

TWENTY-SECOND DIVISION

[CA-G.R. SP NO. 115681-MIN, August 29, 2014]

DIOSDADO G. PALLASIGUE, PETITIONER, VS. ELIAS S. SEGURA, JR., OFFICE OF THE OMBUDSMAN AND HON. SUHARTO T. MANGUDADATO, THE PROVINCIAL GOVERNOR OF SULTAN KUDARAT, RESPONDENTS.

D E C I S I O N

INTING, J.:

Before Us is petitioner's Petition for Review under Rule 43 of the Rules of Court assailing the Decision^[1] dated June 11, 2010 issued by the Office of the Ombudsman in Case No. OMB-M-A-08-199-E for "*Grave Misconduct and Abuse of Authority*".

The facts of the case are as follows:

Respondent Elias Segura, Jr. was appointed as Municipal Planning and Development Coordinator (MPDC) of the Municipal Planning and Development Office (MPDO) of Isulan, Sultan Kudarat under a permanent status on August 1, 1996.

On September 14, 2007, a memorandum^[2] was issued by petitioner Municipal Mayor Diosdado Pallasigue reassigning Segura to the Office of the Municipal Mayor to perform specific tasks enumerated in the aforesaid memorandum, thereby temporarily relieving him of his duties as MPDC. On the basis of another Memorandum^[3] dated September 14, 2007 issued by petitioner to Mr. Freddie Tiosing, Project Development Officer II of the Municipality, the latter was designated as Acting MPDC. On October 11, 2007, petitioner issued another memorandum containing basically the same items in the Memorandum dated September 14, 2007, but with the additional phrase stating that "*this Memorandum shall retroact from September 14, 2007 and shall remain effective one (1) year thereafter pursuant to CSC Memorandum Circular No. 2, Series of 2005*". From September 2007 to February 2008, Segura continuously received the Representation and Travel Allowance (RATA) attached to his office.

An appeal was filed by Segura before the Civil Service Commission (CSC) questioning his reassignment and the payment of RATA to Tiosing. In its Decision^[4] dated February 26, 2008, the CSC ruled in favor of Segura directing petitioner to recall Segura's reassignment and to restore the latter to his position as MPDC.

On April 7, 2008, Segura filed a Letter-Complaint to the Deputy Ombudsman charging petitioner with technical malversation, abuse of authority and grave misconduct. Segura alleged that starting March 2008, the RATA which he had continuously received from the time he was appointed as MPDC in 1996 was withheld and was given to the acting MPDC in the person of Tiosing who was named

in the Memorandum dated September 14, 2007. He further alleged that this was made possible through the insertion of item no. 10 to the original powers and functions given to Tiosing. In the second memorandum dated October 11, 2007, it was stated that the receipt of RATA is now part and parcel of the duties and functions of Tiosing as acting MPDC. Segura claimed that there was a falsification/modification of the original memorandum designating Tiosing as acting MPDC to justify the disbursement of the RATA to Tiosing.

On October 13, 2009, Graft Investigation and Prosecution Officer II, Milagros De Jesus-Macaraig of the Office of the Ombudsman signed the assailed Decision^[5] finding petitioner guilty of simple misconduct. The dispositive portion of the decision reads:

WHEREFORE, premises considered, this Office finds and so holds that respondents Municipal Mayor **DIOSDADO GONZALES PALLASIGUE, FREDIE GIGOSO TIOSING and LALYN BARCEMO ESPINOSA** guilty of the administrative offense of simple misconduct. In accordance with Section 10, Rule III of Administrative Order No. 07, as amended by A.O. 17, Rules of Procedure of the Office of the Ombudsman, they are hereby meted the penalty of one (1) month and one (1) day suspension from office.

Section 7, Rule III (Procedure in Administrative Cases) of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17, provides:

"xxxx xxxx xxxx

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be ground for disciplinary action against said officer.

Moreover, Memorandum Circular No. 61, Series of 2006 dated 11 April 2006 of the Tanodbayan reads:

xxxx xxxx xxxx

The filing of a motion for reconsideration or a petition for review before the Office of the Ombudsman does not operate to stay the immediate implementation of the foregoing Ombudsman decisions, orders or resolutions.

Only a Temporary Restraining Order (TRO) or a Writ of Preliminary Injunction, duly issued by a court of competent jurisdiction, stays the immediate implementation of the said Ombudsman decisions, orders or resolutions.

Accordingly, Provincial Governor SUHARTO T. MANGUDADATU of Isulan, Sultan Kudarat is hereby tasked to IMMEDIATELY implement the penalty of suspension imposed on respondents Municipal Mayor **DIOSDADO GONZALES PALLASIGUE**, Project Development Officer III **FREDIE GIGOSO TIOSING** and Municipal Budget Officer **LALYN BARCEMO ESPINOSA** as decreed in the subject Decision in accordance with Section 7, 3rd paragraph of Rule III of Administrative Order No. 17 of the Office of the Ombudsman. A Compliance Report, indicating the OMB Case Number, shall be promptly submitted to this Area Office. Let a copy of this Decision be furnished to the Head of Office of the Civil Service Commission (CSC), ARMM and the Department of Interior and Local Government (DILG), ARMM, for their appropriate information and action thereon.

The case against respondents Leonarda Marcelino Panceras, Rudy Belasa Fernandez and Renante Agana Zabala is hereby dismissed for lack of substantial evidence.

SO DECIDED.

On May 10, 2010, petitioner was re-elected as Mayor of Isulan, Sultan Kudarat. However, it was only on June 11, 2010 when the assailed Decision was signed and approved by the Deputy Ombudsman for Luzon.

Petitioner now comes before Us praying for the reversal and annulment of the Decision of the Office of the Ombudsman dated June 11, 2010 and further raises the following assignment of errors^[6]:

I.

WHETHER THE PUBLIC RESPONDENT OMBUDSMAN ERRED IN FINDING PETITIONER GUILTY OF SIMPLE MISCONDUCT WHEN HE AMENDED THE 17 SEPTEMBER 2007 MEMORANDUM, RELYING IN GOOD FAITH ON THE RULINGS OF THE CIVIL SERVICE COMMISSION AND THE DEPARTMENT OF BUDGET AND MANAGEMENT ON THE GRANT OF REPRESENTATION AND TRANSPORTATION ALLOWANCE (RATA).

II.