

FIRST DIVISION

[G.R. No. 165416, January 22, 2008]

OFFICE OF THE OMBUDSMAN, Petitioner, VS. FLORITA A. MASING and JOCELYN A. TAYACTAC, Respondents.

[G.R. No. 165584]

OFFICE OF THE OMBUDSMAN, Petitioner, VS. FLORITA A. MASING, Respondent.

[G.R. No. 165731]

PAUL L. CANSINO, FELICIDAD MOJICA, VENERANDO MOJICA and RICARTE L. MAMPARO, Petitioners, VS. FLORITA A. MASING and JOCELYN A. TAYACTAC, Respondents.

D E C I S I O N

PUNO, CJ.:

These cases involve the issue of whether the Ombudsman may directly discipline public school teachers and employees, or merely **recommend** appropriate disciplinary action to the Department of Education, Culture and Sports (DECS).

In **G.R. Nos. 165416 and 165731**, respondent Florita A. Masing was the former Principal of the Davao City Integrated Special School (DCISS) in Bangkal, Davao City. Respondent Jocelyn A. Tayactac was an office clerk in the same school. In 1997, respondents were administratively charged before the Office of the Ombudsman for Mindanao for allegedly collecting unauthorized fees, failing to remit authorized fees, and to account for public funds. The cases were docketed as follows:

1. OMB-MIN-ADM-97-193 for grave misconduct and neglect of duty, against respondent Masing only;
2. OMB-MIN-ADM-97-249 for violation of Republic Act No. 6713, against respondent Masing and a schoolteacher;
3. OMB-MIN-ADM-97-253 for violation of Republic Act No. 6713, against respondents Masing and Tayactac, and several schoolteachers;
4. OMB-MIN-ADM-97-254 for violation of Republic Act No. 6713, against respondent Masing and several schoolteachers.

The complainants were parents of children studying at the DCISS, among whom were the petitioners in **G.R. No. 165731**, namely, Paul L. Cansino, Felicidad

Mojica, Venerando Mojica, and Ricarte L. Mamparo.

On July 2, 1998, respondents filed a motion to dismiss on the ground that the Ombudsman has no jurisdiction over them. Respondents alleged that the DECS has jurisdiction over them which shall exercise the same through a committee to be constituted under Section 9 of Republic Act (R.A.) No. 4670, otherwise known as the "The Magna Carta for Public School Teachers." The motion was denied, as well as respondents' motion for reconsideration.

On June 30, 2000, the Ombudsman for Mindanao rendered a joint decision finding respondents Masing and Tayactac guilty, the dispositive portion of which reads:

WHEREFORE, PREMISES CONSIDERED, this Office finds substantial evidence that:

1. Respondent Florita Masing is guilty of gross misconduct, neglect of duty and violation of Section 4, paragraphs (a), (b), and (c) of RA 6713 in relation to the collection of unauthorized fees, non-remittance of authorized fees and failure to account for public funds; and of misconduct in relation to the complaint of Felicidad Mojica, and she is hereby **DISMISSED FROM [THE] SERVICE** with all the accessory penalties including forfeiture of retirement benefits and disqualification from holding public office; and
2. Respondent Jocelyn Tayactac is guilty of simple neglect of duty, and is hereby suspended for a period of six (6) months. A repetition of the same offense will be met with stiffer penalty. x x x ^[1]

Respondents filed a motion for reconsideration which the Ombudsman denied in an Order dated September 26, 2000. Respondents sought recourse to the Court of Appeals via a petition for review under Rule 43 of the Rules of Court, docketed as CA-G.R. SP No. 61993. On February 27, 2004, the Court of Appeals granted the petition, viz:

WHEREFORE, the joint decision of June 30, 2000 and the Order of September 26, 2000 are **REVERSED** and **SET ASIDE**; and Administrative Cases Nos. OMB-MIN-ADM-97-193, OMB-MIN-ADM-97-249, OMB-MIN-ADM-97-253, and OMB-MIN-ADM-97-254 of the Office of the Ombudsman-Mindanao are hereby **DISMISSED**.

The **IMMEDIATE REINSTATEMENT** of the petitioners with full backwages and other benefits is further **ORDERED** in the interest of justice.^[2]

On April 13, 2004, the Office of the Ombudsman, which was not impleaded as respondent in the cases, filed an **Omnibus Motion to Intervene and for Reconsideration**.^[3] The Court of Appeals denied the omnibus motion on the grounds that (1) intervention is not proper because it is sought by the quasi-judicial body whose judgment is on appeal, and (2) intervention, even if permissible, is belated under Section 2, Rule 19 of the Rules of Court.^[4] Hence, the petition before us by the Office of the Ombudsman, docketed as **G.R. No. 165416**.

