

THIRD DIVISION

[G.R. No. 172206, July 03, 2013]

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. ERNESTO M. DE CHAVEZ, ROLANDO L. LONTOC, SR., DR. PORFIRIO C. LIGAYA, ROLANDO L. LONTOC, JR. AND GLORIA M. MENDOZA, RESPONDENTS.

D E C I S I O N

PERALTA, J.:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Resolution^[1] of the Court of Appeals (CA), dated April 7, 2006, be reversed and set aside.

The crux of the controversy is whether the Batangas State University Board of Regents (BSU-BOR) could validly enforce the Office of the Ombudsman's Joint Decision dated February 14, 2005 and Supplemental Resolution dated July 12, 2005, **finding herein respondents guilty of dishonesty and grave misconduct and imposing the penalty of dismissal from service with its accessory penalties**, despite the fact that said Joint Decision and Supplemental Resolution are pending appeal before the CA.

On August 18, 2005, the BSU-BOR received an Order from Deputy Ombudsman Victor Fernandez directing the former to enforce the aforementioned Office of the Ombudsman's Joint Decision and Supplemental Resolution. Pursuant to said Order, the BSU-BOR issued Resolution No. 18, series of 2005, dated August 22, 2005, resolving to implement the Order of the Office of the Ombudsman. Thus, herein respondents filed a petition for injunction with prayer for issuance of a temporary restraining order or preliminary injunction before the Regional Trial Court of Batangas City, Branch 4 (RTC), against the BSU-BOR. The gist of the petition before the RTC is that the BSU-BOR should be enjoined from enforcing the Ombudsman's Joint Decision and Supplemental Resolution because the same are still on appeal and, therefore, are not yet final and executory.

On September 26, 2005, the RTC ordered the dismissal of herein respondents' petition for injunction on the ground of lack of cause of action. Respondents filed their notice of appeal and promptly filed a Motion for Issuance of a Temporary Restraining Order and/or Injunction dated December 8, 2005 with the CA. On February 17, 2006, the CA issued a Resolution granting respondents' prayer for a temporary restraining order enjoining the BSU-BOR from enforcing its Resolution No. 18, series of 2005.

Thereafter, on March 7, 2006, the Office of the Ombudsman filed a Motion to Intervene and to Admit Attached Motion to Recall Temporary Restraining Order, with the Motion to Recall Temporary Restraining Order attached thereto. Respondents

opposed said motion and then filed an Urgent Motion for Issuance of a Writ of Preliminary Injunction. On April 7, 2006, the CA issued the Resolution subject of the present petition, pertinent portions of which are reproduced below:

At the outset, let it be emphasized that We are accepting and taking cognizance of the pleadings lodged by the Office of the Ombudsman only in so far as to afford it with ample opportunity to comment on and oppose appellants' application for injunctive relief, but not for the purpose of allowing the Ombudsman to formally and actively intervene in the instant appeal. Basically, this is a regular appeal impugning the disposition of the trial court, the pivotal issue of which is only for the appellants and the Board of Regents of BSU to settle and contest, and which may be completely adjudicated upon without the active participation of the Office of the Ombudsman.

x x x x

In the final reckoning, We stand firm by Our conclusion that the administrative penalty of dismissal from the service imposed upon herein appellants is not yet final and immediately executory in nature in view of the appeal interposed therefrom by the appellants before this Court, and this fact, in the end, impelled Us to act with favor upon appellants' prayer for injunctive relief to stay the execution of the impugned Resolution of the Board of Regents of BSU.

Wherefore, premises considered, the Ombudsman's Motion to Recall the TRO is denied. On the other hand, appellants' Urgent Motion for Issuance of a Writ of Preliminary Injunction is granted. Accordingly, let a Writ of Preliminary Injunction be issued, as it is hereby issued, conditioned upon the posting by the appellants of an Injunction Bond in the sum of Php10,000.00, enjoining the Board of Regents of BSU, and all other persons and agents acting under its command authority, pending the complete resolution of this appeal, from effecting the enforcement and implementation of its Resolution No. 18, Series of 2005 issued pursuant to the July 12, 2005 Supplemental Resolution of the Ombudsman, Central Office.

