

## SECOND DIVISION

[ G.R. No. 172635, October 20, 2010 ]

### OFFICE OF THE OMBUDSMAN, PETITIONER, VS. PEDRO DELIJERO, JR., RESPONDENT.

#### D E C I S I O N

##### PERALTA, J.:

Before this Court is a petition for review on *certiorari*,<sup>[1]</sup> under Rule 45 of the Rules of Court, seeking to set aside the June 7, 2005 Decision<sup>[2]</sup> and May 2, 2006 Resolution<sup>[3]</sup> of the Court of Appeals (CA), in CA-G.R. SP No. 00017.

The facts of the case, as culled from the records, are as follows:

Respondent Pedro Delijero, Jr., was a public school teacher at the Burauen Comprehensive National High School, Burauen, Leyte and was administratively charged for Grave Misconduct.

A complaint against respondent was filed before petitioner Office of the Ombudsman as a Request for Assistance (RAS) from the President of the Burauen Watchdog Committee for Good Government. Philip Camiguing, Graft Prevention & Control Officer I, submitted his final evaluation report and recommended that the RAS be upgraded into an administrative and criminal complaint against respondent.<sup>[4]</sup>

The complainant, Cleofas P. dela Cruz, was the mother of the alleged victim Myra dela Cruz (Myra). At the time of the incident, Myra was only 12 years old and a first year high school student at the Burauen Comprehensive National High School. Respondent, on the other hand, was Myra's 52-year-old Mathematics teacher.<sup>[5]</sup>

Sometime in May 2003, complainant learned from her cousin that respondent was courting her daughter Myra. Complainant then immediately confronted Myra, who admitted having received from respondent several handwritten love letters, a Valentine's card and Two Hundred Pesos as allowance.<sup>[6]</sup>

In her Affidavit,<sup>[7]</sup> Myra gave the following declarations, to wit:

x x x x

2. Sometime on August 12, 2002, our Mathematics teacher, Mr. Pedro Delijero, started courting me, by sending love notes, valentines cards thru my classmates Angelyn del Pilar, Maricel Gayanes, Irene Cajote;

3. Last April 7, 2003, at about 10:00 a.m., more or less, my math

teacher, Mr. Pedro Delijero, who was inside his room, [called] my attention, and as I got inside the said room, he abruptly closed the open door, thereby, immediately kissed my cheek, out of fear, I pushed him away from me, and I rushed to the door of said room and went outside.

[8]

Maricel Gayanes, Irene Cajote and Angelyn del Pilar, all classmates of Myra, submitted their Joint Affidavit<sup>[9]</sup> the pertinent portions of which read:

x x x x

In several instances, which we cannot anymore recall the dates, we were requested by our Math teacher Mr. Pedro Delijero, Jr. to handed the letters to my classmate Myra Dela Cruz,

4. We have the knowledge of all the letters sent to her, as "LOVE LETTERS" as it was confirmed by our classmate Myra dela Cruz, that those letters which we brought to her, were all love letters from our Math teacher, Mr. Pedro Delijero, since Mr. Delijero is courting her, same were true with regard to Valentine's Cards, as well as the 2 pieces of One Hundred Peso Bill (P100.00) being inserted at the intermediate pad paper, x x x

Respondent submitted a Counter-Affidavit<sup>[10]</sup> in his defense. Respondent denied kissing Myra in the morning of April 7, 2003. Moreover, respondent claimed that Myra fell in love with him and wrote him love letters. Respondent claimed that he was merely forced to answer her letters as she threatened him that she would kill herself if he would not answer her and reciprocate her love. Lastly, respondent claimed that their relationship was merely platonic.

Petitioner called the parties to a preliminary conference and, after which, ordered them to submit their respective position papers.

Respondent, however, did not submit a position paper but instead submitted a Manifestation<sup>[11]</sup> stating that the administrative aspect of the complaint was likewise the subject of a complaint filed by complainant before the Office of the Regional Director, Department of Education, Regional Office VIII, Palo, Leyte.

On May 17, 2004, petitioner rendered a Decision<sup>[12]</sup> finding respondent guilty of Grave Misconduct and meted him the penalty of dismissal, the dispositive portion of which reads:

WHEREFORE, premises considered, this Office finds respondent PEDRO DELIJERO, JR. guilty of Grave Misconduct and, pursuant to Section 46 (b) of the Revised Administrative Code of 1987, he is, therefore, meted the penalty of DISMISSAL from public service, forfeiture of all benefits and perpetual disqualification to hold public office.

SO DECIDED.<sup>[13]</sup>

Respondent moved for a reconsideration<sup>[14]</sup> of petitioner's decision. Respondent asked that the order of dismissal be reconsidered and, instead, be changed to a penalty of suspension. On May 14, 2004, petitioner issued an Order<sup>[15]</sup> denying respondent's motion for reconsideration.

Aggrieved, respondent then appealed to the CA.

