Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

OFFICE OF THE OMBUDSMAN,
Petitioner,

- versus -

MARCELINO A. DECHAVEZ,
Respondent.

G.R. No. 176702

Present:

CARPIO, *J.*,
Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

NOV 13 2013

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DECISION

BRION, *J.*:

The petitioner, Office of the Ombudsman (*Ombudsman*), seeks in this Rule 45 petition for review on *certiorari*[1] the reversal of the Court of Appeals' *(CA's)* decision[2] and resolution[3] reversing the Ombudsman's rulings[4] that dismissed respondent Marcelino A. Dechavez (*Dechavez*) from the service for dishonesty.

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1 *Rollo*, pp. 10-32.

2 In CA-G.R. SP. No. 00673, dated March 31, 2006; penned by Associate Justice Pampio A. Abarintos, and concurred in by Associate Justices Enrico A. Lanzanas and Apolinario D. Bruselas, Jr.; id. at 35-47.

3 Id. at 50-51; dated February 7, 2007.

4 Decision dated October 29, 2004 and order dated April 6, 2005; id. at 71-80 and 81-86, respectively.

THE FACTS

The attendant facts are not complicated and, in fact, involve the oft-repeated scenario in the public service workplace – a complaint by subordinate employees against their superior officer for misconduct in office. In a twist of fortune (or misfortune), an accident triggered the whole train of events that led to the present case.

Dechavez was the president of the Negros State College of Agriculture (*NSCA*) from 2001 until his retirement on April 9, 2006. On May 5, 2002, a Sunday, Dechavez and his wife, Amelia M. Dechavez (*Mrs. Dechavez*), used the college service Suzuki Vitara to go to Pontevedra, Negros Occidental. Dechavez drove the vehicle himself. On their way back to the NSCA, they figured in a vehicular accident in Himamaylan City, resulting in minor injuries to the occupants and damage to the vehicle.

To support his claim for insurance, Dechavez executed an affidavit[5] before the Government Service Insurance System (*GSIS*). The GSIS subsequently granted Dechavez's claims amounting to ₱308,000.00, while the NSCA shouldered ₱71,000.00 as its share in the vehicle's depreciation expense. The GSIS released ₱6,000.00 for Mrs. Dechavez's third-party liability claim for bodily injuries.

On November 11, 2002, twenty (20) faculty and staff members of the NSCA (*complainants*) asked the Commission on Audit (*COA*) to conduct an

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[5] Id. at 14-15; dated May 10, 2002, which states:

That, last May 5, 2002, Mrs. Amelia M. Dechavez, my wife and I went to Pontevedra, Negros Occidental on official business, using the college vehicle Suzuki-Vitara as the official service vehicle of the undersigned;

That, at the time of the undersigned's official trip on May 5, 2002, there was no other driver available to do the driving and motivated by the fact that the destination was not too far with the estimate that the undersigned and his wife can return to their station before sunset;

That, the official trip was considered very urgent at the time for the good of the service;

That, it is part of the official duties and responsibilities of the undersigned as head of the state college to develop and maintain good linkages with both government and non-government organizations;

That, Mrs. Dechavez made a follow-up of the unsubmitted evaluation sheets of the cooperating teachers in the District of Pontevedra, where some NeSCA student teachers underwent their practice teaching activities in the second semester of SY 2001-2002, at the same time delivering the certificates of merit to the critic teachers and Principals of Pontevedra South Elementary School, and Assistant Superintendent Schools;

That the undersigned used to perform his extension service or confer with NeSCA's linkages like the technical staff of Hon. Congressman Carlos "Charlie" O. Cojuangco of the 4th Congressional District of Negros Occidental during week-ends to maximize his time during regular work days[.] [underscore supplied]

audit investigation of NSCA's expenditures in the May 5, 2002 vehicular accident. The COA dismissed the complaint for lack of merit.[6]

The complainants then sought recourse with the Ombudsman, Visayas, through a verified complaint[7] charging Dechavez with Dishonesty under Section 46(b)(1), Chapter 6, Tile I of the Administrative Code of 1987.[8]

THE OMBUDSMAN'S RULING

The Ombudsman dismissed Dechavez from the service with all accessory penalties after finding him guilty.[9] The Ombudsman ruled that the complainants sufficiently established their allegations, while Dechavez's defenses had been successfully rebutted. The motion for reconsideration that Dechavez filed was subsequently denied.[10]

THE CA'S RULING

The CA examined the same pieces of evidence that the Ombudsman considered and **reversed the Ombudsman's findings.**[11]

In complete contrast with the Ombudsman's rulings, the CA found that the complainants failed to sufficiently show that Dechavez had deliberately lied in his May 10, 2002 affidavit. Dechavez sufficiently proved that he went on an official trip, based on the reasons outlined below and its reading of the evidence:

First, there was nothing wrong if Dechavez worked on a Sunday; he must, in fact, be commended for his dedication.

