

SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
SUPREME COURT
Manila

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Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division
JUL 12 2017

THIRD DIVISION

**CINDY SHIELA COBARDE-
GAMALLO,**

Petitioner,

- versus -

JOSE ROMEO C. ESCANDOR,
Respondent.

x-----x

OFFICE OF THE OMBUDSMAN,
Petitioner,

- versus -

JOSE ROMEO C. ESCANDOR,
Respondent.

x-----x

G.R. No. 184464

Present:

VELASCO, JR., *J.*, Chairperson,
BERSAMIN,
REYES,
JARDELEZA, and
TIJAM, *JJ.*

G.R. No. 184469

Promulgated:

June 21, 2017
Wilfredo V. Lapitan

DECISION

VELASCO, JR., J.:

Challenged in these consolidated Petitions for Review on Certiorari under Rule 45 of the Rules of Court are the Decision¹ and the Resolution² dated March 25, 2008 and August 28, 2008, respectively, of the Court of Appeals (CA) in CA-G.R. SP No. 02886.

These two cases arose from an administrative complaint for Violation of Republic Act No. 7877 (Anti-Sexual Harassment Act of 1995) filed by Cindy Sheila Cobarde-Gamallo (Cobarde-Gamallo), a contractual employee of the National Economic Development Authority, Regional Office No. 7 (NEDA 7), for the UNICEF-assisted Fifth Country Program for Children (CPC V), against Jose Romeo C. Escandor (Escandor), Regional Director of NEDA 7, before the Office of the Deputy Ombudsman for the Visayas (OMB-Visayas), docketed as OMB-V-A-04-0492-I.

¹ Rollo (G.R. No. 184464), pp. 80-86. Penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Pampio A. Abarintos and Francisco P. Acosta.

² Id. at 115-116. Penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Francisco P. Acosta and Franchito N. Diamante.

In a Decision dated March 21, 2007, there being substantial evidence, the OMB-Visayas, through Graft Investigation and Prosecution Officer II Cynthia C. Maturan-Sibi, adjudged Escandor guilty of grave misconduct and meted him with the penalty of dismissal from the service with all its accessory penalties.³ This OMB-Visayas Decision was later approved by the then Ombudsman Ma. Merceditas N. Gutierrez (Gutierrez) on June 14, 2007. Pursuant to Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order (AO) No. 17,⁴ the Office of the Ombudsman (OMB) issued on even date an Order directing the implementation of the aforesaid Decision, particularly Escandor's dismissal from the service, through the then Director General/Secretary of NEDA Romulo L. Neri (Neri).⁵

Aggrieved, Escandor went to the CA via a Petition for Certiorari (with application for Temporary Restraining Order and Preliminary Injunction) under Rule 65 of the Rules of Court, seeking to set aside, reverse and declare null and void the OMB Order dated June 14, 2007 directing the immediate implementation and execution of the OMB-Visayas Decision dated March 21, 2007 (approved on June 14, 2007) dismissing him from the service.⁶ In support of his petition, Escandor claimed that he timely moved for reconsideration of the said Decision; thus, it would be premature for the OMB and the NEDA to dismiss him from the service.⁷ Escandor also cited several rulings⁸ of this Court to sustain his position that the penalty of dismissal cannot be immediately executed pending any appeal or motion for reconsideration. Lastly, Escandor sought the nullification of Section 7, Administrative Order No. 17 of the OMB for being allegedly contrary to this Court's ruling in the cases cited by him.

Finding merit in Escandor's petition, the CA, in its now assailed Decision dated March 25, 2008, partly granted the same, and, thus, enjoined Ombudsman Gutierrez and Secretary Neri from executing the Decision

³ Id. at 107.

⁴ 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.

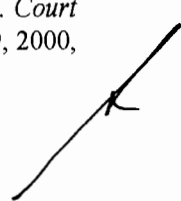
A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of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

⁵ *Rollo* (G.R. No. 184464), p. 81.

⁶ Id. at 14-55.

⁷ Id. at 82.

