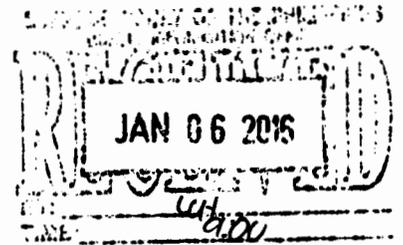




Republic of the Philippines  
 Supreme Court  
 Manila

FIRST DIVISION



**OFFICE OF THE OMBUDSMAN,**  
 represented by **HON. CONCHITA**  
**CARPIO MORALES,** in her capacity  
 as **Tanodbayan,** and **HON. GERARD**  
**A. MOSQUERA,** in his capacity as  
**Deputy Ombudsman for Luzon,**  
 Petitioners,

**G.R. No. 201830**

- versus -

**ROGER F. BORJA,**  
 Respondent.

**LERMA S. PRUDENTE and**  
**DAMASO T. AMBRAY,**  
 Petitioners,

**G.R. No. 201882**

- versus -

**ROGER F. BORJA,**  
 Respondent.

Present:  
 SERENO, *C.J.*, Chairperson,  
 LEONARDO-DE CASTRO,  
 BERSAMIN,  
 PEREZ, and  
 PERLAS-BERNABE, *JJ.*

Promulgated:  
NOV 10 2015

X-----X

**DECISION**

**PERLAS-BERNABE, J.:**

Before the Court are consolidated petitions<sup>1</sup> assailing the Decision<sup>2</sup> dated October 26, 2011 and the Resolution<sup>3</sup> dated May 9, 2012 of the Court of Appeals

<sup>1</sup> *Rollo* (G.R. No. 201830), pp. 9-29; *rollo* (G.R. No. 201882), pp. 8-14.  
<sup>2</sup> *Rollo* (G.R. No. 201830), pp. 34-44. Penned by Associate Justice Mario L. Guariña III with Associate Justices Apolinario D. Bruselas, Jr. and Manuel M. Barrios concurring.

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(CA) in CA-G.R. SP No. 112008, which reversed and set aside the Decision<sup>4</sup> dated November 27, 2007 and the Orders<sup>5</sup> dated September 22, 2009 and October 12, 2009 of petitioner Office of the Ombudsman (Ombudsman) in OMB-L-A-03-1156-L, finding respondent Roger F. Borja (Borja) guilty of conduct prejudicial to the best interest of the service, thereby imposing upon him the penalty of suspension for one (1) year without pay.

### The Facts

In August 1991, the Board of Directors of San Pablo City Water District (SPCWD) passed separate resolutions dismissing its division chiefs, Evelyn Eje (Eje) and Racquel Tolentino (Tolentino), on the basis of the administrative complaint filed by its General Manager, Borja.<sup>6</sup>

Eje and Tolentino appealed to the Merit Systems Protection Board (MSPB) of the Civil Service Commission (CSC), which affirmed their dismissal from service.<sup>7</sup> The case was, thereafter, elevated to the CA<sup>8</sup> which, in a Resolution dated December 18, 1995, set aside Eje and Tolentino's dismissal and awarded them backwages and other employment benefits.<sup>9</sup> The CA, however, ruled that the backwages could not be charged against SPCWD, in view of the doctrine that where a public officer removes or dismisses another officer wrongfully, he acts outside the scope of his authority and hence, shall be held personally liable.<sup>10</sup> The CA decision attained finality on March 27, 1996,<sup>11</sup> and on July 4, 1996, Eje and Tolentino were reinstated and paid their backwages which were, however, taken from SPCWD's funds upon Borja's approval.<sup>12</sup>

In 1999, members of the San Pablo City Bar Association instituted a civil action on behalf of the water concessionaires seeking to compel the members of the Board of Directors of SPCWD and Borja to reimburse SPCWD for the amount paid to Eje and Tolentino.<sup>13</sup> In a Decision<sup>14</sup> dated May 26, 2000, the Regional Trial Court (RTC) of San Pablo City, Branch 32 ordered Borja to refund to SPCWD the amount of ₱1,942,031.82 paid to Eje and Tolentino within 60 days from receipt of the decision.<sup>15</sup> The RTC noted that Borja knew that the same was his personal liability based on the information given by the Commission on Audit (COA)

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<sup>3</sup> Id. at 46-47. Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Remedios Salazar-Fernando and Manuel M. Barrios concurring.

