

## THIRD DIVISION

[ G.R. No. 175433, March 11, 2015 ]

**ATTY. JACINTO C. GONZALES, PETITIONER, VS. MAILA CLEMEN F. SERRANO, RESPONDENT.**

### D E C I S I O N

**PERALTA, J.:**

Before the Court is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court filed by Atty. Jacinto C. Gonzales,<sup>[2]</sup> assailing the Decision<sup>[3]</sup> of the Court of Appeals (CA), dated August 16, 2006, and its Resolution<sup>[4]</sup> dated October 4, 2006, in CA G.R. SP No. 76959. The CA reversed and set aside the Memorandum-Order dated January 3, 2003 and the Order dated February 11, 2003 approved by then Overall Deputy Ombudsman Margarito P. Gervacio Jr. in OMB-ADM-0-01-0162, and reinstated the Decision dated March 19, 2002 of the Ombudsman Administrative Adjudication Bureau approved by then Ombudsman Aniano A. Desierto in OMB-ADM-01-0162 (RAS-2001-0156).

The factual and procedural antecedents are as follows:

This case arose from an administrative complaint filed by Atty. Maila Clemen F. Serrano (*respondent*) against her direct superior, Atty. Jacinto C. Gonzales (*petitioner*), Chief, Legal Division of the Philippine Racing Commission (PHILRACOM), for grave misconduct, sexual harassment and acts of lasciviousness.

In her Complaint-Affidavit<sup>[5]</sup> dated January 12, 2001, respondent alleged that on November 23, 2000, petitioner invited her, along with her officemates, Administrative Officer V Eva Bataller, Atty. III Eugene Juanson, and Stenographer II Roman Vidal, to eat lunch at Buddy's Restaurant, at J.P. Rizal St., Makati City. While seated at the table waiting for their food to be served, petitioner suddenly took hold of respondent's face and forcefully kissed her lips in the presence of Eva, Eugene, Roman and other customers. Respondent tried to ward off petitioner by pulling her head away from him, but he persisted on kissing her against her will. She was so shocked, terrified, and humiliated that she could hardly talk and move. She wanted to cry, but held her tears for fear of further embarrassment. After releasing her, petitioner said: "*Ang sarap pala ng labi ni Maila...*" Then, he held her hand and said "*Maila sige na...*" But, she took away her hand from him. Thereafter, she immediately reported the incident to PHILRACOM Executive Director Juan Lozano.

Respondent also alleged that prior to that "kissing" incident, petitioner had already degraded her person on four (4) separate occasions, namely: (1) on the very first day she met him in the office, he offered to purchase her a cell phone so that he can text her, which offer she straightforwardly refused; (2) on that same day, he wanted her to join him in his car in going home, which she likewise refused; (3) a week later, he asked her to eat out for lunch; again, she refused; and (4) on August 23,

2000, after her sick leave from office, petitioner called her in his office and scolded her and uttered the following unsavory remarks:

*Eh ayoko na sa iyo. Hindi mo sinabi sa akin na may anak ka! Nasaan na ang tatay ng anak mo? Wala na? Ano pang hindi mo sinasabi sa akin, may boyfriend ka? Akala ko pa naman ok ka, kaya nga sinabihan kita dati na sumabay ka sa akin! Ang daming nagrereklamo sa iyo dito. Hindi ka marunong makisama. Makisama ka naman! Paano na kung alisin ka dito, makakabalik ka pa ba sa dati mong opisina? Eh ayoko talaga sa iyo dito. Ano? Do you have a choice? Alam mo ba na ako ang nagrekomenda kay Eva diyan sa Admin. kay Chairman. Kaya ka nakapasok dito dahil pakiusap ka lang [ni] Eva sa akin. Alam mo bang nakasalalay dito and posisyon mo dito? Alam mo bang kung ano mo ako dito? Ha? Ano mo ako dito? xxx Ano ngayon ang gagawin natin eh ayoko nga sa iyo? Anong gagawin natin ngayon?*

Respondent further alleged that she was constrained to elevate her complaint before the Office of the Ombudsman because the PHILRACOM Grievance Committee had not taken any concrete action on her administrative case which had been pending for over a month, and also because of petitioner's relatively high position in the office.

To support her complaint-affidavit and to corroborate her account, respondent submitted the Joint Affidavit<sup>[6]</sup> of her officemates Eva, Eugene and Roman, who witnessed the entire "kissing" incident on November 23, 2000.

