

FIRST DIVISION

[G.R. Nos. 241576 & 241623, November 03, 2020]

**CECILIA Q. REJAS,* PETITIONER, VS. OFFICE OF THE
OMBUDSMAN, DEPARTMENT OF THE INTERIOR AND LOCAL
GOVERNMENT AND DIOSDADO N. DITONA, REPRESENTED BY
EDWIN N. DITONA, RESPONDENTS.**

DECISION

CAGUIOA, J:

This is a Petition for Review on *Certiorari*^[1] (Petition) under Rule 45 of the 1997 Rules of Civil Procedure assailing the; (1) Decision^[2] dated February 15, 2018 of the Special Twenty-Third Division of the Court of Appeals (CA), Mindanao Station in the consolidated cases of CA-G.R. SP No. 07765-MIN and CA-G.R. SP No. 07826-MIN; and (2) Resolution^[3] dated July 6, 2018 denying petitioner's motion for reconsideration.

The assailed Decision and Resolution affirmed with modification the Decision^[4] dated September 7, 2016 of the Office of the Ombudsman (Ombudsman) and its Order^[5] dated October 28, 2016 denying petitioner's motion for reconsideration, relative to OMB-M-A-12-0201 entitled "*Diosdado N. Ditona vs. Rogelio N. Quiño, et al.*" where petitioner was found administratively liable for grave misconduct and was meted the penalty of dismissal from service.

FACTS

In his Affidavit Complaint^[6] dated June 13, 2012 filed before the Ombudsman, Diosdado Ditona (Ditona) alleged that Rogelio N. Quiño^[7] (Rogelio), the former Municipal Mayor of Manolo Fortich, Bukidnon, approved several appointments of his brother, Antonio N. Quiño, Jr. (Antonio), as Mechanical Shop Foreman. Ditona alleged that these appointments violated the rule on nepotism. He further averred that petitioner, Rogelio's and Antonio's sister, certified the appointments in her capacity as the former Municipal Budget Officer of the Municipality of Manolo Fortich, Bukidnon.^[8] The siblings purportedly conspired to make it appear that the position of Mechanical Shop Foreman is of a higher salary grade (SG 15) when in truth, the *Sangguniang Bayan* of Manolo Fortich, Bukidnon, through Ordinance Nos. 2000-151^[9] and 2001-157,^[10] fixed a lower Salary grade of 11 to the position. Consequently, Antonio received a salary higher than what was provided by law, to the damage and prejudice of the government.^[11] Ditona finally alleged that Antonio falsified his personal data sheet (PDS) by making it appear that he was not related to the appointing or recommending authority.^[12]

In their Joint Counter-Affidavit,^[13] the siblings denied that there was an intention to hide their relationship with Antonio, and that on the contrary, the fact was disclosed right from the beginning.^[14] The position of Mechanical Shop Foreman was likewise contractual and of non-career service, and was thusly excluded from the scope of the prohibition on nepotism under Section 79 of the Local Government Code^[15] (LGC).^[16] The siblings pointed out that the nature of the position involves functions that require the highest degree of trust and confidence between the appointing authority and the appointee.^[17] These functions included:

- [1.]To see to it that the appropriate procedures in the utilization of heavy equipments (*sic*), trucks and service vehicles by the officials and employees of the LGU are strictly observed;
- [2.]Continuously observe, study and implement appropriate measures and procedures to improve or streamline the heavy equipment and motor pool operations and instill the acceptable attitude and mindset of the personnel assigned in the said department;
- [3.]Evaluate the impact, effects and relevance of the adopted measures and improvements in the over-all performance of the said Economic Enterprise Department in relation to the standards set for its efficient and sustainable operation;
- [4.]Report personally and directly to the Chief Executive matters that need to be decided and acted upon by the Mayor including the submittal of his quarterly reports to the Mayor's office;
- [5.]Perform such other functions as maybe directed by the Mayor including the monitoring of unscrupulous or corrupt practices that maybe committed in the said department and recommend appropriate action thereof.^[18] (Emphasis and underscoring omitted)

Petitioner and her brothers also denied that Antonio falsified his PDS, explaining that he answered "No" to the question on having a relative within the third degree of consanguinity or affinity in the national government, but answered "Yes" to the question on having a relative within the third degree of consanguinity or affinity in the local government.^[19]

