

TWELFTH DIVISION

[CA-G.R. SP NO. 133649, October 16, 2014]

**MANUEL O. LOPEZ, PETITIONER, VS. TERESITA T. PERALTA,
RESPONDENT.**

D E C I S I O N

SALANDANAN-MANAHAN, J.:

The Case

Before us is a *Petition For Review under Rule 43 of the Rules of Court*,^[1] assailing the following issuances of the Office of the Deputy Ombudsman (OMB) for Luzon in OMB-L-A-10-0734-K:

1. The February 6, 2013 *Decision*^[2] finding the petitioner guilty of *Simple Misconduct* and meting him the penalty of three (3) months suspension; and
2. The November 6, 2013 *Resolution*^[3] denying the petitioner's *Motion for Reconsideration*.^[4]

The Facts

The facts of the instant case are simple.

On November 5, 2010, the respondent Peralta filed with the Office of the Ombudsman for Luzon, an administrative complaint^[5] for abuse of authority, oppression, serious misconduct, discourtesy in the conduct of official duties, and conduct prejudicial to the best interest of the service, docketed as OMB-L-A-10-0734-K.

In her *Complaint-Affidavit*,^[6] the respondent alleged that she works as a teacher at the Malasin Elementary School, Brgy. Malasin, San Jose City, Province of Nueva Ecija, while the petitioner is the School Principal therein.

On September 24, 2010 at around 7:00 o'clock in the morning, the respondent reported to school to perform her regular duties. While the respondent was supervising the cleaning of her classroom, petitioner Lopez saw her. During that time, the respondent was then holding a video camera because she was then taking a video of the back portion of her classroom. Thereafter, the respondent went to the office of the petitioner to sign in the logbook. The petitioner followed her.

After signing in the logbook, the respondent saw some of the parents of her students who were then standing near the gate of the school. The respondent

approached and conversed with them. The petitioner followed the respondent and when he was almost near her, he uttered the following words:

"Mrs. Peralta, yong mga plywood sa loob ng kuwarto mo, ilabas mo. Alam mong kinukuha ng Engineering, sinabayan mo ng absent. Ilang plywood ba ang kinana mo?"

The respondent claimed that the said utterances made by the petitioner was heard by the parents of her students and she was deeply humiliated by the questioned posed by the petitioner.

The respondent alleged that although she was shocked and humiliated, she tried to explain to the petitioner that she asked the prior permission of the City Engineering's Office of the City of San Jose if she could keep the old pieces of plywood when the latter was hauling the remaining materials used in repairing some classrooms. However, he did not listen to her explanation and in a loud voice and in the presence of the parents of the students, the petitioner again asked the respondent this question:

"Ilang plywood ba ang ninakaw mo?"

The respondent's account of the incident in the morning of September 24, 2010 was corroborated by the *Sworn Statement*^[7] of Bernardo D. Del Rosario and Amorsolo T. Tejano who claimed that on the said date, while they were in front of the Malasin Elementary School together with the respondent, the petitioner approached the latter and told her, thus:

"Mrs. Peralta, yong mga plywood sa loob ng kuwarto mo, ilabas mo. Alam mong kinukuha ng Engineering, sinabayan mo ng absent. Ilang plywood ba ang kinana mo?"

Witnesses Bernardo D. Del Rosario and Amorsolo T. Tejano likewise narrated in their *Sworn Statement* that despite being deeply humiliated, the respondent tried to explain her side to the petitioner but he refused to listen to her but instead asked her again this question:

"Ilang plywood ba ang ninakaw mo?"

In the petitioner's *Counter-Affidavit* dated April 19, 2011,^[8] he denied the charges filed against him. He claimed that repairs were conducted in the school and there were unused old pieces of plywood and some materials which were retrieved by the City Engineering's Office. On September 24, 2010, the petitioner was surprised to see that there were still some pieces of used plywood in the classroom of the respondent which were not turned over to the City Engineering's Office. The petitioner argued that he was not aware that the respondent and the City Engineering's Office had a previous agreement with regard to the used pieces of

plywood because the respondent did not report for work in the afternoon of September 23, 2010 when the City Engineering's Office hauled the old pieces of plywood and some materials used in the repairs.

Hence, when the petitioner saw the pieces of plywood in the respondent's classroom, he approached the respondent who was standing near the gate of the School at that time. The petitioner denied having uttered the words "***Ilang plywood ba ang kinana mo?***" or "***Ilang plywood ba ang ninakaw mo?***" The petitioner said that he merely asked the respondent to surrender the used pieces of plywood in her classroom to the City Engineering's Office to be included in the inventory and advised the respondent to just ask for them from the said Office.

