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Wilfredo V. Lattán
WILFREDO V. LATTAN
Division Clerk of Court
Third Division

AUG 13 2018

Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ELMER P. LEE,
Petitioner,

G.R. No. 205294

Present:

VELASCO, JR., J., *Chairperson*,
BERSAMIN,
LEONEN,
MARTIRES, and
GESMUNDO, JJ.

-versus-

ESTELA V. SALES, DEPUTY
COMMISSIONER LEGAL AND
INSPECTION GROUP; EFREN P.
MARTINEZ, CHIEF PERSONNEL
INQUIRY DIVISION; NESTOR S.
VALEROSO, REGIONAL
DIRECTOR, REVENUE REGION
NO. 8; and ALL OF THE BIR AND
ALL PERSONS ACTING ON THEIR
ORDERS OR BEHALF,
Respondents.

Promulgated:

July 4, 2018

Wilfredo V. Lattán

X-----X

DECISION

LEONEN, J.:

The pendency of a motion for reconsideration of a decision of the Office of the Ombudsman does not stay the immediate execution of the penalty of dismissal imposed upon a public office.

This is a Petition for Review on Certiorari¹ under Rule 45 of the Rules of Court, assailing the January 16, 2013 Order² of Branch 105, Regional Trial Court, Quezon City in Civil Case No. Q-12-72104. The Regional Trial Court dismissed the petition for injunction and/or prohibition and damages, with prayer for writ of preliminary mandatory injunction and/or writ of preliminary injunction³ filed by Elmer P. Lee (Elmer) against Estela V. Sales (Sales), Efren P. Martinez (Martinez), Nestor S. Valeroso (Valeroso), and all of the Bureau of Internal Revenue and all persons acting on their orders or behalf (collectively, respondents). Elmer sought to enjoin the immediate execution of the Office of the Ombudsman's July 16, 2012 Decision⁴ dismissing him from his position as Revenue Officer 1.

In a June 11, 2010 Complaint,⁵ the Field Investigation Office, Office of the Ombudsman, through Associate Graft Investigation Officer I Dennis G. Buenaventura, charged the spouses Elmer and Mary Ramirez Lee (collectively, the Spouses Lee) with dishonesty, grave misconduct, and conduct prejudicial to the best interest of the service.⁶ The Spouses Lee were both employed at the Bureau of Internal Revenue as Revenue Officer I.⁷

The Complaint charged that the Spouses Lee were members, stockholders, or incorporators of four (4) corporations, but did not disclose their interest in these corporations in their 2001 to 2006 Statements of Assets, Liabilities and Net Worth (SALN).⁸ The Spouses Lee also allegedly declared certain vehicles in their SALNs, but there were no documents to validate these vehicles' existence. However, the Land Transportation Office system database disclosed that one (1) vehicle was registered under their names.⁹

The Complaint alleged that the Spouses Lee acquired wealth in the amounts of ₱2,353,785.93 and US\$13,414.17, which were disproportionate to their legitimate incomes. It claimed that in 2002, the Spouses Lee had a total aggregate income of ₱252,840.00 but had cash in bank amounting to

¹ *Rollo*, pp. 3–34.

² *Id.* at 35–41. The Order was penned by Presiding Judge Rosa M. Samson.

³ *Id.* at 131–144.

⁴ *Id.* at 58–93. The Decision, docketed as OMB-C-A-10-0598-L (LSC), was penned by Assistant Special Prosecutor III Pilarita T. Lapitan, recommended for approval by Director Nellie P. Boguen-Golez and Deputy Special Prosecutor Jesus A. Micael, and approved by the Ombudsman Conchita Carpio Morales.

⁵ *Id.* at 44–50.

⁶ *Id.* at 59. As defined in Section 3(f) of Civil Service Commission Resolution No. 060538, titled "Rules on the Administrative Offense of Dishonesty," and Section 52, Nos. 3 and 20 of Civil Service Resolution No. 991936, titled "Uniform Rules on Administrative Cases in the Civil Service."

⁷ *Id.* at 58.

⁸ *Id.* at 59.