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6 Id. at 37.

7 The complainants alleged that the affidavit executed by the respondent was untrue because of the following: 1) the NSCA drivers were all present and available during that time, it being a Sunday, and no official trips were assigned to them; 2) the trip was not "very urgent" as the tasks allegedly done could be accomplished on regular days, *i.e.*, weekdays; and 3) that the alleged unsubmitted evaluation sheets of the cooperating teachers where two (2) NSCA students underwent their practice teaching were no longer necessary as these two (2) students had already graduated as of March 2002.

8 Section 46. Discipline: General Provisions. —

(a) No officer or employee in the Civil Service shall be suspended or dismissed except for cause as provided by law and after due process.

(b) The following shall be grounds for disciplinary action:

(1) Dishonesty[.]

9 *Supra* note 4.

10 Ibid.

11 *Supra* note 2.

Second, the Ombudsman should have accorded greater belief on the NSCA drivers' positive assertion that they were not available to drive for Mr. and Mrs. Dechavez (as they had serviced other faculty members at that time), as against the NSCA security guards' allegation that these drivers were available then (because they allegedly saw the drivers within the college premises on that Sunday); speculations on the nature of the trip should not arise simply because Dechavez personally drove the vehicle.

Third, the certifications of Mr. Larry Parroco (Pontevedra Sanggunian Bayan Member) and Mr. Cornelio Geanga (Chair of the Education Committee and Head Teacher of the M.H. Del Pilar Elementary School) should have persuaded the Ombudsman that the affiants are public officials who would not lightly issue a certification or falsely execute affidavits as they know the implications and consequences of any falsity.

Fourth and lastly, the two lists of teaching instructors had been prepared by the same person, and if the second list had indeed been questionable, Mr. Pablito Cuizon (NSCA's Chairman for Instructions) would have not attached the second list to his affidavit.

On February 7, 2007, the CA denied[12] the motion for reconsideration filed by the Ombudsman.

THE PARTIES' ARGUMENTS

The Ombudsman argues that the guilt of Dechavez has been proven by substantial evidence – the quantum of evidence required in administrative proceedings. It likewise invokes its findings and posits that because they are supported by substantial evidence, they deserve great weight and must be accorded full respect and credit.

Dechavez counters that the present petition raises factual issues that are improper for a petition for review on *certiorari* under Rule 45. He adds that the present case has been mooted by his retirement from the service on April 9, 2006, and should properly be dismissed.

THE COURT'S RULING

The Court finds the petition meritorious.

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12 *Supra* note 3.

The CA's factual findings are conclusive; exceptions

The rule that the Court will not disturb the CA's findings of fact is not an absolute rule that admits of no exceptions.[13] A notable exception is the presence of conflict of findings of fact between or among the tribunals' rulings on questions of fact. The case before us squarely falls under this exception as the tribunals below made *two critical conflicting factual findings*. We are thus compelled to undertake our own factual examination of the evidence presented.

This Court cannot be any clearer in laying down the rule on the quantum of evidence to support an administrative ruling: "In administrative cases, substantial evidence is required to support any findings. Substantial evidence is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The requirement is satisfied where there is reasonable ground to believe that the petitioner is guilty of the act or omission complained of, even if the evidence might not be overwhelming."[14]

Our own examination of the records tells us that the Ombudsman's findings and appreciation of the presented evidence are more in accord with reason and common experience so that it successfully proved, by the required quantum of evidence, Dechavez's dishonesty, at the same time that we find the respondent's reading of the evidence to be stretched to the point of breaking, as our analysis below shows.

We start with our agreement with the CA's view that the Ombudsman's finding – that Dechavez was not on official business on May 5, 2002 because it was a Sunday (a non-working day) – by itself, is not sufficient basis for the conclusion that Dechavez's business on that day was not official. We, nevertheless, examined the other surrounding facts and are convinced that the spouses Dechavez's trip was a personal one; thus, Dechavez had been dishonest when he made the claim that he went on

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[13] Settled is the rule that the jurisdiction of this Court in cases brought before it from the CA via Rule 45 of the Rules of Court is limited to reviewing errors of law. Findings of fact of the latter are conclusive, except in the following instances: "(1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record"; *Sps. Sta. Maria v. CA,* 349 Phil. 275, 282-283 (1998), citing *Medina v. Asistio*, 191 SCRA 218, 223-224 (1990).