⁸ *Office of the Ombudsman v. Laja, et al.*, G.R. No. 169241, May 2, 2006, 488 SCRA 574; *Laxina v. Office of the Ombudsman, et al.*, G.R. No. 153155, September 30, 2005, 471 SCRA 542; *Lopez v. Court of Appeals, et al.*, 438 Phil. 351 (2002); *Lapid v. Court of Appeals, et al.*, G.R. No. 142261, June 29, 2000, 334 SCRA 738.



dated March 21, 2007, as well as the Order dated June 14, 2007, in OMB-V-A-04-0492-I until after the said Decision becomes final and executory. The CA held that there are good grounds to prevent Ombudsman Gutierrez and Secretary Neri from enforcing the Decision dated March 21, 2007, as it has not yet become final and executory considering the pendency of Escandor's Motion for Reconsideration thereof. The CA based its Decision from the same cases cited by Escandor in his petition where this Court declared that penalties other than public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary, cannot be immediately executed pending any appeal or motion for reconsideration. With these, the CA considered it grave abuse of discretion to insist Escandor's dismissal from the service despite the unequivocal pronouncements of this Court on the matter and Escandor's pending motion for reconsideration with the OMB. The CA, however, declined to nullify Section 7, Administrative Order No. 17 of the OMB.⁹

Cobarde-Gamallo, Ombudsman Gutierrez and Secretary Neri sought reconsideration of the aforesaid CA Decision but it was denied for lack of merit in the now questioned CA Resolution dated August 28, 2008.

Hence, these consolidated Petitions.

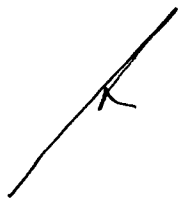
Both Cobarde-Gamallo and the OMB insist that the CA committed an error of law in enjoining the immediate implementation of the Decision dated March 21, 2007 despite the clear provision of Section 7, Article III, of the OMB Rules of Procedure, as amended, that decisions, resolutions and orders of the OMB are immediately executory even pending appeal. They also argue that the CA's reliance on this Court's rulings in *Office of the Ombudsman v. Laja, et al.*, *Laxina v. Office of the Ombudsman, et al.*, *Lopez v. Court of Appeals, et al.*, and *Lapid v. Court of Appeals, et al.*,¹⁰ is likewise an error of law as these cases have already been superseded by the ruling in *Buencamino v. Court of Appeals, et al.*,¹¹ where this Court declared that Section 7, Rule III of the OMB Rules of Procedure, was already amended by AO No. 17, where it is categorically stated that the appeal shall not stop the decisions of the OMB from being immediately executory.

On the contrary, Escandor maintains the correctness of the CA's ruling enjoining the immediate execution of the Decision dated March 21, 2007. Escandor believes that the amendment of Section 7, Rule III of the OMB Rules of Procedure by AO No. 17 cannot overturn the doctrinal pronouncements in *Lapid*, *Laxina*, *Lopez* and *Laja* that penalties other than public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary cannot be immediately executed pending any appeal or motion for reconsideration. Escandor also holds that the immediate implementation and execution of the order of dismissal pursuant to AO No. 17 deprive him of his rights without due process of law.

⁹ *Rollo* (G.R. No. 184464), pp. 82-85.

¹⁰ *Supra* note 8.

¹¹ G.R. No. 175895, April 12, 2007, 520 SCRA 797.



Given the foregoing arguments of the parties, the sole issue that must be addressed in these consolidated petitions is whether the OMB's Decision and Order of Dismissal against Escandor can be immediately implemented despite the pendency of his Motion for Reconsideration and/or Appeal.

This Court rules in the affirmative.

The issue presented in these consolidated petitions is not novel. In fact, it has long been settled in a number of cases, to wit: *Office of the Ombudsman v. Samaniego*,¹² *Villaseñor, et al. v. Ombudsman, et al.*,¹³ and *The Office of the Ombudsman v. Valencerina*,¹⁴ stating that the OMB's decision, even if the penalty imposed is dismissal from the service, is immediately executory despite the pendency of a motion for reconsideration or an appeal and cannot be stayed by mere filing of them.

