

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. FARIDA T. LUCERO AND COURT OF APPEALS (CEBU CITY), RESPONDENTS.

G.R. NO. 168718. November 24, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is a Petition for Review under Rule 45 of the Rules of Court of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 83356 reversing the decision of the Ombudsman in OMB V-A-02-0254-F, which ordered respondent Farida T. Lucero dismissed from the service for dishonesty.

As culled by the CA from the records of the case, the antecedents are as follows:

Petitioner Farida T. Lucero was appointed on November 18, 1999 as Clerk II of the Land Transportation Office, Regional Office No. VII, and was assigned at the Chief Finance Division in order to augment the personnel complement thereat. In a Memorandum dated November 18, 1999 which was issued by Regional Director Isabelo K. Apor, she was likewise directed to assist the Regional Cashier in collecting and receiving miscellaneous fees/revenues.

On September 29, 2000, then OIC-Regional Director Porferio I. Mendoza of the LTO, Regional Office No. VII, Cebu City requested COA to conduct an audit in the Cash Section of the Operations Division of their office in order to determine the extent of malversation of funds just discovered covering the period from November 18, 1999 up to September 30, 2000.

Acting on the said request, on October 2, 2000, an audit was conducted by State Auditor Nora B. Tiu, at the Cash Section of the Operations Division of LTO Regional Office No. VII where the Petitioner was assigned.

After conducting her audit, State Auditor Nora B. Tiu prepared an Audit Observation Memorandum revealing Petitioner to have issued sixty-nine (69) altered miscellaneous receipts. The aforesaid Audit Observation Memorandum states, in part, the following:

" x x x wherein the duplicate copies of said miscellaneous receipts on file with the processor/computer did not tally with the copies of the miscellaneous receipts on file with the auditor. The miscellaneous receipts attached to the supporting documents on file at the office of the Regional Director reflected lesser amounts, thereby abstracting the difference totaling P46,400.00."

As a consequence thereof, a Notice of Charge, NC No. 00-001-101 (00) dated November 14, 2000, was issued by the COA, LTO Region No. VII, receipt of which was acknowledged by the former Regional Directors Isabelo K. Apor and Porferio I. Mendoza of the Land Transportation Office.

Thereafter, an administrative case for dishonesty was filed against the Petitioner in the Office of the Ombudsman (Visayas).

On July 18, 2002, Petitioner filed her Counter-Affidavit denying the charges. She claimed the absence of legal authority on her part to receive cash collections in behalf of the agency or to issue official receipts for miscellaneous fees/revenues of the LTO. She alleged that she was not given any official designation to assist the

cashier in the collection and receipt of the miscellaneous incomes/fees. Petitioner further averred that the issuance of the Memorandum, dated November 18, 1999, purportedly assigning her to assist the cashier was a mere afterthought and said Memorandum was antedated to jibe with the postulation that she was authorized to receive the collections in behalf of the LTO from the start of her assumption into office on November 18, 1999.

On July 20, 2003, the Office of the Ombudsman (Visayas) rendered its Decision finding the Petitioner guilty of dishonesty. The dispositive portion of the said Decision reads as follows:

WHEREFORE, premises considered, respondent had clearly committed DISHONESTY upon which a penalty of DISMISSAL from the service with the accessory penalties of FORFEITURE OF ALL BENEFITS and DISQUALIFICATION TO HOLD PUBLIC OFFICE IS HEREBY IMPOSED.

Petitioner sought reconsideration of the aforequoted Decision, but the Office of the Ombudsman (Visayas) denied it on January 26, 2004.

Aggrieved with the aforesaid Decision and Order of the Respondent Office of the Ombudsman (Visayas), the Petitioner filed in this Court a Petition for Review thereof.

The grounds set forth by the Petitioner in her petition are as follows:

I

THERE IS NO SUFFICIENT EVIDENCE TO ESTABLISH THAT SHE IS GUILTY OF DISHONESTY.

II

THE RESPONDENT OFFICE OF THE OMBUDSMAN (VISAYAS) HAS NO POWER TO DIRECTLY DISMISS HER FROM THE SERVICE.[2]

In its Decision[3] dated June 15, 2005, the appellate court upheld the finding of the Ombudsman and found petitioner guilty of dishonesty. However, the CA declared that the Ombudsman had no authority to order petitioner's dismissal from the service in accordance with the ruling in *Tapiador v. Office of the Ombudsman*. [4]

The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us SETTING ASIDE the Decision dated July 20, 2003 and the Order dated January 26, 2004 rendered and issued by the Respondent Office of the Ombudsman (Visayas) in OMB-VIS-A-02-0254-F but only insofar as said office directly imposes upon the Petitioner the penalty of dismissal from the service. The said office may recommend such penalty to the proper disciplining authority.

SO ORDERED.[5]

The Ombudsman filed a motion for partial reconsideration, which the CA denied.

