



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **December 5, 2022** which reads as follows:*

“G.R. No. 225872 (Office of the Ombudsman v. Mark E. Jalandoni).

- Before the Court is a Petition for Review on *Certiorari*¹ under Rule 45, Rules of Court, assailing the 31 July 2015 Decision² and the 14 July 2016 Resolution³ of the Court of Appeals (CA) in CA-G.R. SP No. 131210, which reversed and set aside the 19 March 2013 Decision⁴ of the Office of the Ombudsman (OMB) – Internal Affairs Board (IAB) in OMB-C-A-11-0372-F (IAB-11-0029), finding respondent Mark E. Jalandoni (Jalandoni) guilty of Grave Misconduct Prejudicial to the Best Interest of the Service, and denied the Motion for Reconsideration⁵ dated 7 September 2015, respectively.

In December 2005, Jalandoni was appointed as Assistant Ombudsman by then Ombudsman Ma. Merceditas N. Gutierrez (Ombudsman Gutierrez).⁶ Purportedly, in March 2006, Ombudsman Gutierrez issued an Office Order requiring all resolutions, decisions, and orders of the OMB to pass through her before the same were released.⁷

In March 2010, Jalandoni was appointed as Deputy Ombudsman for Luzon. Allegedly, Ombudsman Gutierrez delegated to Jalandoni the authority to act on several pending cases through Office Order No. 136, series

¹ *Rollo*, pp. 8–30.

² Penned by Associate Justice Rosmari D. Carandang (retired Justice of this Court), and concurred in by Associate Justices Mario V. Lopez (now a member of this Court) and Myra V. Garcia-Fernandez; *id.* at 32–52.

³ Penned by Associate Justice Rosmari D. Carandang (retired Justice of this Court), and concurred in by Associate Justices Mario V. Lopez (now a member of this Court) and Myra V. Garcia-Fernandez; *id.* at 54–59.

⁴ *Id.* at 60–93.

⁵ *CA rollo*, pp. 1152–1164.

⁶ *Rollo*, p. 10.

⁷ *Id.* at 33.

of 2010,⁸ and three Office Memoranda dated 11 June 2010,⁹ 21 July 2010,¹⁰ and 9 March 2011.¹¹

On 8 April 2011, Jalandoni tendered his resignation as Deputy Ombudsman for Luzon which was approved on 12 April 2011. Meanwhile, Ombudsman Gutierrez announced her resignation from office to take effect on 6 May 2011.¹²

Orlando C. Casimiro (Casimiro), formerly the Overall Deputy Ombudsman, served as the Acting Ombudsman and ordered the inventory of all cases and other administrative matters left for the final approval and disposition of Ombudsman Gutierrez. It was then discovered that, in some cases, the name of the approving/disapproving authority was superimposed with an unsigned or signed patch of paper bearing the name of Jalandoni as the approving/disapproving authority on it.¹³

Casimiro filed a Complaint-Affidavit¹⁴ dated 29 June 2011 and Supplemental Complaint-Affidavit¹⁵ dated 6 July 2011 before the OMB-IAB against Jalandoni, with the administrative aspect docketed as OMB-C-A-11-0372-F.¹⁶

In its 19 March 2013 Decision, the OMB-IAB found Jalandoni guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service, the dispositive portion of which reads:

WHEREFORE, premises considered, this Board respectfully submits the following findings and recommendations:

x x x x

- (2) While the instant complaint was filed subsequent to the resignation of respondent **MARK E. JALANDONI**, since his resignation was tainted with bad faith and deliberately employed to evade this Board's administrative disciplinary jurisdiction, it is respectfully recommended that administrative charges against said respondent be taken cognizance of, and that he be held **GUILTY** of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service, with a penalty of **DISMISSAL FROM SERVICE** and the accessory penalties of **CANCELLATION of ELIGIBILITY, FORFEITURE OF RETIREMENT BENEFITS, PERPETUAL DISQUALIFICATION FROM HOLDING PUBLIC OFFICE**

⁸ Id. at 203.

⁹ Id. at 264.

¹⁰ Id. at 370.

¹¹ Id. at 438 and 34.

¹² Id. at 34.

¹³ Id. at 33-34.

¹⁴ Id. at 511-513.

¹⁵ Id. at 514-516.

¹⁶ Id. at 34.

AND BAR FROM TAKING CIVIL SERVICE EXAMINATIONS. However, in view of respondent Jalandoni's resignation, the penalty of fine equivalent to his salary for One (1) Year is hereby imposed upon him in lieu of dismissal from service.

x x x x

SO DECIDED.¹⁷

The OMB-IAB held that it had jurisdiction over the administrative case against Jalandoni because his resignation was tainted with bad faith. Jalandoni supposedly had knowledge of the administrative charges filed against him at the Office of the President (OP) prior to his resignation.¹⁸ Moreover, the OMB-IAB ruled that Jalandoni's act of superimposing his name and signature on the subject documents without valid and subsisting authority violated the principles and standards of ethical conduct in the government service.¹⁹

Aggrieved, Jalandoni filed before the CA a Petition for Review²⁰ under Rule 43, Rules of Court dated 4 September 2013, docketed as CA-G.R. SP No. 131210.

