

SPECIAL TWENTIETH DIVISION

[CA-G.R. SP No. 08287, January 26, 2015]

**MA. LOURDES Z. UY, PETITIONER, VS. PUBLIC ASSISTANCE AND
CORRUPTION PREVENTION OFFICE – OFFICE OF THE
OMBUDSMAN (VISAYAS), RESPONDENT.**

D E C I S I O N

QUIJANO-PADILLA, J.:

This petition for review^[1] pursuant to Rule 43 of the 1997 Rules on Civil Procedure seeks to assail the Decision^[2] dated December 4, 2013 rendered by the Office of the Ombudsman (Visayas) in Case No. OMB-V-A-13-0174 entitled, "Public Assistance and Corruption Prevention Office-Office of the Ombudsman (Visayas) vs. Lourdes Z. Uy, Department Manager III (SG 26)/Designated Officer-in-Charge Home Mutual Development Fund Bacolod Sub-Regional Office Bacolod City Province of Negros Occidental" finding herein petitioner liable for Simple Misconduct in violation of Section 361, paragraphs 1(d) and 2, Government Accounting and Auditing Manual (GAAM) and meting a penalty of suspension from service without pay for a period of four (4) months.

Version of the Petitioner^[3]

The facts as succinctly narrated by the herein Petitioner are as follows:

Petitioner was the Officer-In-Charge of the Home Development Mutual Fund Iloilo Branch starting 2005 and was eventually appointed as Department Manager III of the Home Development Mutual Fund with Salary Grade 26 on November 17, 2008.

Petitioner, being a resident of Bacolod City, Philippines, was provided with a staff house for her and her immediate family to use while staying in Iloilo City, Philippines.

On June 21, 2008, however, Super Typhoon "Frank" struck and hit Iloilo City, Philippines flooding most parts of the city as well as its neighboring cities and municipalities. As a result, the entire province of Iloilo was declared under a state of calamity.

As no one was spared by said natural calamity, the staff house where the petitioner and her son, Loius Isagani Z. Uy were staying was also submerged in floodwaters.

So too, petitioner's service vehicle, an Isuzu Crosswind XTO with Plate Number FEM 872 was also submerged by flood waters rendering it unserviceable for several months.

In light of the damages it sustained, said motor vehicle and most parts of the same

were replaced.

Since the staff house where the petitioner and her son were staying was also inundated by water and, considering further that all hotels in the city were also fully booked as there was an influx of guests who are flood victims themselves, she and her son temporarily took shelter at the living quarters of HDMF Iloilo building while the staff house was also being repaired.

In the weeks following the aftermath of the super typhoon, the transactions at the HDMF Iloilo reached its peak level as thousands of typhoon victims rushed to file calamity loan applications from the office.

As a result of the sudden and heavy influx of transactions, the office was forced by circumstances to process the calamity loan applications on a 24-hour basis, seven days a week.

Because of the extra-ordinary situation in the office, the petitioner, including her staff and employees under her no longer had time to prepare even their meals as they were required to be in the office in a 24-hour, seven days a week basis.

As this was the sad predicament, not only of the petitioner but her office staff and employees as well, they were forced under the circumstances to request the office driver to buy them some fast foods for them to partake while on a 24-hour duty.

It was on these occasions when the petitioner requested the driver if her son could hitch a ride from the office to the latter's school while the driver is on his way to buy the petitioner and her staff's meals.

At no instance, however, when the driver was asked to bring petitioner's son to school for that purpose alone. All those circumstances when petitioner's son was able to hitch a ride with the office service vehicle, the driver was primarily heading out to do errands for the office, the petitioner and the office staff and employees who were rendering overtime work for the office.

Version of the Respondent^[4]

On account of an anonymous complaint received by the Office of the Ombudsman-Visayas against herein petitioner, Ma. Lourdes Uy, Department Manager III of the Home Development Mutual Fund (HDMF) Iloilo City Branch, a fact-finding investigation was conducted by the Public Assistance and Corruption Prevention Office of the OMB-Visayas. Among the irregularities imputed to petitioner was the illegal use of service vehicle of HDMF by its driver upon the directive of petitioner to bring her son to and from school on several occasions in August 2008.

Finding substantial basis for the charges, an administrative case was filed against petitioner for Misconduct anchored on the violation of Section 361 paragraphs 1(d) and 2 of the Government Accounting and Auditing Manual (GAAM) on the use of government service vehicles.

After administrative adjudication, the OMB-Visayas, by Decision dated December 4, 2013, found petitioner guilty of Simple Misconduct and imposed upon her the penalty of Suspension for four (4) months.

Without filing a motion for reconsideration, petitioner went to this Honorable Court via the instant petition.

By Resolution dated March 28, 2014 and received on April 10, 2014, the Honorable Court required respondent to file Comment on the Petition and on petitioner's plea for the issuance of a TRO and/or Writ of Preliminary Injunction.

