



Republic of the Philippines
Supreme Court
 Manila

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Welfredo V. Lapitan
WELFREDO V. LAPITAN
 Division Clerk of Court
 Third Division
 OCT 17 2016

THIRD DIVISION

**ANIANO DESIERTO (Substituted by
 Simeon V. Marcelo) and MAUCENCIA
 ORDONEZ,**

Petitioners,

-versus-

**RUTH EPISTOLA and RODOLFO
 GAMIDO,**

Respondents.

G.R. No. 161425

Present:

VELASCO, JR., J.,
Chairperson,
 PERALTA,*
 PEREZ,
 REYES, and
 JARDELEZA, JJ.

Promulgated:
November 23, 2016

Welfredo V. Lapitan

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RESOLUTION

PEREZ, J.:

This is a petition for review on certiorari assailing the Decision¹ dated 16 December 2003 of the Court of Appeals in CA-G.R. SP No. 68508 which reversed the Office of the Deputy Ombudsman for Luzon's (Ombudsman) finding that respondents are administratively liable for simple neglect of duty and grave misconduct.

Respondent Ruth Epistola (Epistola), now deceased, was a public school teacher and class adviser, while Rodolfo Gamido (Gamido) was a Barangay Captain. Respondents are related.

This case arose from the death of Rustom Ordoñez (Rustom) due to drowning when he went to the river to gather water lilies for a class project. Rustom was a Grade V student at Bone North Elementary School in Aritao,

* On Wellness Leave.
¹ Rollo, pp. 34-49; Penned by Associate Justice Noel G. Tijam with Associate Justices Ruben T. Reyes and Edgardo P. Cruz concurring.

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Nueva Vizcaya. According to Rustom's classmate, Jhomel Patinio (Jhomel), Rustom, Harold Rafanan, Jayson Acosta and Rolly Fei Acosta were ordered by their class adviser Epistola to gather water lilies for the beautification of the school lagoon on 12 March 1999.² On the following day, Rustom sought permission from his grandmother Maucencia Ordoñez (Maucencia) to collect water lilies. Maucencia forbade Rustom from going but the latter sneaked out of the house and went to the river to gather lilies. Rustom drowned and instantaneously died.

Armed with Jhomel's 22 July 1999 Sworn Statement, Maucencia filed a criminal complaint on 8 December 1999 against Epistola before the Office of the Deputy Ombudsman for Luzon for reckless imprudence.

On 22 February 2000, Jhomel retracted his previous statement and attested that he heard Epistola assign Harold, and not Rustom, to gather water lilies. His Affidavit was sworn before Gamido.

Yet, on 16 June 2000, Jhomel executed another affidavit repudiating his earlier retraction. He explained that he was coerced into signing by respondents, along with five (5) other teachers, namely: Lorna Caser, Delia Cacal, Manuel Esperanza, Marilyn Serapon and Ernesto Gamido, inside the principal's office.

On 12 July 2000, Maucencia filed an administrative complaint against respondents and five other teachers of Bone North before the Office of the Deputy Ombudsman for Luzon for coercing Jhomel to retracting his statement on Epistola's complicity in Rustom's death.

Epistola strongly denied that she instructed Rustom to collect water lilies because the latter was then wearing a thick pair of eyeglasses. She claimed to have instructed only Harold and Jayson to gather water lilies.

Jayson executed an affidavit on 22 March 1999 before Barangay Captain Gamido narrating that he was one of those assigned by Epistola to gather water lilies; that he went to the house of Maucencia to fetch Rustom who earlier asked to accompany them to the field. Rustom was not allowed to go but the latter caught up with the group of Jayson when they reached the first irrigation canal. When the group was able to get some water lilies, Rustom insisted on going to the river to get more lilies. Upon reaching the river, Rustom immediately undressed and dived into the water. Rustom was

² Id. at 35.



able to reach the deep portion of the river before he started screaming for help because he was drowning. The group tried to rescue him but to no avail.