Section 7, Rule III of the OMB Rules of Procedure, as amended by AO No. 17 dated September 15, 2003, explicitly provides:

Section 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 said officer. (emphases supplied)

It can be gleaned from the afore-quoted provision that the OMB's decisions in administrative cases may either be unappealable or appealable. The unappealable decisions are final and executory, to wit: (1) respondent is absolved of the charge; (2) the penalty imposed is public censure or reprimand; (3) suspension of not more than one month; and (4) a fine equivalent to one month's salary. The appealable decisions, on the other hand, are those falling outside the aforesaid enumeration, and may be

¹² G.R. No. 175573, October 5, 2010, 632 SCRA 140.

¹³ G.R. No. 202303, June 4, 2014.

¹⁴ G.R. No. 178343, July 14, 2014.

appealed to the CA under Rule 43 of the Rules of Court, within 15 days from receipt of the written notice of the decision or order denying the motion for reconsideration. **Section 7 is categorical in providing that an appeal shall not stop the decision from being executory, and that such shall be executed as a matter of course.**¹⁵

Also, Memorandum Circular (MC) No. 01, Series of 2006, of the OMB states:

Section 7, Rule III of Administrative Order No. 07, otherwise known as, the "Ombudsman Rules of Procedure" provides that: "A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course."

In order that the foregoing rule may be strictly observed, all concerned are hereby enjoined to implement all Ombudsman decisions, orders or resolutions in administrative disciplinary cases, immediately upon receipt thereof by their respective offices.

The filing of a motion for reconsideration or a petition for review before the Office of the Ombudsman does not operate to stay the immediate implementation of the foregoing Ombudsman decisions, orders or resolutions. (emphases supplied.)

Here, Escandor was ordered dismissed from the service. Undoubtedly, such decision against him is appealable via Rule 43 to the CA. Nonetheless, the same is immediately executory even pending appeal or in his case even pending his motion for reconsideration before the OMB as that is the clear mandate of Section 7, Rule III of the OMB Rules of Procedure, as amended, as well as the OMB's MC No. 01, Series of 2006. As such, Escandor's filing of a motion for reconsideration does not stay the immediate implementation of the OMB's order of dismissal since "a decision of the [OMB] in administrative cases shall be executed as a matter of course" under the afore-quoted Section 7.¹⁶

Further, in applying Section 7, there is no vested right that is violated as the respondent in the administrative case is considered preventively suspended while his case is on appeal and, 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.¹⁷ To note, there is no such thing as a vested interest in an office, or even an absolute right to hold office. Except for constitutional offices that provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office.¹⁸ Hence, no vested right of Escandor would be violated as he would be considered under preventive suspension and entitled to the salary and

¹⁵ *Villaseñor, et al. v. Ombudsman, et al.*, supra note 13.

¹⁶ *Id.*

¹⁷ *Belmonte, et al. v. Office of the Deputy Ombudsman for the Military and Other Law Enforcement Officers, et al.*, G.R. No. 197665, January 13, 2016, citing *Villaseñor, et al. v. Ombudsman, et al.*, *id.*; *Office of the Ombudsman v. De Chavez, et al.*, G.R. No. 172206, July 3, 2013, citing *Facura v. Court of Appeals*, G.R. No. 184263, February 16, 2011, 643 SCRA 428.

¹⁸ *Villaseñor, et al. v. Ombudsman, et al.*, *id.*

emoluments that he did not receive, by reason of his dismissal from the service, in the event that his Motion for Reconsideration will be granted or that he wins in his eventual appeal.

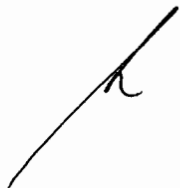
Now, as regards the earlier pronouncements in *Lapid*, *Laxina*, *Lopez* and *Laja* that penalties other than public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary cannot be immediately executed pending any appeal or motion for reconsideration, which relied upon by both Escandor and the CA, this Court explained in *The Office of the Ombudsman v. Valencerina*,¹⁹ thus:

x x x the previous ruling in *Lapid v. CA* (as quoted in *Lopez v. CA* and *OMB v. Laja*) wherein the Court, relying on the old OMB Rules of Procedure, *i.e.*, Administrative Order No. 7 dated April 10, 1990, had opined that “the fact that the [Ombudsman Act] gives parties the right to appeal from [the OMB’s] decisions should generally carry with it the stay of these decisions pending appeal,” cannot be successfully invoked by Valencerina in this case for the reason that **the said pronouncement had already been superseded by the more recent ruling in *Buencamino v. CA* (Buencamino). In *Buencamino*, the Court applied the current OMB Rules of Procedure, *i.e.*, Administrative Order No. 17 dated September 15, 2003, which were already in effect at the time the CA assailed Resolutions dated June 15, 2006 and April 24, 2007 were issued, and, hence, governing** x x x. (emphases supplied)

