

FIRST DIVISION

[G.R. No. 159395, May 07, 2008]

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. COURT OF APPEALS AND DR. MERCEDITA J. MACABULOS RESPONDENTS.

D E C I S I O N

CARPIO, J.:

The Case

This is a petition for review^[1] of the Decision^[2] dated 17 March 2003 and the Resolution dated 30 July 2003 of the Court of Appeals in CA-G.R. SP No. 66411.

The Facts

On 31 March 1998, Dr. Minda L. Virtudes (Dr. Virtudes) executed a complaint-affidavit^[3] charging Dr. Mercedita J. Macabulos (Dr. Macabulos) with dishonesty, grave misconduct, oppression, conduct grossly prejudicial to the best interest of the service and acts unbecoming a public official in violation of the Civil Service Laws and the Code of Conduct and Ethical Standards for Public Officials and Employees.

Dr. Macabulos, who held the position of Medical Officer V at the Department of Education, Culture and Sports, National Capital Region (DECS-NCR), was the Chief of the School Health and Nutrition Unit. Dr. Virtudes was then Supervising Dentist III working under the supervision of Dr. Macabulos. Dr. Virtudes asserted in her complaint that in May 1997, Dr. Macabulos required her to submit dental and medical receipts for the liquidation of Dr. Macabulos' cash advance in the year 1995 amounting to P45,000 for the purchase of dental medicines and supplies. Dr. Virtudes did not submit receipts and invoices considering that she was not yet assigned at the School Health and Nutrition Unit, DECS-NCR when Dr. Macabulos incurred the cash advance.

Because of Dr. Virtudes' failure to produce receipts and invoices, Dr. Macabulos allegedly subjected Dr. Virtudes to several forms of harassment by: 1) denying her request for the purchase of dental supplies and equipment; 2) requiring her and her co-workers to sign an "Attendance Log Book" every time they arrived at the office and again before leaving the office even if they were already using the employees' Bundy clock and signing the Attendance Sheet in the office; 3) threatening Dr. Virtudes and her co-workers with transfer of assignment; 4) sending letters to Dr. Virtudes threatening to charge her with insubordination and disrespect; and 5) threatening to kill her and her husband or do other harm to her and her family.

In her counter-affidavit, Dr. Macabulos denied forcing Dr. Virtudes to make a liquidation as the latter was not yet assigned to her unit at the time the cash advance was made. Dr. Macabulos likewise claimed that while the P45,000 cash

advance was in her name being the only bonded employee in their unit, it was Dr. Antonia Lopez-Dee (Dr. Dee), who was then the Supervising Dentist, who used the money to purchase medical and dental supplies. Attached to Dr. Macabulos' counter-affidavit was an unnotarized affidavit^[4] of Dr. Dee which admitted, among others, that she requested Dr. Macabulos to make the cash advance.

Dr. Macabulos attributed the filing of the complaint against her to professional jealousy. Dr. Virtudes allegedly resented Dr. Macabulos' order, requiring all employees under her supervision to sign an attendance log book. Dr. Macabulos imposed the new requirement as a remedial measure to curb Dr. Virtudes' alleged practice of leaving the office without permission to engage in private practice at the Philippine Lung Center where Dr. Virtudes' husband was also a dentist. Dr. Macabulos denied that she instigated the transfer of Dr. Virtudes and her two friends to other units and alleged that it was Dr. Virtudes and her friends who requested for the transfer of assignment.

In her reply-affidavit, Dr. Virtudes alleged that Dr. Macabulos, in enforcing the use of the attendance log book, singled her out although there were others who failed to sign the log book. Dr. Virtudes denied engaging in private practice. Dr. Virtudes pointed out that she confronted Dr. Dee, who disowned the contents of her alleged affidavit which Dr. Macabulos attached to her counter-affidavit. Dr. Virtudes claimed that it was Dr. Macabulos who made the P45,000 cash advance, improperly spent the amount, and later tried to liquidate the same with the tampered Sales Invoice No. 3366 issued by Medsordent Center to conform to the amount of the cash advance.

On 29 December 2000, Graft Investigation Officer I Ulysis S. Calumpad (GIO I Calumpad) rendered a decision absolving Dr. Macabulos from the administrative charge. However, Overall Deputy Ombudsman Margarito P. Gervacio, Jr. (Overall Deputy Ombudsman Gervacio) disapproved the decision of GIO I Calumpad.