SO ORDERED.^[2]

Petitioners then filed a petition for review on *certiorari* before this Court, assailing the aforequoted CA Resolution dated April 7, 2006, alleging that:

I.

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS DISREGARDED THE WELL-ENTRENCHED RULE AGAINST FORUM SHOPPING WHEN, INSTEAD OF OUTRIGHTLY DISMISSING RESPONDENTS' PETITION, THE SAID COURT TOOK COGNIZANCE OF THE PETITION AND SUBSEQUENTLY ISSUED ITS RESOLUTIONS DATED 17

FEBRUARY 2006 AND 7 APRIL 2006, RESPECTIVELY;

II.

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS SERIOUSLY OVERLOOKED THE PROVISIONS OF RULE 58 OF THE 1997 REVISED RULES OF CIVIL PROCEDURE WHEN IT TOOK COGNIZANCE OF RESPONDENTS' UNVERIFIED PETITION AND SUBSEQUENTLY ISSUED ITS 17 FEBRUARY 2006 AND 7 APRIL 2006 RESOLUTIONS;

III.

THE ISSUANCE BY THE HONORABLE COURT OF APPEALS OF THE 17 FEBRUARY 2006 AND 7 APRIL 2006 RESOLUTIONS ENJOINING THE IMPLEMENTATION OF BOARD RESOLUTION NO. 18, SERIES OF 2005 ISSUED BY THE BOARD OF REGENTS OF BATANGAS STATE UNIVERSITY UNDULY DISREGARDS THE ESTABLISHED RULES RELATIVE TO IMPLEMENTATION OF OMBUDSMAN DECISION PENDING APPEAL, CONSIDERING THAT:

A. BOARD RESOLUTION NO. 18, SERIES OF 2005 WAS ISSUED BY THE BOARD OF REGENTS OF THE BATANGAS STATE UNIVERSITY PURSUANT TO THE JOINT DECISION AND SUPPLEMENTAL RESOLUTION ISSUED BY THE OFFICE OF THE OMBUDSMAN.

B. UNDER THE OMBUDSMAN RULES OF PROCEDURE, AN APPEAL DOES NOT STAY THE EXECUTION OF DECISIONS, RESOLUTIONS OR ORDERS ISSUED BY THE OFFICE OF THE OMBUDSMAN.

IV.

RESPONDENTS ARE NOT ENTITLED TO THE INJUNCTIVE RELIEF PRAYED FOR IN THEIR UNVERIFIED MOTION FILED BEFORE THE HONORABLE COURT OF APPEALS.^[3]

Controverting petitioner's claims, respondents in turn allege that:

1. PETITIONER (OMBUDSMAN) HAS NO LEGAL PERSONALITY TO INSTITUTE THE INSTANT PETITION INASMUCH AS IT IS NOT A PARTY TO THE APPEALED CASE PENDING BEFORE THE COURT OF APPEALS;

2. ASSUMING THAT THE PETITIONER HAS THE LEGAL PERSONALITY TO INTERVENE IN THE APPEALED CASE BEFORE THE COURT OF APPEALS, THE INSTANT PETITION IS NOT THE PROPER RECOURSE AVAILABLE TO THE PETITIONER; AND

3. THE COURT OF APPEALS DID NOT COMMIT ANY GRAVE ABUSE OF DISCRETION IN ISSUING THE ASSAILED RESOLUTIONS.^[4]

At the outset, the Court must clarify that a petition for review on *certiorari* is not the proper remedy to question the CA Resolution dated April 7, 2006 granting the Writ of Preliminary Injunction and denying petitioner's motion for intervention. Said Resolution did not completely dispose of the case on the merits, hence, it is merely an interlocutory order. As such, Section 1, Rule 41 of the Rules of Court provides that no appeal may be taken therefrom. However, where the assailed interlocutory order is patently erroneous and the remedy of appeal would not afford adequate and expeditious relief, the Court allows *certiorari* as a mode of redress.^[5]

In this case, the discussion below will show that the assailed Resolution is patently erroneous, and that granting the Office of the Ombudsman the opportunity to be heard in the case pending before the lower court is of primordial importance. Thus, the Court resolves to relax the application of procedural rules by treating the petition as one for *certiorari* under Rule 65 of the Rules of Court.