In his Counter-Affidavit/Answer dated March 22, 2001, petitioner alleged that at the prodding of his staff, he agreed to treat them for lunch, as it was respondent's birthday, and she had no money for a "blowout".<sup>[7]</sup> While their group were talking in the restaurant, he greeted respondent and planted an innocent birthday greeting kiss on her left cheek, near her lips. He also alleged that he first met respondent when she applied for Attorney III; that on July 1, 2000, he summoned her to explain the complaints forwarded by the Personnel and Administrative Division as to her frequent absence and tardiness; and that his act of reviewing her official functions was in accordance with his duties and responsibilities as a legal counsel of PHILRACOM.

In her Reply-Affidavit,<sup>[8]</sup> respondent stated that she never solicited any favor from petitioner, let alone obliged him to spend money for her birthday "blowout"; that his birthday lunch treat was part of a premeditated evil plan to have her submit to his sexual desire; that she never allowed him to kiss her on the cheek, much less on the lips; that in the course of her employment with petitioner as her supervisor, he had often made sexual advances and gestures towards her, but she still tried to keep their relationship on a strictly professional level; that the alleged work-related incidents of tardiness, inefficiency and laziness were all intended to harass her; and that because of the administrative case she filed against him, she lost her job.

Meanwhile, records show that in an Order of Termination dated January 18, 2001, Executive Director Lozano ordered the termination of respondent at the close of business hours of January 19, 2001.<sup>[9]</sup> Records also show that the Commission on

Human Rights issued a Resolution dated May 8, 2001 in CHR Case No. 2001-037 which found petitioner to have committed acts of sexual harassment, abuse of authority, and illegal dismissal against respondent.<sup>[10]</sup>

In an Order dated June 27, 2001, the parties were directed to appear for the preliminary conference of the administrative case. Both parties appeared as directed and agreed to submit the case for decision based on the evidence on record and pleadings filed.

A Resolution dated July 17, 2001 was approved by then Overall Deputy Ombudsman Margarito P. Gervacio, Jr. (*Overall Deputy Ombudsman*) in OMB-0-01-0039, the dispositive portion of which reads:

**WHEREFORE**, premises considered, this Office finds sufficient evidence that supports the conclusion that the crime of violation of Section 3(a), Republic Act No. 7877, otherwise known as "An Act Declaring Sexual Harassment Unlawful in the Employment, Education, or Training Environment, and for other purposes," was committed probably by the herein respondent. Let therefore, the appropriate information be filed against Jacinto C. Gonzales before the Metropolitan Trial Court of Makati City.

SO RESOLVED.<sup>[11]</sup>

On March 19, 2002, the Office of the Ombudsman Administrative Adjudication Bureau, through Graft Investigation Officer Marlon T. Molina, issued a Decision finding petitioner guilty of grave misconduct. Approved by Ombudsman Aniano A. Desierto, among other officers, the Decision has the following dispositive portion:

FOREGOING PREMISES CONSIDERED, this Office finds substantial evidence that respondent JACINTO G. GONZALES is guilty of Grave Misconduct.

Accordingly, the penalty of DISMISSAL from the service is hereby imposed upon him pursuant to Section 52 (A), par. 3, Rule IV of Resolution No. 991936 otherwise known as the Uniform Rules on Administrative Cases in the Civil Service.

The Honorable Chairman of the Philippine Racing Commission, Electra House Building, Esteban Street, Legaspi Village, Makati City is hereby directed to implement this Decision in accordance with law and promptly report to this Office compliance thereof.

SO ORDERED.<sup>[12]</sup>

Petitioner moved for reconsideration which the Ombudsman Administrative Adjudication Bureau denied in the Order dated September 9, 2002.<sup>[13]</sup>

However, on January 3, 2003, the Overall Deputy Ombudsman approved the Memorandum issued by Graft Investigation Officer II Julita M. Calderon, with a decretal portion that states:

WHEREFORE, foregoing premises considered, we most respectfully recommend that the herein **ORDER** dated September 9, 2002 prepared by GIO Molina be **MODIFIED** insofar as the infraction and the penalty to be imposed upon the herein respondent is concerned, i.e., from **GRAVE MISCONDUCT** to **SIMPLE MISCONDUCT** and from **DISMISSAL** from the Service to a mere **ONE (1) MONTH SUSPENSION**, without pay, pursuant to Section 52B (2) of Rule IV of the "Uniform Rules on Administrative Cases in the Civil Service."<sup>[14]</sup>

Aggrieved, respondent brought the case to the CA *via* a Petition for *Certiorari* under Rule 65 of the Rules of Court, attributing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Overall Deputy Ombudsman. On August 16, 2006, the CA sustained respondent and rendered the herein assailed decision. Thus:

WHEREFORE, premises considered, the instant Petition is GRANTED. The memorandum-order dated 03 January 2003 and the Order dated 11 February 2003 approved by then Overall Deputy Ombudsman Margarito P. Gervacio, Jr. in OMB-ADM-0-01-0162 are REVERSED and SET ASIDE. The Decision dated 19 March 2002 approved by then Ombudsman Aniano A. Desierto in OMB-ADM-0-01-0162 (RAS-2001-0156) is hereby REINSTATED. Costs against private respondent.

