



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ARLYN ALMARIO-
TEMPLONUEVO,

G.R. No. 198583

Petitioner, Present:

CARPIO,* J.,
PERALTA,** *Acting Chairperson*,
MENDOZA,
LEONEN, and
MARTIRES, JJ.

- versus -

OFFICE OF THE
OMBUDSMAN, THE
HONORABLE SECRETARY,
DEPARTMENT OF INTERIOR
AND LOCAL GOVERNMENT
and CHITO M. OYARDO,

Respondents.

Promulgated:
28 JUN 2017

x ----- *HM Cabalag Peralta* ----- x

DECISION

MENDOZA, J.:

This petition for review on *certiorari* under Rule 45 of the Rules of Court seeks the review of the February 17, 2011¹ and the September 8, 2011² Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 116229. The CA issuances dismissed the petition for *certiorari* and prohibition filed by petitioner Arlyn Almario-Templonuevo (*Templonuevo*), thus, affirming the January 6, 2010 Decision³ of Office of the Deputy Ombudsman for Luzon (*Ombudsman*) in OMB-L-A-08-0097-B, finding her administratively

* On Official Leave.

** Per Special Order No. 2445 dated June 16, 2017.

¹ Penned by Associate Justice Jane Aurora C. Lantion, with Presiding Justice Andres B. Reyes, Jr., and Associate Justice Japar B. Dimaampao, concurring. *Rollo*, pp. 25-27.

² Id. at 28-31.

³ Penned by Graft Investigation and Prosecution Officer II, Marietta M. Ramirez, with Acting Director Evaluation Investigation Office Bureau A Joaquin F. Salazar, concurring. With the recommending approval of Deputy Ombudsman for Luzon, Victor C. Fernandez and with such recommendation approved by Deputy Ombudsman for Luzon, Mark E. Jalandoni. Id. at 32-41.

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liable for simple misconduct. The complaint against her was filed by respondent Chito M. Oyardo (*Oyardo*).

Factual Antecedents

Templonuevo was elected as Sangguniang Bayan Member of the Municipality of Caramoan, Province of Catanduanes, during the May 2007 elections. She served from July 1, 2007 to June 30, 2010. In the elections of May 2010, she was elected as Municipal Vice Mayor of the same municipality.

In a complaint, docketed as OMB-L-A-08-0097-B, Oyardo administratively charged Templonuevo before the Ombudsman for violation of Sec. 2, par. 1 of Republic Act No. 9287.

In its January 6, 2010 Decision, the Deputy Ombudsman for Luzon found petitioner guilty of simple misconduct and imposed upon her the penalty of one month suspension without pay. The dispositive portion of said decision reads:

WHEREFORE, premises considered, it is hereby respectfully recommended that **ARLYN ALMARIO-TEMPLONUEVO** be adjudged guilty of violation of simple misconduct and is hereby imposed a penalty of one (1) month suspension from office without pay pursuant to Section 7 Rule III of the Administrative Order No. 07 as amended by Administrative Order No. 17 in relation to Republic Act No. 6770.

The Honorable Secretary Ronaldo V. Puno, Department of Interior and Local Government, is hereby directed to implement this DECISION immediately upon receipt thereof 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 hereon.

SO DECIDED.⁴

At the time Templonuevo received her copy of the January 6, 2010 Decision on September 27, 2010, her term as Sangguniang Bayan Member had expired. She, however, was elected as Vice Mayor of the same municipality.

⁴ Id. at 40.

Without filing a motion for reconsideration, Templonuevo directly filed before the CA an original petition for certiorari and prohibition under Rule 65 of the Rules of Court. She claimed that the Ombudsman acted with grave abuse of discretion in ordering her suspension at a time when her term of office as Sangguniang Bayan Member had already expired and she had been elected as Vice Mayor in the May 2010 elections.

In its February 17, 2011 Resolution,⁵ the CA dismissed outright the petition on the ground of Templonuevo's failure to file a motion for reconsideration. According to the CA, the remedy of certiorari will not lie if other plain and speedy remedies in the ordinary course of law such as a motion for reconsideration are available, which, in this case, was not sought after by Templonuevo.

Templonuevo moved for reconsideration, but her motion was denied by the CA in its September 8, 2011 Resolution.

Aggrieved, Templonuevo elevated the case to this Court via Rule 45 of the Rules of Court.

Hence, this petition.

Templonuevo asserts that the CA decided questions of substance contrary to law and the applicable decisions of this Court when her petition was dismissed outright on the ground of failure to file a motion for reconsideration. She claims that there was no need to file for reconsideration considering that the Ombudsman's decision has become final, executory and unappealable. She cites, as support, Section 7, Rule III of Administrative Order No. 07, otherwise known as the Rules of Procedure of the Ombudsman, as amended by A.O. No. 17, which 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 in 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 the receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

⁵ Id. at 27.