The complainant-parents filed their own petition for review of the Court of Appeals' decision dated February 27, 2004, docketed as G.R. No. 165731.

In **G.R. No. 165584**, respondent Florita A. Masing faced yet another administrative case before the Office of the Ombudsman-Mindanao filed by Erlinda P. Tan.^[5] The charges were oppression, serious misconduct, discourtesy in the conduct of official duties, and physical or mental incapacity or disability due to immoral or vicious habits.

As in the other administrative cases, respondent Masing filed a motion to dismiss on the ground that the Office of the Ombudsman has no jurisdiction over the case. The motion was denied, as well as respondent's motion for reconsideration.

On December 27, 1999, the Ombudsman for Mindanao found respondent Masing guilty as charged and ordered her suspension for six (6) months without pay. The DECS Regional Director, Regional Office No. XI, was ordered to implement the decision upon its finality.

Respondent Masing filed a petition for review with the Court of Appeals, docketed as CA-G.R. SP No. 58735. On July 31, 2003, the Court of Appeals set aside the assailed Ombudsman decision, viz:

WHEREFORE, finding merit in the herein petition, the same is hereby given due course and the decision of the agency *a quo* in Case No. OMB-MIN-ADM-97-282 is hereby **SET ASIDE**, and petitioner is further declared as entitled to her salary which she failed to receive during the period of her flawed suspension.^[6]

The Office of the Ombudsman filed an **Omnibus Motion to Intervene and for Reconsideration** which the Court of Appeals denied in its Resolution dated September 30, 2004.^[7] Hence, this petition by the Office of the Ombudsman, docketed as **G.R. No. 165584**.

We consolidated G.R. Nos. 165416 and 165584 in our Resolution dated November 9, 2005. G.R. No. 165731 was consolidated per Resolution dated June 21, 2006.

The Office of the Ombudsman contends^[8]—

I.

THE x x x COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AND IGNORED THE CLEAR LANGUAGE OF THE CONSTITUTION, LAW AND JURISPRUDENCE WHEN IT RULED THAT PETITIONER OFFICE OF THE OMBUDSMAN HAS NO AUTHORITY TO DISCIPLINE ERRING MEMBERS OF THE DEPARTMENT OF EDUCATION, CULTURE AND SPORTS (DECS), THIS CONSIDERING THAT:

(A) THE TAPIADOR [TAPIADOR VS. OFFICE OF THE OMBUDSMAN, 379 SCRA 322 (2002)] CASE CITED BY THE

APPELLATE COURT A QUO IS NOT APPLICABLE, AS THE TAPIADOR OBITER DICTUM CAN NEVER BE CITED AS A VALID *RATIO DECIDENDI*;

(B) THE FABELLA [FABELLA VS. COURT OF APPEALS, 282 SCRA 256 (1997)] CASE, WHICH INVOLVED AN ILLEGAL CONSTITUTION OF AN INVESTIGATING COMMITTEE IN THE DECS, IS NOT APPLICABLE TO THE DISCIPLINARY CASE AGAINST PRIVATE RESPONDENTS PUBLIC SCHOOL PRINCIPAL AND OFFICE CLERK OF THE DECS;

(C) SECTION 9 OF REPUBLIC ACT NO. 4670 (MAGNA CARTA FOR PUBLIC SCHOOL TEACHERS) HAS NOT ADDED PUBLIC SCHOOL PRINCIPALS, TEACHERS AND EMPLOYEES, LIKE HEREIN PRIVATE RESPONDENTS, TO THE LIST OF SPECIAL PRIVILEGED CLASSES OF PUBLIC SERVANTS EXEMPTED FROM THE OMBUDSMAN'S ADMINISTRATIVE DISCIPLINARY AUTHORITY UNDER THE SUBSEQUENT 1987 CONSTITUTION, AND ANY SUCH INTERPRETATION SUFFERS FROM THE VICE OF UNCONSTITUTIONALITY;

(D) THE CONCEDED ADMINISTRATIVE DISCIPLINARY JURISDICTION OF THE PETITIONER OMBUDSMAN OVER PRIVATE RESPONDENTS, A PUBLIC SCHOOL PRINCIPAL AND AN OFFICE CLERK OF THE DECS, WHICH IS FULLY SUPPORTED BY THE 1987 CONSTITUTION, REPUBLIC ACT NO. 6770 (THE OMBUDSMAN ACT OF 1989) AND EXISTING JURISPRUDENCE, CANNOT BE SUPPLANTED BY SECTION 9 OF REPUBLIC ACT NO. 4670 (MAGNA CARTA FOR PUBLIC SCHOOL TEACHERS); AND

