OFFICE OF THE OMBUDSMAN, PETITIONER, VS. PENDATUN G. LAJA AND THE COURT OF APPEALS, RESPONDENTS.

G.R. NO. 169241. May 02, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

This petition for certiorari under Rule 65 of the Rules of Court assails the May 12, 2005 Resolution[1] of the Court of Appeals in CA-G.R. SP No. 00101-MIN which granted respondent Pendatun G. Laja's prayer for the issuance of the writ of preliminary injunction conditioned upon the posting of the requisite bond, as well as the June 24, 2005 Resolution[2] which issued a writ of preliminary injunction enjoining the Office of the Solicitor General, Mindanao, from enforcing the April 15, 2004 Joint Decision[3] and the September 27, 2004 Joint Order[4] of the Office of the Ombudsman, Mindanao, in Case Nos. OMB-M-A-02-306-K and OMB-M-A-02-312-L. The Joint Decision and Joint Order of the Office of the Ombudsman, Mindanao, ordered the dismissal from service of respondent Laja for dishonesty, neglect of duty and grave misconduct.

The facts of the case are undisputed.

On November 18, 2002 an administrative complaint for Misconduct and Neglect of Duty[5] was filed by the employees of the Provincial Government of Tawi-Tawi against respondent Laja, in his capacity as Provincial Treasurer, in connection with the non-remittance of their contributions to the Government Service Insurance System (GSIS) for the years 1998 to 2001 which resulted in the denial of their loan applications. Thereafter, on November 29, 2002, a similar administrative complaint[6] for Dishonesty, Oppression and Violation of Republic Act (R.A.) No. 6713, otherwise known as Code of Conduct and Ethical Standards for Public Officials and Employees, was filed by former employees of the Provincial Government of Tawi-Tawi against said respondent in connection with the non-remittance of their GSIS contributions which resulted in the deduction of the corresponding amounts from their retirement benefits. These two cases were subsequently consolidated and submitted for resolution.

The Office of the Ombudsman for Mindanao proceeded to hear both cases and in a Joint Decision dated April 15, 2004 disposed of the cases, thus:

> WHEREFORE, WITH THE FOREGOING PREMISES CONSIDERED, this Office finds respondent PENDATUN G. LAJA, Provincial Treasurer of Tawi-Tawi and currently Officer-In-Charge of Office of the Assistant Regional Director of the Bureau of Local Government Finance-Legaspi City, GUILTY of the administrative charges of DISHONESTY, NEGLECT OF DUTY and GRAVE MISCONDUCT pursuant to the Revised Administrative Code and Section 52, paragraph (A), sub-paragraph (1, 2 and 3) of the Uniform Rules on Administrative Cases in the Civil Service. The subject offenses being all classified as grave, respondent Laja is consequently meted the penalty of DISMISSAL FROM SERVICE, with the accessory penalties of perpetual disqualification to hold public office and cancellation of civil service eligibility, effective upon the finality of this Decision.
>
> SO DECREED.[7]

Respondent filed a motion for reconsideration[8] which was denied in a Joint Order dated September 27, 2004. Thus, he filed a Petition for Certiorari with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[9] with the Court of Appeals where the same was docketed as CA-G.R. SP No. 00101-MIN.

On March 8, 2005, the appellate court issued a Temporary Restraining Order for a period of 60 days enjoining the enforcement of the Joint Decision and required petitioner to file a comment and to show cause why a writ of preliminary injunction should not issue.

On March 18, 2005, petitioner endorsed the foregoing resolution of the appellate court to the Office of the Solicitor General (OSG) for appropriate action. Thereafter, the OSG filed an Entry of Appearance with Motion to Defer Filing of Comment[10] pending receipt of the petition and its accompanying documents.

Upon receipt of the petition, the OSG filed a Manifestation and Motion dated May 16, 2005[11] praying that it be excused from further participation in the case on the ground that under Section 5, Rule 65 of the Rules of Court, it is the private respondents who are tasked to defend the validity of the proceedings below as well as the challenged Joint Decision dated April 15, 2004 and Joint Order dated September 27, 2004.

On April 4, 2005, counsel for private respondents in CA-G.R. SP No. 00101-MIN filed a Comment[12] praying for the dismissal of the petition on the ground of forum shopping, pointing out that Laja appealed the Joint Decision to this Court by way of a petition under Rule 45 of the Rules of Court which was denied in a Resolution dated January 12, 2005 and a motion for reconsideration thereof is still pending.

Due to the impending expiration of the 60-day temporary restraining order issued by the appellate court, Laja filed a Motion To Resolve the Prayer for the Issuance of a Writ of Preliminary Injunction and/or Extend the Lifetime of the Temporary Restraining Order.[13]

On May 12, 2005, the appellate court issued a Resolution granting the issuance of a writ of preliminary injunction on the condition that a bond of P500,000.00 Pesos be posted within five days from receipt. Upon posting of the requisite bond, the Court of Appeals issued on June 24, 2005 a Resolution issuing a writ of preliminary injunction enjoining the Office of the Solicitor General from enforcing the Joint Decision and Joint Order of the Office of the Ombudsman.

Prefatorily, respondent Laja raises procedural objections on the propriety of this proceeding pointing out that no motion for reconsideration was filed by petitioner before elevating its cause to this Court and that the petition is tardily filed.