To counter Jhomel's accusation that he was coerced into signing the retraction, his classmate Harold executed an Affidavit on 3 October 2000 stating that he and Jayson were assigned by Epistola to gather water lilies. On the following day, Harold went to the fields where he was able to collect a sack full of lilies. He learned later in the day that his classmate Rustom drowned while bathing in the big river. Sometime in February 2000, Harold recalled that he and some of his classmates were summoned to the principal's office to meet the barangay captain of Bone North. He denied seeing the other teachers who could have intimidated Jhomel into retracting his prior statement.³

Two days earlier or on 1 October 2000, a purported affidavit from Jhomel made the following clarifications: that he was made to sign a prepared affidavit on 16 June 2000 in the house of Maucencia; that the same was not explained to him nor did he appear before the Notary Public; that his statement on 22 February 2000 given at the principal's office in the presence of Gamido was not obtained by force, intimidation or threat for it was voluntarily given and even read and explained to him by his father; and that his 22 July 1999 retraction was also signed in the house of Maucencia.⁴

However, Jhomel executed an Affidavit dated 22 January 2001 denying that he executed or signed the 1 October 2000 affidavit. He alleged that his signature appearing thereon was forged.⁵

In lieu of a formal hearing, the parties submitted their respective memorandum.

On 7 June 2001, the Office of the Deputy Ombudsman for Luzon found Epistola guilty of simple neglect of duty for ordering Rustom to gather water lilies. Epistola, along with Gamido, was also found guilty of grave misconduct for tampering with evidence. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, this office finds and so hold respondent Ruth Epistola guilty of simple neglect of duty for her act of

³ Id. at 38-39.

⁴ Id. at 39-40.

⁵ Id. at 12.



ordering her pupil Rustom Ordonez to gather water lilies. Thus, her negligence to observe the demands of a substitute parent for her pupil, she is hereby meted the penalty of Suspension for One Month.

FURTHERMORE, respondent Barangay Captain Rodolfo Gamido and Ruth Epistola, acting in conspiracy for forging the signature of Jhomel Patinio, are also found guilty of Grave Misconduct. But since they are first offenders, they are hereby meted the penalty of one (1) year suspension without pay, there being no aggravating circumstances.

The charge against the other respondents is hereby recommended to be dismissed for lack of substantial evidence.⁶

The Ombudsman gave credence to Jhomel's declaration that Epistola did instruct Rustom to gather water lilies, which ultimately caused his death. In doing so, Epistola was instrumental in exposing her students to such danger that resulted in the death of Rustom; hence, she was found guilty of simple neglect of duty. Moreover, respondents were also found to have attempted to pervert the truth by executing retraction affidavits and falsifying Jhomel's signature; thus, they were found to have committed grave misconduct.

Respondents filed a Motion for Reconsideration but it was denied by the Ombudsman on 17 October 2001.

Respondents elevated the case to the Court of Appeals.

On 16 December 2003, the Court of Appeals reversed and set aside the Decision and Resolution of the Ombudsman. The appellate court gave more credence to Harold's sworn declaration that he and Jayson were the only ones assigned to gather the water lilies. The appellate court also considered the affidavit of Rustom's other companions that the latter had intended to swim and not to gather water lilies when he went into the river, resulting in his early demise. The appellate court chose to disregard Jhomel's conflicting statements. With respect to Gamido, the appellate court held that his relationship with Epistola does not by itself taint the proceeding in the principal's office in light of Jhomel's classmates' sworn declaration that no undue pressure was exerted upon Jhomel. Finally, the appellate court ruled that under the Ombudsman Law, the Ombudsman had no authority to conduct an investigation over the case because the complaint was filed one year after the occurrence of the act complained of. The appellate court added that it should have been the committee referred to in

⁶ Id. at 56.



Section 9 of the Magna Carta for Public School Teachers that conducted the investigation of the administrative complaint.