(E) THE POWER OF THE OMBUDSMAN TO DISCIPLINE PUBLIC SERVANTS NOT EXEMPTED FROM ITS JURISDICTION AND TO IMPLEMENT ITS JUDGMENTS HAS BEEN AFFIRMED IN LEDESMA VS. COURT OF APPEALS, G.R. NO. 161629, 29 JULY 2005.^[9]

(F) THE OFFICE OF THE OMBUDSMAN HAS CONCURRENT INVESTIGATIVE AND DISCIPLINARY AUTHORITY WITH THE DECS OVER PUBLIC SCHOOL TEACHERS, INCLUDING HEREIN PRIVATE RESPONDENT MASING, AS THERE IS SIMPLY NO REPUGNANCE BETWEEN THE LAWS CONFERRING INVESTIGATIVE AND DISCIPLINARY JURISDICTION ON THE OFFICE OF THE OMBUDSMAN (ART. XI, 1987 CONSTITUTION AND R.A. 6770) AND THE LAWS CONFERRING THE SAME INVESTIGATIVE AND DISCIPLINARY JURISDICTION TO DECS (R.A. 4670 [MAGNA CARTA FOR PUBLIC SCHOOL TEACHERS] AND P.D. 807, NOW BOOK V OF E.O. 292 [CIVIL SERVICE LAW]).^[10]

CONTRARY TO THE APPELLATE COURT A *QUO'S* RULING, THE PETITIONER OFFICE OF THE OMBUDSMAN TIMELY AND RIGHTFULLY FILED ITS OMNIBUS MOTION TO INTERVENE AND FOR RECONSIDERATION ON A PATENTLY ERRONEOUS DECISION OF THE COURT OF APPEALS WHICH HAS NOT YET ATTAINED FINALITY.^[11]

The petitioners in G.R. No. 165731 contend—

I.

TAPIADOR V. OFFICE OF THE OMBUDSMAN (379 SCRA 322) CITED BY THE COURT OF APPEALS IS NOT APPLICABLE, AS THE *TAPIADOR* OBITER DICTUM CAN NEVER BE CITED AS A VALID *RATIO DECIDENDI*. MOREOVER, THE *TAPIADOR* RULING HAS EFFECTIVELY BEEN ABANDONED BY THE HONORABLE SUPREME COURT WHEN IT UPHELD THE DISCIPLINARY AUTHORITY OF THE OMBUDSMAN IN SUBSEQUENT CASES EVEN AS *TAPIADOR* FAILED TO TAKE INTO ACCOUNT THE PROPER CONSTITUTIONAL AND STATUTORY BASES OF THE OMBUDSMAN'S DISCIPLINARY POWER OVER ALL APPOINTIVE AND ELECTIVE PUBLIC OFFICIALS AND EMPLOYEES.

II.

TO INSIST THAT PUBLIC SCHOOL TEACHERS PURSUANT TO THE RULING IN *FABELLA V. COURT OF APPEALS* (G.R. NO. 110379, 28 NOVEMBER 1997) CAN ONLY BE PROCEEDED AGAINST ADMINISTRATIVELY THROUGH THE "COMMITTEE" UNDER SECTION 9 OF R.A. NO. 4670 WOULD BE AN UNDUE, UNWARRANTED AND INVALID "CLASSIFICATION" BY JUDICIAL FIAT OF A CERTAIN GROUP OF PUBLIC SERVANTS WHICH IS VIOLATIVE OF THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION. MOREOVER, THE SAID LAW DOES NOT CONFER JURISDICTION ON THE "COMMITTEE."

III.

SECTION 9 OF REPUBLIC ACT NO. 4670 HAS NOT ADDED PUBLIC SCHOOL TEACHERS TO THE LIST OF SPECIAL PRIVILEGED CLASSES OF PUBLIC SERVANTS EXEMPTED FROM THE OMBUDSMAN'S ADMINISTRATIVE DISCIPLINARY AUTHORITY UNDER THE 1987 CONSTITUTION, AND ANY SUCH INTERPRETATION SUFFERS FROM THE VICE OF UNCONSTITUTIONALITY.

IV.

THE CONCEDED ADMINISTRATIVE DISCIPLINARY JURISDICTION OF THE OMBUDSMAN OVER THE HEREIN RESPONDENTS, WHICH IS FULLY SUPPORTED BY THE 1987 CONSTITUTION, REPUBLIC ACT NO. 6770 AND EXISTING JURISPRUDENCE CANNOT BE SUPPLANTED BY SECTION 9 OF REPUBLIC ACT NO. 4670.