

Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

ELENA M. BORCILLO, G.R. No. 246542  
REYNALDO E. MANUEL, JR.  
AND ROMIEL S. VALLENTE,

Petitioners, Present:

PERALTA, C.J.,  
Chairperson,  
CAGUIOA,  
CARANDANG,  
ZALAMEDA, and  
GAERLAN, JJ.

- versus -

Promulgated:

EDNA LAGO MAGHINAY,

Respondent.

FEB 10 2021

*withheld*

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DECISION

CARANDANG, J.:

Before this Court is a Petition for Review on *Certiorari*<sup>1</sup> under Rule 45 of the Rules of Court, assailing the Decision<sup>2</sup> dated October 12, 2018 and Resolution<sup>3</sup> dated February 20, 2019 of the Court of Appeals (CA) in CA-G.R. SP No. 08068-MIN.

Antecedents

Petitioners Elena M. Borcillo (Borcillo), Reynaldo E. Manuel, Jr. (Manuel, Jr.), and Romiel S. Vallente (Vallente; collectively, petitioners) were the Department of Education (DepEd) Cagayan de Oro City's School Division Superintendent, Assistant School Division Superintendent, and the Administrative Officer (AO) V – Administrative Services Division,

<sup>1</sup> *Rollo*, pp. 4-13.

<sup>2</sup> Penned by Associate Justice Tita Marilyn Payoyo- Villordon, with the concurrence of Associate Justices Oscar V. Badelles and Walter S. Ong; *id.* at 24-32

<sup>3</sup> *Id.* at 33-34.

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respectively.<sup>4</sup> They filed a complaint against respondent Edna L. Maghinay (Maghinay), AO V of the DepEd, Cagayan de Oro City Division. They alleged that pursuant to DepEd's approved Rationalization Plan (RP), Borcillo issued Special Order (SO) No. 123<sup>5</sup> dated January 23, 2015, reassigning Maghinay from AO V of the Administrative Services Division to AO V – Finance (Budget) Division, effective January 26, 2015. Maghinay protested her reassignment before the DepEd Regional Office No. 10 (RO-10).<sup>6</sup>

On June 4, 2015, the DepEd RO-10, through Officer-In-Charge Office of the Regional Director (OIC-RD) Atty. Shirley O. Chatto, issued a Resolution<sup>7</sup> revoking SO No. 123 and directing Maghinay's reinstatement to her former position as AO V-Administrative Services.<sup>8</sup> In ruling that SO No. 123 is bereft of any basis, the OIC-RD explained that AO V – Administrative Services is entirely different from AO V- Finance (Budget) Division such that a reassignment from the former position to the latter, and vice versa, would result to constructive dismissal. Because the two positions are distinct from each other, Maghinay would be constrained to perform duties and responsibilities inconsistent with her former position.<sup>9</sup>

Borcillo moved for reconsideration but was denied in a Resolution<sup>10</sup> dated July 6, 2015.

On July 21, 2015, OIC-RD Chatto, had issued a First Endorsement for the Implementation of her Resolution dated June 4, 2015.<sup>11</sup>

Meanwhile, on October 9, 2015, Borcillo appealed the Resolution dated June 4, 2015 of the DepEd RO-10 to the DepEd-Secretary.<sup>12</sup>

On February 12, 2016, the DepEd Secretary, through Undersecretary Alberto T. Muyot, rendered its Decision<sup>13</sup> granting the appeal and upholding the validity of SO No. 123. It was clarified that since the appointment paper of Maghinay provides that her station is Division of Cagayan de Oro City, not Administrative Services, she can be assigned by the appointing authority, Borcillo, to any of the offices in the Division of Cagayan de Oro where she can perform her duties and responsibilities as Administrative Officer V. It was explained that the reassignment order is supported by Civil Service Commission Memorandum Circular No. 02-05 dated January 4, 2005 and Rule IV of DepEd Order No. 1, s. 2003 dated January 6, 2003.<sup>14</sup> It was also held that there was no constructive dismissal because Maghinay still occupies the position of Administrative Officer V (Step 8) and receives the same salary.

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<sup>4</sup> Id. at 36.

<sup>5</sup> Id. at 62, 112.

<sup>6</sup> Id. at 6.

<sup>7</sup> Id. at 55-61, 114-120.

<sup>8</sup> Id. at 120.

<sup>9</sup> Id. at 119.

<sup>10</sup> Penned by Chief Administrative Officer Atty. Shirley O. Chatto; id. at 121-129.

<sup>11</sup> Id. at 7, 31.

<sup>12</sup> Id. at 7.