⁹ *Id.* at 61.

₱334,929.93 and US\$8,414.17, and a declared vehicle worth ₱640,000.00. In 2004, they had a total aggregate income of ₱259,152.00 but had cash in bank in the amounts of ₱380,000.00 and US\$3,000.00, an ₱800,000.00 vehicle, and personal effects amounting to ₱150,000.00. In 2005, they had a total aggregate income of ₱259,152.00 but had cash in bank in the amounts of ₱290,000.00 and US\$2,000.00, a ₱500,000.00 vehicle, and personal effects amounting to ₱30,000.00.¹⁰

In its July 16, 2012 Decision, the Ombudsman found the Spouses Lee guilty of dishonesty and grave misconduct. It found that they separately filed their SALNs from 2001 to 2006, apart from 2003 for which they filed a joint SALN. However, even though they filed separate SALNs in 2001 and 2002, the entries on the assets, real and personal liabilities, and business interests and financial connections were the same. This proved that they commonly owned the assets in the SALNs, and confirmed the regime of absolute community of property controlling their property relations.¹¹

In their 2004 to 2006 SALNs, the entries were entirely different, which could be explained by their claim that they separately owned those real and personal assets. But, despite the separate filings of SALNs and their claim that they were separated, there was no evidence on record of any judicial decree of separation that would have dissolved the absolute community of property. The Ombudsman found that they were not legally separated and that they continued to be governed by the same property regime. Further, they failed to declare their business interests and financial corporations in all the SALNs they filed, whether jointly or separately.¹²

The Ombudsman held that they had the willful intent to violate Section 7 of Republic Act No. 3019, in relation to Section 8 of Republic Act No. 1379, when they failed to declare their true, detailed, and sworn statements of their business and financial interests. They did not initiate to correct their earlier non-declaration of these interests in their subsequent SALNs, which confirmed their persistent disregard of the existing laws. The Ombudsman found that these acts amounted to gross misconduct, and ordered them to be “dismissed from service effective immediately with forfeiture of all of their benefits, except accrued leave credits, if any, with prejudice to their reemployment in the government.”¹³

On September 11, 2012, Elmer filed a Motion for Reconsideration¹⁴ of the Office of the Ombudsman’s Decision. While the motion was still

¹⁰ Id. at 63. The Office of the Ombudsman’s narration mentioned a ₱5,000.00 vehicle for 2005 but its summary table showed ₱500,000.00. *See rollo*, p. 62.

¹¹ Id. at 74–76.

¹² Id.

¹³ Id. at 91–92.

¹⁴ Id. at 94–103.

pending, he received a September 18, 2012 letter from Martinez, Chief of the Personnel Inquiry Division of the Bureau of Internal Revenue, through Regional Director Valeroso.¹⁵ The letter directed Elmer, among others, to turn over all government assets and documents to the head office, transfer his accountabilities, and surrender his Bureau of Internal Revenue Identification Card to the Human Resource Management Unit in the Regional Office. It further prohibited him from reporting to the office, representing the office, instructing staff members on official matters, and signing any documents, among others.¹⁶ In an October 1, 2012 letter, Elmer informed Martinez and Valeroso of his pending motion for reconsideration, and that the Office of the Ombudsman's July 16, 2012 Decision was not yet final and executory.¹⁷ However, Sales, the Deputy Commissioner of the Legal Inspection Group, as well as Martinez, insisted on Elmer's dismissal.¹⁸

On October 12, 2012, Elmer filed a Petition for Injunction and/or Prohibition and Damages with Prayer for Writ of Preliminary Mandatory Injunction and/or Writ of Preliminary Injunction, docketed as Civil Case No. Q-12-72104, with Branch 105, Regional Trial Court, Quezon City.¹⁹ He prayed for the trial court to enjoin herein respondents from executing his dismissal from service. He claimed that the Office of the Ombudsman's Decision was not yet final and executory due to his pending motion for reconsideration, as the Ombudsman's Administrative Order No. 07 did not categorically state the effects of the filing of a motion for reconsideration.²⁰ He claimed that his dismissal pre-empted and rendered moot his motion for reconsideration.²¹