The Ombudsman filed a petition for review on 18 February 2004 defending its factual findings as to the administrative liability of respondents. In particular, the Ombudsman insists that Gamido interfered and used his authority as Barangay Chairman to compel the witness to retract his statement. The Ombudsman also stresses that Gamido participated in the falsification of the second affidavit of retraction by signing in the joint answer knowing that the affidavit attached thereto was falsified. The Ombudsman maintains that it exercises discretion in the conduct of administrative investigation.

Epistola died on 19 December 2006 while Gamido was no longer the Barangay Captain of Bone North as of 14 March 2003.

With respect to Epistola, the Court issued a Resolution dated 24 August 2009 dismissing the instant petition against her.⁷

In his Memorandum, Gamido denies coercing, intimidating or influencing Jhomel to execute the questioned affidavits. Gamido asserts that the Ombudsman merely focused on Jhomel's flip-flopping statements and failed to consider the accounts of the other witnesses to the case. Significantly, Gamido alleges that assuming he is guilty, his suspension is already moot and academic because he is no longer the barangay chairman of Bone North.

We deny the Petition for being moot and academic.

A case or issue is considered moot and academic when it ceases to present a justiciable controversy by virtue of supervening events, so that an adjudication of the case or a declaration on the issue would be of no practical value or use. In such instance, there is no actual substantial relief which a petitioner would be entitled to, and which would be negated by the dismissal of the petition. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness. This is because the judgment will not serve any useful purpose or have any practical legal effect because, in the nature of things, it cannot be enforced.⁸

⁷ Id. at 262.

⁸ *Penafancia Sugar Mill, Inc. v. Sugar Regulatory Administration*, G.R. No. 208660, 5 March 2014, 718 SCRA 212, 217-218.



In the instant case, Gamido is no longer the incumbent barangay chairman of Bone North as far back as 2003. The expiration of his term as barangay chairman operates as a supervening event that mooted the present petition. The validity or invalidity of his suspension could no longer affect his tenure.

Notwithstanding the mootness of the petition, we shall make a categorical resolution on whether Gamido committed grave misconduct during his tenure as barangay chairman.

Findings of fact by the Office of the Ombudsman are conclusive when supported by substantial evidence. Its factual findings are generally accorded with great weight and respect, if not finality by the courts, by reason of its special knowledge and expertise over matters falling under its jurisdiction.⁹

Substantial evidence, which is more than a mere scintilla but is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, would suffice to hold one administratively liable. The standard of substantial evidence is satisfied when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant. While substantial evidence does not necessarily import preponderance of evidence as is required in an ordinary civil case, or evidence beyond reasonable doubt as is required in criminal cases, it should be enough for a reasonable mind to support a conclusion.¹⁰

In finding that Gamido's actuations are tantamount to grave misconduct, the Ombudsman ratiocinated, thus:

Relative to the Charge of Grave Misconduct arising from the alleged act of pressuring or unduly influencing Jhomel Patinio to execute retraction affidavits and to the extent of allegedly falsifying his signature, we find that, there was such an attempt to perverse the truth. The version of Jhomel Patinio that he was unduly pressured to execute the retraction affidavit is in full accord with the other corroborative evidence. These are: the undue interest exerted by Barangay Captain Gamido in taking, preparing and administering the first retraction affidavit of Jhomel Patinio when the said case was never referred to his office for official action and the variance in the signature of Jhomel Patinio in his retraction affidavit dated October 1, 2000 favoring respondent against his admitted usual signatures. The interest of respondent Barangay Captain is explained by

⁹ *Miro v. Vda. De Erederos*, 721 Phil. 772, 784 (2013).