<sup>13</sup> Id. at 44-53.

<sup>14</sup> Id. at 50-51.

Her duties and responsibilities in the Finance (Budget) Division are duties and responsibilities of the same dignity as those of an Administrative Officer V in the Administrative Services.<sup>15</sup>

Maghinay appealed the Decision of the DepEd Secretary before the Civil Service Commission (CSC). Pending her CSC appeal, Maghinay refused to assume and discharge the functions of her office as AO V-Finance (Budget) Division while continuously receiving her salaries. She also refused to submit her 2015 Individual Performance Commitment and Review Form (IPCRF). Maghinay countered that she already submitted an IPCRF based on her actual performance.<sup>16</sup> However, the IPCRF she submitted did not pertain to her assigned functions.<sup>17</sup>

On April 21, 2016, while the appeal of Maghinay to the CSC was still pending, petitioners filed an administrative case for Gross Neglect of Duty against her before the Office of the Ombudsman (OMB).<sup>18</sup>

Meanwhile, on May 16, 2017, the CSC rendered its Decision<sup>19</sup> declaring SO No. 123 void. The CSC ordered that Maghinay be restored to her original station at the Administrative Services of DepEd Cagayan de Oro.<sup>20</sup> The CSC refused to resolve the substantive issues presented in the appeal because when Borcillo appealed to the DepEd Secretary on October 9, 2015, or after almost three months from her receipt of the Resolution denying her Motion for Reconsideration, the DepEd should have dismissed her appeal outright. For the CSC, the Resolution dated June 4, 2015 of OIC-RD Atty. Chatto is already final and executory.<sup>21</sup>

In a Resolution<sup>22</sup> dated August 15, 2017, the CSC denied the Motion for Reconsideration petitioners filed.<sup>23</sup>

### Ruling of the Ombudsman

On December 22, 2016, the OMB rendered its Decision,<sup>24</sup> the dispositive portion of which states:

**WHEREFORE**, premises on all the foregoing, respondent **Edna Lago Maghinay** is hereby held administratively guilty of **Gross Insubordination** and is hereby **meted out the penalty of suspension of six (6) months and one (1) day** without pay. The charge for Gross

<sup>15</sup> Id. at 52.

<sup>16</sup> Id. at 63.

<sup>17</sup> Id. at 7.

<sup>18</sup> Id.

<sup>19</sup> Penned by Civil Service Commissioner Robert S. Martinez with the concurrence of Chairman Alicia del Rosa-Bala; id. at 146-150.

<sup>20</sup> Id. at 150.

<sup>21</sup> Id. at 149-150.

<sup>22</sup> Penned by Civil Service Commissioner Robert S. Martinez with the concurrence Chairman Alicia dela Rosa-Bala and Commissioner Leopoldo Roberto W. Valderosa, Jr.; id. at 152-155.

<sup>23</sup> Id. at 155.

<sup>24</sup> Approved by Deputy Ombudsman for Mindanao Rodolfo M. Elman; id. at 36-43.

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Neglect of Duty is dismissed.

In the event that the penalty of Suspension can no longer be enforced due to respondent's separation from the service, the same shall be converted into a Fine equivalent to her salary for six (6) months payable to the Office of the Ombudsman, and may be deductible from her accrued leave credits or any receivable from her office.

This Decision shall be executed as a matter of course and an appeal or motion for reconsideration shall not stop it from being executory. The refusal or failure to comply without just cause, of the officer directed to implement this Decision shall be a ground for disciplinary action against said officer.

Accordingly, the Honorable Regional Director, Allan G. Farnazo, Department of Education – Region X, is hereby directed to implement the aforesated penalty imposed against the respondent within ten (10) days from receipt hereof, and to submit to this Office within the same period, a Compliance Report indicating the Docket Number of this case.

**SO ORDERED.**<sup>25</sup> (Citations omitted; emphasis in the original)

The OMB found no proof indicating that Maghinay's reassignment was arbitrary, oppressive, or otherwise done out of mere whim and caprice. The OMB held that Maghinay cannot claim that the reassignment was a demotion because she retained the same position, rank, and salary rate she previously held (*i.e.*, AO V with salary grade 18, step 8.).<sup>26</sup>

With respect to Maghinay's pending appeal before the CSC, the OMB clarified that where a decision by a department is further appealed to the CSC, the same shall be executory pending appeal except when it involves the penalty of removal.<sup>27</sup>

As to the charge of Gross Neglect of Duty, the OMB ruled that Maghinay cannot be said to have neglected her duty in refusing to submit her 2015 IPCRF because she submitted one. Although it was wrong for her not to assume the duties of an AO V – Finance (Budget) Division and do tasks other than what she was assigned to do, to require her to submit an IPCRF not based on her actual work would mean to compel her to lie.<sup>28</sup>

In an Order dated March 13, 2017, Maghinay's Motion for Reconsideration was denied.<sup>29</sup>

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<sup>25</sup> Id. at 41-42.

