

THIRD DIVISION

[G.R. NO. 164316, September 27, 2006]

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. GERTRUDES MADRIAGA AND ANA MARIE BERNARDO, RESPONDENTS.

D E C I S I O N

CARPIO MORALES, J.:

The Court of Appeals having declared, by Decision of May 28, 2004, that the six-month suspension meted out by the Office of the Ombudsman to respondent Gertrudes Madriaga (Gertrudes), school principal of San Juan Elementary School, San Juan, Metro Manila, and her co-respondent Ana Marie Bernardo (Ana Marie), a classroom teacher who was designated as Canteen Manager of the same school, is merely recommendatory to the Department of Education, the Office of the Ombudsman filed the present Petition for Review on Certiorari.

The factual antecedents of the case are as follows:

By letter-complaint^[1] of September 8, 2000 filed before the Office of the Ombudsman, the San Juan School Club (the Club), through its president Teresa Nuque (Teresa), charged respondents with violation of Section 1 of Rule IV^[2] and Section 1 of Rule VI^[3] of the Rules Implementing Republic Act (R.A.) No. 6713 otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees.

After respondents had given their side of the complaint, Graft Investigation Officer Helen M. Acuña, by Decision of May 28, 2001, found respondents guilty of violation of Section 5(a) of R.A. No. 6713 reading:

SEC. 5. Duties of Public Officials and Employees. - In the performance of their duties, all public officials and employees are under obligation to:

(a) *Act promptly on letters and requests.* - All public officials and employees shall, **within fifteen (15) working days from receipt thereof, respond to letters, telegrams or other means of communications sent by the public.** The reply must contain the action taken on the request (Emphasis supplied),

and imposed upon them the penalty of reprimand.^[4]

By Memorandum Order dated June 28, 2001, however, Graft Investigation Officer Julita Calderon "set aside" Helen Acuña's decision, the former finding that respondents were guilty also of conduct grossly prejudicial to the best interest of the service, and accordingly penalizing them with six months suspension. Thus Julita Calderon's order disposed:

WHEREFORE, foregoing premises being considered and there being substantial evidence to establish the guilt of respondent GERTRUDES MADRIAGA for violation of Section 5 (a) of RA 6713 for not promptly responding to the letter request of the complainant for copies of the school canteen's financial statements for the period from February to August 2000 and against respondents GERTRUDES MADRIAGA and ANA MARIE BERNARDO for **[C]onduct Grossly Prejudicial to the Best Interest of the Service under Section 22(t) of Rule XIV, of the Omnibus Rules Implementing Book V of EO No. 292, the penalty of six (6) months suspension** is hereby imposed as against both these respondents.

Accordingly, the Decision dated May 28, 2001 of GIO Acuña is therefore **SET ASIDE.**

Let a copy of this Memorandum Order of June 28, 2001 be sent to the Secretary of the Department of Education, Culture and Sports (DECS) with office address at ULTRA, Pasig City, for proper implementation.^[5] (Emphasis partly supplied and partly in the original; underscoring supplied)

Respondents' motion for reconsideration and/or reinvestigation having been denied by Order^[6] of July 26, 2001, they elevated the case to the Court of Appeals via petition for certiorari. Finding the issues that called for resolution in the petition to be

- A. Whether or not the Office of the Ombudsman has the authority to impose administrative sanctions over public officials; and
- B. What is the nature of the functions of the Ombudsman as envisioned by the Fundamental Law,^[7]

the appellate court, by Decision of May 28, 2004, declared that the penalty imposed by the Office of the Ombudsman is merely "recommendatory" to the Department of Education,^[8] it (Office of the Ombudsman) having "only the power to investigate possible misconduct of a government official or employee in the performance of his functions, and thereafter recommend to the disciplining authority the appropriate penalty to be meted out; and that it is the disciplining authority that has the power or prerogative to impose such penalty."^[9]

Hence, the present petition.

The Office of the Ombudsman (hereafter petitioner) argues that the Constitution and R.A. No. 6770 (The Ombudsman Act of 1989) have conferred on it full disciplinary authority over public officials and employees including the power to enforce its duly-issued judgments,^[10] and jurisprudence has upheld such authority; and under Section 21 of R.A. No. 6770,^[11] with the exception of impeachable officials, Members of Congress and the Judiciary, it has been given full administrative disciplinary jurisdiction over all public officials and employees who commit any kind of malfeasance, misfeasance or non-feasance.^[12]

The petition is impressed with merit.

Article XI, Section 13 of the 1987 Constitution^[13] grants petitioner administrative disciplinary power to

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient, [and]

x x x x

(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and **recommend** his removal, suspension, demotion, fine, censure, or prosecution, **and ensure compliance therewith.**

x x x x (Emphasis supplied)

Section 15(3) of R.A. No. 6770 echoes the constitutional grant to petitioner of the power to "recommend" the imposition of penalty on erring public officials and employees and ensure compliance therewith.

SEC. 15. *Powers, Functions and Duties.* - The Office of the Ombudsman shall have the following powers, functions and duties:

x x x x

(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglects to perform an act or discharge a duty required by law, and **recommend** his removal, suspension, demotion, fine, censure, or prosecution, and **ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21^[14] of this Act: *Provided***, that the refusal by an officer without just cause to comply with an **order** of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer;

x x x x (Emphasis supplied)

In the recent case of *Ledesma v. Court of Appeals*,^[15] this Court, resolving in the negative the issue of whether the recommendation of the Ombudsman for the suspension of the therein petitioner, who was found administratively liable in connection with the extension of Temporary Resident Visas of two foreign nationals, was merely advisory on the Bureau of Immigration and Deportation where petitioner was the Chairman of the First Division of its Board of Special Inquiry, held:

Petitioner insists that the word "*recommend*" be given its literal meaning, that is, that the Ombudsman's action is only advisory in nature rather than one having any binding effect, citing *Tapiador v. Office of the Ombudsman*, . . .