

FIRST DIVISION

[G.R. No. 146731, January 13, 2004]

**AGUSTINA M. ENEMECIO, PETITIONER, VS. OFFICE OF THE
OMBUDSMAN (VISAYAS) AND SERVANDO BERNANTE,
RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

The Case

Before us is a petition for review on certiorari^[1] assailing the Resolution^[2] dated 31 May 2000 of the Court of Appeals in CA-G.R. SP No. 58875. The Court of Appeals dismissed for being an inappropriate remedy the petition for certiorari filed by petitioner Agustina M. Enemecio against respondents Office of the Ombudsman and Servando Bernante. The present petition also assails the Court of Appeals' Resolution dated 7 December 2000 denying petitioner's motion for reconsideration.

The Antecedents

Petitioner Agustina M. Enemecio ("Enemecio") is a utility worker at the Cebu State College of Science and Technology, College of Fisheries Technology ("CSCST-CFT"), Carmen, Cebu. Private respondent Servando Bernante ("Bernante") is an Assistant Professor IV of CSCST-CFT.

On 30 March 1998, Enemecio filed an **administrative** complaint for gross misconduct, falsification of public documents, malversation, dishonesty and defamation against Bernante before the Office of the Executive Dean of CSCST-CFT. ^[3] Dr. Severino R. Romano, CSCST-CFT Executive Dean, indorsed the complaint to the Office of the Ombudsman for the Visayas ("Ombudsman").

Enemecio also filed with the Ombudsman a **criminal** complaint against Bernante for falsification of public document. ^[4] The Ombudsman ordered Enemecio to submit her affidavit and the affidavits of her witnesses. After Enemecio submitted the required affidavits, the Ombudsman ordered Bernante to submit his counter-affidavit. The administrative complaint was docketed as OMB-VIS-ADM-98-0201, while the criminal complaint was docketed as OMB-VIS-CRIM-98-0286. The Ombudsman jointly tried the two cases.

Enemecio alleged that Bernante had caused the spray-painting of obscene and unprintable words against her on the walls of the CSCST Carmen Campus. Enemecio claimed that Bernante also shouted defamatory words against her while she was inside the school premises. Enemecio further asserted that Bernante made it appear in his leave application that he was on forced leave from 15 May 1996 to 21 May 1996 and on vacation leave from 22 May 1996 to 31 May 1996. In truth,

Bernante was serving a 20-day prison term, from 14 May 1996 to 2 June 1996, because of his conviction of the crime of slight physical injuries in Criminal Case No. NR-1678-CR. Bernante was able to receive his salary during his incarceration since then CSCST-CFT Superintendent Andres T. Melencion approved Bernante's application for leave. Enemecio contended that Bernante was not entitled to receive salary for that period because of his "falsified leave applications."^[5]

For his part, Bernante did not deny that he was in prison from 15 May 1996 to 31 May 1996. He maintained that he received his salary for that period because of his duly approved leave applications. Bernante also alleged that Enemecio filed the criminal and administrative complaints against him in retaliation for the case he filed against Enemecio's friends, Dean Severino Romano and Bernadette Mante. Bernante denied he was behind the spray-painting of obscenities against Enemecio on the walls of the school campus.^[6]

On 13 January 2000, the Ombudsman rendered a decision dismissing the **administrative** complaint against Bernante in OMB-VIS-ADM-98-0201. The Ombudsman explained:

On the issue of the alleged falsification of respondent's application for leave by making it appear that he was on vacation when in truth and in fact he was serving a sentence for a criminal conviction, we have determined that there is no regulation restricting the purpose or use of an employee's earned leave credits. Considering that the application for leave filed by the respondent was duly approved by the appropriate official concerned, it matters not how he utilizes his leave for it is not a requirement that the specifics or reasons for going on leave be spelled out in such application.

On the issue of the spray painting of obscenities on the walls of the school, the evidence is insufficient to prove that respondent was the person responsible for such as there were no eye witnesses to such activity. The testimony of Bernadette Mante merely identifies the respondent as allegedly having a drinking session with security guard Estanislao Lavarria at around 11:00 on the night of March 29, 1998. Furthermore, witness Mante states that there are about ten (10) to twelve (12) families living inside the dormitory facing the school walls where the graffiti appeared. Despite this number, not one single person appeared to have witnessed respondent spray painting the questioned graffiti on the walls of the campus (TSN, April 19, 1999). While it may be probable that the only person or persons who could have had the opportunity to spray paint the said graffiti on the night of March 29, 1998 or in the early morning hours of March 30, 1998 were the respondent and security guard Lavarria, this is not sufficient justification to directly blame them for such event.

