charges, and an administrative case subject of the petition. In said case, this Court found that its factual findings regarding the proceeding for the determination of probable cause bound the disposition of the factual issues in the administrative case under the principle of conclusiveness of judgment, as both the probable cause proceeding and the administrative case require the same quantum of evidence, that is, substantial evidence. Furthermore, the factual backdrop in the proceeding for the determination of probable cause, which this Court declared as insufficient to hold respondents for trial, was the same set of facts which confronted this Court in the administrative case.

On the other hand, the Ombudsman, Tuason and LWUA raised the jurisprudential principle that the dismissal of a criminal case involving the same set of facts does not automatically result in the dismissal of the administrative charges due to the distinct and independent nature of one proceeding from the other. They further countered that the only issue resolved in *De Jesus* was the absence of *mens rea*, which was not a mandatory requirement for a finding of falsification of official documents as an administrative offense;^[48] and although it was found that there was no absolutely false narration of facts in the two sets of appointment papers, the issue in this administrative case was not limited solely to falsification of official documents. It was further contended that the evidence and admissions in the administrative case were different from the evidence in the criminal case, thus, the findings in the criminal case could not bind the administrative case. Finally, they argued that the doctrine of *res judicata* would only apply to judicial or quasi-judicial proceedings and not to administrative matters.^[49]

The Court agrees with De Jesus insofar as the finding regarding the falsification of official documents is concerned.

The doctrine of *res judicata* is set forth in Section 47 of Rule 39 of the Rules of Court, as follows:

Sec. 47. Effect of judgments or final orders. - The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

x x x

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which actually and necessarily included therein or necessary thereto.

The principle of *res judicata* lays down two main rules: (1) the judgment or decree of a court of competent jurisdiction on the merits concludes the litigation between the parties and their privies and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal; and (2) any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claims or demands, purposes, or subject matters of the two suits are the same.[50] The first rule which corresponds to paragraph (b) of Section 47 above, is referred to as "bar by former judgment"; while the second rule, which is embodied in paragraph (c), is known as "conclusiveness of judgment." [51]

As what is involved in this case is a proceeding for the determination of probable cause and an administrative case, necessarily involving different causes of action, the applicable principle is conclusiveness of judgment. The Court in *Calalang v. Register of Deeds of Quezon City* [52] explained such, to wit:

The second concept - conclusiveness of judgment- states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit (*Nabus v. Court of Appeals*, 193 SCRA 732 [1991]). Identity of cause of action is not required but merely identity of issue.

Justice Feliciano, in *Smith Bell & Company (Phils.), Inc. v. Court of Appeals* (197 SCRA 201, 210 [1991]), reiterated *Lopez v. Reyes* (76 SCRA 179 [1977]) in regard to the distinction between bar by former judgment which bars the prosecution of a second action upon the same claim, demand, or cause of action, and conclusiveness of judgment which bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.

The general rule precluding the relitigation of material facts or questions which were in issue and adjudicated in former action are commonly applied to all matters essentially connected with the subject matter of the litigation. Thus, it extends to questions necessarily implied in the final judgment, although no specific finding may have been made in reference thereto and although such matters were directly referred to in the pleadings and were not actually or formally presented. Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself.

Under the principle of conclusiveness of judgment, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or when an opportunity for such trial has been given, the judgment of the court, as long as it remains unreversed, should be conclusive upon the parties and those in privity with them. Simply put, conclusiveness of judgment bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.[53]

Although involving different causes of action, this administrative case and the proceeding for probable cause are grounded on the same set of facts, involve the same issue of falsification of official documents, and require the same quantum of evidence[54]- substantial evidence, as was similarly found in Borlongan, and correctly relied upon by De Jesus.

