

## FIRST DIVISION

[ G.R. NO. 140240, October 18, 2007 ]

**RODOLFO S. DE JESUS, JULIAN Q. TAJOLOSA, HERMILO S. BALUCAN AND AVELINO C. CASTILLO, PETITIONERS, VS. OFFICE OF THE OMBUDSMAN AND CARLOS E. INFANTE, RESPONDENTS.**

### D E C I S I O N

**CORONA, J.:**

This is a petition for certiorari and/or prohibition<sup>[1]</sup> assailing the resolution<sup>[2]</sup> dated November 20, 1998 of the Office of the Ombudsman in OMB-VIS-ADM-96-0460 and the order<sup>[3]</sup> dated August 20, 1999 denying reconsideration.

The resolution dated November 20, 1998 found petitioners Rodolfo S. de Jesus, Julian Q. Tajolosa, Hermilo S. Balucan and Avelino C. Castillo, members of the interim board of directors of the Kabankalan Water District (KWD), guilty of simple misconduct for enacting and approving resolution no. 5, s. 1992 and resolution no. 8, s. 1993 granting the interim manager of KWD a housing allowance, a representation and travel allowance (RATA) and an extraordinary and miscellaneous expense (EME) allowance. In holding petitioners liable, the Office of the Ombudsman cited Civil Service Commission resolution no. 95-4073 dated July 11, 1995 and resolution no. 96-2079<sup>[4]</sup> dated March 21, 1996 declaring as illegal the receipt and collection of any additional, double or indirect compensation (including RATA and EME) from a water district, except *per diems*, by any officer or employee of the LWUA<sup>[5]</sup> who sits as member of the board of directors of a water district, pursuant to Section 13 of PD 198.<sup>[6]</sup> Thus, petitioners were suspended for one month.

Petitioners sought reconsideration but it was denied in an order dated August 20, 1999. Hence, this petition.

Petitioners contend that the Office of the Ombudsman committed grave abuse of discretion in finding them guilty of simple misconduct and suspending them for one month. They claimed that the enactment and approval of resolution no. 5, s. 1992 and resolution no. 8, s. 1993 were authorized under paragraph 2.4 of LWUA resolution no. 21, s. 1991 (Policy Guidelines Regarding Defaulting Water Districts):

2.4The Interim General Manager shall be designated/appointed by the Administrator from within LWUA or within the [water district] locality whose qualifications shall at least be the same as that of Grade 20 LWUA employee. **His compensation and other allowances shall be as determined by the [water district] Board of Directors.**

Ordinarily, this petition which was filed on October 19, 1999 should have been dismissed outright. In *Fabian v. Desierto*,<sup>[7]</sup> we ruled that appeals from the

decisions of the Office of the Ombudsman in administrative disciplinary cases should be taken to the Court of Appeals by way of a petition for review under the provisions of Rule 43 of the Rules of Court. Pursuant to this ruling, the Court promulgated its February 9, 1999 resolution in A.M. No. 99-2-02-SC:

In light of the decision in *Fabian v. Ombudsman* (G.R. No. 129742, 16 September 1998), any appeal by way of petition for review from a decision or final resolution or order of the Ombudsman in administrative cases, or special civil action relative to such decision, resolution or order filed with the Court after 15 March 1999 shall no longer be referred to the Court of Appeals, but must be forthwith **DENIED** or **DISMISSED**, respectively.

Moreover, Section 7, Rule III of Administrative Order No. 07 also known as the Rules of Procedure of the Office of the Ombudsman provides:<sup>[8]</sup>

*Sec. 7. Finality of Decision.* – Where the respondent is absolved of the charge and in case of conviction where the penalty imposed is public censure or reprimand, **suspension of not more than one month**, or a fine not equivalent to one month salary, the decision shall be **final and unappealable**. (emphasis supplied)

In *Coronel v. Desierto*,<sup>[9]</sup> however, this Court suspended the application of A.M. No. 99-2-02-SC on the following grounds:

Indeed, **where as here, there is a strong showing that grave miscarriage of justice would result from the strict application of the [r]ules, we will not hesitate to relax the same in the interest of substantial justice.** It bears stressing that the rules of procedure are merely tools designed to facilitate the attainment of justice. They were conceived and promulgated to effectively aid the court in the dispensation of justice. Courts are not slaves to or robots of technical rules, shorn of judicial discretion. In rendering justice, courts have always been, as they ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat against substantive rights, and not the other way around. **Thus, if the application of the Rules would tend to frustrate rather than promote justice, it is always within our power to suspend the rules, or except a particular case from its operation.** (emphasis supplied)

In *Herrera v. Bohol*,<sup>[10]</sup> this Court stated that decisions of the Ombudsman in administrative cases imposing the penalty of public censure, reprimand, **suspension of not more than one month** or a fine equivalent to one month salary shall be final and unappealable. However, this rule is not without exception. In *Republic v. Canastillo*,<sup>[11]</sup> the Court declared that decisions of administrative agencies which are declared final and unappealable by law are still subject to judicial review if they fail the test of arbitrariness, or upon proof of gross abuse of discretion, fraud or error of law.

Moreover, in *Baylon v. Fact-Finding Intelligence Bureau*,<sup>[12]</sup> while the Court found that the Court of Appeals correctly dismissed Baylon's petition for review of a decision of the Ombudsman in an administrative case for having been filed beyond