



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **05 May 2021** which reads as follows:*

“G.R. No. 234761 (Humphrey M. Lumawag and Armando D. Degracia v. Carlo V. Gamban, Dela G. Ledesma, Ian Hondrade, Marissa Lim, and the Office of the Ombudsman).

Under Section 2, Rule 45 of the Rules of Court, petitioners have 15 days from the receipt of judgment or final order or resolution to file a petition for review. In case a motion for extension is requested, the Court may grant a period of 30 days to file the petition, thus:

SEC. 2. Time for filing; extension. - The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner’s motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.¹

Here, petitioners received the Resolution of the Court of Appeals (CA) denying their motion for reconsideration on September 19, 2017,² hence, they had until October 4, 2017 to file a petition for review. On October 3, 2017, petitioners filed a motion for extension of 30 days or until November 3, 2017 to file the petition. On November 3, 2017, petitioners furnished respondents a copy of the petition as shown by the registry return cards³ attached to the petition. However, the copy intended for the Court was posted by the

¹ Rules of Court, Rule 45.

² *Rollo*, p. 15.

³ *Id.* at 25.

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petitioners only on November 6, 2017, as shown in the proof of delivery receipt.⁴ Petitioners' failure to file the petition in accordance with Section 2, Rule 45 of the Rules of Court justifies the denial of the petition. Consequently, it has also precluded this Court from ruling on the case. Nevertheless, even if we disregard this procedural error, the petition will still be denied for lack of merit.

Presidential Decree No. 807 or the "Civil Service Decree of the Philippines" declared that the Civil Service Commission shall be the central personnel agency to set standards and to enforce the laws governing the discipline of civil servants. The law categorically described the scope of Civil Service as embracing every branch, agency, subdivision, and instrumentality of the government, including every government-owned or controlled corporation whether performing governmental or proprietary function. The law construed an agency to mean any bureau, office, commission, administration, board, committee, institute, corporation, whether performing governmental or proprietary function, or any other unit of the National Government, as well as provincial, city or municipal government, except as otherwise provided. Corollarily, Executive Order No. 18⁵ defined "government employees" as all employees of all branches, subdivisions, instrumentalities, and agencies, of the Government, including government-owned or controlled corporations with original charters. It provided that the Civil Service and labor laws shall be followed in the resolution of complaints, grievances and cases involving government employees.⁶

Notably, Executive Order No. 292 or the "Administrative Code of 1987" empowered the Civil Service Commission to hear and decide administrative cases instituted by or brought before it directly or on appeal, including contested appointments, and review decisions and actions of its offices and of the agencies attached to it.⁷ Apropos is Article 276 of the Labor Code, which states:

ART. 276. Government employees. The terms and conditions of employment of all government employees, including employees of government-owned and controlled corporations, shall be governed by the Civil Service Law, rules and regulations. Their salaries shall be standardized by the National Assembly as provided for in the New Constitution. However, there shall be no reduction of existing wages, benefits and other terms and conditions of employment being enjoyed by them at the time of the adoption of this Code.

It is undisputed that petitioners are employees of the municipal government of Silay City, Negros Occidental; hence, they are part of the Civil Service. As such, their hiring and firing are governed by the Civil Service Law

⁴ *Id.* at 258.

⁵ PROVIDING GUIDELINES FOR THE EXERCISE OF THE RIGHT TO ORGANIZE OF GOVERNMENT EMPLOYEES, CREATING A PUBLIC SECTION LABOR-MANAGEMENT COUNCIL, AND FOR OTHER PURPOSES. Took effect June 1, 1987.

⁶ *Duty free Philippines v. Mojica*, 508 Phil. 726, 730-731 (2005).

⁷ *Id.* at 731.

and Civil Service Rules and Regulations. The Ombudsman has no jurisdiction to rule on the legality of petitioners' dismissal or removal from the roll of service. The Court is in full accord with the Ombudsman's justification in its July 30, 2009 Decision,⁸ as affirmed by the CA, to wit:

At the outset, We stress that this Office does not tackle the issue on the validity of respondent Gamban's Office Order Nos. 898 and 899 x x x which ordered for the dropping of complainants from the Roll of Service, as the same were outside the jurisdiction of this Office. Since complainants had already filed a Motion for Reconsideration of said Orders, which was denied by respondent Gamban, they should have filed a complaint for illegal dismissal before the Civil Service Commission (CSC), Regional Office as prescribed under Section 6 of CSC Resolution No. 991936. CSC Regional Office has the authority to rule upon matters pertaining to the decisions of the local government units relative to personnel actions such as the alleged incurred absences without leave of complainants as well as on respondent Gamban's decision of detailing the complainants to other officers prior to their final dismissal from office. Nevertheless, the acts which precipitated the issuance of said Orders will be necessarily taken into consideration for purposes of determining the culpability of the concerned respondents.⁹

Meanwhile, petitioners' insistence on the administrative liability of respondents Carlo V. Gamban (Gamban), Marissa Lim (Lim), and Dela G. Ledesma (Ledesma) has no basis. The nature of the case before the Office of the Ombudsman determines the proper remedy available to the aggrieved party, and the court where it should be filed. In administrative disciplinary cases, an appeal from the Ombudsman's decision should be taken to the CA under Rule 43, unless the decision is not appealable owing to the penalty imposed.¹⁰ Pertinently, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order (AO) 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.

x x x x

The clear import of Section 7, Rule III of the Ombudsman Rules is to deny the complainant the right to appeal where the Ombudsman has exonerated the respondent of the administrative charge, as in this case. The complainant, therefore, is not entitled to any corrective recourse, whether by

⁸ *Rollo*, pp. 59-80.