Thus, petitioner Republic of the Philippines filed the instant petition for and in behalf of the Ombudsman seeking the reversal of the CA ruling. It argues that:

I

THE OFFICE OF THE OMBUDSMAN HAS FULL ADMINISTRATIVE DISCIPLINARY JURISDICTION OVER PUBLIC OFFICIALS AND EMPLOYEES UNDER ITS AUTHORITY, INCLUDING THE LESSER POWER TO ENFORCE THE SANCTIONS IMPOSED ON ERRING FUNCTIONARIES.

II

THE RELIANCE BY THE HONORABLE COURT OF APPEALS ON THE OBITER DICTUM IN TAPIADOR VS. OFFICE OF THE OMBUDSMAN, 379 SCRA 322 (2002) DISPOSSESSING THE OMBUDSMAN OF ITS DISCIPLINARY AUTHORITY, CONSTITUTES A GRAVE AND PALPABLE ERROR OF LAW CONSIDERING THAT:

A. SUCH A PASSING STATEMENT MUST BE INTERPRETED TO MEAN THAT THE OMBUDSMAN CANNOT "DIRECTLY" IMPLEMENT ITS ADMINISTRATIVE DECISIONS;

B. SUCH STATEMENT IS AND HAS REMAINED AN OBITER DICTUM WHICH DOES NOT HAVE THE STATUS OF A LEGAL DOCTRINE AND

C. THE POWER OF THE OMBUDSMAN TO IMPLEMENT ITS JUDGMENTS HAS BEEN AFFIRMED IN LEDESMA VS. COURT OF APPEALS, G.R. NO. 161629, 29 JULY 2005.[6]

Petitioner maintains that the appellate court erred in relying on the obiter dictum of this Court in Tapiador. Petitioner asserts that under Section 13, Article XI of the Constitution, and Sections 13, 15(3), 16, 19, 21 and 25 of Republic Act No. 6770, the Ombudsman is empowered to order the dismissal of appointive government employees in administrative cases. Petitioner further asserts that it behooved the CA to rely on the definitive ruling of this Court in Ledesma v. Court of Appeals.[7]

In her Comment on the petition, respondent counters that, under the Constitution, the Ombudsman can only recommend the removal of a public officer or employee found to be at fault. She insists further that there is no substantial basis for declaring her liable for dishonesty.

The threshold issues for resolution are as follows: (1) whether the Ombudsman is empowered to order the removal of public officials or employees in administrative cases; and (2) whether there is sufficient evidence to hold respondent liable for dishonesty.

On the first issue, we agree with petitioner's contention that the appellate court erred in relying on the obiter dictum of the Court in Tapiador.[8] As the Court had the occasion to state in Ledesma v. Court of Appeals:[9]

For their part, the Solicitor General and the Office of the Ombudsman argue that the word "recommend" must be taken in conjunction with the phrase "and ensure compliance therewith." The proper interpretation of the Court's statement in Tapiador should be that the Ombudsman has the authority to determine the administrative liability of a public official or employee at fault, and direct and compel the head of the office or agency concerned to implement the penalty imposed. In other words, it merely concerns the procedural aspect of the Ombudsman's functions and not its jurisdiction.

We agree with the ratiocination of public respondents. Several reasons militate against a literal interpretation of the subject constitutional provision. Firstly, a cursory reading of Tapiador reveals that the main point of the case was the failure of the complainant therein to present substantial evidence to prove the charges of the administrative case. The statement that made reference to the power of the Ombudsman is, at best, merely an obiter dictum and, as it is unsupported by sufficient explanation, is susceptible to varying interpretations, as what precisely is before us in this case. Hence, it cannot be cited as a doctrinal declaration of this Court nor is it safe from judicial examination.

The issue raised in this Court has already been resolved in Office of the Ombudsman v. Court of Appeals.[10] In that case, the Court declared that in the exercise of its administrative disciplinary authority under Section 12, Article XI of the 1987 Constitution and Republic Act No. 6770, the Office of the Ombudsman is empowered not merely to recommend, but to impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault. The Court stated that this was the manifest intent of the legislature:

All these provisions in Republic Act No. 6770 taken together reveal the manifest intent of the lawmakers to bestow on the Office of the Ombudsman full administrative disciplinary authority. These provisions cover the entire gamut of administrative adjudication which entails the authority to, inter alia, receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the said penalty.

The explanation of Senator Edgardo Angara, one of the sponsors of Senate Bill No. 534 which, as consolidated with House Bill No. 13646, became RA 6770, is instructive:

Senator Laurel. Because, Mr. President, in the light of another section of the bill, with respect to Section 13, disciplinary authority, first, the Ombudsman here is granted the power of disciplining public officers and employees, while other bodies may not be so authorized; second, the Constitution itself empowers the Office of the Ombudsman merely to investigate and review; but the bill here authorizes the Ombudsman, and grants the power of disciplining public officers and employees. It goes beyond the constitutional provision.