[14] *Orbase v. Office of the Ombudsman*, G.R. No. 175115, December 23, 2009, 609 SCRA 111, 126, citing *Office of the Ombudsman v. Fernando J. Beltran*, G.R. No. 168039, June 5, 2009, 588 SCRA 574.

official business. The dishonesty, of course, did not arise simply from the nature of the trip, but from the claim for insurance that brought the spouses a substantial sum.

First. Dechavez alleged that the trip was urgent, and there were no drivers available; hence, he drove the vehicle himself. He added that the fact that the trip ticket was accomplished on May 5, 2002, a Sunday, and that it was typewritten, are not material as he was not prohibited from driving the car himself.

We do not agree with Dechavez's claim about the immateriality of the trip ticket; it was presented as evidence and, as such, carries implications far beyond what Dechavez claims. The fact alone that the ticket, for a trip that was allegedly urgent, was typewritten already speaks volumes about the integrity of this piece of evidence. We agree with the Ombudsman, based on common experience and probability, that had the trip really been urgent and had the trip ticket been accomplished on the date of the trip, May 5, 2002, it would have been handwritten. The trip ticket, however, was typewritten, indicating that it had been prepared ahead of time, or thereafter, not on that Sunday immediately before leaving on an urgent trip. In fact, if it had been prepared ahead of time, then the trip could not have been urgent as there was advance planning involved.

In other words, if the trip ticket had been prepared ahead of time, the trip should have been scheduled ahead of time, and necessary arrangements should have been made for the availability of a driver. Therefore, it was unlikely that Dechavez would have known that no driver would be available for him on the date of the trip.

On another note, if the trip ticket had been prepared after the trip, the Ombudsman was correct in observing that Dechavez had no authority to drive the vehicle in the absence of the requisite trip ticket.[15] Worse, if it had been prepared after the trip after an accident had intervened, then there had been a conscious attempt to "sanitize" the incidents of the trip. It is at this point where the claim for insurance becomes material; the trip ticket removed all questions about the regularity and official character of the trip.

After examining the testimonies, too, we lean in favor of the view that there were available drivers on May 5, 2002, contrary to what Dechavez claimed. As between the assertion of the security guards that they had seen available drivers on the day of the trip, and the drivers' denial (and assertion that they had serviced other faculty members at that time), the settled

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15 *Rollo*, p. 78.

evidentiary rule is that "as between a positive and categorical testimony which has a ring of truth, on one hand[,] and a bare denial[,] on the other, the former is generally held to prevail."[16] Furthermore, while Dechavez insists that the allegations of the drivers were corroborated by the teachers they had driven for, the attestations of these teachers remained to be hearsay: Dechavez failed to present their attestations in evidence.

Dechavez additionally argues that the way the trip ticket was accomplished bears no significance in these circumstances, insisting further that it is of no moment that he drove the vehicle himself, as he was not prohibited from doing so. Read in isolation, the Court might just have found these positions convincing. Read with the other attendant circumstances, however, the argument becomes shaky.

If Dechavez thought that there was nothing wrong in driving the vehicle himself, why would he indicate that the reason he drove the vehicle himself was that there were no available drivers, and that it was urgent? Finally, if indeed it was true that Dechavez used to perform his extension service or confer with the NSCA's linkages during weekends, how come the trip became urgent and the driver had not been assigned beforehand?

Second. We cannot give weight to the certification of Mr. Parroco that Dechavez used to visit the Pontevedra District to coordinate with his office, and that Dechavez also visited his office on May 5, 2002. We likewise disregard the statement of Mr. Geanga that Dechavez appeared before his office on May 5, 2002. The certifications of these two witnesses were submitted only in October 2004 or two (2) years after the case was filed with the Ombudsman. The time lag alone already renders the certifications suspect and this inconsistency has not been satisfactorily explained. The late use of the certifications also deprived the complainants of the opportunity to refute them and the Ombudsman the chance to examine the affiants. As the Ombudsman observed, too, it is hard to believe that all four (4) of them – Mr. and Mrs. Dechavez, Mr. Parroco, and Mr. Geanga – happened to agree to work on a Sunday, a non-working day; this story simply stretches matters beyond the point of believability in the absence of supporting proof that this kind of arrangement has been usual among them.

