

## THIRD DIVISION

[ G. R. No. 175006, November 27, 2008 ]

**BELEN A. SALVACION, PETITIONER, VS. SANDIGANBAYAN  
(FIFTH DIVISION) AND LEO H. MANLAPAS, RESPONDENTS.**

### DECISION

**CHICO-NAZARIO, J.:**

In this Petition for *Certiorari*<sup>[1]</sup> under Rule 65 of the Revised Rules of Court, petitioner Belen A. Salvacion (Salvacion) urges us to annul and set aside the 23 February 2006<sup>[2]</sup> and 4 August 2006<sup>[3]</sup> Resolutions<sup>[4]</sup> of the Sandiganbayan, Fifth Division, reversing its 11 November 2005 Resolution<sup>[5]</sup> which affirmed (a) the 7 February 2005 Resolution<sup>[6]</sup> and 12 May 2005 Order,<sup>[7]</sup> both of the Deputy Ombudsman for Luzon, finding reasonable ground to charge respondent Leo H. Manlapas (Manlapas), then Municipal Mayor of Baleno, Masbate, with violation of Section 3, paragraphs (e) and (f) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended; and (b) the Information thereafter filed before respondent Sandiganbayan, docketed as Criminal Case No. 28111. Consequently, petitioner Salvacion also seeks in the present Petition the reinstatement of Criminal Case No. 28111 before the Sandiganbayan, Fifth Division.

The antecedents are not complicated.

In preparation for her impending retirement on 31 December 2002, petitioner Salvacion, Bookkeeper of the Municipality of Baleno, Masbate, prepared all the pertinent documents and clearance for her permanent separation from government service. One such document was an application<sup>[8]</sup> for the payment of her retirement benefits and terminal leave pay filed on 10 December 2002. Said application was duly acted upon and approved by respondent Manlapas as the Municipal Mayor of Baleno, Masbate, and the authorized official to act upon it.

On 18 March 2003, petitioner Salvacion submitted to the Office of the Municipal Mayor, for payment, a Disbursement Voucher<sup>[9]</sup> duly signed and approved for payment by respondent Manlapas, and accompanied by supporting documents, in the amount of P162,291.46 representing her Terminal Leave Pay for 815.226 unused leave credits.

In the intervening time, according to petitioner Salvacion, she made numerous follow-ups for the disbursement of her Terminal Leave Pay; to no avail.

On 10 September 2003, a few days short of six months from the day she submitted the afore-mentioned Disbursement Voucher and its supporting documents to the Office of the Municipal Mayor, petitioner Salvacion sent, *via* registered mail, a letter requesting "the release of fund for payment of my terminal leave pay x x x I will be

going to Manila for medical check-up, so that I'm in dire need of money."<sup>[10]</sup> No response was made by respondent Manlapas.

On 17 February 2004, petitioner Salvacion filed a sworn Complaint<sup>[11]</sup> before the Office of the Provincial Prosecutor, Masbate, charging respondent Manlapas with violation of Section 3, paragraphs (e) and (f), of Republic Act No. 3019, as amended, which state that:

SEC. 3. *Corrupt practices of public officers.* - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

(f) Neglecting or refusing, after due demand or request, without sufficient justification to act within a reasonable time on any matter pending before him for the purpose of obtaining directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

The Complaint was docketed as I.S. No. 04-17546 (DF).

In his Counter-Affidavit,<sup>[12]</sup> respondent Manlapas denied the charges against him. He averred that "complainant had been following up the payment of her terminal leave pay as alleged x x x, however, I did not make any promise `to release the payment after a weeks (sic) time,' the truth of the matter being that I really refused immediately (not negligently) to order payment of her Terminal Leave Pay with legal, factual and sufficient justification because upon inquiry from the OIC Municipal Treasurer and contrary to the Certification issued by the previous OIC Municipal Treasurer, Mr. Ismael C. Adoptante in cohort with the complainant, Mrs. Belen A. Salvacion she `is not free from money and/or property responsibilities,' x x x."

On 19 April 2004, the 4<sup>th</sup> Assistant Provincial Prosecutor of Masbate, Richard R. Rivala, resolved<sup>[13]</sup> to dismiss the Complaint. The fiscal chose to believe the account of respondent Manlapas that his failure to release petitioner Salvacion's retirement benefits was due to the latter's supposed failure to remit the amount of P7,564.38 to the Municipal Government of Baleno.