On May 20, 2014, respondent filed its Comment with Opposition to the Issuance of a TRO and/or Writ of Preliminary Injunction.

On August 13, 2014, respondent received the Honorable Court's Resolution dated July 30, 2014 which denied petitioner's prayer for the issuance of TRO and/or Writ of Preliminary Injunction. Said Resolution likewise directed the parties to file their respective Memoranda within fifteen (15) days from notice or until August 28, 2014.

Respondent respectfully submits that the instant petition must fail.^[5]

Ruling of the Office of the Ombudsman-Visayas

On December 4, 2013, the Office of the Ombudsman-Visayas thru Graft Investigation and Prosecution Officer II Maria Corazon S. Vergara-Naraja rendered the decision^[6] against the petitioner, which reads:

"WHEREFORE, finding substantial evidence against respondent **LOURDES Z. UY** for Simple Misconduct, she is hereby meted the penalty of **Suspension from the Service Without Pay for a Period of Four (4) months.** She is however, STERNLY WARNED that a similar infraction in the future shall be punished with a more severe penalty.

Furnish copy of the Decision to the President/Chief Executive Officer of the Home Development Mutual Fund, who is hereby directed to implement the same, with the request to promptly submit to this Office, through the Office of the Deputy Ombudsman for the Visayas, Department of Agriculture RO-7 Compound, M. Velez St., Guadalupe, 6000 Cebu City, a Compliance Report hereof, indicating the subject OMB case number.

Compliance is respectfully enjoined consistent with Section 3 (e) of R.A. 3019, as amended (The Anti-Graft and Corrupt Practices Act) and Section 15 (3) of R.A. 6770.

Furnish also copy to the Commission on Audit and the Civil Service Commission, both in region VI, for information and record purposes.

SO DECIDED.^[7]

The Office of the Ombudsman-Visayas ruled that petitioner's repeated acts of using HDMF's Toyota Innova as her son's service vehicle transgressed a rule of action contained in the Government Accounting and Auditing Manual.^[8] Thus, according to the Graft Investigation and Prosecution Officer II, she committed those acts using the influence of her office and while in the performance of her duty as officer-in-

charge of HDMF-Iloilo City Branch, hence, she is liable for Misconduct.^[9]

Nevertheless, the said Officer declared that herein petitioner is only liable for Simple Misconduct absent any allegation that she acted with sinister or corrupt motives.^[10] Furthermore, it was stated that Simple Misconduct is a less grave offense punishable by suspension of one month and one day to six months for the first infraction.^[11] Hence, without any aggravating or mitigating circumstances as in this case, the medium penalty shall be imposed.^[12]

Without having filed a Motion for Reconsideration, petitioner sought recourse to this Court via the present Petition for Review, raising the following as grounds:

1. THE HONORABLE OFFICE OF THE OMBUDSMAN GRAVELY AND SERIOUSLY ERRED IN FINDING HER LIABLE FOR MISCONDUCT TAKING INTO ACCOUNT THE FACTUAL MILIEU OF THIS CASE .

2. The HONORABLE OFFICE OF THE OMBUDSMAN COMMITTED SERIOUS ERRORS IN THE APPRECIATION OF THE FACTS ATTENDANT TO THIS CASE WHICH, IF NOT CORRECTED, WOULD MOST DEFINITELY CAUSE GRAVE AND IRREPARABLE DAMAGE TO THE PETITIONER.^[13]

This Court's Ruling

The petition is partially meritorious.

After a careful perusal of the records, We found no substantial basis to reach to a conclusion that the Office of the Ombudsman-Visayas erred in finding the herein petitioner, Lourdes Z. Uy, guilty in committing simple misconduct by allowing Home Development Mutual Fund's service vehicle to be used in fetching and bringing her son to school and by utilizing the working hours of the driver for personal purposes. On the contrary, We have assessed that the decision of the Ombudsman thoroughly discussed the facts and the corresponding law applicable to the case at bench.

However, due to the circumstances of the case, We have modified the penalty imposed from suspension from service without pay for a period of four months to suspension from service without pay for for a period of one month.

This petition involves a government employee who is guilty of Simple Misconduct for using a government service vehicle in the pursuit of personal interests and outside of the purpose for which it was intended. Such Simple Misconduct is anchored on the violation of Section 361 paragraphs 1(d) and 2 of the Government Accounting and Auditing Manual which provide:

1. All government motor vehicles shall be used exclusively and strictly for official business.

2. The use of government motor vehicle for private social functions such as receptions, balls, theaters, and for other personal purposes is absolutely prohibited. Likewise, **use thereof by spouses, children, relatives, friends, etc. of the officials entitled thereto, even if they are in company of said officials is strictly prohibited.** (emphasis supplied).