

[SYLLABUS]

[G.R. No. 117618, March 29, 1996]

VIRGINIA MALINAO, PETITIONER, VS. HON. LUISITO REYES, IN HIS CAPACITY AS GOVERNOR OF THE PROVINCE OF MARINDUQUE, SANGGUNIANG PANLALAWIGAN OF MARINDUQUE AND WILFREDO RED, IN HIS CAPACITY AS MAYOR OF STA. CRUZ, MARINDUQUE, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This is a petition for certiorari and mandamus to annul the decision dated October 21, 1994 of the Sangguniang Panlalawigan of Marinduque, dismissing the administrative case filed by petitioner against respondent Mayor Wilfredo Red of Sta. Cruz, Marinduque. The ground for the present petition is that the same body already found respondent Mayor guilty of abuse of authority in removing petitioner from her post as Human Resource Manager without due process in another decision which is now final and executory.

The facts are as follows:

Petitioner Virginia Malinao is Human Resource Manager III of Sta. Cruz, Marinduque. Respondent Mayor filed a case against her in the Office of the Ombudsman for gross neglect of duty, inefficiency and incompetence. While the case was pending, he appointed a replacement for petitioner.

On February 24, 1994 petitioner filed an administrative case, docketed as Administrative Case No. 93-03, against respondent Mayor in the Sangguniang Panlalawigan of Marinduque, charging him with abuse of authority and denial of due process.

On August 12, 1994, the case was taken up in executive session of the Sanggunian. The transcript of stenographic notes of the session^[1] shows that the Sanggunian, by the vote of 5 to 3 of its members, found respondent Mayor guilty of the charge and imposed on him the penalty of one-month suspension,

The result of the voting was subsequently embodied in a "Decision" dated September 5, 1994,^[2] signed by only one member of the Sanggunian, Rodrigo V. Sotto, who did so as "Presiding Chairman, Blue Ribbon Committee, Sangguniang Panlalawigan." Copies of the "Decision" were served on respondent Mayor Red as well as on respondent Governor Luisito Reyes on September 12, 1994.

On September 14, 1994, respondent Mayor filed a manifestation^[3] before the Sanggunian, questioning the "Decision" on the ground that it was signed by Sotto alone, "apparently acting in his capacity and designated as 'Presiding Chairman,

Blue Ribbon Committee, Sangguniang Panlalawigan.'" He contended that because of this the decision could only be considered as a recommendation of the Blue Ribbon Committee and he was not bound thereby.

On September 13, 1994, respondent Mayor sought the opinion of the Secretary of the Department of the Interior and Local Government regarding the validity of the "Decision."

In his letter dated September 14, 1994,^[4] DILG Secretary Rafael M. Alunan III opined that the "decision" alluded to does not appear to be in accordance with Section 66 of the Local Government Code of 1991 and settled jurisprudence" since

in the instant case, the purported decision of the Blue Ribbon Committee should have been submitted to, approved and/or adopted by the Sangguniang Panlalawigan as a collegial body inasmuch as the Sangguniang Panlalawigan has the administrative jurisdiction to take cognizance thereof in conformity with Section 61 and Section 66 of the Code. It is not for the said committee to decide on the merits thereof, more so to impose the suspension, as its duty and function is purely recommendatory. If it were at all the intention of the Sangguniang Panlalawigan to adopt entirely the recommendation of the Blue Ribbon Committee, it should have so stated and the members of the Sangguniang Panlalawigan, who may have affirmatively voted thereon or participated in its deliberations, should have affixed their respective signatures on whatever decision that could have been arrived at..

On the other hand petitioner sent a letter^[5] on October 14, 1994 to respondent Governor Reyes, demanding that the "Decision" suspending respondent Mayor from office be implemented without further delay.

In his letter dated October 20, 1994,^[6] respondent Governor informed the Sanggunian that he agreed with the opinion of the DILG for which reason he could not implement the "Decision" in question.

On October 21, 1994,^[7] the Sanggunian, voting 7 to 2, acquitted respondent Mayor of the charges against him. The vote was embodied in a Decision of the same date, which was signed by all members who had thus voted.^[8]

Hence this petition.

I. Petitioner's basic contention is that inasmuch as the "Decision" of September 5, 1994 had become final and executory, for failure of respondent Mayor to appeal, it was beyond the power of the Sanggunian to render another decision on October 21, 1994 which in effect reversed the first decision.

These contentions are without merit. What petitioner claims to be the September 5, 1994 "Decision" of the Sangguniang Panlalawigan bore the signature of only one member (Rodrigo V. Sotto) who signed the "Decision" as "Presiding Chairman, Blue Ribbon Committee, Sangguniang Panlalawigan." Petitioner claims that at its session on August 12, 1994, the Sanggunian by the vote of five members against three found respondent Mayor guilty of having removed petitioner as Human Resources

Officer III without due process and that this fact is shown in the minutes of the session of the Sanggunian. The minutes referred to read in pertinent part as follows:

- KGD. SOTTO -** No if he [respondent Mayor] is acquitted, then let's acquit it. Whatever is the decision everybody goes to the majority.
(There was nominal voting from the Sangguniang Panlalawigan member. For NOT GUILTY OR GUILTY)
- KGD. ZOLETA -** I vote not guilty.
- KGD. MUHI -** Guilty.
- KGD. LIM -** Not guilty.
First I would like to say that I will decide on the merit of the case. The fact that the Civil Service ordered the reinstatement wherein Virginia Molinao is included, only means that the Supreme Court duly constituted has found the merit of the decision of the Civil Service.
I vote that the Mayor is guilty.
- KGD. PINAROC -** Guilty.
- KGD. DE LUNA -** Guilty, there is no due process and to protect the integrity of the Sangguniang Panlalawigan.
- KGD. LAGRAN -** Guilty.
- KGD. ZOLETA -** My reason for voting "not guilty" is that the mayor acted in good faith, he just followed the order of the reorganization recommended by the Placement Committee.
The order of the reorganization was given by the Civil Service Commission and based on the contention made by Kgd. Palamos that since there should be reorganization to be conducted by the Civil Service Commission the mayor was supposed to go on with that reorganization and based on the reorganization there should be a screening committee to check whether the employees are really working efficiently. Based on the case that has been given to Mrs. Malinao, based on the witnesses, Ligeralde, Monterozo and Pastrana and then decided that Mayor Red has done in good faith.
So I vote Not Guilty.
- KGD. REJANO -**

**Five (5) voted
GUILTY:**

Kgd. Muhi

Kgd. Raza

Kgd. Pinaroc

Kgd. Lagran

Kgd. De Luna