It was ruled in De Jesus that there was no reasonable ground to believe that the requisite criminal intent or mens rea was present. Although the presence of mens rea is indeed unnecessary for a finding of guilt in an administrative case for falsification of official documents,[55] it was expressly found by this Court in De Jesus that there was no absolutely false narration of facts in the two sets of appointment papers. The pertinent portion is quoted hereunder as follows:

Criminal intent must be shown in felonies committed by means of dolo, such as falsification. In this case, there is no reasonable ground to believe that the requisite criminal intent or mens rea was present. The Ombudsman assails the first set of documents with dates of appointment earlier than December 12, 2001. Clearly, the first set of CSC Form No. 33 was prepared earlier as shown by the serial numbers. The first set has serial numbers 168207, 168210, 168213, 168214, 168215, 168216, 168217, 168287 and 168288; while the second set has serial numbers 168292, 168293, 168294, 168295, 168297, 168298, 168299, 168301 and 168304. The Ombudsman also admits this fact. Indeed, petitioner admits having signed two sets of appointment papers but nothing in said documents constitutes an absolutely false narration of facts. The first set was prepared and signed on the basis of the inter-office memoranda issued by the members of the Board appointing their respective confidential staff conformably with the DBM approval. There was no untruthful statement made on said appointment papers as the concerned personnel were in fact appointed earlier than December 12, 2001. In fact, the DBM also clarified that the authority to hire confidential personnel may be implemented retroactive to the date of actual service of the employee concerned. In any case, Jamora authorized the issuance of the second set of appointment papers. Following the CSC Rules, the second set of appointment papers should mean that the first set was ineffective and that the appointing authority, in this case, the members of the Board, shall be liable for the salaries of the appointee whose appointment became ineffective. There was nothing willful or felonious in petitioner's act warranting his prosecution for falsification. The evidence is insufficient to sustain a prima facie case and it is evident that no probable cause exists to form a sufficient belief as to the petitioner's guilt.[56] [Emphasis supplied]

Hence, the finding that nothing in the two sets of appointment papers constitutes an absolutely false narration of facts is binding on this case, but only insofar as the issue of falsification of public documents is concerned, and not on the other issues involved herein, namely, the other acts of De Jesus and Parungao which may amount to dishonesty, gross neglect of duty, grave misconduct, being notoriously undesirable, and conduct prejudicial to the best interest of the service, as charged in the complaint.

Contrary to Tuason and LWUA's contentions, the factual finding of this Court in De Jesus as to the absence of falsification is based on the same evidence as in this administrative case. There are, however, other evidence and admissions present in this case as cited by Tuason and LWUA which pertain to other issues and not to the issue of falsification.

Meanwhile the doctrine in Montemayor v. Bundalian[57] that res judicata applies only to judicial or quasi-judicial proceedings, and not to the exercise of administrative powers, has been abandoned in subsequent cases[58] which

have since applied the principle of *res judicata* to administrative cases. Hence, *res judicata* can likewise be made applicable to the case at bench. Thus, given all the foregoing, the factual finding in *De Jesus* that there was no false statement of facts in both sets of appointment papers, is binding in this case.

Even granting that the principle of conclusiveness of judgment is inapplicable to the case at bench, this Court finds no cogent reason to deviate from the factual findings in *De Jesus* based on a careful review of the evidence on record. The existence of malice or criminal intent is not a mandatory requirement for a finding of falsification of official documents as an administrative offense. What is simply required is a showing that *De Jesus* and *Parungao* prepared and signed the appointment papers knowing fully well that they were false.[59]

The Court, however, believes that in this case, at the time each set of appointment papers were made, *De Jesus* and *Parungao* believed they were making true statements. They prepared and signed the first set on the basis of the inter-office memoranda issued by the Board members appointing their respective confidential staff conformably with DBM approval. The second set was prepared to correct the retroactive appointments to conform to the CSC reportorial requirements, and the same was also approved by Administrator *Jamora*. There was no reason for *De Jesus* and *Parungao* to believe such to be false. Irregular it is perhaps, not being in conformity with the CSC rules on accreditation, but not false. Therefore, this Court finds that no falsification of official documents occurred.