¹⁰ *Ombudsman Marcelo v. Bungubung*, 575 Phil. 538, 557-558 (2008).



the fact that he and respondent Ruth Epistola are relatives. The variance in Jhomel's signature, which was never sufficiently explained by the respondents with competent evidence, such as the employment of an "expert", suggests that there was falsification of his signature. The fact also that during the preliminary conference, Jhomel Patinio was with complainant and ready to testify for her, adds weight to complainant's allegation that the subject affidavit of retraction was given involuntarily by Jhomel Patinio.¹¹

A review of the records of the case shows that the factual findings of the Ombudsman upon which its decision on Gamido's administrative liability was based are supported by the evidence on record. Gamido indeed administered Jhomel's retraction on 22 February 2000 at the principal's office. Section 420¹² of the Local Government Code empowers the barangay chairman to administer oaths only in matters relating to all proceedings in the implementation of the Katarungang Pambarangay. There was no record of a barangay conciliation proceeding where both parties appeared before the barangay chairman for an amicable settlement. Gamido thus had no business administering the oath in Jhomel's affidavit of retraction. Furthermore, the blood relationship between Gamido and Epistola emboldened the former to interfere in the case in favor of his relative by exerting undue influence on Jhomel to first retract his first sworn statement implicating Epistola in the death of Rustom.

Misconduct is defined as a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. Misconduct is considered grave if accompanied by corruption, a clear intent to violate the law, or a flagrant disregard of established rules, which must all be supported by substantial evidence.¹³ It is clear that Gamido took advantage of his position as barangay chairman to commit the unlawful acts charged against him. His administration of the oath in the affidavit is a blatant abuse of his power as the authority granted to him by law pertains only to matters relating to the barangay conciliation proceedings.

The penalty for grave misconduct under Section 52(A)(2) of Rule IV of the Uniform Rules on Administrative Cases in the Civil Service is dismissal from service. We affirm the penalty of suspension for one year

¹¹ *Rollo*, p. 56.

¹² SECTION 420. *Power to Administer Oaths.* - The Punong Barangay, as chairman of the Lupong Tagapamayapa, and the members of the pangkat are hereby authorized to administer oaths in connection with any matter relating to all proceedings in the implementation of the katarungang pambarangay.

¹³ *Lagoc v. Malaga*, 738 Phil. 623, 640 (2014).



imposed by the Ombudsman who took into consideration that respondents were first time offenders.

Lastly, we correct the erroneous interpretation and application by the Court of Appeals of Section 20(5) of Republic Act (R.A.) No. 6770 or the Ombudsman Act of 1989, which reads:

Section 20. *Exceptions.* — The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

- (1) The complainant has an adequate remedy in another judicial or quasi-judicial body;
- (2) The complaint pertains to a matter outside the jurisdiction of the Office of the Ombudsman;
- (3) The complaint is trivial, frivolous, vexatious or made in bad faith;
- (4) The complainant has no sufficient personal interest in the subject matter of the grievance; or
- (5) The complaint was filed after one (1) year from the occurrence of the act or omission complained of.

The Court of Appeals declared that the administrative complaint was filed beyond the period prescribed under R.A. No. 6770 when it was only filed on 12 July 2000, more than one year after Epistola gave the questioned instruction on 12 March 1999.

In the case of *Office of the Ombudsman v. Andutan, Jr.*,¹⁴ the Court stressed that the provisions of Section 20(5) are merely directory and that the Ombudsman is not prohibited from conducting an investigation a year after the supposed act was committed. The Court expounded, thus:

The issue of whether Section 20(5) of R.A. 6770 is mandatory or discretionary has been settled by jurisprudence. In *Office of the Ombudsman v. De Sahagun*, the Court, speaking through Justice Austria-Martinez, held:

[W]ell-entrenched is the rule that administrative offenses do not prescribe [*Concerned Taxpayer v. Doblada, Jr.*, A.M. No. P-99-1342, September 20, 2005, 470 SCRA 218;



¹⁴ 670 Phil. 169 (2011).

Melchor v. Gironella, G.R. No. 151138, February 16, 2005, 451 SCRA 476; Heck v. Judge Santos, 467 Phil. 798, 824 (2004); Floria v. Sunga, 420 Phil. 637, 648-649 (2001)]. Administrative offenses by their very nature pertain to the character of public officers and employees. In disciplining public officers and employees, the object sought is not the punishment of the officer or employee but the improvement of the public service and the preservation of the public's faith and confidence in our government [Melchor v. Gironella, G.R. No. 151138, February 16, 2005, 451 SCRA 476, 481; Remolona v. Civil Service Commission, 414 Phil. 590, 601 (2001)].