Investigating further, the Ombudsman required Dr. Dee to confirm her statements in her unnotarized affidavit dated 14 September 1998. In reply, Dr. Dee disowned the statements in her unnotarized affidavit. In her sworn affidavit^[5] dated 9 May 2001, Dr. Dee stated that although she signed the unnotarized affidavit dated 14 September 1998, the contents of the first page were entirely different from the one attached by Dr. Macabulos in her counter-affidavit. Dr. Dee asserted that as Supervising Dentist, her job involved the requisition of the necessary health and dental supplies but not the purchasing of supplies which was done by the purchasing unit of the School Health and Nutrition Unit which was under Dr. Macabulos. Dr. Dee denied encashing the check for P45,000 which was in the name of Dr. Macabulos. Dr. Dee likewise denied purchasing the supplies indicated in the Medsordent Center sales invoice which was submitted by Dr. Macabulos to liquidate her P45,000 cash advance.

In a Memorandum^[6] dated 13 June 2001, Graft Investigation Officer II Julita M. Calderon (GIO II Calderon) reversed the decision of GIO I Calumpad. GIO II Calderon found Dr. Macabulos guilty of dishonesty, falsification, grave misconduct, conduct grossly prejudicial to the best interest of the service and violation of reasonable office rules and regulations defined and penalized under the Civil Service Laws. The Memorandum, approved by Overall Deputy Ombudsman Gervacio and

Ombudsman Aniano A. Desierto, imposed upon Dr. Macabulos the penalty of dismissal from government service.

On 11 July 2001, Dr. Macabulos filed a motion for reconsideration, which was denied in an Order dated 26 July 2001.

On 31 August 2001, Dr. Macabulos filed a petition for review with the Court of Appeals. On 17 March 2003, the Court of Appeals rendered a decision, the dispositive portion of which reads:

WHEREFORE, premises considered, the petition is GIVEN DUE COURSE. The assailed memorandum dated June 13, 2001 and the order dated July 26, 2001 of the Office of the Ombudsman in *OMB Case No. 0-98-0438* are hereby REVERSED and SET ASIDE. The earlier decision of the GOI I Ulysis S. Calumpad of the Office of the Ombudsman is REINSTATED and the subject complaint DISMISSED. No pronouncement as to costs.

SO ORDERED.^[7]

The Ruling of the Court of Appeals

The Court of Appeals held that under Section 20(5) of Republic Act No. 6770 (RA 6770),^[8] the Office of the Ombudsman (Ombudsman) can no longer investigate the complaint since the acts complained of were committed more than one year from the filing of the complaint. The Court of Appeals found irregular the reversal of the earlier decision of GIO I Calumpad, absolving Dr. Macabulos from the administrative charge, mainly on the basis of the recantation of Dr. Dee of her previous statements contained in an affidavit.

The Court of Appeals held that Dr. Macabulos' retirement from government service did not render the administrative case moot and academic.

Lastly, citing Section 27 of RA 6770, the Court of Appeals ruled that the Memorandum Order dated 13 June 2001 of the Ombudsman, imposing upon Dr. Macabulos the penalty of dismissal from government service, is not immediately executory.

The Issues

Petitioner raises the following issues:

1. THE INTERPRETATION OF THE COURT OF APPEALS OF SEC. 20(5), RA 6770 AS A PRESCRIPTIVE PERIOD ON OMBUDSMAN ADMINISTRATIVE DISCIPLINARY CASES IS UNCONSTITUTIONAL, AS THE SAME UNDULY IMPINGES ON THE INVESTIGATORY AUTHORITY OF THE OMBUDSMAN ON ANY ACT OR OMISSION APPEARING TO BE ILLEGAL, UNJUST, IMPROPER OR INEFFICIENT.
2. IN HIGHLY MERITORIOUS CASES, AS HERE, THE PETITIONER OFFICE OF THE OMBUDSMAN HAS THE DISCRETIONARY AUTHORITY TO CONDUCT ADMINISTRATIVE INVESTIGATION ON COMPLAINTS FILED MORE THAN ONE (1) YEAR FROM THE

OCCURRENCE OF THE ACT OR OMISSION COMPLAINED OF, AND THE RULING OF THE COURT OF APPEALS THAT SUCH INVESTIGATION IS BARRED BY REASON OF PRESCRIPTION IS A GLARING NULLITY.

