



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

DR. ZENAIDA P. PIA,
Petitioner,

G.R. No. 172334

Present:

-versus-

SERENO, C.J.,
Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, JJ.

HON. MARGARITO P. GERVACIO, JR., Overall Deputy Ombudsman, Formerly Acting Ombudsman, Office of the Ombudsman, **Dr. OFELIA M. CARAGUE,** Formerly PUP President, **Dr. ROMAN R. DANNUG,** Formerly Dean, College of Economics, Finance and Politics (CEFP), now Associate Professor, CEFP Polytechnic University of the Philippines (PUP), Sta. Mesa, Manila,
Respondents.

Promulgated:

JUN 05 2013

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DECISION

REYES, J.:

This resolves the Petition for Review on *Certiorari*¹ filed by petitioner Zenaida P. Pia (Pia) to assail the following:

- (1) the Decision² dated June 29, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 75648, which affirmed the Office of the Ombudsman's decision finding Pia guilty of Conduct Prejudicial to the Best Interest of the Service; and

¹ *Rollo*, pp. 9-32.

² Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Roberto A. Barrios and Vicente S. E. Veloso, concurring; *id.* at 38-57.

- (2) the CA Resolution³ dated March 28, 2006, which denied Pia's motion for reconsideration of the Decision dated June 29, 2005.

The Antecedents

The petition stems from a complaint⁴ filed in December 2001 by respondent Dr. Roman Dannug (Dannug), in his capacity as Dean of the College of Economics, Finance and Politics (CEFP) of the Polytechnic University of the Philippines (PUP), against Pia who was then a professor at PUP. Dannug claimed that Pia was directly selling to her students a book entitled "Organization Development Research Papers" at a price of ₱120.00 per copy, in violation of Section 3, Article X of the Code of Ethics for Professional Teachers, which reads:

No teacher shall act, directly or indirectly, as agents of, or be financially interested in any commercial venture, the business of which is to furnish textbooks and other printed matter, stationery, athletic goods, school uniforms, and other materials, in the purchase and disposal of which the teacher's official influence can be exercised, x x x.⁵

Pia's act was also claimed to be violative of several memoranda issued by PUP officials against the sale of books, articles or any items by any faculty member directly to their students.⁶ Furthermore, the books were believed to be overpriced at ₱120.00 each, being mere bound machine copies of reports and research papers that were submitted by Pia's former students. Dannug attached to his complaint a list of the students who were allegedly made to buy copies of the book.

For her defense, Pia argued that her students were not forced to buy copies of the book, even submitting a certification to that effect from students who had bought from her. Pia also claimed that the list of students attached to the complaint was a mere attendance sheet of Dannug's students in a research writing class, and not as Dannug claimed it to be.

After preliminary conference and the parties' submission of their respective memoranda, the case was deemed submitted for resolution.

³ Id. at 35-36.

⁴ Docketed as OMB-C-A-02-0022-A.

⁵ *Rollo*, p. 59.

⁶ Id.

The Ruling of the Ombudsman

In the Office of the Ombudsman's Decision⁷ dated September 27, 2002, signed by Graft Investigation Officer II Joselito P. Fangon and approved by herein respondent Margarito P. Gervacio, Jr. as the Overall Deputy Ombudsman and Acting Ombudsman, Pia was declared guilty of Conduct Prejudicial to the Best Interest of the Service. It was explained:

It is of no moment that the students were not forced to buy the book. It stands to reason that the respondent [Pia], as teacher, exercises moral ascendancy over her students, such that an offer made by her directed to the students, to buy something from her, operates as a compulsion which the students [cannot] easily avoid. x x x.

