

## FIRST DIVISION

[ G.R. NO. 149226, June 26, 2006 ]

**RUDIGARIO C. GATMAITAN, PETITIONER, VS. DR. RICARDO B. GONZALES, OFFICE OF THE OMBUDSMAN AND COURT OF APPEALS, RESPONDENTS.**

### D E C I S I O N

**AUSTRIA-MARTINEZ, J.:**

Before this Court is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, challenging the May 9, 2001 Decision<sup>[1]</sup> and July 24, 2001 Resolution<sup>[2]</sup> of the Court of Appeals<sup>[3]</sup> (CA) in CA-G.R. SP No. 61506 which affirmed the Decision<sup>[4]</sup> of the Office of the Ombudsman in OMB-ADM-0-00-0135 dismissing the administrative complaint of petitioner Rudigario C. Gatmaitan against private respondent Dr. Ricardo B. Gonzales, for lack of substantial evidence.

The herein petition arose from a complaint<sup>[5]</sup> filed by petitioner charging private respondent for grave misconduct, grave abuse of authority, harassment and oppression allegedly committed as follows:

1. Issuing or orders pressuring him (petitioner) to give up and/or resign from his position as Hospital Housekeeper to give way to his protégé, a certain Mr. Ely Villegas;
2. Issuing Hospital Order No. 184, s. 1999, reassigning him to the Operating Room-Delivery Room (OR-DR) Complex to perform janitorial tasks which are inconsistent with the position description of his present position;
3. Instructing the Administrative Officer V of the Dr. Jose Fabella Memorial Hospital to hold submission to his office of petitioner's Performance Evaluation Report (PER) for 1998 thereby depriving the latter of his Productivity Incentive Bonus for that year;
4. Changing the hospital personnel's Performance Evaluation Report;
5. Ordering the payment of Productivity Incentive Bonus for 1998 at the rate of P2,000.00 each employee regardless of the outcome of the Performance Evaluation Report; and
6. The undue initial disapproval of his sick leave application from February 12 to 17 of 1998 while his (private respondent's) favorite, a certain Dr. Caluag, was allowed to go to the United States on official time to attend some courses without even presenting any certificate.<sup>[6]</sup>

Petitioner alleged that private respondent started harassing him only shortly after he was elected president of the Alliance of Hospital Workers-Dr. Jose Fabella Memorial Hospital (AHW-DJFMH).<sup>[7]</sup>

In his defense, private respondent, through his counter-affidavit, averred the following:

. . . .

2. In fact to my recollection, there was a time when we were scouting for a dormitory manager for the male quarters. This position has a salary grade of 9 and Mr. R. Gatmaitan (the petitioner) as a Hospital Housekeeper who has a salary grade of 8 is a possible candidate. The plan was not pursued because Mr. R. Gatmaitan does not meet the qualification standard in the career service of professional or second level eligibility. As a chain reaction, any Utility Foreman with a salary grade of 6 can qualify for the Hospital Housekeeper. Mr. Ely Villegas is just one of the possible candidates from several Utility Foreman.

Moreover, in several occasions upon request of Mr. Gatmaitan, I approved his requests to attend on official time with payment of the corresponding registration fees all meetings/conferences needing his presence as representative of ... [AHW-DJMH]. I never questioned his re presentation in the absence of any hospital records whatsoever showing his presidency of the AHW-DJFMH. . . .

4. In relation to the 1998 Productivity Incentive Bonus the respondent gave an instruction to the Administrative Officer V setting the deadline of submission of their consolidated Performance evaluation Report. To my recollection it was set sometime in August 1999. The Housekeeping, Security and Information Units failed to submit on time. Respondent gave them an extension within which to submit but failed. On their letter dated September 24, 1999 which the respondent received on the dated September 24, 1999 which the respondent received on the 28th, respondent had its inscription 'AOV review their PER according to Quality, Quantity and Time if truly VS'. Then respondent simultaneously wrote his correction to their letter the proper procedure in sending a letter to my office considering that all the above-mentioned units are under the office of the Administrative Officer V stating 'regrets, this should be coursed thru AOV'. Being the approving authority, it is inherent upon the respondent to check whether they really deserved to have a grade of VS upon the recommendation of the AOV. Those who were able to submit on time were approved on August 1999. They were also able to receive their PIB for 1998 on August 30, 1999.

5. With respect to the Hospital Order 184 s. 1999, it was a legitimate act of the respondent when he reassigned Mr. Gatmaitan to OR-DR Complex based on Section 10, Rule VII of the Rules Implementing Book V of Executive Order 292 which reads:

A reassignment is the movement of an employee from one organizational unit to another in the same department or

agency which does not involve a reduction in rank, status or salary and does not require the issuance of appointment.

In fact, under CSC Resolution No. 96-3986 clearly states that 'reassignment is generally presumed to have been made in the interest of the service . . . ,' therefore, as shown under the penultimate paragraph of the said order such act was made with the same purpose.

. . . .

8. As regards to the complainant's sick leave application incurred on February 12 to 17, 1998, prior to its approval, the Administrative Officer V informed the respondent that the reason why he wanted to be on sick leave on the said date was he had no maid. So when his application for sick leave reached my office, respondent inscribed his doubt, 'you informed me that he does not have a maid, which is which'. The true reason upon seeing his application that he had an acute bronchitis supported by a medical certificate, said application was approved by the respondent. As alleged by the complainant that such act was made oppressively amounting to grave abuse of authority, respondent exercised only the right thing to do in complainant's application. It is not ministerial on the part of the respondent to approve sick leave application in case of doubt and without verifying or clarifying the reason/s stated thereon and the corresponding medical certificate. 'Application for sick leave in excess of five (5) successive days shall be accompanied by a proper medical certificate'. (Section 53, Rule XVI of the Omnibus Rules Implementing Book V of Executive Order 292)

. . . .<sup>[8]</sup>

Petitioner filed a reply to private respondent's counter-affidavit<sup>[9]</sup> insisting that he was constructively dismissed when the latter issued Hospital Order No. 184, s. 1999; and claiming that said order directed him to perform menial duties such as the daily disposal of garbage and unnecessary junks, continuous mopping of the OR corridor and the like.