Regarding the complainant's allegation that on March 10 and 25, 1998, the respondent defamed the former by uttering slanderous words, it appears that only the incident occurring on March 10, 1998 was corroborated by the testimony of witness Delfin Buot (TSN, April 7, 1998). Witness Buot testified that he was about (3) meters from the respondent when the latter shouted the words 'buricat' (whore) 'putang

ina' and 'maot' (snob) to the complainant. However, the circumstances of the utterance, particularly the time and the relation of the protagonists involved, leads us to conclude that the same is removed from the official functions of the respondent as a professor of the school. Stated otherwise, the act of the respondent was not in relation to his official functions. In the case of *Palma vs. Fortich, et al.*, 147 SCRA 397, the Supreme Court ruled that:

In administrative actions against municipal officers, the Supreme Court in *Festijo v. Crisologo, et al.* (17 SCRA 868, 869 [1966]), classified the grounds for suspension under two categories, namely: (1) those related to the discharge of the functions of the officer concerned (neglect of duty, oppression, corruption or other forms of maladministration of office and (2) those not so connected with said functions. Under the second category, when the crime involving moral turpitude is not linked with the performance of official duties, conviction by final judgment is required as a condition precedent to administrative action.

Therefore, inasmuch as the oral defamation charge is now pending before the Municipal Circuit Trial Court in Catmon, Cebu under Criminal Case No. 30006-CR, the matter of respondent's administrative culpability is still premature to be determined herein.^[7]

On the same date, the Ombudsman dismissed the **criminal** complaint against Bernante in OMB-VIS-CRIM-98-0286^[8] finding no probable cause to indict Bernante for falsification of public document. The Ombudsman explained thus:

It is well established by documentary evidence that the applications for leave filed by the respondent for the period from May 15 to 31, 1996 were duly approved by the head of office, which in this case is Mr. Andres T. Melencion, Vocational School Superintendent. All these leaves were with pay indicating that the respondent availed of his leave credits which are undeniably due to him by law. It matters not how the respondent utilizes the days where he is on leave, be they enjoyed as a vacation or, in this case, incarceration for a crime. There appears to be no regulation or law against the utilization of leave credits for purposes other than recreation. As such, there could be no falsification where nothing is being misrepresented in the official leave forms which the respondent prepared and submitted.^[9]

The Ombudsman denied Enemecio's motion to reconsider the dismissal of the **criminal** complaint in its Order of 28 February 2000. In denying the motion, the Ombudsman stated:

We find the complainant's arguments untenable. There is no dispute that the leave forms are public documents. What is in dispute is whether or not the failure of the respondent to indicate therein the reasons for his leave amounts to a crime of falsification. It is submitted that it does not, for the simple reason that the form itself does not require stating the reasons for going on leave. An employee simply indicates through check marks the nature of the leave he is availing of, which in the case at bar,

respondent chose to avail of his forced and vacation leave credits. Nevertheless, the omission does not affect the validity of its approval. What is indicated in the leave forms is only the need to specify the whereabouts of the employee who goes on leave. However, it is not a requirement that specifics must be provided. In any case the omission to state the location of a vacationing employee is not a condition sine-qua-non for its approval.

To sum it up, there is no falsification of leave forms where there is no requirement for the indication of reasons for going on leave. Regardless of such a requirement, the need to indicate the whereabouts of a vacationing employee is not a necessity for its approval.^[10]

Enemecio filed a special civil action for certiorari before the Court of Appeals, assailing the resolutions which dismissed the **criminal** complaint and denied the motion for reconsideration in OMB-VIS-CRIM-98-0286. Applying the ruling in ***Fabian v. Desierto***,^[11] the appellate court dismissed Enemecio's petition for having been filed out of time. The appellate court also stated that the proper remedy available to Enemecio was a petition for review under Rule 43 and not a petition for certiorari under Rule 65.

In her motion for reconsideration, Enemecio argued that the appellate court should not have relied on ***Fabian***. Enemecio contended that ***Fabian*** declared void only Section 27 of Republic Act No. 6770 ("RA 6770") and Section 7, Rule III of Administrative Order No. 07 ("AO No. 07") insofar as they provide for appeals in administrative disciplinary cases from the Ombudsman to the Supreme Court. Enemecio asserted that the other provisions of Section 27 of RA 6770 and Section 7 of AO No. 07, including the "final and unappealable character" of orders, resolutions or decisions exonerating a respondent from any criminal liability, still stand. Enemecio stated that she filed the petition for certiorari under Rule 65 with the Court of Appeals because she considered Bernante's absolution from the administrative complaint in OMB-VIS-ADM-98-0201 as already final and unappealable. As there was no adequate remedy of appeal, Enemecio claimed that her only recourse was a petition for certiorari before the appellate court under Rule 65.^[12]

The Court of Appeals denied Enemecio's motion for reconsideration in its Order of 7 December 2000.

Hence, this petition for review.

The Ruling of the Court of Appeals

In dismissing the petition, the Court of Appeals stated that in ***Fabian***, the Supreme Court held that appeals in administrative disciplinary cases from the Ombudsman to the Court of Appeals must be brought by petition for review under Rule 43. The appellate court stated that a petition for review must be filed within 15 days from notice of the assailed final order or resolution. Since Enemecio received on 22 March 2000 a copy of the Ombudsman's Order denying her motion for reconsideration, the appellate court ruled that Enemecio had only until 6 April 2000 to file a petition for review. Enemecio filed her petition only on 8 May 2000. The