

## THIRD DIVISION

**[ G.R. No. 175115, December 23, 2009 ]**

**LILY O. ORBASE, PETITIONER, VS. OFFICE OF THE OMBUDSMAN  
AND ADORACION MENDOZA-BOLOS, RESPONDENTS.**

### DECISION

**PERALTA, J.:**

This is a petition for review on *certiorari* assailing the Decision<sup>[1]</sup> dated August 11, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 57158, and the Resolution<sup>[2]</sup> dated October 23, 2006, denying petitioner's motion for reconsideration.

The factual and procedural antecedents are as follows:

Respondent Adoracion Mendoza-Bolos, then Director of the National Library, filed a complaint against petitioner Lily O. Orbase, Assistant Director of the same Office, before the Evaluation and Preliminary Investigation Bureau (EPIB), Office of the Ombudsman, for violation of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, as amended, docketed as OMB-ADM-0-99-0198.<sup>[3]</sup>

The case stemmed from the alleged misrepresentation and/or dishonesty committed by the petitioner when she declared in her bio-data, which was attached to her application for the position of Assistant Director of the National Library dated January 9, 1996, that she was a consultant of the National Library "*from March-December 1993 and February 1994 to present*" when in fact petitioner merely held the said position for the period covering March 1, 1993 to December 31, 1994.<sup>[4]</sup>

In her Counter-Affidavit<sup>[5]</sup> dated January 7, 1999, petitioner denied having committed any misrepresentation, asserting that the bio-data presented in evidence was what she submitted in support of her then application for the position of Director of the National Archives sometime in 1994. She claimed that the said bio-data was inadvertently attached to the subject application. Petitioner asserted further that she was hired not only on the basis of her consultancy position with the National Library, but for her other qualifications as well. She also controverted the authenticity of the bio-data that was attached to the complaint, since it did not bear her initial or signature.<sup>[6]</sup>

On May 21, 1999, the EPIB issued a Resolution<sup>[7]</sup> dismissing the criminal aspect of the case, but recommended that the administrative aspect thereof be referred to the Administrative Adjudication Bureau (AAB), Office of the Ombudsman, for the conduct of the proper administrative proceedings against petitioner. The case was docketed as OMB-ADM-0-99-0517 for Dishonesty and Grave Misconduct.

In compliance with the directive of the Office of the Ombudsman, petitioner filed a

Manifestation and Motion<sup>[8]</sup> dated August 19, 1999, adopting all the arguments embodied in her Counter-Affidavit, as well as all the documentary evidence that were already submitted in OMB-0-99-0198. Petitioner also moved to submit the administrative case for resolution based on the evidence on record.

On September 6, 1999, Graft Investigation Officer I Marlyn M. Reyes found petitioner not guilty of the offense charged and ordered that the complaint be dismissed for lack of merit.<sup>[9]</sup>

However, upon review, the Office of Legal Affairs, Office of the Ombudsman, in its Memorandum<sup>[10]</sup> dated October 21, 1999, vacated the earlier decision. It found petitioner guilty of dishonesty and, consequently, dismissed her from government service. The dispositive portion of said Memorandum reads:

**WHEREFORE**, in view of the foregoing considerations, it is respectfully recommended that the AAB Decision dated September 6, 1999 be **disapproved** and that respondent is found guilty of **Dishonesty** and **dismissed** from service with all the accessory penalties.<sup>[11]</sup>

Petitioner filed a Memorandum of Appeal<sup>[12]</sup> and Supplemental Appeal and/or Reconsideration.<sup>[13]</sup> She also filed a Motion for Re-Assignment and to Conduct Preliminary Conference and Hearing,<sup>[14]</sup> but they were denied in the Memorandum<sup>[15]</sup> dated January 5, 2000.

Aggrieved, petitioner sought recourse before the CA in CA-G.R. SP No. 57158, arguing that:

1. the honorable office of the ombudsman, through its office of the Chief legal counsel, erred in holding that it had the requisite jurisdiction to act on the complaint against the petitioner. It is most respectfully submitted that there was clear error in not holding that petitioner was not within the scope of applicability of ra 6770.
2. the honorable office of the ombudsman erred in holding that substantial evidence exists to support the findings of dishonesty and ignoring other evidence on record negating such evidence.
3. the honorable office of the ombudsman erred in denying petitioner's motion for reconsideration and IN failing to give due course to petitioner's request for re-assignment and the conduct of a preliminary conference and formal investigation.
4. the honorable office of the ombudsman erred in imposing the penalty of dismissal for the alleged offense of dishonesty. It is respectfully submitted that such penalty was too harsh and disproportionate as to be arbitrary and oppressive.<sup>[16]</sup>

On August 11, 2006, the CA rendered a Decision<sup>[17]</sup> denying the petition, the

decretal portion of which reads:

**WHEREFORE**, premises considered, the instant petition is **DENIED**. The assailed Memoranda dated October 21, 1999 and January 5, 2000 of the Office of the Ombudsman in OMB-ADM-0-99-0517 are **AFFIRMED**.

**SO ORDERED.**

In denying the petition, the CA ratiocinated that the Office of the Ombudsman has concurrent jurisdiction over administrative complaints involving public officers and employees; thus, petitioner's contention that the Office of the Ombudsman had no jurisdiction over the subject complaint cannot be upheld. Also, the CA opined that dishonesty, in order to warrant dismissal, need not be committed in the course of the performance of duty by the person charged. Moreover, the appellate court held that contrary to petitioner's claim, the fact that the complaint was filed three years after the misrepresentation was made cannot bar an investigation or inquiry by the Office of the Ombudsman into the questioned act. Finally, there was no denial of due process, since petitioner was given an opportunity to be heard and, in fact, participated in the proceedings before the Office of the Ombudsman.<sup>[18]</sup>

Petitioner filed a Motion for Reconsideration,<sup>[19]</sup> but it was denied in a Resolution<sup>[20]</sup> dated October 23, 2006.