The actuation of the respondent (herein petitioner) appears to constitute a betrayal of the Code of Ethics for Professional Teachers which amounts to **Conduct Prejudicial to the Best Interest of the Service**.⁸ (Emphasis ours)

Thus, the dispositive portion of the Office of the Ombudsman's decision reads:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered finding respondent **ZENAIDA P. PIA, GUILTY of Conduct Prejudicial to the Best Interest of the Service**, for which the **PENALTY of SUSPENSION FOR SIX (6) MONTHS WITHOUT PAY** is hereby imposed, pursuant to Section 10, Rule III of Administrative Order No. 07, in relation to Section 25 of Republic Act No. 6770.

The Honorable, the University President, Polytechnic University of the Philippines, Sta. Mesa, Manila, is hereby furnished a copy of this Decision for its implementation in accordance with law, with the directive to inform this Office of the action taken thereon.

SO RESOLVED.⁹

Pia's motion for reconsideration was denied *via* an Order¹⁰ dated November 20, 2002.

Feeling aggrieved, Pia filed a petition for review with the CA. Even before she could have filed the petition, respondents Dannug and Dr. Ofelia M. Carague (Carague), former PUP President, implemented the penalty of suspension that was imposed by the Office of Ombudsman.

⁷ Id. at 58-76.

⁸ Id. at 73.

⁹ Id. at 74-76.

¹⁰ Id. at 77-84.

The Ruling of the CA

On June 29, 2005, the CA rendered its Decision¹¹ affirming the rulings of the Office of the Ombudsman. For the appellate court, the Office of the Ombudsman has sufficiently established by substantial evidence the culpability of Pia. In addition, the CA explained that the appeal was dismissible on the ground that the Office of the Ombudsman's decision and order had already attained finality when the petition for review was filed with it by Pia on March 20, 2003.

Pia's motion for reconsideration was denied. Hence, this petition for review.

The Issues

From Pia's arguments, the main issues for the Court's determination are:

- (1) Whether or not Pia's petition with the CA was filed on time;
- (2) Whether or not the CA erred in affirming the Office of the Ombudsman's decision finding Pia guilty of Conduct Prejudicial to the Best Interest of the Service; and
- (3) Whether or not Dannug and Carague erred in implementing the Office of the Ombudsman's decision during the time that Pia's period to appeal had not yet expired.

This Court's Ruling

Reglementary period for petitions for review with the CA

In the assailed CA decision, the appellate court declared that the decision of the Office of the Ombudsman was already final and executory at the time that the petition for review was filed by Pia. It explained:

¹¹ Id. at 38-57.

The petitioner did not controvert the contention that she received the denial of her motion for reconsideration of the questioned decision on February 18, 2003. Under Sec. 7, Rule III of Administrative Order No. 14-A, Series of 2000, which prescribes the Rules of Procedure of the Office of the Ombudsman, it allows the aggrieved party to appeal the decision of the said Office (in administrative disciplinary cases to the Court of Appeals) within ten (10) days from receipt of the written notice of the decision or order denying the motion for reconsideration. Thus, in accordance with the said procedural rule, the petitioner has only until February 28, 2003 to file her petition for review with this Court as enunciated in the *Fabian* case.

Consequently, on her last day to appeal on February 28, 2003, the petitioner filed a motion for extension of time (for an additional fifteen [15] days) to file the said petition or until March 17, 2003. It may be pertinent to state here that the records are bereft of evidence on the status of the said motion whether the same was granted or denied. However, even assuming that the said motion was favorably acted upon in petitioner's favor, her belated filing of her appeal on March 20, 2003 is clearly beyond the reglementary period provided for by law if we consider in the computation the grant of the 15-day extension period as requested in her motion.¹² (Citations omitted)

We reverse such finding of the CA.

