

EN BANC

[G.R. No. 175349, June 22, 2010]

OFFICE OF THE OMBUDSMAN (VISAYAS), PETITIONER, VS. RODOLFO ZALDARRIAGA, RESPONDENT.

D E C I S I O N

PERALTA, J.:

This is a petition for review on *certiorari* assailing the Decision^[1] dated October 27, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 81392, which reversed and set aside the Decision of the Office of the Ombudsman (Visayas) dismissing respondent from government service.

The procedural and factual antecedents are as follows:

Respondent Rodolfo Zalzarriaga was the Municipal Treasurer of the Municipality of Lemery, Iloilo.

On November 16, 1998, the Commission on Audit (COA), through State Auditors Sergia G. Garachico, Cresencia H. Gulangayan, and Shelly H. Gorriceta, conducted an audit examination of the accountabilities of respondent's cash and accounts covering the period November 30, 1997 to November 16, 1998. Based on the audit conducted, the COA auditors prepared a report showing a deficiency amounting to P4,711,463.82.^[2]

Respondent was asked to reconstitute the deficiency but he failed to do so. Instead, respondent sent letters to State Auditor Garachico requesting for a bill of particulars on his alleged accountability.^[3] The COA, however, failed to clarify the basis of the shortage. Subsequently, on the strength of the COA auditors' report, the COA filed a Letter-Complaint^[4] against the respondent before the Office of the Ombudsman (Visayas).

In his Counter-Affidavit, respondent contested the findings of the COA auditors alleging that it was inaccurate, incorrect, and devoid of merit. He stated that during the audit examination, the COA team never mentioned any discrepancy in the cashbook nor found any accountability. Respondent claimed that during the said audit examination, the COA team established that the balance for the General Fund was only in the amount of P998.00 and that all other accounts showed a zero balance. Respondent also pointed out that the COA's failure to show a detailed "disbursements and cash items validated and/or disallowed" placed doubt as to the accuracy and reliability of the findings.

Meanwhile, the Office of the Provincial Treasurer also conducted its own investigation on the alleged deficiency. Its findings, however, did not indicate any shortage but, instead, pointed out that had the municipal mayor, municipal

treasurer, and municipal accountant observed the COA Rules and Regulations in the proper disbursement of funds, the irregularity would not have been committed.^[5]

Thereafter, the COA conducted another audit examination of respondent's cash and accounts covering the period November 17, 1998 to May 25, 2000. In the report of cash examination,^[6] State Auditor II Malvie Melocoton, reported a zero balance during the last examination conducted on November 16, 1998.^[7] Respondent then sought for the dismissal of the complaint filed against him on the ground that the latest COA report dated May 25, 2000 indicated that there was no shortage.

After the parties filed their respective pleadings, the Office of the Ombudsman (Visayas) rendered a Decision^[8] dismissing respondent from government service for dishonesty, the dispositive portion of which reads as follows:

WHEREFORE, finding *substantial evidence* to hold respondent **RODOLFO B. ZALDARRIAGA**, Municipal Treasurer of Lemery, Iloilo, administratively guilty of ***Dishonesty***, he is hereby meted the penalty of DISMISSAL FROM THE SERVICE with the corresponding *accessory penalties* of perpetual disqualification for re-employment in the government service, and cancellation of eligibility and forfeiture of retirement benefits.

This Office also WARNED the other responsible Municipal Officials of the Municipal Government of Lemery, Iloilo to be more discreet and circumspect in their actions by properly observing existing COA and Civil Service Rules and Regulations.

For complainant COA, it is hereby ADVISED to be more vigilant in its duties and responsibilities. The said Office must see to it that there should be proper observance of its Rules and Regulations in every government agency, particularly the Local Government Unit of Lemery, Iloilo.^[9]

In ruling against the respondent, the Ombudsman opined, among other things, that while it may be true that both the Municipal Mayor and the respondent were signatories of several Land Bank checks covering the Municipality's cash advances during the said period, it was the respondent who encashed and received their proceeds; thus, he should be the one responsible and accountable for the same. Respondent never denied having received these funds. His failure to account the same when audited and his alleged lack of cooperation with the Audit Team constitute substantial evidence of dishonesty. Also, the Ombudsman did not give much credence (1) to the second audit examination conducted by State Auditor Melocoton, reasoning that it was conducted two years from November 16, 1998; (2) that of the three assigned state auditors, it was only State Auditor Melocoton who signed the second report; and (3) on conclusion that there was no shortage in the second report may be due to the fact that petitioner had restituted the missing funds after its discovery.

Respondent filed a Motion for Reconsideration, which was denied in an Order^[10]

dated July 1, 2003.

Aggrieved, respondent sought recourse before the CA arguing, among other things, that the Office of the Ombudsman erred (1) in ruling that the amount of P4,711,463.82 was lost, despite the absence of substantial evidence on how the COA Auditors reached the conclusion; (2) in failing to declare that the audit conducted by the COA Auditors was incomplete, inaccurate, replete with errors, and in violation of the COA Rules and Regulations; and (3) in dismissing him from the service notwithstanding the absence of substantial evidence.

On October 27, 2006, the CA rendered a Decision^[11] in favor of the respondent, the decretal portion of which reads:

WHEREFORE, premises considered, the *Petition for Review* is **GRANTED**. The *Decision* dated 27 January 2003 and the *Order* dated 1 July 2003 of the Office of the Ombudsman (Visayas) finding petitioner administratively guilty of *Dishonesty* and dismissing him from service are **REVERSED** and **SET ASIDE**.

SO ORDERED.^[12]

Ruling in favor of the respondent, the CA opined that since the shortage was not clearly and indubitably established, the administrative case against respondent should be dismissed.

Hence, the present petition assigning the following errors:

THE COURT OF APPEALS GRAVELY ERRED IN REVERSING THE OMBUDSMAN'S ORDER DISMISSING RESPONDENT FROM THE SERVICE.

A. THE OMBUDSMAN'S ORDER DISMISSING RESPONDENT [FROM] THE SERVICE IS BASED ON SUFFICIENT EVIDENCE.

B. THE ZERO-SHORTAGE FINDING OF STATE AUDITOR M[ELO]COTON DOES NOT NEGATE THE COA'S FINDING ON RESPONDENT'S CASH SHORTAGE.^[13]

Petitioner argues that the COA findings that respondent failed to account for the shortage and his unjustified release of cash advances constitute sufficient basis for his dismissal. These findings were duly supported by records from respondent's own office, and, as such, could not have been merely contrived in order to implicate him. Petitioner insists that respondent was given ample time and opportunity to refute and rebut the charges against him and was provided documents supporting the audit findings. Despite being fully apprised of the details of the charges against him, respondent failed to present countervailing evidence in his favor; instead, respondent was content on simply denying the adverse findings of the COA.

Petitioner maintains that the zero-balance reflected in State Auditor Melocoton's