In its January 16, 2013 Order,²² the Regional Trial Court denied Elmer's prayer for writ of preliminary mandatory injunction and/or writ of preliminary injunction, and dismissed the case for injunction and/or prohibition. The Regional Trial Court found that since there was a five (5)-day period within which the Ombudsman must resolve a motion for reconsideration, his remedy should have been a petition for mandamus to compel the Ombudsman to resolve his motion.²³ Moreover, in the Office of the Ombudsman's Memorandum Circular No. 01, Series of 2006, decisions and resolutions of the Ombudsman shall not be stayed by a motion for reconsideration or petition for review filed before it.²⁴

¹⁵ Id. at 104–105.

¹⁶ Id.

¹⁷ Id. at 106–110.

¹⁸ Id. at 127–129.

¹⁹ Id. at 131–144.

²⁰ Id. at 134.

²¹ Id. at 138.

²² Id. at 35–41.

²³ Id. at 38–39.

²⁴ Id. at 39.

Since the Office of the Ombudsman's July 16, 2012 Decision was immediately executory, Elmer was not entitled to a writ of preliminary injunction. The Regional Trial Court held that it could not interfere with the Ombudsman's judgments or orders by way of injunction, citing *Office of the Ombudsman v. Samaniego*.²⁵

On February 6, 2013, Elmer filed a Petition for Review²⁶ under Rule 45 of the Rules of Court before this Court, assailing the January 16, 2013 Order of the Regional Trial Court.

Petitioner argues that the Regional Trial Court erred in finding that a motion for reconsideration does not stay the execution of a decision of the Office of the Ombudsman.²⁷

First, he claims that direct resort to this Court, without filing any motion for reconsideration with the trial court, is proper. He argues that he raises only pure questions of law, and that his Petition is consistent with *Metropolitan Bank and Trust Company v. International Exchange Bank*.²⁸

Second, he claims that since Administrative Order No. 07²⁹ did not expressly state the effects of filing a motion for reconsideration, then the Rules of Court should apply in a suppletory manner. Applying by analogy Rule 37, Sections 1 and 2 of the Rules of Court,³⁰ in relation to Rule 39,

²⁵ Id. at 40–41.

²⁶ Id. at 3–34.

²⁷ Id.

²⁸ Id. at 5.

²⁹ The relevant provisions of Administrative Order No. 07, otherwise known as the Rules of Procedure of the Office of the Ombudsman, state:

RULE III

Procedure in Administrative Cases

.....
 Section 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.

Section 8. *Motion for reconsideration or reinvestigation; Grounds.* — Whenever allowable, a motion for reconsideration or reinvestigation may only be entertained if filed within ten (10) days from receipt of the decision by the respondent on any of the following grounds:

a) New evidence had been discovered which materially affects the order, directive or decision.

b) Errors of facts or law or irregularities have been committed prejudicial to the interest of the movant.

Only one motion for reconsideration or reinvestigation shall be allowed, and the hearing officer shall resolve the same within five (5) days from receipt thereof.

³⁰ RULES OF COURT, Rule 37, secs. 1 and 2 state:

Section 1. *Grounds of and Period for Filing Motion for New Trial or Reconsideration.* — Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his

Section 1 of the Rules of Court,³¹ the Office of the Ombudsman's July 16, 2012 Decision was not yet final and executory due to Elmer's pending motion for reconsideration.³² He argues that *Samaniego* is inapplicable, since in that case, this Court ruled that "[t]he decision of the Ombudsman is immediately executory pending appeal and may not be stayed by the filing of the appeal or the issuance of an injunctive writ."³³ Here, Elmer claims that his case was not yet pending appeal, but only pending a motion for reconsideration. Further, citing *JP Latex Technology, Inc. v. Ballons Granger Balloons, Inc.*, he claims that the pendency of a motion for reconsideration prevents the period to appeal from even commencing.³⁴

Third, he claims that the Regional Trial Court has jurisdiction over his Petition for Injunction and/or Prohibition. He points out that the case was directed against the officials of the Bureau of Internal Revenue, and not against the Office the Ombudsman.³⁵

Finally, he alleges that he is entitled to a writ of preliminary mandatory injunction for his reinstatement to the Bureau of Internal Revenue's payroll, and a writ of preliminary injunction to enjoin the Bureau of Internal Revenue from implementing the Office of the Ombudsman's July

rights; or

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.

