

## SECOND DIVISION

[ G.R. No. 154652, August 14, 2009 ]

**PRUDENCIO M. REYES, JR., PETITIONER, VS. SIMPLICIO C. BELISARIO AND EMMANUEL S. MALICDEM, RESPONDENTS.**

### D E C I S I O N

**BRION, J.:**

This petition for review on *certiorari*<sup>[1]</sup> challenges the Court of Appeals (CA) decision of November 27, 2001<sup>[2]</sup> and resolution of August 1, 2002<sup>[3]</sup> that commonly reversed the Office of the Ombudsman Decision of July 19, 2000.<sup>[4]</sup> The petitioner imputes error on the CA for entertaining the respondents' appeal of the Ombudsman's decision, and for the reversal that followed. He maintains that the Ombudsman's decision was final and unappealable under Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman (the *Ombudsman Rules*)<sup>[5]</sup> and the CA should not have entertained it on appeal.

### THE FACTS

The factual antecedents, based on the records before us, are summarized below.

On March 3, 2000, respondents Deputy Administrators Simplicio Belisario, Jr. and Emmanuel B. Malicdem<sup>[6]</sup> (*respondents*), along with Daniel Landingin and Rodolfo S. De Jesus, all officers of the Local Water Utilities Administration (LWUA), filed before the Office of the Ombudsman a ***criminal complaint*** against LWUA Administrator Prudencio M. Reyes, Jr. (*petitioner*) for **violation of Section 3(e) of Republic Act No. 3019**, or the Anti-Graft and Corrupt Practices Act.

On March 16, 2000, or only 13 days after the filing of the graft charge, the petitioner issued Office Order No. 69 **reassigning** respondents together with De Jesus from the offices they then held to the Office of the Administrator. Supposedly, the reassigned officers were to act as a core group of a LWUA Task Force and their specific assignments were to be given by petitioner; Officers-in-Charge (*OICs*) were designated for the offices they vacated.

The following day, March 17, 2000 - a Friday, the OIC for Administration issued a directive to the Magilas Security Agency to **bar the respondents from using the rooms and facilities** they occupied prior to their reassignments.

On Monday, March 20, 2000, the petitioner, through Office Order No. 82, further directed the respondents to **"vacate [their] offices and remove [their] personal belongings and transfer the same to the former PROFUND Office which has been designated as the Office of the Special Task Force."**

On March 24, 2000, Atty. Arnaldo M. Espinas, LWUA corporate legal counsel, sought the opinion of the Civil Service Commission (CSC) regarding the regularity of the reassignments of respondents and of De Jesus.

On March 30, 2000, the petitioner, *via* Office Order No. 99, directed the respondents to **"desist in performing and exercising the functions and activities pertaining to [their] previous positions" and relieved them of their designations or assignments as 6<sup>th</sup> Member and interim Directors of the Water Districts under their responsibility. To implement this latest Office Order, and in the respondents' absence, entry was effected into their respective rooms with the help of police officers; their room locks were replaced with new ones; and their cabinet drawers were sealed with tapes.**  
[7]

The CSC responded on April 3, 2000 through a **legal opinion** (*CSC legal opinion*) issued by Assistant Commissioner Adelina B. Sarmiento. It categorically ruled that the reassignments were not in order, were tainted with bad faith, and constituted constructive dismissal.<sup>[8]</sup> The legal opinion stated:

Worthy of note is the provision of Section 6a of CSC MC No. 40, s. 1998 which provides that:

a. Reassignment - movement of an employee from one organizational unit to another in the same department or agency which does not involve a reduction in rank, status or salary. If reassignment is without the consent of the employee being reassigned it shall be allowed only for a maximum period of one year. Reassignment is presumed to be regular and made in the interest of public service unless proven otherwise or if it constitutes constructive dismissal.