Senator Angara. Well, if the Gentleman is through with his statement ...

Senator Laurel. Well, yes.

Senator Angara. I do not agree that this bill is going beyond what the Constitution has prescribed for the Ombudsman; because, as I understand it, the constitutional provision was construed in the proceedings of the Constitutional Commission and in fact, left it to the Legislature to determine the powers and functions to be allocated to the Ombudsman. It did not say or it did not prohibit the Legislature from granting disciplinary power that we are now granting to the Ombudsman. But over and beyond that interpretation, Mr. President, is the question that one must always ask, if he wants this institution of the Ombudsman to be effective, rather than simply be like the other watchdogs the past administrations created. Then we believe, the Committee believes, that we must give the Ombudsman the necessary teeth in order to implement its own decision. We believe that this is fully in accord with the Filipino custom and tradition, and based on our historical experience. Short of not giving the Ombudsman the disciplining authority, I think we might as well kiss the system goodbye, because it will be like the same watchdogs created in the past-toothless and inutile.

Senator Angara, by way of reply to the queries of Senator Neptali Gonzales, further explained:

Senator Gonzales. All right. There are certain admissions and, however reluctantly given, at least, let us go further because the Gentleman is invoking the whole of Section 13. I might really be wrong, and I want to be corrected his early.

Now, under paragraph (2), it says:

Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision thereof to perform and expedite. . .

Probably a ministerial act because it says:

... any act or duty required by law or to stop, prevent and correct any abuse or impropriety in the performance of duties.

There is neither a grant of disciplining authority, nor can we imply one from this specific provision; only from this specific provision.

Senator Angara. My answer, again, Mr. President, is that one cannot derive that broad, sweeping conclusion solely on the basis of this provision.

Senator Gonzales. There is none solely on this provision. Let us go to (3):

Direct the officer concerned to take appropriate action against a public official or employee at fault –

There is a determination, that is, at fault, and this is very important,

-recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.

Mr. President, the power here, even after a determination of fault, is merely to recommend to the appropriate office or agency the imposition of administrative sanctions, which, under this law, instead are to be imposed by the Ombudsman himself or directly. Could not the Gentleman see a conflict between these two provisions, Mr. President?

Senator Angara. I do not see any conflict, Mr. President. As I said, the grant of disciplinary power is something that the Constitution does not forbid.

Senator Gonzales. Well, we will take it differently.

Senator Angara. Again, the question is: Is it necessary to grant the Ombudsman such a power in order to make it effective? That is a means necessary to the end, to the objective.

Senator Gonzales. Is it, therefore, now another power?

Senator Angara. I submit that the means, that is, the disciplinary power, is necessary to achieving that objective of making an effective Ombudsman.

The legislative history of Republic Act No. 6770 thus bears out the conclusion that the Office of the Ombudsman was intended to possess full administrative disciplinary authority, including the power to impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault. The lawmakers envisioned the Office of the Ombudsman to be "an activist watchman," not merely a passive one. And this intent was given validation by the Court in *Uy v. Sandiganbayan* where it stated that:

Clearly, the Philippine Ombudsman departs from the classical Ombudsman model whose function is merely to receive and process the people's complaints against corrupt and abusive government personnel. The Philippine Ombudsman, as protector of the people, is armed with the power to prosecute erring public officers and employees, giving him an active role in the enforcement of laws on anti-graft and corrupt practices and such other offenses that may be committed by such officers and employees. The legislature has vested him with broad powers to enable him to implement his own actions. x x x

On the second issue, the Court quotes with approval the ruling of the Ombudsman and the appellate court that there is ample evidence of petitioner's dishonesty:

x x x The Office of the Ombudsman (Visayas) was however correct when it came up with a finding that the Petitioner is guilty of dishonesty.

The Petitioner submitted the following arguments in contending that the assailed Decision of the Respondent Office of the Ombudsman lacks factual basis:

4.6 Respondent COA concludes that it was Mrs. Lucero who falsified the receipts and misappropriated the corresponding amounts involved because she was present at the Cashier's Office allegedly issuing receipts.

4.7 On cross-examination, the examining auditor, Ms. Nora Tiu, based her conclusion imputing liability unto the herein petitioner on her evaluation of the signatures appearing in the questioned receipts even if she has not seen the petitioner actually affixing her signatures therein.

4.14 On the other hand, the testimony of the cashier herself, Ms. Luciana Dicdican, similarly cannot be given credence.

4.15 In her testimony, she admitted that she is not even sure that the receipts actually turned over to her were

the very same ones now allegedly falsified and the subject matter of this case.

