

## SECOND DIVISION

[ G.R. No. 166495, February 16, 2011 ]

**ROQUE C. FACURA AND EDUARDO F. TUASON, PETITIONERS, VS. COURT OF APPEALS, RODOLFO S. DE JESUS AND EDELWINA DG. PARUNGAO, RESPONDENTS.**

[G.R. No. 184129]

**RODOLFO S. DE JESUS, PETITIONER, VS. OFFICE OF THE OMBUDSMAN, EDUARDO F. TUASON, LOCAL WATER UTILITIES ADMINISTRATION (LWUA), REPRESENTED BY ITS NEW ADMINISTRATOR ORLANDO C. HONDRAGE, RESPONDENTS.**

[G.R. No. 184263]

**OFFICE OF THE OMBUDSMAN, PETITIONER, VS. EDELWINA DG. PARUNGAO, AND THE HONORABLE COURT OF APPEALS (FORMER 7TH DIVISION), RESPONDENTS.**

### D E C I S I O N

**MENDOZA, J.:**

For resolution before this Court are the following:

**G.R. No. 166495** is a petition for certiorari filed by Roque Facura (*Facura*) and Eduardo Tuason (*Tuason*) assailing the Resolutions<sup>[1]</sup> dated September 22, 2004 and January 4, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 84902, which granted the applications for preliminary mandatory injunction filed by Atty. Rodolfo De Jesus (*De Jesus*) and Atty. Edelwina Parungao (*Parungao*) by ordering their reinstatement to their former positions despite the standing order of dismissal issued by the Office of the Ombudsman (*Ombudsman*) against them.

**G.R. No. 184129** is an appeal, by way of Petition for Review on Certiorari under Rule 45 of the Rules of Court, filed by De Jesus, from the Decision<sup>[2]</sup> dated May 26, 2005 and Resolution<sup>[3]</sup> dated August 6, 2008 of the CA, in CA-G.R. SP No. 84902, which affirmed the Review and Recommendation<sup>[4]</sup> dated January 26, 2004 and Order<sup>[5]</sup> dated April 20, 2004 issued by the Ombudsman in OMB-C-A-02-0496-J, which dismissed De Jesus from the government service with prejudice to re-entry thereto.

**G.R. 184263** is another appeal, by way of Petition for Review on Certiorari under Rule 45 of the Rules of Court, filed by the Ombudsman, from the Decision dated May 26, 2005 and Resolution dated August 6, 2008 of the CA, in CA-G.R. SP No. 84902, for ordering the reinstatement of Parungao as Manager of the Human Resources

Management Department (*HRMD*) of the Local Water Utilities Administration (*LWUA*), thereby modifying the Review and Recommendation<sup>[6]</sup> dated January 26, 2004 and Order<sup>[7]</sup> dated April 20, 2004, issued by the Ombudsman in OMB-C-A-02-0496-J, which dismissed Parungao from the government service with prejudice to re-entry thereto.

These consolidated cases arose from a Joint Complaint-Affidavit filed with the Ombudsman by Facura and Tuason against De Jesus and Parungao for violation of Republic Act (*R.A.*) No. 3019 (*the Anti-Graft and Corrupt Practices Act*), dishonesty, gross neglect of duty, grave misconduct, falsification of official documents, being notoriously undesirable, and conduct prejudicial to the best interest of the service.

### **The Facts**

The LWUA is a government-owned and controlled corporation chartered under Presidential Decree (*P.D.*) No. 198, as amended. De Jesus was the Deputy Administrator for Administrative Services of LWUA, while Parungao was its HRMD Manager for Administrative Services.

De Jesus was dismissed from the service per LWUA Board Resolution No. 061<sup>[8]</sup> dated March 28, 2001. Through Board Resolution No. 069 dated April 17, 2001, the Board denied his motion for reconsideration and prohibited De Jesus from acting on any matter as head of Administrative Services. On April 18, 2001, De Jesus appealed to the Civil Service Commission (*CSC*) to nullify Board Resolution Nos. 061 and 069.

On August 20, 2001, pending resolution of his petition with the *CSC*, De Jesus filed a petition for reinstatement with a newly-reconstituted LWUA Board, which granted it on September 4, 2001 through Board Resolution No. 172.<sup>[9]</sup> De Jesus then withdrew his petition with the *CSC* on September 5, 2001.

Under the *CSC* Accreditation Program, particularly under *CSC* Resolution No. 967701<sup>[10]</sup> dated December 3, 1996, LWUA has been granted the authority to take final action on appointment papers effective January 1, 1997. Under LWUA Officer Order No. 205.01<sup>[11]</sup> dated September 25, 2001, LWUA Administrator Lorenzo Jamora (*Administrator Jamora*) granted De Jesus the authority to sign/approve and issue appointment papers of appointees to vacant plantilla positions in LWUA which have been previously cleared or approved in writing by the Administrator or the Board of Trustees.