Aggrieved, petitioner Salvacion filed a Petition for Review before the Office of the Deputy Ombudsman for Luzon, where it was docketed as Case No. OMB-L-C-04-

In a *Review Resolution*<sup>[14]</sup> dated 7 February 2005, issued after due proceedings, the Office of the Deputy Ombudsman for Luzon recommended the reversal of the finding of the Provincial Prosecutor, and thereby declared that there was probable cause to hold respondent Manlapas liable for the violation of Section 3, paragraphs (e) and (f) of Republic Act No. 3019. The pertinent portion of said Resolution reads:

Records of this case show that complainant had retired from government service on December 31, 2002 and was subsequently issued all the pertinent documents and clearances appurtenant to her claim for payment of her terminal leave amounting to P162,291.46, with the corresponding certification from the OIC Municipal Treasurer, Esmael C. Adoptante that sufficient funds exist to cover for the payment of the same. Ironically and without valid reason, respondent denied payment of the same alleging among others, that complainant had failed to remit some of her collections amounting to P7,564.38 as contained in a new certification issued by the new acting Municipal Treasurer, MR. CEFERINO D. CORTES, JR. on February 23, 2004, a year and two months after complainant's severance from service. The averment by the respondent that he immediately ordered the non-payment of the terminal leave pay of the complainant despite her repeated demands based on an alleged cash shortage as certified to by the new OIC Municipal Treasurer only on February 23, 2004 is a flimsy excuse to cover up for his baseless and malicious act. After all, it was only on February 23, 2004 that an alleged shortage was found out. Hence, it was only on even date that he would have had a valid ground to refuse payment of the same. As the Local Chief Executive, herein respondent should have pursued the legal means to collect the alleged cash shortage allegedly owed by the complainant from the municipality. He could have substantiated his claim by filing a case against the complainant and not place the complainant in a stalemate position as regards the payment of the terminal leave pay of which she is entitled to receive, to her damage and prejudice. The more than a year's delay in the payment of what one had lawfully earned and is rightfully due seem to be a punishment and not a reward for more than two (2) decades of government service, as in this case. Respondent himself admitted that follow-ups on her claim were made by the complainant.

Respondent Manlapas moved for the reconsideration of the aforequoted *Review Resolution*. He argued that his refusal to release petitioner Salvacion's Terminal Leave Pay was essentially prompted by good faith, *i.e.*, to protect the interest of the people of Baleno, Masbate, from being defrauded by petitioner Salvacion. He narrated that on the 7<sup>th</sup> and 8<sup>th</sup> of January 2003, petitioner Salvacion usurped the functions of revenue collectors by collecting tax payments from tax payers at Baleno, Masbate, amounting to P7,564.38, and issuing the corresponding Official Receipts, but failing to remit the same to the Office of the Municipal Treasurer. In support of his defense, respondent Manlapas submitted, as newly discovered evidence, photocopies of several Official Receipts dated 7 and 8 January 2003. Further, respondent Manlapas pointed out that the certification issued by the officer-in-charge (OIC) Municipal Treasurer Ismael C. Adoptante (Adoptante) that petitioner Salvacion had no more accountabilities with the Municipality of Baleno, Masbate,

was invalid, considering that the same was issued at the time when Adoptante had already been relieved of his duties as OIC Municipal Treasurer by virtue of Bureau of Local Government Finance (BLGF) Regional Special Personnel Order No. 1-2002 dated 2 December 2002.

Despite the aforementioned arguments, in an Order<sup>[15]</sup> dated 12 May 2005, the Office of the Deputy Ombudsman for Luzon resolved respondent Manlapas' prayer for reconsideration in the negative. The dispositive portion of said order reads:

WHEREFORE, in view of the foregoing, it is hereby recommended that the instant Motion for Reconsideration filed by respondent be denied for lack of merit. Accordingly, the Review Resolution dated 07 February 2005 which recommended that an Information for violation of Sec. 3(f) of RA 3019 be filed against the latter stands.

