



Republic of the Philippines  
**Supreme Court**  
 Manila

**THIRD DIVISION**

**GERARDO R. VILLASEÑOR**  
**AND RODEL A. MESA,**  
 Petitioners,

**G.R. No. 202303**

Present:

- versus -

VELASCO, JR., *J., Chairperson.*  
 PERALTA,  
 VILLARAMA, JR.,<sup>\*</sup>  
 MENDOZA, and  
 LEONEN, *JJ.*

**OMBUDSMAN AND HON.**  
**HERBERT BAUTISTA,**  
 City Mayor, Quezon City,  
 Respondents.

Promulgated:

**June 4, 2014**

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**DECISION**

**MENDOZA, J.:**

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the March 15, 2012<sup>1</sup> and June 18, 2012<sup>2</sup> Resolutions of the Court of Appeals (CA), in CA G.R. SP No. 121378, which dismissed for utter lack of merit the petition to nullify or restrain the immediate implementation of the June 17, 2003 Joint Decision of the Office of the Ombudsman in OMB-ADM-0-01-0376 and OMB-ADM-0-01-0390, directing the dismissal from the service and one-year suspension of petitioners Gerardo R. Villasenor (*Villasenor*) and Rodel A. Mesa (*Mesa*), respectively.

<sup>\*</sup> Designated Acting Member in view of the vacancy in the Third Division, per Special Order No. 1691 dated May 22, 2014.

<sup>1</sup> *Rollo*, pp. 303-304; penned by Associate Justice Amy C. Lazaro-Javier, and concurred in by Associate Justice Andres B. Reyes, Jr. and Associate Justice Sesinando E. Villon.

<sup>2</sup> *Id.* at 305.

### **The Facts**

The petitioners, along with several others, were administratively charged in connection with the Manor Hotel fire tragedy that took place on August 18, 2001, killing 74 people and causing injury to others. Petitioner Villasenor was an electrical inspector from the Electrical Division, and petitioner Mesa was an inspector from the Electrical Engineering Office, both of Quezon City.

In OMB-ADM-0-01-0376, petitioner Villasenor was charged with grave misconduct prejudicial to the best interest of the service and gross negligence. In OMB-ADM-00390, both petitioners were charged with violation of Section 4 of Republic Act (R.A.) No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees).

In its Joint Decision dated June 17, 2003, the Investigating Panel of the Office of the Ombudsman ruled as follows:

1. In OMB-ADM-0-01-0376, Villaseñor was found guilty of conduct prejudicial to the best interest of the service and gross neglect of duty for which he was meted the penalty of dismissal from the service with all its accessory penalties.
2. In OMB-ADM-0-01-0390, Mesa was found guilty of conduct prejudicial to the best interest of the service for which he was meted the penalty of one year suspension without pay.

In its Memorandum,<sup>3</sup> dated July 26, 2004, the Ombudsman approved the findings in the Joint Decision as regards the petitioners.

On December 13, 2004, Villaseñor and Mesa filed their separate motions for reconsideration<sup>4</sup> of the Joint Decision.

In the Memorandum,<sup>5</sup> dated March 2, 2006, the Ombudsman denied the motion for reconsideration filed by Mesa and those of the other accused, and affirmed *in toto* the Joint Decision. Villaseñor's motion for reconsideration, however, was not enumerated as one of the pleadings resolved.<sup>6</sup>

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<sup>3</sup> Id. at 149-185.

<sup>4</sup> Id. at 193-201.

<sup>5</sup> Id. at 202-234.

<sup>6</sup> Id. at 202-203.

On April 18, 2006, Mesa appealed to the CA, which was docketed as CA-G.R. No. 93891. Villaseñor made no appeal, his motion for reconsideration before the Ombudsman being yet unresolved.

In the Order<sup>7</sup> dated August 23, 2006, pending resolution of Mesa's appeal and Villaseñor's motion for reconsideration, the Ombudsman directed the Mayor of Quezon City and the Secretary of the Department of Interior and Local Government to enforce the Joint Decision immediately upon receipt of the order.

On September 20, 2011, Villaseñor and Mesa filed a special civil action for *certiorari*<sup>8</sup> before the CA docketed as CA-G.R. SP No. 121378, assailing the August 23, 2006 Order of the Ombudsman ordering the immediate implementation of the Joint Decision despite the pendency of Villaseñor's motion for reconsideration and Mesa's appeal. They prayed that the said order be annulled and an injunction be issued to restrain its implementation.