On the basis thereof, although the reassignment is presumed regular and made in the interest of public service, there is an iota of **bad faith** attendant to the herein case evidenced by the fact that the reassignment was issued barely ten days after the reassigned officials filed a criminal complaint against the Administrator for violation of the Anti-Graft and Corrupt Practices Act. Moreover, while the reassigned officials used to head their specific departments, being Deputy Administrators at that, their reassignment resulted to a **diminution of their respective ranks.** To apply the ruling of the Court of Appeals in the *Fernandez* case to the herein case, it is clear that there was such a diminution in rank because the reassignment order "did not state any justifiable reason for the reassignment, has no specificity as to the time, functions, duties and responsibilities, making it a floating assignment, and removes from their supervision employees who are part of their staff and subordinates." And more importantly, the recent development wherein the reassigned officials were directed to desist from performing and exercising the functions of their respective positions constituted **constructive**

**dismissal** x x x.

x x x (Emphasis supplied.)

On April 13, 2000, the respondents filed before the Office of the Ombudsman an **administrative complaint**<sup>[9]</sup> for Oppression and Harassment against the petitioner and the OICs. The petitioner duly filed a counter-affidavit raising as defense his authority to terminate the respondents' employment and forum shopping. The petitioner denied as well that force and intimidation were used in taking over the respondents' offices.

The Office of the Ombudsman resolved the administrative case through a decision dated July 19, 2000.<sup>[10]</sup> The Ombudsman **desisted from ruling on the validity of the respondents' reassignments, acknowledging the primary jurisdiction of the CSC over the issue:**

*The CSC is the central personnel agency of the government and as such it is the Office tasked with the duty of rendering opinions and rulings*

*on all personnel and other civil service matters which shall be binding on all heads of departments, offices and agencies. x x x.*

Hence, **this Office can hardly arrogate unto itself the task of resolving the said issue.** As stated by the Supreme Court, the doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence. x x x (Emphasis supplied.)

but at the same time denied weight to the CSC legal opinion, contending that it was **"not a final and categorical ruling"** on the validity of the reassignments. On this premise, the Ombudsman declared that the reassignments enjoyed the presumption of regularity and were thus considered valid. For this reason and for lack of evidence of force or intimidation on the part of the petitioner and co-defendant OICs in the implementation of the reassignments, the Ombudsman exonerated the petitioner and his co-defendants and dismissed the administrative case against them.

Meanwhile, the CSC *en banc* rendered **Resolution No. 001729**<sup>[11]</sup> dated July 26, 2000 **fully affirming the CSC opinion** earlier given by Asst. Commissioner Sarmiento. By this action, the CSC *en banc* declared the reassignments invalid, tainted with bad faith, and constitutive of the respondents' constructive dismissal. The CSC *en banc* emphasized that **the LWUA Administrator has no authority under the law to issue the questioned reassignment order**, and ordered the respondents' reinstatement.

The petitioner responded by filing a motion for reconsideration of CSC Resolution No. 001729 and thus avoided the implementation of the respondents' reinstatement.

In the administrative case before the Ombudsman, the respondents moved for the

reconsideration of the Ombudsman's 28 July 2000 decision, attaching to their motion a copy of CSC Resolution No. 001729. Nevertheless, the Ombudsman denied the requested reconsideration,<sup>[12]</sup> stressing that CSC Resolution No. 001729 was not yet final in view of the petitioner's pending motion for reconsideration. The pertinent part of the Ombudsman resolution of denial reads:

While it is true that the CSC en banc thru the aforecited resolution appears to have affirmed the earlier opinion of Assistant Commissioner ADELINA B. SARMIENTO that the reassignment of the complainants by respondent REYES is not in order, the same is **not yet final** considering the timely filing before the said Commission of a Motion for Reconsideration by respondent REYES on August 29, 2000 x x x. Certainly, this is **not the final and categorical ruling which this Office had in mind when it issued the questioned DECISION.** (Emphasis supplied.)

The same order expressed that under Section 7, Rule III of the Ombudsman Rules, the Ombudsman's July 28, 2000 decision thus affirmed should now be *final and unappealable*.