<sup>4</sup> Id. at 48-56. Penned by Graft Investigation and Prosecution Officer II Margie G. Fernandez-Calpatura with Evaluation and Investigation Office – Bureau A Acting Director Joaquin F. Salazar concurring and approved by Overall Deputy Ombudsman Orlando C. Casimiro.

<sup>5</sup> Id. at 57-61. Penned by Deputy Ombudsman for Luzon Victor C. Fernandez; id. at 62-70. Penned by Graft Investigation and Prosecution Officer I Claudette Agatep-Granville.

<sup>6</sup> *Rollo* (G.R. No. 201830), p. 36. See also *CA rollo*, pp. 40-45.

<sup>7</sup> Id.

<sup>8</sup> Docketed as SP No. 377690; id. at 36.

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> Id. at 41.

<sup>14</sup> *CA rollo*, pp. 309-341. Penned by Judge Zorayda Herradura-Salcedo.

<sup>15</sup> *Rollo* (G.R. No. 201830), p. 41.

through Director Felicitas Ona (COA Director Ona).<sup>16</sup> The COA was, however, ordered to audit the payments made to Eje and Tolentino to ascertain if they were to be considered misuse of public funds.<sup>17</sup>

Borja was also criminally charged in Criminal Case Nos. 13758-SP, 13759-SP, and 13760-SP for violation of Section 3 (e) of Republic Act No. (RA) 3019,<sup>18</sup> entitled the “Anti-Graft and Corrupt Practices Act,” for causing undue injury to SPCWD when he paid Eje and Tolentino’s backwages and other benefits from the water district’s funds. In an Order<sup>19</sup> dated October 14, 2008, the RTC of San Pablo City, Branch 30 dismissed the criminal complaints against Borja on the basis of the Ombudsman’s recommendation<sup>20</sup> when the case was referred back to the Office of the City Prosecutor for reinvestigation, where it noted that the COA *En Banc* had ruled that the payment by SPCWD was made in good faith, and that the subsequent issuances of the COA and CSC negated the initial findings of bad faith, manifest partiality, and negligence on his part.<sup>21</sup>

Meanwhile, in 2003, Borja and the other officers of SPCWD were charged administratively, docketed as OMB-L-A-03-1156-L. The complaint<sup>22</sup> alleged that Borja and the other respondents therein used public funds to settle a private obligation, considering that Eje and Tolentino’s backwages and other benefits were Borja’s personal liabilities.<sup>23</sup>

In his defense, Borja maintained that the ruling of the RTC in the civil case for reimbursement could not be used as basis to hold him administratively liable inasmuch as the condition imposed thereat, *i.e.*, for the COA to conduct an audit, has not been complied with.<sup>24</sup>

### **The Ombudsman’s Ruling**

In a Decision<sup>25</sup> dated November 27, 2007, the Ombudsman held Borja guilty of conduct prejudicial to the service and accordingly, suspended him from service for one (1) year without pay. It found that notwithstanding the ruling of the CA and the RTC that backwages and other employment benefits of Eje and Tolentino were his personal obligation, he nonetheless directed the release of funds from SPCWD’s coffers.<sup>26</sup> The Ombudsman also pointed out that Borja cannot feign ignorance of his personal liability considering that COA Director Ona had earlier

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<sup>16</sup> CA *rollo*, p. 315.

<sup>17</sup> Id. at 339.

<sup>18</sup> Approved on August 17, 1960.

<sup>19</sup> CA *rollo*, p. 245.

<sup>20</sup> Id. at 246-248.