In the assailed March 15, 2012 Resolution,<sup>9</sup> the CA dismissed the petition for utter lack of merit. It held that the Ombudsman decision was immediately executory pending appeal and would not be stayed by the filing of the appeal or issuance of an injunctive relief.

In the assailed June 18, 2012 Resolution,<sup>10</sup> the CA denied the petitioners' motion for reconsideration.

Hence, this petition.

### **Issues And Arguments**

Petitioner Villaseñor argues that his constitutional right of not to be deprived of life, liberty and property without due process of law, was grossly violated by the Ombudsman when:

1. He was prevented from cross-examining complainant's witnesses;
2. He failed to receive any copy of any order relative to the preliminary conference of the case; and

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<sup>7</sup> Id. at 332-339.

<sup>8</sup> Id. at 307-329.

<sup>9</sup> Id. at 303-304.

<sup>10</sup> Id. at 305.

3. His dismissal from the service was ordered implemented while his motion for reconsideration remains unresolved.

He argues that the order of dismissal cannot be deemed executory as it has not yet attained finality on account of his unresolved motion for reconsideration.

Petitioner Mesa, on the other hand, argues that the order of suspension against him should not have been implemented pending his appeal with the CA, in accordance with Section 7 of Rule III of the Office of the Ombudsman's Rules of Procedure. He argues that Administrative Order (A.O.) No. 17, which took effect on September 7, 2003 and amended said Section 7, should not be applied to his case because it was promulgated long after the rendition of the order of his suspension on June 17, 2003. Mesa further argues that to apply the amendment to him will give it a retroactive effect which is prohibited under Article 4 of the Civil Code.

Both petitioners aver that *Ombudsman v. Samaniego*,<sup>11</sup> the case relied upon by the CA, cannot be applied to their case because the principal basis of the ruling was Section 7, as amended, which they insist is inapplicable to them.

The first two issues raised by petitioner Villasenor do not relate to the assailed CA Resolutions, which ruled upon the Order of the Ombudsman implementing the Joint Decision. They are, therefore, irrelevant to the present petition. The sole issue before the Court now is, thus:

**Whether the Ombudsman's order of dismissal from the service and suspension of one year can be implemented pending resolution of petitioner Villasenor's motion for reconsideration before the Ombudsman, and petitioner Mesa's appeal before the CA?**

### **The Ruling of the Court**

The petition must fail.

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

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<sup>11</sup> G.R. No. 175573, October 5, 2010, 632 SCRA 140.

**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.

[Emphases supplied]

From the above, it can be gleaned that the Ombudsman decisions in administrative cases may either be unappealable or appealable. Unappealable decisions are final and executory, and they are as follows: (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. Appealable decisions, on the other hand, are those which fall outside said enumeration, and may be 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.

Petitioner Mesa was ordered suspended for one year without pay, while petitioner Villasenor was ordered dismissed from the service. These are plainly appealable decisions which are immediately executory pending appeal.

The petitioners cannot argue that A.O. No. 17, which makes appealable decisions of the Ombudsman immediately executory, cannot be

applied to them. It is of no moment that A.O. No. 17 took effect on September 7, 2003, after the Joint Decision was issued against Mesa and Villaseñor on June 17, 2003. Of note are the facts that the Joint Decision was approved by the Ombudsman on November 26, 2004; the motions for reconsideration thereto were denied on March 2, 2006; and the Joint Decision was ordered implemented on August 23, 2006, all after A.O. No. 17 had already become effective.

Article 4 of the Civil Code does indeed provide that laws shall have no retroactive effect. Rules regulating the procedure of courts, however, are retroactive in nature, and are, thus, applicable to actions pending and unresolved at the time of their passage. As a general rule, no vested right may attach to or arise from procedural laws and rules, hence, retroactive application does not violate any right of a person adversely affected.<sup>12</sup>

The Rules of Procedure of the Office of the Ombudsman are procedural in nature and therefore, may be applied retroactively to petitioners' cases which were pending and unresolved at the time of the passing of A.O. No. 17. No vested right is violated by the application of Section 7 because 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. It is important to note that 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.<sup>13</sup>

The nature of appealable decisions of the Ombudsman was, in fact, settled in *Ombudsman v. Samaniego*, where it was held that such are immediately executory pending appeal and may not be stayed by the filing of an appeal or the issuance of an injunctive writ.<sup>14</sup> The petitioners argue that this particular case cannot be applied to them because it was based on Section 7, as amended by A.O. No. 17, which cannot be applied to them retroactively. Their argument cannot be given credence. As already discussed, Section 7 may be retroactively applied in the case of the petitioners.