In *Fabian v. Hon. Desierto*,¹³ the Court declared unconstitutional the provisions in Republic Act (R.A.) No. 6770, otherwise known as The Ombudsman Act of 1989, that mandates a direct appeal to the Supreme Court from the decisions of the Office of the Ombudsman in administrative cases. We then declared categorically that "appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the [CA] under the provisions of Rule 43."¹⁴

Consistent with the foregoing jurisprudence, Pia claims that her petition for review was timely filed, as her motion for extension of time to file the petition with the CA was filed on February 24, 2003; and she asked through the said motion for an additional period of 15 days from the expiration of her original reglementary period of 15 days within which to file a petition for review. The CA, however, adopted the view of the Office of the Solicitor General (OSG), counsel for respondent Overall Deputy Ombudsman, that the petition with the CA should have been filed within ten days from Pia's notice of her motion for reconsideration's denial, as required under the Office of the Ombudsman's Administrative Order No. 14-A, Series of 2000.

¹² Id. at 51-52.

¹³ 356 Phil. 787 (1998).

¹⁴ Id. at 808.

The Court agrees with Pia. As the Court explained in *Dimagiba v. Espartero*,¹⁵ “[c]onsidering that the *Fabian* ruling stated that Rule 43 of the Rules of Court should be the proper mode of appeal from an Ombudsman decision in administrative cases, and Section 4 of Rule 43 provides for a reglementary period of 15 days from receipt of the order appealed from, a motion for extension of time to file petition within the 15-day period is considered timely filed.”¹⁶ Between the 10-day period under R.A. No. 6770 and Section 4 of Rule 43, the latter shall apply.

In the present case, Pia filed with the CA her motion for extension of time within the allowed 15-day period. She received a copy of the Ombudsman’s order on February 18, 2003, then filed her motion on February 24, 2003. Equally important is the fact that her petition for review was filed within the period asked for in her motion, which was 15 days from the expiration of the original period ending March 5, 2003, or until March 20, 2003.

Although the records do not include a particular CA resolution that granted Pia’s motion for extension of time, this may be reasonably deduced from the appellate court’s reconsideration of an earlier dismissal of the petition, coupled with its issuance of a temporary restraining order against the implementation of the Ombudsman’s decision that carried a penalty of Pia’s suspension.¹⁷

**On the finding that Pia is guilty of
Conduct Prejudicial to the Best
Interest of the Service**

The petition, however, fails on the merits.

In administrative cases, the quantum of evidence necessary to find an individual administratively liable is substantial evidence. Section 5, Rule 133 of the Rules of Court defines substantial evidence as that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.¹⁸

The settled rule provides that factual findings of the Office of the Ombudsman are conclusive when supported by substantial evidence and are accorded due respect and weight, especially when they are affirmed by the

¹⁵ G.R. No. 154952, July 16, 2012, 676 SCRA 420.

¹⁶ Id. at 434.

¹⁷ *Rollo*, p. 115.

¹⁸ *Office of the Ombudsman (Visayas) v. Zaldarriaga*, G.R. No. 175349, June 22, 2010, 621 SCRA 373, 379-380.

CA.¹⁹ Furthermore, only questions of law may be raised in petitions filed under Rule 45 of the Rules of Court; the Court is not a trier of facts and it is not its function to review evidence on record and assess the probative weight thereof.²⁰

Both the Office of the Ombudsman and the CA have sufficiently identified Pia's act that constitutes Conduct Prejudicial to the Best Interest of the Service. Although Pia questions the weight that should be accorded to the list of students attached to the complaint of Dannug, it is significant that she readily admitted having directly sold copies of the book/compilation "Organization Development Research Papers" to her students, an act that is proscribed among PUP faculty members, by the submission of a certification from her students claiming that they were not forced to buy copies of the book.

In asking for the complaint's dismissal, Pia argues that she was not covered by the Code of Ethics of Professional Teachers which was cited by the Office of the Ombudsman to support the decision rendered against her. She contends that the Code only applies to teachers in educational institutions at the pre-school, primary, elementary and secondary levels, but not to professors in the tertiary level.