Legality of Reinstatement and Authority to Sign

The CA held that, as evinced from CSC Resolution No. 011811, which ordered LWUA to conduct an investigation, the CSC had not divested itself of jurisdiction and authority over *De Jesus*' dismissal case at the time he issued and signed both sets of appointment papers. The CA ruled that in doing so, he defied the CSC directive recalling his reinstatement.

De Jesus argues that, his title is not open to indirect challenge and can only be assailed in a proceeding for quo warranto; and that absent any judicial declaration, he remained to be a *de jure* officer, and even if he were only a *de facto* officer, his acts were done under color of authority and, thus, valid and binding. *De Jesus* further argues that the pendency of his appeal to the CSC did not render his reinstatement illegal, as he had no choice but to rely on the regularity of the LWUA board resolution which reinstated him, and this reinstatement should have rendered superfluous the CSC resolution ordering investigation. He further contends that it was wrong for the CA to rely on the CSC resolutions which were interlocutory. Since CSC Resolution No. 030504 ultimately dismissed the case against him and in effect nullified his prior dismissal from LWUA, he should be considered as never having left his office. Said CSC resolution should have also rendered the previous CSC resolutions moot and academic.

De Jesus also cites CSC Resolution Nos. 07-0633 and 07-0146, which relate to other complaints filed against him, and which recognize the legality of his reinstatement and affirm CSC Resolution No. 030504 as *res judicata*. He argues that this case should be bound by the three aforementioned CSC resolutions under the principle of *res judicata*.

A brief review of the relevant facts is necessary to resolve the issue at hand. LWUA dismissed *De Jesus* on March 28, 2001. He appealed to the CSC on April 18, 2001. He was reinstated on September 4, 2001 and so withdrew his appeal with the CSC the next day. Notwithstanding, in connection with his appeal, the CSC issued Resolution No. 011811 on November 20, 2001 ordering LWUA to investigate. The two sets of appointment papers were signed by *De Jesus* in December 2001. It was only on August 15, 2002 that the CSC issued Resolution No. 021090, which recalled *De Jesus*' reinstatement and declared it illegal and void. However, *De Jesus* title was conclusively established on May 5, 2003 by CSC Resolution No. 030504, which finally dismissed the case against

him.

Thus, prior to the CSC resolution recalling his reinstatement and declaring it illegal and void, De Jesus cannot be faulted for relying on the LWUA board resolution reinstating him as Deputy Administrator. Furthermore, the CSC resolution recalling his reinstatement and declaring it illegal and void was issued only after the appointment papers were prepared and signed. Thus, there was no misrepresentation of authority on the part of De Jesus when he signed the appointment papers because he did so after he was reinstated by the LWUA Board and before such reinstatement was declared illegal and void by the CSC.

More important, the dismissal case against him was ultimately dismissed, thereby conclusively establishing his right to his title and position as Deputy Administrator of LWUA.

Duties under the CSC Accreditation Program

The CA also found that De Jesus failed to comply with the CSC rules under the Accreditation Program due to his failure to submit the first set of retroactive appointment papers to the CSC. Such failure was said to constitute a concealment of the retroactivity from the CSC and, thus, dishonesty on his part. Parungao, on the other hand, was reinstated by the CA after having been found that she took steps to clarify the matter with the CSC; that she informed her superiors about her misgivings and the legal effects of the retroactive appointments; and that she published such retroactive appointments in the LWUA Quarterly Reports on Accession, thus, demonstrating her good faith.

De Jesus argues that, as Deputy Administrator, it was not his responsibility to comply with the CSC rules under the Accreditation Program. He contends that the CA itself recognized this fact when it stated that it was the responsibility of the LWUA Administrator to know and implement the terms and conditions of accreditation. The CA even further stated that it was the Human Resources Management Officer who had the responsibility of preparing and submitting the appointment papers with the ROPA.

On the other hand, Tuason and LWUA argue that under Executive Order (E.O.) No. 286, the Office of the Deputy Administrator has direct supervision over the HRMD, and so De Jesus should be held liable for failure to submit the first set of appointment papers in accordance with the CSC rules.