The CA should have allowed the Office of the Ombudsman to intervene in the appeal pending with the lower court. The wisdom of this course of action has been exhaustively explained in *Office of the Ombudsman v. Samaniego*.^[6] In said case, the CA also issued a Resolution denying the Office of the Ombudsman's motion to intervene. In resolving the issue of whether the Office of the Ombudsman has legal interest to intervene in the appeal of its Decision, the Court expounded, thus:

x x x the Ombudsman is in a league of its own. It is different from other investigatory and prosecutory agencies of the government because the people under its jurisdiction are public officials who, through pressure and influence, can quash, delay or dismiss investigations directed against them. Its function is critical because public interest (in the accountability of public officers and employees) is at stake.

x x x x

The Office of the Ombudsman sufficiently alleged its legal interest in the subject matter of litigation. Paragraph 2 of its motion for intervention and to admit the attached motion to recall writ of preliminary injunction averred:

"2. As a competent disciplining body, the Ombudsman has the right to seek redress on the apparently erroneous issuance by this Honorable Court of the Writ of Preliminary Injunction enjoining the implementation of the Ombudsman's Joint Decision x x x."

In asserting that it was a "competent disciplining body," the Office of the Ombudsman correctly summed up its legal interest in the matter in controversy. In support of its claim, it invoked its role as a constitutionally mandated "protector of the people," a disciplinary authority vested with quasi-judicial function to resolve administrative disciplinary cases against public officials. To hold otherwise would have been tantamount to abdicating its salutary functions as the guardian of public trust and accountability.

Moreover, the Office of the Ombudsman had a clear legal interest in the inquiry into whether respondent committed acts constituting grave misconduct, an offense punishable under the Uniform Rules in Administrative Cases in the Civil Service. **It was in keeping with its duty to act as a champion of the people and preserve the integrity of public service that petitioner had to be given the opportunity to act fully within the parameters of its authority.**

It is true that under our rule on intervention, the allowance or disallowance of a motion to intervene is left to the sound discretion of the court after a consideration of the appropriate circumstances. However, such discretion is not without limitations. One of the limits in the exercise of such discretion is that it must not be exercised in disregard of law and the Constitution. The CA should have considered the nature of the Ombudsman's powers as provided in the Constitution and RA 6770.

x x x x

Both the CA and respondent likened the Office of the Ombudsman to a judge whose decision was in question. This was a tad too simplistic (or perhaps even rather disdainful) of the power, duties and functions of the Office of the Ombudsman. **The Office of the Ombudsman cannot be detached, disinterested and neutral specially when defending its decisions. Moreover, in administrative cases against government personnel, the offense is committed against the government and public interest.** What further proof of a direct constitutional and legal interest in the accountability of public officers is necessary?^[7]

Here, since its power to ensure enforcement of its Joint Decision and Supplemental Resolution is in danger of being impaired, the Office of the Ombudsman had a clear legal interest in defending its right to have its judgment carried out. The CA patently erred in denying the Office of the Ombudsman's motion for intervention.

A discussion of the next issue of the propriety of the issuance of a writ of preliminary injunction in this case would necessarily touch on the very merits of the case, *i.e.*, whether the concerned government agencies and instrumentalities may execute the Office of the Ombudsman's order to dismiss a government employee from service even if the Ombudsman's decision is pending appeal. It would also be a great waste of time to remand the case back to the CA, considering that the entire records of the proceedings have already been elevated to this Court. Thus, at this point, the Court shall fully adjudicate the main issue in the case.

Note that for a writ of preliminary injunction to issue, the following essential requisites must concur, to wit: (1) that the invasion of the right is material and substantial; (2) that the right of complainant is clear and unmistakable; and, (3) that there is an urgent and paramount necessity for the writ to prevent serious damage.^[8] In the present case, the right of respondents cannot be said to be clear and unmistakable, because the prevailing jurisprudence is that the penalty of dismissal from the service meted on government employees or officials is immediately executory in accordance with the valid rule of execution pending appeal