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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 ground for disciplinary action against said officer.

To Templonuevo, said AO makes a motion for reconsideration unavailable in cases where a respondent is absolved of the charge or in cases of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine of equivalent to one month salary. Considering that she was given the penalty of one-month suspension only, her only remedy then was to file a petition for *certiorari* under Rule 65 of the Rules of Court.

In furtherance of her position, Templonuevo cites *Office of the Ombudsman v. Alano*,⁶ wherein the Court ruled that a resolution or order of the Ombudsman becomes final and unappealable in the instances mentioned by her. The effect of such finality, in her view, is simple – that the motion for reconsideration is not required before resorting to the extraordinary remedy of *certiorari*. This was, according to her, the same conclusion reached by the Court in *Reyes, Jr. v. Belisario*.⁷ There, it was held that the complainant therein was not entitled to any corrective recourse, whether by motion for reconsideration, or by appeal to the courts, to effect a reversal of the exoneration. The Court further held that despite such a fact, courts are still empowered by the Constitution to determine whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

Templonuevo, thus, believes that because the decision of the Ombudsman in her case was immediately final, executory and unappealable, the same could no longer be reviewed by the said office and as such a motion for reconsideration would be an exercise in futility. The CA should have taken note of that fact and such a failure amounts to an error, says petitioner.

⁶ 544 Phil. 709 (2007).

⁷ 612 Phil. 937 (2009).

Templonuevo likewise calls the Court's attention to the fact that the misconduct for which she was penalized was committed when she was still a Sangguniang Bayan Member. As she was elected Vice Mayor of the same municipality in 2010, she claims that such election resulted in the condonation of her administrative liability on acts committed during her previous post. She cites the case of *Pascual v. Hon. Provincial Board of Nueva Ecija*,⁸ where this Court held that the re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefrom. Consequently, the decision of the Ombudsman is in her view a patent nullity.

On November 16, 2011, the Court resolved to require the respondents to comment on the petition and also issued a Temporary Restraining Order enjoining the respondents from implementing the Decision of the Office of the Ombudsman.⁹

On December 2, 2011, the Office of the Solicitor General (*OSG*) filed a Manifestation and Motion (in Lieu of Comment),¹⁰ stating that the arguments raised by it in its Manifestation and Motion (in Lieu of Comment), dated April 26, 2011 and filed on April 28, 2011 with the CA, was exhaustive enough to serve as its comment on the present petition. The *OSG* in the pleadings it filed with the CA took the side of Templonuevo. It, thus, asserts that by virtue of AO No. 7, as amended, a decision of Ombudsman imposing a penalty of not more than one (1) month is final, executory and unappealable and, as such, a motion for reconsideration or appeal is not an available remedy. It also claimed that the subsequent re-election of Templonuevo precludes the imposition and execution of the penalty by virtue of the long standing doctrine of condonation.

In its Comment on the Petition For Review on *Certiorari* with Leave of Court (With Motion to Recall the Temporary Restraining Order with Opposition to the Issuance of a Writ of Preliminary Injunction),¹¹ the Ombudsman submits that Section 7, Rule III, Administrative Order No. 07, as amended, allows the filing of motions for reconsideration on its decisions that impose one month suspension; that a plethora of jurisprudence reveals that the Condonation Doctrine was applied by the Supreme Court only in cases where there was re-election to the same position; and that, the issuance of a temporary restraining order was erroneous and the error should not be extended with the issuance of a writ of preliminary injunction which the law proscribes.

⁸ 106 Phil. 466 (1959).

⁹ See *Rollo*, pp. 86-90.

¹⁰ *Id.* at 91-115.

¹¹ *Id.* at 141-163.

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In the meantime, Templonuevo filed a Manifestation in Lieu of Compliance¹² with the January 25, 2012 Resolution which ordered her to furnish this Court with the current address of Oyardo. She stated therein that she did not know the present address of Oyardo, who was not a permanent resident of Caramoan, and that no forwarding address was left behind.

In its July 18, 2012 Resolution,¹³ the Court noted the manifestation and required the Ombudsman to furnish the address of Oyardo. This was complied with.¹⁴

Oyardo still failed to file his Comment on the petition. As such, in the Court's September 14, 2015 Resolution,¹⁵ Oyardo's right to file his comment was deemed waived. In the same Resolution, the Court required Templonuevo to file her Reply to the manifestation and motion of the OSG, dated December 1, 2011, and to the Comment on the Petition for Review on Certiorari with Leave of Court filed by the Ombudsman.