On the matter of the alleged falsity of the salary grade of Antonio's position, the siblings clarified that they merely relied on the Plantilla of Casual Appointment which was prepared by and originated from the Human Resource Management Office (HRMO). Moreover, the increases in the salary grade were based on the Annual Appropriation Budget submitted by the Executive Department and duly approved by the *Sangguniang Bayan*. As such, the salary increases were based on the Annual Budget Ordinances of the local government unit (LGU). The siblings pointed out that the actual disbursements of salaries and wages for the Heavy Equipment Motorpool Division were well within the Annual Budget for calendar years 2007 to 2012. In fact, these salary increases passed the government audit.^[20]

Petitioner and her brothers maintained that the hiring of Antonio did not cause undue injury to the government, but had even proved beneficial and advantageous to the government considering the 1,544% increase in the annual gross receipts of the heavy equipment operations from the calendar years 2006 to 2011.^[21]

In its Decision^[22] dated September 7, 2016, the Ombudsman found the charge of nepotism against Rogelio unmeritorious and also dismissed the charge of falsification against Antonio. However, the Ombudsman found Rogelio and petitioner liable for grave misconduct. The dispositive portion of the Ombudsman's Decision reads:

WHEREFORE, finding substantial evidence, respondents **ROGELIO N. QUIÑO**, Mayor (SG 27) and **CECILIA QUIÑO-REJAS**, Municipal Budget Officer (SG 24), both of the local government of Manolo Fortich, Bukidnon, are administratively liable for **GRAVE MISCONDUCT** and are meted the penalty of **DISMISSAL FROM THE SERVICE**, together with the corresponding accessory penalties of forfeiture of retirement benefits, cancellation of eligibility, bar from taking civil service examinations and perpetual disqualification from holding any public office.

In the event that the **principal penalty of dismissal can no longer be enforced** due to respondents' separation from the service, retirement or any form of severance, it shall be converted into a **Fine** in the amount equivalent to their basic salary for **one (1) year**, payable to the Office of the Ombudsman, and may be deducted from terminal leave benefits or any receivable from the government, or respondents may opt to directly pay the fine.

The administrative complaint against respondent **ANTONIO QUIÑO, JR.** [,] Mechanical Shop Foreman (SG 11), also of the local government of Manolo Fortich, Bukidnon, is hereby **DISMISSED** for lack of substantial evidence.

SO ORDERED.^[23]

In holding petitioner and Rogelio liable for grave misconduct, the Ombudsman found their act of signing and approving the Plantilla of Casual Appointments which upgraded Antonio's position as Mechanical Shop Foreman from salary grade 15 to 18, and of certifying the appointments and the existence of an appropriation legally made for the purpose, respectively, to have "transgressed some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."^[24] The acts were also considered grave because they were "committed with the element of corruption, a willful intent to violate the law, and disregard established rules, *i.e.*, the rules on compensation and position classification under [Republic Act (RA)] No. 6758 and [Department of Budget and Management (DBM) C]irculars, and to favor their sibling Antonio."^[25] The Ombudsman was unconvinced with their claim about relying on the HRMO which prepared the documents in light of the fact that it was only Antonio who benefited from the salary upgrading.^[26]

As for Antonio, the Ombudsman dismissed the charges against him because he

merely benefited from the salary upgrade as the appointee. There was also no merit in the charge of falsification as he, in fact, answered "Yes" to the question on whether he was related to the appointing authority within the fourth civil degree of affinity or consanguinity.^[27]

Petitioner and Rogelio moved for the reconsideration of the Decision but the same was denied in the Ombudsman's Order^[28] dated October 28, 2016.