<sup>26</sup> Id. at 39-40.

<sup>27</sup> Id.

<sup>28</sup> Id. at 41.

<sup>29</sup> Id. at 64-68.

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### Ruling of the Court of Appeals

On October 12, 2018, the CA rendered its Decision,<sup>30</sup> the dispositive portion of which states:

WHEREFORE, the Court GRANTS the Petition. The Decision dated December 22, 2015 and Order dated March 13, 2017 of the Hon. Ombudsman are hereby REVERSED and SET ASIDE. The Court DIRECTS the REINSTATEMENT of the petitioner and PAYMENT of her salaries and other emoluments of her office which she failed to receive by reason of her suspension.

SO ORDERED.<sup>31</sup>

The CA noted that the Decision dated February 12, 2016 of the DepEd Secretary was void for being issued without jurisdiction because the appeal was belatedly filed. It was pointed out that on July 21, 2016, OIC-RD Atty. Chatto, had already issued a First Endorsement for the Implementation of her Resolution dated June 4, 2015. Since said Resolution had already become final and executory, the DepEd Secretary has no jurisdiction to review it. Maghinay cannot be held liable for gross insubordination because the DepEd Secretary's Decision dated February 12, 2016 is void. Since it is a void decision, it does not affect the Resolution dated June 4, 2015 of OIC-RD Chatto which revoked SO No. 123 or the order of reassignment of Maghinay. There is no basis to hold Maghinay guilty of insubordination because she is not bound to obey a revoked order.<sup>32</sup>

The Motion for Reconsideration<sup>33</sup> petitioners filed was denied in a Resolution<sup>34</sup> dated February 20, 2019.

In the present petition,<sup>35</sup> petitioners insist that the order of reassignment must be complied with immediately before it is revoked or its implementation is restrained.<sup>36</sup> Petitioners also point out that Maghinay erred in appealing the reassignment order to the DepEd Regional Office and not to the CSC considering that her reassignment is a non-disciplinary personnel action. For petitioners, DepEd Regional Office has no jurisdiction to entertain her appeal and its Decision cannot be the basis for the determination of the validity of SO No. 123 which Maghinay is bound to obey.<sup>37</sup>

In her Comment,<sup>38</sup> Maghinay argues that the DepEd Regional Director has jurisdiction over the validity of SO No. 123, which led to her reassignment. She maintains that petitioners cannot collaterally attack now the

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<sup>30</sup> Supra note 2.

<sup>31</sup> *Rollo*, p. 32.

<sup>32</sup> *Id.* at 30-32.

<sup>33</sup> *Id.* at 81-88.

<sup>34</sup> Supra note 3.

<sup>35</sup> *Rollo*, pp. 4-13.

<sup>36</sup> *Id.* at 9.

<sup>37</sup> *Id.* at 11-12.

<sup>38</sup> *Id.* at 290-302.

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Decision of the CSC dated May 16, 2017 as this had already become final and executory following the Entry of Judgment issued by the CA on April 29, 2018.<sup>39</sup> Maghinay also highlights the DepEd RO-10's supervisory authority in cases of personnel action such as reassignment pursuant to DepEd Order No. 35, Series of 2004 on the Grievance Machinery and reiterates that the decision of OIC-RD Chatto is final.<sup>40</sup> Maghinay also argues that a void judgment, such as the order of reassignment in SO No. 123, has no legal effect and may be resisted in any action or proceeding.<sup>41</sup> Maghinay also points out that petitioners have no *locus standi* because they have no authority to represent the proper disciplining authority, Schools Division Superintendent of the Division of Cagayan de Oro City Jonathan S. Dela Pena.<sup>42</sup> Lastly, Maghinay emphasizes that there was no willful disobedience on her part because from January 2015 to March 18, 2016, she relied in good faith on the Decision of OIC-RD Chatto. When the DepEd Secretary reversed the Decision of OIC-RD Chatto, she obeyed by assuming the position of AO V–Finance, her reassigned position. She assumed this function even while her appeal with the CSC was pending and only resumed her functions as AO V – General Services after she received a memorandum implementing the Decision of the CSC.<sup>43</sup>

### Issues

The issues to be resolved in this case are:

1. whether petitioners have legal standing to initiate the administrative complaint against Maghinay with the OMB;
2. whether the Decision of the DepEd Secretary upholding the reassignment order of Maghinay is valid; and
3. whether Maghinay, in refusing to comply with her reassignment order while her appeal to the DepEd Regional Office was still pending, should be held administratively liable for gross insubordination.

