

## THIRD DIVISION

[ G.R. No. 168309, September 25, 2008 ]

**OFFICE OF THE OMBUDSMAN, PETITIONER, VS. MARIAN D. TORRES, MARICAR D. TORRES AND COURT OF APPEALS (SPECIAL THIRD DIVISION), RESPONDENTS.**

### RESOLUTION

**NACHURA, J.:**

For resolution is the Motion for Reconsideration<sup>[1]</sup> of private respondents Marian and Maricar Torres of our Decision dated January 29, 2008 reversing and setting aside the Decision dated January 6, 2004 and the Resolution dated May 27, 2005 of the Court of Appeals (CA) and reinstating the Decision dated November 9, 2001 of the Office of the Ombudsman. The Decision of the Office of the Ombudsman found private respondents administratively guilty of dishonesty, grave misconduct and falsification of official documents.

Private respondents raise the following grounds -

- I. With all due respect, the Honorable Court erred in its finding that the respondents in this case are administratively liable for dishonesty, grave misconduct and falsification of official document.
- II. With all due respect, the Honorable Court erred in ruling that damage has been caused to the government by the actuations of the respondents as shown in the manner of handling their daily time records and that the existence of malice or criminal intent is not a prerequisite to declare the respondents administratively culpable.
- III. With all due respect, the Honorable Court erred in ruling that the Office of the Ombudsman was correct in not dismissing the case outright.
- IV. With all due respect, the Honorable Court erred in ruling that the doctrine laid down in *Aguinaldo vs. Santos* is not applicable to respondent Maricar.<sup>[2]</sup>

With respect to the first ground, private respondents insist that the nature of their positions required them to be on call 24 hours in a day, such that they would at times render more than eight hours of work for their father. They argue that they are not supposed to actually stay in the office as required of ordinary employees. Maricar even cites the fact that she has been regularly attending evening classes from Monday to Friday at the University of the East (UE) College of Law since 1999 when she first enrolled, since the said school does not offer any day classes for law

students. She further claims that the Office of the Ombudsman could not have concluded that she falsified her Daily Time Records (DTRs) for the period 1995-1997 because it was not able to examine them during the investigation. Similarly, Marian posits that her DTRs for the period May 1996 to December 1997 were not examined by petitioner through Graft Investigation Officer I Moreno F. Generoso (GIO Generoso). Private respondents now ask: How could petitioner have validly concluded that their DTRs for those periods were falsified if they were not even seen and scrutinized by GIO Generoso?

As to the other grounds raised in the motion, private respondents merely reiterate the arguments they raised in their Comment<sup>[3]</sup> and their Memorandum<sup>[4]</sup> before this Court.

On the alleged absence of criminal intent or malice on the part of private respondents to falsify their respective DTRs during the subject periods of government employment, the argument that there was no damage caused the government by their acts, the error of the Office of the Ombudsman in not dismissing the complaint outright, and the supposed applicability of *Aguinaldo v. Santos*<sup>[5]</sup> to Maricar's case, this Court observes that these were the very same arguments that we already passed upon in our Decision<sup>[6]</sup> promulgated on January 29, 2008.

At this point, we reiterate, albeit briefly, our discussion on these matters.

The existence of malice or criminal intent is not a mandatory requirement for a finding of falsification of official documents as an administrative offense. What is required is simply a showing that private respondents made entries in their respective DTRs knowing fully well that they were false. The offense is in the nature of *malum prohibitum*, such that respondents' commission of the act with full knowledge of the falsity of the entries on the DTR is sufficient to hold them liable. The element of damage is also not absolutely necessary, since this case does not pertain to the felony of Falsification under the Revised Penal Code. Further, it remains arguable that there could have been damage caused the government, as public money was paid for hours of work not actually rendered.

On the issue of prescription, we reiterate that the Office of the Ombudsman, under R.A. No. 6770, has a wide range of discretion whether or not to proceed with an investigation of administrative offenses beyond the expiration of one (1) year from the commission of the offense.<sup>[7]</sup>

Likewise, it is a well-entrenched jurisprudential principle that the dismissal of the criminal case involving the same set of facts does not automatically result in the dismissal of the administrative charges against private respondents.<sup>[8]</sup>

Our ruling in *Aguinaldo* also cannot benefit Maricar because she was not a re-elected public official when she won as Councilor of Malabon City. Prior to her election, she held an appointive position - Legislative Staff Assistant - having been appointed thereto by her own father, former Councilor Edilberto Torres. It is very clear that in *Aguinaldo*, condonation of an administrative offense applied only to an elective public official who was re-elected during the pendency of an administrative case against him.