Thereafter, petitioner and Rogelio filed two petitions before the CA under Rule 65 and Rule 43 of the Rules of Court, which were consolidated by the appellate court. However, considering that the two petitions involved different modes of appeal which are mutually exclusive, the CA dismissed the petition filed under Rule 65 (CA-G.R SP No. 07765-MIN) for being a superfluity.^[29]

The CA ruled that petitioner and Rogelio were guilty of grave misconduct for granting unto themselves the determination of the salary increase of Antonio, in contravention of Sections 81 and 325 of the LGC and *Sangguniang Bayan* Ordinance Nos. 2000-151 and 2001-157. Petitioner cannot likewise evade liability as she, being the local budget officer, ought to know the budget that can only be allocated for Antonio's position.^[30] These findings, notwithstanding, the CA held that the subsequent re-elections of Rogelio as Municipal Mayor in 2013 and as Vice-Governor in 2016 operated as a condonation to his offenses that happened in 2009 to 2012.^[31] Thus, the CA was constrained to reverse the ruling of the Ombudsman insofar as he was concerned.^[32] The dispositive portion of the CA Decision dated February 15, 2018 reads:

WHEREFORE, foregoing circumstances, this Court **RESOLVES** to:

1. **DISMISS** the *Petition for Certiorari* in CA-G.R. SP No. 07765-MIN; and
2. **PARTLY GRANT** the *Petition for Review* in CA-G.R. SP No. 07826-MIN. Accordingly, the assailed *Decision* dated 07 September 2016 and *Order* dated 28 October 2016 issued by the Office of the Ombudsman in OMB-M-A-12-0201, insofar as it held petitioner Rogelio N. Quiño administratively liable for Grave Misconduct, in the light of jurisprudence, are **REVERSED and SET ASIDE**. All other dispositions in the assailed *Decision* and *Order* are hereby **AFFIRMED**.

SO ORDERED.^[33]

Petitioner filed a motion for reconsideration of the CA Decision, but the same was denied in the assailed Resolution of the CA dated July 6, 2018.

PETITION BEFORE THE COURT

In her Petition, petitioner avers in the main that the CA erred in holding her liable as the former Municipal Budget Officer for grave misconduct. She insists that her mere certifications as to the availability of appropriations in the Plantilla for Casual Appointments of Antonio did not have anything to do directly with the gradual

increase in his salary grades^[34] and were duly supported by appropriation ordinances duly passed by the *Sangguniang Bayan*.^[35] Petitioner also stresses that these included all the heads of the Economic Enterprise Division of the LGU and not just Antonio.^[36] Hence, she asserts that the CA erred in holding her liable for grave misconduct absent any evidence of corruption, intent to violate the law or flagrant disregard of any established rule.^[37]

Petitioner argues further that the CA erred in holding that the salary adjustments of Antonio were illegal *per se* without considering the actual work he performed as Division Head of the Motorpool and Heavy Equipment Operations. She contends that the designation of Antonio as Mechanical Shop Foreman was just an unfortunate inadvertence, and that since his appointment in 2008, he had always performed functions requiring supervisory skills and experience. Thus, petitioner defends that the salary adjustments were made to conform to Antonio's actual work, functions and duties.^[38]

In its Comment,^[39] the Ombudsman counters that as Municipal Budget Officer, petitioner was aware of Ordinance Nos. 2000-151 and 2001-157 setting the salary grade of a Mechanical Shop Foreman to 11 and she had the duty to comply with these. Instead, she repeatedly participated in increasing the salary grade of her brother to 15 or 18.^[40] The Ombudsman is unconvinced about petitioner's defense that her participation was limited to certifying the existence of appropriations since her functions included being in charge of the Municipal Budget Office and being part of the Local Finance Committee. These functions meant reviewing the budget proposal for the Municipality's Economic Enterprise that included the component for salaries for the Motorpool and Heavy Equipment Unit, and assisting her brother Rogelio in preparing said proposed budget or the Annual Appropriation Budget submitted by the Executive Department.^[41]

The Department of the Interior and Local Government (DILG) also filed its Consolidated Comment^[42] which chiefly adopts the arguments of the Ombudsman in its Comment. It adds that petitioner continues to insist that the upgrading was actually an adjustment of Antonio's salary to conform to his actual functions in accordance with "equal pay for equal work." However, a simple principle and policy is not executory on its own and must, nonetheless, work within the legal framework. Thus, considering that petitioner failed to procure the approval of the DBM on the salary increases of Antonio as required by law, the DILG agrees that the finding of grave misconduct against petitioner is justified.^[43]

Petitioner filed her Consolidated Reply^[44] which basically repleads her arguments in her Petition.

ISSUE

The sole issue to be resolved here is whether the CA erred in upholding the finding of the Ombudsman of grave misconduct against petitioner.

RULING OF THE COURT

The Petition is meritorious.