SO ORDERED.<sup>[15]</sup>

Thereafter, petitioner filed an Urgent Motion for Extension of Time to File Motion for Reconsideration,<sup>[16]</sup> but the CA denied it in a Resolution<sup>[17]</sup> dated October 4, 2006 for being a prohibited motion.

Hence, petitioner filed the instant Petition for Review.

Petitioner raises the following issues:

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERROR IN SETTING ASIDE THE MEMORANDUM-ORDER DATED 03 JANUARY 2003 AND THE ORDER DATED 11 FEBRUARY 2003 APPROVED BY THE THEN OVERALL DEPUTY OMBUDSMAN MARGARITO P. GERVACIO, JR. IN OMB-ADM-0-01-0162, IT APPEARING THAT THE DEPUTY OMBUDSMAN, IN FINDING THAT THERE WAS ONLY SIMPLE MISCONDUCT, HAS NOT BEEN SHOWN TO HAVE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK, OR IN EXCESS OF DISCRETION [sic], UPON WHICH THE INSTANT PETITION IS BASED, IN GROSS CONTRAVENTION OF THE RULES AND ESTABLISHED JURISPRUDENCE ON THE MATTER.

THE HONORABLE COURT OF APPEALS LIKEWISE GROSSLY ERRED IN DENYING PETITIONER'S URGENT MOTION FOR RECONSIDERATION, THE GROUNDS INVOKED THEREIN NOT BEING APPLICABLE TO THE CASE AT BAR AND MOREOVER, THE DENIAL THEREOF HAS SACRIF[I]CED THE BASIC PRINCIPLES OF JUSTICE AND FAIR PLAY TO TECHNICALITIES OF PROCEDURE.<sup>[18]</sup>

On the first issue, petitioner asserts that it is only in an appealed case, not in a petition for certiorari under Rule 65, that the CA has authority to substitute its own findings and conclusions with that of the disciplining authority. He points out that what is claimed as "grave abuse of discretion" on the part of the Overall Deputy Ombudsman was his alleged erroneous approval of the Memorandum-Order dated January 3, 2003 which modified the infraction and the penalty from grave misconduct to simple misconduct, and from dismissal to a mere one (1) month suspension without pay. But, he argues that such was merely an error in the exercise of judgment or discretion which is not correctible by a writ of certiorari. He also argues that the mere fact that the Overall Deputy Ombudsman made findings and conclusions contrary to or inconsistent with those of the Ombudsman Administrative Adjudication Bureau cannot, by itself, be considered grave abuse of discretion, as the findings of the disciplining authority is always subject to amendment, corrections or reconsideration. He concedes that the Overall Deputy Ombudsman found him to have committed misconduct amounting to sexual harassment. However, he points out that such finding of simple misconduct, instead of grave misconduct, is supported by facts and circumstances, and such finding is within sole discretion of the Overall Deputy Ombudsman over which the courts have no authority to interfere. At any rate, he submits that his misconduct was not motivated by a premeditated, obstinate or intentional purpose; hence, the extreme penalty of dismissal is not warranted. Finally, he maintains that the issue of sexual harassment is better addressed and resolved in the criminal case for violation of Section 3(a) of R.A. No. 7877<sup>[19]</sup> (docketed as Crim. Case No. 311165) pending before the Metropolitan Trial Court of Makati, Branch 64, for to do so in an administrative proceedings would be unfair, unjust and extremely unreasonable.

On the second issue, petitioner contends that the CA grossly erred in applying the two prohibitions laid down in *Habaluyas Enterprises, Inc. et al. v. Court of Appeals*,<sup>[20]</sup> which was reiterated in *Ma. Imelda Argel, et al. v. Court of Appeals, et al.*,<sup>[21]</sup> i.e., the doctrine that the 15-day period for filing an appeal is non-extendible, and the prohibition against the filing of a motion for extension of time to file a motion for reconsideration in all courts, except the Supreme Court. He insists that the denial of such motion for extension should be based on the court's assessment of the grounds relied upon and not on purely procedural technicality. He seeks to justify his urgent motion for extension on the fact that, as Presiding Judge and Pairing Judge of the Metropolitan Trial Court of Olongapo City, he was beset with pressures of work attending to numerous court trials, preparation of court orders and decisions, and large volume of case load. He prays for a liberal construction of procedural rules in order to assist the parties in obtaining a just, speedy and inexpensive determination of every action or proceeding.

There is no merit in the petition