

CORAZON C. BALBASTRO, APPELLEE, VS. COMMISSION ON AUDIT, REGIONAL OFFICE NO. VI, APPELLANT.*G.R. No. 171481. June 30, 2008*

Ponente: CARPIO MORALES, J.

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Petitioner – former principal of the Iloilo City National High School (ICNHS or the school) in Molo, Iloilo City – assails via petition for review the Amended Decision of the Court of Appeals dated January 18, 2006, which affirmed the decision of the Office of the Ombudsman (Visayas) of April 11, 2002 finding her guilty of Grave Misconduct and dismissing her from government service.

Acting on a February 12, 1999 letter-complaint filed by the officers of the ICNHS Teachers and Employees Association, against petitioner, the Ombudsman-Visayas (Ombudsman), in OMB-VIS-INQ-99-0183, requested respondent Commission on Audit Regional Office No. VI (COA Region VI) to conduct a fact-finding investigation thereon.

Upon order of the COA Region VI, State Auditors Arlene T. Tagonon and Marie Elaine G. Dolorfino conducted a comprehensive audit of the accounts of the ICNHS for the period January 1998 to March 1999 and submitted a report thereon on August 16, 1999. The audit report enumerated the following irregularities which it found to have been probably committed by petitioner and Lydia Ocate, the Disbursing Officer of ICNHS:

- Late remittance of GSIS, PAG-IBIG and Medicare contributions, thus depriving the employees of availing themselves of loans and receiving benefits granted by these institutions;
- Non-reflection as government funds in the books of account of miscellaneous fees received by the Principal from the City Government of Iloilo amounting to P184,536.76, which funds were spent for purposes other than those for which they were intended;
- Spending the amount P161,150 purportedly for repair of projects which were not implemented and were without appropriation;
- Disbursement by the school of a total of P467,254.55 for costumes of participants in the Ati-Atihan, but only P48,275 of which was spent for the designer's fees; and there was no appropriation for the disbursement of the said amount, which was sourced from the school's Personal Services Funds; and
- Fifty laborers' names appearing as payees in the payrolls significantly differ from those in other payrolls, casting doubt as to the documents' authenticity.[1]

A copy of the audit report was forwarded to the Ombudsman for its evaluation.

On the basis of the audit report of COA Region VI, Director Virginia Palanca-Santiago of the Office of the Ombudsman recommended on April 12, 2000 the upgrading of the inquiry in OMB-VIS-INQ-99-0183 into an administrative and criminal case. The administrative case was eventually docketed as

OMB-VIS-ADM-2000-0441, and the criminal case as OMB-VIS-CRIM-2000-0494.

On July 7, 2000, COA Region VI, upon the request of Director Palanca-Santiago, submitted to the Ombudsman the complaint-affidavit of auditors Arlene Tagonon and Elaine Dolorfino.

By Order of December 11, 2000 issued in OMB-VIS-ADM-2000-0441 and OMB-VIS-CRIM-2000-0494,[2] "Commission on Audit, Regional Office No. VI v. Corazon Balbastro and Lydia Ocate," the Ombudsman ordered the therein respondents to file their "counter-affidavit and controverting evidence to the herein attached complaint filed against you by COMMISSION ON AUDIT, REGIONAL OFFICE NO. VI" (underscoring in the original).

Corazon Balbastro, herein petitioner, filed her Answer dated January 31, 2001 alleging that the charges of the ICNHS Teachers & Employees Association are a mere duplication of the administrative charges filed against her at the Department of Education, Culture and Sports (DECS), Region VI entitled "Ninfa Bata, et al. v. Corazon Balbastro."

Petitioner later filed a Supplemental Answer dated July 4, 2001[3] reiterating her original claim that the charges in the letter-complaint merely duplicate the pending DECS case, and denying the charges set forth in the COA audit report.

When the cases were called for preliminary conference on July 5, 2001 by the Ombudsman, only petitioner's co-respondent Ocate and the latter's counsel appeared. In view of the absence of counsel's for COA and for petitioner, the preliminary conference was rescheduled initially to August 7, 2001, but finally to September 7, 2001.