Having been superseded by this Court’s recent rulings declaring that the OMB’s decisions, resolutions and orders are immediately executory pending motion for reconsideration or appeal, it is, therefore, an error on the part of the CA to still rely on those old rulings and make them its bases in granting Escandor’s writ of certiorari and enjoining the OMB from implementing its Decision and Order dismissing Escandor from the service. Notably, the assailed CA Decision and Resolution were rendered in 2008 while the ruling in *Buencamino* was made in 2007 and the amendments to the OMB Rules of Procedure stating that the OMB’s decisions, resolutions and orders are immediately executory pending appeal were already in effect as early as 2003. Yet, the CA still enjoined the implementation of the OMB Decision and Order on the ground that the same were not yet final and executory as Escandor has pending motion for reconsideration before the OMB. This is a clear error on the part of the CA, which this Court now corrects.

As a final note. The OMB is authorized to promulgate its own rules of procedure by none other than the Constitution, which is fleshed out in Sections 18 and 27 of Republic Act No. (RA) 6770, otherwise known as “The Ombudsman Act of 1989” empowering the OMB to “promulgate its rules of procedure for the effective exercise or performance of its powers, functions, and duties” and to accordingly amend or modify its rules as the interest of justice may require. With that, the CA cannot just stay the execution of decisions rendered by the OMB when its rules categorically and

¹⁹ Supra note 14.



specifically warrant their enforcement, else the OMB's rule-making authority be unduly encroached and the constitutional and statutory provisions providing the same be disregarded.²⁰

WHEREFORE, premises considered, these consolidated petitions are hereby **GRANTED**. The Decision dated March 25, 2008 and the Resolution dated August 28, 2008 of the CA in CA-G.R. SP No. 02886 are hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

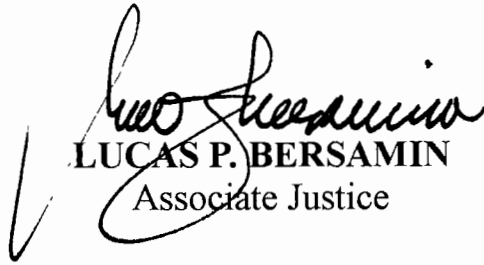



PRESBITERO J. VELASCO, JR.
Associate Justice


²⁰ *Valencerina, id.; Samaniego, supra note 12.*




WE CONCUR:


LUCAS P. BERSAMIN
 Associate Justice

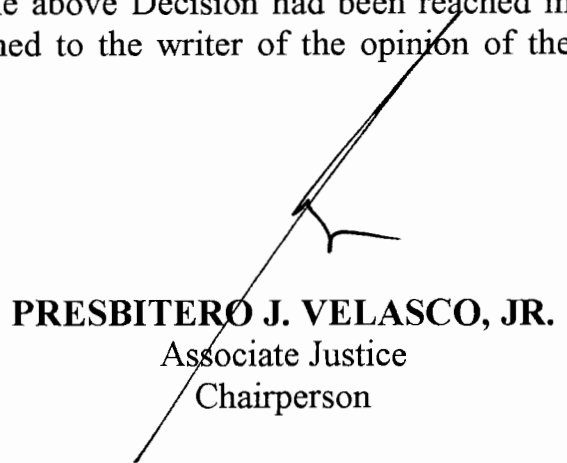

BIENVENIDO L. REYES
 Associate Justice


FRANCIS H. JARDELEZA
 Associate Justice


NOEL GIMENEZ TIJAM
 Associate Justice


ATTESTATION

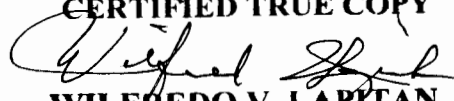
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
 Chief Justice

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 Division Clerk of Court
 Third Division
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