For expediency and to remove all other issues not germane to the complaint, the Office of the Ombudsman simplified the issues as follows:

1. Is the reassignment from the lobby to the OR-DR ordered by respondent constitutive of the charge of harassment?
2. Was there abuse of authority when the complainant was reassigned to the OR-DR of the same department; and
3. Was there grave misconduct or conduct unbecoming of a public officer when he was reassigned?<sup>[10]</sup>

In a Decision dated July 24, 2000, the Office of the Ombudsman exonerated private respondent finding him not guilty as charged and dismissed the complaint for lack of substantial evidence.<sup>[11]</sup> Petitioner's Motion for Reconsideration was likewise denied for lack of merit.<sup>[12]</sup>

Not satisfied with the outcome, the matter was elevated to the CA.

### **RULING OF THE COURT OF APPEALS**

Adopting the simplification of issues made by the Office of the Ombudsman, the Court of Appeals affirmed the latter's decision stating that the reassignment was made – *"in the interest of the service"* – that the order was issued for this purpose is even presumed under Civil Service Rules absent any proof of harassment, coercion, intimidation, or other personal reasons therefor. Moreover, the CA held that private respondent had in his favor the presumption of regularity in the performance of official duties which the petitioner failed to rebut since he failed to present any evidence to prove malice and bad faith in the issuance of the questioned order.

As to petitioner's charge of diminution in rank, the CA noted that petitioner's appointment as Hospital Housekeeper is without any specific station or unit assignment hence he can always be reassigned to clean or maintain the upkeep of one station to another, whenever and wherever his services are much needed since he cannot claim a vested right to the station to which he was originally assigned nor to security of tenure thereat.<sup>[13]</sup>

### **ISSUES**

In his petition, petitioner submitted the following grounds:

- A. THE PUBLIC RESPONDENT COURT OF APPEALS SERIOUSLY ERRED AND GRAVELY ABUSED ITS DISCRETION IN AFFIRMING AN OBVIOUSLY ERRONEOUS RULING OF THE OFFICE OF THE OMBUDSMAN.
- B. THE PUBLIC RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT FINDING AND CONCLUDING THAT PETITIONER IS ENTITLED TO BE REASSIGNED TO HIS FORMER POSITION AS HEAD OF THE HOUSEKEEPING UNIT OF THE HOSPITAL AND TO RECOVER FROM THE PRIVATE RESPONDENT MORAL, NOMINAL/ CONSEQUENTIAL DAMAGES.<sup>[14]</sup>

In his Memorandum, petitioner raised the following issues for the consideration of this Court.

1. ARE THE ACTIONS OF RESPONDENT GONZALES CONSTITUTIVE OF GRAVE MISCONDUCT OR CONDUCT UNBECOMING OF A PUBLIC OFFICER?
2. ARE THE SAID ACTS COVERED BY THE PRESUMPTION OF REGULARITY OF OFFICIAL DUTIES AND WITHIN THE DEFINITION OF ACTS RENDERED IN THE INTEREST OF THE PUBLIC SERVICE?
3. IS PETITIONER ENTITLED TO REINSTATEMENT TO HIS PREVIOUS POSITION AND TO THE PAYMENT OF MORAL AND EXEMPLARY DAMAGES BY RESPONDENT GONZALES?<sup>[15]</sup>

It must be borne in mind that a petition for review under Rule 45 must only raise questions of law which must be distinctly set forth. Petitioner in his petition set forth grounds that properly pertain to the extraordinary remedy of *certiorari* under Rule 65 of the Rules of Court. In the interest of substantial justice, however, this Court deems it best to resolve the issues presented.

In his Memorandum, petitioner posits the premise that the CA committed a serious error of law in holding that the actions committed by respondent Gonzales fall within the definition of official acts committed in the line of duty and did not constitute grave misconduct or conduct unbecoming of a public officer and such ruling violated existing laws and jurisprudence. Petitioner further argues that the CA erred when it upheld the validity of Hospital Order No. 184 which re-assigned him as hospital housekeeper from the Administrative Service to the OR-DR Complex of the hospital thereby amounting to his demotion from a supervisory position to a mere janitor.

As presented by petitioner, his original duties prior to his reassignment were as follows:

1. Directs and administers housekeeping program and maintains hospital cleanliness and orderly condition;
2. Formulates plans for improvement of housekeeping program and establishes standards, work methods and schedules;
3. Inspects rooms and wards to determine that cleanliness standards are maintained;
4. Maintains good working relationships with professional, administrative and maintenance personnel of other department;
5. Initiates and directs training program and demonstrated new equipment and methods;
6. Submits necessary reports and evaluate performance of the Institution Workers and Janitors; and
7. Performs other related work.<sup>[16]</sup>

When petitioner was reassigned to the OR-DR, however, his duties were changed to:

1. Daily disposal of garbage;
2. Disposal of unnecessary junks;
3. Continuous mopping and disinfection of OR corridor and area under the mezzanine;
4. Maintenance/Cleaning of all windows, doctor's quarters; and
5. Daily disposal of solid linen.<sup>[17]</sup>

Petitioner submits the argument that while there might had been no demotion in his salaries, it could not be denied that there was a demotion in his status pointing to a