Under CSC Resolution No. 967701[60] granting LWUA authority to take final action on its appointments under the CSC Accreditation Program, the following was said to have been violated:

6. That for purposes of immediate monitoring and records keeping, the LWUA shall submit within the first fifteen calendar days of each ensuing month to the CSFO two copies of the monthly Report on Personnel Actions (ROPA) together with certified true copies of appointments acted upon;
7. That failure to submit the ROPAs within the prescribed period shall render all appointments listed therein lapsed and ineffective;
8. That appointments issued within the month but not listed in the ROPA for the said month shall become ineffective 30 days from issuance;

x x x

As culled from the CSC letter[61] dated November 11, 1996, addressed to then LWUA Administrator De Vera, which accompanied CSC Resolution No. 967701, the following responsibilities under the CSC Accreditation Program were reiterated thus:

The LWUA Administrator/appointing authority shall:

- Take final action on all appointments that he issues/signs;
- Exercise delegated authority to take final action on appointments following the terms and conditions stipulated in the Resolution and within the limits and restrictions of Civil Service Law, rules, policies and standards;
- Assume personal liability for the payment of salaries for actual services rendered by employees whose appointments have been invalidated by the CSNCRO.

On the other hand, the Human Resources Management Officer shall:

- Ensure that all procedures, requirements, and supporting papers to appointments specified in MC No. 38, s. 1997 and MC Nos. 11 and 12, s. 1996 have been complied with and found to be in order before the appointment is signed by the appointing authority;

x x x

- Prepare and submit within the first fifteen calendar days of each ensuing month to the CSFO concerned two copies of the monthly ROPA together with certified true copies of appointments issued and finally acted upon; and

x x x

[Emphases supplied]

Under LWUA Office Order No. 205.01,[62] Administrator Jamora authorized De Jesus to sign appointment papers of appointees to vacant plantilla positions in LWUA which were previously approved by the Administrator or the Board of Trustees. Thus:

In the exigency of the service and to facilitate/expedite administrative works, the Deputy Administrator, Administrative Services, is hereby authorized under delegated authority to act on and sign for and in behalf of the Administrator, documents such as Office Orders, Appointment Papers, Inter-Office Memoranda and other administrative documents including communications to CSC and/or DBM relating to filling up of vacant positions, either by promotion or recruitment, as well as transfer of personnel, which have been previously cleared/approved in writing by the Administrator, or by the Board of Trustees, as the case may be. Also delegated is the authority to act and sign for and in behalf of the Administrator, the Notice(s) of Salary Adjustment (NOSA) and Notice(s) of Salary Increment (NOSI). [Emphases supplied]

It is clear from the above that the responsibility to submit within the first fifteen (15) calendar days of each ensuing month to the CSFO two copies of the monthly ROPA together with certified true copies of appointments acted upon lies with the Human Resources Management Officer (HRMO), namely, Parungao. Even granting that De Jesus, as Deputy Administrator, has direct supervision over the Human Resources and Management Department, it is the HRMO who is expressly tasked with the duty to submit to the CSC the ROPA with true copies of appointments finally acted upon. Therefore, De Jesus, as Deputy Administrator, cannot be held liable for such failure to submit the first set of appointment papers with the ROPA as prescribed under the CSC accreditation rules.

The authority to exercise the delegated authority to take final action on appointment papers is lodged in the LWUA Administrator. The only duty of De Jesus is to sign appointment papers previously approved by the Administrator or Board. Thus, De Jesus' duty to sign appointment papers is only ministerial in nature, while the discretionary power to take final action on appointments remains lodged in the LWUA Administrator. De Jesus is, thus, bound only to sign appointment papers previously approved by the LWUA Administrator or Board, in accordance with LWUA Office Order No. 205.01, having no power to exercise any discretion on the matter.