On June 7, 2005, the CA rendered a Decision ruling in favor of respondent, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered by us GRANTING the petition filed in this case and SETTING ASIDE the Decision dated May 17, 2004 and the Order dated July 30, 2004 rendered and issued by the Office of the Ombudsman in OMB-VIS-A-03-0506-4.

IT IS SO ORDERED.<sup>[16]</sup>

The CA, without ruling on the issues raised by respondent, instead tackled the issue of jurisdiction *motu proprio*. The CA ruled that petitioner had no jurisdiction to investigate the complaint filed before it as Republic Act No. 4670 (RA 4670), the Magna Carta for Public School Teachers, specifically covers and governs administrative proceedings involving public school teachers. The CA held that petitioner should have immediately dismissed the case after respondent had informed it, through a manifestation, of the pendency of an administrative complaint before the DECS. Moreover, the CA ruled that even assuming *arguendo* that petitioner had the power to investigate the complaint, it still had no power to directly impose sanctions against respondent as its power is limited to only recommend the appropriate sanctions, but not to directly impose the same.

Petitioner then filed an Omnibus Motion to Intervene and for Reconsideration<sup>[17]</sup> assailing the Decision of the CA. On May 2, 2006, the CA issued a Resolution denying petitioner's motion.

Hence, herein petition, with petitioner raising the following issues for this Court's resolution, to wit:

## I.

THE OFFICE OF THE OMBUDSMAN HAS FULL AND COMPLETE ADMINISTRATIVE DISCIPLINARY AUTHORITY OVER PUBLIC SCHOOL TEACHERS, WHICH AUTHORITY IS CONCURRENT WITH OTHER DISCIPLINING AUTHORITIES SANCTIONED BY NO LESS THAN REPUBLIC ACT NO. 4670, OTHERWISE KNOWN AS "THE MAGNA CARTA FOR PUBLIC SCHOOL TEACHERS," AND THE CIVIL SERVICE LAW (PD 807, BOOK V OF

EO 292).

## II.

SECTION 9 OF REPUBLIC ACT NO. 4670 (MAGNA CARTA FOR PUBLIC SCHOOL TEACHERS) HAS NOT ADDED PUBLIC SCHOOL TEACHERS TO THE LIST OF SPECIAL PRIVILEGED CLASSES OF PUBLIC SERVANTS EXEMPTED FROM THE OMBUDSMAN'S ADMINISTRATIVE DISCIPLINARY AUTHORITY UNDER THE 1987 CONSTITUTION, AND ANY SUCH INTERPRETATION SUFFERS FROM THE VICE OF UNCONSTITUTIONALITY.

## III.

THE ISSUE OF WHETHER OR NOT THE OMBUDSMAN HAS THE AUTHORITY TO DETERMINE THE ADMINISTRATIVE LIABILITY OF AN ERRING PUBLIC OFFICIAL OR EMPLOYEE, AND TO DIRECT AND COMPEL THE HEAD OF THE CONCERNED OFFICE OR AGENCY TO IMPLEMENT THE PENALTY IMPOSED, HAS ALREADY BEEN SETTLED BY THE HONORABLE COURT IN THE CASE OF LEDESMA VS COURT OF APPEALS, ET AL., 465 SCRA 437 (2005).<sup>[18]</sup>

The petition is meritorious.

This Court shall jointly discuss the first and second issues as the same are interrelated. Petitioner mainly argues that its administrative disciplinary authority over public school teachers is concurrent with the Department of Education, Culture and Sports (DECS) disciplining authority.

Petitioner is correct. The issue is not novel.

In *Office of the Ombudsman v. Medrano*,<sup>[19]</sup> (*Medrano*) this Court ruled that the administrative disciplinary authority of the Ombudsman over a public school teacher is not an exclusive power but is concurrent with the proper committee of the DECS, to wit:

In resolving the second issue - whether petitioner has jurisdiction over the administrative complaint against respondent - it is necessary to examine the source, nature and extent of the power and authority of the Ombudsman *vis-à-vis* the provisions of the *Magna Carta for Public School Teachers*.

Section 5, Article XI of the Constitution "created the independent Office of the Ombudsman." Hailed as the "protectors of the people," the Ombudsman and his Deputies are bestowed with overreaching authority, powers, functions, and duties to act on complaints against public officials and employees, as provided in Sections 12 and 13 thereof, thus:

Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision,

agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

Sec. 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient;

(2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties;

(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith;

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action;

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;

(6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence;

(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency; and

(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law. (Underscoring supplied)

The above enumeration of the Ombudsman's far-reaching powers is not exclusive as the framers of the Constitution gave Congress the leeway to prescribe, by subsequent legislation, additional powers, functions or duties to the Ombudsman, as mandated in Section 13(8), quoted above.

Pursuant to the constitutional command, Congress enacted R.A. No. 6770 (*The Ombudsman Act of 1989*) providing for the functional, structural