In its 31 July 2015 Decision,²¹ the CA reversed and set aside the 19 March 2013 Decision of the OMB-IAB and dismissed the administrative case against Jalandoni for lack of jurisdiction of OMB to hear the case and for lack of merit.

The CA held that Jalandoni was already separated from service with the OMB when the administrative case was filed against him. Casimiro failed to prove that Jalandoni's resignation was tainted with bad faith. Thus, applying the general rule laid down in the *Office of the Ombudsman v. Andutan, Jr.* (Andutan, Jr.),²² the CA ruled that the OMB has no jurisdiction to hear the administrative case against Jalandoni.²³

Moreover, the CA ruled that "[p]etitioner's [Jalandoni] act of patching a piece of paper bearing either his signed or unsigned name over the signed names of Ombudsman Gutierrez, respondent, and the then Overall Deputy Ombudsman Gervacio, was justified and authorized by the said Office Order

¹⁷ Id. at 90-91.

¹⁸ Id. at 83-84

¹⁹ Id. at 88-89.

²⁰ Id. at 600-641.

²¹ Id. at 32-52.

²² 670 Phil. 169, 182 (2011). In this case, the Court ruled that "[a]lthough the Ombudsman is not precluded by Section 20 (5) of R.A. 6770 from conducting the investigation, the Ombudsman can no longer institute an administrative case against Andutan because the latter was not a public servant at the time the case was filed."

²³ *Rollo*, pp. 37-40.

and the three Memoranda issued by Ombudsman Gutierrez pursuant to her statutory powers.”²⁴

Casimiro filed a Motion for Reconsideration dated 7 September 2015, but the same was denied by the CA in its 14 July 2016 Resolution.²⁵

Hence, on 13 September 2016, the OMB filed the present Petition before this Court after being granted an additional period to file its petition, raising the following issues:

1. Whether the CA erred in not finding that the OMB has jurisdiction over the person of Jalandoni and the subject matter of the administrative case against him.
2. Whether the CA erred in not finding that Jalandoni’s guilt for Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service was proven by substantial evidence.²⁶

The OMB maintains that the exception in *Andutan, Jr.* — i.e., the administrative jurisdiction of the OMB can still be exercised if it is found that the public officials, subject of the administrative case, resigned to preempt the imminent filing of one — applies in the instant case. Citing the cases of *Pagano v. Nazarro, Jr.*²⁷ and *Office of the Court Administrator v. Juan*,²⁸ the OMB argues that it has jurisdiction over the person of Jalandoni and the subject matter of the administrative case because Jalandoni resigned from government service to preempt the filing of the administrative case and escape administrative liability. The OMB claims that there was already a pending complaint filed against Jalandoni for grave abuse of authority and usurpation of authority for signing orders and decisions without valid authority before the OP when he resigned.²⁹

In his Comment³⁰ dated 6 April 2017, Jalandoni contends that the CA did not commit any error in reversing and setting aside the 19 March 2013 Decision of the OMB. He states that there is no proof of the pending administrative complaint against him before the OP.³¹

²⁴ Id. at 43.

²⁵ Id. at 59.

²⁶ Id. at 14.

²⁷ 560 Phil. 96 (2007).

²⁸ 478 Phil. 823 (2004).

²⁹ *Rollo*, p. 17.

³⁰ Id. at 121–150.

³¹ Id. at 137–138.

In its Reply³² dated 8 October 2018, the OMB reiterates its position that the OMB has jurisdiction over the person of Jalandoni and the subject matter of the administrative case against him.³³

This Court notes the Manifestation/Submission (Re: Acquittal of Respondent of All Charges Relating to the Criminal Aspect of the Case)³⁴ dated 28 September 2022 filed by Jalandoni, informing this Court that the Sandiganbayan, Special Third Division issued a Decision³⁵ dated 26 August 2022 acquitting him of all criminal charges in Case Nos. SB-14-CRM-0124 to 0179 and SB-14-CRM-0180 to 0192.

The Court finds no reason to reverse the CA.

In the recent case of *Bangko Sentral ng Pilipinas v. Office of the Ombudsman*,³⁶ this Court upheld the general rule that the separation of a public officer from the government service forecloses the filing of administrative charges against such public officer as enunciated in *Andutan*. An exception to this general rule is if the public officer voluntarily separated from the service to “pre-empt the imminent filing” thereof. Hence, the general rule should apply in this case, unless the OMB proves that there is bad faith attendant to Jalandoni’s resignation.

The OMB’s contention that Jalandoni’s resignation is tainted with bad faith is based on the allegation made by Casimiro in his Verified Position Paper³⁷ dated 27 February 2012 that “[i]t is of public knowledge that respondent Jalandoni resigned in April 2011 following the filing of complaints against him before the Office of the President.”³⁸ However, this remains unfounded. First, the OMB did not present in court the alleged administrative complaints filed before the OP. Second, the OMB failed to provide any substantial evidence to support this allegation. As ruled by this Court, mere allegation or speculation is not evidence, and is not equivalent to proof.³⁹ Thus, such allegation, which cannot be considered as evidence, will not evince bad faith.

