

## SECOND DIVISION

[ G.R. No. 177580, October 17, 2008 ]

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. VICTORIO N. MEDRANO, RESPONDENT.

### D E C I S I O N

**CARPIO MORALES, J.:**

Challenged *via* Petition for Review on *Certiorari* are the Decision<sup>[1]</sup> dated June 29, 2006 and Resolution dated April 2, 2007 of the C`ourt of Appeals in CA-G.R. SP No. 93165<sup>[2]</sup> which **nullified** the Decision dated July 19, 2004 of the Office of the Ombudsman (petitioner), as modified, finding Victorio N. Medrano (respondent) guilty of sexual harassment in the administrative complaint against him and **dismissed** the said complaint for lack of jurisdiction.

Sometime in May 2003, Ma. Ruby A. Dumalaog (Ma. Ruby), a teacher at Jacobo Z. Gonzales Memorial National High School in Biñan, Laguna (the school), filed a sworn letter-complaint<sup>[3]</sup> before the Office of the Ombudsman (for Luzon) charging her superior-herein respondent, Officer-In-Charge (OIC) of the school and concurrently the principal of San Pedro Relocation Center National High School in San Pedro, Laguna, with (1) violation of Republic Act (R.A.) No. 7877 (Anti-Sexual Harassment Act of 1995), docketed as OMB-L-C-03-0613-E (criminal case), and (2) grave misconduct, docketed as OMB-L-A-03-0488-E (administrative case).

The administrative complaint, in essence, alleged that in the afternoon of March 28, 2003, respondent made sexual advances on Ma. Ruby and abused her sexually.

In his Counter-Affidavit,<sup>[4]</sup> respondent denied the charge, claiming that it was "maliciously designed to harass and threaten him to succumb to Ma. Ruby's demand that she be given a regular teaching post." He thus prayed for the dismissal of the complaint.

While the administrative case was pending investigation, Ma. Ruby filed an Urgent Ex-Parte Motion for Preventive Suspension,<sup>[5]</sup> alleging that respondent was "using the powers of his office by utilizing his subordinates in harassing her." By Order<sup>[6]</sup> of July 29, 2003, petitioner granted the motion and ordered the preventive suspension of respondent for six (6) months without pay.

Respondent, this time assisted by counsel, Atty. Alan P. Cabaero, moved for the lifting of the preventive suspension Order on the ground that the evidence of his guilt is not strong.<sup>[7]</sup> It was denied.

Undaunted, respondent filed a Supplemental Motion for Reconsideration<sup>[8]</sup> alleging that the Schools Division Superintendent Lilia T. Reyes had already designated

Hereberto Jose D. Miranda as the new OIC of the school in his stead, effective September 1, 2003. By Order<sup>[9]</sup> of October 16, 2003, petitioner lifted the preventive suspension Order.

By Decision<sup>[10]</sup> of July 19, 2004 rendered in the **administrative case**, petitioner adjudged respondent guilty of grave misconduct and imposed upon him the penalty of dismissal from the service.

With respect to the criminal case, petitioner, by Resolution<sup>[11]</sup> of July 19, 2004, found probable cause to indict respondent for violation of the *Anti-Sexual Harassment Act of 1995*. An information for violation of said Act, docketed as Criminal Case No. 29190 before the Metropolitan Trial Court (MeTC) of Biñan, Laguna, was in fact filed.

Respondent moved for reconsideration of petitioner's issuances in both cases. Respecting the **administrative case**,<sup>[12]</sup> he assailed not only the factual findings and conclusions of petitioner, but, for the first time, he challenged its jurisdiction over the case. He argued that under Section 9 of R.A. No. 4670 (the *Magna Carta for Public School Teachers*), an **administrative** complaint against a public school teacher should be heard by an investigating committee of the Department of Education Culture & Sports, now Department of Education (DepEd), composed of the school superintendent of the division where the teacher belongs, a representative from a teachers' organization, and a supervisor of the division. He thus prayed for the dismissal of the administrative case as petitioner has no jurisdiction over it.

By Joint Order<sup>[13]</sup> of April 8, 2005, petitioner affirmed its Resolution in the criminal case but modified its Decision in the administrative case by finding respondent guilty of sexual harassment, instead of grave misconduct, and meted on him the penalty of suspension from the service for one (1) year, without pay.

Dissatisfied, respondent filed a Petition for Review (with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction)<sup>[14]</sup> before the Court of Appeals, assailing petitioner's decision in the administrative case, attributing to it grave abuse of discretion amounting to lack or excess of jurisdiction when it -

## I

. . . assumed jurisdiction over the administrative case against petitioner, although under R.A. 4670, otherwise known as the *Magna Carta for Public School Teachers*, **only the appropriate committee of the Department of Education has exclusive jurisdiction to hear and try administrative complaints against public school teachers**.

## II

. . . denied him his right to present before the Graft Investigation Officer the text messages sent by complainant which would have established the fact that the sexual harassment charge did not actually happen. x x x

### III

. . . totally ignored his overwhelming evidence positively establishing his presence in another place at the time the alleged acts of sexual harassment were committed against complainant.

### IV

. . . found him guilty of sexual harassment and imposed upon him the penalty of one (1) year suspension from the service.<sup>[15]</sup> (Underscoring supplied)

By the now assailed Decision of June 29, 2006, the appellate court annulled petitioner's July 19, 2004 Decision, as modified, in the administrative case and dismissed the complaint on the sole ground that petitioner has no jurisdiction over it. It held that although respondent raised the issue of jurisdiction only after petitioner rendered an adverse decision, "the rule on *estoppel* will not apply against [Medrano]" because such jurisdictional issue was raised "when the case was still before the Ombudsman."<sup>[16]</sup> It thus found no need to address the other issues raised by respondent.