Hence, the petition assigning the following errors:

- I. whether or not the ombud[s]man and the court of appeals gravely abuse[d] its discretion in not holding that petitioner's submission of an inaccurate bio-data upon her application for the position of assistant director of the national library is an act outside of the jurisdiction of the ombudsman;
- II. whether or not the ombudsman and the court of appeals gravely abused its discretion In not ruling that the complaint suffers technical flaws in that it was filed beyond the one year period, and by a person who had no interest in the complaint;
- III. whether or not the ombu[d]sman and the court of appeals gravely abuse[d] its discretion in holding that preliminary conference may be dispensed with, contrary to the express provision of administrative order no. 07 or the rules of the ombudsman and that a formal hearing is indispensable IN THIS CASE;
- IV. Whether or not the ombudsman and the court of appeals gravely abuse[d] its discretion amounting to lack of jurisdiction in holding that there is sufficient evidence to hold petitioner guilty of the offenses of dishonesty and falsification.<sup>[21]</sup>

Petitioner argues that the CA erred when it ruled that the Office of the Ombudsman

has jurisdiction over the administrative case despite the fact that the act complained of was committed before her entry into government service.

Petitioner insists that the administrative case should have been dismissed in the first instance. She contends that the case was barred by prescription as provided in Section 20 (5) of Republic Act (R.A.) No. 6770, since the case was filed three years after the alleged act was committed. Additionally, petitioner assails the personality of the then Director of the National Library, Adoracion Mendoza-Bolos, to file the administrative case against her arguing that she has no personal interest in the subject matter of the complaint. Petitioner also maintains that there was a denial of her right to due process when the Office of the Ombudsman did not conduct a preliminary conference and formal investigation in the administrative case. Finally, petitioner contends that the evidence on record is not sufficient to prove the charge of dishonesty against her.

The petition is bereft of merit.

R.A. No. 6770 provides for the functional and structural organization of the Office of the Ombudsman. In passing R.A. No. 6770, Congress deliberately endowed the Ombudsman with the power to prosecute offenses committed by public officers and employees to make him a more active and effective agent of the people in ensuring accountability in public office.<sup>[22]</sup> Thus, Section 21 thereof provides:

SEC. 21. *Officials Subject to Disciplinary Authority; Exceptions.* • **The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government** and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.<sup>[23]</sup>

At the time of the filing of the case against petitioner, she was the Assistant Director of the National Library; as such, as an appointive employee of the government, the jurisdiction of the Office of the Ombudsman to take cognizance of the action against the petitioner was beyond contestation.

Moreover, petitioner's claim that the Ombudsman does not have jurisdiction over the action, since the act complained of was committed before her entering government service, cannot be sustained. Section 46 (18), Title I, Book V of the Administrative Code of 1987 provides:

SEC. 46. *Discipline: General Provisions.* - x x x

(b) The following shall be grounds for disciplinary action:

x x x x

(18) Disgraceful, immoral or **dishonest conduct prior to entering the service.**<sup>[24]</sup>

From the foregoing, even if the dishonest act was committed by the employee prior to entering government service, such act is still a ground for disciplinary action.

It is noteworthy that the subject of the administrative case against petitioner was her act of supplying false information in her bio-data regarding her qualifications when she was applying for the position of Assistant Director of the National Library. In her bio-data, petitioner made it appear that she was a consultant of the National Library "from March-December 1993 and February 1994 to present." This false misrepresentation was one of the main factors why the then Secretary of Education, Culture and Sports, Ricardo T. Gloria, recommended petitioner to then President Fidel V. Ramos for appointment to the position of Assistant Director of the National Library. Secretary Gloria heavily relied on this misrepresentation of petitioner as shown in his sworn affidavit.<sup>[25]</sup> This misrepresentation was made by petitioner for the purpose of giving herself undue advantage over other qualified applicants, thus, ensuring her appointment to the position of Assistant Director. Were it not for this act of supplying false information, the then Secretary Gloria would not have recommended petitioner for appointment. As aptly found by the Office of Legal Affairs, Office of the Ombudsman, to wit:

The disputed bio-data of respondent clearly indicates that she was the *"Consultant of the National Library from March-December 1993 and February 1994 - to present."* Her bio-data containing the said information was apparently relied upon by the then Secretary of Education, Culture and Sports Ricardo T. Gloria as the latter's recommendation letter to then Pres. Fidel V. Ramos stated that *"Miss Orbase is presently a Consultant in the National Library. x x x Enclosed is Miss Orbase's bio-data and other related documents for reference."* Then Secretary Gloria's reliance upon the said bio-data was bolstered by Secretary Gloria's Affidavit dated March 4, 1999 (Record, p. 23) stating that *"I recommended Ms. Orbase for appointment and she was, in fact, thereafter appointed as Assistant Director in the National Library because I was made to believe by Ms. Orbase herself that she was then the 'present' Consultant in the National Library."* However, respondent Orbase's misrepresentation was belied by the Certification dated February 3, 1999 issued by Arnulfo R. Lim, Administrative Officer V of the National Library.<sup>[26]</sup>

Likewise, there is also no basis in petitioner's claim of prescription. Petitioner insists that Section 20 (5) of R.A. No. 6770 proscribes the investigation of any administrative act or omission if the complaint was filed one year after the occurrence of the act or omission complained of. The provision reads:

SEC. 20. *Exceptions.* - The Office of the Ombudsman **may** not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

x x x x