

## SECOND DIVISION

[ G.R. No. 172224, January 26, 2011 ]

### OFFICE OF THE OMBUDSMAN, PETITIONER, VS. COURT OF APPEALS AND DINAH C. BARRIGA, RESPONDENTS.

#### DECISION

**CARPIO, J.:**

##### The Case

Before the Court is a petition for certiorari<sup>[1]</sup> assailing the Resolutions dated 20 February 2006<sup>[2]</sup> and 16 June 2005<sup>[3]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 00079.

##### The Facts

Sometime in 2000, Sonia Q. Pua (Pua), a Municipal Councilor of Carmen, Cebu, filed a complaint<sup>[4]</sup> with the Office of the Deputy Ombudsman for Visayas. Pua alleged that Virgilio E. Villamor (Villamor), Municipal Mayor; Bebelia C. Bontia (Bontia), Municipal Treasurer; and respondent Dinah C. Barriga (Barriga), Municipal Accountant, all public officials of Carmen, Cebu, entered into several irregular and anomalous transactions in their official capacity. These transactions pertained to the handling of the trust fund of the Municipality of Carmen, Cebu in the Central Visayas Water and Sanitation Project.

On 7 March 2001, the Office of the Deputy Ombudsman for Visayas directed the parties to submit their counter-affidavits. In their Joint Counter-Affidavit dated 9 May 2001, Villamor and Barriga denied Pua's allegations.

In a Decision dated 28 August 2002,<sup>[5]</sup> the Office of the Deputy Ombudsman for Visayas found Barriga guilty of misconduct and imposed on her the penalty of six months suspension from the service. In the same decision, the case against Villamor and Bontia were dismissed for being moot and academic. At the time, Villamor was no longer the incumbent mayor of Carmen, Cebu but the municipality's elected vice-mayor and Bontia had already been dismissed from government service pursuant to a final decision of the Office of the Ombudsman dated 19 August 1998.<sup>[6]</sup>

Upon review, petitioner Office of the Ombudsman modified the decision and found Barriga guilty of conduct prejudicial to the best interest of the service and imposed on her the penalty of suspension for one year.<sup>[7]</sup>

Barriga filed a motion for reconsideration which petitioner denied in an Order dated 2 April 2003.<sup>[8]</sup>

Later, in an Order dated 13 November 2002,<sup>[9]</sup> petitioner directed the municipal mayor of Carmen, Cebu to implement the decision dated 28 August 2002.

Barriga filed a petition for review with the CA, docketed as CA G.R. SP No. 76958. On 7 July 2003, the petition was denied for lack of merit.<sup>[10]</sup>

Barriga then elevated the case to the Supreme Court, docketed as G.R. No. 160402. In a Resolution dated 14 January 2004, this Court denied the petition. Barriga filed a motion for reconsideration which this Court denied in a Resolution dated 17 March 2004. Barriga filed a second motion for reconsideration which this Court again denied in a Resolution dated 7 July 2004.

After a month, in a letter dated 10 August 2004, petitioner, through the Office of the Deputy Ombudsman for Visayas, again directed the municipal mayor of Carmen, Cebu to implement the Order dated 13 November 2002.

In a letter<sup>[11]</sup> dated 16 August 2004 addressed to petitioner, Barriga made a request that the implementation of the penalty of one-year suspension be held in abeyance pending the issuance of the entry of judgment by this Court in G.R. No. 160402. The request was denied by petitioner in a letter dated 3 September 2004.<sup>[12]</sup> Barriga then challenged the said letters of petitioner with the CA through a petition for review.<sup>[13]</sup>

Meanwhile, the Supreme Court issued the entry of judgment in G.R. No. 160402 on 28 October 2004. In addition, the municipal mayor of Carmen, Cebu implemented Barriga's suspension from service through an Order dated 2 November 2004.<sup>[14]</sup>

Thereafter, in a Decision dated 18 March 2005, the CA denied Barriga's appeal. Barriga filed a motion for reconsideration. In a Resolution dated 16 June 2005, the CA modified its earlier decision and declared as null and void the orders of petitioner in the letters dated 10 August 2004 and 3 September 2004. The CA explained that the acts of petitioner went beyond mere recommendation but rather imposed upon the mayor to implement the order of suspension which run counter to its authority. The appellate court said that the immediate implementation of petitioner's Order dated 13 November 2002 was premature pending resolution of the appeal. Since Republic Act No. 6770 or the Ombudsman Act of 1989 gives parties the right to appeal then such right also generally carries with it the right to stay these decisions pending appeal. Thus, the CA concluded that the acts of petitioner cannot be permitted nor tolerated. The dispositive portion of the resolution states:

WHEREFORE, the decision in the instant case is MODIFIED in that the Orders of the Office of the Ombudsman dated August 10, 2004 and September 3, 2004 in so far as it directed the implementation of the suspension of petitioner is declared null and void having been made beyond its authority and prematurely. Consequently, the letter of the municipal mayor of Carmen, Cebu dated November 2, 2004 implementing said order is also nullified. Petitioner's immediate reinstatement is in order. No pronouncement as to costs.

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

Pursuant to the CA's Resolution dated 16 June 2005, the municipal mayor of Carmen, Cebu reinstated Barriga as municipal accountant in Memorandum No. 2005-99 dated 21 June 2005.<sup>[16]</sup>

Petitioner filed a Motion for Reconsideration and raised the issue of finality of the Ombudsman's Decision dated 28 August 2002. The motion was denied by the CA in a Resolution dated 20 February 2006.

Hence, this petition.

### **The Issue**

The main issue is whether the Court of Appeals gravely abused its discretion in nullifying the orders of the Office of the Ombudsman to the municipal mayor of Carmen, Cebu for the immediate implementation of the penalty of suspension from service of respondent Barriga even though the case was pending on appeal.

### **The Court's Ruling**

The petition is meritorious.

Petitioner submits that the Office of the Ombudsman is possessed with jurisdiction to entertain an administrative complaint against a public official and if found guilty, has the authority to impose a penalty and implement the decision. Petitioner explains that the implementation of administrative sanctions over erring public officials is not merely advisory in nature but is actually mandatory within the bounds of law. It is absurd for the Ombudsman to only recommend a penalty to a head of office, in this case, a municipal mayor, since political independence is the element that provides integrity to its quasi-judicial findings. Petitioner adds that a municipal mayor has no authority to adopt or reject petitioner's decision, as if in review, where no such recourse is provided by law.

Also, petitioner insists that the Ombudsman's Decision dated 28 August 2002 already reached finality after this Court in G.R. No. 160402 denied Barriga's second motion for reconsideration in a Resolution dated 7 July 2004. Thus, the implementation of the decision finding Barriga's administrative liability and the imposition of the corresponding disciplinary penalty should follow as a matter of course.

Section 7, Rule III of Administrative Order No. 7,<sup>[17]</sup> as amended by Administrative Order No. 17,<sup>[18]</sup> states:

*Section 7. Finality and execution of decision.-* Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of