Our review of the CA decision indicates that such argument has already been sustained by the appellate court. Nonetheless, the finding of Conduct Prejudicial to the Best Interest of the Service remains justified given the standards that are required from Pia as a faculty member in a state-run university. The appellate court correctly explained:

[W]e sustain the petitioner's contention that she is not covered under R.A. No. 7836 (The Philippine Teachers Professionalization Act of 1994) relative to the definition of "teachers" therein. As we have earlier stated, **the culpability of the petitioner is anchored on her irregular and unjustifiable act being complained of, in violation of an existing regulation of a state-run university (the PUP, in this case) where she is currently employed. Additionally, the Code of Conduct and Ethical Standards for Public Officials and Employees enunciates the State policy of promoting a high standard of ethics and utmost responsibility in the public service.**²¹ (Emphasis ours)

In *Avenido v. Civil Service Commission*,²² we explained that acts may constitute Conduct Prejudicial to the Best Interest of the Service as long as

¹⁹ *Tolentino v. Loyola*, G.R. No. 153809, July 27, 2011, 654 SCRA 420, 434.

²⁰ *Salumbides, Jr. v. Office of the Ombudsman*, G.R. No. 180917, April 23, 2010, 619 SCRA 313, 328.

²¹ *Rollo*, pp. 49-50.

²² G.R. No. 177666, April 30, 2008, 553 SCRA 711.

they tarnish the image and integrity of his/her public office. The Code of Conduct and Ethical Standards for Public Officials and Employees (R.A. No. 6713) enunciates, *inter alia*, the State policy of promoting a high standard of ethics and utmost responsibility in the public service. Section 4(c) of the Code commands that “[public officials and employees] shall at all times respect the rights of others, and shall refrain from doing acts contrary to law, good morals, good customs, public policy, public order, public safety and public interest.”²³

In affirming the finding that the act imputed upon Pia amounts to Conduct Prejudicial to the Best Interest of the Service, we take into account her moral ascendancy over her students. Dannug’s complaint also indicates that the book/compilation was overpriced, and that the students’ refusal to buy the book/compilation could result in their failure in the subject. In addition, Pia was found to have directly violated memoranda issued by officials of PUP. It then appeared that she allowed her personal interests to adversely affect the proper performance of her official functions, to the disadvantage of her students and in patent violation of a policy in the state-run university where she was teaching.

The certification that was allegedly executed by Pia’s students in her defense deserves scant consideration: *first*, her moral ascendancy as a professor could have easily allowed her to obtain such certification, regardless of the circumstances that attended her students’ purchase of the book/compilation; and *second*, the certification in fact confirms that she directly sold the book/compilation to her students, in violation of the prohibition imposed by the PUP officials.

Pia’s argument that she was not properly charged with the offense for which she was found guilty of committing still does not warrant her exoneration from the offense. In *Avenido*, we emphasized that the designation of the offense or offenses with which a person is charged in an administrative case is not controlling, and one may be found guilty of another offense where the substance of the allegations and evidence presented sufficiently proves one’s guilt.²⁴ Citing the case of *Dadubo v. Civil Service Commission*,²⁵ we held in *Avenido* that the charge against the respondent in an administrative case need not be drafted with the precision of an information in a criminal prosecution. It is sufficient that he is apprised of the substance of the charge against him; what is controlling is the allegation of the acts complained of, not the designation of the offense.²⁶

²³ Id. at 720-721.

²⁴ Id. at 719.

²⁵ G.R. No. 106498, June 28, 1993, 223 SCRA 747.

²⁶ Id. at 754; *supra* note 21, at 719-720.

Considering then that the acts alleged and proved to have been committed by Pia amounts to Conduct Prejudicial to the Best Interest of the Service, and that she has been afforded a full opportunity to present her side and refute the act imputed against her, the Court finds no cogent reason to nullify the ruling made by the CA on Pia's guilt.

Implementation of the ruling of the Office of the Ombudsman

The Court also finds no irregularity in Dannug and Carague's implementation of the rulings of the Office of the Ombudsman, notwithstanding the fact that Pia then still had the remedy of an appeal before the CA.