On September 7, 2001, only Atty. Rose Edith Togonon and Arlene Togonon of the COA, and therein respondent Ocate and her counsel, appeared. Petitioner again failed to show up despite notice, prompting the Ombudsman to consider petitioner's and her counsel's two consecutive absences as a waiver of petitioner's right to ask for a formal hearing and to present evidence on her behalf.[4]

The Ombudsman thereafter issued the aforementioned April 11, 2002 Decision in OMB-VIS-ADM-2000-0441 (Ombudsman decision) finding petitioner guilty of Grave Misconduct and imposing upon her the penalty of dismissal from the service with all its accessory penalties. Therein respondent Ocate was exonerated for lack of evidence.

The Ombudsman held petitioner guilty of the irregularities stated in the audit report, except with respect to late remittances of GSIS, PAG-IBIG and Medicare contributions. Albeit those remittances were indeed late, the Ombudsman gave petitioner the benefit of the doubt that she was not responsible for the delay.

With regard to the discrepancies in the payrolls, the Ombudsman noted that the same had already been the subject of another case, OMB-VIS-ADM-2000-0382 to 0391, in which petitioner and Ocate had already been penalized.

Petitioner's motion for reconsideration of the Ombudsman Decision was denied by Order dated September 19, 2002, hence, she filed a petition for review with the Court of Appeals.

The appellate court, while ruling that the COA audit report was "enough basis to sustain the Ombudsman's finding of guilt of petitioner," held that the Ombudsman had no power to directly impose sanctions against government officials and employees, its power being only limited to recommending the appropriate sanctions to the disciplining authority, which in this case is the DECS. Accordingly, the Court of Appeals, by Decision dated April 29, 2005, set aside the challenged Ombudsman decision insofar as it directly imposed on petitioner the penalty of dismissal.

On motion for reconsideration of the Ombudsman, however, the appellate court - on the basis of this Court's

ruling in *Ledesma v. Court of Appeals*[5] that the Ombudsman has the power, not only to determine the administrative penalty of an erring public official, but also to compel the head of the agency concerned to implement the penalty imposed – promulgated an Amended Decision dated January 18, 2006 which affirmed the Ombudsman's imposition of the penalty of dismissal against petitioner.

Without filing a motion for reconsideration of the Amended Decision, petitioner filed the present petition.

Petitioner asserts that the Court of Appeals erred and gravely abused its discretion when it held that she was not denied due process in the proceedings before the Ombudsman and that the Ombudsman decision was supported by evidence and applicable jurisprudence.

Petitioner maintains that she was denied due process and that the proceedings before the Ombudsman were attended by serious irregularities. Thus she claims that she had not been furnished the sworn complaint of COA Region VI, thus giving her the mistaken impression that OMB-VIS-ADM-2000-0441 merely involved the allegations in the letter-complaint dated February 12, 1999 mentioned earlier; and that the letter-complaint, which requested for a comprehensive audit of the ICNHS, merely dwelt on the matter of late remittances to the GSIS, PAG-IBIG and BIR, hence, those were the only matters she responded to in her Answer filed with the Ombudsman.

The petition fails.

If indeed petitioner was not furnished a copy of the sworn complaint of COA Region VI, she could have easily manifested the same in her Answer; instead, she remained totally silent thereon and went on merely to argue that the allegations in the letter-complaint were then the subject of a pending case before the DECS.

Petitioner could not have mistaken the letter-complaint of the INCHS Teachers and Employees Association to be the complaint referred to in the December 11, 2000 Order of the Ombudsman. Not only was COA Region VI the named complainant in the case title as set forth in that Order. The main body of the Order itself directed petitioner "to file your counter-affidavit and controverting evidence to the herein attached complaint filed against you by COMMISSION ON AUDIT, REGIONAL OFFICE NO. VI," the capitalization and underscoring of which are found in the original Order.