Section 2. *Contents of Motion for New Trial or Reconsideration and Notice Thereof.* — The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.

A motion for new trial shall be proved in the manner provided for proof of motions. A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by counter-affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.

A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law, making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.

A *pro forma* motion for new trial or reconsideration shall not toll the reglementary period of appeal.

³¹ RULES OF COURT, Rule 39, sec. 1 states:

Section 1. *Execution Upon Judgments or Final Orders.* — Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or final order or orders sought to be enforced and of the entry thereof, with notice to the adverse party.

The appellate court may, on motion in the same case, when the interest of justice so requires, direct the court of origin to issue the writ of execution.

³² *Rollo*, pp. 14–16.

³³ *Id.* at 16.

³⁴ *Id.* at 16–17.

³⁵ *Id.* at 24.

16, 2012 Decision.³⁶

On August 15, 2013, respondents filed their Comment³⁷ to the Petition, in accordance with this Court's February 18, 2013 Resolution.³⁸

Respondents contend that Administrative Order No. 07 was amended by Administrative Order No. 17,³⁹ and now provides for the immediate execution of the decisions of the Ombudsman. They further point to Memorandum Circular No. 01, Series of 2006, which clarifies that the filing of a motion for reconsideration or a petition for review before the Office of the Ombudsman does not stay the implementation of its decisions, orders, or resolutions.⁴⁰ They argue that *JP Latex Technology, Inc. v. Ballons Granger Balloons, Inc.* and *Lapid v. Court of Appeals* as cited by Elmer are inapplicable. They claim that *Lapid* has already been superseded by, among others, *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH and Ombudsman v. Court of Appeals and Macabulos*.⁴¹ Moreover, *Samaniego* applies to this case since both involve the immediate execution of the Ombudsman's decisions.⁴²

As to the Regional Trial Court's jurisdiction, respondents argue that the relief Elmer sought in his petition for injunction and/or prohibition was tantamount to a prayer for the reversal of the Office of the Ombudsman's decision on the merits.⁴³ They claim that he should have awaited the notice of the Ombudsman's denial of his motion for reconsideration and thereafter file a petition for review under Rule 43 of the Rules of Court. However, an application for injunctive relief before the appellate court should also be

³⁶ Id. at 25–27.

³⁷ Id. at 246–267.

³⁸ Id. at 215.

³⁹ The relevant provision of Administrative Order No. 17, which amended Rule III of Administrative Order No. 07, states:

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 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 said officer.

⁴⁰ Id. at 252–254.

⁴¹ Id. at 256.

⁴² Id. at 261–262.

⁴³ Id. at 263.

denied, following *Samaniego*.⁴⁴

Finally, respondents claim that Elmer was not entitled to a temporary restraining order and/or writ of preliminary injunction as he had no clear legal right to a stay of the enforcement of the Ombudsman's decision.⁴⁵

On September 3, 2013, Elmer filed his Reply⁴⁶ to the Comment.

On August 6, 2014, this Court issued a Resolution⁴⁷ giving due course to the Petition and ordering the parties to submit their memoranda. Respondents filed their Memorandum on October 9, 2014,⁴⁸ while Elmer submitted his Memorandum on October 23, 2014.⁴⁹ These Memoranda were noted in this Court's January 12, 2015 Resolution.⁵⁰

The issues to be resolved by this Court are as follows:

First, whether or not a pending motion for reconsideration stays the execution of a decision of the Ombudsman dismissing a public officer from service; and

Second, whether or not a Regional Trial Court has jurisdiction over a petition for prohibition or injunction directed against the execution of a decision of the Ombudsman.

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A pending motion for reconsideration of a decision issued by the Office of the Ombudsman does not stay its immediate execution. This is clear under the rules of the Office of the Ombudsman and our jurisprudence.