⁹ *Id.* at 67-68.

¹⁰ *Flor Gupilan-Aguila v. Office of the Ombudsman*, 728 Phil. 210, 226 (2014).

motion for reconsideration in the Office of the Ombudsman, or by appeal to the courts, to effect the reversal of the exoneration. Only the respondent is granted the right to appeal but only in case he is found liable and the penalty imposed is higher than public censure, reprimand, one-month suspension or a fine equivalent to one month salary.¹¹

The absence of any statutory right to appeal the exoneration of the respondent in an administrative case does not mean, however, that the complainant is left with absolutely no remedy. Over and above our statutes is the Constitution whose Section 1, Article VIII empowers the courts of justice to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. This is an overriding authority that cuts across all branches and instrumentalities of government and is implemented through the petition for *certiorari* that Rule 65 of the Rules of Court provides. A petition for *certiorari* is appropriate when a tribunal, clothed with judicial or quasi-judicial authority, acted without jurisdiction (*i.e.*, without the appropriate legal power to resolve a case), or in excess of jurisdiction (*i.e.*, although clothed with the appropriate power to resolve a case, it oversteps its authority as determined by law, or that it committed grave abuse of its discretion by acting either outside the contemplation of the law or in a capricious, whimsical, arbitrary or despotic manner equivalent to lack of jurisdiction). The Rules of Court and its provisions and jurisprudence on writs of *certiorari* fully apply to the Office of the Ombudsman's Rules. The Rules of Court are also the applicable rules in procedural matters on recourses to the courts and hence, are the rules the parties have to contend with in going to the CA.

In this case, petitioners' administrative complaint against respondents Gamban, Lim, and Ledesma was dismissed by the Ombudsman in its July 30, 2009 Decision. Since the Decision absolved respondents of the charge, the same is final, executory, and unappealable. Petitioners' remedy should have been to file a petition for *certiorari* before the CA within 60 days from notice. Petitioners, however, failed to do this. Hence, the decision of the Ombudsman exonerating respondents from the administrative charges had already become final.

FOR THESE REASONS, the Petition for Review on *Certiorari*¹² is **DENIED**. The assailed Decision¹³ dated August 31, 2016 and Resolution¹⁴ dated August 9, 2017 of the Court of Appeals-Cebu City in CA-G.R. SP No. 07088 are **AFFIRMED**.

¹¹ *Tolosa, Jr. v. Office of the Ombudsman*, G.R. No. 233234, September 14, 2020.

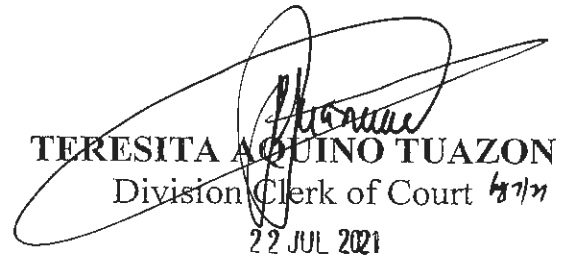
¹² *Rollo*, pp. 13-27.

¹³ *Id.* at 231-241; penned by Associate Justice Edward B. Contreras, with the concurrence of Associate Justices Edgardo L. Delos Santos (now a Member of this Court) and Geraldine C. Fiel-Macaraig.

¹⁴ *Id.* at 256-257.

SO ORDERED." (Lopez, J. Y., J., designated additional member *per* Special Order No. 2822 dated April 7, 2021).

By authority of the Court:


TERESITA AQUINO TUAZON
 Division Clerk of Court *4/7/21*
 22 JUL 2021

ATTY. RAUL G. BITO-ON (reg)
 Counsel for Petitioners
 No. 54, Ledesma Street
 Silay City, Negros Occidental

VALENCIA VALENCIA CIOCON DIONELA
 PANDAN RUBICA RUBICA & GARCIA LAW
 OFFICES (reg)
 (Atty. Rodney Rubica)
 Counsel for Respondents
 2nd Floor, JSY Building
 San Agustin Drive corner 18th Street
 Bacolod City, Negros Occidental

OFFICE OF THE SOLICITOR GENERAL (reg)
 134 Amorsolo Street
 1229 Legaspi Village
 Makati City

OFFICE OF THE LEGAL AFFAIRS (reg)
 Office of the Ombudsman
 Ombudsman Building, Government Center
 Agham Road, Diliman, Quezon City

OFFICE OF THE OMBUDSMAN-VISAYAS (reg)
 Department of Agriculture, R07 Compound
 M. Valdez Street, Guadalupe
 6000 Cebu City

COURT OF APPEALS (reg)
 Visayas Station
 Cebu City
 CA-G.R. SP No. 07088

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