4.16 She just made a sweeping conclusion that it could be the petitioner's because the signatures therein are made hastily and that it is the latter who turned over these receipts to her.

4.23 If indeed she was authorized pursuant to the said Memorandum to collect Miscellaneous Income and Revenue, then why she was not (sic) required to put up a bond, in accordance with Sections 101 (1) and (2) of Presidential Decree No. 1445, otherwise known as the "Government Auditing Code of the Philippines."

We are not persuaded by the foregoing arguments. The Respondent Office of the Ombudsman correctly accorded credence and weight to the complaint filed by Respondent Commission on Audit. Petitioner's claim is rendered doubtful by her tendency to deny particularly each and all allegations made by Respondent COA. For instance, during the investigation before the Respondent Office of the Ombudsman, Petitioner denied having issued the receipts. However, Petitioner thereupon made a complete turnabout and acknowledged that she did issue some miscellaneous receipts during busy days. The Regional Cashier of the LTO likewise positively and competently testified about the said issuance of the miscellaneous receipts by the Petitioner.

Such acknowledgment by Petitioner of having issued Miscellaneous Receipts during busy days and the further testimony of the LTO Regional Office VII Cashier to that effect only belie Petitioner's claim that she was not assigned in the Cashier Section of the Operations Division of the LTO Regional Office No. VII and never signed any miscellaneous receipt from the period beginning on November 18, 1999 up to September 30, 2000.

Moreover, the issuance of the Miscellaneous Receipts by the Petitioner was duly proven during the investigation conducted by the Respondent Office of the Ombudsman. As testified to by the examining auditor, there are obvious similarities between the Petitioner's signature in her Certificate of Appointment as Clerk II of the LTO and her signatures on the Miscellaneous Receipts being issued. In the case *Court Administrator vs. Villanueva*, the Supreme Court held that evidence respecting handwriting may be given by a comparison made by the Court with writings admitted or treated as genuine by the party against whom the evidence is offered.

Under the circumstances, we find adequate basis of the findings of the Respondent Office of the Ombudsman. Indeed, it appears that the contentions of the Petitioner are devoid of merit. Petitioner's only defense is one of denial. The rule is that the denial, if not substantiated by clear and convincing evidence, is negative and self-serving evidence, which has no weight in law and cannot be given greater evidentiary value over the testimony of credible witnesses who testified on affirmative matters.[11]

Indeed, the Court has adopted a policy of non-interference in the exercise of the Ombudsman's constitutionally mandated powers of calibrating the evidence of the parties. This Court is not a trier of facts; the Ombudsman is.[12] Moreover, absent a clear showing of grave abuse of discretion, the findings of fact of the CA, affirming the findings of the Ombudsman, are final and conclusive on this Court.[13] In this case, there is no showing that the Ombudsman had abused his discretion.

IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The finding of the Court of Appeals in CA-G.R. SP No. 83356 that there is sufficient evidence of respondent Farida T. Lucero's guilt for dishonesty is AFFIRMED. However, the appellate court's declaration that the Ombudsman has no power to order her removal or dismissal from office is SET ASIDE. Consequently, the decision of the Ombudsman dismissing respondent Lucero is AFFIRMED.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Garcia, and Velasco, Jr., JJ., concur.

[1] Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Sesinando E. Villon and Enrico A. Lanzanas, concurring; rollo, pp. 60-67.

[2] Id. at 61-63.

[3] Id. at 60-67.

[4] 429 Phil. 47, 58 (2002). The pertinent portion of the Tapiador ruling reads:

In view of the foregoing, it is not necessary anymore to pass upon the other grounds raised by the petitioner in his petition. The complainant clearly failed to present the quantum of proof necessary to prove the charge in the subject administrative case, that is, with substantial evidence. Besides, assuming *arguendo*, that petitioner was administratively liable, the Ombudsman has no authority to directly dismiss the petitioner from the government service, more particularly from his position in the BID. Under Section 13, subparagraph (3), of Article XI of the 1987 Constitution, the Ombudsman can only "recommend" the removal of the public official or employee found to be at fault, to the public official concerned.

[5] Id. at 66-67.

[6] Id. at 18-19.

[7] G.R. No. 161629, July 29, 2005, 465 SCRA 437.

[8] *Supra* note 3.

[9] *Supra*, at 448-449.

[10] G.R. No. 160675, June 16, 2006, pp. 20-23. The respondents filed a motion for the reconsideration of the decision of the Court affirming the decision of the Ombudsman claiming that there was no factual basis for the decision of the Ombudsman finding them guilty of simple misconduct and ordering their suspension for one (1) month.

[11] Rollo, pp. 63-66.

[12] *Kara-an v. Office of the Ombudsman*, G.R. No. 119990, June 21, 2004, 432 SCRA 457, 467.

[13] *Espinosa v. Office of the Ombudsman*, 397 Phil. 829, 840 (2000).

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