In exercising his ministerial duty of signing the appointment papers, De Jesus obeyed the patently lawful order of his superior. CSC Resolution No. 967701 does not charge De Jesus with the duty to know and comply with the rules of the Accreditation Program, that being the province of the LWUA Administrator and HRMO, as expressly provided for in the CSC letter. Therefore, so long as the appointment papers were approved by the Administrator or Board, the order to sign them is patently lawful. Hence, De Jesus cannot be faulted for obeying the patently lawful orders of his superior. Furthermore, there is no evidence on record to indicate that he acted in bad faith, as what he did was in conformity with the authority granted to him by LWUA Office Order No. 205.01.

The same, however, cannot be said of Parungao. As HRMO, she was expressly charged with the duty to prepare and submit within the first fifteen calendar days of each ensuing month to the CSFO concerned two copies of the monthly ROPA together with certified true copies of appointments issued and finally acted upon. Thus, she must necessarily be aware that failure to submit the ROPAs within the prescribed period shall render all appointments listed therein lapsed and ineffective, and that appointments issued within the month but not listed in the ROPA for the said month shall become ineffective 30 days from issuance. Knowing this, she should never have given her approval by initialing the first set of retroactive appointments as she should have known that they would be ineffective under the CSC accreditation rules.

No Dishonesty, Mere Confusion

With the finding that the request for approval of the DBM to apply the earlier granted authority retroactively was a disingenuous attempt to provide a semblance of legality to the intended retroactive appointments, the CA held that the approval or disapproval of appointment to the government was the sole office of the CSC, and not the DBM. Furthermore, dishonesty was found present when De Jesus submitted the first set of appointment papers to the DBM and the second set to the CSC, apparently to ensure that the DBM was unaware of what the CSC was doing and vice versa.

A careful perusal of the records will show that the request for approval to the DBM, characterized by the CA as an attempt to provide a semblance of legality, was the act of Administrator Jamora and not of De Jesus or Parungao. The request letter^[63] to the DBM was signed by Jamora. Therefore, neither De Jesus nor Parungao can be held liable for the act. The Court also failed to find any evidence on record that De Jesus deliberately ensured that DBM was unaware of what the CSC was doing and vice versa. It has already been discussed that De Jesus' only duty was to sign the appointment papers in accordance with the LWUA office order granting him authority to do so. All responsibilities relating to the reportorial requirements pertain to Parungao as the HRMO.

Furthermore, the appointment papers provided to the DBM were referenced by Administrator Jamora in his request letter, and not by De Jesus or Parungao. The first set of appointment papers was never submitted to the CSC not because the retroactivity of the appointments was being concealed, but precisely because it was realized that such did not comply with the reportorial requirements. Given the foregoing, there could have been no dishonesty on the part of De Jesus and Parungao.

Instead, it appears that the root of the dilemma in the case at bench lies in confusion rather than dishonesty. This confusion pertains to the misunderstanding of the roles of the CSC and the DBM vis-a-vis the issuance of appointment papers. Such confusion can be gleaned from the brief to Administrator Jamora signed by De Jesus and initialed by Parungao, stating that the issues on the retroactive appointments and overpayments were deemed settled with the reply letter of the DBM on the retroactive implementation of the authority previously granted.

The CA correctly stated that the approval or disapproval of appointment to the government is the sole office of the CSC, and not the DBM, as the very authority given to LWUA to take final action on its appointments is by virtue of CSC's accreditation program.^[64] Thus, the DBM approval to retroact its previously granted authority to hire

the LWUA confidential staff is subject to an appointment validly issued in accordance with CSC rules. In other words, the DBM approval for retroactivity presupposed valid appointments. DBM's approval was mistakenly understood to pertain to both the back salaries and the validity of the staff's appointments when, in fact, DBM's approval related only to LWUA's authority to hire and not to the validity of the appointments of the hired personnel. Therefore, back salaries should only have been due upon the effectivity of valid appointments, which is within the authority of the CSC to approve, and not of the DBM.