Respondents insist that Section 20 (5) of R.A. No. 6770, to wit:

SEC. 20. Exceptions. – The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

x x x x

(5) The complaint was filed after one year from the occurrence of the act or omission complained of. (Emphasis supplied)

proscribes the investigation of any administrative act or omission if the complaint was filed after one year from the occurrence of the complained act or omission.

In Melchor v. Gironella [G.R. No. 151138, February 16, 2005, 451 SCRA 476], the Court held that the period stated in Section 20(5) of R.A. No. 6770 does not refer to the prescription of the offense but to the discretion given to the Ombudsman on whether it would investigate a particular administrative offense. The use of the word "may" in the provision is construed as permissive and operating to confer discretion [Melchor v. Gironella, G.R. No. 151138, February 16, 2005, 451 SCRA 476, 481; Jaramilla v. Comelec, 460 Phil. 507, 514 (2003)]. Where the words of a statute are clear, plain and free from ambiguity, they must be given their literal meaning and applied without attempted interpretation [Melchor v. Gironella, G.R. No. 151138, February 16, 2005, 451 SCRA 476, 481; National Federation of Labor v. National Labor Relations Commission, 383 Phil. 910, 918 (2000)].

In Filipino v. Macabuhay [G.R. No. 158960, November 24, 2006, 508 SCRA 50], the Court interpreted Section 20 (5) of R.A. No. 6770 in this manner:

Petitioner argues that based on the abovementioned provision [Section 20(5) of RA 6770], respondent's complaint is barred by prescription considering that it was

filed more than one year after the alleged commission of the acts complained of.

Petitioner's argument is without merit.

The use of the word "may" clearly shows that it is directory in nature and not mandatory as petitioner contends. When used in a statute, it is permissive only and operates to confer discretion; while the word "shall" is imperative, operating to impose a duty which may be enforced. Applying Section 20(5), therefore, it is discretionary upon the Ombudsman whether or not to conduct an investigation on a complaint even if it was filed after one year from the occurrence of the act or omission complained of. In fine, the complaint is not barred by prescription.

The declaration of the CA in its assailed decision that while as a general rule the word "may" is directory, the negative phrase "may not" is mandatory in tenor; that a directory word, when qualified by the word "not," becomes prohibitory and therefore becomes mandatory in character, is not plausible. It is not supported by jurisprudence on statutory construction.

Clearly, Section 20 of R.A. 6770 does not prohibit the Ombudsman from conducting an administrative investigation after the lapse of one year, reckoned from the time the alleged act was committed. Without doubt, even if the administrative case was filed beyond the one (1) year period stated in Section 20(5), the Ombudsman was well within its discretion to conduct the administrative investigation.¹⁵

Furthermore, it was settled in the case of *Office of the Ombudsman v. Medrano*¹⁶ that the administrative disciplinary authority of the Ombudsman over a public school teacher is not an exclusive power but is concurrent with the proper committee of the Department of Education. The fact that a referral to the proper committee would have been the prudent thing to do does not operate to divest the Ombudsman of its constitutional power to investigate government employees including public school teachers.

All told, we reiterate that there is no justiciable controversy in view of the mootness of the suspension due to the fact that Gamido is no longer the barangay chairman of Bone North.

WHEREFORE, the Petition is **DENIED** for being moot and academic.

¹⁵ Id. at 179-181.

¹⁶ 590 Phil. 762, 777 (2008).

SO ORDERED.



JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

(On Wellness Leave)
DIOSDADO M. PERALTA
Associate Justice



BIENVENIDO L. REYES
Associate Justice



FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

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



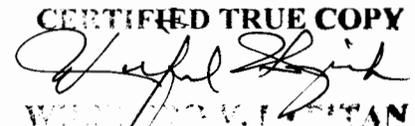
PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Resolution 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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WENCESLAO M. ECHAN
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Third Division
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