<sup>21</sup> *Rollo* (G.R. No. 201830), p. 42

<sup>22</sup> Docketed as OMB Case No. OMB-L-A-03-1156-L; id. at 41.

<sup>23</sup> Id.

<sup>24</sup> Id. at 37.

<sup>25</sup> Id. at 48-56.

<sup>26</sup> Id. at 39.

informed him that the sum due Eje and Tolentino could not be charged against SPCWD, in view of the doctrine on personal liability of public servants.<sup>27</sup>

Borja moved for reconsideration,<sup>28</sup> which was, however, denied by the Ombudsman in an Order<sup>29</sup> dated October 12, 2009. In an Order<sup>30</sup> dated September 22, 2009, the Ombudsman directed the Board of Directors to implement Borja's suspension. Aggrieved, Borja filed a Petition for Prohibition<sup>31</sup> before the CA, which was treated by the appellate court as a petition for review under Rule 43 of the Rules of Court, docketed as CA-G.R. SP No. 112008.

### The CA Ruling

In a Decision<sup>32</sup> dated October 26, 2011, the CA found that Borja should not be held administratively liable on the ground that he made the payment in good faith, as found by the COA *En Banc* in its ruling in 2004. In fact, it was this finding of good faith that moved the Ombudsman to dismiss the criminal cases against Borja. It ratiocinated that if Borja could not be held criminally liable because the payments made to Eje and Tolentino were made in good faith by the management of the water district, there is even less reason to hold him administratively liable for the same act done in good faith. The motion for reconsideration filed by the Ombudsman was denied by the CA through a Resolution<sup>33</sup> dated May 9, 2012.

### The Proceedings Before the Court

Undaunted, the Ombudsman filed a petition for review on *certiorari*<sup>34</sup> before this Court, docketed as G.R. No. 201830, where it maintained that the dismissal of the criminal charges against Borja is not a ground to dismiss the administrative case against him, given that only substantial evidence is necessary to sustain a finding of administrative liability. It further added that this quantum of proof had been met as it was established that Borja used the funds of SPCWD to pay the backwages of Eje and Tolentino, which were his personal liabilities, thereby tarnishing the image of his office.<sup>35</sup> The Ombudsman also invoked the rule that its findings are deemed conclusive on courts when supported by substantial evidence.<sup>36</sup>

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<sup>27</sup> Id.

<sup>28</sup> Via a petition for review filed on August 3, 2009 which was treated as a motion for reconsideration; *CA rollo*, pp. 33-34.

<sup>29</sup> Id. at 62-70.

<sup>30</sup> Id. at 57-61.

<sup>31</sup> *CA rollo*, pp. 3-16.

<sup>32</sup> Id. at 34-44.

<sup>33</sup> Id. at 46-47. Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Remedios Salazar-Fernando and Manuel M. Barrios concurring.

<sup>34</sup> Id. at 9-29.

<sup>35</sup> Id. at 21.

<sup>36</sup> Id. at 24.

On July 17, 2012, a separate petition,<sup>37</sup> docketed as G.R. No. 201882, was filed by petitioners Lerma S. Prudente (Prudente) and Damaso T. Ambray (Ambray), members of the Board of Directors of SPCWD. They argued that Borja was not in good faith when he ordered the release of funds from SPCWD's coffers since the CA and the COA had earlier determined that he was personally liable for Eje and Tolentino's backwages.<sup>38</sup> Prudente and Ambray further averred that contrary to the CA's findings, the COA *En Banc* Resolution No. 2004-006<sup>39</sup> dated September 14, 2004 did not allow such payments made to Eje and Tolentino; hence, the same could not have been made in good faith.<sup>40</sup>

In a Resolution<sup>41</sup> dated September 5, 2012, the Court consolidated the present petitions.

### **The Issue Before the Court**

The lone issue for the Court's resolution is whether or not the CA committed any reversible error in dismissing the administrative complaint against Borja.