Finally, we find that Mrs. Dechavez was not on official business on May 5, 2002; in fact, she was not teaching at that time. We note in this regard that the parties presented two (2) *conflicting* instructor's summer teaching loads for 2002: the first one, dated April 1, 2002, which did not include Mrs. Dechavez, while the other, an *undated* one, included Mrs.

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16 *People v. Biago*, 261 Phil. 525, 532-533 (1990), citing *People v. Abonada*, 251 Phil. 482 (1989).

Dechavez's name. Curiously, the same person who prepared both documents, Mr. Cuizon, failed to explain why there were two (2) versions of the same document. Considering the highly irregular and undated nature of the list that contained the name of Mrs. Dechavez, we again concur with the Ombudsman's reading that while we can presume that the undated list had been prepared before the start of the summer classes, we can also presume that the other list had been prepared subsequently to conveniently suit the defense of the respondent.[17]

Likewise, Ms. Fe Ulpiana, a teacher at the NSCA, whose name appears in the second document, attested that she had never been assigned to register and assess the students' school fees, contrary to what appeared thereon. We find it worth mentioning that Dechavez's witness, Mr. Cuizon, despite being subpoenaed by the Ombudsman, failed to furnish the Schedule of Classes for Summer 2002 and the Actual Teaching Load for Summer 2002.[18] Dechavez also failed to provide the Ombudsman with the subpoenaed daily time record (*DTR*) of Mrs. Dechavez for summer 2002 as the DTR supposedly could not be located.

All told, too many gaps simply existed in Dechavez's tale and supporting evidence for his case to be convincing.

Retirement from the service during the pendency of an administrative case does not render the case moot and academic

As early as 1975, we have upheld the rule that "the jurisdiction that was Ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications."[19]

Arguably, the cited case above is not applicable as it involved a *judge* who retired four (4) days after a charge of grave misconduct, gross dishonesty and serious inefficiency was filed against him. The wisdom of citing this authority in the present case can be found, however, in its ruling

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17 *Rollo*, p. 76.

18 Id. at 76.

19 *Atty. Perez v. Judge Abiera*, 159-A Phil. 575, 580 (1975); citation omitted.

that: "If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation."[20]

Recently, we emphasized that in a case that a public official's cessation from service does not render moot an administrative case that was filed prior to the official's resignation. In the 2011 case of *Office of the Ombudsman v. Andutan, Jr.*,[21] we reiterated the doctrine and laid down the line of cases supporting this principle when we ruled:

> To recall, we have held in the past that a public official's resignation does not render moot an administrative case that was filed prior to the official's resignation. In *Pagano v. Nazarro, Jr.*, we held that:
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> > In *Office of the Court Administrator v. Juan* [A.M. No. P-03-1726, 22 July 2004, 434 SCRA 654, 658], this Court categorically ruled that the precipitate resignation of a government employee charged with an offense punishable by dismissal from the service does not render moot the administrative case against him. Resignation is not a way out to evade administrative liability when facing administrative sanction. The resignation of a public servant does not preclude the finding of any administrative liability to which he or she shall still be answerable [*Baquerfo v. Sanchez*, A.M. No. P-05-1974, 6 April 2005, 455 SCRA 13, 19-20]. [Italics supplied, citation omitted]

Likewise, in *Baquerfo v. Sanchez*,[22] we held:

> **Cessation from office of respondent by resignation or retirement neither warrants the dismissal of the administrative complaint filed against him while he was still in the service nor does it render said administrative case moot and academic.** The jurisdiction that was this Court's at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased in office during the pendency of his case. Respondent's resignation does not preclude the finding of any administrative liability to which he shall still be answerable. [Emphases ours; citations omitted]

Thus, from the strictly legal point of view and as we have held in a long line of cases, jurisdiction, once it attaches, cannot be defeated by the

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20 Id. at 581.

21 G.R. No. 164679, July 27, 2011, 654 SCRA 539, 551.

22 495 Phil. 10 (2005).

acts of the respondent, save only where death intervenes and the action does not survive.

WHEREFORE, under these premises, we hereby **GRANT** the petition for review on *certiorari*. Accordingly, we **REVERSE AND SET ASIDE** the decision dated March 31, 2006 and the resolution dated February 7, 2007 of the Court of Appeals in CA-G.R. SP. No. 00673, and **REINSTATE** the decision dated October 29, 2004 and the order dated April 6, 2005 of the Office of the Ombudsman.

Costs against respondent Marcelino A. Dechavez.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

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