

## FIRST DIVISION

[ G.R. No. 134104, September 14, 1999 ]

**NENITA R. ORCULLO, PETITIONER, VS. HON. MARGARITO P. GERVACIO, JR., IN HIS CAPACITY AS THE DEPUTY OMBUDSMAN FOR MINDANAO, DAVAO CITY, AND MRS. VIRGINIA YAP MORALES, RESPONDENTS.**

### DECISION

**PARDO, J.:**

The case before the Court is a special civil action for certiorari with preliminary injunction or temporary restraining order assailing the orders of the Deputy Ombudsman for Mindanao,<sup>[1]</sup> which required petitioner, a city councilor of Davao City, to pay back wages amounting to P70,800.00, to private respondent, and directed a graft investigation officer to file with the Office of the Deputy Ombudsman for Mindanao a case for violation of Section 3 (e), R.A. No. 3019, against petitioner.

We grant the petition.

The facts are as follows:

Petitioner Nenita R. Orcullo was, at the times material hereto, a duly elected City Councilor of the Second District of Davao City (Sangguniang Panlungsod, Davao City). She was elected in the May 8, 1995 elections and was chair of the Committee of Women Welfare and Development of the Sangguniang Panlungsod, Davao City.

In September, 1995, the City Government of Davao City, represented by the Vice-Mayor, named respondent Virginia Yap Morales as team leader of a study group in the conduct of the Action Study Towards Policy Formulation on the Welfare and Development of Women, in aid of legislation.

However, in 1996, due to financial constraints, petitioner caused the suspension of the project.

On February 18, 1997, respondent Virginia Yap Morales wrote the Office of the Ombudsman for Mindanao "requesting for assistance" to collect back wages. She alleged that petitioner:

"\* unceremoniously and without formal notice separated me as Coordinator of Research and Documentation Project of the CWWD in August 1996,

"\* informed me of the unilateral closing down of any further dialogue and payment of additional services rendered for the period August to October 1996 in a hand written note received by me on September 11,

1996,

“\* refusal to pay back wages due me for services duly rendered in 1995.”<sup>[2]</sup>

On March 20, 1997, petitioner having been furnished a copy of the above letter, replied thereto. She said that respondent Virginia Yap Morales was among women activists who volunteered to work for the codification of the Women Code, and she was endorsed to head the study team. Acting thereon, on September 15, 1995, the Vice Mayor of Davao City, appointed respondent team leader of a study group for an action study towards policy formulation on women's welfare and development, in aid of proposed legislation. As there was no budget for the project, petitioner recommended her appointment as technical assistant in the City Council of Davao City. On October 24, 1995, respondent accepted the appointment and signed a contract of service with the City of Davao, represented by the Vice-Mayor, enforceable for the period October 1, 1995 to December 31, 1995, and upon expiration thereof, she was named as clerk II in the office of petitioner. She received all salaries due her even during the time the work was suspended for three months, until the suspension of the project due to financial constraints.

On February 5, 1998, respondent Margarito P. Gervacio, Jr., Deputy Ombudsman for Mindanao,<sup>[3]</sup> issued an order directing petitioner to pay respondent Morales back wages, stating that:

“x x x

“The project undertaken by the Committee on Women Welfare and Development contracted out requester’s services as Team Leader of the Study Team for the duration of the project but she was not able to finish the project in its entirety due to financial and administrative setbacks. However, despite the written Contracts of Employment as Technical Assistant B and Clerk II, requester really worked on the project as its team leader/coordinator and as Consultant to the project in the aforementioned periods. It is to this latter positions that she should be compensated.

“WHEREFORE, the Honorable 2nd District City Councilor NENITA R. ORCULLO is ordered to pay the requester back wages in the amount of SEVENTY THOUSAND EIGHT HUNDRED PESOS (P70,800.00) less withholding tax thereon within five (5) days from receipt of this order.

“FAIL NOT UNDER PENALTY OF THE LAW.

“SO ORDERED.

“Davao City, Philippines, 05 February 1998.

“(s/t) MARGARITO P. GERVACIO, JR.

“Deputy Ombudsman for Mindanao”<sup>[4]</sup>