Moreover, the very same arguments were passed upon and refuted by the CA in the assailed Decision, ruling that the OMB failed to prove that Jalandoni resigned in bad faith. The CA ruled:

³² Id. at 696–705.

³³ Id. at 697–698.

³⁴ Temporary *rollo*, unpaginated.

³⁵ Penned by Associate Justice Ronald B. Moreno, and concurred in by Associate Justices Amparo M. Cabotaje-Tang, Bernelito R. Fernandez, Oscar C. Herrera, Jr., and Edgardo M. Caldona; id.

³⁶ G.R. No. 201069, 16 June 2021.

³⁷ CA *rollo*, pp. 976–1010.

³⁸ Id. at 978. *See rollo*, p. 83.

³⁹ *Miro v. Vda. de Erederos*, 721 Phil. 772, 785 (2013).

Respondent's claim regarding petitioner's purported bad faith is anchored upon his assertion that there were numerous complaints filed against petitioner at the Office of the President prior to the latter's resignation. This assertion however is unsubstantiated. **We have carefully perused the records of this case but We did not find copies of such administrative cases that are pending before the Office of the President. It is an elementary rule that bad faith is not presumed and he who alleges the same has the onus of proving it. Respondent has not discharged that burden of proof sufficiently.**

Aside from the alleged administrative cases filed before the Office of the President against petitioner, the IAB also tried to demonstrate petitioner's bad faith by taking judicial notice of the fact that the then Ombudsman Gutierrez was being hounded by impeachment proceedings at the House of Representatives and by public pressure to resign from office. For the IAB, these events resulted in equal pressure against Ombudsman Gutierrez' close confidantes, including the petitioner, as they were the next logical targets of pressures.

We agree that the said impeachment proceedings and public pressure against Ombudsman Gutierrez could have triggered petitioner to resign from office. However, We do not agree with the conclusion that these events showed petitioner's bad faith in resigning from his position. On the contrary, this only gave credence to the fact that petitioner's resignation was due to a valid reason. Given his close working relationship with Ombudsman Gutierrez spanning more than eight years in three different government agencies, it would have been logical for petitioner to resign as it would be pointless and impractical for him to continue working at the Office of the Ombudsman without his long-time superior. From his unique vantage point, the possibility that Ombudsman Gutierrez was to resign or be removed from office in the near future would have greatly demoralized him in his work.

But this does not necessarily mean that petitioner resigned primarily to pre-empt the charges against him. He did not and could not have the foresight to anticipate the same. **In other words, his resignation was not for the purpose of setting naught any future administrative charges against him. Rather, it was due to the impending removal from office or resignation of his long-time superior. We cannot thus impute bad faith on petitioner from these events.**⁴⁰ (Emphasis supplied)

Based on the foregoing, the CA did not err in finding that the OMB has no jurisdiction over the person of Jalandoni and the subject matter of the administrative case against him.

Anent the second issue, it raises the propriety of the CA's reversal of the OMB-IAB's decision finding Jalandoni guilty of Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service. To resolve this issue necessitates the Court to review whether substantial evidence exists to hold Jalandoni liable for the charge of grave misconduct.

⁴⁰ *Rollo*, pp. 39-40.


This Court reiterates that a review by *certiorari* under Rule 45 is a matter of discretion. Under this mode of review, the jurisdiction of the Court is limited to reviewing only errors of law, not fact.⁴¹

Be that as it may, the second issue raised by the OMB likewise deserves scant consideration. The CA held that “[p]etitioner’s [Jalandoni] act of superimposing his name over the names of the approving authorities in the subject resolutions was within the purview of his delegated authority to act on the cases specified therein.”⁴² The CA added that “Ombudsman Gutierrez’s delegation to petitioner [Jalandoni] of her power ‘to act’ on these cases necessarily requires the exercise of discretion on the part of the latter to override the decisions of the approving/disapproving authorities of the subject documents.”⁴³

WHEREFORE, the instant petition is **DENIED**, there being no reversible error on the part of the Court of Appeals. The assailed 31 July 2015 Decision and 14 July 2016 Resolution of the Court of Appeals in CA-G.R. SP No. 131210 are **AFFIRMED**.

SO ORDERED.” *Inting, J.*, designated additional member per Raffle dated 20 September 2022 vice *Hernando, J.*; *Gaerlan, J.*, designated additional member per Raffle dated 2 November 2022 vice *Gesmundo, C.J.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court *h2/7*

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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FEB 07 2023

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(CA-G.R. SP No. 131210)

⁴¹ *DBP Pool of Accredited Insurance Companies v. Radio Mindanao Network, Inc.*, 516 Phil. 110, 117 (2006).

⁴² *Rollo*, p. 43.

⁴³ *Id.* at 45.

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