### **The Court's Ruling**

After a judicious review of the records, the Court is convinced that Borja should be held administratively liable for conduct prejudicial to the best interest of the service.

At the outset, it must be pointed out that the CA's ruling in SP No. 377690<sup>42</sup> had attained finality on March 27, 1996. It was held therein that Eje and Tolentino were illegally dismissed but the payment of their backwages and other benefits could not be taken from SPCWD's funds, being Borja's personal liability as the public officer who caused their wrongful removal. As such, by causing SPCWD to pay Eje and Tolentino's backwages and other benefits, Borja therefore contravened the final and executory decision of the CA.

It is well-settled that once a judgment attains finality, it thereby becomes immutable and unalterable.<sup>43</sup> Such judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest Court of the land.<sup>44</sup>

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<sup>37</sup> *Rollo* (G.R. No. 201882), pp. 8-14.

<sup>38</sup> *Rollo* (G.R. No. 201882), p. 11.

<sup>39</sup> CA *rollo*, pp. 300-302. Signed by Chairman Guillermo N. Carague and Commissioners Emmanuel M. Dalman and Reynaldo A. Villar.

<sup>40</sup> *Rollo* (G.R. No. 201882), pp. 10-11.

<sup>41</sup> See Notice of Resolution; *rollo* (G.R. No. 201830), p. 90.

<sup>42</sup> *Rollo* (G.R. No. 201830), p. 36.

<sup>43</sup> *Montemayor v. Millora*, 670 Phil. 209, 217 (2011), citing *Gallardo-Corro v. Gallardo*, 403 Phil. 498, 511 (2001).

<sup>44</sup> *Mauleon v. Porter*, G.R. No. 203288, July 18, 2014, 730 SCRA 229, 239.

The doctrine is founded on considerations of public policy and sound practice that, at the risk of occasional errors, judgments must become final at some definite point in time.<sup>45</sup>

While there is no concrete description of what specific acts constitute the offense of conduct prejudicial to the best interest of the service under the civil service law and rules, it has been jurisprudentially held to pertain to acts that tarnish the image and integrity of the public office, even if it not be related or connected to the public officer's function.<sup>46</sup> Among others, the Court has considered the following acts or omissions such as: misappropriation of public funds, abandonment of office, failure to report back to work without prior notice, failure to safe keep public records and property, making false entries in public documents, and falsification of court orders.<sup>47</sup>

On the basis of the foregoing, the Court holds that Borja acted in a manner prejudicial to the best interest of the service. By causing SPCWD to pay the backwages and other benefits due Eje and Tolentino, Borja clearly placed said office in a financial disadvantage as it was made to pay a liability which did not belong to it, especially considering that the amount involved and taken from SPCWD's funds, *i.e.*, ₱1,942,031.82, is by no means negligible. In doing so, the integrity of Borja's office was put in to question, and SPCWD was placed in a deleterious financial position.

The fact that the criminal charge against Borja for violation of Section 3 (e) of RA 3019 had been dismissed upon the Ombudsman's manifestation that it lacked basis to prosecute him is of no moment. As correctly pointed out by the Ombudsman, the dismissal of the criminal case is not a ground for the dismissal of the administrative case, in consonance with the rule that a criminal case is separate from an administrative case and each must be disposed of according to the facts and the law applicable to each case.<sup>48</sup> Moreover, in criminal cases, the guilt of the accused must be established by proof beyond reasonable doubt before a conviction could be had,<sup>49</sup> while liability in administrative cases is only hinged on the lesser threshold of substantial evidence, defined as that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.<sup>50</sup>

Besides, the elements for the commission of graft and corrupt practices under Section 3 (e) of RA 3019, are different from what constitutes conduct prejudicial to the best interest of the service, which is an administrative offense. The following are the essential elements for violation of Section 3 (e) of RA 3019:

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<sup>45</sup> Id.

<sup>46</sup> *Philippine Retirement Authority v. Rupa*, 415 Phil. 713, 720 (2001).