Dishonesty refers to a person's "disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." [65] The absence of dishonesty on the part of De Jesus and Parungao is supported by their good faith in complying with the orders of Administrator Jamora. Their good faith is manifested in several circumstances. First, their brief to Administrator Jamora, stating that the issues on the retroactive appointments and overpayments were deemed settled with the reply letter of the DBM, demonstrates that they actually and honestly believed that the letter had in fact resolved the issue. Second, their memorandum [66] to Administrator Jamora explained that the appointment papers with retroactive effectivity dates would be violative of the provisions of CSC Res. No. 967701 and CSC Omnibus Rules on Appointments Rule 7, Section 11. Third, an informal consultation [67] was held with the CSC Field Director to seek advice regarding the retroactive appointments, wherein it was suggested that the appointments be re-issued effective December 12, 2001, hence, the issuance of the second set of appointment papers. Finally, such retroactive appointments were published in the LWUA Quarterly Reports on Accession. The foregoing circumstances are apparently contrary to any intention to defraud or deceive.

Parungao - Guilty
Of Simple Neglect of Duty

Simple neglect of duty is defined as the failure to give proper attention to a task expected from an employee resulting from either carelessness or indifference. [68] In this regard, the Court finds Parungao, as HRMO, guilty of simple neglect of duty. Given her duties under the CSC Accreditation Program, she should have been aware of the reportorial requirements, and of the fact that it is the CSC which has authority over appointments, and not the DBM. Had she given the proper attention to her responsibility as HRMO, the first set of appointment papers would never have been issued, thereby avoiding the present predicament altogether.

When a public officer takes an oath of office, he or she binds himself or herself to faithfully perform the duties of the office and use reasonable skill and diligence, and to act primarily for the benefit of the public. Thus, in the discharge of duties, a public officer is to use that prudence, caution and attention which careful persons use in the management of their affairs. [69] Parungao failed to exercise such prudence, caution and attention.

Simple neglect of duty is classified under the Uniform Rules on Administrative Cases in the Civil Service as a less grave offense punishable by suspension without pay for one month and one day to six months. Finding no circumstance to warrant the imposition of the maximum penalty of six months, and considering her demonstrated good faith, the Court finds the imposition of suspension without pay for one month and one day as justified.

WHEREFORE,

(1) in G.R. No. 166495, the petition is GRANTED. The assailed September 22, 2004 and January 4, 2005 Resolutions of the Court of Appeals are hereby REVERSED and SET ASIDE. The writ of preliminary mandatory injunction issued in CA-G.R. SP No. 84902 is ordered DISSOLVED.

(2) in G.R. No. 184129, the petition is GRANTED, and in G.R. No. 184263, the petition is PARTIALLY

GRANTED. The assailed May 26, 2005 Decision and August 6, 2008 Resolution of the Court of Appeals in CA-G.R. SP No. 84902, are hereby REVERSED and SET ASIDE, and a new one entered

- ordering the reinstatement of Rodolfo S. De Jesus as Deputy Administrator of the LWUA with full back salaries and such other emoluments that he did not receive by reason of his removal; and

- finding Human Resources Management Officer Edelwina DG. Parungao GUILTY of Simple Neglect of Duty and hereby imposing the penalty of suspension from office for one (1) month and one (1) day without pay.

SO ORDERED.

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

[*] Designated as an additional member in lieu of Associate Justice Diosdado M. Peralta, per raffle dated September 29, 2010.

[1] Rollo (G.R. 166495), pp. 235-237, 307-314. Penned by Associate Justice Josefina Guevara-Salonga with Associate Justice Conrado M. Vasquez, Jr. and Associate Justice Fernanda Lampas Peralta, concurring.

[2] Rollo (G.R. 184129), pp. 73-99. Penned by Associate Justice Josefina Guevara-Salonga with Associate Justice Conrado M. Vasquez, Jr. and Associate Justice Fernanda Lampas Peralta, concurring.

[3] Id. at 101-105. Penned by Associate Justice Josefina Guevara-Salonga with Associate Justice Conrado M. Vasquez, Jr. and Associate Justice Fernanda Lampas Peralta, concurring.

