

# FIRST DIVISION

[ G.R. No. 237742, October 08, 2018 ]

**CELSO OLIVIER T. DATOR, PETITIONER, V. HON. CONCHITA CARPIO-MORALES, IN HER CAPACITY AS THE OMBUDSMAN, AND HON. GERARD A. MOSQUERA, IN HIS CAPACITY AS THE DEPUTY OMBUDSMAN FOR LUZON, AND THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, RESPONDENTS.**

## DECISION

**TIJAM, J.:**

Before Us is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court, assailing the Resolution dated February 23, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 154524, denying petitioner's Petition for Injunction, with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction.

### The Antecedents

The case stemmed from a complaint<sup>[2]</sup> filed on May 2, 2016 by complainant Moises B. Villasenor (Villasenor) against the incumbent Mayor of Lucban, Quezon, petitioner Celso Olivier T. Dator (Dator), and Maria Lyncelle D. Macandile (Macandile), also of Lucban, Quezon for grave misconduct, grave abuse of authority and nepotism.

It was alleged that in his immediately preceding term, Dator hired his sister, Macandile, as Chief Administrative Officer through a Job Order<sup>[3]</sup> and designated her as Municipal Administrator through Special Order (S.O.) No. 2, Series of 2014<sup>[4]</sup>, dated March 1, 2014. There was no appointment paper that was submitted to the Sangguniang Bayan for the required confirmation pursuant to Sec. 443(d)<sup>[5]</sup> of the Local Government Code (LGC).<sup>[6]</sup>

It was also alleged that Macandile lacked the qualifications of a Municipal Administrator and her Job Order stated that "*the above-named hereby attests that he/she is not related within the third degree (fourth degree in case of LGUs) of consanguinity or affinity to the 1) hiring authority and/or 2) representatives of the hiring agency*",<sup>[7]</sup> when in truth and in fact, she is the sister of Dator.

In the Joint Counter-Affidavit of Dator and Macandile<sup>[8]</sup>, they denied the charges and stated that Macandile was merely granted an authority to perform the duties and functions of an administrator in the exigency and best interest of public service. They stated that Macandile's credentials showed her competence as she worked as a Head Nurse in Ginebra San Miguel, Inc. from 1994 to 2005.<sup>[9]</sup> They further alleged that the position of Municipal Administrator did not exist in the municipality's plantilla of personnel, hence, there was no appointment paper submitted to the Sangguniang Bayan for confirmation.<sup>[10]</sup>

They also countered that the position of Municipal Administrator is primarily confidential, non-career and coterminous with the appointing authority and that the Job Order was executed for payroll purposes only. They pointed out that complainant was a former mayor of Lucban, Quezon and the said practice was done even during the complainant's administration. They submitted copies of the Job Order forms<sup>[11]</sup> issued during the administration of the complainant, where a Dr. Palermo C. Salvacion (Dr. Salvacion) was designated as Chief Administrative Officer from 2007 to 2010.

### **The OMB Ruling**

The Ombudsman (OMB) rendered a Decision dated March 20, 2017,<sup>[12]</sup> dismissing the charges against Macandile, but finding Dator administratively liable for Simple Misconduct.

The OMB found that Dator's act of hiring his sister without observing the regular process of appointment, and merely issuing a Job Order was irregular. It noted that since the position of Municipal Administrator was not in the plantilla, Dator should have requested the Sangguniang Bayan to create the said position through an ordinance.

It also noted that though the position of Municipal Administrator was coterminous and highly confidential in character, it was required that the appointee meet the qualifications enumerated in Section 480, Article X of the LGC.<sup>[13]</sup> It also ruled that the position did not fall within the confidential/personal staff contemplated under Section 1(e), Rule X of CSC MC No. 40, s. 1998<sup>[14]</sup> which dispenses with the eligibility and professional experience requirements.