The Office of the Ombudsman issued Administrative Order No. 7, as amended by Administrative Order No. 17, Rule III, Section 7, which states:

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,

⁴⁴ Id. at 263–264.

⁴⁵ Id. at 264–265.

⁴⁶ Id. at 271–282.

⁴⁷ Id. at 286.

⁴⁸ Id. at 289–314.

⁴⁹ Id. at 315–339.

⁵⁰ Id. at 341.



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 said officer.

Moreover, Ombudsman Memorandum Circular No. 01, Series of 2006, provides:

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.

Only a Temporary Restraining Order (TRO) or a Writ of Preliminary Injunction, duly issued by a court of competent jurisdiction, stays the immediate implementation of the said Ombudsman decisions, orders or resolutions.

Both Administrative Order No. 17 and Memorandum Circular No. 01, Series of 2006 were issued by the Ombudsman, an independent Constitutional office, pursuant to its rule-making power under the 1987 Constitution⁵¹ and Republic Act No. 6770⁵² to effectively exercise its

⁵¹ CONST, art. XI, sec. 13 states, in part:
Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

....
(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

mandate to investigate any act or omission of any public official, employee, office, or agency, when this act or omission appears to be illegal, unjust, improper, or inefficient.⁵³ For this Court to not give deference to the Ombudsman's discretion would be to interfere with its Constitutional power to promulgate its own rules for the execution of its decisions.⁵⁴

The Ombudsman is the Constitutional body tasked to preserve the integrity of public service, and must be beholden to no one.⁵⁵ To uphold its independence,⁵⁶ this Court has adopted a general policy of non-interference with the exercise of the Ombudsman of its prosecutorial and investigatory powers.⁵⁷ The execution of its decisions is part of the exercise of these powers to which this Court gives deference.

Further, after a ruling supported by evidence has been rendered and during the pendency of any motion for reconsideration or appeal, the civil service must be protected from any acts that may be committed by the disciplined public officer that may affect the outcome of this motion or appeal. The immediate execution of a decision of the Ombudsman is a protective measure with a purpose similar to that of preventive suspension, which is to prevent public officers from using their powers and prerogatives to influence witnesses or tamper with records.⁵⁸

Moreover, public office is a public trust.⁵⁹ There is no vested right to

⁵² Rep. Act No. 6770, sec. 18 states:

Section 18. Rules of Procedure. — (1) The Office of the Ombudsman shall promulgate its rules of procedure for the effective exercise or performance of its powers, functions, and duties.

(2) The rules of procedure shall include a provision whereby the Rules of Court are made suppletory.

(3) The rules shall take effect after fifteen (15) days following the completion of their publication in the Official Gazette or in three (3) newspapers of general circulation in the Philippines, one of which is printed in the national language.

⁵³ CONST, art. XI, sec. 13(1) states, in part:

Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

⁵⁴ *Ombudsman v. Samaniego*, 646 Phil. 445 (2010) [Per C.J. Corona, En Banc].

⁵⁵ *Alba v. Nitorreda*, 325 Phil. 229 (1996) [Per J. Francisco, En Banc].

⁵⁶ *Dichaves v. Ombudsman*, G.R. Nos. 206310-11, December 7, 2016 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/206310-11.pdf>> [Per J. Leonen, Second Division]; *Dimayuga v. Ombudsman*, 528 Phil. 42 (2006) [Per J. Azcuna, Second Division].

⁵⁷ *Reyes v. Ombudsman*, G.R. No. 208243, June 5, 2017 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/208243.pdf>> [Per J. Leonen, Second Division]; *Joson v. Ombudsman*, G.R. Nos. 197433 and 197435, August 9, 2017 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/197433.pdf>> [Per J. Leonen, Second Division]; *Purísima v. Carpio-Morales*, G.R. No. 219501, July 26, 2017 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/219501.pdf>> [Per J. Perlas-Bernabe, First Division]; *Kara-An v. Ombudsman*, 476 Phil. 536 (2004) [Per J. Carpio, First Division].