Petitioner, moreover, filed a Supplemental Answer in which she discussed matters that certainly strayed beyond those tackled in the letter-complaint of February 12, 1999 – a fact which petitioner admitted in her Reply filed with this Court only after respondent raised it as an argument in its Comment. Again, petitioner made no mention in that Supplemental Answer of the alleged failure of the Ombudsman to furnish her a copy of the sworn complaint. Instead, she responded to the findings stated in the audit report submitted by COA Region VI.

AT ALL EVENTS, petitioner cannot protest that she was deprived of due process for not having been apprised of the charges against her since the charges did not go beyond the findings of the audit report, a copy of which she received and to which she responded via her Supplemental Answer.[6]

Petitioner's only objection, as it turns out in her Reply, is that she was not able to respond to the charges specifically enough. Petitioner has no one to blame but herself, she having had ample time to do the same. Besides, if she really wanted to be more particularly informed of the charges against her, she should have attended the two preliminary conferences set by the Ombudsman, one of the purposes of which being to allow the parties to consider, *inter alia*, whether they "desire a formal investigation to determine the nature of the charge, stipulation of facts, a definition of the issues." [7]

Apropos is the ruling in *Alba v. Nitorreda*[8] in which there appears to have been only one preliminary conference

scheduled by a Graft Investigating Officer, unlike petitioner's case in which the initial preliminary conference was reset after petitioner and her counsel failed to show up thereat.

Petitioner further assails the failure of the Graft Investigating Officer to call the parties to another preliminary conference after their failure to appear at the first one. He contends that the lack of any kind of hearing for evidence presentation resulted in "what may be termed, in the lingo of 'civil procedure', a 'judgment on the pleading.' " At the onset, it is worth pointing out that petitioner was afforded ample opportunity to present his side at the scheduled preliminary conference. His non-appearance thereat is attributable to no one else but himself and he cannot be allowed to now pass the buck to the Graft Investigating Officer who had complied strictly with the abovequoted procedure in the conduct of administrative investigations. x x x

Petitioner goes on to claim the presence of the following irregularities in the proceedings before the Ombudsman: only one hearing was held, on December 19, 2001, where only Ocate testified; the case is bereft of any record containing the testimonies of complainant and its witnesses; the Ombudsman decided the case without even requiring the complainant and its witnesses to affirm and confirm their affidavits, if any were submitted, and testify on the unsworn and unsigned COA report which was furnished petitioner; and the members of the ICNHS Teachers and Employees Association who authored the letter-complaint were not presented during the formal investigation of the administrative case.

Petitioner deprived herself of standing to raise these issues, however, for failing to show up for two consecutive times at the preliminary conference which thus constrained the Ombudsman to deem her to have waived her right "to ask for a formal hearing and present evidence" and led it to consider the case "for resolution based on the evidence on record as far as she is concerned." [9] The Court sees no reason to disturb this ruling of the Ombudsman.

Respecting the non-appearance of the members of the ICNHS Teachers and Employees Association, since the charges against petitioner were not based on their letter-complaint but on the audit report submitted by COA Region VI, their appearance was not necessary. The letter-complaint merely served the purpose of initiating the investigation, not to establish the culpability of petitioner.

As to petitioner's contention that the Ombudsman decision is not supported by evidence and applicable jurisprudence, the arguments proffered in support thereof are sorely lacking in substance. Ironically, some of these arguments even reinforce the credibility of the COA audit report on which the Ombudsman based its findings against petitioner.