Until now, no reply has been filed by Templonuevo. She is deemed to have waived her right to file it.

Issues

A reading of the pleadings filed by the parties reveals that the issues are as follows:

1. Whether the CA committed an error in dismissing outright the petition filed by Templonuevo on the ground of failure to file a motion for reconsideration from the decision of the Ombudsman finding her administratively liable and imposing upon her a penalty of one month suspension.
2. Whether the CA committed an error in not treating the election of Templonuevo as Vice Mayor of the same municipality as an event that precludes the imposition of the one month suspension penalty following the doctrine of condonation.

The Ruling of the Court

The Court grants the petition.

¹² Id. at 165-167.

¹³ Id. at 170-171.

¹⁴ Id. at 193-194.

¹⁵ Id. at 210-211.

A motion for reconsideration is not required where the penalty imposed by the Ombudsman is one month suspension before a petition under Rule 65 can be filed.

The settled rule is that a motion for reconsideration is a condition *sine qua non* for the filing of a petition for *certiorari*.¹⁶ Its purpose is to grant an opportunity for the court to correct any actual or perceived error attributed to it by re-examination of the legal and factual circumstances of the case.¹⁷

This rule, however, admits well-defined exceptions, such as (a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction; (b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court; (c) where there is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government or of the petitioner or the subject matter of the action is perishable; (d) where, under the circumstances, a motion for reconsideration would be useless; (e) where petitioner was deprived of due process and there is extreme urgency for relief; (f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable; (g) where the proceedings in the lower court are a nullity for lack of due process; (h) where the proceeding were *ex parte* or in which the petitioner had no opportunity to object; and (i) where the issue raised is one purely of law or where public interest is involved.¹⁸

Templonuevo contended that her non-filing of a motion for reconsideration of the assailed Ombudsman decision was justified because it would be useless. She claims that the assailed decision was final, executory and unappealable, hence, beyond the ambit of a motion for reconsideration following Section 7, Rule III of Administrative Order No. 07. She also argued that the Ombudsman's decision was a patent nullity considering that her election as Vice Mayor of the same municipality precluded the attachment to her of any administrative liability arising from the acts done while she was a Sangguniang Bayan Member.

The Court agrees with Templonuevo on her first position.

¹⁶ *Commissioner of Internal Revenue v. Court of Tax Appeals*, 695 Phil. 55, 61 (2012); *Medado v. Heirs of Consing*, 681 Phil. 536, 548 (2012), citing *Pineda v. Court of Appeals*, 649 Phil. 562, 571 (2010).

¹⁷ *Id.* at 61.

¹⁸ *Siok Ping Tang v. Subic Bay Distribution, Inc.*, 653 Phil. 124, 137 (2010). See also *Republic v. Pantranco North Express, et al.*, 682 Phil. 186, 194, (2012). See also *Domdom v. Sandiganbayan*, 627 Phil. 341, 346 (2010), citing *Tan v. Court of Appeals*, 341 Phil. 570, 576-578 (1997).

In *Ombudsman v. Alano*,¹⁹ the Court stressed that Section 13(8), Article XI of the 1987 Constitution empowers the Office of the Ombudsman to, among others, "promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law." Pursuant to such constitutional authority, Administrative Order No. 07 (otherwise known as the "Rules of Procedure of the Office of the Ombudsman"), dated April 10, 1990, was issued. Section 7, Rule III thereof provides:

SEC. 7. Finality 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 and unappealable. In all other cases, the decision shall become final after the expiration of ten (10) days from receipt thereof by the respondent, unless a motion for reconsideration or petition for *certiorari* shall have been filed by him as prescribed in Section 27 of RA 6770.

The Court, in interpreting the above constitutional and statutory provisions, recognizes only two instances where a decision of the Ombudsman is considered as final and unappealable and, thus, immediately executory. The first is when the respondent is absolved of the charge; and second is, 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.

In this case, Templonuevo was meted with a penalty of one month suspension. Accordingly, the decision of the Ombudsman is final, unappealable and immediately executory.

Being the case, the Ombudsman's decision was beyond the reach of an appeal or even of a motion for reconsideration. This was the same ruling in *Reyes v. Belisario*,²⁰ where the Court explained that a complainant was not entitled to any corrective recourse by motion for reconsideration in the Ombudsman, or by appeal to the courts if the penalty imposed was higher than public censure, reprimand, one-month suspension or a fine equivalent to a one month salary. It was further written:

The clear import of Section 7, Rule III of the Ombudsman Rules is to deny the complainant in an administrative complaint the right to appeal where the Ombudsman has exonerated the respondent of the administrative charge. The complainant, therefore, is not entitled to any corrective recourse, whether by motion for reconsideration in the Office of the Ombudsman, or by

¹⁹ Supra note 6.