⁵⁸ *Pimentel v. Gachitorena*, 284 Phil. 233 (1992) [Per J. Griño-Aquino, En Banc].

⁵⁹ CONST. art. XI, sec. 1 states:

Section 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

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a public office or an absolute right to remain in office that would be violated should the decision of the Ombudsman be immediately executed.⁶⁰ In case the suspended or removed public official is exonerated on appeal, Administrative Order No. 17, Rule III, Section 7 itself provides for the remedial measure of payment of salary and such other emoluments not received during the period of suspension or removal. No substantial prejudice is caused to the public official.⁶¹

Notably, at the time the Office of the Ombudsman's July 16, 2012 Decision was issued in this case, the amendatory Administrative Order No. 17 and Memorandum Circular No. 01, Series of 2006, had already been issued. Thus, respondents did not err in implementing petitioner's dismissal from office.

Likewise, *Lapid v. Court of Appeals*,⁶² as cited by petitioner, has already been overturned by the subsequent cases of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*,⁶³ *Buencamino v. Court of Appeals*,⁶⁴ *Ombudsman v. Samaniego*,⁶⁵ *Ombudsman v. Valencerina*,⁶⁶ and *Villaseñor v. Ombudsman*,⁶⁷ among others.

As ruled in *Buencamino v. Court of Appeals*:⁶⁸

Hence, the instant petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended. Petitioner alleged therein that in denying his application for a preliminary injunction, the Court of Appeals gravely abused its discretion; that pursuant to Section 7, Rule III of Administrative Order No. 07, the Decision of the Office of the Ombudsman suspending him from office is not immediately executory; and that in enforcing its Decision suspending him from the service during the pendency of his appeal, the Office of the Ombudsman violated Section 27 of R.A. No. 6770 (Ombudsman Act of 1989) and the rulings of this Court in *Lapid v. Court of Appeals*; *Lopez v. Court of Appeals*, and *Ombudsman v. Laja*.

In its comment, the Office of the Ombudsman countered that the Court of Appeals did not gravely abuse its discretion in issuing the assailed Resolutions; and that the cases cited by petitioner are not applicable to this case, the same having been overturned by the ruling of this Court in "*In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*" and that Section 7, Rule III of

⁶⁰ *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of DPWH*, 529 Phil. 619 (2006) [Per J. Ynares-Santiago, First Division].

⁶¹ *Ombudsman v. Valencerina*, 739 Phil. 11 (2014) [Per J. Perlas-Bernabe, Second Division].

⁶² 390 Phil. 236 (2000) [Per J. Gonzaga-Reyes, Third Division].

⁶³ 529 Phil. 619 (2006) [Per J. Ynares-Santiago, First Division].

⁶⁴ 549 Phil. 511 (2006) [Per J. Sandoval-Gutierrez, First Division].

⁶⁵ 646 Phil. 445 (2010) [Per C.J. Corona, En Banc].

⁶⁶ 739 Phil. 11 (2014) [Per J. Perlas-Bernabe, Second Division].

⁶⁷ 735 Phil. 409 (2014) [Per J. Mendoza, Third Division].

⁶⁸ 549 Phil. 511 (2006) [Per J. Sandoval-Gutierrez, First Division].

Administrative Order No. 07 has been amended by Administrative Order No. 17, thus:

. . . this Honorable Court emphatically declared that Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman was already amended by Administrative Order No. 17 wherein the pertinent provision on the execution of the Ombudsman's decision pending appeal is now similar to Section 47 of the "Uniform Rules on Administrative Cases in the Civil Service" — that is, **decisions of the Ombudsman are immediately executory even pending appeal.**

We agree.

Section 7, Rule III of Administrative Order No. 07, relied upon by petitioner, 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 not 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 R.A. 6770.