Prior to the grant of authority to De Jesus to sign appointment papers, in a letter<sup>[12]</sup> dated August 27, 2001 signed by Administrator Jamora, LWUA requested the Department of Budget and Management (*DBM*) for authority to hire confidential staff for the LWUA Board of Trustees. The request was to seek exemption for LWUA from Administrative Order No. 5 which prohibited the hiring of new personnel in order to generate savings.

While awaiting the reply of *DBM* on his request, Jamora, in an inter-office memorandum<sup>[13]</sup> dated October 23, 2001, directed the Office of Administrative Services (*OAS*), headed by De Jesus, and the Investment and Financial Services, to

process the payment of the salaries and allowances of his two (2) newly appointed confidential staff who reported to him effective October 10, 2001. Upon receipt of the said inter-office memorandum, the OAS forwarded it to the HRMD headed by Parungao for appropriate action.

On December 11, 2001, LWUA received a reply letter<sup>[14]</sup> from DBM granting the request to fill positions for the LWUA Board's confidential staff. On the same day, on the strength of said letter of approval, LWUA board members issued their respective inter-office memoranda<sup>[15]</sup> and letter<sup>[16]</sup> containing the retroactive appointments of their confidential staff, as follows: Board Chairman Francisco Dumpit appointed Michael M. Raval and Ma. Geraldine Rose D. Buenaflor effective August 20, 2001; Trustee Bayani Dato, Sr. appointed Albino G. Valenciano, Jr. effective August 20, 2001; and Trustee Solomon Badoy appointed Kristina Joy T. Badoy and Noelle Stephanie R. Badoy effective June 19, 2001. On December 18, 2001, Trustee Normando Toledo also issued an inter-office memorandum<sup>[17]</sup> appointing, effective August 20, 2001, Marc Anthony S. Verzosa and Ma. Lourdes M. Manaloto. These inter-office memoranda and letter directed De Jesus to prepare their appointment papers. They bore the written concurrence of Administrator Jamora as agency head and mandated appointing authority of LWUA employees under the LWUA charter. Upon his receipt of the aforesaid inter-office memoranda and letter, De Jesus forwarded them to the HRMD for the preparation and processing of the corresponding appointment papers.

As HRMD head, Parungao forwarded the said documents to the Personnel Division to have them transformed into formal appointment papers, otherwise known as CSC Standard Form No. 33. The encoded standard forms indicated the names and positions of the confidential staff and the dates of signing and issuance of the appointments, which were the retroactive effectivity dates appearing in the inter-office memoranda and letter issued by the Board member. The concerned HRMD staff and Parungao affixed their initials below the printed name of De Jesus who, in turn, signed the formal appointment papers as representative of the appointing authority. The nine (9) appointment papers<sup>[18]</sup> bore Serial Nos. 168207, 168210, 168213, 168214, 168215, 168216, 168217, 168287, and 168288.

In Office Order No. 286.01 dated December 13, 2001 and Office Order No. 001.02 dated December 20, 2001 issued by De Jesus and Parungao, it was stated therein that the following nine (9) personnel were appointed retroactively to the dates indicated below:

Ma. Geraldine Rose D. Buenaflor	-	August 20, 2001
Michael M. Raval	-	August 20, 2001
Albino G. Valenciano, Jr.	-	August 20, 2001
Noelle Stephanie R. Badoy	-	June 19, 2001
Kristina Joy T. Badoy	-	June 19, 2001
Jesusito R. Toren	-	October 15, 2001
Ma. Susan G. Facto	-	October 10, 2001
Ma. Lourdes M. Manaloto	-	August 20, 2001
Marc Anthony S. Versoza	-	August 20, 2001

On December 20, 2001, Administrator Jamora issued an inter-office memorandum<sup>[19]</sup> to the accounting department on the matter of payment of back salaries of the said confidential staff, stating therein that as approved by the DBM in its letter, the hiring of such personnel was authorized retroactive to their employment date, thus, ordering the immediate payment of their back salaries and other remunerations. On the same day, a LWUA disbursement voucher<sup>[20]</sup> was prepared and processed by the Accounting Department, and Administrator Jamora thereafter approved the release of a Land Bank check amounting to P624,570.00 as part of the cash advance amounting to P692,657.31, for the payment of the back salaries.

The appointments of the subject confidential staff were reflected in the Supplemental Quarterly Report on Accession for June and August 2001 and *Quarterly Report on Accession and Separation* for October to December 2001 which were submitted to the CSC on January 8, 2002.