<sup>47</sup> Id., citing *Report of the Financial Audit Conducted on the Accounts of Clerk of Court Zenaida Garcia, MTC, Barotac Nuevo, Iloilo*, 362 Phil. 480, 484-485 (1999); *Unknown Municipal Councilor of Sto. Domingo, Nueva Ecija v. Alomia, Jr.*, A.M. No. P-91-660, August 7, 1992, 212 SCRA 330, 334-335; and *Ponferrada v. Relator*, 260 Phil. 578, 580-581(1990).

<sup>48</sup> *Dela Cruz v. Department of Education, Culture and Sports - Cordillera Administrative Region*, 464 Phil. 1033 (2004).

<sup>49</sup> Id.

<sup>50</sup> Section 5, Rule 133, Rules of Court.

(1) The accused must be a public officer discharging administrative, judicial or official functions;

(2) He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and

(3) That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.<sup>51</sup>

On the other hand, conduct prejudicial to the best interest of the service has been consistently held to pertain to acts that tarnish the image and integrity of the public office, although not necessarily related or connected to the public officer's function. Thus, while the absence of bad faith may negate criminal liability for graft and corrupt practices under Section 3 (e) of RA 3019, it does not automatically absolve Borja of administrative liability for conduct prejudicial to the best interest of the service, considering that the only question material to the latter is whether the public officer's acts tarnished the image or integrity of the public office. At this juncture, the Court deems it fit to emphasize that a public office is a public trust.<sup>52</sup> As such, public officers must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency.<sup>53</sup>

Furthermore, contrary to the CA's findings, COA Resolution No. 2004-006<sup>54</sup> dated September 14, 2004, did not allow the payment of Eje and Tolentino's backwages from SPCWD's funds. Instead, it prescribed the guidelines on the matter of allowances and other benefits such as representation and transportation allowances, emergency and miscellaneous expenses allowance, Christmas and other bonuses, rice allowance, and other similar allowances given to officials and employees of water districts in general, *viz.*:

SUBJECT: *GUIDELINES ON THE DISPOSITION/RESOLUTION OF APPEALS/PETITIONS FOR RECONSIDERATION OF VARIOUS ALLOWANCES ON THE BENEFITS AND ALLOWANCES RECEIVED BY MEMBERS OF THE BOARD OF DIRECTORS, OFFICIALS AND EMPLOYEES OF WATER DISTRICTS.*

*WHEREAS*, water districts have been granting allowances and benefits in the form of Representation Allowance and Transportation Allowance (RATA), Emergency and Miscellaneous Expenses (EME), Christmas cash gift/bonus, rice allowances, extraordinary allowances and similar allowances to members of Board of Directors and their organic personnel;

x x x x<sup>55</sup>

<sup>51</sup> *Consigna v. People of the Philippines*, G.R. No. 175750-51, April 2, 2014, 720 SCRA 350, 366.

<sup>52</sup> Section 1, Article XI, 1987 Constitution.

<sup>53</sup> *Id.*

<sup>54</sup> *CA rollo*, pp. 300-302.

<sup>55</sup> *Id.*

Verily, COA Resolution No. 2004-006 does not even relate to the payment of backwages and other allowances and benefits to Eje and Tolentino. Accordingly, the CA erred in relying on the above-stated resolution in ruling that the payments to Eje and Tolentino were made in good faith.

In fine, the Court holds Borja administratively liable for conduct prejudicial to the best interest of the service.

**WHEREFORE**, the petitions are **GRANTED**. The Decision dated October 26, 2011 and the Resolution dated May 9, 2012 of the Court of Appeals in CA-G.R. SP. No. 112008 are hereby **REVERSED** and **SET ASIDE** and the Decision dated November 27, 2007 and the Orders dated September 22, 2009 and October 12, 2009 of the Office of the Ombudsman are **REINSTATED**.

**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**WE CONCUR:**

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**JOSE PORTUGAL PEREZ**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

  
**MARIA LOURDES P. A. SERENO**  
Chief Justice