The OMB ruled that in the issuance of the Job Order and S.O. No. 2, Series of 2014, Dator exhibited reprehensible conduct. It also found Dator's act of affixing his signature in the Job Order, which contained an attestation that Macandile is not related within the fourth degree of consanguinity to the hiring authority, despite knowledge of its falsity, is a clear transgression of the norms and standards expected of him as a government official.<sup>[15]</sup>

It disposed, thus:

WHEREFORE, finding substantial evidence, respondent CELSO OLIVIER T. DATOR is hereby found administratively liable for Simple Misconduct and is meted the penalty of SIX (6) MONTHS SUSPENSION FROM OFFICE WITHOUT PAY pursuant to Section 10, Rule III, Administrative Order No. 07, as amended by Administrative Order No. 17 in relation to Section 25 of Republic Act No. 6770.

In the event that the penalty of Suspension can no longer be enforced due to respondent's separation from the service, the penalty shall be converted into a Fine in an amount equivalent to his salary for 6 months payable to the Office of the Ombudsman, and may be deductible from his retirement benefits, accrued leave credits or any receivable from his office.

The Honorable Secretary, the Department of the Interior and Local Government is hereby directed to implement this DECISION immediately

upon receipt thereof pursuant to Section 7, Rule III of Administrative Order No. 07, as amended by Administrative Order No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1 series of 2006 dated April 11, 2006 and to promptly inform this Office of the action taken hereon.

SO ORDERED.<sup>[16]</sup>

The same was approved by Hon. Ombudsman Conchita Carpio Morales on October 11, 2017 with the footnote prescribing a shorter penalty, viz:

WHEREFORE, finding substantial evidence, respondent CELSO OLIVIER T. DATOR is hereby found administratively liable for Simple Misconduct and is meted the penalty of ONE (1) MONTH AND ONE (1) DAY SUSPENSION FROM OFFICE WITHOUT PAY pursuant to Section 10, Rule III, Administrative Order No. 07, as amended by Administrative Order No. 17 in relation to Section 25 of Republic Act No. 6770.

In the event that the penalty of Suspension can no longer be enforced due to respondent's separation from the service, the penalty shall be converted into a Fine in an amount equivalent to respondent's salary for 1 month payable to the Office of the Ombudsman, and may be deductible from his retirement benefits, accrued leave credits or any receivable from his office.

The Honorable Secretary of the Department of the Interior and Local Government is hereby directed to implement this DECISION immediately upon receipt thereof pursuant to Section 7, Rule III of Administrative Order No. 07, as amended by Administrative Order No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1 series of 2006 dated April 11, 2006 and to promptly inform this Office of the action taken hereon.

SO ORDERED.<sup>[17]</sup>

A Motion for Reconsideration<sup>[18]</sup> was filed by Dator. A Supplement to the Motion for Reconsideration dated November 6, 2017<sup>[19]</sup> was likewise filed by his new counsel, in collaboration with the counsel of record, reiterating, among others, that Villasenor granted authority through similar job orders to a Dr. Salvacion as Chief Administrative Officer to perform the functions and duties appurtenant to an Administrator from 2007 to 2010. It was further pointed out that the administrative case was extinguished by the re-election of Dator in 2016 under the Aguinaldo (or condonation) Doctrine which was only abandoned in 2015 by the Supreme Court in the *Ombudsman Carpio Morales vs. CA, et al*,<sup>[20]</sup> case.

Dator also filed a Motion for Clarification<sup>[21]</sup>, seeking clarification as to the correct penalty imposed – whether it is six (6) months suspension or one (1) month and one (1) day suspension.

Dator filed before the CA a Petition for Injunction with Prayer for Issuance of Preliminary Injunction and/or Temporary Restraining Order<sup>[22]</sup> (petition for injunction), praying for respondents to desist and refrain from implementing the OMB's March 20, 2017 Decision.

## **The CA Ruling**

In the assailed February 23, 2018 Resolution, the CA<sup>[23]</sup> denied the petition outright in this wise:

The Petition for Injunction, with prayer for the issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction, is DISMISSED on the following grounds:

1. an original action for injunction (under Rule 58 of the 1997 Rules of Civil Procedure) is outside the jurisdiction of the Court of Appeals (Allgemeine Bau-Chemie Phils. Inc. vs. Metropolitan Bank, 482 SCRA 247)
2. the correct mode to impugn the Decision of the Ombudsman in administrative disciplinary cases is to appeal to the Court of Appeals under Rule 43 (Gupilan-Aguilar vs. Office of the Ombudsman, 717 SCRA 503)

Dator then filed with Us a Petition for Review on Certiorari raising the following issues:

I. WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT RULING THAT THE AGUINALDO DOCTRINE OTHERWISE KNOWN AS THE CONDONATION DOCTRINE STILL APPLIES IN THIS CASE AT BAR.

II. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN NOT RULING THAT THE CONFLICTING PENALTIES METERED (sic) OUT BY THE OFFICE OF THE OMBUDSMAN WARRANTS THE ISSUANCE OF AN INJUNCTIVE WRIT.

III. WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT GIVING DUE COURSE TO THE PETITION.

Subsequently, the OMB denied Dator's motion for reconsideration in a February 27, 2018 Order.<sup>[24]</sup> It also clarified that the seeming conflict in the proper penalty imposable on Dator was due to an honest oversight in the footnote of the OMB decision, and clarified that the penalty imposed on Dator is six months suspension without pay.

In its Comment, the Office of the Solicitor General (OSG) pointed out that Dator filed a Petition for Review with Extremely Urgent Application for Temporary Restraining Order/Status Quo Ante Order and/or Writ of Preliminary Injunction (petition for review) dated June 19, 2018<sup>[25]</sup> before the CA, assailing the March 20, 2017 Decision and February 27, 2018 Order of the OMB. It ascribed forum shopping upon Dator for filing the instant petition dated February 9, 2018 and the said petition for review dated June 19, 2018 before the CA. It highlighted that the CA was correct in dismissing the Petition for Injunction case before it, and that Dator is not entitled to any injunctive relief.

## **The Court's Ruling**

***The petition is partly meritorious.***

*The CA erred in not giving due course to the petition*

Indeed, appeals from decisions in administrative disciplinary cases of the OMB should be taken to the CA via a Petition for Review under Rule 43 of the Rules of Court. Rule 43 prescribes the manner of appeal from quasi-judicial agencies, such as the OMB, and was formulated precisely to provide for a uniform rule of appellate procedure for quasi-judicial agencies.<sup>[26]</sup>

Although Dator filed a petition for injunction, a close scrutiny of the petition, its allegations and discussion would clearly disclose that it questioned the decision in its entirety. The CA should not have been quick to dismiss the said petition on procedural grounds alone. Given the peculiar circumstances of the case, where Dator is unsure of whether the suspension that is immediately executory is one month and one day or six months, and the resolution of his motion for clarification is still forthcoming, Dator understandably sought relief. Without further belaboring the point, We find it very clear that the extreme urgency of the situation required an equally urgent resolution, and due to the public interest involved, the petitioner is justified in straightforwardly seeking the intervention of this Court.<sup>[27]</sup>

While the Rules of Procedure must be faithfully followed, the same Rules may be relaxed for persuasive and weighty reasons to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure.<sup>[28]</sup> Again, as We repeatedly held in prior cases, the provisions of the Rules should be applied with reason and liberality to promote their objective of securing a just, speedy, and inexpensive disposition of every action and proceeding.<sup>[29]</sup>

The petition for injunction set out circumstances that merited the relaxation of the rules. It cannot be emphasized enough that the suspension from office of an elective official, whether as a preventive measure or as a penalty, will undeservedly deprive the electorate of the services of the person they have conscientiously chosen and voted into office.<sup>[30]</sup>

*Forum shopping*

The case of *Yamson, et al. vs. Castro, et al.*,<sup>[31]</sup> discusses the rule on forum shopping succinctly:

The rule against forum shopping prohibits the filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively for the purpose of obtaining a favorable judgment. Forum shopping may be committed in three ways: (1) **through *litis pendentia*** - filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet; 2) **through *res judicata*** - filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved; and 3) **splitting of causes of action** - filing multiple cases based on the same cause of action but with different prayers - the ground to dismiss being either *litis pendentia* or *res judicata*.<sup>[32]</sup>

A review of the petition for injunction, from which this petition for review on *certiorari* is rooted from, and the petition for review dated June 19, 2018 would