### Ruling of the Court

The petition is partly meritorious.

**Petitioners have legal standing to initiate the administrative complaint against Maghinay with the OMB.**

Maghinay argues that petitioners have no *locus standi* because they have no authority to represent the proper disciplining authority, Schools

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<sup>39</sup> Id. at 294-295.

<sup>40</sup> Id. at 295-296.

<sup>41</sup> Id. at 296-297.

<sup>42</sup> Id. at 299-300.

<sup>43</sup> Id. at 301.

Division Superintendent of the Division of Cagayan de Oro City Jonathan S. Dela Pena.<sup>44</sup> She is mistaken.

It must be emphasized that at the time SO No. 123 was implemented, petitioners Borcillo, and Manuel, Jr. were the DepEd – Cagayan de Oro City’s School Division Superintendent and Assistant School Division Superintendent, respectively. The challenged SO No. 123 was issued by Borcillo in her official capacity. As the immediate supervisors of Maghinay, they having standing to initiate an administrative complaint against an erring subordinate.

Although Borcillo already retired from service as of May 29, 2018 and Manuel, Jr. is no longer connected with DepEd – Cagayan de Oro City, their separation from government service during the pendency of the case does not render the administrative complaint against Maghinay procedurally defective. Also, the fact that Vallente occupied the same position as Maghinay does not bar him from initiating an administrative complaint against her. The procedure in administrative cases stated in Section 3 of Rule III of Administrative Order No. 7 states:

Section 3. How initiated. – An administrative case may be initiated by a written complaint under oath accompanied by affidavits of witnesses and other evidence in support of the charge. Such complaint shall be accompanied by a Certificate of NonForum Shopping duly subscribed and sworn to by the complainant or his counsel. An administrative proceeding may also be ordered by the Ombudsman or the respective Deputy Ombudsman **on his initiative** or on the basis of a complaint originally filed as a criminal action or a grievance complaint or request for assistance. (Emphasis supplied)

Clearly, with or without a complaint, an administrative proceeding may be initiated by the OMB against erring public officers under the jurisdiction of the OMB.

**Petitioners’ appeal to the DepEd Secretary was filed out of time.**

At the outset, it must be pointed out that the appeal of petitioners to the DepEd Secretary should not have been given due course as it was filed out of time. Section 51 of the Revised Rules of Procedure of the DepEd in Administrative Cases states:

Section 51. Filing of Appeals – Decisions of the Regional Directors imposing a penalty exceeding thirty (30) days suspension or fine in an amount exceeding thirty (30) days’ salary, may be appealed to the Secretary of Education **within a period of fifteen (15) days from receipt thereof**. Then, from the Secretary of Education, the same may be finally

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<sup>44</sup> Id. at 299-300.

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appealed to the Civil Service Commission. Pending appeal, the same shall be executory, except where the penalty is removal in which case the same shall be executory only after confirmation by the Secretary concerned. (Emphasis supplied)

The appeal of petitioners before the DepEd Secretary was belatedly filed considering that almost three months already lapsed, reckoned from Maghinay's receipt of the Resolution on July 21, 2015, before they filed the same. Thus, the DepEd Secretary should have dismissed the appeal of petitioners for being filed out of time. As correctly pointed out by the CA, the DepEd Secretary's Decision dated February 12, 2016 was void for being issued without jurisdiction because the appeal was filed out of time. It was noted that on July 21, 2016, OIC-RD Chatto, had already issued the First Endorsement for the Implementation of her Resolution dated June 4, 2015. Since said Resolution had already been final and executory, the DepEd Secretary has no jurisdiction to review it.<sup>45</sup>

**Maghinay is only liable for simple insubordination, a less grave offense, instead of gross insubordination.**

Insubordination refers to "a refusal to obey some order, which a superior officer is entitled to give and have obeyed. The term imports a willful or intentional disregard of the lawful and reasonable instructions of the employer."<sup>46</sup>

Maghinay cannot be held liable for gross insubordination for defying the DepEd Secretary's Decision dated February 12, 2016. Since it is a void decision, it does not affect the Resolution of OIC-RD Chatto which revoked SO No. 123 or the order of reassignment of Maghinay.