The CSC *en banc* denied the petitioner's motion for reconsideration of Resolution No. 001729 through CSC Resolution No. 002348<sup>[13]</sup> dated October 17, 2000, and thus affirmed the illegality of the reassignments and the reassignment order.

On October 31, 2000, the respondents challenged the Ombudsman's rulings through a petition for review<sup>[14]</sup> filed with the CA, citing among others the Ombudsman's **grave abuse of discretion** in issuing its rulings.

The CA ruled in the respondents' favor in its decision of November 27, 2001 and thus reversed the assailed Ombudsman's July 28, 2000 decision.<sup>[15]</sup> The appellate court observed that the "Ombudsman did not decide the [respondents'] complaint for Harassment and Oppression on its merits, but relied on the non-finality of the Resolution of the Civil Service Commission."<sup>[16]</sup> It also found the Ombudsman's decision incongruous, as the Ombudsman recognized the CSC's jurisdiction to determine the legality of the reassignments, but did not pursue this recognition to its logical end; he simply "ignored the legal premises" when he applied the presumption of regularity to the petitioner's reassignment orders and, on this basis, absolved the petitioner and his co-defendants of the administrative charge. To quote the CA rulings on this regard:

[The Ombudsman] was right the first time when it ruled in the assailed Decision that it can "hardly arrogate unto itself the task of resolving the issue" of whether the personnel actions ordered by [the petitioner] against [the respondents] were within the scope of the former's authority. **It correctly ruled that the CSC is tasked with the "duty of rendering opinions and rulings on all personnel and other civil service matters."** It then ruled that "unless there is a final and categorical ruling of the CSC that the reassignment of the complainants by [petitioner] Administrator Reyes is not valid, the

said Order of Reassignment enjoys the presumption of regularity."

Unfortunately, however, without pursuing its initial ruling to its logical conclusion, the Ombudsman ultimately ignored the legal premises presented before it and acted to absolve the [petitioner and his co-defendants], thereby sustaining the illegal reassignments of the [complainants], which only the LWUA Board of Trustees as the proper appointing power was authorized to do pursuant to Section 3.1 of Executive Order No. 286, s. 1995. (Emphasis supplied.)

The CA likewise declared that the Ombudsman's exoneration of the petitioner could not have become *final and unappealable* pursuant to Section 7, Rule III of the Ombudsman Rules because it is void for lack of substantial evidentiary basis. Again, to quote the appellate court:

**[W]e cannot consider the Decision of the Ombudsman as valid.** Section 27 of Republic Act 6770 otherwise known as "An Act Providing for the Functional and Structural Organization of the Office of the Ombudsman" provides that **findings of fact by the Office of the Ombudsman when supported by substantial evidence are conclusive.**

**However**, per our examination of the evidence on hand, the findings of fact and conclusion by the Office of the Ombudsman in the questioned Decision are **not supported by substantial evidence**, and in fact, have **deviated from the correct ruling it earlier made as to the proper body to determine the validity of the reassignments of petitioners**, which is the Civil Service Commission. **Consequently such findings are not binding and the decision it rendered has not attained finality.** (Emphasis supplied.)

The appellate court denied the petitioner's motion for reconsideration in its Resolution<sup>[17]</sup> of August 1, 2002.

The petitioner lodged before this Court the present petition for review on *certiorari*<sup>[18]</sup> on the sole ground that the Ombudsman's July 28, 2000 decision exonerating him of the administrative charge is **final and unappealable** under the express terms of Section 7, Rule III of the Ombudsman Rules. The petitioner thus argues that the CA erred in taking cognizance of the appeal and in reversing the Ombudsman's decision.

### **The Court's Ruling**

#### ***The Propriety of the Recourse Taken Before the CA***

The threshold issue in this petition is the procedural question of whether a complainant in an administrative case before the Office of the Ombudsman has the