Petitioner furthermore asserts that the evidence in OMB-VIS-ADM-2000-0441 would show that the only person administratively liable is her therein co-respondent Ocate, she stressing that Ocate admitted "all the findings of the Commission on Audit" against her. Assuming *arguendo* that Ocate is indeed liable, it would not follow that petitioner is thereby exonerated, for petitioner may still be just as liable as Ocate for the acts charged. Moreover, her claim that Ocate admitted the findings of the COA is based solely on the statement of COA Region VI in its Comment filed with the appellate court, not on any finding by the Ombudsman or on any statement appearing in the records. The Ombudsman was in fact explicit in its decision that "[r]espondent Lydia E. Ocate, for her part, aside from claiming that the charges against her are not clear and ambiguous, denies the same and alleges the following as the truth of the matter x x x." [10]

With regard to the finding in the audit report that petitioner misapplied the P184,536.76 given by the city government of Iloilo for miscellaneous expenses of students, she, in her petition:

. . . submits that she has never misapplied the miscellaneous funds she received in November 1997 and November 1998, long after the first semesters of the respective school years, when all the miscellaneous

expenses of the students had already been underwritten and paid for by the school. Certainly, said funds could not have been directly spent therefore (sic). Petitioner used the funds to cover all the other miscellaneous expenses of the students. She never personally gained a centavo out of the same.

Petitioner's above-quoted statement hardly serves to exonerate her. She would like the Court to believe that it was impossible to apply the questioned funds to the students' miscellaneous expenses because, at the time she received them, all such expenses had already been paid for, impliedly admitting that, indeed, the funds were not spent on the miscellaneous expenses they were intended for. Yet she proceeds to claim that she used the funds to cover "all the other miscellaneous expenses of the students." To make matters worse, she does not even attempt to spell out what those other miscellaneous expenses were.

More importantly, she does not categorically deny the findings of the COA, which were upheld by the Ombudsman, that she misapplied the funds to the following items of expense: (1) Ati-Atihan 1999; (2) sports/athletic meet; (3) food for visitors; (4) cultural/dance activities; (5) equipment and furniture; (6) office supplies; and (7) filling materials, stones and other landscaping materials.[11]

Regarding the finding that P161,150 was spent for projects that were not implemented, petitioner explains in her Reply that the report prepared by Senior Technical Audit Specialist Genesis H. Abello was clear that indeed there were repairs that were done but that the extent thereof merely cannot be determined. This explanation only echoes what has already been stated by the Ombudsman, to wit:

However, during the ocular inspection the Technical Audit Specialist of the COA noted that although there were traces of repair works found in the Mathematics Building; Social Studies Building and school fences, the extent of repairs could not be determined or confirmed because of the absence of documents in support thereof such as: approved job order; estimate of works; program of works and bill of materials. The location of the projects could not also be confirmed because of the absence of sketch plans detailing the location of the projects, as there were several waiting sheds; toilets and fences; and two (2) English Buildings. Thus, prompting the COA to conclude that these itemized projects were not implemented at all, which respondent Corazon Balbastro did not dispute with clear and convincing evidence. And all told, this Office is convinced that most, if not all, of these projects were non-existing.[12] (Underscoring supplied)

In fine, petitioner's arguments only render more pronounced the correctness of the Ombudsman's decision finding her guilty on the basis of the audit report which constitutes substantial evidence. As *Balbastro v. Junio*[13] held, an administrative case also involving herein petitioner:

As to the findings of the Ombudsman, it is settled that in administrative proceedings, the quantum of proof required for a finding of guilt is only substantial evidence – that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. Factual findings of administrative bodies, when supported by substantial evidence, are entitled to great weight and respect on appeal. And a finding of guilt in an administrative case would also have to be sustained for as long as it is supported by substantial evidence that respondent has committed the acts stated in the complaint or formal charge. (Underscoring supplied)

WHEREFORE, the petition is DENIED.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-De Castro, and Brion, JJ., concur.

[1] Rollo, p. 38.

[2] Rollo, p. 51.

[3] Rollo, p. 89.

[4] Rollo, p. 41.

[5] G.R. No. 161629, July 29, 2005.

[6] Rollo, p. 38.

[7] Administrative Order No. 7, April 10, 1990, "RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN."

[8] 325 Phil 229 (1996).

[9] Rollo, p. 41.

[10] Rollo, p. 40. (Emphasis supplied)

[11] Rollo, p. 42.

[12] Rollo, p. 43.

[13] G.R. No. 154678, July 17, 2007; 527 SCRA 680, 693.

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