²⁰ 612 Phil. 937 (2009).

appeal to the courts, to effect a 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 fine equivalent to one month salary.²¹

Left without any remedy in the ordinary course of law, Templonuevo was justified in resorting directly to the CA via a Rule 65 petition. Indeed, an independent action for *certiorari* may be availed of only when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law and *certiorari* is not a substitute for the lapsed remedy of appeal.²² In other words, because petitioner could not avail a motion for reconsideration or an appeal, her choice of a Rule 65 petition was proper.

The decision of the Ombudsman was not a patent nullity; Condonation doctrine applies.

Templonuevo claimed that the decision of the Ombudsman was null and void as the penalty imposed could no longer be imposed on account of her election as Vice Mayor of the same municipality, which to her, operated as forgiveness by her constituents for the acts done while she was still a Sangguniang Bayan Member. This “theory of nullity,” in a sense, does not hold water. The Ombudsman decided the case prior to the May 2010 elections. At that time, Templonuevo remained an incumbent and no event had transpired yet which would have had an effect on her liability for the acts done during her previous term. As the elections for 2010 did not happen yet, nothing could have substantially changed the course of action of the Ombudsman.

The election of 2010, however, became material only when the Ombudsman’s decision was on appeal. It is at this stage that the CA, should have considered Templonuevo’s election as Vice Mayor as rendering the imposition of administrative sanctions moot and academic on the basis of the condonation doctrine. Said doctrine, despite its abandonment in *Conchita Carpio-Morales v. Court of Appeals and Jejomar Erwin S. Binay, Jr., (Carpio-Morales)*,²³ still applies in this case as the effect of the abandonment was made prospective in application.

²¹ Id. at 954.

²² See Rules of Court, Rule 65, Section 1.

²³ G.R. Nos. 217126-27, November 10, 2015.


In *Giron v. Ochoa*,²⁴ the Court recognized that the doctrine can be applied to a public officer who was elected to a different position provided that it is shown that the body politic electing the person to another office is *the same*. Thus, the Court ruled:

On this issue, considering the *ratio decidendi* behind the doctrine, the Court agrees with the interpretation of the administrative tribunals below that the condonation doctrine applies to a public official elected to another office. The underlying theory is that each term is separate from other terms. Thus, in *Carpio-Morales*, the basic considerations are the following: *first*, the penalty of removal may not be extended beyond the term in which the public officer was elected for each term is separate and distinct; *second*, an elective official's re-election serves as a condonation of previous misconduct, thereby cutting the right to remove him therefor; and *third*, courts may not deprive the electorate, who are assumed to have known the life and character of candidates, of their right to elect officers. **In this case, it is a given fact that the body politic, who elected him to another office, was the same.** [Emphasis supplied]

In this case, those who elected Templonuevo into office as Sangguniang Bayan member and Vice Mayor were essentially the same. Stated otherwise, the electorate for the Vice Mayor of a municipality embraces wholly those voting for a member of the Sangguniang Bayan. Logically, the condonation doctrine is applicable in her case. The Court is, thus, precluded from imposing the administrative penalties of one month suspension on account of the same people's decision to elect her again to office.

WHEREFORE, the petition is **GRANTED**. The February 17, 2011 and September 8, 2011 Resolutions of the Court of Appeals in CA-G.R. SP No. 116229 are hereby **REVERSED** and **SET ASIDE**. The act committed by petitioner Arlyn Almario-Templonuevo is deemed **CONDONED**.

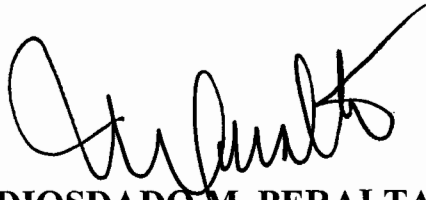
SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

²⁴ G.R. No. 218463, March 1, 2017, https://cdasiaonline.com/jurisprudences/62604?hits%5D%5Bid%5D=62604&hits%5B%5D%5Btype%5D=Jurisprudence&path=%2Fjurisprudences%2Fsearch&q%5Bcitation_finder%5D=&q%5Bfull_text%5D=&q%5Bissue_no%5D=218463&q%5Bponente%5D=&q%5Bsyllabus%5D=&q%5Btitle%5D=&q%5Butf8%5D=%E2%9C%93&q%5Byear_end%5D=&q%5Byear_start%5D=.

WE CONCUR:

(On Official Leave)
ANTONIO T. CARPIO
Associate Justice



DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson




MARVIC M.V.F. LEONEN
Associate Justice



SAMUEL R. MARTIRES
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.



DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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