[4] Id. at 252-267. Penned by Special Prosecution Officer Roberto T. Agagon, approval recommended by Assistant Ombudsman Pelagio G. Apostol, and approved by Hon. Victor C. Fernandez.

[5] Id. at 296-311. Penned by Special Prosecution Officer Roberto T. Agagon, approval recommended by Assistant Ombudsman Pelagio G. Apostol, and approved by Deputy Ombudsman Victor C. Fernandez.

[6] Id. at 252-267.

[7] Id. at 296-311.

[8] Id. at 449-452.

[9] Id. at 407-411.

[10] Id. at 204-206.

[11] Id. at 177.

[12] Id. at 168-169.

[13] Id. at 170.

[14] Id. at 171-172.

[15] Id. at 173-174.

[16] Id. at 176.

[17] Id. at 175.

[18] Id. at 178-186.

- [19] Id. at 187
- [20] Id. at 193.
- [21] Id. at 485-487.
- [22] Id. at 204-206.
- [23] Id. at 195-203.
- [24] Id. at 207.
- [25] Id. at 208.
- [26] Id. at 412-419.
- [27] Id. at 420-423.
- [28] Id. at 244-251.
- [29] Id. at 212-223.
- [30] Id. at 224-236.
- [31] 438 Phil. 351 (2002).
- [32] G.R. Nos. 164166 & 164173-80, October 17, 2007, 536 SCRA 394.
- [33] G.R. No. 175573, October 5, 2010.
- [34] Administrative Order No. 7, dated April 10, 1990.
- [35] Buencamino v. CA, G.R. No. 175895, April 12, 2007, 520 SCRA 797.
- [36] G.R. No. 150274, August 4, 2006, 497 SCRA 626, 636-637.
- [37] G.R. No. 175895, April 12, 2007, 520 SCRA 797.
- [38] See Section 3, Rule V, Rules of Procedure of the Office of the Ombudsman.
- [39] Republic Act No. 6770.
- [40] SEC. 12. Effect of appeal. - The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just. [Emphasis supplied]
- [41] Supra note 36.
- [42] G.R. No. 169241, May 2, 2006, 488 SCRA 574.
- [43] Supra note 32.
- [44] Id.
- [45] Rollo (G.R. 184129), p. 406.
- [46] G.R. No. 167234, February 27, 2006, 483 SCRA 405.
- [47] Supra note 32.

- [48] Ombudsman v. Torres, G.R. No. 168309, January 29, 2008, 543 SCRA 46, 60.
- [49] Montemayor v. Bundalian, 453 Phil. 158 (2003).
- [50] Noceda v. Arbizo-Directo, G.R. No. 178495, July 26, 2010.
- [51] Alamayri v. Pabale, G.R. No. 151243, April 30, 2008, 553 SCRA 146.
- [52] G.R. Nos. 76265 and 83280, March 11, 1994, 231 SCRA 88, 99-100.
- [53] Noceda v. Arbizo-Directo, G.R. No. 178495, July 26, 2010.
- [54] Borlongan v. Buenaventura, G.R. No. 167234, February 27, 2006, 483 SCRA 405, 415-416.
- [55] Supra note 48.
- [56] Supra note 32 at 405-406.
- [57] 453 Phil. 158, 169 (2003).
- [58] Borlongan v. Buenaventura, supra note 54; Executive Judge Basilia v. Judge Becamon, 487 Phil. 490 (2004); Atty. De Vera v. Judge Layague, 395 Phil. 253 (2000).
- [59] Supra note 48.
- [60] Rollo (G.R. No. 184129), pp. 469-471.
- [61] Id. at 467-468.
- [62] Id. at 177.
- [63] Id. at 207.
- [64] Id. at 91.
- [65] Re: Failure of Various Employees to Register their Time of Arrival and/or Departure from Office in the Chronolog Machine, A.M. No. 2005-21-SC, September 28, 2010.
- [66] Rollo (G.R. 184129), pp. 485-487.
- [67] Id. at 486.
- [68] Salumbides v. Ombudsman, G.R. No. 180917, April 23, 2010.
- [69] Id.

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