The petitioner further averred that granting *arguendo* that he indeed posed those questions to the respondent, he insisted that they were not violative of her rights. Moreover, the petitioner claimed that he cannot remember having asked those questions in the presence of the parents of the students contrary to the claim of the respondent.

In a *Manifestation*^[9] dated July 13, 2012, the petitioner stated that he is adopting his *Sworn Statement* as his *Position Paper* to the *Administrative Case* filed against him and he attached thereto a copy of the CD to prove what really transpired on September 24, 2010.

On February 6, 2013, Expedito O. Allado, Jr., Graft Investigation and Prosecution Officer I, rendered his *Decision*, the dispositive portion of which reads:

"WHEREFORE, PREMISES CONSIDERED, this Office finds respondent MANUEL O. LOPEZ GUILTY of Simple Misconduct and is hereby meted the penalty of Suspension from Office for a period of three (3) months.

The complaint for Oppression and Violation of R.A. No. 6713 against respondent MANUEL O. LOPEZ is hereby DISMISSED for lack of substantial evidence.

The Secretary, Department of Education is hereby directed to implement this DECISION immediately upon receipt hereof pursuant to Section 7, Rule III of Administrative Order No. 07, as amended by Administrative Order No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1, Series of 2006, dated 11 April 2006 and to promptly inform this Office of the action taken thereon.

SO DECIDED."^[10]

The petitioner sought a reconsideration of the Decision but to no avail, as the OMB denied the *Motion for Reconsideration*^[11] in the Resolution dated November 6, 2013.^[12]

Undaunted, the petitioner filed the instant *Petition for Review*, raising the following

errors, to wit:

"I.

THE OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON GRAVELY ERRED WHEN IT FAILED TO STAY THE EXECUTION OF THE ORDER PENDING APPEAL.^[13]

II.

THE OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON GRAVELY MISAPPRECIATED THE FACTS AND EVIDENCE PRESENTED.^[14]

III.

THE OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON GROSSLY ERRED IN FINDING THE PETITIONER GUILTY OF SIMPLE MISCONDUCT AND FOR DENYING THE PETITIONER'S MOTION FOR RECONSIDERATION."^[15]

The Issue

The sole issue for our resolution is **WHETHER THE OFFICE OF THE DEPUTY OMBUDSMAN FOR LUZON ERRED IN FINDING THE PETITIONER GUILTY OF SIMPLE MISCONDUCT AND IN IMPOSING UPON HIM THE PENALTY OF THREE (3) MONTHS SUSPENSION.**

The Court's Ruling

The Petition is **NOT MERITORIOUS.**

On the First Assignment of Error

The petitioner's claim that the Office of the Deputy Ombudsman for Luzon erred when it failed to stay the execution of the *Decision* during the pendency of the appeal.

The petitioner's contention is **BEREFT OF MERIT.**

Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17 dated September 15, 2003, provides:

*"SEC. 7. Finality and execution 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 equivalent to one month salary, the decision shall be final, executory and unappealable. **In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43***

of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the motion for reconsideration.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against such officer."
(Emphasis supplied)

The Ombudsman's *Decision* imposing the penalty of suspension for three (3) months is immediately executory pending appeal.^[16] It cannot be stayed by the mere filing of an appeal to this Court. This rule is similar to that provided under Section 47 of the Uniform Rules on Administrative Cases in the Civil Service.^[17]

In the case of ***In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of the DPWH,***^[18] the Highest Tribunal held:

"The Rules of Procedure of the Office of the Ombudsman are clearly procedural and no vested right of the petitioner is violated as he is considered preventively suspended while his case is on appeal. Moreover, in the event he wins on appeal, he shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. Besides, there is no such thing as a vested interest in an office, or even an absolute right to hold office. Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office."

Following the ruling in the above cited case, the Supreme Court, in ***Buencamino v. Court of Appeals,***^[19] upheld the Resolution of the Court of Appeals denying Buencamino's application for preliminary injunction against the immediate implementation of the suspension order against him. The Supreme Court stated therein that this Court did not commit grave abuse of discretion in denying petitioner's application for injunctive relief because Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman was amended by Administrative Order No. 17 dated September 15, 2003.

Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended, is categorical, ***an appeal shall not stop the decision from being executory.***