Concededly, the settled rule is that a motion for reconsideration is a condition sine qua non for the filing of a petition for certiorari. Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case.[14] The rule is, however, circumscribed by well-defined exceptions such as where the order is a patent nullity, as where the court a quo had no jurisdiction; where the questions raised in the certiorari proceeding have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; where, under the circumstances, a motion for reconsideration would be useless; where petitioner was deprived of due process and there is extreme urgency for relief; where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; where the proceedings in the lower court are a nullity for lack of due process; where the proceedings were ex parte or in which the petitioner had no opportunity to object; and where the issue raised is

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one purely of law or where public interest is involved.[15]

Furthermore, as is oft said the provisions of the Rules of Court should be applied with reason and liberality to promote its objective of securing a just, speedy and inexpensive disposition of every action and proceeding. Rules of procedure are used to help secure and not override substantial justice. Thus, the dismissal of an appeal on a purely technical ground is frowned upon especially if it will result in unfairness.[16]

In accordance with this policy, appeals tardily filed were allowed by the Court in a plethora of cases.[17] Prescinding, therefore, from the foregoing, the technical objections raised by the respondent will be disregarded by the Court to get at the substantive issues raised by both parties, consistent with this Court's inherent power to suspend the application of procedural rules when warranted, in relation to the dictum that all controversies should be resolved on their merits.

The primordial question posed is whether the Court of Appeals may enjoin petitioner from enforcing its judgment in an administrative case ordering respondent's dismissal from the service pending the final resolution of respondent's appeal from said verdict before the appellate tribunal.

The crux of the controversy is the effectivity or binding effect of the challenged Joint Decision. Petitioner insists that the issuance of the injunctive writ is improper because respondent does not have a vested right to hold public office and that decisions imposing administrative sanctions in administrative disciplinary cases are "executory" pending appeal. Respondent, on the other hand, contends that petitioner's authority and jurisdiction to order his dismissal is merely "recommendatory" under the Constitution.

On the question of whether the assailed judgment dismissing respondent Laja from the service is "executory" pending appeal, we held in Lopez v. Court of Appeals[18] that:

> [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.[19] [Emphasis added]

Thus, the order imposing the penalty of dismissal from the service of the respondent is not immediately executory. An appeal timely filed will stay the immediate implementation of the decision.[20]

Regarding respondent Laja's argument that the Ombudsman's administrative decisions are merely "recommendatory", we held in Ledesma v. Court of Appeals,[21] that the Ombudsman's order to remove, suspend, demote, fine, censure, or prosecute an officer or employee is not merely advisory or recommendatory but is actually mandatory, thus:

> We note that the proviso above qualifies the "order" "to remove, suspend, denote, fine, censure, or prosecute" an officer or employee - akin to the questioned issuances in the case at bar. That the refusal, without just cause, of any officer to comply with such an order of the Ombudsman to penalize an erring officer or employee is a ground for disciplinary action, is a strong indication that the Ombudsman's "recommendation" is not merely advisory in nature but is actually mandatory within the bounds of law. This should not be interpreted as usurpation by the Ombudsman of the authority of the head of office or any officer concerned. It has long been

> settled that the power of the Ombudsman to investigate and prosecute any illegal act or omission of any public official is not an exclusive authority but a shared or concurrent authority in respect of the offense charged. By stating therefore that the Ombudsman "recommends" the action to be taken against an erring officer or employee, the provisions in the Constitution and RA 6770 intended that the implementation of the order be coursed through the proper officer, x x x.[22] [Emphasis added]

All told, we sustain the grant of injunctive relief by the appellate court. The order dismissing an employee from the service, as in this case, is not immediately executory considering the pendency of the appeal. The Joint Decision dated April 15, 2004 becomes final and executory only after the denial of the appeal from said Joint Decision. It is only then that execution shall perforce issue as a matter of right.

WHEREFORE, in view of all the foregoing, the challenged Resolutions of the Court of Appeals dated May 12, 2005 and June 24, 2005 in CA-G.R. SP No. 00101-MIN are AFFIRMED and the instant petition is DISMISSED.

SO ORDERED.

Panganiban, C. J., (Chairperson), Austria-Martinez, and Callejo, Sr., JJ., concur.
Chico-Nazario, J., on official leave.

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[1] Rollo, pp. 34-35. Penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Rodrigo F. Lim, Jr. and Normandie B. Pizarro.

[2] Id. at 30-31.

[3] Id. at 61-81.

[4] Id. at 108-118.

[5] Docketed as OMB-M-A-02-306-K.

[6] Docketed as OMB-M-A-02-312-L.

[7] Rollo, p. 79.

[8] Id., at 82-97.

[9] Id. at 37-60.

[10] Id. at 167-169.

[11] Id at 170-172.

[12] Id.at 173-175.

[13]Id. at 176-179.

[14]Estate of Salvador Serra Serra v. Heirs of Primitivo Hernaez, G.R. No. 142913, August 9, 2005, 466 SCRA 120, 127.

[15] Tan v. Court of Appeals, 341 Phil. 570, 577-578 (1997).

[16] Benguet Corporation v. Cordillera Caraballo Mission, Inc., G.R. No. 155343, September 2, 2005, 469 SCRA 381, 385-386.

[17]See Postigo. v. Philippine Tuberculosis Society, Inc. G.R. No. 155146, January 24, 2006; Philippine Ports

Authority v. Sargasso Construction and Development Corp., G.R. No. 146478, July 30, 2004, 435 SCRA 512, 527; Sacdalan v. Court of Appeals, G.R. No. 128967, May 20, 2004, 428 SCRA 586, 597; Development Bank of the Philippines v. Court of Appeals, 411 Phil. 121, 135 (2001).

[18] 438 Phil. 351 (2002).

[19] Id. at 359-360.

[20] Lapid v. Court of Appeals, 390 Phil. 236, 247 (2000).

[21] 465 Phil. 437 (2005).

[22] Id. at 449-450.

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