On January 25, 2002, HRMD and OAS issued a Memorandum<sup>[21]</sup> for Administrator Jamora on the subject of the appointment papers of the nine (9) confidential staff of the Board. De Jesus and Parungao called his attention to the requirements under CSC Resolution No. 967701<sup>[22]</sup> of the submission to the CSC of two (2) copies of the Report on Personnel Actions (*ROPA*) within the first fifteen (15) days of the ensuing month together with the certified true copies of the appointments acted on, and appointments not submitted within the prescribed period would be made effective thirty (30) days prior to the date of submission to the CSC. It was explained that the appointment papers with retroactive effectivity dates violated the provisions of CSC Res. No. 967701 and Rule 7, Section 11 of the CSC Omnibus Rules on Appointments. For said reason, LWUA accreditation could be cancelled and the Administrator be held personally liable for the invalidated appointments. It was suggested instead that the appointments be re-issued effective December 12, 2001, the *ROPA* be dated January 15, 2002, and the earlier retroactive appointments be cancelled, as advised by a CSC Field Director in a previous informal consultation. It was also proposed that the salaries and benefits already paid be made on *quantum meruit* basis, based on actual services rendered as certified by the Board members.

Therefore, for the purpose of meeting the monitoring and reportorial requirements of the CSC in relation to the accreditation given to LWUA to take final action on its appointments, De Jesus and Parungao, with the prior approval of Administrator Jamora, re-issued the appointments of the Board's nine (9) confidential staff. The appointment papers<sup>[23]</sup> were now all dated December 12, 2001, with Serial Nos. 168292, 168293, 168294, 168295, 168297, 168298, 168299, 168301, and 168304 and were transmitted to the CSC.

On February 28, 2002, Administrator Jamora again wrote a letter<sup>[24]</sup> to the DBM clarifying whether its December 11, 2001 letter, approving the hiring of the confidential staff of the LWUA Board, had retroactive effect. It was explained that the said confidential staff had started rendering services as early as August 20, 2001, when the Board assumed office because their services were urgently needed by the trustees.

Meanwhile, the LWUA Accounting Department, in a Brief to the Legal Department

dated March 2, 2002, sought its legal opinion on the subject of the first payment of salary of the confidential staff. The Legal Department replied that a letter had been sent to the DBM seeking clarification on whether the previous DBM approval retroacted to the actual service of the confidential staff.

Thereafter, the Internal Control Office (*ICO*) of LWUA issued a memorandum dated May 10, 2002, questioning the issuance of the retroactive appointment papers. It pointed out that since the appointment papers submitted to the CSC indicated December 12, 2001 as effective date, the appointment of the involved personnel to the government service should be considered effective only on said date, with their salaries and other compensation computed only from December 12, 2001. Thus, there was an overpayment made as follows:

Ma. Geraldine Rose D.-	P107,730.09
Buenaflor	
Michael M. Raval -	P111,303.16
Albino G. Valenciano, Jr. -	P107, 730.09
Noelle Stephanie R. Badoy -	P157, 210.34
Kristina Joy T. Badoy -	P163, 130.69

It was further recommended that the Legal Department conduct an investigation to identify the person liable to refund to LWUA the overpayments made to the subject personnel and that the Accounting Department take appropriate actions to recover the overpayment.

On June 5, 2002, LWUA received DBM's reply letter<sup>[25]</sup> on June 5, 2002, informing Administrator Jamora that the previously granted authority on the hiring of the confidential staff to the LWUA Board may be implemented retroactive to the date of actual service rendered by the employees involved.

In a Brief to Administrator Jamora dated July 26, 2002, signed by De Jesus and initialed by Parungao, the issues raised by ICO in its Memorandum on the retroactive appointments of the concerned confidential staff and overpayments were deemed clarified with the reply letter of the DBM on the retroactive implementation of the authority granted to LWUA in the previous letter of approval.

Meanwhile, on November 20, 2001, in relation to the earlier appeal of De Jesus (which he withdrew upon his reinstatement by the newly reconstituted LWUA Board), the CSC issued Resolution No. 011811,<sup>[26]</sup> which remanded the case to LWUA for the conduct of an investigation regarding De Jesus' dismissal, to be finished within three (3) calendar months, failure of which would result in the dismissal of the case against De Jesus.

On August 15, 2002, the CSC issued Resolution No. 021090<sup>[27]</sup> ruling that CSC Resolution No. 011811 had not been rendered moot and academic by the reinstatement of De Jesus by the LWUA Board. It further declared the reinstatement as illegal, null and void. The Board was directed to recall the reinstatement of De Jesus, and LWUA was ordered to continue the conduct of the investigation on De Jesus as earlier directed, within three (3) calendar months from receipt of the resolution. For failure of LWUA to conduct an investigation within the