OFFICE OF THE OMBUDSMAN, PETITIONER, VS. JOEL S. SAMANIEGO, RESPONDENT.

G.R. No. 175573. October 05, 2010

Ponente: CORONA, J.

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CORONA, J.:

This is a resolution of the second motion for partial reconsideration filed by petitioner Office of the Ombudsman to our decision dated September 11, 2008,[2] particularly our pronouncement with respect to the stay of the decision of the Ombudsman during the pendency of an appeal:

> Following Office of the Ombudsman v. Laja, we hold that the mere filing by respondent of an appeal sufficed to stay the execution of the joint decision against him. Respondent's prayer for the issuance of a writ of a preliminary injunction (for purposes of staying the execution of the decision against him) was therefore a superfluity. The execution of petitioner's joint decision against respondent should be stayed during the pendency of CA-G.R. SP No. 89999.

We reconsider.

> Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman,[3] 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. (emphasis supplied)

The Ombudsman's decision imposing the penalty of suspension for one year is immediately executory pending appeal.[4] 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,[5] 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,[6] 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 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 â€- 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.[7] 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[8] 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,[9] 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.[10]

WHEREFORE, the second motion for partial reconsideration is hereby GRANTED. Our decision dated September 11, 2008 is MODIFIED insofar as it declared that the imposition of the penalty is stayed by the filing and pendency of CA-G.R. SP No. 89999. The decision of the Ombudsman is immediately executory pending appeal and may not be stayed by the filing of the appeal or the issuance of an injunctive writ.

SO ORDERED.

Carpio Morales, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez, Mendoza and Sereno, JJ., concur.
Carpio, J., on official leave.

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Abad, J., on official business.

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[1] The Former Seventh Division of the Court of Appeals was impleaded as a respondent but the Court excluded it pursuant to Section 4, Rule 45 of the Rules of Court.

[2] Denied with finality in a resolution dated November 11, 2008. Rollo, p. 401.

[3] Administrative Order No. 7, dated April 10, 1990.

[4] Buencamino v. CA, G.R. No. 175895, 12 April 2007, 520 SCRA 797.

[5]G.R. No. 150274, 4 August 2006, 497 SCRA 626, 636-637.

[6] Supra note 3.

[7] See Section 3, Rule V, Rules of Procedure of the Office of the Ombudsman.

[8] RA 6770.

[9]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)

[10] Supra note 4.

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