3. CONTRARY TO THE APPELLATE COURT'S RULING, THERE IS MORE THAN SUBSTANTIAL EVIDENCE PROVING PRIVATE RESPONDENT'S GUILT, AND THE INCULPATORY SWORN STATEMENT OF PRIVATE RESPONDENT'S SUPPOSED OWN WITNESS, BEING ADMISSIBLE IN EVIDENCE AND NOT REBUTTED BY PRIVATE RESPONDENT, WAS CORRECTLY APPRECIATED BY THE OMBUDSMAN IN ADJUDGING PRIVATE RESPONDENT GUILTY OF GROSS MALFEASANCE NECESSITATING HER DISMISSAL FROM SERVICE.
4. THE PENALTY OF DISMISSAL FROM THE SERVICE METED ON PRIVATE RESPONDENT IS IMMEDIATELY EXECUTORY IN ACCORDANCE WITH THE VALID RULE OF EXECUTION PENDING APPEAL UNIFORMLY OBSERVED IN ADMINISTRATIVE DISCIPLINARY CASES, AND THE RULING OF THE COURT OF APPEALS TO THE CONTRARY IS A PATENT NULLITY.
5. CONTRARY TO THE APPELLATE COURT'S RULING, THE PETITIONER OFFICE OF THE OMBUDSMAN TIMELY AND RIGHTFULLY FILED ITS MOTIONS TO INTERVENE AND FOR RECONSIDERATION ON A PATENTLY ERRONEOUS DECISION OF THE COURT OF APPEALS WHICH HAS NOT YET ATTAINED FINALITY.^[9]

The Ruling of the Court

We find the petition meritorious. The Court of Appeals should have granted the motion for intervention filed by the Ombudsman. In its decision, the appellate court not only reversed the order of the Ombudsman but also delved into the investigatory power of the Ombudsman. Since the Ombudsman was not impleaded as a party when the case was appealed to the Court of Appeals in accordance with Section 6, Rule 43 of the Rules of Court,^[10] the Ombudsman had no other recourse but to move for intervention and reconsideration of the decision in order to prevent the undue restriction of its constitutionally mandated investigatory power.^[11]

Prescription

The Court of Appeals held that under Section 20(5) of RA 6770, the Ombudsman is already barred by prescription from investigating the complaint since it was filed more than one year from the occurrence of the complained act. We find this interpretation by the appellate court unduly restrictive of the duty of the Ombudsman as provided under the Constitution to investigate on its own, or on complaint by any person, any act or omission of any public official or employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.^[12]

Section 20 of RA 6770 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:

- (1) The complainant has an adequate remedy in another judicial or quasi-judicial body;
- (2) The complaint pertains to a matter outside the jurisdiction of the Office of the Ombudsman;
- (3) The complaint is trivial, frivolous, vexatious or made in bad faith;
- (4) The complainant has no sufficient personal interest in the subject matter of the grievance; or
- (5) The complaint was filed after one (1) year from the occurrence of the act or omission complained of.** (Emphasis supplied)

The use of the word "may" is ordinarily construed as permissive or directory, indicating that a matter of discretion is involved.^[13] Thus, the word "may," when used in a statute, does not generally suggest compulsion. The use of the word "may" in Section 20(5) of RA 6770 indicates that it is within the discretion of the Ombudsman whether to conduct an investigation when a complaint is filed after one year from the occurrence of the complained act or omission.

In *Filipino v. Macabuhay*,^[14] the Court interpreted Section 20(5) of RA 6770 in this wise:

Petitioner argues that based on the abovementioned provision [Section 20(5) of RA 6770)], respondent's complaint is barred by prescription considering that it was filed more than one year after the alleged commission of the acts complained of.

Petitioner's argument is without merit.

The use of the word "may" clearly shows that it is directory in nature and not mandatory as petitioner contends. When used in a statute, it is permissive only and operates to confer discretion; while the word "shall" is imperative, operating to impose a duty which may be enforced. Applying Section 20(5), therefore, it is discretionary upon the Ombudsman whether or not to conduct an investigation on a complaint even if it was filed after one year from the occurrence of the act or omission complained of. In fine, the complaint is not barred by prescription.^[15]

Moreover, Section 20 of RA 6770 has been clarified by Administrative Order No. 17^[16] (AO 17), which amended Administrative Order No. 07 (AO 07), otherwise known as the Rules of Procedure of the Office of the Ombudsman. Section 4, Rule III^[17] of the amended Rules of Procedure of the Office of the Ombudsman reads:

Section 4. *Evaluation.* - Upon receipt of the **complaint**, the same shall be evaluated to determine whether the same **may be**:

a) dismissed outright for any grounds stated under Section 20 of Republic Act No. 6770, provided, however, that the dismissal