In affirming the *Review Resolution*, the Office of the Deputy Ombudsman for Luzon reasoned that:

It could not have possibly escaped respondent's attention that complainant has sought the payment of her terminal leave pay considering that he signed the corresponding disbursement voucher certifying that the same is necessary and lawful and even approved its payment amounting to P162,291.46 x x x. Having presented said document for his signature, it should have prompted him to verify first if there is no impediment in the payment of such claim of complainant. And it appears that indeed there was none, otherwise he could not have signed the same. But now, he is now justifying his refusal of not giving complainant her terminal leave pay because the amount of P7,564.38 of her collection is missing. To this, we are not convinced because, aside from the fact that the same is uncorroborated, the purported acts of complainant of usurping the functions of the revenue collectors and misappropriating the amount of P7,564.38 transpired immediately on the month after complainant has retired. If the same is factual, immediate action thereon could have been taken and that it should have been relayed at once to complainant and not after a year. With respect to the supposed newly discovered evidence submitted by respondent, we find that the photocopied receipts issued by the municipality only confirms the fact that certain amounts were collected but not to the fact that it was complainant who collected the same and not remit it to the coffers of the municipality. Finally, with respect to the alleged invalidity of the certification made by Adoptante, it was as early as December 2002 that respondent was apprised of the latter's relief as OIC Municipal Treasurer. As such, he should have called complainant's attention of such fact right away and not raised it at this point in time had he be (sic) sincere in acting on the claim of complainant.

On 29 April 2005, bearing the approval of Dennis M. Villa-Ignacio, Special Prosecutor, Office of the Ombudsman, an Information<sup>[16]</sup> was filed with the Sandiganbayan, and raffled to its Fifth Division, charging respondent Manlapas with having violated Section 3, paragraph (f) of Republic Act No. 3019, as amended, with the accusatory portion of the same reading as follows:

That on December 31, 2002, and for sometime prior or subsequent thereto, in the Municipality of Baleno, Masbate, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, LEO H. MANLAPAS, a high ranking public officer, being then the Mayor of Baleno, Masbate, while in the performance of his official administrative functions and acting in relation thereto, with grave abuse of authority, did then and there willfully, unlawfully and criminally fails and refuses without sufficient justification, to order and cause within a reasonable period of time, the payment of the terminal leave pay benefits in the amount of ONE HUNDRED SIXTY TWO THOUSAND TWO HUNDRED NINETY ONE PESOS AND FORTY SIX CENTAVOS (P162,291.46) of BELEN A. SALVACION, a retired municipal employee, after several follow-ups and due demand, the last of which was in September 2003 and requests and thereby discriminating against said BELEN A. SALVACION, to the prejudice of the latter.

The Information was docketed as Criminal Case No. 28111 before the Sandiganbayan, Fifth Division. A Hold Departure Order was issued by the Sandiganbayan, Fifth Division, directing the Bureau of Immigration to hold the departure of respondent Manlapas and include him in the Bureau's Hold Departure List.<sup>[17]</sup> Likewise, an Order of Arrest was issued by the same division commanding the arrest of respondent Manlapas.<sup>[18]</sup>

Respondent Manlapas subsequently filed the sufficient bail bond<sup>[19]</sup> for his provisional liberty which was duly approved by the Executive Judge of the Regional Trial Court (RTC), City of Masbate, on 1 June 2005.<sup>[20]</sup>

The arraignment of the accused, respondent Manlapas, was set on 29 July 2005. Before said date, however, respondent Manlapas filed an *Omnibus Motion [(1) For Determination and/or Review of Finding of Probable Cause and/or Reinvestigation; and (2) To Defer/Suspend Arraignment]* on the ground that "new and material evidence has been discovered which the accused could not, with reasonable diligence, have discovered and produced during the preliminary investigation and which, if produced and submitted during the preliminary investigation, would have certainly established the lack of probable cause and, therefore, would have changed the conclusions and findings of the investigating prosecutors."<sup>[21]</sup> He claimed that he was recently informed that as early as 1 September 2003, petitioner Salvacion had already withdrawn her terminal leave application and its supporting documents. In view of said development, petitioner Salvacion's terminal leave pay was not included in the budget appropriation for Calendar Year 2003-2004. He explained that "[h]aving withdrawn her application for terminal leave benefits as early as 01 September 2003, or MORE THAN five (5) months BEFORE the filing of the complaint-affidavit, complainant had no right to demand for the approval of her terminal leave application from herein accused. In other words, complainant had no cause of action against herein accused at the time of the filing of her complaint for the simple reason that it would have been PHYSICALLY IMPOSSIBLE for herein accused to approve or even act upon a NON-EXISTENT application for terminal leave benefits."<sup>[22]</sup> He then concluded that "[t]hus, complainant Belen A. Salvacion could not have suffered damage or injury by reason of the non-payment of her terminal leave benefits; and herein accused could not have committed a crime for not approving the payment of said benefits in the absence of any application therefor."