To support her stance that the Office of the Ombudsman's order of suspension should not have been executed while her period to appeal has not yet lapsed, Pia cites the cases of *Tuzon v. CA*,²⁷ *Lapid v. CA*²⁸ and *Lopez v. CA*.²⁹ Given, however, subsequent jurisprudence on the matter, Pia's argument is misplaced.

A decision of the Office of the Ombudsman is immediately executory even pending appeal. The issue was fully explained by the Court in *Office of the Ombudsman v. Court of Appeals*,³⁰ viz:

In *Lapid v. Court of Appeals*, the Court anchored its ruling mainly on Section 27 of RA 6770, as supported by Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman. The pertinent provisions read:

“Section 27 of RA 6770:

SEC. 27. *Effectivity and Finality of Decisions*.—(1)
All provisional orders at the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:

(1) New evidence has been discovered which materially affects the order, directive or decision;

²⁷ G.R. No. 90107, August 21, 1992, 212 SCRA 739.

²⁸ 390 Phil. 236 (2000).

²⁹ 438 Phil. 351 (2002).

³⁰ G.R. No. 159395, May 7, 2008, 554 SCRA 75.

(2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: *Provided*, That only motion for reconsideration shall be entertained.

Findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive. **Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one month's salary shall be final and unappealable.**

In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for *certiorari* within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require.” (Emphasis supplied)

Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman (AO 07):

Sec. 7. Finality 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 and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for certiorari, shall have been filed by him as prescribed in Section 27 of RA 6770.** (Emphasis supplied)

The Court held in *Lapid v. Court of Appeals* that the Rules of Procedure of the Office of the Ombudsman “mandate that decisions of the Office of the Ombudsman where the penalty imposed is other than public censure or reprimand, suspension of not more than one month salary are still appealable and hence, not final and executory.”

Subsequently, on 17 August 2000, the Ombudsman issued Administrative Order No. 14-A (AO 14-A), amending Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman. The amendment aims to provide uniformity with other disciplining authorities in the execution or implementation of judgments and penalties in administrative disciplinary cases involving public officials and employees. Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by AO 14-A, reads:

“Section 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 and unappealable. In all other cases, the decision may be appealed within ten (10) 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.” (Emphasis supplied)


x x x x

x x x [I]n the 2007 case of *Buencamino v. Court of Appeals*, the primary issue was whether the decision of the Ombudsman suspending petitioner therein from office for six months without pay was immediately executory even pending appeal in the Court of Appeals. The Court held that the pertinent ruling in *Lapid v. Court of Appeals* has already been superseded by the case of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*, which clearly held that decisions of the Ombudsman are immediately executory even pending appeal.³¹ (Citations omitted)

Clearly from the foregoing, Pia’s complaint against Carague and Dannug’s immediate implementation of the penalty of suspension imposed by the Office of the Ombudsman deserves no merit.

WHEREFORE, premises considered, the instant petition is hereby **DENIED**. The Decision dated June 29, 2005 and Resolution dated March 28, 2006 of the Court of Appeals in CA-G.R. SP No. 75648 are **AFFIRMED**.

SO ORDERED.


BIENVENIDO L. REYES
Associate Justice

³¹

Id. at 91-95.

WE CONCUR:



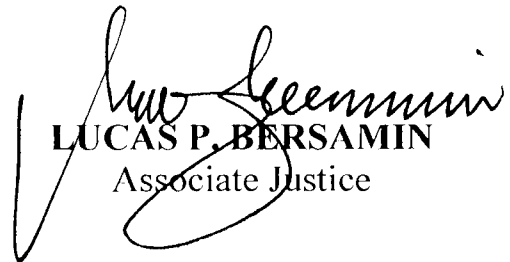
MARIA LOURDES P. A. SERENO

Chief Justice

Chairperson



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



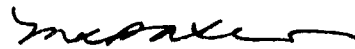
LUCAS P. BERSAMIN
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO

Chief Justice