However, despite the void Decision of the DepEd Secretary, Maghinay is not absolutely free from administrative liability. She should have immediately complied with the reassignment order Borcillo issued while her appeal remained pending with the DepEd RO-10. We note that Maghinay began discharging the functions of AO V – Finance (Budget) Division only in March 2016 while the reassignment order took effect on January 26, 2015. She waited for the Decision of the DepEd Secretary affirming her reassignment pursuant to SO No. 123 before she complied with the order. Maghinay failed to act promptly on the Borcillo's instruction in SO No. 123 which enjoys the presumption of regularity and warrants her obedience and compliance. To Our mind, this inaction and non-compliance to SO No. 123, despite being subsequently nullified, constitutes a disregard of the instructions of her supervisor. While the case of *Light Rail Transit Authority v. Salvana*<sup>47</sup> is not on all fours with the present case, it is worthy to highlight the Court's explanation that "what respondent should have done would be to occupy the

<sup>45</sup> Id. at 31, 150.

<sup>46</sup> *Civil Service Commission v. Arandia*, 731 Phil. 639, 648 (2014).

<sup>47</sup> 736 Phil. 123 (2014)



new position and then file the proper remedies. She should not have defied the orders of her superiors.”<sup>48</sup> Thus, upon receipt of SO No. 123, Maghinay should have immediately reported to her new work assignment though she may not agree with it.

Maghinay should be held liable only for the less grave offense of insubordination instead of gross insubordination because this is only her first offense and she firmly believed, based on the advice of her counsel, that she could defy the reassignment order pending the resolution of her appeal in the Civil Service Commission. Absent any proof of willful or intentional disregard of the lawful and reasonable instruction of her superior, Maghinay cannot be held guilty of gross insubordination. In *Civil Service Commission v. Arandia*<sup>49</sup> the Court considered the failure to promptly comply with a memorandum instructing respondent to turn over documents in relation to a reassignment order simple insubordination. In *Arandia*, the Court found suspension of one month and one day as sufficient penalty for respondent’s offense though she was only fined at the end as she was no longer in government service when the case was decided.<sup>50</sup>

In several administrative cases, the Court has refrained from strictly imposing the penalties provided by law, in light of mitigating factors such as the offending employee’s length of service, acknowledgment of his or her infractions, good faith, and other equitable considerations. To Our mind, the same liberality should be accorded to Maghinay. We note that it was Maghinay’s first infraction of such kind. She honestly believed that she could defy the reassignment order while her appeal was pending resolution. Accordingly, Maghinay should be meted the penalty of suspension for a period of one month and one day.<sup>51</sup>

**WHEREFORE**, premises considered, the Decision dated October 12, 2018 and the Resolution dated February 20, 2019 of the Court of Appeals in CA-G.R. SP No. 08068-MIN are **SET ASIDE**. We find respondent Edna Lago Maghinay **GUILTY** of simple insubordination and impose on her the penalty of suspension of one (1) month and (1) day.

**SO ORDERED.**

<sup>48</sup> Id. at 160.

<sup>49</sup> 731 Phil. 639, 649 (2014).

<sup>50</sup> Id.

<sup>51</sup> (B) (5), Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service of 2017 (2017 RACCS) states:

B. The following are less grave offenses with the corresponding penalties:

x x x x

5. Insubordination


1st offense – Suspension 1 mo. 1 day to 6 mos.

2nd offense – Dismissal




**ROSMARID D. CARANDANG**  
*Associate Justice*

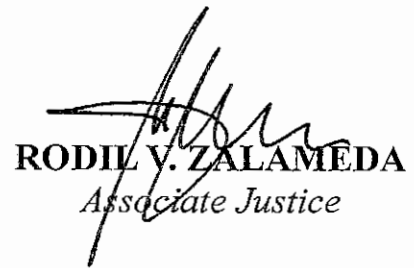
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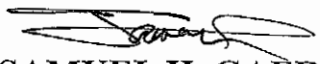
**DIOSDADO M. PERALTA**  
*Chief Justice*



**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*



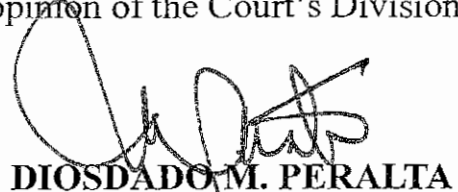
**RODIL V. ZALAMEDA**  
*Associate Justice*



**SAMUEL H. GAERLAN**  
*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 case was assigned to the writer of the opinion of the Court's Division.



**DIOSDADO M. PERALTA**  
*Chief Justice*