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<sup>12</sup> *Panay Railways Inc. v. Heva Management and Development Corp.*, G.R. No. 154061, January 25, 2012, 664 SCRA 1, 8.

<sup>13</sup> *Facura v. CA*, G.R. No. 166495, February 16, 2011, 643 SCRA 427, 450-451, citing *Ombudsman v. Samaniego* G.R. No. 175573, October 5, 2010, 632 SCRA 140, 143, citing *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of the DPWH*, 529 Phil. 619, 630-631 (2006).

<sup>14</sup> G.R. No. 175573, October 5, 2010, 632 SCRA 140, 143-145.

It is, therefore, beyond cavil that petitioner Mesa's appeal cannot stay the implementation of the order of suspension against him.

Petitioner Villaseñor argues that the Ombudsman erred in implementing the order of dismissal against him despite his pending motion for reconsideration with the same office.

The records show that both petitioners duly filed their respective motions for reconsideration on December 13, 2004. In the March 2, 2006 Memorandum of the Ombudsman, Mesa's motion for reconsideration, among others, was denied. Thus, he appealed to the CA. A review of the said Memorandum reveals, however, that Villaseñor's motion for reconsideration was not enumerated<sup>15</sup> as one of the pleadings submitted for resolution, and nowhere was his liability discussed or even mentioned therein. It is, therefore, apparent that Villaseñor's motion for reconsideration was never resolved by the Ombudsman, for which reason he has been unable to file an appeal with the CA.

Nonetheless, Villaseñor's pending motion for reconsideration cannot stop his order of dismissal from being executory. Memorandum Circular No. 01, series of 2006, of the Office of the Ombudsman, provides in part:

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.**

x x x

[Emphasis supplied]

Thus, petitioner Villaseñor's filing of a motion for reconsideration does not stay the immediate implementation of the Ombudsman's order of

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<sup>15</sup> *Rollo*, pp. 202-203.

dismissal, considering that “a decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course” under Section 7. As already explained, no vested right of Villaseñor would be violated as he would be considered under preventive suspension, and entitled to the salary and emoluments he did not receive in the event that he wins his eventual appeal.

The Ombudsman did not, therefore, err in implementing the orders of suspension of one year and dismissal from the service against the petitioners.

The Court notes, however, that under Section 8 of Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by A.O. No. 17, the Hearing Officer shall decide a motion for reconsideration within 5 days from the date of submission for resolution. Petitioner Villaseñor filed his motion for reconsideration on December 13, 2004, on the same day as petitioner Mesa, whose motion was duly resolved. Whether by oversight or negligence, a period nearly 10 years has elapsed without action on Villaseñor’s motion for reconsideration. The Office of the Ombudsman is called upon to be more vigilant in carrying out its functions and in complying with the periods laid down in the law.

**WHEREFORE**, the petition is **DENIED**. The March 15, 2012 and June 18, 2012 Resolutions of the Court of Appeals, in CA G.R. SP No. 121378 are **AFFIRMED**.

The Office of the Ombudsman is **DIRECTED** to resolve the motion for reconsideration of petitioner Gerardo R. Villaseñor in OMB-ADM-0-01-0376 and OMB-ADM-0-01-0390 with immediate dispatch.

**SO ORDERED.**

  
**JOSE CATRAL MENDOZA**  
Associate Justice

**WE CONCUR:**



**PRESBITERO J. VELASCO, JR.**

Associate Justice  
Chairperson



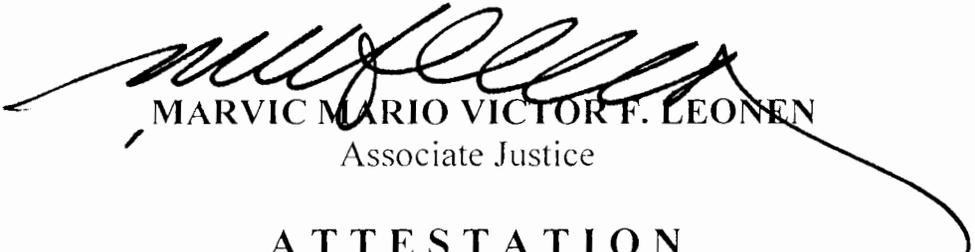
**DIOSDADO M. PERALTA**

Associate Justice



**MARTIN S. VILLARAMA, JR.**

Associate Justice



**MARVIC MARIO VICTOR F. LEONEN**

Associate Justice

**A T T E S T A T I O N**

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, Third 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