In interpreting the above provision, this Court held in *Laja*, citing *Lopez*, that "only orders, directives or decisions of the Office of the Ombudsman in administrative cases imposing the penalties of public censure, reprimand or suspension of not more than one month or a fine not equivalent to one month salary shall be final and unappealable hence, immediately executory. **In all other disciplinary cases where the penalty imposed is other than public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary, the law gives the respondent the right to appeal. In these cases, the order, directive or decision becomes final and executory only after the lapse of the period to appeal if no appeal is perfected, or after the denial of the appeal from the said order, directive or decision. It is only then that execution shall perforce issue as a matter of right.** The fact that the Ombudsman Act gives parties the right to appeal from its decisions should generally carry with it the stay of these decisions pending appeal. Otherwise, the essential nature of these judgments as being appealable would be rendered nugatory."

However, as aptly stated by the Office of the Ombudsman in its comment, Section 7, Rule III of Administrative Order No. 07 has been amended by Administrative Order No. 17, thus:

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 not 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 said officer.

Clearly, considering that an appeal under Administrative Order No. 17, the amendatory rule, shall not stop the Decision of the Office of the Ombudsman from being executory, we hold that the Court of Appeals did not commit grave abuse of discretion in denying petitioner's application for injunctive relief.⁶⁹ (Emphasis and underlining in the original, citations omitted)

The facts in this case are similar as to those in *Cobarde-Gamallo v. Escandor*,⁷⁰ in which respondent Jose Romeo C. Escandor filed a petition for injunction with the regular courts to stop his dismissal from service, on the ground that he had a pending motion for reconsideration of the decision of the Office of the Ombudsman. This Court held in that case:

Here, Escandor was ordered dismissed from the service. Undoubtedly, such decision against him is appealable via Rule 43 to the CA. Nonetheless, the same is immediately executory even pending appeal or in his case even pending his motion for reconsideration before the OMB as that is the clear mandate of Section 7, Rule III of the OMB Rules of Procedure, as amended, as well as the OMB's MC No. 01, Series of 2006. *As such, Escandor's filing of a motion for reconsideration does not stay the immediate implementation of the OMB's order of dismissal since "a decision of the [OMB] in administrative cases shall be executed as a matter of course" under the afore-quoted Section 7.*

Further, in applying Section 7, there is no vested right that is violated as the respondent in the administrative case is considered

⁶⁹ Id. at 514–516.

⁷⁰ G.R. Nos. 184464 and 184469, June 21, 2017 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/184464.pdf>> [Per J. Velasco, Third Division].

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. To note, there is no such thing as a vested interest in an office, or even an absolute right to hold office. Except for constitutional offices that provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office. Hence, no vested right of Escandor would be violated as he would be considered under preventive suspension and entitled to the salary and emoluments that he did not receive, by reason of his dismissal from the service, in the event that his Motion for Reconsideration will be granted or that he wins in his eventual appeal.⁷¹ (Emphasis supplied, citations omitted)

Petitioner relies on *JP Latex Technology, Inc. v. Ballons Granger Balloons, Inc.*⁷² to support his claim that a motion for reconsideration stays an execution pending appeal, but that case is inapplicable here. *JP Latex Technology, Inc.* involved the execution of a decision of a Regional Trial Court in a civil case, which is governed by the Rules of Court, specifically Rule 39. Here, petitioner's case is an administrative action specifically governed by the special rules of procedure issued by the Office of the Ombudsman. "[W]hen two rules apply to a particular case, that which was specially designed for the said case must prevail over the other."⁷³ Petitioner does not present any reason for this Court to reexamine the doctrine established in the above-cited cases.

II

Since decisions of the Ombudsman are immediately executory even pending appeal, it follows that they may not be stayed by the issuance of an injunctive writ.⁷⁴ It bears noting that for an injunction to issue, the right of the person seeking its issuance must be clear and unmistakable.⁷⁵ However, no such right of petitioner exists to stay the execution of the penalty of dismissal. There is no vested interest in an office, or an absolute right to hold office.⁷⁶ Petitioner is deemed preventively suspended and should his motion for reconsideration be granted or his eventual appeal won, he will be entitled to the salary and emoluments he did not receive in the meantime.⁷⁷

Further, it is the legally mandated duty of respondents to implement the Office of the Ombudsman's decision. If they refused or failed to comply with the Ombudsman's order to dismiss petitioner from service, then they

⁷¹ Id. at 5–6.

⁷² 600 Phil. 600 (2009) [Per J. Tinga, Second Division].

⁷³ *Ombudsman v. Valencerina*, 739 Phil. 11, 21 (2014) [Per J. Perlas-Bernabe, Second Division].

⁷⁴ *Facura v. Court of Appeals*, 658 Phil. 554 (2011) [Per J. Mendoza, Second Division].

⁷⁵ *Ombudsman v. De Chavez*, 713 Phil. 211 (2013) [Per J. Peralta, Third Division].

⁷⁶ *Cobarde-Gamallo v. Escandor*, G.R. Nos. 184464 & 184469, June 21, 2017 <<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/184464.pdf>> [Per J. Velasco, Jr., Third Division].

⁷⁷ Id.

would be liable for disciplinary action, pursuant to Rule III, Section 7 of Administrative Order No. 07, as amended.

As correctly ruled by the Regional Court, petitioner's proper recourse should have been to file a petition for mandamus to compel the Ombudsman to resolve his motion for reconsideration within the five (5)-day period prescribed in the Rules of Procedure of the Office of the Ombudsman.⁷⁸ Otherwise, he should have awaited the Ombudsman's ruling on his motion for reconsideration, then, in the event of a denial, file a petition for review under Rule 43 of the Rules of Court with the Court of Appeals.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The January 16, 2013 Order of Branch 105, Regional Trial Court, Quezon City in Civil Case No. Q-12-72104 is **AFFIRMED**.

SO ORDERED.



MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



LUCAS P. BERSAMIN
Associate Justice



SAMUEL R. MARTIRES
Associate Justice

⁷⁸ Adm. Order No. 7, Rule III, sec. 8, as amended, states:

Section 8. *Motion for reconsideration or reinvestigation; Grounds* — Whenever allowable, a motion for reconsideration or reinvestigation may only be entertained if filed within ten (10) days from receipt of the decision or order by the party on the basis of any of the following grounds:

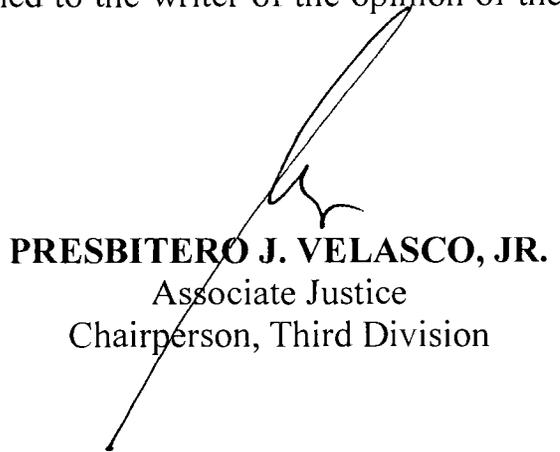
- a) New evidence had been discovered which materially affects the order, directive or decision;
- b) Grave errors of facts or laws or serious irregularities have been committed prejudicial to the interest of the movant.

Only one motion for reconsideration or reinvestigation shall be allowed, and the Hearing Officer shall resolve the same within five (5) days from the date of submission for resolution.


ALEXANDER G. GESMUNDO
 Associate Justice

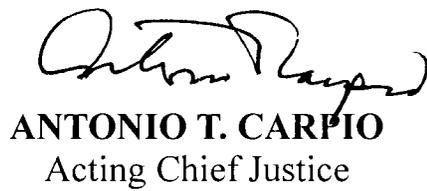
ATTESTATION

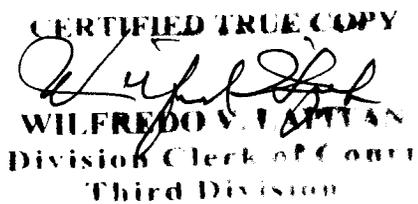
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


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.


ANTONIO T. CARPIO
 Acting Chief Justice

CERTIFIED TRUE COPY

WILFREDO V. MATTAN
 Division Clerk of Court
 Third Division

AUG 13 2014