Petitioner's Motion for Reconsideration<sup>[17]</sup> of the appellate court's Decision was denied by Resolution<sup>[18]</sup> of April 2, 2007, hence, the present Petition for Review on *Certiorari*.

Petitioner contends that the Court of Appeals erred in not ruling that it (petitioner) has **concurrent** jurisdiction with the DepEd over the administrative complaint against respondent.<sup>[19]</sup>

Instead of filing a comment on the present petition as directed, respondent filed a *Manifestation With Motion In Lieu Of Comment*<sup>[20]</sup> praying that "the instant petition be dismissed for being moot and academic" in view of the execution of an Affidavit of Desistance<sup>[21]</sup> by Ma. Ruby on September 17, 2007 before Assistant Provincial Prosecutor Ramonito Delfin of Biñan, Laguna, as well as the Order<sup>[22]</sup> of even date issued by the MeTC of Biñan dismissing the criminal case<sup>[23]</sup> against him due to her lack of interest to prosecute the case.

In her Affidavit of Desistance, Ma. Ruby stated, *inter alia*:

2. That in retrospect and after an objective and sincere review of the events that led to the filing of the instant cases [referring to the criminal and administrative cases], I am now fully enlightened that said incident was just a product of mistake of fact and clear misunderstanding between me and the accused/respondent, who after all, was not actually criminally nor immorally motivated to do any form of offense/harm to my person. Thus, I am now retracting everything I said against the accused/respondent in my letter-complaint with the Office of the Ombudsman dated May 13, 2003, which became the basis for the filing of the criminal and administrative cases against him;

3. That x x x, I am no longer interested in pursuing the criminal and administrative cases I filed against Mr. Victorio N. Medrano, and is now requesting the Honorable Court [referring to the trial court in the criminal case], the Office of the Ombudsman or the Honorable Supreme Court with whom the administrative case is pending, to dismiss the said cases. (Underscoring supplied)

Petitioner opposes respondent's move, contending that Ma. Ruby's Affidavit of Desistance and the dismissal of the criminal case do not constitute legal bases for dismissing the present petition and the administrative complaint.

The issues for resolution are:

1. Whether the petition has become moot and academic, Ma. Ruby having executed an affidavit of desistance and the criminal case having been dismissed due to her lack of interest to prosecute the same;
2. Whether petitioner has jurisdiction over the administrative complaint against respondent; and
3. Whether respondent is *estopped* to question petitioner's assumption of jurisdiction over the administrative complaint.

With respect to the first issue, the Court holds in the negative.

The flaw in respondent's argument that the execution of Ma. Ruby's Affidavit of Desistance and the dismissal of the criminal case must result in the dismissal of the administrative case is that it ignores the whole of a difference between those two remedies. In *Gerardo R. Villaseñor and Rodol A. Mesa v. Sandiganbayan and Louella Mae Oco-Pesquerra (Office of the Special Prosecutor, Ombudsman)*,<sup>[24]</sup> the Court stressed the distinct and independent character of the remedies available to an offended party against any impropriety or wrongdoing committed by a public officer, thus:

Significantly, there are three kinds of remedies available against a public officer for impropriety in the performance of his powers and the discharge of his duties: (1) civil, (2) criminal, and (3) administrative. These remedies may be invoked separately, alternately, simultaneously or successively. Sometimes, the same offense may be the subject of all three kinds of remedies.

Defeat of any of the three remedies will not necessarily preclude resort to other remedies or affect decisions reached thereat, as different degrees of evidence are required in these several actions. In criminal cases, proof beyond reasonable doubt is needed, whereas a mere preponderance of evidence will suffice in civil cases. In administrative cases, only substantial evidence is required.

It is clear, then, that criminal and administrative cases are distinct from each other. **The settled rule is that criminal and civil cases are altogether different from administrative matters, such that the first two will not inevitably govern or affect the third and vice**

**versa. Verily, administrative cases may proceed independently of the criminal proceedings.** (Underscoring supplied)

At any rate, an affidavit of desistance (or recantation) is, as a rule, viewed with suspicion and reservation because it can easily be secured from a poor and ignorant witness, usually through intimidation or for monetary consideration.<sup>[25]</sup> And there is always the probability that it would later be repudiated, and criminal prosecution would thus be interminable.<sup>[26]</sup> Hence, such desistance, by itself, is not usually a ground for the dismissal of an action once it has been instituted in court.<sup>[27]</sup>

The suspicious and unreliable nature of Ma. Ruby's Affidavit of Desistance is evident. Firstly, her affidavit was executed only on **September 17, 2007** or more than three (3) years after petitioner had rendered its **July 19, 2004** Decision, as modified by its Joint Order of April 8, 2005 finding respondent guilty of sexual harassment. Secondly, unlike her six-page sworn letter-complaint of May 13, 2003 wherein she *narrated in her own Pilipino dialect the factual details* of respondent's acts complained of, Ma. Ruby's one-page Affidavit of Desistance is couched in English with legal terms and *conclusions* only one with a trained legal mind can formulate, e.g., "I am now fully enlightened that said incident was just a product of mistake of fact and clear misunderstanding between me and the accused/respondent, who after all, was not actually criminally nor immorally motivated to do any form of offense/harm to my person." Thirdly, Ma. Ruby's Affidavit is bereft of any *factual particulars*, engendering more questions that bolster its unreliability, e.g.: What was the "misunderstanding" between her and respondent? How was she "fully enlightened" about the whole incident? How did she arrive at her conclusion that he "was not actually criminally nor immorally motivated to do any form of offense/harm" against her person?

In fine, the bases of respondent's plea to have the present petition dismissed do not obliterate his liability in the administrative case subject of the present petition.

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: