

## THIRD DIVISION

[ G.R. No. 170146, August 25, 2010 ]

**HON. WALDO Q. FLORES, IN HIS CAPACITY AS SENIOR DEPUTY EXECUTIVE SECRETARY IN THE OFFICE OF THE PRESIDENT, HON. ARTHUR P. AUTEA, IN HIS CAPACITY AS DEPUTY EXECUTIVE SECRETARY IN THE OFFICE OF THE PRESIDENT, AND THE PRESIDENTIAL ANTI-GRAFT COMMISSION (PAGC), PETITIONERS, VS. ATTY. ANTONIO F. MONTEMAYOR, RESPONDENT.**

### D E C I S I O N

**VILLARAMA, JR., J.:**

Before us is a Rule 45 petition assailing the October 19, 2005 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 84254. The appellate court, in the said decision, had reversed and set aside the March 23, 2004 Decision<sup>[2]</sup> and May 13, 2004 Resolution<sup>[3]</sup> of the Office of the President in O.P. Case No. 03-1-581 finding respondent Atty. Antonio F. Montemayor administratively liable as charged and dismissing him from government service.

The facts follow.

Respondent Atty. Antonio F. Montemayor was appointed by the President as Regional Director II of the Bureau of Internal Revenue (BIR), Region IV, in San Fernando, Pampanga.

On January 30, 2003, the Office of the President received a letter from "a concerned citizen" dated January 20, 2003 relating Montemayor's ostentatious lifestyle which is apparently disproportionate to his income as a public official. The letter was referred to Dario C. Rama, Chairman of the Presidential Anti-Graft Commission (PAGC) for appropriate action.<sup>[4]</sup> The Investigating Office of the PAGC immediately conducted a fact-finding inquiry into the matter and issued *subpoenas duces tecum* to the responsible personnel of the BIR and the Land Transportation Office (LTO). In compliance with the subpoena, BIR Personnel Division Chief Estelita Datu submitted to the PAGC a copy of Montemayor's appointment papers along with a certified true copy of the latter's Sworn Statement of Assets and Liabilities (SSAL) for the year 2002. Meanwhile, the LTO, through its Records Section Chief, Ms. Arabelle O. Petilla, furnished the PAGC with a record of vehicles registered to Montemayor, to wit: a 2001 Ford Expedition, a 1997 Toyota Land Cruiser, and a 1983 Mitsubishi Galant.<sup>[5]</sup>

During the pendency of the investigation, the Philippine Center for Investigative Journalism, a media organization which had previously published an article on the unexplained wealth of certain BIR officials, also submitted to the PAGC copies of Montemayor's SSAL for the years 1999, 2000 and 2001.<sup>[6]</sup> In Montemayor's 1999

and 2000 SSAL, the PAGC noted that Montemayor declared his ownership over several motor vehicles, but failed to do the same in his 2001 SSAL.<sup>[7]</sup>

On the basis of the said documents, the PAGC issued a Formal Charge<sup>[8]</sup> against Montemayor on May 19, 2003 for violation of Section 7 of Republic Act (RA) No. 3019<sup>[9]</sup> in relation to Section 8 (A) of RA No. 6713<sup>[10]</sup> due to his failure to declare the 2001 Ford Expedition with a value ranging from 1.7 million to 1.9 million pesos, and the 1997 Toyota Land Cruiser with an estimated value of 1 million to 1.2 million pesos in his 2001<sup>[11]</sup> and 2002<sup>[12]</sup> SSAL. The charge was docketed as PAGC-ADM-0149-03. On the same date, the PAGC issued an Order<sup>[13]</sup> directing Montemayor to file his counter-affidavit or verified answer to the formal charge against him within ten (10) days from the receipt of the Order. Montemayor, however, failed to submit his counter-affidavit or verified answer to the formal charge lodged against him.

On June 4, 2003, during the preliminary conference, Montemayor, through counsel, moved for the deferment of the administrative proceedings explaining that he has filed a petition for *certiorari* before the CA<sup>[14]</sup> questioning the PAGC's jurisdiction to conduct the administrative investigation against him. The PAGC denied Montemayor's motion for lack of merit, and instead gave him until June 9, 2003 to submit his counter-affidavit or verified answer.<sup>[15]</sup> Still, no answer was filed.

On June 23, 2003, the CA issued a Temporary Restraining Order (TRO) in CA-G.R. SP No. 77285 enjoining the PAGC from proceeding with the investigation for sixty (60) days.<sup>[16]</sup> On September 12, 2003, shortly after the expiration of the sixty (60)-day TRO, the PAGC issued a Resolution<sup>[17]</sup> finding Montemayor administratively liable as charged and recommending to the Office of the President Montemayor's dismissal from the service.

On March 23, 2004, the Office of the President, through Deputy Executive Secretary Arthur P. Autea, issued a Decision adopting *in toto* the findings and recommendation of the PAGC. The pertinent portion of the Decision reads:

After a circumspect study of the case, this Office fully agrees with the recommendation of PAGC and the legal premises as well as the factual findings that hold it together. Respondent failed to disclose in his 2001 and 2002 SSAL high-priced vehicles in breach of the prescription of the relevant provisions of RA No. 3019 in relation to RA No. 6713. He was, to be sure, afforded ample opportunity to explain his failure, but he opted to let the opportunity pass by.

WHEREFORE, premises considered, respondent Antonio F. Montemayor is hereby found administratively liable as charged and, as recommended by PAGC, meted the penalty of dismissal from the service, with all accessory penalties.

SO ORDERED.<sup>[18]</sup>

Montemayor sought reconsideration of the said decision.<sup>[19]</sup> This time, he argued

that he was denied his right to due process when the PAGC proceeded to investigate his case notwithstanding the pendency of his petition for certiorari before the CA, and its subsequent elevation to the Supreme Court.<sup>[20]</sup> The motion was eventually denied.<sup>[21]</sup>

Aggrieved, Montemayor brought the matter to the CA *via* a petition for review<sup>[22]</sup> under Rule 43 of the 1997 Rules of Civil Procedure, as amended. He made the following assertions: *first*, that the PAGC exceeded its authority when it recommended that he be dismissed from government service since the power to investigate does not necessarily carry with it the power to impose penalty unless the same was expressly granted; *second*, that the PAGC grossly violated his right to due process of law when it did not give him the opportunity to present his countervailing evidence to the charges against him; *third*, that the PAGC cannot validly proceed with the investigation of the charges against him on the basis of an unverified anonymous letter-complaint without any supporting documents attached thereto, contrary to the requirement of Section 4 (c) of Executive Order (EO) No. 12;<sup>[23]</sup> *fourth*, that it was an error for the Office of the President to hold him liable for violation of Section 7 of RA No. 3019 and Section 8 (A) of RA No. 6713 since the SSAL should reflect assets and liabilities acquired in the preceding year; and *fifth*, that the assailed PAGC Resolution was not supported by substantial evidence.

As aforesaid, the CA in its assailed Decision dated October 19, 2005, ruled in favor of Montemayor. The CA concluded that Montemayor was deprived of an opportunity to present controverting evidence amounting to a brazen denial of his right to due process.

Hence, petitioners now appeal the matter before us raising the following issues:

- I. WHETHER PETITIONER PAGC HAD A CONSTITUTIONAL DUTY TO ACCORD RESPONDENT A "SECOND" OPPORTUNITY TO PRESENT EVIDENCE IN PAGC-ADM-0149-03 AFTER THE EXPIRATION OF THE TRO ISSUED IN CA-G.R. SP NO. 77285.
- II. WHETHER THE MERE PENDENCY OF CA-G.R. SP NO. 77285 WAS A LEGAL GROUND FOR RESPONDENT'S REFUSAL TO PRESENT EVIDENCE IN [PAGC]-ADM-0149-03.
- III. WHETHER THE ALLEGED UNDUE HASTE AND APPARENT PRECIPITATION OF PROCEEDINGS IN [PAGC]-ADM-0149-03 HAD RENDERED THE SAME INFIRM.
- IV. WHETHER RESPONDENT HAD COMMITTED A MAJOR ADMINISTRATIVE INFRACTION WARRANTING DISMISSAL FROM [GOVERNMENT] SERVICE.
- V. WHETHER THE [OFFICE OF THE PRESIDENT'S] DETERMINATION THAT RESPONDENT COMMITTED THE ADMINISTRATIVE OFFENSE CHARGED IS SUPPORTED BY SUBSTANTIAL EVIDENCE.

VI. WHETHER THE PAGC HAD AUTHORITY TO RECOMMEND TO THE PRESIDENT THE PENALTY OF DISMISSAL, FOLLOWING ITS INVESTIGATION INITIATED BY AN ANONYMOUS COMPLAINT, AND DESPITE THE PENDENCY OF ANOTHER INVESTIGATION FOR THE SAME OFFENSE BEFORE THE [OFFICE OF THE] OMBUDSMAN.<sup>[24]</sup>

The issues may be summarized as follows:

- I. WHETHER RESPONDENT WAS DEPRIVED OF HIS RIGHT TO DUE PROCESS WHEN IT PROCEEDED TO INVESTIGATE HIM ON THE BASIS OF AN ANONYMOUS COMPLAINT, AND ALLEGEDLY WITHOUT AN OPPORTUNITY TO PRESENT EVIDENCE IN HIS DEFENSE;
- II. WHETHER THE PAGC HAS THE AUTHORITY TO RECOMMEND RESPONDENT'S DISMISSAL FROM THE SERVICE;
- III. WHETHER THE ASSUMPTION BY THE OFFICE OF THE OMBUDSMAN OF ITS JURISDICTION TO INVESTIGATE RESPONDENT FOR THE SAME OFFENSE DEPRIVED THE PAGC [WITH ITS JURISDICTION] FROM PROCEEDING WITH ITS INVESTIGATION; AND
- IV. WHETHER THE PAGC'S RECOMMENDATION WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.

We discuss the first three (3) issues jointly as these involve procedural aspects.

The PAGC was created by virtue of EO No. 12, signed on April 16, 2001 to speedily address the problem on corruption and abuses committed in the government, particularly by officials appointed by the President. Under Section 4 (b) of EO No. 12, the PAGC has the power to investigate and hear administrative complaints provided (1) that the official to be investigated must be a presidential appointee in the government or any of its agencies or instrumentalities, and (2) that the said official must be occupying the position of assistant regional director, or an equivalent rank, or higher.<sup>[25]</sup>

Respondent contends that he was deprived of his right to due process when the PAGC proceeded to investigate him on the basis of an anonymous complaint in the absence of any documents supporting the complainant's assertions.

Section 4 (c) of EO No. 12, however, states that the PAGC has the power to give due course to anonymous complaints against presidential appointees if there appears on the face of the complaint or based on the supporting documents attached to the anonymous complaint a probable cause to engender a belief that the allegations may be true.<sup>[26]</sup> The use of the conjunctive word "or" in the said provision is determinative since it empowers the PAGC to exercise discretion in giving due course to anonymous complaints. Because of the said provision, an anonymous complaint may be given due course even if the same is without supporting documents, so long as it appears from the face of the complaint that there is probable cause. The clear implication of the said provision is intent to empower the

PAGC in line with the President's objective of eradicating corruption among a particular line of government officials, *i.e.*, those directly appointed by her. Absent the conjunctive word "or," the PAGC's authority to conduct investigations based on anonymous complaints will be very limited. It will decimate the said administrative body into a toothless anti-corruption agency and will inevitably undermine the Chief Executive's disciplinary power.

Respondent also assails the PAGC's decision to proceed with the investigation process without giving him the opportunity to present controverting evidence.

The argument is without merit.

We find nothing irregular with the PAGC's decision to proceed with its investigation notwithstanding the pendency of Montemayor's petition for *certiorari* before the CA. The filing of a petition for *certiorari* with the CA did not divest the PAGC of its jurisdiction validly acquired over the case before it. Elementary is the rule that the mere pendency of a special civil action for *certiorari*, commenced in relation to a case pending before a lower court or an administrative body such as the PAGC, does not interrupt the course of the latter where there is no writ of injunction restraining it.<sup>[27]</sup> For as long as no writ of injunction or restraining order is issued in the special civil action for *certiorari*, no impediment exists, and nothing prevents the PAGC from exercising its jurisdiction and proceeding with the case pending before its office.<sup>[28]</sup> And even if such injunctive writ or order is issued, the PAGC continues to retain jurisdiction over the principal action<sup>[29]</sup> until the question on jurisdiction is finally determined.

In the case at bar, a sixty (60)-day TRO was issued by the CA in CA-G.R. SP No. 77285. However, barely a week after the lapse of the TRO, the PAGC issued its resolution finding Montemayor administratively liable and recommending to the Office of the President his dismissal from government service. The CA believes that there has been "undue haste and apparent precipitation" in the PAGC's investigation proceedings.<sup>[30]</sup> It notes with disapproval the fact that it was barely eight (8) days after the TRO had lapsed that the PAGC issued the said resolution and explains that respondent should have been given a second chance to present evidence prior to proceeding with the issuance of the said resolution.<sup>[31]</sup>

We beg to disagree with the appellate court's observation.

First, it must be remembered that the PAGC's act of issuing the assailed resolution enjoys the presumption of regularity particularly since it was done in the performance of its official duties. Mere surmises and conjectures, absent any proof whatsoever, will not tilt the balance against the presumption, if only to provide constancy in the official acts of authorized government personnel and officials. Simply put, the timing of the issuance of the assailed PAGC resolution by itself cannot be used to discredit, much less nullify, what appears on its face to be a regular performance of the PAGC's duties.

Second, Montemayor's argument, as well as the CA's observation that respondent was not afforded a "second" opportunity to present controverting evidence, does not hold water. The essence of due process in administrative proceedings is an opportunity to explain one's side or an opportunity to seek reconsideration of the